

OHS Performance and Assessment Guide

1. Introduction

A primary objective of Queensland's workers compensation scheme is to encourage improved health and safety performance by employers.

The Workers' Compensation Regulator has been established under the *Workers' Compensation and Rehabilitation Act 2003* (the WCR Act) to oversee workers' compensation insurers in Queensland.

The Workers' Compensation Regulator has responsibility for the issue or renewal of a licence to be a self-insurer only if satisfied that, among other criteria, the employer's occupational health and safety (OHS) performance is satisfactory.

The Regulator under the *Work Health and Safety Act 2011* (the WHS Regulator) has been established to ensure that workers and other people are protected against harm to their health, safety and welfare from risks arising from work activities or workplaces. The WHS Regulator is responsible for preparing a report about the OHS performance of an employer (or group of employers) that has applied for a self-insurance licence.

In undertaking these functions, the WHS Regulator role includes:

- considering the legislative performance and compliance of all employers subject to the self-insurance licence application;
- conducting the coordination of the OHS management system audits of all employers subject to the self-insurance licence application;
- reporting the findings of the OHS performance assessment to the Workers' Compensation Regulator.

The Workers' Compensation Regulator and the WHS regulator are supported in undertaking their functions by the Office of Industrial Relations (OIR).

These requirements support the objectives of the workers' compensation scheme by supporting healthier, safer and more productive workplaces, and providing a mechanism for self-insurers to benchmark their performance as a basis for continuous improvement of their systems for managing OHS

2. Purpose

The purpose of this guide is to inform workers' compensation scheme stakeholders and provide information on the procedures for obtaining an OHS performance assessment for the purpose of issuing or renewing a self-insurer's licence under the WCR Act.

This guide supports the Self-Insurer Performance and Compliance Framework, which outlines how OIR will monitor self-insurers' performance, and assess whether a self-insurer is fit and proper and complying with their licence conditions and obligations.

3. Application for issue or renew of a licence to be a self-insurer

Applications for issue or renewal of a licence to be a self-insurer must be lodged with the Workers' Compensation Regulator, through Self-Insurer Licencing and Performance Unit, OIR.

The Workers' Compensation Regulator may issue or renew a licence for a single or group employer to be a self-insurer only if the employer meets the self-insurance criteria, including demonstrating satisfactory OHS performance.

The applicant must contact OIR at least six months prior to the date the licence application or renewal application is to be submitted to request that an *OHS Performance Assessment Report* be prepared. On receipt of the fee prescribed in the *Work Health and Safety Regulation 2011*, OIR will prepare an *OHS Performance Assessment Report* in accordance with this guide.

4. OHS performance assessment

OIR facilitates the OHS performance and assessment process in consultation with the applicant. There are two elements involved in the process:

- Element 1 - An OHS management systems audit conducted by an independent accredited OHS auditor;
- Element 2 - A legislative performance and compliance review conducted by OIR.

OIR collates the reports from each element and provides an analysis of the results, in the form of an *OHS Performance Assessment Report*. This report will be provided to the Workers' Compensation Regulator and will be used in the decision-making process to determine if the applicant's OHS performance is satisfactory for the purpose of licence issue or renewal.

4.1 OHS management systems audit

The employer (or group employer) must undertake an independent third-party audit of its OHS management systems.

The scope of the OHS management systems audit will focus on how effectively each employer's (or group employer's) systems, including the structure, policies, planning activities, resourcing, operating procedures and work practices combine together to manage the OHS risks associated with the self-insurers' business. The conduct of the audit, including the scope and sample size, must be endorsed by OIR prior to being commenced.

Audits are to be undertaken in accordance with criteria defined in the [National self-insurer OHS management system audit tool](#) (NAT audit tool) by independent accredited OHS auditors (self-insurance). The auditor must complete three key deliverables including workplace assessment, presentation of preliminary findings and submission of the final audit report. Further information on the requirements for the OHS management system audit can be found in section 5.

4.2 Review of legislative performance and compliance

An assessment of legislative performance and compliance under the *Work Health and Safety Act 2011* (WHS Act) and any other relevant safety Act (e.g. *Coal Mining Safety and Health Act 1999*) will be undertaken by OIR concurrently with the OHS management systems audit.

This involves a review of records of performance, compliance and other activity by the relevant regulator and a review of injury data. The records of all bodies corporate subject of the self-insurance application will be assessed and analysed and a *Legislative Performance and Compliance Review Report* prepared.

The *Legislative Performance and Compliance Review Report* applies to all applications to issue or renew a self-insurance licence.

Further information on the requirements for the review of legislative performance and compliance can be found in section 6.

5. OHS management system audit report

An OHS management system audit is a *systematic examination against defined criteria to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve the organisation's policy and objectives*.

In Queensland, the self-insurance OHS management systems audit is undertaken using the NAT audit tool and incorporates the following:

1. Health and Safety Policy OHS
2. Planning
3. Implementation
4. Measurement and Evaluation
5. Management Review

The elements under each heading are detailed in the user guide and workbook contained in the NAT audit tool.

All elements of the NAT audit tool must be assessed for each safety management system used by the applicant, and the audit report must include an assessment of each safety management system and an assessment of the group employer.

5.1 Selection of Auditor and audit scope

Self-insurance licence applicants must nominate an accredited OHS auditor (self-insurance) from a public register listed on worksafe.qld.gov.au (or an auditor endorsed by another equivalent WHS Regulator) to undertake an audit of each of the applicant's OHS management systems, subject to OIR's agreement that the nominee meets the terms and conditions of appointment (particularly matters of conflict of interest).

Before engaging the auditor, the scope and sample size of workplaces to be visited for the audit of the OHS management systems is agreed between the applicant and OIR.

The scope of the audit for each OHS management system will include:

- all employers working under each of the OHS management systems;
- all workplaces for each of the employers, regardless of the applicable safety legislation at the workplace;
- workplaces in metropolitan, regional and rural locations will be included in the audit.

When deciding the sample size for each OHS management system OIR will, as a general guide, require that:

- all employers working under the OHS management system are included in the audit sample size selection;
- the number of workplaces for each employer to be audited will be the square root of the number of workplaces ($y=\sqrt{x}$) [rounded up to the next whole number, where y = number of workplaces to be audited and x = total number of workplaces], with a minimum of 10 per cent of all the employer's workplaces being audited.

After the audit scope has been agreed OIR will provide a list of the workplaces to be audited to the OHS auditor (self-insurance). In determining the list of workplaces to be audited, OIR will consider factors such as:

- the risk profile of the employer's business and of each workplace
- previous audit findings and non-conformance close-out
- previous audits undertaken at a workplace
- incident trends and complaints
- claim history
- notices, activity and other information from the relevant WHS Regulator
- size and structure of the employer and each workplace
- the number of full time worker equivalents (FTE) at each workplace
- structure and complexity of the OHS management system

The OHS auditor (self-insurance) will prepare an audit plan for endorsement by OIR prior to commencement of the audit. The audit plan should include information on how:

- the audit will be conducted and the audit time
- multiple shifts or variations in work procedures will be included in the audit
- the auditor will determine the number and type of workers to be interviewed and how the interviews will be conducted
- suppliers, contractors, subcontractors and other persons with an interest in the OHS management system will be contacted and included in the audit (for example interviewing a contractor's workers that are or have been working within the employer's workplace, work health and safety representatives, on-site worker representatives, etc).

Further guidance on the conduct of the audit, including scoping and sampling, can be found in JAS-ANZ Procedure 02¹, IAF MD1 and IAF MD 22².

5.2 Evaluation scoring

Under headings 1 (Health and Safety Policy), 2 (Planning), 4 (Measurement and Evaluation), and 5 (Management Review) of the NAT audit tool, the criteria are addressed by a conformance/non-conformance answer format. To enable an assessment of *satisfactory performance* a conformance assessment is required for each of these headings. If a non-conformance is provided this results in an assessment of *unsatisfactory OHS performance*.

Under heading 3 – Implementation of the NAT audit tool, the OHS auditor (self-insurance) is required to determine a level of achievement by reviewing performance under 11 elements outlined in table one. A level of achievement is allocated by the OHS auditor after reviewing the responses to questions contained in each category.

Table one

Implementation elements
3.1 Structure and responsibility-resources
3.2 Structure and responsibility-responsibility
3.3 Structure and responsibility- training and competency
3.4 Consultation, communication and reporting-consultation
3.5 Consultation, communication and reporting-communication
3.6 Consultation, communication and reporting-reporting
3.7 Documentation
3.8 Documentation and data control
3.9 Health and safety risk management program
3.10 Hazard identification, risk assessment and control of risks
3.11 Emergency preparedness and response

The audit is an assessment of current management systems and does not prescribe the form or type of management system to be used by a self-insurer.

Determining level of achievement

A scoring system is used to determine the level of implementation of management systems used by the self-insurer. The scoring system and levels of implementation is summarised in table two.

Table two

Levels of implementation	
Level achieved	Outcome achieved
0	The criteria have not been considered.
0.5	Strategy/controls or management plans are under development.
1.0	Strategy/controls or management plans have been developed but not implemented.

¹ www.jas-anz.org

² www.iaf.nu

1.5	Strategy/controls or management plans have been developed and partially implemented in all relevant areas.
2.0	Strategy/controls or management plans have been developed and implemented in all relevant areas.
2.5	Strategy/controls or management plans have been developed, implemented in all relevant areas and evaluated for effectiveness.
3.0	Strategy/controls or management plans have been developed, implemented in all relevant areas and evaluated for effectiveness against organisational goals.
3.5	Strategy/controls or management plans have been developed, implemented in all relevant areas, evaluated for effectiveness and resultant actions are achieving organisational goals.
4.0	Strategy/controls or management plans have been developed, implemented in all relevant areas, evaluated and reviewed for effectiveness, are achieving organisational goals and by using industry, interstate or international benchmark comparisons, are trending to 'best in class'.

Each element is then given a weighting with a score calculated by simply multiplying the level achieved by the weighting. Table three indicates the weighting attributed and maximum score for each element. To enable an assessment of *satisfactory OHS performance* a score of 70 per cent of the maximum total score against the elements under heading 3 for each OHS management system included in the application is required. A score of less than 70 per cent will result in an assessment of *unsatisfactory OHS performance*.

Table three

Scoring for implementation element			
Elements under heading 3	Weighting	Max score	Total score
3.1 Structure and responsibility - resources	3	4	12
3.2 Structure and responsibility - responsibility	8	4	32
3.3 Structure and responsibility - training and competency	8	4	32
3.4 Consultation, communication and reporting - consultation	5	4	20
3.5 Consultation, communication and reporting -communication	4	4	16
3.6 Consultation, communication and reporting - reporting	5	4	20
3.7 Documentation	3	4	12
3.8 Documentation and data control	4	4	16
3.9 Health and safety risk management program	12	4	48
3.10 Hazard identification, risk assessment and control of risks	12	4	48
3.11 Emergency preparedness and response	8	4	32
Total score	72	44	288

5.3 Report process

Audit report preliminary findings

The OHS auditor (self-insurance) must forward to the applicant and to OIR a copy of the audit report preliminary findings.

The auditor will advise the applicant if the preliminary audit report findings submitted by the auditor identifies non-conformance or an implementation score of less than 70% for each OHS management system included in the application. The applicant will be provided with an opportunity to submit additional information or to submit details to justify why the non-

conformance or implementation score of less than 70% should not constitute an unsatisfactory OHS performance.

The applicant should provide to the auditor and to OIR the evidence of action taken to resolve the issues and/or submit reasons why the issues identified should not constitute unsatisfactory OHS performance. The applicant may make these submissions within 10 business days after receiving the preliminary audit report findings.

Final Audit report

After reviewing any submissions made in response to the audit report preliminary findings, the OHS auditor (self-insurance) will finalise their *OHS management system audit report*. The auditor must forward the final report to the applicant and to OIR. If the auditor has made any changes to the final report because of submissions made by the applicant then the auditor must identify these changes and provide reasons for the changes.

Within the final report and in addition to the level achieved under heading 3 and the conformance assessments required under headings 1, 2, 4, and 5 of the NAT audit tool, the report will indicate any identified deficiencies in each of the OHS management systems. The auditor will be required to indicate options, actions and recommended timeframes for addressing the identified deficiencies.

If the auditor's report identifies deficiencies or recommendations for action, the applicant will need to develop an action plan based on the auditor's report, within a timeframe acceptable to OIR. The action plan should provide evidence to OIR of how the applicant intends to rectify the deficiencies identified by the auditor and how they will achieve outcomes that meet the minimum score and conformance. This information will be considered and included in OIR's final *OHS Performance Assessment Report*.

The rectification outcomes are subject to confirmation of suitable completion by the OHS auditor (self-insurance) at the applicant's expense.

6. Legislative Performance and Compliance Review Report

When OIR is preparing the *Legislative Performance and Compliance Review Report* information will be sought from all relevant corresponding regulators as defined under the WHS Act.

The *Legislative Performance and Compliance Review Report* does not represent an employer's statement of compliance with the obligations under the WHS Act or any other equivalent Act, nor does it provide any form of immunity from inspectorate performance and compliance activity.

6.1 Determining legislative performance and compliance

Non-compliance finding

The following matters will constitute evidence of non-compliance for the review:

- a successful prosecution for a category 1 or a category 2 offence of the WHS Act, or any equivalent prosecution under any other legislation relating to work health and safety, in the preceding four years;
- non-compliance with an enforceable undertaking accepted for contravention of the WHS Act, or any other legislation relating to work health and safety, in the preceding four years;
- the WHS Regulator, or any other equivalent Regulator, concludes that the performance and compliance history of the employer (or an employer within the group of employers) demonstrates unsatisfactory OHS performance.

A non-compliance finding will result in an assessment of *unsatisfactory OHS performance* for the employer (or group employer).

Qualified compliance finding

The following matters will constitute evidence of qualified compliance for the review:

- a prosecution for a category 1 or a category 2 offence of the WHS Act, or any equivalent prosecution under any other legislation relating to work health and safety, has been commenced but not yet decided at the time the WHS Regulator considers the report;
- an employer subject to the application has entered an enforceable undertaking accepted for contravention of the WHS Act, or any other legislation relating to work health and safety, and the enforceable undertaking is current at the time the WHS Regulator considers the report;
- a successful prosecution for a category 3 offence of the WHS Act, or any equivalent prosecution under any other legislation relating to work health and safety, in the preceding four years.
- non-compliance with an improvement or prohibition notice issued under the WHS Act, or any equivalent direction issued by any corresponding regulator as defined under the WHS Act, in the preceding four years.
- the WHS Regulator, or any other equivalent Regulator, concludes that the performance and compliance history of the employer (or an employer within the group) demonstrates that the OHS performance is poor compared to the relevant industry of the employer (or group employer) but does not conclude that the OHS performance is unsatisfactory.

6.2 Report process

Preliminary findings

OIR will advise the applicant of any non-compliance findings or any qualified compliance findings and provide the applicant an opportunity to submit additional information or to submit details to justify why the findings should not constitute unsatisfactory OHS performance. The applicant should provide evidence of action taken to resolve the issues and submit reasons why the issues identified should not be considered as evidence of unsatisfactory OHS performance.

The applicant may make these submissions within 10 business days after the advice of the findings is given.

Final report

OIR will consider the applicants further submissions and finalise the *Legislative Performance and Compliance Review Report* element of the assessment. OIR will provide the applicant with a copy of the finalised *Legislative Performance and Compliance Review Report*.

7. Workers' Compensation Regulator's Decision and Right of Appeal

The Workers' Compensation Regulator will consider the *OHS Performance Assessment Report*.

If the *OHS Performance Assessment Report* identifies an area where there is unsatisfactory OHS performance (e.g. a non-conformance, implementation score of less than 70% for the *OHS management system audit report*, or a non-compliance finding for the *Legislative Performance and Compliance Review Report*) then the Workers' Compensation Regulator will find that the applicant has not met the requirement for a self-insurer to have satisfactory OHS performance.

In this instance, the insurer will need to submit special circumstances as part of the licence issuing and renewal process to justify the issue or renewal of the licence. If the Workers' Compensation Regulator accepts that there are special circumstances to justify the issue or renewal of the licence, then the licence may be issued with or without special licence conditions and for a period of not more than one year.

If the *OHS Performance Assessment Report* identifies deficiencies or recommendations for action from the *OHS management system audit report* or a qualified compliance finding for the *Legislative Performance and Compliance Review Report*, the Workers' Compensation Regulator will consider the matter and determine whether it is sufficiently serious to result in determination that a self-insurer has not met the requirement for a self-insurer to have

satisfactory OHS performance. If this determination is made, then the insurer will need to submit special circumstances as part of the licence issuing and renewal process to justify the issue or renewal of the licence. If the Workers' Compensation Regulator accepts that there are special circumstances to justify the issue or renewal of the licence, then the licence may be issued with or without special licence conditions and for any period deemed appropriate but not more than four years.

An applicant dissatisfied with a decision on licence duration or conditions may appeal the decision by judicial review.

If the Workers' Compensation Regulator decides to deny the application for issue or renewal of the licence on the grounds that the employer's (or group employer's) OHS performance is unsatisfactory, then:

- If the application is for a new licence, the applicant will have the review rights provided for under section 77 of the WCR Act.
- If the application is for renewal of a current licence, the applicant will have the review rights provided for under section 80 of the WCR Act.

If the Workers' Compensation Regulator decides to issue the licence with conditions relevant to OHS performance and those conditions are not complied with, the licence may be cancelled, and the licensee will have the review rights provided for under section 96 of the WCR Act.

8. Prescribed fees

8.1 OHS Performance Assessment

As required by the WHS Act (schedule 2, part 3, section 24(2)), the employer or group employer must pay OIR a fee for preparation of the *OHS Performance Assessment Report*.

This fee is set in accordance with the WHS Regulation and is subject to increases in line with government approved indexation. Refer to the [self-insurance fees and charges](#) for preparation of the *OHS Performance Assessment Report*.

The *OHS Performance Assessment Report* will not be prepared until the applicant has paid the prescribed fee.

8.2 OHS Management System audit costs

All costs associated with undertaking the *OHS management system audit report* are the responsibility of the self-insurer. The fees payable for audit services are negotiable between the OHS management systems' auditor and the applicant. Costs associated with the audit component will be dependent upon the size, complexity and geographic locations of the applicant employer/s workplaces.

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