

SUPPLEMENTARY GAZETTE



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ADELAIDE, THURSDAY, 8 DECEMBER 2016

RETURN TO WORK ACT 2014*Code of Conduct for Self-Insured Employers***Preamble**

Subsection 129(5)(d) of the *Return to Work Act 2014* (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 129(5)(d) of the Act, I hereby 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 1 December 2016.

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

Dated 28 November 2016.

J. YUILE, Board Chair



Code of conduct for self-insured employers

Version 11.2

Author: Self-insured Regulation

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Return to *work*.
Return to *life*.



Government of
South Australia

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

GLOSSARY

Term	Meaning
Act	the Return to Work Act 2014
balance sheet test	total tangible assets ÷ total liabilities
Board	the Board of Management of ReturnToWorkSA as constituted by the RTWCA, or any properly delegated committee appointed by the Board of Management.
Code of conduct (Code)	the self-insured employer code as amended from time to time and published in the Gazette pursuant to section 129(5)(d)
cash flow margin	operating cash flow ÷ net sales
Compensation Fund	the Compensation Fund pursuant to section 135 of the Act
Crown self-insured employer	an employer deemed registered as a self-insured employer under section 130 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	employer has the same meaning as in the Act
foreign company	has the same meaning as in section 129 of the Act
Gazette	as defined in section 4(1) of the <i>Acts Interpretation Act 1915</i>
gearing ratio	loan capital ÷ total capital employed
group of self-insured employers	a group of self-insured employers registered under section 129(3) of the Act
holding company	has the same meaning as in section 129 of the Act
industrial association	as defined by section 4 of the Act
Injury Management Standards	Injury Management Standards for Self-insured Employers
liquidity ratio	current assets ÷ current liabilities
local government corporation	has the meaning as defined in section 4 of the Act and regulation 5 of the Regulations
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
number of employees	For the purposes of section 129(11) of the Act the number of employees is calculated in a manner consistent with Clause 3.5.3
private employer	any employer other than a Crown employer
private self-insured employer	any self-insured employer other than a Crown self-insured employer

Term	Meaning
profitability ratio	net profit before tax ÷ total equity
registered employer	an employer that is registered pursuant to section 128 of the Act
Regulations	the Return to Work <i>Regulations 2015</i>
related bodies corporate	has the same meaning as in section 129 of the Act
relevant legislation	<p>The relevant legislation includes:</p> <ul style="list-style-type: none"> ▪ the Act ▪ Regulations ▪ the WHS Act ▪ the WHS Regulations ▪ the RTWCA ▪ 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
RTWCA	the <i>Return To Work Corporation of South Australia Act 1994</i>
ReturnToWorkSA	the Return to Work Corporation of South Australia
ReturnToWorkSA Premium Order	ReturnToWorkSA Premium Provisions and Orders as published in the South Australian Government Gazette from time to time
self-insured fee	the fee referred to in clause 7.4
Schedule 3	Schedule 3 to the Regulations
Scheme	the Return to Work Scheme
self-insured employer	an employer or group of employers registered by ReturnToWorkSA as a self-insured employer pursuant to Division 1 of Part 9 of the Act
Standards	Injury Management Standards for Self-insured Employers and WHS Standards for Self-insured Employers
transferred liability	<ul style="list-style-type: none"> ▪ any form of assertion by a past or present worker to an entitlement to receive money from ReturnToWorkSA pursuant to the Act that ▪ is payable after the date of registration of a self-insured employer or group of self-insured employers; ▪ arises from a compensable injury which occurred prior to the date of registration of a self-insured employer or group of self-insured employers ▪ arises in the course of employment by that self-insured employer or that group of self-insured employers; <p>and includes</p> <ul style="list-style-type: none"> ▪ such an assertion (whenever received) even if it is not successful ▪ anything which is consequential upon such an assertion

Term	Meaning
	<p>being successful or unsuccessful</p> <ul style="list-style-type: none"> ▪ the entire amount that the nominated worker is or may become entitled to receive from ReturnToWorkSA pursuant to the relevant provisions of the Act whether or not a separate or further assertion of an entitlement to receive the same is made by the person ▪ all claims for compensation which were included in the Actuarial calculation that determined the LTP ▪ such other claims as may be included in an SIETCMA entered into by ReturnToWorkSA or a self-insured employer
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 Standards	the WHS Performance Standards for self-insured employers
worker	Has the same meaning as in section 5 of the Act.
work injury	has the same meaning as in the Act

PREAMBLE

Note: Terms in italics are defined in the Glossary.

A. The purpose of this Code

The purpose of *the Code* is to:

- (1) provide to *self-insured employers* a framework of *ReturnToWorkSA* policies and procedures in administering the *Return to Work Act 2014* (the *Act*);
- (2) constitute a code of conduct for *self-insured employers* that each *self-insured employer* must comply with as a condition of their registration pursuant to section 129(5)(d) of the *Act*;
- (3) ensure all *self-insured employers* are aware of the ongoing obligations of registration as a *self-insured employer*; 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 *ReturnToWorkSA* under section 129(5)(a)(iii) of the *Act* (but not those terms and conditions which have been determined by *ReturnToWorkSA* to be applicable to an individual *self-insured employer* or a *group of self-insured employers*).

B. ReturnToWorkSA Policy on self-insured employer status

Through the Code of Conduct, the *ReturnToWorkSA Board* has formulated a policy 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 *Code* 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 *RTWCA* and the *Act*.

- (5) All *self-insured employers* are required to maintain compliance with the *Code* throughout the period of registration, with the consequences of a failure to comply resulting in a potential supplementary payment, revocation, reduction or the placing of conditions on *self-insured employer* status or refusal to renew *self-insured employer* status.
- (6) The *Board* requires *employers* who are *related bodies corporate* to be registered as a *group of self-insured employers*.
- (7) If as a result of an evaluation of a *self-insured employer*, *ReturnToWorkSA* forms a view that the *self-insured employer* has not met the standard required for a full period of renewal to be recommended, *ReturnToWorkSA* 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.

C. ReturnToWorkSA's role

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

D. Statement of Regulatory Intent

ReturnToWorkSA 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.”*

E. Objects of Act

The Act provides for the following object and objectives:

The object of this Act is—

- (1) *to establish a scheme that supports workers who suffer injuries at work and that has as its primary objective to provide early intervention in respect of claims so as to ensure that action is taken to support workers—*
 - (a) *in realising the health benefits of work; and*
 - (b) *in recovering from injury; and*
 - (c) *in returning to work (including, if required, after retraining); and*
 - (d) *in being restored to the community where returning to work is not possible*
- (2) *In connection with subsection (1), the other objectives that apply with respect to this Act are —*
 - (a) *to ensure that workers who suffer injuries at work receive high-quality service, are treated with dignity, and are supported financially; and*
 - (b) *to ensure that employers' costs are contained within reasonable limits so that the impact of work injuries on South Australian businesses is minimised; and*
 - (c) *to provide a reasonable balance between the interests of workers and the interests of employers; and*
 - (d) *to reduce the overall social and economic cost of work injuries to the State and to the community; and*
 - (e) *to support activities that are aimed at reducing the incidence of work injuries; and*
 - (f) *to reduce disputation when workers are injured at work by improving the quality of decision making and by reducing adversarial contests to the greatest possible extent.*
- (3) *A person exercising judicial, quasi-judicial or administrative powers must interpret this Act in the light of its objects and these objectives without bias towards the interests of employers on the one hand, or workers on the other.*

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

F. Important considerations when contemplating self-insured employer status

Employers are advised of the following important considerations when contemplating self-insured employer status:

- (1) On attaining *self-insured employer* status, the *self-insured employer* assumes liability for all payments of compensation to which any person becomes entitled in consequence of the occurrence of a *work injury* arising from the employment by the *self-insured employer* or member of the *self-insured employer group* (if applicable) whether that *work injury* occurred before or after the date of grant of *self-insured employer* status.
- (2) On assuming liability for all payments of compensation described in (1) above, the Corporation may in accordance with Clause 11.5, a liability transfer payment may be payable by or to the Corporation.
- (3) 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 *ReturnToWorkSA*.
- (4) 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 appropriate to those estimates as approved by *ReturnToWorkSA*.
- (5) The *self-insured employer* must maintain appropriate claims management facilities and expertise to ensure ongoing compliance in relation to claims management.
- (6) The *self-insured employer* must also pay a fee pursuant to section 146 of the *Act* and adjustments to the fee (if any) as determined by *ReturnToWorkSA* to apply to the *self-insured employer*, in accordance with the *Act*, the *Regulations*, and this *Code*.
- (7) *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 12 (inclusive), Glossary of Terms and Annexures as amended from time to time by *ReturnToWorkSA* and published in the *Gazette* pursuant to section 129(5)(d). The *Code* is to be known as the *self-insured employer code* and any references in this *Code* to 'the *Code*' means the *Code of conduct for self-insured employers*.

1.2. The Return To Work Act 2014

- a) Compliance with the *Code* (as determined by *ReturnToWorkSA* from time to time and published in the *Gazette*) is enforceable as a condition of registration of that *self-insured employer* pursuant to section 129(5)(d) of the *Act*.
- b) The *Act* is administered by *ReturnToWorkSA* in accordance with the objects of the *Act* set out in section 3 of the *Act*.

1.3. Other parts of the Act apply

- a) Part 9 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. 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*.

1.5. 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.

1.6. Application and operation

Pursuant to section 129(5)(d) of the *Act*, the *Code* applies as a condition of registration as a *self-insured employer*.

1.7. Updates

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

1.8. Group of self-insured employers

- a) The *Act* allows for a group of *employers* to apply to *ReturnToWorkSA* for registration as a *group of self-insured employers*.
- b) Chapter 10 of *the Code* sets out the requirements and obligations of *group of self-insured employers*.
- c) Where the context permits, a reference in *the Code* to '*self-insured employer*' includes a reference to a *group of self-insured employers*.

1.9. Indemnified maritime employers

Pursuant to section 129(5)(b) of the *Act*, indemnified maritime employers may apply to be registered as *self-insured employers*.

1.10. Continuous Disclosure

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

1.11. 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.

1.12. 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 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 129 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 *ReturnToWorkSA*.
- b) Compliance by the *self-insured employer* with the conditions and other obligations of registration will be subject to ongoing review by *ReturnToWorkSA*.

2.3. Obligations of a self-insured employer

Pursuant to section 129(5) of the Act, registration as a *self-insured employer* is subject to:

- a) a condition that the *self-insured employer* must adopt and apply the service standards set out in Schedule 5 of the Act (but these standards do not, in themselves, give rise to substantive rights or liabilities (compared to rights or liabilities established or prescribed under other relevant provisions of this Act)); and
- b) 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
- c) such other terms and conditions as *ReturnToWorkSA* determines from time to time or as are prescribed by the *Regulations*; and
- d) if *self-insured employer* status was conferred on a group of *related bodies corporate*—the condition that there is at no time a *related body corporate* to any member of the group that employs a *worker* or *workers* in employment to which the Act applies that is not a member of the group; and
- e) a condition that the *self-insured employer* will comply with any code of conduct for *self-insured employers* determined by *ReturnToWorkSA* 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 134 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) *ReturnToWorkSA* 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 *ReturnToWorkSA* as the compensating authority in respect of *worker* costs of injuries suffered by the *self-insured employer's workers* to the extent specified in section 134(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 134 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 *ReturnToWorkSA* and shall be subject to review and appeal in the same way as a decision of *ReturnToWorkSA*.
 - (ii) *ReturnToWorkSA* cannot exercise a power or discretion that has been delegated to a *self-insured employer*.
 - (iii) *ReturnToWorkSA* cannot interfere with or overrule a decision of a *self-insured employer* made in the exercise of a delegated power, except pursuant to section 134.

2.4.4. Reasonable exercise of powers and discretions

- 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, *ReturnToWorkSA* may take such action available to it under the *Act* as is appropriate in the circumstances including:
 - (i) the withdrawal of all or part of the relevant delegated power; or
 - (ii) revocation of the *employer's* registration as a *self-insured employer*.
- c) The exercise of a *self-insured employer's* delegated powers and discretions must be undertaken directly by the *self-insured employer* or *group of self-insured employers*.
- d) The *self-insured employer* must be able to demonstrate that an employee of the *self-insured employer* or *group of self-insured employers* has exercised the powers and discretions delegated under section 134 of the *Act*.
- e) The *self-insured employer* must be able to demonstrate that it has an appropriate level of knowledge and expertise to enable the informed exercise of its delegated powers and discretions.

A *self-insured employer* must establish and implement procedures, which describe how it will exercise all powers and discretions delegated under section 134 of the *Act*.

2.5. Additional terms and conditions of registration

2.5.1. Criteria under section 129(11) of the Act

- a) *ReturnToWorkSA* 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 circumstances *ReturnToWorkSA* 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 *ReturnToWorkSA* had regard to in accordance with section 129 of the *Act* when conferring or renewing self-insured status including all of the material supplied to *ReturnToWorkSA* 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, *ReturnToWorkSA* may notify the *self-insured employer* of other matters *ReturnToWorkSA* 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. **WHS Standards and Injury Management Standards**

- a) *ReturnToWorkSA* has determined that ongoing conformance with the *Standards* is a term and condition of registration as a *self-insured employer*.
- b) The *WHS Performance Standards for self-insured employers* are a set of standards that are used by *ReturnToWorkSA* to evaluate an *employer's* performance in relation to prevention of injury in the workplace and compliance with *relevant legislation*.
- c) The *Injury Management Standards for Self-insured Employers* is a set of performance criteria used by *ReturnToWorkSA* to evaluate an *employer's* performance in relation to claims management, return to work and the *Code*.
- d) *ReturnToWorkSA* will undertake a regular evaluation of an *employer's* compliance with the *Standards* in accordance with Chapter 8 of this *Code*.
- e) A copy of the current *WHS Performance Standards for self-injury employers* is Annexure A and the *Injury Management Standards for Self-insured Employers* is Annexure B to the *Code*.

2.5.3. **Schedule 3 of the Regulations**

- a) Pursuant to regulation 51 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 3*.
- b) It is a condition of registration that the *self-insured employer* must comply with any policies or requirements notified by *ReturnToWorkSA* from time to time in relation to the application of *Schedule 3*, including but not limited to the Self-Insured Employer EDI Technical Specification v12.0.

- c) *ReturnToWorkSA* has determined the following policies and requirements in relation to *Schedule 3*:

- (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. For these purposes, a 'consistent and regular pattern' will be:

- (A) data provided within 14 days or such other time as approved by *ReturnToWorkSA*;
- (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;
- (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 *ReturnToWorkSA*, 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 *ReturnToWorkSA* and the *self-insured employer*;
- (G) when *ReturnToWorkSA* changes the data requirements, the *self-insured employer* meets those new data requirements within three months of being notified of those changes; and
- (H) when an *employer* is first granted registration as a *self-insured employer*, an operational and compliant claims data base must be implemented with transmissions commencing no longer than three months after the first grant registration.

- (ii) Actuarial reports
 - (A) Each *self-insured employer* is required to submit an actuarial report within three months of the end of the *self-insured employer's* financial year. The report must be prepared by an actuary following *ReturnToWorkSA's* actuarial guidelines, which are Annexure D to this *Code*.
 - (B) The actuarial reports are used by *ReturnToWorkSA* to determine the appropriate level of financial guarantee to be provided by the *self-insured employer*.
 - (C) A failure to provide the report to *ReturnToWorkSA* within the time stipulated in *Schedule 3* 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 3*.
 - (B) *ReturnToWorkSA* 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+. *ReturnToWorkSA* 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 *ReturnToWorkSA* decides otherwise.

- (C) *ReturnToWorkSA* may consider other forms of security that provide a comparable level of security to *ReturnToWorkSA* but *ReturnToWorkSA* 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 *ReturnToWorkSA*.
- (B) *ReturnToWorkSA* 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 *ReturnToWorkSA* on the happening of any of the circumstances set out in paragraph 10 of *Schedule 3*, *self-insured employers* must also notify *ReturnToWorkSA* in the event of any change to the position of:

- (A) chief executive officer of the *self-insured employer*, and
- (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.

2.5.4. Financial distress

- a) *ReturnToWorkSA* 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

- a) *ReturnToWorkSA* 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*:
- b) clause 3.5.3 *Number of employees* employed by the group;
- c) clause 3.5.4 *Financial viability*;
- d) clause 3.5.5 *Claims administration resources*;
- e) clause 3.5.6 *Incidence and severity of injuries*;
- f) clause 3.5.7 *Effect of working conditions*;
- g) clause 3.5.8 *Return to work services*;
- h) clause 3.5.9 *Provision of suitable employment*;
- i) clause 3.5.10 *Views of relevant industrial associations*;
- j) clause 3.5.11 *Effect on the Compensation Fund*; and
- k) chapter 4 *Statement of Service Standards*.

2.5.6. Other terms

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

2.5.7. 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, *ReturnToWorkSA* may after taking into account the nature of the *non-compliance*, provide the *self-insured employer* an opportunity to undertake corrective actions.

Where in the case of an instance of a *non-compliance* with these requirements *ReturnToWorkSA* may, pursuant to the *Act* do one or more of the following:

- a) take such a *non-compliance* with the *Act* or a term of condition of registration into account when determining whether to subsequently renew *self-insured employer* status;

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- b) pursuant to section 129(9) of the *Act*, revoke or reduce the period of registration as a *self-insured employer* as outlined in Chapter 6;
 - c) pursuant to section 146(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 7;
 - d) pursuant to section 198 of the *Act*, prosecute the *self-insured employer* for a breach of the *Act*;
 - e) pursuant to section 134(7) of the *Act*, withdraw (in whole or in part) the delegated powers of *the self-insured employer*;
 - f) impose a supplementary payment pursuant to section 147 of the *Act*.

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 5 of the *Code*.

3.3. Satisfaction of ReturnToWorkSA

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

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

3.4. Eligibility

Pursuant to section 129(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*.

Pursuant to section 129(4) of the *Act* *ReturnToWorkSA* may reject an application by an individual *employer* if the *employer* is a member of a group comprised of *related bodies corporate* or *local government corporations*.

3.4.1. Group of employers

- a) Pursuant to section 129(2)(b)(i) of the *Act*, a group of *employers* may apply to *ReturnToWorkSA* for registration as a group of *self-insured employers* providing they are *related bodies corporate* under section 129(15) 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) An application by a group of *employers* is subject to any special conditions relating to *foreign companies* that are *holding companies* and their subsidiaries more specifically provided for under Chapter 10 of the *Code*.
- c) In considering an application for self-insurance for a group of *employers* constituted of associated entities under clause 3.4.1 (a)(ii) *ReturnToWorkSA* 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) *ReturnToWorkSA* 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.

- d) The *employer* group must nominate a member of that group pursuant to section 131(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 129(11) 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*, *ReturnToWorkSA* 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 *work 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 recovery and return to work of *workers*;
 - (vii) the record of the *employer* or *employers* in providing suitable employment to *workers* who suffer *work injuries*;
 - (viii) the views of any *industrial association* that has, in the opinion of *ReturnToWorkSA*, a proper interest in the matter; and
 - (ix) once an *employer* or group has been registered as a *self-insured employer*, *ReturnToWorkSA* must not, in deciding whether to renew the registration, consider the effect of the registration on the *Compensation Fund*.

- b) *ReturnToWorkSA* considers each criterion separately and gives due weight to each criterion.
- c) In considering the criteria *ReturnToWorkSA* 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 129(11) of the *Act*, in deciding whether to grant, renew, revoke or reduce a period of registration as a *self-insured employer*, *ReturnToWorkSA* may have regard to such matters as it considers relevant.
- b) Without limitation, *ReturnToWorkSA* 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) whether a single applicant for self-insurance is a member of a corporate group of *related bodies corporate*; and
 - (iv) 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 *ReturnToWorkSA* must have regard to under section 129(11) 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) Ordinarily the *number of employees* required for consideration of an application for a *self-insured employer* registration or a renewal of *self-insured employer* registration will be 200 or more employees. In exceptional cases *ReturnToWorkSA* may, in its discretion, consider whether registration or renewal of registration of an *employer* or *self-insured employer* (as the case may be) will be permitted notwithstanding that the minimum *number of employees* has not been met.
- b) Unless otherwise agreed by RTWSA, for the purposes of clause 3.5.3 of the *Code* the *number of employees* is calculated by calculating the total number of ordinary hours worked by employees employed during a continuous 6-month period and dividing the number of hours by 910. The whole of continuous 6-month period must be within a period of one year prior to the date of the application.
- c) An application for renewal of a registration as a *self-insured employer* or *group of self-insured employers* with fewer than 200 employees calculated in accordance with clause 3.5.3 of the *Code* will be assessed having regard to the likelihood of the *self-insured employer* or *group of self-insured employers* reaching 200 employees within a 12-month period from the date of expiry of the current self-insurance registration period.

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*, *ReturnToWorkSA* 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, *ReturnToWorkSA* 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, *ReturnToWorkSA* will take into consideration such financial data as it considers relevant. *ReturnToWorkSA* will ordinarily consider the following elements as being relevant but this list should not be considered as exhaustive:

Primary indicators

- (i) *Balance sheet test*, being total tangible assets divided by total liabilities.
- (ii) *Gearing ratio*, being loan capital divided by total capital employed.
- (iii) *Liquidity ratio*, being current assets divided by current liabilities.
- (iv) *Cash Flow Margin*, being operating cash flow divided by net sales.

Secondary indicator

- (i) *Profitability ratio*, being net profit before tax divided by total equity.
- d) *ReturnToWorkSA* will consider each of the four primary indicators in all cases and the secondary indicator where considered appropriate to assist in the overall analysis. The industry specific benchmarks to be applied are set out in the table below:

Industry Group	Balance Sheet	Gearing	Liquidity	Cash flow margin	Profitability
Manufacturing	≥1.6	≤60%	≥1.3	≥5%	≥10%
General Contracting	1.2	50%	1.3	5%	5%
Not for Profit	1.2	50%	1.3	5%	n/a
Retail	1.2	50%	1.3	3%	10%
Other	1.2	50%	1.3	7%	5%

- e) When the *employer* results do not meet the stated benchmarks, *ReturnToWorkSA* will make a judgement based on a holistic assessment of the *employer's* financial viability.
 - f) 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 *employer's* overall position.
- g) *ReturnToWorkSA* may consider an *employer* that provides financial guarantees on behalf of other *self-insured employers* as meeting the required level of financial performance.

- h) In considering the financial suitability of an entity *ReturnToWorkSA* will have regard to any grouping of the *employer* and the financial relationships within groups to determine whether it is appropriate to measure the *employer* or group by reference to the financial results of some other related company.
- i) The CEO of *ReturnToWorkSA* may override any assessment outcome that indicates an *employer* is not eligible based on the assessment against the stated financial viability criteria.
- j) Any decision to revoke a self-insurance registration will remain the delegation of the *Board*.

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, *ReturnToWorkSA* will have regard to the following matters:

- a) the qualifications and experience of the officers responsible for claims administration;
- b) the number, frequency, complexity and duration of claims;
- c) job description of the officers responsible; and
- d) the performance of the *employer* or group of *employers* as measured against the *Code*.

3.5.6. Incidence and severity of injuries

- a) The incidence and severity of injuries for *self-insured employers* will be evaluated based on 3 years previous data from the *employer* using the *ReturnToWorkSA* database.
- b) Evaluation of the incidence of *work injuries* is based on the total number of claims reported per million dollars remuneration.
- c) Evaluation of the severity of *work injuries* is based on the average cost of claims per million dollars remuneration.

- d) *ReturnToWorkSA* will ordinarily consider the *employer* as having satisfied these criteria if the *employer's* performance in relation to the incidence and severity is lower than relevant industries. If the *employer* represents 30% or more of the remuneration paid in their *ReturnToWorkSA* industry classification then *ReturnToWorkSA* 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*, *ReturnToWorkSA* will have regard to all relevant circumstances including:

- a) the performance of the *self-insured employer* evaluated against the *WHS 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*;
- 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 *ReturnToWorkSA*, indicates a non-conformance with the standards and will, unless the non-conformance is rectified to *ReturnToWorkSA's* satisfaction before a date nominated by *ReturnToWorkSA*, be regarded as inconsistent with the *employer's* eligibility for *self-insured employer* status or continued registration; and
- e) *ReturnToWorkSA* will actively monitor the *employer's* actions and require reporting from the *employer* during the period when the fatality is under investigation.

3.5.8. Return to Work Services

When assessing the record of the *employer* or *employers* in relation to the provision of recovery and return to work services to *workers* who suffer work injuries, *ReturnToWorkSA* will have regard to all relevant circumstances including the:

- a) performance of the *employer* or group of *employers* evaluated against the *Injury Management Standards* as relevant to the recovery and return to work of *workers*;

- b) *employer's* prior record of performance in relation to recovery and return to work, including:
 - (i) sustainable early return to work outcomes;
 - (ii) placement of *workers* in suitable and sustainable employment; and
 - (iii) record of compliance with the requirements of *ReturnToWorkSA* in relation to sections 18, 20 and 25 of the *Act*; and
 - (iv) the nature and outcomes of any program, whether it is officially recorded and described or simply an informal practice whereby treatment is offered and provided for a limited or extended period of time without a claim being lodged.

3.5.9. Provision of suitable employment

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

- a) performance of the *employer* or group of *employers* as measured by *ReturnToWorkSA* against the *Injury Management Standards*;
- b) *employer's* record and attitude towards the provision of suitable employment for *workers* who have suffered *work injuries* including any action taken by *ReturnToWorkSA* in relation to that matter concerning the *employer* including the application of a supplementary payment in circumstances attracting the application of sections 18, 20 and 25 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) *ReturnToWorkSA* must have regard to the opinions of any *industrial association* that has, in the opinion of *ReturnToWorkSA*, a proper interest in the matter.
- b) *ReturnToWorkSA* will ordinarily consider the following *industrial associations* as having a proper interest in the matter:
 - (i) an industrial association, including State level officials of an association, that may have members employed by the *self-insured employer*;
 - (ii) on-site representatives of any relevant *industrial association*;
 - (iii) other *workers* or their nominated representatives as considered appropriate by *ReturnToWorkSA*;
 - (iv) any *employer*, business, or industry associations of which the *self-insured employer* is a member.
- c) The *employer* must identify and contact in writing all *industrial associations* that have a proper interest and must satisfy *ReturnToWorkSA* that all such *industrial associations* have been identified and have been consulted in writing but doing so will not prohibit *ReturnToWorkSA* from making contact with *industrial associations* to further inform it 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 *ReturnToWorkSA* to have no objection to the application.

3.5.11. Effect on the fund

- a) Except in relation to an application for renewal, *ReturnToWorkSA* 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*, *ReturnToWorkSA* 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 129(3) of the *Act*:
where an application is made for *self-insured employer* registration and *ReturnToWorkSA* 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,
- ReturnToWorkSA* 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 *ReturnToWorkSA* 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*, *ReturnToWorkSA* 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 *ReturnToWorkSA* 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. Statement of service standards

4.1. Application

This chapter applies to all *self-insured employers* or *employers* who have applied for registration as a *self-insured employer* or *group of self-insured employers*.

4.2. General

Section 129 of the *Act* requires as a condition of registration that the *self-insured employer* adopt and apply the statement of service standards set out in Schedule 5 of the *Act*.

This chapter describes the requirements a *self-insured employer* must meet when adopting and applying the statement of service standards set out in Schedule 5.

4.3. Application of the Statement of Service Standards

In applying the statement of service standards, the *self-insured employer* will:

- a) provide easy access to the statement of service standards to its employees;
- b) ensure procedures are in place which describes how the *self-insured employer* will meet the requirements of the statement of service standards;
- c) ensure that all providers of relevant services engaged by the *self-insured employer* meet the requirements of the Statement of service standards;
- d) provide to *ReturnToWorkSA* within 30 days of receipt a copy of any investigation report provided to it by the State Ombudsman; and
- e) any investigation report provided by the Ombudsman and provided to *ReturnToWorkSA* must be accompanied by written details of any corrective actions being undertaken by the *self-insured employer* to address any substantiated complaint.

CHAPTER 5

5. APPLICATIONS FOR INITIAL GRANT OF REGISTRATION AS A SELF-INSURED EMPLOYER.

5.1. Application process for initial grant of registration

5.1.1. Scope

- a) Chapter 5 of the Code applies to an application for the grant of registration as a self-insured employer under section 129(1) of the Act.
- b) This Chapter does not apply to:
 - (i) an existing self-insured employer who has applied for renewal of its registration as a self-insured employer pursuant to section 129(1) of the Act, or
 - (ii) an application by a *self-insured employer* or *group of self-insured employers* under section 129(7)(a) of the Act.

5.1.2. How to apply

- a) Prior to commencing an application, an *employer* should contact *ReturnToWorkSA* to discuss the application process and ongoing requirements of registration as a *self-insured employer*.
- b) An Application will consist of a submission by the employer of:
 - (i) An Expression of Interest.
 - (ii) An Application for registration as a self-insured employer.

5.2. Expression of interest

- a) An *employer* is required to complete the Expression of Interest template published on the *ReturnToWorkSA* website and submit it to *ReturnToWorkSA*.

5.3. Application

5.3.1. Application

- a) An *employer* must apply to *ReturnToWorkSA* for registration as a self-insured employer.
- b) An application for registration as a *self-insured employer*:
 - (i) Must include a completed Application template published on the *ReturnToWorkSA* website; and

- (ii) be accompanied by the payment of the prescribed fee.

5.3.2. Assessment process

The application process will consist of a number of steps as outlined below:

Expression of Interest

- a) *ReturnToWorkSA* will review an Expression of Interest and provide advice to the *employer* on its suitability for registration as a *self-insured employer*.

Application for an initial grant of registration

- a) On submission of a complete Application for an initial grant of registration as a *self-insured employer* and payment of the prescribed fee, *ReturnToWorkSA* will arrange with the *employer* to:
 - (i) review the employer's application; and
 - (ii) evaluate the employer's work health, safety, and injury management systems.
- b) Evaluation of the *employer's* work, health and safety and injury management systems will be in accordance with the *ReturnToWorkSA* Self-insured Evaluation Practice Manual.
- c) At the conclusion of the evaluation process, the employer will receive an Evaluation Report. On receipt of an Evaluation Report an employer may elect to:
 - (i) cease the application process; or
 - (ii) proceed to the consideration of its application by the Board of *ReturnToWorkSA*.
- d) An employer may choose to make a submission in response the Evaluation Report, which will be provided to the Board of *ReturnToWorkSA* in conjunction with the employer's Application and the Evaluation Report. The submission may include details of corrective actions in response to any non-conformances identified.

5.4. Decision by the Board

- a) The Board must determine an Application for the initial grant of registration as a self-insured employer.
- b) The Board's decision to reject an application for self-insured employer registration is subject to appeal as set out in Chapter 6.

5.5. Valuation of Liability Transfer Payment

- a) Prior to consideration of an application for the initial grant of registration as a self-insured employer:
 - (i) The employer will need to agree the terms and conditions for the transfer of liabilities (including all the necessary financial calculations and adjustments) pursuant to section 64(3) and 64(4) with *ReturnToWorkSA*.
 - (ii) An actuarial evaluation will be undertaken to establish the value of the existing claims liability to estimate the likely liability incurred and payments payable during the first year of self-insured employer registration.
- b) The employer will need to submit the required financial guarantee, and evidence of the existence of the excess of loss insurance policy before its registration as a self-insured employer can commence.

5.6. Group registration

- a) Pursuant to section 129(12) 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 129(13) of the Act, *ReturnToWorkSA* may, on application from the group, change the nominated *employer*. When considering an application to do so *ReturnToWorkSA* 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; and
 - (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*.

5.7. Registration

5.7.1. Registration

- a) Pursuant to section 129(3) of the *Act*, where a valid application for registration has been made and *ReturnToWorkSA* 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,

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

5.7.2. Effective date

- a) Registration takes effect from a date fixed by *ReturnToWorkSA*.
- b) Should the employer and *ReturnToWorkSA* agree, the registration may take effect from a date after the date fixed under paragraph (a) but no extension will be given beyond six months, and if not taken up by that time the original approval of self-insurance will be considered to have lapsed.
- c) *ReturnToWorkSA* cannot backdate a registration.

5.7.3. Initial period of registration

- a) Registration will ordinarily be subject to evaluation against the Injury Management Standards within the first year of registration. Should the self-insured employer fail such evaluation, *ReturnToWorkSA* 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 *ReturnToWorkSA* to renew its registration for a further period not exceeding five years in accordance with section 129(5)(f) of the *Act*.

CHAPTER 6

6. REDUCTION, REVOCATION, AND APPEALS

Part I - Introduction

6.1. Application

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

6.2. General

- a) Part I specifies the statutory criteria *ReturnToWorkSA* 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 *ReturnToWorkSA* 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 *ReturnToWorkSA* when considering whether to revoke a *self-insured employer's* registration.
- d) Part IV of this chapter specifies the alternative actions *ReturnToWorkSA*, 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 *ReturnToWorkSA* refuses to grant, renew or revoke a *self-insured employer's* registration.

6.3. Reduction or revocation

Pursuant to section 129(g) of the *Act*, *ReturnToWorkSA* 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.

6.4. Statutory criteria

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

6.5. Notification

Pursuant to a *self-insured employer's* obligations of notification set out in Chapter 1 and paragraph 10 of the *Schedule 3*, a *self-insured employer* must notify *ReturnToWorkSA* 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.

6.6. Process of reduction or revocation of registration

- a) The *Board of ReturnToWorkSA*, 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 129(11) of the *Act* as set out in clause 3.5 of the *Code* and *WHS standards* and *Injury Management 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 *ReturnToWorkSA* in relation to the reduction or revocation of the period of registration of a *self-insured employer*.
- d) *ReturnToWorkSA* 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 *ReturnToWorkSA* making a recommendation to the *Board* that the registration of a *self-insured employer* should be reduced or revoked, *ReturnToWorkSA* will (unless there are good reasons for proceeding urgently):
 - (i) request the *self-insured employer* to show cause why *ReturnToWorkSA* 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 *ReturnToWorkSA* its compliance with the *Act* and the terms and conditions of registration; and
 - (iv) in the circumstances of a revocation, inform the *self-insured employer* of its rights to dispute the decision of *ReturnToWorkSA*.
- f) Without limitation clauses 6.6(e)(ii) and 6.6(e)(iii) will not apply if *ReturnToWorkSA* is of the opinion that the circumstances require an immediate revocation of the period of registration.
- g) Clause 6.6(e)(iii) will not apply if *ReturnToWorkSA* 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

6.7. Application

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

6.8. General

- a) Reduction of a period of registration will ordinarily be used as an alternative to revocation if *ReturnToWorkSA* 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 *ReturnToWorkSA* to reduce its registration as a *self-insured employer*. Section 133 of the *Act* and Part V of this chapter set out the *self-insured employer's* rights in terms of an appeal.

6.9. Application of criteria under section 129(11) of the Act

- a) A reduction of term has potentially adverse financial implications for a *self-insured employer*.
- b) Without limitation, *ReturnToWorkSA* will when considering whether to reduce the period of registration of an *employer* in accordance with section 129(9) 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 129(11) of the *Act* or a term or condition of registration,that, in the opinion of *ReturnToWorkSA* 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.

6.10. Effect of reduction of registration

- a) *ReturnToWorkSA* 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 *ReturnToWorkSA* to renew its registration in accordance with section 129 of the *Act* and chapters 3 and 5 of the *Code* if it wishes to remain a *self-insured employer*.

Part III – Revocation of registration

6.11. Application

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

6.12. General

- a) A *self-insured employer* may appeal a decision by *ReturnToWorkSA* to revoke its registration as a *self-insured employer*. Section 133 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 167 of the *Act*, where an *employer* ceases to be a *self-insured employer*, *ReturnToWorkSA* may, in its discretion, undertake, in whole or part, liabilities related to work injuries arising from employment during the period of the *self-insured employer* registration. Clause 8.4 of the *Code* sets out the requirements and terms of administration of section 167 by *ReturnToWorkSA*.

6.13. Application of criteria under section 129(g) of the Act

- a) *ReturnToWorkSA* 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 *ReturnToWorkSA* 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 *ReturnToWorkSA's* ability to monitor the performance of the *self-insured employer* by, for example, failing or refusing to provide accurate and timely reports to *ReturnToWorkSA* in accordance with the requirements of *Schedule 3* of the *Regulations*;
 - (iv) acted in such a way as to materially increase the risk to *ReturnToWorkSA* 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 *ReturnToWorkSA* from time to time that is approved by *ReturnToWorkSA* and satisfies the requirements of *Schedule 3* of the *Regulations*.

- (B) The sale or loss of all or part of the assets of the *self-insured employer*, which in the opinion of *ReturnToWorkSA*, 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 *ReturnToWorkSA* within the time specified of any of the matters referred to in paragraph 10 of *Schedule 3*.
- c) Without limitation, *ReturnToWorkSA* 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; or
 - (ii) the *self-insured employer* has refused to give any undertakings to *ReturnToWorkSA* that it will comply with the *Act* or a term or condition of registration; or
 - (iii) in the opinion of *ReturnToWorkSA*, 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 *ReturnToWorkSA*.
- d) Where an *employer* ceases to be a *self-insured employer*, the delegation to the *employer* under section 134 of the *Act* will, if *ReturnToWorkSA* so determines, continue to such extent as *ReturnToWorkSA* 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 the *Act*, to be the act or omissions of a *self-insured employer*).

6.14. Effect of revocation of registration

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

Part IV – Alternative action

6.15. Application

This part sets out the alternative action available to *ReturnToWorkSA*, which it may, within its discretion, consider when deciding whether to reduce, revoke or not renew a *self-insured employer's* registration or when *ReturnToWorkSA* 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.

6.16. Removal of delegation

- a) Pursuant to section 134(7) of the *Act*, *ReturnToWorkSA* may consider the removal of delegation of a power or discretion.
- b) *ReturnToWorkSA* 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 6.16(b) *ReturnToWorkSA* may withdraw the delegation until it is satisfied the power will be exercised reasonably.

6.17. Prosecution

Pursuant to sections 198 and 199 of the *Act*, *ReturnToWorkSA* may consider prosecution where a *self-insured employer* is in breach or fails to comply with the *Act*.

Part V – Appeals

6.18. Application

This part applies to any *employer* that wishes to appeal a decision of *ReturnToWorkSA* pursuant to section 133 of the *Act*.

General

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

6.19. Appeals to the Minister

Pursuant to section 133 of the Act:

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

CHAPTER 7

7. SELF-INSURED EMPLOYER FEES

7.1. Application

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

7.2. General

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

7.3. Self-insured employer fee

7.3.1. Fee

Pursuant to section 146 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 Part 9 of the *Act* and will be fixed by the Corporation with a view to raising from *self-insured employers* -
 - (i) a fair contribution towards the administrative expenditure of the *Corporation*; and
 - (ii) a fair contribution towards the cost of recovery and return to work funding; and
 - (iii) a fair contribution towards the cost of the system of dispute resolution established by the *Act*, and
 - (iv) a fair contribution towards the costs associated with the operation of Part 8 of the *Act*; and
 - (v) a fair contribution towards actual and prospective liabilities of the *Corporation* arising from the insolvency of employers and other liabilities of the *ReturnToWorkSA* as an insurer of last resort.

7.3.2. 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 *ReturnToWorkSA* in the administration of the *Scheme*; and
- (ii) the cost of services provided to *self-insured employers* by *ReturnToWorkSA*.

- b) Contribution towards recovery and return to work funding.

ReturnToWorkSA does not currently require *self-insured employers* to make a contribution to the cost of recovery and return to work funding as *self-insured employers* currently fund all such 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 *ReturnToWorkSA* to support the South Australian Employers Tribunal and its functions, including any contributing required for the runoff of the functions of the Workers Compensation Tribunal under the repealed legislation.

- d) Contribution towards the costs associated with the operation of Part 8 of the Act.

A fair contribution towards the costs that must be paid by *ReturnToWorkSA* to support the function relating to Independent Medical Advice referred by the South Australian Employers Tribunal and the Office of the State Ombudsman.

- e) Fair contribution toward liabilities arising from insolvency and other liabilities of *ReturnToWorkSA* as an insurer of last resort.

Subject to clause 7.6, a fair contribution towards liabilities arising from insolvency is determined by *ReturnToWorkSA* and is included in the fee for *self-insured employers*.

7.4. Fee payable

- a) Subject to clause 7.4(b), the fee for all *self-insured employers* as described in clause 7.3.1 is subject to an annual review by the *ReturnToWorkSA 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 146(3) be subject to individual adjustment from time to time under this Chapter 7.
- b) The fee is payable in addition to:
- (i) the *WHS employer registration fee*;
 - (ii) any fines or penalty interest or supplementary payments payable under divisions 6 or 7 of Part 9 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 *ReturnToWorkSA* by reference to the following factors:
- (i) the class of *self-insured employers* for which *ReturnToWorkSA* has determined that section 146(2)(e) of the *Act* does not apply, or should make no contribution under that section;
 - (ii) the class of all *Crown self-insured employers* for which *ReturnToWorkSA* does not assess performance against the *Code* or the *Standards*.

7.5. 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:

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

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

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

Definitions:

D is the differentiation (expressed as a %) arising from the application of all of the factors contained in clause 7.4 c).

R is the total remuneration that the *self-insured employer* expects to pay or has paid to the *self-insured employer's workers* during the relevant financial year commencing on or after 1 July 2015, as adjusted by subtracting total remuneration paid to apprentices/trainees as defined in a *ReturnToWorkSA Premium Order* published in the *Government Gazette* in accordance with section 140 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 *ReturnToWorkSA*.

SEF is the fee rate for *self-insured employers* as determined by *ReturnToWorkSA* from time to time as set out in clause 7.3.1. SEF is set at different rates for the *private self-insured employers* and the *crown self-insured employers*.

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

7.6. Component of fee determined under section 146(2)(e) of the Act as of 1 July 2015

- a) *ReturnToWorkSA* will keep a record of the total of the contributions by each *self-insured employer* in relation to the component of the levy paid under section 68(2)(d) of the repealed Workers Rehabilitation and Compensation Act prior to 1 July 2012 and/or the fee paid under section 72B(2)(e) of that repealed Act after 1 July 2012 and before 30 June 2015, and/or of the period or periods after 1 July 2015 during which that *self-insured employer* has paid a levy/fee under section 146(2)(e) of the Act which included this component.

- b) *ReturnToWorkSA* may determine the characteristics of a class of *self-insured employers* under clause 7.7 whose fee shall not include a fee component under section 146(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 146(2)(e) and allocate *self-insured employers* to that class as meet those characteristics.

7.7. Classes of fee

- a) *ReturnToWorkSA* 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 *ReturnToWorkSA* from time to time, and will be determined by reference to the reason for the fee class being established.
- c) *ReturnToWorkSA* has determined that all *Crown self-insured employers* form a class of *self-insured employers* which:
 - (i) are not required to pay that component of a fee that comes under section 146(2)(e) of the Act; and
 - (ii) will pay a different fee percentage due to *ReturnToWorkSA* no longer bearing responsibility to evaluate compliance with the self-insured standards.
- d) *ReturnToWorkSA* 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 *ReturnToWorkSA's* assessment of those *non-compliances*.

7.8. Supplementary Payment

- a) *ReturnToWorkSA* may in relation to a particular *employer*, after having regard to the matters specified in section 147(2) of the Act determine to impose a supplementary payment on the *self-insured employer* (to be paid in addition to fees payable by the *employer* under Part 9 Division 5 of the Act).
- b) A *self-insured employer* may be subject to a supplementary payment if, in the opinion of *ReturnToWorkSA*, the *self-insured employer* is not complying with the matters specified under section 147(2) of the Act or any other matter *ReturnToWorkSA* determines to be appropriate or relevant.
- c) Supplementary payment(s) associated with those matters specified under section 147(2) of the Act will be provided or payable in accordance with a *scheme* approved by the Minister.

- d) Prior to implementing a supplementary payment, *ReturnToWorkSA* 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 such a period as agreed by *ReturnToWorkSA*. 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, *ReturnToWorkSA* may impose a remedial fee without further notice.

7.9. Payment of fee

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

7.10. Administration of fees

- a) Pursuant to section 149(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 149(3) of the *Act*, *ReturnToWorkSA* 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 150(1), *ReturnToWorkSA* 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 150(4).
- d) Pursuant to section 151(1), *ReturnToWorkSA* 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 152 *ReturnToWorkSA* may issue to an *employer* a notice of adjustment if *ReturnToWorkSA* 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.

7.11. Imposition of fine and/or penalty interest

Under section 155 of the *Act*, *ReturnToWorkSA* 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*.

7.12. Recovery of fees

Pursuant to section 158 of the *Act*, a fee payable under the *Act* (and any penalty interest or fine imposed by *ReturnToWorkSA*) is a debt due to *ReturnToWorkSA* and may be recovered by *ReturnToWorkSA* in a court of competent jurisdiction.

7.13. Review rights

Pursuant to section 157 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 146 of the *Act*) where the decision of *ReturnToWorkSA* is considered by the *self-insured employer* to be unreasonable.

CHAPTER 8

8. TERMINATION/EXPIRATION OF REGISTRATION

8.1. Application

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

- a) it is revoked pursuant to section 129(9) or section 129(10) of the *Act*;
- b) it expires and the *employer* does not apply to *ReturnToWorkSA* to have it renewed; or
- c) *ReturnToWorkSA* determines not to grant an application for renewal or registration of a *self-insured employer*.

8.2. General

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

8.3. Delegation of powers and discretions

- a) Pursuant to section 134(8) of the *Act*, *ReturnToWorkSA* 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 *ReturnToWorkSA* determines that the delegation of powers and discretions are to continue, the delegation continues only to such extent as *ReturnToWorkSA* 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*.

8.4. Assumption of liabilities

- a) Pursuant to section 167 of the *Act*, *ReturnToWorkSA* is the insurer of last resort.
- b) As insurer of last resort, *ReturnToWorkSA* 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 *ReturnToWorkSA* considers adequate for dealing with claims, liabilities and responsibilities relating to work injuries arising from employment during the period of *self-insured employer* registration.
- c) Other than in the circumstances listed in clause 8.4b), *ReturnToWorkSA* may, in its discretion, undertake in whole or part, liabilities related to work injuries arising from employment during the period of the *self-insured employer* registration.
- d) *ReturnToWorkSA* 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 *ReturnToWorkSA* assumes the liabilities of a *self-insured employer*, either in whole or part, and whether or not the liability is assumed immediately or after a period of runoff, it is entitled to receive a payment from the *employer* equal to the capitalised value of all outstanding liabilities.

8.5. Valuation of capitalised liabilities

- a) *ReturnToWorkSA* will determine the process for valuation of claims at the time claims liability is assumed by *ReturnToWorkSA*.
- b) *ReturnToWorkSA* 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 11. However, *ReturnToWorkSA* reserves the right to issue such additional instructions as to 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 *ReturnToWorkSA* 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*.

8.6. Payment

- a) *ReturnToWorkSA* 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 *ReturnToWorkSA*.

- b) *ReturnToWorkSA* may recover the amount of liabilities undertaken by *ReturnToWorkSA* or part thereof, either as a debt due to *ReturnToWorkSA* 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, *ReturnToWorkSA* will retain the financial guarantee for such period as *ReturnToWorkSA* determines is necessary to ensure that no part of the payment received by *ReturnToWorkSA* is subject to repayment pursuant to the laws relating to insolvency or bankruptcy.

8.7. Run off of claims

- a) Where *ReturnToWorkSA* 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 *work injuries*, it may allow the former *self-insured employer* to retain responsibility for such liabilities for such a period as *ReturnToWorkSA* determines appropriate (a 'run off').
- b) Where *ReturnToWorkSA* deems a run off to be appropriate or necessary in the circumstances, *ReturnToWorkSA* may also determine that the former *self-insured employer* continues to exercise some or all of its delegated powers and discretions.
- c) Without limitation, *ReturnToWorkSA* 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.
- d) *ReturnToWorkSA* will evaluate the former *self-insured employer's* compliance with the *Act*, *WHS Standards* and *Injury Management Standards* and the agreement referred to in clause 8.8 and may terminate the run off if *ReturnToWorkSA* considers there are substantive grounds for doing so.

- e) Upon cessation of the run off period, *ReturnToWorkSA* 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 *ReturnToWorkSA*.

8.8. Agreement

- a) In circumstances where *ReturnToWorkSA* 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* for a period, *ReturnToWorkSA* may require the former *self-insured employer* to enter into an agreement with *ReturnToWorkSA*.
- 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 *ReturnToWorkSA* in such circumstances;
 - (iii) plan for the takeover of any residual liabilities by *ReturnToWorkSA*, 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.

8.9. Registration as a registered employer

Pursuant to section 128 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 *ReturnToWorkSA* within 14 days of the cessation of its registration as a *self-insured employer*.

8.10. Treatment of Claim files on cessation of self-insurance

On cessation of self-insurance and transfer of liabilities to the *ReturnToWorkSA* under section 167 of the *Act*, the claim files in relation to any claim responsibility for which has been assumed by *ReturnToWorkSA* must be provided to *ReturnToWorkSA* before the financial guarantee document is released to the *employer*. The claim files required will include both closed and open files but will not extend to any files that have been properly destroyed under the provisions of *Regulations* relating to claim file retention.

CHAPTER 9

9. EVALUATIONS

9.1. Application

This chapter applies to all *employers* who are:

- a) applying an initial grant 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.

9.2. Application for renewal

- a) A *self-insured employer* wishing to renew its registration as a *self-insured employer* must apply to *ReturnToWorkSA* 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) An applicant renewal of a registration as a *self-insured employer* must include the *number of employees* employed by the *employer* calculated in accordance with clause 3.5.3 of the *Code*.
- d) 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 *ReturnToWorkSA* in order for such renewal to be granted. These criteria are set out in Chapter 3 of the *Code* and the *Standards*.
- e) The period of registration granted as a result of an application to renew registration will not exceed five years.

9.3. General

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

ReturnToWorkSA may carry out an evaluation at any time to assess the *self-insured employer's* overall compliance with the requirements of registration or in relation to a particular matter of compliance.

9.4. When evaluations are conducted

ReturnToWorkSA may conduct evaluations:

- a) upon application for grant of *self-insured employer* registration;
- b) upon application for renewal of *self-insured employer* registration;

- c) on an ongoing basis to monitor the *self-insured employer's* ongoing compliance with the requirements of registration; and
- d) on the occurrence of any of the matters outlined in clause 9.4.2(d) of the *Code*.

9.5. Criteria for evaluations

9.5.1. 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, *ReturnToWorkSA* will evaluate the *employer's* performance against the requirements of section 129(11) of the *Act* and the *Code* as they apply from time to time. A validation of the *employer's* data provided in accordance with *Schedule 3* 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 129(11) of the *Act*.
- c) *ReturnToWorkSA* will undertake evaluations in line with the methodology set out in the Evaluation Practice Manual.

9.5.2. Ongoing evaluation

- a) *ReturnToWorkSA* may require a *self-insured employer*, *group of self-insured employers*, or an applicant for an initial period of registration as a *self-insured employer*, to provide reports of its ongoing compliance with the requirements of registration against the *Act*, any terms or conditions of registration and against the *Code* as they apply from time to time.
- b) *ReturnToWorkSA* 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 *Code* as they apply from time to time.
- c) *ReturnToWorkSA* may carry out an evaluation of the *self-insured employer* from time to time, as *ReturnToWorkSA* deems appropriate.
- d) *ReturnToWorkSA* 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 18 of the Act or evidence of a pattern of non-provision of duties;
- (iv) adverse findings of the South Australian Employment 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 South Australian Employment Tribunal, except where such an order has been stayed or is otherwise legally inoperative; and
- (xi) a failure to comply with financial requirements.

9.6. 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 *ReturnToWorkSA* has notified the *employer* of the nature of the evaluation and *ReturnToWorkSA* and the *employer* have agreed to a time during which *ReturnToWorkSA* will conduct its evaluation.
- b) Where appropriate, *ReturnToWorkSA* will notify the *employer* of the scope and the evaluation process prior to conducting the evaluation.
- c) An *employer* must make all reasonable efforts to assist *ReturnToWorkSA* with its evaluation process. This includes the completion and submission of any report requested by *ReturnToWorkSA*.

9.7. Outline of renewal process

- a) The following paragraphs apply where a *self-insured employer* applies to *ReturnToWorkSA* for a renewal of registration as a self-insured employer.
- b) Upon receiving the *self-insured employer's* application for renewal, *ReturnToWorkSA* will appoint one or more evaluators to evaluate the application.
- c) The evaluator will meet with the *self-insured employer* to outline and discuss the requirements of the evaluation process.
- d) If the evaluator determines that there is a material chance that the *self-insured employer* will not meet the requirements of the *Code* then, provided that the *self-insured employer* has made its application for renewal in the time specified under clause 9.2 of the *Code*, *ReturnToWorkSA* 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; and
 - (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 *ReturnToWorkSA* officer/evaluator within 30 calendar days on receiving the written findings; and
 - (iii) the evaluator will consider any response made by the *self-insured employer* or any action taken the *self-insured employer* to address issues raised by the evaluator in the final report.
- e) Where a written response is not received from the *self-insured employer* within the 30 days, the evaluation report(s) will be considered final.
- f) If the *self-insured employer* proposes to dispute the provisional findings it must follow the review process outlined in clause 9.10

9.8. Failure to comply

If *ReturnToWorkSA* is of the opinion, an *employer* or *self-insured employer* has failed to:

- a) comply with any reasonable request for an evaluation, or
- b) use all reasonable efforts to assist *ReturnToWorkSA* 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,

The Board may:

- a) refuse to grant or renew *self-insured employer* registration, or
- 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 6 of *the Code*.

9.9. Self-insurance application and renewal model

In determining the term and conditions of registration for an initial application or an application for renewal of registration as a *self-insured employer*, *ReturnToWorkSA* will have regard to the self-insurance application and renewal model.

9.10. Review process

9.10.1. Review of Evaluation Report

- a) Where a *self-insured employer* or an *employer* disagrees with an assessment made by *ReturnToWorkSA* in respect of any of the criteria contained in section 129 of the *Act* or the *Code* as part of a renewal of registration, or initial grant of registration as a *self-insured employer* a review process will be available as follows:
 - b) The *self-insured employer* or *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 provide evidence supporting its position.
 - c) *ReturnToWorkSA* will review the evaluation findings and the *self-insured employers* or *employers* submission and, if appropriate:
 - (i) change its findings; or
 - (ii) arrange for conciliation to take place between the parties.
 - d) Should *ReturnToWorkSA*'s conciliation result in a change to the assessment of the relevant criteria, the findings shall be altered accordingly.
 - e) If the matter is not resolved, the *self-insured employer* or *employers* may request that *ReturnToWorkSA* appoint a different evaluator to undertake a peer review. The peer review will consider the *self-insured employers* or *employers* response to the initial findings or any corrective action taken by the *self-insured employer* or and make a final assessment for consideration by the *Board* or its delegate.
 - f) *ReturnToWorkSA* and the *self-insured employer* or *employer* may agree to bypass conciliation and proceed directly to peer review.

- g) 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.

CHAPTER 10

10. GROUP SELF-INSURED EMPLOYERS AND CORPORATE RESTRUCTURE

10.1. 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*.

10.2. 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 *ReturnToWorkSA* of the occurrence of any of the events referred to in this chapter.
- c) The role of *ReturnToWorkSA* 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 *transferred liability*.
- d) In considering each circumstance where this chapter may have application, *ReturnToWorkSA* 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 129(5)(a)(iii) of the *Act*, *ReturnToWorkSA* 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 10.4 of the Code to apply to constitute a *group of self-insured employers* that includes that *related body corporate*.

- f) Pursuant to section 129 of the Act *ReturnToWorkSA* 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.

10.3. Group employers

- a) Pursuant to sections 129(1) and (2) of the Act, a group of *employers* may apply to *ReturnToWorkSA* for registration as a *group of self-insured employers* providing they are *related bodies corporate*. A *foreign company*, which is a holding company, cannot be a member of a *group of self-insured employers* under section 129(8) of the Act and will to the extent relevant be disregarded when determining the bodies corporate that will be related for the purposes of the grouping provisions.
- b) The requirements for registration are set out in chapters 3 and 5 of the Code.
- c) Pursuant to section 129(5)(c) 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 10.3a "*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 129 (5)(c) of the Act to *ReturnToWorkSA* to add that relevant *registered employer* to that group.
- e) *ReturnToWorkSA* will consider how it will deal with such an application depending on the size of the *registered employer*. All applications where the relevant *registered employer* has 200 or more employees *ReturnToWorkSA* 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.

- f) Clause 10(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*.
- g) A failure by a *self-insured employer* or *group of self-insured employers* to make such an application in accordance with clause 10.3(d) (or the refusal of such an application by *ReturnToWorkSA*) will be taken into account by *ReturnToWorkSA* when considering whether to cancel or not renew the *group of self-insured employers'* registration as a *group of self-insured employers*.
- h) *ReturnToWorkSA* 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 10.3(d) is granted.
- i) Transfer of liability arrangements will be applicable to all such circumstances.

10.4. 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 129(1) of the Act for registration as a *group of self-insured employers* that includes that *related body corporate* (in this clause 10.4 "related registered employer"). A *foreign company*, which is a holding company, cannot be a member of a *group of self-insured employers* under section 129(8) of the Act.
- b) Clause 10.4(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 10.4(a) (or the refusal of such an application by *ReturnToWorkSA*) will be taken into account by *ReturnToWorkSA* when considering whether to revoke or not renew the *self-insured employers'* registration as a *self-insured employer*.
- d) *ReturnToWorkSA* 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 10.4(a) is granted.
- e) Transfer of liability arrangements will be applicable to all such circumstances.

10.5. Subsidiary of a foreign company which is a holding company**10.5.1. Subsidiary of a foreign company**

- a) A *self-insured employer* must notify *ReturnToWorkSA* if a body corporate exists that may be considered a *related body corporate* to the *self-insured employer* by virtue of it being a subsidiary of a *foreign company*.
- b) *ReturnToWorkSA* in determining *related bodies corporate* under clauses 10.3 and 10.4 of the *Code* will ordinarily consider the following when those *related bodies corporate* are subsidiaries of a *foreign company*:
 - (i) workforce structure of the subsidiary and the *self-insured employer*;
 - (ii) management and reporting structure;
 - (iii) the relevant size of the subsidiary and the *self-insured employer*;
 - (iv) industry the subsidiary operates in;
 - (v) the views of the subsidiary and the *self-insured employer*; and
 - (vi) any other matter *ReturnToWorkSA* considers relevant.
- c) Where *ReturnToWorkSA* determines that a body corporate that would otherwise be a *related body corporate* should be excluded from the self-insured group by virtue of the fact the relationship occurs solely through a *foreign company*, *ReturnToWorkSA* will advise the *self-insured employer* of each exclusion.
- d) If *ReturnToWorkSA* determines that that the *related body corporate* should be included in a self-insured registration the *self-insured employer* must apply to add that *related body corporate* to its self-insurance registration.
- e) *ReturnToWorkSA* may review or change each determination to exclude the body corporate from the self-insured group if the facts relating to that consideration change for any reason.

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

10.6.1. 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 129(7) 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 10.6.1(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 10.6.1(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 *ReturnToWorkSA*.

10.6.2. 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 128 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*.

10.7. 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 10.7 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 129(7)(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 *ReturnToWorkSA* as set out in Chapter 3 of the *Code*.

10.8. 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 129(7)(a) of the *Act* and, in the latter case, apply to amalgamate their registrations so as to form a group pursuant to section 129(7)(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 *ReturnToWorkSA*) will be taken into account by *ReturnToWorkSA* when considering whether to cancel or not renew the *self-insured employer* or *group of self-insured employer’s* 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, *ReturnToWorkSA* will consider submissions from the entity on the timing of the full application of the *Self-insurance Registration Framework* to the entity or entities added to the group.

10.9. Ongoing requirements of group members

- a) Pursuant to section 129(12) 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 129(13) of the *Act*, *ReturnToWorkSA* may, on application from the group, change the nominated *employer* as set out in Chapter 5 of the *Code*.
- c) Notwithstanding clause 10.9 a), the members of the *group of self-insured employers* are jointly and severally liable to satisfy the liabilities of the *employer* treated as the *employer* of all *workers* employed by the various members of the group.
- d) Notwithstanding clauses 10.9 a) and c), any failure by any member of the *group of self-insured employers* to comply with the requirements of the *Act* or a term or condition of registration, as set out in Chapter 2 of the *Code*, will be considered to be such a failure by each member of the *group of self-insured employers* and may result in *ReturnToWorkSA* taking such action as it deems appropriate in the circumstances, as set out in Chapter 6 of the *Code*.

CHAPTER 11

11. CLAIMS LIABILITIES INCURRED PRIOR TO GRANT OF SELF-INSURANCE

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

11.1. Application

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

11.2. General

This part sets out the requirements in relation to the ongoing acceptance and management of claims liabilities that were incurred prior to the grant of self-insurance.

11.3. Agreement

- a) On the approval or restructure of *self-insured employer* registration an agreement governing:
 - (i) the transfer and management of existing claims liabilities, and
 - (ii) the transfer and management of the potential recovery of third party liabilities,

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

- b) The standard form of the SIETCMA can be found on the *ReturnToWorkSA* website www.rtwsa.com

11.4. Management of transferred claims by the employer

- a) Section 64(3) of the *Act* provides that a *self-insured employer* is liable to make all outstanding payments of compensation to which a person is entitled in consequence of the occurrence of a *work injury* arising from employment by the *employer* that occurred before the *employer* became a *self-insured employer*. The terms and arrangements for the transfer are set out in a SIETCMA.
- b) Such transfer and management of pre self-insured liabilities is a condition of the grant of registration as a *self-insured employer*.

11.5. General requirements

- a) Section 64 (4) of the Act provides:

"In connection with the assumption of liability by a self-insured employer under subsection (3) to make outstanding payments of compensation, the Corporation must determine, in accordance with the code of conduct for self-insured employers published by the Corporation in the Gazette under Part 9, whether –

- (a) *the Corporation is required to make a payment to the self-insured employer; or*
- (b) *the self-insured employer is required to make a payment to the Corporation,*

and the amount of any such payment."

- b) The payment pursuant to section 64(4) will be determined and calculated in accordance with the conditions and principles outlined in this part and the applicable SIETCMA. This payment is referred to within the *code* as a Liability Transfer Payment or LTP.
- c) The LTP 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.
- d) The estimate of liabilities used to calculate the LTP 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 *ReturnToWorkSA* until such time as *ReturnToWorkSA* determines the liabilities are unable to be recovered.
- e) Determination of LTP

11.5.1. Valuation

- a) An actuary appointed or approved by *ReturnToWorkSA* will value the claim portfolio 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 claim payments by the *self-insured employer* in respect of the *transferred liability*.

- c) The valuation will not include an allowance for future claims administration costs. *ReturnToWorkSA* 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 D.
- e) The actuary's cost in providing the valuation will be borne by the *self-insured employer*.

11.5.2. 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, and may in some circumstances result in the *employer* being required to make a payment to the *ReturnToWorkSA*. 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 *ReturnToWorkSA*.

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.

LTP will be calculated as follows:

if $OL > NPP$ then $LTP = NPP$

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

where:

'OL' or 'outstanding liabilities' means the present value of the future liability of *ReturnToWorkSA* to pay claims costs for work 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 *ReturnToWorkSA*.

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

$$\text{NPP} = \text{APP} - \text{CP}$$

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

'APP' or 'adjusted premium payment' is *ReturnToWorkSA'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 *ReturnToWorkSA's* estimate of the claims costs paid by *ReturnToWorkSA* 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 *ReturnToWorkSA* 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 *ReturnToWorkSA* 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.

11.5.3. Determination and payment

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

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

If NPP determined in accordance with the clause 11.6.2 of the *Code* is negative, no LTP will be made to the *employer* and the *employer* will be required to pay the negative amount to *ReturnToWorkSA* as a condition of being granted self-insurance.

GST is considered to be additional to LTP and will not be counted as part of LTP until after the limitation discussed in clause 11.6.2 of the *Code* is applied.

11.6. Employers acknowledgement and SIETCMA

- a) A *self-insured employer* must acknowledge in writing the value of the applicable LTP as determined by ReturnToWorkSA as a term and condition of registration.
- b) The acknowledgement will form part of the SIETCMA.
- c) ReturnToWorkSA 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) It is evident that the LTP is dependent on known premiums. Any action that may change the premium payments in hindsight could affect the LTP. A *self-insured employer* must confirm in writing its understanding and acceptance of the potential for the value of the LTP to be affected by the outcomes of any dispute relating to the payment of premiums to ReturnToWorkSA.

11.6a Discretion to change calculation methodology

Where an application has been made before 1 July 2015 in accordance with section 60(2) of the *Workers Rehabilitation and Compensation Act 1986* by an existing single or group self-insured employer to include within its existing self-insured employer registration any related bodies corporate and such is to be determined after 1 July 2015, ReturnToWorkSA may, in rare and exceptional circumstances where ReturnToWorkSA believes that the calculation methodology described in clause 11.5.2 of this Code creates a manifest unfairness to the self-insured employer in a particular instance, adopt a methodology that differs from the methodology in clause 11.5.2.

ReturnToWorkSA will ensure that:

- any liability transfer payment does not exceed the present value of the future liability of ReturnToWorkSA to pay claims costs for work injuries 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 ReturnToWorkSA; and
- the LTP will be paid in accordance with the terms of the relevant SIETCMA; and
- the conditions of the SIETCMA may include the ability to determine an Adjusted Liability Transfer Payment (ALTP).

ReturnToWorkSA may only exercise this discretion where the change in methodology will result in a more favourable result for the employer.

11.7. Potential recovery of liabilities

- a) The LTP will be reduced by the notional outstanding claim value of any claim where a recovery potential has been identified.

- 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.
- e) *ReturnToWorkSA* will provide the necessary delegations to allow the *self-insured employer* to proceed with such recoveries.
- f) 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 *ReturnToWorkSA* 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 LTP in respect of that transitional liability at the time of entering into the SIETCMA.
- g) 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 LTP; then
 - (ii) *ReturnToWorkSA* 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.
- h) The *employer* must diligently pursue the recovery potential of the claim, and must not discontinue the recovery process without the approval of *ReturnToWorkSA*.
- i) In the event the recovery is less than the notional claim value, *ReturnToWorkSA* will, subject to the *employer's* compliance with clause e), pay the difference to the *self-insured employer* as an adjustment of the LTP.
- j) In the event the *employer* breaches clause e), the *employer* must repay to *ReturnToWorkSA* all potentially recoverable amounts paid by *ReturnToWorkSA* prior to the date of registration of the *self-insured employer*.
- k) If the *self-insured employer* has complied with clause e) including taking any necessary action required by *ReturnToWorkSA* from time to time and *ReturnToWorkSA* agrees that there is no reasonable prospect of a successful recovery, *ReturnToWorkSA* will make payment of the notional outstanding claims value as an adjustment of the LTP to the *self-insured employer* as soon as practicable.

- l) Nothing in the conditions relating to recovery claims will result in *ReturnToWorkSA* making a payment to the self- that would be in excess of the LTP that is limited by referred to the NPP.

11.8. Other issues

11.8.1. Timing of payment

- a) *ReturnToWorkSA* will ordinarily pay the full LTP within two months of the commencement of *self-insured employer* registration. However, *ReturnToWorkSA* reserves the right in suitable circumstances to make other arrangements on the payment of the LTP and any such other arrangements will be contained in the SIETCMA to be executed by the employer before approval of self-insurance.

11.8.2. Reservation of payment.

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

- b) In the event that particular claims have been reserved by *ReturnToWorkSA*, *ReturnToWorkSA* will propose alternative arrangements which are deemed appropriate at the discretion of *ReturnToWorkSA*.
- c) *Self-insured employer* registration will not commence until the *employer* and *ReturnToWorkSA* have agreed to these arrangements.

11.8.3. 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

11.9. Application

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

11.10. General

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

11.11. Agreement

- a) On cessation of *self-insured employer* registration, if *ReturnToWorkSA* allows the former *self-insured employer* to retain liability for existing claims for a period as dealt with in Chapter 8 of *the Code*, *ReturnToWorkSA* will provide an Extension of Delegation to Former Self-insured Employer (EDFSIE) document between *ReturnToWorkSA* and the former *self-insured employer*.
- b) The standard form of the EDFSIE can be found at Annexure E.
- c) *ReturnToWorkSA* will amend the standard form of the EDFSIE as it thinks fit to suit the particular circumstances.

11.12. Transfer of liabilities to ReturnToWorkSA

The transfer of liabilities to *ReturnToWorkSA* will occur:

- a) if *ReturnToWorkSA* so determines, immediately upon the *self-insured employer* registration ceasing, or
- b) where *ReturnToWorkSA* 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.

11.13. 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 *ReturnToWorkSA*.
- c) In determining the amount to be paid, *ReturnToWorkSA* 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*.

11.14. 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 *ReturnToWorkSA* 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 *ReturnToWorkSA* is satisfied that all liabilities transferred to it are fully secured by the monies *ReturnToWorkSA* has received.

CHAPTER 12

12. MISCELLANEOUS

12.1. Application

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

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

- a) A *self-insured employer* must ensure compliance with sections 18 and section 20 of the *Act*.
- b) *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 *ReturnToWorkSA*.
- c) *Self-insured employers* are also encouraged to proactively report situations where their compliance with 18 and/or section 20 may potentially come into question.
- d) *Self-insured employers* acknowledge that a breach of section 18 and/or section 20 will be a matter which *ReturnToWorkSA* will consider (under section 129(11) of the *Act*) in determining whether a *self-insured registration* is to be renewed.
- e) A failure to comply with section 18 and section 20 of the *Act* may result in a supplementary payment. Furthermore, *ReturnToWorkSA* 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) The following *process* of reporting by *self-insured employers* and monitoring by *ReturnToWorkSA* will occur:
 - (i) Where a *self-insured employer* believes it cannot provide suitable employment to an injured *worker(s)*, the *self-insured employer* must within 7 days of assessing an inability to provide suitable employment or non-provision of suitable employment notify *ReturnToWorkSA* in writing of its inability to provide suitable employment.

- (ii) A notification under clause 12.2 f)(i) must include information used to assess suitable employment options, including details of:
 - (A) the nature of the *worker's* incapacity and previous employment;
 - (B) the *worker's* age, education, skills and work experience;
 - (C) the *worker's* place of residence;
 - (D) medical information relating to the *worker* that is reasonably available, including in any medical certificate or report;
 - (E) if any recovery/return to work services are being provided to or for the *worker*;
 - (F) the *worker's* recovery/return to work plan, if any;
 - (G) the process and the outcome of the process undertaken by the self-insurer to assess the suitable employment options with the *self-insured employer* or *group of self-insured employers* when taking into account its assessment of A-F above; and
 - (H) factors relating to the exclusions detailed in section 18(2) (b) to (e) of the *Act*.
- (iii) A *self-insured employer* must provide *ReturnToWorkSA* with 28 days' notice of the termination of a *worker* who has suffered a *work injury* unless,
 - (A) the *worker's* employment was terminated on the grounds of serious and wilful misconduct. The burden of establishing that an *employer* terminated a *worker's* employment on the ground of serious and wilful misconduct lies on the *employer*; or
 - (B) the *worker* is neither participating in a recovery/return to work plan, nor receiving compensation, for the *work injury*; or
 - (C) the *worker's* rights to compensation for the injury have been exhausted or the time for making a claim for compensation has expired.

- (iv) A notification under clause 12.2 f)(iii) must include details of:
 - (A) the grounds for termination;
 - (B) the proposed date of termination;
 - (C) the last date of compensation (weekly payments or medical expenses); and
 - (D) factors relating to the exclusions detailed in section 20(2) (a) to (c) of the *Act*.
- (v) *ReturnToWorkSA* will evaluate *self-insured employers* compliance as part of the evaluation process for renewals of self-insured registration. If any issue of concern arise from the evaluation in relation to compliance with section 18 or section 20, 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, Self-insured.
- (vi) *ReturnToWorkSA* may require a *self-insured employer* to provide a declaration of its compliance with the requirements of the *Act* and Clause 12 of the *Code*.
- (vii) Where *ReturnToWorkSA* receives a complaint or referral that a *self-insured employer* may not have complied with its obligations under section 18 and or section 20 of the *Act*, and determines to undertake an investigation, it will provide the *self-insured employer* with advice that an investigation has commenced.
- (viii) It is important that complaints of *non-compliance* with section 18 and section 20 obligations are investigated and resolved expeditiously and in a transparent manner.
- g) Where *ReturnToWorkSA* proposes to *recommend* to the *Board* or its delegate that a *self-insured employer's* period of registration be revoked, reduced or that the *self-insured employer's* registration not be renewed under clause 12.2(d), *ReturnToWorkSA* will afford the *self-insured employer* a reasonable opportunity to respond to *ReturnToWorkSA's* determination that the *self-insured employer* has failed to comply with section 18 and/or section 20 of the *Act*. This will take place before the *Board* or its delegate makes a decision to revoke, reduce the period of, or not renew, the *self-insured employer's* registration.

- h) Where *ReturnToWorkSA* proposes to recommend to the *Board* or its delegate that a supplementary payment is to be applied under clause 12.2(e), *ReturnToWorkSA* will afford the *self-insured employer* a reasonable opportunity to respond to *ReturnToWorkSA*'s determination that the *self-insured employer* has failed to comply with section 18 and/or section 20 of the *Act*. This will take place before the *Board* or its delegate makes a decision to apply a supplementary payment.

12.3. Return to work co-ordinators

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

12.4. 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 33 of the *Act*;
 - (ii) economic loss compensation payments pursuant to section 56 of the *Act*;
 - (iii) non-economic loss compensation payments pursuant to section 56 of the *Act*;
 - (iv) a commutation paid under section 59 of the *Act* in respect of weekly payments arising from the death of a *worker*; and
 - (v) a lump sum payment to a spouse or dependant of a deceased *worker* under section 61 of the *Act*.
- b) Notification
- (i) Within 14 days of making a payment:
 - (A) on a lump sum to a *worker*; or
 - (B) any addition or alteration to a determination in paragraph (A),
a *self-insured employer* must complete and forward to *ReturnToWorkSA* a notification of that lump sum determination or alteration.
 - (ii) The notification must be in such form as *ReturnToWorkSA* 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 SEAT 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 stating the section 49(2) amount;
 - (D) for a non-economic loss compensation payment, the determinations stating percentage of injury upon which the calculation is based;
 - (E) for economic loss compensation payments, the determination which identifies all factors specified by section 56 (4) demonstrating how the lump sum was calculated; and
 - (F) for recoveries against a third party wrongdoer under section 66 of the *Act*, a copy of the deed of release stating the amount of damages retained by the *worker* and the rate of payments the *worker*, will be taken to be receiving under section 49 (3) of the *Act*.

12.5. Confidentiality

- a) Pursuant to section 185 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 185 may result in a prosecution and, in the event of a plea or finding of guilt by a court, a fine of \$10 000, *ReturnToWorkSA* 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 185(2) of the *Act*, *ReturnToWorkSA* 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.

12.6. 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.

12.7. Assessment of permanent impairment

- a) A *self-insured employer* must establish procedures to ensure assessment under Part 2 Division 4 and Part 2 Division 5 of the Act;
 - (i) An assessment, under Part 2 Division 5 must only be undertaken on evidence from a medical practitioner(s) that the injury has stabilised.
 - (ii) By a current accredited medical practitioner(s), in accordance with the Impairment Assessment Guidelines.

12.8. Notification under section 102 of the Act

A *self-insured employer* must ensure that notification of the appointment of reconsideration officers is made to the Registrar of the Employment Tribunal in accordance with section 102 of the Act, and that such notifications are updated when changes occur.

12.9. 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) *ReturnToWorkSA*;
- e) *ReturnToWorkSA*'s claims agents; or
- f) another *self-insured employer*,

(as the case may be) by providing information to *ReturnToWorkSA* regarding such information as is reasonably required by *ReturnToWorkSA* or the other *self-insured employer* (as determined by *ReturnToWorkSA*) 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 recovery and return to work arising from the subsequent *compensable injury*.

**ANNEXURES TO THE CODE OF CONDUCT FOR
SELF-INSURED EMPLOYERS**

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GLOSSARY:

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

	implemented effectively; and whether they are suitable to achieve the organisation's policy and objectives. The results of the internal audits must be documented and employees consulted over them. Preventive/corrective action plans must be subsequently developed.
Key element	An essential component of the management system applicable to a particular business.
Legislative compliance	Meeting the requirements of prevailing legislation.
measurement	Any technique used to measure any system or element outcome against objectives, targets, timeframes etc., established or set by the organisation.
non-conformance	Activities undertaken and the results achieved do not fulfil the specified requirements of the elements. This may be due to the substantive absence or inadequate implementation of a system or documented systems or procedures not being followed.
objective	An overall goal in terms of performance, arising from policies that an organisation sets itself to achieve, and which is quantified, where practicable.
Observation	Activities undertaken and results achieved fulfil the specified requirements of the elements, however an opportunity for improvement exists due to minor deficiencies identified.
organisation	A company, corporation, firm, enterprise, government agency, institution, or other legal identity, or part thereof, whether incorporated or not, public or private, that has its own functions and administration.
Performance indicator	A selected indicator of how effectively a process is operating against objectives. These indicators can be quantitative or qualitative and the choice is dependent on the type of element they are used to measure, as appropriate to the organisation.
policy	Statement by the organisation of its intentions and principles in relation to its overall health, safety, recovery and return to work and claims management performance. The policy provides a framework for action and for the setting of health, safety, recovery and return to work and claims management objectives and targets.
procedure	Written, detailed way to action/perform in conformance with policy objectives.
program	A planned component of an organisation's business management system for health, safety, recovery and return to return to work and claims management.
relevant	Connected with the matter in hand; pertinent (e.g., legislative requirements and/or other identified needs of the organisation).

target	A detailed performance requirement, quantified wherever practicable, pertaining to the organisation that arises from the health, safety, recovery and return to work and claims management objectives. It needs to be met in order to achieve those objectives.
Work health and safety (WHS) management system	An orderly arrangement of interdependent activities and related procedures that drives an organisation's WHS performance.
Workplace Monitoring	To check, observe or keep a record of something (by a person or a device), usually used for the evaluation of a hazard and for assessing the effectiveness of control measures.

Annexure A: WHS Performance standards for self-insured employers

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 Return to Work Act 2014 (RTWA) and the requirements of the Third schedule to the Regulations.

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

The standards are designed to address:

- the integration of WHS 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) the development of systems that measure outcomes; and
- *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.

A business management systems structure clearly designates overall responsibility for WHS 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 ReturnToWorkSA 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 ReturnToWorkSA's website, www.rtwsa.com.

Part 2: Standards

2.1 Overview of the WHS 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 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 performance standards promote a business management systems approach to WHS. 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 with the core functions of the *organisation*;
- assurance that a high level of performance is being maintained; and
- *continuous improvement* in WHS outcomes.

2.2 Objectives of the standards

- To produce measurable *continuous improvement* outcomes in WHS through a business management systems approach.
- To provide a framework that allows *organisations* to meet legislative responsibilities under the WHS Act 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 ReturnToWorkSA.

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 systems and 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 ReturnToWorkSA will consult for the purpose of:

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

ReturnToWorkSA recognises that the employer's commitment to improvement ultimately drives its outcomes. ReturnToWorkSA'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



Standard 1 – Commitment and policy

The Standard requires an organisation to define its *WHS policy* and commit adequate resources to ensure the success of its management systems.

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

SCOPE: *The organisation defines its WHS policy and supporting procedures in consultation with employees or their representatives.*

Element 1 Endorsed and distributed policy statement

- 1.1 The organisation's policy statement must:
- 1.1.1 Recognise the requirement for legislative compliance
 - 1.1.2 Recognise the pursuit of continuous improvement
 - 1.1.3 Be integral and relevant to the organisation's:
 - mission statement, vision, core values and beliefs
 - overall management system structure and system
 - activities, products, services and people
 - 1.1.4 Identify responsibilities and accountabilities for all relevant employees
 - 1.1.5 Recognise commitment that appropriate internal and/or external expertise will be utilised, when required, in all related activities.
 - 1.1.6 Recognise other organisational policies and procedures when relevant.
 - 1.1.7 Recognise a commitment to communication of relevant information to all staff.
 - 1.1.8 Recognise the organisation's duty of care to all persons in the workplace including labour hire, contractors and subcontractors, volunteers and other visitors.
 - 1.1.9 Recognise a hazard management approach to *WHS*
 - 1.1.10 Incorporate commitment to consultation

Element 2 Supporting policies and/or procedures

- 1.2 The organisation must have supporting policies and/or procedures that show:
- 1.2.1 Evidence of policies and/or procedures to support the policy statement
 - 1.2.2 Contingency arrangements are outlined for the organisation

Standard 2 – Planning

The successful implementation and operation of *WHS 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 management system* 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

- 2.1 The organisation's system must ensure:
- 2.1.1 Legislative compliance is addressed as part of the system, where relevant.
 - 2.1.2 Employees or their representatives directly affected by the implementation of WHS plans are consulted when the plans are being formulated.
 - 2.1.3 Programs have objectives, targets and performance indicators where relevant.
 - 2.1.4 Action plans are in place to correct identified areas of non-conformance with documented procedures.
 - 2.1.5 Program(s) are in place to identify, evaluate and control hazards in the organisation.
 - 2.1.6 Action plans are in place for dealing with corrective action identified as part of any incident investigation process.

Element 2 Setting of systems objectives

- 2.2 The organisation must ensure:
- 2.2.1 The identification of objectives for the organisation.
 - 2.2.2 The identification of appropriate strategies to measure, monitor, evaluate, and review the system's objectives.

Element 3 Training

- 2.3 The organisation must ensure:
- 2.3.1 Appropriate training requirements have been identified.
 - 2.3.2 Training plan(s) have been developed.

Standard 3 – Implementation

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

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

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

Element 1 Resources

3.1 The organisation must ensure:

3.1.1 Adequate human, physical and financial resources are being allocated to support the program(s).

3.1.2 Specialist expertise is used as required.

Element 2 Training

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

Element 3 Responsibility and accountability

3.3 The organisation must ensure:

3.3.1 Defined responsibilities are communicated to relevant employees.

3.3.2 Accountability mechanisms are being used when relevant.

Element 4 Integration

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

Element 5 Employee involvement

3.5 The organisation must ensure arrangements for employee consultation, and involvement are known and integrated into the programs developed.

Element 6 Communication

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

Element 7 Contingency planning

3.7 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

- 3.8 The organisation must ensure:
- 3.8.1 A hazard management process that includes identification, evaluation and control is in place.
 - 3.8.2 Employees or their representatives are consulted and participate in hazard management processes.
 - 3.8.3 Control measures are based on the hierarchy of control process.
 - 3.8.4 Program(s) are in place to ensure an appropriate WHS consideration is given to changes in the workplace and work practices.
 - 3.8.5 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.
 - 3.8.6 Program(s) are in place to meet the organisation's duty of care for all persons in the workplace
 - 3.8.7 Program(s) are in place to ensure work related injury/illness and incidents are investigated and action taken when relevant.

Element 9 Workplace monitoring

- 3.9 The organisation must ensure:
- 3.9.1 That the implementation of relevant inspection and testing procedures are conducted by the relevant, competent person(s).
 - 3.9.2 That corrective/preventive action is taken on non-conformance issues identified by inspection, and testing procedures.

Element 10 Process delivery

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

Element 11 Reporting/documentation

- 3.11 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

- 3.12 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 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

4.1 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

4.2 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

4.3 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 management system, in consultation with its employees or their representatives, with the objective of maintaining and where possible improving overall performance.*

Element 1 Policy

5.1 The organisation must ensure

- 5.1.1 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

5.2 The organisation must ensure:

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

Element 3 System review

5.3 The organisation must ensure:

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

Annexure B: Injury Management Standards

Part 1: Introduction

The Code of conduct for self-insured employers sets out ReturnToWorkSA's policies and procedures which are applied when deciding to grant, renew, revoke or reduce the period of registration as a self-insured employer or group of self-insured employers.

These Injury Management Standards for self-insured employers must be read in conjunction with other requirements set out in legislation and the Code of conduct for Self-insured employers.

The primary *objectives* of the Injury Management Standards are to provide a framework from which a self-insured employer's exercise of its delegated powers and discretions can be *evaluated* with a focus on:

- Effective early intervention and return to work processes.
- Ensuring injured workers are provided quality services that optimize recovery and return to work.
- Timely decision making on claims and the provisions of benefits and ensuring a high level of compliance with *relevant* legislative requirements.
- Effective communication and consultative arrangements to support return to work outcomes and to minimize the number of applications for review.
- The financial integrity of the scheme.

To be granted an initial registration, an employer must demonstrate readiness of systems and resources to meet the injury management standards including the development of *policies* and *procedures* that describe how these standards and other requirements of self-insurance are to be achieved.

To obtain a maximum period of registration renewal, a self-insured employer must demonstrate to the satisfaction of ReturnToWorkSA the requirements of the injury management standards have been met.

The Injury Management Standards will be implemented in line with the processes detailed in the Self-Insured Evaluation Practice Manual.

1. Condition of Registration as a Self-Insured Employer

1.1. Policies and Procedures

A self-insured employer shall develop and implement injury management *procedures* that define how it will:

- 1.1.1. Achieve the fundamental principles, rights and obligations within section 13 of the *Act*.
- 1.1.2. Exercise the delegated powers and discretion set out in Section 134 of the *Act*.
- 1.1.3. Meet the "Service Standards" set out in Schedule 5, Part 2 of the *Act*.

1.2. Resources

A self-insured employer must have arrangements in place to ensure it has in place adequate resources to administer claims and provide effective return to work services to injured employees. These arrangements shall include:

- 1.2.1. Documented job descriptions for all injury management personnel and where *relevant* management, supervisors and employees.
- 1.2.2. Ensuring injury management personnel are *competent* to administer the self-insured employers delegated powers and discretions in a reasonable manner.
- 1.2.3. Ensuring the allocation of resources is *appropriate* for the *organisations* type, volume and complexity of the case load.
- 1.2.4. Suitability of facilities and accommodation to ensure restricted access to information, including maintaining confidentiality during interaction with injured workers and service providers.
- 1.2.5. A self-insured employer must appoint a return to work coordinator and ensure the person appointed to this role has successfully completed *relevant* training. Where this role becomes vacant, the self-insured employer must re-appoint an employee within 3 months and ensure the employee(s) appointed have received *relevant* training within 3 months of the appointment being made.

1.3. External Claims Administration

Where external administration services are contracted, a self-insured employer must ensure those arrangements are clearly documented covering:

- 1.3.1. Exercise of delegations by the self-insured employer
- 1.3.2. Data security and confidentiality

1.3.3. Administrative arrangements

1.3.4. Complaint processes

1.4. Data

A self-insured employer shall provide all *relevant* data set out in Schedule 3, Part 5 of the RTW Regulations 2015:

1.4.1. Fortnightly, unless an alternative arrangement has been agreed to by ReturnToWorkSA.

1.4.2. All errors at batch and line level shall be resolved within one month of receiving the data transmission return file.

1.4.3. A self-insured employer must notify ReturnToWorkSA at least one month prior to the implementation of any change to the workers compensation data system.

1.5. Financials

A self-insured employer shall provide to ReturnToWorkSA:

1.5.1. A copy of audited financial statements within 5 months of the self-insured employer's financial year end date, or within an alternative timeframe approved by ReturnToWorkSA.

1.5.2. An actuarial report on the outstanding workers compensation liabilities of the employer within 3 months of the self-insured employer's financial year end date or within an alternative timeframe approved by ReturnToWorkSA.

1.5.3. The self-insured employer shall provide a financial guarantee that meets all the terms and conditions set out in written correspondence issued by ReturnToWorkSA.

1.5.4. A self-insured employer shall provide to ReturnToWorkSA a contract of insurance that meets all requirements set out in Schedule 3, Part 9 of the Return To Work Regulations 2015.

1.6. Information provided to employees

A self-insured employer shall inform all employees in writing of the following arrangements:

1.6.1. How to report a work related injury

1.6.2. The process for lodging a claim for compensation

1.6.3. Location of claim forms

- 1.6.4. Injury reporting process and the location of approved claim forms
- 1.6.5. Overview of the claims administration process
- 1.6.6. Overview of the early intervention and return to work process
- 1.6.7. Injured worker rights and responsibilities
- 1.6.8. Rights and responsibilities of the employer
- 1.6.9. Complaints management processes (including those reported to the Ombudsman).

2. Claim Management

2.1. General matters

- 2.1.1. Claim files are maintained in such a way that all decisions and determinations are identifiable and *relevant* supporting notes and documents maintained.
- 2.1.2. In all instances, notices and information are provided in accordance with Return to Work Act requirements including rights to review and are given within required timeframes.
- 2.1.3. The rights and needs of injured workers, including cultural and linguistic diversity are *appropriately* considered.
- 2.1.4. Confidentiality is maintained.
- 2.1.5. A copy of all reports prepared by a health practitioner detailing the findings made or opinions formed by the health practitioner, shall be provided to the worker within 7 calendar days.
- 2.1.6. Where a worker provides a written request, under section 180 of the Act, for a copy of all documentary material (hardcopy and electronic) *relevant* to their claim, the self-insured employer shall provide this material within 45 days of receiving the request.
- 2.1.7. A worker shall not be required to submit to an examination by a health practitioner of the same specialty more frequently than once every 2 months.

2.2. Claims

- 2.2.1. Claim forms are on file.
- 2.2.2. Where reasonably practicable claims are determined within 10 business days.

- 2.2.3. Where claims are not determined within 10 business days, offers of interim benefits are made in accordance with section 32 of the Act.
- 2.2.4. Claims are considered and determined (including re-determinations) in accordance with section 31 of the Act.

2.3. Medical Expenses

- 2.3.1. Payments for accounts for medical expenses are promptly paid.
- 2.3.2. Where a self-insured employer receives an application made by a worker seeking advanced approval for the provision of services, a written determination must be issued to the worker and where approval is not given, state the ground for the decision and inform the worker of their right to apply to have the decision reviewed.

2.4. Income Support

- 2.4.1. AWE entitlements are determined in accordance with Part 4, Division 4 of the Act, including incomes support for incapacity resulting from surgery.
- 2.4.2. AWE calculations are made in accordance with section 5 of the Act and copies of information used to calculate AWE are held on file.
- 2.4.3. AWE is *appropriately* adjusted in all cases a worker has previously redeemed entitlement to weekly payments.
- 2.4.4. AWE adjustments are made in accordance with section 45 of the Act.
- 2.4.5. AWE Reviews are made in accordance with section 46 of the Act.
- 2.4.6. Reduction/discontinuance of weekly payments is made in accordance with section 48 of the Act.
- 2.4.7. Where there has been a delay in the making of weekly payments and the delay was not the fault of the worker, then the self-insured employer shall calculate and apply interest at the prescribed rate to the amount in arrears within one month, and issue a written notice to the worker setting out details of the interest applied to the amount in arrears.

2.5. Serious Injury

- 2.5.1. Seriously injured workers are assessed and determinations made in accordance with section 21 of the Act.

2.6. Permanent Impairment – Economic Loss & Non Economic Loss

- 2.6.1. Determinations of entitlement to economic and non-economic loss are issued in writing and detail the calculation applied to determine the economic and non-economic loss lump sum entitlements and the workers' rights to a review of the decision.
- 2.6.2. Within one month from the date the determination notice was issued to the worker, the self-insured employer must provide ReturntoWorkSA with a completed Notice of Lump Sum Determination Return, including all *relevant* supporting documentation.

2.7. Redemptions and Deed of Release

- 2.7.1. Where a self-insured employer reaches agreement to redeem the liability to make ongoing weekly payments and/or the liability associated with ongoing medical services, all requirements set out in Section 53 and 54 of the Act have been met and *relevant* documentation is held on the claim file.
- 2.7.2. Where a self-insured employer redeems liability to make ongoing weekly payments, the self-insured employer will ensure the rate of weekly payments that would have been payable if there had been no redemption is *appropriately* recorded.
- 2.7.3. Where self-insured employers liability is discharged under a deed of release under section 66(7) of the Act, the self-insured employer will ensure the rate of weekly payments that would have been payable if the deed of release had not been entered into, is *appropriately* recorded.
- 2.7.4. On redemption of liability, a Lump Sum Determination Return Notice must be completed for forwarding to ReturntoWorkSA within 10 working days of the determination being made and include all *relevant* supporting documentation.

2.8. Early Intervention, Recovery and Return to Work

- 2.8.1. Recovery and Return to Work Plans (Plan) comply with the standards and requirements prescribed by the regulations, and when developed are specific to an individual worker.
- 2.8.2. Recovery and return to work plans are in place where the injured worker is or is likely to be incapacitated for work more than 4 weeks and detail the actions and responsibilities of key parties.
- 2.8.3. When preparing a Plan, the worker must be consulted and provided with a copy of the plan.
- 2.8.4. The Plan is reviewed in line with scheduled review dates and where the worker has applied for review of the Plan, the Plan shall be modified in line with the determination made at review.

- 2.8.5. Where a worker has not returned to pre-injury employment within 6 months from date of first incapacity and is not working to their full capacity, new or other employment options are considered for the worker when reviewing the plan.
- 2.8.6. Where a self-insured employer does not provide suitable employment, the self-insured employer notifies ReturnToWorkSA.

2.9. Legal Compliance

- 2.9.1. Claims are managed and delegations administered in accordance with ReturnToWork Act and Regulations.

3. Dispute Resolution

3.1. Reconsideration

- 3.1.1. A reconsideration officer is appointed and the Registrar must be notified as per the regulations of the details of the nominated officer.
- 3.1.2. The reconsideration process must comply with Part 6, Division 4 of the Act.

3.2. SAET Orders

- 3.2.1. Where a determination has been made by the South Australian Employer Tribunal (SAET) and an Order or direction issued, the self-insured employer must comply with the Order within the timeframe specific by the SAET.

4. Measurement, Monitoring and Review

4.1. Delegated powers and discretions

- 4.1.1. Processes are in place that monitor, measure and review the effective implementation of delegated powers and discretions granted to a self-insured employer under the Act and where *relevant*, strategies to improve performance of the injury management system are identified.
 - 4.1.1.1. The implementation and performance of the injury management system is reviewed against the, fundamental principles, rights and obligations within section 13 of the Act.
 - 4.1.1.2. Delegated powers and discretion set out in section 134 of the Act.
 - 4.1.1.3. "Service Standards" set out in Schedule 5, Part 2 of the Act.

Annexure C: Self-insurance application and renewal model

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

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

ReturnToWorkSA will use the information to assess whether the employer meets the required standard to be registered as a self-insured employer 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 ReturnToWorkSA Board.

For employers applying for renewal of self-insurance registration, the overriding philosophy of the model is 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 ordinarily 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.

Similarly, a self-insured employer who demonstrates injury management practices consistent with the *objectives* of the Act, reasonable application of its powers and discretions and compliance with legislation and Code of conduct 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.

It is expected self-insured employers would be able to demonstrate a standard of performance commensurate with a five-year renewal. If ReturnToWorkSA 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, ReturnToWorkSA 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; and
- determination timeframes (days from notification, to initial determination).

Secondary indicators of injury management performance such as:

- percentage of redeemed claims;
- complaints received; and
- number of disputes.

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 will be those indicators of performance detailed within clause 3.5.4 (Financial Viability) of the Code.

Safety performance primary indicators will be:

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

In assessing the performance of the self-insured employer, ReturnToWorkSA 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 ReturnToWorkSA 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	3-5 Year Renewal	<3 years	Non-renewal
Work Health and Safety	<p>Full conformance to sampled elements of Standards 1-5 (5 Years) over the period of registration.</p> <p>Improvement action plans are in place to address non-conformances with standards 4 and 5 (3-5 Years).</p> <p>Self-assessments provided within required timeframes.</p> <p>Meets the requirements of the code.</p>	<p>A period of registration of less than three years will be influenced by the extent and nature of the non-conformances present within Standards 1-3 over the registration period.</p> <p>Self-assessments provided within required timeframes.</p> <p>Meets the requirements of the code.</p>	<p>Sustained material poor performance and non-conformance with the standards and or lack of capacity or willingness to address systemic performance issues.</p>
Claims and return to work case management	<p>Reasonable application of powers and discretions over the full period of registration.</p> <p>No non-conformances recorded against the Injury Management Standards (5 years).</p> <p>Meets the requirements of the code.</p>	<p>Reasonable application of powers and discretions.</p> <p>Non-conforming finding(s) against the Claims Management Standards.</p> <p>A period of registration of less than three years will be influenced by the extent and nature of any critical evaluation findings and non-compliance with the requirements of the code.</p>	<p>Sustained material poor performance and or lack of capacity or willingness to address systemic performance issues.</p>
Overall assessment and additional considerations	<p>The CEO of ReturnToWorkSA is confident that the objects of the Act will be met by renewing the self-insurance registration.</p> <p>Self-insured employer's meets all obligations and terms and conditions of registration under the Code of conduct.</p>	<p>The CEO of ReturnToWorkSA is confident that the objects of the Act will be met by renewing the self-insurance registration.</p> <p>The self-insured employer has WHS and Injury management systems in place that minimises the incident and severity of work injuries, addresses the effects or likely effects on the health and safety of the working conditions under which workers are</p>	<p>The ReturnToWorkSA 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>

Assessment Criteria	3-5 Year Renewal	<3 years	Non-renewal
Periods of registration:		employed, provide for effective recovery and return to work of injured workers and where appropriate maintains suitable employment. (For a new applicant the Board will need to make this assessment).	
	Five years is 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. Return ToWorkSA 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.		

Annexure D: 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 ReturnToWorkSA.
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 3 years (or such other time as ReturnToWorkSA 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 56 (Economic Loss lump sums) and section 58 of the Act (Non-economic Loss lump sums).
5. The estimate of outstanding liability not including a provision for future administration expense.
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 paragraph 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. Should the report be done at such a time as the full information is not available, the payments for the part year should be stated, and an estimate of the balance of the year should also be stated. Figures provided pursuant to this requirement should be in approximately the format set out in Table 2. When any part of the payments for the year is estimated, the report should be followed up by a supplementary letter when the actual payments are known advising of those figures.
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 in a format approximating Table 1.
13. The report must include a list of total estimated incurred costs for each claim year in respect of the year under review plus the 10 preceding years. This information should be provided in approximately the format set out in table 2.
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 report must state whether the actuary is aware if the employer operates any program, whether it is officially recorded and described or is simply an informal practice, whereby treatment is offered and provided for a limited or extended period in lieu of claim for compensation being lodged; whether the provision of these treatments has had a material impact on the valuation and if this is quantifiable the extent of the impact.
17. 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.
18. The employer bears the responsibility for all costs associated with the actuarial analysis unless otherwise specified by ReturnToWorkSA. Accounts for actuarial services should be rendered directly to the employer.
19. The report should also:
 - 19.1. Comment on any effort the actuary has made to ensure that the self-insured employer's general ledger payments on workers compensation claims are all shown in the claims data used for the actuarial analysis;

- 19.2. Comment on whether all claims where income maintenance has been incurred includes the first two week's income maintenance; and
- 19.3. Be carried out without any allowance for GST on the total value of the claim portfolio.

Table 1

Claim year	Payment year 1	Payment year 2	Payment year 3	Payment year 4	Payment year 5	Payment year 6	Total payments
2010	X	XX	XXX	XXXX	XXXXX	XXXXXX	Total
2011	X	XX	XXX	XXXX	XXXXX		Total
2012	X	XX	XXX	XXXX			Total
2013	X	XX	XXX				Total
2014	X	XX					Total
2015	X						Total

Table 2

Year under review		(A)			
Actual payments made during year regardless of incurred year		\$			
If above is based on data from a part year and estimated gross up, please show	Actual (date) to (date)	\$	Estimate (date) to (date)	\$	
Incurring year*	Paid to date	Outstanding at A	Current estimate of ultimate incurred	Comparable estimate taken from last year's report	If variation is greater than 10%, provide brief explanation
Year	P	O	P+O		
Year	P	O	P+O		
Year	P	O	P+O		
Year	P	O	P+O		
Year	P	O	P+O		
Year	P	O	P+O		
Year	P	O	P+O		
Year	P	O	P+O		
Year (this one to be a current year A)	P	O	P+O		

*Not less than 10 years should be shown unless period of self-insurance is less.

Annexure E: Extension of delegation to former self-insured employer pursuant to section 134(8) of the Act

Whereas:

- (Employer name) has been registered as a self-insured employer under section 129 of the Return To Work Act 2014 (the Act),
- (Employer name) has advised ReturnToWorkSA of its desire to withdraw from operations requiring it to employ workers within South Australia, and
- ReturnToWorkSA has determined pursuant to section 134(8) of the Act that the delegation of the powers contained in section 134 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.
- ReturnToWorkSA 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 ReturnToWorkSA 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 ReturnToWorkSA in a form and in a sum approved by ReturnToWorkSA. In order to maintain this guarantee at an *appropriate* level, (employer name) shall provide to ReturnToWorkSA actuarial evaluations of the outstanding claims portfolio at such intervals as ReturnToWorkSA shall require, provided that ReturnToWorkSA 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 ReturnToWorkSA reasonable notice.
 7. Should ReturnToWorkSA 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 ReturnToWorkSA Scheme, ReturnToWorkSA may terminate these arrangements forthwith.

Dated the day of (year)

Signed for and on behalf of the Return to Work)
Corporation of South Australia by)

.....

pursuant to a power contained in Return to)
Work Corporation of South Australia's)
Delegation of Authorities

Dated

Witnessed by:

.....

ReturnToWorkSA**Enquiries: phone 13 18 55**

400 King William Street

Adelaide SA 5000

Fax: (08) 8233 2466

info@rtwsa.comwww.rtwsa.com

The following free information support services are available:

If you are deaf or have a hearing or speech impairment, you can call ReturnToWorkSA 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 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 ReturnToWorkSA on 13 18 55. For Braille, audio or e-text call 13 18 55.



The information in this publication is compiled by ReturnToWorkSA. The data and facts referred to are correct at the time of publishing and provided as general information only. It is not intended that any opinion as to the meaning of legislation referred to is to be relied upon by readers. You should seek independent or legal advice as to any specific issues that are relevant to you, your workplace or organisation.

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