

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.

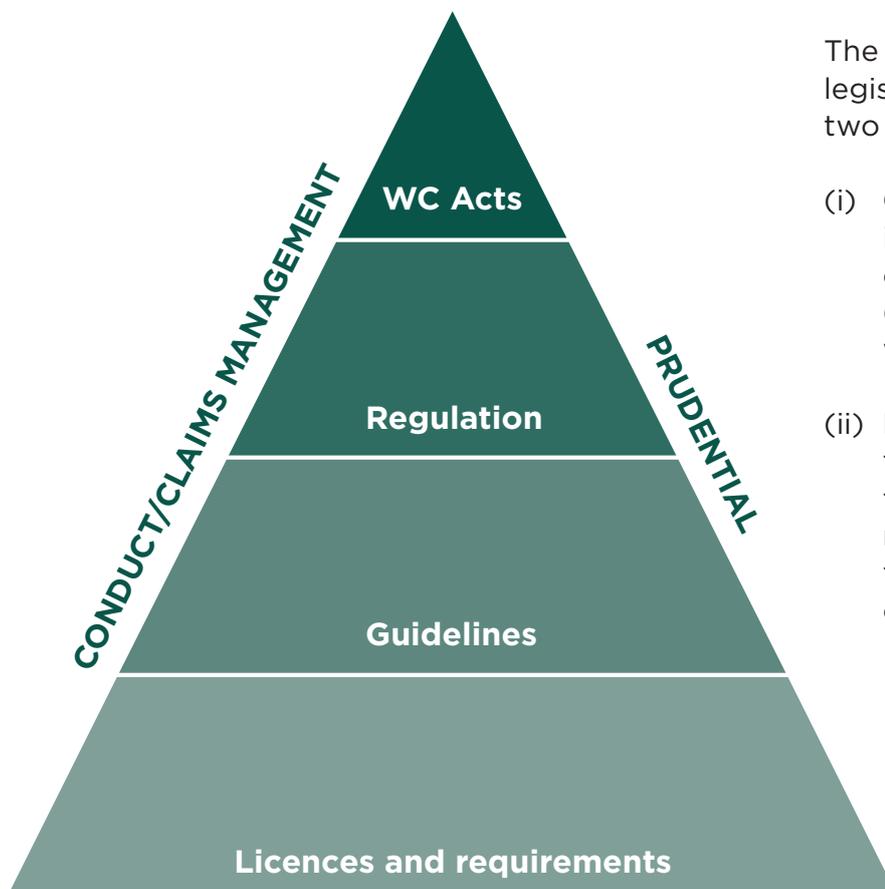


FIGURE 1: LEGISLATIVE FRAMEWORK

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:

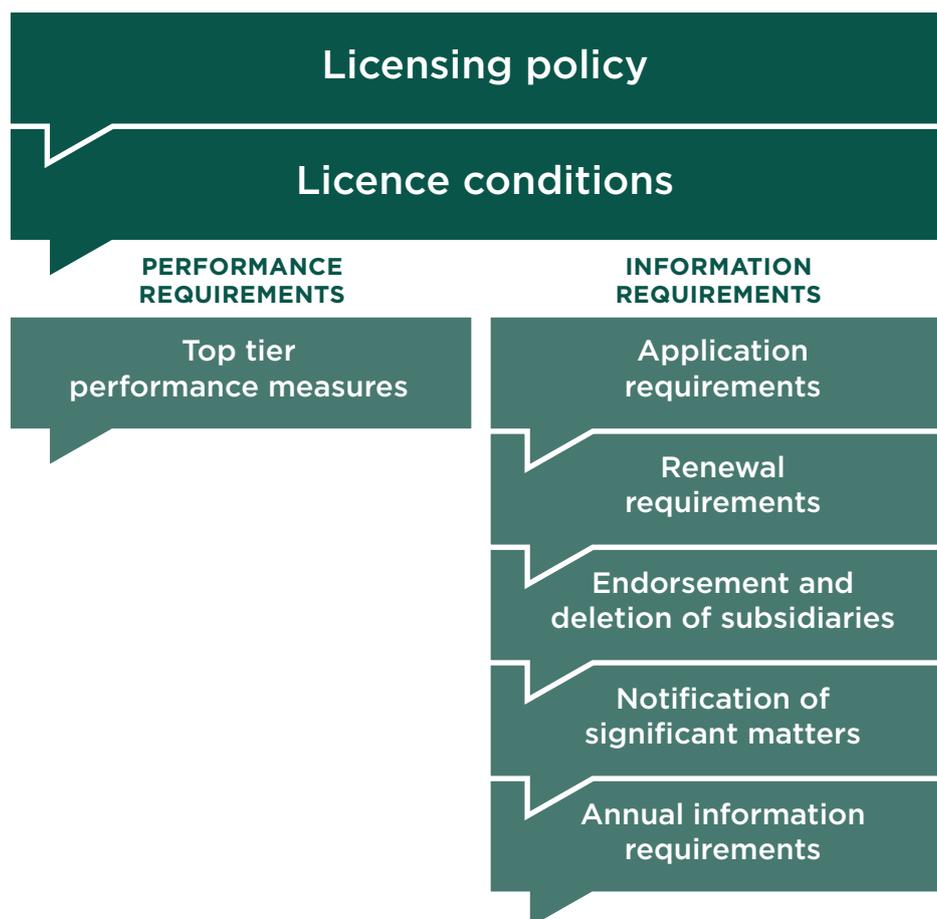


FIGURE 2: SELF-INSURANCE LICENSING FRAMEWORK

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.

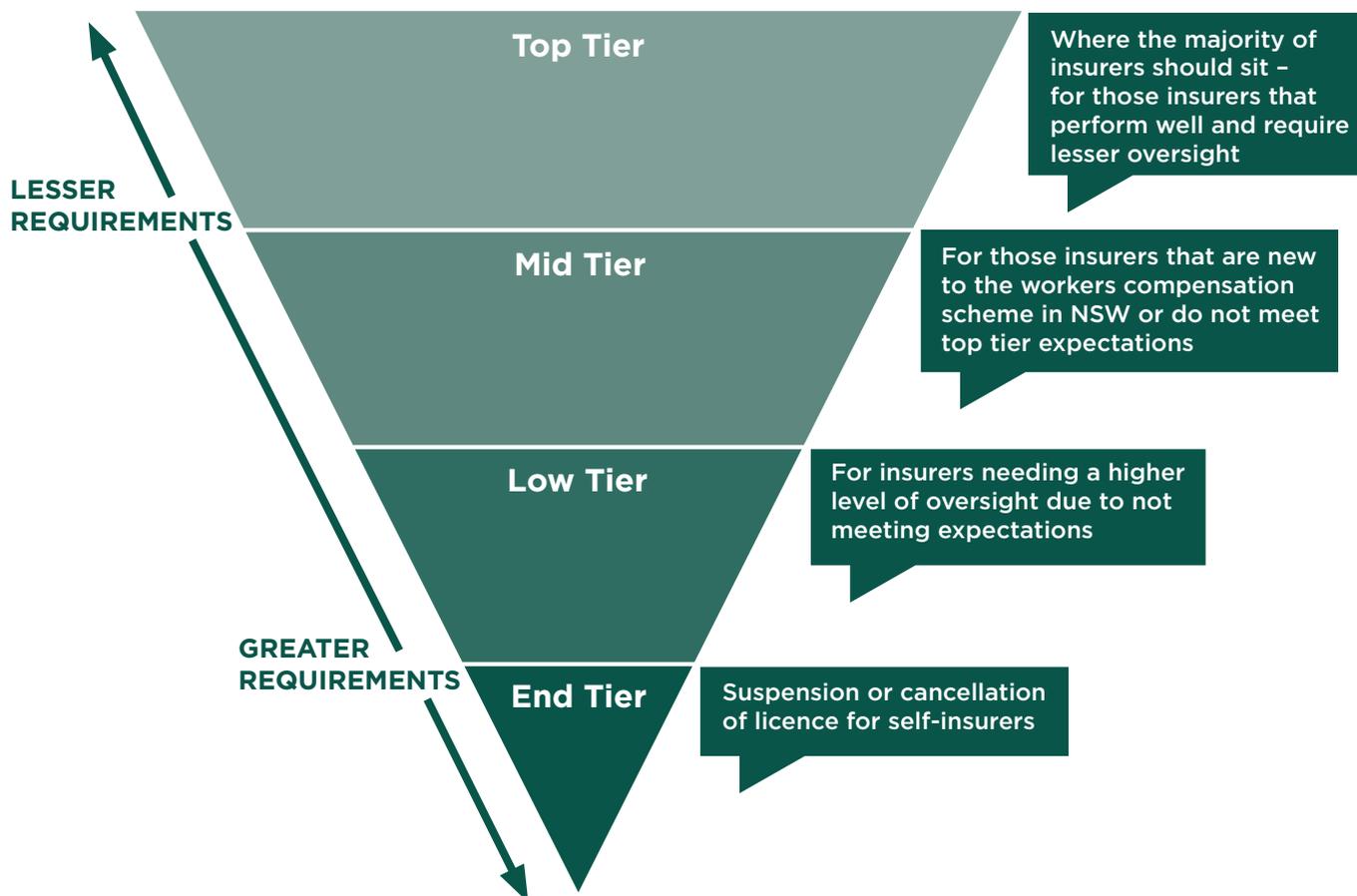


FIGURE 3. SELF-INSURANCE TIERED SUPERVISORY MODEL

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.

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Catalogue no. SIRA08146

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