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ADELAIDE, THURSDAY, 7 AUGUST 2014

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**WORKERS REHABILITATION AND COMPENSATION ACT 1986****Code of Conduct for Self-Insured Employers***Preamble*

Subsection 60 (4) (*bb*) of the Workers Rehabilitation and Compensation Act 1986 (the Act) states that registration as a self-insured employer under that section:

‘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*’

## NOTICE

PURSUANT to subsection 60 (4) (*bb*) of the Act and all other enabling powers I, Greg McCarthy, CEO of the WorkCover Corporation of South Australia, give notice that the attached document is the Code of Conduct for Self-Insured Employers determined by the Corporation and published in the *South Australian Government Gazette*.

The Code of Conduct for Self-Insured Employers will have effect from the date it is published and supersedes the Code of Conduct for Self-Insured Employers previously published in the *Government Gazette* on 12 June 2014.

Confirmed as a true and accurate record of the decision of the Corporation.

Dated 23 July 2014.

GREG MCCARTHY, Chief Executive Officer

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# Code of conduct for self-insured employers

## **Version 10.1**

Author:	Employer Services Directorate
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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 WorkCoverSA 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 injury	an injury 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 WorkCoverSA in its absolute discretion determines
net worth	total tangible assets minus total liabilities
Self-insured Employer Report	report issued by the self-insured employer as detailed in this Code
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
Self-insured fee	the fee referred to in clause 6.4
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

Term	Meaning
ratings agency	Standard & Poor's or Moody's and any other such agency as WorkCoverSA 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	<p>The relevant legislation includes:</p> <ul style="list-style-type: none"> <li>▪ the Act</li> <li>▪ Regulations</li> <li>▪ the WHS Act</li> <li>▪ the WHS Regulations</li> <li>▪ the WCA</li> <li>▪ 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</li> </ul>
Schedule 1	Schedule 1 to the Regulations
Scheme	the South Australian Workers Compensation Scheme
self-insured employer	an employer that is registered by WorkCoverSA 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 WorkCoverSA from time to time
transitional claims	<ul style="list-style-type: none"> <li>▪ any form of assertion by a past or present worker to an entitlement to receive money from WorkCoverSA pursuant to the Act that</li> <li>▪ is payable after the date of registration of a self-insured employer or group of self-insured employers;</li> <li>▪ arises from a compensable injury which occurred prior to the date of registration of a self-insured employer or group of self-insured employers</li> <li>▪ arises in the course of employment by that self-insured employer or that group of self-insured employers;</li> </ul> <p>and includes</p> <ul style="list-style-type: none"> <li>▪ such an assertion (whenever received) even if it is not successful</li> <li>▪ anything which is consequential upon such an assertion being successful or unsuccessful</li> <li>▪ the entire amount that the nominated worker is or may become entitled to receive from WorkCoverSA pursuant to the relevant provisions of the Act whether or not a separate or further assertion of an entitlement to receive</li> </ul>

Term	Meaning
	<p>the same is made by the person</p> <ul style="list-style-type: none"> <li>▪ all claims for compensation which were included in the Actuarial calculation that determined the CMP</li> <li>▪ such other claims as may be included in an SIETCMA entered into by WorkCoverSA or a self-insured employer</li> </ul>
WCA	the <i>WorkCoverSA Corporation Act 1994</i>
WorkCoverSA	the WorkCoverSA 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,</p> <p>and includes a former worker and the legal representative of a deceased worker.</p>
WHS Act	the <i>Work Health and Safety Act 2012 (SA)</i>
WHS employer registration fee	the fee payable under the <i>South Australia Work Health and Safety Act 2012</i>
WHS Regulations	the <i>Work Health and Safety Regulations 2012</i>
WorkCover Premium Provisions	WorkCoverSA Premium Provisions and Orders as published in the South Australian Government Gazette from time to time



## PREAMBLE

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

### The purpose of this Code

The purpose of *the Code* is to:

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

### WorkCoverSA Policy on self-insured employer status

Through the Code of Conduct, the *WorkCoverSA Board* has formulated a formal policy statement on the continued existence of self-insured employer status. It provides the recognition, that:

- (1) The *Act* contains provision for self-insured employer status as an integral part of the *Scheme*.
- (2) The financial security of the *Scheme* is viewed as a relevant matter in the administration and continuation of self-insured employer registrations.
- (3) That self-insured employer status should only be available to fit and proper *employers* capable of achieving and maintaining the required level of performance with the *standards* and compliance with the requirements of the *Act*.
- (4) *Self-insured employer* status should only be made available to fit and proper *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*.

- (5) 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*.
- (6) All *self-insured employers* are required to maintain compliance with the *standards* 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.
- (7) the *Board* requires *employers* who are *related bodies corporate* to be registered as a *group of self-insured employers*.
- (8) If as a result of an evaluation of a *self-insured employer*, *WorkCoverSA* forms a view that the *self-insured employer* has not met the standard required for a full period of renewal to be recommended, *WorkCoverSA* will inform the *self-insured employer* of the reasons for this and provide the *self-insured employer* with an opportunity to respond to the relevant issues before making a final decision on a renewal.

#### **WorkCoverSA's role**

*WorkCoverSA* performs a number of statutory functions in respect of an *employer* that is registered as a *self-insured employer*. This include supervision of *self-insured employers* to ensure compliance with the *standards* and the *Act*, and in doing so ensuring employees are treated in a manner that complies with the objectives and requirements of the *Act*.

#### **Statement of Regulatory Intent**

*WorkCoverSA* has developed a Statement of Regulatory Intent describing its philosophy and commitment to effective regulation. The terms of the statement are replicated below.

*"Through effective regulation, we will protect the interests of workers and employers by monitoring and enforcing compliance with the Act and Regulation. We will regulate in a way that is consistent with the objects of the Act.*

*While regulation is essential and assists us to achieve scheme objectives, it also imposes a financial and administrative cost on the community. We need to be mindful of that imposition in how we engage with the community and seek to reduce unnecessary red tape for employers, workers, and service providers".*

We will:

- Exercise our powers responsibly and in a way that achieves a balance between the interests of *employers* and *workers*.
- Seek to educate, promote and encourage legislative compliance but not shy away from enforcement where material, clear, or systemic non-compliance occurs.
- Provide all parties with procedural fairness and seek to negotiate a positive outcome wherever possible.



- Ensure enforcement activity is considered and proportionate.
- Take a risk-based approach to maximise efficiency and the outcomes that can be achieved.
- We aim to establish credibility with our stakeholders and service providers by understanding their interests, performance and risks, and working with them to achieve better results.

*The objects of this Act are—*

*(1)(a) to establish a workers rehabilitation and compensation scheme—*

*(i) that achieves a reasonable balance between the interests of employers and the interests of workers; and*

*(ii) that provides for the effective rehabilitation of injured workers and their early return to work; and*

*(iii) that provides fair compensation for employment-related injuries; and*

*(iv) that reduces the overall social and economic cost to the community of employment-related injuries; and*

*(v) that ensures that employers' costs are contained within reasonable limits so that the impact of employment-related injuries on South Australian businesses is minimised; and*

*(b) to provide for the efficient and effective administration of the scheme; and*

*(c) to establish incentives to encourage efficiency and discourage abuses; and*

*(d) to ensure that the scheme is fully funded on a fair basis; and*

*(e) to reduce the incidence of employment-related accidents and injuries; and*

*(f) to reduce litigation and adversarial contests to the greatest possible extent.*

*(2) A person exercising judicial, quasi-judicial or administrative powers must interpret this Act in the light of its objects without bias towards the interests of employers on the one hand, or workers on the other.*

*(3) The Corporation, and the employer from whose employment a compensable injury arises, must seek to achieve an injured worker's return to work (taking into account the objects and requirements of this Act).*

**Important considerations when contemplating self-insured employer status**

*Employers* are 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 injuries, incurred by its *workers* after the date of registration.
  - (b) A condition of registration will include management and funding of compensable injuries sustained by its *workers* prior to the date of registration in return for a capped fee calculated by reference to actuarial estimate of those claim costs.
- (2) The *self-insured employer* must commit appropriate levels of financial and management resources to ensure ongoing compliance with the requirements of the *Act* and any terms and conditions of registration imposed by *WorkCoverSA*.
- (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 *WorkCoverSA*.
- (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 fee pursuant to section 72B of the *Act* and any adjustments to fee as determined by *WorkCoverSA* to apply to the *self-insured employer*, 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 WorkCoverSA 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

Compliance with the Code (as determined by WorkCoverSA 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.

- a) The Act is administered by WorkCoverSA 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 self-insurance 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 was created at the commencement of the Act on 30 September 1987. All *employers* that were self-insured employers under the previous legislation had an automatic right to be *self-insured employers*, and most self-insured employers 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.

#### 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* 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*.

### 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 *WorkCoverSA* website at [www.workcover.com](http://www.workcover.com).
- b) Where there is an inconsistency between *the Code* available from the *WorkCoverSA* 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 *WorkCoverSA* for registration 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 *self-insured employers*.

### 1.11. Notification

An *employer* which is granted registration as a *self-insured employer* has an ongoing obligation to notify *WorkCoverSA* of any change to its circumstances or conditions which are relevant to that 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 *WorkCoverSA*.
- b) Compliance by the *self-insured employer* with the conditions and other obligations of registration will be subject to ongoing review by *WorkCoverSA*.

#### 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 *WorkCoverSA* 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 *WorkCoverSA* 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) *WorkCoverSA* 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 *WorkCoverSA* as the compensating authority in respect of worker costs of compensable injuries 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, i.e. 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 was a decision of *WorkCoverSA* and shall be subject to review and appeal in the same way as a decision of *WorkCoverSA* – section 63(4).
  - (ii) *WorkCoverSA* cannot exercise a power or discretion that has been delegated to a *self-insured employer* – section 63(2).
  - (iii) *WorkCoverSA* 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) *WorkCoverSA* 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, *WorkCoverSA* may withdraw all or part of the relevant delegated power. In certain circumstances where a *self-insured employer* has exercised a delegated power unreasonably, *WorkCoverSA* 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) *WorkCoverSA* has determined that it is a condition of continuing registration of a *self-insured employer* or a group of self-insured employers that it does not undergo a materially adverse change in any of the circumstance *WorkCoverSA* considered in granting self-insurance or the last renewal of a self-insured registration. Should such a material change be noted, the self-insurance status may be reduced or revoked. These circumstances are the matters *WorkCoverSA* 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 *WorkCoverSA* by the *employer* or *group of self-insured employers* 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, *WorkCoverSA* may notify the *self-insured employer* of other matters *WorkCoverSA* 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) *WorkCoverSA* 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 *WorkCoverSA* to evaluate an employer's performance in relation to prevention of injury in the workplace, compliance with relevant legislation, claims management and rehabilitation.
- c) *WorkCoverSA* 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 *WorkCoverSA* from time to time in relation to the application of *Schedule 1*.
- c) *WorkCoverSA* 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.<sup>1</sup> For these purposes, a 'consistent and regular pattern' will be:

- (A) data provided within 14 days or such other time as approved by *WorkCoverSA*
- (B) no more than two missed or failed/rejected data submissions in any six-month period
- (C) no occurrences of two or more consecutive missed or failed/rejected transmissions
- (D) all errors at batch and line levels resolved within one month

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



- (E) all coding queries resolved within one month
  - (F) when the *self-insured employer* changes its claims database, it should discuss the arrangements for data provision during the period of system transition with *WorkCoverSA*, to ensure any resulting lapse in data transmission does not exceed one month, or where delays are beyond the control of the self-insured employer, such other period as agreed between *WorkCoverSA* and the self-insured employer
  - (G) when *WorkCoverSA* changes the data requirements, the *self-insured employer* meets those new data requirements within three months of being notified of those changes
- (ii) Actuarial reports
- (A) Each *self-insured employer* is required to submit an actuarial report within five months of the end of the self-insured employer's financial year. The report must be prepared by an actuary following *WorkCoverSA*'s actuarial guidelines, which are Annexure B to this *Code*.
  - (B) The actuarial reports are used by *WorkCoverSA* to determine the appropriate level of financial guarantee to be provided by the *self-insured employer*.
  - (C) A failure to provide the report to *WorkCoverSA* within the time stipulated in *Schedule 1* will be considered to be a serious breach of the terms and conditions of registration.
- (iii) Guarantees
- (A) Each *self-insured employer* must provide a financial guarantee determined in accordance with *Schedule 1*.
  - (B) *WorkCoverSA* has determined that the guarantee must be:
    - (1) an unconditional undertaking to pay money on demand,
    - (2) a continuing guarantee,
    - (3) provided by a financial institution that is not related to the *self-insured employer* and that has a Standard & Poor's credit rating not less than A+. *WorkCoverSA* 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 \$2million, and
    - (4) provided by a financial institution that is subject to prudential regulation by the Australian Prudential Regulation Authority (APRA) unless *WorkCoverSA* decides otherwise,

- (C) *WorkCoverSA* may consider other forms of security that provide a comparable level of security to *WorkCoverSA* but *WorkCoverSA* 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 *WorkCoverSA*.
- (B) *WorkCoverSA* 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 *WorkCoverSA* on the happening of any of the circumstances set out in paragraph 10 of *Schedule 1*, *self-insured employers* must also notify *WorkCoverSA* in the event of any change to the position of:
- (A) chief executive officer of the *self-insured employer*
  - (B) any officer or officers who have responsibility for the compliance of the employer with the requirement of the *WHS Act* and injury management systems.
- d) A copy of *Schedule 1* is Annexure C to the *Code*.

**2.5.4. Financial distress**

- a) *WorkCoverSA* 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 described in this clause

**2.5.5. Ongoing compliance with assessment criteria**

*WorkCoverSA* 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 Number of employees employed by the group
- b) clause 3.5.4 Financial viability
- c) clause 3.5.5 Claims administration resources
- d) clause 3.5.6 Incidence and severity of injuries
- e) clause 3.5.7 Effect of working conditions
- f) clause 3.5.8 Rehabilitation
- g) clause 3.5.9 Provision of suitable employment
- h) clause 3.5.10 Views of relevant industrial associations
- i) clause 3.5.11 Effect on the fund



### 2.5.6. *Other terms*

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

## 2.6. **Non-compliance**

A *self-insured employer* is at all times, required to comply with the *Act* or a term or condition of registration. Where an instance of non-compliance with these requirements is identified, a *self-insured employer* will be provided an opportunity to undertake corrective actions.

If a *self-insured employer* fails to comply with the *Act* or a term or condition of registration or undertake, to the satisfaction of *WorkCoverSA*, corrective action, pursuant to its powers under the *Act*, *WorkCoverSA* may do one or more of the following:

- a) take such a non-compliance with the *Act* or a term or condition of registration into account when determining whether to subsequently renew self-insured employer status;
- b) 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;
- c) pursuant to section 72B(3) of the *Act*, allocate the *self-insured employer* to a class of *self-insured employers* that pay an increased fee as outlined in Chapter 6;
- d) pursuant to section 122 of the *Act*, prosecute the *self-insured employer* for a breach of the *Act*;
- e) pursuant to section 63(6) of the *Act*, withdraw (in whole or in part) the delegated powers of *the self-insured employer*.

## 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 WorkCoverSA

An *employer* must establish to the satisfaction of *WorkCoverSA* that it is a fit and proper *employer* and has reached the standard that, in the opinion of *WorkCoverSA*, must be achieved before conferral of self-insured status will be considered.

In determining whether the employer is a fit and proper *employer* *WorkCoverSA* will have regard to the relevant matters described within clause 3.5 of the *Code*.

#### 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 *WorkCoverSA* 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) *WorkCoverSA* 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) *WorkCoverSA* 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*, *WorkCoverSA* 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 injuries 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 injuries
  - (viii) The views of any *industrial association* that has, in the opinion of *WorkCoverSA*, a proper interest in the matter, and,  
  
once an *employer* or group has been registered as a *self-insured employer*, *WorkCoverSA* must not, in deciding whether to renew the registration, consider the effect of the registration on the *Compensation Fund*.
- b) *WorkCoverSA* considers each criterion separately and gives due weight to each criterion.
  - c) In considering the criteria *WorkCoverSA* 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*, *WorkCoverSA* may have regard to such matters as it considers relevant.
- b) Without limitation, *WorkCoverSA* will ordinarily consider the following as relevant considerations in determining whether the *employer* or group of *employers* is fit and proper to be self-insured:
  - (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 *WorkCoverSA* 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) *WorkCoverSA* 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*, *WorkCoverSA* 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, *WorkCoverSA* 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, *WorkCoverSA* will take into consideration such financial data as it considers relevant. Subject to any other considerations, if the following criteria are satisfied, *WorkCoverSA* 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 *WorkCoverSA*, *WorkCoverSA* 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, *WorkCoverSA* considers relevant to establishing the financial solvency of the *employer*
- h) A positive rating by a ratings agency is a Standard & Poor's 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, *WorkCoverSA* 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 *WorkCoverSA* database.
- b) Evaluation of the incidence of compensable injuries is based on the total number of claims reported per million dollars remuneration.
- c) Evaluation of the severity of compensable injuries is based on the average cost of claims per million dollars remuneration.
- d) *WorkCoverSA* 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 relevant industries. If the *employer* represents 30% or more of the remuneration paid in their *WorkCoverSA* industry classification then *WorkCoverSA* 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*, *WorkCoverSA* will have regard to all relevant circumstances including:

- a) the performance of the *self-insured employer* evaluated against the *standards*
- 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<sup>2</sup>
- c) any successful prosecutions against a *self-insured employer* or *group of self-insured employers* for an alleged breach of the *WHS Act* resulting in a death
- d) any work health and safety 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 *WorkCoverSA*, indicates a non-conformance with the *standards* and will, unless the non-conformance is rectified to *WorkCoverSA*'s satisfaction before a date nominated by *WorkCoverSA*, be regarded as inconsistent with the employer's eligibility for self-insured employer status or continued registration.

### 3.5.8. *Rehabilitation*

When assessing the record of the *employer* or *employers* in relation to the rehabilitation of *workers* who suffer compensable injuries, *WorkCoverSA* 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 *WorkCoverSA* in relation to sections 58B, 58C and 28A of the *Act*

### 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 injuries, *WorkCoverSA* will have regard to all relevant circumstances including the:

- a) performance of the *employer* or group of *employers* as measured by *WorkCoverSA* against the *standards*

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<sup>2</sup> *WorkCoverSA* will actively monitor the employer's actions and require reporting from the *employer* during the period when the fatality is under investigation.



- b) employer's record and attitude towards the provision of suitable employment for *workers* who have suffered compensable injuries including any action taken by *WorkCoverSA* in relation to that matter concerning the *employer* including the application of a supplementary payment 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) *WorkCoverSA* must have regard to the opinions of any *industrial association* that has, in the opinion of *WorkCoverSA*, a proper interest in the matter.
- b) Without limitation, *WorkCoverSA* 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 *WorkCoverSA*
  - (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 *WorkCoverSA* that all such industrial associations have been identified and have been consulted in writing but doing so will not prohibit *WorkCoverSA* from making contact with industrial associations 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 *WorkCoverSA* to have no objection to the application.

#### **3.5.11. Effect on the fund**

- a) Except in relation to an application for renewal, *WorkCoverSA* 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*, *WorkCoverSA* will have regard to all relevant circumstances including the projected effect on the employer's industry premium 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 *WorkCoverSA* is satisfied:
- (i) that the *employer* or *employers* constituting the group have reached a standard that 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,
- WorkCoverSA* 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 *WorkCoverSA* 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*, *WorkCoverSA* 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 *WorkCoverSA* 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, *WorkCoverSA* recommends any *employer* wishing to become registered as a *self-insured employer* contact *WorkCoverSA* for details before making an application for registration.
- d) An *employer* applying for registration as a *self-insured employer* (not a *self-insured employer* applying for a renewal), must pay to *WorkCoverSA* 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, *WorkCoverSA* 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 its application be rejected.

#### **4.3.4. Initial financial evaluation**

- a) During the initial financial evaluation, *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA* to carry out the financial evaluation, the *employer* must provide copies of relevant audited annual financial reports.
- d) After the initial financial evaluation is completed, *WorkCoverSA* 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 *WorkCoverSA*, 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 *WorkCoverSA* 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 *WorkCoverSA*.
- g) Advice by *WorkCoverSA* 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*

#### **4.4.2. Application for registration**

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

- a) be in the form approved by *WorkCoverSA*
- b) be completed in the manner approved by *WorkCoverSA*
- 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 the Employer Services Directorate at *WorkCoverSA*.

#### **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 *registration as a self-insured employer* (not an application for renewal registration) submitted to *WorkCoverSA* 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 for each *worker* employed by the applicant 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**

- 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* *WorkCoverSA* may, on application from the group, change the nominated *employer*. When considering an application to do so *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA* 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.

#### 4.7. Registration

##### 4.7.1. Registration

- a) Pursuant to section 60(3) of the *Act*, where a valid application for registration has been made and *WorkCoverSA* is satisfied that:
  - (i) the *employer* or the *employers* constituting the group have reached a standard that 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,

*WorkCoverSA* 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 *WorkCoverSA* in making its decision to approve or reject an application.
- c) *WorkCoverSA* will issue a notice of registration as a *self-insured employer* for a specified period.

#### **4.7.2. Decision by the Board**

- a) An application for 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 *WorkCoverSA*.
- c) The Board's or its delegate's decision to reject an application for 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 *WorkCoverSA*.
- b) *WorkCoverSA* cannot backdate a registration.

#### **4.7.4. Period of registration**

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

#### **4.7.5. Initial period of registration**

- a) A *self-insured employer* will ordinarily be granted a conditional registration for an initial period not exceeding two years. That registration will be subject to evaluation against the standards relating to claims management and rehabilitation on or about the expiry of the first year. Should the *self-insured employer* fail such evaluation, *WorkCoverSA* may take such action 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 *WorkCoverSA* to renew its registration for a further period (not exceeding three years) in accordance with section 60(6) of the *Act*.

### **4.8. Outline of application process**

- a) The application process and its progress will consist of a number of steps as outlined below.
  - (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) *WorkCoverSA* 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 *WorkCoverSA* determines whether the *employer* has met all appropriate *standards* and criteria
  - (vi) The *employer* and *WorkCoverSA* agree on a target date for commencement of self-insured employer registration if the application is successful
  - (vii) The *employer* and *WorkCoverSA* 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 *WorkCoverSA* with the requisite information as and when it is required by *WorkCoverSA*. *WorkCoverSA* 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, *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA* for a renewal of self-insured employer registration pursuant to clause 4.6:

- a) Upon receiving the self-insured employer's application for renewal, *WorkCoverSA* 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, *WorkCoverSA* 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 60 calendar days before the expiry of the self-insured employer's registration, or in the case of a new applicant the consideration of the application for self-insurance by the *Board of WorkCoverSA*.
  - (ii) The *self-insured employer* will be given an opportunity to respond to the findings and to address any issues raised directly with the responsible *WorkCoverSA* officer/evaluator within 30 calendar days on receiving the written findings
  - (iii) 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.
  - (iv) Where no written response is received from the *self-insured employer* within the 30 days, the evaluation report (s) will be considered to be final.
  - (v) If the *self-insured employer* proposes to dispute the provisional findings it must follow the review process outlined in clause 4.10.

#### 4.10. Review process

Where a *self-insured employer* or *employer* disagrees with an assessment made by *WorkCoverSA* 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 review process will be available as follows:

- a) Should outstanding areas of dispute remain the *self-insured employer* must write to the Manager, Self-insured, 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.
- b) *WorkCoverSA* will review the evaluation findings and the *self-insured employer's* submission. If appropriate,
  - (i) May change its findings
  - (ii) If appropriate, *WorkCoverSA* may organise for conciliation to take place between the parties.

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- c) Should WorkCoverSA's conciliation result in a change to the assessment of the application of the relevant criteria then the findings shall be altered accordingly.
  - d) If the matter is not resolved, the *self-insured employer* or *employer* may request that *WorkCoverSA* appoint a different and (if possible) more senior evaluator/officer to undertake a peer review. The peer review will consider the *self-insured employers* or *employers'* 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.
  - e) *WorkCoverSA* and the *self-insured employer* or *employer* can agree to bypass conciliation and proceed directly to peer review.
  - f) 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 *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA* when considering whether to revoke a self-insured employer's registration.
- d) Part IV of this chapter specifies the alternative actions *WorkCoverSA*, in its discretion may take, where appropriate, as an alternative to reducing or revoking a self-insured employer's registration.
- e) Part V of this chapter specifies the right of appeal of a *self-insured employer* if *WorkCoverSA* 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*, *WorkCoverSA* 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*, *WorkCoverSA*:
  - (i) may have regard to such matters as it considers relevant, and
  - (ii) will have regard to the considerations *WorkCoverSA* must have regard to pursuant to the *Act*.



- b) Clause 3.5 of *the Code* and the *standards* sets out the requirements *WorkCoverSA* 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 *WorkCoverSA* 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 WorkCoverSA*, 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 *WorkCoverSA* in relation to the reduction or revocation of the period of registration of a *self-insured employer*.
- d) *WorkCoverSA* 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 *WorkCoverSA* making a recommendation to the *Board* that the registration of a *self-insured employer* should be reduced or revoked, *WorkCoverSA* will (unless there are good reasons for proceeding urgently):
  - (i) request the *self-insured employer* to show cause why *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA*
- (v) Without limitation, 5.6(ii) and 5.6(iii) will not apply if *WorkCoverSA* is of the opinion that the circumstances require an immediate revocation of the period of registration.
- (vi) 5.6(iii) will not apply if *WorkCoverSA* 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 *WorkCoverSA*.

### 5.8. General

- a) Reduction of a period of registration will ordinarily be used as an alternative to revocation if *WorkCoverSA* considers it appropriate to maintain self-insured employer status subject to a review of the circumstances of the *self-insured employer*.
- b) A *self-insured employer* may appeal a decision by *WorkCoverSA* to reduce 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.

### 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, *WorkCoverSA* 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 *WorkCoverSA* is or is likely to have a materially adverse effect 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) *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA*.

### 5.12. General

- a) A *self-insured employer* may appeal a decision by *WorkCoverSA* 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*, *WorkCoverSA* may, in its discretion, undertake, in whole or part, liabilities related to compensable injuries 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 *WorkCoverSA*.

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

- a) *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA*'s ability to monitor the performance of the *self-insured employer* by, for example, failing or refusing to provide accurate and timely reports to *WorkCoverSA* in accordance with the requirements of *Schedule 1*
  - (iv) acted in such a way as to materially increase the risk to *WorkCoverSA* 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 *WorkCoverSA* from time to time that is approved by *WorkCoverSA* 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 *WorkCoverSA*, 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 *WorkCoverSA* within the time specified of any of the matters referred to in paragraph 10 of *Schedule 1*.
- c) Without limitation, *WorkCoverSA* 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 *WorkCoverSA* that it will comply with the *Act* or a term or condition of registration, or
  - (iii) in the opinion of *WorkCoverSA*, 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 *WorkCoverSA*.
- d) Where an *employer* ceases to be a *self-insured employer*, the delegation to the *employer* under section 63 of the *Act* will, if *WorkCoverSA* so determines, continue to such extent as *WorkCoverSA* thinks fit in relation to injuries 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 *WorkCoverSA* as a *registered employer*.

## Part IV – Alternative action

### 5.15. Application

This part sets out the alternative action available to *WorkCoverSA* which it may, within its discretion, consider when deciding whether to reduce, revoke or not renew a self-insured employer's registration or when *WorkCoverSA* 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*, *WorkCoverSA* may consider the removal of delegation of a power or discretion.
- b) *WorkCoverSA* 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 5.16b) *WorkCoverSA* 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*, *WorkCoverSA* 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 *WorkCoverSA* pursuant to section 62A of the *Act*.

### 5.19. General

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

### 5.20. Appeals to the Minister

Pursuant to section 62A of the *Act*:

- a) If *WorkCoverSA*:
  - (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 *WorkCoverSA*'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 *WorkCoverSA* 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, *WorkCoverSA* 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 *WorkCoverSA* in relation to registration as the Minister thinks appropriate.
- f) If the Minister decides in favour of the appellant, the Minister must furnish *WorkCoverSA* with a statement of the reasons for the decision.



## CHAPTER 6

### 6. SELF-INSURED EMPLOYER FEES

#### 6.1. Application

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

#### 6.2. General

A *self-insured employer* is liable to pay a fee to *WorkCoverSA*.

#### 6.3. Self-insured employer fee

##### 6.3.1. Fee

Pursuant to section 72B(2) of the *Act*:

- a) The fee payable by a *self-insured employer* will be a percentage of the base premium that would have been payable by the *employer* if the *employer* were not registered as a *self-insured employer* and liable to pay a base premium under this Part and will be fixed by the Corporation with a view to raising from *self-insured employers*
- b) a fair contribution towards the administrative expenditure of the Corporation; and
- c) a fair contribution towards the cost of rehabilitation funding; and
- d) a fair contribution towards the cost of the system of dispute resolution established by the *Act*, and
- e) without limiting a preceding paragraph, a fair contribution towards the costs associated with the operation of Part 6C and Part 6D; and
- f) a fair contribution towards actual and prospective liabilities of the Corporation arising from the insolvency of employers.

##### 6.3.2. Elements in determining the fee

- 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 *WorkCoverSA* in the administration of the *Scheme*
  - (ii) the cost of services provided to *self-insured employers* by *WorkCoverSA*.

b) Contribution towards rehabilitation funding

*WorkCoverSA* 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 *WorkCoverSA* to support the Workers Compensation Tribunal and its functions.

d) Contribution towards the costs associated with the operation of Part 6C and Part 6D

A fair contribution towards the costs that must be paid by *WorkCoverSA* to support Medical Panels and the WorkCover Ombudsman

e) Fair contribution toward liabilities arising from insolvency

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

#### 6.4. Fee payable

a) Subject to 6.4(b), the fee for all *self-insured employers* as described in clause 6.3.1 is subject to an annual review by the *WorkCoverSA 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 fee in respect of an individual *self-insured employer* (or group of *self-insured employers*) may pursuant to section 72B(3) be subject to individual adjustment from time to time under this Chapter 6.

b) The fee is payable in addition to:

- (i) the WHS employer registration fee
- (ii) any fines or penalty interest payable under sections 72J or 72K of the *Act*, and
- (iii) any GST payable under *A New Tax System (Goods and Services) Tax Act 1999 (Commonwealth)*.

c) The fee payable by a *self-insured employer* will be differentiated between different *self-insured employers* or classes of *self-insured employers* created by *WorkCoverSA* by reference to the following factors:

- (i) the criteria to which a remedial fee element applies under clause 6.8.
- (ii) the class of *self-insured employers* for which *WorkCoverSA* has determined that section 72B(2)(e) of the *Act* does not apply, or should make no contribution under that section.

## 6.5. Basis of calculation

The fee is calculated in accordance with the following formula:

$$\text{Fee} = (R \times \text{IPR} \times \text{SIR}) + \text{WHS} + \text{GST}$$

Where:

$$\text{SIR} = \text{SEF} + (\text{SEF} \times D);$$

$$\text{WHS} = R \times \text{IPR} \times \text{EP} \times \text{WHS}\%; \text{ and}$$

$$\text{GST} = R \times \text{IPR} \times \text{EP} \times \text{GST}\%$$

Definitions:

**D** is the differentiation (expressed as a %) arising from the application of all of the factors contained in clause 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 commencing on or after 1 July 2013, as adjusted by subtracting total remuneration paid to apprentices/trainees as defined in a *WorkCover Premium Order* published in the Government Gazette in accordance with section 71 of the Act.

**IPR** is the industry premium 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 *WorkCoverSA*.

**SEF** is the fee rate for *self-insured employers* as determined by *WorkCoverSA* from time to time as set out in clause 6.3.1.

**WHS%** is the percentage rate in regard to the *WHS employer registration fee* for *self-insured employers* as determined by *WorkCoverSA* for the relevant financial year.

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

The total fee payable by a *self-insured employer* is the sum of the fee payable for all locations registered by the *self-insured employer* plus the adjusted fee component and additional fee component (if any) applicable to the *self-insured employer* under this Code.

## 6.6. Component of fee determined under section 72B(2)(e) of the Act as of 1 July 2012

- a) *WorkCoverSA* 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) prior to 1 July 2012 and/or the fee paid under section 72B(2)(e) after 1 July 2012, and of the period or periods during which that *self-insured employer* has paid a levy/fee which included this component.



- b) *WorkCoverSA* may determine the characteristics of a class of self-insured employers under clause 6.7 whose fee shall not include a fee component under section 72B(2)(e) of the *Act* in which event it will allocate a rate of fee to that class of employers as reflects the differentiation from those *self-insured employers* making a contribution under section 72B(2)(e) and allocate *self-insured employers* to that class as meet those characteristics.

### 6.7. Classes of fee

- a) *WorkCoverSA* may, from time to time, determine the classes of fee for *self-insured employers* and may nominate any *self-insured employer* to any class of fee either for finite or indefinite periods.
- b) The fee rates for each fee class will be determined by *WorkCoverSA* from time to time, and will be determined by reference to the reason for the fee class being established.
- c) *WorkCoverSA* has determined that all *Crown self-insured employers* form a class of self-insured employers which are not required to pay that component of a fee that comes under section 72B(2)(e) of the *Act*.
- d) *WorkCoverSA* 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 fee classes') and may allocate *self-insured employers* to those classes by reference to *WorkCoverSA*'s assessment of those non-compliances.

### 6.8. Remedial fee classes

- a) Remedial fees are payable by *self-insured employers* by way of a differentiated ordinary fee to reflect the additional cost to *WorkCoverSA* 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 fee increment are as described below.

- b) A *self-insured employer* will be subject to a remedial fee if, in the opinion of *WorkCoverSA*, the *self-insured employer* is not complying with the *Act* or a term or condition of their registration.

- c) Prior to implementing a remedial fee, *WorkCoverSA* 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 *WorkCoverSA* 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, *WorkCoverSA* may impose a remedial fee without further notice.
- d) There are four classes of remedial fee.
- e) Each remedial fee applies to a particular remedial fee 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 fee.
- 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 fee) then that *self-insured employer* will in the calendar month expiring immediately after the *employer* fell within that level pay a fee as follows:
- (i) Level A – *ordinary fee* plus 10%
  - (ii) Level B – *ordinary fee* plus 25%
  - (iii) Level C – *ordinary fee* plus 55%
  - (iv) Level D – *ordinary fee* plus 100%



### 6.9. Payment of fee

- a) The fee payable by a *self-insured employer* must be paid by a date as specified by *WorkCoverSA* and must be paid electronically (e.g. by way of direct debit) to *WorkCoverSA* in accordance with *WorkCoverSA*'s instructions unless alternative payment arrangements have been agreed on as per (b)
- b) Alternative payment arrangements:
  - (i) *WorkCoverSA* may make alternative payment arrangements with *self-insured employers*.
  - (ii) A *self-insured employer* wishing to pay by alternative payment arrangements must contact a senior information officer in the premium operations area at *WorkCoverSA*.
  - (iii) *WorkCoverSA* 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. Administration of fees

- a) Pursuant to section 72E(1) of the *Act*, a *self-insured employer* must by a date in each year specified by the Corporation provide to the Corporation a return in the designated manner and form that sets out the information required by the Corporation for the purposes of the calculation or determination of any statutory payment under this Part.
- b) Pursuant to section 72E(3) of the *Act*, *WorkCoverSA* may, by notice to a particular *employer* or by notice in the *Gazette*, specify an estimate or estimates that will apply instead of an estimate specified by an *employer* under subsection(1).
- c) Pursuant to section 72F(1) *WorkCoverSA* may require an *employer* to provide in the designated manner and form information specified by the Corporation and must be provided within a period determined by the Corporation under 72F(4).
- d) Pursuant to section 72G(1) *WorkCoverSA* has absolute discretion to review and revise an estimate or determination; or correct an error or revise an assessment previously made.
- e) Pursuant to section 72H *WorkCoverSA* may issue to an *employer* a notice of adjustment if *WorkCoverSA* considers that a statutory payment payable by the *employer* should be adjusted.
- f) A *self-insured employer* must cooperate with any review or verification of its payment of fee.

### 6.11. Imposition of fine and/or penalty interest

Under section 72K of the *Act*, *WorkCoverSA* may impose on the *self-insured employer* a fine of up to three times the amount of the fee payable where the *self-insured employer* fails to pay a fee required by or under the *Act*.



**6.12. Recovery of fees**

Pursuant to section 72N of the Act, a fee payable under the Act (and any penalty interest or fine imposed by *WorkCoverSA*) is a debt due to *WorkCoverSA* and may be recovered by *WorkCoverSA* in a court of competent jurisdiction.

**6.13. Remission of fees**

*WorkCoverSA* has not granted any remissions pursuant to section 72B(4) of the Act relating to the fee payable by individual self-insured employers.

**6.14. Review rights**

Pursuant to section 72M of the Act, an application may be made for a review of a fee related decision (including the imposition of an adjusted fee component pursuant to section 72B of the Act) where the decision of *WorkCoverSA* 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 *WorkCoverSA* to have it renewed, or
- c) *WorkCoverSA* 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*, *WorkCoverSA* 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 *WorkCoverSA* determines that the delegation of powers and discretions are to continue, the delegation continues only to such extent as *WorkCoverSA* thinks fit in relation to injuries 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 omission of a *self-insured employer*.

#### 7.4. Assumption of liabilities

- a) Pursuant to section 50 of the *Act*, *WorkCoverSA* is the insurer of last resort.
- b) As insurer of last resort, *WorkCoverSA* 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 *WorkCoverSA* considers adequate for dealing with claims, liabilities and responsibilities relating to compensable injuries arising from employment during the period of self-insured employer registration.

- c) Other than in the circumstances listed in 7.4b), *WorkCoverSA* may, in its discretion, undertake in whole or part, liabilities related to compensable injuries arising from employment during the period of the self-insured employer registration.
- d) *WorkCoverSA* 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 *WorkCoverSA* 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) *WorkCoverSA* will determine the process for valuation of claims at the time claims liability is assumed by *WorkCoverSA*.
- b) *WorkCoverSA* 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, *WorkCoverSA* 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 *WorkCoverSA* 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) *WorkCoverSA* 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 *WorkCoverSA*.
- b) *WorkCoverSA* may recover the amount of liabilities undertaken by *WorkCoverSA* or part thereof, either as a debt due to *WorkCoverSA* 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, *WorkCoverSA* will retain the financial guarantee for such period as *WorkCoverSA* determines is necessary to ensure that no part of the payment received by *WorkCoverSA* is subject to repayment pursuant to the laws relating to insolvency or bankruptcy.



### 7.7. Run off of claims

- a) Where *WorkCoverSA* 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 injuries, it may allow the former *self-insured employer* to retain responsibility for such liabilities for such a period as *WorkCoverSA* determines appropriate (a 'run off').
- b) Where *WorkCoverSA* deems a run off to be appropriate or necessary in the circumstances, *WorkCoverSA* 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, *WorkCoverSA* may require the former *self-insured employer* to enter into an agreement with *WorkCoverSA*.
- d) Without limitation, *WorkCoverSA* 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) *WorkCoverSA* will evaluate the former self-insured employer's compliance with the *Act*, *standards* and the agreement referred to in clause 0 and may terminate the run off if *WorkCoverSA* considers there are substantive grounds for doing so.
- f) Upon cessation of the run off period, *WorkCoverSA* 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 *WorkCoverSA*.

### 7.8. Agreement

- a) In circumstances where *WorkCoverSA* 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*, *WorkCoverSA* may require the former *self-insured employer* to enter into an agreement with *WorkCoverSA*.

- 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 *WorkCoverSA* in such circumstances
  - (iii) plan for the takeover of any residual liabilities by *WorkCoverSA*, 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 *WorkCoverSA* 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 self-insurance registration or renewal of registration as a *self-insured employer*, or
- b) registered as a *self-insured employer*, where evaluations may occur with respect to whether they maintain that registration.

#### 8.2. General

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

*WorkCoverSA* may carry out an evaluation at any time to assess 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

*WorkCoverSA* 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, *WorkCoverSA* 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 1 may 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) *WorkCoverSA* will undertake evaluations in line with the methodology set out in the Evaluation Practice Manual. The Evaluation Practice Manual can be found on the *WorkCoverSA* website at [www.workcover.com](http://www.workcover.com).



#### 8.4.2. Ongoing evaluation

- a) *WorkCoverSA* 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) *WorkCoverSA* may carry out an evaluation of the *self-insured employer* from time to time, as *WorkCoverSA* deems appropriate. *WorkCoverSA* 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 work health and safety 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 SafeWorkSA
  - (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 *WorkCoverSA* has notified the *employer* of the nature of the evaluation and *WorkCoverSA* and the *employer* have agreed to a time during which *WorkCoverSA* will conduct its evaluation.
- b) Where appropriate, *WorkCoverSA* 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 *WorkCoverSA* with its evaluation process. This includes the completion and submission of the *Self-insured Employer Report* and any report requested by *WorkCover* to be completed pursuant to its evaluation process.
- d) The *Self-insured Employer Report* is to be provided by the *employer* no later than nine months prior to the expected expiry of its self-insured registration\ review period, unless agreed by *WorkCoverSA*.

#### 8.6. Failure to comply

If *WorkCoverSA* 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 *WorkCoverSA* 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,

*WorkCoverSA* may

- a) refuse to grant or renew self-insured employer registration
- b) reduce or revoke the period of registration, or
- c) 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* contributes 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 *WorkCoverSA* of the occurrence of any of the events referred to in this chapter.
- c) The role of *WorkCoverSA* 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, *WorkCoverSA* 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) *WorkCoverSA* 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 WorkCoverSA* 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 *WorkCoverSA* 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(4)(ba) 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 *WorkCoverSA* to add that relevant *registered employer* to that group. *WorkCoverSA* 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*. *WorkCoverSA* 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* – *WorkCoverSA* will conduct an evaluation to satisfy itself the *registered employer* has achieved and is capable of maintaining the obligations of registration as a *self-insured employer*. This will be considered as an application for self-insurance in its own right.

- e) Clause 9.3(d) applies, but is not limited to, acquisition of a new *related body corporate* by 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 *WorkCoverSA*) will be taken into account by *WorkCoverSA* when considering whether to cancel or not renew the group of self-insured employers' registration as a group of self-insured employers.
- g) *WorkCoverSA* 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) *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 *WorkCoverSA*) will be taken into account by *WorkCoverSA* when considering whether to cancel or not renew the self-insured employers' registration as a *self-insured employer*.
- d) *WorkCoverSA* 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 *WorkCoverSA*.

### **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 *WorkCoverSA* 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 *WorkCoverSA*) will be taken into account by *WorkCoverSA* 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-insured employers, appropriate consideration will be given to the performance of the previously registered self-insured employer. Where new entities that were not previously self-insured are added to existing groups or a previously single registration becomes a new group, *WorkCoverSA* 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* *WorkCoverSA* may, on application from the group, change the nominated *employer* as set out in Chapter 4 of *the Code*.
- c) Notwithstanding clause 9.8a), 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 9.8a) 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 *WorkCoverSA* 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* or restructure of existing *self-insured employers*.

##### 10.2. General

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

##### 10.3. Agreement

- a) On the approval or restructure 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 *WorkCoverSA* and the *self-insured employer*.
- b) The standard form of the SIETCMA can be found on the *WorkCoverSA* website [www.workcover.com](http://www.workcover.com).

##### 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 *WorkCoverSA* of *transitional claims* against *WorkCoverSA* 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 *WorkCoverSA* for the management of transitional liabilities will ordinarily be by way of payment of a sum as consideration for the management of those liabilities (claims management payment or CMP which includes an allowance for administration).
- 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 *WorkCoverSA* until such time as *WorkCoverSA* determines the liabilities are unable to be recovered.

## **10.6. Determination of CMP**

### **10.6.1. Valuation**

- a) An actuary appointed or approved by *WorkCoverSA* 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 *WorkCoverSA* or the *self-insured employer* on behalf of *WorkCoverSA*.
- c) The valuation will not include an allowance for future claims administration costs. *WorkCoverSA* 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. The calculation methodology**

The intent of the methodology is to provide a payment to the employer on an as close to full value basis as possible. This is subject to a limitation by reference to the employer's contribution to the Scheme over the defined period and the costs incurred by the Scheme with respect to the employer's claims. This methodology is used for all applicants for self-insurance and for the existing self-insured employer who are required to bring related bodies corporate into their self-insurance under the *Act* and this *Code*.

The calculation will cover all current and non-current employer registrations including registrations for related bodies corporate as determined relevant by *WorkCoverSA*.

Defined period for the purpose of the calculation is six full preceding financial years and the current incomplete financial year. If the period of registration is less than six years then the full period of registration and the current financial year will be included in the calculation.

CMP will be calculated as follows:

if  $OL > NPP$  then  $CMP = NPP$

if  $OL \leq NPP$  then  $CMP = OL$

where:

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

NPP' or 'net premium position' is calculated as follows:

$NPP = APP - CP$

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

'APP' or 'adjusted premium payment' is *WorkCoverSA's* estimate of the adjusted premium paid by the *employer* in each year during the defined period prior to becoming a *self-insured employer* and inflated to current financial year, and

'CP' or 'claims paid' is *WorkCoverSA's* estimate of the claims costs paid by *WorkCoverSA* in each year in the defined period preceding the *employer* becoming a *self-insured* and inflated to current financial year.

Adjustment factor for the premium year is the total scheme overhead administration element taken from the *WorkCoverSA* annual report for the year in question and expressed as a percentage of the Scheme premium revenue for that year.

Inflation factor is the one year return rate achieved by the investments of the compensation fund as disclosed in the *WorkCoverSA* annual report for the year in question (the inflation factor may be negative if the investment return is negative for the year in question). The factor will apply to both premium and claim cost inflation for each year of the calculation.

### **10.6.3. Determination and payment**

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

The CMP will be paid in accordance with the terms of the relevant SIETCMA.



If NPP determined in accordance with the clause 10.6.2 is negative, no CMP will be made to the employer and the employer will be required to pay the negative amount to *WorkCoverSA* as a condition of being granted self-insurance.

GST is considered to be additional to CMP and will not be counted as part of CMP until after the limitation discussed in 10.6.2 is applied.

#### 10.7. Employers acknowledgement and SIETCMA

- a) A *self-insured employer* must agree in writing to the value of the CMP as determined by *WorkCoverSA* as a term and condition of registration.
- b) The acknowledgement will form part of the SIETCMA.
- c) *WorkCoverSA* 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) *WorkCoverSA* 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 *WorkCoverSA* 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; then
  - (ii) *WorkCoverSA* is to be repaid the recoverable portion of its claim costs expended prior to the date of registration of the *self-insured employer*; then.
  - (iii) *Self-insured employer* retains any balance after (i) and (ii) clauses above are satisfied.



- f) The *employer* must diligently pursue the recovery potential of the claim, and must not discontinue the recovery process without the approval of *WorkCoverSA*.
- g) In the event the recovery is less than the notional claim value, *WorkCoverSA* 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 *WorkCoverSA* all potentially recoverable amounts paid by *WorkCoverSA* 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 *WorkCoverSA* from time to time and *WorkCoverSA* agrees that there is no reasonable prospect of a successful recovery, *WorkCoverSA* 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 injury* 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. The function has now been transferred to *WorkCoverSA's* claims agents, Employers Mutual Limited and Gallagher Bassett Services Pty Ltd.
- b) RISE provided for *WorkCoverSA* 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

*WorkCoverSA* 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 SIETCMA.

#### 10.10.2. Reservation of payment

- a) *WorkCoverSA* 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 *WorkCoverSA* and the *employer* within a reasonable period of time.

- b) In the event that particular claims have been reserved by *WorkCoverSA*, *WorkCoverSA* will propose alternative arrangements which are deemed appropriate at the discretion of *WorkCoverSA*.
- c) Self-insured employer registration will not commence until the *employer* and *WorkCoverSA* 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 SIETCMA 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 *WorkCoverSA* allows the former *self-insured employer* to retain liability for existing claims for a period as dealt with in Chapter 7 of *the Code*, *WorkCoverSA* will provide an Extension of Delegation to Former Self-insured Employer (EDFSIE) document between *WorkCoverSA* and the former *self-insured employer*.
- b) The standard form of the EDFSIE can be found at Annexure E.
- c) *WorkCoverSA* will amend the standard form of the EDFSIE as it thinks fit to suit the particular circumstances.

### **10.14. Transfer of liabilities to WorkCoverSA**

The transfer of liabilities to *WorkCoverSA* will occur:

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

### 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 *WorkCoverSA*.
- c) In determining the amount to be paid, *WorkCoverSA* 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 *WorkCoverSA* 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 *WorkCoverSA* is satisfied that all liabilities transferred to it are fully secured by the monies *WorkCoverSA* 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 *WorkCoverSA 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 *WorkCoverSA* 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* must advise *WorkCoverSA*. *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 *WorkCoverSA* will occur:
  - (i) Where a *self-insured employer* believes it cannot provide suitable employment to an injured worker(s), the *self-insured employer* must advise the Manager, Self-insured in writing of its inability to provide suitable employment and the basis on which it has formed this view.
  - (ii) *Self-insured employers* will provide a declaration of their compliance with sections 58B and section 58C. This declaration will be provided in the *Self-insured employer report*. 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 *WorkCoverSA* during the renewal period.

- (iii) *WorkCoverSA* 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-insured employer and ascertain if any other information exists that might bear on the matter. If, after the self-insured employer has had the opportunity to clarify the situation, the evaluator remains of the view that the matter should be investigated, the self-insured employer will be so informed and the matter referred to the Manager, Employer Regulation.
- (iv) This process will allow *WorkCoverSA* 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.
- (v) Where *WorkCoverSA* receives a complaint of a general nature from a third party that:
  - (A) alleges that a self-insured employer has not complied with its obligations under section 58B and/or section 58C; but
  - (B) does not contain sufficient specific information to enable *WorkCoverSA* to identify the relevant claim/s, and understand the alleged factual basis of the complaint.
- (vi) *WorkCoverSA* 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.
- (vii) *WorkCoverSA* will determine whether an investigation (section 58B and/or section 58C) is required irrespective of whether it relates to a specific claim or generally.
- (viii) Where *WorkCoverSA* 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.
- (ix) 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.
- (x) It is important that complaints of *non-compliance* with section 58B obligations are investigated and resolved expeditiously and in a transparent manner.



- e) In accordance with the agreed protocol, unless the *self-insured employer* and *WorkCoverSA* 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, *WorkCoverSA* 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 *WorkCoverSA* 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), *WorkCoverSA* will afford the *self-insured employer* a reasonable opportunity to respond to *WorkCoverSA'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 a *rehabilitation* and return work co-ordinator and provide necessary facilities, assistance and required 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 *WorkCoverSA* a notification of that lump sum determination or alteration.



- (ii) The notification must be in such form as *WorkCoverSA* 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 and WCT orders
  - (B) for any income maintenance redemption, the amount of weekly income maintenance redeemed and the current rate of notional weekly earnings
  - (C) a copy of the most recent determination of weekly payment entitlements
  - (D) for a non-economic loss compensation payment, the percentage of injury 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 *WorkCoverSA* 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*.

### 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, *WorkCoverSA* 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* *WorkCoverSA* 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 injury*, 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*
- (b) *must be a person who has been nominated to the Registrar in accordance with the Regulations as a person who may be assigned to reconsider disputed decisions under this Division.'*

### 11.10. Code of Claimants' Rights

Section 123B of the *Act* allows for the establishment by regulation of a Code of Claimants'

Rights, dealing with the matters specified in Section 123B(2). The status of such a Code under the *Act* is specified in Section 123B(3).

Section 123B(4) of the *Act* requires a *self-insured employer* to ensure that in dealing with its injured workers' claims, its actions are consistent with the Code of Claimant's Rights.

### 11.11. Cooperation on information exchange

Where:

- a) a worker or former worker of a self-insured employer has suffered a compensable injury
- 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 injury*, and
- c) the *worker* or former *worker* of the *self-insured employer* suffers a subsequent *compensable injury* whilst employed by a different *employer*,

the *self-insured employer* must cooperate with:

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

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

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



**ANNEXURE A: Performance standards for self-insured employers**

**WorkCoverSA**

**PERFORMANCE STANDARDS FOR  
SELF-INSURED EMPLOYERS**

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#### **GLOSSARY:**

##### **Self-insurance application and renewal model**

##### **Self-insurance Registration Framework**

##### **Annexure B: Actuarial guidelines**

##### **Annexure C: Schedule 1 to the Regulations**

##### **Annexure D: Workers Rehabilitation and Compensation Regulations 2010 (Regulation 11)**

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## Part 1: Introduction

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

These standards are one component of the requirements that self-insured employers 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* (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 *WorkCoverSA* 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 standards are designed to address:

- the integration of WHS, claims management and rehabilitation into mainstream management systems for self-insured employers
- consultation and joint employer and employee involvement
- a system capable of ensuring that employers meet their duty of care under the WHS legislation
- compliance with the *Work Health and Safety Act 2012 (SA)* (WHS Act) and WRCA and associated Regulations
- the development of systems that measure outcomes
- continuous improvement

The performance standards are consistent with the Australian/New Zealand Standard 4804: 2001, *Occupational Health and Safety Management Systems – General Guidelines on Principles, Systems and Supporting Techniques* and include modifications to incorporate rehabilitation and claims administration.

A business management systems structure clearly designates overall responsibility for WHS, 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 *WorkCoverSA* 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 *WorkCoverSA*'s website, [www.workcover.com](http://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 WHS, 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 WHS, 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 WHS, rehabilitation and claims management with the core functions of the organisation,
- assurance that a high level of performance is being maintained, and
- continuous improvement in WHS, rehabilitation and claims management.

### 2.2 Objectives of the standards

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

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

## 2.3 Consultation

### 2.3.1 *Internal consultation*

Self-insured employers 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 WHS, claims management and rehabilitation systems initiatives within the workplace,
- employee contribution to and acceptance of those processes, and
- compliance with the consultation requirements of the WHSA 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-insured employers and *WorkCoverSA* will consult for the purpose of:

- evaluating the employer's business management system,
- following up employee reports to *WorkCoverSA* that suggest non-conformance with relevant Acts, or the self-insured employer's rehabilitation and claims management plan,
- discussing and addressing unresolved non-conformance when identified by the self-insured employer or *WorkCoverSA*, and
- 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.

*WorkCoverSA* recognises that the *employer's* commitment to improvement ultimately drives its outcomes. *WorkCoverSA's* focus on performance and ensuring underpinning systems meet the requirements of the standards assists the *employer* to achieve its desired outcomes.

Diagram 1 – Continuous improvement model



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



## Standard 2 – Planning

The successful implementation and operation of WHS, 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 WHS, 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 WHS plans are consulted when the plans are being formulated (WHS),
- 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 (WHS)
- action plans are in place for dealing with corrective action identified as part of any incident investigation process (WHS), and
- 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 objectives for the organisation, and
- 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, and
- training plan(s) have been developed.

**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.

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

**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) (WHS), and
- that corrective/preventive action is taken on non-conformance issues identified by inspection, and testing procedures (WHS)

**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**

WHS, 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 and reported.

**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 seek to continually improve its systems. This leads to the development of continuous improvement strategies within the organisation.

**Scope:** *The organisation regularly reviews its WHS, rehabilitation and claims management systems, in consultation with its employees or their representatives, with the objective of maintaining and where possible 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, and
- 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, and
- the system's measurement outcomes are used as a basis for future system development.

**GLOSSARY:**

<b>Action plan</b>	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.
<b>Appropriate</b>	Suitable or fitting for a particular purpose, person, occasion or intent.
<b>CEO</b>	The chief executive officer or most senior executive/manager residing within South Australia with the responsibility for WHS, rehabilitation and claims of the elements.
<b>Contingency</b>	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.
<b>Consultation</b>	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 management.
<b>Competent</b>	A person who is suitably qualified (by experience and/or training) to carry out the work or function described.
<b>Conformance</b>	Activities undertaken and results achieved fulfil the specified requirements.
<b>Contingency</b>	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.
<b>Consultation</b>	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.
<b>Continuous improvement</b>	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.
<b>Evaluate</b>	To test and find value, quality etc, to appraise, make judgements.

<b>Inspection</b>	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
<b>Internal audit</b>	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.
<b>Key element</b>	An essential component of the management system applicable to a particular business.
<b>Key system element</b>	Major, indispensable element of the organisation's system.
<b>Legislative compliance</b>	Meeting the requirements of prevailing legislation.
<b>Measurement</b>	Any technique used to measure any system or element outcome against objectives, targets, timeframes etc, established or set by the organisation.
<b>Non-conformance</b>	Activities undertaken and the results achieved do not fulfil the specified requirements of the elements. This may be due to the substantive absence or inadequate implementation of a system or documented systems or procedures not being followed.
<b>Objective</b>	An overall goal in terms of performance, arising from policies that an organisation sets itself to achieve, and which is quantified, where practicable.
<b>Observation</b>	Activities undertaken and results achieved fulfil the specified requirements of the elements, however an opportunity for improvement exists due to minor deficiencies identified.



<b>Organisation</b>	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.
<b>Performance indicator</b>	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.
<b>Policy</b>	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.
<b>Procedure</b>	Written, detailed way to action/perform in conformance with policy objectives.
<b>Program</b>	A planned component of an organisation's business management system for health, safety, rehabilitation and claims management.
<b>Rehabilitation</b>	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.
<b>Relevant</b>	Connected with the matter in hand; pertinent (e.g., legislative requirements and/or other identified needs of the organisation).
<b>Target</b>	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.
<b>Work health and safety (WHS) management system</b>	An orderly arrangement of interdependent activities and related procedures that drives an organisation's WHS performance.
<b>Workplace Monitoring</b>	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.

## Self-insurance application and renewal model

WorkCover will consider the following matters in deciding an application for renewal of a self-insurance registration:

1. WHS performance and systems
2. Claims and rehabilitation case management performance and systems
3. Legislative compliance
4. Provision of accurate and timely data to WorkCover
5. Financial viability in terms of being able to meet liabilities
6. Any other relevant matter

WorkCover will use the information to assess whether the employer meets the required standards to be registered as a self-insured business and has exercised its delegated powers under the *Act* reasonably.

Employers applying for initial registration will be required to demonstrate a satisfactory level of performance and systems for WHS. With no claims management experience, the employer will be required to demonstrate how it plans to support this function to a level that will meet the required standard. Applications for initial registration will be decided by the WorkCover SA Board.

For employers applying for renewal of self-insurance registration, the overriding philosophy of the model is that if a self-insured employer is able to demonstrate a satisfactory standard of WHS performance supported by resources and systems to enable such performance, the employer will be assessed as having met the necessary WHS requirement to be self-insured. The assessment will be based on safety performance and an evaluation of the WHS systems in place to support that performance. Performance data will also be used to inform judgements about the location and materiality of controls to be evaluated in systems audits.

Similarly, a *self-insured employer* who demonstrates implementation of appropriate injury management policy commitments, procedures describing the manner in which its delegations will be fulfilled, clearly defined and communicated responsibilities and accountabilities, legally compliant claims and rehabilitation processes and satisfactory injury management performance will be assessed as having met the necessary injury management requirement to be self-insured.

The following table outlines a framework for making decisions about self-insurance renewals. The framework is a guidance document only and not prescriptive. The framework provides an indication of the period of registration that would ordinarily be awarded upon renewal of a self-insurance registration. Each application and renewal will be considered holistically and on its individual merits. Financial viability is a minimum requirement for renewal of self-insured status. It is open to the *WorkCoverSA* CEO to consider any relevant matter when deciding on an application to renew a self-insurance registration.

It is expected that most self-insured employers would be able to demonstrate a standard of performance commensurate with a three-year renewal. If *WorkCoverSA* officers make a recommendation to its CEO for a registration period that is less than three years, the reasons for that recommendation will be communicated to the employer in advance, and the *employer* will be invited to provide a response for the CEO to consider before making a decision.



In assessing a self-insured employer WorkCover will consider performance against a range of primary and secondary indicators. These indicators will be considered in the context of all aspects of the self-insured employer's performance to form a holistic overall assessment.

These indicators are,

Claims performance primary indicators,

- duration rates - days lost,
- claims frequencies - claims per \$M remuneration,
- rejections - % of claims rejected, % of rejections subsequently accepted
- determination timeframes (days from notification, to initial determination)

Secondary indicators of injury management performance such as percentage of redeemed claims, complaints received, number of disputes will also be considered.

The assessment of claims management primary and secondary indicators will be considered in the context of determining the self-insured employer has reasonably exercised its delegated powers or discretions under the Act.

Financial performance primary indicators:

- net worth,
- gearing ratio,
- liquidity ratio,
- profitability ratio,
- mercantile agency rating.

Safety performance primary indicators:

- SafeworkSA notices -improvement notices, prohibition notices, non-disturbance notices,
- notifiable incidents,
- serious injury or illness,
- dangerous incidents, notifiable incidents,
- enforceable undertakings, successful prosecutions, views of industrial associations.

In assessing the performance of the self-insured employer, WorkCoverSA will consider whether performance represents systemic application of practices that:

- constitutes an unreasonable exercise of the self-insured employer's delegations and/or;
- are contrary to the achievement of the objects of the Act.

Should a self-insured employer's performance be assessed as being unsatisfactory WorkCoverSA will provide the self-insured employer with the basis for this assessment and an opportunity to provide a response detailing its views of the assessment of its performance and reasons as to why its performance should not have an adverse impact on the grant of its self-insurance registration.



## Self-insurance Registration Framework

Assessment Criteria	3 years	Non-renewal
<b>Work Health and Safety</b>	<p>Satisfactory performance indicated by data and substantive conformance to the sampled elements of Standards 1 – 3. Meets the requirements of the code.</p> <p>Improvement action plans are in place to address material non-conformances with standards 4 and 5.</p>	<p>Sustained material poor performance and non-conformance with the standards, combined with a lack of capacity or willingness to address systemic performance issues.</p>
<b>Claims and rehabilitation case management</b>	<p>The employer consistently exercises its delegated functions and powers reasonably. Demonstrates substantive conformance to Standards 1-3 and meets the requirements of the code.</p> <p>Improvement action plans are in place to address material non-conformances with standards 4 and 5.</p>	<p>Sustained material poor performance and non-conformance with the standards, combined with a lack of capacity and or willingness to address systemic performance issues.</p>
<b>Overall assessment and additional considerations</b>	<p>The CEO of WorkCoverSA is confident that the objects of the Act will be met by renewing the self-insurance registration.</p> <p>(For a new applicant the Board will need to make this assessment.)</p>	<p>The WorkCoverSA Board does not believe the objects of the Act can be met by renewing the registration.</p> <p>Or</p> <p>The self-insured employer has been assessed to be unable or unwilling, to demonstrate commitment to the corrective actions necessary to achieve and maintain the requirements of self-insurance.</p>
<b>Periods of registration:</b>	<p>Three years remains the maximum period of registration available. Reduced periods of registration remain an option as an escalation point where other reasonable attempts to resolve material performance or compliance issues have been unsuccessful. WorkCover recognises that a reduced period of registration imposes a significant cost on an employer and will not use this option unless it is considered proportionate to the associated issues of concern.</p>	

## 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 WorkCoverSA.
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 WorkCoverSA approves) and should make reasonable allowance for claims that occur gradually e.g., 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.
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 WorkCoverSA. Accounts for actuarial services should be rendered directly to the employer.



## 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 injuries 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;

- (xiii) the occupation of the worker at the time of the injury (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 injury;
  - (xviii) the date of the occurrence of the injury;
  - (xix) the time of day at which the injury occurred (so far as is known to the employer);
  - (xx) the date on which the employer was first notified of the injury;
  - (xxi) the apparent cause of the injury;
  - (xxii) a description of the injury;
  - (xxiii) a statement as to the parts of the worker's body affected by the injury;
  - (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 injury, or the incident that caused the injury, 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;
  - (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).
- (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 injuries); 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 injuries 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;

*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 an injury 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.
- 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 (Regulation 11)

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 injured 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.

- (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).
- (4) For the purposes of section 62(3) of the Act—
  - (a) any material change in any details or information previously provided under section 62(1) of the Act will constitute prescribed circumstances; and
  - (b) the period of 30 days from the occurrence of any such change is prescribed.



## **Annexure E: 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 WorkCoverSA Corporation of South Australia (WorkCoverSA) of its desire to withdraw from operations requiring it to employ workers within South Australia, and
- WorkCoverSA 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.

WorkCoverSA 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 WorkCoverSA 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 WorkCoverSA in a form and in a sum approved by WorkCoverSA. In order to maintain this guarantee at an appropriate level, (employer name) shall provide to WorkCoverSA actuarial evaluations of the outstanding claims portfolio at such intervals as *WorkCoverSA* shall require, provided that WorkCoverSA 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 WorkCoverSA reasonable notice.
7. Should WorkCoverSA 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 WorkCoverSA Scheme, WorkCoverSA may terminate these arrangements forthwith.





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The following free information support services are available:

If you are deaf or have a hearing or speech impairment, you can call WorkCoverSA through the National Relay Service (NRS):

- **TTY users** can phone 13 36 77 then ask for 13 18 55.
- **Speak & Listen (speech-to-speech) users** can phone 1300 555 727 then ask for 13 18 55.
- **Internet relay users** can connect to NRS on [www.relayservice.com.au](http://www.relayservice.com.au) then ask for 13 18 55.

For languages other than English call the Interpreting and Translating Centre (08) 8226 1990 and ask for an interpreter to call WorkCoverSA on 13 18 55. For Braille, audio or e-text call 13 18 55.

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