

Australian Capital Territory

Workers Compensation (Insurer Contribution Protocol) Approval 2010 (No 1)*

Notifiable instrument NI2010-340

made under the

***Workers Compensation Regulation 2002*, reg 100A (Approved protocols about compulsory insurance)**

1 Name of instrument

This instrument is the *Workers Compensation (Insurer Contribution Protocol) Approval 2010 (No 1)*.

2 Commencement

This instrument commences on 30 June 2010.

3 Approval of the Default Insurance Fund (Insurer Contribution Protocol)

In accordance with reg 100A of the *Workers Compensation Regulation 2002* I approve the *Default Insurance Fund (Insurer Contribution Implementation Protocol)* as the Protocol prescribing how the insurers approved to operate in the ACT private sector workers' compensation scheme are required to:

- a. Implement the payment of the annual insurer contribution required under the *Workers Compensation Act 1951*; and
- b. Disclose the DI Fund Levy to employers

Andrew Barr
A/g Minister for Industrial Relations

Dated: 13 June 2010

*Name amended under Legislation Act, s 60

DEFAULT INSURANCE FUND

INSURER CONTRIBUTION IMPLEMENTATION PROTOCOL

1 LAW AND POLICY

1.1 The ACT Default Insurance Fund (the DI fund) meets the costs of workers' compensation claims where:

- a) a worker suffers a work-related injury but their employer does not have a workers' compensation insurance policy (the Uninsured Employer arm of the DI fund); or
- b) their employer has a policy, but the insurer has collapsed or is otherwise unable to pay the claim (the Collapsed Insurer arm of the DI fund).

1.2 The DI fund's operations are funded through the annual contributions of all ACT Insurers. This arrangement reflects the nature of the DI fund's funding as an insurer liability, as set out in the DI fund Implementation Issues Paper released to insurers in September 2010.

1.3 The same contribution calculation (% x GWP) applies to all insurers and is set annually by the DI fund actuaries taking into consideration:

- a) the expected claim reporting and settlement pattern;
- b) outstanding claim liability;
- c) existing DI fund assets;
- d) prior year GWP (as reported to ACT WorkCover);
- e) expected future GWP, and
- f) the amount required to be paid into the DI fund to ensure its sustainable functioning.

1.4 To achieve the necessary transparency around the cost of the DI fund's operations for the ACT community, all approved insurers are required to implement revised disclosure practices. Specifically, all insurers must disclose a prescribed amount (% x GWP) on employer premium notices, which represents the insurer's DI fund liability.

1.5 The *Workers Compensation Act 1951* provides the following framework around the calculation of the annual insurer contribution:

Workers Compensation Act 1951 Section 168A (1) to (4) and note

(1) Each year, the DI fund manager must determine the yearly contribution (the annual insurer contribution) approved insurers and self-insurers must make to the DI fund based on the following:

- (a) the DI fund manager's assessment of the DI fund's—
 - (i) existing and expected liabilities; and
 - (ii) assets;
- (b) the total of the following amounts for the last completed policy period:
 - (i) the gross written premiums for each approved insurer;
 - (ii) the notional gross written premium for each self-insurer;
- (c) the amount required to be paid into the DI fund to ensure the sustainable functioning of the fund.

(2) The DI fund manager may apportion the annual insurer contribution among approved insurers and self-insurers to be paid—

(a) quarterly; or

(b) as required for the sustainable functioning of the DI fund.

(3) If the DI fund manager makes an apportionment for a period, the manager must give each approved insurer and self-insurer a written notice that—

(a) sets out details of the apportionment; and

(b) requires the insurer or self-insurer to pay to the DI fund the amount apportioned to the insurer or self-insurer within the time for payment stated in the notice.

Note: An insurer issuing a compulsory insurance policy to an employer must include information about the proportion of the premium that is to offset an amount paid by the insurer to the DI fund for the policy (see *Workers Compensation Regulation 2002*, s 62A).

2 BUSINESS REQUIREMENTS

2.1 Insurer contribution

2.1.1 Insurers are liable for making the required contribution to fund the DI fund's ongoing operations.

2.1.2 The annual insurer contribution is calculated as % x GWP.

2.1.3 The DI fund will issue advice to all insurers in April/May as to the annual percentage amount used to determine the annual insurer contribution.

2.1.4 This insurer contribution must be disclosed to all policy holders as a levy specifically related to the DI fund. Notwithstanding this disclosure, insurers are responsible for full satisfaction of the insurer contribution.

2.1.5 The Federal Treasurer's Determination, made under s 81-5(2) of the *A New Tax System (Goods and Services Tax) Act 1999*, provides that the annual insurer contribution required to fund the DI fund is GST exempt. Insurers are therefore not required to pay any GST to the DI fund in connection with their annual contributions.

2.2 DI fund levy amount

2.2.1 The annual percentage amount used to determine the annual insurer contribution (see 2.1.3) is the same percentage amount to be disclosed on an employer's premium notice as the DI fund levy.

2.2.2 The disclosure requirements are for all policies new or renewed from 4pm 30 June of that year (for the requirements as to the form of disclosure see 2.3).

2.2.3 The DI fund levy should be included in the calculation of the GST payable by an employer in connection with obtaining a compulsory insurance policy. Each insurer is responsible for remitting the relevant GST amount to the Tax office.

2.3 Application

2.3.1 The obligation to disclose the DI fund levy applies to all workers' compensation policies new or renewed from 4pm, 30 June 2010.

2.3.2 The levy must be titled 'DI fund levy' and identified on the **premium notice** as a separate amount, as follows:

Premium amount	\$xxxx
DI fund levy	\$xxxx
GST	\$xxxx
Total	\$xxxx
Commission ¹	\$xxxx
GST on Commission ²	\$xxxx
Total payable	\$xxxx

2.3.3 A further note is to be added to the premium notice that should read "*The DI fund levy covers the cost of uninsured employers' claims on the Default Insurance Fund. This cost was previously incorporated into the total premium payable by all ACT employers and is now separated out of premium and shown as a levy.*"

2.4 Reporting and reconciliation

2.4.1 Insurers are required to submit quarterly DI fund returns to the DI fund.

2.4.2 Returns are due the 10th business day following the end of the quarter.

2.4.3 Reconciliation (template attached) covers current period and year to date, and includes:

- a) written premium - total of all notices issued in the period of reporting (i.e. processed, confirmed, incepted and adjusted policies in the period) – determined once the employer provides the wage estimate for the year or when auto renewed, wage adjustments and endorsements on policies written on or after 4pm, 30 June 2010. Excludes cover notes. Also excludes DI fund levy, broker commission, GST and GST on commission.
- b) DI fund levy – total of DI fund levy in the period; and
- c) GST
- d) Actual payable.

¹ System variances exist across insurers as to the disclosure of Commission and GST on Commission. No system change is required for those insurers who do not currently itemise these components of the total cost payable by employers.

² See above.

2.4.4 A nil statement of return is required where applicable.

2.5 Debt write off

2.5.1 Insurers may, in accordance with their own debt collection procedures, recover an unpaid DI fund levy from an employer as a debt owing to the insurer.

2.5.2 Insurers may, in accordance with their own debt collection procedures, write off an unpaid employer DI fund levy in the Insurer's accounts.

2.5.3 However, insurers remain liable to discharge the full annual DI fund insurer contribution irrespective of their recovery of the offset from employers.

2.5.4 If a debt is written off due to "employer insured elsewhere" the premium is to be reversed out of the insurer's system rather than written off.

2.6 Quarterly apportionment (i.e. remittance)

2.7.1 Following receipt and review of the DI fund returns the DI fund will issue an invoice for the amount of insurer contribution to be paid to the DI fund for the period – per s168A(2) and (3) *Workers Compensation Act*.

2.7.2 Insurer contributions will be due the 30 days following the issue of the invoice.

2.7 Miscellaneous matters

2.8.1 The preceding paragraphs relate to the calculation, imposition and collection of the insurer contribution to fund the DI fund's general operations. In exceptional circumstances the DI fund Manager may exercise the power conferred under s168AA and require insurers to make supplementary contributions.