

Australian Capital Territory

# Workers Compensation (Self-Insurer Licence Application) Protocol 2022

Notifiable instrument NI2022–165

made under the

**Workers Compensation Regulation 2002, section 100 (Approved protocols about certain documents and information and section 101 (Approved protocols for insurers)**

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## 1 Name of instrument

This instrument is the *Workers Compensation (Self-insurer Licence Application) Protocol 2022*.

## 2 Commencement

This instrument commences on the day after notification.

## 3 Approval

I approve the attached *Self-insurer Licence Application Protocol 2022*.

Mick Gentleman MLA  
Minister for Industrial Relations and Workplace Safety  
30 March 2022

# Self-insurer Licence Application Protocol

## 1. Introduction

For the purposes of the Workers' Compensation Scheme, the *Workers Compensation (Self-insurer Licence Application) Protocol* (the Protocol) is made under sections 100 and 101 of the *Workers Compensation Regulation 2002* (the Regulation).

Employers must be licensed to operate as a self-insurer. To become a licensed self-insurer, applicants will need to apply for a workers' compensation insurer licence under section 145K of the *Workers Compensation Act 1951* (the Act).

Section 145L of the Act requires applications to:

- a) be in writing; and
- b) comply with the requirements for the application.

Section 145M of the Act allows the regulator to request more information that the regulator reasonably needs to decide the application.

The application requirements are made under the Regulation<sup>1</sup> and in this Protocol<sup>2</sup> as set out in clause 3 below.

### How to apply for a licence

Applications are made to the regulator<sup>3</sup> who is responsible for assessing licence applications in accordance with the Act and the Regulation.

When applying for a licence, a self-insurer must submit an application to WorkSafe ACT:

By post to: WorkSafe ACT  
PO Box 158  
CANBERRA ACT 2601

Att: WHS Commissioner

Or by email to: [workerscompensation@worksafe.act.gov.au](mailto:workerscompensation@worksafe.act.gov.au)

If a self-insurer has questions about the application process, they may contact WorkSafe by

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<sup>1</sup> Section 145U(a) allows the Regulation to prescribe how a self-insurer may apply for an insurer licence. Section 84A of the Regulation sets out the requirements for an insurer licence application.

<sup>2</sup> Refer section 84A of the Regulation

<sup>3</sup> Regulator means the WHS Commissioner as prescribed in the *Work Health and Safety Act 2011*

email at: [workerscompensation@worksafe.act.gov.au](mailto:workerscompensation@worksafe.act.gov.au) or phone: 13 22 81.

## When can a licence be issued?

A licence may be issued by the regulator only where the regulator is satisfied that:

- a) a self-insurer is financially and prudentially sound; and
- b) the self-insurer, if licensed, will:
  - i. be able to meet their existing and expected liabilities under the Act; and
  - ii. be able to meet the employer's obligations under the Act in relation to injury management programs and personal injury plans; and
  - iii. be able to comply with the employer's health and safety duties under the *Work Health and Safety Act 2011*; and
  - iv. comply with the conditions of their self-insurer licence.<sup>4</sup>

Once a licence is granted, it remains in force until such time as it is cancelled<sup>5</sup> or suspended.

## 2. Application requirements

This Protocol provides the minimum application requirements when an applicant applies for an ACT workers' compensation self-insurer licence. The regulator may request additional<sup>6</sup> information over and above what is contained in this protocol if required.

This Protocol is made up of four parts:

- **Part A** – application requirements under the Regulation;
- **Part B** – application requirements under this Protocol: additional information and evidence which is required to assist the regulator to make a fully informed determination of the application;
- **Part C** – application requirements under this Protocol: the declarations which a self-insurer is required to make when applying for a self-insurer licence; and
- **Part D** – application requirements under this Protocol: the proforma which self-insurers must use when obtaining a Bank Guarantee.

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<sup>4</sup> Criteria for issuing self-insurer licence (s84B of the Regulation)

<sup>5</sup> Surrender of a licence is taken to be a cancellation (s145R of the Act)

<sup>6</sup> Regulator may request additional information to decide an application (section 145M of the Act)

### 3. Application specifications

#### Part A – Application requirements under the Regulation

##### Financial and prudential

1. All applications for licence must submit information demonstrating (section 84A of the Regulation):
  - a. evidence that the applicant has unlimited reinsurance for a single event to cover the self-insurer's existing and expected liability under the Act;
  - b. a copy of the self-insurer's audited financial statements (or equivalent information) for each of the previous 3 years; and
  - c. an actuarial report as specified in section 84A(1)(e) and section 84A(3) of the Regulation, and
  - d. a guarantee from an authorised deposit-taking institution in favour of the DI fund for the guaranteed amount as defined in sections 84A(1)(f) and 84A(4), in the format provided in Part D of this application.

##### Corresponding licence information

2. To allow the regulator to fully consider the applicant's ability to operate as a licensed self-insurer, if the applicant has a corresponding workers' compensation licence in another jurisdiction, the application must include evidence of:
  - a. the corresponding workers' compensation self-insurer licence; and
  - b. if the corresponding self-insurer licence is subject to conditions—the conditions on the licence.

##### Injury management and Work Health & Safety

3. All applicants are required to establish and maintain an injury management program under section 88 of the Act.
4. An application for a self-insurer licence must include a copy of the injury management program.

5. All self-insurers must employ a return-to-work coordinator (RTWC) as per section 103(B)(b) and 103C of the Act.
6. All applicants are required to have in place an occupational health and safety management system that complies with any Australian New Zealand standards in relation to safety mentioned in a protocol relating to applying for a licence.
  - a. For the purposes of section 84A(1)(g) of the Regulation, the AS/NZS ISO 45001:2018 Australian Standard is mentioned in this protocol.
  - b. Occupational health and safety management systems that comply with the now superseded AS/NZS 4801-2001 would also be considered to meet the requirement in section 84A(1)(g) of the Regulation until 1 July 2023.
7. Applicants must include evidence of their occupational health and safety management system with their application.

## **Part B – Application requirements under this Protocol: additional information requirements**

### **Part B1 – General information requirements**

#### **Organisation details**

8. An application for a licence must include information to identify and contact the applicant.
9. The application must contain the following information:
  - a. applicant name;
  - b. applicant ABN or ACN;
  - c. applicant business address;
  - d. applicant primary email contact; and
  - e. applicant business contact phone number.

#### **Key personnel information**

10. Key personnel information is required for the purposes of administering and monitoring the scheme, data reporting, monitoring scheme performance, claims queries and other purposes.
11. All applicants must provide the name, title and contact details (email address and phone number) for each key personnel of the applicant. Key personnel are considered to be:

- a. the relevant executive office with responsibility for the applicant's workers' compensation portfolio;
- b. the primary contact for enquiries about self-insurer performance;
- c. the primary contact for enquiries from the regulator;
- d. the primary contact for attending self-insurer meetings;
- e. the primary contact for self-insurer data enquiries;
- f. the primary claims management contact for claims enquiries; and
- g. the primary financial information contact for invoicing scheme levies.

## **Part B2 – Additional information and evidence requirements**

### **Location of claims management services**

12. Self-insurers have a critical role under the Act in supporting injured ACT workers to return to work.
13. To ensure self-insurers have an understanding of the ACT's private sector workers' compensation scheme, local providers and workplaces, all applicants should maintain an office and employ claims personnel in the ACT.
14. An application for a self-insurer licence must include the applicant's ACT registered office where claims management services for the self-insurer will be provided, if different to the registered business address provided in part B.1 above.
15. Claims management services include, but are not limited to, claims administration and processing, claim payments and claims management procedures and data management.

### Claims management functions carried on outside of the ACT

16. If an applicant proposes to provide claims management services under the Act outside of the ACT, this must be approved by the regulator.
17. An applicant must provide evidence to the regulator to demonstrate that the services proposed to be provided outside the ACT meet the same service delivery standard regardless of whether claims management functions are provided in the ACT or outsourced.
18. Evidence to be submitted in relation to clause 17 above includes:
  - a. details of claims management functions for the applicant's ACT workers' compensation claims that are proposed to be managed outside of the ACT;

- b. evidence that personnel performing claims management functions have information, training, knowledge and experience of workers' compensation and the legislation in the ACT.

### **Location of Injury management services**

19. The provision of injury management services is a pivotal component in the support of injured workers and their return to work and these services should be located in the ACT.
20. An application for a self-insurer licence should be supported by information about the location of personnel that will be performing Return to Work Coordinator and Workplace Rehabilitation Provider functions for ACT workers' compensation claims.

### Outsourcing of injury management functions

21. If an applicant proposes to provide injury management functions outside of the ACT, this must be approved by the regulator.
22. An applicant must provide evidence to the regulator to demonstrate that the services proposed to be provided outside the ACT meet the same service delivery standard regardless of whether injury management functions are provided in the ACT or outsourced.
23. Evidence to be submitted under clause 22 above includes:
  - a. details of injury management functions for the applicant's ACT workers' compensation claims that are proposed to be managed outside of the ACT;
  - b. evidence that personnel performing injury management functions have information, training, knowledge and experience of workers' compensation in the ACT and the Act, including local knowledge relating to ACT service providers.

## **Part C – Additional requirements under this Protocol: declarations required for self-insurer licence applications**

### **Declarations**

24. When applying for a self-insurer licence, the applicant must acknowledge their self-insurer responsibilities under the Act and agree the following declarations:
  - a. the applicant agrees to comply with the Workers Compensation Act 1951 (the Act) and the Workers Compensation Regulation 2002 (the Regulation);
  - b. the applicant, if granted a licence, agrees to comply with the conditions of licence imposed under section 145P of the Act and division 10.2 of the Regulation and any guidelines issued by WorkSafe in relation to workers' compensation;

- c. the applicant agrees to comply with any approved protocols made that relate to a licensed self-insurer;
  - d. the applicant agrees to provide information, comply with reasonable requests of a person conducting a compliance or financial audit, and pay reasonable fees and expenses of a compliance audit or financial audit required by the regulator under part 10A of the Regulation<sup>7</sup>;
  - e. the applicant will be able to meet existing and expected liabilities future claims under the Act for which they are or are expected to be liable; and
  - f. the applicant agrees to allow the Minister to discuss the affairs and performance of the applicant with Commonwealth or State Ministers responsible for workers compensation, or corporate or prudential regulation.
25. When submitting an application for licence, the applicant acknowledges that information provided by the applicant under the Act, including data about workers compensation claims, is reasonably necessary if it is used:
- a. for compliance purposes;
  - b. to monitor and review scheme performance, insurer performance, reporting for comparative purposes across Australia; and
  - c. for research commissioned for the purposes of monitoring the scheme and promoting worker safety and injury management; and
  - d. agrees to collect information in a manner that would facilitate these uses.
26. When submitting an application for licence, the applicant agrees the regulator may:
- a. by written notice, require the applicant to provide:
    - i. further evidence or information in relation to the requirements set out in section 84A of the Regulation; and
    - ii. any other relevant evidence or information necessary to determine whether the regulator may licence the applicant;
  - b. request further evidence or information or inspect evidence or information given to the regulator as part of the application to verify its contents.
27. An insurer licence application must be signed by an officer with authority to act on behalf of the applicant.

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<sup>7</sup> Section 90 of the Regulation.



## Part D – Application requirements under this Protocol: Bank Guarantee Proforma

### Australian Capital Territory Workers Compensation Bank Guarantee Proforma

**THIS AGREEMENT** for Financial Undertaking is made on the xx day of xxx Year

**BETWEEN** the Default Insurance Fund under the *Workers Compensation Act 1951* (the Act)

**AND** The Financial Institution specified in Item 1 of Schedule 1 (Bank)

**The Bank** has agreed at the request of the party specified in Item 4 (**Guaranteed Party**) to issue this financial undertaking in favour of the party specified in Item 5 (**Beneficiary**).

The Bank agrees with the Beneficiary as follows:

#### Operative Part

1. The Bank unconditionally and irrevocably undertakes to pay the Beneficiary upon receipt from the Beneficiary of a written demand any amount or amounts to a maximum aggregate amount as specified in Item 6 of the Schedule (**Maximum Amount**).
2. To make demand under this instrument the Beneficiary must deliver a demand in writing purporting to be signed by or on behalf of the Beneficiary and substantially in the form specified in Schedule 2 to the Bank at the address specified in Item 2 for the attention of the office specified in Item 3.
3. The Bank will make payment to the Beneficiary upon receiving the demand referred to in paragraph 2 above without reference to the Guaranteed Party and notwithstanding any contrary direction or notice by the Guaranteed Party.
4. The liability of the Bank under this instrument will continue until:
  - a. written notice has been given to the Bank by the Beneficiary that the instrument is no longer required; or
  - b. the Bank makes payment to the Beneficiary of the whole of the Maximum Amount in one payment; or

- c. the time at which the total of all payments of such amounts as the Beneficiary may demand from time to time when aggregated, equal the Maximum Amount; or
  - d. the Guaranteed Party delivers a replacement financial undertaking in the same terms as this instrument from a financier acceptable to the Beneficiary in its absolute discretion and for an amount no less than the Maximum Amount.
5. The Beneficiary will, upon request by the Bank, following the first occurrence of any of the events specified in Clause 4 above, return the original of this instrument promptly to the Bank for cancellation.
  6. The Bank may terminate its liability under this instrument at any time by paying to the Beneficiary the balance of the Maximum Amount outstanding.
  7. Unless the Bank's liability has terminated pursuant to Clauses 4 or 6 above, the liability of the Bank under this instrument will not be affected, discharged or released for any reason, including the fact that the Guaranteed Party ceases to be an approved self-insurer under any ACT legislation governing the operation of workers compensation.
  8. The Bank warrants that this undertaking has been executed in accordance with the laws of the place specified in Item 7. The Bank agrees that, in respect of any dispute relating to this instrument, the Bank submits to the jurisdiction of the courts of the Australian Capital Territory.
  9. If this instrument is executed by an attorney of the Bank, the attorney warrants by their execution of this instrument that their power of attorney confers the power to execute this instrument and the appointment has not been revoked.
  10. Neither the Beneficiary nor the Bank may transfer or assign its right or interest under this instrument except that a statutory successor of the Beneficiary will have the same rights as the Beneficiary specified in this undertaking.

Signed by the attorney of [xxxxx] under power of attorney registered Book [ xx] No [ xx], and who has received no notice of the revocation of the power, in the presence of:

.....  
Signature of witness

.....  
Signature of attorney

Signed  
[place of

.....  
Name of witness (print)  
execution]

.....  
Name of attorney (print)

Dated                    this            day of            20

## Schedule 1

**Item 1:** [ ] ABN ## of the address specified in Item 2

**Item 2:** [insert details of office from which undertaking issued]

**Item 3:** [insert office of person upon whom demand must be served or an equivalent position - eg Chief Legal Officer or any substitute for Chief Legal Officer]

**Item 4:** [insert details of Guaranteed Party - full name + ABN + address]

**Item 5:** Default Insurance Fund, Level 3, Canberra Nara Centre, 1 Constitution Avenue, Canberra ACT 2601

**Item 6:** [Maximum Amount - in words, for example (Five million dollars) and figures (\$5,000,000)]

**Item 7:** Australian Capital Territory

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Initialed by signatory