

## Cost of claims definition – Conventional policies

As at June 2024

For the purposes of clause 143 (1) (c) of the *Workers Compensation Regulation 2016* the **cost of claims**, in relation to a period of insurance commencing on or after 12 midnight 30 June 2024 but before 12 midnight 30 June 2025 for a policy, means the total of the costs of each individual claim of which the Nominal Insurer has notice at the time of renewal of the policy concerned, being a claim made against a particular employer with respect to an injury received (or that is deemed by the *Workers Compensation Act 1987* (the Act) or the former Act to have been received) during a prior injury year or the period of insurance, whichever is relevant, but not including any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act, or any claim or illness attributed to contracting COVID-19 in the workplace that is supported by a positive test result, or any claim or illness attributed to receiving the COVID-19 vaccination that has been evidenced as being a workplace requirement.

The cost of an individual claim (C) is to be calculated in accordance with the following formulae whether the payments were made, or the fees, expenses or costs were paid during or after the injury year or period of insurance in which the injury to which the claim relates was received (or is deemed by the Act or the former Act to have been received):

$$C = ((CC \times (1 - R\%)) \times (1 - RTW1\%))$$

where:

**C** is the cost of the individual claim.

**CC** is \$150,000 (being the large claim limit for the policy) or the sum of the following at the commencement of the period of insurance, whichever is the lesser:

- (a) (a) weekly compensation payments, if any, made by the insurer in respect of the claim pursuant to the Act,
- (b) (b) provisional weekly payments of compensation, if any, under Part 3 of Chapter 7 of the *Workplace Injury Management and Workers Compensation Act 1998* by the insurer, being payments of compensation on the basis of provisional acceptance of liability to a worker,
- (c) (c) the payments, if any, of permanent impairment under section 66 (Entitlement to compensation for permanent impairment) of the Act made by the insurer either in satisfaction of judgments relating to the claim or in settlement of the claim,
- (d) (d) the payments, if any, made by the insurer in respect of the claim pursuant to Division 9 (Commutation of compensation) of Part 3 (Compensation— benefits) of the Act either in satisfaction of judgments relating to the claim or in settlement of the claim,
- (e) (e) the payments, if any, of damages at common law and under the *Compensation to Relatives Act 1897* made by the insurer either in satisfaction of judgments relating to the claim or in settlement of the claim.

**CC** does not include:

- the cost of any claim under section 8.1 Catastrophic claim contribution, or
- any amount that section 54 (4) (b) of the 1998 Act (Second-injury scheme) requires to be excluded from the claims experience of the employer

**R%** is the amount recovered, or confirmed legally recoverable from a third party, as a percentage of the total cost of an individual claim calculated using the following formula:

$$R\% = \frac{R}{TCC} \times \frac{100}{1}$$

where:

**R** is the sum of amounts recovered by the insurer, or confirmed legally recoverable from a third party, in relation to any individual claim however,

in any case:

- (a) does not exceed TCC, and
- (b) does not include amounts recovered under section 160 of the Act.

**TCC** is the total of all payments made on the claim as at the policy renewal date

**RTWI%** is the return to work incentive percentage for the employer and is:

for a small employer—0, and

for an experience-rated employer—calculated with respect to the period of insurance as follows:

- i. if the claim was made against a policy that took effect at or after 4pm on 30 June 2015 and the injured worker returned to sustained suitable employment within a period specified in Column 1 of the Table to this Section, the percentage rate specified in Column 2 of the Table that corresponds to that period,

Return to work period after date of injury	RTWI%
Less than 13 weeks	15%
13 weeks or greater but less than 26 weeks	10%
26 weeks or greater but less than 52 weeks	5%
52 weeks or greater	0%

**sustained suitable employment** means suitable employment for a period of at least 3 consecutive months before the commencement of the period of insurance concerned, with no requirement for weekly compensation payments.

**Note:** The cost of an individual claim is not reduced by the amount the injured worker is entitled to receive as one week’s weekly payment of compensation, whether or not a claims excess is payable. Conventional policies commencing or renewing on or after 4pm 30 June 2015 are not subject to clause 145 of the *Workers Compensation Regulation 2016*.

If an employer, after the renewal of a policy, requests reimbursement of any weekly compensation payments in respect of a period of incapacity before that renewal, the Nominal Insurer may adjust the amount of weekly compensation payments and re-calculate the employer's premium.

**Note.** Clause 143 (1) of the *Workers Compensation Regulation 2016* provides that, in any case where a single event leads to 3 or more individual claims, the total costs of all those claims in relation to that event are not to exceed the amount that is twice the relevant large claim limit for the policy.

## Retrospective application of recoveries

For conventional policies, in applying a recovery, icare will generally only alter the totals for C1, C2 & C3 of the current policy period and the most recently expired policy period.

For any policy periods prior to these, alterations to costs in applying a recovery will be assessed on a case-by-case basis.

For claims subject to a recovery under CTP insurance from a third party, where a police report has been provided confirming the injured worker is not at fault, full recovery of all costs can be applied.

### How to connect with us

**Phone:** 13 44 22 (7am to 7pm, Monday to Friday)

**Email:** [underwriting.operations@icare.nsw.gov.au](mailto:underwriting.operations@icare.nsw.gov.au)

**Post:** PO Box 6766, Silverwater NSW 1811