

Refusal of Indemnity

The **WCIMA23** provides for regulations to prescribe circumstances in which a licensed insurer is permitted to refuse indemnity to an employer against its liability to pay compensation or damages for an injury to a worker.

Key Points

Act ref: s. 241

- Insurers can currently refuse indemnity to an employer if an employer breaches a condition, or the subject matter is excluded, under a workers compensation policy. The 1981 Act places some constraints on indemnity refusal relating to acts or omissions of the employer that did not contribute to the injury, but indemnity refusal is largely left to the policy of insurance terms and conditions (a matter of contract).
- The current (unregulated) standard employer indemnity policy does not make indemnity for compensation subject to conditions or exclusions, but provides that indemnity for common law damages is subject to a policy limit and the exclusions and conditions of the policy (for which there are many exclusions and conditions). Some limits and exclusions are statutorily provided for (such as the policy limit of \$50,000,000 per event and exclusions for common law liabilities arising outside of Australia).
- In practice indemnity refusal is rare. Where it has occurred, it has always been in relation to indemnity for common law damages only and due to conduct of the employer being grossly negligent in causing the injury.
- There is an intention to standardise all workers compensation policy terms, limits, exclusions and the permitted circumstances for an insurer refusing indemnity (such matters being better addressed in statute rather than contract).
- Regulations will therefore set out the permitted circumstances in which a licensed insurer may refuse to indemnify an employer against liability to pay compensation or damages in respect of an injury to the employer's workers.

Key Points

- There are likely to be very limited (or none at all) circumstances prescribed but this issue will be canvassed further in the development of regulations along with the development of a standard form policy.
- In the event indemnity refusal is permitted, the **WCIMA23** provides for notification to WorkCover WA, the employer and worker within 5 days after the decision to refuse indemnity. The **WCIMA23** also addresses what happens to the claim if the notice is sent before or after the insurer is required to make a liability decision and how disputes about the indemnity refusal and the employer's liability for compensation are dealt with.

Questions & Answers

Q. Why are the circumstances for refusing indemnity now being provided for in regulations?

A. There is a need to standardise policy terms including the basis, if any, of refusing to indemnify employers. Exclusions and conditions on indemnity should not be dealt with as contractual conditions up for negotiation. Ultimately all insurers contribute towards the cost of the compensation or damages where indemnity is refused and the employer cannot pay.

Q. Will the permitted circumstances for refusing indemnity need to be in regulations when the new Act commences?

A. Yes. Industry will be consulted on the permitted circumstances for refusing indemnity as part of the development of regulations to standardise workers compensation policies.