

Assessment of Premium Rates and Industry Classifications: Loading and Appeal Policy

Purpose

1. This paper aims to inform and guide insurers, employers and employer representatives of the policies and processes WorkCover WA applies to approve or review workers' compensation insurance premiums.
2. This policy establishes a set of expectations that should be applied. WorkCover WA acknowledges this policy may not address all scenarios and practises. In these circumstances, WorkCover WA will always assess and rectify issues by considering policy intent and pragmatic operations.

Roles

3. One of WorkCover WA's roles is to set 'recommended premium rates' as a benchmark for insurers to establish insurance premiums for employers across a range of industries. Recommended premium rates for each industry vary from year to year and are published annually by WorkCover WA. The recommended premium rates are calculated on the weighted six-year claim experience of each industry class.
4. Workers' compensation insurance is underwritten by private insurance companies. WorkCover WA is not an insurer and does not collect insurance premiums.
5. In most cases, WorkCover WA has no direct role in setting a premium charged by an insurer.
6. Most employers use an insurance broker to source workers' compensation quotes and insurance, although some employers liaise directly with an insurer. Other employer representatives, aside from brokers, also assist employers. As most employer representatives are brokers, the term 'broker' is used in this paper, albeit the term refers to a broader range of employer representatives. Brokers typically charge an employer a fee for their service, and/or receive a commission from an insurer. Brokers have an important role to find employers the most competitive rate by negotiating with insurers on a range of quantitative and qualitative factors. Workers' compensation is often included in an insurance business package placed with an insurer. Brokers are not regulated by WorkCover WA.

Legislative Requirements

7. In Western Australia, all employers are legally required to hold workers' compensation insurance with an approved insurer for which they pay an insurance premium.
8. While insurers have considerable freedom in determining premiums, the workers' compensation legislation establishes some checks and balances in the underwriting process for premium assessments and classifications. These processes are linked to WorkCover WA's recommended premium rates. Insurers are not required to use the recommended premium rates as the basis of the quotes they provide. Insurers assign each employer to one or more industry classes using WorkCover WA guidelines which are based on the Australian Bureau of Statistics 2006 Edition of the *Australian and New Zealand Standard Industrial Classification (ANZSIC)*.
9. While insurers can discount relative to the recommended premium rates by any amount, they may only charge a loading on a recommended premium rate of more than 75% of that rate with WorkCover WA's approval (referred to as a 'loading'). WorkCover WA approval is required even where the employer has agreed to pay the proposed premium. Employers have a legislative right to appeal premium rate assessments and industry classifications. Certain timeframes apply (refer paragraph 30d).
10. Where a loading has been applied by an insurer, an employer/broker is expected to source the market for alternative quotes. Insurers are legislatively required to provide quotes, thereby enabling a competitive market.
11. Premium loadings typically occur where an employer's claim frequency and/or claim costs are excessive. When WorkCover WA become aware of these situations, the WorkSafe division of the Department of Mines, Industry Regulation and Safety has requested employer details be provided to them.

Insurance Premiums and Quotes

12. Insurer premiums are typically assessed as a percentage of the total annual wages paid by an employer. This is known as a 'premium rate'.
13. Amongst other factors, an insurer's premium rate is based on the nature of an employer's business activity; risk profile; the actual and projected frequency, cost and loss ratio of insurance claims; and an employer's commitment to safety and risk management.

14. For an insurer to quote a premium, employers/brokers are required to provide an insurer with an estimate of their annual total wages. Additional information, including business activities, risk management controls and claims history may also be requested.
15. Based on an employer's risk profile, an insurer may set a premium which is lower or higher than the recommended premium rate (i.e. the premium is discounted or loaded).
16. Employers/brokers are able, and encouraged, to obtain premium quotes from multiple insurers and select an insurer based on the premium assessment, service delivery and other considerations. Once a quote has been accepted, a premium is paid by an employer.

Premium Loadings: WorkCover WA Requirements

17. When insurers seek WorkCover WA's approval to apply a loading on a recommended premium rate of more than 75% of that rate, WorkCover WA's expectations of insurers and employers/brokers are:
 - a. *Policy renewal process:* Insurers must provide brokers with a minimum of 30 days of notice when inviting them to renew policies. Where a broker is not involved, employers must be given a minimum of 14 days of notice (30 days is recommended). Preferably, full terms should be provided. These timeframes enable employers/brokers to commence seeking alternative quotes, if required. WorkCover WA recommends providing employers/brokers with longer notice. Similarly, employers/brokers should initiate the renewal process as early as possible.
 - b. *Full terms:* Ideally, policy renewal notifications will include full terms, including a proposed premium for the employer's ensuing policy period. Full terms must always be provided prior to policy expiry.
 - c. *Premium Loadings:* If an insurer submits a loading application to WorkCover WA where full terms were provided less than 30 days from policy expiry, the loading can only be applied from 30 days of providing full terms. This provides an employer/broker with 30 days to consider alternative insurance, and for other insurers to provide terms. WorkCover WA expects the insurer proposing the loading to maintain insurance coverage for the employer for up to 30 days from when full terms were provided. Prior to WorkCover WA approval, insurers may only charge and/or collect a loading of up to 75% of the recommended premium rate. Administrative records of all transactions must be maintained by the insurer.

- d. *Application timeframes:* WorkCover WA will not consider a premium loading application unless it is lodged within 90 days of policy expiry. This timeframe allows insurers, employers and brokers to continue negotiations where policy and premium terms could not be agreed, and for documents to be finalised. If an insurer experiences unreasonable delays in receiving a response to a proposed loading from an employer/broker, WorkCover WA must be advised. Loading applications and appeals are considered by WorkCover WA simultaneously. Timeframes relating to appeals are outlined in paragraph 30d.
- e. *Premium payments:* Employers must maintain a valid insurance policy at all times. Although insurers may 'charge' (i.e. invoice or quote) a premium loading prior to WorkCover WA's approval, any premium in excess of the 75% loading must be transparently conveyed to an employer/broker and must not be 'collected' (i.e. paid by the employer and received by the insurer) before WorkCover WA approval. If WorkCover WA approval is granted, an insurer may subsequently 'collect' payment of the remaining premium from the commencement date of the policy.
- f. *Consent of Terms and Conditions:* When an employer/broker consents to a premium loading, an insurer is responsible for ensuring the employer/broker is aware, understands, and accepts the financial implication of a premium loading, with no intention to appeal. Insurers must provide confirmation via WorkCover WA Online. Insurers must keep records of employer/broker consent for audit purposes.

Premium Loadings: WorkCover WA assessment

- 18. This section relates to situations where an insurer proposes to charge a loading on a recommended premium rate of more than 75% of that rate.
- 19. Premium loading consented to: Further to 17(f) above, WorkCover WA will approve premium loadings consented to by the employer, or by the broker on the authorised behalf of the employer. In instances where an appeal results, and an employer's consent is unable to be provided to WorkCover WA, the decision and date of WorkCover WA's approval to load a premium may be revised.

20. Premium loading not consented to: Where an employer does not consent to the premium, and an insurer lodges a premium loading application, the employer is deemed to have appealed the loading. In these situations, WorkCover WA will undertake a pre-assessment, as follows:

- a. *Claims review*: WorkCover WA must be satisfied insurers and employers/brokers have had reasonable opportunity to comment and agree on historical claims data and projected claim liabilities for unfinalised claims. Insurers and employers/brokers are responsible for confirming the accuracy of claims history data including outstanding claim estimates before a loading application is accepted by WorkCover WA. In situations where claims data and/or estimates cannot be agreed, WorkCover WA may make a determination based on evidence available. Loading applications will not be progressed until all parties have agreed on claim data, or WorkCover WA has made a determination. WorkCover WA will provide claim and policy data (up to six years) previously submitted by the insurer(s) as at policy expiry.
- b. *Loading methodology*: Insurers are expected to provide WorkCover WA with the percentage requested above the recommended premium rate for each relevant ANZSIC industry classification. The resultant premium rate is to exclude all costs outside of the base premium (commissions, brokerage, GST, overseas common law, industrial common law, principal's indemnity, amongst others).
- c. *Claim costs recovery*: When lodging a loading application, insurers are required to provide claim information to WorkCover WA and the employer/broker if it is likely to recover costs from a third party, and to quantify the expected recovery. Where there is disagreement between an insurer and an employer/broker on the prospect of claim recovery, WorkCover WA will make a determination.

21. Once WorkCover WA is satisfied pre-assessment requirements have been met, an assessment of the premium loading is undertaken (only when employer/broker consent has not been provided). WorkCover WA does not conduct an independent underwriting assessment of the employer. WorkCover WA uses a statistical actuarial model to assess the reasonableness of a proposed premium. The model provides WorkCover WA with a quantitative guide of the maximum appropriate loading relative to the industry recommended premium rate. It is primarily based on an employer's past claims performance, including estimates of outstanding claim liabilities.

22. The actuarial model considers the claim history (up to six years of current and former insurers) for each industry classification as this reflects recent claims performance and limits the impact of one-off claims. This approach also achieves consistency with the methodology used to determine recommended premium rates. Where six years of history is unavailable, WorkCover WA may also consider the reliability of shorter claim periods, and claims history of former (related) entity structures.
23. WorkCover WA will typically only approve an application if the loading is less than the maximum loading indicated by the actuarial model.
24. In some circumstances, the use of the actuarial model may not be appropriate. In particular, 'labour hire' entities have unique premium classification and assessment features that reduce the applicability of the actuarial model. Other scenarios, including a new entity with no claims history, and/or a new entity where there is a connection to a defunct entity with poor claims history, may limit the suitability of the actuarial model.
25. Where the actuarial model is not appropriate to be used, WorkCover WA reserves the right to assess the proposed premium by considering:
 - a. the nature and context of the entity;
 - b. the recommended premium rate for the industry of the employer;
 - c. the insurer's underwriting process, methodology and rationale in determining the proposed premium;
 - d. whether the employer/broker was afforded reasonable opportunity to source alternative quotes from other insurers, and the outcome of the quotes; and/or
 - e. any information relevant to the claim experience of the employer (e.g. related or former corporate entities).
26. WorkCover WA will only consider loading applications for current and forthcoming policy periods.
27. Applications to load greater than 75% of the recommended premium rate will typically not be approved where there is no claims history.
28. Premium loadings greater than 75% of the recommended premium rate are considered monthly by the WorkCover WA Board. Only complete applications will be considered.

Premium Appeals: WorkCover WA Requirements

29. Section 154(1) of the Act enables an employer to lodge an appeal with WorkCover WA if it is dissatisfied with a premium assessment or classification. There are two forms of appeal:

- a. *Premium assessment appeal:* Where an employer is dissatisfied with the amount of premium proposed by an insurer.
- b. *Classification appeal:* Where an employer disagrees with the industry into which its insurer has classified it.

30. In these appeal circumstances, WorkCover WA's expectations of insurers and employers/brokers are:

- a. Reasonable efforts to resolve the disagreement via an insurer's internal dispute resolution process must have been made between the insurer and employer/broker before an appeal is lodged with WorkCover WA.
- b. An insurer cannot change an industry classification without consulting the employer/broker.
- c. Insurers are responsible for selecting the relevant industry classification. Where an employer/broker disagrees on the industry classification, insurers and employers/brokers are to seek guidance from WorkCover WA website resources..
- d. The Act requires appeals to be lodged within one month of the insurer advising the employer of the proposed premium classification and/or assessment (refer s154 (2)). The appeal period commences on the following day of full terms being provided by the insurer to the employer/broker (refer paragraphs 17a and 17b). By the end of this timeframe, WorkCover WA must be advised of an employer/broker's intent to appeal where negotiations with an insurer are continuing. In extenuating circumstances, WorkCover WA may grant limited additional time for an employer to appeal.
- e. Loading applications and appeals will be considered by WorkCover WA simultaneously.

31. Appeals are considered by the WorkCover WA Board. Only complete applications will be considered.

Premium Rate Assessment Appeals: WorkCover WA Assessment

32. In most cases, where an appeal is lodged, WorkCover WA will assess the proposed premium against the actuarial model.
33. Unless extenuating circumstances apply, WorkCover WA uses the following guidelines to assess appeals:
- a. WorkCover WA's primary assessment of loadings is the outcome produced by the actuarial model, based on claims history and current and estimates of existing claim liabilities. Although an employer may consider certain claims as 'one-offs', these claims are still relevant and therefore considered by WorkCover WA. Other factors such as an employer's financial viability; risk management processes; and/or insurer service standards are secondary considerations and do not carry the same weight.
 - b. WorkCover WA will not consider premium appeals where the proposed premium loading is less than or equal to 75% of the recommended premium rate for the employer's industry. The Act gives insurers the authority to charge a loading of up to 75% without WorkCover WA approval.

Premium Classification Appeals: WorkCover WA Assessment

34. If a disagreement between an insurer and employer/broker arises in regard to the most suitable industry classification, an appeal to WorkCover WA can be lodged. In these situations, WorkCover WA will:
- a. Seek confirmation that attempts to resolve the disagreement have been made via the insurer's internal dispute resolution process.
 - b. Seek the respective views of the proposed industry classification from the insurer and employer/broker, and assess the extent paragraph 30c above has been followed.
 - c. Obtain further information and/or seek further independent advice, as required.
35. Where an employer lodges an appeal on both 'premium assessment' and 'classification' grounds, the classification appeal will first be considered due to the potential subsequent impact on the premium. A change in an industry classification does not necessarily result in a lesser premium. WorkCover WA may request insurers to provide a rate on both classifications to assist with making a determination.