Guidelines for
section 183 of the
*Return to Work Act 2014*

Guidelines for the proper appointment of, and appropriate exercise of powers by, authorised officers under section 183 of the *Return to Work Act 2014*.

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#  Purpose

This document is intended to:

* provide guidelines for the proper appointment of, and appropriate exercise of powers by, authorised officers under section 183 of the *Return To Work Act* 2014 (‘the Act’); and
* ensure confidence in ReturnToWorkSA’s administration of section 183 of the Act.

#  Scope and application

These guidelines provide a framework for ReturnToWorkSA to ensure that all people using the Act’s investigative powers understand and operate within their limits. The guidelines are relevant to anyone who might be investigating a matter which arises under the Act - but they are *particularly* relevant to the people who are granted these powers: **authorised officers.**

The guidelines address the appointment of authorised officers and what is necessary before a person can be considered to hold the necessary knowledge, experience and maturity to be appointed as an authorised officer.

They address the extent of the section 183 powers available to authorised officers, and the limits of those powers: who can exercise them, where they can be exercised, when they can be exercised – and when they cannot.

#  Background

Section 183 of the Actempowers an authorised officer, for the purposes of the Act, to enter and inspect workplaces, compel persons to provide information, and seize and retain evidence. A person who hinders or obstructs the proper exercise of section 183 powers commits a criminal offence. The full text of section 183 appears in an appendix to these guidelines.

Section 183 gives ReturnToWorkSA wide, far reaching powers, extending beyond anything available to the ordinary insurance industry. These powers encroach upon established civil rights: the rights of occupiers to exclude trespassers, the rights of owners of property, the right of every citizen not to answer questions, and most importantly, the right of every citizen not to be compelled to provide incriminating evidence against themselves.

With these powers comes a heavy responsibility to ensure that they are not abused. Authorised officers must be able to demonstrate at any time why the power they are exercising is for the purposes of the Act. Authorised officers’ use of section 183 powers must be monitored and audited to ensure no unlawful or inappropriate use.

# Section 183 – nature and purpose

## Nature of section 183:

Section 183 empowers an authorised officer to do specific things that most of the community are not permitted to do. Parliament has decided that the public interest in helping ReturnToWork SA discharge its functions under the Act outweighs the public interest in protecting rights to privacy, rights to silence and rights to protect property.

To understand the nature of the powers granted, it is necessary to first understand the rights they take away.

*The right to protect one’s property:* Ordinarily no person may enter a building or land without the consent of its owner or occupier. If the owner or occupier refuses access, the visitor becomes a trespasser, who can be sued or prosecuted. However, an authorised officer who needs to do so for the purposes of the Act is granted a statutory power to enter any workplace[[1]](#footnote-1) and inspect anything there[[2]](#footnote-2). This extends to taking photos, films, videos or audio recordings[[3]](#footnote-3), measurements, notes, records or tests[[4]](#footnote-4). If the authorised officer acts within section 183’s limits, they cannot be sued as a trespasser, or prosecuted for being unlawfully on premises.

An investigator, like any other citizen, can always ask people to help them find things. But ordinarily everyone has the lawful right to refuse to co-operate. An authorised officer who needs to do so for the purposes of the Act can statutorily *require* others to produce documents and records[[5]](#footnote-5) and provide copies[[6]](#footnote-6). If such a statutory requirement is made, a refusal to comply is a criminal offence.

Ordinarily no-one has the right to take someone else’s property without their consent: it is either a civil tort of trespass to goods (for which the taker can be sued) or a criminal offence of theft (for which the taker could be prosecuted). However, an authorised officer who suspects on reasonable grounds that an offence against the Act has been committed may seize and retain anything that affords evidence of that offence (section 183(4)).

*The right not to answer questions:* ordinarily every citizen has the right not to answer questions. Thus, ordinarily no person is required by law to give a witness statement. Indeed, some people (like medical providers) owe duties of confidentiality not to disclose information. However, an authorised officer who needs to do so for the purposes of the Act can statutorily require any person to answer questions relevant to any matter arising under the Act (section 183(1)(g)). The person must answer, unless the answer would tend to incriminate them in an offence, or unless the information is privileged on the ground of legal professional privilege (section 183(3)). If they do not comply, they commit a criminal offence and can be fined up to $10,000 (section 183(9)(b)).

Thus section 183 grants powers to invade personal privacy and encroach upon what are ordinarily considered to be fundamental rights. To limit the risk of these powers being abused, Parliament has declared that these powers are only to be entrusted to **authorised officers,** and that they may only be used **for the purposes of the Act.**

## Purpose of section 183

In their day to day work, ReturnToWorkSA and its claims agents need to decide whether claims under the Act should be accepted or rejected, continued, suspended or discontinued, and what entitlements a claimant may have under the Act. For any number of reasons they may need more information to make those decisions. Similarly, from time to time people may doubt the honesty, reliability or currency of the facts they have been given. They may need more information, to decide not only the claim’s future, but also whether a dishonesty offence may have been committed against the Act.

To get this information *might* be as simple as making a phone call or writing a letter to someone who knows the facts - and is prepared to co-operate. That does not require the exercise of any statutory powers, but it relies upon the goodwill and co-operation of others to succeed.

The practical reality is that not everyone is prepared to co-operate. People may simply be reluctant to get involved. They may think that privacy or confidentiality obligations prevent them from assisting. Or they might actively intend to frustrate investigation.

Whatever the reason, section 183 powers exist because Parliament recognises that the public interest in ReturnToWorkSA obtaining information for the purpose of the Act should outweigh the ordinary rights of citizens to refuse to assist.

In practice, authorised officers use section 183 to:

* investigate offences against specific sections of the Act (involving employers, workers or providers) [[7]](#footnote-7);
* investigate facts necessary to determine a claim under the Act (pursuant to section 31(1) or section 31(6)); to review average weekly payments (section 45 including s45(9)); to ascertain whether there is a basis to reduce or discontinue weekly payments (s48)
* investigate what rights of recovery exist under section 66 or 201 of the Act;
* investigate what level of liability may exist for the purpose of Part 5 (Common law) of the Act (where the Corporation exercises its entitlement to conduct proceedings to which an employer is a party under s93(2));
* Investigate and audit employers to determine the amount of insurance premium they are required to pay under the Act.

This is far from being an exhaustive list. But whenever section 183 powers are used, they *must* be used for the purpose of the Act. At any time, an authorised officer must know why the facts they are seeking are required under the Act. They must be able to point to the specific section that requires those facts to be discovered.

#  Who can use section 183 powers: authorised officers

## Authorised officers

Section 183 powers can only be exercised by an **authorised officer**, which is defined as “a person who is authorised by the Corporation to exercise the powers of an authorised officer under this Act”.[[8]](#footnote-8)

The power to appoint authorised officers is currently delegated[[9]](#footnote-9) to the Leader, Enforcement. The Leader, Enforcement is responsible for ensuring that section 183 powers are used lawfully and properly. This includes deciding who should be an authorised officer, and for how long they should be authorised.

ReturnToWorkSA employs a rigorous authorisation process. It provides training on the appointment of authorised officers. It provides training on the use of section 183 powers by authorised officers.

Presently, authorised officers include members of ReturnToWorkSA’s Employer Regulation and Enforcement, Premium Audit and Investigations teams. But temporary authorities may also be issued for the purposes of individual investigations, to ReturnToWorkSA’s contracted investigative services provider and suitably qualified investigators engaged by self-insured employers.

Before any external investigation provider is approved as an authorised officer, they must demonstrate to ReturnToWorkSA’s satisfaction that:

* they are appropriately licensed under the *Security and Investigation Industry Act* 1995 (or have appropriate qualifications, skills and experience to conduct the necessary investigation);
* they have passed a thorough security and background check in accordance with ReturnToWorkSA’s Fraud Control Policy;
* they have successfully completed ReturnToWorkSA's Employer Regulation and Enforcement team training;
* they have demonstrated their knowledge of the purpose, scope and limits of section 183; and
* they have the requisite knowledge and maturity required to exercise section 183 powers.

Where a Claims Agent applies for an investigator to become an authorised officer, the investigator must be from the contracted investigations provider.

Where a self-insurer applies for an investigator to become an authorised officer, they must nominate the investigator and the investigation company on the application. A copy of the nominated investigator’s current license under the *Security and Investigation Industry Act 1995* must be included with the application*.* The nominated investigator must have completed section 183 training provided by RTWSA.

Occasionally forensic accountants may become authorised officers. The forensic accountant must be appropriately licensed and accredited. They must have completed ReturnToWorkSA section 183 training.

In all applications, the section of the Act to which the investigation relates **must be clearly identified on the application** (e.g. sections 31, 66 etc).

## Assistants

Section 183(7) of the Act states that in the exercise of powers under section 183, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.

It is important to realise that the assistants are exactly that – assistants. The subsection does not turn them into authorised officers. Assistants are *not* given any powers to compel other people to do things. What the subsection does is permit assistants to accompany the authorised officer into workplaces or other places where an authorised officer is exercising *their* powers; it permits the assistants to help the authorised officer by doing things at the authorised officer’s direction.

Sometimes the evidence sought is so specialist in nature that while an authorised officer cannot be certain what they are looking for, an expert (i.e. doctor, engineer, forensic accountant, IT specialist) can identify it more easily. With care, such an expert can assist the authorised officer to exercise their powers. Alternatively, if they possess the requisite qualifications, the expert can themselves be appointed as an authorised officer on a short-term basis.

#  Where section 183 powers can be used

## Only in South Australia

Section 183 appears in an Act of the SA Parliament. The SA Parliament does not ordinarily have power to make laws that affect any other place than South Australia. Thus section 183 powers should only be used in the State of South Australia. They do not confer power to enter any workplace outside South Australia. Even if a person in South Australia sent a written section 183 requirement to produce documents to a person interstate, the interstate person would not commit an offence if they refused to comply while they were still interstate.

## Entry and Inspection section 183(1)(a) and (b): any “workplace”

Sections 183(1)(a) and (b) are powers to enter “any workplace”, to inspect the workplace, anything at the workplace and work there in progress. The word “workplace” is almost certainly adopted from the *Work Health and Safety Act,* where it is defined as “a place where work is carried out for a business or undertaking[[10]](#footnote-10) and includes any place where a worker goes, or is likely to be, while at work.” Under that Act, “place” includes vehicles, vessels, aircraft or other mobile structures. It can include waters (i.e. a diving workplace) and any installation on land, on the bed of any waters or floating on any waters (i.e. drilling rigs).

Nothing in section 183(1)(a) or (b) restricts *whose* workplace may be entered under the section – so long as it *is* a workplace.

However a place where *no* work is carried out for a business or undertaking (for instance, a building which is solely a residential home) cannot be entered under section 183(1)(a) or (b).

## All other section 183 powers – anywhere in South Australia

All of the other powers in section 183 carry no restriction as to their place of exercise. They are *not* confined to any “workplace”. They may be exercised anywhere in South Australia, whether that place is a workplace or not.

Thus, if a person has chosen to store relevant documents at their home (where an authorised officer has no power to enter), the authorised officer would, while in SA, still retain the power to require that person[[11]](#footnote-11) to produce those documents to the authorised officer at some other place in SA (like for instance, the authorised officer’s office).

# When section 183 powers can be used

## Any reasonable time

For the purposes of the Act an authorised officer may exercise the section 183 powers “at any reasonable time”.

It would not be an offence to refuse or fail to comply with the authorised officer’s requirements made *other* than at reasonable time (because the authorised officer would not be empowered to make them).

A reasonable time is what it sounds like. It varies depending on the workplace. During the workplace’s ordinary operating hours can be a good start (noting that an authorised officer commits an offence if they unreasonably hinder or obstruct an employer in the day to day running of their business).

## For the purposes of the Act

The starting point for all questions about the scope of s 183(1) is its opening words: “[F]or the purposes of this Act.”

The words “this Act” mean that section 183 powers can only be exercised for the purpose of theAct*–* not for the purpose of any *other* Act like the *Workers Rehabilitation and Compensation Act 1986* or the *Return to Work Corporation of South Australia Act 1994*.

The Full Supreme Court has observed that these powers are available to an authorised officer where it would assist ReturntoWorkSA in the discharge of its statutory powers and obligations conferred by *particular provisions* of the Act.[[12]](#footnote-12) This means that anyone appointed as an authorised officer must always be able to justify why the s 183(1) power they seek to exercise is for the purposes of the Act.

The powers will not be available simply to promote general objects[[13]](#footnote-13) or functions[[14]](#footnote-14) within the Act. Authorised officers must always be able to point to the specific section that requires facts to be established (like for instance, investigating facts required to determine a claim under s31; investigating facts required to decide what recovery rights exist under s66; investigating facts required to decide whether a s 196 offence has been committed) before they can justify the use of powers to discover those facts.[[15]](#footnote-15) It is extremely prudent for authorised officers, whenever exercising section 183 powers, to make contemporaneous notes about the section of the Act to which their investigations related when they exercised the power in question.

## When an authorised officer suspects on reasonable grounds that an offence has been committed: the power to seize and retain (section 183(4))

Section 183(4) empowers an authorised officer who suspects on reasonable grounds that an offence has been committed to seize (take) and retain (keep) anything that affords evidence of that offence.

An authorised officer must therefore hold a specific state of mind before they can exercise this power. Prudent and experienced investigators make notes of the things they know and suspect before deciding to exercise such powers. To exercise the power the authorised officer must:

* *“suspect”:* A suspicion that a fact exists is less certain than a belief in the existence of that fact.A belief is held on information which is accepted as reliable and implies a reasonable satisfaction that the fact is at least more likely to be true than any other alternative fact or facts.On the other hand, a suspicion that a fact exists, in the context of an investigation of the truth of that fact, is a working hypothesis for which there is some supporting material. There must be a rational connection between the supporting material and the suspicion. Mere curiosity, speculation or “idle wondering” about the existence of the fact is not the same as a suspicion that it exists.[[16]](#footnote-16)
* “*suspect on reasonable grounds”:* The additional element of reasonableness means that the information or material from which the suspicion arises must not only rationally produce a suspicion in the mind of the authorised officer, but it must also engender that suspicion in the mind of any person who was thinking reasonably about that information.[[17]](#footnote-17)
* *“suspect on reasonable grounds that an offence against this Act has been committed”:* the authorised officer must be able to point to the actual section which they suspect has been offended against. The offence has to be one against the Act*,* and it will not be sufficient if it is an offence against some other Act, even if related. The suspicion has to be that the offence *has been committed*, not that it *is being* committed,[[18]](#footnote-18) or that it *will be* committed. In the exercise of the power to seize and retain, it does *not* matter who is suspected to have committed the offence.

If the authorised officer holds the relevant suspicion, the power is available, but not otherwise.

If the power is available, then the authorised officer can seize anything that affords evidence of the offence; the power is not restricted to books, records or documents.

Note that the Act requires the issue of a receipt to the person from whom the things are seized.[[19]](#footnote-19) The Act also provides that that person, or the owner of the thing, can sue for its return (or for its value) if proceedings (i.e. an Information) are not instituted for an offence against the Act within 6 months after it is seized.

# When section 183 powers cannot be used

Section 183 powers cannot be used by people who are not authorised officers. They cannot be used at an unreasonable time. They cannot be used outside South Australia. They cannot be used to enter places that are not workplaces. And they cannot be used if the user cannot point to the specific provision of the Act to which their use of the power is related.

Authorised officers should be aware of two specific areas in which a person will not commit an offence if they fail to comply with the authorised officers’ requirements to answer questions of or provide information:

1. In the exercise of the privilege against self-incrimination;
2. In the exercise of legal professional privilege.

## Privilege against self-incrimination

The privilege against self-incrimination is a privilege enjoyed by all Australian persons (but *not* companies) unless it is taken away by an Act of Parliament.

The principle is that no person can be forced to provide evidence against themselves.

One of the more popular manifestations of the privilege is that unless an Act of Parliament says otherwise, all people have the right to refrain from answering questions that may incriminate them in an offence.

A lesser known but equally important corollary of the privilege is that, again unless an Act of Parliament says otherwise, all people have the right not to be compelled to produce evidence that may incriminate them.

The privilege is regarded as so central to our system of justice that courts presume it to exist, unless the words of an Act of Parliament are so clear that there is no choice but to conclude that it no longer exists.

The Act actually *preserves* this privilege. Section 183(3)(b) makes it clear that a person is not required to answer a question under section 183 if the answer would tend to incriminate that person of an offence. It follows from this that if they fail to answer, they have committed no offence.

The Act is silent about whether a person has to produce information (as opposed to answer questions) if it would incriminate them in an offence. But that just means that Parliament has not expressly excluded the privilege, and the courts presume that it still exists. This means that a person is entitled not to produce information if it would incriminate them, and their failure to comply will not be an offence.

For practical purposes, this means that section 183 powers are most practical when used to compel persons who are not suspected of any involvement in any offence. Most witnesses are likely to fit into that category. But if a person is a suspect then they are more likely to be entitled to refuse to answer questions or produce information.

An authorised officer might or might not suspect that a given person has committed an offence. However it is not up to the authorised officer to decide whether answers are incriminating or not. It is up to the person who is being required to answer. That means that *whenever* any section 183 power involves a person producing information, the authorised officer should caution the person that they are *not* required to answer a question or produce information if to do so would tend to incriminate that person of an offence.

Note that this is a privilege against ***self*-**incrimination. There is no general privilege against incriminating someone else. A person is not entitled to refuse to answer a question simply because to do so would incriminate someone else.

Where a corporate entity is suspected of committing an offence, it *is* possible to use section 183 powers to compel its agents or employees to produce evidence which would incriminate the company. First, a company does not have a privilege against self-incrimination. Second, the agents and employees are, in law, not the same person as the company (which has its own legal personality). Thus, agents and employees cannot claim the privilege if it is simply to protect the company – another legal person – because the privilege is one against *self-* incrimination.

Corporate investigation is a specialised field. Authorised officers need to be alive to the heightened possibility that those agents or employees might *also* have committed offences of aiding and abetting the company. It may be an area where you ask for specific advice.

## Legal professional privilege

Legal professional privilege has existed since Elizabethan times. The principle is based on the policy that communications between a lawyer and their client about legal matters should be kept confidential between them, so that clients are free to give complete and honest instructions about those legal matters without fear that their own lawyer could be called as a witness against them.

Thus section 183(3)(a) provides that a person is not required to provide information under section 183 that is privileged on the ground of legal professional privilege.

The privilege protects communications (whether letters, emails, records of phone calls or meetings) between lawyer and client, or between their agents. The dominant purpose of the communication must be for the purpose of legal advice, or for existing or pending litigation. The communication must have been intended to be confidential.

If an authorised officer knows in advance that they may encounter claims for legal professional privilege, then it may be an opportune time to seek specific advice about the best way to approach the exercise of section 183 powers. In some cases it may be possible to exercise the powers in a manner which permits the information to be produced in sealed containers lodged with the Supreme Court without the authorised officers examining it, enabling the relevant client to make a claim of legal professional privilege, and for that claim to be tested in that court.

## Where the information is required for existing proceedings in the South Australian Employment Tribunal (or any other court)

If information is required for the purpose of *existing* proceedings in the South Australian Employment Tribunal (or existing proceedings in any court), then care is required, and usually legal advice should be sought.

Courts and tribunals have the power to require parties to proceedings to make discovery of documents in their possession, or to issue subpoenas to compel third parties to produce documents to the court or tribunal. Once Tribunal proceedings have *commenced*, those methods should be regarded as the primary means by which to obtain further information relevant to those proceedings. In fact, if the court or tribunal is hearing a prosecution matter, it could arguably be a contempt of court to use section 183 powers once the proceedings have actually commenced.

Particular complexity arises if subpoenaed or discovered documents in a Tribunal matter disclose facts which are relevant to a different investigation (even if it relates to the same person). This is because there exists an implied undertaking that anyone who accesses those documents will *only* use them for the purpose of the existing Tribunal proceedings and for no other purpose. Using them to further a different investigation is likely to breach that undertaking and constitute a contempt.

# Section 183 and the Privacy Act

The *Privacy Act* 1988 is a Commonwealth law which applies to Commonwealth Government agencies, Norfolk Island administration, medium-to-large businesses, the not-for-profit sector, the credit reporting industry and health service providers (called “APP entities” in the Act). Many people involved in these organisations may fear that the *Privacy Act* prohibits them from complying with an authorised officer’s section 183 requirements. They may consider that it constitutes a lawful excuse not to comply.

It is true that the Commonwealth *Privacy Act* protects individuals’ personal information from unlawful disclosure, by commanding them to obey the Australian Privacy Principles found in Schedule 1 of that Act. But there are exceptions under section 6 of the Australian Privacy Principles, which would permit disclosure in response to a section 183 requirement:

* Australian Privacy Principle 6.2(b) – if the use or disclosure of the information is required or authorised by or under an Australian law (such as, i.e. section 183 of the Act);
* Australian Privacy Principle 6.3(e) – if the APP entity reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body (such as, i.e. ReturntoWorkSA when it is performing a function under a law which prescribes a penalty).

This means that, contrary to popular belief, the Commonwealth *Privacy Act* 1988 does not provide a lawful excuse not to comply with a section 183 requirement.

If a person, despite having been advised of the above, maintains a refusal to provide information based on their *Privacy Act* obligations, the circumstances surrounding the refusal should be recorded and referred immediately to Employer Regulation and Enforcement for assessment.

Unlike some other states, South Australia does not have its own *Privacy Act.* It does have a number of privacy principles about how personal information should be collected, stored and used by SA public sector agencies. ReturnToWorkSA is exempt from those privacy principles, and thus there is nothing within them that gives people a lawful excuse to refuse to comply with a section 183 requirement.

It is sometimes useful to reassure people that when information is provided to in a return or in response to a request for information under the Act, the Act has itsown confidentiality provisions at section 185 governing the extent to which that information can be further disclosed by ReturntoWorkSA or anyone else.

# When section 183 powers might be required

## Gaining information from witnesses - generally

Subsection 31(1) allows investigations to take place for the purpose of determining a claim. ReturnToWorkSA Claims Agents and Self Insured Employers have the delegated authority to manage claims under the Act.

The investigation required to determine a claim may be as simple as making a telephone call or sending a letter asking for information. However, often it will require more detailed investigation. It might require interviewing a claimant or others in detail. A case manager might choose to use an approved investigator to undertake this.

An investigator has no power to compel anyone to do anything. People may refuse to co-operate with them, for any number of reasons. They might simply be reluctant to get involved. They might feel they are breaching someone’s privacy by disclosing things they were told confidentially. They might be worried about repercussions if it was known that they voluntarily co-operated. People might also be duty bound not to provide information. If a worker revokes a doctor’s authority to disclose their records, not only does the doctor have no obligation to disclose them, but they are generally obliged *not* to disclose them – unless required by law.

Thus, an investigator can ask questions, but might not get answers. They might ask to enter premises so they can find things, but they might be refused entry. Some common examples appear below.

* An investigator seeks gymnasium or sports club team sheet records in order to learn a claimant’s true physical ability - but the gym or club declines to provide the private records of its members;
* An investigator asks a witness about their dealings with a claimant to confirm whether the claimant is secretly earning income from their own business - but the witness does not want to get the claimant in trouble;
* An investigator asks an employer to provide information about an employee or former employee claimant - but the employer refuses claiming that they never co-operate with ReturnToWork SA;
* An investigator knows they can find records about a claimant’s true income at an accountant’s office - but no one there thinks that they have any permission or authority to hand them over to the investigator.
* An investigator knows that a doctor can provide information about a claimant’s true physical ability - but the doctor has not responded to multiple requests to provide a medical report.
* An investigator thinks that a claimant has been investigated for dishonesty offences but SA Police decline to release the claimant’s private information.

The common denominator is that the investigator needs information for the purpose of the Act but is unable to get that information because (for whatever reason) the person from whom they want to get that information is exercising their lawful rights not to co-operate.

When this kind of situation arises, the case manager may ask for an *authorised officer* to use their section 183 powers.

The use of section 183 powers is a last resort, not a first resort. The investigator should exhaust the possibility of obtaining voluntary co-operation before there is any thought of an authorised officer using their section 183 powers. The investigator and case manager should consider whether there are alternative ways of finding out the same information without resort to section 183 powers.

## Gaining information from witnesses - medical

Using section 183 powers to obtain medical notes should always be approached with care. Case managers and investigators have to be conscious of the therapeutic relationship between doctor and patient, and the effect on that relationship if a doctor breaches the patient’s expectations of privacy or confidentiality. Case managers should also remember that using section 183 powers may also impact adversely upon their working relationship with the claimant and their medical practitioner. In addition to the matters contained in these Guidelines, case managers should:

* consider carefully whether clinical notes are actually required (this should not be automatically assumed). Where possible, seek advice from the in-house medical adviser who may suggest alternate solutions.
* maximize the prospect of a doctor voluntarily producing notes, by clearly explaining the need for the notes with the worker, and asking for the worker’s signed authority to obtain them *before* approaching the doctor. If there is no medical authority on file, or it has been revoked, consider asking whether the worker and their representative are prepared to provide a limited authority to seek a medical report answering agreed questions.
* ensure that the authorised officer makes personal telephone contact with the medical practitioner to explain the requirement for medical notes and the section 183 Authority. Confirmation by letter should be provided enclosing a copy of the ‘Appointment of Authorised Officer ' document, a copy of section 183, and clearly identifying the specific provision in the Act to which the investigation relates (e.g. section 31 – determination of a claim, section 58 – lump sum compensation).
* never ‘cold call’: appointments should be made to attend the practice, see the medical practitioner and obtain the relevant notes. The authorised officer should clearly identify themselves, identify the specific provision in the Act to which the investigation relates, produce their Appointment of Authorised Officer document, and produce a copy of section 183 (doctors will often request a copy of the legislation so that their files can explain why they ultimately produced what would otherwise be confidential patient notes. Sometimes they will request copies for their medical defence insurers).
* consider – instead of seeking all notes ever made by a doctor about their patient - making a request for a (voluntary) medical report, tailored to the circumstances, asking specific questions to obtain the facts required under the Act. In applying for any use of section 183 powers, the case manager will need to show why such a specific medical report will not provide the information required.
* similarly, consider asking whether the medical practitioner will voluntarily answer specifically tailored questions in an interview, and confine any subsequent request to (voluntarily) produce notes to those relevant to the practitioner’s answers.
* ensure that if used, section 183 requirements to provide information are limited to compelling production of the clinical notes necessary to obtain the facts required under the Act.
* Understand and accept that medical providers are entitled to be reimbursed for their time when providing medical notes, participating in interviews and providing statements. The rates of reimbursement are to be in accordance with the appropriate fee schedule, published at <http://www.rtwsa.com/service-providers/payment-and-invoicing/fee-schedules>

## Gaining information from State government departments

It is common to find that SA government departments are not prepared to voluntarily release information about their dealings with private individuals. To the extent that such departments are bound by the Information Privacy Principles, that is not surprising.

Nevertheless, requests for such information are common. As a result, ReturnToWorkSA’s Employer Regulation and Enforcement team has existing arrangements which enable its authorised officers to exercise section 183 powers to require various government departments to produce:

* Motor vehicle and boat registration details
* SAPOL incident and accident reports
* Motor vehicle accident (MVA) reports
* Coroner’s reports
* SafeWork SA reports
* Information held by the Births, Deaths and Marriages Registration Office
* Information held by the Office of the Technical Regulator.

To obtain this kind of information, claims agents must complete an 'Agent Request for Information' form. These are available as an Infiniti form.

The request must clearly state what is being investigated, what section of the Act the investigation relates to, and why the information is relevant to that investigation.

An authorised officer from the Employer Regulation and Enforcement team will consider the request. If satisfied that it is necessary for the purposes of the Act, the authorised officer will exercise their section 183 power to require the relevant government department to produce the information, and then forward it to the requesting claims agent.

## Gaining information from Commonwealth government departments.

In some circumstances section 183 may be used to seek information from Commonwealth Departments. However all such requests must be managed by ReturnToWorkSA’s Employer Regulation and Enforcement team.

#  How to apply for appointment as an authorised officer

## Self-Insurers

Self-insurers should complete the ‘Self-insured claim investigation application form (Section 183)’, which is available at: [https://www.rtwsa.com/\_\_data/assets/pdf\_file/0019/17272/Self-insured-claim-investigation-application-form-SECTION 183.pdf](https://www.rtwsa.com/__data/assets/pdf_file/0019/17272/Self-insured-claim-investigation-application-form-S183.pdf)

* An application must be made in the 'first person' eg “I wish to be appointed an authorised officer because...”.
* Applicants must demonstrate why they need to exercise powers under section 183, using the application checklist. The checklist ensures that applicants have eliminated all alternatives to using compulsive powers (for instance, because a person has refused to produce books, documents or records necessary for ReturnToWorkSA to determine a claim) and demonstrates that it is necessary for an authorised officer to exercise power under section 183 to require the production of the books, documents or records.
* Supporting documents should accompany the application where appropriate.
* Applications must be signed by the applicant. Emailed application forms are acceptable.

## Section 183 checklist – claim determination/recovery

The following matters should be considered before applying for appointment as an authorised officer under section 183.

* Is the information being sought for the purposes of the Act?
	+ Which section of the Act is the information required for?
	+ Will the information sought help decide how to deal with a claim/claimant/other matter dealt with under that section?
* Has the information requested already been obtained?
	+ Has the claims file been checked?
	+ Has the recovery file been checked?
* What has already been done to obtain the information or documents required?
	+ Has there been any attempt to simply *ask* for the information or documents?
	+ Is there a good reason to think that simply asking won’t work?
	+ Has someone refused to produce information when asked to do so?
	+ Have other methods of obtaining the information been exhausted e.g. seeking a tailored medical report rather than copies of medical records?
* Is it necessary to engage the services and incur the cost of an investigator to obtain the information?

#  Deciding whether to appoint authorised officers under section 183

Applications for appointment as an authorised officer will be considered on a case by case basis.

Employer Regulation and Enforcement will employ a rigorous authorisation procedure before appointing an applicant as an authorised officer.

* Records will be kept of all applications and all appointments made.
* All applications will be assessed having particular regard to the apparent need to use powers conferred by section 183, and the suitability of the applicant for appointment as a person entitled to exercise those powers.
	+ As to the need to use section 183 powers, assessment will have regard to:
		- whether the applicant has demonstrated that they are seeking information for the purposes of the Act; whether the applicant understands the context of the information they are seeking, and how it can help to decide a question that arises under a specific identified section of the Act.
		- whether the applicant has demonstrated that the information cannot be obtained without recourse to section 183 powers; whether they attempted to do so, and what the results were;
		- whether the information sought could be obtained by an existing authorised officer on a one-off basis, or whether the applicant may need to use section 183 powers for a period of time;
		- whether the exercise of section 183 powers would be futile because the information sought would be the subject of legal professional privilege, or because the person from whom information is sought would exercise the privilege against self-incrimination.
	+ As to the suitability of the applicant to use section 183 powers, assessment will have regard to:
		- whether they are appropriately licensed under the *Security and Investigation Industry Act* 1995 (or have appropriate qualifications, skills and experience to conduct the necessary investigation);
		- whether they have passed a thorough security and background check in accordance with ReturnToWorkSA’s Fraud Control Policy;
		- whether they have successfully completed ReturnToWorkSA's Employer Regulation and Enforcement team training;
		- whether they have demonstrated their knowledge of the purpose, scope and limits of section 183;
		- whether they have the requisite knowledge and maturity required to exercise section 183 powers;
		- (where a Claims Agent applies for an investigator to become an authorised officer) whether the investigator is from the contracted investigations provider.
* If, after assessing the information provided upon the application, Employer Regulation and Enforcement considers that it is necessary and reasonable for section 183 powers to be exercised, and that the applicant is an appropriate person to be entrusted with those powers, then an appointment may be made.
* Employer Regulation and Enforcement will attempt to provide decisions on applications within 72 hours or as soon as otherwise practicable.
* If an authorised officer is appointed:
	+ The authorised officer will be provided with proof of appointment. They will be issued with an “Appointment of an Authorised Officer” document. This must be produced by the authorised officer if and when they use a section 183 power to require another person to do something.
	+ The duration of the appointment will be stated in the Appointment of an Authorised Officer document. The normal duration will be 3 months.
	+ The authorised officer will *also* be provided with specific instructions by Employer Regulation and Enforcement about their use of section 183 powers. Authorised officers may in some cases be instructed to confine their use of power to that reasonably necessary in the circumstances to investigate the matters that were disclosed in the application for appointment.
	+ If Employer Regulation and Enforcement learns that section 183 powers are being used for purposes *other* than those disclosed in the appointment application, or beyond the officer’s specific instructions, it may take steps to immediately revoke the person’s appointment as an authorised officer.
	+ The *‘Instructions to Investigate’* accompanying the Appointment of an Authorised Officer are for the authorised officer's use only. They are to not to be released to other parties. Their disclosure may constitute a breach of section 185.

# How to use section 183 powers

Upon receiving an Appointment of an Authorised Officer document, the recipient should first check that all details are correct. Incorrect names, appointment dates or expiry dates could mean that the recipient is not truly an authorised officer at the relevant time – and it may make all the evidence obtained by means of the faulty document inadmissible in evidence. Authorised officers cannot “correct” the document in the event of an error. They should not try to exercise section 183 powers, but should immediately contact Employer Regulation and Enforcement.

## SECTION 183(1) (a) and (b): entry and inspection of workplaces

An authorised officer may, at any reasonable time, for the purposes of the Act, enter any workplace and inspect it, anything at it, and any work there in progress.

That power should be used respectfully but firmly. It is true that section 183(8) imposes a duty on employers to provide such assistance as is necessary, and that section 183(9) makes hindering or obstructing an authorised officer an offence. But authorised officers always need to remember that they too can commit offences against the Act. Section 183(10) makes it an offence for an authorised officer or their assistant to unreasonably hinder or obstruct an employer in the day to day running of their business, to address offensive language to anyone present at the workplace, or to assault anyone at the workplace. The end result is that the Act demands a civilised and respectful approach to the use of the powers conferred. Certainly section 183 does not confer any power to use force against any person.

Authorised officers should, wherever practicable, alert the occupiers of their presence, and identify themselves as authorised officers (by producing their Appointment document to the occupier). Wherever possible, they should simply *ask* for the co-operation of occupiers before resorting to the use of their section 183 powers.

If an occupier declines to voluntarily permit authorised officers to enter and inspect when so asked, then the authorised officer will be entitled to exercise their section 183 power. They should always respectfully explain to the occupier that the Act empowers them to enter the workplace and to inspect it. It is *extremely* prudent for authorised officers to have a copy of section 183 (or even the Act) to show occupiers. They should advise the occupier that section 183(1) gives authorised officers certain powers, and that section 183(9) has made it an offence to hinder or obstruct an authorised officer. At that time, the authorised officer should also be contemporaneously noting the fact that they have elected to exercise their section 183(1)(a) and/or (b) power (and *why*, nominating the section under which they are investigating).

Not all refusals are because people want to frustrate the investigation. Workplaces can be dangerous places. Occupiers may be extremely reluctant to place authorised officers in danger. Authorised officers should respect and obey all site directions relating to safety.

If, despite producing an Appointment document and explaining the powers and penalties, an occupier refuses to permit an authorised officer to enter or inspect a workplace, then the authorised officer should, if they are not already doing so, make contemporaneous notes (or better still, videotaped recording) of the occupier being once more shown the Appointment document, being directed to section 183(9), and any subsequent refusal, before leaving the premises. No force or threat of force should be used: to do so will be a section 183(10) offence by the authorised officer.

## Section 183(1) (c),(d) and (h): production and copying of books, documents and records.

Authorised officers have considerable section 183 powers relating to “books, documents or records”. That phrase is significantly wider than it might at first appear, because each of those words is given a broader definition by s 4 of the *Acts Interpretation Act 1915:*

* ***book*** *… includes, unless the contrary intention appears, a reference to a digital data storage device.[[20]](#footnote-20)*
* ***document*** includes –

*(a) any paper or other material on which there is writing[[21]](#footnote-21); and*

*(b) any map, plan, drawing, graph or photograph; and*

*(c) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and*

*(d) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;* [[22]](#footnote-22)

* ***record*** *includes information stored or recorded by computer or other process’*.[[23]](#footnote-23)

Authorised officers may require the custodian of books, records or documents to produce them under section 183(1)(c). They can examine them, copy them, take extracts from them under section 183(1)(d); or they can require an employer to provide the authorised officer with a copy of them under section 183(1)(d).

Like all section 183 powers, the authorised officer can only require production or require the making of copies for the purposes of the Act. As always, they will need to be able to articulate what it is that they are investigating, how the information will assist – and what section of the Act requires those facts to be clarified (e.g. section 31 – determination of a claim, section 66 – recovery, section 71 – common law, section 196 – investigation of dishonesty offences).

The powers relating to books, documents and records can be exercised anywhere in SA. They are not restricted to workplaces. On the other hand, authorised officers do not have statutory power to *enter* places other than work places. That does not make the power useless. It can be exercised without entry. An authorised officer can post, fax or email a *written* requirement to someone on the premises, requiring them to produce books, documents or records to the authorised officer at some other time (which must be a reasonable time) and place.

Authorised officers should, wherever practicable, first simply *ask* the custodian whether they are prepared to produce the books, documents or records. If they are, then there is no reason to use section 183 powers. However, if (for whatever reason) the custodian is not prepared to do so, then the section 183 power should be exercised.

*If making a requirement in person:*

To exercise the power the authorised officer needs to demonstrate to the custodian that they are an authorised officer (by showing them their Appointment document). They need to demonstrate to the custodian that authorised officers have a power to *make* the custodian produce books, documents and records (by showing them section 183(1)(c)). They need to explain to the custodian that they are not required to provide information that is the subject of legal professional privilege, or if it would incriminate the custodian personally of an offence (by showing them section 183(3)). And they need to – respectfully – advise the custodian that without a lawful excuse, refusing or failing to comply with a requirement is a criminal offence (by showing them section 183(9)).

A prudent authorised officer will make notes of all of this, or better still, capture it on video.

When all of that information has been given to the custodian, then the authorised officer may make the requirement:

“As an authorised officer, for the purposes of the *Return To Work Act 2014,* I now require you pursuant to section 183(1)(c) of that Act to produce to me [*the relevant books, documents or records*].”

The use of the word “require” is necessary: at this stage, the authorised officer is no longer “asking” or “requesting”.

Similarly it is necessary to make sure that the custodian knows the authorised officer is making the requirement pursuant to section 183(1)(c) of the Act.

*If making a requirement in writing:*

The same information must be conveyed to the custodian, but in written form. The authorised officer must enclose a copy of their Appointment document to show that they are an authorised officer; they must recite section 183(1)(c), section 183(3) and section 183(9). They should then make the requirement:

“As an authorised officer, for the purposes of the *Return To Work Act 2014,* I now require you, pursuant to section 183(1)(c) of that Act to produce to me [*the relevant books, documents or records*] by [*xxxx am/pm*] on [*xx/yy/zz*] at [*Address*].”

Obviously, a copy of the written requirement must be kept.

*Copies of documents*

Mere production of the original books, documents or records is often not much use to an investigator. If an authorised officer suspects on reasonable grounds that an offence against the Act has been committed, they can seize and retain the books/documents/records if they afford evidence of that offence. But often that will *not* be the case (if for no other reason than that the officer is not actually investigating an offence). Often what the investigator really wants is copies of the documents.

Authorised officers *do* have powers to make other people make copies – *if* they are an employer (under section 183(1)(c) or (h)). Otherwise, the authorised officer will have to exercise their own power to copy the documents themselves under section 183(1)(d). That means authorised officer need to be equipped in advance with either a suitable photocopier, a digital camera, or an iPhone/iPad equipped with a suitable scanning application. Authorised officers can *ask* to use a photocopier belonging to workplace*,* but cannot *compel* anyone to make it available to them. Any reasonable costs associated with the production of books, documents or records including photocopying will be, as a matter of policy, met by ReturnToWorkSA.

## Section 183(1)(e) and (f): making records (written, audio or video), measuring and testing

Section 183(1)(e) empowers authorised officers to take photographs, films or video or audio recordings. Like all section 183 powers, authorised officers should make sure that they take the photos, films, videos or audio recordings at a reasonable time, and only for the purposes of the Act.

One consequences of section 183(1)(e) is that authorised officers who use it are not committing an offence under the *Surveillance Devices Act 2016.* Because section 183(1)(e) exists, authorised officers using it do not require another person’s consent to take photos, films, video or audio recordings.

As discussed below, if a person being interviewed is suspected on reasonable grounds of having committed an offence, the authorised officer should *warn* the person not only that they may refrain from answering questions that may incriminate them, but that anything they say may be recorded and used in evidence.

Section 183(1)(f) is similar in nature to section 183(1)(e): it empowers authorised officers to take measurements, make notes and records and carry out tests. A word of caution: if testing out the claims of a worker as to how they became injured – authorised officers should take great care not to injure themselves or others in that process. Note that there is no specific power to compel other persons to help make measurements or help carry out tests. If help is required, the authorised officer may require an assistant as contemplated by section 183(7) of the Act.

## Section 183(1)(g): requiring a person to answer questions

This is the power most likely to be misunderstood. Clear explanations can help a great deal.

**Suspected offenders** should be referred to Employer Regulation and Enforcement for investigation. If an authorised officer suspects, on reasonable grounds, that a person has committed an offence, then they should not try to use section 183(1)(g) at all to compel that person to answer questions about it. Rather they should caution the suspect:

“I am investigating a possible offence/possible offences against section [*xx*] of the *Return To Work Act 2014.* I now intend to ask you (further) questions about this matter. You do not have to answer these questions, but anything you say may be recorded and given in evidence. If your native language is not English and you are not reasonably fluent in English, you are entitled to be assisted by an interpreter.”

**Co-operative witnesses** **(not suspected of any offending)** may be prepared to answer questions without any need for the authorised officer to resort to section 183(1)(g). It is often prudent to check:

“I am investigating the facts related to a matter arising under section [*xx*] of the *Return to Work Act 2014.* Are you prepared to voluntarily answer my questions about this matter?”

If the witness is prepared to co-operate voluntarily, then the questions and answers can proceed immediately.

**Unco-operative witnesses (not suspected of any offending)** are those who, for whatever reason (which may not be sinister at all), are unprepared to voluntarily answer questions. This is when the authorised officer can and should exercise their power to require them to answer questions – preferably electronically recorded on video or audio:

“I am what is called an authorised officer under the *Return to Work Act 2014.* This [*produce Appointment document*] is the document that appoints me an authorised officer, and this [*produce photo identification – preferably Security and Investigation Industry Act licence*] is a proof of my identity.

I am investigating the facts related to a matter arising under section [xx] of the *Return to Work Act 2014.*

This [*produce copy of section 183*] is a copy of section 183 of the *Return to Work Act 2014*. As an authorised officer, I have the statutory power to *require* you to answer my questions about this matter to the best of your knowledge information and belief.

If you do not comply with the requirement to answer my questions without lawful excuse, then you will be committing an offence under section 183(9), which has a maximum penalty of a $10,000 fine.

You are not required to answer my questions if the answer would incriminate *you* of an offence, or if you would be providing information that was privileged on the ground of legal professional privilege. However it is not a lawful excuse simply that your answers might incriminate someone else.

If English is not your native language, you are entitled to be assisted by an interpreter.”

From that point on, the authorised officer should preface every question with the words: “I require you to answer this question to the best of your knowledge information and belief - ”.

## Section 183(4), (5), (6): Seizure of evidence

Section 183(4) empowers an authorised officer who suspects on reasonable grounds that an offence against the Act has been committed, to seize and retain anything that affords evidence of that offence.

If no offence is suspected by the authorised officer, then the authorised officer has no seizure power. Officers can still require people to produce books, documents and records (which they can examine, copy or take extracts from), but do not have the power to seize (take) them from the person producing them.

It is a ReturnToWorkSA Employer Regulation and Enforcement directive that under no circumstances will an authorised officer seize anything without approval from ReturnToWorkSA's Leader Enforcement. The reasons for the proposed seizure must be reported as soon as possible to the Manager Employer Regulation and Enforcement, who will give careful consideration to the appropriate course of action, and whether such a seizure will be authorised.

If a seizure takes place, the authorised officer must provide a receipt to the person the thing was seized from if they request. It is sound practice to issue a receipt in any event.

If a seizure takes place, then section 183(6) is enlivened. For present purposes it is important to know that if no charge is laid relating to the seized thing; or if the accused is found not guilty, or if despite being found guilty no forfeiture order is made, then the person from whom the thing was seized (or its owner) is entitled to have the thing back or compensation equal to its market value.

#  Hindering an authorised officer: section 183(9) offence

To be effective, section 183 relies upon the threat of prosecution and criminal conviction in the event of non-compliance with the authorised officer’s requirement. Section 183(9) provides that:

(9) A person must not –

(a) hinder or obstruct an authorised officer in the exercise of a power conferred by this section;

or

(b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Maximum penalty: $10,000

If an authorised officer makes a section 183 requirement, and the person in question refuses or fails to comply with it:

* The authorised officer *should* have already -
	+ identified themselves as being an authorised officer;
	+ shown a copy of section 183 to the person;
	+ explained that section 183(9) makes it a criminal offence for the person not to comply with the requirement without lawful excuse, punishable by a maximum $10,000 fine.
	+ told the person that they are not required to answer a question under section 183 if the answer would incriminate *that person*.
	+ told the person that they are not required to provide information under section 183 if it is privileged on the ground of legal professional privilege.
	+ made the requirement in question (having advised that the authorised officer is making it for the purposes of an investigation of a matter under section [xx] of the Act).

 However, if that has *not* occurred, it must now take place. If it has not already been recorded on video or audio, it should now be recorded electronically.

* The authorised officer should then make the requirement once more, recorded electronically.
* If the person does not comply with the requirement, the authorised officer is entitled to ask the person what lawful excuse they have for not complying.
* If the person gives a lawful excuse then no offence is committed. If the person gives a response which does not constitute a lawful excuse, then the authorised officer should tell them that their non-compliance will be reported and that a prosecution may result.
* The authorised officer should report the non-compliance to the Manager, Employer Regulation and Enforcement.

The Manager, Employer Regulation and Enforcement, will consider whether the evidence recorded by the authorised officer can prove beyond (reasonable) doubt that:

1. They were indeed an authorised officer, and made the person aware of that fact;
2. They were indeed acting for the purposes of the Act, and made the person aware of that fact;
3. They made the requirement at a reasonable time
4. The requirement was one which could be made under section 183;
5. The person hindered, obstructed, refused or failed to comply with the requirement made by, the authorised officer
6. The person had no lawful excuse.

The Manager Employer Regulation and Enforcement will also consider whether it is in the public interest to pursue the prosecution.

It is reasonable, in forming that view, for the Manager Employer Regulation and Enforcement to contact the person directly to reinforce the purpose and statutory authority of section 183, the penalties for non-compliance, and to offer the person an opportunity to reconsider their position.

However, such communication can be problematic. As the person is now suspected on reasonable grounds of having committed a section 183(9) offence, they are not required to respond to questions about their earlier non-compliance – and they should be cautioned that while they do not have to say anything, anything that they do say may be recorded and given in evidence.

 If the Manager Employer Regulation and Enforcement considers that the evidence can establish a section 183(9) offence beyond (reasonable) doubt and that it is in the public interest to prosecute it, the evidence should be submitted to the Crown Solicitor’s Office for advice.

# Relevant legislation

The relevant State legislation includes:

* *Return to Work Act 2014*
* *Return to Work Corporation of South Australia Act 1994*

# Appendix

## Full text of section 183 *Return to Work Act 2014*

183—Powers of entry and inspection

 (1) For the purposes of this Act, an authorised officer may, at any reasonable time—

 (a) enter any workplace;

 (b) inspect the workplace, anything at the workplace and work there in progress;

 (c) require a person who has custody or control of books, documents or records relevant to any matter arising under this Act to produce those books, documents or records;

 (d) examine, copy and take extracts from any such books, documents or records, or require an employer to provide a copy of any such books, documents or records;

 (e) take photographs, films or video or audio recordings;

 (f) take measurements, make notes and records and carry out tests;

 (g) require (directly or through an interpreter) any person to answer, to the best of that person's knowledge, information and belief, any question relevant to any matter arising under this Act;

 (h) require an employer to produce any document, or a copy of any document, that is required to be prepared or kept under this Act;

 (i) seize any document that has been mistakenly provided by the Corporation under this Act.

 (2) If—

 (a) a person whose native language is not English is suspected of having breached this Act; and

 (b) the person is interviewed by an authorised officer in relation to that suspected breach; and

 (c) the person is not reasonably fluent in English,

the person is entitled to be assisted by an interpreter during the interview.

 (3) A person is not required—

 (a) to provide information under this section that is privileged on the ground of legal professional privilege; or

 (b) to answer a question under this section if the answer would tend to incriminate that person of an offence.

 (4) An authorised officer, who suspects on reasonable grounds that an offence against this Act has been committed, may seize and retain anything that affords evidence of that offence.

 (5) An authorised officer must, at the request of any person from whose possession evidentiary material is seized under [subsection (4)](#id7b8490c8_4a62_4889_8ab6_09530c245ba8_d), provide a receipt for that material.

 (6) Where anything has been seized under [subsection (4)](#id7b8490c8_4a62_4889_8ab6_09530c245ba8_d) the following provisions apply:

 (a) the thing seized must be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorises its release to the person from whom it was seized, or any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under [paragraph (b)(ii)](#id4bfcce7f_9544_4507_a7c8_120c5a6e7e65_5));

 (b) where proceedings for an offence against this Act relating to the thing seized are instituted within 6 months of its seizure and the person charged is found guilty of the offence, the court may—

 (i) order that it be forfeited to the Crown; or

 (ii) where it has been released pursuant to [paragraph (a)](#id49231dca_0a3a_4151_805a_d6804cf4af60_7)—order that it be forfeited to the Crown or that the person to whom it was released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;

 (c) where—

 (i) proceedings are not instituted for an offence against this Act relating to the thing seized within 6 months after its seizure; or

 (ii) proceedings having been so instituted—

 (A) the person charged is found not guilty of the offence; or

 (B) the person charged is found guilty of the offence but no order for forfeiture is made under [paragraph (b)](#id85e41971_ad81_4263_8268_ccb6bcef7eb3_e),

the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister, by action in a court of competent jurisdiction, the thing itself, or if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure.

 (7) In the exercise of powers under this section, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.

 (8) An employer whose workplace is subject to an inspection under this section must provide such assistance as may be necessary to facilitate the exercise of the powers conferred by this section.

 (9) A person must not—

 (a) hinder or obstruct an authorised officer in the exercise of a power conferred by this section; or

 (b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Maximum penalty: $10 000.

 (10) An authorised officer, or a person assisting an authorised officer, who in the course of exercising powers under this section in relation to an employer—

 (a) unreasonably hinders or obstructs the employer in the day to day running of his or her business;

 (b) addresses offensive language to the employer or to any other person at the workplace;

 (c) assaults the employer or any other person at the workplace,

is guilty of an offence.

Maximum penalty:

 (a) for an offence against [paragraph (a)](#id8c52a89d_1822_4811_9b74_7164dabda37c_2) or [(b)](#id3d3281cc_0bb3_455e_8f44_ee64e4f5320c_e)—$5 000;

 (b) for an offence against [paragraph (c)](#id9083201c_37dc_4906_b7d6_8b8a43e1d438_9)—$5 000 or imprisonment for 1 year.



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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.

1. Section 183(1)(a) [↑](#footnote-ref-1)
2. Section 183(1)(b) [↑](#footnote-ref-2)
3. Section 183(1)(e) [↑](#footnote-ref-3)
4. Section 183(1)(f) [↑](#footnote-ref-4)
5. Section 183(1)(c) and section 183(1)(h) [↑](#footnote-ref-5)
6. Section 183(1)(d) and section 183(1)(h) [↑](#footnote-ref-6)
7. Section 16(6); section 26(3); section 28(3); section 30(5); section 30(6); section 33(16); section 52(4); section 102(5); section 108(1); section 115(2); section 128(1); section 154(5); section 155(4); section 163(1); section 165(3); section 165(5); section 165(6); section 174(1); section 180(15); section 183(9); section 183(10); section 184(3); section 185(1); section 186(1); section 196(1), section 196(2). See also s198 – a person who contravenes or fails to comply with a provision of this Act is guilty of an offence – and if no penalty is specifically provided, they are liable to a fine not exceeding $5000. [↑](#footnote-ref-7)
8. Section 4 [↑](#footnote-ref-8)
9. Under section 17 of the *Return to Work Corporation of South Australia Act* 1994. [↑](#footnote-ref-9)
10. The term “business or undertaking” is also defined in an expansive way. [↑](#footnote-ref-10)
11. So long as that person was not themselves suspected of committing an offence against the Act. [↑](#footnote-ref-11)
12. *Workcover Corporation of South Australia & Another v Broken Hill Proprietary Company Limited; Jagermann v Workcover Corporation of South Australia (“Jagermann’”*)(1999) 73 SASR 393, 397 [21]-[23] (Doyle CJ). [↑](#footnote-ref-12)
13. *Jagermann* at [21]. [↑](#footnote-ref-13)
14. *Maroulis v Duffin* (2005) 93 SASR 1 [↑](#footnote-ref-14)
15. *Jagermann* at [21]. In *Maroulis v Duffin* (2005) 93 SASR 1 at [12], the purpose of a written notice to produce documents was said to be an “audit” or “review” of a doctor’s charges rendered to WorkCover clients – without reference to any individual claim or as part of any investigation as to whether any offence against the Act had been committed. While the general objects of the Act might have permitted such a review, they were not a purpose of the Act for which s 110 (s 183) powers could be used: [31] (White J). [↑](#footnote-ref-15)
16. *R v Nguyen* (2013) 117 SASR 432 at [21] (Kourakis CJ, Blue and Stanley JJ). [↑](#footnote-ref-16)
17. *R v Nguyen* at [22]. [↑](#footnote-ref-17)
18. Although often an authorised officer may suspect that an offence has been committed and completed, and other similar offences may still be continuing. That would not stop them from using their power to seize evidence of the completed offences. [↑](#footnote-ref-18)
19. Section 183(5) *Return to Work Act 2014* [↑](#footnote-ref-19)
20. Section 4(2) *Acts Interpretation Act 1915.* [↑](#footnote-ref-20)
21. And note that “writing” includes any visible form in which words, figures, drawings or symbols may be reproduced or represented: s4(1)) *Acts Interpretation Act 1915.* [↑](#footnote-ref-21)
22. Section 4(1) *Acts Interpretation Act 1915.* [↑](#footnote-ref-22)
23. Section 4(1) *Acts Interpretation Act 1915.* [↑](#footnote-ref-23)