



## LATE PAYMENT FEE MORATORIUM AND WAIVERS

This operational instruction provides the Scheme Agent with instructions regarding the charging and waiving of late payment fees on Premiums due and payable as a result of a wage audit. It is to be read in conjunction with operational instruction 2.3.

WorkCover has extended the existing late payment fee moratorium to include all audits on policy periods that have actual Wages declared **prior to 31 December 2006** in order to provide relief for Employers who may have under-declared Wages as a result of deemed Worker/contractor, working beneficiary of a trust and/or working director issues. The extension will also allow Employers to become familiar with WorkCover's new private ruling and advice process to determine the status of a Worker/contractor for Premium Calculation purposes. Late payment fees under Section 175 of the 1987 Act will continue to apply where these issues are not identified as part of a wage audit. However new provisions have also been introduced to allow WorkCover to waive all or part of the late payment fees where it can be evidenced the Employer has not acted deliberately to avoid their Premium obligations.

To assist in the application of the late payment fee arrangements and to provide Employers with greater certainty about the status of their Workers, two new policies have been introduced and are outlined in the table below

Effective Date	Policy	Applications
<b>Effective 15 September 2006</b>	<p><b>Late Payment Fee Waiver Provision under S.175(4)(B)</b></p> <p>Upon application from an Employer, WorkCover may exercise its discretionary powers to waive or reduce late payment fees on Workers Compensation Premiums identified as a result of a wage audit.</p>	<p>Applications for late payment fee waivers applications should be forwarded to the Premium Appeals Branch. WorkCover will consider applications for all wage audits that have been processed since 30 June 2005.</p> <p>The Scheme Agent is required to provide any additional information it believes should be considered in the waiver application together with any recommendations either in support or against the waiver application by the Employer.</p>
<b>Effective October 2006</b>	<p><b>Private Rulings under S.175C</b></p> <p>Pursuant to S.175C of the Act, WorkCover will assist Employers by providing advice and private rulings on the status of a Worker/contractor for Premium Calculation purposes.</p>	<p>Employers can obtain advice on Worker/Contractor status through the WorkCover On-Line Assessment Tool. If the On-Line tool is unable to provide a definitive result Employers can then request and obtain a "Private Ruling" from WorkCover on the Worker/Contractor status.</p>

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Under the new arrangements Employers will have a three-month period in which to utilise the new on-line assessment tool to obtain advice or a private ruling to prepare and submit wage declarations with greater clarity in relation to deemed Worker and contractor issues.

### General Principles of the Moratorium

Under the conditions of the extended moratorium late payment fees that relate to the deemed Worker/contractor, working beneficiary of a trust and/or working director will not be applied to any Policy period of the audit for which the actual Wages were declared **prior to 31 December 2006**.

As previously advised, before the audit results are processed the Scheme Agent must provide careful consideration to the details of each wage audit to ensure all relevant information concerning the inclusion and exclusion of any payments has been considered, and the Employer has been provided the opportunity to respond to the details of the audit before the results are processed.

The final decision regarding the inclusion or exclusion of disputed payments is the responsibility of the Scheme Agent and must be based upon all of the relevant information supplied by both the auditor and the Employer.

### Waiver or Reduction of Late Payment Fees

Under the new late payment fee waiver provisions (S175 (4b) of the Act) and effective from 15 September 2006 for all wage audits (completed or in progress) WorkCover can now exercise its discretionary powers to waive or reduce late payment fees on Workers Compensation Premiums identified as a result of a wage audit.

WorkCover may consider waiving all or part of an applicable late payment fee where evidence establishes that an Employer has made an honest error in the declaration of Wages for Premium purposes.

WorkCover will review the circumstances and relevant factors on a case-by-case basis and will assess the reasonableness of waiving all or part of a late payment fee where it is satisfied that there has not been a deliberate attempt by the Employer to avoid paying premium.

Employers will be required to provide full details of the circumstances they believe support their waiver application, the Scheme Agent is also required to supply any additional supporting information and recommendations in support of the waiver application if they consider the circumstances are appropriate.

Factors that may be considered include (but are not limited to):

- The total late payment fee payable in relation to the overall Premium adjustment payable and the overall result of the wage audit for all Policy periods.
- The cause or reason for the identified variance.
- The Employer's willingness to enable access to all relevant wage records and co-operate with the wage audit process.
- The Employer's unwillingness to submit to the audit and the requirement for WorkCover to issue Orders to the Employer to obtain access to wage records and the quality of the records supplied.
- The Employer's compliance with the legislation to submit both estimate and actual wage declarations to allow for the calculation of accurate renewal and adjustment of Premiums
- The Employer's compliance history including previous wage audit results and LPF waiver applications, the operations of related entities or identified related phoenix operations or any other identified compliance risks or issues.

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- The reason for the Wage audit.
- Whether it can be evidenced the Employer has operated in breach of their Workers Compensation obligations intentionally to gain an unfair commercial advantage.

An Employer will not incur any further late payment fees during the waiver review process provided the full Premium amount in arrears is paid by the due date. Where an Employer fails to pay the additional Premium payable by the due date—pending the result of the waiver application, further late payment fees may be applied. Where WorkCover approves a waiver of all or part of the payment of a late payment fee, the full Premium amount in arrears must still be paid.

Applications for the waiver of late payment fees should be forwarded to the Premium Appeals Branch. The waiver of late payment fees cannot be considered until the Premium debt is finalised and is no longer in dispute.

**Deemed worker, working beneficiary and working director payments – information for Scheme Agents**

When determining whether payments made to a deemed Worker/contractor, working beneficiary of a trust and/or working director are assessable for Premium Calculation purposes, the Scheme Agent must:

- Review the audit results meticulously to identify any deemed Worker/contractor, working beneficiary of a trust and/or working director issues, and
- Determine if it is appropriate to include or exclude these payments, giving special consideration to the circumstances of the Employer and the payments.

To assist in this determination, the Scheme Agent must establish that:

- The auditor has recorded the Employer’s understanding of a deemed Worker/contractor, working beneficiary of a trust and/or working director, and has considered the Employer’s circumstances in relation to the payments
- The Employer has provided the auditor with all necessary documentation to enable the auditor to determine if the payments in question should be included – if an Employer has not been forthcoming with the required documents, auditors must refer the matter to the Scheme Agent to determine if a section 174 Order should be requested, or if the Employer is willing to provide the necessary information or records directly to the Scheme Agent
- The working papers of the auditor concerning deemed Worker/contractor, working beneficiary of a trust and/or working director are to be attached to the audit report.

Before the audit results are finalised and processed, the Scheme Agent must contact the Employer explaining the effect of the wage audit results involving payments made to a deemed Worker/contractor, working beneficiary of a trust and/or working director, and the additional Premium.

The Employer should be invited to comment on any issues concerning their circumstances and the interpretation of these payments. The Employer must be given all reasonable opportunity to provide further information or documents to support the exclusion of the disputed payments in the Premium adjustment calculation.

**Scheme Agent’s Review of late payment fees**

When the Scheme Agent is requested by an Employer to review the application of late payment fees as a result of a wage audit and has lodged an application for waiver request, the Scheme Agent must review the audit results and provide a response to WorkCover detailing any reasons they believe do or do not support the Employers application for waiver request.

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**Refund of late payment fees approved by WorkCover following a Waiver Request**

The Scheme Agent is requested to process all refunds as soon as possible after WorkCover provides approval for the waiver. The Scheme Agent, in processing the refund, can reverse the original late payment fee debt from their accounting system and issue the Employer with the appropriate refund amount. Refund and adjustment details for all late payment fee adjustments must also be noted in WorkCover's wage audit database and must be coded under the new 'reasons for amendment Code A08 – late payment fee moratorium'.

**Examples**

Following are some examples relating to the moratorium:

<p><b>All Policy periods subject to an audit have had actual wage declarations lodged prior to 31 December 2006.</b></p>	<p>The total audit period is entitled to the moratorium exemptions. Late payment fees relating to deemed Worker/contractor, working beneficiary of a trust and/or working director are not subject to late payment fees however any additional Premium identified is still payable.</p> <p>Late payment fees will still be applied in relation to other issues identified in the audit and remain payable.</p> <p>Once the wage audit is processed, under the provisions of S.170 of the Act, the Employer may appeal the additional Premium charges. If the Premium is not in dispute or the appeal has been resolved the Employer can apply for the late payment fees to be waived.</p>
<p><b>Two Policy periods subject to the audit had actual wage declarations lodged prior to 31 December 2006. The actual wage declaration for the last Policy period of the audit was lodged on 30 September 2007. The Employer has not obtained any advice from the on-line assessment tool or a private ruling from WorkCover.</b></p>	<p>Only the first two Policy periods are subject to the moratorium exemptions. Only late payment fees relating to deemed Worker/contractor, working beneficiary of a trust and/or working director in the first two Policy periods of the audit are exempt from late payment fees. Any additional Premium identified is still payable.</p> <p>Late payment fees will still be applied in relation to other issues identified in the first two Policy periods of the audit and remain payable.</p> <p>The last Policy period of the audit will be subject to all normal late payment fee penalties as the Employer had the capacity to obtain a private ruling or advice for this period.</p> <p>Once the wage audit is processed, under the provisions of S.170 of the Act, the Employer may appeal the additional Premium charges. If the Premium is not in dispute or the appeal has been resolved the Employer can apply for the late payment fees to be waived.</p>
<p><b>The first Policy period subject to the audit had actual Wages declarations lodged before</b></p>	<p>Only the first Policy period is entitled to the moratorium exemptions. Only late payment fees</p>

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<p><b>31 December 2006. The last two Policy periods subject to the audit had actual wage declarations lodged on 31 August 2007 and 30 September 2008 respectively.</b></p> <p><b>The Employer did not obtain any advice from the on-line assessment tool or a private ruling from WorkCover until December 2007. The audit identified deemed Worker/contractor, working beneficiary of a trust and/or working director in both the first and second policy periods of the audit. No issues in relation to deemed Worker/contractor, working beneficiary of a trust and/or working director were identified in the final year of the audit period as the Employer had obtained a private ruling for this period in December 2007.</b></p>	<p>relating to deemed Worker/contractor, working beneficiary of a trust and/or working director in the first Policy period of the audit are not subject to late payment fees however any additional Premium identified is still payable.</p> <p>Late payment fees will still be applied in relation to other issues identified in the first Policy period of the audit and remain payable.</p> <p>The second or middle Policy period of the audit will not be eligible for any moratorium exemptions and will be subject to all normal late payment fee penalties as the Employer had the capacity to obtain a private ruling or advice for this period.</p> <p>The final Policy period of the audit will not be eligible for any moratorium exemptions and will be subject to all normal late payment fee penalties as the Employer had obtained a private ruling or advice for this period.</p> <p>Once the wage audit is processed, under the provisions of S.170 of the Act, the Employer may appeal the additional Premium charges. If the Premium is not in dispute or the appeal has been resolved the Employer can apply for the late payment fees to be waived.</p>
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**References**

*Workers Compensation Act 1987, sections 174, 175*

*Premium and Debt Collection Manual*

Deed, Schedule 2, clauses 2.1.2, 2.1.3, 2.1.4

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