

STANDING COMMITTEE ON LAW AND JUSTICE
REVIEW OF THE WORKERS COMPENSATION SCHEME
SIRA QUESTIONS TAKEN ON NOTICE - 7 November 2016 hearing

QUESTION 1

The Hon. DANIEL MOOKHEY: Are you able to tell the Committee your forecast for the increase in the volume of disputes that you expect, as well as the change in the levels of permanent impairment and the number of workers who will be affected by the reduction in weekly benefits? On the last point, did you hear icare's assessment of how many people it expected would be affected?

Mr LEAN: No, I did not.

The Hon. DANIEL MOOKHEY: It is 7,000 to 8,000 at first, then 200 a month. Does SIRA have any basis on which to disagree with that or are you prepared to accept that number.

Mr LEAN: We are working through this at the moment, not just with icare but with all the specialised insurers and self-insurers.

The Hon. DANIEL MOOKHEY: Good.

Mr LEAN: At this point we do not have a precise estimate of the increased number of disputes or increased number of permanent impairment assessments that would need to be completed. We have asked all the insurers to verify the numbers of injured workers who will be affected by this change. We are working through the details at the moment. Ms Donnelly may like to add to that.

Ms DONNELLY: We have sought from all the insurers in the system estimates of the potential number of workers affected. The current estimates that I have indicate between 5,300 and 6,000. I did not hear the testimony from icare this morning.

Ms DONNELLY: I did not hear that testimony this morning. I will be interested to read that. I acknowledge that the majority of those workers will be clients of icare. For that reason, we have asked them to start to identify and work through processes and test the approach, ahead of us giving more guidance to the rest of the insurers in the system. We expect that that will assist us to refine the estimates, particularly as there may be some workers who have not had a whole person permanent impairment assessment yet.

The Hon. DANIEL MOOKHEY: When do you expect all the insurers you regulate to have provided you with that estimate?

Ms DONNELLY: They have provided us with preliminary estimates, so the number I gave you is based on that.

The Hon. DANIEL MOOKHEY: Are you able to provide us preliminary estimates by insurer on notice?

Ms DONNELLY: I could take that on notice, but what I am expecting to do is implement by the end of the year a process where they will give us monthly updates as they contact workers and work with them and give us a more refined estimate as we go on.

ANSWER

The estimates available as at 7 November 2016 were that up to 6,000 workers may lose access to weekly benefits as a result of the operation of section 39 of the *Workers Compensation Act 1987* between September 2017 and June 2018.

As at 24 November 2016 the estimate from system insurers indicates that there are up to 6,661 workers potentially impacted by the operation of section 39 of the *Workers Compensation Act 1987* between September 2017 and June 2018.

Broken down by insurer type, this is as follows:

- Nominal Insurer (icare): up to 5,569 workers which equates to approximately 84 per cent of the workers who are impacted by section 39
- Treasury Managed Fund: up to 740 workers which equates to approximately 11 per cent
- Self and Specialised insurers: up to 352 workers which equates to approximately five per cent.

Workers will start to cease entitlement to weekly payments from September 2017, with the majority of these workers' entitlements ceasing during December 2017 and January 2018.

Current SIRA projections indicate that the post January 2018 ongoing number of workers ceasing entitlement to weekly payments under section 39 will be up to 80 per month.

SIRA has established clear, regular reporting requirements for all insurers commencing from December 2016. icare (acting for the Nominal Insurer and the Treasury Managed Fund) will provide monthly updates to SIRA. Self and specialised insurers will report to SIRA on a bi-monthly basis, commencing January 2017.

Permanent impairment assessments - icare

Scheme agents are reviewing 4,261 Nominal Insurer scheme claims, relevant to permanent impairment. SIRA understands that 2,980 (70 per cent) of the reviews have been completed.

Other key results include:

- 36 per cent of reviewed workers (approximately 1,527 of 4,261 claims) require an assessment to determine their degree of permanent impairment (PI)
- 72 per cent of workers with a determined PI are expected to have section 39 apply
- 28 per cent of workers with a determined PI are not expected to have section 39 apply.

SIRA is not able at present to provide a precise estimate of the number of potential medical disputes regarding permanent impairment.

QUESTION 2

Mr DAVID SHOEBRIDGE: We saw one example of a work capacity decision that was 170 pages long—

The Hon. TREVOR KHAN: I think it was 180.

Mr DAVID SHOEBRIDGE: Whilst that might be at the extreme end, there have been repeated examples given to this committee of work capacity decisions that are 50, 100, 120 or 170 pages long, and an individual worker without legal representation is meant to challenge that. Do you really think that that is a viable system?

Mr LEAN: I am not familiar with those specific decisions that you are referring to. We would be happy to have a look at that and take those on notice.

ANSWER

SIRA is unable to comment on the work capacity decision referred to by the Committee, as it does not have the necessary details concerning this specific example.

The response to question 3 provides detail on the length of work capacity decisions and attachments that insurers may provide to workers about the work capacity decisions.

QUESTION 3

Mr DAVID SHOEBRIDGE: *You can take this on notice: What is the longest work capacity decision, including all the attached documents, that has come through to the merit review service? What is the average size?*

Mr LEAN: *I will have to take that on notice.*

Mr DAVID SHOEBRIDGE: *What is the average size? What do you reckon the average size would be?*

Mr LEAN: *Off the top of my head, I do not know. I will take it on notice.*

Mr DAVID SHOEBRIDGE: *You must have looked at them. Are they five pages long?*

The CHAIR: *Mr Shoebridge, I think Mr Lean has said he will take it on notice three times.*

Mr DAVID SHOEBRIDGE: *Mr Lean, you must have looked at them. Are they normally five pages, 10 pages or 30 pages long? You are at the head of this organisation. What is the average size?*

Mr LEAN: *I am going to take that question on notice.*

ANSWER

The following table provides a summary of 50 current applications for merit review open as at November 2016.

Length of Insurer's original Work Capacity Decisions and attachments				
	Min pages	Max pages	Avg pages	Median pages
Decision*	3	13	8	8
Attachments**	3	187	73	42

Length of Insurer's Internal Review Decisions and attachments				
	Min pages	Max pages	Avg pages	Median pages
Decision*	6	14	9	9
Attachments**	0	208	83	61

The table below provides a summary of 50 Decisions issued by the service during October 2016.

Merit Review Service Decisions length				
	Min pages	Max pages	Avg pages	Median pages
Decision*	1	20	7	8

*Decisions are contained in a letter from the insurer to the worker

****Attachments** are provided to the worker as attachments to the decision letter and include the information available relevant to the insurer's decision.

The length of each decision is largely determined by the nature of the dispute and the complexity of the issues raised in each application. Some applications may only raise one discrete issue for determination, while other applications may raise a large volume of issues, relating to a number of work capacity decisions, to be dealt with in the merit review.

Guidelines for claiming workers compensation

SIRA has recently updated the *Guidelines for claiming workers compensation*. The Guidelines:

- promote procedural fairness, having regards to the nature and potential consequences of each decision
- include the requirements for communication of decisions to workers and the information used in support of the decision. This can influence the amount of correspondence the worker receives
- encourage the insurer to send information that is appropriate and relevant to the decision, as follows:
 - where a decision does not change the amount of weekly payments the worker will receive, the decision may be communicated with a phone call to the worker
 - where a decision establishes or changes the amount that a worker will receive in weekly payments, the insurer must formally write to the worker to communicate the decision made and the information considered in making the decision. While this can result in the inclusion of lengthy attachments to the communication of the decision as some decisions are complex and rely on numerous reports, it is necessary to ensure the worker has full access to all the relevant information and may consider this in the context of whether they wish to seek a review of the decision, and
 - the insurer must attach a copy of the *Work Capacity Decision - Application for Internal Review by Insurer* form to the decision letter to ensure the worker is fully informed of their right and available methods to seek a review of the decision.

Following the release of the Guidelines, SIRA conducted education sessions with insurers to ensure that the new Guidelines are implemented consistently and work capacity decisions are implemented in a way that provides information to the worker that is appropriate to their circumstances.

SIRA hosts a regular meeting between the Merit Review Service and icare to identify issues and trends relative to work capacity decisions, which allows for best practice to be identified and shared.

QUESTION 4

Mr DAVID SHOEBRIDGE: Is it true that overwhelmingly on those internal and merit reviews that the worker is not in a position to put in additional information or medical reports that assert their case unless they have parallel proceedings going on in the commission?

Mr LEAN: The way the process works is that they lodge the form. They can attach any documents that they like—this is my understanding of the process—they can attach any additional documentation. The matter is then triaged through the Merit Review Service and they go about gathering the additional information that they need whether it be from the worker or the insurer. It is not like your traditional adversarial process where it is up to each party to prepare their case; it is a fresh decision.

Mr DAVID SHOEBRIDGE: It is not like the usual adversarial process in so far as all of the evidence is provided by the insurer and the worker has bugged all opportunity to put anything in themselves? That is what distinguishes it from the adversarial process, is it not? It is all one sided.

Mr LEAN: No, I do not agree with that. The form enables the worker to attach additional documentation if they so choose.

Mr DAVID SHOEBRIDGE: How often do they do it?

Mr LEAN: Off the top of my head, I do not know. I could take that on notice as well.

ANSWER

A review of 50 applications for merit review open as at November 2016 found:

Workers making merit review submissions:

- 100 per cent of applications included comments from workers about the insurer's work capacity decision they were seeking to be reviewed
- 80 per cent of applications included written submissions from workers, ranging from a minimum of one page to a maximum of 48 pages, with the average being six pages, and the median two pages.

Additional documents attached to merit review applications and length of documents:

- In 20 per cent of applications the workers relied on their written submissions and did not submit any additional relevant documentation with their application
- In 80 per cent of applications the workers did submit additional documentation with their application and any submissions, ranging from a minimum of one page to a maximum of 57 pages, with the average 29 pages, and the median six pages.

Section 44BB(3)(d) of the *Workers Compensation Act 1987* states that the worker and the insurer must provide such information as the Merit Reviewer may reasonably require and request for the purposes of the review. This ensures that the Merit Reviewer can determine the issues between the parties on the basis of all of the available relevant information, beyond the information that the parties may choose to provide in support of their position.

A review of 50 Decisions issued by the Merit Review Service during October 2016 found:

Merit Reviewer seeking and obtaining additional relevant information from the parties

- 15 per cent of applications were determined without the need for additional information from the parties
- 85 per cent of applications required additional information to be sought from the parties, of which:
 - 57 per cent - additional information requested from and provided by both the worker and the insurer
 - 18 per cent - additional information requested from and provided by the insurer only, and
 - 10 per cent - additional information requested from and provided by the worker only.

The *Guidelines for claiming workers compensation* outlines the process that a worker may undertake for the internal review by the insurer of a work capacity decision. The Guideline states that 'a worker can include additional relevant information for the insurer to consider (for example medical or employment information).'

QUESTION 5

The Hon. DAVID CLARKE: WIRO has recommended that SIRA publish all recommendations by the Merit Review Service on its web site with any identifying details removed. What is your response to that suggestion?

Mr LEAN: We already publish some merit review decisions on the SIRA web site. We de-identify them. We do not just black out the names, we actually put them up as a bit of a case study but we already publish decisions on the web site—not all of them.

The Hon. DAVID CLARKE: That is right. WIRO made that recommendation taking into account that you already publish some of them on the web site. Is that right.

Mr LEAN: I am not sure when that recommendation was made by WIRO. The view that we have certainly taken is that there are some decisions that it is useful to publish, because it helps in the understanding of particular issues within the scheme. We do not believe it is necessary to publish all of them. We identify ones that we think would have value in terms of educating scheme participants, and publish them on the web site.

The Hon. DAVID CLARKE: How many could you publish if you published all of them?

Mr LEAN: If we published all of them?

The Hon. DAVID CLARKE: How many are we talking about?

Mr LEAN: I think there is about 600 to 700 decisions made every year. I think we only publish a small number at the moment—somewhere between 10 and 20. We do continually update them so if a better decision comes along which is more informative or whatever then we will replace them from time to time.

The Hon. DAVID CLARKE: Do you say you publish approximately 20 per year?

Mr LEAN: I will have to take that on notice to confirm the precise numbers that we publish.

ANSWER

The WIRO raised the matter of publication of Merit Review Service decisions during meetings with SIRA on 7 April 2016 and 25 July 2016. SIRA also notes the recommendation contained in the September 2016 WIRO submission to the Committee that “*WIRO recommends that SIRA ensure that all recommendations by the Merit Review Service be published on the SIRA website forthwith after issue*”.

On 1 August 2016, SIRA published a new *Merit Review User Guide* which signaled SIRA’s intent to publish notable merit review decisions. Clause 8.21 of the User Guide states:

“The publication of merit reviews is to enhance transparency, accountability and education and to provide guidance to workers, insurers, representatives and all scheme stakeholders. Publication is intended to assist in improving claims management practices, work capacity decision making and minimise disputation in the workers compensation scheme.”

Clause 8.22.2 of the User Guide provides for:

“Publication of de-identified and anonymised merit reviews, findings and recommendations, statements of reasons, case studies, or head notes about new, novel, or notable issues, ensuring that the privacy of individuals is respected.”

Since commencement of the new User Guide, SIRA has published a number of de-identified and anonymised ‘notable’ merit review decisions about a range of important system issues. There are currently 11 such ‘notable’ decisions available on the SIRA website.

As new merit review decisions are issued, they are considered for potential addition to the published 'notable' decisions on the SIRA website. Stakeholder feedback has helped in identifying areas where publication of a 'notable' decision would be of assistance. The feedback has resulted in the publication of a decision on a new issue arising in the system, and in another decision being replaced by a more recent one, which covered a broader range of issues.

QUESTION 6

The Hon. DAVID CLARKE: How long have you been publishing these decisions?

Mr LEAN: Only this year. I think it was about August that we changed some of our guidelines to enable that to occur.

The Hon. DAVID CLARKE: When did you receive the recommendation from WIRO to publish?

Mr LEAN: I will have to take that question on notice.

ANSWER

On commencement of the new *Merit Review User Guide* on 1 August 2016, SIRA began publishing relevant de-identified and anonymised 'notable' merit review decisions on the SIRA website. There are currently 11 such 'notable' decisions available.

As noted above, WIRO raised the matter of publication of Merit Review Service decisions during meetings with SIRA on 7 April 2016 and 25 July 2016.

SIRA notes the recommendation contained in the September 2016 WIRO submission to the Committee that "*WIRO recommends that SIRA ensure that all recommendations by the Merit Review Service be published on the SIRA website forthwith after issue*".

QUESTION 7

The CHAIR: Is it an efficient system?

Ms DONNELLY: That is a big question in terms of what is an ideal market, and it is probably one that would take a while to answer. There are probably diverse views as well. We need to get enough data to be able to explore where it is working and where it may not be.

The Hon. LYNDA VOLTZ: Do you have access to the agreements that are signed?

The Hon. DANIEL MOOKHEY: Between the agent and the nominal insurer.

Ms DONNELLY: I have seen them personally, and SIRA has the power to access them.

The Hon. LYNDA VOLTZ: icare said that none of them have met their service criteria. Is that correct?

Ms DONNELLY: I was not here to hear that testimony.

The Hon. LYNDA VOLTZ: You have people overseeing them. Is that your experience?

Ms DONNELLY: I would have to look the context of that comment.

The Hon. LYNDA VOLTZ: Can you take that question on notice?

Ms DONNELLY: Yes.

ANSWER

SIRA uses a range of regulatory tools to monitor, influence and evaluate insurer behaviour. SIRA regularly engages insurers to supervise compliance with the workers compensation legislation and discuss performance, including with icare in its role of administering the Nominal Insurer and the Treasury Managed Fund workers compensation functions.

In that context, SIRA's role is to supervise icare and to hold icare accountable for the performance of any service providers that icare engages to undertake functions of the Nominal Insurer or the Treasury Managed Fund workers compensation functions, including scheme agents.

It is icare's responsibility to manage its providers including scheme agents in line with legislative and contractual (eg Scheme Agent Deed) requirements.

SIRA does expect icare to disclose to SIRA any material events or performance issues in relation to workers compensation.

In testimony to the committee on 7 November 2016, icare advised that scheme agent performance had been below standard in relation to insurance policy and premium administration.

SIRA has requested a report from icare on the below standard performance and steps icare will take to remedy sub-standard performance.

QUESTION 8

The Hon. LYNDA VOLTZ: Mr Lean, you said you have put up cases. Do you put up any appeals to those cases?

Mr LEAN: Sorry, this is merit review decisions?

The Hon. LYNDA VOLTZ: Yes.

Mr LEAN: No, I do not believe we publish—after our merit review decision the only way to appeal those is through a judicial review application to the Supreme Court. My understanding is that there is only a small number that have gone down that path. Decisions from the Supreme Court are normally published but I would need to check specifically whether these ones are. It would be a matter for the court but not necessarily for us.

Mr DAVID SHOEBRIDGE: The system is complex but there is a procedural review of the original decision as well through WIRO?

Ms DONNELLY: There is, yes.

Mr LEAN: That is correct.

Mr DAVID SHOEBRIDGE: So it is not really true to say that the only remedy is through the Court of Appeal. I know that it is an unnecessarily complex system.

Mr LEAN: I was picking up on the point about an appeal from our decision.

ANSWER

There have been over 2,800 merit review applications finalised since commencement of the operations of the Merit Review Service in January 2013. To date there has been one judicial review decision by the court [*CSR Limited v Busbridge [2015] NSWSC 1268*] on a challenge by a self-insurer to a Merit Review Service decision. In that matter, the Merit Review Service decision was upheld and the challenge was dismissed by the court.

The materials published by SIRA for this decision include:

- summary of the decision in the introductory website text

- downloadable copy of the full Supreme Court Decision upholding the merit review decision
- case note about the Supreme Court decision, and
- 'Key Points' summary of the key issues arising from the Supreme Court decision.

QUESTION 9

The Hon. LYNDA VOLTZ: I understand that you have printed merit cases where there has been subsequent judicial review that have found errors in determinations in cases that you have had.

Mr LEAN: Sorry, I would need to take that on notice. My understanding is that the number has been very small. We can get you more details about that on notice.

ANSWER

No judicial review decisions to date have found errors in Merit Review Service decisions.

Of the over 2,800 merit review applications finalised by the Merit Review Service, one Judicial Review application has been determined by the Supreme Court to date [*CSR Limited v Busbridge [2015] NSWSC 1268*].

In that matter, the Court found that none of the alleged grounds were made out, it dismissed the self-insurer's application and ordered the self-insurer to pay the worker's costs. The Court found no errors in the merit review decision.

QUESTION 10

The Hon. DANIEL MOOKHEY: What proportion of the premium dollar is returned to injured workers in benefits?

Ms DONNELLY: An estimate would be about 85 per cent of the premium dollar is returned, not necessarily just to the worker but also to pay for treatment and other benefits for the injured worker.

The Hon. DANIEL MOOKHEY: Is that an upward or downward trend?

Ms DONNELLY: I actually do not know. I could take that on notice. I think it is reasonably stable but I am happy to check and take that on notice.

The Hon. DANIEL MOOKHEY: Do you mind taking that on notice?

Ms DONNELLY: No, not at all.

The Hon. DANIEL MOOKHEY: Do you mind itemising it over the relevant period of time you have reported?

Ms DONNELLY: Absolutely.

ANSWER

Over the past four years, claim related payments have represented approximately 86 per cent of premium income.

Financial Year	Total compensation NSW system	Total NSW system Premium ¹	% Benefit to Premium ²
2012/13	\$ 2,956,056,694	\$ 3,505,805,481	84%
2013/14	\$ 2,737,589,584	\$ 3,236,936,339	85%
2014/15	\$ 2,619,374,280	\$ 3,000,420,192	87%
2015/16	\$ 2,641,609,990	\$ 3,044,864,815	87%

QUESTION 11

The Hon. DANIEL MOOKHEY: What is the total volume or quantum of compensation that is paid to injured workers in benefits?

Ms DONNELLY: I probably do have it somewhere. If you do not mind me turning pages I can get it now or I am happy to take it on notice.

The Hon. DANIEL MOOKHEY: You might want to take it on notice to save time.

ANSWER

Around \$2.6 billion was paid across the workers compensation system as compensation each year from 2012/13 to 2015/16, including weekly benefits and other compensation payments to injured workers.

Financial Year	Amount of weekly benefits and other compensation paid to injured workers
2012/13	\$ 2,956,056,694
2013/14	\$ 2,737,589,584
2014/15	\$ 2,619,374,280
2015/16	\$ 2,641,609,990

QUESTION 12

The Hon. DANIEL MOOKHEY: How many enforcement actions has SIRA launched against insurers in the last two years?

Ms DONNELLY: Enforcement actions? What does that mean?

The Hon. DANIEL MOOKHEY: You are the regulator, are you not?

Ms DONNELLY: We are.

The Hon. DANIEL MOOKHEY: It is your responsibility to undertake enforcement action for insurer behaviour that is found to be outside the rules and regulations, the law, is it not?

Ms DONNELLY: Do you mean non-compliance with the legislation—

The Hon. DANIEL MOOKHEY: Yes, non-compliance with the legislation.

Ms DONNELLY: —or unsatisfactory performance?

¹ Note: Self-insurers do not pay a premium

² Note: Benefits includes medicals, weekly payments, lump sums and other expenses such as legal fees.

The Hon. DANIEL MOOKHEY: Non-compliance with your guidelines and unsatisfactory performance. Please feel free to itemise the enforcement actions by category for the last two years.

Mr LEAN: In terms of things like licence suspensions or some of the other stronger sanctions that we have, certainly in the time that I have been in the chair I am not aware that we have taken any. But that said, there are a range of other interventions so I mentioned that complaints escalated—

The Hon. DANIEL MOOKHEY: So what is the most frequent intervention?

Mr LEAN: Do you mind if I finish?

The Hon. DANIEL MOOKHEY: I understand that. I do not wish to be rude, but if you are going to expand on this I ask you to clarify for the Committee the form of intervention.

Mr LEAN: We can certainly do that. I mean the primary intervention form would be through escalated complaints that come through our customer care centre and then we would take action to intervene with individual insurers to get a different outcome for the complainant. That is the primary—

The Hon. DANIEL MOOKHEY: How many have you taken?

Mr LEAN: I would need to confirm the numbers on that.

The Hon. DANIEL MOOKHEY: Which insurer is the most frequent?

Mr LEAN: I will take that on notice and give you a full report.

ANSWER

SIRA evaluates insurer compliance and performance activities. Intervention and/or enforcement activities are taken based on identified risks. SIRA is utilising an Insurer Supervision Model to identify insurer risk before it is escalated and intervenes to mitigate that risk. Enforcement activities relate to our strongest sanction.

Examples of enforcement activities include shorter licensing terms, licence suspension, cancellation of a licence, revoking a licence, decision not to issue a licence, prosecutions and penalties.

Examples of intervention activities include additional conditions on the insurer's licence, improvement plans, management plans, additional security requirements, greater scrutiny under financial viability tests, follow-up activities, additional audits, penalties, civil penalties, a letter of censure, non-acceptance of premium filings/requirements to resubmit premium filings if not acceptable under the *Market Practice and Premium Guidelines*, requiring additional information under the *Licensed Insurer Business Plan Guidelines*.

Since its establishment, SIRA has taken enforcement action including placing restrictions on the licensing term, of four insurers and required greater security of one of these four insurers. There have been no licence cancellations or suspensions. The most frequent intervention has been escalated complaints from SIRA to the insurer requiring an explanation of the sub-optimal action or risk and the action the insurer will undertake to address the problem.

During the period 1 October 2015 to 31 October 2016, five or more complaints were received about 19 insurers, across all categories of insurer. Of the total volume of complaints for those 19 insurers (1024), 131 were escalated through the complaint process following the insurer response, resulting in intervention activities.

By insurer type, the highest volumes of escalations through the complaints process are as follows:

- Nominal Insurer (icare: Allianz (37)
- SiCorp (icare): QBE TMF (11)
- Self and Specialised insurers: Woolworths (7)

QUESTION 13

The Hon. DANIEL MOOKHEY: It is a slightly different question, but which scheme agent of the nominal insurer is subject to the most amount of escalated actions?

Mr LEAN: I will have to take it on notice and come back to you.

ANSWER

Complaints are received initially by SIRA's Customer Service Centre, with the majority of these referred to the insurer or Scheme agent for resolution. These complaints are categorised as Level 1. Those complaints involving more serious or complex issues, or those that are unable to be resolved at Level 1, are escalated to the SIRA Customer Care Team.

The Team contacts the insurer and allows five business days for the insurer to provide a response to the complaint. Those complaints where a response is not received or there is an identified breach of guidelines/ legislation may require more intensive case management and are classified Level 2a. Outcomes for Level 2 and Level 2a complaints include a regulatory response, or appeal and internal review.

The following table outlines the number of level 2 and level 2a complaints managed by the Customer Care Team from 1 October 2015 to 31 October 2016. The numbers are also expressed as a percentage of system wide escalations (i.e. inclusive of all insurer types).

Nominal Insurer Scheme Agent	Number of policies (Policy Year 15/16)	Percentage of market share (Policy Year 15/16)	Number of Level 2 complaints (01/10/15-31/10/16)	Percentage of Level 1 complaints converted to Level 2 for individual scheme agents (01/10/15-31/10/16)	Number of Level 2 complaints requiring further intervention at Level 2a (01/10/15-31/10/16)	Percentage of system wide Level 2 complaints requiring further intervention at Level 2a (01/10/15-31/10/16)
EML	32,786	12.79%	80	22.9%	13	13.4%
ALLIANZ	66,261	25.84%	140	23.50%	37	38.1%
CGU	40,899	15.94%	65	16.6%	12	12.3%
QBE	32,807	12.79%	89	20.9%	18	18.5%
GIO	83,700	32.64%	86	22.6%	17	17.5%
TOTAL	256,453	100%	460			

QUESTION 14

Mr DAVID SHOEBRIDGE: Have you reviewed the report from WIRO, which is issued on a regular basis, that shows the number of ILARS issues that are raised with the different self-insurers?

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: As well as the licensed insurers?

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: Did you notice in the most recent one that there was one self-insurer, Coles, which had more than five times as many issues as another comparable self-insurer, Woolworths?

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: What have you done?

Ms DONNELLY: What we have done, we are close to finalising consultation with all of the self-insurers about this shift that we want to make in their licence conditions and how we manage their performance. We have begun putting in place a process where we look at what is happening in terms of complaints and the data that we have—we obviously can have access to that from the WIRO. In raising that with those insurers we intend to formalise that as a performance expectation as part of the new licence conditions from next year and have a much more formal and transparent insurer supervision model that I mentioned before. I think that we do have work to do, and it is what we propose to do, to ensure that the performance indicators that attract action from the regulator on our watch at SIRA are more detailed and are more responsive to protecting the experience of injured workers.

Mr DAVID SHOEBRIDGE: Did you pick up the phone and call Coles and say, "What is going on here?" That surely is the first thing. Did anybody from your extremely well-funded, large government department pick up the phone and call Coles and say, "What is going on?" Any one person?

Ms DONNELLY: They may well have. I certainly have discussed it with that part of the business, I am not sure that they have at this point.

Mr DAVID SHOEBRIDGE: You say you have discussed it, then you would know whether or not they had. Just the most basic, fundamentally simple thing to do is to phone up and find out what happens and you cannot even tell me that happened.

Ms DONNELLY: I can tell you that we have put in place an insurer supervision model where that happens. In this particular instance I am happy to take it on notice and find out whether it has happened yet. I can assure you that it will happen.

ANSWER

SIRA has regular meetings and contact with Coles. This issue has been highlighted to Coles.

Coles has advised that they have contacted WIRO to obtain further information and are investigating the causes of the stated figures. SIRA discussed the matter at the November 2016 performance meeting with Coles. SIRA will also seek further advice from WIRO in relation to the data about Coles reported by the WIRO.

QUESTION 15

Mr DAVID SHOEBRIDGE: Can you understand the frustration of injured workers and those who are observing the scheme, seeing you, with all the resources of the regulator, not even doing this most basic function when the data is in front of you to see as plain as can be?

Ms DONNELLY: I disagree with the suggestion that we are not supervising the insurers. My view is that we are supervising them, ringing them up and visiting them at a much higher level of intensity than has happened previously. You are asking me about a specific number published by the WIRO recently and whether we have picked

up the phone. I do not have the precise answer about that.

Mr DAVID SHOEBRIDGE: Well, here is a simple question: What is going wrong at Coles? You can take it on notice if you like.

Ms DONNELLY: I am happy to.

The Hon. DANIEL MOOKHEY: How many enforcement actions have you taken against Coles?

Ms DONNELLY: I will take that on notice. What I will say is that I would like to have a system where we are not waiting for it to be an enforcement action in which it is a prosecution; we are actually having an early intervention.

Mr DAVID SHOEBRIDGE: But you have got to have some enforcement action, have you not, otherwise the terms of the deed, the conditions of their licence, are not worth the paper they are written on? So what enforcement action have you taken?

Mr LEAN: We will take that on notice. As Ms Donnelly has indicated, we are just not sure in this particular case whether there has been a direct intervention. We will take it on notice and get you a full response. There may have been individual interventions in relation to specific cases as well. We will happily cover that off too.

ANSWER

In addition to the answer to Question 14, for the financial year 2015/16, 22 risk indicators were reviewed for Coles as part of SIRA's Insurer Supervision Model. Risk indicators covered both compliance and performance activities and were further broken down by conduct, financial and claims management measures. The risk indicators include:

Conduct Indicators, which include: annual reviews under section 189 of the *Workers Compensation Act 1987*, timeliness of claims data submissions and meeting additional workers compensation legislative requirements.

Financial Indicators, which include: security, financial viability and levy submissions and licensing conditions.

Claims Management Indicators, which include: return to work measures, claims management self-audit assessments, timeliness of payment obligations, claims numbers year on year, active claims, disputes decisions overturned, complaints received by the Customer Service Centre, claims incident rates and psychological claims.

Coles had low risk across all 22 indicators except for Indicator five: Timeliness of Claims Data Submissions.

Coles is currently on a three-year licence term expiring 31 January 2017.

Throughout the 2015/16 financial year, one complaint about Coles was escalated to SIRA's Insurer Performance Team.

There have been no enforcement actions since SIRA was established in relation to Coles.

Once the cause of the ILARS data reported by WIRO is determined, SIRA will follow a fair procedure to determine whether enforcement or intervention activity is appropriate.

SIRA will continue to monitor Coles as part of ongoing compliance activities to identify high risk insurers.

Previous compliance

In 2014, WorkCover conducted an on-site case management audit of Coles as part of a pilot audit program. The results of this audit identified Coles as scoring 86 per cent where the required pass mark was 80 per cent. During the audit, all compliance elements were met and where a lower score was obtained, recommendations and assistance was provided regarding best practice approaches to case management.

QUESTION 16

Mr DAVID SHOEBRIDGE: But individual interventions are fundamentally different from an intervention that has got the benefit of a large amount of data in front of it and shows a systemic problem. You understand that, do you not, Mr Lean?

Mr LEAN: Yes.

Mr DAVID SHOEBRIDGE: So an answer which just iterates a series of individual actions will be one that would be woefully inadequate in the circumstances. You understand that too?

Mr LEAN: Yes, but I think, as Ms Donnelly has indicated, we are developing our insurer supervision model at the moment and through that there will be much better linkages between the complaints that we receive, the complaints that WIRO receives, and we can feed that back in to drive insurer performance.

Ms DONNELLY: I could happily provide for the Committee the five documents about that detailed insurer supervision model that are now currently available on the Government's Have Your Say website. The fact that we have not implemented it is to give fair notice to those insurers that we intend to change their licence conditions.

ANSWER

SIRA is currently undertaking a review of the implementation of the proposed self-insurance licensing framework. Public consultation on the implementation of the proposed licensing framework and supervisory model closed on the 11 November 2016.

The five documents relating to the review and proposed licensing framework are:

- Group self-insurer draft standard licensing conditions
- Self insurer licensing framework review: SIRA response to expert report
- Discussion paper on implementation of new licensing framework
- Self insurer top-tier expectations and measures – proposed requirements
- PwC final report to SIRA 2016

These are attached and are also available on the SIRA website at www.sira.nsw.gov.au.

QUESTION 17

The Hon. David CLARKE: WIRO has noted that SIRA's Merit Review Service has made recommendations which contradict the assessment of insurers, sometimes to the detriment of workers. What is your response to that concern?

Mr LEAN: As I understand the question, there are some cases where the decision is remade by the Merit Review Service and it is less favourable to the worker than what the original decision was.

The Hon. David CLARKE: Yes, even when it is contradicting the assessment of insurers. In other words, it is contradicting the insurers and the interests of the worker. Are you aware that there are cases in that situation?

Mr LEAN: It is certainly a possibility with the decision-making process because the Merit Review Service remakes the decision. It is not your traditional appeal and if they form a different view about what the correct decision should be it is theoretically possible it would be less advantageous to the worker.

The Hon. David CLARKE: That would be an unusual situation, would it not, that you would make a recommendation which contradicts the assessment of insurers and the detriment of the workers at the same time? Would that not be unusual?

ANSWER

Workers are advised of the possibility of an adverse merit review outcome.

A merit review is a fresh decision made by an independent Merit Reviewer, based on the merits of the issues raised in a work capacity decision. It is not an appeal looking at the validity or correctness of the preceding insurer's internal review or the original insurer work capacity decision.

In making a merit review decision, the decision and its impact for the worker may be different to the original decision of the insurer, and may be different to the internal review decision of the insurer.

That difference may be due to the Merit Reviewer making different findings of facts or a different application of the law to the facts of the case, or it may be due to other factors including that there may be more relevant information now available, or that there may have been a change in the workers condition and capacity since the earlier decisions.

Of the 681 merit review applications finalised in 2015/16, there were 22 applications (three per cent) where the outcome was less beneficial to a worker than the work capacity decision of the insurer.

Every worker applying for a merit review is provided with an information sheet about the merit review process, which includes explicit information about the potential outcomes of the review and confirms that the worker has the opportunity to withdraw their application at any time:

“What is a merit review?”

We review your matter as if the insurer's original decision had not been made. We consider all the relevant information available including any new information you, or the insurer, give us. Following our review, we may make binding recommendations to the insurer, based on our findings.

There are a number of possible outcomes for you following a merit review. Our findings and recommendations may result in a decision that is less beneficial for you, or it may result in the same outcome as the insurer's decision, or it may be more beneficial to you. It is important to understand that the review may not lead to the outcome you would like.

Can I withdraw my application?

You can withdraw your application at any time before the completion of the review. This might occur, for example, if your circumstances have changed and a merit review is no longer required, or if the insurer has made a new work capacity decision. To withdraw your application, you just need to call, email or write to us to let us know.”

QUESTION 18

The Hon. TREVOR KHAN: Can I just ask whether there is a procedure that provides that a worker is advised of the possibility of an adverse outcome before the finding is made?

Mr LEAN: We have to apply the rules of procedural fairness when we are remaking the decision. So, as part of that, my understanding would be that they are given some indication. But I will take it on notice and confirm that.

The Hon. TREVOR KHAN: You see, even if you go into the District Court on something as basic as a licence appeal—

Mr DAVID SHOEBRIDGE: Or a severity appeal.

The Hon. TREVOR KHAN: —before the matter proceeds to a conclusion, an appellant will be advised that he may be heading south and can withdraw the appeal at that point in time.

Mr LEAN: I will confirm the precise procedure that we follow, but certainly my understanding is the rules of procedural fairness should ensure that that happens.

The Hon. David CLARKE: And you will take on notice the issue that I have raised?

Mr LEAN: Yes, I will.

ANSWER

It is unusual for the outcome of a merit review to be more detrimental / less beneficial to a worker than the work capacity decision of the insurer.

When this occurs, it is usually as a result of a recent improvement in the worker's capacity to work, and/or an increase in the number of hours the worker is working each week, and/or an increase in the amount the worker is now earning as current weekly earnings each week.

As noted in the question above, of the 681 merit review applications finalised in 2015/16, there were 22 applications (three per cent) where the outcome was less beneficial to a worker than the work capacity decision of the insurer.

Every worker applying for a merit review is provided with an information sheet about the merit review process, which includes explicit information about the potential outcomes of the review, as detailed in the response to question 17.

QUESTION 19

The CHAIR: I have a totally out-of-left-field question. I am not sure if you are the right witnesses to ask. We had a submission from a person who touched on an issue that I have certainly experienced myself, which is that for telecommunicators, people who work from home, there are regulations whereby employers have to inspect their home or where they are working from and their opportunity to work from home can actually be declined. Would that be a regulator area?

Mr LEAN: It is not part of the State Insurance Regulatory Authority's jurisdiction but it is a safe work issue—it goes to work health and safety.

The CHAIR: But they are citing workers compensation concerns.

Mr DAVID SHOEBRIDGE: It is the OH and S regulator, SafeWork

Mr LEAN: The general principle is wherever an employee is working the employer has an obligation to take steps to ensure that they meet their duty of care, and that applies whether they are working from home or they are working somewhere else.

The CHAIR: I think it is submission 55 and it cites burning himself in the kitchen is viewed as too high a risk. I do not want to go to the individual case but I know when I worked in local government the same rules were there, though that is a self-insurer, they would not inspect a home-based work environment. I was just looking at the question of flexibility of a modern workforce, helping a telecommunicator stay home and be a carer and still work on a laptop, on the wi-fi and still be productive. It just seems to be that it has not caught up with the modern era, but you are saying it is not an issue for SIRA.

Mr LEAN: No, it is not an issue for SIRA; it is for SafeWork. But we could certainly provide you with a more detailed answer.

The CHAIR: I would like that, and I think the young man who made the submission would like that too. If you could provide more information on notice for that—I think it was submission No. 55, but the secretariat can confirm that.

ANSWER

Neither the work health and safety (WHS) nor the workers compensation legislation prevent a person conducting a business or undertaking (PCBU) or employer having flexible working arrangements, including telework. Whether or not to employ persons and allow them to do telework, is a matter for the PCBU or employer.

WHS legislation places a responsibility on PCBUs to ensure the health and safety of all workers, including those engaged in flexible working arrangements such as working from home. PCBUs have a primary duty to ensure that workers and others are not exposed to risks to their health and safety so far as is reasonably practicable. Regardless of the nature of the work, each PCBU must consider the risks posed, and eliminate or control the risks as much as they are reasonably and practically able to.

The PCBU must ensure the work environment, equipment and facilities that will be used by workers for their work are safe, the worker knows how to use them properly, and they are set up correctly, and will not, so far as is reasonably practicable, result in an injury or health problems for the worker.

The connection to work is necessary to establish there is a duty. Work tasks are the responsibility of the PCBU. However, a PCBU is not reasonably and practically able to control what a person working from home may do in their home outside their work tasks.

The current regulation is progressive, not restrictive. It provides the right level of protection for workers and doesn't impede business beyond what is a practical and reasonable requirement.

Where a work-related injury does occur, workers may lodge a workers compensation claim. Each claim is assessed by the employer's insurer according to the legislated criteria.

Any legislative changes to work health and safety and workers compensation laws are a matter for the Government.

QUESTION 20

Mr DAVID SHOEBRIDGE: If I were to see the current claim form, would that still have "WorkCover" on it?

Ms DONNELLY: We still have official forms that have "WorkCover" on them.

Mr DAVID SHOEBRIDGE: I am not talking about forms generally, I am talking about the primary form, the claim form, the one that kicks off the whole system, that is meant to be setting the worker on the path. Does that still have "WorkCover" on it?

Ms DONNELLY: I believe it does.

Mr DAVID SHOEBRIDGE: How on earth do we have that system? More than 12 months down the track, you are pointing workers to the wrong path at the outset. It does not even exist. Why are we there? It is a simple question: Why are we there, 12 months down the track?

Mr LEAN: There is a range of documents, guidelines and forms that we have to go through the process of reviewing. In the case of the website it was an extraordinarily large job to look at all the information that was on the motor accidents and the workers' compensation website. It is a big job. I take your point. I will certainly have a look at the claims form itself because most people access that online now and it should be something we can fix relatively quickly. The only thing I would put a caveat on around that is whether there is some issue with the fact that it is a prescribed form under the regulation but that should have been fixed when we remade the regulation.

The CHAIR: You will take that on notice?

Mr LEAN: Yes.

ANSWER

The Claim form used in the NSW workers compensation system is issued under section 65 of the *Workplace Injury Management and Workers Compensation Act 1998* as an 'approved form'. This form is harmonised with claims forms used by WorkSafe Victoria and WorkCover Queensland. SIRA has recently redesigned the claim form for ease of use, relevancy of information collection and branding requirements. The new form is expected to be available for use on-line shortly.

QUESTION 21

Hon. DANIEL MOOKHEY: Throughout the course of these hearings we have heard multiple accounts from a variety of people—employers, unions, medical professionals, the whole bunch—about the coercive pressure that is applied by insurers in the rehabilitation phase. That is a view that is being expressed, that medical professionals do not provide the insurer with the report that they expect. They are subject to implied or direct threats to their future ability to obtain work. We have also heard multiple evidence of, I guess you would call it medical expert shopping, or approved medical specialist [AMS] shopping, to find the right person that will provide the evidence that an insurer seeks. Should we be putting store in those claims and what is SIRA doing about this?

Mr LEAN: Could I just clarify, do you mean AMS's or independent medical examiners [IME's]?

The Hon. DANIEL MOOKHEY: Both.

Mr LEAN: Both, okay. So the independent medical experts, we are aware of concerns that have been raised by stakeholders through this inquiry and we will be commencing a review of the framework for IME's early next year. In terms of AMS's, that is actually a matter for the Workers Compensation Commission.

The Hon. DANIEL MOOKHEY: If you could take the AMS's and IME's on notice that would be great.

ANSWER

Approved medical specialists

Approved medical specialists (AMS) are senior practicing specialists with a sound knowledge of the NSW workers compensation system and workplace based injury management.

Approved medical specialists are appointed by the Workers Compensation Commission to assess disputes about medical issues for workers compensation claims lodged on or after 1 January 2002.

There are two types of approved medical specialist:

1. those who help to resolve disputes about general medical issues, such as injury management, medical hospital and rehabilitation costs, work capacity, and
2. those who help resolve disputes about the assessment of permanent impairment.

Independent medical examiners

Independent medical examiners (IME) are registered medical practitioners who provide impartial medical assessments.

The worker or the insurer can request an independent medical examination. A referral for an independent medical examination occurs when medical information is inadequate, unavailable or inconsistent, and the referrer has been unable to resolve the problem directly with the practitioners involved. IMEs do not provide advice to workers about their condition, treatment or workers compensation claim. The IME's report may include advice on accepting a claim, the insurer's ongoing liability and the worker's level of capacity for employment and ongoing treatment.

SIRA has recently updated the *Guidelines for claiming workers compensation*. One of the amendments made in the new guideline restricts the number of work capacity assessment appointments that the insurer can require the worker to attend. This approach limits the ability for insurers to engage in 'medical expert shopping' with the goal of obtaining a favourable medical report when undertaking work capacity assessments. SIRA has undertaken extensive education with insurers to ensure that the new guideline is understood and that the instruction surrounding work capacity assessments is operationalised in a way which prevents 'medical expert shopping'.

SIRA is aware that icare has implemented a process where the worker is provided with a choice of three IMEs. icare has reported that this process has been very successful in reducing the number of complaints from workers. SIRA will continue to monitor all complaints made through its Customer Service Centre to identify trends with all insurers.

This information will be incorporated in SIRA's review of IMEs commencing in early 2017. The review will consider the framework for how SIRA regulates IMEs and update the *Guidelines on independent medical examinations and reports*.

The Guidelines prescribe the parameters for referring parties in the selection and referral to IMEs within the system. The review will also evaluate the current referral and selection process and consider the interaction with the medical professions code of conduct and professional standards regarding medico-legal examinations. SIRA will consider additional regulatory activity that SIRA may undertake to ensure objectivity and impartiality within the system.

Anthony Lean

Chief Executive

State Insurance Regulatory Authority

Group self-insurer:

Draft standard licence conditions

DRAFT

September 2016



DRAFT GROUP SELF-INSURER LICENCE
ISSUED PURSUANT TO
SECTION 211 OF THE WORKERS COMPENSATION ACT 1987

This licence is granted to ABN (the Licensee) for years commencing at 4.00pm on and ending at 4.00pm on

This licence is subject to:

- the conditions prescribed now and in the future by the Acts and any regulations, and
- the following additional conditions.

Additional conditions

In these licence conditions:

1987 Act means the *Workers Compensation Act 1987*.

1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*.

Acts means both the 1987 Act and the 1998 Act.

APRA means the Australian Prudential Regulation Authority established by the *Australian Prudential Regulation Authority Act 1998* and any successor authority.

Authority means the State Insurance Regulatory Authority.

Business Day means a weekday on which the Authority's head office is attended and open.

References to legislation other than the Acts includes any successor legislation and references to particular provisions of legislation which is replaced include references to the equivalent provisions in the successor legislation.

1. General

- 1.1 The Licensee shall act in accordance with all directions, guidelines and additional conditions of licence issued by the Authority.

2. Scope of Licence

- 2.1 This licence is granted to the licensee and extends to the wholly owned subsidiaries as named in Schedule 1 of this licence.

3. Conduct (NEW)

- 3.1 A self-insurer must conduct itself to the standards acceptable to the Authority and invest in its resources in order to provide sufficient, timely and accurate information for the Authority to effectively regulate the New South Wales workers compensation system.

3.2 *Fairness (NEW)*

- 3.2.1 The Licensee is to adhere to a business plan for its New South Wales workers compensation portfolio that has been developed and submitted in accordance with the requirements established by the Authority.

3.3 *Compliance (REPLACES OHS AUDIT REQUIREMENT)*

- 3.3.1 The Licensee must perform its workplace obligations and functions as an employer in accordance with requirements of the Work, Health and Safety Act 2011.

3.4 *Corporate information*

- 3.4.1 The Licensee must notify the Authority in writing within 5 Business Days of becoming aware of any change in the effective control of the Licensee or any change in the ownership of the Licensee exceeding 20% of its shareholding. In such an event the continuity of the Licence will be subject to review by the Authority.
- 3.4.2 The Licensee must notify the Authority in writing within 5 Business Days of any company which:
- (a) becomes a wholly-owned subsidiary of the Licensee and employs workers in New South Wales
 - (b) is named on Schedule 1 of this Licence and is disposed of or is no longer a wholly owned subsidiary of the Licensee.
- 3.4.3 The Licensee must not enter into any transaction the effect or purported effect of which is to transfer the whole or any part of its New South Wales workers compensation liabilities without the Authority's prior written approval.

3.5 Significant matters (NEW)

The Licensee must formally notify the Authority of becoming aware of a significant matter providing such information as required within the time as directed by the Authority.

3.6 Claims information

- 3.6.1 The Licensee must provide to the Authority such data relating to claims as the Authority reasonably requires to carry out its functions under the Act. The Licensee shall ensure that such data is accurate and provided to the Authority within the time specified by prescribed regulations or as otherwise directed by the Authority.
- 3.6.2 The Licensee must provide to the Authority self-audit results of its data quality within a timeframe and in accordance with requirements established by the Authority. (NEW)

3.7 Contact

- 3.7.1 The Licensee must notify the Authority in writing within 5 Business Days of any change or vacancy in the senior management position responsible for its New South Wales workers compensation business or the senior management position with overall responsibility for workers compensation.

4. Management and administration of claims operations

- 4.1 The Licensee must perform its obligations and functions as a Licensed Self-insurer in accordance with commercially acceptable and professional standards and demonstrate performance in injury and claims management of a standard acceptable to the Authority.
- 4.2 The Licensee must provide to the Authority self-audit results of its injury and claims management performance within a timeframe and in accordance with requirements established by the Authority.
- 4.3 Before outsourcing the whole or any substantial part of any key operational functions the Licensee must obtain the Authority's prior approval. The Licensee must:
- (a) give the Authority notice in writing identifying the function, the organisation to which it is proposed to outsource the function and the terms of the outsourcing arrangement;
 - (b) satisfy the Authority that the Authority's powers and its ability to exercise them will not be actually or potentially impaired as a result of the proposed outsourcing and
 - (c) demonstrate to the Authority that the organisation to which it is proposed to outsource the function has the expertise and capacity to do so to a commercially acceptable standard.

Key operational functions are the following:

- (i) injury management
- (ii) claims management

(iii) information management and processing

and any other operational functions (being functions which relate to the statutory obligations of Self-insurers under legislation) from time to time notified by the Authority to Licensed self-insurers.

5. Financial ability

5.1.1 The Licensee must demonstrate ongoing financial viability and strength. The continuity of the licence is subject to review by the Authority if, in the opinion of the Authority, the financial position of the Licensee is such that it may make vulnerable the Licensee's ability to undertake its obligations as a self-insurer.

5.2 The Licensee must provide a copy of its annual report (including audited financial statements prepared in accordance with Australian Accounting Standards and the Corporations Act 2001) each financial year within a timeframe to be established by the Authority. If the Licensee is not the ultimate holding company in Australia, then the annual report of the ultimate Australian holding company is to be provided.

5.3 Security

5.3.1 The Licensee shall maintain or provide, by a date to be advised by the Authority, a deposit with the Authority or security in a form approved by the Authority in favour of the Authority and/or its nominee(s). The deposit or security shall be for such sums and in such manner as the Authority may from time to time determine for the purpose of securing the payment of workers compensation liabilities, including contingent liabilities, of the Licensee subject to a minimum security requirement.

5.3.2 The Licensee must provide the Authority with an actuarial report prepared by a qualified actuary for reported and unreported claims in respect of its New South Wales workers compensation business within a timeframe and in accordance with requirements established by the Authority.

5.4 Reinsurance

5.4.1 The Licensee must at all times have reinsurance arrangements in place in relation to its New South Wales workers compensation business in accordance with requirements established by the Authority.

5.4.2 The Licensee shall provide the Authority with evidence of the currency of such reinsurance arrangements.

5.5 Holding Company Guarantee

5.5.1 The Licensee shall maintain a Holding Company Guarantee in a form approved by the Authority under which the Licensee guarantees the liabilities to workers under the Acts and independently of the Acts of each of its wholly-owned subsidiaries as named in Schedule 1 of the licence.

End of licence conditions

Schedule 1

This is Schedule 1 forming part of the licence granted to: -

[LICENSEE]

for the period commencing to

Subject to the conditions of the licence, the licence is granted to the Licensee and extends to all its wholly-owned subsidiaries who are employers in New South Wales as named below :-

[SUBSIDIARIES]

Name	ABN/ACN	Date endorsed

DRAFT

DRAFT

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

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Workers Compensation Regulation, Level 24, 580 George Street, Sydney NSW 2000

Customer Service Centre 13 10 50 Website www.sira.nsw.gov.au

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Self-insurance licensing framework review

SIRA response to expert report.
Discussion paper on implementation
of new licensing framework.

September 2016



State Insurance
Regulatory Authority

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Introduction

In August 2015 the NSW Government introduced reforms to the NSW workers compensation system to create a fairer and sustainable workers compensation system.

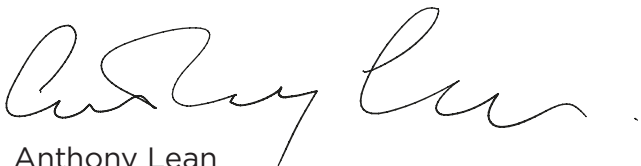
The Government's reforms were implemented by the *State Insurance and Care Governance Act 2015* which established three new organisations to deliver regulatory and operational functions in relation to statutory and Government insurance and regulation of work health and safety. The State Insurance Regulatory Authority (SIRA) regulates NSW statutory insurance systems.

SIRA recognised the importance of addressing all aspects of the system to ensure they were operating at best practice standards to most effectively meet the needs of stakeholders. In 2015, the regulator commenced a review of the self-insurance licensing policy and conditions, which have not been updated since 2001.

PricewaterhouseCoopers (PwC) was engaged to review the NSW self-insurance licensing framework. To ensure stakeholders were properly consulted, an issues paper was developed to elicit feedback on key licensing concerns. The resulting PwC report is accepted by SIRA with the recommendations forming the basis of the new proposed licensing framework and supervisory model.

SIRA would again like to hear the views of self-insurers and other stakeholders on the implementation of the proposed licensing framework. Please note security requirements are not included in this consultation as prudential requirements across all insurers will be reviewed later this year. This discussion paper sets out some key implementation considerations and presents targeted questions for discussion.

We encourage you to have your say and let us know how we can sustain a stable and fair workers compensation system that is effective for all insurers, employers and workers in NSW.



Anthony Lean
Chief Executive - State Insurance Regulatory Authority
September 2016

Context and background

Objective

The objective of this discussion paper is to obtain comment on the proposed self-insurance licensing framework including draft licence conditions and requirements.

The self-insurer financial ability requirements do not form part of this consultation as these requirements will be considered as part of the broader consultation on workers compensation insurer prudential standards to occur later this year.

The NSW workers compensation system

The objectives of the workers compensation system are set out in section 3 of the *Workplace Injury Management and Workers Compensation Act 1998*. They are to:

- secure workers' health, safety and welfare while preventing work-related injury
- provide prompt treatment and rehabilitation to assist injured workers to return to work
- provide income and treatment payments to injured workers and their families
- provide a fair, affordable and financially viable system
- deliver an efficient and effective system.

State Insurance Regulatory Authority (SIRA)

The legislative reforms in 2015 included significant changes to the workers compensation system governance arrangements. In particular it dissolved the former WorkCover entity and created in its place three new entities:

- Insurance and Care NSW (icare) – insurance and care service provider
- State Insurance Regulatory Authority (SIRA) – independent insurance regulator
- SafeWork NSW – independent workplace safety regulator.

These new entities commenced on 1 September 2015. SIRA is responsible for the regulatory functions in relation to workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation.

Legislative requirements for self-insurers

With the separation of functions as described earlier, SIRA is establishing the regulatory framework to oversee workers compensation insurers. This includes updating the self-insurance licensing framework.

The powers SIRA uses in designing its self-insurance licensing framework derive from the legislative framework, particularly the *Workers Compensation Act 1987* (NSW), *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (together the WC Acts) and the *Workers Compensation Regulation 2016*, and guidelines.

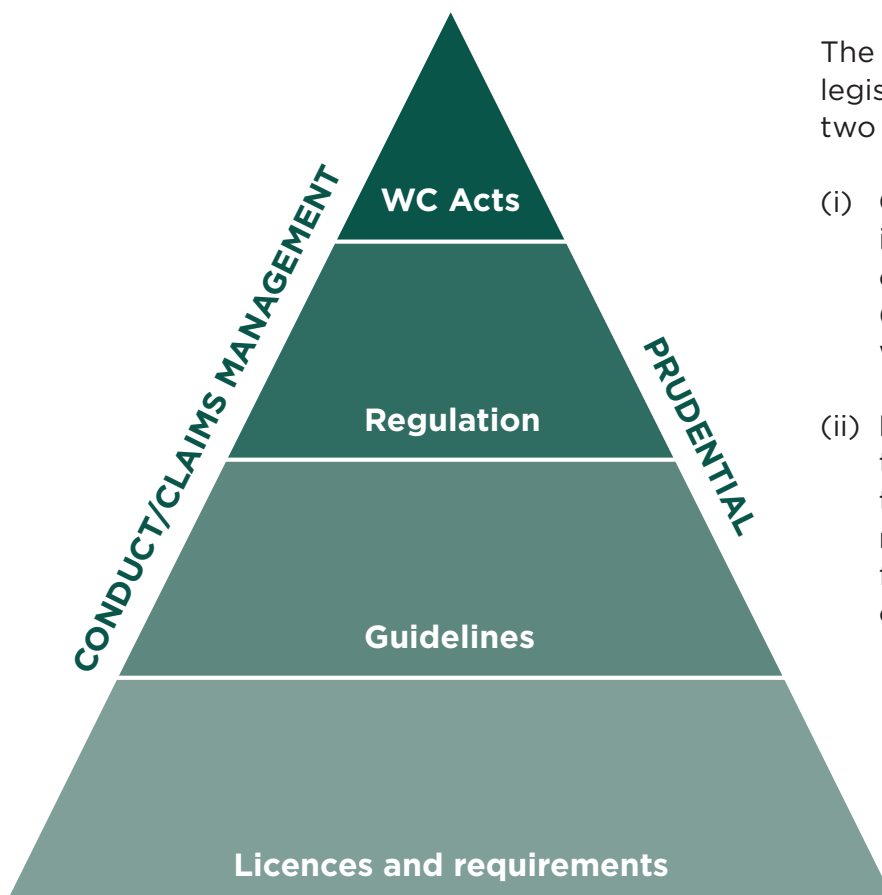


FIGURE 1: LEGISLATIVE FRAMEWORK

The NSW workers compensation legislative framework is divided into two defined regulatory aspects:

- (i) **Conduct:** focusing on the insurer's relationship with its customers: insured employers (premiums setting) and injured workers (claims management).
- (ii) **Prudential strength:** focusing on the financial ability of insurers, the additional insurer protection measures and the long term financial strength of the workers compensation system.

The self-insurance licensing review concentrates on the licensing conditions as part of the broader legislative framework. A self-insurer licence establishes additional operational requirements (conditions) that supplement the insurer requirements contained within legislation.

Expert report and SIRA's view

The self-insurance licensing framework outlined in this discussion paper is largely informed by the expert report commissioned by SIRA and prepared by PricewaterhouseCoopers Australia (PwC): Review of the NSW self-insurance licensing framework: Final report (Attachment 1). SIRA's response to this report follows.

Review of the NSW self-insurance licensing framework: Final report

SIRA engaged PwC to undertake a review of the current licensing framework for self-insurers within the NSW workers compensation system. The aim of the review was to establish a fit-for-purpose, best practice self-insurance licensing framework that incentivises the performance of self-insurers to achieve better outcomes.

PwC consulted with industry when formulating its report, incorporating feedback provided from a strong representation of self-insurers and interested parties. SIRA thanks all stakeholders, particularly the many self-insurers who took the time to draft their feedback and develop suggestions in response to the 2015 PwC issues paper. This feedback was individually reviewed and considered by SIRA together with the recommendations included in the PwC report in developing the new self-insurance licensing framework.

The PwC report has been published on our website. The culmination of PwC's review is the proposal to implement a new risk-based framework for self-insurance that has been designed to:

- incentivise self-insurers to improve their performance by redesigning the licence requirements and conditions
- provide self-insurers with a level of earned autonomy (and reduced regulatory burden) where they have demonstrated a high level of performance
- enable continuous oversight/assessment of self-insurer performance, moving away from the traditional approach of infrequent, point-in-time assessments.

Report recommendations

Based on feedback and analysis, PwC presented 16 recommendations (page iv of the report). The recommendations and SIRA's responses are provided below.

PwC recommendation	SIRA response
Operating model	
<p>Recommendation 1: Implement a three-tiered oversight model for self-insurance, based on self-insurer performance.</p>	<p>Agreed. SIRA will implement a tiered supervisory model for self-insurance. Assessment of a self-insurer's performance will be based on measures of conduct, claims management and prudential (financial ability) performance.</p> <p>The proposed top tier measures form part of this paper.</p>
<p>Recommendation 2: Increase the licence term to a maximum of eight years for higher performing self-insurers (i.e. with top tier self-insurers having a longer renewal period than other self-insurers) and maintain shorter terms for other self-insurers (including new self-insurers).</p>	<p>Agreed. SIRA will extend the licence term for top tier performers up to a maximum of eight years. Those not in the top tier at the time of licence renewal will receive a lesser term. SIRA will determine the appropriate term of a licence at its own discretion.</p>
Oversight	
<p>Recommendation 3: SIRA should consider the views of industry, employees and injured worker representatives when assessing a self-insurer's performance, tier placement and/or licence renewal.</p>	<p>Agreed. SIRA will gather relevant information it deems appropriate in considering the term of a self-insurer's licence and performance. This may include feedback from third parties with informed views on the workers compensation performance of the self-insurer.</p>
<p>Recommendation 4: Adopt a risk-based approach to claims management oversight, in which top tier self-insurers are subject to fewer audit requirements than middle and bottom tier employers.</p>	<p>Agreed. SIRA is adopting a tiered supervisory model to assess the performance of self-insurers. The tiered model recognises and acknowledges the performance of self-insurers by linking the level of regulatory supervision for each licence element on a risk basis to the performance of the self-insurer.</p>
<p>Recommendation 5: Redevelop the existing claims management audit tool to ensure that it is fit for purpose under the new regulator's objectives, is compatible with the audit of historical claims and can be directly linked to claims management performance measures.</p>	<p>Agreed. The claims management audit tool will be redeveloped and will play an important role in the monitoring of performance. SIRA will place greater importance on continual monitoring and expects self-insurers to proactively inform the regulator of issues that arise.</p>
<p>Recommendation 6: Develop complementary measures (to traditional audits) to assess claims management performance.</p>	<p>Agreed. SIRA's regulatory supervision of self-insurers under the tiered model will include a broader range of measures and will be more responsive to specific risks and performance or non-compliance issues.</p>

PwC recommendation	SIRA response
<p>Recommendation 7: Require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and an insurer for workers compensation.</p>	<p>Agreed. SIRA expects self-insurers to have privacy management plans in place that are compliant with the self-insurer’s legislative obligations and consistent with privacy principles. The plans will be required to specifically address privacy management for injured workers and in workers compensation procedures. The self-insurer will be required to make the plans available to the regulator upon request.</p>
<p>Recommendation 8: Remove the OHSMS self-audit and OHSMS audit requirements from the self-insurance licensing framework. Instead, rely on the existing WHS engagement and enforcement activity undertaken by SafeWork NSW that applies to all employers in NSW. Also, establish a new and contemporary framework for referring any WHS issues that come to SIRA’s attention to SafeWork NSW.</p>	<p>Agreed. SIRA will remove the Occupational Health and Safety Management System (OHSMS) audit requirements from the self-insurer licence conditions. These will be replaced by a comprehensive co-regulator referral and information exchange protocol between SIRA and SafeWork NSW to ensure the work health and safety performance of self-insurers is supervised by the appropriate regulator (SafeWork NSW) while remaining visible to SIRA to be considered within the tiered self-insurer supervision model. SIRA retains a clear requirement (and top tier measure) that self-insurers will maintain high standards of workplace safety by complying with the work health and safety legislation. Compliance with the <i>Work Health and Safety Act 2011</i> continues to be monitored and enforced by SafeWork NSW.</p>
<p>Recommendation 9: Establish an integrated and automated data analysis system to enable SIRA to better assess self-insurer performance. This system will support the proposed risk-based approach to self-insurance oversight by SIRA.</p>	<p>Agreed. SIRA will establish a new framework for information management and analysis of data as part of its supervision of the workers compensation scheme.</p>
<p>Recommendation 10: Prepare a quarterly summary performance report for each self-insurer that provides transparency on its performance relative to other self-insurers and its industry.</p>	<p>Agreed. SIRA will provide self-insurers with quarterly summary performance reports once self-insurers have transitioned to the new licensing framework.</p>
<p>Recommendation 11: Publish on SIRA’s website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme.</p>	<p>Agreed. Consistent with Recommendation 10, SIRA will work to establish regular scheme performance reports once the new framework has been in place for sufficient time for self-insurers to transition their operations. This will include aggregated self-insurer performance compared to the rest of the NSW scheme.</p>

PwC recommendation	SIRA response
<p>Recommendation 12: Introduce a data auditing program to help to ensure data submitted by self-insurers and published by SIRA are accurate.</p>	<p>Agreed in principle. SIRA expects that information held by self-insurers and reported to SIRA is current and accurate. SIRA will develop a data quality assurance program that will include audits as required.</p>
<p>Recommendation 13: Require self-insurers to formally advise SIRA of any strategically significant matters related to their management of claims.</p>	<p>Agreed. SIRA expects that significant matters will be brought to the regulator’s attention within required timeframes, and with sufficient detail to make an assessment of potential impacts. Notification requirements will be a licence condition.</p>
<p>Financial</p>	
<p>Recommendation 14: Align SIRA’s cost recovery model more closely with the regulatory effort incurred by the regulator by differentiating self-insurer licence fees based on their level of performance. The fee structure would be aligned with the proposed three tiered model.</p>	<p>For further consideration. SIRA will consider this recommendation and develop an options paper for further consultation.</p>
<p>Recommendation 15: Provide a mechanism by which employers that exit the self-insurance scheme are required to pass on their tail claims to a licensed insurer. This would require the employer to pay a buyout amount covering the cost of its outstanding claims liabilities.</p>	<p>For further consideration. SIRA will consider a range of approaches consistent with the legislation to manage any exit from the self-insurance scheme.</p>
<p>Recommendation 16: SIRA, in consultation with its actuaries, should consider updating the prudential requirements to ensure that they remain fit for purpose.</p>	<p>Agreed. SIRA will consider updating the prudential requirements and will consult on options later this year in the context of broader consultation on prudential risk regulation of all NSW workers compensation insurers.</p>

PwC has not made any recommendation with regards to the licensing policy criterion for applicants to have a minimum of 500 employees. The 500-employee entry requirement provides important guidance to employers considering self-insurance about the scale required to make it a potentially viable proposition. SIRA proposes to use this criterion as a guide when assessing self-insurance application requirements.

Consultation

To implement the self-insurance licensing framework as recommended by PwC, SIRA has:

- redrafted its licensing documentation
- drafted proposed top tier requirements for discussion.

The proposed licence conditions and supervisory model form the basis for discussion and focus questions below.

Insurers, employers, workers and any other interested parties are invited to comment on this paper within the submission period.

SIRA will consider the feedback provided in submissions, then finalise the new licensing documentation and issue the licensing framework formally.

Key dates

Consultation activity	Dates
Discussion paper published on the SIRA website and the NSW Government 'Have Your Say' website	9 September 2016
Submissions received by SIRA	11 November 2016
SIRA reviews submissions and prepares summary of feedback	25 November 2016
Submissions summary paper published	2 December 2016
SIRA publishes new licensing policy, conditions and requirements	By 28 February 2017

Please note, SIRA will publish final versions of the licensing policy, licence conditions and associated requirements following consultation about insurer prudential requirements (including self-insurer security requirements) which will occur later this year.

How to make a submission

SIRA welcomes comment and feedback from all stakeholders. The preferred format for providing a response to this discussion paper is via a written submission.

Written submissions should be emailed to SIRA at consultation@sira.nsw.gov.au by 11 November 2016.

Written submissions may be published on the SIRA website. If you do not want your submission or any part of it published, you must clearly indicate this at the time of submission.

Focus questions and discussion

New licensing documentation

SIRA has updated the self-insurer licence conditions to support SIRA's evolving legislative framework and to implement the new self-insurance licensing framework as proposed by PwC. Section 211 of the *Workers Compensation Act 1987* states that SIRA may take the following matters into consideration in determining an application for (or renewal of) a licence:

- a. the suitability of the applicant,
- b. the financial ability of the applicant to undertake the liabilities under this Act,
- c. the efficiency of the workers compensation system generally, and
- d. such other matters as SIRA thinks fit.

The self-insurer licence conditions have been structured to facilitate the achievement of the workers compensation system objectives through the supervision of self-insurers' performance in the licensing elements of Conduct and Claims Management (together referred to as applicant suitability) and Financial Ability while considering the efficiency of the workers compensation system generally.

The licensing framework includes Performance and Information requirements as represented in Figure 2 below:

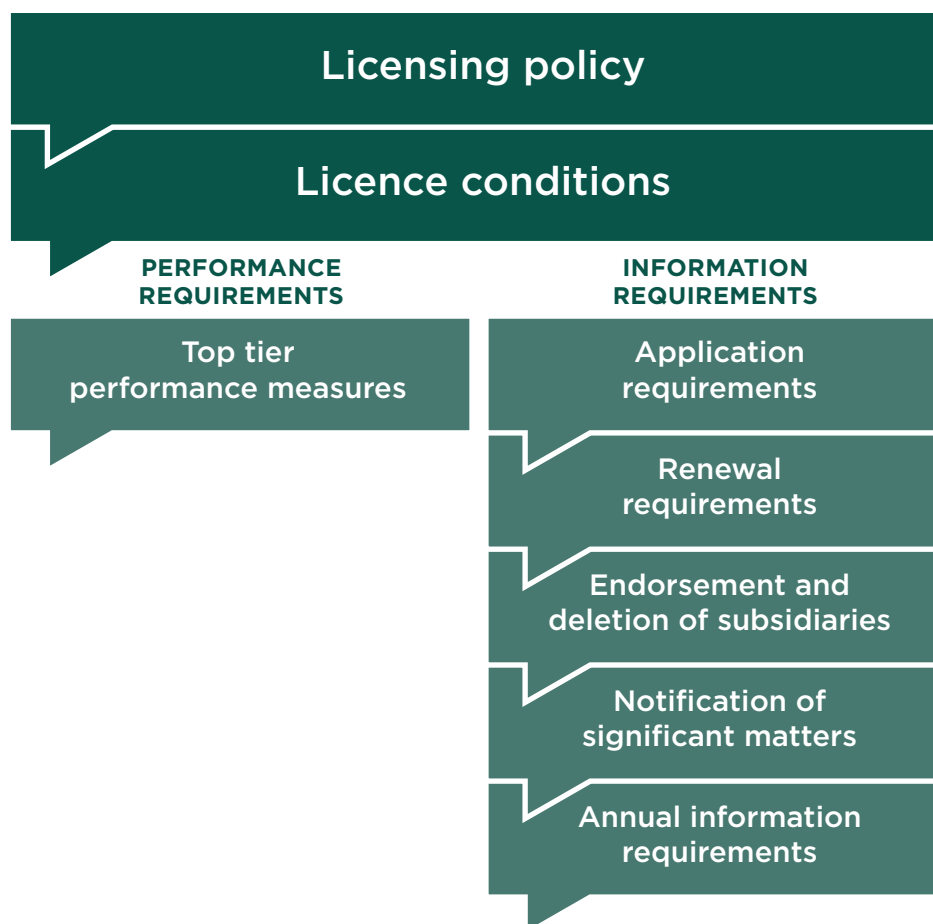


FIGURE 2: SELF-INSURANCE LICENSING FRAMEWORK

The draft licence conditions are attached (Attachment 2) with proposed or revised licence conditions highlighted.

Focus Question 1: What is your view of the proposed standard licence conditions?

Implementing a tiered supervisory model

The new self-insurance licensing framework will be supported by a tiered supervisory model as recommended by PwC (Recommendation 1). The model provides self-insurers with an understanding of SIRA's expectations, assessment of performance against expectations and formal assessment reporting. The tiered model recognises and acknowledges the performance of self-insurers by linking the level of regulatory supervision for each licence element on a risk basis to the performance of the self-insurer.

SIRA is implementing a tiered supervisory model for insurers with the top tier representing the expected performance of insurers where the majority should be allocated. The end tier represents sustained poor performance or non-compliance resulting in a regulatory response to suspend or cancel the self-insurance licence.

Self-insurers that exhibit expected levels of performance against outcome measures for each self-insurance element while remaining compliant with legislation will be assessed as top tier and will be subject to fewer oversight requirements from SIRA.

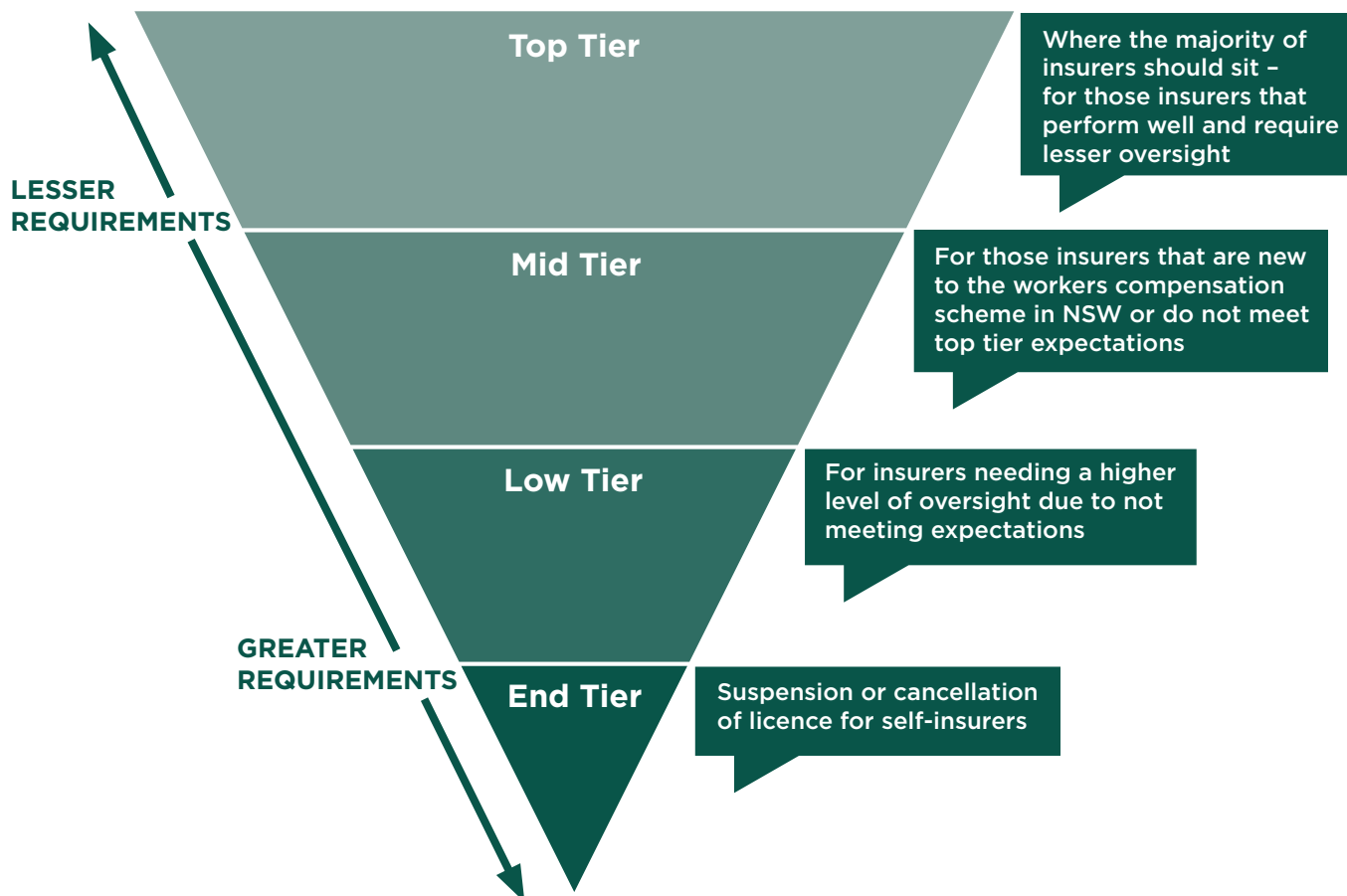


FIGURE 3. SELF-INSURANCE TIERED SUPERVISORY MODEL

Failure to meet top tier measures may mean re-categorisation into lower tiers. This will result in additional regulatory oversight within one or more insurer elements of Conduct, Claims Management or Financial Ability depending upon the performance risk or non-compliance identified. A self-insurer’s performance will need to improve to the standard expected or place their self-insurer licence at risk.

SIRA is proposing top tier performance measures for the following elements:

1. Conduct
2. Claims management
3. Financial ability

Refer to the document Self-insurer top tier requirements (Attachment 3) for the proposed areas that will be considered (excluding financial ability).

Focus Question 2: What is your view of the appropriateness of the draft top tier measures for conduct and claims management to set SIRA’s expectations of insurance performance?

Focus Question 3: Are there any other areas or measures that should be considered?

Focus Question 4: What is your view on applying the same assessment criteria to applications for a new self-insurer licence?

New self-insurers will be categorised in the mid tier for all three elements for the first year of their licence so SIRA can monitor the self-insurer's adoption and implementation of the licence requirements. After one year, the new self-insurer will be reassessed and may move tiers as their performance dictates.

Focus Question 5: What is your view of the allocation of new self-insurers to the mid tier for their first year under licence?

Business plan

One of the proposed top tier requirements requires self-insurers to develop and submit a business plan. This is already a requirement for licensed insurers (as defined under the 1987 Act) under the new *Workers Compensation Licensed Insurer Business Plan Guidelines*. It is expected that self-insurers will develop a simplified business plan (template to be provided) outlining their strategies to:

- manage workplace and workers compensation risks
- lead an appropriate corporate culture in order to treat injured workers fairly
- improve claims management outcomes.

Focus Question 6: What is your view on the requirement for self-insurers to submit a business plan to outline their strategic direction consistent with licensed insurers?

Attachments

Attachment 1

Review of the NSW self-insurance licensing framework: Final report, PricewaterhouseCoopers Australia.

Attachment 2

Draft group self-insurer standard licence conditions.

Attachment 3

Draft self-insurer top tier requirements for conduct and claims management.



**State Insurance
Regulatory Authority**

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers. However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website www.legislation.nsw.gov.au.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Self-insurer top tier expectations and measures

Proposed requirements

DRAFT

September 2016



State Insurance
Regulatory Authority

Top tier requirements: Conduct

EXPECTATION	REFERENCE	MEASURE
Fairness		
<p>Lead a corporate culture that gives due regard to the interests of injured workers and treats them fairly at all times.</p> <p>(New)</p>	Licence condition	<p>The self-insurer is to adhere to a business plan that has been developed and submitted to SIRA's satisfaction in accordance with SIRA's requirements. The plan to outline strategies including:</p> <ul style="list-style-type: none"> • manage workplace and workers compensation risks • lead an appropriate corporate culture in order to treat injured workers fairly • improve claims management outcomes.
Compliance		
<p>Uphold the intent and comply with the Workers Compensation Legislative Framework</p>	Legislative requirement	<p>The self-insurer is to comply with the workers compensation legislative framework with particular regard to meeting legislative timeframes for:</p> <ul style="list-style-type: none"> • determining liability • making provisional payment • providing medical expenses.
<p>Self-insurer must maintain compliance with the Work Health and Safety Legislation</p> <p>(Revised requirement)</p>	Licence condition	<p>The self-insurer to comply with the legislative requirements of the <i>Work, Health and Safety Act 2011</i>.</p>

Reporting

<p>Timely and accurate monthly claims data submissions</p>	<p>Licence condition</p>	<p>Claims information to be recorded and reported accurately in accordance with the Claims Technical Manual with</p> <ul style="list-style-type: none"> • X% of quarter end submissions accepted by SIRA and provided within timeframe requirements • More than X% of monthly claims data submissions accepted by SIRA and provided within timeframe requirements • No fatal errors outstanding for more than X months at any time • No suspect errors outstanding for more than X months at any time
<p>Timely notification of significant matters (New)</p>	<p>Licence condition</p>	<p>All significant matters to be formally notified to SIRA in accordance with the <i>Notification of significant matters: requirements</i> (within X business days).</p>
<p>Outcome of data quality audits (with any improvement plan taken into consideration) (New)</p>	<p>Licence condition</p>	<p>SIRA will consider the outcomes of data quality audits conducted in accordance with the [<i>Data quality audit manual - to be developed</i>] (both self or SIRA initiated) and the self-insurer's response to the audit outcomes.</p>
<p>Timely provision of annual business information</p>	<p>Legislative requirement: Section 189 of the 1987 Act</p>	<p>Section 189 annual information to be lodged with SIRA in accordance with SIRA's requirements and within X months of the self-insurer's financial year end (X months for government entities) including:</p> <ul style="list-style-type: none"> • Contact information • Business plan • Audited annual report • Actuarial valuation of outstanding claims liability • Evidence of reinsurance policy
<p>Timely and accurate provision of contribution information</p>	<p>Legislative requirement: Section 39 of the 1998 Act</p>	<ul style="list-style-type: none"> • Annual wages and employee information to be reported in the format required and the date requested by SIRA. • Workers Compensation Operational Fund and Dust Diseases Fund contributions to be paid by the due date.

Top tier requirements: Claims management

EXPECTATION	REFERENCE	MEASURE
<p>Handles claims fairly by meeting claims management principles:</p> <ul style="list-style-type: none"> • focus on work • provide effective communication • make evidence based decisions • use a tailored, cost effective approach • have timely intervention. <p>(New performance reporting)</p>	Licence condition	<p>SIRA will consider the performance of a self-insurer against benchmarks in outcome measures over the previous year and current year:</p> <ul style="list-style-type: none"> (i) return to work measures (ii) percentage of disputes and decisions that are subsequently overturned (iii) incidence of claims.
<p>Outcome of claims management audits (with any improvement plan taken into account)</p>	Licence condition	<p>SIRA will consider the outcomes of case management audits/ reviews conducted in accordance with the Insurer Audit Manual (both self or SIRA initiated) and the self-insurer's response to the audit outcomes including:</p> <ul style="list-style-type: none"> (i) conformance with audit requirements and the number and nature of any non-conformances (ii) the quality of any improvement plan to address the audit non-conformances (iii) the implementation of the improvement plan and time taken to resolve non-conformances.
<p>Handles complaints and disputes fairly having regard to needs and reasonable expectations by:</p> <ul style="list-style-type: none"> • responding and investigating quickly 	Licence condition	<p>Complaints: SIRA will consider the nature and number of complaints including:</p> <ul style="list-style-type: none"> (i) time taken to resolve complaints (XX% level 2 complaints resolved within 20 days) (ii) whether the complaints are substantiated as legislative non-compliance. <p>SIRA's expects the majority of complaints will be resolved at a Level 1</p>

<ul style="list-style-type: none"> • providing reasonable information • prompt resolution • active participation within the complaints and disputes process • improving processes. 		<p>stage however where a complaint progresses to Level 2, the self-insurer will promptly respond and resolve within the required timeframes.</p> <p>(New) Disputes: SIRA will consider the following indicators within the workers compensation disputes process:</p> <ul style="list-style-type: none"> (i) nature and number of sustained disputes (ii) participation in the disputes process including providing the information required in a timely and accurate manner (iii) implementing and honouring the resolution or directions arising from the dispute.
<p>Informs and obtains SIRA's approval to outsource any whole or substantial part of any key operational function</p>	<p>Licence condition</p>	<p>SIRA requires self-insurers to inform and obtain SIRA's approval to outsource any whole or substantial part of any key operational function in accordance with its requirements.</p>

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Top tier requirements: Financial ability

EXPECTATION	REFERENCE	MEASURE
Maintains strong financial ability	Licence condition	The self-insurer to meet financial ratio benchmarks for its industry. (Financial ratios and benchmarks to be considered as part of the prudential consultation)
Provides security/ maintains appropriate reinsurance arrangement/ executes a holding company guarantee as determined by SIRA (if applicable)	Licence condition	The self-insurer shall maintain or provide a deposit with or security to SIRA in a form approved by SIRA for such amount and within a timeframe (typically X weeks) as directed by SIRA. (Security and financial protection requirements to be considered as part of the prudential consultation)

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Review of the NSW self- insurance licensing framework Final Report

*State Insurance
Regulatory Authority*

July 2016

Disclaimer

This Report has been prepared by PricewaterhouseCoopers Australia (PwC) in its capacity as advisor to the New South Wales State Insurance Regulatory Authority (SIRA) in accordance with the engagement letter dated 24 July 2015.

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Executive summary

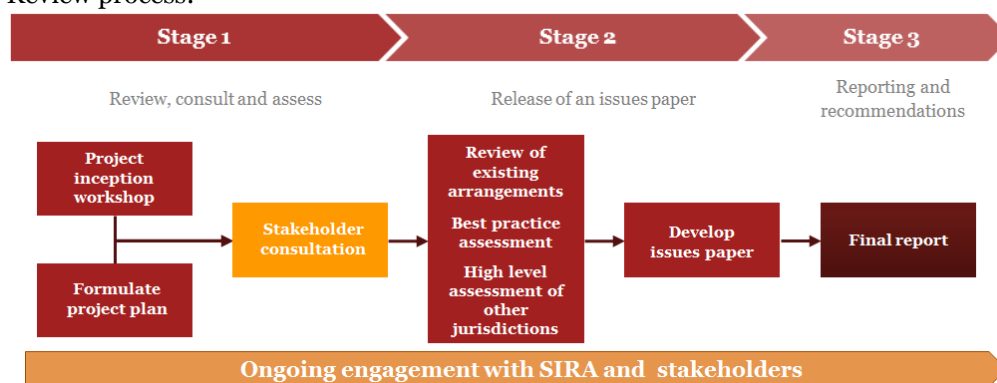
About the review

The State Insurance Regulatory Authority (SIRA) is the new government regulator responsible for the regulatory functions in relation to workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation. SIRA reports to the Minister for Innovation and Better Regulation.

SIRA has engaged PricewaterhouseCoopers Australia (PwC) to undertake a review of the current licensing framework for self-insurers within the New South Wales (NSW) workers compensation system.

The aim of the review is to establish a fit for purpose, best practice self-insurance licensing framework that incentivises the performance of self-insurers to achieve better outcomes.

Review process:



Current state of self-insurance in NSW

In the context of workers compensation, self-insurance provides organisations with the opportunity to take direct responsibility for the management of their claims and payment of claim liabilities. As of July 2016, there were 56 licensed self-insurers, including a range of shire and city councils, and group self-insurers.

Coverage of organisations licensed by SIRA to be self-insured:



In 2001, SIRA (then WorkCover NSW) established the self-insurance licence criteria that remain in place today. The current requirements can be grouped into four categories. These are:

- entry and renewal requirements
- financial requirements
- claims management requirements
- workplace health and safety (WHS) requirements.

To assess the current licence requirements against best practice principles, consultation was undertaken with a broad range of stakeholders representing self-insurers, workers, regulators and service providers.

In response to an Issues Paper, the review received submissions from 36 stakeholders, ranging from self-insurers and businesses supporting outsourced self-insurer arrangements to WHS auditors and employee and injured worker representatives.

The stakeholder engagement has informed the development of the proposed framework and detailed recommendations contained in this report.

A new framework for self-insurance in NSW

A new framework for self-insurance in NSW has been designed to:

- incentivise self-insurers to improve their **performance** by redesigning the licence requirements and conditions
- provide self-insurers with a level of **earned autonomy** (and reduced regulatory burden) where they have demonstrated a high level of performance
- enable **continuous oversight/assessment** of self-insurer performance, moving away from the traditional approach of less frequent, point-in-time assessments.

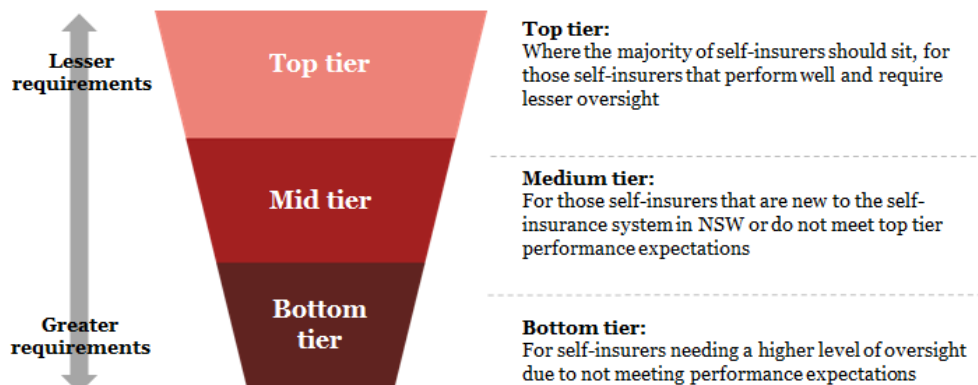


The proposed framework provides a risk-based, fit for purpose approach to better align the self-insurance framework with the new regulator's objectives.

There are a number of important benefits to the proposed framework, including that:

- it recognises the underlying incentives faced by self-insurers
- it is risk-based, as compliance monitoring activities are directly scaled against performance
- it reduces the compliance burden for many self-insured organisations
- higher performing licensees are rewarded for performance as the costs they bear for being licensed are reduced
- lesser performing self-insurers are given a direct incentive to improve performance
- it is administratively more efficient as SIRA can target its oversight activity on fewer higher risk organisations.

A three tiered operating model is proposed, with those self-insurers that exhibit high levels of performance and meet SIRA's operational and reporting obligations being subject to fewer oversight requirements. Conversely, self-insurers that do not meet performance requirements will be subject to greater oversight from SIRA to assist them to lift their performance.



Recommendations

The recommendations underpinning the proposed framework are detailed in the body of this report. They can be grouped into three categories:

- 1 **Operating model** – recommendations that relate to the operationalisation of the new model for self-insurance in NSW.
- 2 **Oversight** – recommendations relating to changes or additions to specific oversight requirements under the self-insurance licensing framework.
- 3 **Financial** – recommendations relating to financial requirements under the self-insurance licensing framework.

The recommendations are listed in Table 1.

Table 1: Recommendations – by category

Report recommendations

Operating model

Recommendation 1: Implement a three-tiered oversight model for self-insurance, based on self-insurer performance. Under this model:

- Self-insurers that exhibit higher levels of performance against outcome measures and meet SIRA's operational and reporting obligations will be subject to fewer oversight requirements from SIRA. Most self-insurers are expected to be in the top tier over the medium-term
- Self-insurers that do not meet performance requirements and/or do not meet SIRA's operational and reporting requirements will be subject to greater oversight from SIRA. The bottom tier is intended to be a short term allocation for lesser performers, with self-insurers either improving their performance to move to the mid tier, or otherwise placing their self-insurance licence at risk
- An intermediate level of oversight is proposed for medium performers (mid tier). New self-insurers would enter the scheme at the mid tier until they have proven their ability to meet SIRA's performance requirements.

Recommendation 2: Increase the licence term to a maximum of 8 years for higher performing self-insurers (i.e. with top tier self-insurers having a longer renewal period than other self-insurers) and maintain shorter terms for other self-insurers (including new self-insurers).

Oversight

Recommendation 3: SIRA should consider the views of industry, employees and injured worker representatives when assessing a self-insurer's performance, tier placement and/or licence renewal. This may include:

- using its legislative authority to require licence applicants to advertise or give notice of their application
- collecting feedback on self-insurers from employee and injured worker groups
- incorporating stakeholder feedback into self-insurer performance measures.

Recommendation 4: Adopt a risk-based approach to claims management oversight, in which top tier self-insurers are subject to fewer audit requirements than middle and bottom tier employers. This could include:

- **top tier employers** - conducting claims management self-audits at least every 2 years and completing a claims management audit at licence renewal (or if concerns are raised)
- **mid tier employers** - conducting annual claims management self-audits and completing a claims management audit at licence renewal (or if concerns are raised)
- **bottom tier employers** - conducting annual claims management self-audits and completing an annual claims management audit conducted by SIRA (six months following the self-audit).

Recommendation 5: Redevelop the existing claims management audit tool to ensure that it:

- is fit for purpose under the new regulator's objectives
- is compatible with the audit of historical claims

Report recommendations

- can be directly linked to claims management performance measures.

Recommendation 6: Develop complementary measures (to traditional audits) to assess claims management performance including:

- 'random' spot checks of self-insurers claims management functions by SIRA
- a periodic survey of injured workers across both self-insured and nominally insured employers
- regular assessment of claims management performance data by SIRA.

Recommendation 7: Require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and an insurer for workers compensation

Recommendation 8: Remove the OHSMS self-audit and OHSMS audit requirements from the self-insurance licensing framework. Instead, rely on the existing WHS engagement and enforcement activity undertaken by SafeWork NSW that applies to all employers in NSW. Also, establish a new and contemporary framework for referring any WHS issues that come to SIRA's attention to SafeWork NSW.

Recommendation 9: Establish an integrated and automated data analysis system to enable SIRA to better assess self-insurer performance. This system will support the proposed risk-based approach to self-insurance oversight by SIRA.

Recommendation 10: Prepare a quarterly summary performance report for each self-insurer that provides transparency on its performance relative to other self-insurers and its industry.

Recommendation 11: Publish on SIRA's website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme. This could include indicators on:

- claims management and return to work outcomes
- relative incident and claims volumes
- compliance rates in relation to SIRA's reporting and data provision requirements
- injured worker satisfaction.

Recommendation 12: Introduce a data auditing program to help to ensure that data submitted by self-insurers and published by SIRA are accurate.

Recommendation 13: Require self-insurers to formally advise SIRA of any strategically significant matters related to their management of claims, including:

- any cases to be litigated in a court
- any cases expected to generate significant public interest.

Financial

Recommendation 14: Align SIRA's cost recovery model more closely with the regulatory effort incurred by the regulator by differentiating self-insurer licence fees based on their level of performance. The fee structure would be aligned with the proposed three tiered model.

Recommendation 15: Provide a mechanism by which employers that exit the self-insurance scheme are required to pass on their tail claims to a licensed insurer. This would require the employer to pay a buyout amount covering the cost of its outstanding claims liabilities.

Recommendation 16: SIRA, in consultation with its actuaries, should consider updating the prudential requirements to ensure that they remain fit for purpose, including:

- updating its guidance in relation to the calculation of outstanding claims liabilities
 - increasing the minimum claims handling expense assumption
 - introducing a minimum security requirement
 - allowing self-insurers with large amounts of claim liabilities to utilise a different valuation methodology
 - increasing the retention amount range
 - increasing the level of the retention amount beyond which approval is required from SIRA.
-

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1 Introduction

1.1 Purpose of the review

The State Insurance Regulatory Authority (SIRA) is the new government regulator responsible for the regulatory functions in relation to workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation. SIRA reports to the Minister for Innovation and Better Regulation.

SIRA focuses on ensuring key public policy outcomes are achieved in relation to service delivery to injured people, affordability, and the effective management and sustainability of the workers compensation and CTP insurance schemes.

Under the *State Insurance and Care Governance Act 2015*, the principal objectives of SIRA in exercising its functions are to:

- promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation and motor accidents legislation and the other Acts under which SIRA exercises functions
- minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with such injuries
- promote workplace injury prevention, effective injury management and return to work measures and programs
- ensure that persons injured in the workplace or in motor accidents have access to treatment that will assist with their recovery
- provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation
- promote compliance with the workers compensation and motor accidents legislation.

In order to meet its legislative objectives, SIRA will regularly evaluate its existing guidelines and regulatory requirements. It has engaged PricewaterhouseCoopers Australia (PwC) to assist with its review of the current licensing framework for self-insurers within the New South Wales (NSW) workers compensation system.

The aim of the review is to establish a fit for purpose, best practice self-insurance licensing framework that incentivises the performance of self-insurers to achieve better outcomes. In doing this, the review will assess the self-insurance licensing framework with consideration of the NSW Government's aim to 'make it easier to do business' in NSW.¹

The NSW self-insurance framework was last reviewed in 2001, and since then much has changed within the workers compensation system, including the adoption of new health and safety requirements, increased focus on return to work and implementation of legislative structural and benefit reform.

¹ NSW Department of Industry, Investment in NSW <http://www.industry.nsw.gov.au/invest-in-nsw/why-sydney-and-nsw/economic-development-framework/make-it-easier-to-do-business>, October, 2015

1.2 Review scope

In order to develop a set of recommendations for a best practice self-insurance licensing framework, the scope of the review involves:

Stage 1 – Review, consult and assess

- development of a review methodology specifying the analytical framework to be applied (refer to section 1.5)
- a desktop review of relevant current literature along with a review of self-insurance models in other jurisdictions (refer to Appendix D)
- an assessment of current licensing requirements against the Independent Pricing and Regulatory Tribunal's (IPART's) licensing framework (refer to section 1.5.3)
- engagement with stakeholders to gather initial feedback on the current licensing framework and suggestions for potential improvements (refer to section 1.5.3).

Stage 2 – Release of an Issues Paper

- publication of an Issues Paper inviting stakeholder comment on the key issues in relation to the existing licensing framework along with components of the proposed licensing framework redesign (refer to sections 1.5.3 & 2)
- review of stakeholder responses to the Issues Paper to inform development of recommendations for the licensing framework redesign (refer to section 2).

Stage 3 – Reporting and recommendations

- development of a final report (this report) providing the recommendations flowing from the review, along with a roadmap for implementation of the recommended licensing framework (refer to sections 3 & 4).

1.3 About this document

This document is the final report outlined above, and presents the outcomes of the review of self-insurance arrangements in NSW. It draws on stakeholder comments received during all stages of the Review and presents PwC's recommendations for improving the arrangements for self-insurance. It contains 16 recommendations and provides a new framework for regulating self-insurance in NSW. In doing this, the report has five sections:

- 1 An introduction laying out the purpose, background and methodology of the Review.
- 2 A section on stakeholder perspectives, summarising the submissions that were received in response to the Issues Paper.
- 3 The proposed overarching model for self-insurance in NSW, explaining the:
 - model principles of risk, efficiency, alignment and transparency
 - proposed three-tiered self-insurance framework.
- 4 Our detailed recommendations, categorised into:
 - financial recommendations covering licence fees, tail management and prudential requirements
 - operational recommendations, dealing with licence renewal, claims management, claimant privacy and conflicts of interest, and work health and safety
 - information recommendations, discussing the use of licensee data, increased transparency and reporting of significant matters.
- 5 Six appendices, detailing the consultation schedule, submissions to the review, the current framework and requirements, and a summary of the self-insurance requirements in other jurisdictions.

1.3.2 Limitations of the analysis

A notable limitation of the analysis presented in this report is the limited availability of detailed self-insurance performance data. The limited data provided to the review by SIRA was not able to be verified. As a result, data on the performance of self-insurers has not been included in this report or the preceding Issues Paper.

1.4 Current situation

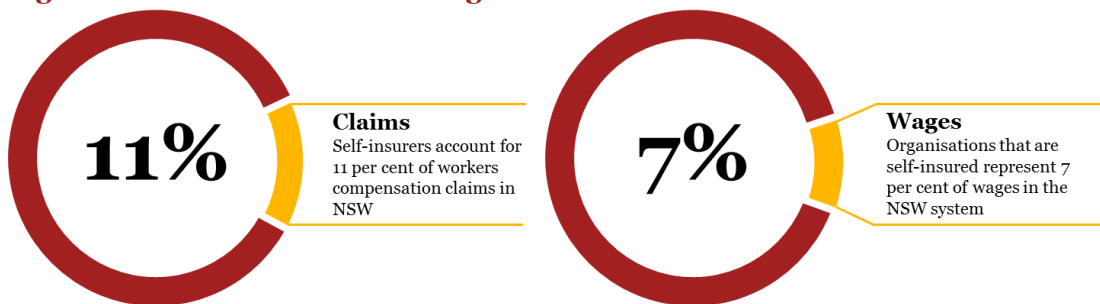
In the context of workers compensation, self-insurance refers to an arrangement in which an employer (or corporate group of employers) is licensed to carry its own underwriting risk and therefore does not need to obtain a workers compensation policy of insurance.

Self-insurance provides organisations with the opportunity to improve their workers compensation outcomes and stabilise their workers compensation costs by taking direct responsibility for the management of their claims and payment of claim liabilities. To aid in fulfilling these requirements, SIRA has an objective to incentivise self-insurers to improve workers compensation outcomes.

1.4.1 Number and performance of self-insurers

As of July 2016, there were 56 licensed self-insurers, including a range of shire and city councils, and group self-insurers. A list of organisations currently self-insured in NSW can be found in Appendix E. The system coverage of organisations licensed by SIRA to be self-insured is provided in Figure 1.

Figure 1: Licensed self-insured organisations



The performance of self-insured organisations varies. Research conducted in Victoria as part of a review of their self-insurance arrangements in 2005 compared the WHS and claims management outcomes of self-insurers with large scheme-insured employers with remuneration of more than \$20m. The analysis indicated that self-insurers achieved similar durable return to work rates and injured worker satisfaction, while observing higher average claims frequency rates but lower average payments per standard claim.² Due to limited data availability, the review was unable to conduct similar analysis on the performance of self-insurers in NSW.

1.4.2 Regulation of self-insurers

Government arrangements for the self-insurance market take the form of legislation and regulation. These arrangements are administered by SIRA with the objective of achieving its public policy outcomes, which include:

- improving workers compensation outcomes for both self-insurers and injured workers
- a ‘right touch’ regulatory approach that incentivises performance and encourages compliance with legislation.

Appendix C further discusses the ways in which the regulatory framework aims to improve self-insurer outcomes.

² Review of Self-Insurance Arrangements in Victoria - Report of the Self-Insurance Review Team, Victorian Workcover Authority, August 2005

1.4.3 Current requirements for self-insurance

In 2001, SIRA (then WorkCover NSW) established the self-insurance licence criteria that remain in place today. It stated that the intention of these requirements was to ensure:

- the protection of injured workers against self-insurer insolvency
- the viability and commitment of self-insurers to maintain self-insurance in the long term
- that appropriate injury and claims management and occupational health and safety systems are implemented and maintained by self-insurers
- the provision of timely and accurate data on claims to WorkCover.

The current requirements can be divided into four categories:

- **Entry and renewal requirements** – measures used when determining an organisation’s eligibility to enter into and remain within the self-insurance licensing scheme
- **Financial requirements** – ongoing requirements that employers must satisfy to remain in the self-insurance system, aimed at ensuring that self-insurers are able to cover the costs of their claim liabilities while also providing for the stability of the broader system
- **Claims management requirements** – ongoing measures requiring self-insurers to demonstrate that their performance in injury and claims management is of a standard acceptable to SIRA
- **Workplace health and safety requirements** – requirements that aim to drive the continued WHS compliance of self-insurers throughout the licence term. Observance of WHS compliance should not be limited to when the audit is conducted.

The current requirements are summarised in Table 2.

Table 2: Summary of current self-insurance licence requirements

Category	Current requirements ³
Entry & Renewal	<ul style="list-style-type: none"> • Payment of an application fee of \$25K for individual SIs or \$30K for group self-insurers • Minimum 500 employees • Sufficient financial resources to meet liabilities • Deposit or bank guarantee based upon projected tariff premium for ensuing 12 months plus a prudential margin of 50 per cent • Must obtain unlimited reinsurance cover • Claims management personnel, resources and structure to perform obligations and functions as a licensed self-insurer • Injury management program • Claims management system • Must demonstrate that its Occupational Health and Safety Management System (OHSMS) is operating at an acceptable level under the National Self-Insurer OHS

³ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

Category	Current requirements ³
	Management System Audit Tool (NAT)
Financial	<ul style="list-style-type: none"> • Lodge a deposit for 150 per cent of claims liabilities • Must maintain unlimited reinsurance cover • Levy based on a percentage of deemed premium • 3-year licence renewal period
Claims Management	<ul style="list-style-type: none"> • Self-insurers must perform their obligations and functions in accordance with commercially acceptable and professional standards and demonstrate performance in injury and claims management • Self-insurers must provide SIRA with monthly claims data • SIRA will conduct injury management audits on self-insurers periodically to monitor their compliance with legislative requirements • Self-insurers are required to conduct and report self-audit results at every year and lodge any revised injury management program to SIRA
Workplace health and safety	<ul style="list-style-type: none"> • A self-insurer must demonstrate that its OHSMS is operating at an acceptable level by achieving a minimum score of 75% in each of the two categories audited under the NAT • Self-insurers must conduct annual self-audits of their OHSMS against the NAT criteria and provide a report to SIRA

The review has leveraged best practice guidance on regulatory licensing in addition to stakeholder consultation in order to identify a case for change and any opportunities for improvement to these current requirements. The related findings and recommendations are detailed in the remainder of this document.

1.5 Review methodology

1.5.1 Best practice regulation

The NSW Government's 2009 Guide to Better Regulation⁴ highlights that the benefits of regulation, when well designed and properly targeted, can substantially outweigh its administrative burden. Such regulation minimises the time and resources the community spends on compliance, freeing them up to innovate and improve productivity.

The Government has articulated seven "better regulation principles" which illustrate how regulators should approach the creation or change of legislation:⁵

- 1 The **need** for government action should be established
- 2 The **objective** of government action should be clear
- 3 The **impact** of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- 4 Government action should be **effective** and **proportional**
- 5 **Consultation** with business and the community should inform regulatory development
- 6 The **simplification**, repeal, reform or consolidation of existing regulation should be considered
- 7 Regulation should be periodically reviewed, and if necessary, reformed to ensure its continued **efficiency** and **effectiveness**

These principles encourage definition of specific objectives, wide consultation to understand the costs and benefits, and determination of whether there are non-regulatory options or trade-offs that can be made to repeal or simplify existing regulation.

1.5.2 IPART's licensing framework

The Independent Pricing and Regulatory Tribunal (IPART) recently published a best practice 'licensing framework'.⁶ The review has been informed by this framework, as well as the better regulation principles, in its assessment of the self-insurer licensing arrangements. The framework involves a series of steps which are outlined in Figure 2. These steps are designed as questions that regulators should ask when designing licensing schemes.

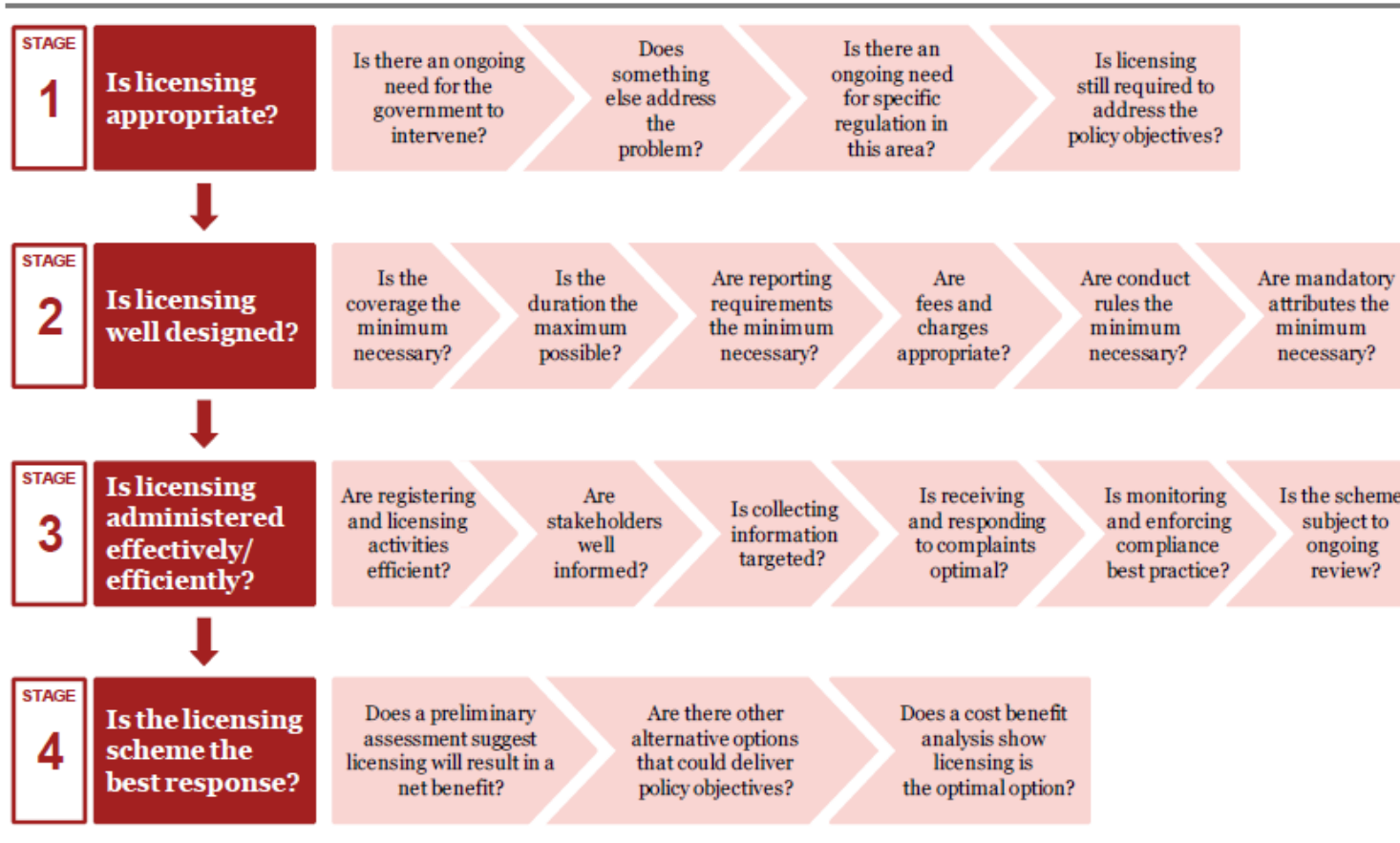
The Issues Paper drew guidance from this framework in discussing the current elements of the self-insurance licensing framework, identifying issues and posing questions to stakeholders.

⁴ NSW Government Better Regulation Office, 'Guide to Better Regulation', November 2009

⁵ NSW Department of Premier and Cabinet, 'The Seven Principles of Better Regulation', 2015

⁶ IPART, 'PwC – A best practice approach to licensing schemes – Conceptual Framework – March 2013', http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design/22_May_2014_-_Consultants_final_licensing_framework/PWC_-_A_best_practice_approach_to_licensing_schemes_-_Conceptual_Framework_-_March_2013

Figure 2: IPART licensing framework



Source: IPART Final Report – Reforming Licensing in NSW – Review of licence rationale and design – September 2014

1.5.3 Issues and opportunities identified

In assessing the current licence requirements against best practice principles and IPART's framework, the review identified a number of issues and opportunities for improvement. These issues were presented in an Issues Paper along with a series of related questions for stakeholders. The Issues Paper was released publicly by SIRA on 12 November 2015. The questions posed to stakeholders provide a summary of the issues presented; these questions are outlined in Table 3.

Table 3: Issues presented in the Issues Paper

IPART Framework element	Licence requirement	Issue questions posed to stakeholders ⁷
1. Is licensing appropriate?	All	1.1 To what extent are the requirements of the self-insurance licensing framework proportionate to any risks posed by self-insurers above and beyond those posed by other employers?
		1.2 What should the government's objectives and expectations be in relation to self-insurance? How does this differ to current practices?
		1.3 What is the value of self-insurance to an employer?
		1.4 What are the intrinsic costs of being self-insured?
		1.5 How does an employer demonstrate its senior executive's commitment to self-insurance and achieving better outcomes for their injured workers?
2. Is licensing well designed?	Prudential requirements	2.1 Is there an appropriate minimum number of employees or another entry level requirement that an applicant should have in order to be eligible and guarantee being able to perform as a self-insurer? If so, please explain why.
		2.2 What feedback do you have about the effectiveness and efficiency of the licensing entry requirements?
	Licence duration	2.3 What would define a self-insurer as a high performer?
		2.4 What impact would a shorter or longer renewal period have on self-insurers, their employees and the broader system? What should be the maximum term of a licence?
		2.5 What would be the impact of implementing an open-ended licence renewal period in NSW?
	Fees and levies	2.6 What would be the benefits of greater transparency around the calculation and use of licence fees and levies?
	Claims management	2.7 What regulatory changes to claims management licence requirements should be made to incentivise better injury prevention and return to work outcomes? Please state the change and impact.
		2.8 What indicators or risk factors should SIRA use to measure claims management performance?
		2.9 What would be the impact of limiting claims management audits to those self-insurers that exhibit lesser performance?
		2.10 How should SIRA promote best practice and/or innovation in claims management to deliver better return to work outcomes?
	Work Health and Safety	2.11 Do any factors make self-insurers a greater risk to maintaining a safe workplace compared with other employers? Please describe any relevant factors and how they could be mitigated.
		2.12 Are OHSMS audits improving WHS outcomes? How might this

⁷ PwC review of self-Insurance licensing arrangements –Issues Paper 2015

IPART Framework element	Licence requirement	Issue questions posed to stakeholders⁷
		be improved?
		2.13 How should a high WHS performer be defined?
		2.14 What other indicator or compliance activities (such as prosecutions or infringements) could be considered to determine and manage WHS performance throughout a licence term?
3. Is licensing administered effectively and efficiently?	Financial Requirements	3.1 The current retention amounts for reinsurance are \$100,000 to \$1,000,000 per event. Should the excess for reinsurance be increased? If so, to what dollar amount?
		3.2 Should the security amount continue to be determined as 150 per cent of the central estimate (or forward central estimate if greater) or should employers be allowed to adopt a prudential margin based upon a probability of adequacy?
	Privacy / Separation of Functions	3.3 To what extent are there potential conflicts of interest where an organisation is both the insurer and the employer?
		3.4 What evidence is there of issues associated with the privacy of claimant information? How could these issues be addressed?
	Independent Medical Examinations	3.5 What evidence is there of a conflict of interest where an employer is also the insurer in relation to the appointment of independent medical examiners? How should any conflict be managed?
	Claims Management Audit Tool	3.6 What should SIRA's claims management compliance monitoring and enforcement activities look like and how do they differ from your experiences?
		3.7 How could the claims management audit tool be improved to deliver improved assessment on the compliance of case management practices and to improve performance?
		3.8 What regulatory action should be taken to improve claims management practices and return to work outcomes?
	Tail Management	3.9 What benefits and costs would be created if an employer that ceases to be a licensed self-insurer was able to pass on its long-tail liabilities to the Nominal Insurer?
	OHS Management System Audits	3.10 How could OHSMS audits be changed to improve their effectiveness in lifting WHS performance?
	Collection and Provision of Information	3.11 Do the current requirements surrounding provision and quality of data to the regulator enable SIRA to adequately monitor self-insurer claims management and WHS performance?
		3.12 How could transparency of performance data be improved and should it be improved?
4. Is the licensing scheme the best response?	Reporting of Significant Matters	4.1 What impact does self-insurance have on the broader NSW system and on the Nominal Insurer?
		4.2 Is there any evidence of adverse outcomes from self-insurers not reporting significant matters to the regulator? How could these risks be mitigated?
		4.3 What other policy options should be considered by the NSW State Government to improve the workers compensation system in the context of the self-insurance licensing arrangements?

Application of IPART's framework in this report

In assessing the existing self-insurance requirements against IPARTS's framework the analysis found that under question one, "Is licensing appropriate?" that licensing is in this case justified. The prevalence of self-insurance arrangements across Australia, combined with its more direct financial and worker incentives for employers, illustrates that self-

insurance is a viable and beneficial option for managing workers compensation. To fundamentally alter or remove these arrangements, there would need to be strong evidence to suggest that the current self-insurance framework is not working or is failing to meet the NSW State Government's objectives.

As a result of this, in proposing a new framework for self-insurance licensing and a set of corresponding recommendations for changes to the existing requirements, the majority of this report focusses on stages two and three of the IPART framework.

“Is licensing well designed?”

The proposed model and recommendations outlined in sections 3 and 4 include changes to licence durations, reporting requirements, licence fees and conduct rules. These changes are aimed at improving the design of the existing framework and establishing a licensing system that meets SIRA's objectives and remains a beneficial option for self-insurers.

“Is licensing administered effectively and efficiently?”

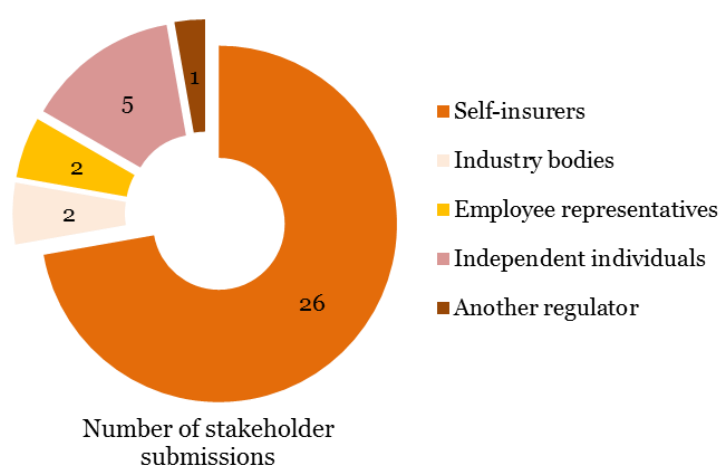
The report also discusses and makes recommendations in relation to the administration of the self-insurance licensing framework. These recommendations focus on the efficiency of oversight requirements, in relation to both SIRA's ability to apply the requirements, as well as the efficiency with which self-insurers can comply and demonstrate their compliance to the regulator.

2 Stakeholder perspectives

The Issues Paper sought stakeholder comment on opportunities to improve key areas of the framework governing self-insurance licensing in NSW. Development of the Issues Paper was supported by consultation with a range of stakeholders representing self-insurers, workers, regulators and service providers.

The review also received submissions from 36 stakeholders, ranging from self-insurers and businesses supporting outsourced self-insurer arrangements to OHS auditors and employee and injured worker representatives. Submissions were published on SIRA's website. A list of submissions received can be found in Appendix B. The majority of submissions were from self-insurers, as shown in Figure 3.

Figure 3: Composition of submissions in response to the Issues Paper



Comments from stakeholders related to the following areas of the self-insurance arrangements:

- 1 General comments
- 2 Financial comments
- 3 Operational comments
- 4 Information comments

The stakeholder comments and opportunities for improvement have informed the development of the proposed framework and set of detailed recommendations in this report. An overview of stakeholder perspectives is included below.

2.2 General comments

Self-insurers and self-insurer representatives largely argued for a reduction in licensing requirements, while employee and injured worker representatives generally advocated the maintenance or an increase in the current level of scrutiny.

For the most part, self-insurers indicated that they found the current licensing framework disproportionate to the risks posed. They believed that as they had been given a self-insurance licence due to their high performance, a greater degree of autonomy should be granted. Some self-insurers pointed to Western Australia's self-insurance framework as a best practice example of efficient and effective arrangements.

Others looked for opportunities to streamline the regulations, such as abolishing the OHSMS audits, consolidating and improving the performance data, and harmonisation of regulation across jurisdictions. One self-insurer's submission advocated maintaining the current licensing requirements, including OHSMS audits (as audit results give a lead indicator, whereas performance data, such as claim and injury rates, are only lag indicators).

Employee and injured worker representatives advocated winding back self-insurance and taking an approach where only organisations posing no risk of workplace injuries would be granted a licence. Their primary concern was that self-insurance created an unsolvable conflict of interest in claims management, where self-insurers have a financial incentive to pressure injured workers into returning to work too soon (or instead taking a medical retirement), and minimising the cost of treating their injuries.

2.3 Financial comments

Licence fees

Most submissions expressed broad satisfaction with current financial requirements. Some self-insurers commented that they would like to see greater transparency around the use of the licence fees they paid. Both an employee representative and self-insurers suggested the use of performance-based licence fees to strengthen incentives to reduce workplace injuries and properly deal with claims. A few self-insurers noted the high levels of their fees but did not explicitly seek lower fees.

Prudential requirements

Stakeholders generally thought the prudential requirements for self-insurers were appropriate. Almost all self-insurers recommended that reinsurance amounts be indexed with inflation to ensure they did not have to be manually changed. A couple of self-insurers thought the bank guarantee should be based on the probability of adequacy and capped at 150 per cent, but others were happy with the current level.

One employee representative claimed that if past company collapses in Australia were any guide, the prudential requirements would not be sufficient to cover all workers' liabilities. In the event of a self-insured company exiting the system, a number of submissions recommended that they be allowed to buy out of their tail liabilities and pass them either to the Nominal Insurer or a third-party.

2.4 Operational comments

Licence duration

The operational requirements of self-insurance licences prompted the highest level of commentary. A key source of comment was the term of licence renewal. Self-insurers advocated an open-ended or at least extended (five to eight year) licence compared to the current renewal period. Employee and injured worker representatives thought that a shorter licence term would allow for greater oversight and ensure that licence cancellations could be easily obtained if self-insurers performed poorly. They also suggested that workers be polled before a licence was granted to an organisation.

Minimum number of employees

There was some disagreement over the eligibility for a self-insurance licence. Employee representatives thought there was no evidence that 500 employees was the right number, with one advocating raising the threshold to 2000. Self-insurers also did not see why 500 was the right number, but thought that the threshold could be lowered or abolished altogether, with assessments of an application for a self-insurance licence instead made based on financial capacity. One self-insurer did note that it would be quite hard to sustain a viable and effective claims management function in a small organisation. A few self-insurers mentioned that they would like it to be easier to bring acquisitions and subsidiaries in under a group licence, and that the default should be that new acquisitions were automatically included in the licence.

OHSMS audits

There was more consensus that, at present, OHSMS audits were not improving outcomes. One employee representative commented that audits never seem to venture into assessing the effectiveness of the self-insurer's WHS practices, only the compliance with the audit tool. Feedback from self-insurers was similar, with a few saying that they would find an effective audit useful for identifying areas to improve their systems. Most, however, advocated abolishing the audit requirement altogether, or at least moving to a risk-based approach where only poor performers were audited. A WHS coordinator at a self-insurer commented that self-insurers have become very good at passing OHSMS audits without much effort, and that senior management drop the ball on WHS matters after the audit is complete. Submissions by OHS auditors themselves as well as companies supporting outsourced self-insurance functions supported maintaining the current audit requirements. Employee representatives also proposed keeping the audits, but conducting them randomly as well as at the start and end of every licence. They pointed out that if self-insurers represented seven per cent of the NSW workforce but 11 per cent of all claims, this implied that self-insurers were proportionally experiencing more injuries than non-self-insured employers and therefore needed to be monitored more closely.

Claims management

There was a similar dissatisfaction with current claims management requirements. Self-insurers largely argued that the claims management audit tool focused too heavily on process over practice, with some submissions suggesting that claims management shouldn't be monitored at all. However, others said that the claims management audits helped them learn many vital lessons. Stakeholders supporting outsourced self-insurance functions suggested new indicators such as:

- number of complaints
- recurring errors in SIRA data submissions
- high number of reversals in decision
- deterioration of costs over time
- retro-paid loss performance measures.

According to these companies, these indicators would be less easy to manipulate than the current claims management assessment. Employee and injured worker representatives asserted that in-house decisions seemed to favour the employer far more than comparable cases in iCare insurers, and that self-insurers had a financial incentive to rush injured workers back to work to minimise their costs.

Conflict of interest

Employee and injured worker representatives argued that these incentives created a conflict of interest where giving an injured worker time and resources to fully heal directly countered the self-insurer's financial and work interests. As a result, it was claimed that injured workers were coerced into going to a self-insurer-aligned doctor as well as injured workers' medical privacy being violated within the organisation. Self-insurers stated that any concerns in relation to conflicts of interest or claimant privacy are outweighed by the advantages of holding self-insurance, and that workers with grievances could contact SIRA to resolve any conflicts. Some detailed how they ensured the separation of human resources and claims management staff.

2.5 Information comments

Benchmarking performance

There was broad support for changes that would improve the level of information and transparency in relation to self-insurer performance. The majority of comments related to self-insurers wanting to benchmark themselves against other self-insurers and their nominally insured industry counterparts. Currently, self-insurers are required to provide monthly claims data to SIRA however, stakeholders indicated that under current arrangements, such data can be difficult to obtain, obscuring the flow of information between licensees, SIRA and other stakeholders.

Publication of performance information

While there was general agreement that improved transparency would be beneficial there was disagreement as to whether this information should be made publically available. The majority of stakeholders, including self-insurers and employee representatives that made comment in relation to this issue, advocated making performance information publically available in anonymised form. Others preferred that this information be limited to self-insurers and SIRA or remained silent on the subject.

Frequency of information provision

A number of self-insurers noted that they would benefit from more frequent provision of information. One stakeholder suggested that reports be provided to self-insurers on a quarterly basis. Another self-insurer suggested a 'self-service' approach in which self-insurers would have access to published tables of performance information.

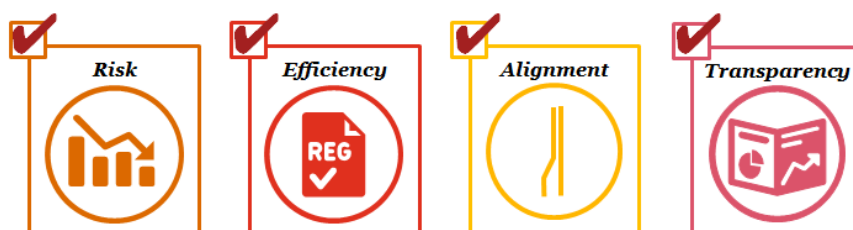
3 A new model for self-insurance in NSW

3.1 Model principles

As stated, the objective of the review has been to develop a fit for purpose, best practice self-insurance licensing framework that incentivises the performance of self-insurers to achieve better outcomes. In order to meet this objective and recommend changes, the review has identified a set of underlying principles which underpin the proposed framework.

The principles provide a lens through which the current self-insurance licensing framework can be examined and potential improvement opportunities identified. There are four principles:

- 1 **Risk:** The framework’s regulatory requirements should be aligned with areas of greatest risk.
- 2 **Efficiency:** The framework’s regulatory requirements should promote an optimal level of burden of regulation on licensed NSW employers in order to achieve the objectives of the regulation.
- 3 **Alignment:** The framework’s regulatory requirements should align SIRA’s role as an independent regulator with its priorities in relation to claims management and return to work outcomes.
- 4 **Transparency:** The framework’s regulatory requirements should incentivise continuous improvement through performance transparency.

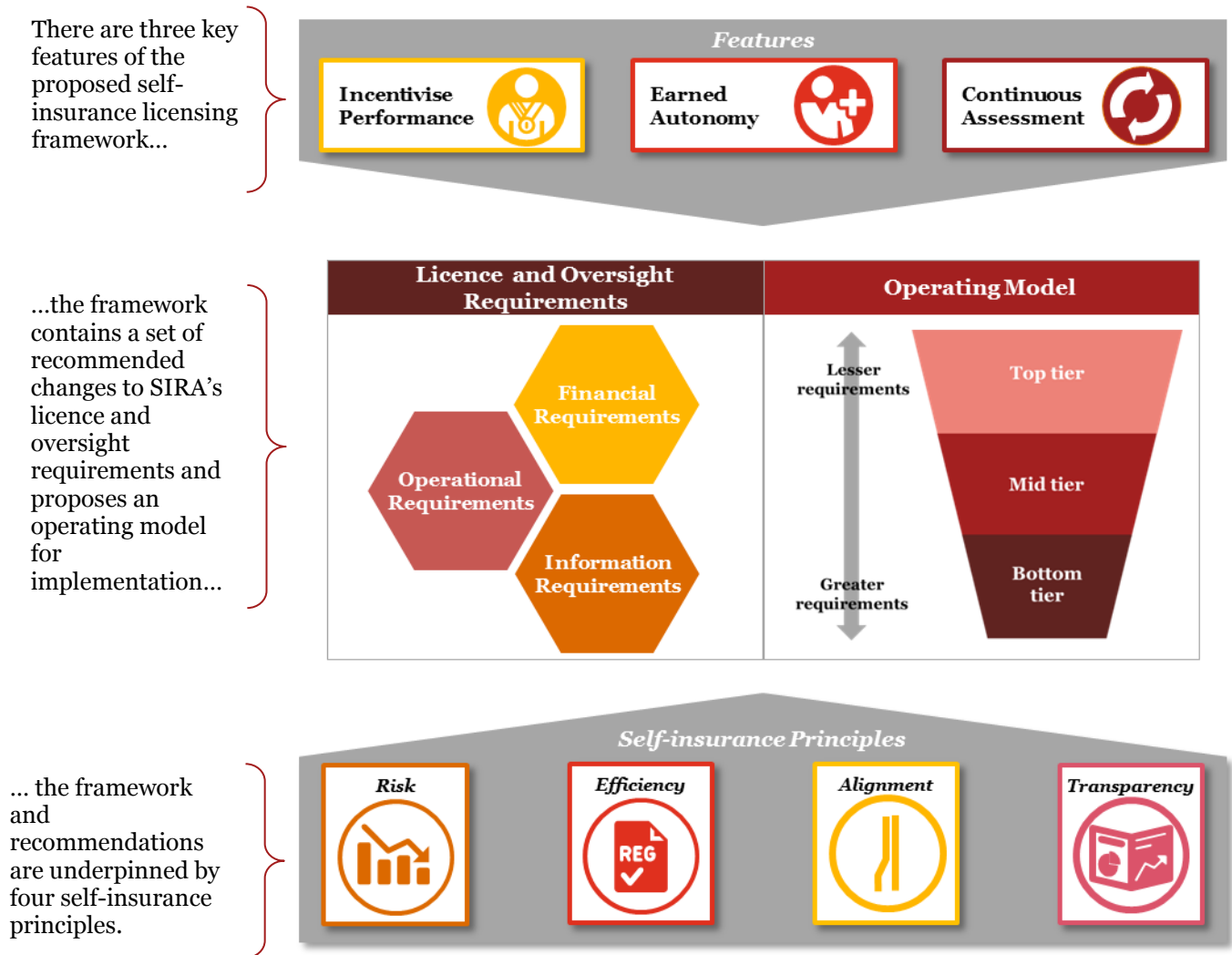


The proposed framework and set of recommendations detailed in this report flow directly from the application of these principles to current arrangements governing self-insurance licensing in NSW. Collectively the recommendations provide a roadmap detailing the path towards an effective and efficient self-insurance licensing system in NSW.

3.2 Proposed framework

In applying the principles listed above, our proposed licensing framework provides a risk-based approach that recognises the performance of self-insurers and promotes efficiency in its administration. Figure 4 is a visual representation of the framework, and shows the principles that underpin the remainder of the framework.

Figure 4: Proposed self-insurance licensing framework



The framework outlined above and the corresponding recommendations outlined in the remainder of this report represent a significant shift in the way self-insurance licensing is designed and administered in NSW. There are a number of important benefits to the proposed framework, such that:

- it recognises the underlying incentives faced by self-insurers
- it is risk-based, as compliance monitoring activities are directly scaled against performance
- it reduces the compliance burden for many self-insured organisations
- higher performing licensees are rewarded for performance as the costs they bear for being licensed are reduced
- lesser performing self-insurers are given a direct incentive to improve performance
- it is administratively more efficient as SIRA can target its oversight activity on fewer high risk organisations.

3.2.1 Key features

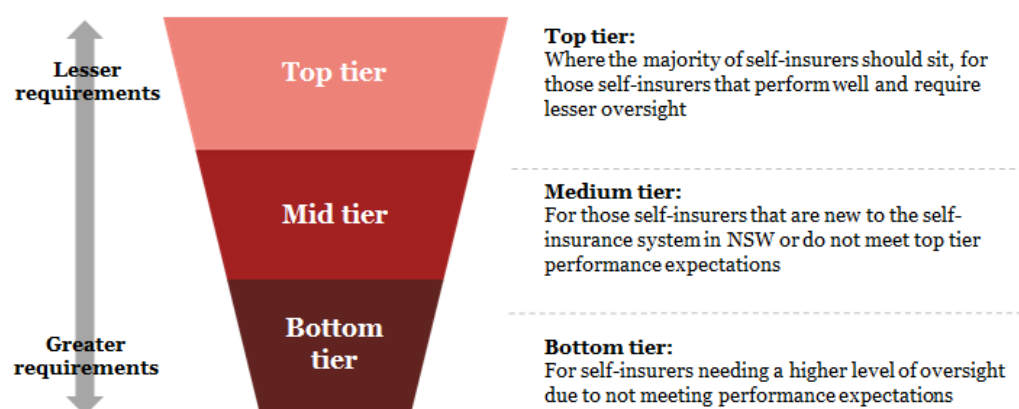
The first component/panel of Figure 4, reflects the three key features of the framework. If successfully implemented, these features will be the characteristics of the new licensing framework. The features are:

- **Incentivise performance** – A design feature of the proposed framework is that it establishes licence requirements and conditions that incentivise self-insurers to improve their performance. The proposed framework includes measures to create direct incentives in the form of reduced compliance costs for self-insurers, where they can demonstrate the required level of performance.
- **Earned autonomy** – The framework will provide self-insurers with a level of earned autonomy, in which their performance and adherence to the regulator’s requirements grants them the freedom to meet their obligations in a manner best suited to their needs. This approach allows organisations to improve the efficiency with which they meet their obligations, as well as pursue innovative approaches that may in turn benefit other self-insurers. Achieving this requires a shift away from the largely one size fits all approach in which all self-insurers are subjected to the same requirements.
- **Continuous assessment** – The proposed framework aims to shift the focus of regulatory activity away from the traditional point-in-time assessment of self-insurers during a licence renewal or audit process to one in which the performance and compliance of self-insurers is monitored continuously. This approach allows the regulator to have a view of performance throughout a licence term and adjust its oversight accordingly.

3.2.2 Licence requirements and operating model

Implementation of the framework is achieved through a tiered operating model in which self-insurers are divided into three categories as outlined in Figure 5.

Figure 5: Tiered framework for self-insurance



Under this model, those self-insurers that exhibit high levels of performance against outcome measures and meet SIRA’s operational and reporting obligations will be subject to fewer oversight requirements from SIRA. This earned autonomy for high performing self-insurers, corresponds to the level of risk they pose in their ability to fulfil their licence obligations.

Conversely, self-insurers that do not meet performance requirements and/or do not meet SIRA’s operational and reporting requirements will be subject to greater oversight from SIRA. A sample of the oversight requirements at each tier are outlined in Table 4 in the following section.

This section has presented the key features and benefits of the proposed framework. These features have been identified through application of the review principles to current arrangements and analysis of stakeholder feedback gathered through the Issues Paper. The recommendations informing the framework are detailed in the chapters to follow. The implementation of these recommendations is required in order for the proposed model to be effective.

4 Detailed recommendations

4.1 Operational performance

4.1.1 Three tiered operating model

Current requirements

The current licence requirements for self-insurers are largely a ‘one size fits all’ approach in which there is no strong link between oversight requirements and self-insurer performance. The exception to this being where SIRA has chosen to grant a shorter licence term to a self-insurer where it has deemed this to be warranted.

Stakeholders were not asked to comment directly on a three tiered model. However, the Issues Paper did pose a number of questions in relation to the linking of specific requirements to performance. In response to these questions, several self-insurers supported the view that oversight requirements (particularly audits) should be reduced or removed on the basis of performance. Employee representatives supported a performance based approach to licence fees but in general did not support any reduction in oversight requirements.

Opportunities for improvement

As outlined in section 3 and shown in Figure 6 below, a three-tiered oversight model for self-insurers is proposed that would provide greater flexibility in the oversight of self-insurers. Under this proposed approach self-insurers would be differentiated based on performance and be subject to a variable level of intervention and monitoring. For example, high performing self-insurers (top-tier) would be relieved of the requirement to undergo audits conducted by SIRA and be required to undertake less frequent claims management self-audit spot checks. Whereas lower performing self-insurers (bottom tier) would be subject to relatively higher levels of oversight. An intermediate level of oversight is proposed for medium performers (mid tier).

Figure 6: Tiered framework for self-insurance

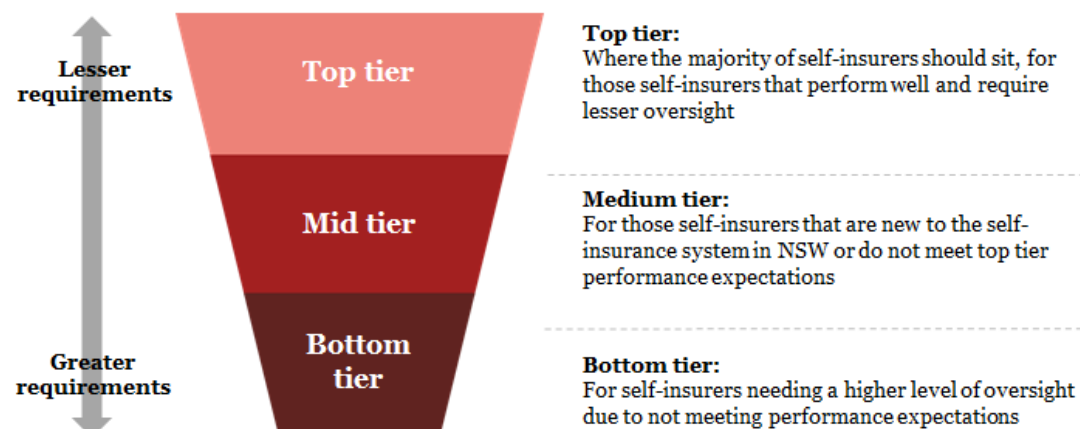


Table 4 outlines the three-tiered oversight approach under the proposed model.

Table 4: Suggested sample of self-insurer oversight and requirements under a tiered model

Category	Financial	Operational	Information
Top tier	<ul style="list-style-type: none"> Lower licence fees reflecting reduced regulatory oversight requirements Meet SIRA's prudential requirements 	<ul style="list-style-type: none"> Maximum 8 year licence term Conduct claims management self-audits at least every 2 years Claims management audit conducted by SIRA at licence renewal or if concerns are raised Random claims management spot checks 	<ul style="list-style-type: none"> Timely submission of self-audit results Timely submission of performance data Meet top tier requirements against indicators
Middle tier	<ul style="list-style-type: none"> Higher licence fees reflecting higher regulatory oversight Meet SIRA's prudential requirements 	<ul style="list-style-type: none"> Maximum 8 year licence term Conduct annual claims management self-audits Claims management audit conducted by SIRA at licence renewal or if concerns are raised Random claims management spot checks 	<ul style="list-style-type: none"> Timely submission of self-audit results Timely submission of performance data Meet mid tier performance requirements against indicators
Bottom tier	<ul style="list-style-type: none"> Higher licence fees reflecting higher regulatory oversight Meets SIRA's prudential requirements 	<ul style="list-style-type: none"> Maximum 3 year licence term Annual claims management self-audits Annual claims management audit conducted by SIRA Random claims management spot checks 	<ul style="list-style-type: none"> Timely submission of self-audit results Timely submission of performance data

Measuring performance

To enable a tiered framework, a shift away from a traditional point-in-time assessment of self-insurers is required. Traditionally, self-insurers are assessed through annual audits and licence renewals. This framework requires a less onerous but more frequent approach in which the performance of self-insurers is assessed continuously throughout a licence period.

This may be achieved through regular monitoring of key performance indicators by the regulator. In order to effectively assess the performance of a self-insurer, it is expected that these performance measures would focus on:

- claims management and return to work outcomes
- relative incident and claim volumes
- timely reporting of claims management data
- timely reporting of financial data
- timely completion and reporting of self-assessment/audits (where required)
- results of injured worker surveys.

(Specific recommendations relating to these indicators are discussed in section 4.2).

Tier placement

Self-insurers would be allocated to the tiers based on the quarterly assessment conducted by SIRA as well as at the time of licence renewal, based on the most recent relative assessment

of self-insurer performance against a set of indicators. In either case, the decision to allocate or maintain the tier of a self-insurer should be made at the discretion of SIRA as it considers appropriate.

As shown in Figure 6, the top tier is larger than the mid and bottom tiers. This represents the expected number of self-insurers at each level. The framework is designed so that the majority of self-insurers would be in the top tier. This means that as the performance of self-insurers improves, more self-insurers will move into the top tier. Hypothetically, it may be the case that self-insurer performance reaches a level where all self-insurers are in the top tier. This approach reflects that:

- self-insurers pose no greater risk to maintaining a safe workplace compared to other employers
- self-insurers have underlying incentives to achieve good return to work outcomes for injured workers, generated from directly bearing the cost of their claims
- the regulator should focus its efforts on the areas of greatest risk as additional oversight on the majority of self-insurers is unlikely to have a significant impact on their performance.

Where a self-insurer fails to meet the performance and reporting requirements they will remain in, or move to a lower tier. This determination will be made by SIRA using a clear set of performance criteria and requirements. These should be designed so that there is minimal need for interpretation or discretion from the regulator. Ensuring this means that self-insurers can begin to self-assess against the criteria and be prepared for the regulator's finding.

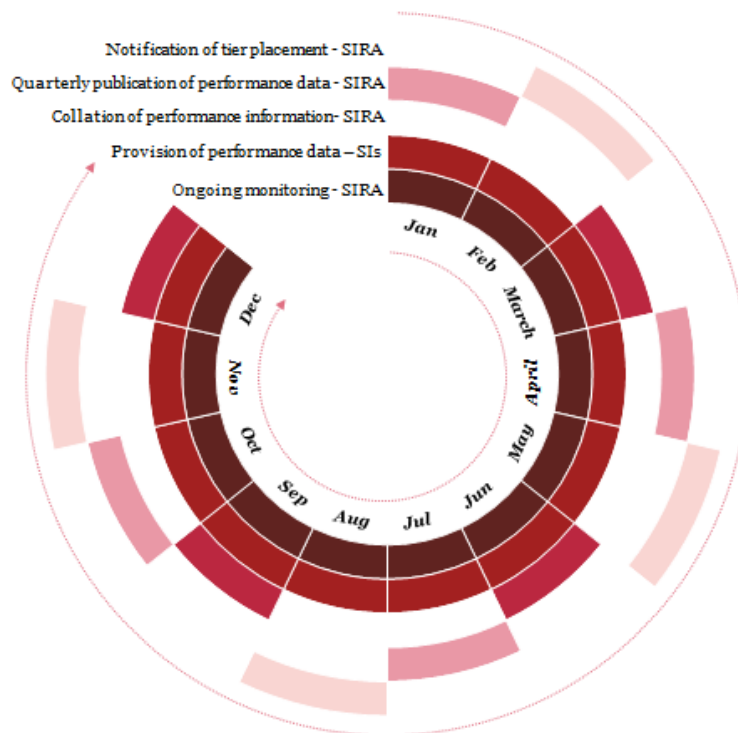
The bottom tier is intended to be a short term allocation for lesser performers, with self-insurers either improving their performance to move to the mid tier, or otherwise placing their self-insurance licence at risk.

It is recommended that new self-insurers will automatically enter the mid tier to ensure that regulators can monitor their adoption and implementation of the self-insurance licence requirements. After a year, they will be reassessed and may move tiers as their performance dictates.

Performance assessment

As discussed in section 3.2.1, one of the key features of the new framework is a shift towards a more continuous assessment of self-insurer performance. In order to operationalise this feature and the tiered operating model a new process to assess the performance of self-insurers is required. Figure 7 outlines a suggested approach for an ongoing performance assessment cycle.

Figure 7: Ongoing performance assessment cycle



The suggested approach involves the regular provision of data to SIRA by self-insurers and an ongoing process for reviewing, publishing and assessing performance information by the regulator. The key stages of the suggested assessment cycle are:

- 1 **Ongoing monitoring** – Throughout the month SIRA should conduct its ongoing monitoring of self-insurer performance gathering of performance information. This includes:
 - collection of self-audit and audit results as they occur
 - ad-hoc or one off information gathering exercises (e.g. injured worker surveys or reviews)
 - information provided to the regulator by third parties.
- 2 **Provision of performance data (SIRA)** – Each month, self-insurers should be required to submit performance information to SIRA (continuation of existing requirements).
- 3 **Collation of performance information** – Once a quarter SIRA should collate the monthly performance data, combine these with other performance measures collected by SIRA in that quarter (survey results, compliance statistics etc.) and assess each self-insurers performance against its performance requirements.
- 4 **Quarterly publication of performance information** – The following month SIRA should publish anonymised performance information on its website and prepare a regular summary performance report for each self-insurer that provides transparency on its performance relative to other employers.
- 5 **Notification of tier placement** – SIRA should notify self-insurers of its assessment against the performance criteria and any resulting impact on their tier placement.

Detailed recommendations in relation to the collection and publication of performance information can be found in section 4.2.

As with any tiered model, an appeals process is required to govern situations where a self-insurer disputes the decision of the regulator. It is recommended that, where self-insurers dispute the regulator's decision to move them to a lower tier, they are able to make their position known to the regulator in writing. The decision should then be independently reviewed by SIRA's CEO for a final determination.

It should be noted that under the recommended model, where the majority of self-insurers are expected to sit in the top tier, there are unlikely to be many appeals in relation to tier placement. This will be supported by clear and transparent performance criteria.

Recommendation 1: Implement a three-tiered oversight model for self-insurance, based on self-insurer performance. Under this model:

- Self-insurers that exhibit higher levels of performance against outcome measures and meet SIRA's operational and reporting obligations will be subject to fewer oversight requirements from SIRA. Most self-insurers are expected to be in the top tier, over time.
- Self-insurers that do not meet performance requirements and/or do not meet SIRA's operational and reporting requirements will be subject to greater oversight from SIRA. The bottom tier is intended to be a short term allocation for lesser performers, with self-insurers either improving their performance to move to the mid tier, or otherwise placing their self-insurance licence at risk
- An intermediate level of oversight is proposed for medium performers (mid tier). New self-insurers would enter the scheme at the mid tier until they have proven their ability to meet SIRA's performance requirements.

4.1.2 Licence renewal

Current requirements

Currently, organisations that are self-insured in NSW are required to renew their licence every three years unless shorter term licences are granted.⁸ This requirement is aimed at ensuring the regulator has a mechanism to periodically review the performance of a self-insurer and its ability to meet its licence requirements.

The licence duration in NSW is generally shorter than in other Australian jurisdictions. Other jurisdictions offer longer licence terms for organisations that exhibit a higher standard of performance. This variation has led stakeholders to highlight the increased compliance burden associated with more frequent renewal requirements in NSW. Current licence durations across other schemes in Australia are provided in Table 5.

⁸ Information in this section sourced largely from WorkCover NSW, 'Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987', effective December 2001.

Table 5: Licence durations in selected Australian jurisdictions

	NSW	Victoria	QLD	SA	Comcare
Renewal period	3-year renewal period	Standard renewal period is 4 years, can be extended by WorkSafe to 6 years	Initial licence is 2 years, licences can be up to 4 years	ReturnToWorkSA can grant registration as a SI for no longer than 3 years	Recently extended to an 8 year renewal period for all self-insurers

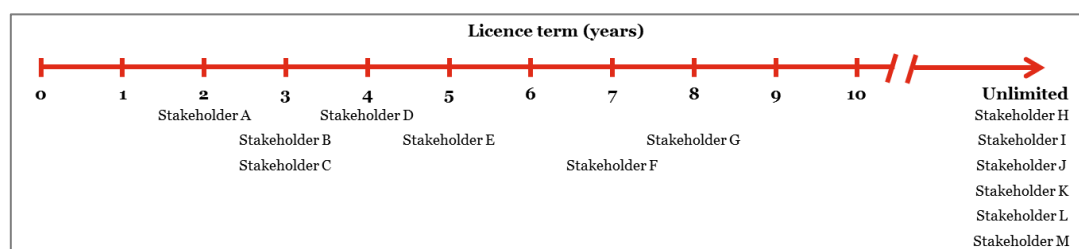
Opportunities for improvement

The proposed framework for self-insurance licensing provides a shift away from the historic approach of reviewing a self-insurer’s performance at the point of licence renewal. This ‘point in time’ approach primarily allows the regulator to obtain a snapshot of performance in audited areas.

Industry stakeholders noted the burden associated with a more frequent licence renewal. This is mainly driven by the process involved in the current renewal process, which includes:

- the completion of an OHSMS audit
- the provision of claims and financial information to SIRA
- the payment of application fees
- the provision of information relating claims management facilities, procedures, systems and personnel to SIRA
- confirmation of prudential and insurance provisions.

Figure 8: Stakeholder views – Proposed licence term



Stakeholder views on the most appropriate licence term varied as shown in Figure 8. Many stakeholders did not make specific comment in relation to their preferred licence duration. Of those that did:

- six self-insurers preferred an open ended licence citing the view that existing prudential requirements were sufficient
- six self-insurers advocated licence terms between three and eight years, expressing satisfaction with existing requirements or a desire to bring NSW in to alignment with other jurisdictions
- one employee representative group advocated a licence term of less than three years, arguing that a shorter renewal period would provide greater capacity for oversight and intervention. This organisation also noted that an open ended licence renewal period would create a situation where licence cancellations would be harder to obtain.

A move away from the traditional approach will allow SIRA to assess performance or self-insurers more frequently while reducing the burden associated with the licence renewal process. The new framework proposes a more ongoing assessment of self-insurer performance against a set of performance indicators. This allows for an adjustment to the duration of licences, it is proposed that:

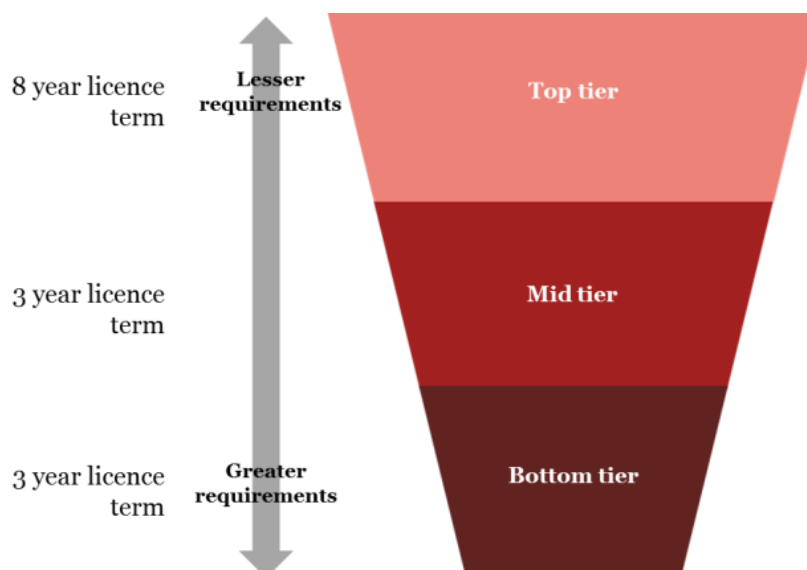
- top tier insurers be granted a licence term of up to eight years
- shorter licence terms be granted to new self-insurers and those in the mid and bottom tiers.

There are a number of benefits to the proposed approach:

- reduces the compliance burden experienced by self-insurers as a result of more frequent renewal processes
- an eight year maximum term improves the ability of NSW to remain competitive with Comcare
- aligns with a model of continuous monitoring rather than ‘point in time’ assessment
- provides performance incentives for self-insurers to be in the top tier.

Under this approach, it is expected that most self-insurers will be granted a longer renewal period than under the current arrangements. However, for a few self-insurers it may be the case that their renewal period is reduced to less than the current three year term, in line with their performance.

Figure 9: Licence duration



Recommendation 2: Increase the licence term to a maximum of 8 years for higher performing self-insurers (i.e. with top tier self-insurers having a longer renewal period than other self-insurers) and maintain shorter terms for other self-insurers (including new self-insurers).

4.1.3 Stakeholder consultation

Current requirements

The workers compensation legislation establishes that SIRA may, in determining an application for a self-insurer licence, require the applicant to advertise or give notice of its application. At present, however, SIRA does not directly consult with, or seek feedback from, industry, employee or injured worker representatives on whether an organisation is suitable for an existing self-insurance licence or to have its licence renewed.

Opportunities for improvement

Obtaining the views of industry, employee and injured worker representatives will ensure that the community's view is represented and that the regulator's actions in relation to the self-insurer are well informed.

When the regulator is considering a self-insurer's performance, tier placement and/or licence renewal stakeholder views should be considered. There are a number of options for the regulator to trigger and collate this information, including:

- using its legislative authority to require licence applicants to advertise or give notice of their application
- obtaining feedback from employee and injured worker groups
- incorporating stakeholder feedback into self-insurer performance measures
- providing an online mechanism through which employees or members of the public can submit feedback to the regulator at any point throughout a self-insurer's licence period.

The benefit of this approach is that it allows stakeholders to provide feedback on a self-insurer's performance throughout a licence term. This in turn allows the regulator to provide ongoing and transparent feedback to self-insurers.

A similar approach was advocated by a workers representative group in its submission to the review. Another workers representative group argued for a further measure which would require a vote or plebiscite of workers regarding a self-insurer's application or renewal. The remainder of stakeholders did not make direct comment in relation to this opportunity.

Recommendation 3: SIRA should consider the views of industry, employees and injured worker representatives when assessing a self-insurer's performance, tier placement and/or licence renewal. This may include:

- using its legislative authority to require licence applicants to advertise or give notice of their application
- collecting feedback on self-insurers from employee and injured worker groups
- incorporating stakeholder feedback into self-insurer performance measures.

4.1.4 *Claims management*

Current requirements

SIRA's current licence policy specifies that self-insurers must demonstrate performance in injury and claims management of a standard acceptable to SIRA.⁹ It expects that skilled claims staff with a thorough knowledge of workers compensation law and administration will be engaged to give prompt consideration to claims and to pay compensation in a timely manner.

A self-insurers licence is dependent on a professional standard of injury and claims management, along with compliance with relevant guidelines issued by SIRA. This includes the preparation of return to work plans for any injured workers in collaboration with the worker and their medical practitioner.

Self-insurers are able to outsource their injury and claims management functions to a suitably qualified third party, subject to SIRA's approval of any such arrangements. SIRA must be satisfied, for instance, that such an arrangement will not lead to a decrease in established service standards to injured workers.

Information provision requirements are also in place for licensees in respect of claims management. For example, self-insurers are required to provide monthly claims data in a form approved by SIRA and within the timeframes specified by SIRA. An applicant must demonstrate that it has appropriate systems to provide timely and accurate claims data in accordance with SIRA's requirements from the commencement of the licence. Self-insurers are additionally required to undertake annual claims management self-audits.

An audit tool is available to licensed self-insurers to undertake claims management audits and report on these to SIRA. Currently, the claims management audit tool is being used by self-insurers to report their self-audit results to SIRA.

Opportunities for improvement

In its role as a new regulator, SIRA is aiming to leverage its claims management requirements to incentivise innovation and high performance. It recognises that ensuring self-insurers are meeting their claims obligations is one of its primary roles as a regulator.

Claims management audits conducted by the regulator and self-audits in their current form only present a 'point in time' assessment against the areas selected for audit. With the proposed tiered approach and recommendation to extend the licence duration, an alternative approach to monitoring claims management is proposed which will enable SIRA to assess claims management performance more frequently.

⁹ Information in this section sourced from WorkCover NSW, 'Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987', effective December 2001.

Claims management audits

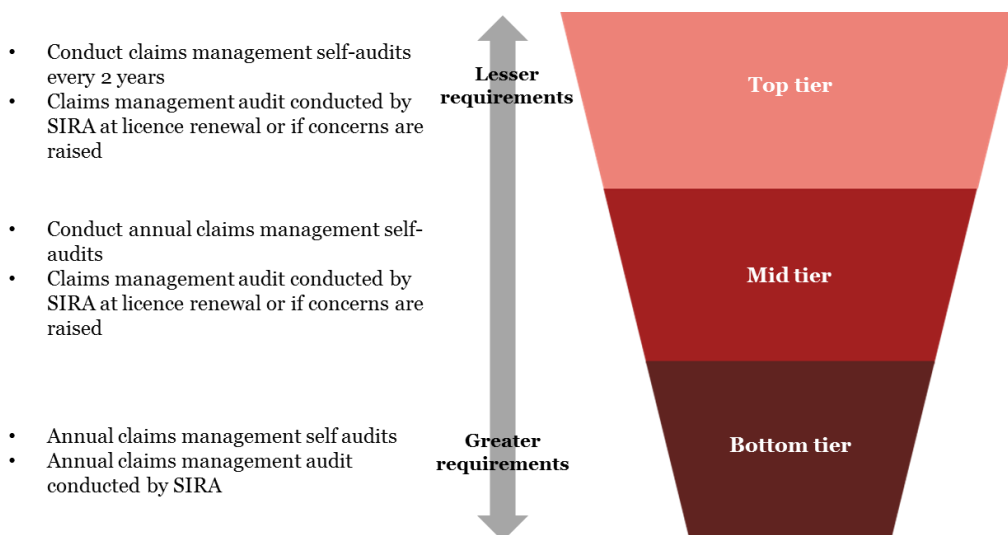
Under the proposed framework there are a number of recommendations in relation to claims management audits. The first related to the frequency of audits, it is recommended that a risk-based approach is adopted. Under a tiered model, the claims management audit requirements should be aligned to the areas of greatest risk.

As shown in Figure 10, those self-insurers that meet the performance requirement to be in the top tier should only be subject to claims management audits conducted by the regulator at the point of licence renewal or if concerns are raised to the point at which the regulator has sufficient reason to believe obligations are not being met. To supplement this approach, top tier self-insurers should be required to complete self-audits at least every two years, reporting the results to SIRA.

For mid tier self-insurers, it is recommended that claims management self-audits are conducted annually. This is in addition to the claims management audit requirements at the point of licence renewal imposed on top tier insurers.

For bottom tier self-insurers, it is recommended that SIRA conduct claims management audits annually in addition to annual self-audits conducted by the self-insurer.

Figure 10: Claims management



Recommendation 4: Adopt a risk-based approach to claims management oversight, in which top tier self-insurers are subject to fewer audit requirements than middle and bottom tier employers. This could include:

- **top tier employers** - conducting claims management self-audits at least every 2 years and completing a claims management audit at licence renewal (or if concerns are raised)
- **mid tier employers** - conducting annual claims management self-audits and completing a claims management audit at licence renewal (or if concerns are raised)
- **bottom tier employers** - conducting annual claims management self-audits and completing an annual claims management audit conducted by SIRA (six months following the self-audit).

The second consideration in relation to claims management audits is the audit tool currently being used to complete self-audits. It has been raised by stakeholders that recent changes to

the claims management requirements (and the related tool) have meant that the new assessment criteria are being applied to old claims. That is, new criteria based on current requirements are being applied to old claims under different requirements. This has created difficulties for some self-insurers in meeting the criteria, particularly for older claims that would have passed when measured against the requirements at the time of the claim. As a result it is recommended that SIRA conduct a review of the existing claims management audit tool to ensure that it is fit for purpose with the new regulator's objectives.

Recommendation 5: Redevelop the existing claims management audit tool to ensure that it:

- is fit for purpose under the new regulator's objectives
- is compatible with the audit of historical claims
- can be directly linked to claims management performance measures.

Alternative claims management performance indicators

To ensure that SIRA maintains effective oversight of claims management performance, it is recommended that the reduced audit requirements be supplemented with alternate indicators of claims management performance. This approach is consistent with a move towards ongoing monitoring of performance rather than assessment at the point of licence renewal. There are a number of options SIRA should consider for claims management performance indicators, including:

- 'random' spot checks of self-insurers claims management functions, conducted at any point during a licence term. This would involve SIRA selecting particular self-insurers and conducting checks focusing on:
 - the competence and knowledge of claims management professionals
 - the existence of required procedures and documentation
- introducing a periodic survey of injured workers, covering both self-insured and nominally insured organisations to assess worker satisfaction with claims management processes
- regular assessment of self-insurer claims management performance data (discussed further in section 4.2).

There are a number of benefits to the proposed approach to assessing claims management performance, including:

- a shift away from 'point in time' performance assessments of performance which enables a more holistic view of how self-insurers are performing on an ongoing basis
- improving the effectiveness of claims management audits and self-audits in assessing performance by ensuring the audit requirements and corresponding audit tool are fit for purpose
- reducing regulatory burden on self-insurers incurred in the claims management audit process by reducing the frequency of audits for higher performing self-insurers.

Recommendation 6: Develop complementary measures (to traditional audits) to assess claims management performance including:

- random spot checks of self-insurers claims management functions by SIRA
- a periodic survey of injured workers across both self-insured and nominally insured employers
- regular assessment of claims management performance data by SIRA.

In developing alternative measures of claims management performance, SIRA has an opportunity to adopt a set of innovative, best practice performance measures. The Productivity Commission publishes an annual report discussing best practice in comparative performance measurement.¹⁰ SIRA should use this guidance in developing claims management performance measures and any potential new indicators.

¹⁰ Productivity Commission, 'Report on Government Services: Chapter 1', 2016, <http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/approach-to-performance-reporting/chapter-1-the-approach-to-performance-measurement/rogs-2016-volumea-chapter1.pdf>, accessed 10 February 2016.

Best practice comparative performance measures

The Productivity Commission publishes the annual Report on Government Services to provide information on the equity, efficiency and effectiveness of government services in Australia. One part of the Report concerns comparative performance measurement, and proposes the following guiding principles for performance indicators:

- **Comprehensiveness** — performance indicator frameworks should be comprehensive, assessing performance against all important objectives.
- **A focus on outcomes** — high level performance indicators should focus on outcomes, reflecting whether service objectives have been met.
- **Meaningful** — reported data must measure what it claims to measure. Proxy indicators will be clearly identified as such and the Steering Committee will encourage the development of more meaningful indicators to replace proxy indicators where practicable.
- **Comparability** — the ultimate aim is data that are comparable — across jurisdictions and overtime. However, comparability may be affected by progressive data availability. Where data are not yet comparable across jurisdictions, time series data within jurisdictions is particularly important.
- **Progressive data availability** — progress may vary across jurisdictions and data are generally presented for those jurisdictions that can report (not waiting until data are available for all).
- **Timeliness** — to be relevant and enhance accountability, the data published will be the most recent possible — incremental reporting when data become available, and then updating all relevant data over recent years, is preferable to waiting until all data are available.
- **Use acceptable (albeit imperfect) performance indicators** — use relevant performance indicators that are already in use in other national reporting arrangements wherever appropriate. Adopting existing indicators can ensure consistency with other, relevant reports where this adds value, lowers the costs of data collection and avoids delays in reporting.
- **Understandable** — to improve public accountability, data must be reported in a way that is meaningful to a broad audience, many of whom will not have technical or statistical expertise.
- **Accurate** — data published will be of sufficient accuracy to provide confidence in analysis based on information in the Report.

4.1.5 Claimant privacy and conflicts of interest

Current requirements

Current arrangements do not require separation of the claims management function from other management functions within a self-insurer, such as the human resources function. For those NSW employers insured by the Nominal Insurer, these functions are naturally separated as the claims management function is undertaken by a separate entity. However, for those self-insurers that manage their claims in-house, there may not necessarily be the same physical and operational separation of the claims management function from other activities of the employer such as human resources.

Some stakeholders have indicated that this has the potential to create a conflict of interest when a self-insurer is managing an injured worker. For instance, it could create issues where human resources staff from the self-insurer may be able to access an injured worker's private medical history that has been disclosed as part of the claims management process. Some stakeholders raised concerns that access to this type of information could adversely affect the worker's future prospects for job promotion or other work opportunities within the self-insurer.

Opportunities for improvement

To manage the risk of privacy breaches, claims management functions should be clearly separated from human resources and business management. Staff outside the claims management function should not have access, formally or informally, to confidential information about an injured worker's claim or medical history.

As such, self-insurers should have processes and procedures in place to maintain the privacy of claimant information. It is proposed that SIRA require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and insurer for workers compensation. This requirement could be included in a self-insurer's licence conditions.

Recommendation 7: Require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and an insurer for workers compensation

4.1.6 Workplace health and safety

Current requirements

Under the current licensing arrangements, self-insurers are required to meet a number of requirements in relation to WHS. The licensing criteria have been established with the intention of enabling the regulator to ensure that appropriate WHS systems are implemented and maintained by self-insurers.¹¹ The SIRA self-insurance licensing policy states that self-insurers are required to:

- undergo an OHSMS audit conducted by SafeWork NSW on behalf of SIRA as a part of the licence review and renewal process
- conduct annual self-audits of their OHSMS. As part of this process, self-insurers may engage the services of an independent auditor to obtain objective verification of compliance.

To comply with licence requirements, a self-insurer must demonstrate that its OHSMS is operating at an acceptable level against each of the five elements selected for audit. As part of the audit conducted by SafeWork NSW on behalf of SIRA, self-insurers are audited against two of the five categories in the NAT. Data on OHSMS audit performance provided by SafeWork NSW show:

- 24 OHSMS audits were undertaken in 2014
- the pass/fail rate of OHSMS audits has fluctuated significantly over the past 20 years. (A pass is defined as achieving a compliance rate of at least 75 per cent against the areas

¹¹ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

assessed in the OHS audit.) Some of this fluctuation is due to changes in the audit tool over time.

Stakeholder views

During the consultation process, a number of stakeholders questioned whether OHSMS audits led to improved safety outcomes. They pointed out that self-insurers have an inherent incentive to provide safer workplaces, as they directly bear the cost of any injury claim that occurs. Some self-insurers acknowledged that audits may have a role in promoting “reinvestment in safety”.

A commonly expressed sentiment was that any OHSMS audit requirements should be focused on lesser performing self-insurers. This could provide WHS teams and senior management within a self-insurer with an additional incentive to improve outcomes in order to avoid being subject to future OHSMS audits.

A counter-view from a stakeholder noted that focusing solely on those self-insurers with poor records could impose burdens on employers who may have simply experienced infrequent injuries due to ‘bad luck’ rather than targeting any systemic issues.¹²

In the submissions received, 20 respondents made direct comment in relation to the OHSMS audit requirements. Of these responses:

- seven submissions supported the need for WHS audits, with some raising issues with the existing process based criteria
- six submissions suggested the removal of WHS audits from the self-insurance licence requirements
- four submissions advocated a risk-based approach linking the WHS audit requirements to self-insurer performance
- two submissions supported the existing WHS audit requirements
- one submission advocated a random WHS audit of every self-insurer prior to the expiry of their licence, with the results reviewed by a Tripartite Body prior to the issuing of licences.

Opportunities for improvement

There are two key considerations when assessing the existing WHS requirements:

1 Additional WHS risks posed by self-insurers

The review has not found any evidence to suggest that self-insurers pose any additional WHS risk compared with other (non-self-insured) employers. That is, an employer does not pose a greater level of WHS risk simply as a result of obtaining a self-insurance licence. In this regard, there does not appear to be a risk-based rationale for imposing additional WHS requirements on an employer on the basis that they elect to manage and bear the cost of their workers compensation claims.

Further, as self-insurers directly bear the cost of any injury claim that occurs, they have an inherent financial incentive to provide safer workplaces.

¹² Information provided by stakeholders in consultations with PwC

2 SIRA's role

Self-insurers are responsible for the payment of their claim liabilities and for the management of those claims. SIRA's focus is on ensuring that self-insurers are meeting their obligations in relation to claims management and return to work outcomes.

SafeWork NSW is responsible for administering regulations in relation to WHS, focussing on harm prevention and improving the safety culture in NSW workplaces. In doing this, SafeWork NSW:

- offers advice on improving work health and safety
- provides licensing and registration for potentially dangerous work
- provides testing services
- investigates workplace incidents
- enforces work health and safety laws in NSW.¹³

These WHS activities undertaken by SafeWork NSW apply to all NSW employers, regardless of their method of insurance.

Given the lack of evidence of any additional WHS risk posed by self-insurers as a group, the nature of SIRA's role as a regulator and the oversight activities undertaken by SafeWork NSW, it is difficult to justify self-insurers having additional WHS requirements compared with other employers in NSW.

Application of IPART's framework

IPART's framework states that

“conduct rules should only be applied if the risk is great, ability to remedy is poor, financial remedies insufficient, and the risk is driven by the licence holder's behaviour. Conduct rules should focus on outcomes, not duplicate other obligations and be enforceable.”¹⁴

In considering the application of IPART's framework in relation to the existing WHS requirements on self-insurers, the 'test' is not met as:

- a self-insurer's WHS risk is not generated as a result of it being self-insured
- the current obligation is a duplication of the broader WHS obligations imposed by other regulatory bodies, in this case SafeWork NSW.

Based on this assessment, it is recommended that the requirement for self-insurers to undergo OHSMS audits conducted by the regulator and the requirement for self-insurers to undertake OHSMS self-audits be removed from the self-insurance licensing framework. The two key benefits of the proposed approach are:

¹³ <http://www.safework.nsw.gov.au/> - retrieved 11/02/16

¹⁴ IPART, 'PwC – A best practice approach to licensing schemes – Conceptual Framework – March 2013', http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design/22_May_2014_-_Consultants_final_licensing_framework/PWC_-_A_best_practice_approach_to_licensing_schemes_-_Conceptual_Framework_-_March_2013

- 1 it reduces the compliance burden for self-insured organisations
- 2 it better aligns the self-insurance licensing framework more closely with SIRA's role as an independent regulator and its priorities in relation to claims management and return to work outcomes.

In monitoring the performance of self-insurers, SIRA may become aware of WHS issues or trends (e.g. increased incidents, increased claims, workplace safety incidents etc.). These issues will influence SIRA's holistic assessment of a self-insurer. They may also have implications from a WHS point of view that are beyond the scope of SIRA. To address this situation, a new framework could be established to refer any WHS issues that come to SIRA's attention to the appropriate regulatory authority (SafeWork NSW).

Recommendation 8: Remove the OHSMS self-audit and OHSMS audit requirements from the self-insurance licensing framework. Instead, rely on the existing WHS engagement and enforcement activity undertaken by SafeWork NSW that applies to all employers in NSW. Also, establish a new and contemporary framework for referring any WHS issues that come to SIRA's attention to SafeWork NSW.

4.2 Information

4.2.1 Use of licensee data to monitor risk

Current requirements

SIRA collects data on the claims management and WHS performance of self-insurers through the claims management and OHSMS audit tools, amongst other measures. SIRA uses the data to monitor self-insurer performance and manage licences appropriately. For example, self-insurers' claims management and WHS performance data are examined as part of the licence renewal process. Self-insurers are required to provide monthly claims data to SIRA. Stakeholders indicated that under current arrangements, such data can be difficult to obtain, obscuring the flow of information between licensees, SIRA and other stakeholders.

Opportunities for improvement

There is a wide scope for improving the collection of self-insurer data by the regulator to monitor performance and identify areas where improvement is needed. The current coordination of data collection by SIRA appears to be low and involves manual and hard-copy data input.

Instead, we recommend that an integrated and automated data analysis facility be established with:

- a digital channel for data submissions
- a standardised format of data
- greater ability to view and customise data
- self-reporting functionality
- an integrated dataset
- links to other performance measurements and organisations
- links to performance indicators in other jurisdictions.

Setting up such a facility would involve an upfront cost to establish, but would provide benefits over time by allowing SIRA to reallocate its resources towards analysis of workers compensation outcomes, and reduce self-insurers' compliance burden. One self-insurer complained that they were still forced to make their monthly submissions to SIRA in hard-copy.

It would also address criticisms by self-insurers that they cannot easily benchmark their performance against a 'league table' of other self-insurers or industry counterparts. They suggested that access to de-identified data from these employers would help them improve their own outcomes, and this should be encouraged to enable best practice WHS and workers compensation methods to be acknowledged and implemented.

There are numerous examples of modern and secure data collection software across the NSW and Federal governments, including in the national body overseeing WHS and workers compensation, Safe Work Australia.

Recommendation 9: Establish an integrated and automated data analysis system to enable SIRA to better assess self-insurer performance. This system will support the proposed risk-based approach to self-insurance oversight by SIRA.

4.2.2 Increased public transparency of licensee data

Current requirements

There is currently little transparency around the performance of self-insurers and how they compare to non-self-insured counterparts. As mentioned in Section 4.2.1, self-insurers themselves cannot easily benchmark themselves against other self-insurers. The public and stakeholders such as employee representatives have no access to any data on self-insurer outcomes.

Opportunities for improvement

Increasing transparency of self-insurance performance data has the potential to further strengthen the incentives for self-insurers to avoid injuries in the workplace and improve the service for workers who do get injured. Publishing de-identified performance data will ensure that the public, the press and key stakeholders can have confidence that the self-insurance system results in better outcomes for both workers and companies. There was near-universal agreement among submissions, that there needed to be better access to data.

The data we envisage being published include:

- the rate of new claims reported per \$1m wages
- the rate of gross incurred cost per \$1m wages
- the average gross incurred cost per claim
- the percentage of new claims reported within seven days of injury
- the average lost time duration in days
- the rate of lost time duration injuries per \$1m wages
- injured worker satisfaction.

However, in implementing the proposed framework, further analysis will be required to confirm and define the appropriate measures.

While performance data should be anonymous to ensure isolated and non-contextualised information does not unfairly damage a company's reputation, we foresee that low performers will experience significant internal and implicit pressure to improve their outcomes. Furthermore, our proposed risk-based approach will provide other incentives to focus on investing in their WHS and workers compensation performance.

To ensure the data submitted by self-insurers and subsequently published by SIRA is accurate, a program of data auditing should be established. This should involve spot checks of self-insurers claims management systems to satisfy the regulator that all injuries and claims are being recorded and treated properly. Furthermore, consideration should be given to strengthening the deterrent to knowingly or negligently submitting misleading or inaccurate information, as this behaviour would severely damage community trust in the self-insurance system.

Recommendation 10: Prepare a quarterly summary performance report for each self-insurer that provides transparency on its performance relative to other self-insurers and its industry.

Recommendation 11: Publish on SIRA's website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme. This could include indicators on:

- claims management and return to work outcomes
- relative incident and claims volumes
- compliance rates in relation to SIRA's reporting and data provision requirements
- injured worker satisfaction.

Recommendation 12: Introduce a data auditing program to help to ensure that data submitted by self-insurers and published by SIRA are accurate.

4.2.3 Reporting of significant matters

Current requirements

Significant matters such as court proceedings between an insurer and an employee in relation to a workers compensation claim can result in a particular interpretation of legislation being tested through the court. The outcome of these cases can have a detrimental cost impact for the scheme due to the flow on effects to other claims. Due to these broader impacts, SIRA should seek to be aware of matters that may impose a risk to the system. Currently, there is no requirement for self-insurers to report on such matters to SIRA.

Opportunities for improvement

SIRA should apply a reporting requirement on self-insurers in relation to strategically significant matters (as is done under the requirements for specialised insurance). This would enable SIRA to keep abreast of any matters that could impact public perceptions of the regulator or of potential legal precedents from court proceedings, among other considerations.

Recommendation 13: Require self-insurers to formally advise SIRA of any strategically significant matters related to their management of claims, including:

- any cases to be litigated in a court
- any cases expected to generate significant public interest.

4.1 Financial

4.1.1 Performance based licence fees

Current requirements

Under current requirements, self-insurers pay an annual levy as calculated by SIRA. The calculation of this levy is based on a fixed percentage of their deemed premium. That is, a fixed percentage of the premium payable by the self-insurer had they been insured under the nominal scheme. Once an organisation has been granted a licence, they also pay an annual levy for workers compensation regulatory costs and dust diseases support (these fees are also paid by nominally insured organisations as part of their insurance premium).

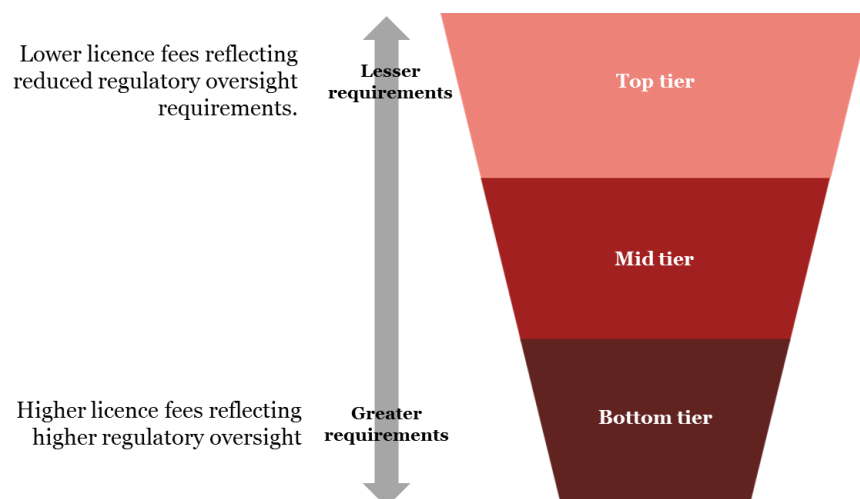
Opportunities for improvement

Self-insurance licence fees should, in general, reflect the cost of regulating self-insurers. Under the proposed tiered model, those self-insurers that perform less well than others will require greater scrutiny of their activities by the regulator. For example, where a self-insurer is required to undergo an audit conducted by the regulator, the fees payable should reflect the costs incurred by the regulator in conducting the audit (in addition to any other regulatory activity related to the oversight of that self-insurer).

In the current state, the calculated fee is independent of the regulatory effort required by the regulator. For example, where a self-insurer has a shorter licence period (less than the standard three years), SIRA's effort in relation to that self-insurer increases due to the more frequent licence renewal requirements. In this situation the levy for the self-insurer does not change, and as a result, there is a cross subsidisation occurring in which the levy paid by self-insurers with a longer licence is subsidising the cost of the regulatory effort incurred for the self-insurer with a shorter term.

As a result it is recommended that SIRA better align fees with costs incurred by the regulator. This would mean that the fees paid by self-insurers would vary depending on their tier, as shown in Figure 11; top tier self-insurers would pay the lowest fee and bottom tier, the highest.

Figure 11: Risk-based licence fees



In order to implement this recommendation SIRA would need to establish a view of the costs it incurs in relation to its oversight activities and determine what fee levels will cover those cost under the new framework. In addition there are some costs that would be incurred by other regulators and industry bodies. For example, inspection costs incurred by SafeWork NSW or dispute resolution costs incurred by the Workers Compensation Commission (WCC). As the self-insurance levy is the only mechanism to recover these costs, SIRA will need to ensure that these are incorporated in the levies collected under the new framework.

IPART's licensing framework makes specific reference to ensuring that licence fees and charges are appropriate. Its best practice guidance suggests that "fees and charges should generally be set to recover the efficient costs of administering regulation."¹⁵ The recommended approach will bring the self-insurance levy requirements closer to the suggested best practice approach.

The main benefits of the recommendation are, firstly, that it acknowledges the performance of self-insurers and provides a direct financial incentive for those in lower tiers to improve their performance. Secondly, it would allow SIRA to refresh its funding model and cover its costs, following the split from WorkSafe NSW.

In the submissions received in response to the Issues Paper a number of self-insurers and employee representatives groups welcomed the prospect of variable licence fees to encourage improved performance. Self-insurers largely saw it as an opportunity to gain a discount from their current fees for their continued performance, while employee representatives viewed variable fees as another incentive to WHS performance. Some self-insurers expressed a desire for greater transparency in relation to licence fees without making specific comment as to their calculation or level. However, it should be noted that the majority of submissions remained silent on the matter.

Recommendation 14: Align SIRA's cost recovery model more closely with the regulatory effort incurred by the regulator by differentiating self-insurer licence fees based on their level of performance. The fee structure would be aligned with the proposed three tiered model.

4.1.2 Tail management

Current requirements

Under current arrangements, employers that exit the self-insurance scheme are able to access workers compensation insurance through the licensed insurer scheme for any new claims arising following their exit from the self-insurance scheme. However, the employer is required to retain responsibility for the management of its existing long-term claims liabilities. These are known as 'long-tail' liabilities, hence the use of the expression 'tail management'.

In these circumstances, the former self-insurer bears the responsibility for managing these long-tail liabilities under the workers compensation legislation but no longer fall under the licensing and reporting requirements governing self-insurance in NSW.

Opportunities for improvement

Where an organisation has ceased to be self-insured but has existing claims liabilities a situation is created under which an organisation is managing its own claims but is no longer subject to the oversight and reporting requirements of a self-insurer. This presents the risk that the organisation does not meet its obligations to its injured workers as it is not subject to any claims management oversight requirements (e.g. audits and self-audits).

To address these risks, it is recommended that those organisations that exit the self-insurance system are required to buy out of their tail claims, with a licensed insurer taking

¹⁵ IPART, 'PwC – A best practice approach to licensing schemes – Conceptual Framework – March 2013', http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design/22_May_2014_-_Consultants_final_licensing_framework/PWC_-_A_best_practice_approach_to_licensing_schemes_-_Conceptual_Framework_-_March_2013

responsibility for these claims in return for a sum representing the central estimate of the employer's tail liabilities. As the employer is no longer self-insured, the regulator has no ability to oversee the employer's management of its tail claims.

In response to this issue, most submissions received remained silent on this issue. However, four representatives of self-insurers made specific comment. Of these, two suggested that the management and potential buyout of claim liabilities at the point an organisation ceases to be self-insured should be dealt with on a case by case basis. One self-insurer advocated an approach where self-insurers are given the option to pass their tail claims to the nominal insurer for a fee. This self-insurer also advocated the option to allow self-insurers to transfer the management of their tail claims to a third party claims management organisation. The final self-insurer that made specific comment in relation to this issue suggested that self-insurers should have the option to manage their existing tail claims with the additional provision that the prudential requirements for self-insurance continue to be met.

Recommendation 15: Provide a mechanism by which employers that exit the self-insurance scheme are required to pass on their tail claims to a licensed insurer. This would require the employer to pay a buyout amount covering the cost of its outstanding claims liabilities.

4.1.3 Prudential and actuarial requirements for self-insurers

Current requirements

SIRA's Self-insurance Licensing Policy contains prudential requirements that employers must satisfy to enter and remain in the self-insurance system. To enter the self-insurance licensing scheme, an organisation must:¹⁶

- possess sufficient financial resources to meet its liabilities
- demonstrate long term financial viability by way of audited financial statements for the previous 5 years
- lodge a deposit (either in cash or government-guaranteed securities) with SIRA or alternately provide an irrevocable bank guarantee of an amount equivalent to the projected tariff premium for the ensuing 12 months plus a prudential margin of 50 per cent
- provide a cross/holding company guarantee, in the case of group self-insurance licences, under which each of the companies guarantee the other companies' liabilities to workers.

There are also ongoing financial requirements self-insurers must meet, which are intended to ensure that self-insurers are able to cover the costs of their claim liabilities, while also providing for the stability of the broader system and include the maintenance of unlimited reinsurance cover.

There is no direct link between the bank guarantee requirement which aims to ensure coverage of claims liabilities and the reinsurance policy which aims to mitigate credit risk.

¹⁶ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

Opportunities for improvement

As discussed in section 2.3, submissions received from stakeholders in relation to prudential requirements ranged from a view that current requirements were inadequate, to general satisfaction with the current prudential requirements to a view from some self-insurers that prudential requirements were overly burdensome. Among these views:

- four self-insurers advocated the indexation of reinsurance retention requirements
- three self-insurers argued that the 50 per cent prudential margin was excessive
- one self-insurer advocated an approach in which self-insurers that met outstanding prudential benchmarks should face a lower prudential margin
- an employee representative group argued that the current prudential requirements were inadequate and noted examples where large organisations around the world had collapsed (although the examples provided did not indicate that the prudential requirements of self-insurers in NSW would be insufficient to meet any outstanding workers compensation claims liabilities).

The broad objective of the prudential requirements is to ensure that where an organisation is responsible for the financial cost of its claim liabilities, protections are in place to enable those claim liabilities to be met in the event that the self-insurer becomes bankrupt.

This review has not undertaken a detailed assessment of the current prudential requirements as SIRA should determine these requirements in conjunction with its actuary. In reviewing prudential arrangements, SIRA should consider:

- updating its guidance in relation to the calculation of outstanding claims liabilities
- increasing the minimum claims handling expense assumption
- introducing a minimum security requirement
- allowing self-insurers with large amounts of claim liabilities to utilise a different valuation methodology
- increasing the retention amount range
- increasing the level of the retention amount beyond which approval is required from SIRA.

Recommendation 16: SIRA, in consultation with its actuaries, should consider updating the prudential requirements to ensure that they remain fit for purpose, including:

- updating its guidance in relation to the calculation of outstanding claims liabilities
- increasing the minimum claims handling expense assumption
- introducing a minimum security requirement
- allowing self-insurers with large amounts of claim liabilities to utilise a different valuation methodology
- increasing the retention amount range
- increasing the level of the retention amount beyond which approval is required from SIRA.

5 Issues discussed in the Issues Paper, but not addressed by recommendations

5.1 Independent Medical Examinations

Current situation

An independent medical examination (IME) is conducted by a registered medical practitioner who is engaged to provide an impartial medical assessment in relation to a worker's compensation claim. The examination can be requested by the worker, worker's legal representative or the insurer where medical information is inadequate, unavailable inconsistent or where the referrer has been unable to resolve the issues related to the problem directly with the parties involved.¹⁷

While these examinations are not a direct requirement of a self-insurer's licence, they do fall under the self-insurer's claims management obligations. In addition, as the insurer for its employees, a self-insured organisation is in a position to request an IME.

Reason for not proposing a change to current requirements

Issues raised by stakeholders relating to the appointment of IMEs stemmed from the potential for a conflict of interest to arise in the management of claims and rehabilitation. It was noted that, in some cases, employees that were asked to attend an IME felt that they were unable to exercise their rights for fear of jeopardising their employment situation and/or relationship with their employer. These rights include, registering an objection or complaint in relation to the IME, recovering the cost of the IME, obtaining a copy of the IME report and receiving adequate notice and information in relation to their claim.

The review notes that there are existing mechanisms in place for individuals to raise any concerns including:

- seeking the advice of employee and injured worker representative groups
- raising concerns directly with the regulator
- registering a complaint or lodging a dispute with the WCC.

These mechanisms apply equally to employees of self-insurers and employees of nominally insured organisations. As a result, the review has not made any additional recommendations in response to this issue.

¹⁷ WorkCover NSW, Workers Compensation Claims, 2015, <http://www.workcover.nsw.gov.au/workers-compensation-claims/medical-professionals/medical-practitioners/independent-medical-examiner>

5.2 Employer size threshold

Current situation

One criterion in SIRA's licensing policy for self-insurers is an organisation's number of employees.¹⁸ The policy specifies, upon application, that self-insurers must have a minimum of 500 employees, although on renewal, this threshold does not apply.

In practice this means that an employer with an existing self-insurance licence but fewer than 500 employees would be assessed on different licensing requirements to an employer with the same number of employees applying for a licence for the first time. The latter would be unable to meet the entry requirements for self-insurance but the former would be able to remain self-insured (subject to meeting the other renewal requirements).

Reason for not proposing a change to current requirements

The employee size threshold serves as a proxy for an organisation's ability to sufficiently comply with the requirements of the self-insurance licence, particularly to manage claims. In theory, those applicants with under 500 employees might be expected to be able to evaluate whether they have the capabilities and capacity for self-insurance. However, in practice, there is imperfect information available to organisations wishing to apply for self-insurance as they have not had the experience of setting up the necessary structures and systems to meet the self-insurance requirements. While it may only be a proxy, the 500 employee entry criterion provides important guidance to employers that are considering self-insurance and the scale required to make it a potentially viable proposition.

¹⁸ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

Appendix A Appendix Consultation Schedule

Stakeholder	Category	Date of consultation
AMWU	Employee and injured worker representative	21 September 2015
Bluescope	Self-insurer	28 August 2015
Brickworks	Self-insurer	28 August 2015
Comcare	Regulator (Commonwealth)	16 November 2015
David Zaman	Self-insurer actuary	28 August 2015
Fairfield City Council	Self-insurer	28 August 2015
Independent Pricing and Regulatory Tribunal (IPART)	Regulator	7 September 2015
Injured Workers Support Network (IWSN)	Employee and injured worker representative	7 September 2015
Julie McMahon	Self-insurer actuary	28 August 2015
Nominal Insurer	Regulator	7 September 2015
NSW Self-insurers Association (NSWSIA)	Self-insurer representative	28 August 2015
Safe Work NSW	Regulator	21 September 2015
State Transit Authority	Self-insurer	23 September 2015
Toll	Self-insurer	28 August 2015
Transport Shared Services	Self-insurer	28 August 2015
Unions NSW	Employee and injured worker representative	7 September 2015 21 September 2015
Woolworths	Self-insurer	28 August 2015
Workers Compensation Commission (WCC)	Regulator	2 September 2015
Workers Compensation Independent Review Office (WIRO)	Regulator	7 September 2015

Appendix B List of submissions received

Submission author	Category
ANZ	Self-insurer
Ausgrid	Self-insurer
Australian Manufacturing Workers Union (AMWU)	Employee and injured worker representative
Bluescope	Self-insurer
CSR Limited	Self-insurer
Endeavour Energy	Self-insurer
Fairfield City Council	Self-insurer
Hawkesbury City Council	Self-insurer
Injured Workers Support Network (IWSN)	Employee and injured worker representative
Insurance Council of Australia	Industry body
Kelly Davies	Independent individual
Melissa Fabian	Independent individual
Minerva Consulting (4)	OHSMS auditors
National Insurance Brokers Association of Australia	Organisation supporting self-insurers
NSW Self-Insurers Association	Industry body
NSW Trains	Self-insurer
Qantas	Self-insurer
QBE	Organisation supporting self-insurers
Robert Hunter	Independent individual
Shoalhaven City Council	Self-insurer
Steve Moxham	Independent individual
Toll	Self-insurer
Vaz Vozzo	Independent individual
Wollongong City Council	Self-insurer
Woolworths	Self-insurer
Confidential	Various (9 submissions)

Appendix C Self-insurance in NSW

Self-insurance in NSW

Background

The introduction of the NSW WorkCover scheme in June 1987 required insurers to maintain separate statutory trust funds for employers' premiums and outstanding claims. Liabilities are, therefore, secured by this statutory mechanism.

Self-insurers on the other hand are not required to maintain separate trust funds to secure outstanding claims liabilities. Assets representing provisions for outstanding claims are not separated from the other assets of self-insurers.

Self-insurers are an integral part of the NSW WHS and workers compensation. Their status is derived from the Workers Compensation Act 1987, which provides for employers to be licensed by SIRA subject to meeting certain licensing criteria.¹⁹

Self-insurers are subject to rules which intend to ensure that other employers in NSW will not be required to meet the cost of claims if these entities are not able to meet their workers compensation liabilities.

Self-insurers and specialised insurers are subjected to stricter prudential management settings than the Nominal Insurer.²⁰ Unlike under the Nominal Insurer Scheme wherein employers pay a premium reflecting industry performance and the broader performance of the Scheme, employers covered by a self-insurance option pay a premium that more directly reflects their success in scheme management and claims outcomes. There is hence a stronger price signal for effective claims management under a self-insurance arrangement.²¹

Previous reviews

NSW's self-insurance policy was last revised in 2001. Since this time there have been a number of changes to the operational environment and regulation surrounding self-insurance in NSW, including the implementation of WHS requirements in NSW and other jurisdictions.

Several reviews of the broader scheme have been undertaken in recent years which have commented, to a limited extent, on self-insurance arrangements within the scheme. These include:

- the 2012 *NSW Workers Compensation Scheme Issues Paper*, which limited or capped some benefits and aimed to reduce the \$4bn deficit in the scheme

¹⁹ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers' Compensation Act, 1987, p1.

²⁰ The workers compensation Nominal Insurer is a not-for-profit legal entity established in 2005 to issue policies of insurance and manage workers compensation claims for NSW employers. All premiums received are paid into the Workers Compensation Insurance Fund (WCIF) to meet the cost of claims and the administration of the Scheme. The assets of the WCIF are owned by the employers of NSW, who are also responsible for meeting any shortfall. (Sourced from NSW WorkCover Annual Report 2013-14, p6).

²¹ Centre for International Economics, 'Statutory review of the Workers Compensation Legislation Amendment Act 2012', June 2014, p26.

- *Workers Compensation Legislation Amendment Act 2012*, which did not make any major self-insurance-specific changes
- the *Statutory Review of the Workers Compensation Legislation Amendment Act 2012*, undertaken on behalf of the Office of Finance and Services in 2014
- the *Review of the exercise of the functions of the WorkCover Authority*, undertaken by the Standing Committee on Law and Justice in 2014.

These reports did not complete comprehensive reviews of the self-insurance arrangements under NSW WorkCover, however, meaning the existing arrangements are largely unchanged since the revision in 2001.

2015 workers compensation reform package

In August 2015, the NSW Government announced a package of reforms to the workers compensation system in NSW.²² The package included three main elements, firstly the introduction of three new organisations to regulate NSW's insurance scheme's and health and safety requirements. SafeWork NSW, as a regulator for work health and safety, Insurance & Care NSW (iCare) to deliver insurance and care services and State Insurance Regulatory Authority (SIRA), to independently regulate and oversee the state's insurance schemes. Secondly, the package announced changes to benefits and entitlements for injured workers and thirdly legislated reductions in insurance premiums for NSW business.

Under the reforms announced in the package, the role of Safety, Return to Work and Support (SRWS) which previously regulated self-insurance, will fall under the jurisdiction of SIRA. While these changes are expected to have an impact on the operation of the broader system, existing self-insurance regulations and requirements remain unchanged. As a result the review remains timely and relevant.

Regulation in the context of NSW self-insurance

Government intervention in the self-insurance market has taken the form of legislation and regulation. The legislative instruments and regulatory framework are described in the following sections.

Instruments

The workers compensation system in NSW is legislated through:

- the *Workers Compensation Act 1987*
- the *Workplace Injury Management and Workers Compensation Act 1998*
- the *Workers Compensation Regulation 2010*
- the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

These instruments operate to establish the workers compensation and injury management system.

Role of self-insurance regulation

From an economic perspective, freely functioning markets generally provide the most efficient means of allocating goods and services between members of the community so as to

²² Dominic Perrottet, Minister for Finance, Services and Property, Media Release, \$1BN INSURANCE REFORM PACKAGE PUTS THE CUSTOMER AT THE CENTRE, 4 August 2015.

maximise the well-being of the community.²³ There are however cases where government intervention in markets is justified on economic efficiency grounds, or to achieve social and environmental objectives.

There are several reasons for government intervention in the operation of markets.

Addressing market failure

In some instances, the market does not deliver the best outcomes for society – for example, because of the existence of market distortions or imperfections. In some circumstances, government intervention may be justified on the grounds that economic outcomes could be improved.

Common causes of market failure include:

- external costs and benefits, generally referred to as ‘externalities’, which occur where an activity imposes costs on or generates benefits for individuals or groups not directly involved in the activity
- insufficient information, where market participants do not have access to the information they require to make well-informed decisions
- public goods, whose benefits can be enjoyed by all parties but for which it is not feasible to charge all users
- the presence of significant market power, which can arise from anti-competitive conduct or from uncompetitive market structures.

Addressing social welfare objectives

Government intervention may be justified in the pursuit of social and equity objectives. These include the redistribution of income to achieve equity goals, establishing law and order, cultural objectives, and preserving and protecting environmental resources.

For example, governments commonly use taxation and social welfare systems to redistribute resources to the socially disadvantaged, such as the unemployed. These systems are also employed to deliver core services to the community, such as health and education.

Addressing the management of public risk

A particular form of social regulation relates to requirements that seek to reduce or manage the risk of harm to health, safety or welfare of individuals or the community. Sometimes referred to as ‘protective’ regulation, this includes:

- measures to promote public health and safety, including the regulation of product and home safety
- actions undertaken to reduce the risk of harm to vulnerable individuals or groups, such as minimum quality standards in childcare
- restrictions on the practice of certain occupations to protect consumers from risky practitioners, such as medical professionals.

WHS and workers compensation regulations are considered to be measures promoting public health and safety. Such regulations seek to reduce the risk and incidence of injuries

²³ This section is based predominantly on the Victorian Guide to Regulation, *Toolkit 1: Purposes and types of regulation*, July 2014, prepared by the Victorian Department of Treasury and Finance.

and deaths in the workplace and to ensure that adequate protections are in place for injured workers.

Self-insurance arrangements in workers compensation present a distinct set of risks that require separate regulations to those in place for employers insured by the nominal insurer. These potential risks include:

- injured workers may not receive their entitlements in the event of self-insurer insolvency
- some self-insurers may not undertake to manage workers' claims appropriately.

Definition of self-insurance

In the context of workers compensation, self-insurance refers to an arrangement in which an employer or corporate group of employers is relieved from obtaining a workers compensation policy of insurance and allows such employers to carry their own underwriting risk.

Self-insurers are responsible for the payment of their claim liabilities and for the management of those claims. In NSW, SIRA bears the responsibility of ensuring that workers' outstanding claims are adequately protected and will be met.²⁴

Purpose of self-insurance

Self-insurance provides an option to an employer to manage their own claims while also bearing the costs and risks of such claims. At its core, a self-insurance system should aim to achieve the following:

- flexibility and choice for employers
- better work health and safety conditions
- fair and equitable treatment for injured employees
- improvement in rehabilitation and injury management
- incentivise employers to improve OHS performance and return-to-work outcomes
- incentivise employers to be innovative and customise approaches to the management of workers compensation claims.

Attainment of these objectives aims to facilitate knowledge transfer across the broader scheme, leading to improvement in outcomes for both employers and employees throughout NSW.

²⁴ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers' Compensation Act, 1987, p1.

Table 6: How self-insurance regulation endeavours to incentivise improved outcomes for workers

Risk category	Key potential risks of unregulated self-insurance	Are the potential risks present for nominally insured employers?	How the regulations address these risks
Financial	Injured workers may not receive their entitlements in the event of self-insurer insolvency. Some self-insurers may not have the capacity to maintain self-insurance in the long term, meaning injured employees may not be sufficiently provided for.	No. An injured worker receives entitlements regardless of the financial stability of the employer.	The regulations specify licensing requirements designed to ensure that self-insurers have sufficient financial resources to cover their current and future claims liabilities. Self-insurers are required to maintain unlimited reinsurance to restrict its liabilities to a maximum amount in respect of any one event. A bank guarantee (or equivalent deposit) is also required to secure total outstanding claims liabilities. The regulations additionally specify requirements in respect of information provision SIRA. This information, which includes actuarial reports and other financial reports, allows SIRA to determine: <ul style="list-style-type: none"> - the current financial stability and capacity of self-insurers - the quantum of self-insurers' claims liabilities - their capacity to meet these and potential future liabilities.
Claims management	A self-insurer may not undertake to manage its injured employees' claims appropriately, presenting a risk to injured workers.	Yes. While claims for nominally insured employers are managed by scheme agents rather than by the employers themselves, the risk is still present that an employee's claim may not be managed appropriately.	Self-insurers are subject to claims management audits that are designed to ensure that appropriate claims management practices are being followed. The regulations also specify requirements in relation to the provision of information to SIRA. This information includes self-audit results, injury management programs and regular claims data submissions. This information gives SIRA an indication of claims management performance.
WHS	A self-insurer may not provide an appropriate safe working environment for its employees	Yes. Nominally insured employers could also fail to provide a safe working environment for their employees.	Self-insurers are subject to OHSMS audits as part of compliance monitoring. Under these audits self-insurers must demonstrate that they are systematically controlling the risks to all persons affected by the organisation's activities, practices and services. Self-insurers are also required to provide annual information regarding self-monitoring and internal governance within the organisation.

Source: PwC

Appendix D Summary of self-insurance requirements in other jurisdictions

Table 7 provides a summary comparison of the licensing requirements for self-insurers (SIs) in NSW compared with those of other Australian jurisdictions.

Table 7: Key components of licensing arrangements across other Australian jurisdictions

	Victoria	QLD	SA	Comcare
Overview	<ul style="list-style-type: none"> 38 SIs including 4 SIs awaiting renewal Representing 8% of Victorian WorkSafe Scheme by total remuneration Last new SI was in 2012 7.32 claims per million hours worked 9 serious injury and disease claims per 1000 employees 	<ul style="list-style-type: none"> 27 SIs 13.9 serious injury and disease claims per 1000 employees 	<ul style="list-style-type: none"> Around 38% of SA's remuneration is paid by SIs There are over 140 members of the Self-insurers of South Australia association 11.9 serious injury and disease claims per 1000 employees 	<ul style="list-style-type: none"> 33 Self-insurance licensees under the Safety, Rehabilitation and Compensation Act (1998) Moratorium on Comcare Self-insurance Licences lifted in 2013 6.2 serious injury and disease claims per 1000 employees
Entry				
Application and fees	Assessment fee is lessor of 0.033% of total wages or \$57,520	Application fee of \$15,000 for single employers and \$20,000 for group employers	Application fee of \$10 - \$40K (depends) on number of workers	Application fee is an amount estimated to be the cost of considering the application
Renewal period	Standard renewal period is 4 years , can be extended by WorkSafe to 6 years	Initial licence is 2 years , licences can be up to 4 years	ReturnToWorkSA can grant registration as a SI for no longer than 3 years	Recently extended to an 8 year renewal period for all self-insurers
Financial entry requirements	<ul style="list-style-type: none"> Able to meet its liabilities Assessed against benchmarks on primary indicators and secondary indicators 	<ul style="list-style-type: none"> At least 2000 full time employees in Queensland An unconditional bank guarantee or deposit Take on all liability for outstanding WorkCover claims 	<ul style="list-style-type: none"> Minimum of 200 employees (exceptions may be made) Assessed against 4 primary indicators and a secondary indicator An unconditional, continuing bank guarantee 	<ul style="list-style-type: none"> SRCC will have regard to "financial and prudential information" A bank guarantee based on the 95th percentile of outstanding liabilities, subject to a minimum of \$2.5m

	Victoria	QLD	SA	Comcare
WHS entry requirements	<ul style="list-style-type: none"> Satisfactorily low incidence of injuries 	<ul style="list-style-type: none"> “Occupational health and safety performance is satisfactory” 	<ul style="list-style-type: none"> Incidence and severity of injuries will be evaluated based on 3 years of previous data Applicant’s performance will be considered in relation to comparable industries 	<ul style="list-style-type: none"> “Resources, the interest of employees and capacity of the applicant to meet standards set by the SRCC”
Claims management entry requirements	<ul style="list-style-type: none"> Appropriate resources planned or in place to ensure high performance “Strong claims management, occupational rehabilitation and return to work history” 	<ul style="list-style-type: none"> Adequate systems and resources for managing claims and rehabilitation Insurers submit claims data monthly and claims reconciliation data half-yearly 	<p>ReturnToWorkSA will assess the following with respect to claims management:</p> <ul style="list-style-type: none"> Qualification and experience of officers responsible Number, frequency, complexity and duration of claims Job description of officers responsible Performance of employer as measured against the Code 	<p>“Claims management systems information including accurate and quick determinations and payments, ensuring equity of outcomes and capacity to comply with conditions of licence”</p>
Risk management	<ul style="list-style-type: none"> Must have unlimited contingent liability insurance 	<ul style="list-style-type: none"> Must have reinsurance cover 	<ul style="list-style-type: none"> Must have contingency plans and test them periodically 	<ul style="list-style-type: none"> Reinsurance policy with a reinsurance retention amount as approved by the SRCC
Ongoing				
Reporting	<ul style="list-style-type: none"> WorkSafe provides an annual report to each SI: Self-insurer Performance Framework provides feedback to SIs SIs must provide: <ul style="list-style-type: none"> Self-audits of claims management, finance and WHS, financial and prudential documentation, etc. Must notify WorkSafe of “strategically significant matters”: Any application for an appeal Where workers are terminally ill workers have asbestos-related conditions 	<ul style="list-style-type: none"> SIs must provide annual actuarial reports 	<ul style="list-style-type: none"> SIs must provide: <ul style="list-style-type: none"> Annual actuarial reports of outstanding liabilities A copy of audited financial statements within 5 months of every financial year 	<ul style="list-style-type: none"> SIs must provide: <ul style="list-style-type: none"> An actuarial assessment of current and projected outstanding liabilities Subject to continual financial monitoring May be subject to an annual risk based desktop review process using the licensees’ audited financial statements Licensees must notify Comcare of any serious or dangerous incidents

	Victoria	QLD	SA	Comcare
OHS auditing and checking requirements	<ul style="list-style-type: none"> • Uses National Audit Tool • WorkSafe expects that 90% of the 108 criteria will be audited during approval process • Accredited auditors can be used 	<ul style="list-style-type: none"> • Uses National Audit Tool • Addresses all 5 elements • 4- and 3-year licence holders must undergo a self-audit (undertaken by internal personnel) at the two-year interval • All applications for licence renewal must undergo the two-stage audit 	<ul style="list-style-type: none"> • Organisation must carry out internal audits to ensure performance of systems and programs • Evaluations are conducted when a prospective SI applies, upon application for renewal and on an ongoing basis to monitor compliance • Evaluations will be undertaken against the methodology in the Evaluation Practice Manual • An employer may elect to be evaluated against the National SI WHSMS Audit Tool instead 	<ul style="list-style-type: none"> • Licence performance is evaluated via the annual Licence Improvement Program (LIP) • Performance outcomes are assessed against a Tier Model • All licensees are subject to external audits in their last year of licence
Actuarial requirements	Must obtain annual actuarial valuation its claims liability	Must prepare annual actuarial report	Must provide annual actuarial reports of outstanding liabilities	Must prepare an actuarial assessment of current and projected outstanding liabilities
Fees	<ul style="list-style-type: none"> • Fees are based on a proportion of WorkSafe's costs determined by total remuneration 	<ul style="list-style-type: none"> • Must pay annual levy to Workers' Compensation Regulator • WHS performance reporting fees are \$1203 and \$1601 for single and group employers respectively 	<p>The fee paid by an SI "will be a percentage of the base premium that would have been payable by the employer if the employer were not an [SI]...and will be fixed by the Corporation with a view to raising from [SIs]":</p> <ul style="list-style-type: none"> • "A fair contribution" towards administrative and dispute resolution costs 	<p>Licenseses must pay a fee based on:</p> <ul style="list-style-type: none"> • A flat fee component • Licensee specific costs <p>An amount determined by the number of FTE</p>
Third-party claims management	<ul style="list-style-type: none"> • Can outsource claims after WorkSafe's assessment of agent's capabilities 	<ul style="list-style-type: none"> • Does not appear to allow outsourcing of claims management 	<ul style="list-style-type: none"> • Does not appear to allow outsourcing of claims management 	<ul style="list-style-type: none"> • Does not appear to allow outsourcing of claims management
Restructuring of company	<ul style="list-style-type: none"> • If an SI acquires a registered employer, they can assume its tail claims liability. The acquisition may also trigger a review of the self-insurers approval • Must advise WorkSafe of acquisitions or dispositions 		<ul style="list-style-type: none"> • SIs must inform ReturnToWorkSA of any restructuring and may have to reapply if there are substantial changes 	<ul style="list-style-type: none"> • Licensee must notify Comcare of any changes in legal structure, ownership or control, and of any significant change in employee numbers
Exit				
Licence suspension, cancellation, non-renewal	<ul style="list-style-type: none"> • Incapable of meeting its claims liabilities, or is not fit and proper to be a SI • Becomes a 	<ul style="list-style-type: none"> • Can appeal to a District or Supreme Court if they are unhappy with the issue, 	<ul style="list-style-type: none"> • Due to insolvency or failing to make adequate provision for claims management • If licence of a SI 	<ul style="list-style-type: none"> • If licence of a corporation is revoked, the licensee ceases to be liable for any claims after the licence was revoked

	Victoria	QLD	SA	Comcare
	subsidiary of another body corporate and it is not approved <ul style="list-style-type: none"> Failed to comply with WIRC Act 	renewal or cancellation of licence	employer is revoked, the licensee ceases to be liable for any claims after the licence was revoked and ReturnToWorkSA will take them on in return for a payment for the capitalised value of all outstanding liabilities	<ul style="list-style-type: none"> If a licence is revoked, Comcare may take all the bank guarantee money
Sources	WorkSafe Victoria, www.worksafe.vic.gov.au/insurance-and-premiums/self-insurance Accessed 13 August 2015	WorkCover Queensland, www.worksafe.qld.gov.au/insurance/self-insurance-auditing Accessed 14 August 2015	Self-insurers of South Australia, www.sisa.net.au/ Accessed 17 September 2015; ReturnToWorkSA, www.rtwsa.com/insurance/self-insurance/regulating-self-insured Accessed 13 August 2015	Comcare, www.comcare.gov.au/the-scheme/regulation Accessed 14 August 2015; Comcare, http://www.comcare.gov.au/data/assets/pdf_file/0/003/134481/Self-insurance_licence_application_process_-_frequently_asked_questions_PDF_88.3_KB.pdf Accessed 14 August 2015

Appendix E List of self-insurers in NSW

Table 8 provides a list of current self-insured employers in NSW. Table 9 lists NSW employers that are currently group self-insurers.

Table 8: List of self-insured employers in NSW

Self-insurers
Ausgrid (Formerly Energy Australia)
Bankstown City Council
BOC Limited
Campbelltown City Council
Council of the City of Blacktown
Council of the City of Lake Macquarie
Council of the City of Newcastle
Council of the City of Sydney
Council of the City of Wollongong
Electrolux Home Products Pty Ltd
Endeavour Energy (Formerly Integral Energy Australia)
Fairfield City Council
Fletcher International Exports Pty Limited
Gosford City Council
Hawkesbury City Council
Inghams Enterprises Pty Limited
ISS Property Services Pty Ltd
Liverpool City Council
Mars Australia Pty Ltd
NSW Trains
Pacific National (NSW) Pty Ltd
Qantas Airways Limited
Rocla Pty Limited
Shoalhaven City Council
Southern Meats Pty Limited
Sutherland Shire Council
Sydney Trains
3M Australia Pty Limited
Transfield Services (Australia) Pty Limited
Transport Service of NSW (STA Group)
UGL Rail Services Pty Limited
University of New South Wales
University of Wollongong
Veolia Environmental Services (Australia) Pty Limited
Warringah Council
Westpac Banking Corporation
Wyong Shire Council

Table 9: Group self-insurers in NSW

Group self-insurers
Arrium Limited
Australia and New Zealand Banking Group Limited
Brambles Industries Limited
Bluescope Steel Limited
Brickworks Limited
Coles Group Limited
Colin Joss & Co Pty Limited
CSR Limited
Echo Entertainment Group Limited
Holcim (Australia) Holdings Pty Limited
JELD-WEN Australia Pty Limited
McDonald's Australia Holdings Limited
Myer Holdings Limited
Northern Co-operative Meat Company Limited
NSW Self-insurance Corporation ²⁵
Primary Health Care Limited
Skilled Group Limited
Toll Holdings Limited
Unilever Australia (Holdings) Pty Ltd
Woolworths Limited

Source: <http://www.workcover.nsw.gov.au/insurance/self-insurers/list-of-self-insurers>

²⁵ NSW Self-insurance Corporation is classified as a self-insurer but is not licensed.

Appendix F Comparison of current and recommended licence requirements

Category	Current requirements ²⁶	Recommendations
Financial	<ul style="list-style-type: none"> • Payment of an application fee of \$25K for individual SIs or \$30K for group SIs. • Licence fee based on a percentage of deemed premium. • Applicants for a new self-insurer licence, either single or group, must have a minimum of 500 employees in NSW. • Sufficient financial resources to meet liabilities. • Deposit or bank guarantee based upon projected tariff premium for ensuing 12 months plus a prudential margin of 50 per cent. • Must obtain unlimited reinsurance cover. A retention amount under the above policy or policies, provided that it is within the range of \$100,000 - \$1,000,000 per event is acceptable to SIRA. • Employers that exit the self-insurance scheme are able to access workers compensation insurance through the nominally insured scheme. When this occurs, the employer retains responsibility for the management of its existing 	<p>Recommendation 14: Align SIRA's cost recovery model more closely with the regulatory effort incurred by the regulator by differentiating self-insurer licence fees based on their level of performance. The fee structure would be aligned with the proposed three tiered model.</p> <p>Recommendation 15: Provide a mechanism by which employers that exit the self-insurance scheme are required to pass on their tail claims to a licensed insurer. This would require the employer to pay a buyout amount covering the cost of its outstanding claims liabilities.</p> <p>Recommendation 16: SIRA, in consultation with its actuaries, should consider updating the prudential requirements to ensure that they remain fit for purpose, including:</p> <ul style="list-style-type: none"> - updating its guidance in relation to the calculation of outstanding claims liabilities - increasing the minimum claims handling expense assumption - introducing a minimum security requirement - allowing self-insurers with large amounts of claim liabilities to utilise a different valuation methodology - increasing the retention amount range - increasing the level of the retention amount beyond which approval is required from SIRA.

²⁶ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

Category	Current requirements ²⁶	Recommendations
Operational	<p>long-term claims liabilities.</p> <ul style="list-style-type: none"> • 3-year licence renewal period. • Self-insurers must perform their obligations and functions in accordance with commercially acceptable and professional standards and demonstrate performance in injury and claims management. • Self-insurers must employ sufficient claims management personnel, resources and structure to perform obligations and functions as a licensed self-insurer. • SIRA will conduct claims management audits on self-insurers periodically to monitor their compliance with legislative requirements. • Self-insurers are also required to conduct and report self-audit results at every year and lodge any revised injury management program to SIRA. • Must demonstrate that its OHS management system is operating at an acceptable level under the National Self-Insurer OHS Management System Audit Tool (NAT). • Self-insurers must conduct annual self-audits of their OHS Management System against the NAT criteria and provide a report to SIRA. 	<p>Recommendation 1: Implement a three-tiered oversight model for self-insurance, based on self-insurer performance. Under this model:</p> <ul style="list-style-type: none"> - Self-insurers that exhibit higher levels of performance against outcome measures and meet SIRA's operational and reporting obligations will be subject to fewer oversight requirements from SIRA. Most self-insurers are expected to be in the top tier, over time - Self-insurers that do not meet performance requirements and/ or do not meet SIRA's operational and reporting requirements will be subject to greater oversight from SIRA. The bottom tier is intended to be short term allocation for lesser performers, with self-insurers either improving their performance to move to the mid tier, or otherwise placing their self-insurance licence at risk - An intermediate level of oversight is proposed for medium performers (mid tier). New self-insurers would enter the scheme at the mid tier until they have proven their ability to meet SIRA's performance requirements. <p>Recommendation 2: Increase the licence term to a maximum of 8 years for higher performing self-insurers (i.e. with top tier self-insurers having a longer renewal period than other self-insurers) and maintain shorter terms for other self-insurers (including new self-insurers).</p> <p>Recommendation 3: SIRA should consider the views of industry, employees and injured worker representatives when assessing a self-insurer's performance, tier placement and/or licence renewal. This may include:</p> <p>using its legislative authority to require licence applicants to advertise or give notice of their application</p> <ul style="list-style-type: none"> - collecting feedback on self-insurers from employee and injured worker groups - incorporating stakeholder feedback into self-insurer <i>performance</i> measures. <p>Recommendation 4: Adopt a risk-based approach to claims management oversight, in which top tier self-insurers are subject to fewer audit requirements than middle and bottom tier employers. This could include:</p> <ul style="list-style-type: none"> - top tier employers - conducting claims management self-audits at least every 2 years and completing a claims management audit at licence renewal (or if concerns are raised) - mid tier employers - conducting annual claims management self-audits and completing a claims management audit at licence renewal (or if concerns are raised) - bottom tier employers - conducting annual claims management self-audits and completing an annual claims management audit conducted by SIRA (six months following the self-audit).

Category	Current requirements ²⁶	Recommendations
		<p>Recommendation 5: Redevelop the existing claims management audit tool to ensure that it:</p> <ul style="list-style-type: none"> - is fit for purpose under the new regulator's objectives - is compatible with the audit of historical claims - can be directly linked to claims management performance measures. <p>Recommendation 6: Develop complementary measures (to traditional audits) to assess claims management performance including:</p> <ul style="list-style-type: none"> - 'random' spot checks of self-insurers claims management functions by SIRA - a periodic survey of injured workers across both self-insured and nominally insured employers - regular assessment of claims management performance data by SIRA. <p>Recommendation 7: Require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and an insurer for workers compensation.</p> <p>Recommendation 8: Remove the OHSMS self-audit and OHSMS audit requirements from the self-insurance licensing framework. Instead, rely on the existing WHS engagement and enforcement activity undertaken by SafeWork NSW that applies to all employers in NSW. Also, establish a new and contemporary framework for referring any WHS issues that come to SIRA's attention to SafeWork NSW.</p>
<p>Information</p>	<ul style="list-style-type: none"> • Self-insurers must provide SIRA with monthly claims data. • Self-insurers must prepare and lodge with SIRA, each financial year, a copy of the annual report (including audited financial statements) for the Licensee and, if it is a subsidiary of an Australian holding company, for its ultimate holding company as well. The financial statements must be provided within 4 months of the end of the relevant financial year or such longer period as SIRA may allow. 	<p>Recommendation 9: Establish an integrated and automated data analysis system to enable SIRA to better assess self-insurer performance. This system will support the proposed risk-based approach to self-insurance oversight by SIRA.</p> <p>Recommendation 10: Prepare a quarterly summary performance report for each self-insurer that provides transparency on its performance relative to other self-insurers and its industry.</p> <p>Recommendation 11: Publish on SIRA's website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme. This could include indicators on:</p> <ul style="list-style-type: none"> - claims management and return to work outcomes - relative incident and claims volumes - compliance rates in relation to SIRA's reporting and data provision requirementsinjured worker satisfaction.
		<p>Recommendation 11: Publish on SIRA's website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme. This could include indicators on:</p>

Category	Current requirements ²⁶	Recommendations
		<ul style="list-style-type: none"> - claims management and return to work outcomes - relative incident and claims volumes - compliance rates in relation to SIRA's reporting and data provision requirements - injured worker satisfaction. <p>Recommendation 12: Introduce a data auditing program to help to ensure that data submitted by self-insurers and published by SIRA are accurate.</p> <p>Recommendation 13: Require self-insurers to formally advise SIRA of any strategically significant matters related to their management of claims, including:</p> <ul style="list-style-type: none"> - any cases to be litigated in a court - any cases expected to generate significant public interest.

Self-insurance licensing framework review – submission form



State Insurance
Regulatory Authority

Consultation no. WCR 2016/4

Please complete this form as your submission to ensure prompt and accurate receipt and processing. All submissions should be sent by email to SIfedback@sira.nsw.gov.au no later than 11 November 2016.

Name of organisation or individual making this submission

Contact person/authorised delegate

Authorised delegate/contact person

Position

Postal address

Suburb

State

Postcode

Telephone number

Mobile number

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Publication of submissions

Following processing, submissions may be published on the SIRA website. Copyright in submissions resides with the author(s), not with SIRA. Please note below if you do NOT want your submission or any part(s) of it published on the SIRA website.

Publication of submissions will usually include your name and the name of the organisation, if relevant. We will remove contact details such as email addresses, postal addresses and telephone numbers. At our discretion we may not publish certain submissions (or part of submissions) due to our assessment of length, content, appropriateness or confidentiality.

For more information, read the SIRA submission procedure at www.sira.nsw.gov.au/about-us/have-your-say

I have read the SIRA submission procedure

Do you want your content to be confidential?

No, my submission is not confidential

Yes, my submission is completely confidential

In part (please indicate confidential areas)

Focus question 1: What is your view of the proposed standard licence conditions?

Focus question 2: What is your view of the appropriateness of the draft top tier measures for conduct and claims management to set SIRA's expectations of insurance performance?

Focus questions continued over...

Focus question 3: Are there any other areas or measures that should be considered?

Focus question 4: What is your view on applying the same assessment criteria to applications for a new self-insurer licence?

Focus question 5: What is your view of the allocation of new self-insurers to the mid-tier for their first year under licence?

Focus question 6: What is your view on the requirement for self-insurers to submit a business plan to outline their strategic direction consistent with licensed insurers?

Further information may be obtained from www.sira.nsw.gov.au.

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