

SOUTH AUSTRALIAN PUBLIC SECTOR

CODE OF PRACTICE
for
CROWN SELF-INSURED EMPLOYERS

FEBRUARY 2015

Office for the Public Sector



Government of South Australia
Office for the Public Sector

Table of Contents

INTRODUCTION	3
SECTION 1.	4
1.1 PURPOSE OF THE CODE	4
1.2 SCOPE	4
SECTION 2.	5
2.1 REGULATORY FRAMEWORK	5
2.1.1 <i>Work Health and Safety Act 2012 and Regulations</i>	5
2.1.2 <i>Workers Rehabilitation and Compensation Act 1986 and Regulations</i>	5
2.1.3 <i>Acknowledgment and Updates</i>	6
2.2 POLICY FRAMEWORK	6
2.2.1 <i>Policy Mechanisms</i>	6
2.2.2 <i>South Australia’s Strategic Plan</i>	6
2.2.3 <i>Safety and Wellbeing in the Public Sector 2010-2015</i>	6
2.2.4 <i>OHS Strategic Framework for SA</i>	7
2.2.5 <i>Australian Work Health and Safety Strategy 2012-2022</i>	7
SECTION 3.	8
3.1 MANAGEMENT SYSTEMS FOR INJURY PREVENTION AND MANAGEMENT.....	8
3.1.1 <i>‘Safety And Wellbeing in the Public Sector 2010-2015’ Strategy</i>	8
3.1.2 <i>Injury Prevention Systems</i>	8
3.1.3 <i>Injury Management Systems</i>	9
3.1.4 <i>Self-Insurance Management System (SIMS)</i>	9
3.1.5 <i>Resources and Training</i>	10
SECTION 4.	11
4.1 PERFORMANCE MONITORING	11
4.1.1 <i>Audit and Verification System (AVS)</i>	11
4.1.2 <i>Internal Audit</i>	12
4.1.3 <i>Performance Indicator and Target Setting</i>	12
4.1.4 <i>Reporting</i>	12
SECTION 5.	14
5.1 WORKCOVERSA REQUIREMENTS	14
5.1.1 <i>The Crown as a Self-Insured Employer</i>	14
5.1.2 <i>Fees Payable to WorkCoverSA by Self-Insured Employers</i>	15
5.1.3 <i>Employer’s Duty to Provide Work and Notice of Termination of Employment</i>	16
5.1.4 <i>Dispute Resolution Processes</i>	17
5.1.5 <i>Settling of Legal Disputes Between Agencies (Legal Bulletin No. 34)</i>	17
SECTION 6.	18
6.1 GLOSSARY	18
6.2 LEGISLATIVE REFERENCES	19
6.3 POLICY REFERENCES	19
APPENDIX A	20
APPENDIX B	21
APPENDIX C	23

INTRODUCTION

The Premier's commitment to safety, expressed in the Safety and Wellbeing in the Public Sector 2010-2015 Strategy, promotes the integration of injury prevention and management into core business. Best practice approaches in injury prevention and 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 supporting an engaged workforce.

The Code of Practice for Crown Self-insured Employers (the Code) has been developed to provide a framework for policies, procedures and guidelines for the administration of a best practice injury prevention and management system across the public sector. The Code is designed to meet the legislative requirements of South Australia's Work Health and Safety Act 2012 and the Workers Rehabilitation and Compensation Act 1986.

The Code provides the framework for both injury prevention and management for chief executives, managers, supervisors, workers, injury prevention and 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, workers are rehabilitated and returned to safe work as soon as possible.

Successful implementation of the Code supports South Australia's commitment to remaining a national leader in promoting the Australian Work Health and Safety Strategy 2012-2022.



Erma Ranieri
Commissioner for Public Sector Employment

SECTION 1.

1.1 PURPOSE OF THE CODE

- a) The purpose of the Code is to provide South Australian public sector agencies, in their capacity as Crown self-insured employers, with:
 - a framework for injury prevention and management as defined by legislation and policy
 - an outline of the WorkCoverSA policies and procedures for the administration of the Workers Rehabilitation and Compensation Act 1986 (WRC Act).
- b) 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

- a) The South Australian public sector is defined¹ by the Public Sector Act 2009 and is the largest single employer in South Australia, representing approximately 12 per cent of South Australia's workforce.
- b) The Code is applicable to any agency or instrumentality of the Crown that is deemed to be a self-insured employer under the WRC Act².
- c) The Code promotes the importance of chief executives providing leadership in injury prevention and management performance.
- d) The Code is designed to inform effective injury prevention and management systems, which are a critical part of portfolio/agency risk management programs. The Code provides guidance and direction for the development and implementation of best practice injury prevention and management systems within the public sector.
- e) The Code incorporates the requirements of WorkCoverSA, in so far as they are relevant to Crown self-insured employers.

1 The Public Sector Act 2009 defines a public sector agency as

- (a) a Minister; or
- (b) a chief executive of an administrative unit; or
- (c) an administrative unit; or
- (d) an employing authority; or
- (e) any other agency or instrumentality of the Crown; or
- (f) a body corporate -
 - (i) 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
 - (ii) subject to control or direction by a Minister; or
- (g) a person or body declared under subsection (3) to be a public sector agency; or
- (h) a subsidiary of a Minister or a person or body referred to in a preceding paragraph, but does not include -
 - (i) a person or body declared under an Act not to be part of the Crown or not to be an agency or instrumentality of the Crown; or
 - (j) a person or body declared under subsection (3) not to be a public sector agency;

2 In certain instances the Governor may declare, by proclamation, that an agency or instrumentality is not to be regarded as a self-insured employer

SECTION 2.

2.1 REGULATORY FRAMEWORK

The Code is based primarily on the provisions of the Work Health and Safety Act 2012, Workers Rehabilitation and Compensation Act 1986 and related policy.

2.1.1 Work Health and Safety Act 2012 and Regulations

- a) The Work Health and Safety Act 2012 (WHS Act) sets out the general requirements for protecting worker health and safety in all workplaces in South Australia. The WHS 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 workers for the resolution of work health and safety (WHS) issues
 - encouraging registered associations to promote and assist the achievement of a healthier and safer working environment.
- b) The Work Health and Safety Regulations 2012 (WHS Regulations) 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 prescribe minimum standards (Approved Codes of Practice) and administrative provisions with general application, or define specific requirements related to a particular hazard or particular type of work.

2.1.2 Workers Rehabilitation and Compensation Act 1986 and Regulations

- a) The Workers Rehabilitation and Compensation Act 1986 (WRC Act) and the Workers Rehabilitation and Compensation Regulations 2010 (WRC Regulations) outline the requirements for the administration of workers rehabilitation and compensation in South Australia.
- b) The WRC Act provides:
 - the return of injured workers to suitable safe employment as soon as possible
 - rehabilitation and restoration of a work injured or ill worker to the workforce, and the community
 - necessary assistance and support during the recovery phase
- 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 injured workers
 - reducing the overall social and economic costs of work related injuries 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 public sector 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 workers
 - 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 public sector agencies access claims management services it should be noted that the financial liabilities and accountability for the management of the claim and the injured worker 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 agency policies and procedures
 - ongoing communication and coordination occurs in relation to each work-injured worker
 - agencies meet early reporting requirements and the legislative requirement to provide suitable employment for an injured worker
 - line managers and supervisors are aware of, and proficient in, their delegated responsibilities.

2.1.3 Acknowledgment and Updates

- a) From time to time, the WorkCoverSA Board may revise their requirements of self-insured employers as outlined in Section 5 of this Code. The Office for the Public Sector (OPS) will review any changes made for their relevance to the public sector and revise this Code accordingly.
- b) OPS will consult with and notify each portfolio/agency/WorkCoverSA of any amendments to the Code.
- c) A copy of the Code and any amendments will be maintained on the OPS website at: <http://www.publicsector.sa.gov.au>

2.2 POLICY FRAMEWORK

2.2.1 Policy Mechanisms

The State and Federal Governments are jointly leading the prevention and management of work-related injury in their respective jurisdictions through promoting, legislating and enforcing injury prevention and management requirements.

2.2.2 South Australia's Strategic Plan

The public sector, as the largest employer in the state, is a key contributor to the achievement of the South Australia Strategic Plan Vision: "We are safe in our homes, community and at work"; Target 21, Greater safety at work: Achieve the nationally agreed target of 40% reduction in injury by 2012 and a further 50% reduction by 2022.

2.2.3 Safety and Wellbeing in the Public Sector 2010-2015

- a) The 'Safety and Wellbeing in the Public Sector 2010-2015' strategy (the Strategy) outlines the Premier's commitment to public sector workers in the area of injury prevention and management (see Appendix A).

- b) The Strategy provides the operational framework for South Australian public sector agency injury prevention and management systems through the application of four interlocked and mutually supporting elements. These are:
 - Commitment to the Management of Safety and Wellbeing
 - Accountability for Safety and Wellbeing Performance
 - Integrated Risk Management
 - Effective Measurement and Evaluation.
- c) The Strategy aims to make safety performance sustainable through simple but effective strategies that align and integrate safety performance within portfolio and agency core business.
- d) The objectives of the Strategy are supported by the South Australian Public Sector Wellbeing Framework, which provides a holistic approach to worker wellbeing in the context of improving safety performance and integrating safety focused workplace strategies, shared responsibility, and supportive people management with a view to enabling agencies to build on systems that integrate safety and wellbeing into core business decision-making.
- e) Each public sector agency is required to have an implementation plan for the Strategy.

2.2.4 **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, as well as the programs by which SafeWork SA will promote and enforce the legislative framework.
- c) The SafeWork SA Advisory Council provides advice to the Minister for Industrial Relations regarding legislation and regulation relevant to WHS and other key matters. The interests of the public sector as an employer are represented on this council.

2.2.5 **Australian Work Health and Safety Strategy 2012-2022**

- a) The Government of South Australia through the COAG Select Council on Workplace Relations is a signatory to the Australian Work Health and Safety Strategy 2012-2022 (the Australian WHS Strategy).
- b) The Australian WHS Strategy builds on the success of the National Occupational Health and Safety Strategy 2002-2012, and establishes a framework for a range of national activities to improve the health and safety of workers in Australia.
- c) The Strategy recognises that governments can strongly influence work health and safety. Governments will improve work health and safety to achieve the following national outcomes:
 - Work health and safety is actively considered in the development, implementation and evaluation of government policy.
 - Governments use their investment and purchasing power to improve work health and safety.
 - Governments exemplify good work health and safety.

SECTION 3.

3.1 MANAGEMENT SYSTEMS FOR INJURY PREVENTION AND MANAGEMENT

3.1.1 'Safety And Wellbeing in the Public Sector 2010-2015' Strategy

- a) The South Australian Government 'Safety and Wellbeing in the Public Sector 2010-2015' strategy (see Appendix A) integrates injury prevention and management into the core business of 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 workers
 - better employer/employee relations.
- b) The 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.
- c) In the context of their core business, each agency chief executive must develop management systems which examine, select, promote and implement best practice approaches in injury prevention and management that result in the sustainable reduction in the human and financial costs associated with work related injury.
- d) Successful implementation of this Code will fulfil the requirements of legislation and policy frameworks for injury prevention and management within the public sector.

3.1.2 Injury Prevention Systems

- a) The 'Safety and Wellbeing in the Public Sector 2010-2015' strategy provides the operational framework for South Australian public sector agencies to develop injury prevention and management systems. Each agency should integrate the strategy elements within the operational requirements of their core business.
- b) This integration is informed by the WHS Act and Regulations, Australian Standard/New Zealand Standard 4804:2001 'Occupational Health and Safety Management Systems – General Guidelines on principles, systems and supporting techniques' and Australian Standard/New Zealand Standard 4801:2001 'Occupational Health and Safety Management Systems – Specification with guidance for use'.
- c) Public sector agencies must have a business management system that clearly designates overall responsibility for injury prevention, rehabilitation and claims administration to the chief executive of the organisation. A business management system must address the following principles:
 - Principle 1 Commitment and Policy
 - Principle 2 Planning
 - Principle 3 Implementation
 - Principle 4 Measurement and Evaluation
 - Principle 5 Review and Improvement.
- d) The WHS Act and Regulations require effective consultation between employers and workers to be a feature of achieving a safe and healthy workplace.
- e) SafeWork SA is responsible for the administration and enforcement of the WHS legislative framework.

- f) Agencies are expected to have procedures in place for recording and responding to complaints and investigations by SafeWork SA.
- g) Failure to comply with the provisions of the WHS Act or Regulations can result in a range of sanctions being imposed against agencies and/or individuals, including enforcement and prosecution action.

3.1.3 Injury Management Systems

- a) Agency Chief Executives must establish systems and processes for the administration of workers compensation including documented policies and procedures for claims administration and the rehabilitation and return to work of injured workers.
- b) OPS has developed a set of 'Injury Management Practice Notes' (Practice Notes) relating to key injury management processes. The Practice Notes are designed to provide guidance to agency based injury management practitioners and to be incorporated into agency injury management systems and operational policies in order to promote consistency in injury management practices across the public sector.
- c) The Practice Notes are available from the OPS website <http://publicsector.sa.gov.au>. As the Practice Notes draw heavily from the WRC Act and established case law, they are subject to change from time to time. Additional Practice Notes may be issued or existing notes updated to ensure that they are current and compliant with legislation.
- d) In addition, there are a number of other publications that detail injury management policies, procedures and systems within the public sector. These publications can also be obtained from the OPS website <http://publicsector.sa.gov.au> and include the following:
 - **Your Road to Recovery**, which outlines the workers compensation system as it relates to public sector workers and provides information for injured workers, the services available to them, the rehabilitation process and rights and responsibilities of injured workers and their employer.
 - **The Best Practice Injury Management Guide** is designed to assist public sector agencies understand injury management principles and implement best practice procedures, practices and strategies to effectively manage claims for workers injured at work.
 - **The SIMS User Guide**, which provides instructions on the use of the Self Insurance Management System (SIMS) to incorporate into agency systems policies and procedures to manage workers compensation claims and to process claim related payments, manage rehabilitation, and meet legislative compliance with the WRC Act.

3.1.4 Self-Insurance Management System (SIMS)

- a) SIMS is the workers compensation database mandated for use by all Crown self-insured employers.
- b) All agencies are required to ensure the timely and accurate recording of workers compensation data into SIMS. This will ensure that the integrity of the information, as required by the WRC Act and Regulations, is maintained for reporting and administrative purposes.
- c) Data entered into SIMS is used for analysis and reporting of Workers Compensation Performance to Cabinet and for portfolio and agency level reporting. It is also used for the actuarial valuation of outstanding workers compensation claims liabilities.

- d) SIMS data is used to comply with the reporting requirements of Schedule 1 of the WRC Regulations to WorkCoverSA³. The transmission of Crown self-insured employer data to WorkCoverSA is undertaken centrally by OPS on behalf of the public sector.
- e) The SIMS data is used for reporting against the South Australian Strategic Plan Target 21, Greater Safety at Work and for reporting against the National Safety Strategy Target.
- f) The SIMS database includes the 'Hazard and Incident Reporting Management System' (HIRMS), capturing hazards, incidents and corrective action.

3.1.5 Resources and Training

- a) The 'Safety and Wellbeing in the Public Sector 2010-2015' strategy outlines the requirement for injury prevention and management systems to be appropriately resourced so that they operate effectively to minimise or eliminate WHS risks and achieve sound return to work outcomes.
- b) Agencies must develop the capability to achieve injury prevention and management objectives and targets. This capability includes human, physical and financial resources

³ See Appendix C for edited Schedule 1 requirements applicable under Government policy to Crown agencies

SECTION 4.

4.1 PERFORMANCE MONITORING

4.1.1 Audit and Verification System (AVS)

- a) Cabinet has approved the implementation of a Public Sector Audit and Verification (Safety and Injury Management) System that includes external auditing and verification of agency safety and injury management systems.
- b) The AVS integrates the following cross-sector activities:
 - audit and verification of safety and workers rehabilitation and compensation systems
 - monitoring, analysis and reporting of workers compensation outcomes and costs
 - policy development and improvement.
- c) Each public sector agency that has more than 200 full-time equivalent staff will be audited by an independent third party auditor over a three to four year cycle.
- d) The cycle of external audit will depend on the agency's risk and performance outcomes, self-audit results and assessed performance, and system capacity.
- e) The process will
 - focus on agency business systems for injury prevention and management
 - utilise agency specific performance outcome data
 - review the integration of work health and safety and workers compensation systems into the broader agency governance arrangements
 - include a substantive audit of systems compliance through sampling of work health and safety policy implementation, injury prevention and management systems
 - evaluate the degree to which agency work health and safety and injury management systems lead to actual improved performance and safety outcomes.
- f) The objectives of the AVS are to ensure that an agency has:
 - established a Work Health and Safety (WHS) management framework that aligns with key elements of the WHS Act and the Australian Standard for Occupational Health and Safety Management systems (AS/NZS 4801:2001)
 - implemented an injury management approach that addresses key requirements of the WRC Act
 - established key controls to address specific risks present within the agency's operations
 - established an effective internal audit program for WHS and injury management systems.
- g) The scope of the audit will reflect the type of injury management function in place, for example in-house or using Department for the Premier and Cabinet Injury Management Services.
- h) The AVS will identify improvement actions relevant to the specific agency work health and safety systems and risks. The auditors will engage with chief executives and senior executives to influence leadership approaches to work health and safety and injury management within agencies.

- i) Outcomes of the AVS will be to agree with agencies a range of corrective actions that, once implemented, will facilitate ongoing improvement of safety and injury management systems to enable superior performance by agencies. Completion and close out of agreed corrective actions will be monitored and will form part of the reporting of audit outcomes.
- j) OPS will undertake an analysis of outcomes of the AVS processes across the public sector and periodically consult with agencies about the findings. Outcomes of audits and the implementation of corrective actions will periodically be reported to the Minister for the Public Sector.

4.1.2 Internal Audit

- a) A central component of the AVS is that agencies have in place effective self-auditing arrangements and to demonstrate ongoing compliance of injury prevention and management systems.
- b) A program of self-audits that allow resources to be directed to the development and consolidation of effective safety management systems must be established.
- c) Self-audits must adequately address:
 - the effective management control of significant risks associated with the business operations of the agency
 - the establishment and satisfactory operation of management systems for safety and injury management.
- d) Self-audits will be subject to AVS assessment to ensure that systems are in place and linked to performance and outcomes.

4.1.3 Performance Indicator and Target Setting

- a) The Safety and Wellbeing in the Public Sector 2010-2015 strategy establishes safety performance targets. Portfolios and agencies contribute to the achievement of these targets. OPS reports the sector's performance in meeting these targets on a quarterly basis.
- b) The Safety and Wellbeing in the Public Sector 2010-2015 strategy also encourages agencies to develop a balance of lead or positive performance indicators and lag indicators that reinforce desired behaviours and cultural change within the agency, and to monitor the impact of these indicators on harm and loss.

4.1.4 Reporting

- a) Whole of government safety and injury management performance monitoring and reporting is undertaken by OPS, using data from SIMS. These reporting requirements enable the Minister and government to be regularly apprised of the current and trend performance. Reports published are listed below:
 - quarterly reports to Cabinet by the Minister for the Public Sector about public sector performance, trends and risks, including in relation to particular agencies
 - quarterly reports to agency chief executives
 - annual comparative performance reports of portfolios to Cabinet
 - annual report for the Minister for the Public Sector about public sector performance.
- b) OPS appoints an external actuary to estimate the outstanding liabilities for workers compensation claims of self-insured agencies. Liabilities relate to all claims incurred prior

to 30 June each year and include an estimate of the cost of claims that are incurred but not reported. Agencies are advised each year of their individual valuations for reporting in financial statements.

- c) Agencies are required to report on their work health and safety and injury management programs in annual reports. Annual reporting should allow for an accurate view to be formed of the agency's safety performance by the public and key stakeholders such as WorkCoverSA and SafeWork SA. The content of annual reports is prescribed in the Premier and Cabinet Circular PC013 Annual Reporting Requirements.

SECTION 5.

5.1 WORKCOVERSA REQUIREMENTS

5.1.1 The Crown as a Self-Insured Employer

- a) Section 61 of the WRC Act deems the Crown and any agency or instrumentality of the Crown to be registered as self-insured employers. That is, the Crown is self-insured as opposed to being part of the registered scheme for employers administered by WorkCoverSA.
- b) The Crown, as a self-insured employer, assumes the role of the compensating authority for workers compensation claims submitted by its workers.
- c) The powers of self-insured employers are set out in s.63 of the WRC Act.⁴ In exercising these powers, agencies must act reasonably,⁵ and meet as a minimum, the relevant legislative requirements of the WRC Act. In addition, agencies are required to assure their capacity and capability to exercise the appropriate delegations as outlined in (d) below. WorkCoverSA retains a responsibility to monitor the exercise of relevant delegations. In exercising its delegations, the agency 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 s.63(3) 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.
- d) Agencies assume the responsibility for the following delegated functions:
 - financial accountability for injury prevention and management performance
 - maintenance of claims management systems, programs and capabilities that promote best practice, including determination of entitlements under its s.63 delegations
 - rehabilitation and return to work of workers injured at work
 - claim costs in relation to compensable injuries
 - investment of financial and management resources to ensure ongoing compliance with the requirements of the WRC Act
 - payment of fees to WorkCoverSA under s.72B of the WRC Act
 - determining the actuarially assessed outstanding claims liability annually.
- e) The Government as 'insurer of last resort' underwrites agency liabilities for workers compensation.

⁴ See Appendix B for a list of the delegated functions under s.63 WRC Act.

⁵ WorkCoverSA has the authority, under s.63 (6) to withdraw delegations if delegated powers are exercised unreasonably.

- f) 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 workers can remain at work or return to work at the earliest appropriate time.
- g) The obligations of agencies are expressed in terms of duties owed to each worker. These obligations may extend beyond the expiry of the employment relationship. Agencies are required to cooperate with WorkCoverSA, their Claims Agent or another self-insured employer to exchange information in accordance with the Exchange of Claims Information Protocol that is reasonably required to determine workers' entitlements to compensation.
- h) As a matter of policy, agencies are required to comply with the elements of Schedule 1⁶ of the WRC Regulations that are relevant to the Crown. The transmission of public sector data to meet these requirements is undertaken centrally by OPS for all Crown self-insured employers using SIMS.
- i) Agencies are expected to have in place procedures for recording and responding to complaints from WorkCoverSA.
- j) OPS liaises with WorkCoverSA to provide assurance that the objects of the WRC Act are being met by public sector agencies.

5.1.2 Fees Payable to WorkCoverSA by Self-Insured Employers

- a) WorkCoverSA has powers under s.72B of the WRC Act to set and collect fees from self-insured employers.
- b) Although public sector agencies are deemed to be self-insured and meet the costs associated with injury prevention and management, a self-insured fee is payable by all self-insured employers to meet the costs associated with the WorkCoverSA scheme administration.
- c) The ordinary fee payable by a Crown self-insured employer under s.72B(2) is calculated as a percentage of the fee that would have been payable by the employer if the employer were not registered as a Crown self-insured employer.
- d) The self-insured fee rate is determined based on the 'activity-based costing component'. This component represents that part of the fee paid by the employer, based on a fair contribution to the operational costs of WorkCover (refer to section 72B of the WRC Act), as adjusted by an employer-by-employer basis. WorkCoverSA formally reviews the base figure annually. This annual base figure is converted to a percentage fee rate, which is set by the WorkCoverSA Board each year at the same time as it sets the normally registered Scheme rate.
- e) Section 72B(2) of the WRC Act enables WorkCoverSA to vary the self-insured fee so that it reflects the Crown self-insured employer's fair contribution towards the administrative expenditure of WorkCoverSA, and costs associated with the administration of the Workers Compensation Tribunal, Medical Panels and the WorkCover Ombudsman.
- f) Agencies are not required to pay the fee component imposed on private self-insured employers that is used to manage any financial liability resulting from insolvency of

6 See Appendix C for edited Schedule 1 requirements applicable under Government policy to Crown agencies

employers under s.72B(2)(e) of the WRC Act. This is because in the case of public sector agencies the Crown, not WorkCoverSA, is the “insurer of last resort”.

- g) Crown self-insured employers are not required to pay the fee component that is used to fund the evaluation of self-insurer performance.
- h) Section 72B(3) of the WRC Act enables WorkCoverSA to differentiate between different classes of self-insured employers to vary the fee percentage, in accordance with s.72B(2), provided that WorkCoverSA is “satisfied that there are good reasons” to do so.

5.1.3 **Employer’s Duty to Provide Work and Notice of Termination of Employment**

As part of the s.58B and s.58C protocol between agencies and WorkCoverSA, the following principles have been agreed:

- a) Agencies must ensure compliance with s.58B and s.58C of the WRC Act.
- b) Agencies acknowledge that a breach of s.58B and/or s.58C will be a matter which WorkCoverSA will consider. An established breach of s.58B and/or s.58C may result in the imposition of a differentiated class fee under the WRC Act (see 5.1.2(h)).
- c) Agencies will be able to create opportunities in line with their delegations, 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 for Public Sector Employment’s Guideline on Redeployment of Excess Employees in the Public Sector⁷ and section 17 of the Public Sector Regulations 2010⁸ apply.
- d) Agencies are encouraged to proactively report situations where their compliance with s.58B and/or s.58C may potentially come into question. In such instances the agency should advise WorkCoverSA and OPS.
- e) If any issue of concern arises in relation to compliance with s.58B or s.58C, WorkCoverSA will promptly advise the agency and ascertain if any other information exists that might bear on the matter. If, after the agency has had the opportunity to clarify the situation, WorkCoverSA remains of the view that the matter should be investigated, the agency will be so informed and the matter referred to the Manager, Compliance and Enforcement, WorkCoverSA for investigation.
- f) This process will allow WorkCoverSA to determine whether an agency has complied with the requirements of s.58B and/or s.58C and intervene and facilitate an outcome where necessary.
- g) Where WorkCoverSA receives a complaint of a general nature from a third party that:
 - alleges that an agency has not complied with its obligations under s.58B and/or s.58C but
 - does not contain sufficient information to enable WorkCoverSA to identify the relevant claim/s, and understand the alleged factual basis of the complaint,WorkCoverSA will firstly approach the party making the complaint and obtain further and better particulars in order to satisfy itself that the complaint has sufficient merit to warrant

7 Extract from Commissioner for Public Employment Guideline on Redeployment of Excess Employees in the Public Sector: “Work injured employees who are not able to carry out their normal duties as a result of compensable injury and therefore require alternative duties as part of a Rehabilitation and Return to Work Plan are to be given priority consideration ahead of excess employees.”

8 Section 17 of the Public Sector Regulations 2010 provides that merit-based selection processes do not apply “to the engagement of an employee in accordance with a rehabilitation and return to work plan under the Workers Rehabilitation and Compensation Act 1986”.

investigation. WorkCoverSA will determine whether an investigation (s.58B and/or s.58C) is required.

- h) Where WorkCoverSA decides to investigate a complaint or referral that an agency may not have complied with its obligations under s.58B, it will provide the agency with advice that an investigation is pending and provide complete copies of all relevant information, correspondence and other documents (which the agency does not already have in its possession) that it is relying on for its decision to investigate the matter. This will occur no less than 10 business days before formal investigation procedures commence.
- i) WorkCoverSA will advise OPS of pending investigations.
- j) To the extent that this process is appropriate the same process will be applied in respect of complaints or referrals of potential s.58C breaches.
- k) It is important that complaints of non-compliance with s.58B obligations are investigated and resolved expeditiously and in a transparent manner.

5.1.4 **Dispute Resolution Processes**

- a) Disputes arising from fees imposed by WorkCoverSA or s.58B and/or 58C issues can be resolved using either informal or formal dispute resolution processes.
- b) The spirit and intent of the WHS 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 or mediate a resolution.
- c) An agency may appeal a WorkCoverSA finding pursuant to the process set down in Legal Bulletin No 34: Settling of Legal Disputes Between Government Agencies.

5.1.5 **Settling of Legal Disputes Between Agencies (Legal Bulletin No. 34)**

- a) Where possible, resolution of any dispute should be negotiated forthwith between the officers concerned in the matter. If that cannot be achieved then resolution should be attempted by more senior officers or the chief executives of the relevant entities.
- b) Where the matter cannot be resolved by the entities concerned in such a way, or there is dispute about whether there are special reasons that the matter should be instead treated as an arm's length dispute, the matter should be referred to the respective Ministers. If the respective Ministers regard it as practicable, they will resolve these issues between them. If the Ministers do not resolve the matter, they will refer the issues to the Attorney-General for resolution.
- c) The Attorney-General may seek advice from the Crown Solicitor as to the resolution of the matter or refer the matter to the Crown Solicitor for resolution on his behalf.
- d) In the case of any dispute concerning the Attorney-General's resolution of the matter, the matter should be referred to Cabinet for final resolution.

SECTION 6.

6.1 GLOSSARY

Agency	A South Australian public sector agency as described by the Public Sector Act 2009 . Agencies are deemed under the provisions of the WRC Act to be self-insured employers ⁹ .
AVS	Audit and Verification (Safety and Injury Management) System. A public sector program that integrates audit and verification of safety and injury management systems with monitoring and reporting of safety outcomes and concomitant policy development.
HIRMS	Hazard and Incident Reporting Management System
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 work health and safety to the core business of a corporate entity or agency. See also WHS.
OPS	The Office for the Public Sector in the Department of the Premier and Cabinet.
Safe Work Australia	A federal tripartite body to oversee national workplace safety. Previously the Australian Safety and Compensation Council and, before that, the National Occupational Health and Safety Council
SafeWork SA	SafeWork SA is South Australia's work health and safety agency. It administers and regulates the Work Health and Safety Act 2012.
Self-Insured Employer	An employer that has been granted the right to self-insure within the South Australian WorkCoverSA scheme.
SIMS	Self Insurance Management System
SISA	Self Insurers of South Australia
WHS	Work health and safety, see Injury Prevention.
WHS Act	Work Health and Safety Act 2012
WRC Act	Workers Rehabilitation and Compensation Act 1986
WorkCoverSA	WorkCoverSA administers and regulates the Workers Rehabilitation and Compensation Act 1986, and the South Australian Workers Rehabilitation and Compensation Scheme established under that Act.

⁹ In certain instances the Governor may declare, by proclamation, that an agency or instrumentality is not to be regarded as a self-insured employer.

6.2 LEGISLATIVE REFERENCES

Commissioner for Public Sector Employment's Determinations

Commissioner for Public Sector Employment's Guidelines

[Fair Work Act 1994](#)

[Public Sector Act 2009](#)

[Public Sector Regulations 2010](#)

[Work Health and Safety Act 2012](#)

[Work Health and Safety Regulations 2012](#)

[Workers Rehabilitation and Compensation Act 1986](#)

[Workers Rehabilitation and Compensation Regulations 2010](#)

6.3 POLICY REFERENCES

Audit and Verification System for Safety and Injury Management

[Australian Work Health and Safety Strategy 2012-2022](#)

[Best Practice Injury Management](#)

[HIRMS User Guide](#)

[Legal Bulletin No 34: Settling of Legal Disputes Between Government Agencies](#)

[Safety and Wellbeing in the Public Sector 2010-2015](#)

[SIMS User Guide](#)

[South Australia's Strategic Plan](#)

[Your Road To Recovery - Information For Injured Employees in the South Australian Public Sector](#)

Appendix A

Safety and Wellbeing in the Public Sector 2010-2015

is available on the

The Office for the Public Sector Website ([link](#)).

Appendix B

S.63 Delegations to a Crown self-insured employer

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

- section 26 Rehabilitation programmes
- section 28A Rehabilitation and return to work plans
- section 32 Compensation for medical expenses (but not section 32(11) and (13))
- section 32A Special provisions for payment of medical expenses after initial notification of injury
- section 35 Compensation by way of income maintenance section 35A
- section 35B Weekly payments after expiry of designated periods—no work capacity
- section 35C Weekly payments after expiry of designated periods—current work capacity
- section 36 Discontinuance of weekly payments
- section 37 Adjustments due to change from original arrangements
- 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 43 Lump sum compensation
- section 43A Assessment of impairment (but not any power associated with an accreditation scheme for medical practitioners under that section)
- section 43B No disadvantage—compensation table
- section 44 Compensation payable on death—weekly payments
- section 45 Review of weekly payments
- section 45A Compensation payable on death—lump sums
- section 45B Funeral benefit
- section 45C Counselling services
- section 50B Commencement of weekly payments following initial notification of injury
- section 50C Status of payments
- section 50D Worker to be notified if weekly payments are not commenced
- section 50E Notice of commencement of weekly payments
- section 50F Obligations of worker

- section 50G Liability to make weekly payments not affected by making of claim
- section 50H Set-offs and rights of recovery
- section 53 Determination of claim (but not the power to approve recognised medical experts for the purposes of section 53(2))
- section 98F Functions of a Medical Panel to give an opinion on any medical question referred
- section 98G Powers and procedures on a referral
- section 98H Opinions - Medical panel
- section 106 Payment of interim benefits
- section 106A Payment not to constitute an admission of liability
- any other prescribed powers and discretions.

WorkCoverSA will not overrule or interfere with a decision of a Crown 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.

Appendix C

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 6-10 have been excluded.

Workers Rehabilitation and Compensation Regulations 2010

These regulations may be cited as the *Workers Rehabilitation and Compensation Regulations 2010*.

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

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

- (xiii) the occupation of the worker at the time of the injury (including, if the worker is an apprentice, making specific reference to that fact);
 - (xiv) the main tasks usually performed by the worker in the stated occupation;
 - (xv) the normal hours, and days per week, worked by the worker;
 - (xvi) the date on which the worker commenced employment with the employer;
 - (xvii) the activity being undertaken by the worker at the time of the occurrence of the injury;
 - (xviii) the date of the occurrence of the injury;
 - (xix) the time of day at which the injury occurred (so far as is known to the employer);
 - (xx) the date on which the employer was first notified of the injury;
 - (xxi) the apparent cause of the injury;
 - (xxii) a description of the injury;
 - (xxiii) a statement as to the parts of the worker's body affected by the injury;
 - (xxiv) the date on which the worker ceased work (if incapacitated for work);
 - (xxv) if relevant, the date of death of the worker;
 - (xxvi) the date on which the occurrence of the injury, or the incident that caused the injury, was reported to the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Occupational Health, Safety and Welfare Act 1986*¹⁰ (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;

¹⁰ On 1 January 2013, the Occupational Health, Safety and Welfare Act 1986 was replaced by the Work Health and Safety Act 2012.

- (vii) rehabilitation;
 - (viii) lump sum payments (section 43 or 45A of the Act);
 - (ix) redemption of income maintenance payments (section 42 of the Act);
 - (x) redemption of medical expenses (section 42 of the Act);
 - (xi) common law;
 - (xii) legal;
 - (xiii) investigation;
 - (xiv) travel;
 - (xv) other goods and services;
 - (xvi) other non-compensation;
 - (xvii) property damage;
 - (xviii) third party recovery;
- (e) Other information reasonably required by the Corporation (including information required to meet national data collection requirements).

(2) For the purposes of subclause (1)—

- (a) the information must be provided in a manner and form (including by electronic means), and at a time, determined by the Corporation; and
- (b) the Corporation may, from time to time—
 - (i) by notice in writing, waive or postpone the obligation to comply with the requirements of that subclause, either for an individual self-insured employer or for self-insured employers of a specified class, subject to conditions (if any) determined by the Corporation; and
 - (ii) on giving reasonable notice (by further notice in writing), vary or revoke the operation of a notice under subparagraph (i), or vary, revoke or substitute a condition that applies under that subparagraph.

(3) In this clause—

reporting period means a period of 14 days or such longer period approved by the Corporation with respect to the relevant employer from time to time.

6-10 *These subsections are not applicable to Crown Agencies*

11 The employer must ensure that—

- (a) all documentation that relates to a claim against the employer under the Act is retained for at least 20 years after the day on which the final payment is made in respect of the claim; and
- (b) any documentation that relates to a claim against the employer under the Act in respect of an injury that occurred before the employer became a self-insured employer or 1 of a group of self-insured employers is provided to the Corporation after the material has been retained by the employer for 20 years as required by paragraph (a).

- 12
- (1) The employer must, in carrying out its functions under the Act, take into account the racial, ethnic and linguistic diversity of the employer's workforce, the interests of both sexes, and the interests of those who may be physically, mentally or intellectually impaired, and must ensure that those of the employer's workers who are entitled to benefits under the Act are not disadvantaged because of their origins or background, their sex, or some physical, mental or intellectual impairment.
 - (2) The employer should, as far as reasonably practicable, ensure that information provided for use in the workplace is in a language and form appropriate for those expected to make use of it.

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