

## Workers Insurance Policy Terms & Conditions

The specific terms of icare's standard workers compensation insurance policies are set by the NSW Government and are contained in the *Workers Compensation Regulation 2016 (NSW)* (the **regulations**). This document outlines the terms and conditions in accordance with clause 51 and Schedule 3 of the *Workers Compensation Regulation 2016 (NSW)*.

### Part 1 Preliminary

#### 1. Definitions

In this Policy:

Employer means the person insured under this Policy, being the person named as the Employer in the Schedule of Employer Particulars.

Insurer means the insurer of the Employer under this Policy, being the person named as the Insurer in the Schedule of Employer Particulars.

Period of insurance means the period specified in the Schedule of Employer Particulars as the period during which this Policy is in force, and any subsequent period in respect of which this Policy is duly renewed.

Schedule of Employer Particulars means the Schedule most recently issued by the Insurer to the Employer as the Schedule of Employer Particulars in respect of this Policy.

The Act means the *Workers Compensation Act 1987* and includes the *Workplace Injury Management and Workers Compensation Act 1998*.

The Proposal means the proposal for insurance in respect of which this Policy is issued (made by the Employer to the Insurer).

Worker has the same meaning as in the Act (including the extended meaning it has because of Schedule 1 (Deemed employment of workers) to the Act).

#### 2. Proposal and Schedule form part of Policy

The Proposal is the basis of this contract of insurance. Both the Proposal and the Schedule of Employer Particulars are considered to form part of this Policy.

### Part 2 Cover Provided By Policy

#### 3. What the Insurer is liable for

The Insurer will indemnify the Employer against all of the following sums for which the Employer becomes liable during or in respect of the period of insurance:

- a. compensation that the Employer becomes liable to pay under the Act to or in respect of any person who is a worker of the Employer (including any person to whom the Employer is liable under section 20 of the *Workers Compensation Act 1987*),
- b. any other amount that the Employer becomes liable to pay independently of the Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for any injury to any such person (not including liability in respect of an injury, suffered by a person other than such a worker, arising out of any rescue or attempted rescue),
- c. costs and expenses incurred with the written consent of the Insurer in connection with the defence of any legal proceeding in which any such liability is alleged.

The Insurer will not indemnify the Employer for the Employer's liability for GST payable on the settlement of a claim.

#### 4. Businesses and industrial activities to which Policy applies

This Policy applies to a business or industrial activity described in the Schedule of Employer Particulars. The Employer can change the

businesses or industrial activities to which this Policy applies by giving notice of the change in writing to the Insurer. The Schedule of Employer Particulars is taken to have been changed to give effect to any such notice given by the Employer. The premium payable for this Policy is to be adjusted in accordance with any change in the businesses or industrial activities to which this Policy applies.

#### **5. Insurer is directly liable to workers**

The Insurer (as well as the Employer) is directly liable to any worker and (if the worker dies) to the worker's dependants or other persons to pay the compensation under the Act or other amount independently of the Act for which the Employer is liable and indemnified under this Policy. This means that a claim can be made and action taken directly against the Insurer.

#### **6. Insurer is bound by judgments etc against Employer**

The Insurer is bound by and subject to any judgment, order, decision or award given or made against the Employer, in respect of any liability for which the Insurer is liable to indemnify the Employer under this Policy.

#### **7. Premium**

The premium for this Policy is calculated in accordance with the *Workers Compensation Market Practice and Premiums Guidelines*.

### **Part 3 Conditions of Policy**

#### **8. Employer must give Insurer or the Nominal Insurer notice of injury to worker**

The Employer must notify the Insurer or the Nominal Insurer within 48 hours after becoming aware that a worker has received a workplace injury.

#### **9. How notices are to be given**

1. Notices to be given under this Policy to the Insurer are to be given by being delivered, posted or transmitted electronically to the address of the Insurer last notified to the person giving the notice.

2. Notices to be given under this Policy to the Employer are to be given by being delivered, posted or transmitted electronically to the address of the Employer last known to the Insurer.
3. The notification of injury required by clause 8 is to be given to the Insurer in the manner required by subclause (1) or in such other manner as the Insurer indicates to the Employer that the Insurer will accept.

#### **10. Employer not to make admissions etc**

The Employer must not, without the written authority of the Insurer, incur any expense of litigation, or make any payment, settlement or admission of liability in respect of any injury to or claim made by any worker.

#### **11. Defence of proceedings**

The Insurer can use the name of the Employer in respect of anything indemnified under this Policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer. The Employer must comply with all reasonable requests by the Insurer for information, assistance and documents to enable the Insurer to settle or resist a claim.

#### **12. Subrogation**

The Insurer can use the name of the Employer in any proceedings to enforce, for the benefit of the Insurer, any order made for costs or otherwise. The Insurer has the right of subrogation in respect of all rights which the Employer may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim for any injury covered by this Policy. The Employer must execute such documents as may be necessary for the purpose of vesting any of those rights in the Insurer, as and when required to do so by the Insurer.

#### **13. Precautions to prevent injury**

The Employer must take all reasonable precautions to prevent injury.

#### **14. Alterations and repairs following injury**

So far as is reasonably practicable, the Employer must not alter or repair any work, machinery, plant, way or appliance after an injury to a worker occurs in connection with it, until the Insurer has had an opportunity to examine it or has consented to the alteration or repair being made.

#### **15. Insurer's right of inspection**

The Insurer is entitled to inspect at any reasonable time any work, machinery, plant, way or appliance used in the Employer's business or industrial activity.

#### **16. Assignment**

An assignment of interest under this Policy does not bind the Insurer unless the written consent of the Insurer to the assignment has been obtained.

#### **17. Renewal of Policy**

This Policy is renewed on the expiration of the current period of insurance to which it applies, except where:

- a. the Employer has given written notice to the Insurer (before the expiration of the current period of insurance) that renewal is not required, or
- b. the Insurer has given the Employer notice in writing not less than 14 days before the expiration of the current period of insurance that the Insurer refuses to renew the Policy, but the Insurer cannot refuse to renew this Policy unless the Authority has given its prior consent in writing to the refusal.

The period of each renewal is 12 months, or such shorter period as the Insurer and the Employer agree to before renewal.

#### **18. Cancellation of Policy**

The Insurer may cancel this Policy at any time if the Insurer has first obtained the written consent of the Authority (and cannot cancel this Policy in any circumstances without that consent). The Insurer cancels this Policy by giving notice of cancellation in writing to the Employer. The cancellation takes effect on

the cancellation day notified in the notice of cancellation but that day must not be less than 7 days after the notice of cancellation is given to the Employer. Section 184 of the 1987 Act applies as if the Policy had been cancelled under that section.

#### **19. No waiver or alteration**

A provision of this Policy cannot be waived or altered unless the consent of the Insurer has been previously obtained and signified by endorsement on this Policy.

#### **20. Employer must tell Insurer if unable to give suitable work requested by injured worker**

If a worker employed by the Employer is partially incapacitated for work as a result of an injury and requests the Employer to provide suitable employment for him or her and the Employer does not immediately provide suitable employment, the Employer must promptly notify the Insurer of the following:

- a. the fact of the worker's request and that the Employer has not provided suitable employment,
- b. any proposal to provide or arrange for suitable employment for the worker, having regard to the certificate of capacity which the worker supplies and to the Employer's return-to-work program (if any) or otherwise.

#### **21. Employer must advise change of business or industry**

The Employer must notify the Insurer, as soon as practicable, of any change in the business or industrial activity carried on by the Employer.

#### **22. Records to be kept of wages**

The Employer agrees to allow the Insurer to inspect the records kept by the Employer under section 174 of the 1987 Act.

**Note:** Section 174 of the 1987 Act requires the Employer to keep certain records (such as records of wages paid to workers) and requires the Employer to keep those records for at least 5 years. The section gives the Authority certain rights to inspect those records.

## 23. Cover conditional on Employer complying with Policy, Act and regulations

The indemnity provided by this Policy is conditional on compliance by the Employer with the provisions of this Policy, the Act and the regulations under the Act.

## 24. Act and regulations form part of Policy

This Policy is subject to the provisions of the Act and the regulations under the Act and those provisions are taken to form part of this Policy.

## Notes

1. *Recovery of excess from Employer.* Under section 160 of the 1987 Act, the Employer is required to repay the prescribed excess amount, as specified by the Workers Compensation Market Practice and Premiums Guidelines, in respect of each claim for weekly compensation paid by the Insurer.

An Employer is not required to make the repayment to the extent that the Insurer either offsets the amount against compensation duly advanced by the Employer to the claimant worker or makes an appropriate debit against

any amount standing to the Employer's credit for premiums.

2. *Domestic etc workers.* If this Policy is issued for domestic or similar workers (including when this Policy forms part of a household insurance package) it is to be read as if:
  - a. the reference to the Employer carrying on business were a reference to the Employer employing domestic or similar workers, and
  - b. the provisions in clause 4 for the Employer to notify a change of business or industrial activity were omitted, and the provisions of clauses 17 (Renewal of Policy) and 21 (Employer must advise change of business or industry) were omitted.
3. *Workplace injury management.* The Employer of an injured worker who has been totally or partially incapacitated for work has certain obligations under Chapter 3 of the *Workplace Injury Management and Workers Compensation Act 1998*, including an obligation under section 49 to provide suitable employment if the worker is able to return to work. It is a condition of this Policy that the Employer must comply with the requirements of that Chapter, but only if the Insurer has taken appropriate steps to ensure that the Employer is made aware of those obligations.

**icare Workers Insurance**

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