

# Employer Indemnity

Policy Wording – Western Australia



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# Employer Indemnity – Policy Wording

## Introduction

1. Under the Act (defined below) employers must obtain from an approved insurance office a Policy of insurance for the full amount of their liability to pay compensation under the Act to any Worker employed by them.
2. The words 'we', 'us' and 'our' in this document refer to Zurich Australian Insurance Limited, ABN 13 000 296 640, AFS Licence Number 232507, which is an approved insurance office.
3. The words 'you' and 'your' in this document refer to the employer named in the Schedule to this document.
4. You have applied in writing to be covered by this Policy upon payment of an agreed premium.
5. We have therefore agreed to issue this Policy to cover you for the Policy Period, on the following terms.

## Definitions

6. The following definitions apply to the words used in this document. As a reminder, the first letters of the words are printed in upper case.

**Act** means the Workers' Compensation & Injury Management Act 1981 as amended and replaced from time to time, including any subordinate rules and regulations.

**Acts of Terrorism** means any act (on or before the final day referred to in the Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001) including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**Business** means the business, occupation, trade or profession described in the Schedule.

**Common Law Liability** means your liability:

- (a) to an Employee for an Injury to that Employee caused by your negligence or the negligence of anyone for whom you are vicariously liable;
- (b) under the *Fatal Accidents Act 1959* as amended for an Injury causing the death of an Employee;
- (c) under the *Law Reform (Miscellaneous Provisions) Act 1941* as amended for an Injury causing the death of an Employee; and

- (d) under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* as amended for an Injury to an Employee,

but does not include your liability under any contract.

**Contractors** means any person(s) engaged by you under a contract for service for the purpose of your Business with a view to your deriving income.

**Employee** means a Worker who is employed by you under:

- (a) a contract of service; or
- (b) a contract of apprenticeship with the apprentice.

**Injury** means injury as defined by the Act.

**Policy** means this document, the Schedule, any endorsement, the proposal for this policy, and any Wages declaration or estimate for the Business pertaining to the Policy Period.

**Policy Period** means the period of insurance commencing at 4.00pm on the start date shown in the Schedule and ceasing at 4.00pm on the end date shown in the Schedule, and any subsequent period for which the Policy is renewed.

**Schedule** means the document pertaining to this Policy and titled 'Policy Schedule'.

**Wages** means all wages, salaries, remuneration, commissions, bonuses, overtime, allowances and the like, directors' fees, superannuation contributions (except those made by force of law), fringe benefits, and all other benefits paid (whether paid in cash or non cash benefits such as vehicles, equipment, mortgage payments, travel, school fees etc.) to or in relation to a Worker (including working directors declared as such to us) or to Contractors, before deduction of income tax.

'Wages' does not include termination payments, retirement pay, retrenchment pay in lieu of notice, pensions, 'golden handshakes', or weekly payments of workers' compensation.

**Worker** means:

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

## Workers' Compensation Insurance

7. If during the Policy Period a Worker suffers an Injury in the Business and you are liable under the Act to make any payment in respect of the Injury, we will indemnify you against that payment and in addition, will pay all reasonable costs and expenses you incur with our written consent.

## Common Law Insurance

8. If:
  - (a) you incur Common Law Liability for an Injury during the Policy Period;
  - (b) you are not otherwise insured against the Common Law Liability;
  - (c) the injured Employee is entitled to recover from you in respect of the Injury both workers' compensation under the Act and damages at common law (subject to section 92 of the Act), or would have been entitled to so recover from you in respect of the Injury if he or she had not died; and
  - (d) you are entitled to indemnity from us under this Policy for that workers' compensation liability (or would be so entitled if a claim were made),

then we will indemnify you against any damages you are liable to pay, and reasonable legal costs you incur with our written consent, for the Common Law Liability subject to the policy limit of the Common Law Insurance and the Exclusions and Conditions of this Policy.

## Policy Limit of the Common Law Insurance

9. We will not pay more than \$50,000,000 for Common Law Liability and costs in respect of any one event, regardless of how many Employees are injured by that event.

## Exclusions

1. The following exclusions apply to the Workers' Compensation Insurance provided at paragraph 7 and the Common Law Insurance provided at paragraph 8.

We will not indemnify you against:

- (a) claims directly or indirectly occasioned by any happening through or in consequence of war, invasion, acts of foreign enemies, hostilities whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power, or Acts of Terrorism;

- (b) claims for pneumoconiosis, mesothelioma or lung cancer arising from employment in any mine or mining operation or claims in respect of other industrial diseases as may be specified by the Minister from time to time, under Section 151(a)(iii) of the Act, as amended and replaced.

2. The following exclusions apply to the Common Law Insurance provided at paragraph 8.

We will not indemnify you against liability:

- (a) in respect of an Injury which occurs outside the Commonwealth of Australia or in respect of a claim brought against you outside the Commonwealth of Australia;
- (b) to anyone other than the Employee who suffered the Injury, except for liability under the Acts mentioned in the definition of 'Common Law Liability';
- (c) to:
  - (i) a person of whom you are an employer only by virtue of Section 175 of the Act; and
  - (ii) a person who is your Worker only by virtue of Section 175AA of the Act;
- (d) in respect of exemplary or punitive damages;
- (e) against which (at the time of the Injury) you were required by any law to insure yourself, even if you did not comply with that law. We will, however, indemnify you against such liability to the extent that it exceeds the amount which is or would have been payable under the compulsory Policy, subject to the terms and conditions of this Policy.

## Conditions

All insurance cover provided by this Policy is conditional on the following terms:

1. **Misrepresentation:** The proposal for this insurance, and any other information supplied to us by you or on your behalf, form the basis of this Policy and must contain no misrepresentations, whether innocent or otherwise.
2. **Notices:** Every notice or communication given or made to us under this Policy must be delivered in writing to our office from which the Policy was issued. Delivery in writing may be electronic.
3. **Notice of Injuries:** You must notify us of any Injury as soon as practicable and you must send us every written notice of claim or legal proceedings and information as to any verbal notice of claim or legal proceedings, immediately after you receive it.

**4. Litigation, Settlement or Admission of Liability:** You must not incur any expense of litigation or make any payment (including weekly payments and medical expenses), settlement or admission of liability in respect of any Injury to or claim made by any Worker, without our written consent.

**5. Use of your name:** Once we agree that you are entitled to be indemnified by us, we are entitled to use your name in any legal proceedings and to exercise any rights you may have against anyone to recover any payments that we make on your behalf. When we require it, you must execute any necessary documents to assist us in taking action in your name.

**6. Your assistance:** In respect of any Injury, you must give us any information, documents and assistance we request, and otherwise cooperate with us in the management, defence or settlement of any claim.

**7. Reasonable Precautions:** You must take all reasonable precautions to prevent Injury to Workers and must comply with all relevant laws, including the Occupational Safety and Health Act 1984 as amended and replaced, and Regulations.

**8. 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, used in your Business.

**9. Premium Calculation:** The first premium and every renewal premium payable to us will be calculated on the amount of the Wages (as defined above) you estimate you will pay during the year following the inception or renewal of the Policy. Your estimate must include all amounts you estimate you will pay Contractors.

You must provide to us within one month after the expiry of each year of the Policy Period, the correct amount of all Wages paid by you in that year, and when required, the number of Workers and Contractors you employed or engaged in that year. The Wages you declare must include all payments you made to Contractors. If the amount of the Wages, the number of Workers and Contractors or the type of Business in which they were engaged, differs from the information on which the premium for that year was calculated, the premium will be adjusted and you must pay a further premium to us or we will refund premium to you, subject to our retaining a customary minimum premium.

Except for declared working directors, the calculation of premium is unrelated to the rate of weekly payments of compensation prescribed by the Act.

**10. Wages Record:** You must keep accurate and up-to-date records ('Your Wages record') of the names of, amounts you pay to, and dates of payments to your Workers and Contractors.

**11. Inspection of Wages Record:** You must at all times (not limited to the Policy Period) allow any officer authorised by us to inspect Your Wages record.

**12. Assignment:** You must not assign your interest in this Policy without our written consent.

**13. Waiver:** You must not rely on any waiver of any provision of this Policy unless we have confirmed the waiver to you, in writing.

**14. Cancellation:** Subject to our being permitted to do so, we may cancel this Policy and, in that event, you must supply us with a correct account of all Wages you have paid in the most recent year of the Policy Period up to the cancellation. We will adjust the premium as described above and refund any unearned premium.

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