

SOUTH AUSTRALIA

**WORKCOVER CORPORATION (STATUTORY RESERVE AND
INSURANCE ASSISTANCE FUNDS—CONTRACTUAL
ARRANGEMENTS) REGULATIONS 1996**

SUMMARY OF PROVISIONS

1. Citation
2. Commencement
3. Authorisation of contract
4. Effect of authorisation

SCHEDULE

REGULATIONS UNDER THE WORKCOVER CORPORATION ACT 1994

*WorkCover Corporation (Statutory Reserve and Insurance
Assistance Funds—Contractual Arrangements) Regulations 1996*

being

No. 35 of 1996: *Gaz.* 14 March 1996, p. 1638¹

¹ Came into operation 6 June 1996, being the day immediately following the day on which the disallowance of these regulations passed: reg. 2.

Citation

1. These regulations may be cited as the *WorkCover Corporation (Statutory Reserve and Insurance Assistance Funds—Contractual Arrangements) Regulations 1996*.

Commencement

2. These regulations will come into operation on the day immediately following the day on which the time for the disallowance of these regulations has passed (*see* section 14(4a) of the *WorkCover Corporation Act 1994*).

Authorisation of contract

3. A contract in the form, or substantially in the form, of the contract contained in the schedule is an authorised contract under section 14(4) of the *WorkCover Corporation Act 1994*.

Effect of authorisation

4. A contract that is entered into by the Corporation in accordance with the authorisation provided by these regulations will remain in full force and effect as between the parties to the contract even if these regulations are varied or revoked so that the contract would otherwise cease to be a contract that is authorised by these regulations.

SCHEDULE

CLAIMS MANAGEMENT AGREEMENT

PARTIES

WorkCover Corporation of South Australia ("the Corporation")

AND

SGIC General Insurance Ltd ACN 069 065 158 of 211 Victoria Square Adelaide in the State of South Australia 5000 ("the Agent")

PURPOSE OF THIS AGREEMENT

- (a) The Corporation's function which is relevant to this Agreement is administering clauses 5 and 5A of Schedule 1 to the WRCA so as to achieve the objectives set out in Section 2(1) of the WRCA.
- (b) The Corporation has the power to enter into any form of contract which is necessary for or incidental to the performance of its functions including (but subject to authorisation by regulation) a contract with a private sector body involving the conferral of power on that body to manage and determine claims.

TERMS OF THIS AGREEMENT

The Corporation and the Agent agree to be bound by the terms and conditions set out in this Agreement and the annexed conditions ("the Conditions").

PERIOD OF THIS AGREEMENT

This Agreement shall be in force for the period specified in the Conditions.

EARLY TERMINATION OF THIS AGREEMENT

This Agreement may be terminated prior to its expiration in the circumstances prescribed for that purpose in the Conditions.

NATURE OF THE RELATIONSHIP BETWEEN THE CORPORATION AND THE AGENT

It is expressly agreed that the rights, entitlements, duties and obligations of the Corporation and the Agent are to be found entirely in the terms of this Agreement and that no right, interest or expectation shall arise other than that expressly provided for herein.

PROHIBITION AGAINST ASSIGNMENT

It is expressly agreed that this Agreement is personal as between the Corporation and the Agent and is not capable of being assigned or transferred by the Agent or the Corporation.

NO GOODWILL

The Agent acknowledges that it will neither create or acquire any goodwill in the undertaking of the Claims Management Function on the basis that it is expressly agreed that:

- (a) the Agent has no right, claim or entitlement to a renewal of this Agreement; and
- (b) the Corporation retains the right to enter into further Claims Management Agreements from time to time with respect to the receipt of claims management services.

FORCE MAJEURE

If for any reason:

- (a) the Corporation ceases to perform the functions under the WCA and the WRCA which it performs at the commencement of this Agreement; or
- (b) the Commonwealth of Australia or any statutory body established by the Commonwealth of Australia offers a form of workers compensation indemnity to entities to which it does not currently offer the same so as to materially affect the extent of the application of the WorkCover Scheme in South Australia; or
- (c) there is any other like adverse change to the circumstances currently applicable to the WorkCover Scheme in South Australia which is beyond the control of either the Agent or the Corporation,

then either party may bring this Agreement to an end by giving three (3) months' notice in writing of its intention so to do in which event neither the Corporation nor the Agent shall have a claim against the other in respect of any matter other than an entitlement that arose prior to the effective date of such termination.

CONDITIONS PRECEDENT

The operation of this Agreement is subject in all respects to the following occurring:

- (a) this Agreement becoming an authorised contract under Section 14 of the WCA;
- (b) Parliament enacting the Workers Rehabilitation and Compensation (SGIC) Amendment Act in the form or substantially the form circulated between the Corporation and the Agent prior to the execution of this Agreement to the intent that notwithstanding the operation of clause 2 of the Conditions this Agreement shall not come into operation until the last to occur of (a) or (b).

DATED 1 December 1995.

THE COMMON SEAL of)
THE WORKCOVER CORPORATION OF)
SOUTH AUSTRALIA) L.S.
was hereto affixed in the)
presence of:)

M J Terlet
.....

R W Hercus
.....

THE COMMON SEAL of)
SGIC GENERAL INSURANCE LTD)
was hereto affixed in the) L.S.
presence of:)

M J Pirone
.....
Director

B R Sheldrick
.....
Secretary

CONDITIONS

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1. CORPORATE REQUIREMENTS AND ARRANGEMENTS

- 1.1 The Agent cannot, under any circumstances, utilise the name "WorkCover" in either its legal or trading name.
- 1.2 The Agent will notify the Corporation of:
- (a) a change in the effective control of the Agent and its immediate or ultimate holding company; or
 - (b) a change in the direct or indirect ownership of the Agent; or
 - (c) a change exceeding 20% of the shareholding in any period of twelve months in the Agent's holding company.

For the purposes of this condition, a change in effective control means a change in the shareholding of the Agent, or its immediate or ultimate holding company whereby the voting rights attaching to the shares the subject of that change is sufficient to alter the degree of control exercised in the authorised Agent or its immediate or ultimate holding company by the owners of those shares.

2. PERIOD OF AGREEMENT

This Agreement shall be in force for a period of three (3) years commencing from the date that this Agreement becomes an authorised contract under Section 14 of the WCA. The parties must discuss renewal of the Agreement not more than twelve (12) and not less than six (6) months prior to its expiry (provided that it has not been terminated or surrendered in the manner contemplated by the Agreement) and, subject to the operation of the WRCA and the WCA, negotiate in good faith with respect to a renewal of the Agreement on the same or otherwise appropriate terms.

3. RESPONSIBILITIES OF THE AGENT

- 3.1 The Agent shall provide the Agent's Services for the period of the Agreement and at the discretion of the Corporation for such longer period thereafter as may be necessary in order to effect an orderly return of the Claims to the Corporation.
- 3.2 In providing the Agent's Services the Agent shall:
- (a) insofar as may be applicable to the Agent's Services act in a manner consistent with the Relevant Law, including acting in a manner that ensures that the performance of the Claims Management Function by the Agent on behalf of the Corporation satisfies the Corporation's obligations under the Relevant Law without breach of the same; and
 - (b) insofar as they may be applicable to the Agent's Services comply with any guidelines, directions, procedural manuals issued by the Corporation from time to time for the purpose of executing its functions referred to in Section 13 of the WCA.

8.

- 3.3 The Corporation shall from time to time pay to the Agent funds which are to be applied by the Agent in payment of the Claims on the basis that:
- (a) the Corporation will make such funds available as are reasonably required to meet claims as they arise from time to time;
 - (b) the moneys shall be invested by the Agent in an approved form of investment with all income on the investment accruing to the credit of the Corporation and the Agent shall be entitled to an investment fee agreed from time to time between the Corporation and the Agent for that purpose;
 - (c) the Agent shall be entitled to draw amounts from the funds so held by the Agent in payment of the Claims;
 - (d) subject to compliance with Schedule A the Agent shall be entitled to draw moneys from the funds held by the Agent under this clause in payment of the remuneration due to the Agent under this Agreement.

4. **AUDIT**

The Corporation shall be entitled, upon the giving of reasonable notice, to undertake an audit of the Agent's performance of the Services and its compliance with the Agreement.

5. **ACCOUNTING AND OTHER INFORMATION**

- 5.1 The Agent shall keep such accounting records as correctly record and explain the transactions concerning the financial position of the Claims which are the subject of the Claims Management Function and maintain such records in accordance with the requirements of the Claims Recording and Reporting Function and otherwise in accordance with standards of the relevant accounting standards.
- 5.2 The Agent shall ensure the accounting returns and any information, data or reports required by the Corporation are accurate and are lodged with the Corporation within the time specified by the Corporation.
- 5.3 The Agent agrees that all information that it receives from the Corporation or which it receives or creates in or in the course of providing the Agent's Services shall be and remain the property of the Corporation and that:
- (a) the Corporation shall be entitled, upon the giving of reasonable notice, to enter upon the premises of the Agent and inspect and review the same including the taking of copies and other extracts of such documents or to provide access to a nominated third party for that purpose; and
 - (b) the Corporation shall be entitled to have possession and control of the same at the expiration or sooner termination of this Agreement;
 - (c) all documents concerning completed or finalised Claims shall be delivered to the Corporation when so required by the Corporation.

6. REMUNERATION

- 6.1 The Agent will be entitled to the remuneration specified in SCHEDULE A.
- 6.2 If during the term of the Agreement there is significant alteration in the Agent's functions and obligations to warrant adjustment of the Agent's remuneration, the Corporation and the Agent will negotiate an appropriate adjustment.
- 6.3 After each twelve months' operation of this Agreement, the Corporation, in consultation with the Agent, will review the amount and composition of remuneration payable to the Agent provided that, except in the circumstance dealt with in clause 6.2, the remuneration payable to the Agent shall not be reduced as a result of such a review.
- 6.4 The Corporation's determination of the remuneration payable to the Agent in the future shall be binding upon both the Corporation and the Agent provided that if the Agent is dissatisfied with the determination the Agent may surrender this Agreement by notice in writing to that effect given to the Corporation within thirty (30) days of the Corporation's determination which surrender shall come into effect six (6) months after the date of the giving of the same to the Corporation and, until the effective date of the surrender, the Agent shall be remunerated on the basis that existed prior to the determination of the Corporation.

7. SECURITY

- 7.1 The Agent is to ensure that it has in place at all times during the period of this Agreement an appropriate security system which ensures the confidentiality of all information obtained in respect of the claims in its custody and possession.
- 7.2 The Agent indemnifies the Corporation against any claims, suits proceedings, damages or losses arising from, or as a result of, any breach of the Agent's security system.

8. DELEGATIONS

The Corporation delegates the Delegated Powers to the Agent to exercise during the period of this Agreement subject to the provisions of the WCA and the WRCA on the basis that the making of this delegation shall not exclude or limit the Corporation's power to exercise any power or function so delegated.

9. CANCELLATION OF AGREEMENT

- 9.1 If a party is in breach or default of a provision of the Agreement (the "Defaulting Party") then the other party (the "Non-Defaulting Party") shall be entitled to give a notice to the Defaulting Party nominating the relevant breach or default requiring that such breach or default be remedied within thirty (30) days of receipt by the Defaulting Party of such notice.
- 9.2 If the Defaulting Party does not remedy the breach or default within thirty (30) days of receipt of a notice given pursuant to clause 9.1 then the Non-Defaulting Party may by notice in writing to the Defaulting Party terminate this Agreement.

10. **CONSULTATION**

The Corporation and the Agent agree that they will engage in consultative processes which are to be used to develop policy, procedures and to provide mechanisms for early intervention and quick resolution of any matters of concern.

11. **CONFIDENTIALITY**

The Agent agrees on its behalf and on behalf of its employees and agents that it shall act in a manner consistent with the provisions of Section 112(1) of the WRCA as if references therein to "the Corporation" were references to "the Agent" and shall not divulge information in a manner which is inconsistent with the operation of that provision, as if applicable to the Agent within the manner referred to above, except to the extent that the same is authorised by Section 112(2) of the Act as if that subsection were applicable to the Agent.

SCHEDULE A

REMUNERATION

Forty-five Dollars (\$45.00) per hour for work performed by way of the Services by the Agent in accordance with this Agreement calculated and payable monthly upon production of a properly itemised and substantiated claim.

SCHEDULE B

DEFINITIONS

In the Agreement -

"**Agent's Services**" means the aggregate of:

- the Claims Management Function;
- the Claims Recording and Reporting Function.

"**this Agreement**" or "**the Agreement**" means the aggregate of the Claims Management Agreement, the Conditions and the Schedules and any amendment or addition thereto contemplated by this Agreement.

"**Claim**" means any form of assertion by a person to an entitlement to receive money from the Corporation pursuant to clause 5(2) of Schedule 1 to the WRCA or a Section 118g policy as defined by clause 5A(6) of Schedule 1 to the WRCA and includes:

- such an assertion even if it is not successful;
- anything which is consequential upon such an assertion being successful;
- the entire amount that the person is or may become entitled to receive from the Corporation pursuant to the relevant provisions of Schedule 1 to the WRCA whether or not a separate or further assertion of an entitlement to receive the same is made by the person.

"**Claims Management**" means the entirety of the functions which are necessary for or incidental to the receipt, assessment, determination, payment, administration, review, finalisation and recording of a Claim.

"**Claims Recording and Reporting Function**" means the recording and retention of all material data concerning any Claim which is the subject of the Claims Management Function and the making of reports and the provision of access to that data in such manner as the Corporation may reasonably require from time to time by notice in writing to the Agent

"**Delegated Powers**" means all of the functions or powers of the Corporation referred to in Schedule C.

"**Relevant Law**" means:

- the WRCA and the WCA;
- any statutory instrument (within the meaning of the Acts Interpretation Act 1915) made under either the WRCA or the WCA;
- any Act or statutory instrument which is a "substitute" Act or statutory instrument within the meaning of the Acts Interpretation Act, of the foregoing Acts or statutory instruments;
- any other law capable of application to a Claim;
- the interpretation of any of the foregoing by a review authority or by a court.

"**WRCA**" means the Workers Rehabilitation and Compensation Act 1986 as amended.

"**WCA**" means the WorkCover Corporation Act 1994 as amended.

Any word or term that has a defined meaning in the WRCA or the WCA shall, unless the contrary appears, have the same meaning in these Conditions.

SCHEDULE C

DELEGATED POWERS

1. Grant of Delegation

Pursuant to Section 17 of the WorkCover Corporation Act 1994 the Corporation delegates to the Agent all of the powers of the Corporation as may be necessary for or incidental to the performance of the Claims Management Function.

2. Revocation and Variation

The Corporation may revoke the delegation of all or any of the Delegated Powers of the Agent at anytime by an instrument in writing either in whole or in part and in particular, and without limiting the foregoing, by addition of any exception, condition or limitation contained in the Appendix to this Schedule.

3. Compliance with Directions

The Agent shall in the exercise of the delegated powers of the Agent comply with conditions of the delegation and with directions of the Corporation given from time to time in accordance with the Relevant Law and this Agreement.

4. Policies of Corporation

The powers delegated to the Agent shall be exercised in accordance with any policies enunciated by the Corporation and advised to the Agent by notice in writing by an authorised officer.

5. **No Sub-Delegation**

The Agent may not sub-delegate or otherwise assign any of the Delegated Powers.

6. **Further Delegation**

The Corporation may delegate to the Agent further powers of the Corporation as it considers necessary for or incidental to the performance of the Claims Management Function in which event the Corporation shall forward to the Agent a further written instrument of delegation which further delegation shall be subject to the operation of this Agreement.