

Proposed changes to the ReturnToWorkSA self-insurance application process

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Introduction

ReturnToWorkSA is seeking feedback on proposed changes to the process of applying for registration as a self-insured employer.

The current process is too long, cumbersome for both ReturnToWorkSA and applicants, and lacks transparency.

This paper outlines the case for change and the proposed changes to the process and will be sent to self-insured employers, SISA, unions and employer associations.

All feedback received will be considered before the Board makes its final decision on the new process.

Process

Feedback and questions about the proposed changes to the self-insurance application process should be directed to Rob Byrne, Manager Self-Insured by email at rob.byrne@rtwsa.com.

Feedback must be received by 5pm on Monday 24th of October 2016 to be considered.

Background

The work injury insurance operations of self-insured employers in South Australian are governed by:

- the *Return to Work Act 2014 (the Act)*
- the *Return to Work Corporation of South Australia Act 1994*
- the *Return to Work Regulations 2015*
- the Code of Conduct for self-insured employers including the Injury Management Standards and WHS Performance Standards for Self-insured Employers
- ReturnToWorkSA's policies and procedures regarding its management of self-insured employers.

Reasons for the proposed changes to the application process

Current process

The Act and Regulations detail the minimum information to be provided by an employer applying for self-insurance (note that no changes to the Act and Regulations are proposed in relation to this process change). Assessment of the information the employer is required to provide, as well as other information that is relevant to determine the employer's preparedness to undertake the responsibilities of self-insurance, is undertaken by a ReturnToWorkSA Evaluator. At present, this is managed through repeated cycles of:

- Evaluation by ReturnToWorkSA
- ReturnToWorkSA reports on non-conformances
- Employer undertakes corrective action
- ReturnToWorkSA evaluates corrective action

This cycle is repeated until conformance with the key requirements of self-insurance can be demonstrated and commonly takes two or more years.

At the conclusion of evaluation activities, ReturnToWorkSA's assessment of the employer's application is presented to the Board for decision. Although the applicant receives an evaluation report detailing ReturnToWorkSA's assessment, it does not receive a copy of the papers provided to the Board.

The case for change

1. The current process takes too long, which incurs significant resource cost and

uncertainty for the applicant and ReturnToWorkSA. The length of the process also increases the risk of information that is relied upon becoming outdated. It is difficult for applicants to maintain the necessary focus and resources for such a long period of evaluation.

2. The Board's decision relies upon the ReturnToWorkSA evaluator's assessment of the applicant's preparedness for self-insurance, as the applicant is not provided with an opportunity to self-assess.
3. There is an opportunity for greater transparency in relation to the information that is provided to the ReturnToWorkSA Board in respect of the application.

Proposed changes to the process

The new process will be in three phases.

Phase 1: Expression of Interest

This phase comprises initial discussions and provision by the potential applicant of preliminary information (Appendix A is a sample Expression of Interest template).

During this phase, ReturnToWorkSA will provide advice to the potential applicant on its suitability for self-insurance, and explain in detail the requirements and expectations of self-insurers as well as what to expect as part of the application process.

ReturnToWorkSA will not undertake any evaluation or provide any assessment of the potential applicant's WHS or injury management systems as part of Phase 1.

The purpose of this phase is to build an understanding of what is involved in being a self-insurer and the requirements of the application

process before any formal commitment is made by an employer.

Phase 2: Application

If the employer decides to pursue self-insurance it must provide a completed application (Appendix B is a sample template) and pay the application fee required by the Act. The application will formally commence once both steps are complete.

The application (Appendix B) will include a self-assessment against the application criteria.

The application will be evaluated by ReturnToWorkSA through desktop and on-site activity. An evaluation report will be provided to the applicant when complete. It will be up to the applicant to determine what corrective action, if any, it wishes to undertake before the application progresses to Phase 3.

Phase 3: Board Decision

To support consideration of the application, the Board will receive complete copies of the following documents:

- the employer's application
- ReturnToWorkSA's evaluation report (already provided to applicant in Phase 2)
- Any further submission the applicant chooses to provide in response to ReturnToWorkSA's evaluation report.

This approach means that the applicant will have access to all papers provided to the Board in respect of the application.

Summary of proposed changes:

Phase 1 is intended to give an employer every opportunity to seek information and advice to enable them to make an informed decision about the requirements and expectations of self-insurance, and to understand the application process.

Phase 2 comprises a formal process where the formal application is made by the employer, and then assessed by ReturnToWorkSA.

ReturnToWorkSA's evaluation report is provided to the applicant at the end of this phase.

Phase 3 is intended to be fair and transparent for all parties involved, with clarity from the beginning of the application process about what will ultimately be provided to the Board for decision on the application.

Benefits of the proposed changes

Deciding to apply to be self-insured is a significant decision for any business.

The proposed changes outlined above maximize the employer's opportunities to obtain information, advice and support before making the decision and commitment to apply for self-insurance.

The self-assessment component of the application process encourages applicants to actively consider and action any gaps in their systems and processes.

Repeated cycles of evaluation, non-conformance reporting, corrective action and evaluation of corrective actions are eliminated.

It is expected that the timeframe from formal application being received until Board consideration will be significantly shorter – six months or less, compared to the current average of two years.

There will be much greater transparency for all parties involved about what information goes to the Board in support of an application. There will also be greater transparency about when an application will be considered by the Board, as this will be when all steps in the process outlined above are complete, rather than when all corrective actions are deemed to be closed out, as at present.

Impact on employers

The changes proposed in this paper are intended to make the process of applying for self-insurance clearer and more transparent, and to significantly shorten the current process. This should have a positive impact on employers who are considering applying for self-insurance, as they will have access to greater information and advice before they apply, and a transparent, consistent, and shorter process after a formal application is made.

The proposed changes are not expected to have any impact on current self-insured employers.

Impact on workers

The proposed changes include a requirement, as part of the application, to consider the views of employees. This is a broader employee consultation requirement than at present.

Transition and implementation

ReturnToWorkSA is seeking feedback from employer associations, SISA, and unions on the proposed changes to the self-insurance application process outlined in this paper.

Once feedback has been received and considered, proposed process changes will go to the Board for approval. Subsequent to this, any approved changes to the process will be communicated.

Changes to the application process will not impact any current applicants whose application has been received but is yet to be decided.

Appendix A – Sample Expression of Interest template

The information detailed below is based on performance information available at the time of the Expression of Interest. Performance against these criteria will change over time. You will need to notify ReturnToWorkSA of any material changes during the period of application.

Part A: Employer details

Section 129 (1) of the Return to Work Act 2014

Please provide details of your organisation including the following:

1. the company full legal name, ACN and ABN of the applicant and any related body corporate;
2. Name of the legislation the company is incorporated under;
3. ReturnToWorkSA registration number(s) for the applicant and any related body corporate (including cancelled employer registration(s));
4. A profile for each of the related bodies corporate subject to this application including details of:
 - a) nature of operations undertaken by the applicant and any related body corporate;
 - b) industries in which the applicant and any related body corporate operates;
 - c) revenue and operating profit for the previous five years for the applicant and any related body corporate.
5. Other jurisdictions the employer or group of employers operates in as a self-insured employer. Please include details of any conditions or restrictions placed on the employer or group of employers' self-insurance registration.

Part B: Details of related bodies corporate

Section 129 (2) of the Return to Work Act 2014

In this section identify all members of the group to be included in the application. (To be completed if any related bodies corporate/associated entities are employers in South Australia)

1. Provide a list of any related body corporate that employed people in South Australia sold in the last three years. Please provide names, ReturnToWorkSA registration numbers and approximate dates they were sold.
2. Provide a list of any related body corporate that ceased operation in the last three years – please provide names and ReturnToWorkSA registration numbers.
3. How does your group report financially under the Corporations Law? (E.g. does your company prepare a set of financial accounts or has your company been exempted from the financial reporting requirement, if so, why?)
4. Provide details of any related bodies corporate that you believe should be excluded from an application for a group registration? If so, please identify these related bodies corporate and your reasons for seeking the exclusion.

5. If you achieve self-insurance as a group, which of your group companies is nominated as the deemed employer of all group employees? (Refer to section 129(12) of the *Return to Work Act 2014*.)
6. Provide details of the structure of the employer or group of employers outlining the lines of control between each related body corporate, a corporate structure showing all companies in the group that employ in SA (or have ever employed in SA) and all corporate ownership levels up to the ultimate holding company. This also needs to identify the State in which each company operates, if in Australia, or if not in Australia, the company's country of domicile.

Part C: Readiness for registration as a self-insured employer

Section 129 (5) of the Return to Work Act 2014

Please provide details of activities undertaken to establish an understanding of and preparation for the requirements of registration as a self-insured employer.

1. Acknowledge the obligations laid out in section 129(5) and Schedule 5 of the Act and understanding that readiness and performance against these will be assessed as part of the formal application process.
2. Provide a high level outline of how you propose to manage Claims (e.g. outsourced, in-house).
3. Outline how you propose to manage complaints with reference to Schedule 5 Part 3 of the Act.
4. How will you ensure the services you deliver meet “the highest standards of service and fairness” in accordance with Schedule 5, Part 1, Section 2 of the Act?

Part D: Size and Financial Considerations

Section 129(11)(b) of the Return to Work Act 2014

Please provide details of your performance against the financial viability indicators used by ReturnToWorkSA to assess an employer's likelihood of being able to continue to meet its liabilities.

1. For each of the following financial viability indicators, please provide a five year history of performance against benchmark indicators.
 - a) Balance sheet test (total tangible assets divided by total liabilities);
 - b) Gearing ratio, (loan capital divided by total capital employed);
 - c) Liquidity ratio (current assets divided by current liabilities);
 - d) Cash Flow Margin (operating cash flow divided by net sales);
 - e) Profitability ratio, (net profit before tax divided by total equity).

Industry Group [INPUT]	Balance Sheet	Gearing	Liquidity	Cash flow margin	Profitability
Benchmark	[INPUT]	[INPUT]	[INPUT]	[INPUT]	[INPUT]
Year					
Year					
Year					
Year					
Year					

2. If not publicly available, please provide copies of the previous five years Annual Reports including annual audited financial statements and any further information you believe should be taken into account by ReturnToWorkSA when assessing performance against financial viability indicators.
3. A feasibility study may be helpful to understand the benefits and risks associated with registration as a self-insured employer. Has a feasibility study been undertaken including:
 - a. the costs associated with payment of claims; and
 - b. operating costs and the impact of liabilities and provision of financial guarantees on working capital?

If yes, please provide a copy of the study or a summary of the findings.

Section 129(11)(a) of the Return to Work Act 2014

1. How many employees are employed in South Australia (FTE and head count) for the applicant and any related body corporate? Please provide a summary of the fluctuations in this number over the past five years including reasons for material variation in these numbers.

Appendix B – Sample Application template

The questions below apply to all legal entities included in the application.

Part A: Employer details

Section 129 (1) of the *Return to Work Act 2014*

Is the information provided in PART A of your Expression of Interest current? If not, please provide information on any changes to these details.

Part B: Details of related bodies corporate

Section 129 (2) of the *Return to Work Act 2014*

Is the information provided in PART B of your Expression of Interest current? If not, please provide information on any changes to these details.

Part C: Size and Financial Considerations

Section 129(11)(a) and (b) of the *Return to Work Act 2014*

Is the information provided in PART D of your Expression of Interest current? If not, please provide information on any changes to these details.

In addition, please provide any further information you believe should be considered in support of your application.

Where any indicators have not been met, provide information as to why you consider you should still be considered for registration as a self-insured employer.

Part D: Injury Prevention and Management

This part requires you to provide details of your activities to minimise the incidence and severity of injury in your workplace(s), including the implementation of strategies to prevent injuries and support the recovery and return to work of workers injured in the workplace.

Details must be supported by reference to evidence. Please attach all evidence referenced.

Section 129(11)(c)(d)(f)(g)(h) of the *Return to Work Act 2014*

Please provide details on

1. The incidence and severity of work injuries arising from employment by the employer or group of employers including:
 - a) The activities undertaken to analyse and reduce the severity and duration of workplace injuries over the past five years.
 - b) The activities taken to assess and reduce the severity and duration of workplace injuries suffered by labor hire and contract workers who have been injured at your workplace(s) over the past five years.
2. Your record in relation to the rehabilitation of injured workers and achieving their recovery and return to work including:

- a) The number of employees who have a current incapacity for work.

Information about the recovery and return to work activities undertaken to rehabilitate non-seriously injured workers within two years of the worker being incapacitated.

- b) Information about activities undertaken to support seriously injured workers in either returning to suitable employment or restoration to the community (detail to be at an individual claimant level).
 - c) Details of any active claims where you have no contact with the claimant and the reasons for there being no contact.
3. Information about your activities in providing suitable employment to non-seriously injured workers who suffer work injuries including details of current individual claimants who are:
 - a) Not at work.
 - b) On a partial return to work.
 - c) Working pre-injury hours.
 4. How you have sought the views of any industrial association that has a proper interest in your registration as a self-insured employer. Please include details of any issues raised and the actions taken to address these issues.
 5. How you have sought the views of your employees in relation to your application for registration as a self-insured employer? Please include details of any issues raised and the actions taken to address these issues.

Part E: Management of Delegation

Please provide details and supporting evidence of how you will exercise the powers and discretions delegated to a self-insured employer.

Please attach all evidence referenced.

Return to Work Regulations 2015 – Regulation 53

1. Please provide a detailed plan of the arrangements that you would implement to administer claims under the Act, which must include:
 - a) The job specifications of the officers who would be responsible for administering the claims.
 - b) The lines of accountability and control that would apply to those officers.
 - c) The policies that would be adopted for the return to work of injured workers.
 - d) The arrangements that would be implemented for the making of claims under the Act.
 - e) Arrangements for the management of seriously injured workers including where the worker does not return to employment.
2. Please provide information on the resources that will be employed to administer claims under the *Return to Work Act 2014* and the organisation plan to resource these requirements including:

- a) How you assessed the level of resources required to administer claims on attainment of registration as a self-insured employer.
 - b) The resourcing model that will be implemented including positions, roles and responsibilities including where the resources will be located.
 - c) The experience, qualification and competencies expected of any position with the authority to exercise the delegated powers and discretions of a self-insured employer (including the nominated Reconsideration Officer).
 - d) The facilities that will be provided to ensure confidentiality of claims information and conversations will be maintained.
 - e) Details of how the employer will ensure impartiality of the position responsible for administering the delegated powers and discretions of a self-insured employer.
 - f) Details of the claims management system to be used on commencement of registration as a self-insured employer.
 - g) A list of locations where a return to work coordinator will be located.
 - h) Copies of all forms, letters, guides, reference materials, brochures to be used in the exercise of the delegated powers and discretions and in communicating employees' rights and responsibilities under the Act (including supervisors and management).
3. Detail the contingency arrangements that are to be implemented in the event of:
- a) The delegated decision maker(s) absence from the workplace
 - b) A loss of claims management or other systems that relate to the administration of delegated powers and discretions

Part F: Management Systems

Please provide information and supporting evidence on your health, safety and injury management systems.

Please attach all evidence referenced.

Section 129(11)(e) of the Return to Work Act 2014

Please provide

1. Evidence (where applicable) that your health and safety management system has been audited by a JAS-ANZ certified body against a management system standard approved by ReturnToWorkSA¹ within the last three years. Documentation to be provided includes audit scopes, audit reports, audit findings and corrective action plans for operations located in South Australia.
2. A list of all notices issued by SafeWorkSA in the previous five years. The list is to include the location, incident details, date of incident, date reported, action taken by SafeWorkSA and the current status of any notice (e.g. open\closed).

¹ AS/NZS 4801 Occupational Health and Safety Management Systems, OHSAS 18001 health and safety management system, National self-insurer WHS audit tool V3

3. Details of any prosecutions or investigations being undertaken by SafeWorkSA.
4. Details of any workplace fatalities in the previous five years.
5. **FREE TEXT FIELD FOR OTHER MATTERS IDENTIFIED IN THE EOI.**

Section 134 of the Return to Work Act 2014

Please provide your self-assessment against the following elements of the Injury Management Standards.

Standard	Element/Sub elements	Met/Not Met	Comments
Standard 1	1.1 Policies and Procedures 1.3 External Claims Management (where applicable) 1.6 Information provided to employees		
Standard 3	3.1.1 Dispute resolution		
Standard 4	4.1 Delegated Powers and Discretions (information will be limited to processes that will be applied on the grant of registration as a self-insured employer)		