

GUIDE TO WORKERS COMPENSATION APPROVAL AS A SELF INSURER IN THE ACT

Disclaimer

This Guide provides general information about the obligations of persons conducting a business or undertaking and/or persons in control of premises and workers under the Work Health and Safety Act 2011. The Guide gives some suggestions for complying with these obligations. However, this Guide is not intended to represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. Full details of legal obligations and responsibilities are set out in the Work Health and Safety Act 2011 referred to in this Guide. If you refer to the legislation you should take care to ensure that you use the most up-to-date version, available from www.legislation.act.gov.au. You should seek legal advice if you need assistance on the application of the law to your situation.

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1. OVERVIEW

1.1 INTRODUCTION

This information pack has been prepared to facilitate the application for exemption for employers to maintain a compulsory workers compensation policy in the ACT. This process is often referred to as an Application for Approval as a Self Insurer under the ACT Workers Compensation Act 1951 (the Act) and the Workers Compensation Regulation 2002 (the Regulation).

Section 151 of the Act states that:

"The Minister may, by written notice given to an employer, exempt the employer from complying with section 147 (1) (Compulsory insurance— employers) for a stated period."

Self Insurers approved by the Minister are normally approved for a 3 year period. At the end of the approval period, those re-applying for exemption/ approval are required to submit a full application.

Access Canberra - Access Canberra has developed an application process, which is outlined in the documentation provided in this package.

It should be noted that the conditions and information outlined in this document are minimum requirements. Additional conditions and information requirements may be imposed at any time during the approval period and such conditions and requirements must be complied with.

The purpose of this document is to provide organisations with information that will enable them to submit an application for exemption under the Act. This document includes:

- Guidelines for eligibility, including details of information to be supplied for the:
 - Application process
 - Review process
- The approval process, including:
 - the application assessment process,
 - the approval process, and
 - the application fee
 - the approval fee;
- Conditions relating to action against Self Insurers



1.2 APPLICATION PROCEDURE

All applications for exemption are made to Access Canberra. The application is an online Smart Form, and all documents can be uploaded immediately. The application must contain:

- the Completed Application Form as a Self-Insurer;
- the Completed Checklist;
- other documentation as outlined in the Checklist;
- the Application Fee.

To enable prompt assessment, applicants should ensure that all necessary information is submitted to Access Canberra.

Applications and enquiries should be forwarded to:

Workers Compensation Inspectorate

Access Canberra - PO Box 158,

Canberra ACT 2601

Telephone: (02) 6207 3000

Fax: (02) 6205 0336

E-mail: workerscompensation@act.gov.au

1.3 APPLICATION COSTS

The prescribed fees associated with an application for approval as an Insurer in the ACT are set by the Minister each financial year.

For information contact the Workers Compensation Team.

1.4 APPLICATION TIMEFRAMES

Any employer wishing to re-apply for an exemption/approval that is about to expire will have to provide a full and completed application at least 3 months in advance of the expiry date

For any new applicants applying for an exemption to become a Self Insurer must supply a full and complete application and be aware that approval may take up to three months.

2. GUIDELINES FOR ELIGIBILITY

WHO IS ELIGIBLE TO APPLY FOR EXEMPTION?

Any employer as defined under the Act is eligible to submit an application for exemption.





The definition of an employer under Section 5 of the Workers Compensation Act 1951 (the Act) states that:

“employer includes—

- a) an entity; and
- b) the legal personal representative of a dead employer; and
- c) if the services of the worker are temporarily lent or let on hire to someone else (the temporary employer) by the person (the original employer) with whom the worker has entered into a contract of service or apprenticeship—the original employer is, for this Act, taken to continue to be the employer of the worker while the worker is working for the temporary employer.”

INFORMATION TO BE SUPPLIED

All documentation relating to the requirements listed below must be part of or appended to the application. Failure to supply the required documentation will cause delays in processing the application.

2.1 APPLICATION

The application must include or be accompanied by the following information as per Section 86 of the Workers Compensation Regulation 2002(the Regulation):

- a. a written statement by the employer that the employer will be able to meet present and future claims under the Act for which the employer is, or is expected to be, liable;
- b. if the employer has, or is applying for, a corresponding exemption—evidence of the exemption or application;
- c. evidence that the employer has reinsurance of at least \$500 000 cpi indexed for a single event to cover the employer’s future liability under the Act;
- d. a copy of the employer’s annual report and balance sheet (or, if either is not available, equivalent information) for each of the previous 3 years;
- e. an actuarial report, which must contain:
 - a. an estimate of the employer’s current outstanding liability in relation to compensable injuries); b). an estimate of the total of the employer’s expected liability for each year in relation to which the
 - b. employer is applying to be a self-insurer;
 - c. an estimate of the total of the expected payments in satisfaction of the employer’s liability for compensable injuries that will be made for each year in relation to which the employer is applying to be a self-insurer.
- f. a guarantee from an authorised deposit-taking institution in favour of the nominal insurer for the guaranteed amount in relation to the employer;
- g. The guaranteed amount is the greater of the following amounts:



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- a. \$750 000; or
 - b. an amount calculated by an actuary to be the estimate of outstanding claims liability at the balance date, plus a prudential margin of 30%.
 - h. a written agreement by the employer to allow the Minister to discuss the affairs and performance of the employer with Commonwealth or State Ministers responsible for workers compensation or corporate or prudential regulation;
 - i. a written agreement by the employer to allow, and pay the cost of, an audit conducted on behalf of the Minister to establish that the employer has adequate resources to meet the employer's expected liabilities under the Act;
 - j. a copy of the employer's OH&S policy and evidence that it has been brought to the attention of the employer's workers;
 - k. the name, address in the ACT and telephone number of a person nominated by the employer to be the contact officer who is to give information about claims under the Act to the Minister;
 - l. evidence that the employer has in place an occupational health and safety management system that complies with Australian Standard 4801as in force from time to time;
 - m. Note Australian Standard 4801 is Occupational Health and Safety Management Systems — specification with guidance for use.
 - n. (l) a written statement by the employer that the employer will be able to meet its obligations under the Act in relation to injury management programs and personal injury plans;
 - o. (m) a written agreement by the employer to allow, and pay the cost of, an investigation by the Minister to assess the employer's statement under paragraph (l).

Please note the conditions of becoming a Self-Insurer provided in Division 10.3 of the Regulation may require you to provide further information following exemption should it be deemed necessary by the Minister.

2.2 REVIEW

The review of the application, which will be conducted as part of the assessment process, will determine that:

- in accordance with Section 86 of the Regulation, the employer is able to meet the exemption requirements;
- in accordance with Sections 86 and 87 of the Regulation, the employer is able to meet the financial requirements;
- in accordance with Section 87 of the Regulation, the employer has established an appropriate Injury Management Program, which identifies the processes required to enable the establishment of personal injury plans for injured workers; and



- in accordance with Section 87 of the Regulation, the employer is able to comply with the employer's duties under the Occupational Health and Safety Act 1989, part 4.

However, if information is disclosed in the documents provided by the applicant for exemption, or information comes to light from other sources that bring the financial viability or prudential soundness of the applicant into question, then the Minister may seek further information in writing from the applicant or decide that an audit of the applicant is necessary.

Should the applicant be advised of the need for an audit, then the applicant would be liable to meet the costs of the audit, and no audit would be undertaken without first advising the applicant within a sufficient timeframe.

2.3 OTHER REQUIREMENTS

Access Canberra - may review any of the following systems and processes to establish an understanding and assist an applicant in meeting their requirements under the Act and Regulations:

- that the employer has the appropriate processes in place to meet its obligations in regard to:
 - The Work Health & Safety Act 2011
 - Injury Management Programs (Section 89 of the Act), particularly relating to the processes involved in ensuring employers were aware of their obligations and responsibilities under the Act;
 - Prompt Payment for services (Section 90 of the Act);
 - Personal Injury Plans (Section 97 of the Act);
 - Provision of Information about the Personal Injury Plan (Section 98 of the Act);
 - Notification of rejection of claim, particularly the provision of the reason for rejection (Section 129 of the Act); and,
 - Continued weekly compensation payments for a period of 2 weeks after the rejection of a claim (Section 130 of the Act).
- in accordance with Notifiable Instrument **NI2015-495: Workers Compensation (National Insurer Data Specifications) Approved Protocol 2015 (No 1)**
- the employer collects all information as specified in the Download Specifications; and
- in accordance with Notifiable Instrument **NI2015-495: Workers Compensation (National Insurer Data Specifications) Approved Protocol 2015 (No 1)**

the employer is able to provide data within the specified timeframes as specified in the Download Specifications.

- Relevant forms relating to claims
- Details of how the applicant will meet it's reporting requirements under the Act
- Details of the applicant's current ACT Workers Compensation Policy, including:
 - Name of Insurer;
 - Policy Number;



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- Date of Expiry of the current term of the policy;
 - Estimated wages for the current term of the policy;
 - Estimated number of workers for the current term of the policy; and
 - The cost of premium for the current term of the policy.

It should be noted that it is not the intention of Access Canberra - to notify your current insurer of your application for exemption. This information is required to consider the impact of possible approval on the workers compensation scheme as identified in Regulation 87 of the Regulation.

Should the applicant not wish to provide any of this additional information for the purposes of exemption, an objection may be lodged, in writing, to the Minister.

