

**SOUTH AUSTRALIAN PUBLIC SECTOR**  
**CODE OF PRACTICE**  
**for**  
**CROWN SELF-INSURED EMPLOYERS**

FEBRUARY 2009

**Public Sector Workforce Relations**



**Government of South Australia**

Department of the Premier  
and Cabinet

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## INTRODUCTION

South Australia's Strategic Plan is about improving the wellbeing and prosperity of South Australians and the Government of South Australia places the improved safety and administration of workers rehabilitation and compensation as central to providing positive outcomes for employees, their families and the S.A. community.

The Government's commitment to safety expressed in the Safety in the Public Sector 2007-2010 Strategy promotes the integration of injury prevention and injury management into core business. Best practice approaches in injury prevention and injury management result in a sustainable reduction in the cost of workers compensation ensuring that a higher proportion of expenditure is directed to service delivery while maintaining high levels of morale and retention of valuable employees.

The Code of Practice for Crown Self-insured Employers ("the Code") has been developed to provide a framework for Government policies, procedures and guidelines for the administration of a best practice injury prevention and injury management system. The Code is designed to meet the legislative requirements of South Australia's Occupational Health Safety and Welfare Act (1986), the Workers' Rehabilitation and Compensation Act, 1986, and the Workers Rehabilitation and Compensation Amendment Act, 2008.

The Code provides a framework for both Injury Prevention and Injury Management for chief executives, managers, supervisors, employees, injury prevention and injury management practitioners, health and safety representatives and committees. This framework provides guidance to undertake respective duties, functions and responsibilities to prevent harm arising from hazards in public sector workplaces and to ensure that if injuries do occur, that employees are rehabilitated and as soon as possible returned to safe work.

Successful implementation of the Code will demonstrate that South Australia remains a national leader in promoting the Australian Safety Compensation Council's (ASCC) National OHS Strategy.

I acknowledge the assistance provided by South Australian public sector agencies and practitioners in the development of this Code, which will apply to all Crown Self-Insured Employers.

Signed

Elbert Brooks  
Executive Director, Public Sector Workforce Relations  
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## SECTION 1.

### 1.1 PURPOSE OF THE CODE

- 1.1.1 The purpose of the Code is to provide South Australian public sector agencies, in their capacity as Crown self-insured employers, with
- a) a framework for injury prevention and injury management as defined by legislation and government policy.
  - b) an outline of WorkCoverSA's policies and procedures in administering the Workers Rehabilitation and Compensation Act 1986 (WRC Act).
- 1.1.2 The Code is designed to guide and assist chief executives of South Australian public sector agencies with the regulatory requirements they are required to implement. The Code should be read in conjunction with the legislation and policy to which it relates. A list of references can be found in the appendices and current copies can be found at:  
<http://www.legislation.sa.gov.au/>.

### 1.2 SCOPE

- 1.2.1 The South Australian public sector is defined<sup>1</sup> by the Public Sector Management Act 1995 (PSM Act) and is the largest single employer in South Australia, representing approximately 12 per cent of South Australia's workforce.
- 1.2.2 The Code is applicable to the Crown and any agency or instrumentality of the Crown that is deemed to be a self-insured employer under the WRC Act, except where the Governor has, by proclamation, declared that an agency or instrumentality is not to be regarded as a self-insured employer.
- 1.2.3 The Code promotes the importance of chief executives providing leadership in injury prevention and injury management performance.
- 1.2.4 The Code is designed to inform effective Injury Prevention (IP) and Injury Management (IM) systems, which are a critical part of the portfolio/agency's risk management program. The Code provides guidance and direction for the development and implementation of best practice injury prevention and injury management systems within the public sector.
- 1.2.5 The Code also incorporates the requirements under the WorkCoverSA Performance Standards for Self Insurers and the operation of the Natural Consequences Model, in so far as they are relevant to Crown self-insured employers.

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<sup>1</sup>The Public Sector Management Act, 1995 (PSM Act) defines a Public sector agency as

- a) An administrative unit: or
- b) An agency or instrumentality of the Crown (including a Minister); or
- c) A body corporate-
  - Comprised of persons, or with a governing body comprised of persons, a majority of whom are appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or
  - Subject to control or direction by a Minister; or
  - Declared under subsection (2) to be a public sector agency,

But does not include a person or body declared under subsection (2) not to be a public sector agency

## **SECTION 2.**

### **2.1 REGULATORY FRAMEWORK**

2.1.1 The Code is based primarily on the provisions of the Occupational Health Safety and Welfare Act 1986 (OHSW Act), WRC Act and related Government policy.

### **2.2 LEGISLATION**

#### **2.2.1 Occupational Health, Safety and Welfare Act, 1986 and Regulations**

- a) The OHSW Act sets out the general requirements for protecting employee health and safety in all workplaces in South Australia. The OHSW Act establishes the legal framework for the development of systematic approaches, which focus on:
  - securing the health, safety and welfare of people at work and eliminating risks at their source;
  - protecting the public from risks arising out of, or in connection with the activities of persons at work or the use or operation of various types of plant;
  - providing a consultative framework for employers and employees for the resolution of occupational health, safety and welfare issues;
  - encouraging registered associations to promote and assist the achievement of a healthier and safer working environment.
- b) The OHSW Regulations (1995) set out the general principles, providing the practical steps that should be followed in order to prevent injury and illness at work by undertaking systematic approaches to hazard management within a consultative framework.
- c) Regulations may prescribe minimum standards (Approved Codes of Practice) and administrative provisions with general application, or they may define specific requirements related to a particular hazard or particular type of work.

#### **2.2.2 Workers Rehabilitation and Compensation Act, 1986 and Regulations**

- a) The WRC Act and Regulations, outline the requirements for the administration of workers rehabilitation and compensation in South Australia.
- b) The WRC Act provides:
  - a no-fault workers' rehabilitation and compensation system;
  - rehabilitation and restoration of a work injured or ill employee to the workforce, and the community;
  - fair compensation while employees are unable to work;
  - necessary assistance and support during the recovery phase;
  - the return of injured employees to suitable safe employment as soon as possible.
- c) The WRC Act also provides the legislative framework for the development of injury management systems that minimise the human and financial cost of injury by:
  - establishing a rehabilitation and compensation system that achieves a reasonable balance between the interests of employers and employees;
  - reducing the overall social and economic costs of work related disabilities to the community.
- d) South Australian public sector agencies and instrumentalities are deemed to be Crown self-insured employers under s.61 of the WRC Act.
- e) Self-insured employers, whether private employers or government agencies, operate under the delegated powers outlined in s.63 of the WRC Act and are responsible for:

- the administration and cost of workers compensation claims;
  - the management of rehabilitation and return to work of injured employees; and,
  - maintaining confidentiality of any information obtained in the carrying out of the functions of a self-insured employer as required under s.112 of the WRC Act.
- f) Where Crown agencies access claims management services through Service Level Agreements with Government Injury Management Service Centres, it should be noted that the financial liabilities and accountability for the management of the claim and the injured employee remain the responsibility of the agency chief executive and hence by delegation to managers and supervisors. As a matter of proper governance, agencies should ensure that:
- internal audit and review processes examine the adequacy and effectiveness of the delivery of scheduled services in line with legislative requirements and the WorkCoverSA Performance Standards for Self Insurers (PSSI);
  - ongoing communication and coordination occurs in relation to each claimant;
  - agencies meet the Performance Measures in terms of early reporting and the allocation of suitable duties under s.58B;
  - line managers and supervisors are cognisant of and proficient in their delegated responsibilities.

### 2.2.3 Acknowledgment and Updates.

- a) Public Sector Workforce Relations (PSWR) will require each Portfolio/agency to acknowledge receipt of a copy of the Code when it is first published.
- b) From time to time, the WorkCoverSA Board may revise their requirements of self-insured employers as outlined in section 4 of this Code. PSWR will review any changes made for their relevance to Crown self-insured employers and revise this Code accordingly.
- c) PSWR will consult with and notify each Portfolio/agency of any amendments to the Code.
- d) A copy of the Code and any amendments may be obtained from the PSWR website at: <http://www.pswr.sa.gov.au/>.

### 2.2.4 Public Sector Management Act, 1995 and Commissioner's Standards.

- a) The PSM Act 1995 regulates human resource practice for the South Australian public sector and provides for the publication of [Commissioner's Standards](#). Those standards relevant to this Code include:
  - Commissioner's Standard 2 (Quality Staffing).
  - Commissioner's Standard 3 (Safe and Responsive Conditions of Work).
  - Commissioner's Standard 4 (Managed Performance).

## 2.3 POLICY

### 2.3.1 Policy Mechanisms.

- a) The State and Federal Governments have taken a leadership role in preventing and managing work-related injury in their respective jurisdictions through promoting, legislating and enforcing OHSW and injury management requirements via a range of policy mechanisms.

### 2.3.2 South Australia's Strategic Plan.

- a) South Australia's Strategic Plan Objective, Improving Wellbeing, Greater Safety at Work, Target (T2.11) requires government agencies to contribute to the achievement of the nationally mandated 40% reduction in injury by 2012 (National OHS Strategy 2002 - 2012, Australian Safety and Compensation Commission [ASCC] formerly National Occupational Health and Safety Commission [NOHSC]).

### 2.3.3 **Safety in the Public Sector 2007-2010.**

- a) The 'Safety in the Public Sector 2007-2010' strategy outlines the Government's commitment to its employees in the area of occupational health, safety and injury management. The Strategy endorsed by the Government has created an obligation on Government employers to meet and exceed the OHS and injury management standards established through the WorkCoverSA Performance Standards for Self-Insurers.
- b) The 'Safety in the Public Sector 2007-2010' strategy provides the operational framework for South Australian public sector agency injury prevention and injury management systems through the application of four interlocked and mutually supporting elements. These are:
  - Sustainable Commitment
  - Financial Accountability
  - Risk Management
  - Rigorous Evaluation
- c) The 'Safety in the Public Sector 2007-2010' strategy aims to make safety performance sustainable through a simple but effective strategy that aligns safety performance with portfolio and agency core business.
- d) Each public sector agency is required to have a comprehensive implementation plan for the 'Safety in the Public Sector 2007-2010' strategy.

### 2.3.4 **WorkCoverSA Performance Standards for Self-Insurers (PSSI).**

- a) It is Government policy that public sector agencies provide leadership in the field of injury prevention and management practices by meeting or exceeding the requirements of the PSSI.

### 2.3.5 **OHS Strategic Framework for SA.**

- a) SafeWork SA has developed an OHS Strategic Framework for all employers in South Australia.
- b) The OHS Strategic Framework reflects the injury reduction targets in the SA Strategic Plan and the priority risks for South Australian workplaces and the programs by which SafeWork SA will promote and enforce the legislative framework.

### 2.3.6 **National Occupational Health and Safety Strategy 2002 – 2012.**

- a) The Government of South Australia through the Workplace Relations Ministers' Council endorses the National Occupational Health and Safety Strategy 2002 – 2012. The National Strategy recognises that all levels of government have a role to play in providing leadership in occupational health and safety in the workplace.
- b) The National Strategy provides a framework to ensure a sustained and substantial improvement in Australia's OHSW performance.
- c) Priority Action Plan 5 (Safe and Sound) of the National Strategy aims to strengthen the capacity of the public sector to influence OHSW outcomes and contains the following requirements:
  - ensure senior management demonstrates leadership and commitment to OHSW as a key component within their agency;
  - set targets consistent with the National Strategy and implement performance indicators;
  - share relevant OHSW and workers' compensation information with a view to identifying and developing strategies in response to workplace safety issues;

- include in their annual reports OHSW and injury management performance to ensure this State's performance can be compared against the National Strategy for reporting to the WRMC;
- promote effective management of contractors; and,
- consider OHSW in design and purchasing of goods and services.

## **SECTION 3.**

### **3.1 MANAGEMENT SYSTEMS FOR INJURY PREVENTION AND INJURY MANAGEMENT**

3.1.1 The Government's 'Safety in the Public Sector 2007-2010' strategy integrates injury prevention and injury management into the core business of South Australian public sector agencies. Effective management of risk within the workplace prioritises safety as a key business imperative and can lead to:

- increased productivity;
- higher morale and retention of valuable employees;
- better employer/ employee relations; and,
- assurance that resources are directed to service delivery.

3.1.2 The South Australian public sector is the largest and most diverse employer within South Australia and each agency faces a wide range of operational challenges, hazards and risks.

3.1.3 In the context of their core business, each public sector agency chief executive needs to develop management systems which examine, select, promote and implement best practice approaches in injury prevention and injury management that result in the sustainable reduction in the human and financial costs associated with work related injury.

3.1.4 Successful implementation of this Code will fulfil the requirements of legislation and Government policy frameworks for injury prevention and injury management within the South Australian public sector.

### **3.2 INJURY PREVENTION SYSTEMS ('SAFETY IN THE PUBLIC SECTOR 2007-2010', APPENDIX A)**

3.2.1 The 'Safety in the Public Sector 2007-2010' strategy provides the operational framework for South Australian public sector agencies to develop injury prevention and injury management systems and each agency needs to integrate the strategy elements within the operational requirements of their core business.

3.2.2 This integration needs to be informed by the OHSW Act and Regulations and the PPSI.

3.2.3 The OHSW Act and Regulations require effective consultation between employers and employees to be a feature of a safe and healthy workplace.

3.2.4 Further guidance can be obtained through:

- Australian Standard 4801-2000 'Occupational Health and Safety Management Systems – Specifications and Guidance for Use';
- Australian Standard 4804 (1997) 'Occupational Health and Safety Management Systems'.

3.2.5 SafeWork SA, an administrative unit of the Department of the Premier and Cabinet (DPC), is responsible for the administration and enforcement of the OHSW legislative framework.

3.2.6 Failure to comply with the provisions of the OHSW Act and Regulations can result in a range of sanctions being imposed, against agencies and/or individuals, including enforcement and prosecution action.

### **3.2.7 INJURY MANAGEMENT SYSTEMS (INJURY MANAGEMENT CODE OF PRACTICE FOR PUBLIC SECTOR AGENCIES. APPENDIX B)**

3.2.8 The Injury Management Code of Practice for Public Sector Agencies sets the framework for the implementation of injury management systems within South Australian public sector agencies.

3.2.9 The detail of injury management procedures which support the Injury Management Code are provided in the following publications:

- [South Australian Public Sector Workers Compensation Claims Management Manual](#)
- [Rehabilitation and Return To Work Manual](#)
- [Best Practice Injury Management](#)
- [Your Road To Recovery - Information For Injured Employees](#)
- [Guidelines For Using External Rehabilitation Providers Guidelines For Workers Compensation Investigation And Surveillance Providers](#)
- [130 week review guidelines](#)
- [Injury Management Benchmarks](#)
- [Case Estimating Policy](#)
- [SIMS User Guide](#)

### **3.3 RESOURCES AND TRAINING**

3.3.1 The 'Safety in the Public Sector 2007-2010' strategy and the PSSI outline the requirement for injury prevention and management systems to be appropriately resourced so that they operate effectively to minimise or eliminate OHSW risks and achieve sound return to work outcomes.

3.3.2 Agencies need to develop the capability to achieve injury prevention and injury management objectives and targets. This capability includes adequate human, physical and financial resources as well as access to specialist expertise to support and maintain such systems. In addition, staff operating within Agencies must have the appropriate level of delegations to make decisions<sup>2</sup>.

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<sup>2</sup> See Definitions under the SA Public Sector Workers Compensation Internal disputes resolution policy.

## **SECTION 4. WORKCOVERSA REQUIREMENTS**

### **4.1 THE CROWN AS A SELF-INSURED EMPLOYER**

- 4.1.1 Section 61 of the WRC Act deems the Crown and any agency or instrumentality of the Crown to be registered self-insured employers. That is, the Crown is self-insured as opposed to being part of the registered scheme for employers administered by WorkCoverSA.
- 4.1.2 The Crown, as a self-insured employer, assumes the role of the compensating authority in respect of workers compensation claims submitted by its employees.
- 4.1.3 The powers of self-insured employers are set out in s.63 of the WRC Act<sup>3</sup>. In exercising these powers, Crown self-insured employers must act reasonably<sup>4</sup>, and meet as a minimum, the relevant legislative requirements of the WRC Act. In addition, Crown self-insured employers are required to assure their capacity and capability to exercise the appropriate delegations as outlined in 4.1.4 below. WorkCoverSA retains a responsibility to monitor the exercise of relevant delegations. In exercising its delegations, the Crown self-insured employer is to note that:
- Any decision made in the exercise of a delegated power or discretion has the same effect as if it was a decision of WorkCoverSA and is subject to review and appeal.
  - WorkCoverSA cannot exercise a power or discretion that has been delegated to an agency.
  - Except in relation to certain powers, as set out in sections 63(3aa) and (3a) of the WRC Act, WorkCoverSA cannot interfere with or overrule a decision of an agency made in the exercise of a delegated power.
  - Delegated powers cannot be further delegated to any person or other body corporate, i.e. the delegated powers must be exercised directly by the agency.
- 4.1.4 Crown self-insured employers assume the responsibility for the following delegated<sup>5</sup> functions:
- financial accountability for occupational health, safety, welfare and injury management performance;
  - maintenance of claims management systems, programs and capabilities that promote best practice in claims management;
  - rehabilitation and return to work of employees injured at work;
  - claims costs in relation to compensable disabilities;
  - investment of financial and management resources to ensure ongoing compliance with the requirements of the WRC Act;
  - payment of levies to WorkCoverSA by self-insured employers under s.68 of the WRC Act, and,
  - determining the actuarially assessed outstanding claims liability annually.
- 4.1.5 The Government as 'insurer of last resort' underwrites Crown agency liabilities for workers compensation.
- 4.1.6 Each public sector agency must establish an effective injury management system to enable early notification of workplace injuries. This system should prescribe measures and accountabilities for relevant managers and staff where a workplace injury occurs. This will ensure that the agency is able to commence injury management at the earliest opportunity, so that injured employees can remain at work or return to work at the earliest appropriate time.

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<sup>3</sup> See Appendix C for a list of the delegated functions under s.63 WRC Act.

<sup>4</sup> WorkCoverSA has the authority, under s.63(6) to withdraw delegations if delegated powers are exercised unreasonably.

<sup>5</sup> The delegated functions are further described in the operations manuals and guidelines, including the Claims Management and Workers Compensation Rehabilitation Manuals on the PSWR website.

4.1.7 As a matter of Government policy, agencies are required to comply with the elements of Schedule 4 of the Workers Rehabilitation and Compensation (Claims and Registration) Regulations 1999 (“the Regulations”) that are relevant to the Crown. These elements include prompt claims administration, the provision of rehabilitation services, timely and accurate transmission of data to WorkCoverSA and notification of corporate changes. Refer to Appendix D for detail of the applicable sections of Schedule 4.

4.1.8 The obligations of Crown agencies are expressed in terms of duties owed to each employee. These obligations may extend beyond the expiry of the employment relationship. Agencies are required to cooperate with WorkCoverSA, their Agent or another self-insured employer to exchange information in accordance with the Exchange of Claims Information Protocol that is reasonably required to determine employees’ entitlements to compensation.

## 4.2 **WORKCOVERSA PERFORMANCE STANDARDS FOR SELF INSURERS (PSSI) (Appendix E)**

4.2.1 WorkCoverSA has a regulatory role to ensure that self-insured employers<sup>6</sup> develop effective and efficient systems to manage health, safety, rehabilitation and claims administration to established standards and to achieve continuous improvement in these disciplines.

4.2.2 The PSSI are a key component of the requirements that self-insurers must meet in South Australia. However the PSSI do not replace, but must be read in conjunction with other administrative and legislative requirements.

4.2.3 The PSSI and the Natural Consequences Model (NCM) (refer Section 4.8) are used by WorkCoverSA to evaluate an employer’s performance in relation to prevention of injury in the workplace, compliance with relevant legislation, claims management and rehabilitation.

4.2.4 The key elements of the PSSI are designed to address:

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

4.2.5 The PSSI are consistent with the Australian/New Zealand Standard 4804: ‘Occupational Health and Safety Management Systems - General Guidelines on Principles, Systems and Supporting Techniques’ and includes modifications to incorporate rehabilitation and claims administration.

4.2.6 Public Sector agencies are required to have a business management system that clearly designates overall responsibility for OHSW, rehabilitation and claims administration to the chief executive of the organisation. A business management system must address the following standards:

- Standard 1            Policy and Commitment
- Standard 2            Planning
- Standard 3            Implementation
- Standard 4            Monitoring and Evaluation

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<sup>6</sup> Any reference in this Code to “self-insured employer” must be read as a reference to the Crown and any of its agencies or instrumentalities as Crown self-insured employers under section 61 of the WRC Act.

- Standard 5 Management Review

#### 4.3 LEVIES PAYABLE TO WORKCOVERSA BY SELF-INSURED EMPLOYERS

- 4.3.1 WorkCoverSA has powers under s.68 of the WRC Act to set and collect levies from self-insured employers.
- 4.3.2 Although South Australian public sector agencies are deemed to be self-insured and meet the costs associated with injury prevention and injury management, an administrative levy is payable by all self-insured employers to meet the costs associated with the WorkCoverSA scheme administration.
- 4.3.3 All levies imposed under the WRC Act for administrative matters<sup>7</sup> are determined with reference to the 'Base Levy' also known as the 'Activity Based Costing Component' levy. WorkCoverSA formally reviews the base levy annually. This annual base figure is converted to a percentage levy rate, which is set by the WorkCoverSA Board each year at the same time as it sets the Registered Scheme rate.
- 4.3.4 Section 68(2) of the WRC Act enables WorkCoverSA to vary the levy so that it reflects the self-insured employer's fair contribution towards WorkCoverSA's administrative expenditure and costs associated with the administration of the Workers Compensation Tribunal.

#### 4.4 BASE LEVIES<sup>8</sup>

- 4.4.1 The formula for base levy determination for Crown self-insured employers is calculated by:
- agency remuneration multiplied by the self-insured employer levy rate minus 1% (financial guarantee remission);
  - the financial guarantee remission recognises that Crown self-insured employers are not required to pay the levy component imposed on private self-insurers that is used to manage any financial liability resulting from insolvency of employers under section 68(2)(d). This is because for the Crown, Government, not WorkCoverSA, is the "insurer of last resort".

#### 4.5 DIFFERENTIATED CLASS LEVIES UNDER S.68

- 4.5.1 Section 68(3) of the WRC Act enables WorkCoverSA to differentiate between different classes of self-insured employers to vary the levy percentage, in accordance with s.68(2), provided that WorkCoverSA is "satisfied that there are good reasons" to do so.
- 4.5.2 The variation in the base levy payable by Crown self-insured under s.68(2) is calculated as a percentage of the levy that would have been payable by the employer if the employer were not registered as a self-insured employer.
- 4.5.3 Differentiated class levies are payable by agencies when agencies do not comply with their obligations. The levies are set by establishing "classes" of self-insured employers under s.68(2), with each class representing a level of non-compliance with their obligations. For example, levies may be imposed for a failure or continual errors in data transmission as outlined in Schedule 4 of the Regulations<sup>9</sup> or in relation to unresolved S58B matters. These Levies do not apply to the outcomes of Evaluation under the Natural Consequences Model.
- 4.5.4 There are 4 categories of differentiated class levies. The first level (class A) of employers is that with a single non-compliance for a period of less than 30 days. This class pays the normal levy rate plus 10%.
- 4.5.5 Subsequent levels of non-compliance and the corresponding levy increments payable are outlined in Table 1. Prior to implementing a differentiated class levy, WorkCoverSA will contact the agency, alerting it to the non-compliance and seeking the agency's commitment to improve the performance within an agreed period.

<sup>7</sup> Refer to Appendix F for comprehensive information related to levy setting.

<sup>8</sup> "Base Levy" is the aggregate of the amounts calculated by multiplying the remuneration for each of the *employer's* location by the applicable relevant industry levy rate determined under section 66 of the WRC Act and ignoring the application of GST and any adjustment by way of remission or supplement.

<sup>9</sup> See Appendix D for edited Schedule 4 requirements applicable under Government policy to Crown agencies.

**Table 1: Differentiated Class Levies**

Differentiated employer class	Non-conformances	Levy
A	One non-compliance for a period of not less than thirty (30) days	<i>Base Levy</i> plus 10%;
B	Two or more instances of non-compliance; or one Non-compliance for a period not less than sixty days.	<i>Base Levy</i> plus 25%;
C	Two or more concurrent instances of non-compliance for a period of not less than thirty (30) days; or a single instance of non-compliance for a period of not less than ninety (90) days.	<i>Base Levy</i> plus 55%
D	Two or more concurrent instances of non-compliance for a period of not less than sixty (60) days; or a single instance of non-compliance for a period of not less than one hundred and twenty (120) days; or more than three instances in any twelve (12) calendar months of paying a differentiated class levy.	<i>Base Levy</i> plus 100%,

4.5.6 The differentiated class levy is applied in the subsequent month following the meeting of the WorkCoverSA Board and continues until correction and confirmation that the administrative matters have been resolved.

#### 4.6 REMISSION OF LEVIES

4.6.1 Section 68(4) enables WorkCoverSA to grant Crown self-insured employers a remission of the base levy where they conform to or exceed the Performance Standards for Self Insurers by successfully adopting measures to reduce the incidence of work related injuries, to provide for the rehabilitation of disabled workers and to provide for the efficient and timely administration of claims.

#### 4.7 WORKCOVERSA PERFORMANCE EVALUATION PROGRAM

4.7.1 WorkCoverSA has the statutory authority to ensure that self-insured employers comply with the WRC Act. WorkCoverSA conducts regular evaluations of public sector agencies to assess the adequacy and effectiveness of agencies OHSW and IM systems against the PSSI.

4.7.2 The WorkCoverSA Evaluation Practice Manual<sup>10</sup> outlines the standard approach that the WorkCoverSA evaluators will undertake when working with agencies.

4.7.3 The negotiated schedule of evaluations between agencies and WorkCoverSA can be varied in response to significant issues that may indicate possible under performance.

4.7.4 The evaluation program is a negotiated and collaborative process that drives continuous improvement and the development of a resilient OHSW culture as outlined under the Natural Consequences Model.

4.7.5 In assessing the performance of a Crown self-insured employer, WorkCoverSA may also consider the following:

- The resources that the agency has for the purpose of administering claims for compensation;
- The incidence and severity of compensable disabilities;
- The effect, or likely effect, of working conditions under which workers are employed on the health and safety of those workers;

<sup>10</sup> See Evaluation Practice Manual at Appendix G.

- The performance of the agency in relation to the rehabilitation of disabled employees and in providing suitable employment.
  - The views of any industrial association that has a proper interest in the matter.
  - WorkCoverSA will consider each criterion separately and give due weight to each.
- 4.7.6 In evaluating an agency under this Code, WorkCoverSA may take into account any evidence provided by third party auditors.
- 4.7.7 Under the Natural Consequences Model, the adequacy and effectiveness of the agency's injury prevention and injury management systems are assessed against the PSSI. The results of this assessment assist in the differentiation in the levels of performance. This includes an assessment of agency achievement against the Performance Measures.
- 4.7.8 Although the Crown is deemed to be self-insured, as a matter of Government policy, public sector agencies are required to actively participate in WorkCoverSA evaluations.
- 4.7.9 Performance outcomes of the evaluation program are outlined in Table 2.
- 4.7.10 WorkCoverSA will monitor agencies between programmed evaluations. Instances that may result in an evaluation or re-evaluation may include:
- a) A workplace fatality or serious injury;
  - b) Serious or repeated complaints by employees or their representatives concerning the agency's approach to occupational health, safety and welfare and injury management practices;
  - c) A breach of section 58B of the WRC Act or evidence of a pattern of non-provision of duties;
  - d) Serious or repeated intervention by SafeWork SA;
  - e) Serious administrative irregularities, such as falsification of data or reports;
  - f) Review of agency incident data;
  - g) Instances of under-reporting of claims, and
  - h) Failure to meet an order of the Workers Compensation Tribunal, except where such an order has been stayed or is otherwise legally inoperative.
- 4.7.11 In assessing the need for re-evaluations as outlined in 4.7.10 it is recognised that employees in some agencies are exposed to risks that are taken in the public interest. This is particularly the case in emergency services, policing and critical care settings.

#### **4.8 DETERMINATION OF LEVEL OF PERFORMANCE UNDER THE NATURAL CONSEQUENCES MODEL**

- 4.8.1 The Natural Consequences Model was introduced on 1 January 2006<sup>11</sup> and on evaluation against the PSSI, Crown self-insured employers were allocated to one of four different levels of performance. Following the 12 month review by WorkCoverSA, the levels of performance were refined and are depicted in Table 2. For Government agencies, each level of performance determines the duration of the evaluation cycle and, in the case of private self-insurers, the granting of registration and the period for which registration is granted.
- 4.8.2 The levels range from non-conformance through to highly superior performance and based on a theoretical continuum of "organisational maturity".
- 4.8.3 The Natural Consequences Model recognises four levels of functioning from Level 1 to Gold status.
- Level one differentiates between new employers (1A), established employers who are non-conforming (1B) and 'immature' employers (1C).

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<sup>11</sup> Review of the Criteria for the Exempt Employer System in South Australia, Issues Paper, Clayton, A. & Else, D. June 2004

- There are three levels of stable self-insurers: Level 2, conforming to the standard; Level 3, exceeding requirements; and Gold status, where exemplary performance is demonstrated.

**Table 2: Performance Level**

<b>System Status and description</b>	<b>Level</b>
<p><b>Conforming and compliance focus</b></p> <p>New self-insured agency with system that conforms with the standards but the employer's injury management cannot be reviewed until 12 months</p>	1A
<p><b>Non conforming and compliance focus</b></p> <p>Existing self-insurer with system that does not conform with the standards</p>	1B
<p><b>Conforming system but 'immature'</b></p> <p>Existing self-insurer with system that conforms with the standards but is immature</p>	1C
<p><b>Conforming system with continuous improvement</b></p> <p>Conforming system with continuous improvement</p>	2
<p><b>Conforming system with its application exceeding requirements for Level 2</b></p> <p>Conforming system with its application exceeding requirements and meets indicators for Level 3</p>	3
<p><b>Conforming system that meets Level 3 requirements</b></p> <p>Same as Level 3 plus undertakes either:</p> <ul style="list-style-type: none"> <li>- employment of injured workers from the registered employer scheme, or</li> <li>- sponsors one registered employer, or another self-insured or undertakes activity for the benefit for the whole of Government to improve OHS&amp;W and injury management</li> </ul>	Gold status

- 4.8.4 Conforming to the standard is defined as performing in a manner beyond that generally expected of a Registered Employer in occupational health, safety and welfare and injury management, whilst achieving defined and agreed outcomes and demonstrating continuous improvement.
- 4.8.5 Those organisations that meet but do not exceed the standards nor demonstrate effective continuous improvement, would be classified as 'Conforming with the standard' (Level 1A).
- 4.8.6 Those organisations that are conforming and demonstrating continuous improvement would be classified at Level 2 while those organisations that exceed the requirements for conforming to the standards would be classified at Level 3. A set of indicators has been established to determine Level 3 status. If performance is exemplary then there will be recognition of having attained gold status.
- 4.8.7 Indicators to achieve Level 3 status
- a) Employers that demonstrate 'superior' performance and operate a resilient OHSW and injury management system, feature the following attributes:
- senior leadership participation in the planning, review and monitoring of the system;
  - key system programs that evolve and develop over a two and three year cycle, and
  - activities that integrate the OHS&W and injury management system into the organisation's overall business management system.

- b) To achieve Level 3, the employer will have programs in place to deliver these attributes. The programs will be individual to each employer, but contain objectives, targets and indicators that are subject to improvement and management review within their system indicators and that include:
- (i) Executive level engagement
    - A documented program is in place for the active, ongoing involvement of all identified executive and senior management (including the Person Responsible for the implementation of the requirements of OHSW) in driving the OHSW and injury management system.
    - The program has objectives, targets and performance indicators in line with standards consistent with the policy objectives of OHSW and injury management.
    - The programs objectives, targets and performance indicators are maintained and monitored, in line with standard 4.1.
    - The programs objectives, targets and performance indicators are reviewed, analysed and any deficiencies corrected, in line with standard 5.2.
  - (ii) Positive OHSW and injury management culture and climate
    - a documented program is in place that defines OHSW and injury management behaviours. The behaviours are understood by all measured, reviewed, analysed and actioned.
    - The program has objectives, targets and performance indicators in line with standard 2.1.3, consistent with the policy objectives of OHSW and injury management.
    - The programs objectives, targets and performance indicators are maintained and monitored, in line with standard 4.1.
    - The programs objectives, targets and performance indicators are reviewed, analysed and any deficiencies corrected, in line with standard 5.2.
  - (iii) Demonstrable improvement in programs
    - Internal and external audits, including those undertaken by WorkCoverSA, confirm both the conformance of practices with program element requirements and the effectiveness of outcomes.

4.8.8 Implementation of the Natural Consequences Model has meant a greater focus on the evaluation of public sector agencies. Dependent on the outcome of a WorkCoverSA evaluation the following natural consequences may result from less than optimal performance:

- scheduling of more frequent evaluations;
- imposition of administrative charges;
- imposition of more stringent reporting requirements;
- requirement to develop remedial action plans for non-conformances to the Standards; and
- reduction to a lower level within the model.

#### 4.9 **MOVEMENT AND ADMINISTRATIVE CHARGE UNDER THE NATURAL CONSEQUENCES MODEL**

4.9.1 Any new agency will normally enter at Level 1A of the model (12 - 24 months evaluation cycle) and will then be expected to move through the levels following each assessment. In Government, new agencies may be created through restructuring or as a result of new initiatives and will automatically be deemed self-insured employers under s.61(1).

4.9.2 The movement up the levels will be progressive up to the maximum evaluation cycle period of 3 years. Progression upwards will only be possible one level at a time (subject to the outcomes of re-evaluation).

- 4.9.3 Agencies are required to progress through the various levels as part of the continuous improvement cycle or will be assessed as performing at a lower level.
- 4.9.4 An agency at Level 2 may remain at that level for a maximum of 2 evaluation periods (48 months). If the requirements for Level Three have not been demonstrated prior to the time of the expiration of the second year of evaluation then the agency would revert to Level 1B.
- 4.9.5 An agency may move from Level 3, the maximum period of 3 years within the evaluation cycle, to Levels 2 or 1B of the Natural Consequences Model, if an evaluation results in documented non-conformances.
- 4.9.6 Agencies are only able to remain at Level 1A for two consecutive twelve-month periods of evaluation before reverting to Level 1B. The expectation under the Natural Consequences Model is that the agency will continue to strive for improved performance.
- 4.9.7 In the event that an agency is assessed to be under-performing or non-compliant with any of the provisions of the WRC Act and Regulations and the PSSI, WorkCoverSA may consider taking some or all of the following actions:
- a) reporting the performance of the agency to the WorkCoverSA Self-Insured Board Committee;
  - b) reporting the performance of the agency to Cabinet through the Board and the Minister for Industrial Relations;
  - c) making a public release and disclosure of the agency's non-compliance.
- 4.9.8 Table 3 summarises the Natural Consequences Model depicting the classification levels and associated evaluation cycle administrative charges.
- 4.9.9 Where a Crown agency has been assigned to a different class under s.68(3) of the WRC Act, as a result of not meeting the PSSI, WorkCoverSA will undertake an additional evaluation within twelve to twenty four months. In line with WorkCoverSA's statutory obligation to monitor the performance of self-insured employers, the additional evaluation costs and work undertaken to assist the agency meet the required performance will be reflected in the amount charged to that agency. The agency however retains responsibility for implementing systems that conform to the standards.
- 4.9.10 These administrative charges comprise a 'fair contribution' under s.68 of the WRC Act to the additional costs borne by WorkCoverSA in the discharge of its statutory obligations. The additional charges are assessed in accordance with the Natural Consequences Model as outlined in Table 3, as follows:
- a) the additional annual evaluation charges to an employer (for each increment in the multiplier table) are \$4,000. As an example, an employer with an annual remuneration of \$50m, the cost of the additional evaluation is  $\$4,000 \times 3 = \$12,000$ ; and
  - b) the cost of the work required within twelve to twenty four months to assist the employer achieve conformance with the standards, which are a key requirement of Self Insurance. As an example, an employer requiring 10 days work would be charged \$7,000, (which is costed as a pro-rata daily rate) added to the \$12,000 annual evaluation charge described above. The total additional charges would be \$19,000.
- 4.9.11 The additional charge will be then be assigned to the agency, at the commencement of the next calendar month following the determination made by the WorkCoverSA Board Self-insured Committee ("the date of effect"). Should there be a matter in dispute following the evaluation, the imposition of the administrative charge will be suspended until the matters in dispute are finalised. Once finalised and if the original decision is upheld, the additional charge will be imposed from the date of effect.
- 4.9.12 On the annual calculation of a 'fair contribution' for all self-insured employers, which occurs prior to establishing the levies for self insurers, WorkCoverSA will take into account all levies and charges (base and additional) received during the preceding year to determine the level of 'fair contribution' to be collected from 1 July.
- 4.9.13 Agencies that are evaluated at levels 1 (1A, 1B and 1C) and 2 are therefore required to pay the evaluation cycle administrative charge as outlined above, which covers:

- administrative costs of the additional evaluation process taking into consideration the size of the agency, (i.e. the larger the agency, the greater the cost of evaluation across all functions and is determined using the Administrative Charge Multiplier, as per Table 4), and,
- the cost of additional consultancy work provided by WorkCoverSA to assist the agency reach the required standards.

**Table 3: Natural Consequences Model**

Self Insurer	Evaluation Cycle	Evaluation Cycle Administrative Charge.
<u>Gold Status</u> Exemplary performance	3 years	N/A
<u>Level 3 Conforming and exceeding requirements</u>	3 years	N/A
<u>Level 2</u> Conforming and continually improving	2 years	\$4,000 pa
<u>Level 1A, 1C</u> New or immature	12 - 24 months	\$8,000 pa
<u>Level 1B</u> Associated with non-conformances.	12 - 24 months	\$12,000 pa

**Table 4: Multiplier to determine the Evaluation Cycle Administrative Charge<sup>12</sup>.**

Worker numbers	Remuneration	Multiplier
Up to 399	Up to \$25m pa	1
400 – 1000	\$25 - \$50 m pa	2
Over 1000	Over \$50m pa	3

**Example**

A small agency with less than 1000 employees is evaluated at level 2. Therefore under the Natural Consequences Model

- The period before a re-evaluation is 2 years
- The base levy is augmented with an administrative charge of \$8000 (\$4000 per annum multiplied by 2)

4.9.14 WorkCoverSA recognises that the implementation of the Code as it relates to the evaluation program and its financial impact is subject to common law principles of procedural fairness and natural justice. Further information about WorkCoverSA's role in maintaining an equitable state-based workers compensation system can be found in its Corporate Plan at <http://www.WorkCoverSA.com/>

<sup>12</sup> Extra services and annual adjustment to Base Levy under WRC Act s.68 (3).

#### 4.10 SECTION 58B/C PROTOCOL

- 4.10.1 A Crown agency needs to demonstrate a level of performance that complies with the requirements of the WRC Act and conforms with the WorkCoverSA Performance Standards for Self Insurers. To achieve this, self-insured employers must ensure compliance with sections 58B and 58C in the same manner as applied to all other employers.
- 4.10.2 Crown agencies acknowledge that a breach of s.58B and/or 58C may lead to an increase in evaluation activity. An established breach of s.58B and/or 58C may result in a reduced period within the agency's evaluation cycle and the assignment to a lower level, in addition to the imposition of a levy under s.68(2) and reporting to the Minister for Industrial Relations.
- 4.10.3 Crown agencies as large and diverse businesses, in the main, will be able to create opportunities in line with their delegations<sup>13</sup>, which will lead to suitable employment being offered to injured workers. Situations will, however, arise where they may not be able to achieve this. In such instances the Commissioner's Standard 2 Part 6 applies, and the Crown agency should advise WorkCoverSA and Public Sector Workforce Relations (PSWR). The agency is also encouraged to proactively report situations where their compliance with s.58B and/or 58C may potentially come into question.
- 4.10.4 The following process of reporting by Crown agencies and monitoring by WorkCoverSA is proposed:
- a) The Crown agency will provide an annual declaration of their compliance with sections 58B and 58C. This declaration will be provided in the Responsible Officer report, which is an existing annual reporting requirement. The information provided should include details of where an agency has undertaken a review in response to a complaint they have received about s.58B or 58C and also details of the referrals they have made to WorkCoverSA during the notional renewal period.
  - b) WorkCoverSA will evaluate compliance as part of the evaluation process of Crown agencies. If any issue of concern arises from the evaluation in relation to s.58B and/or 58C, the evaluator will promptly advise the Crown agency and ascertain if any other information exists that might bear on the matter.
  - c) If, after the Crown agency has had the opportunity to clarify the situation, the evaluator remains of the view that the matter should be investigated, the Crown agency will be so informed and the matter will be referred to the Manager, Return to Work Inspectorate and Support Unit at WorkCoverSA.
  - d) To ensure independence from the evaluation, all investigations and communications from this time will be managed by the s.58B and 58C Officer of the Return to Work Inspectorate and Support Unit.
- 4.10.5 This process will allow WorkCoverSA to determine whether an agency has complied with the requirements of s.58B and 58C and intervene and facilitate an outcome where necessary.
- 4.10.6 Where WorkCoverSA receives a complaint of a general nature from a third party that alleges a Crown agency has not complied with its obligations under s.58B and /or 58C but does not contain sufficient information to enable WorkCoverSA to identify the relevant claims and the factual basis for the complaint, WorkCoverSA will:
- a) Approach the party making the complaint for further information to determine the merit of investigating the complaint, and
  - b) Determine whether an investigation is required.
- 4.10.7 Where WorkCoverSA decides to investigate, then at least 10 days before formal investigation procedures commence, it will provide the Crown agency with:
- a) Advice that an investigation is pending;
  - b) Complete copies (excluding those that the agency may already have in their possession) of all relevant information, documents and correspondence on which WorkCoverSA will rely in making a decision.

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<sup>13</sup> Refer s.26 and s.28A of the WRC Act

- 4.10.8 Where complaints in relation to s.58B and/or 58C are investigated, it is important that:
- a) They are investigated and resolved expeditiously and in a transparent manner, and
  - b) Close liaison between WorkCoverSA s.58B investigation staff, the agency and PSWR personnel is maintained during investigation procedures.

#### 4.11 **DISPUTE RESOLUTION PROCESSES**

- 4.11.1 Disputes arising from the evaluation of agencies under the Natural Consequences Model, or levies imposed or s.58B and/or 58C issues may arise from time to time and can be resolved using either informal or formal disputes resolution processes.
- 4.11.2 The spirit and intent of the OHSW and WRC legislation and Government policy is to make every effort at the local level to resolve disputes through open communication and consultation, prior to resorting to more formal means. On occasions, the differences may not be reconciled between the parties and a third party may be used to facilitate a resolution.
- 4.11.3 The WorkCoverSA Evaluation Practice Manual<sup>14</sup> presents an administrative process for resolving disputes on findings in the evaluation report. If the administrative process does not lead to a satisfactory outcome, a more formal conciliation process may be undertaken as outlined below.

#### 4.12 **WORKCOVERSA CONCILIATION PROCESS**

- 4.12.1 Where the employer's Chief Executive, Delegate or Responsible Officer, disagrees with WorkCoverSA's findings a meeting can be requested with the relevant WorkCoverSA staff. The employer's Chief Executive, Delegate or Responsible Officer must set out the disagreement in writing to WorkCoverSA, before the meeting.
- 4.12.2 The conciliation process shall concern itself only with the matters specified. The objective of the process is to attempt a resolution of differences between WorkCoverSA's findings and the employer's views. The agency Chief Executive, Delegate or Responsible Officer is encouraged to consult with Public Sector Workforce Relations (PSWR), the Department of the Premier and Cabinet, in regard to the matters at issue.
- 4.12.3 The parties to be present at the meeting must have sufficient delegated authority to speak on behalf of the agency Chief Executive, Delegate or Responsible Officer and WorkCoverSA. Should the meeting result in all differences being resolved, then that outcome shall be recorded and included with the reports for consideration by the WorkCoverSA Board or the Board Self-insured Committee (where relevant).
- 4.12.4 If resolution of all differences cannot be achieved, the WorkCoverSA representative will prepare a report for the Chief Executive, summarising the discussions that took place at the meeting. The agency shall be provided with a copy of the report and be given an opportunity to comment on its contents.
- 4.12.5 WorkCoverSA may then contact the agency to clarify any remaining issues before finalising the evaluation findings and submitting them to the Board or the Board Self-insured Committee and providing formal advice to the agency of the outcome.
- 4.12.6 Should the situation occur where the parties cannot reach agreement, agencies should request the involvement of PSWR to facilitate a further informal dispute resolution process to be agreed between the agency, WorkCoverSA and PSWR.

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<sup>14</sup> Sec 3.2 Disputes

## SECTION 5.

### 5.1 GLOSSARY

Agency	A South Australian public sector agency as described by the PSM Act
ASCC	Australian Safety and Compensation Council formerly NOHSC.
Commissioner's Standards	A mandatory standards published by the Commissioner for Public Employment under the PSM Act.
Crown Self-insured Employer	A South Australian public sector agency as described by the PSM Act 1995 that has been deemed under the provisions of the WRC Act to be a self-insured employer.
DPC	Department of the Premier and Cabinet
Injury Management	The comprehensive and systematic application of regulatory principles for workers rehabilitation and compensation to the core business of a corporate entity or agency.
Injury Prevention	The comprehensive and systematic application of regulatory principles for Occupational Health, Safety and Welfare to the core business of a corporate entity or agency.
NOHSC	National Occupational Health and Safety Council now ASCC.
OHSW Act	<a href="#">Occupational Health, Safety and Welfare Act 1986</a>
PSM Act	<a href="#">Public Sector Management Act 1995</a>
PSWR	Public Sector Workforce Relations of the Department of the Premier and Cabinet.
Self-Insurer	An employer that has been granted the right to self-insure within the South Australian WorkCoverSA scheme.
WRC Act	<a href="#">Workers Rehabilitation and Compensation Act 1986</a>

## 5.2 **LEGISLATIVE REFERENCES**

[Fair Work Act 1994](#)

[Occupational Health, Safety and Welfare Act 1986](#)

[Occupational Health, Safety and Welfare Regulations 1995](#)

[Public Sector Management Act 1995](#)

[Commissioner's Standards](#)

[Workers Rehabilitation and Compensation Act 1986](#)

[Workers Rehabilitation and Compensation \(Claims and Registration\) Regulations 1999](#)

[Workers Rehabilitation and Compensation \(Disclosure of Information\) Regulations 1999](#)

[Workers Rehabilitation and Compensation \(Dispute Resolution\) Regulations 1996](#)

[Workers Rehabilitation and Compensation \(General\) Regulations 1999](#)

[Workers Rehabilitation and Compensation \(Rehabilitation Standards and Requirements\) Regulations 1996](#)

[Workers Rehabilitation and Compensation \(Reviews and Appeals\) Regulations 1999](#)

[Workers Rehabilitation and Compensation \(Scales of Charges - Medical Practitioners\) Regulations 1999](#)

[Workers Rehabilitation and Compensation \(Scales of Medical and Other Charges\) Regulations 1995](#)

## 5.3 **POLICY REFERENCES**

[South Australia's Strategic Plan](#)

[Safety in the Public Sector 2007-2010](#)

## 5.4 **REFERENCE DOCUMENTS**

N.B.: All of the documents listed below are under review due to legislative amendments and on completion the Code will be updated and agencies will be advised.

[South Australian Public Sector Workers Compensation Claims Management Manual](#)

[Rehabilitation And Return To Work Manual](#)

[Best Practice Injury Management](#)

[Your Road To Recovery Information For Injured Employees](#)

[Guidelines For Using External Rehabilitation Providers](#)

[Guidelines For Workers Compensation Investigation And Surveillance Providers](#)

[2-Year Review Guidelines](#)

[Injury Management Benchmarks](#)

[Case Estimating Policy](#)

[IDEAS User Manual](#)

## **SECTION 6. Appendix A**

**Safety in the Public Sector 2007-2010**  
is available on the  
Public Sector Workforce Relations Website.

## **SECTION 7. Appendix B**

**Injury Management Code of Practice for Public Sector Agencies**  
available on the Public Sector Workforce Relations Website:

<http://www.pswr.sa.gov.au/publications/>

## SECTION 8. Appendix C

### S.63 Delegations to a self-insured employer

The following powers and discretions currently vested in WorkCoverSA are delegated to self-insured employers:

- section 26 Rehabilitation programs
- section 28A Rehabilitation and return to work plans
- section 32 (but not section 32(11) and (13)) Compensation for medical expenses
- section 35 Weekly payments
- section 36 Discontinuance of weekly payments
- section 38 Review of weekly payments
- section 39 Economic adjustments to weekly payments
- section 41 Absence of worker from Australia
- section 42 Redemption of liabilities
- section 42A Loss of earning capacity
- section 42B Power to require medical examination etc
- section 43 Lump sum compensation
- section 44 Compensation payable on death
- section 45 Review of weekly payments
- section 53 Determination of claim (but not the power to approve recognised medical experts for the purposes of section 53(2))
- section 106 Payment of interim benefits
- section 106A; Payment not to constitute an admission of liability

WorkCoverSA will not overrule or interfere with a decision of a self-insured employer made in the exercise of delegated powers or discretions unless the employer has acted unreasonably in the exercise of those powers. In this case, WorkCoverSA may withdraw (in whole or in part) the delegations.

## SECTION 9. Appendix D

Please note that the Schedule listed below has been edited to remove those subsections that are not applicable to the Crown due to its deemed self-insured status and the provision of financial guarantees to WorkCoverSA are not required as Government is the "Insurer of Last Resort". Subsections 8 to 12 have been excluded.

### Workers Rehabilitation and Compensation (Claims and Registration) Regulations 1999

These regulations may be cited as the *Workers Rehabilitation and Compensation (Claims and Registration) Regulations 1999*.

#### Schedule 4—Self-insured employers terms and conditions of registration

- 1 The employer must ensure that forms for making a claim under the Act, in a form approved by WorkCoverSA, are reasonably available to the employer's workers.
- 2 The employer must ensure that all claims under the Act are promptly and efficiently investigated and determined.
- 3 The employer must ensure that any benefit to which a worker is entitled under the Act is—
  - (a) provided promptly; and
  - (b) periodically reviewed in accordance with the Act.
- 4 (1) The employer must ensure that a prompt assessment is made of whether a rehabilitation program would be of assistance to a worker who has suffered a compensable disability and, if required, ensure that an appropriate rehabilitation program is provided for the worker.  
(2) If WorkCoverSA considers that an appropriate rehabilitation program is not being provided to a worker who has suffered a compensable disability, the employer must—
  - (a) allow the WorkCoverSA to establish a rehabilitation program for the worker; and
  - (b) reasonably co-operate with any rehabilitation adviser in the implementation of that program.
- 5 The employer must ensure, so far as is reasonably practicable, that up to date programs that are designed to prevent or reduce the incidence of compensable disabilities are established and maintained at places where the employer's workers work.
- 6 The employer must, as soon as practicable after the receipt of a claim under the Act, estimate the employer's expected liability on the claim.
- 7 (1) In this clause—  
**reporting period** means a period of seven days or such longer period, not exceeding 14 days, agreed between WorkCoverSA and the relevant employer from time to time.  
(2) The employer must, in respect of each reporting period, provide the following information to WorkCoverSA:
  - (a) Employer details:
    - (i) the name of the employer;
    - (ii) the name used by the employer at the location to which the report relates;
    - (iii) the Employer Registration Number;
    - (iv) the relevant Location Number;
    - (v) the relevant Location Address;
  - (b) Particulars relating to each new claim received by the employer during the reporting period:
    - (i) the claim number assigned by the employer;

- (ii) the full name of the worker;
  - (iii) the sex of the worker;
  - (iv) the date of birth of the worker;
  - (v) the language usually spoken at home by the worker;
  - (vi) the worker's country of birth;
  - (via) the postcode of the worker's residence;
  - (vib) the worker's notional weekly earnings (if applicable);
  - (vic) the postcode of the location where the injury occurred;
  - (vid) if the injury occurred at a particular workplace – the predominant class of industry at that workplace
  - (vii) whether the worker is employed on a full time or part time basis by the employer;
  - (viii) whether the worker is employed on a permanent or casual basis by the employer;
  - (ix) the occupation of the worker at the time of the disability (including, if the worker is an apprentice, making specific reference to that fact);
  - (x) the main tasks usually performed by the worker in the stated occupation;
  - (xi) the normal hours, and days per week, worked by the worker;
  - (xii) the date on which the worker commenced employment with the employer;
  - (xiii) the activity being undertaken by the worker at the time of the occurrence of the disability;
  - (xiv) the date of the occurrence of the disability;
  - (xv) the time of day at which the disability occurred (so far as is known to the employer);
  - (xvi) the date on which the employer was first notified of the disability;
  - (xvii) the apparent cause of the disability;
  - (xviii) a description of the disability;
  - (xix) a statement as to the parts of the worker's body affected by the disability;
  - (xx) the date on which the worker ceased work (if incapacitated for work);
  - (xxi) if relevant, the date of death of the worker;
  - (xxii) an estimate of the costs associated with the claim;
  - (xxiii) the date on which the occurrence of the disability, or the incident that caused the disability, was reported to the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Occupational Health, Safety and Welfare Act 1986* (if applicable);
- (c) Particulars relating to each claim that is open during any part of the reporting period:
- (i) the WorkCoverSA reference number;
  - (ii) sufficient details to allow the worker and the claim to be identified;
  - (iii) the status of the claim (e.g., accepted, rejected, undetermined, finalised, reopened);
  - (iv) the total time lost from work by the worker during the relevant period (if any);
  - (v) the worker's last known work status;

- (vi) the date on which the worker resumed work (if known);
  - (vii) the date on which the claim was determined and the date and effect of any redetermination of the claim;
- (d) Particulars relating to each claim on which action has occurred during the period, including details of any changes and, if relevant, the latest totals of payments in the following categories:
- (i) income maintenance;
  - (ii) medical services (e.g. medical practitioner or dentist);
  - (iii) medical – allied health;
  - (iv) medical – other goods and services;
  - (v) hospital outpatient;
  - (vi) hospital inpatient;
  - (vii) rehabilitation;
  - (viii) lump sum payments (section 43 or 44 of the Act);
  - (ix) redemption of income maintenance payments (section 42 or 42A of the Act);
  - (x) redemption of medical expenses (section 42 of the Act);
  - (xi) common law;
  - (xii) legal;
  - (xiii) investigation;
  - (xiv) travel;
  - (xv) other goods and services;
  - (xvi) other non-compensation;
  - (xvii) property damage
  - (xviii) third party recovery;
- (e) Other information reasonably required by WorkCoverSA (including information required to meet national data collection requirements).
- (3) For the purposes of subregulation (2)—
- (a) the information must be provided in a manner and form (including by electronic means), and at a time, determined by WorkCoverSA;
  - (b) WorkCoverSA may, from time to time—
    - (i) by notice in writing, waive or postpone the obligation to comply with the requirements of that subregulation, either for an individual self-insured employer or for self-insured employers of a specified class, subject to conditions (if any) determined by WorkCoverSA;
    - (ii) on giving reasonable notice (by further notice in writing), vary or revoke the operation of a notice under subparagraph (i), or vary, revoke or substitute a condition that applies under that subparagraph.

8-12 *These subsections are not applicable to Crown Agencies*

13 The employer must ensure that all documentation that relates to a claim against the employer under the Act is retained for at least six years after the claim is finalised.

- 14 (1) The employer must, in carrying out its functions under the Act, take into account the racial, ethnic and linguistic diversity of the employer's workforce, the interests of both sexes, and the interests of those who may be physically, mentally or intellectually impaired, and must ensure that those of the employer's workers who are entitled to benefits under the Act are not disadvantaged because of their origins or background, their sex, or some physical, mental or intellectual impairment.
- (2) The employer should, as far as reasonably practicable, ensure that information provided for use in the workplace is in a language and form appropriate for those expected to make use of it.
- 15 This schedule applies to –
- (a) self-insured employers who are registered under section 60 of the Act; and
  - (b) self-insured employers who are deemed to be registered under the Act by virtue of Schedule 1 to the Act.

SECTION 10. Appendix E

**WorkCoverSA Performance Standards for Self Insurers (PSSI)**

available on the WorkCoverSA website at:

<http://www.WorkCoverSA.com/Home/Employers/Selfinsured/Selfinsuredemployers/Performancestandards.aspx>

## **SECTION 11. Appendix F**

### **1. LEVY AND FEES**

#### **1.1 General**

Agencies are liable to pay a levy to WorkCoverSA.

#### **1.2 Self-insured Employer Levy**

##### **1.2.1 Special Levy Rate**

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

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

- (a) a fair contribution towards the administrative expenditure of WorkCoverSA;
- (b) a fair contribution towards the cost of rehabilitation funding;
- (c) a fair contribution towards the cost of the system of dispute resolution established by the WRC Act; and

##### **1.2.2 Elements in Determining Levy Rate**

###### *(a) Contribution Towards Administrative Expenditure:*

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

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

###### *(b) Contribution Towards Rehabilitation Funding:*

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

###### *(c) Contribution Towards Costs of Dispute Resolution:*

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

#### **1.3 Levy Payable**

The special levy rate for all agencies as described in clause 1.2.1 will be reviewed annually (in the first quarter of each calendar year) and apply from 1 July each year and may be subject to individual adjustment from time to time.

- (a) The levy rate is payable in addition to:
  - (i) the Occupational Health Safety & Welfare Employer registration fee;
  - (ii) any fines or penalties payable under sections 70 and 71 of the WRC Act; and
  - (iii) any Goods & Services Tax that may be applicable to the levy.
- (b) For all periods commencing on or after 1 January 2006, the levy payable by an agency will be differentiated between classes of self-insured employers by reference to the following factors:
  - (i) the application of the Natural Consequences Model;
  - (ii) the criteria by which an adjusted levy applies;

#### 1.4 Basis of Calculation

The self-insured employer levy is calculated in accordance with the following formula:

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

Where:

$$\text{EL} = \text{SEL} \times A;$$

$$\text{OHS} = R \times \text{ILR} \times \text{EL} \times \text{OHS\%}; \text{ and}$$

$$\text{GST} = R \times \text{ILR} \times \text{EL} \times \text{GST\%}$$

Definitions:

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

**R** is the total annual remuneration paid during WorkCoverSA's current financial year based on the self-insured employer's predominant activity for the location.

**ILR** is the Industry Levy Rate according to the *self-insured employer's* predominant activity for the location.

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

**SEL** is the special levy rate for self-insured employers as determined by WorkCoverSA from time to time as set out in clause 1.2.1.

**OHS%** is the rate of Occupational Health Safety & Welfare Employer registration fee for self-insured employers as determined by WorkCoverSA relating to the year under review.

**GST%** is the percentage rate of Goods and Services Tax determined by the Australian Government for the year under review.

The total levy payable by a self-insured employer is the sum of the levy payable for all locations registered by that self-insured employer plus the Adjusted Levy Component and Additional Levy Component (if any) applicable to that self-insured employer pursuant to the Natural Consequences Model.

### 1.5 **Payment of Levy**

- (a) An agency must pay the levy within 7 days after the completion of the month and must be paid electronically (e.g. by way of direct debit).

### 1.6 **Returns by Employers**

- (a) In accordance with sections 69(1) and (2) of the WRC Act, agencies must provide WorkCoverSA with returns on aggregate remuneration paid during the month and such other information required by WorkCoverSA in order that it may calculate the levy.
- (b) In accordance with regulation 15, an agency must submit its first return after the end of each financial year (which must include the aggregate remuneration paid during that financial year) to WorkCoverSA electronically via the <http://www.WorkCoverSA.com/> website.
- (c) Under section 69(3) of the WRC Act, WorkCoverSA may:
  - (i) review any information; or
  - (ii) require independent verification of any information,
- (b) Agencies must co-operate with any review or verification of its levy payment process.
- (c) Pursuant to section 69(4) of the WRC Act, WorkCoverSA may, within its discretion, waive the reporting requirements set out in section 69(1), (2) and (3) of the *Act*.

### 1.7 **Appeal against Levy Rate**

Under section 72 of the WRC Act, an agency may appeal any decision of WorkCoverSA in relation to levies, including the imposition of an adjusted levy component pursuant to section 68 of the WRC Act.

**SECTION 12. Appendix G**

**The WorkCoverSA Evaluation Practice manual**

is available on the WorkCoverSA website

<http://www.WorkCoverSA.com/>