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ADELAIDE, THURSDAY, 4 AUGUST 2011

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WORKERS REHABILITATION AND
COMPENSATION ACT 1986

Code of Conduct for Self-Insured Employers Determination 2011

NOTICE is hereby given that the Board of the WorkCover Corporation of South Australia determines as follows pursuant to Section 60 (4) (bb) of the Workers Rehabilitation and Compensation Act 1986, (the Act) and all other enabling powers:

Citation and Date of Commencement

1. This determination may be cited as the Code of Conduct for Self-Insured Employers Determination 2011.
2. This determination takes effect on 19 May 2011.

*Code of Conduct for Self-Insured Employers
Determination 2010*

The Code of Conduct for Self-Insured Employers attached to this determination is a 'code of conduct for self-insured employers' under Section 60 (4) (bb) and it is to be published in the *Government Gazette*.

Confirmed as a true and accurate record of the decision of the WorkCover Board.

Dated 19 May 2011.

P. BENTLEY, Chairperson, WorkCover
Corporation of South Australia

WORKERS REHABILITATION AND
COMPENSATION ACT 1986

Code of Conduct for Self-Insured Employers

Preamble

Section 60 (4) (bb) of the Workers Rehabilitation and Compensation Act 1986 (WRCA) states that self-insurance registration:

'is subject to a condition that the self-insured employer will comply with any code of conduct for self-insured employers determined by the Corporation from time to time and published in the *Gazette*'

In accordance with the determination of the Board dated 19 May 2011, I, Philip Bentley, Chairperson WorkCover Corporation of South Australia (the Corporation) authorise the publication of a code of conduct as follows:

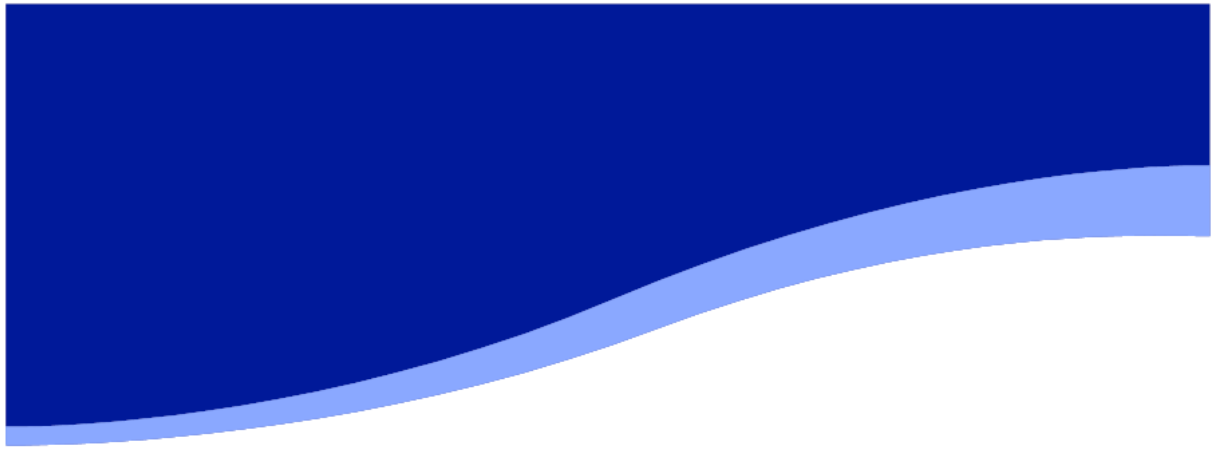
NOTICE

PURSUANT to Section 60 (4) (bb) of the WRCA, I give notice that the document at Appendix 1 constitutes a 'code of conduct for self-insured employers' determined by the Corporation for the purposes of Section 60 (4) (bb) and it will have effect from the date of publication in the *Government Gazette*.

Confirmed as a true and accurate decision of the Corporation.

Dated 19 May 2011.

P. BENTLEY, Chairperson, WorkCover
Corporation of South Australia



WorkCoverSA

Code of conduct for self-insured employers under the WorkCover Scheme

Version 5

Author: Self-insured Return to Work Services



Code of conduct for self-insured employers

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Please refer to the following definitions when reading and interpreting *the Code*

Glossary

Term	Meaning
Act	the <i>Workers Rehabilitation and Compensation Act 1986</i>
Board	the Board of Management of WorkCover as constituted by the WCA, or any properly delegated committee appointed by the Board of Management.
the Code	the self-insured employer code as amended from time to time and published in the Gazette pursuant to section 60(4)(bb)
compensable disability	a disability that is compensable by virtue of section 30 of the Act
Compensation Fund	the Compensation Fund as set up pursuant to section 64 (1) of the Act
Crown self-insured employer	an employer deemed registered as a self-insured employer under section 61 of the Act
Crown	the State of South Australia and any agency or instrumentality of the Crown in right of the State of South Australia.
employer(s)	Employer has the same meaning as in the Act
Gazette	as defined in section 4(1) of the <i>Acts Interpretation Act 1915</i>
gearing ratio	total liabilities ÷ equity
group of self-insured employers	a group of self-insured employers registered under section 60(3) of the Act
Industrial association	as defined by section 3 of the Act
liquidity ratio	current assets ÷ current liabilities
local government corporations	has the meaning as defined in section 3(1) of the Act and regulation 5 of the Regulations
mercantile agency	such mercantile or credit agency that WorkCover in its absolute discretion determines
natural consequences model	the natural consequences model referred to in the standards
net worth	total tangible assets minus total liabilities
non-compliance	a breach or failure to comply with the Act, any Regulations or determinations made under the Act or a term or condition of registration
OHS&W Act	the <i>Occupational Health, Safety and Welfare Act 1986</i>
OHS&W Regulations	the <i>Occupational Health, Safety and Welfare Regulations 1995</i>
ordinary levy	the levy referred to in clause 6.4

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Term	Meaning
performance indicators	the performance indicators contained in the natural consequences model as amended from time to time by WorkCover and notified to self-insured employers
private employer	any employer other than a Crown employer
private self-insured employer	any self-insured employer other than a Crown self-insured employer
profitability ratio	net profit after tax ÷ shareholders' funds
RA regulations	the Workers Rehabilitation and Compensation (Reviews and Appeals) Regulations 1999
ratings agency	Standard & Poors or Moody's and any other such agency as WorkCover deems fit
registered employer	an employer that is registered pursuant to section 59 of the Act
Regulations	the <i>Workers Rehabilitation and Compensation Regulations 2010</i>
related bodies corporate	has the same meaning as in section 60(9) of the Act
relevant legislation	The relevant legislation includes: <ul style="list-style-type: none"> • the Act • Regulations • the OHS&W Act • the OHS&W Regulations • the WCA • any other legislation of either the State or Commonwealth parliaments that may directly or indirectly affect the safety of workers in the self-insured employer's workplace or the management or administration of workers compensation claims
responsible officer	the person appointed to act in that position for the purposes of section 61 of the OHS&W Act
Schedule 1	Schedule 1 to the Regulations
Scheme	the South Australian Workers Compensation Scheme
self-insured employer	an employer that is registered by WorkCover as a self-insured employer pursuant to Division 1 of Part 5 of the Act
SISA	Self Insurers of South Australia Incorporated
standards	the performance standards and performance indicators for self-insured employers as annexed to this Code as amended and notified to self-insured employers by WorkCover from time to time

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Term	Meaning
transitional claims	<p>any form of assertion by a past or present worker to an entitlement to receive money from WorkCover pursuant to the Act that</p> <ul style="list-style-type: none"> • is payable after the date of registration of a self-insured employer or group of self-insured employers; • arises from a compensable disability which occurred prior to the date of registration of a self-insured employer or group of self-insured employers • arises in the course of employment by that self-insured employer or that group of self-insured employers; <p>and includes</p> <ul style="list-style-type: none"> • such an assertion (whenever received) even if it is not successful • anything which is consequential upon such an assertion being successful or unsuccessful • the entire amount that the nominated worker is or may become entitled to receive from WorkCover pursuant to the relevant provisions of the Act whether or not a separate or further assertion of an entitlement to receive the same is made by the person • all claims for compensation which were included in the Actuarial calculation that determined the CMP • such other claims as may be included in an SIETCMA entered into by <i>WorkCover</i> or a self-insured employer
WCA	the <i>WorkCover Corporation Act 1994</i>
WorkCover	the WorkCover Corporation of South Australia
worker	<p>(a) a person by whom work is done under a contract of service (whether or not as an employee), and</p> <p>(b) a person who is a worker by virtue of section 103A of the Act, and includes a former worker and the legal representative of a deceased worker.</p>

PREAMBLE

Note: Terms in *italics* are defined in the **Glossary**.

The purpose of this Code

The purpose of *the Code* is to:

- provide to *self-insured employers* a comprehensive framework of WorkCover's policies and procedures in administering the *Workers Rehabilitation and Compensation Act 1986* (the *Act*);
- (1) ensure all *self-insured employers* are aware of the ongoing obligations of registration as a *self-insured employer*,
- (2) constitute a code of conduct for *self-insured employers* that each *self-insured employer* must comply with as a condition of their registration pursuant to section 60(4)(bb) of the *Act*.; and
- (3) express those terms and conditions to which registration of all *self-insured employers* and *groups of self-insured employers* are subject as determined by WorkCover under section 60(4)(a)(ii) of the *Act* (but not those terms and conditions which have been determined by WorkCover to be applicable to an individual *self insured employer* or a *group of self-insured employers*).

Integration with the Scheme

Self-insurance is an integral part of the *Scheme* and it is our intention that self-insurance is firmly integrated into all aspects of Scheme operations.

WorkCover Policy on self-insured employer status

The WorkCover *Board* has formulated a formal policy statement on the continued existence of self-insured employer status. It states, amongst other things, that:

- (1) the *Board* recognises that the *Act* contains provision for self-insured employer status as an integral part of the *Scheme*
- (2) the *Board* views the financial security of the *Scheme* as being of significant importance in the administration and continuation of self-insured employer registrations
- (3) the *Board* recognises that self-insured employer status should only be made available to *employers* that are able to achieve and maintain the required level of performance of the *standards* and to comply with the requirements of the *Act* to a standard determined by WorkCover from time to time. The *Board* also recognises that self-insured employer status should only be made available to *employers* who can satisfy the *Board* as to their ability to continue to meet all obligations of registration as a *self-insured employer*, and that the granting of self-insured employer status is consistent with:
 - (a) the best interests of the *Compensation Fund*, and
 - (b) the achievement of the objects and functions specified in the *WorkCover Corporation Act* ('the *WCA*') and the *Act*

- (4) the *Board* further recognises that the *Act* allows for a conferral of self-insured employer status for a period not exceeding three years, and prior to the expiry of each grant, the *self-insured employer* must re-apply to renew its registration in accordance with the provisions of the *Act*
- (5) the *Board* requires that all *self-insured employers* maintain compliance with the *standards* and continuous improvement throughout the period of registration, with the consequences of a failure to comply resulting in a potential revocation, reduction or the placing of conditions on self-insured employer status or refusal to renew self-insured employer status
- (6) the *Board* requires *employers* who are *related bodies corporate* to be registered as a *group of self-insured employers* unless there are compelling reasons for this not to occur.

WorkCover's role

WorkCover performs a number of statutory functions in respect of an *employer* that is registered as a *self-insured employer*. They include:

- (1) the supervision of *self-insured employers* to ensure compliance with the *standards* and the *Act*, and
- (2) responsibility for the administration of the *Act* including as it applies to workers of *self-insured employers* to ensure those workers are treated in a manner that complies with the *Act*.

The Code is an important element of *WorkCover's* discharge of those statutory functions.

WorkCover recognises that the implementation of *the Code* is subject to the common law principles of procedural fairness and natural justice. Further information about *WorkCover's* commitment to maintaining an equitable state-based workers compensation system can be found in its corporate plan at www.workcover.com

Important considerations when contemplating self-insured employer status

WorkCover recognises that the decision to apply for self-insured employer status is a decision for the *employer* itself. However, the *employer* is advised of the following important considerations when contemplating self-insured employer status:

- (1)
 - (a) On attaining self-insured employer status, the *self-insured employer* becomes solely responsible for any claims cost of compensable disabilities, incurred by its Workers after the date of registration.
 - (b) A condition of registration will include management and funding of compensable disabilities sustained by its workers prior to the date of registration in return for a capped fee calculated by reference to any actuarial estimate of those claim costs.
- (2) The *self-insured employer* must commit significant financial and management resources to ensure ongoing compliance with the requirements of the *Act* and any terms and conditions of registration imposed by *WorkCover*.

- (3) The *self-insured employer* must provide actuarial estimates of its current and future claim costs annually, and provide and maintain such guarantees and excess of loss insurance that are proportionate to those estimates as approved by *WorkCover*.
- (4) The *self-insured employer* must maintain appropriate claims management facilities and expertise to ensure ongoing compliance in relation to claims management.
- (5) The *self-insured employer* must also pay a levy pursuant to section 68 of the *Act* and any adjusted levies as determined by *WorkCover* to apply to the *self-insured employer* from time to time, in accordance with the *Act*, the *Regulations* and this *Code*.
- (6) Self-insured employer status provides an *employer* with greater flexibility and an opportunity to reduce overall costs if it excels in reducing claims numbers and administering claims but in doing so the *self-insured employer* must maintain compliance with the obligations of registration as a *self-insured employer*.

Chapter 1

1. Introduction

1.1 The Code

This code is constituted by the Preamble, Chapters 1 to 11 (inclusive), Glossary of Terms and Annexures as amended from time to time by *WorkCover* and published in the *Gazette pursuant to section 60(4)(bb)*. *The Code* is to be known as the *self-insured employer code* and any references in this *Code* to '*the Code*' means the *self-insured employer code*.

1.2 The *Workers Rehabilitation and Compensation Act 1986*

- (a) Compliance with *the Code* (as determined by *WorkCover* from time to time and published in the *Gazette*) is enforceable as a condition of registration of that *self-insured employer* pursuant to Section 60(4)(bb) of the *Act*.
- (b) Pursuant to *WCA*, the *Act* is administered by *WorkCover* in accordance with the objects of the *Act* set out in section 2 of the *Act*.

1.3 Other parts of the *Act* apply

- (a) Part 5 of the *Act* contains the primary requirements in relation to application for the grant and renewal of registration as a *self-insured employer*.
- (b) Other parts of the *Act* also apply and continue to apply to an *employer* upon registration as a *self-insured employer*.

1.4 Background

Self-insured employer status under the *Act* was created at the commencement of the *Act* on 30 September 1987. All *employers* that were self-insurers under the previous legislation had an automatic right to be *self-insured employers*, and most self-insurers at that time took up this right. Since that time all private sector *employers* that wished to become *self-insured employers* had to apply and be approved under the provisions of the *Act*.

The *Crown* and any agency or instrumentality of the *Crown* is deemed under section 61 of the *Act* to be registered as *self-insured employers*. *The Code of Practice for Crown Self-Insured Employers* expresses the obligations of *Crown self-insured employers*.

1.5 The regulatory framework

- (a) The *self-insured employer* must comply with regulatory framework consisting of the *relevant legislation* and *the Code*.
- (b) *The Code* must be interpreted and applied so as to be consistent with the *relevant legislation*.

1.6 Inconsistencies

- (a) *The Code* and the *relevant legislation* are intended to operate concurrently.
- (b) Where there is an inconsistency between *the Code* and a provision of the *relevant legislation*, the *relevant legislation* will prevail.

1.7 Application and operation

- (a) Pursuant to section 60(4)(bb) of the *Act*, *the Code* applies as a condition of registration as a *self-insured employer*.
- (b) With respect to *employers* applying for self-insured employer status, *the Code* as in force at the time of the grant of registration, becomes operative as a term and condition of registration upon the grant of registration.

1.8 Updates

- (a) A copy of *the Code* as amended from time to time and published in the *Gazette* may be obtained from the *WorkCover* website at www.workcover.com.
- (b) Where there is an inconsistency between *the Code* available from the *WorkCover* website and *the Code* as last published in the *Gazette*, the gazetted version will prevail.

1.9 Group of self-insured employers

- (a) The *Act* allows for a group of employers to apply to *WorkCover* for registration as a *self-insured employer* or as a *group of self-insured employers*.
- (b) Chapter 9 of *the Code* sets out the requirements and obligations of group employers.
- (c) Unless otherwise specified, a reference in *the Code* to '*self-insured employer*' includes a reference to a *group of self-insured employers*.

1.10 Indemnified maritime employers

Pursuant to section 60 of the *Act*, indemnified maritime employers may apply to be registered as a *self-insured employer*.

1.11 Notification

An *employer* which is granted registration as a *self-insured employer* has an ongoing obligation to notify *WorkCover* of any change to its circumstances or conditions which are relevant to that grant of registration.

1.12 Italicised expressions

- (a) The italicised expressions in *the Code* have the meanings specified in the Glossary.

- (b) Other derivatives and grammatical forms of a word or phrase defined in *the Code* have a corresponding meaning.

1.13 Interpretation

Unless otherwise specified in *the Code*:

- (a) headings are for convenience only and do not affect the interpretation of *the Code*
- (b) words importing the singular include the plural and vice versa
- (c) the provisions of the *Acts Interpretation Act 1915 (SA)* applicable to the interpretation of a statutory instrument are to be treated as applicable to the interpretation of *the Code*
- (d) a reference to notification means notification in writing. Writing shall include facsimile transmission, email or other electronic means of communication that is ordinarily able to be reproduced on paper, and
- (e) the use of the word 'including' shall not limit the generality of anything preceding that word.

Chapter 2

2. Obligations of self-insured employers

2.1 Application

This chapter applies to *private employers* registered as *self-insured employers* under section 60 of the *Act*.

2.2 General

- (a) This chapter sets out the ongoing obligations of an *employer* once registered as a *self-insured employer* by *WorkCover*.
- (b) Compliance by the *self-insured employer* with the conditions and other obligations of registration will be subject to ongoing review by *WorkCover*.

2.3 Obligations of a self-insured employer

Pursuant to section 60(4) of the *Act*, registration as a *self-insured employer* is subject to:

- (a) a condition that the *self-insured employer* must not exercise any power or discretion delegated to the *self-insured employer* under the *Act* unreasonably, and
- (b) such other terms and conditions as *WorkCover* determines from time to time or as are prescribed by the *Regulations*, and
- (c) a condition that the *self-insured employer* will comply with any code of conduct for *self-insured employers* determined by *WorkCover* from time to time and published in the *Gazette*

2.4 Delegated powers and discretion

2.4.1 Powers delegated

The powers delegated to *self-insured employers* are set out in section 63 of the *Act*.

2.4.2 Mechanism of delegation

- (a) A delegation of powers to a *self-insured employer* is effective immediately upon the registration of the *employer* as a *self-insured employer* by virtue of the *Act*.
- (b) *WorkCover* will issue notice of grant of registration or renewal of registration to the *self-insured employer*.

2.4.3 Effect of delegation

- (a) A delegation of powers by virtue of the *Act* means the *self-insured employer* assumes the role of *WorkCover* as the compensating authority in respect of *worker* costs of compensable disabilities suffered by the self-insured employer's

workers on and after the date of registration to the extent specified in section 63(1) of the *Act*.

- (b) These powers are delegated to the *self-insured employer* directly and cannot be further delegated to any person or other body corporate, ie the delegated powers must be exercised directly by the *self-insured employer*.
- (c) Section 63 of the *Act* also provides that:
 - (i) A decision made by the *self-insured employer* in the exercise of a delegated power or discretion has the same force and effect as if it were a decision of *WorkCover* and shall be subject to review and appeal in the same way as a decision of *WorkCover* – section 63(4).
 - (ii) *WorkCover* cannot exercise a power or discretion that has been delegated to a *self insured employer* – section 63(2).
 - (iii) *WorkCover* cannot interfere with or overrule a decision of a *self-insured employer* made in the exercise of a delegated power, except pursuant to section 63 – section 63(3).
 - (iv) *WorkCover* may direct a *self-insured employer* as to the exercise of its delegated powers under Division 4B of Part 4 of the *Act* and the determination of a lump sum to be paid to an orphan child, or to orphan children – see sections 63(3aa) and 63(3a).

2.4.4 Reasonable exercise of powers

- (a) *Self-insured employers* must exercise their delegations in a reasonable manner and in accordance with the law.
- (b) In the event a *self-insured employer* exercises a delegated power unreasonably, *WorkCover* may withdraw all or part of the relevant delegated power. In certain circumstances where a *self-insured employer* has exercised a delegated power unreasonably, *WorkCover* may revoke the employer's registration as a *self-insured employer*.

2.5 Additional terms and conditions of registration

2.5.1 Criteria under section 60(6) of the Act

- (a) *WorkCover* has determined that the absence of a material adverse change to the circumstances of the *employer* considered by *WorkCover* when granting or renewing a self-insured employer registration pursuant to the requirements of section 60(6) of the *Act* is a condition of continuing registration of that *self-insured employer*. The relevant circumstances are the matters *WorkCover* had regard to in accordance with section 60

of the *Act* when conferring or renewing self-insured status including all of the material supplied to *WorkCover* by the *employer* in support of its application for the conferral or renewal of self-insured employer status, to the extent relevant to those matters.

- (b) From time to time, *WorkCover* may notify the *self-insured employer* of other matters *WorkCover* considers relevant to the maintenance of self-insured status and the standard of compliance the *employer* must demonstrate in order to maintain self-insured employer registration.

2.5.2 *Performance standards*

- (a) *WorkCover* has determined that ongoing conformance with the *standards* is a term and condition of registration as a *self-insured employer*.
- (b) The *standards* are a set of standards and *performance indicators* that are used by *WorkCover* to evaluate an employer's performance in relation to prevention of injury in the workplace, compliance with *relevant legislation*, claims management and rehabilitation.
- (c) *WorkCover* will undertake a regular evaluation of an employer's compliance with the *standards* in accordance with Chapter 8 of this *Code*.
- (d) A copy of the current *standards* is Annexure A to the *Code*.

2.5.3 *Schedule 1 of the Regulations*

- (a) Pursuant to regulation 12 of the *Regulations*, the registration of an *employer* as a *self-insured employer* is subject to ongoing compliance with the terms and conditions prescribed in *Schedule 1*.
- (b) It is a condition of registration that the *self-insured employer* must comply with any policies or requirements notified by *WorkCover* from time to time in relation to the application of *Schedule 1*.
- (c) *WorkCover* has determined the following policies and requirements in relation to *Schedule 1*.
 - (i) Provision of data

A self-insured employer will be deemed to have complied with these obligations if it establishes and maintains a consistent and regular pattern of data

provision.¹ For these purposes, a 'consistent and regular pattern' will be:

- (A) no more than two missed or failed data submissions in any six-month period
 - (B) no occurrences of two or more consecutive missed or failed transmissions
 - (C) all errors at batch and line levels resolved within one month
 - (D) all coding queries resolved within one month
 - (E) when the *self-insured employer* changes its claims database, it should discuss the arrangements for data provision during the period of system transition with *WorkCover*, to ensure any resulting lapse in data transmission does not exceed one month, or where delays are beyond the control of the self insurer, such other period as agreed between *WorkCover* and the self insurer, and
 - (F) when *WorkCover* changes the data requirements, the *self-insured employer* meets those new data requirements within three months of being notified of those changes
 - (G) or such other time as agreed by *WorkCover* and the *self-insured employer*.
- (ii) Actuarial reports
- (A) Each *self-insured employer* is required to submit an actuarial report within three months of the end of the self-insured employer's financial year. The report must be prepared by an actuary following *WorkCover's* actuarial guidelines, which are Annexure B to this *Code*.
 - (B) The actuarial reports are used by *WorkCover* to determine the appropriate level of financial guarantee to be provided by the *self-insured employer*.
 - (C) A failure to provide the report to *WorkCover* within the time stipulated in *Schedule 1* will be considered to be a serious breach of the terms and conditions of registration.

¹ When an employer is first granted self-insured status, a reasonable timeframe for an operational claims data base will be determined by *WorkCover* up to a maximum of six months.

- (iii) Guarantees
 - (A) Each *self-insured employer* must provide a financial guarantee determined in accordance with *Schedule 1*.
 - (B) *WorkCover* has determined that the guarantee must:
 - (1) be an unconditional undertaking to pay money on demand
 - (2) be a continuing guarantee
 - (3) be provided by a financial institution that is not related to the *self-insured employer* and that has a Standard & Poors credit rating not less than A+. *WorkCover* will, however, accept guarantees from an institution that has an A or A- rating provided that the guarantee from that institution in respect of any one *self-insured employer* does not exceed \$1million, and
 - (4) be provided by a financial institution that is subject to prudential regulation by the Australian Prudential Regulation Authority (APRA) unless *WorkCover* decides otherwise,
 - (C) *WorkCover* may consider other forms of security that provide a comparable level of security to *WorkCover* but *WorkCover* will have the sole discretion as to the acceptability of such alternative forms of security.
- (iv) Excess of loss insurance
 - (A) *Self-insured employers* are required to obtain and maintain an excess of loss insurance policy, and produce evidence of its existence to the satisfaction of *WorkCover*.
 - (B) *WorkCover* has determined that such excess of loss insurance must satisfy the following:
 - (1) not less than \$100 million on the sum insured
 - (2) a deductible of not less than \$500,000 per event or series of events, and
 - (3) if the *self-insured employer* elects to include a stop loss excess or aggregate

excess, such stop loss or aggregate excess must not be less than the higher of:

- a. three times the individual incident excess, or
- b. 10% above the average incurred claim cost for the prior three years.

(v) Annual reports

Self-insured employers are required to provide audited annual financial statements of the *self-insured employer* not later than five months after the expiry of the self-insured employer's financial year.

(vi) Notification of corporate changes

In addition to the requirement to notify *WorkCover* on the happening of any of the circumstances set out in paragraph 10 of *Schedule 1*, *self-insured employers* must also notify *WorkCover* in the event of any change to the position of:

- (A) chief executive officer of the *self-insured employer*
- (B) *responsible officer* of the *self-insured employer*, or
- (C) any officer or officers who have responsibility for the compliance of the *employer* with the requirement of the *OHS&W Act* and injury management systems.

(d) A copy of *Schedule 1* is Annexure C to *the Code*.

2.5.4 **Financial distress**

- (a) *WorkCover* has determined that a term and condition of registration of any *self-insured employer* is that the *self-insured employer* not be in financial distress.
- (b) For the purposes of this clause, a *self-insured employer* is in financial distress if it:
 - (i) is in liquidation or provisional liquidation or under administration
 - (ii) has a controller (as defined in the *Corporations Act 2001*) or analogous person appointed to it or any of its property or if any steps are taken for such an appointment

- (iii) is taken under section 459F(1) of the *Corporations Act 2001* to have failed to comply with a statutory demand
- (iv) is unable to pay, or stops or suspends or threatens to stop or suspend payment of, its debts
- (v) an application or order, other than an application contested in good faith which is stayed, dismissed or withdrawn within 14 days, is made, or a resolution is passed, for its winding up or notice is given of an intention to make such an application or propose such a resolution other than a solvent reconstruction or amalgamation
- (vi) is otherwise insolvent
- (vii) enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or
- (viii) suffers an event analogous to any of the events describe in this clause

2.5.5 **Ongoing compliance with assessment criteria**

WorkCover has determined that a term and condition of registration of any *self-insured employer* is the ongoing compliance by the *self-insured employer* with the assessment criteria set out in the following clauses of *the Code*:

- (a) clause 3.5.3
- (b) clause 3.5.4
- (c) clause 3.5.5
- (d) clause 3.5.6
- (e) clause 3.5.7
- (f) clause 3.5.8
- (g) clause 3.5.9
- (h) clause 3.5.10
- (i) clause 3.5.11

2.5.6 **Other terms**

WorkCover may determine other terms or conditions of registration to apply to a particular *self-insured employer*.

2.6 **Non-compliance**

Pursuant to its powers under the *Act*, *WorkCover* may do one or more of the following if a *self-insured employer* fails to comply with the *Act* or a term or condition of registration:

- (a) pursuant to section 60(5) of the *Act*, revoke or reduce the period of registration as a *self-insured employer* as outlined in Chapter 5
- (b) pursuant to section 68(3) of the *Act*, allocate the *self-insured employer* to a class of *self-insured employers* that pay an increased levy as outlined in Chapter 6
- (c) pursuant to section 122 of the *Act*, prosecute the *self-insured employer* for a breach of the *Act*
- (d) pursuant to section 63(6) of the *Act*, withdraw (in whole or in part) the delegated powers of the *self-insured employer*
- (e) take such a *non-compliance* with the *Act* or a term of condition of registration into account when determining whether to subsequently renew *self-insured employer* status.

Chapter 3

3. Eligibility and assessment criteria

3.1 Application

This chapter applies to all *private employers* applying for:

- (a) registration as a *self-insured employer* or *group of self-insured employers*, and/or
- (b) a renewal of self-insured employer registration.

3.2 General

- (a) This chapter sets out and describes the application of the eligibility and assessment criteria that must be satisfied in order for an employer or group of employers to become or remain self-insured.
- (b) Unless otherwise specified, an application for registration as a *self-insured employer* must be made in accordance with the requirements of the *Act* as set out in Chapter 4 of *the Code*.

3.3 Satisfaction of WorkCover

An *employer* must establish to the satisfaction of *WorkCover*, that it has reached the *standards* that, in the opinion of *WorkCover*, must be achieved before conferral of self-insured status will be considered.

3.4 Eligibility

Pursuant to section 60(2) of the *Act*, an application for registration as a *self-insured employer* may only be made by an *employer* that is:

- (a) a body corporate or
- (b) an indemnified maritime *employer*, or
- (c) a group of *related bodies corporate* or *local government corporations*.

3.4.1 Group of employers

- (a) Pursuant to section 60(1) of the *Act*, a group of *employers* may apply to *WorkCover* for registration as a *group of self-insured employers* providing they are *related bodies corporate* under section 60(9) of the *Act*, viz:
 - (i) Bodies corporate that are *related bodies corporate* under section 50 of the *Corporations Act 2001* of the Commonwealth; or
 - (ii) Bodies corporate that are associated entities under section 50AAA of the *Corporations Act 2001* of the Commonwealth in this clause 3.4, ("associated entities")

- (b) In considering an application for self-insurance for a group of *employers* constituted of associated entities under 3.4.1 (a)(ii) *WorkCover* will have regard to the following principles:
- (i) All of the relevant circumstances of the associated entities will be considered.
 - (ii) The financial viability and the financial security of the associated entities will be given particular attention.
 - (iii) Financial interdependence of the members of the associated entities and the impact of the nomination of one of the associated entities as the deemed *employer* of all workers of all of the associated entities will be assessed on a case-by-case basis.
 - (iv) *WorkCover* will require the associated entities to enter into and maintain a legally enforceable agreement between all of the associated entities establishing rights of mutual indemnity between the associated entities and containing an express acknowledgement that being a member of such associated entities automatically carries with it joint and several liability for all the workers compensation liabilities of each associated entity.
- (c) The *employer* group must nominate a member of that group pursuant to section 62(1)(c) of the *Act*, as the *employer*, which is for the purposes of the *Act*, to be treated as the *employer* of all workers employed by the various members of the *employer* group.

3.5 Assessment criteria

3.5.1 Statutory considerations

- (a) Pursuant to section 60(6) of the *Act*, in deciding whether to grant, renew, revoke or reduce the period of registration as a *self-insured employer* or *group of self-insured employers*, *WorkCover* may have regard to such matters as it considers relevant and must have regard to the following:
- (i) The number of employees employed by the *employer* or group
 - (ii) Whether the *employer* or group of *employers* is, and is likely to continue to be, able to meet its liabilities
 - (iii) The resources that the *employer* or group of *employers* has for the purpose of administering claims for compensation

- (iv) The incidence and severity of compensable disabilities arising from employment by the *employer* or *employers*
- (v) The effect, or likely effect, of the working conditions under which *workers* are employed by the *employer*, or any of the *employers*, on the health and safety of those *workers*
- (vi) The record of the *employer* or *employers* in relation to the rehabilitation of disabled *workers*
- (vii) The record of the *employer* or *employers* in providing suitable employment to workers who suffer compensable disabilities
- (viii) The views of any *industrial association* that has, in the opinion of *WorkCover*, a proper interest in the matter, and,

once an *employer* or group has been registered as a *self-insured employer*, *WorkCover* must not, in deciding whether to renew the registration, consider the effect of the registration on the *Compensation Fund*.

- (b) *WorkCover* considers each criterion separately and gives due weight to each criterion.
- (c) In considering the criteria *WorkCover* will have regard to the extent that an employer's past experience may or may not have relevance due to changes in structure or personnel.

3.5.2 **Relevant matters**

- (a) Pursuant to section 60(6) of the *Act*, in deciding whether to grant, renew, revoke or reduce a period of registration as a *self-insured employer*, *WorkCover* may have regard to such matters as it considers relevant.
- (b) Without limitation, *WorkCover* will ordinarily consider the following as relevant considerations:
 - (i) An employer's association with a *group of self-insured employers*
 - (ii) The structure and operation of any subsidiaries of the *self-insured employer*, including any ancillary activities carried on by its subsidiaries which are not intended to be registered as a *self-insured employer* but which are or are capable of having a materially adverse effect on the self-insured employer's compliance with the requirements of the *Act* or a term or condition of registration
 - (iii) Any actual or any proposed change to:

- (A) the management or style of operation of the *employer*, including any proposed sale of the business, notwithstanding the new *employer* employs the same employees and retains the same management structure, or
- (B) any other future matter or event which is relevant to the assessment criteria *WorkCover* must have regard to under section 60(6) of the *Act*,

that is likely to occur subsequent to the application for self-insured employer registration.

3.5.3 *Number of employees employed by the employer or group*

- (a) *WorkCover* considers that a significant level of employment is required for an *employer* to meet the self-insurance *standards* (including carrying the overheads and expertise necessary in being a *self-insured employer*) on an economic basis over the medium to long term. Employment at the level at or above 200 full-time-equivalent *workers* will be considered to be a significant level of employment for this purpose.
- (b) Any application for an initial grant or renewal of self-insured status by an *employer* with fewer than 200 full-time-equivalent *workers* will be considered on its merits having regard to paragraph (a) above and to the individual circumstances of the *employer* and any submission the *employer* wishes to put in support of the application or renewal

3.5.4 *Financial viability*

- (a) In relation to an *employer* or group of *employers* wishing to apply for registration as a *self-insured employer*, *WorkCover* will ordinarily assess the employer's capacity to meet its liabilities prior to the lodgement of an application form.
- (b) In relation to a renewal of registration, *WorkCover* will assess the self-insured employer's capacity to meet its liabilities on all relevant considerations including the self-insured employer's latest annual financial statements.
- (c) When determining the self-insured employer's capacity to meet its liabilities, *WorkCover* will take into consideration such financial data as it considers relevant. Subject to any other considerations, if the following criteria are satisfied, *WorkCover* will ordinarily consider the *self-insured employer* to have complied with this requirement:
 - (i) *net worth* of \$50 million or higher
 - (ii) *gearing ratio* of 2.0:1 or lower
 - (iii) *liquidity ratio* of 1.3:1 or higher

- (iv) *profitability ratio* of 10% per annum on shareholders funds, and
 - (v) positive rating by a *mercantile agency* of risk lower than the industry average
- (d) *WorkCover* may consider the *employer* as having complied with the financial viability criteria if:
 - (i) it demonstrates compliance with any three of the five criteria, and
 - (ii) in respect of any criteria in which it fails, the extent of that failure, in the opinion of *WorkCover*, does not outweigh the positive results.
- (e) Wherever possible, averages and trends under each of the criteria over at least three years are to be used to minimise volatility of results and provide a truer picture of the self-insured employer's overall position.
- (f) No one criterion is to be given more weight than any other except in cases of extreme results.
- (g) If an *employer* is unable to satisfy the financial viability criteria to the level required by *WorkCover*, *WorkCover* may, in its discretion, and only in exceptional circumstances, have regard to the following matters when determining the capacity of the *employer* to meet its liabilities:
 - (i) Positive rating by a *ratings agency*
 - (ii) Positive rating by a regulatory authority of the *employer* or group of *employers* monitoring the financial position of particular companies or groups
 - (iii) Any other information that, in its opinion, *WorkCover* considers relevant to establishing the financial solvency of the *employer*
- (h) A positive rating by a *ratings agency* is a Standard & Poors rating of AA- or higher for banks and BBB+ or higher for other *employers* or equivalent rating from other agencies.

3.5.5 **Claims administration resources**

When assessing whether the *employer* or group of *employers* has sufficient resources for the purpose of administering claims for compensation, *WorkCover* will have regard to the following matters:

- (a) The qualifications and experience of the officers responsible for claims administration
- (b) Job description of the officers responsible, and

- (c) The performance of the *employer* or group of *employers* as measured against the *standards*.

3.5.6 *Incidence and severity of injuries*

- (a) The incidence and severity of injuries for *self-insured employers* will be evaluated based on three years previous data from the *employer* using the *WorkCover* database.
- (b) Evaluation of the incidence of compensable disabilities is based on the total number of claims reported per million dollars remuneration.
- (c) Evaluation of the severity of compensable disabilities is based on the cost of time lost claims per million dollars remuneration.
- (d) *WorkCover* will ordinarily consider the *employer* as having satisfied these criteria if the employer's performance in relation to the incidence and severity is at least 10% lower than the employer's relevant industry average. If the *employer* represents 30% or more of the remuneration paid in their *WorkCover* industry classification then *WorkCover* may compare the employer's performance to an appropriate broader benchmark.

3.5.7 *Effect of working conditions*

When assessing the effect, or likely effect, of the working conditions under which *workers* are employed by the *self-insured employer* on the health and safety of those *workers*, *WorkCover* will have regard to all relevant circumstances including:

- (a) the performance of the *self-insured employer* evaluated against the *standards* and Performance Measures
- (b) the death of a person in the workplace including details of the incident leading to the fatality and any remedial action taken by the *employer*¹
- (c) any successful prosecutions against a *self-insured employer* or group of *self-insured employers* for an alleged breach of the *OHS&W Act* resulting in a death
- (d) any occupational health, safety and welfare prosecution, (not being a prosecution for a death of a person in the workplace), of an applicant or an existing *self-insured employer* which, in the opinion of *WorkCover*, indicates a non-conformance with the *standards* and will, unless the non-conformance is rectified to *WorkCover's* satisfaction before a date nominated by *WorkCover*, be regarded as inconsistent with the employer's eligibility for self-insured employer status or continued registration.

¹ *WorkCover* will actively monitor the *employer's* actions and require reporting from the *employer* during the period when the fatality is under investigation.

3.5.8 *Rehabilitation*

When assessing the record of the *employer* or *employers* in relation to the rehabilitation of *workers* who suffer compensable disabilities, *WorkCover* will have regard to all relevant circumstances including the:

- (a) performance of the *employer* or group of *employers* evaluated against the *standards* as relevant to the rehabilitation of *Workers*
- (b) employer's prior record of performance in relation to rehabilitation, including:
 - (i) sustainable early return to work outcomes
 - (ii) placement of rehabilitated *workers* in suitable and sustainable employment, and
 - (iii) record of compliance with the requirements of *WorkCover* in relation to sections 58B, 58C and 28A of the *Act*
- (c) comments of any relevant *industrial association* and *workers* on those matters.

3.5.9 *Provision of suitable employment*

When assessing the record of the *employer* or *employers* in providing suitable employment to *workers* who suffer compensable disabilities, *WorkCover* will have regard to all relevant circumstances including the:

- (a) performance of the *employer* or group of *employers* as measured by *WorkCover* against the *standards*
- (b) employer's record and attitude towards the provision of suitable employment for *workers* who have suffered compensable disabilities including any action taken by *WorkCover* in relation to that matter concerning the *employer* including the application of a supplementary levy in circumstances attracting the application of sections 58B, 58C and 28A of the *Act*, and
- (c) comments of any relevant *industrial association* and *workers* on those matters.

3.5.10 *Views of relevant industrial associations*

- (a) *WorkCover* must have regard to the opinions of any *industrial association* that has, in the opinion of *WorkCover*, a proper interest in the matter.
- (b) Without limitation, *WorkCover* will ordinarily consider the following *industrial associations* as having a proper interest in the matter:

- (i) State level officials of any relevant *industrial association*
 - (ii) On-site representatives of any relevant *industrial association*
 - (iii) Other workers or their nominated representatives as considered appropriate by *WorkCover*
 - (iv) *SISA*
 - (v) Other relevant associations integral to the employer's operations.
- (c) The *employer* must identify and contact in writing all *industrial associations* that have a proper interest and must satisfy *WorkCover* that all such *industrial associations* have been identified and have been consulted in writing but doing so will not limit *WorkCover*'s right to contact *industrial associations* itself to further inform itself of their opinions.
- (d) If four weeks after being contacted by the *employer* there has been no response from the relevant *industrial associations*, the *industrial associations* will be deemed by the *employer* and *WorkCover* to have no objection to the application.

3.5.11 **Effect on the fund**

- (a) Except in relation to an application for renewal, *WorkCover* may consider the effect on the *Compensation Fund* of granting self-insured employer registration to a particular *employer* or group of *employers*.
- (b) When assessing the effect of an application for self-insured employer registration on the *Compensation Fund*, *WorkCover* will have regard to all relevant circumstances including the projected effect on the employer's industry levy rate of granting self-insured employer registration to the particular applicant.

3.6 **Registration**

- (a) Pursuant to section 60(3) of the *Act*:

where an application is made for self-insured employer registration and *WorkCover* is satisfied:

- (i) that the *employer* or *employers* constituting the group have reached a standard that, in the opinion of *WorkCover*, must be achieved before conferral of self-insured status can be considered, and
- (ii) that in all the circumstances it is appropriate to do so,

WorkCover may register the *employer* or the group as a *self-insured employer* or a *group of self-insured employers*.

- (b) All elements referred to in this chapter will be considered by *WorkCover* in making its decision to grant or reject an application for registration or renewal.
- (c) All registrations and renewals will be subject to the condition that the *employer* complies with the terms and conditions of registration.

3.7 Third party information

In assessing or evaluating an *employer* under *the Code*, *WorkCover* may take into account any evidence or report provided by third party auditors in relation to that *employer*, but is under no obligation to do so. However, in no circumstances will *WorkCover* rely solely on the evidence or report of an accredited third party auditor as the basis for a decision regarding the grant, renewal, revocation or reduction of self-insured employer registration.

Chapter 4

4. Applications for grant or renewal of registration

4.1 Application

This chapter applies to all *private employers*, whether a single company or a group of related corporations, who are applying for:

- (a) registration as a *self-insured employer or group of self-insured employers*, or
- (b) a renewal of registration as a *self-insured employer*.

4.2 General

- (a) This chapter sets out and describes the registration procedure and fees payable by an *employer* applying for self-insured employer registration.
- (b) Clause 4.6 sets out the requirements for a *self-insured employer* applying for a renewal of registration.
- (c) Unless otherwise specified, *WorkCover* recommends any *employer* wishing to become registered as a *self-insured employer* contact *WorkCover* for details before making an application for registration.
- (d) An *employer* applying for the grant of registration as a *self-insured employer* (but not a *self-insured employer* applying for a renewal of registration as a *self-insured employer*), must pay to *WorkCover* the fees prescribed in the *Regulations* and payment must accompany the employer's application. The fee is non-refundable.

4.3 Application process

4.3.1 Who may apply?

Any *employer* that is a single company or a group of *related bodies corporate* may apply for registration as a *self-insured employer*.

4.3.2 When to apply

An application for self-insured employer registration may be made at any time.

4.3.3 How to apply

- (a) An outline of the application process is set out in clause 4.8 of *the Code*.
- (b) Section 62 of the *Act* sets out the requirements in relation to an application for registration as a *self-insured employer* as set out in clause 4.8 of *the Code*. However, *WorkCover* will ordinarily offer to carry out an initial financial evaluation of the *employer*

against the requirements of the *Act* before any formal application is made or the prescribed fee is paid.

- (c) An *employer* is not obliged to undergo this initial financial evaluation process and may submit its application for assessment without it. However, the *employer* will be obliged to pay the prescribed fee upon submitting their application and the fee is non-refundable should their application be rejected.

4.3.4 *Initial financial evaluation*

- (a) During the initial financial evaluation, *WorkCover* will evaluate the employer's financial ability to meet the requirements of self-insured employer registration as required by the *Act*.
- (b) The financial requirements and the criteria *WorkCover* will ordinarily consider when determining the employer's financial ability to currently meet and to continue to meet its liabilities as a *self-insured employer* as and when they arise are set out in clause 3.5.4 of the *Code*.
- (c) In order for *WorkCover* to carry out the financial evaluation, the *employer* must provide copies of relevant audited annual financial reports as may be required by *WorkCover*.
- (d) After the initial financial evaluation is completed, *WorkCover* will either advise the *employer*:
 - (i) to proceed with making a formal application for registration as a *self-insured employer* subject to the employer's ability to satisfy any requirements relevant to the employer's financial position that, in the opinion of *WorkCover*, would need to be met for an application for self-insured employer registration to be successful, or
 - (ii) that it does not comply with the financial requirements of the *Act* and that its application is likely to be rejected.
- (e) An *employer* that has been advised by *WorkCover* that, based on an initial financial evaluation, its application for self-insured employer registration is likely to be rejected is not prevented from making an application for self-insured employer registration.
- (f) An *employer* is advised not to proceed with its application until it is satisfied that it can accept the conditions relating to the *transitional claims* arrangement as advised by *WorkCover*.
- (g) Advice by *WorkCover* that the *employer* proceeds to make a formal application is no assurance that the application will be successful.

4.4 Application

4.4.1 Application

Pursuant to section 62 of the Act, an application for registration as a self-insured employer must:

- (a) be made in the designated manner and form
- (b) be accompanied by the prescribed information detailed in regulation 11 of the *Regulations*
- (c) in the case of an application for registration by a group of *employers* nominate a member of the group as the *employer* that is, for the purposes of the Act, to be treated as the *employer* of all workers employed by the various members of the group
- (d) be accompanied by the prescribed fee fixed in accordance with the *Regulations*, and

4.4.2 Application for registration

An application for registration as a *self-insured employer* must:

- (a) be in the form approved by the Minister
- (b) be completed in the manner approved by *WorkCover*
- (c) pursuant to section 62(1)(b) of the Act must be accompanied by the prescribed information.
- (d) An application form and assistance with the application process can be obtained by contacting Self-insured Return to Work Services at *WorkCover*.

4.4.3 Prescribed fee

- (a) Pursuant to regulation 11(2) the prescribed fee must accompany an application for registration as a *self-insured employer*.
- (b) An application for the grant of registration as a *self-insured employer* (but not an application for renewal of such registration) submitted to *WorkCover* for its determination without the prescribed fee will not be considered or evaluated until the fee is paid.
- (c) The current fee is:
 - (i) \$10,000, plus -
 - (ii) \$15 per *worker* employed by the applicant *employer* or group of *employers* up to a maximum of \$40,000.
- (d) The fee set out in clause 4.4.3(c) does not include any goods and services tax that may be applicable.

- (e) The fee is non-refundable.

4.5 Group registration

Pursuant to section 60(7) of the *Act*:

- (a) Pursuant to section 60(7) of the *Act*:
 - (i) Where *related bodies corporate* are registered as a *group of self-insured employers*, the *employer* so nominated by the group shall be treated as the *self-insured employer* of all *workers* employed by the various members of the group.
 - (ii) All members of the group are jointly and severally liable to satisfy the liabilities of the nominated *self-insured employer*.
- (b) Pursuant to section 60(7a) of the *Act WorkCover* may, on application from the group, change the nominated *employer*. When considering an application to do so *WorkCover* will take into account the following principles:
 - (i) Whether it would be a significant change to the *group of self-insured employers*; and
 - (ii) The effect of the change on the financial status of the group. Any material deterioration in financial status will require consideration of whether or not the group can still be supported as an ongoing *group of self-insured employers*; and
 - (iii) Whether the change requires any amendments to financial guarantee or excess of loss insurance arrangements. If so, they must be satisfactorily resolved prior to or concurrent with approval of the change.
 - (iv) A change of name of an existing company where there is no change of the Australian Company Number does not require an application to change nominated *employer*.

4.6 Application for renewal

- (a) A *self-insured employer* wishing to renew its registration as a *self-insured employer* must apply to *WorkCover* for a renewal of its registration in accordance with this clause.
- (b) An application for a renewal of self-insured employer registration must be made not less than six months prior to the end of the period of registration.
- (c) A *self-insured employer* applying for a renewal of its self-insured employer registration must satisfy the assessment criteria of the *Act* to

a standard determined by *WorkCover* in order for such renewal to be granted. These criteria are set out in Chapter 3 of *the Code* and the *standards*.

- (d) The period of registration granted as a result of an application to renew registration will not exceed three years and will be determined in accordance with the *Natural Consequences Model*, contained in the *standards*.

4.7 Registration

4.7.1 Registration

- (a) Pursuant to section 60(3) of the *Act*, where a valid application for the grant of registration has been made and *WorkCover* is satisfied that:
 - (i) the *employer* or the *employers* constituting the group have reached a standard that, in the opinion of *WorkCover*, must be achieved before conferral of self-insured employer status can be considered, and
 - (ii) in all the circumstances it is appropriate to do so,
WorkCover may register the *employer* or the group as a *self-insured employer* or a *group of self-insured employers*.
- (b) all the relevant circumstances (including the elements referred to in this chapter and Chapter 3) will be considered by *WorkCover* in making its decision to approve or reject an application.
- (c) *WorkCover* will issue a notice of grant of registration as a *self-insured employer* for a specified period on registration being granted.

4.7.2 Decision by the Board

- (a) An application for the granting of registration as a *self-insured employer* or renewal of that registration must be determined either by the *Board* or its duly authorised delegate for the exercise of that function ('delegate').
- (b) The *Board* or its delegate will not consider an application until all evaluations are completed to the satisfaction of *WorkCover*.
- (c) The *Board's* or its delegate's decision to reject an application for the grant of self-insured employer registration is subject to appeal as set out in Chapter 5.

4.7.3 Effective date

- (a) Pursuant to section 60(6) of the *Act*, registration takes effect from a date fixed by *WorkCover*.
- (b) *WorkCover* cannot backdate a registration.

4.7.4 *Period of registration*

Pursuant to section 60(4)(d) of the *Act*, *WorkCover* may grant registration of an *employer* as a *self-insured employer* for a period not exceeding three years as determined by *WorkCover*.

4.7.5 *Initial period of registration*

- (a) A *self-insured employer* will ordinarily be granted registration for an initial period not exceeding two years determined in accordance with the *natural consequences model*. That registration will be subject to evaluation against the *standards* relating to claims management and rehabilitation before the expiry of the first year and otherwise in accordance with the *natural consequences model*. Should the *self-insured employer* fail such evaluation, *WorkCover* may take such action, including revocation, as it deems appropriate in the circumstances, having regard to the nature of the *non-compliance*.
- (b) At the end of the initial period of registration, a *self-insured employer* may apply to *WorkCover* to renew its registration for a further period (not exceeding three years) in accordance with section 60(6) of the *Act* and the period of this renewal shall be determined in accordance with the *natural consequences model*.

4.8 **Outline of application process**

- (a) The application process and its progress will consist of a number of steps as outlined below. An indicative timeline for the process is Annexure E to *the Code*.
 - (i) Application submitted for evaluation and consideration
 - (ii) Written confirmation by the *employer* that they have received a copy of *the Code*, have understood and are prepared to be bound by *the Code* as a term and condition of registration as a *self-insured employer*
 - (iii) *WorkCover* appoints one or more evaluators to evaluate the application
 - (iv) The evaluators meet with the *employer* to outline and discuss the requirements of the evaluation process (see Chapter 8 for details on the evaluation process)
 - (v) The evaluation process proceeds until *WorkCover* determines whether the *employer* has met all appropriate *standards* and criteria
 - (vi) The *employer* and *WorkCover* agree on a target date for commencement of self-insured employer registration if the application is successful

- (vii) The *employer* and *WorkCover* agree the terms and conditions for the management of transitional liabilities (including all the necessary financial calculations and adjustments)
 - (viii) An actuarial evaluation is obtained to cover both the value of the existing claims liability to estimate the likely liability that may be incurred during the first year of self-insured employer registration
 - (ix) The *Board* or the delegate considers the application, and if appropriate, grants self-insured employer registration
 - (x) The *employer* submits the required financial guarantee, and evidence of the existence of the excess of loss insurance policy
 - (xi) Commencement of self-insured employer registration
- (b) An adjustment to the agreed timeframes will be made should the *employer* be unable to provide *WorkCover* with the requisite information as and when it is required by *WorkCover*. *WorkCover* will notify the *employer* of any changes to the timeframes as soon as practicable.
- (c) If for any reason the *employer* delays performance of any of the required steps for a period of six months or more in total, *WorkCover* may, in its sole discretion, determine that the *employer* has abandoned its application. Abandoned applications will not be resurrected, and if an *employer* wishes to reapply, the full process must commence again, including payment of the fee. However *WorkCover* may, in its sole discretion, take into consideration any work done prior to the application being abandoned, providing it remains relevant and valid for any new application.

4.9 Outline of renewal process

The following paragraphs apply where a *self-insured employer* applies to *WorkCover* for a renewal of self-insured employer registration pursuant to clause 4.6:

- (a) Upon receiving the self-insured employer's application for renewal, *WorkCover* will appoint one or more evaluators to evaluate the application.
- (b) The evaluator will meet with the *self-insured employer* to outline and discuss the requirements of the evaluation process (see Chapter 8).
- (c) If the evaluator determines that there is a material chance that the *self-insured employer* will not meet the requirements of the *standards* then, provided that the *self-insured employer* has made its application for renewal in the time specified under clause 4.6, *WorkCover* will use its best endeavours to ensure the following:
 - (i) The evaluator will provide the *self-insured employer* with written notice of the evaluator's provisional findings and the

factual basis for those findings at least 50 calendar days before the renewal of the self-insured employer's registration is taken to the *Board* or its delegate.

- (ii) The evaluator will consider any response made by the *self-insured employer* or any action taken by the *self-insured employer* to address issues raised by the evaluator in the final report.
- (iii) If the *self-insured employer* proposes to dispute the provisional findings it must follow the dispute resolution process outlined in clause 4.10.

4.10 Dispute Resolution process

Where a *self-insured employer* or *employer* disagrees with an assessment made by *WorkCover* in respect of any of the criteria contained in section 60 of the *Act* as part of a renewal or application process involving that *self-insured employer* or *employer* a dispute resolution will be available as follows:

- (a) The formal dispute resolution process that is to be followed is outlined in the *WorkCover Evaluation Practice Manual*, which can be found at www.workcover.com.
- (b) The *self-insured employer* will be provided with the written findings of the evaluation at least 50 calendar days before the *Board* or its delegate is due to consider the employer's renewal or application for self-insured registration.
- (c) The *self-insured employer* will be given an opportunity to respond to the provisional findings and to address any issues raised directly with the responsible *WorkCover* officer/evaluator within 30 calendar days of receiving the notice.
- (d) Should outstanding areas of dispute remain the *self-insured employer* must write to the Manager, Self-insured Return to Work Services of *WorkCover*, within the 30 calendar days of receiving the written provisional findings. The *self-insured employer* must ensure that it specifies the area(s) of disagreement and provides evidence supporting its position.
- (e) *WorkCover* will review the evaluation findings and the *self-insured employer's* submission. If appropriate, *WorkCover* will organise for conciliation to take place between the parties.
- (f) Should *WorkCover's* conciliation result in a change to the assessment of the application of the relevant criteria then the findings shall be altered accordingly.
- (g) If the matter is not resolved, the *self-insured employer* or *employer* may request that *WorkCover* appoint a different and (if possible) more senior evaluator/officer to undertake a peer review to consider the self-insured employer's or employer's response to the initial findings or any action taken by the *self-insured employer* or *employer* to address

issues raised by the findings and make a final assessment for consideration by the *Board* or its delegate.

- (h) The *self-insured employer* or *employer* will be provided with the final assessment and recommendation to the *Board* or its delegate when making a decision on that self-insured employer's renewal or employer's application for self-insured registration.

Chapter 5

5. Reduction, revocation and appeals

Part I - Introduction

5.1 Application

This chapter applies to all *private self-insured employers* whose period of registration is being considered for reduction or revocation by *WorkCover* as a result of the *self-insured employer* breaching the *Act* or a condition of registration.

5.2 General

- (a) Part I specifies the statutory criteria *WorkCover* must have regard to when determining whether to reduce or revoke a self-insured employer's registration.
- (b) Part II of this chapter specifies the application of the criteria discussed in Part I by *WorkCover* when considering whether to reduce a self-insured employer's registration.
- (c) Part III of this chapter specifies the application of the criteria discussed in Part I by *WorkCover* when considering whether to revoke a self-insured employer's registration.
- (d) Part IV of this chapter specifies the alternative actions *WorkCover*, in its discretion may take, where appropriate, as an alternative to reducing or revoking a self-insured employer's registration.
- (e) Part V specifies the right of appeal of a *self-insured employer* if *WorkCover* refuses to grant, renew or revoke a self-insured employer's registration.

5.3 Reduction or revocation

Pursuant to section 60(5) of the *Act*, *WorkCover* may reduce or revoke the period of registration of a *self-insured employer* or *group of self-insured employers* if the *self-insured employer* or a member of the *group of self-insured employers* breaches or fails to comply with the *Act* or a term or condition of registration.

5.4 Statutory criteria

- (a) Pursuant to section 60(6) of the *Act*, in deciding whether to reduce or revoke the registration of a *self-insured employer* or *group of self-insured employers*, *WorkCover*:
 - (i) may have regard to such matters as it considers relevant, and
 - (ii) will have regard to the considerations *WorkCover* must have regard to pursuant to the *Act*.
- (b) Clause 3.5 of *the Code* and the *standards* sets out the requirements *WorkCover* may and will have regard to.

5.5 Notification

Pursuant to a self-insured employer's obligations of notification set out in Chapter 1 and paragraph 10 of the *Schedule 1*, a *self-insured employer* must notify *WorkCover* as soon as practicable of:

- (a) any breach or failure to comply with the *Act* or a term or condition of registration, or
- (b) any change to its circumstances which may cause them to be in breach of a term or condition of registration.

5.6 Process of reduction or revocation of registration

- (a) The *Board of WorkCover*, in its discretion, will determine whether the period of registration as a *self-insured employer* or *group of self-insured employers* which has breached or failed to comply with the *Act* or a term or condition of registration should be reduced or revoked, having regard to the criteria referred to in section 60(6) of the *Act* as set out in clause 3.5 of the *Code* and the *standards*.
- (b) If the *Board* determines that a self-insured employer's registration as a *self-insured employer* is to be reduced or revoked, the *Board* will also determine the date upon which the reduction or revocation is to be effective and where appropriate, the reduced period of registration that is to apply.
- (c) The *Board* may have regard to any recommendation by *WorkCover* in relation to the reduction or revocation of the period of registration of a *self-insured employer*.
- (d) *WorkCover* recognises that a reduction or revocation of registration as a *self-insured employer* has potentially serious consequences for a *self-insured employer*.
- (e) Prior to *WorkCover* making a recommendation to the *Board* that the registration of a *self-insured employer* should be reduced or revoked, *WorkCover* will (unless there are good reasons for proceeding urgently):
 - (i) request the *self-insured employer* to show cause why *WorkCover* should not reduce or revoke the period of registration
 - (ii) provide to the *self-insured employer* a reasonable period of time during which the *self-insured employer* may respond to the notification
 - (iii) provide to the *self-insured employer* a reasonable period of rectification during which the *self-insured employer* may demonstrate to *WorkCover* its compliance with the *Act* and the terms and conditions of registration
 - (iv) in the circumstances of a revocation, inform the *self-insured employer* of its rights to dispute the decision of *WorkCover*

- (f) Without limitation, 5.6(e)(ii) and 5.6(e)(iii) will not apply if *WorkCover* is of the opinion that the circumstances require an immediate revocation of the period of registration.
- (g) 5.6(e)(iii) will not apply if *WorkCover* is of the opinion that the breach or failure to comply with the *Act* or a term or condition of registration is of such a nature that it cannot be rectified within a reasonable period of time.

Part II – Reduction of period of registration

5.7 Application

This part applies to all *private self-insured employers* whose period of registration is being considered for reduction by *WorkCover*.

5.8 General

Reduction of a period of registration will ordinarily only be used as an alternative to revocation if *WorkCover* considers it appropriate to maintain self-insured employer status subject to a review of the circumstances of the *self-insured employer* at an early date.

5.9 Application of criteria under section 60(6) of the *Act*

- (a) A reduction of term has potentially adverse financial implications for a *self-insured employer*.
- (b) Without limitation, *WorkCover* will when considering whether to reduce the period of registration of an *employer* in accordance with section 60(5) of the *Act* have regard to all relevant circumstances including whether the *self-insured employer* has at any time during its registration as a *self-insured employer* undergone a change to:
 - (i) its management structure
 - (ii) its style of operation
 - (iii) its financial circumstances, or
 - (iv) any other matter specific to that *self-insured employer* that is relevant to the criteria specified in section 60(6) of the *Act* or a term or condition of registration,

that, in the opinion of *WorkCover* is or is likely to have a materially adverse affect on the self-insured employer's ongoing compliance with the *Act* or a term or condition of registration.

5.10 Effect of reduction of registration

- (a) *WorkCover* may reduce the period of registration to any period which it deems appropriate in the circumstances.
- (b) Upon expiry of the reduced period of registration, a *self-insured employer* must apply to *WorkCover* to renew its registration in

accordance with section 60 of the *Act* and chapters 3 and 4 of the *Code* if it wishes to remain a *self-insured employer*.

Part III – Revocation of registration

5.11 Application

This part applies to all *private self-insured employers* whose registration is being considered for revocation by *WorkCover*.

5.12 General

- (a) A *self-insured employer* may appeal a decision by *WorkCover* to revoke its registration as a *self-insured employer*. Section 62A of the *Act* and Part V of this chapter set out the self-insured employer's rights in terms of an appeal.
- (b) Pursuant to section 50 of the *Act*, where an *employer* ceases to be a *self-insured employer*, *WorkCover* may, in its discretion, undertake, in whole or part, liabilities related to compensable disabilities arising from employment during the period of the self-insured employer registration. Clause 7.4 of the *Code* sets out the requirements and terms of administration of section 50 by *WorkCover*.

5.13 Application of criteria under section 60(6) of the Act

- (a) *WorkCover* will consider revoking a self-insured employer's registration if in all the circumstances it is appropriate to do so including where at any time during the period of registration, the *self-insured employer* commits:
 - (i) a serious or fundamental breach of the *Act* or a term and condition of registration, or
 - (ii) a minor breach of the *Act* or a term or condition of registration and where *WorkCover* has reasonable grounds to believe the *self-insured employer* is likely to repeat the breach or failure to comply with the *Act* or the term or condition of registration.
- (b) By way of example only, a *self-insured employer* will be considered to have committed a serious or fundamental breach of the *Act* where the *self-insured employer* has:
 - (i) acted unreasonably in the performance of its delegated powers or discretions
 - (ii) acted in such a way as to intentionally cause the *workers* of the *self-insured employer* to receive less than their statutory entitlements
 - (iii) acted in such a way as to materially affect *WorkCover's* ability to monitor the performance of the *self-insured employer* by, for example, failing or refusing to provide accurate and timely reports to *WorkCover* in accordance with the requirements of *Schedule 1*

- (iv) acted in such a way as to materially increase the risk to *WorkCover* as insurer of last resort, by, for example:
 - (A) failing to provide at all times a bank guarantee or provide any additional security that is required by *WorkCover* from time to time that is approved by *WorkCover* and satisfies the requirements of *Schedule 1*
 - (B) the sale or loss of all or part of the assets of the *self-insured employer*, which in the opinion of *WorkCover*, results in the *self-insured employer* being unable to satisfy the requirements of the *Act* or terms and conditions of registration
- (v) been successfully prosecuted in relation to a death in the workplace, or
- (vi) failed to notify *WorkCover* within the time specified of any of the matters referred to in paragraph 10 of *Schedule 1*.
- (c) Without limitation, *WorkCover* will have reasonable grounds to believe the *self-insured employer* is likely to repeat the breach or failure to comply with the *Act* or the term or condition of registration if:
 - (i) the *self-insured employer* has failed to expressly acknowledge that the self-insured employer's conduct constituted a breach or a failure to comply
 - (ii) the *self-insured employer* has refused to give any undertakings to *WorkCover* that it will comply with the *Act* or a term or condition of registration, or
 - (iii) in the opinion of *WorkCover*, the *self-insured employer* is unable to rectify the conduct that is in breach of the *Act* or a term or condition of registration within the period specified by *WorkCover*.
- (d) Where an *employer* ceases to be a *self-insured employer*, the delegation to the *employer* under section 63 of the *Act* will, if *WorkCover* so determines, continue to such extent as *WorkCover* thinks fit in relation to disabilities that occurred before cessation of self insurance (and any act or omission of the *employer* within the scope of the delegation will be taken for the purposes of this *Act*, to be the act or omissions of a *self-insured employer*).

5.14 Effect of revocation of registration

An *employer* whose registration as a *self-insured employer* has been revoked must register with *WorkCover* as a *registered employer*.

Part IV – Alternative action

5.15 Application

This part sets out the alternative action available to *WorkCover* which it may, within its discretion, consider when deciding whether to reduce, revoke or not renew a self-insured employer's registration or when *WorkCover* is of the opinion a *self-insured employer* has breached or is failing to comply with the *Act* or a term or condition of registration.

5.16 Removal of delegation

- (a) Pursuant to section 63(6) of the *Act*, *WorkCover* may consider the removal of delegation of a power or discretion.
- (b) *WorkCover* will consider the removal of delegation of power where in all the circumstances it is appropriate to do so including where the serious or fundamental breach is the exercise of a power or discretion unreasonably but the *self-insured employer* is otherwise complying with the *Act*.
- (c) In the circumstances referred to in 5.16(b) *WorkCover* may withdraw the delegation until it is satisfied the power will be exercised reasonably.

5.17 Prosecution

Pursuant to sections 122 and 122A of the *Act*, *WorkCover* may consider prosecution or the imposition of expiation fees where a *self-insured employer* is in breach or fails to comply with the *Act*.

Part V – Appeals

5.18 Application

This part applies to any *employer* that wishes to appeal a decision of *WorkCover* pursuant to section 62A of the *Act*.

5.19 General

Any *self-insured employer* that decides to appeal a decision of *WorkCover* in accordance with the *Act*, should notify *WorkCover* as soon as practicable.

5.20 Appeals to the Minister

Pursuant to section 62A of the *Act*:

- (a) If *WorkCover*:
 - (i) refuses the registration of an *employer* or group of *employers* as a *self-insured employer* or group of *self-insured employers*, or
 - (ii) grants or renews registration as a *self-insured employer* or group of *self-insured employers* for a period of less than three years, or

- (iii) reduces the period of registration of an *employer* or group of *employers* as a *self-insured employer* or *group of self-insured employers*, or
- (iv) cancels the registration of an *employer* or group of *employers* as a *self-insured employer*,

the *employer* or *employers* may appeal to the Minister against the decision.

- (b) The appeal must be commenced within one month after the *employer* or *employers* receive notice of WorkCover's decision unless the Minister allows an extension of time for the appeal.
- (c) If an appeal to the Minister is against a decision of *WorkCover* to refuse to renew, or to cancel the registration of the *employer* or *employers* as a *self-insured employer* or *group of self-insured employers*, *WorkCover* may extend or renew the registration of the *employer* or *employers* for a period of up to 3 months (pending resolution of the appeal).
- (d) The Minister may (but is not obliged to) permit an appellant to appear personally or by representative before the Minister on an appeal.
- (e) The Minister has an absolute discretion to decide an appeal against a decision of *WorkCover* in relation to registration as the Minister thinks appropriate.
- (f) If the Minister decides in favour of the appellant, the Minister must furnish *WorkCover* with a statement of the reasons for the decision.

Chapter 6

6. Levy and fees

6.1 Application

This chapter applies to all *self-insured employers*.

6.2 General

A *self-insured employer* is liable to pay a levy to *WorkCover*.

6.3 Self-insured employer levy

6.3.1 *Special levy*

Pursuant to section 68(2) of the *Act*:

The special levy payable by a *self-insured employer* will be a percentage of the levy that would have been payable by the *employer* if the *employer* were not registered as a *self-insured employer* and will be fixed by *WorkCover* with a view to raising from *self-insured employers*:

- (a) a fair contribution towards the administrative expenditure of *WorkCover*; and
- (b) a fair contribution towards the cost of rehabilitation funding; and
- (c) a fair contribution towards the cost of the system of dispute resolution established by the *Act*; and
- (d) a fair contribution towards actual and prospective liabilities of *WorkCover* arising from the insolvency of *employers*.

6.3.2 *Elements in determining special levy*

- (a) Contribution towards administrative expenditure:

A fair contribution towards administrative expenditure is a fair contribution by *self-insured employers* towards:

- (i) the costs and overheads incurred by *WorkCover* in the administration of the *Scheme*
- (ii) the cost of services provided to *self-insured employers* by *WorkCover*.

- (b) Contribution towards rehabilitation funding:

WorkCover does not currently require *self-insured employers* to make a contribution to the cost of rehabilitation funding as *self-insured employers* currently fund all rehabilitation functions for their injured *workers* themselves.

- (c) Contribution towards costs of dispute resolution:

A fair contribution towards the costs of dispute resolution is a fair contribution by *self-insured employers* that must be paid by *WorkCover* to support the Workers Compensation Tribunal and its functions.

- (d) Fair contribution toward liabilities arising from insolvency:

Subject to clause 6.6 a fair contribution towards liabilities arising from insolvency is determined by *WorkCover* and is included in the special levy for *self-insured employers*.

6.4 Levy payable

- (a) Subject to 6.4(b), the special levy for all *self-insured employers* as described in clause 6.3.1 is subject to an annual review by the *WorkCover Board* (in the first quarter of each calendar year). The outcome of any review is applied from the commencement of the following financial year (1 July each financial year). The special levy in respect of an individual *self insured employer* (or group of *self insured employers*) may pursuant to section 68(3) be subject to individual adjustment from time to time under this Chapter 6.
- (b) The special levy is payable in addition to:
- (i) the occupational health safety and welfare employer registration fee
 - (ii) any fines or penalty interest payable under sections 70 or 71 of the *Act*, and
 - (iii) any GST payable under *A New Tax System (Goods and Services) Tax Act 1999 (Commonwealth)*.
- (c) The levy payable by a *self-insured employer* will be differentiated between different *self-insured employers* or classes of *self-insured employers* created by *WorkCover* by reference to the following factors:
- (i) the application of the *natural consequences model*
 - (ii) the criteria to which a remedial levy element applies under clause 6.8
 - (iii) the class of *self-insured employers* for which *WorkCover* has determined that section 68(2)(d) of the *Act* does not apply, or should make no contribution under section 68 (2)(d).

6.5 Basis of calculation

The special levy is calculated in accordance with the following formula:

$$\text{Levy} = (\text{R} \times \text{ILR} \times \text{EL}) + \text{OHS} + \text{GST}$$

Where:

$EL = SEL \times A;$

$OHS = R \times ILR \times EL \times OHS\%;$ and

$GST = R \times ILR \times EL \times GST\%$

Definitions:

A is the differentiation (expressed as a %) arising from the application of all of the factors contained in clause 6.4(c).

R is the total remuneration that the *self insured employer* expects to pay or has paid to the self insured employer's *workers* during the relevant financial year.

ILR is the industry levy rate corresponding to the class of industry in which the *self insured employer* employs workers for each of the self insured employer's locations as determined by *WorkCover*.

EL is the industry levy rate applicable to a *self-insured employer* in calculating the levy payable by the *self-insured employer* at each location and comparable remuneration levels paid by other *self-insured employers'* locations.

SEL is the special levy rate for *self-insured employers* as determined by *WorkCover* from time to time as set out in clause 6.3.1.

OHS% is the percentage rate in regard to the occupational health safety and welfare employer registration fee for *self-insured employers* as determined by *WorkCover* for the relevant financial year.

GST% is the percentage rate in regard to the of goods and services tax determined by the Australian Government for the relevant financial year.

The total levy payable by a *self-insured employer* is the sum of the levy payable for all locations registered by the *self-insured employer* plus the adjusted levy component and additional levy component (if any) applicable to the *self-insured employer* pursuant to the *natural consequences model*.

6.6 Component of levy determined under section 68 (2)(d) of the Act

- (a) *WorkCover* will keep a record of the total of the contributions by each *self-insured employer* in relation to the component of the levy paid under section 68(2)(d) of the Act, and of the period or periods during which that *self-insured employer* has paid a levy which included this component.
- (b) *WorkCover* may determine the characteristics of a class of *self-insured employers* under clause 6.7 whose levy shall not include a levy component under section 68(2)(d) of the Act in which event it will allocate a rate of levy to that class of employers as reflects the differentiation from those *self-insured employers* making a contribution under section 68(2)(d) and allocate *self-insured employers* to that class as meet those characteristics.

6.7 Classes of levy

- (a) *WorkCover* may, from time to time, determine the classes of levy for *self-insured employers* and may nominate any *self-insured employer* to any class of levy either for finite or indefinite periods.
- (b) The levy rates for each levy class will be determined by *WorkCover* from time to time, and will be determined by reference to the reason for the levy class being established.
- (c) *WorkCover* has determined that all *Crown self-insured employers* form a class of *self-insured employers* which are not required to pay a levy that includes a component under section 68(2)(d) of the *Act*.
- (d) *WorkCover* has determined to differentiate between *self-insured employers*, and to impose an adjusted levy component on some *self-insured employers*, by reference to certain characteristics described in the *natural consequences model* as referred to in the calculation formula contained in clause 6.5.
- (e) *WorkCover* has determined to differentiate between classes of *self-insured employers* that do not commit *non-compliances* and those that do and also as between *self-insured employers* that commit such *non-compliances* by reference to the different extent and durations of such *non-compliances* ('remedial levy classes') and may allocate *self-insured employers* to those classes by reference to *WorkCover's* assessment of those *non-compliances*.

6.8 Remedial levy classes

- (a) Remedial levies are payable by *self-insured employers* by way of a differentiated *ordinary levy* to reflect the additional cost to *WorkCover* of administering the *Act* in respect of *self-insured employers* that do not comply with their obligations as *self-insured employers*. This is achieved by establishing classes of *self-insured employers* with each class representing a level or extent of *non-compliance*.

The first level (or class) of *self-insured employers* are those *employers* that are not in contravention of the *Act* or a term or condition of registration. This class of *self-insured employer* pays the levy rate referred to in 6.4 of the *Code* as adjusted for the individual circumstances of the *employer*. Subsequent levels of *non-compliance* and the appropriate levy increment are as described below.

- (b) A *self-insured employer* will be subject to a remedial levy if, in the opinion of *WorkCover*, the *self-insured employer* is not complying with the *Act* or a term or condition of their registration.
- (c) Prior to implementing a remedial levy, *WorkCover* will firstly contact the *self-insured employer*, alerting it to the *non-compliance* and seeking the *self-insured employer's* commitment to rectifying the *non-compliance* within 14 days or such other period as agreed between *WorkCover* and the *self-insured employer*. If no such commitment is made by the *self-insured employer* or such a commitment is made but not satisfied before the relevant period for satisfying the commitment

has elapsed, *WorkCover* may impose a remedial levy without further notice.

- (d) There are four classes of remedial levy.
- (e) Each remedial levy applies to a particular remedial levy class of *self-insured employers* as follows:
 - (i) Level A – those *self-insured employers* that have a single instance of *non-compliance* for a period of not less than 30 days
 - (ii) Level B – those *self-insured employers* that have:
 - (A) two or more instances of *non-compliance*, or
 - (B) a single instance of *non-compliance* for a period not less than 60 days.
 - (iii) Level C – those *self-insured employers* that have either:
 - (A) two or more concurrent instances of *non-compliance* for a period of not less than 30 days, or
 - (B) a single instance of *non-compliance* for a period of not less than 90 days.
 - (iv) Level D – those *self-insured employers* that have either:
 - (A) two or more concurrent instances of *non-compliance* for a period of not less than 60 days, or
 - (B) a single instance of *non-compliance* for a period of not less than 120 days, or
 - (C) more than three instances in any 12 calendar months of paying a remedial levy.
- (f) On each occasion a *self-insured employer* falls within one of the levels defined above (and if more than one level, then the *self-insured employer* will be treated as falling within the level attracting the higher remedial levy) then that *self-insured employer* will in the calendar month expiring immediately after the *employer* fell within that level pay a levy as follows:
 - (i) Level A – *ordinary levy* plus 10%
 - (ii) Level B – *ordinary levy* plus 25%
 - (iii) Level C – *ordinary levy* plus 55%
 - (iv) Level D – *ordinary levy* plus 100%

6.9 Payment of levy

- (a) The levy payable by a *self-insured employer* is payable by the prescribed date in each financial year or as otherwise specified by *WorkCover* and must be paid electronically (eg, by way of direct debit) to *WorkCover* in accordance with *WorkCover's* instructions unless alternative payment arrangements have been agreed on as per (b)
- (b) Alternative payment arrangements:
 - (i) *WorkCover* may make alternative payment arrangements with *self-insured employers*.
 - (ii) A *self-insured employer* wishing to pay by alternative payment arrangements must contact the self-insured employer registration and levy officer of *WorkCover*.
 - (iii) *WorkCover* will not permit any alternative payment arrangement in order to provide the *self-insured employer* with a competitive or financial advantage from such an arrangement.

6.10 Initial payment

- (a) Pursuant to section 69(1)(a) and (3) of the *Act*, a *self-insured employer* must by the prescribed date (31 July) in each financial year provide *WorkCover* with a return in the form determined by the Corporation containing an estimate of the aggregate remuneration that the employer expects to pay to the employer's workers during the financial year accompanied by the levy payable
- (b) Pursuant to section 69(4) of the *Act*, *WorkCover* may, by notice to a particular *employer* or by notice in the *Gazette*:
 - (i) specify another day date that will apply instead of the prescribed date under section 69 (1),
 - (ii) specify an estimate or estimates of aggregate remuneration that will apply instead of any estimate under section 69 (1);
 - (iii) specify that any levy must be paid according to some other requirements determined by the Corporation.
- (c) A *self-insured employer* must cooperate with any review or verification of its payment of levy.
- (d) Pursuant to section 69(9) of the *Act*, *WorkCover* may, as it thinks fit, vary or revoke a notice under subsection (4), or make a new specification or impose a new requirement under subsection (4).

6.11 Imposition of fine and/or penalty interest

Under section 70 of the *Act*, *WorkCover* may impose on the *self-insured employer* a fine of up to three times the amount of levy payable where the

self-insured employer fails to pay a levy payment of the full amount of the levy required by or under the *Act*.

WorkCover has adopted a policy not to impose a fine on *self-insured employers* who fail to make payment of an adjustment of levy, pursuant to section 69E(2) of the *Act*, within the time allowed in a notice. *Self-insured employers* who fail to make payment of an adjustment of levy within the time allowed in a notice may be subjected to legal proceedings to recover an outstanding amount..

Under section 71 of the *Act* penalty interest at the prescribed rate is payable on an amount in arrears unless *WorkCover* determines otherwise. While an amount remains in arrears, penalty interest will continue to accrue on a daily basis on the amount in arrears until the full amount payable is received by *WorkCover*.

6.12 Recovery of levy

Pursuant to section 76A of the *Act*, a levy payable under the *Act* (and any penalty interest or fine imposed by *WorkCover*) is a debt due to *WorkCover* and may be recovered by *WorkCover* in a court of competent jurisdiction.

6.13 Remission of levies

WorkCover has not granted any remissions pursuant to section 68(4) of the *Act* relating to the levy payable by individual *self-insured employers*.

6.14 Review rights

Pursuant to section 72 of the *Act*, an application may be made for a review of a levy related decision (including the imposition of an adjusted levy component pursuant to section 68 of the *Act*) where the decision of *WorkCover* is considered by the *self-insured employer* to be unreasonable,

Chapter 7

7. Termination/expiration of registration

7.1 Application

This chapter applies to any *employer* whose registration as a *self-insured employer* ceases because:

- (a) it is revoked
- (b) it expires and the *employer* does not apply to *WorkCover* to have it renewed, or
- (c) *WorkCover* determines not to grant an application for renewal or registration of a *self-insured employer*.

7.2 General

This chapter sets out the consequences for an *employer* should their registration as a *self-insured employer* cease.

7.3 Delegation of powers and discretions

- (a) Pursuant to section 63(7) of the *Act*, *WorkCover* may determine that the delegation of powers and discretions to an *employer* is to continue notwithstanding that the *employer* has ceased to be a *self-insured employer*.
- (b) If *WorkCover* determines that the delegation of powers and discretions are to continue, the delegation continues only to such extent as *WorkCover* thinks fit in relation to disabilities that occurred before cessation of registration.
- (c) Any *Act* or omission of an *employer* whose registration as a *self-insured employer* has ceased that is within the scope of the continued delegation will be taken for the purposes of the *Act*, to be the act or omissions of a *self-insured employer*.

7.4 Assumption of liabilities

- (a) Pursuant to section 50 of the *Act*, *WorkCover* is the insurer of last resort.
- (b) As insurer of last resort, *WorkCover* must undertake the liabilities of any *self-insured employer* that ceases to be registered as a *self-insured employer* if the *employer*:
 - (i) becomes insolvent, or
 - (ii) ceases to carry on business in the State and fails to make provision that *WorkCover* considers adequate for dealing with claims, liabilities and responsibilities relating to compensable disabilities arising from employment during the period of self-insured employer registration.

- (c) Other than in the circumstances listed in 7.4(b), *WorkCover* may, in its discretion, undertake in whole or part, liabilities related to compensable disabilities arising from employment during the period of the self-insured employer registration.
- (d) *WorkCover* will ordinarily only determine to undertake part of the self-insured employer's liabilities if it is satisfied of the ability of the *employer* to continue to manage and bear financial responsibility for the balance of its liabilities.
- (e) Where *WorkCover* assumes the liabilities of a *self-insured employer*, either in whole or part, it is entitled to receive a payment from the *employer* equal to the capitalised value of all outstanding liabilities.

7.5 Valuation of capitalised liabilities

- (a) *WorkCover* will determine the process for valuation of claims at the time claims liability is assumed by *WorkCover*.
- (b) *WorkCover* will appoint or approve an actuary to assess the total claims liability.
- (c) The actuarial assessment will be made in accordance with the processes outlined in Chapter 10. However, *WorkCover* reserves the right to issue such additional instructions as the carrying out of that valuation as it considers necessary to ensure the protection of the *Compensation Fund*.
- (d) If a claim is made by *WorkCover* for an amount representing liabilities that have not fallen due, or have not been ascertained, as at the date of the claim, the liabilities will be estimated and capitalized in accordance with principles stated, or referred to, in the *Regulations*.

7.6 Payment

- (a) *WorkCover* may, at its discretion, give a *self-insured employer* whose registration is ceasing a choice as to whether to pay the capitalised sum from its own resources, or to have the financial guarantee provided during the period of self-insured employer registration paid to *WorkCover*.
- (b) *WorkCover* may recover the amount of liabilities undertaken by *WorkCover* or part thereof, either as a debt due to *WorkCover* or as a claim, in the event the *employer* is wound up.
- (c) If the *employer* elects to pay the capitalised sum from its own resources, *WorkCover* will retain the financial guarantee for such period as *WorkCover* determines is necessary to ensure that no part of the payment received by *WorkCover* is subject to repayment pursuant to the laws relating to insolvency or bankruptcy.

7.7 Run off of claims

- (a) Where *WorkCover* is satisfied of the ability of the *employer* to continue to manage and bear financial responsibility for any claims by its

Workers in relation to compensable disabilities, it may allow the former *self-insured employer* to retain responsibility for such liabilities for such a period as *WorkCover* determines appropriate (a 'run off').

- (b) Where *WorkCover* deems a run off to be appropriate or necessary in the circumstances, *WorkCover* may also determine that the former *self-insured employer* continues to exercise some or all of its delegated powers and discretions.
- (c) If a former *self-insured employer* is permitted to run off its claims and continue to exercise its delegated powers and discretions, *WorkCover* may require the former *self-insured employer* to enter into an agreement with *WorkCover*.
- (d) Without limitation, *WorkCover* will ordinarily consider the following circumstances as being suitable circumstances in which to allow the former *self-insured employer* to run off its claims:
 - (i) *Employers* that have substantially reduced their workforce but which have performed their self-insured employer duties and obligations in accordance with the requirements of the *Act* and its term and conditions of registration
 - (ii) A subsidiary of a *self-insured employer* is sold and the subsidiary or the *self-insured employer* has sufficient resources and financial security to run off its claims
 - (iii) An *employer* closes down its operations in the state, but remains a viable company operating interstate
- (e) *WorkCover* will evaluate the former self-insured employer's compliance with the *Act*, *standards* and the agreement referred to in clause 7.7 and may terminate the run off if *WorkCover* considers there are substantive grounds for doing so.
- (f) Upon cessation of the run off period, *WorkCover* will appoint an Actuary to assess the value of the claims existing at that time in order to calculate the capitalised sum (if any) the *employer* must pay to *WorkCover*.

7.8 Agreement

- (a) In circumstances where *WorkCover* has decided not to undertake all of the liabilities of the former *self-insured employer* and to continue the delegation of powers and discretions to the former *self-insured employer*, *WorkCover* may require the former *self-insured employer* to enter into an agreement with *WorkCover*.
- (b) Where appropriate, the agreement will ordinarily:
 - (i) identify the circumstances and conditions under which the *employer* is permitted to retain its liabilities and exercise its delegated powers and discretions

- (ii) prescribe the consequences of any change in the circumstances or breach of any conditions imposed by *WorkCover* in such circumstances
- (iii) plan for the takeover of any residual liabilities by *WorkCover*, and
- (iv) provide for operational requirements that must apply, including the provision of an appropriate form of financial guarantee and the maintenance of appropriate qualitative *standards* during the period of run off and exercise of delegated powers.

7.9 Registration as a registered employer

Pursuant to section 59 of the *Act*:

- (a) Unless the *employer*:
 - (i) ceases to employ *workers* in employment to which the *Act* applies, or
 - (ii) is an *employer* who is not required to be registered pursuant to the *Regulations* of the *Act*,
- (b) an *employer* whose registration as a *self-insured employer* ceases must register as an *employer* with *WorkCover* within 14 days of the cessation of its registration as a *self-insured employer*.

Chapter 8

8. Evaluations

8.1 Application

This chapter applies to all *employers* who are either:

- (a) applying for the grant or renewal of registration as a *self-insured employer* in relation to that application, or
- (b) registered as a *self-insured employer* with respect to whether they maintain that registration.

8.2 General

This chapter outlines the various evaluations carried out by *WorkCover* in relation to self-insured employer registration.

Where *WorkCover* deems appropriate, an evaluation may be carried out by *WorkCover* at any time to evaluate the employer's overall compliance with the requirements of registration or in relation to a particular matter of compliance.

8.3 When evaluations are conducted

WorkCover will conduct evaluations:

- (a) upon application for or a renewal of self-insured employer registration, and
- (b) on an ongoing basis to monitor the self-insured employer's ongoing compliance with the requirements of registration.

8.4 Criteria for evaluations

8.4.1 *Grant or renewal of registration*

- (a) When evaluating whether an *employer* should be granted registration as a *self-insured employer* or have its self-insured employer registration renewed, *WorkCover* will evaluate the employer's performance against the requirements of section 60(6) of the *Act* and the *standards* as they apply from time to time. A validation of the employer's data provided in accordance with *Schedule 4* will be conducted prior to the employer's renewal.
- (b) Chapter 3 of *the Code* sets out the eligibility and assessment requirements of registration or a renewal of registration pursuant to section 60(6) of the *Act*.
- (c) *WorkCover* will undertake evaluations in line with the methodology set out in the Evaluation Practice Manual. The Evaluation Practice Manual can be found on the *WorkCover* website at www.workcover.com.

8.4.2 *Ongoing evaluation*

- (a) *WorkCover* will conduct evaluations of a self-insured employer's ongoing compliance with the requirements of registration against the requirements of the *Act*, any terms or conditions of registration and against the *standards* as they apply from time to time.
- (b) *WorkCover* may, for any reason, carry out an evaluation of the *self-insured employer* from time to time, as *WorkCover* deems appropriate. *WorkCover* will monitor *self-insured employers* on an ongoing basis between programmed evaluations. Instances that may result in an evaluation or re-evaluation of a *self-insured employer* include:
 - (i) a workplace fatality or serious injury or an unsatisfactory organisational response to such fatality or serious injury
 - (ii) serious or repeated complaints concerning the employer's approach to occupational health, safety and welfare and injury management practices
 - (iii) a breach of section 58B of the *Act* or evidence of a pattern of non provision of duties
 - (iv) adverse findings of the Workers Compensation Tribunal in relation to the *self-insured employer*
 - (v) serious or repeated intervention by SafeWork SA
 - (vi) serious administrative irregularities, such as falsification of data or reports
 - (vii) complaints from *workers* and or their industrial representatives that indicate a pattern of *non-compliance*
 - (viii) remedial action taken as a result of the review of accident incident data
 - (ix) instances of under-reporting of claims
 - (x) failure to meet an order of the Workers Compensation Tribunal, except where such an order has been stayed or is otherwise legally inoperative
 - (xi) a failure to comply with financial requirements.

8.5 Evaluation process

- (a) Subject to the particular circumstances of the *employer* and the nature of the evaluation, evaluations will usually only be carried out after *WorkCover* has notified the *employer* of the nature of the evaluation and *WorkCover* and the *employer* have agreed to a time during which *WorkCover* may conduct its evaluation.

- (b) Where appropriate, *WorkCover* will also notify the *employer* of the scope and the process of evaluation to be used in the particular circumstances prior to conducting the evaluation.
- (c) An *employer* must make all reasonable efforts to assist *WorkCover* with its evaluation process. This includes the self-insured employer's *responsible officer* preparing any report requested by *WorkCover* to be completed pursuant to its evaluation process. The *responsible officer* report is to be provided by the *employer* annually or no later than the anniversary date of its self-insured registration.

8.6 Failure to comply

If *WorkCover* is of the opinion an *employer* or *self-insured employer* has failed:

- (a) to comply with any reasonable request for an evaluation
- (b) to use all reasonable efforts to assist *WorkCover* with its evaluation process, or
- (c) is or is likely to breach or fail to comply with the requirements of self-insured employer registration as against the relevant criteria of an evaluation,

WorkCover may

- (d) refuse to grant or renew self-insured employer registration
- (e) reduce or revoke the period of registration, or
- (f) take such other action as the *Act* provides and as set out in Part IV, Chapter 5 of *the Code*.

8.7 Evaluation findings

- (a) Evaluation against the requirements of the *standards* contribute to the assessment of compliance with some but not all of the criteria relevant under section 60 of the *Act*. An assessment of compliance with all of the criteria relevant under section 60 is considered when making a recommendation on a *self-insured employer's* registration to the *Board* or its delegate.
- (b) An outline of the application and renewal process are described in clause 4.6 and 4.8 of *the Code*. Clause 4.10 outlines the process where a *self-insured employer* does not agree with the assessment against the criteria and the proposed recommendation to the *Board* or its delegate.

Chapter 9

9. Group self-insured employers and corporate restructure

9.1 Application – Part I

This chapter applies to:

- (a) any group of *employers* registered as a *group of self-insured employers*
- (b) any *self-insured employer* or *group of self-insured employers* which forms, acquires or disposes of or is going to form, acquire or dispose of a related body corporate, and
- (c) any *self-insured employer* which is acquired by a *registered employer* which thereby becomes a related body corporate.

9.2 General

- (a) This chapter sets out the obligations of an *employer* to which the chapter applies in relation to the registration and ongoing obligations of *self-insured employers* and *groups of self-insured employers* in relation to any corporate restructure.
- (b) A *self-insured employer* or *group of self-insured employers* has an ongoing obligation to notify *WorkCover* of the occurrence of any of the events referred to in this chapter.
- (c) The role of *WorkCover* in any restructuring of a *group of self-insured employers* is to ensure:
 - (i) the integrity of the self-insured employer registration is retained
 - (ii) at all times, the liability for workers compensation claims is known, and
 - (iii) protection of the *Compensation Fund* by ensuring that there is an appropriate arrangement for the management of *transitional claims*.
- (d) In considering each circumstance where this chapter may have application, *WorkCover* will have regard to an employer's past circumstances in the context of changes in structure or personnel that have occurred in the meantime.
- (e) Pursuant to section 60(4)(a)(ii) *WorkCover* determines that it is a term and condition of registration of a *self-insured employer* that at no time a related body corporate to that *self-insured employer* employs a *worker* or *workers* to this *Act* applies unless that *self-insured employer* forthwith complies with clause 9.4 of *the Code* to apply to constitute a *group of self-insured employers* that includes that related body corporate.
- (f) Pursuant to section 60 of the *Act* *WorkCover* may, at any time, on application by a *group of self-insured employers*, amend the registration of the group by amalgamating two or more *groups of self-insured employers*, adding another body corporate to the group, removing a body corporate from the group or dividing the registration of the group into two or more new groups.

9.3 Group employers

- (a) Pursuant to sections 60(1) and (2) of the *Act*, a group of *employers* may apply to *WorkCover* for registration as a *group of self-insured employers* providing they are *related bodies corporate*.
- (b) The requirements for registration are set out in chapters 3 and 4 of the *Code*.
- (c) Pursuant to section 60(4b)(a) of the *Act* where self-insured status was conferred on a group of *related bodies corporate*, it is subject to a condition that there is at no time a related body corporate to any member of the group that employs a *worker* or *workers* to which the *Act* applies (in this clause 9.3a "related *registered employer*") that is not a member of the group.
- (d) If there is a related *registered employer* to a member of a *group of self-insured employers* at any time the *group of self-insured employers* must apply under section 60(4b) of the *Act* to *WorkCover* to add that relevant *registered employer* to that group. *WorkCover* will consider how it will deal with such an application depending on the size of the *registered employer* as follows:
 - (i) Small – the relevant *registered employer* has less than 100 additional *workers* - a new application to be registered as a new *group of self-insured employers* will not be required and the matter will be dealt with on application under section 60(4b)(a) of the *Act* to add the relevant *registered employer* to the existing group.
 - (ii) Medium – the relevant *registered employer* has between 100 and 200 additional *workers* - a new application to be registered as a new *group of self-insured employers* will not be required and the matter will be dealt with on application under section 60(4b)(a) of the *Act* to add the relevant *registered employer*. *WorkCover* will, in determining that application, carry out an evaluation to identify if the relevant *registered employer* can be adequately accommodated within the existing *group of self-insured employers'* resources and procedures. If the application is granted the relevant *registered employer* body corporate will be added to the existing registration for the group.
 - (iii) Large – the relevant *registered employer* has more than 200 *workers* – an application must be made for a grant of self-insured status for a new group including the relevant *registered employer* and the relevant *registered employer* will be evaluated as if it was making an application for self-insured status in its own right.
- (e) Clause 9.3(d) applies, but is not limited to, acquisition of a new related body corporate a member of the *group of self-insured employers* or the acquisition of a member of a *group of self-insured employers* by a new related body corporate.
- (f) A failure by a *self-insured employer* or *group of self-insured employers* to make such an application in accordance with clause 9.3(d) (or the refusal of such an application by *WorkCover*) will be taken into account by *WorkCover* when considering whether to cancel or not renew the *group of self-insured employers'* registration as a *group of self-insured employers*.
- (g) *WorkCover* will require all necessary adjustments to financial guarantees and excess of loss insurance provided by the *group of self-insured employers* to reflect the inclusion of the relevant *registered employer* body corporate in a registration of a *group of self-insured employers* in the event that an application under clause 9.3(d) is granted.

- (h) Discontinuance fees and *transitional claims* arrangements will be applicable to all such circumstances.

9.4 Changes to a self-insured employer

- (a) If there is a related body corporate to a *self-insured employer* that employs a *worker* or *workers* to which the *Act* applies that *self-insured employer* must apply under section 60(1) of the *Act* for registration as a *group of self-insured employers* that includes that related body corporate (in this clause 9.4(4) “related registered employer”).
- (b) Clause 9.4(a) applies, but is not limited to, acquisition of a new *related body corporate* by the *self-insured employer* or the acquisition of the *self-insured employer* by a new *related body corporate*.
- (c) A failure by a *self-insured employer* to make such an application in accordance with 9.4(a) (or the refusal of such an application by *WorkCover*) will be taken into account by *WorkCover* when considering whether to cancel or not renew the self-insured employers’ registration as a *self-insured employer*.
- (d) *WorkCover* will require all necessary adjustments to financial guarantees and excess of loss insurance provided by the *self-insured employer* to reflect the constitution of the new *group of self-insured employers* in the event that an application under clause 9.4(a) is granted.
- (e) *Transitional claims* arrangements will be applicable to all such circumstances.

9.5 Member of a group of self-insured employers ceases to be a related body corporate

9.5.1 Registration of the ongoing group

- (a) Where a member of a *group of self-insured employers* ceases to be a related body corporate of the other members of the *group of self-insured employers* (in this clause ‘the outgoing group member’) the group may apply to:
 - (i) remove the outgoing group member from the group under section 60(4b)(b) of the *Act* and if that application is granted the remaining members of the group will continue to be registered as a *group of self-insured employers* (without the outgoing group member); or
 - (ii) divide the registration of the group into two new groups with the outgoing group member (and a related body corporate to that outgoing group member) being a group and the remaining group members of the original group being the other group.
- (b) Clause 9.5.1(a) applies, but is not limited to, the sale or disposal of the outgoing group member by another member or other members of the *group of self-insured employers*.
- (c) Approval of an application under clause 9.5.1(a) shall be subject in each case to:
 - (i) ongoing compliance with *the Code* by all group members; and
 - (ii) arrangements relating to the claims of the *workers* of the outgoing group member and the remaining group members and the sharing of management resources as between them being advised to and approved by *WorkCover*.

9.5.2 Registration of outgoing group member

- (a) Where an outgoing group member has been removed from the *group of self-insured employers* and is not a member of a new group, the outgoing group member may apply for registration as a *self-insured employer* but if it does not, it must apply for registration under, and within the period required by, section 59 of the *Act*.
- (b) In order to become registered as a *self-insured employer* the outgoing group member must satisfy the requirements of registration set out in Chapter 3 of the *Code*.
- (c) Notwithstanding that an outgoing group member has ceased to be a member of the original *group of self-insured employers*, it remains jointly and severally liable under section 60(8) of the *Act* for the liabilities of the nominated member of the *group of self-insured employers* under the *Act* incurred while the outgoing group member was a member of the *group of self-insured employers*.

9.6 Acquisition of a member of a group of self-insured employers by a registered employer

Where a *registered employer* acquires an entity that is a member of a *group of self-insured employers* (in this clause 9.6 an "outgoing group member") and wishes to become registered as a different *group of self-insured employers*, the original *group of self-insured employers* must apply under section 60(4b)(d) of the *Act* to divide that group registration into two groups being the members of the original group (other than the outgoing group member) as one group and the outgoing group member and the *registered employer* on the second group which application will be subject to the second group satisfying the requirements of the *Act* to a standard determined by *WorkCover* as set out in Chapter 3 of the *Code*.

9.7 Amalgamations

- (a) Where a member of a *group of self-insured employers* acquires another *self-insured employer* or all the members of another *group of self-insured employers* they may apply, in former case, to add that *self-insured employer* to the group pursuant to section 60(4b)(a) of the *Act* and, in the latter case, apply to amalgamate their registrations so as to form a group pursuant to section 60(4b)(c) of the *Act*.
- (b) A failure by the *self-insured employer* or *group of self-insured employers* to make such an application (or the refusal of such an application by *WorkCover*) will be taken into account by *WorkCover* when considering whether to cancel or not renew the *self-insured employer's* or *group of self-insured employers'* current registration as a *self-insured employer* or *group of self-insured employers*.
- (c) If required to submit a new application for registration as a group of self-insurers, appropriate consideration will be given to the performance of the previously registered self-insurer. Where new entities that were not previously self-insured are added to existing groups or a previously single registration becomes a new group, *WorkCover* will consider submissions from the entity on the timing of the full application of the *Natural Consequences Model* to the entity or entities added to the group.

9.8 Ongoing requirements of group members

- (a) Pursuant to section 60(7) of the *Act*, where employers are registered as a *group of self-insured employers*, one of the *employers* nominated in the application for registration shall, for the purposes of the *Act*, be treated as the *employer* of all *workers* employed by the various members of the *group of self-insured employers*.

- (b) Pursuant to section 60(7a) of the *Act WorkCover* may, on application from the group, change the nominated *employer* as set out in Chapter 4 of *the Code*.
- (c) Notwithstanding clause 9.8(a), the members of the *group of self-insured employers* are jointly and severally liable to satisfy the liabilities of the *employer* treated as the *employer* of all *workers* employed by the various members of the group.
- (d) Notwithstanding clauses 9.8(a) and (c), any failure by any member of the *group of self-insured employers* to comply with the requirements of the *Act* or a term or condition of registration, as set out in Chapter 2 of *the Code*, will be considered to be such a failure by each member of the *group of self-insured employers* and may result in *WorkCover* taking such action as it deems appropriate in the circumstances, as set out in Chapter 5 of *the Code*.

Chapter 10

10. Management of transitional liabilities

Part I – Management of pre-existing liabilities on self-insured employer registration

10.1 Application

This part applies to all *private employers* applying for registration as a *self-insured employer*.

10.2 General

This part sets out the requirements in relation to the management of transitional liabilities after the grant of self-insured employer registration.

10.3 Agreement

(a) On the grant of self-insured employer registration an agreement governing:

- (i) the management of transitional liabilities, and
- (ii) the management of the potential recovery of third party liabilities,

will be made pursuant to a Self-Insured Employer Transitional Claims Management Agreement (SIETCMA) made between *WorkCover* and the *self-insured employer*.

(b) The standard forms of the SIETCMA can be found on the *WorkCover* website www.workcover.com being:

- Form 1 which is intended to be used for a *group of self-insured employers* which have not been previously self-insured.
- Form 1A, which is intended to be used for a *self-insured employer* which has not previously been a *self-insured employer* and which is a *group employer* (ie, registration has more than one legal entity)
- Form 2, which is intended to be used where an existing *self-insured employer group* is re-registered with an additional group member or members
- Form 2A, which is intended to be used where an existing *self-insured employer group* is re-registered with an additional group member or members and no previous self-insured (exempt) employer pre-existing claims management agreement or self-insured (exempt) employer transitional claims management agreement (as the case may be) has been in place
- Form 3, which is intended to be used where:
 - an existing *self-insured employer group* is re-registered with less group members, and
 - there are no further payments to be made by *WorkCover* under the previous exempt employer pre-existing claims management agreement or exempt employer transitional claims management agreement (as the case may be)

- Form 4, which is intended to be used where:
 - an existing *self-insured employer group* is re-registered with less group members, and
 - there are further payments to be made by *WorkCover* under the previous exempt employer pre-existing claims management agreement or exempt employer transitional claims management agreement (as the case may be).

10.4 Management of *transitional claims* by the employer

- (a) The management of *transitional claims* requires the management by the *self-insured employer* or *group of self-insured employers* on behalf of *WorkCover* of *transitional claims* against *WorkCover* on the terms set out in a SIETCMA.
- (b) Such management of *transitional claims* is a condition of the grant of registration as a *self-insured employer*.

10.5 General requirements

- (a) The fee payable by *WorkCover* for the management of transitional liabilities will ordinarily be by way of payment of a lump sum as consideration for the management of those liabilities (Claims management payment or CMP).
- (b) The CMP will take account of and allow for the management of liabilities for claims incurred prior to and payable after the date of self-insured employer registration, including any liabilities arising from reported or unreported claims or from reopening of closed claims.
- (c) The determination of the amount of the CMP will be in accordance with the conditions and principles outlined in this part and the applicable SIETCMA.
- (d) The estimate of transitional liabilities used to calculate the CMP will include an estimate of the outstanding liability in respect of any claims where a recovery potential has been identified. This amount will be withheld by *WorkCover* until such time as *WorkCover* determines the liabilities are unable to be recovered.

10.6 Determination of CMP

10.6.1 Valuation

- (a) An actuary appointed or approved by *WorkCover* will value the transitional liabilities relating to liabilities incurred or expected to be incurred prior to the date of registration as a *self-insured employer*.
- (b) The valuation will include an adjustment based on the actuary's estimate for:
 - (i) Inflation, and
 - (ii) the present value of the expected flow of payments by *WorkCover* or the *self-insured employer* on behalf of *WorkCover*.
- (c) The valuation will not include an allowance for future claims administration costs. *WorkCover* will make such allowance for future claims administration costs as it deems appropriate as the final calculations are made.

- (d) The actuary will carry out the valuation on a mid range basis and in accordance with the guidelines attached as Annexure B.
- (e) The actuary's cost in providing the valuation will be borne by the *self-insured employer*.

10.6.2 **Balancing Payment**

WorkCover will deduct from the CMP the balancing payment calculated as follows:

if $NLP \geq OL$, then $BP = FSC + AC$; and

if not, then:

if $OL - NLP \geq FSC$, then $BP = OL - NLP + AC$; and

if not, then $BP = FSC + OL - NLP + AC$.

where:

'AC' or 'actuarial costs' means the costs and expenses incurred by WorkCover to appoint an actuary to calculate the amount payable by or to the *employer*.

'Adjusted total levy' is the total levy less that part of the base levy which is estimated by WorkCover to be attributed to recovering costs and expenses of WorkCover other than the claim costs.

'Base levy' is the aggregate of the amounts calculated by multiplying the remuneration for each of the employer's locations by the applicable relevant industry levy rate determined under section 66 of the *Act* and ignoring the application of GST and any adjustment by way of remission or supplement and, if more than one such applicable industry levy rate in a relevant period, by multiplying the remuneration for each part of the period by the levy rate applicable to that part of the period and aggregating the product.

'Claim costs' is all costs, expenses and payments made by or on behalf of WorkCover in respect of a *compensable disability* including but not limited to payments of compensation to the worker that suffered the *compensable disability*.

'FSC' or 'Funding shortfall contribution' means the amount which WorkCover estimates that the *employer* would be expected to pay by way of base levy during the unfunded liability period which is attributed to the recovery of the unfunded liabilities assuming for that purpose that:

the *employer* remained registered as an *employer* under the *Act* for the unfunded liability period

subject to subparagraph 10.6.2(a)(viii)(B) the amount of such contribution of that *employer* remains the same proportion of the base levy payable by that *employer* during the unfunded liability period as exists at the beginning of the unfunded liability period

the *employer* has the same industry classification and the base levy rate applicable to that industry classification does not change during the unfunded liability period, and

the *employer's* aggregate remuneration which would attract the application of the base levy increases for each year during the unfunded liability period at the rate last

specified by the *Board* for this purpose before the *employer* become a *self-insured employer*.

'NLP' or 'net levy position' is calculated as follows:

$$NLP = ALP - TCP,$$

(which figure, to avoid doubt, may be positive or negative) where:

'ALP' or 'adjusted levy payment' is WorkCover's estimate of the adjusted total levy paid by the *employer* during the seven years¹ prior to becoming a *self-insured employer*, and

'TCP' or 'total claims paid' is WorkCover's estimate of the aggregate of the claims costs paid by WorkCover in the seven years¹ preceding the *employer* becoming a *self-insured employer* to workers employed by that *employer* at the time of the trauma to which those claims costs are attributable discounted to the dates that the injuries that gave rise to the claims occurred at the rate last specified by the *Board* for this purpose before the *employer* becoming a *self-insured employer*.

'OL' or 'outstanding liabilities' means the present value of the future liability of WorkCover to pay claims costs for compensable disabilities attributable to traumas that occurred before the *employer* became a *self-insured employer* in relation to the workers of the *employer*² as estimated by an actuary appointed by WorkCover.

'Total levy' is the base levy payable by a particular *employer* after it has been increased by the addition of any supplement or decreased by the grant of any remission.

'Unfunded liabilities' means the amount by which WorkCover's total liabilities exceeds its total assets as specified in audited accounts of WorkCover last issued before the *employer* becoming a *self-insured employer*

'Unfunded liability period' means the period:

commencing on the *employer* becoming a *self-insured employer*, and

expiring at the end of the period last specified by the *Board* for this purpose before the *employer* becoming a *self-insured employer* (being the time by which the unfunded liabilities are estimated to have been recovered).

As at the date of commencement of this subclause 0:

the rate specified by the *Board* for the purpose of subclause (vii) (D) is 3%

the rate specified by the *Board* for the purpose of subclause (vii) is 7.6%, and

the period specified by the *Board* for the purpose of subclause 0 ends on **30 June 2013**.

1 If the employer has not been registered as an employer under the Act over the whole of that period, this period shall be replaced by a period equal to the period that the employer has been registered as an employer under the Act.

2 Whether or not those traumas have been reported to WorkCover or to the employer commonly referred as 'incurred but not reported' (IBNR).

WorkCover will also make adjustments to the valuation of liabilities in respect of any payments already made or any claims not included in the valuation in the period before the final determination of the CMP.

10.6.3 **Determination and payment**

After the valuation is completed and any adjustments have been made, *WorkCover* will determine the CMP.

10.7 **Employers acknowledgement and SIETCMA**

- (a) A *self-insured employer* must agree in writing to the value of the CMP as determined by *WorkCover* as a term and condition of registration.
- (b) The acknowledgement will form part of the SIETCMA.
- (c) *WorkCover* will not proceed with the registration of the *employer* as a *self-insured employer* until it has received the acknowledgment and the completed SIETCMA.
- (d) The SIETCMA includes the necessary delegations to allow the *self-insured employer* to manage the transitional liabilities.

10.8 **Potential recovery of liabilities**

- (a) The CMP will be reduced by the notional outstanding claim value.
- (b) A 'notional outstanding claim value' is an estimate of the total outstanding liability on a claim if all or part of that claim may be recoverable after the date of transfer.
- (c) *WorkCover* will provide the necessary delegations to allow the *self-insured employer* to proceed with such recoveries.
- (d) The right to manage any transitional liabilities which have a potential recovery from a third party will be subject to the following conditions:
 - (i) the *employer* and *WorkCover* agreeing to a notional outstanding claim value for such transitional liabilities, and
 - (ii) the *employer* accepting the management of the relevant transitional liability with no allowance payment in the CMP in respect of that transitional liability at the time of entering into the SIETCMA.
- (e) In the event that the recovery is successful, the proceeds of the recovery will be applied as follows:
 - (i) The *self-insured employer* will retain up to the agreed notional outstanding claim value as an adjustment of the CMP.
 - (ii) *WorkCover* is to be repaid the recoverable portion of its claim costs expended prior to the date of registration of the *self-insured employer*.
 - (iii) *WorkCover* retains any balance in excess of the notional claim value.
- (f) The *employer* must diligently pursue the recovery potential of the claim, and must not discontinue the recovery process without the approval of *WorkCover*.

- (g) In the event the recovery is less than the notional claim value, *WorkCover* will, subject to the employer's compliance with clause 10.6, pay the difference to the *self-insured employer* as an adjustment of the CMP.
- (h) In the event the *employer* breaches clause 10.6, the *employer* must repay to *WorkCover* all potentially recoverable amounts paid by *WorkCover* prior to the date of registration of the *self-insured employer*.
- (i) If the *self-insured employer* has complied with clause 10.6 including taking any necessary action required by *WorkCover* from time to time and *WorkCover* agrees that there is no reasonable prospect of a successful recovery, *WorkCover* will make payment of the notional outstanding claims value as an adjustment of the CMP to the *self-insured employer* as soon as practicable.

10.9 RISE and the like commitments

- (a) RISE was a re-employment incentive scheme designed to encourage *workers* with a *compensable disability* to return to work through the placement of such *workers* with other *employers* in circumstances where the *worker's employer* is unable to provide suitable duties to that *worker*. RISE ceased operations in February 2007 and the function was transferred to *WorkCover's* sole claims agent, Employers Mutual Limited.
- (b) RISE provided for *WorkCover* to assume a liability to the *employer* with whom the *worker* is placed.
- (c) For the purposes of determining the CMP, all RISE liabilities and like liabilities arising from replacement employment or re-employment schemes will be considered to be transitional liabilities which are to be included in the liabilities to be managed by the *self-insured employer* subject to the terms of the Agreement entered into with a *self-insured employer* under clause 10.5 of *the Code*.

10.10 Other issues

10.10.1 *Timing of payment*

WorkCover will ordinarily pay the first instalment of the CMP within two months of the commencement of self-insured employer registration. The timing and adjustment of the subsequent instalments of the CMP shall be made in accordance with the terms of the applicable EETCMA.

10.10.2 *Reservation of payment*

- (a) *WorkCover* may, at its discretion, refuse to approve the *self-insured employer* managing the transitional liabilities, if it is unable to determine a payment value which is fair to both *WorkCover* and the *employer* within a reasonable period of time.
- (b) In the event that particular claims have been reserved by *WorkCover*, *WorkCover* will propose alternative arrangements which are deemed appropriate at the discretion of *WorkCover*.
- (c) Self-insured employer registration will not commence until the *employer* and *WorkCover* have agreed to these arrangements.

10.10.3 *Effect on financial guarantee*

The obligations of the *self-insured employer* under these provisions and the relevant EETCMA will be taken into account in determining the financial guarantee requirement for the *self-insured employer*.

Part II – Transfer of liabilities on cessation of self-insured employer registration

10.11 Application

This part applies to all *self-insured employers* whose registration as a *self-insured employer* ceases for any reason.

10.12 General

This part sets out the requirements in relation to the transfer of liabilities upon cessation of self-insured employer registration.

10.13 Agreement

- (a) On cessation of self-insured employer registration, if *WorkCover* allows the former *self-insured employer* to retain liability for existing claims for a period as dealt with in Chapter 7 of the *Code*, *WorkCover* will provide an Extension of Delegation to Former Self-insured Employer (EDFSIE) document between *WorkCover* and the former *self-insured employer*.
- (b) The standard form of the EDFSI can be found on the *WorkCover* website.
- (c) *WorkCover* will amend the standard form of the EDFSI as it thinks fit to suit the particular circumstances.

10.14 Transfer of liabilities to *WorkCover*

The transfer of liabilities to *WorkCover* will occur:

- (a) if *WorkCover* so determines, immediately upon the self-insured employer registration ceasing, or
- (b) where *WorkCover* allows the former *self-insured employer* to retain liability for a period and provides the EDFSI, immediately upon the expiry or termination of the EDFSI.

10.15 General requirements

- (a) The transfer of liabilities will ordinarily be by way of payment of a capitalised lump sum as consideration for the transfer of liability.
- (b) The amount of the payment will be determined by *WorkCover*.
- (c) In determining the amount to be paid, *WorkCover* will ordinarily have regard to the principles set out in the balance of this Chapter (so far as they can be applied to the circumstances of the particular case without incurring a loss to the *Compensation Fund*).
- (d) The cost of any actuarial valuation will be borne by the former *self-insured employer*.

10.16 Other issues

- (a) The former *self-insured employer* will make payment for the transfer of liabilities as soon as practicable following cessation of registration.
- (b) Upon cessation of self-insured employer registration *WorkCover* will be at liberty at any time to call upon the guarantee it holds in respect of that self-insured employer registration, and it shall not release the guarantee until such time as *WorkCover* is satisfied that all liabilities transferred to it are fully secured by the monies *WorkCover* has received.

Chapter 11

11. Miscellaneous

11.1 Application

This chapter applies to all *self-insured employers*.

11.2 Employer's duty to provide work and notice of termination of employment

As part of the section 58B and section 58C protocol with *self-insured employers*, the following principles have been agreed:

- (a) An *employer* granted self-insured status needs to demonstrate a level of performance which complies with the requirements of the *Act* and conforms with the *WorkCover Self-insured Performance Standards*. To achieve this, *self-insured employers* must ensure compliance with sections 58B and section 58C.
- (b) *Self-insured employers* acknowledge that a breach of section 58B and/or section 58C will be a matter which *WorkCover* will consider (under section 60(6) of the *Act*) in determining whether a self-insured registration is to be renewed. An established breach of section 58B and/or section 58C may result in either a reduced term or revocation of the *employer's* self-insured registration, in addition to the imposition of a remedial levy.
- (c) *Self-insured employers*, as large and diverse businesses, in the main will be able to create opportunities to provide suitable employment to injured *workers*. Situations will however arise where *self-insured employers* may not be able to achieve this. In such instances *self-insured employers* should advise *WorkCover*. *Self-insured employers* are also encouraged to proactively report situations where their compliance with 58B and/or section 58C may potentially come into question.
- (d) The following process of reporting by *self-insured employers* and monitoring by *WorkCover* will occur:
 - (i) *Self-insured employers* will provide an annual declaration of their compliance with sections 58B and section 58C. This declaration will be provided in the *Responsible Officer* report - a current annual reporting requirement. The information provided would include details of where an *employer* has undertaken a review of a matter in response to a complaint they have received about section 58B or section 58C and also details of the referrals they have made to *WorkCover* during the renewal period.
 - (ii) *WorkCover* will evaluate *self-insured employer* compliance as part of the evaluation process for renewals of self-insured registration. If any issue of concern arises from the evaluation in relation to compliance with section 58B or section 58C, the evaluator will promptly advise the self-insurer and ascertain if any other information exists that might bear on the matter. If, after the self-insurer has had the opportunity to clarify the situation, the evaluator remains of the view that the matter should be investigated, the self-insurer will be so informed and the matter referred to the Manager, Return to Work Inspectorate and Support Unit for investigation.
 - (iii) This process will allow *WorkCover* to determine whether a *self-insured employer* has complied with the requirements of section 58B and/or section 58C and intervene and facilitate an outcome where necessary.
 - (iv) Where *WorkCover* receives a complaint of a general nature from a third party that:

- alleges that a self insurer has not complied with its obligations under section 58B and/or section 58C; but
 - does not contain sufficient specific information to enable *WorkCover* to identify the relevant claim/s, and understand the alleged factual basis of the complaint;
- (v) *WorkCover* will firstly approach the party making the complaint and obtain further and better particulars in order to satisfy itself that the complaint has sufficient merit to warrant investigation.
- (vi) *WorkCover* will determine whether an investigation (section 58B and/or section 58C) is required irrespective of whether it relates to a specific claim or generally.
- (vii) Where *WorkCover* decides to investigate a complaint or referral that a self-insured may not have complied with its obligations under section 58B, it will provide the *self-insured employer* with advice that an investigation is pending and complete copies of all relevant information, correspondence and other documents (which the *self-insured employer* does not already have in its possession), that it is relying on for its decision to investigate the matter. This will occur no less than 10 business days before formal investigation procedures commence.
- (viii) To the extent that this process is appropriate the same process will be applied in respect of complaints or referrals of potential section 58C breaches.
- (ix) It is important that:
- complaints of *non-compliance* with section 58B obligations are investigated and resolved expeditiously and in a transparent manner, and.
 - *WorkCover* section 58B investigation staff and Self-insured Operations staff maintain close liaison before and during investigation procedures.
- (e) In accordance with the agreed protocol, unless the *self-insured employer* and *WorkCover* have entered into an agreement in relation to the *worker's* return to work, a failure to comply with section 58B and section 58C of the *Act* may result in a prosecution under the *Act*. Furthermore, *WorkCover* could revoke, or reduce the registration of *employer* as a *self-insured employer* or take such alternative action as it deems appropriate in the circumstances.
- (f) Where *WorkCover* proposes to recommend to the *Board* or its delegate that a *self-insured employer's* period of registration be reduced or that the self-insured employer's registration not be renewed under clause 11.2(e), *WorkCover* will afford the *self-insured employer* a reasonable opportunity to respond to *WorkCover's* determination that the *self-insured employer* has failed to comply with section 58B and/or section 58C of the *Act*. This will take place before the *Board* or its delegate makes a decision to reduce the period of, or not renew, the *self-insured employer's* registration.

11.3 Rehabilitation and return to work co-ordinators

- (a) A *self-insured employer* must appoint rehabilitation and return work co-ordinator and provide necessary facilities, assistance and require training to enable such co-ordinator to perform his or her functions.

11.4 Notification of lump sum payments

- (a) Without limitation, lump sum payments will ordinarily include:

- (i) redemptions of future:
 - (A) income maintenance, or
 - (B) costs pursuant to section 32 of the *Act*
 - (ii) non-economic loss compensation payments pursuant to section 43 of the *Act*
 - (iii) a commutation paid under section 44 of the *Act* in respect of weekly payments arising from the death of a *worker*.
 - (iv) a lump sum payment to a spouse or dependant of a deceased *worker* under section 45A of the *Act*.
- (b) Notification
- (i) Within 14 days of making a payment:
 - (A) on a lump sum to a *worker*
 - (B) any addition or alteration to a determination in paragraph (A),
a *self-insured employer* must complete and forward to *WorkCover* a notification of that lump sum determination or alteration.
 - (ii) The notification must be in such form as *WorkCover* may approve from time to time.
 - (iii) The notification must be accompanied by a copy of the determination.
 - (iv) The following information must also accompany the notification:
 - (A) for any redemption, a copy of the redemption agreement
 - (B) for any income maintenance redemption, the amount of weekly maintenance redeemed and the current rate of notional weekly earnings
 - (C) for a non-economic loss compensation payment, the percentage disability upon which the calculation is based.

11.5 Decision subject to review and appeal

- (a) Pursuant to section 63(4) of the *Act*, any decision made by a *self-insured employer* pursuant to the exercise of its delegated powers or discretions is subject to review and appeal.
- (b) Parts 6, 6A, 6B of the *Act* and the *Regulations* set out the requirements in relation to a dispute of a self-insured employer's decision.
- (c) Pursuant to Part 6D of the *Act* the *WorkCover* Ombudsman may:
 - (i) review a self-insured employer's decision to discontinue weekly payments and may suspend the decision to discontinue weekly payments pending a resolution of a Notice of Dispute in the Tribunal

- (ii) receive and investigate complaints about failures to comply with section 58B and section 58C of the Act by a *self-insured employer*
- (iii) receive, investigate and seek to resolve complaints with reference to the Act

11.6 Medical Panels SA

- (a) A *self-insured employer* may make a referral to Medical Panels under section 98F(2) of the Act.
- (b) The procedures of Medical Panels issued by the Minister, and/or any directions given by the Convenor as to the procedures of the Panels, and/or any procedures determined by Medical Panels are binding on a *self-insured employer*.
- (c) Opinions issued under section 98H by Medical Panel on medical questions relating to claims of *self-insured employers* are to be adopted and applied by a *self-insured employer* and must be accepted as final and conclusive.

11.7 Confidentiality

- (a) Pursuant to section 112 of the Act, except in the circumstances provided for in the Act, a *self-insured employer* must ensure that its officers and employees keep confidential any information they obtain in the carrying out of the functions of a *self-insured employer*.
- (b) A failure to comply with the requirements of section 112 may result in a fine of \$5000, *WorkCover* revoking or reducing the registration of the *employer* as a *self-insured employer* or taking such alternative action as it deems appropriate in the circumstances.
- (c) Pursuant to section 112(1a) of the Act *WorkCover* may enter into arrangements with corresponding workers compensation authorities about sharing information obtained in the course of carrying out functions related to the administration, operation, or enforcement of the Act or a corresponding law

11.8 Medical examinations of employees

If a *self-insured employer* seeks to have a *worker* examined by a medical expert for purposes other than the treatment of a *compensable disability*, examinations may not be more frequent than every two months.

11.9 Notification under section 91 of the Act

A *self-insured employer* must ensure that notification of the appointment of reconsideration officers is made to the Registrar of the Workers Compensation Tribunal in accordance with section 91 of the Act, and that such notifications are updated when changes occur.

Section 91 of the Act states in part:

'91(2) A person assigned to reconsider the disputed decision-

- (a) may (but need not be) an officer of the relevant compensating authority but must not be the person who made the disputed decision, and

- (a) *supply the health and safety representative with a copy of the form required under subregulation (2), and*
- (b) *at the request of the health and safety representative, provide reasonable assistance to the health and safety representative to ensure compliance with subregulation (1).'*

11.12 Cooperation on information exchange

Where:

- (a) *a worker or former worker of a self-insured employer has suffered a compensable disability*
- (b) *the worker or former worker of the self-insured employer became entitled to weekly payments from the self-insured employer in respect of that compensable disability, and*
- (c) *the worker or former worker of the self-insured employer suffers a subsequent compensable disability whilst employed by a different employer,*

the self-insured employer must cooperate with:

- (d) *WorkCover*
- (e) *WorkCover's claims agents, or*
- (f) *another self-insured employer,*

(as the case may be) by providing information to WorkCover regarding such information as is reasonably required by WorkCover or the other self-insured employer (as determined by WorkCover) for:

- (g) *the calculation of the worker's or former worker's entitlements arising from the subsequent compensable disability, or*
- (h) *the management of the worker's or former worker's claim for compensation or rehabilitation arising from the subsequent compensable disability.*

Annexure A**WorkCoverSA*****Performance standards
for self-insured employers***

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Part 1 Introduction

During 1996, the WorkCover Board developed a policy on self-insurance in South Australia. One of the outcomes of that policy was a set of standards that would allow employers to integrate occupational health safety and welfare (OHSW) and injury management into their business management systems.

The performance standards and evaluation process are means to an end. The clear focus is on outcomes, with the standards as the means of ensuring that the outcomes are achieved.

These standards are one component of the requirements that self-insurers must meet in South Australia. They must be read in conjunction with other administrative and legislative requirements, including the *Code of conduct for self-insured employers under the WorkCover Scheme* (the Code), the *Workers Rehabilitation and Compensation Act 1986* (WRCA) and the data requirements of the First schedule to the Regulations.

The primary objective for WorkCover is to provide an effective and efficient system that helps employers and employees work together to get the best results in health, safety, rehabilitation and claims management and to achieve continuous improvement in these disciplines.

The key elements of the standards are designed to address:

- the integration of OHSW, claims management and rehabilitation into mainstream management systems for self-insurers
- continuous improvement
- consultation and joint employer and employee involvement
- a system capable of ensuring that employers meet their duty of care under the OHSW legislation
- compliance with the *Occupational Health, Safety and Welfare Act 1986* (OHSWA) and WRCA and associated Regulations
- the development of systems that measure outcomes.

The performance standards are consistent with the Australian/New Zealand Standard 4804: 1997, *Occupational Health and Safety Management Systems – General Guidelines on Principles, Systems and Supporting Techniques* and includes modifications to incorporate rehabilitation and claims administration.

A business management systems structure clearly designates overall responsibility for OHSW, rehabilitation and claims administration to senior management of the organisation.

It should be noted that compliance with the performance standards is only one of a number of matters that WorkCover will consider as part of the evaluation process associated with initial applications and renewal of self-insured registration. Details of the full range of requirements are contained in the Code, which is available from WorkCover's website, www.workcover.com.

Part 2 Standards

2.1 Overview of the performance standards

The performance standards apply to all self-insured organisations. They will be used to provide an equitable benchmark for measuring performance and in considering applications for registration and renewal under section 60 of the Act.

The performance standards do not replace legislative requirements, or relieve organisations from the responsibility of complying with those requirements. If a conflict between these standards and the law occurs, the law will take precedence.

The performance standards describe the OHSW, rehabilitation and claims management system requirements for self-insured organisations in South Australia. As such, they are designed to provide organisations with the opportunity to demonstrate objective evidence of the presence of effective business management systems.

The performance standards rely on the business and its employees identifying the health and safety hazards in the particular workplace and documenting the corrective action required to prevent injury. The hazard management process of identifying, evaluating and controlling hazards is central to, and a key deliverable of the management system created by the standards. The standards also require effective and equitable systems for the administration of rehabilitation and claims management.

The performance standards promote a business management systems approach to OHSW, rehabilitation and claim management. As such, they will provide self-insured organisations with:

- flexibility in developing and implementing strategies to reduce risk, resulting in fewer claims and lower costs
- integration of OHSW, rehabilitation and claims management with the core functions of the organisation
- assurance that a high level of performance is being maintained
- continuous improvement in OHSW, rehabilitation and claims management.

2.2 Objectives of the standards

- To produce measurable continuous improvement outcomes in OHSW, rehabilitation and claims management through a business management systems approach
- To provide a framework that allows organisations to meet legislative responsibilities under the OHSWA and the WRCA and associated Regulations
- To assist WorkCover to achieve its aim of reducing claim numbers, claim rates and the cost, duration and severity of claims in South Australia, as detailed in WorkCover's strategic plan.

2.3 Consultation

The standards require two levels of consultation; internal consultation between management and employees and external consultation with WorkCover.

2.3.1 *Internal consultation*

Self-insurers are required to establish and maintain effective mechanisms for consultation with employees to ensure:

- employee representative involvement in the development of policy and the planning, implementation and evaluation of its OHSW, claims management and rehabilitation systems initiatives within the workplace
- employee contribution to and acceptance of those processes
- compliance with the consultation requirements of the OHSWA and Regulations, as a minimum.

The consultative mechanism will vary, in each self-insured organisation depending on the business management system. However, the consultative mechanism must be capable of facilitating dialogue, seeking information or the opinions of affected employees, and giving consideration to those opinions prior to management making key decisions.

2.3.2 *External consultation*

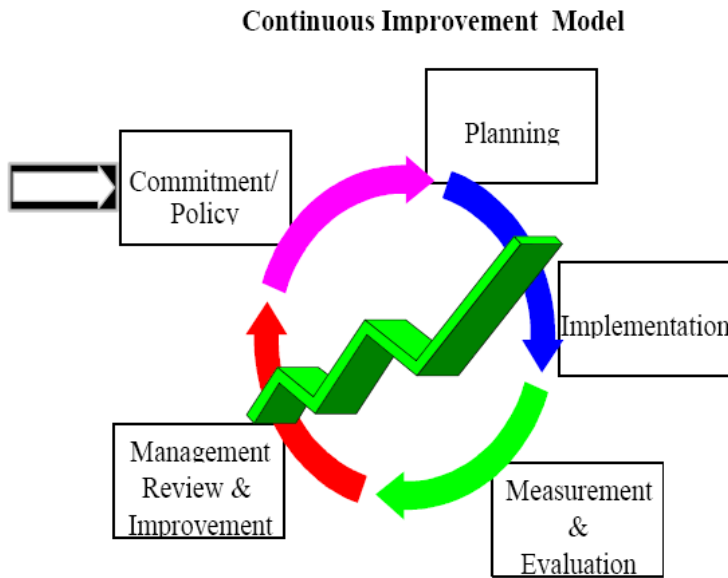
Self-insurers and WorkCover will consult for the purpose of:

- evaluating the employer's business management system
- following up employee reports to WorkCover that suggest non-conformance with relevant Acts, or the self-insurer's rehabilitation and claims management plan
- discussing and addressing unresolved non-conformance when identified by the self-insurer or WorkCover
- maintaining a relationship to review the implementation of the employer's agreed action plan

2.4 Continuous improvement model

The continuous improvement model works on five principles as illustrated below and explained in the following section.

Diagram 1 –Continuous improvement model



**Unless otherwise stated the element requirements apply to all disciplines ie, OHSW, rehabilitation and claims.

Standard 1 – Commitment and policy

An organisation should define its OHSW, rehabilitation and claims administration policy and commit adequate resources to ensure the success of its management systems.

The policy needs to be relevant to the organisation's overall vision and objectives. It needs to set the framework for continuous improvement. It should ensure accountability and link OHSW, rehabilitation and claims administration to the overall organisational values, objectives and processes. It should guide the setting of objectives. Supporting procedures should set into place the steps to be taken to achieve the organisation's policy goals.

SCOPE: *The organisation defines its OHSW, rehabilitation and claims management policy and supporting procedures in consultation with employees or their representatives.*

Element 1 Endorsed and distributed policy statement

The organisation's policy statement must:

- recognise the requirement for legislative compliance
- recognise the requirement for continuous improvement
- be integral and relevant to the organisation's:
 - 1) mission statement, vision, core values and beliefs
 - 2) overall management system structure and system
 - 3) activities, products, services and people.
- identify responsibilities and accountabilities for all relevant employees
- recognise commitment that appropriate internal and/or external expertise will be utilised, when required, in all related activities
- recognise other organisational policies and procedures when relevant
- recognise a commitment to communication of relevant information to all staff.

Element 1 Endorsed and distributed policy statement (continued)

- recognise the organisation's duty of care to all persons in the workplace including labour hire, contractors and subcontractors, volunteers and other visitors (OHSW)
- recognise a hazard management approach to (OHSW)
- incorporate commitment to consultation (OHSW)
- incorporate commitment to consultation (REHAB)
- recognise commitment to effective rehabilitation (REHAB)
- recognise commitment to equitable claims management. (CLAIMS)

Element 2 Supporting policies and/or procedures

The organisation must have supporting policies and/or procedures that show:

- evidence of policies and/or procedures to support the policy statement
- contingency arrangements are outlined for the organisation.

Standard 2 – Planning

The successful implementation and operation of OHSW, rehabilitation and claims management systems requires an effective planning process with defined and measurable outcomes. The plan starts with the policy statement and its objectives and addresses the schedules, resources and responsibilities necessary for achieving them.

Objectives, targets and performance indicators are identified as they will be used to measure the effectiveness of the OHSW, rehabilitation and claims management systems and to identify areas requiring corrective action and improvement.

In summary, the plans aim to fulfil the organisation's policy, objectives and targets.

Scope: *The organisation plans to fulfil its policy, objectives and targets in consultation with employees or their representatives.*

Element 1 System strategies

The organisation's system must ensure:

- legislative compliance is addressed as part of the system, where relevant
- employees or their representatives directly affected by the implementation of OHSW plans are consulted when the plans are being formulated (OHSW)
- programs have objectives, targets and *performance indicators* where relevant
- action plans are in place to correct identified areas of non-conformance with documented procedures
- program(s) are in place to identify, evaluate and control hazards in the organisation (OHSW)
- action plans are in place for dealing with corrective action identified as part of any incident investigation process (OHSW)
- program(s) are in place to identify the organisation's core rehabilitation and claims management activities and to provide direction regarding performance outcomes (REHAB) (CLAIMS).

Element 2 Setting of systems objectives

The organisation must ensure:

- the identification of appropriate objectives for the organisation
- the identification of appropriate strategies to measure, monitor, evaluate and review the system's objectives.

Element 3 Training

The organisation must ensure:

- appropriate training requirements have been identified
- training plan(s) have been developed.

Standard 3 – Implementation

This principle focuses on ensuring that the resources and supporting mechanisms needed to achieve the organisation's policy objectives and targets are provided.

It deals with adequate resources being made available, integration with current management practices and systems, responsibilities being defined and understood, methods for holding all managers and employees accountable, arrangements for employee involvement, training being implemented, and supporting mechanisms such as verbal and written communications.

Scope: *The organisation demonstrates the capabilities and support mechanisms that are necessary to achieve its policy objectives and targets, in consultation with employees or their representatives.*

Element 1 Resources

The organisation must ensure:

- adequate human, physical and financial resources are being allocated to support the program(s)
- specialist expertise is used as required.

Element 2 Training

The organisation must ensure a relevant training program is being implemented.

Element 3 Responsibility and accountability

The organisation must ensure:

- defined responsibilities are communicated to relevant employees
- accountability mechanisms are being used when relevant.

Element 4 Integration

The organisation must ensure system elements are aligned with, or integrated into, corporate business functions, where relevant.

Element 5 Employee involvement

The organisation must ensure arrangements for employee consultation and involvement are known and integrated into the programs developed (OHSW) (REHAB)

Element 6 Communication

The organisation must ensure communication arrangements for information dissemination and/or exchange are in place.

Element 7 Contingency planning

The organisation must ensure contingency plans are periodically tested and/or evaluated to ensure an adequate response, if required.

Element 8 Hazard identification, evaluation and control

The organisation must ensure:

- a hazard management process that includes identification, evaluation and control is in place (OHSW)
- employees or their representatives are consulted and participate in hazard management processes (OHSW)
- control measures are based on the hierarchy of control process (OHSW)
- program(s) are in place to ensure an appropriate OHSW consideration is given to changes in the workplace and work practices (OHSW)
- program(s) are in place to ensure an appropriate OHSW consideration is given at the time of purchase, hire or lease of plant, equipment and substances (OHSW)
- program(s) are in place to meet the organisation's duty of care for all persons in the workplace (OHSW)
- program(s) are in place to ensure work related injury/illness and incidents are investigated and action taken when relevant (OHSW)

Element 9 Workplace monitoring

The organisation must ensure:

- that the implementation of relevant inspection and testing procedures are conducted by the relevant, competent person(s) (OHSW)
- that corrective/preventive action is taken on non-conformance issues identified by inspection, and testing procedures (OHSW)

Element 10 Process delivery

The organisation must ensure all other activities arising out of policies and/or procedures are being implemented.

Element 11 Reporting/documentation

The organisation must ensure the relevant level of reporting, records and/or documentation is maintained to support the system programs and legislative compliance.

Element 12 Documentation control

The organisation must ensure program(s) of documentation control for identification and/or currency of essential documents are in place and maintained.

Standard 4 – Measurement and evaluation

OHSW, rehabilitation and claims management performance is measured, monitored and evaluated using performance indicators, to ensure that the organisation is performing in accordance with its policy, objectives and targets. Importantly, areas of success and activities requiring corrective action and improvement will be identified.

Scope: *The organisation measures, monitors and evaluates its performance in consultation with its employees or their representatives, and takes corrective action when necessary.*

Element 1 Objectives, targets and performance indicators

The organisation must ensure planned objectives, targets and performance indicators for key elements of program(s) are maintained and monitored.

Element 2 Internal audits

The organisation must ensure programmed internal audits are performed objectively by competent personnel to ensure performance of systems and programs and employees directly affected by the results, or their representatives, are consulted.

Element 3 Corrective action

The organisation must ensure outcomes of the audits are documented and the necessary corrective action(s) identified, prioritised and implemented.

Standard 5 – Management systems review and improvement

The organisation should regularly review and continually improve its systems. This leads to the development of continuous improvement strategies within the organisation.

Scope: *The organisation regularly reviews its OHSW, rehabilitation and claims management systems, in consultation with its employees or their representatives, with the objective of improving overall performance.*

Element 1 Policy

The organisation must ensure it reviews the scope and content of the policy statement and supporting policies/procedures in consultation with employees or their representatives to ensure continued suitability and effectiveness.

Element 2 Objectives, targets and performance indicators

The organisation must ensure:

- the level of achievement of documented objectives, targets and performance indicators is analysed and utilised to promote continuous improvement strategies
- results are analysed and used to determine areas of success and areas requiring corrective and preventive action.

Element 3 System review

The organisation must ensure:

- the system is reviewed and revised, if required, in line with current legislation, the workplace and work practices
- the system's measurement outcomes are used as a basis for future system development.

Glossary:

Action plan	Describes the activities of the organisation to achieve the organisation's objectives and includes key elements for attention and/or review, the person responsible for action and the timeframes intended for completion.
Appropriate	Suitable or fitting for a particular purpose, person, occasion or intent.
CEO	The chief executive officer or most senior executive/manager residing within South Australia with the responsibility for OHSW, rehabilitation and claims management.
Competent	A person who is suitably qualified (by experience and/or training) to carry out the work or function described.
Conformance	Activities undertaken and results achieved fulfil the specified requirements of the elements.
Contingency	Planning to maintain control of the management system applicable to a particular business during an unplanned event, such as fire, chemical spill, bomb threat, injury and the loss of key personnel.
Consultation	Consultation involves the sharing of information and the exchange of views between employers and the persons or bodies that must be consulted and the genuine opportunity for them to contribute effectively to any decision-making process to eliminate or control risks to health or safety. The extent and nature of the consultation will vary between workplaces and the different situations.
Continuous improvement	Process of enhancing the health, safety and rehabilitation and claims management systems, to achieve improvements in overall related performance, in line with the organisation's policies. The process need not take place in all areas simultaneously.
Evaluate	To test and find value, quality etc, to appraise, make judgements.
Inspection	An examination of a workplace to identify and record hazards for corrective action and to check how safety features (hazard controls) are operating, paying attention especially to components most likely to develop unsafe or unhealthy conditions because of stress, wear, impact, vibration, heat, corrosion, chemical reaction or misuse, etc.
Internal audit	A systematic, and wherever possible, independent examination, carried out by a competent person, appointed by the employer, in consultation with employees or their representatives, to determine whether an activity or activities and related results conform to planned arrangements; whether these arrangements are implemented effectively; and whether they are suitable to achieve the organisation's policy and objectives. The results of the internal audits must be documented and employees consulted over them. Preventive/corrective action plans must be subsequently developed.
Key element	An essential component of the management system applicable to a particular business.
Key system element	Major, indispensable element of the organisation's system.

Legislative compliance	Meeting the requirements of prevailing legislation.
Measurement	Any technique used to measure any system or element outcome against objectives, targets, timeframes etc. established or set by the organisation.
Non-conformance	Activities undertaken and the results achieved do not fulfil the specified requirements of the elements. This may be due to the absence or inadequate implementation of a system or documented systems or procedures not being followed.
Objective	An overall goal in terms of performance, arising from policies that an organisation sets itself to achieve, and which is quantified, where practicable.
Observation	Activities undertaken and results achieved fulfil the specified requirements of the elements, however an opportunity for improvement exists due to minor deficiencies identified.
Occupational health, safety and welfare (OHSW) management system	An orderly arrangement of interdependent activities and related procedures that drives an organisation's OHSW performance.
Organisation	A company, corporation, firm, enterprise, government agency, institution, or other legal identity, or part thereof, whether incorporated or not, public or private, that has its own functions and administration.
Performance indicator	A selected indicator of how effectively a process is operating against objectives. These indicators can be quantitative or qualitative and the choice is dependent on the type of element they are used to measure, as appropriate to the organisation.
Policy	Statement by the organisation of its intentions and principles in relation to its overall health, safety, rehabilitation and claims management performance. The policy provides a framework for action and for the setting of health, safety, rehabilitation and claims management objectives and targets.
Procedure	Written, detailed way to action/perform in conformance with policy objectives.
Program	A planned component of an organisation's business management system for health, safety, rehabilitation and claims management.
Rehabilitation	A managed process involving early intervention with appropriate, adequate and timely services based on assessed needs, which are aimed at maintaining injured or ill employees in, or returning them to, suitable employment.
Relevant	Connected with the matter in hand; pertinent (eg, legislative requirements and/or other identified needs of the organisation).
Responsible officer	Has the same meaning as section 61 of the <i>OHS&W Act 1986</i> .

Target	A detailed performance requirement, quantified wherever practicable, pertaining to the organisation that arises from the health, safety, rehabilitation and claims management objectives. It needs to be met in order to achieve those objectives.
Workplace monitoring	To check, observe or keep a record of something (by a person or a device), usually used for the evaluation of a hazard and for assessing the effectiveness of control measures.

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Part 3 Natural Consequences Model

Self-insurer	Period of registration	Activity-based component	Adjusted levy component (spread over 2 years) x multiplier	WorkCover monitoring/partnership management program
Gold status	3 years	Base levy	N/A	Partnership plan, which features: <ul style="list-style-type: none"> • annual meetings built around review of Responsible Officer report, and • formal evaluation of OHSW and injury management at 30 months
Level three (Conforming system with its application exceeding the level 2 requirements)	3 years	Base levy	N/A	Partnership plan, which features: <ul style="list-style-type: none"> • annual meetings built around review of Responsible Officer report, and • formal evaluation of OHSW and injury management from 30 months
Level two (Conforming system with continuous improvement)	2 years	Base levy	\$4000	Partnership plan, which features: <ul style="list-style-type: none"> • six monthly meetings to monitor continuous improvement activity, and • formal evaluation of OHSW and injury management from 18 months
Level 1C (Conforming system but 'immature')	2 years	Base levy	\$8000	Partnership plan developed, which features: <ul style="list-style-type: none"> • six monthly meetings to monitor activities to achieve ongoing conformance and continuous improvement, and • formal evaluation of OHSW and injury management from 18 months
Level 1B (Non-conforming and compliance focus)	2 years with a 12 month period to close-out non-conformances	Base levy	\$12,000 Additional levy: to be assessed on a case-by-case basis and applied for 12 months	Partnership plan developed, which features: <ul style="list-style-type: none"> • quarterly reviews, and • twelve month validation of non-conformance close-out • formal evaluation of OHSW and injury management from 18 months
Level 1A (new self-insured applicant - conforming system but 'immature')	2 years with a evaluation of injury management system at 12 months	Base levy	\$8000	Partnership plan developed, which features: <ul style="list-style-type: none"> • six monthly meetings to review progress, and • twelve month evaluation of the employer's injury management system • formal evaluation of OHS&W and injury management from 18 months

Meeting the benchmark is defined as:

Conformance with the performance standards in both OHSW and injury management, which is performing beyond that generally expected of a registered employer in occupational health, safety and welfare and injury management, while achieving defined and agreed outcomes and demonstrating continuous improvement. Refer to Appendices for further detail.

Level 1A – New self-insured applicant conforming with the standards but the employer's OHSW and/or injury management system is 'immature'.

Level 1A applies to a new self-insured applicant, who must conform to the standards before an initial grant of self-insurance is approved. A new self-insured applicant will undergo a review of its injury management system, 12 months after the initial grant of self-insurance.

Level 1B – Non-conforming and compliance focus.

An employer does not conform to the standards, is assigned a level 1B and attracts a two-year registration with a 12-month period to close-out non-conformances.

Level 1C – Conforming with the standards but the employers OHSW and/or injury management system is 'immature'.

Level 1C applies to an existing self-insurer that conforms to the performance standards but its system is 'immature'. Immature is defined as when the audit (Standard 4) and review (Standard 5) of an employer's system has not been demonstrated through a continuous period of at least 12 months, which is expected to be one full cycle of system review.

Level 2 – Conforming with the standards with continuous improvement.

The employer's OHSW and injury management system conforms to the standards, with continuous improvement evident, demonstrated by the system having undergone a full period (at least 12 months) of audit and review.

Level 3 – Conforming with the standards and meeting the indicators for level 3 (or 'superior performance').

The employer's OHSW and injury management system conforms to the standards, with continuous improvement evident, demonstrated by the system having undergone a full period (at least 12 months) of audit and review. In addition the employer meets the level 3 indicators.

'Gold' status – 'Going over and above' what is required of a level three employer.

The 'gold' status is an optional level for an employer. To achieve a 'gold' status, the employer must be an existing level 3 employer and undertake to either:

- employ injured workers from the registered scheme
- mentor a registered employer or another self-insured employer to improve its OHSW and injury management
- implement an initiative that improves OHSW and/or injury management across the whole of the government sector.

A self-insurer may apply for 'gold' status annually.

Allocation of periods of registration

Existing self-insured employers will be allocated by WorkCover to the various levels within the model in accordance with the assessed performance at the time of the renewal of the registration by the Chief Executive Officer.

At the time of its first grant of self-insured status, a new self-insured employer will enter the model at level 1A (two-year registration), and will then be expected to move progressively, up the levels following each assessment.

The movement up the levels will be progressive up to the maximum registration period of three years. Progression (upward movement) will normally be one step at a time, although an employer may progress (subject to the outcomes of re-evaluation) more rapidly through the model. A self-insured employer will be required to move up the various levels as part of the continuous improvement cycle or face the consequences of being dropped back to a lower level and paying increased levies (in accordance with the model).

It will be possible for a self-insured employer to move from the maximum period of three years registration to level 1B of the model (non-conforming with the standards or not improving), or somewhere in between, subject to the outcome of a single evaluation conducted by WorkCover.

An employer at level 1B will be allowed to stay at that level for a maximum of four years (two renewal periods). If the identified issues that resulted in the employer being assessed at that level have not been remediated to the satisfaction of WorkCover (prior to the expiration of the second two-year grant), then self-insured employer status will not be renewed.

Additionally there may be a requirement for the imposition of an interim six-month review dependent upon the circumstances.

An employer at level 2 will be allowed to remain at that level for a maximum of two evaluation periods (48 months). If the requirements for level 3 have not been demonstrated prior to time of the expiration of the second two-year grant, then the employer would fall back to level one.

All decisions of the Board or Chief Executive Officer to grant or renew self-insurance status for periods of less than three years can be appealed by the self-insurer and sent to Ministerial review under section 62A of the Act.

Activity-based costing component

The activity-based costing component of the model relates to the current funding model. It represents that component of the levy paid by the employer, based on a fair contribution to the operational costs of WorkCover (refer to section 68 of the Act), as adjusted by an employer-by-employer basis.

The base figure will be formally reviewed annually. This annual base figure will be converted to a percentage levy rate, to be set by the Board each year at the same time as it sets the normally registered Scheme rate.

Adjusted levy component

The adjusted levy component will be applied as differentiation between classes of self-insured employers which allows for an extension to the activity-based costing model, on the basis that there must be additional evaluation work (and resourcing) needed where a self-insured employer

has been assessed as not meeting or maintaining the requirements for a three-year grant of registration (refer to the model). The adjusted levy component within the model is based on an estimated additional resourcing requirement for the increased evaluation activity and associated additional administrative costs.

A multiplier will be applied to the quantum of the adjusted levy component set out in the table above determined in accordance with the following table and based on the aggregate remuneration (as defined in section 65 of the Act) paid to the employer's workers:

Adjusted levy component multiplier	
Remuneration	Multiplier
Up to \$25m pa	1
\$25m – \$50m pa	2
Over \$50m pa	3

Additional levy component

The additional levy component will apply in addition to the activity and adjusted levy component and will be imposed as a differentiation between classes of self-insured employers whose registration as a self-insured employer is subject to assessed non-compliance with the standards and/or the Code (as amended from time to time).

The quantum of the additional levy component will be assessed on a case-by-case basis and will consider such factors as:

- the degree and extent of assessed individual non-conformance
- the necessary resources that would need to be applied to remedy the identified non-conformance
- the cost of implementing an agreed control strategy to remedy the issues identified.

This may (for example) involve funding an external third party to assist in the resolution of the issues over a period of time.

Timing for implementation

The natural consequences model applied from 1 July 2006, with the revised model effective for all renewals from September 2008. All self-insured employer renewals assessed after 1 July 2006 will be subject to being allocated to a class of self-insured employers to which the additional levy components contained in the model and the revised terms and conditions of registration apply. The self-insured employer will also be assessed against the additional performance requirements and indicators associated with the period of registration.

Crown self-insured employers will be assigned a notional registration date in accordance with the *natural consequences model*, for the purposes of future evaluations.

Where an evaluation has not occurred for some time, an evaluation date will be allocated in consideration of a number of factors.

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Level 3 performance indicators

Employers that demonstrate 'superior' performance and operate a resilient OHSW and injury management system, feature the following attributes:

- senior leadership participation in the planning, review and monitoring of the system
- key system programs that evolve and develop over a two and three-year cycle
- activities that integrate the OHSW and injury management system into the organisation's overall business management system.

To achieve level 3, the employer will have programs in place to deliver these attributes. The programs will be individual to each employer, but contain objectives, targets and indicators that are subject to improvement and management review within their system.

The indicators to achieve level 3 are:

1. Executive level engagement

- 1.1 A documented program is in place for the active, ongoing involvement of all identified executive and senior management (including the responsible officer) in driving the OHSW and injury management system.
- 1.2 The program has objectives, targets and performance indicators in line with standard 2.1.3, consistent with the policy objectives of OHSW and injury management.
- 1.3 The programs objectives, targets and performance indicators are maintained and monitored, in line with standard 4.1.
- 1.4 The programs objectives, targets and performance indicators are reviewed, analysed and any deficiencies corrected, in line with standard 5.2.

2. Positive OHSW and injury management culture and climate

- 2.1 A documented program is in place that defines OHSW and injury management behaviours. The behaviours are understood by all measured, reviewed, analysed and actioned.
- 2.2 The program has objectives, targets and performance indicators in line with standard 2.1.3, consistent with the policy objectives of OHSW and injury management.
- 2.3 The programs objectives, targets and performance indicators are maintained and monitored, in line with standard 4.1.
- 2.4 The programs objectives, targets and performance indicators are reviewed, analysed and any deficiencies corrected, in line with standard 5.2.

3. Demonstrable improvement in programs

- 3.1 Internal and external audits, including those undertaken by WorkCover, confirm both the conformance of practices with program element requirements and the effectiveness of outcomes.

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It should be noted that, where there is assessed non-compliance with the performance standards and indicators are likely to affect the recommended term of registration of the self-insurer (and the decision by WorkCover is in dispute), the matters associated with non-compliance will be reviewed in accordance with the *Evaluation practice manual* and the dispute process outlined in that document. If the matter under dispute is not resolved to the satisfaction of the employer, then the employer has the right to submit an appeal to the Minister under section 62A of the Act. The facts presented by the employer in mitigation (should the matters in relation to the dispute not be resolved), will also be presented to the Chief Executive Officer or Board for consideration as part of the application for, or renewal of, self-insurance.

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Annexure B

Actuarial guidelines

1. Actuarial reports provided for the purposes of fixing the level of financial guarantees should state whether the valuation is done on the basis of the claims continuing to be managed by the self-insured employer or by WorkCover.
2. For the purpose of the calculation of the net present value of a future stream of payments used to calculate a provision for future liabilities a real discount rate of no greater than 4% should be used.
3. Any estimate of outstanding liability for an employer should include adequate provision for claims incurred but not reported (IBNR) based on the history of claims reporting patterns of that employer over a period of at least three years (or such other time as WorkCover approves) and should make reasonable allowance for claims that occur gradually eg, hearing loss, as well as a factor to escalate the provisions based on movement in past estimates.
4. Realistic and adequate provision should be made for liabilities that may arise pursuant to section 43 of the Act (lump sums).
5. The estimate of outstanding liability should include a provision for future administration expense in handling claims and that expense factor should not be less than eight per cent of claims value of payments.
6. Any estimate of outstanding liability prepared for a self-insured employer should be validated by a physical review of a sample of the employer's claims to verify the basis of the valuation.
7. In choosing the sample required under para 6, an actuary should include a review of claims in each of the following categories. The cost referred to should be considered to be the full incurred cost including both the cost paid to the date at which the report is compiled and the estimate of future outstanding liability on the claim.
 - 7.1. All open claims where the estimate exceeds \$100,000
 - 7.2. 20% of claim files where the estimate is between \$5000 and \$100,000
 - 7.3. 5% of claim files where the estimate is less than \$5000 and five days time has been or is expected to be lost, and
 - 7.4. Such proportion as the actuary deems proper of claims closed during the period since the last review, with a view to identifying the probability and cost of re-opening claims and to providing a comment on whether the proportion of claims examined in this category is adequate to provide a proper view.

In relation to categories 7.2 and 7.3, if there are less than 10 claims in the category, then all such claims should be reviewed; if there are more than 10 claims in the category, 10 or the number of claims derived in accordance with the stated requirement should be reviewed, whichever is the greater, up to 25 per category. If the actuary believes that a true reflection cannot be achieved with the maximum number stated above, then the actuary should review such higher number of claims as the actuary deems appropriate.
8. The report should state the number of claims reviewed in each of the categories.

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9. The report should list the estimated outstanding liability in aggregate for each claim year as assessed by the actuary and as assessed by the self-insured employer.
10. After reviewing the sample the actuary should state, after taking into account the sample reviewed, what is the most appropriate method of valuation of the particular portfolio of outstanding liabilities and the reasons.
11. The report must include a statement of the total workers compensation payments made during the year under review regardless of the claim year the payments apply to.
12. The report must include a 'claims paid' development table including all claim years for which a payment was made during the period under review. For example:

Claim year	Payment year 1	Payment year 2	Payment year 3	Payment year 4	Payment year 5	Payment year 6	Total payments
1995	X	XX	XXX	XXXX	XXXXX	XXXXXX	Total
1996	X	XX	XXX	XXXX	XXXXX		0
1997	X	XX	XXX	XXXX			Total
1998	X	XX	XXX				Total
1999	X	XX					Total
2000	X						Total

13. The report must include a list of total estimated incurred costs for each claim year in respect of which a payment has been made during the period under review.
14. Potential recoveries under any excess of loss or other insurance maintained by the employer shall not be taken into account in determining the employer's workers compensation liabilities.
15. Any allowance for discounting or inflation must be stated in such a way as both the rate and the total dollar amount of the discount or inflation allowance is readily identifiable.
16. The actuarial report should be compliant with the Professional Standard PS300 of the Institute of Actuaries of Australia. This compliance must be explicitly stated in the report.
17. The employer bears the responsibility for all costs associated with the actuarial analysis unless otherwise specified by WorkCover. Accounts for actuarial services should be rendered directly to the employer.

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Annexure C

Schedule 1 to the Regulations

Schedule 1—Self-insured employers terms and conditions of registration

- 1 The employer must ensure that forms for making a claim under the Act, in a form approved by the Corporation, are reasonably available to the employer's workers.
- 2 The employer must ensure that all claims under the Act are promptly and efficiently investigated and determined.
- 3 The employer must ensure that any benefit to which a worker is entitled under the Act is—
 - (a) provided promptly; and
 - (b) periodically reviewed in accordance with the Act.
- 4 The employer must ensure, so far as is reasonably practicable, that up to date programs that are designed to prevent or reduce the incidence of compensable disabilities are established and maintained at places where the employer's workers work.
- 5 (1) The employer must, in respect of each reporting period, provide the following information to the Corporation:
 - (a) Employer details:
 - (i) the Employer Registration Number;
 - (ii) the relevant Location Number;
 - (iii) the relevant Location Address;
 - (b) Particulars relating to each new claim received by the employer during the reporting period:
 - (i) the claim number assigned by the employer;
 - (ii) the full name of the worker;
 - (iii) the sex of the worker;
 - (iv) the date of birth of the worker;
 - (v) the language usually spoken at home by the worker;
 - (vi) the worker's country of birth;
 - (vii) the postcode of the worker's residence;
 - (viii) the worker's notional weekly earnings (if applicable);
 - (ix) the postcode of the location where the injury occurred;
 - (x) if the injury occurred at a particular workplace—the predominant class of industry at that workplace;
 - (xi) whether the worker is employed on a full time or part time basis by the employer;
 - (xii) whether the worker is employed on a permanent or casual basis by the employer;

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- (xiii) the occupation of the worker at the time of the disability (including, if the worker is an apprentice, making specific reference to that fact);
 - (xiv) the main tasks usually performed by the worker in the stated occupation;
 - (xv) the normal hours, and days per week, worked by the worker;
 - (xvi) the date on which the worker commenced employment with the employer;
 - (xvii) the activity being undertaken by the worker at the time of the occurrence of the disability;
 - (xviii) the date of the occurrence of the disability;
 - (xix) the time of day at which the disability occurred (so far as is known to the employer);
 - (xx) the date on which the employer was first notified of the disability;
 - (xxi) the apparent cause of the disability;
 - (xxii) a description of the disability;
 - (xxiii) a statement as to the parts of the worker's body affected by the disability;
 - (xxiv) the date on which the worker ceased work (if incapacitated for work);
 - (xxv) if relevant, the date of death of the worker;
 - (xxvi) the date on which the occurrence of the disability, or the incident that caused the disability, was reported to the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Occupational Health, Safety and Welfare Act 1986* (if applicable);
- (c) Particulars relating to each claim that is open during any part of the reporting period:
- (i) the WorkCover reference number;
 - (ii) sufficient details to allow the worker and the claim to be identified;
 - (iii) the status of the claim (eg accepted, rejected, undetermined, finalised, reopened);
 - (iv) the total time lost from work by the worker during the relevant period (if any);
 - (v) the worker's last known work status;
 - (vi) the date on which the worker resumed work (if known);
 - (vii) the date on which the claim was determined and the date and effect of any redetermination of the claim;
- (d) Particulars relating to each claim on which action has occurred during the period, including details of any changes and, if relevant, the latest totals of payments in the following categories:
- (i) income maintenance;
 - (ii) medical services (eg medical practitioner or dentist);
 - (iii) medical—allied health;
 - (iv) medical—other goods and services;
 - (v) hospital outpatient;
 - (vi) hospital inpatient;
 - (vii) rehabilitation;

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- (viii) lump sum payments (section 43 or 45A of the Act);
 - (ix) redemption of income maintenance payments (section 42 of the Act);
 - (x) redemption of medical expenses (section 42 of the Act);
 - (xi) common law;
 - (xii) legal;
 - (xiii) investigation;
 - (xiv) travel;
 - (xv) other goods and services;
 - (xvi) other non-compensation;
 - (xvii) property damage;
 - (xviii) third party recovery;
- (e) Other information reasonably required by the Corporation (including information required to meet national data collection requirements).
- (2) For the purposes of subclause (1)—
- (a) the information must be provided in a manner and form (including by electronic means), and at a time, determined by the Corporation; and
 - (b) the Corporation may, from time to time—
 - (i) by notice in writing, waive or postpone the obligation to comply with the requirements of that subclause, either for an individual self-insured employer or for self-insured employers of a specified class, subject to conditions (if any) determined by the Corporation; and
 - (ii) on giving reasonable notice (by further notice in writing), vary or revoke the operation of a notice under subparagraph (i), or vary, revoke or substitute a condition that applies under that subparagraph.
- (3) In this clause—
- reporting period** means a period of 14 days or such longer period approved by the Corporation with respect to the relevant employer from time to time.
- 6 (1) The employer must deliver to the Corporation within 5 months after the end of each financial year of the employer—
- (a) an audited copy of the employer's financial statements for that financial year; and
 - (b) an actuarial report on the outstanding liabilities of the employer under the Act, as at the end of that financial year.
- (2) For the purposes of this clause, the financial years of an employer are successive periods, not exceeding 12 months, determined by the employer to be the employer's financial years or, in the absence of such a determination, each period of 12 months ending on the 30th day of June.
- 7 (1) The employer must at all reasonable times allow an authorised officer to examine—
- (a) the accounting and other records of the employer; and
 - (b) any system or facility used by the employer in connection with acting as a self-insured employer under the Act.
- (2) The employer must provide such assistance as may be reasonably required to facilitate an examination referred to in subclause (1).

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- (3) The employer must, at the request of a person carrying out an examination referred to in subclause (1), provide any explanations, information or assistance that the person may reasonably require for the purposes of the examination.
- (4) The employer must comply with any written notice served on the employer by an authorised officer requiring the employer to exercise or perform a power or function of the employer under the Act in accordance with the Act.
- 8 (1) The employer must ensure that there is in force at all times a guarantee given by a financial institution to or in favour of the Corporation which—
 - (a) guarantees the payment of an amount to the Corporation in the event that the employer becomes insolvent or ceases to be a self-insured employer; and
 - (b) complies with subclause (3).
- (2) The amount guaranteed by a guarantee entered into for the purposes of subclause (1)—
 - (a) must be an amount, at least equal to the prescribed sum, determined by the Corporation to be reasonable for the purposes of this provision after taking into account the principle that a scaling factor of 2 should be applied to—
 - (i) an actuarial estimate of the value of the current and contingent liabilities of the employer under the Act at the time of the determination (whether or not claims have been made with respect to those disabilities); plus
 - (ii) an actuarial estimate of the value of the liabilities of the employer as a self-insured employer under the Act in respect of compensable disabilities attributable to traumas expected to arise from employment by the employer over the ensuing period of 12 months; less
 - (iii) an actuarial estimate of the amounts expected to be paid out by the employer under the Act over the ensuing period of 12 months; and
 - (b) must be reviewed annually.
- (3) A guarantee complies with this subclause if—
 - (a) the guarantee is given by a financial institution which has a credit rating at least equal to a standard set by the Corporation for the purposes of this provision and which is specifically approved by the Corporation as a financial institution which can give guarantees under this clause; and
 - (b) the guarantee is in a form, and for a term, approved by the Corporation.
- (4) A financial institution cannot give a guarantee under subclause (1) if the financial institution and the employer are related bodies corporate.
- (5) The Corporation and an employer may agree to enter into and maintain an arrangement that will apply in substitution for a guarantee under this clause if the Corporation is satisfied that the arrangement provides adequate and appropriate security to the Corporation in case the employer becomes insolvent or ceases to be a self-insured employer and, in the event of such an agreement, the employer is not (while the agreement remains in force) required to comply with a preceding subclause.
- (6) In this clause—

financial institution means—

 - (a) an ADI; or
 - (b) a person whose sole or principal business is the provision of financial services;

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prescribed sum means—

- (a) in respect of an amount that is to apply to a period that corresponds to, or ends during, 2010—\$730 000;
- (b) in respect of an amount that is to apply to a period that corresponds to, or ends during, a subsequent year—a sum (calculated to the nearest multiple of \$10 000) that bears to \$730 000 the same proportion as the Consumer Price Index for the September quarter of the immediately preceding financial year bears to the Consumer Price Index for the September quarter, 2009;

related bodies corporate has the same meaning as in section 60(9) of the Act.

- 9 The employer must ensure that there is in force at all times a contract of insurance, in a form approved by the Corporation, for an amount approved by the Corporation, in excess of an amount approved by the Corporation, against any liability of the employer that may arise under the Act as a result of the occurrence of 1 event or series of events during the period of the contract.
- 10 In relation to an employer that is a company incorporated, or taken to be incorporated, under the *Corporations Act 2001* of the Commonwealth—
 - (a) the employer must immediately give the Corporation written notice of the commencement of any procedure to liquidate or wind up the employer; and
 - (b) the employer must, within 5 business days, give the Corporation written notice of—
 - (i) the commencement of steps to merge or take over the employer or the undertaking of the employer; or
 - (ii) a change in the board of directors of the employer that substantially changes the management of the employer; or
 - (iii) a relocation of the undertaking of the employer; or
 - (iv) the purchase or sale of any asset that materially changes the financial position of the employer, the composition of its workforce or the nature of the work undertaken by its workers; or
 - (v) any other action that significantly affects the employer's ability to meet its liabilities under the Act.
- 11 The employer must ensure that—
 - (a) all documentation that relates to a claim against the employer under the Act is retained for at least 20 years after the day on which the final payment is made in respect of the claim; and
 - (b) any documentation that relates to a claim against the employer under the Act in respect of a disability that occurred before the employer became a self-insured employer or 1 of a group of self-insured employers is provided to the Corporation after the material has been retained by the employer for 20 years as required by paragraph (a).
- 12 (1) The employer must, in carrying out its functions under the Act, take into account the racial, ethnic and linguistic diversity of the employer's workforce, the interests of both sexes, and the interests of those who may be physically, mentally or intellectually impaired, and must ensure that those of the employer's workers who are entitled to benefits under the Act are not disadvantaged because of their origins or background, their sex, or some physical, mental or intellectual impairment.
- (2) The employer should, as far as reasonably practicable, ensure that information provided for use in the workplace is in a language and form appropriate for those expected to make use of it.

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13 This Schedule applies to self-insured employers who are registered under section 60 of the Act.

Annexure D

Workers Rehabilitation and Compensation Regulations 2010

under the *Workers Rehabilitation and Compensation Act 1986*

11—Registration (section 62 of Act)

- (1) For the purposes of section 62 of the Act, an application for registration as a self-insured employer or group of self-insured employers must contain, or be accompanied by, the following:
 - (a) a statement, prepared by an actuary, of the liabilities that an employer would be undertaking over the first 12 months if the applicant were registered as a self-insured employer;
 - (b) details of the financial guarantee or other security arrangements, and the contract of insurance, that the applicant would obtain for the purposes of Schedule 1 if the applicant were registered as a self-insured employer;
 - (c) a detailed plan of the arrangements that the applicant would implement to administer claims under the Act, which must—
 - (i) include details of—
 - (A) the job specifications of the officers who would be responsible for administering the claims; and
 - (B) the lines of accountability and control that would apply to those officers; and
 - (C) the policies that would be adopted for the rehabilitation of disabled workers; and
 - (D) the arrangements that would be implemented for the making of claims under the Act; and
 - (ii) be accompanied by a copy of any form that the applicant would require a claimant to complete;
 - (d) in respect of safety policies—
 - (i) a copy of any safety policy that has been adopted by the applicant; and
 - (ii) details of any programs that the applicant has implemented, or proposes to implement, to train workers in safe working procedures; and
 - (iii) details of the facilities and arrangements that the applicant has for providing first aid to workers; and
 - (iv) details of any safety committees that have been established by the applicant, and a copy of any minutes kept from meetings held by those committees over the period of 6 months immediately preceding the application;
 - (e) the name of any registered association of which any worker employed by the applicant is a member.

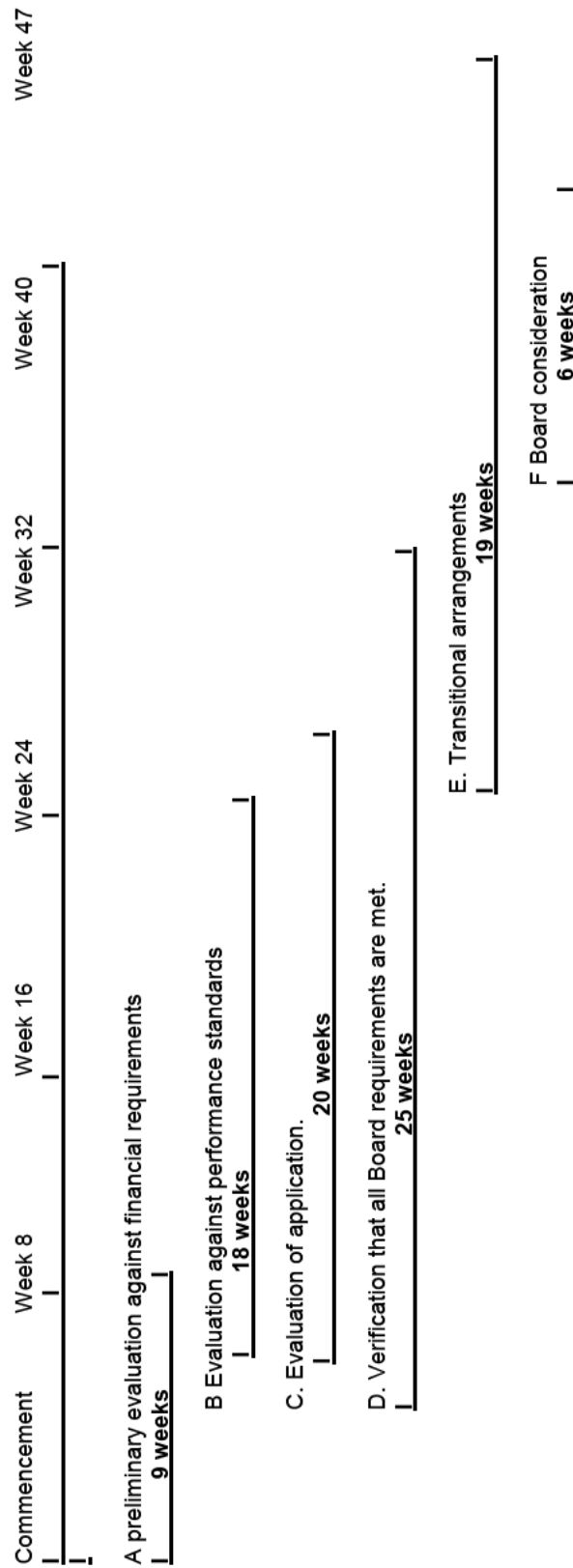
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- (2) Pursuant to section 62(2) of the Act, a fee of \$10 000 (plus GST) in addition to \$15 (plus GST) for each worker employed by the employer, or group of employers, at the time of the application is fixed as the fee that must accompany an application for registration as a self-insured employer, or group of self-insured employers.
- (3) However—
 - (a) if the applicant is an employer who is taking over, or who has within the preceding period of 12 months before the date of application taken over, an activity undertaken by the Crown or an agency or instrumentality of the Crown and who, at the same time, is taking over, or has taken over, the employment of various workers engaged in that activity then—
 - (i) if that activity is the sole activity undertaken by the employer within the State—no fee is payable under subregulation (2); and
 - (ii) in any other case—there will be a proportionate reduction in the fee that is otherwise payable under subregulation (2) according to the proportion that the activity that is being taken over, or that has been taken over, bears to all activities undertaken by the employer within the State; and
 - (b) if the applicant is an employer who has, within the preceding period of 2 months before the date of application, ceased to be a self-insured employer by virtue of a proclamation under section 61(2) of the Act then no fee is payable under subregulation (2); and
 - (c) the maximum fee payable under subregulation (2) is \$40 000 (plus GST).

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Annexure E

Application timeline for typical application for self-insured employer registration



Commencement of self-insured employer registration can be expected to occur at about week 45.

This timeline is for a typical application that an employer can expect WorkCover to meet. Failure of an applicant to meet all preliminaries to allow any of the steps to occur on time will extend the commencement date. An undue delay caused by an applicant may cause WorkCover to consider an application as lapsed.

Annexure F**Extension of delegation to former self-insured employer
pursuant to section 63(7) of the Act**

Whereas:

- (Employer name) has been registered as a self-insured employer under section 60 of the *Workers Rehabilitation and Compensation Act 1986* (the Act)
- (Employer name) has advised WorkCover Corporation of South Australia (WorkCover) of its desire to withdraw from operations requiring it to employ workers within South Australia, and
- WorkCover has determined pursuant to section 63(7) of the Act that the delegation of the powers contained in section 63 of the Act should continue to enable (employer name) to remain responsible for management and liability for claims incurred while (employer name) was registered as a self-insured employer

WorkCover hereby determines that the powers delegated to self-insured employers shall continue to be vested in (employer name) for a period expiring on (date) upon the following terms and conditions:

1. (Employer name) shall maintain to the satisfaction of WorkCover resources adequate to ensure proper management of all claims incurred before the self-insured employer registration of (employer name) ceased.
2. (Employer name) shall continue to report all data relating to the claims it manages as though it was a continuing self-insured employer.
3. (Employer name) shall maintain a financial guarantee in favour of WorkCover in a form and in a sum approved by WorkCover. In order to maintain this guarantee at an appropriate level, (employer name) shall provide to WorkCover actuarial evaluations of the outstanding claims portfolio at such intervals as WorkCover shall require, provided that WorkCover shall not require such evaluations more often than once per year.
4. (Employer name) shall provide evidence from its parent company of an undertaking by that parent to retain (employer name) in existence for the duration of this arrangement.
5. From the date of this document (employer name) shall cease to be registered as a self-insured employer, and will register and maintain that registration as a non-self-insured employer. However, whilst exercising the powers under this delegation, (employer name) will be subject to the same performance standards and requirements that apply to a self-insured employer in respect of the management and determination of claims.
6. (Employer name) shall have the right to terminate these arrangements upon giving WorkCover reasonable notice.
7. Should WorkCover cease to be satisfied with (employer name)'s compliance with any of these conditions, or otherwise consider that continuation of these arrangements is inconsistent with the objectives of the WorkCover Scheme, WorkCover may terminate these arrangements forthwith.

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Dated 19 May 2011.

P. BENTLEY, Chairperson, WorkCover Corporation of South Australia