



TRANSFER OF EXPERIENCE BETWEEN EMPLOYERS

This operational instruction describes the application of the predecessor rule and the transfer of Claims experience to an Employer acquiring a business. In summary, the Insurance Premiums Order (IPO) states that when calculating a Premium, a Scheme Agent must include for the purposes of C₁, C₂, W₁ and W₂ the relevant cost of Claims and Wages for the predecessor.

The following definitions apply.

Person – an individual or company that has legal standing, whether acting alone or through a partnership, trust, business name or other entity.

Predecessor – a person is the predecessor of an Employer if the Employer has acquired the business of the person. This applies whether the business acquired is the whole or main part of the business of the person, or is the whole or main part of a separate and distinct business of the person, and whether or not the business acquired is carried on at the same location.

Main part of a business – a functioning unit, even if it was not the whole of the predecessor's business, that is structured differently, grouped in a new division or owned by a different holding company. A functioning unit is the main part of the business, if most (but not necessarily all) of the following factors remain the same: the trading name, industry, location(s), plant equipment, staff and clients.

Separate and distinct business – where the part of a business being acquired is substantial and self-contained as a functioning unit within the whole or main part of the business undertaking of the predecessor.

Transferred business – a business that is sold or transferred from a person to an acquiring entity. The transferred business may constitute the whole or main part of the business, or the whole or main part of a separate and distinct business of the person.

Acquiring entity – a person is an acquiring entity when they have acquired the business of a predecessor. This applies whether the business acquired is the whole or part of the business of a predecessor, or is the whole or part of a separate and distinct business of the predecessor.

Guiding principles

The objective of the experience adjustment system is to provide a mechanism to vary an Employer's Premium based on the Claims experience of that business. It is intended to apply in a fair and equitable manner and to be applied consistently, regardless of whether the resulting adjustment is positive or negative.

An Employer must not avoid the negative impact of their experience through manipulation of the system or their business structure – and must not gain through positive experience not rightly theirs.

Where business operations are transferred between legal entities, the following principles apply:

- (a) the decision whether or not to apply the experience of a transferred business to an acquiring entity is independent of its resulting impact – a Scheme Agent has no discretion to waive the application of the predecessor's experience

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| Page 1 of 3 | TRIM file: 2005/047720 File no: D05/056435 |

- (b) the experience of the transferred business must be applied to the acquiring entity
 - ie. the legal entity acquiring the business of the predecessor
- (c) the appropriate Premium Calculation will apply from the date of issue of the Premium Calculation forms to the acquiring entity, as distinct from the date the business was acquired.

In all cases, it is assumed that the business entity being acquired is fundamentally the same. Whether an entity remains fundamentally the same business should be considered in terms of the trading name, industry, location(s), plant, equipment, staff and clients. If most, but not necessarily all, remain unchanged or subject to small changes, it is considered the same business. It is not sufficient to demonstrate that the business has new management and that new management intends to take the business in a new strategic direction, or that the business has been restructured under the new management.

The grouping of injured Workers into a new division and the subsequent transfer or sale of that division does not serve to negate the experience impact. The Claims experience is to be applied to the divisions, or within the business, where the Claims originally occurred.

Where the acquiring entity purchases only the goodwill of a business, the details surrounding the purchase will need to be closely examined, as not all purchases of goodwill mean the acquiring entity must be experience adjusted based on the Claims and Wages history of the acquired business entity.

Predecessor’s period of insurance

Where the predecessor’s period of insurance is less than 12 months, the cost of Claims to be used in the acquiring entity’s Premium Calculation is the cost of Claims for the two 12-month periods immediately preceding the commencement of the acquiring entity’s Policy period.

Where the predecessor’s period of insurance is 12 months, the acquiring entity’s hindsight Premium is calculated by applying the Wages and cost of Claims for the three 12-month periods preceding the expiry date of the period of insurance. This includes the predecessor’s Wages and cost of Claims and the acquiring entity’s Wages and cost of Claims for the period just concluded. The cost of Claims includes the cost of all Claims of the predecessor and the acquiring entity calculated as at the expiry date of the period of insurance.

Application

The component of the Claims experience and Wages of the predecessor Employer applicable to the business acquired by the acquiring entity is to be taken into account in determining the experience Premium of the acquiring entity.

The cost of an individual Claim remains with the business in which the Injury occurred. Should the business be subject to the predecessor rule, the Claim will move with the business – regardless of whether the claimant stays with the predecessor, transfers to the acquiring entity or is no longer employed by either party.

The inclusion of the Claims experience of the predecessor in the Premium Calculation of the acquiring entity will depend on whether the Premium Calculation forms have been issued to the acquiring entity as at the date of sale or transfer. For example, when the acquiring entity, as at the date of the acquisition of the business:

- (a) has been issued with Premium Calculation forms for the period of insurance, the experience of the predecessor will not impact on the acquiring entity until the calculation of the hindsight Premium – the predecessor’s Wages and cost of Claims for the previous years must be

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| Page 2 of 3 | TRIM file: 2005/047720 File no: D05/056435 |

included in the calculation of the acquiring entity's hindsight Premium in accordance with the IPO

- (b) has not been issued with Premium Calculation forms for the period of insurance, the experience of the predecessor will impact on the calculation of the initial/renewal Premium of the acquiring entity – the Scheme Agent should include in the calculation of the acquiring entity's initial/renewal Premium, the predecessor's Wages and cost of Claims for the previous years in accordance with the IPO.

Exception

For Policies renewed from 4pm on 30 June 2003, an Employer who considers the costs of an individual Claim, or Claims of a predecessor, to be extraordinary, may apply to WorkCover to have that Claim (or Claims) excluded from the Premium Calculation in accordance with the IPO.

Applications must be submitted to:

The Manager

Appeals Branch

Locked Bag 2906

Lisarow NSW 2252

Fax: (02) 4325 4760

Applications of this nature will be determined in the same way as applications made under section 170 of the 1987 Act.

References

Workers Compensation Act 1987, section 168, 169, 170

Insurance Premiums Order

Deed, Schedule 2, clause 2.1.2

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| Page 3 of 3 | TRIM file: 2005/047720 File no: D05/056435 |