



163B ORDERS

NEW POWERS TO ENSURE WORKERS COMPENSATION COMPLIANCE

The section 163B amendment to the *Workers Compensation Act 1987* was proclaimed to commence on 16 September 2005. This new section gives authorised officers of WorkCover power to order employers to stop work when they have a reasonable suspicion that the employer does not have a workers compensation policy that covers all employees. An employer has five working days from the issuing of the order to provide a Certificate of Currency as evidence of a workers compensation policy. Employers can obtain a Certificate of Currency from their workers compensation insurer. If a certificate is not provided within this time then the employer must cease work until such time as the certificate is provided to WorkCover and the stop work order is withdrawn.

Why do WorkCover officers have this power?

Employers are required by law to have a workers compensation policy that covers all their employees. The fairness of the workers compensation system requires all employers to meet this obligation. Employees can be placed at financial risk and other employers at a competitive disadvantage by employers who do not take out a workers compensation policy that covers all employees and who do not pay the appropriate premium. Through the ability to issue a section 163B 'stop work' order, WorkCover's authorised officers will be better able to promote workers compensation compliance and thus protect the interests of workers and of all employers who are meeting their obligations.

How will the new Stop Work orders be applied?

WorkCover officers undertake workers compensation compliance as part of workplace compliance activities. In order to establish that an employer has a workers compensation policy, an initial request will be made by a WorkCover officer to an employer under section 163A of the *Workers Compensation Act* to provide a Certificate of Currency for their policy. When issued with such a request an employer has five working days to obtain this certificate from their insurer and provide it to the authorised officer. The maximum penalty for failing to comply with a request under s163A is \$5,500.

If the employer does not provide the certificate by the end of this period, the inspector will issue the employer with a section 163B Order. The employer then has five working days to obtain the certificate of currency. If the employer fails to provide a certificate by the end of this period then the employer must cease work until such a certificate is provided to WorkCover and the order is withdrawn. A penalty of up to \$55,000 or imprisonment for 6 months, or both, may be imposed for breach of a stop work order.

Section 163B Orders will only be issued when an employer has failed to comply with a Section 163A Request.

What should employers do?

All employers should ensure that they have a current workers compensation policy and that this policy meets their legal obligations. The industry classification of the policy should correspond with the activities that comprise the employer's undertaking; and it should also cover all the employer's employees. If an employer has any uncertainty about the adequacy of their policy they should contact their workers compensation insurer for advice.

There is no need for employers to obtain a Certificate of Currency in anticipation that they may be the subject of a Section 163A Request. However, employers should have their policy details at hand to enable them to obtain a Certificate of Currency if so requested.

When there is a request by an inspector for a Certificate of Currency the employer should immediately contact their insurer for an 'Employer request for a Certificate of Currency' form. This request can be made by phone and the form faxed by the insurer. The form should be completed and faxed back to the insurer. The insurer will check the policy details and provide the Certificate of Currency by fax. If an employer experiences any difficulty in obtaining a certificate within five days after a request is made, the employer should contact the WorkCover officer and provide the necessary details.