

Insurance Commission of Western Australia

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Employers' Indemnity Insurance Industrial Disease Policy



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Table of Contents

The Schedule.....	3
Introduction	3
Renewal Procedure	3
Claims Procedure	3
Definitions.....	4
The Cover.....	4
Exclusion.....	5
Conditions.....	5

The Schedule

The Schedule activates the insurance under this policy. When the policy is renewed for a further term a new Schedule will be issued.

The Schedule shall be considered part of the policy and anything detailed therein shall be considered as incorporated in the policy.

Please keep the Schedule with your policy. This policy is substituted for your earlier policy and shall be effective as from the date of renewal.

Introduction

This policy is issued pursuant to sections 162 and 163 of the Act.

Effective from 1 October 2011 cover is provided under this policy for the condition of “diffuse pleural fibrosis” as a result of Act amendments which incorporated this condition into the industrial disease provisions of the legislation.

This policy has been designed to provide your business with protection against workers' compensation claims from workers who contract the disease(s) of pneumoconiosis, mesothelioma, lung cancer or diffuse pleural fibrosis arising from employment in any mine or mining operation.

Your responsibility for workers' compensation arises under the Act. The benefits payable to injured workers are embodied within the

legislation and are therefore not shown in this policy.

We have set out in this document the specific terms of the cover we provide to you and certain conditions you must comply with to be covered by the policy. Please read this document carefully and do not hesitate to contact your Broker or Agent or us if you are uncertain of any aspect.

Renewal Procedure

Before your policy expires we will offer renewal by forwarding a notice advising the premium payable.

The premium and statutory charges must be paid to us by the due date shown in the Schedule, unless otherwise agreed by us.

Claims Procedure

If you become aware of an Injury suffered by a Worker you must notify us as soon as practicable. We will advise you of the procedure you and your Worker should follow.

You must not, without our permission, make any payment, settlement or give any admission of liability in respect of any claim.

Definitions

“Common Law Liability” means your liability:

- (a) to a Worker for damages due, claimed or paid independently of the Act;
- (b) under the Fatal Accidents Act 1959 as amended for an Injury causing the death of a Worker;
- (c) under the Law Reform (Miscellaneous Provisions) Act 1941 as amended for an Injury causing the death of a Worker; and
- (d) under the Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 as amended for an Injury to a Worker.

"Injury" means the disease(s) of pneumoconiosis, mesothelioma, lung cancer, diffuse pleural fibrosis and other industrial diseases as specified in accordance with section 151(a)(iii) of the Act arising from employment in any mine or mining operation.

“Policy Period” means the period of insurance commencing on the start date shown in the Schedule and ceasing at 4pm on the end date shown in the Schedule, and any subsequent period for which the policy is renewed.

"Schedule" means the current Schedule issued by us which forms part of this policy.

"The Act" means the Workers' Compensation and Injury Management Act 1981 (WA) as amended and replaced from time to time, including any subordinate rules and regulations.

“we”, “us” and “our” means the Insurance Commission of Western Australia.

“Worker” means:

- (a) a person who is defined as a Worker by the Act;
- (b) a person in respect of whom you are deemed to be an employer pursuant to section 175 of the Act;
- (c) a person deemed to be your Worker pursuant to section 175AA of the Act.

“you” and “your” means the Insured named in the Schedule attaching to the policy.

The Cover

As you or your appointed Broker or Agent has made a written or verbal request to us to effect the insurance provided under this policy which it is agreed shall be the basis of the contract, we agree to issue this policy to cover you on the terms, conditions and exclusions of the policy, subject to payment to us of the premium and statutory charges shown in the Schedule.

If during the Policy Period your Worker suffers an Injury and you are legally liable to make any payment in respect of such Injury under the Act, we will indemnify you against that payment, and in addition, will pay all reasonable costs and expenses incurred with our written consent, provided that:

1. We will not be liable under this policy to indemnify you in respect of a liability against which you are required by any law in force at the date on which the event or events occurred giving rise to the liability, to have indemnity under another policy of insurance, except to the extent of an amount (if any) which exceeds the amount payable under such other policy of insurance as permitted by the relevant law.
2. The truth of the written or verbal request for cover and any other information supplied to us, and the due observance and fulfilment of the conditions of this policy and any memoranda endorsed or otherwise expressed hereon or attached hereto, which conditions and memoranda are to be read as part of this policy, shall be conditions precedent to our liability.

Exclusion

No cover will apply under the policy for Common Law Liability.

Conditions

1. Notices

Every notice or communication to be given or made under this policy shall be delivered in writing to our office from which the policy has been issued. Delivery in writing may be electronic.

2. Notice of Injury

You shall give us notice of an Injury to a Worker as soon as practicable after information as to the happening of such, or of any incapacity arising therefrom, comes to you or your representatives' knowledge, or comes to the knowledge of you or your representative and shall forward to us as soon as practicable after you receive it, every written notice of claim or proceedings and all information as to any verbal notice of claim or proceedings.

3. Litigation, Settlement or Admission of Liability

You shall not, without our written consent, incur any expenses of litigation or make any payment, settlement or admission of liability in respect of any Injury to or claim made by any Worker.

4. Use of Your Name and Assistance

We shall in respect of anything indemnified under this policy, including the bringing, defending, enforcing or settling of legal proceedings for our benefit, be entitled to use your name. You shall give all necessary information and assistance to us and forward all documents we request, and cooperate with us in the management, defence or settlement of any claim.

5. Subrogation Rights

We shall be entitled to use your name in any proceedings to enforce, for our benefit, any order made for costs or

otherwise, and shall have the right of subrogation in respect of all rights which you may have against any person or persons who may be responsible to you or otherwise in respect of any claim for any Injury covered by this policy, and you shall as and when required execute any necessary documents to assist us in taking action in your name.

6. Reasonable Precautions

You must take all reasonable precautions to prevent Injury to Workers and must comply with all relevant statutory requirements, including the Occupational Safety and Health Act 1984 (WA) as amended and replaced, and its regulations.

7. Right of Inspection

After an Injury to a Worker, you must (as far as reasonably practicable), not alter, repair or dispose of any works, machinery, plant, tools or equipment involved in the Injury or documents pertaining to the Injury without our consent (which will not be unreasonably withheld).

We may, at all reasonable times, inspect the works, machinery, plant, tools, equipment and documents pertaining to the Injury.

8. Assignment

You must not assign your interest in this policy without our written consent.

9. Waiver

You must not rely on any waiver of any condition or provision of this policy unless we have confirmed the waiver to you in writing or by electronic means.

10. Cancellation

Subject to the provisions of sections 160(4) and 171(1)(b) of the Act, we may cancel this policy and retain the minimum premium charged for this policy.

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