

INTRODUCTION

What is Workers Compensation?

Workers Compensation is insurance cover that employer is legally obliged to have. It protects the employer from the cost of injuries to workers and associates common law costs. It also provides injured workers with weekly payments, as well as medical, rehabilitation and other cost.

The Tasmania *Workers Rehabilitation and Compensation Act 1988* has two main purposes:

- to return injured or sick workers to the workforce as soon as possible through rehabilitation
- to ensure that injured or sick workers are compensated for the lost wages and medical and other expenses while they are unable to work, and that the dependants of deceased workers are compensated for the loss of the primary wage earner

WHO CAN CLAIM WORKERS COMPENSATION

Workers compensation can be claimed by anyone who is a worker, or deemed to be by the *Tasmanian Workers Rehabilitation and Compensation Act 1988* (the Act).

The Act defines a 'worker' as a person who has entered in, or works under, a contract of service or training agreement. The contract with the employer can take many forms and still be binding; it may be express or formal (ie in writing) or implied (ie oral).

For the purposes of the Act the term also includes the legal personal representatives or dependants of a deceased worker.

The definition includes workers who have been 'lent' or hired by their employer to another employer. In such cases, responsibility under the Act stays with the *usual* employer.

Volunteer firefighters, police, ambulance workers and other prescribed volunteers are also deemed to be workers while they are engaged in their volunteer duties.

There are several specific exclusions from the Act's coverage. These are:

- workers employed on a casual basis for purpose other than the employer's trade or business
- outworkers
- workers employed as domestic servants with a private family who have not completed 48 hours employment at the time they suffer injury
- members of crew of fishing boats who are mainly paid on the basis of shares of profits or gross earnings of the boat
- people participating in approved programs of work for unemployment payment (work for the dole schemes)

The Act does not apply to 'contractors' (people engaged in a contract **for** services), and it does not apply to worker engaged in sporting activities who may receive some payment simply for playing, training or travelling with a sporting body. (The Act does, however, apply to workers genuinely engaged under contracts of service with sporting bodies – for example, paid coaches, umpires or referees.)

WHAT ARE THE OBLIGATIONS AND RESPONSIBILITIES OF AN EMPLOYER?

Under the *Workers Rehabilitation and Compensation Act 1988*, it is **compulsory for every employer to have a current workers compensation policy or to hold a permit to self- insure**. An employer who does not have a current policy may be prosecuted, and if found guilty of the offence, be liable to be fined up to \$50,000, as well as an amount equal to the premium that the employer would have paid if insurance had been taken out. In addition, uninsured employer will be held responsible to pay the full cost of compensation, including any common law costs, if their workers are injured.

Permits may be granted to employers to carry their own liability ie -self insured under the Act, provided that they are able to satisfy specific conditions laid down by the WorkCover Tasmania Board.

Employers are required to meet the cost of income replacement payments for the first five working days of each injury suffered by a worker and the first \$200 of other benefits. This excess can be removed if any employer obtains a certificate from the WorkCover Tasmania Board. It is also possible for an employer to extend this period of insurance excess 30 days.

Immediately upon receiving a claim for compensation from a worker, the employer must complete the employer's report section of the claim form and, together with the medical certificate, send them to the insurer **within five working days**.

WHAT PROVISIONS APPLY TO THE LICENSING OF INSURERS?

To be permitted to write workers compensation insurance in Tasmania, insurers must hold licences issued under the WorkCover Rehabilitation and Compensation Act 1988.

Licences may be granted by the WorkCover Tasmania Board, and in considering licence application from insurers, the Board will need to be satisfied that:

- The insurer will provide the necessary insurance service, including, the ability to meet time limits imposed by this Act.
- The insurer will set premiums that reflect:
 1. The claims experience of an employer
 2. An employer's commitment to workplace health and safety
 3. An employer's agreement to provide suitable alternative duties to injured workers
- The insurer is financially viable
- The insurer is financially committed an appropriate level of resources in this state to manage claims for compensation in manner that furthers the object of rehabilitating injured workers
- The insurer will involve an employer in the management of claims for compensation