

OFFICIAL



Self-insured injury management standards and guidance notes

Consultation discussion paper

March 2024

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



Government of
South Australia

Contents

Aim	1
Background.....	1
Change in structure	2
Standard 1: Conditions of Registration as a Self-insured Employer.....	2
Standard 2: Claims Management	2
Key changes to the IM standards	3
Complaints about breaches of the standards	3
Managing an early intervention program	3
Continuous disclosure requirements to ReturnToWorkSA.....	4
Confidentiality.....	4
Measure, monitor and review.....	5
Income support.....	5
Early intervention, recovery and return to work	5
Other changes	6
Next steps	7

Aim

To seek the views of self-Insured stakeholders on potential changes to the Self-insured injury management standards and guidance notes.

Background

Self-insurance is an integral part of the South Australian Return to Work Scheme ('the Scheme') and self-insured status should only be granted to employers that are able to demonstrate a level of performance commensurate with the relevant sections of the *Return to Work Act 2014* ('the Act').

In determining whether to grant a period of self-insurance, ReturnToWorkSA has regard to, but is not limited to, the relevant criteria outlined in section 129 of the Act. A Self-insured employer is required to demonstrate conformance with the Work health and safety standards (WHS standards) and Injury management standards (IM standards) for self-insured employers. ReturnToWorkSA will monitor and evaluate compliance with the requirements of registration, including any specific terms and conditions applicable to an individual employer's registration. The IM standards and guidance notes provide a framework against which a self-insured employer exercises its delegated powers and discretions and compliance with the Act can be evaluated.

The IM standards and guidance notes were last reviewed in 2016 shortly after the change in workers compensation legislation and the *Return to Work Act 2014* commencing. The only updates since have been minor in nature such as the recent changes to align with the 2022 Scheme Sustainability Amendments.

ReturnToWorkSA have completed a review of the IM standards and guidance notes, including the specific requirements aligned to the sub-elements. The intent of the review was to:

- streamline the standards and reconfigure in a more logical format,
- address gaps or emerging risks observed during oversight of registrations or past evaluations,
- allow Evaluators to discuss current testing procedures for each sub-element and agree and define a common approach, and
- rewrite guidance notes to reduce ambiguity and support consistent interpretation of the IM standards.

A copy of the proposed version of the IM standards and guidance notes is available on the ReturnToWorkSA website in support of this paper. This paper does not contain the full list of changes but aims to provide a high level summary of the key updates including supporting rationale. Stakeholders are encouraged to review the updated IM standards and guidance notes and make note of the relevant changes or seek additional clarification.

Change in structure

It is proposed that the IM standards and IM guidance notes are merged into one document rather than maintaining two documents containing very similar information.

Overall, elements have reduced from 18 to 16 and sub-elements have reduced from 62 to 58. Consideration has been given to updating the structure of the IM standards to simplify into two overarching standards. Standard one contains the obligations and practices for maintaining an effective self-insured injury management system (system) and standard two relates to effective application of this system at the claims level.

The dispute resolution standard has been moved with the requirements for appointing an appropriate reconsideration officer being incorporated into Standard 1.2.6 and the other sub-elements into Standard 2.91.

Although Standard four is deleted, the requirement to monitor, measure and review the effectiveness of the system is still critical to the program and will continue to be scoped during an evaluation. However, the Standard has been moved to align with Standard one, conditions of registration as a self-insured employer.

Standard 1: Conditions of Registration as a Self-insured Employer

The review highlighted gaps in the detail of requirements which a self-insured employer's exercise of its delegated powers and discretions can be evaluated against.

The fundamentals and purpose of Standard one has not changed. The elements within Standard one remain the same except for element seven which was previously captured in Standard four. The elements of the revised standard are:

- Element 1: Policies and procedures
- Element 2: Resources
- Element 3: External claims administration
- Element 4: Data (Schedule 3, Part 5 of the Return to Work Regulations 2015)
- Element 5: Financials
- Element 6: Information provided to employees
- Element 7: Measure, monitor and review

Standard 2: Claims Management

The fundamentals and purpose of Standard two has not changed however the elements have. The elements of the revised standard are:

- Element 1: General matters
- Element 2: Claims
- Element 3: Medical expenses
- Element 4: Income support
- Element 5: Early intervention, recovery and return to work
- Element 6: Seriously injured workers
- Element 7: Permanent impairment – economic loss and non-economic loss
- Element 8: Redemptions and Deed of Release
- Element 9: Legal and dispute resolution

Key changes to the IM standards

Complaints about breaches of the standards

Inconsistencies have been observed with the quality of which complaints are tracked and managed by self-insured employers. The previous standards provided some detail on what is expected where external claims administration was in place, however we have now extended requirements for all arrangements.

Sub-element 1.1.3 – Meet the ‘Service Standards’ set out in Schedule 5, Part 2 of the Act:

- Currently, the standards note that the employer must be able to provide evidence that it has documents on file to explain the process for lodging, recording, responding, and resolving complaints within 10 business days and against the Service Standards.
- This sub-element was expanded to include documents that detail the process for recording outcomes and remedies for complaints lodged and considering the ‘wider issues’ in line with Schedule 5, Part 4 of the Act.
- The revised version includes monitoring of complaints, analysing, and the transparency with workers and self-insured employers on steps taken to address concerns and prevent recurrence.

Sub-element 2.1.6 – Complaints are managed in accordance with the Act and the designated complaints process:

- This sub-element was expanded to take into consideration the amendments to sub-element 1.1.3. As part of the evaluation process, the employer must be able to demonstrate it has applied its procedure to include recording the outcome and remedy in its designated register. Written notification must also be provided to the person who lodged the complaint, notifying them of the outcome of the complaint.

Managing an early intervention program

ReturnToWorkSA recognise that pre-claim or early intervention programs are outside of the scope of the Act, however there are instances where these programs can impact on claims management or the obligations of a self-insured employer.

Most employers now utilise an early intervention program to expeditiously support injured workers with minor/short term injuries. These programs are generally effective at removing red tape for minor injuries and the controls for ensuring the workers’ rights are communicated and that services remain within the parameters of the program are managed well. A number of early intervention claims eventually transition to claims under the Act. The level of oversight of these programs does vary throughout the Scheme and we believe amendments are needed to address the following risks:

- Workers are not completely aware of the difference between lodging a claim and accessing early intervention or what entitlements under the Act may not be available if no claim is lodged (i.e. adherence to Service Standards (f) and (g) of the Act).
- Overutilisation of an early intervention program with limited services may stifle recovery and the objective of section 23 of the Act.
- Records management for early intervention programs are below the standard required for claims resulting in a loss of information should future transition to a claim occur.
- The level of detail around the costs of the early intervention program is insufficient to be appropriately considered in actuarial assessments, the liability transfer process or to determine the level of risk to the compensation fund.

To address these risks, where an employer utilises some form of early intervention program, we have introduced additional requirements in Standard one and two to monitor instances where these programs interact with the system.

Sub-element 1.1.4 – Manage early intervention programs (if applicable):

- This sub-element was added to ensure there is evidence that parameters of the program, options about any claim, entitlements, obligations and responsibilities have been communicated to the worker.
- The sub-element requires accountability for program oversight to be defined as well as documented procedures on how to transition to a claim (where required).
- Performance of the early intervention program must also be monitored under sub-element 1.7.1.

Sub-element 2.2.2 – Appropriate transition from early intervention program:

- This sub-element has been introduced to ensure workers, that have transitioned from an early intervention program, have been informed of their right to make a claim, the designated process in sub-element 1.1.4 has been followed and all evidence has transitioned to the claim system.

Continuous disclosure requirements to ReturnToWorkSA

The Code of conduct for self-insured employers (the Code) under clause 1.17 outlines the circumstances where a self-insured employer has an obligation to notify ReturnToWorkSA of any change to its circumstances or conditions. The requirement has been incorporated into the standards to further highlight the obligation and support evaluation of performance.

Sub-element 1.1.5 – Meet continuous disclosure requirements within the Code:

- This sub-element has been introduced to reiterate the requirement to notify ReturnToWorkSA of systemic breaches or failure to comply with the Act, changes of circumstances or registration, breaches of a term and condition of registration or where there is a death in connection to the workplace or activities associated with its operations.

Sub-element 2.1.7 – Continuous disclosure requirements within the Code have been met:

- This is a new sub-element added to the standards to ensure, where required, practices outlined in sub-element 1.1.5 have been undertaken.

Confidentiality

Maintaining confidentiality and responding to potential or actual breaches is important. The existing standards were limited in prescribing minimum expectations for self-insured employers receiving, recording and investigating potential breaches of confidentiality under the Act.

Sub-element 1.2.4 – Suitability of facilities and accommodation to ensure restricted access to information, including maintaining confidentiality during interaction with injured workers and service providers:

- This sub-element has been updated to increase the requirements for managing potential and actual confidentiality breaches including a list of information that must be recorded. Additional requirements have also been added to ensure ReturnToWorkSA are notified of serious confidentiality breaches.

Sub-element 2.1.3 – Confidentiality is maintained:

- This sub-element has been expanded to ensure, where required, requests for claims information under section 185 by ReturnToWorkSA are appropriately managed and practices outlined in sub-element 1.2.4 have been undertaken.

Measure, monitor and review

As mentioned above, elements of what was previously Standard four remain, however the three sub-elements have been consolidated into one. Evidence obtained for evaluating measure, monitor and review practices often spanned across sections 13, 134 and the Service Standards. Due to the extreme differences in size and risk of self-insured employers, it was challenging to be too prescriptive on what processes must be in place to ensure oversight of the system.

The following changes have been made to help clarify the minimum expectation for measures and internal reviews.

Sub-element 1.7.1 – Processes are in place that measure, monitor and review the effectiveness of the injury management system with particular reference to sections 13, 134 and Schedule 5, Part 2 and 3 (the Service Standards) of the Act:

- The specific requirements set out in sub-element 1.7.1 provides clearer expectations of the minimum measures that must be monitored and presented to executive of the self-insured employer. It is expected that employers with greater risk to the compensation fund (i.e. claims liability greater than the minimum guarantee figure) will have more sophisticated measure and monitoring practices relevant to risk. An obligation to ensure continuous improvement by remediating and controlling for known issues or trends (i.e. breaches or non-conformances) will also be evaluated under this sub-element. The sub-element has also been updated to prescribe the minimum expectations for internal reviews of critical system functions.

Income support

Standard two, element four previously had eight sub-elements addressing average weekly earnings (AWE) and income support payments. This has now been reduced to five sub-elements and the guidance notes have been updated to define, more clearly, the requirements for each sub-element.

Early intervention, recovery and return to work

The level of information contained within Return to Work Plans (Plans) across self-insured employers varies, highlighting a gap in the requirements set by ReturnToWorkSA in the guidance notes. The sub-elements within Standard two, element five have been escalated in the document to better align with the life of a claim. The sub-elements have also been edited to better outline the requirements within Part 3 of the Act and associated Regulations to state the format, timing, quality, review and consultation requirements of a Plan more clearly. Additions have also been made to clarify expectations in relation to section 18 and 20 of the Act.

Sub-element 2.5.3 – Plans detail the actions and responsibilities of key parties and reviewed as required:

- This sub-element was added and details what a self-insured employer must demonstrate to deliver quality Plans and when they should be reviewed.

Sub-element 2.5.6 – Adherence to section 18 and 20 of the Act and the requirement to notify ReturnToWorkSA where required:

- This sub-element has been updated to expand the obligations for self-insured employers for management of issues relating to sections 18 and 20 of the Act.

Other changes

Sub-element 1.2.2 – Ensuring injury management personnel are competent and supported in their ability to administer the self-insured employer’s delegated powers and discretions in a reasonable manner:

- This has been expanded in the guidance notes to ensure personnel have relevant skills and experience as well as being provided with training and support where required.

Sub-element 1.3.1 – Exercise of Delegations by the self-insured employer:

- The sub-element was updated to include the excerpt from clause 1.3 of the Code clarifying that the self-insured employer has the delegated authority, and this is not transferrable to external third-party providers.
- Where external claims administration is utilised, the following requirements where determinations are made have been added throughout the standards:
 - evidence of approval by an authorised representative of employer.
 - notice includes identity and contact details for authorised representative of employer responsible for the decision.

Sub-element 1.4.4 – Remuneration and labour hire data is provided annually by the designated due date:

- This is currently a requirement in line with the annual fee process and the obligation is now embedded in the standards.

Standard 1, element 6 – Information provided to employees:

- This has been simplified from nine sub-elements to two with the requirements to provide general information about the claim process to all employees and then more detailed and tailored information to employees following a work injury.

Sub-element 2.7.1 – Permanent impairment assessments have been completed in line with the Act and relevant guidelines:

- The previous sub-element was vague and referenced permanent impairment determinations as well as the referral process but no detail on what the Evaluator would be looking for to ensure compliance. Element Seven has now been split into the referral and then the determination sub-elements with more detail on the requirements for compliance.

Next steps

This consultation will be delivered via an online tool. The link to access the [online submission form here](#).

Please complete your submission, providing reasoning for your answers, for ReturnToWorkSA to gather as much information as possible. We will require contact and organisation details to complete the submission.

During this consultation phase, information sessions for self-insured employers will be arranged, at which specific questions can be fielded regarding the recommended changes.

Following finalisation of the review, final documents will be communicated, and employers will be provided with a six-month grace period to update its systems to incorporate any new obligations. Claims reviewed at evaluation will be assessed against the requirements applicable at that point in time. This can be discussed and agreed with the allocated Evaluator and incorporated into partnership planning.

If you wish to discuss alternative options for providing feedback, please contact the Self-Insured Services team via selfinsured@rtwsa.com

Following completion of this consultation, ReturnToWorkSA will consider the feedback and make any necessary changes before circulating a final version.



The following free information support services are available:

If you are deaf or have a hearing or speech impairment, you can call ReturnToWorkSA on **13 18 55** through the National Relay Service (NRS) www.relayservice.gov.au.

For languages other than English call the Interpreting and Translating Centre on **1800 280 203** and ask for an interpreter to call ReturnToWorkSA on **13 18 55**.

For braille, audio or e-text of the information in this brochure call **13 18 55**.

ReturnToWorkSA

13 18 55

info@rtwsa.com



Government
of South Australia