



**THE ACCIDENT REHABILITATION AND COMPENSATION
INSURANCE (EXPERIENCE RATING) REGULATIONS 1993**

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 27th day of September 1993

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to sections 104, 104A, and 167 of the Accident Rehabilitation and Compensation Insurance Act 1992, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Accident Rehabilitation and Compensation Insurance (Experience Rating) Regulations 1993.

(2) These regulations shall be deemed to have come into force on the 1st day of April 1993, and shall apply to any basic premium paid or payable on or after that date under the Act.

PART I

INTERPRETATION

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“Act” means the Accident Rehabilitation and Compensation Insurance Act 1992:

“1982 Act” means the Accident Compensation Act 1982 as that Act applied before its repeal by the Act:

“Basic premium”, in relation to any premium liability year, means the basic premium payable by an employer pursuant to section 101 of the Act for that premium liability year; and includes the levy payable by an employer pursuant to section 38 of the 1982 Act, in both cases excluding any goods and services tax which is charged as part of that basic premium or that levy:

“Claim date”, in relation to a qualifying claim, shall be the date on which the personal injury or personal injury by accident in respect of which that claim was made occurred, as determined in accordance with the provisions of either the Act or the 1982 Act, as the case may be:

“Company” means any body corporate or other entity which has a legal personality or existence distinct from those of its members, whether that body corporate or other entity is incorporated or created in New Zealand or elsewhere; and includes anything deemed to be a company for the purposes of the Income Tax Act 1976, a special corporate entity, and a partnership:

“Earnings as an employee” has the same meaning as in the Earnings Definitions Regulations:

“Earnings Definitions Regulations” means the Accident Rehabilitation and Compensation Insurance (Earnings Definitions) Regulations 1992:

“Employer” means—

(a) Every employer for the purposes of the Act or the 1982 Act; and

(b) Every person who ceases or has ceased to be an employer:

“Group of employers” has the meaning assigned to that term by regulation 9 of these regulations:

“Large employer”, in relation to any premium liability year, means any qualifying employer where the basic premium payable by that employer for that premium liability year is equal to or exceeds \$10,000:

“New employer”, in relation to any premium liability year, means—

(a) Every employer, other than a representative employer of a specified group, who is not a qualifying employer in that premium liability year; and

(b) Every representative employer of a specified group, where each of the representative employer and every member of the specified group for that premium liability year is not a qualifying employer in that premium liability year, determined as if regulation 12 of these regulations did not apply:

“Person” includes a company:

“Personal injury by accident” means a personal injury by accident covered by the 1982 Act:

“Premium discount”, in relation to any premium liability year, means the amount which the Corporation is liable to pay under these regulations to an employer in respect of any basic premium paid by that employer for that premium liability year:

“Premium liability year”, in relation to any employer, means any year for which the employer is liable to pay a basic premium:

“Premium loading”, in relation to any premium liability year, means the amount which an employer is liable to pay under these regulations for that premium liability year in addition to the basic premium paid or payable by that employer for that premium liability year:

“Public authority” means the Public Trustee, the Maori Trustee, and every other department or instrument of the Executive Government of New Zealand; and includes the Christmas Island Phosphate Commission, incorporated in Australia by the Christmas Island Agreement Act 1949 of the Parliament of Australia:

“Qualifying claim”, in relation to an employer, means, subject to regulation 6 of these regulations, a work injury claim lodged in respect of employment with that employer and accepted by the Corporation (such a qualifying claim is referred to in these regulations as being a qualifying claim attributable to that employer):

“Qualifying employer”, in relation to any premium liability year, means a person—

(a) Who pays or is liable to pay a basic premium for the premium liability year; and

(b) Who—

- (i) Paid or was liable to pay a basic premium for the year preceding the premium liability year; or
- (ii) Is deemed by the Corporation, pursuant to regulation 6 of these regulations, to have qualifying claims attributable to it in respect of that premium liability year; or
- (iii) Was a member of a specified group for the year preceding the premium liability year:

“Qualifying payment”, in relation to any employer, means any payment made by the Corporation that the Corporation is able to associate with a qualifying claim attributable, or deemed to be attributable, to that employer, where that payment is made not later than the last day of the 4th premium liability year following the premium liability year in which the claim date falls; but does not include any payment made by the Corporation to the extent that it is recoverable under section 114 of the 1982 Act or section 77 of the Act:

“Representative employer”, in relation to a specified group, means the employer specified as the representative employer of that specified group in accordance with regulation 11 of these regulations:

“Shareholder” includes any person who holds or is deemed to hold voting power in a company, and any partner in a partnership:

“Small employer”, in relation to any premium liability year, means any qualifying employer where the basic premium payable by that employer for that premium liability year is less than \$10,000:

“Special corporate entity” means a special corporate entity as defined in section 8B of the Income Tax Act 1976:

“Specified group” has the meaning assigned to that term by regulation 10 of these regulations:

“State-owned enterprise” means any person from time to time specified in the Fourteenth Schedule to the Income Tax Act 1976:

“Subsequent work injury” has the same meaning as in section 121 (5) of the Act, but read as if the words “on or after the 1st day of July 1992” in paragraph (a) of that subsection 5 were omitted:

“Voting power” means the power of a shareholder to vote at a meeting of a company, excluding any power to vote which arises only in circumstances where the rights of the shareholder may be altered to the shareholder’s detriment:

“Work injury claim” means—

(a) A work injury claim to which section 65 (1) of the Act refers; and

(b) A claim made under the 1982 Act in relation to personal injury by accident arising out of and in the course of employment—

but does not include a claim which relates to any personal injury by accident or work injury which is a subsequent work injury:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(b) A day in the period commencing on the 25th day of December in any year and ending with the 15th day of January in the following year:

“Year” means a period commencing on the 1st day of April and ending with the following 31st day of March.

(2) Subject to subclause (1) of this regulation, in these regulations expressions defined in the Act or in the Income Tax Act 1976, unless the context otherwise requires, have the meanings so defined.

(3) For the purposes of these regulations only, except as provided in regulation 8 of these regulations, the basic premium payable in any year (referred to in this subclause as the year of payment) by any employer shall be deemed to be payable for the premium liability year ending with the 31st day of March preceding the year of payment.

(4) For the purposes of subclause (1) of this regulation, a partnership includes any series of succeeding partnerships each of which comprises substantially the same partners as the immediately preceding partnership to the intent that the partnerships shall be treated as a single continuous partnership.

(5) For the purposes of these regulations, a special corporate entity shall be deemed to be a body which has a legal personality or existence distinct from that of its members, and shall be treated as the employer of all employees engaged in its activities, and the members of it, or, if there are no members, the directors of the entity (including, in the case of any public authority or any State-owned enterprise that has neither members nor directors as so described, any relevant Minister of the Crown performing the functions of a director), shall be deemed to hold voting power in it in proportion to their ability to govern its activities, and shall be deemed not to hold any voting power other than that in the special corporate entity and that deemed to be held pursuant to regulation 9 of these regulations.

PART II

APPLICATION OF EXPERIENCE RATING

3. New employers—Every new employer shall not be entitled to a premium discount and shall not be liable to pay a premium loading under these regulations.

4. Small employers—(1) Every small employer shall be entitled to a premium discount in respect of the basic premium payable by the small employer for any premium liability year if the Corporation has not made any qualifying payments pursuant to any qualifying claims attributable, or deemed to be attributable, to the small employer in the premium liability year.

(2) The amount of the premium discount referred to in subclause (1) of this regulation shall be calculated in accordance with the following formula:

$$a \times (b - (c \times d))$$

where—

- a is 15 percent or such other percentage as may be specified by Order in Council as the size factor for the small employer for the purposes of this regulation; and
- b is the basic premium payable by the small employer for the premium liability year; and

- c is $\frac{0.80}{100}$ or such other figure as may be specified by Order in Council as the non-work injury factor for the purposes of this regulation; and
- d is the total amount of earnings as an employee paid or provided by the small employer in the premium liability year by reference to which the basic premium payable by the small employer for that year has been calculated.

5. Large employers—(1) Subject to subclauses (4) and (5) of this regulation, each premium liability year every large employer shall, in respect of the basic premium paid or payable by that large employer for that premium liability year, be liable to pay a premium loading or be entitled to a premium discount, calculated in accordance with the following formula:

$$a \times [b - ((c \times d) + (e \times f))]$$

where—

- a is the particular employer size factor for the large employer for the premium liability year determined in accordance with subclause (3) of this regulation; and
- b is the basic premium payable by the large employer for the premium liability year; and
- c is $\frac{0.80}{100}$ or such other figure as may be specified by Order in Council as the non-work injury factor for the purposes of this regulation; and
- d is the total amount of earnings as an employee paid or provided by the large employer in the premium liability year by reference to which the basic premium payable by the large employer for that year has been calculated; and
- e is 1.5 or such other figure as may be specified by Order in Council as the claims adjustment factor for the purposes of this regulation; and
- f is all, or such portion as the Corporation in its discretion may determine, of the qualifying payments (if any) made by the Corporation in the premium liability year pursuant to the qualifying claims (if any) attributable, or deemed to be attributable, to the large employer in the premium liability year.

(2) If the amount calculated pursuant to subclause (1) of this regulation—

- (a) Is a positive amount, such amount shall be a premium discount; or
- (b) Is a negative amount, such amount shall be a premium loading.

(3) For the purposes of item a of the formula in subclause (1) of this regulation, the particular employer size factor for a large employer for any premium liability year shall be an amount equal to the smaller of the following amounts:

- (a) An amount, rounded down to 3 decimal places, calculated in accordance with the following formula:

$$\frac{(0.65 \times a) + 10,000}{a + 100,000}$$

where—

- a is the basic premium payable for the premium liability year by the large employer:

(b) 0.6 or such other figure as may be specified by Order in Council as the maximum size factor for the purposes of this regulation.

(4) If the basic premium payable by a large employer for a premium liability year is or exceeds \$10,000 but does not exceed \$30,000, and the large employer is liable to pay a premium loading for that year, the amount of the premium loading shall not exceed an amount calculated in accordance with the following formula:

$$a \times (b - c)$$

where—

- a is 1.5; and
- b is the basic premium payable by the large employer for the premium liability year; and
- c is \$10,000.

(5) If the basic premium payable by a large employer for a premium liability year exceeds \$30,000, and the large employer is liable to pay a premium loading for that year, the amount of the premium loading shall not exceed an amount equal to the basic premium payable by the large employer for that year.

PART III

CLAIMS ATTRIBUTABLE TO EMPLOYERS

6. Reattribution of claims to another employer—(1) The purpose of this regulation is to enable the Corporation to attribute as many qualifying claims associated with one employer as possible to another employer where all or part of an activity or another activity carried on by that first employer has subsequently been carried on by that other employer or where the 2 employers are or were related or connected, to the intent that the financial costs to the Corporation of such claims are borne by that other employer and not by all employers generally.

(2) Notwithstanding that a qualifying claim is, or is deemed to be, attributable to an employer or, in the case of a company which is a member of a specified group would, but for the application of regulation 12 (1) (c) of these regulations, be or be deemed to be attributable to that employer (referred to in this regulation as the first employer), the Corporation may deem that qualifying claim to be attributable to one or more other employers, or to such other employers and the first employer (together referred to in this regulation as the second employer), with effect from such time as the Corporation may specify, if the qualifying claim related to a personal injury by accident or work injury that occurred in the course of employment which—

- (a) Was in respect of an activity carried on by the first employer where all or part of that activity has been transferred as a going concern to the second employer; or
- (b) Was with the first employer where the first employer was a company which is or has at any time within the preceding 5 years been a member of the same group of employers as the second employer; or
- (c) Was in respect of an activity at any time carried on by the first employer where—
 - (i) All or part of another activity has been transferred as a going concern by the first employer to the second employer; and

(ii) The first employer is not a member of a specified group for the premium liability year in which the transfer occurs; and

(iii) Following the transfer, the first employer does not carry on any other activity as a going concern; or

(d) Was with the first employer where the second employer has an economic interest in the first employer or where the same person or persons directly or indirectly, or through any one or more interposed companies, have an economic interest in the first employer and the second employer.

(3) Where the Corporation is satisfied that an arrangement has been entered into between the first employer and the second employer for a purpose, which is more than an incidental purpose, of avoiding the application of subclause (2) of this regulation, the Corporation may deem any transfer to the second employer of all or part of an activity carried on by the first employer to be a transfer of all or part of that activity as a going concern.

(4) Where, pursuant to subclause (2) of this regulation, the Corporation has deemed a qualifying claim to be attributable to the second employer, the Corporation may attribute that qualifying claim back to the first employer where the second employer has ceased to pay or provide earnings as an employee, and may alter any assessments made under regulation 21 of these regulations in respect of the first employer and the second employer accordingly.

(5) Where a qualifying claim is attributable to two or more employers during a premium liability year, it, and all qualifying payments associated with it for that premium liability year, shall be treated for the purposes of regulations 4 and 5 of these regulations as being attributable only to those employers to which it is attributable at the end of the last day of that premium liability year; and, where it is so attributable to two or more such employers, the qualifying payments shall be divided by the Corporation between those employers on such basis as the Corporation determines (after consulting with those employers) is fair and reasonable.

(6) Where a qualifying claim is deemed to be attributable to an employer pursuant to subclause (2) (d) of this regulation, the Corporation must exercise its discretion under item f of regulation 5 (1) of these regulations to ensure that the proportion of qualifying payments associated with that qualifying claim in the relevant premium liability year taken into account in the said item f in respect of that employer corresponds to the common economic interest (expressed as a proportion) existing between the first employer and the second employer in terms of that subclause.

(7) Where all or part of an activity carried on by an employer is transferred as a going concern to another employer, those employers shall each notify the Corporation in writing and in such form as may be prescribed by the Corporation of such particulars as may be specified.

(8) The economic interest existing between employers and persons and the nature and extent of an activity shall be determined by the Corporation in such manner as it thinks fit.

7. Adverse events—A qualifying claim shall not be attributable, or deemed to be attributable, to an employer if the qualifying claim resulted, directly or indirectly, from any event, happening, or cause which is declared by the Minister to be an adverse event for the purpose of this regulation, unless an employer, by any prior or contemporaneous act or

omission of the employer, materially contributed to the personal injury by accident or work injury which gave rise to the qualifying claim.

PART IV

CESSATION ADJUSTMENTS

8. Employers who pay premiums in advance—(1) This regulation applies for the purposes of determining the amount of premium loading payable by, or premium discount payable to, an employer.

- (2) Where an employer—
- (a) Disposes of or otherwise ceases to carry on any business in any year (referred to in this regulation as the year of cessation); and
 - (b) Was, on the 31st day of March 1980, an employer in relation to that business; and
 - (c) Has continued to be an employer in relation to that business until the date of disposing of or otherwise ceasing to carry on that business; and
 - (d) Applies for an adjustment under regulation 14 of the Earnings Definitions Regulations to the amount of the basic premium otherwise payable by that employer for the year of cessation—
that employer shall be deemed to have paid—
- (e) A basic premium for the premium liability year preceding the year of cessation equal to the amount of the basic premium which would be payable by that employer on the 31st day of May in the year of cessation as if that employer was not, on the 31st day of March 1980, an employer in relation to that business; and
 - (f) A basic premium for the premium liability year coinciding with the year of cessation equal to the amount notified to that employer under regulation 14 of the Earnings Definitions Regulations as the premium payable for the year of cessation.
- (3) Where an employer—
- (a) Disposes of or ceases to carry on any business in a year of cessation; and
 - (b) Is not an employer to which subclause (2) of this regulation applies; and
 - (c) Is required to furnish a statement pursuant to regulation 12 (a) of the Earnings Definitions Regulations—
the basic premium payable by the employer in accordance with regulation 12 (b) (ii) of the Earnings Definitions Regulations shall be deemed to be payable for the premium liability year coinciding with the year of cessation.
- (4) Where subclause (2) or (3) of this regulation deems a basic premium to be payable for a premium liability year coinciding with the year of cessation, then—
- (a) Where the employer is not a member of a specified group at the time the basic premium is payable (referred to in this regulation as the time of cessation), these regulations shall be applied according to their terms at the time of cessation as if the time of cessation was immediately after the end of the last day of the premium liability year:
 - (b) Where the employer is a member of a specified group at the time of cessation, the employer shall be deemed to be a member of the specified group for the premium liability year and, subject to

regulation 6 of these regulations, qualifying claims attributable to the representative employer at the time of cessation by virtue of the employer being a member of the specified group, and all qualifying payments associated with such qualifying claims, shall be treated as being attributable to the representative employer at the end of the last day of the premium liability year.

(5) An employer to whom this regulation applies shall notify the Corporation in the prescribed form of the disposal or cessation of any business carried on by the employer and, in such notification, shall set forth—

- (a) Where subclause (2) of this regulation applies, the basic premium deemed to be payable by the employer for the premium liability year preceding the year of cessation; and
- (b) The basic premium payable by the employer for the year of cessation; and
- (c) If the employer is a large employer, the employer's calculation of the premium discount payable to the employer or the premium loading payable by the employer in respect of the basic premium paid or payable by the employer—
 - (i) If the employer has not furnished a return pursuant to regulation 20 of these regulations for the premium liability year preceding the year of cessation; and
 - (ii) The year of cessation.

PART V

GROUPS OF EMPLOYERS

9. Members of group of employers—(1) For the purposes of these regulations, two or more companies, each being an employer, shall be members of a group of employers at any time if at that time the aggregate of the lowest percentage of voting power held by each shareholder in each of those companies is not less than 66 percent.

(2) Where the Corporation is of the opinion that—

- (a) Voting power or any share in any company has been subject to an arrangement or series of related or connected arrangements; or
- (b) Any share in any company has had any rights attaching to it extinguished or altered, directly or indirectly, by any means whatsoever—

in either case for the purpose, or for purposes including the purpose, of seeking to ensure that a company is, or is not, a member of a particular group of employers (but for the application of this provision), the Corporation may deem the company not to be or, as the case may be, to be a member of that group of employers.

(3) For the purposes of this regulation—

- (a) Voting power held by the husband or wife of a shareholder shall be deemed to be held by the shareholder;
- (b) Voting power in one company held by another company shall be deemed to be held by the shareholders of that other company in proportion to their voting power in that other company, and so on;
- (c) Voting power held by a person who is required to exercise that voting power in accordance with the directions of another person shall be deemed to be held by that other person, and voting power

held, directly or indirectly, on behalf of a person shall be deemed to be held by that person.

PART VI

SPECIFIED GROUPS

10. Members of specified group—For the purposes of these regulations, two or more companies shall be members of a specified group for a premium liability year where they are members of the same group of employers at the end of the last day of that premium liability year, and each such company shall be a member of the specified group for each subsequent premium liability year until such time as that company ceases to be a member of the specified group under regulation 13 of these regulations.

11. Representative employer—(1) Where two or more companies are members of a specified group for a premium liability year, they shall, on or before the date specified by the Corporation, by notice in writing to the Corporation specify one such company to be the representative employer of the specified group.

(2) The company specified as the representative employer of a specified group under subclause (1) of this regulation shall continue to be the representative employer of that specified group until such time as that company ceases to be a member of the same group of employers as the other companies in the specified group (in which case that company and another member of the specified group shall make the application referred to in subclause (3) of this regulation) or another company becomes the representative employer of the specified group under subclause (3) of this regulation.

(3) The representative employer of a specified group may apply to the Corporation for it to cease to be the representative employer and for another member of the specified group, which applies in writing to the Corporation to become the representative employer of the specified group, to be the representative employer of the specified group with effect from such time as may be specified in the application, being a time within 2 months after the date the application is received by the Corporation; and the Corporation shall grant the application with effect from the time specified in it or such other time as the Corporation, with the agreement of the representative employer, substitutes.

(4) If at any time a specified group does not have a representative employer, the Corporation may specify any company which is a member of the specified group to be the representative employer.

(5) Where the representative employer of a specified group (referred to in this subclause as the old representative employer) ceases to be the representative employer of the specified group and another member of the specified group becomes the representative employer of the specified group (referred to in this subclause as the new representative employer), the old representative employer shall, from the date on which it ceases to be the representative employer of the group, be deemed never to have been the representative employer of that specified group and the new representative employer shall, from the date on which it becomes the

representative employer of the specified group, be deemed always to have been the representative employer of that group.

12. Consequences of group membership—(1) For the purposes of these regulations, where any companies are members of a specified group for a premium liability year—

- (a) The earnings as an employee paid or provided in the premium liability year by every company which is a member of the specified group shall be deemed to have been paid or provided in the premium liability year by the representative employer of that specified group:
- (b) The basic premium payable for the premium liability year by every company which is a member of the specified group shall be deemed to be payable for the premium liability year by the representative employer:
- (c) The qualifying claims (if any) attributable or deemed to be attributable to a company which is a member of the specified group shall be deemed to be attributable to the representative employer:
- (d) The qualifying payments (if any) made by the Corporation in any premium liability year pursuant to the claims referred to in paragraph (c) of this subclause shall be deemed to be qualifying payments made by the Corporation in the premium liability year pursuant to qualifying claims attributable to the representative employer:
- (e) The Corporation shall give to the representative employer (or, unless the Corporation otherwise determines, to a person notified by the representative employer to the Corporation) the notice or notices referred to in regulation 18 of these regulations: Provided that where a company is not a member of the same group of employers as the other companies in the specified group at all times during a premium liability year, the notice or notices referred to in regulation 18 of these regulations may be given by the Corporation to any of the following persons:
 - (i) The company to which the relevant qualifying payments would have been attributable or deemed to be attributable but for this regulation:
 - (ii) The representative employer of that specified group:
 - (iii) The person last notified to or recorded by the Corporation as the person to whom such notice or notices should be given:
- (f) The Corporation shall make the assessment referred to in regulation 21 of these regulations in respect of the representative employer, and if the assessment—
 - (i) Shows an amount payable by the representative employer, the representative employer shall pay such amount to the Corporation on or by the due date for the payment of such amount:
 - (ii) Shows an amount payable by the Corporation, the Corporation shall pay such amount to the representative employer and, upon making such payment, the Corporation shall not be liable in respect of such amount to any company included in the specified group represented by the representative employer:

(g) Only the representative employer may exercise any right of review or appeal as against the Corporation in respect of any matter dealt with by these regulations.

(2) Notwithstanding the provisions of subclauses (1) and (3) of this regulation, for the purposes only of filing a declaration or return to the Corporation but not for any other purpose, a company which is a member of a specified group for a premium liability year may advise the representative employer of the specified group that it elects itself to file the declaration or return referred to in regulations 19 and 20 of these regulations as if regulation 12 of these regulations did not apply (except that the question whether an employer is a large employer or a small employer and the particular employer size factor shall be determined as if regulation 12 (1) of these regulations did apply), and that company and the representative employer shall each file the declaration or return on that basis, but subject to such modifications as the Corporation may determine, and provide such further information as the Corporation may determine.

(3) For the purposes of these regulations, any obligation which a company, being a member of a specified group but not being the representative employer, would have had but for the application of subclause (1) of this regulation, shall be disregarded.

(4) Notwithstanding the provisions of subclauses (1) and (3) of this regulation, each company which is a member of a specified group for a premium liability year shall be jointly and severally liable for any amounts payable by the representative employer of the specified group for that premium liability year, unless an Act provides otherwise:

Provided that if a company, being a member of a specified group, is prevented by an Act from being jointly and severally liable for amounts payable by the representative employer, such company shall nevertheless remain liable for the amount which would have been payable by that company to the Corporation pursuant to these regulations, but for the application of regulation 12 (1) of these regulations (except that the question whether an employer is a large employer or a small employer and the particular employer size factor shall be determined as if regulation 12 (1) did apply):

Provided also that, where a company has ceased to be a member of the size group of employers as the other members of the specified group, that company may apply to the Corporation to be released from its joint and several liability and the Corporation may, in its discretion, grant or decline such application on such terms and conditions as it thinks fit.

(5) As between themselves, the representative employer of, and companies which are members of, a specified group for a premium liability year shall, unless otherwise agreed, compensate each other for the premium loadings and premium discounts (respectively referred to in this subclause as notional premium loadings and notional premium discounts) which would have arisen but for the application of subclause (1) of this regulation or regulation 5 (4) or regulation 5 (5) of these regulations:

Provided that where regulation 5 (4) or regulation 5 (5) of these regulations applies to reduce a premium loading otherwise payable by the representative employer of the specified group, the notional premium loadings shall be reduced on a pro rata basis by the amount of that reduction, after subtracting notional premium discounts:

Provided also that, in determining whether a company is a small employer or a large employer and, in the case of a large employer, the

particular employer size factor for the purposes of regulation 5 of these regulations, that company shall be deemed to have paid the basic premiums payable for the premium liability year by all the companies which are members of the specified group.

(6) Where any company which is a member of a specified group for a premium liability year is not a member of the same specified group for the succeeding premium liability year by reason of voting power in it having been transferred (whether as a result of the transfer of shares, the alteration of rights as between shareholders, or otherwise), the Corporation shall attribute to that company the qualifying claims which would have been attributable to it but for the application of subclause (1) (c) of this regulation, and any qualifying claims that are so attributed to that company by the Corporation shall cease to be attributable to the representative employer as from the beginning of the premium liability year in which the attribution takes effect.

13. Termination of membership—Except as provided in regulation 8 of these regulations, where a company, being a member of a specified group, ceases at any time to be a member of the same group of employers as the other companies in that specified group—

- (a) By reason of voting power in it having been transferred (whether through the transfer of shares, the alteration of rights as between shareholders, or otherwise), that company shall cease to be a member of the specified group with effect from the beginning of the premium liability year in which it ceases to be a member of the group of employers:
- (b) By reason of the company ceasing to exist, that company shall cease to be a member of the specified group with effect from the beginning of the next premium liability year.

14. Service of notices—Any notice given under the Act or regulations made under the Act to the representative employer of a specified group shall be deemed to be given to that representative employer and to all members of that specified group.

PART VII

DISCLOSURE OF INFORMATION

15. Disclosure of information to Corporation—(1) In relation to each premium liability year, the representative employer of a specified group shall, on or before the date specified by the Corporation, notify the Corporation in writing of—

- (a) Every company which was a member of the specified group for the premium liability year; and
 - (b) Every company in the specified group which is filing its own declaration or return for the premium liability year in terms of regulation 12 (2) of these regulations.
- (2) In relation to each premium liability year, every company which is a member of a specified group for the premium liability year and which has elected to itself file the declaration or return referred to in regulations 19 and 20 of these regulations shall, on or before the date specified by the Corporation, notify the Corporation in writing—

- (a) That it is filing a declaration or return pursuant to an election made under regulation 12 (2) of these regulations; and

(b) Of the name of the representative employer of the specified group.

(3) A company or representative employer may, with the agreement of the Corporation, appoint another person as its agent to notify the Corporation of the matters specified in this regulation.

16. Exchange of information between employers—In relation to each premium liability year, every company which is a member of a specified group shall supply, upon request, to any other company which is a member of the same specified group such information as is necessary to enable that other company to complete declarations or returns which it is required to make.

17. Disclosure of information by shareholders—(1) For the purposes only of performing its obligations under regulation 15 of these regulations, every company which has reasonable cause to believe that it is in the same specified group for a premium liability year as another company, and which is unable to ascertain otherwise, after having made due inquiry, whether that other company is in the same specified group for the premium liability year, may request in writing any person to notify it in writing of the voting power held by or on behalf of that person at the end of the last day of that premium liability year in any company or companies.

(2) Every person who receives a request for information pursuant to subclause (1) of this regulation shall, within 30 days after the date the request is received by that person, provide the information requested.

PART VIII

ADMINISTRATION

18. Notification to employers—Before the Corporation makes an assessment under these regulations of the amount of any premium discount payable to any employer or of any premium loading payable by any employer in respect of the basic premium payable by the employer for any premium liability year, the Corporation may give notice or notices to an employer of the qualifying payments made (if any) by the Corporation in that year pursuant to the qualifying claims (if any) attributable, or deemed to be attributable, to the employer, and, where appropriate, the portion of those qualifying payments to be taken into account in item f of regulation 5 (1) of these regulations.

19. Small employer declarations—Every small employer who is given a notice in relation to a premium liability year pursuant to regulation 18 of these regulations shall, if required by the Corporation, within the time specified in that notice, make a declaration to the Corporation in the prescribed form that the employer was a small employer for that year, and shall provide such other documents or information as the Corporation may require.

20. Large employer returns—(1) Every large employer who is given a notice in relation to a premium liability year pursuant to regulation 18 of these regulations shall, within the time specified in that notice, furnish to the Corporation a return in the prescribed form setting forth the large employer's calculation of the premium discount payable to the employer or the premium loading payable by the employer in respect of the basic premium paid or payable by the employer for that year.

(2) Every larger employer shall include in or attach to the return required to be furnished by the employer pursuant to subclause (1) of this regulation—

- (a) The particulars for each of the items contained in the formulae referred to in subclauses (1) and (3) of regulation 5 of these regulations; and
- (b) Such other particulars as may be prescribed; and
- (c) Such other documents or information as the Corporation may require.

(3) A return purporting to be made by or on behalf of any employer shall for all purposes be deemed to have been made by the employer or by the authority of the employer, as the case may be, unless the contrary is proved.

21. Assessments—(1) The Corporation shall, in relation to the basic premium paid or payable by every employer,—

- (a) If the employer is a small employer, make an assessment of the premium discount (if any) payable to the employer; or
- (b) If the employer is a large employer, make an assessment of the premium discount payable to the employer or the premium loading payable by the employer—

and shall give notice of the assessment to the employer. Omissions by the Corporation to give notice of an assessment shall not invalidate or affect the operation of the assessment.

(2) If any employer defaults in furnishing any return or declaration, or if the Corporation has reason to suppose that any person who has not made a return or declaration is an employer, the Corporation may make an assessment of the amount which in its judgment is the premium discount or premium loading of the employer or person.

(3) The Corporation may from time to time and at any time make all such alterations to an assessment as the Corporation considers necessary to ensure its correctness, notwithstanding that an employer may have made a payment pursuant to any such assessment. The Corporation shall give notice to an employer of any alteration to an assessment made in respect of the employer, but the omission of the Corporation to give a notice of an alteration to an assessment shall not invalidate or affect the operation of the assessment.

(4) The validity of an assessment made by the Corporation shall not be affected by reason that any of these regulations have not been complied with.

22. Evidence of returns and assessments—Any document produced by the Corporation purporting to be a copy of or extract from any return or assessment shall in all Courts and in all proceedings be sufficient evidence of the original; and the production of the original shall not be necessary, and all Courts and Tribunals shall in all proceedings take judicial notice of any such copy or extract.

23. Reviews and appeals—(1) An employer's obligation to pay any premium loading pursuant to any assessment made by the Corporation, and the Corporation's right to receive and recover any such premium loading, shall not be suspended by any application for a review or any appeal in respect of any such review; but if the application for a review is

successful and the Corporation does not appeal against the decision given on the review, the Corporation shall, within 20 working days, refund to the applicant the amount of any premium loading paid by the applicant to the Corporation to the extent to which the premium loading paid by the applicant exceeds the amount which, according to the decision on the review, was properly payable by the applicant.

(2) The Corporation shall only be liable to pay to an employer the amount of any premium discount assessed by the Corporation except to the extent to which that premium discount is increased, or a premium discount is allowed, by any review or appeal, where that review or appeal becomes final and conclusive.

24. Payment of premium loadings—(1) Every employer who is liable to pay a premium loading shall make payment of the premium loading on or by the due date for such payment specified in the notice of assessment given by the Corporation.

(2) The Corporation may recover any unpaid premium loading as a debt due, or may deduct such amount from any payment due to be made by or on behalf of the Corporation to the employer who is liable to pay such amount.

25. Payment of premium discounts—(1) Subject to subclauses (2) and (3) of this regulation, the Corporation shall, within 2 months after giving an assessment to an employer entitled to a premium discount, make payment of the premium discount or, at the option of the Corporation, credit all or any part of such premium discount in payment of any amount due and unpaid by the employer to the Corporation.

(2) Where an employer has failed to comply with any of its obligations under the Act, or any regulations made under the Act, the Corporation shall not be required to pay any premium discount to that employer, or, where that employer is a member of a group of employers, to any company which is a member of the group of employers including, in the case of a specified group, the representative employer of that specified group, until such time as that employer has complied with all those obligations.

(3) The Corporation shall not be required to make payment of a premium discount which is less than an amount specified by the Corporation from time to time (such amount not to exceed \$50), but may credit all or part of such premium discount in payment of any amount that is or may become payable by the employer to the Corporation.

26. Right of set-off—The Corporation, but no employer, may deduct from, and set off against, any amount payable by the Corporation to a company that is a member of a specified group the amount of any basic premium or any other amount due and unpaid by any other company that is a member of the same specified group to the Corporation.

27. Notices—Any notice required to be given under these regulations may be given in the same manner as notices may be delivered under section 162 of the Act.

28. Goods and services tax—(1) The amount of any premium loading payable by an employer and any premium discount payable by the Corporation under regulations 4 and 5 of these regulations does not

include any goods and services tax. Such premium loadings and premium discounts shall be increased by the amount of any goods and services tax which is referable to the supply to which the premium loading or premium discount relates and which is determined by reference to the amount of the premium loading or premium discount.

(2) For the purposes of the Goods and Services Tax Act 1985, the amount of any premium loading or premium discount shall be treated as if it were an alteration to the previously agreed consideration for the supply of cover by the Corporation, such previously agreed consideration being represented by the basic premium payable by the employer and to which the premium loading or the premium discount relates. In this regard, the representative employer of a specified group shall be treated as the agent of each member of the specified group.

29. Revocation and saving—(1) The Accident Compensation (Accident Experience) Regulations 1992* are hereby revoked.

(2) Notwithstanding the revocation of the Accident Compensation (Accident Experience) Regulations 1992* by subclause (1) of this regulation, those regulations shall continue to have effect in relation to basic premiums payable before the 1st day of April 1993.

MARIE SHROFF,
Clerk of the Executive Council.

*S.R. 1992/161

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations continue an experience rating system to adjust the amount of the basic premium payable by employers pursuant to the Accident Rehabilitation and Compensation Insurance Act 1992, to reflect the accident experience of employers.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 30 September 1993.

These regulations are administered in the Accident Rehabilitation and Compensation Insurance Corporation.