



*Workers compensation market
practice and premiums guidelines
and
Workers compensation licensed
insurer business plan guidelines*

Discussion paper on proposed approach 2016–2017

March 2016

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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* (SICG Act) 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.

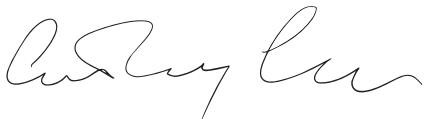
The SICG Act also included amendments to the *Workers Compensation Act 1987* (WC Act) to strengthen regulatory oversight and supervision of insurers. The amendments, that have yet to commence, provide for workers compensation *Market practice and premiums guidelines* (MPPGs), *Licensed insurer business plan guidelines* (LIBPGs) and prudential standards to be developed in consultation with insurers. It is planned that these provisions will commence following consultation.

This initial consultation on SIRA's regulatory oversight and supervision model focuses on the version of the MPPGs and LIBPGs that will be applied in the 2016–2017 policy year. The development of these guidelines is the first step in establishing SIRA's regulatory framework for workers compensation insurers. SIRA will consult further during 2016 with a view to issuing revised MPPGs for the 2017–2018 policy year, which will further progress the transition towards risk-based regulation and supervision of workers compensation insurers' financial and prudential requirements.

The MPPGs and the LIBPGs are intended to ensure better health, social and economic outcomes for workers and employers within the workers compensation system.

SIRA would like to hear the views of insurers and other stakeholders on the proposed approach to the MPPGs and the LIBPGs in general, and for the version to be applied in the 2016–2017 policy year. This paper sets out some key 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 workers and employers in NSW.



Anthony Lean
Chief Executive – State Insurance Regulatory Authority
March 2016

Context and background

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* (WIMWC Act). 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 reform 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.

Financial and prudential legislative requirements for insurers

With the separation of functions, as described above, SIRA is establishing the regulatory model to oversee workers compensation insurers' financial and prudential requirements.

The powers SIRA uses in designing its oversight model for regulating insurers come from the WC Act, WIMWC Act and *Workers Compensation Regulation 2010* (WC Regulation).

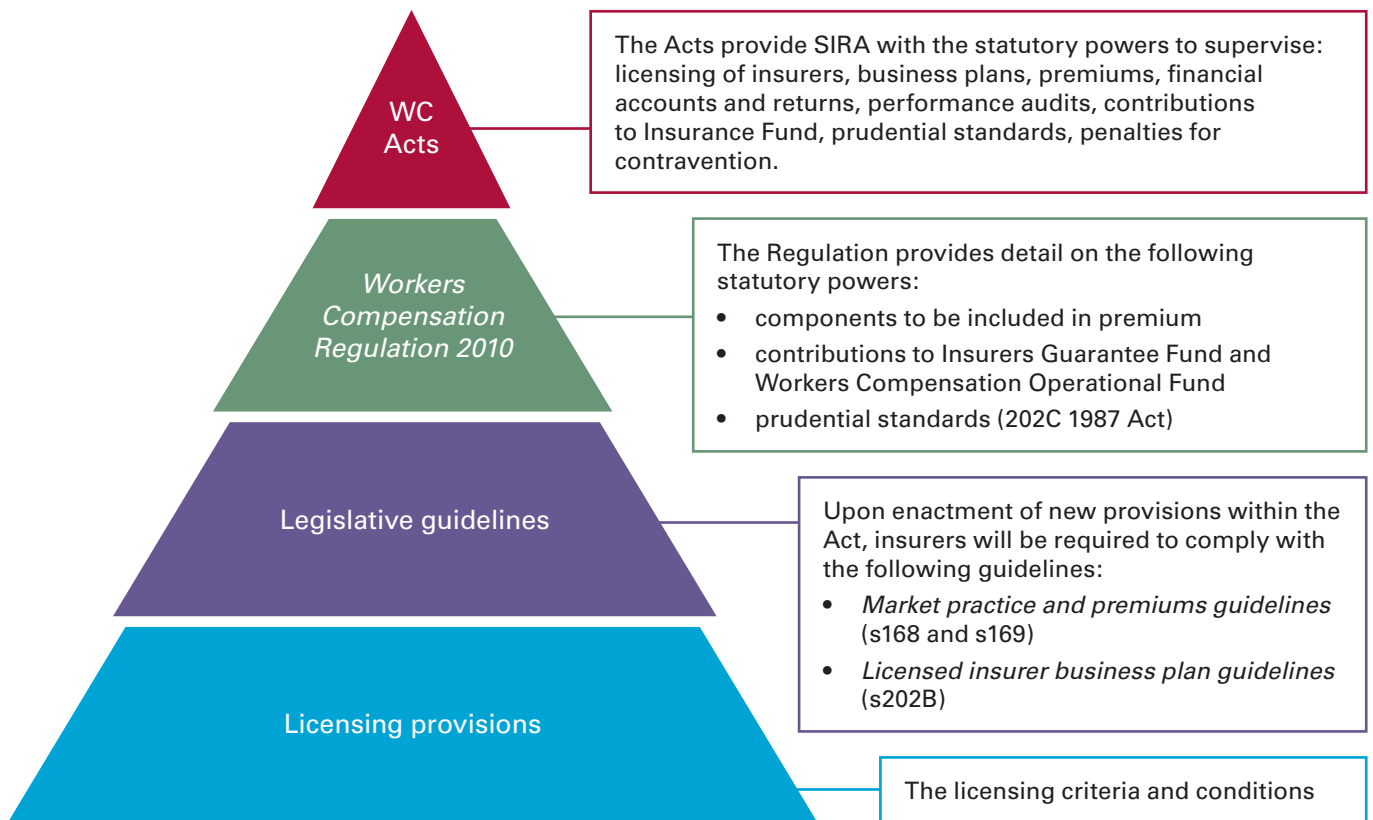


Figure 1 – SIRA's legislative and regulatory framework

The SICG Act included amendments to the WC Act to strengthen regulatory oversight and supervision of insurers. The three amendments that are specific to regulating insurers and are yet to commence are:

- *Market practice and premiums guidelines* (MPPGs), section 168
- *Licensed insurer business plan guidelines* (LIBPGs), section 202B
- prudential standards, section 202C.

The development of the MPPGs and LIBPGs for the 2016–2017 policy year is the first step in establishing SIRA's oversight model for regulating insurers. The scope of this initial consultation and this discussion paper is focused on these guidelines only.

The initial version of these guidelines to be applied in the 2016–2017 policy year will ensure that all legislative obligations are met with only moderate change to the current requirements. This will maintain stability within the workers compensation system and allow licensed insurers to transition to the broader oversight model which will be subject to further consultation during 2016 for the 2017–2018 policy year.

SIRA is aware that icare is currently reviewing the design of the Retro Paid Loss product. SIRA will work closely with icare throughout the consultation period to ensure that any changes will meet the principles of the MPPGs. These changes, including changes required as per legislation and the Regulation, will be reflected in the final guidelines.

SIRA intends to conduct further consultation in August 2016. This will include consultation on prudential regulation which is covered under the new section 202C and a more comprehensive version of the MPPGs and LIBPGs. In early 2017, SIRA expects to publish further versions of the MPPGs and LIBPGs and any amendments that may be required to the Regulations.

Scope of the financial and prudential regulation

The amendments under the SICG Act allow SIRA to issue guidelines in respect to 'policies of insurance' and requirements for licensed insurers to submit business plans to SIRA.

For the purposes of supervising premiums through the 2016–2017 policy year MPPGs, 'licensed insurers', as referred to in the MPPGs, include specialised insurers and the Nominal Insurer.

For the purposes of supervising market practices through the 2016–2017 policy year MPPGs and LIBPGs, 'licensed insurers', as referred to in those instruments, include specialised insurers and the Nominal Insurer.

For the purposes of supervising market practices and prudential standards from 2017–2018 onwards, the relevant guidelines and regulations will extend to all insurers licensed under the WC Act, including self-insurers. SIRA is currently undertaking a review of the Self-Insurance Licensing Framework. In particular, it is anticipated that SIRA will require the business plan requirements outlined in the LIBPGs to be fulfilled by self-insurers.

SIRA proposes that any prudential regulations would also complement the oversight activities of the Australian Prudential Regulation Authority (APRA) with which SIRA has a Memorandum of Understanding. It will also consider the role of Ministers and NSW Treasury in prudential oversight of NSW Government insurance businesses.

Market practice and premiums guidelines and Licensed insurer business plan guidelines: a summary

The MPPGs may require licensed insurers to:

- file with SIRA premiums for classes of employers in such manner, and at such times, as may be specified in the guidelines
- specify how they have determined premiums
- provide additional information to justify the premium filing.

Specifically, section 168 (1) of the 1987 Act as amended by the SICG Act (which has not yet commenced) states:

Section 168 (1)

The Authority may issue guidelines with respect to policies of insurance (the Workers Compensation Market Practice and Premiums Guidelines)

The LIBPGs may require licensed insurers to:

- prepare and deliver to SIRA a business plan for its workers compensation business in accordance with the guidelines
- describe the manner in which the insurer's workers compensation business is to be conducted
- provide information as to how it will conduct its workers compensation business in accordance with its current business plan.

Specifically, section 202B of the 1987 Act as amended by the SICG Act (which has not yet commenced) states:

202B Business plans of licensed insurers

- (1) *A licensed insurer must prepare and deliver to the Authority a business plan for its workers compensation insurance business as soon as practicable after it is requested to do so by the Authority.*
- (2) *The licensed insurer must revise its business plan:*
 - (a) *whenever it departs significantly from its business plan, and*
 - (b) *at such intervals of not less than 12 months as the Authority directs.*
- (3) *The licensed insurer must, as far as practicable, conduct its workers compensation insurance business in accordance with its current business plan, but if it departs significantly from that plan the insurer must notify the Authority accordingly.*
- (4) *A business plan must be prepared in accordance with such guidelines as the Authority determines from time to time and notifies to licensed insurers.*
- (5) *A business plan must describe the manner in which the insurer's workers compensation insurance business is to be conducted (including premiums, claims handling, management, expenses and systems).*
- (6) *In this section, a reference to the workers compensation insurance business of a licensed insurer is a reference to any business associated with policies of insurance.*

As the regulator of workers compensation in NSW, SIRA is consulting with stakeholders to seek their views prior to finalising the guidelines. The draft guidelines are designed to support the objectives of the workers compensation system by:

- ensuring that policies of insurance and premiums are fair and reflective of each employer's risks, and they are not unreasonably volatile or excessive
- ensuring that licensed insurers are operating in accordance the NSW workers compensation system objectives as set out in Section 3 of the 1998 Act.

The commencement of the MPPGs and LIBPGs will repeal the current Section 168–170, which provides SIRA with the power to issue the Insurance Premiums Order (IPO).

Consultation

Consultation on the development of the Guidelines is required under the new section 168 (4) of the 1987 Act. Consultation on the version of the MPPGs and LIBPGs that will be applied in the 2016–2017 policy year commences with the publication of this discussion paper.

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

SIRA will consider the feedback provided in submissions, then finalise the MPPGs and the LIBPGs and issue them formally.

A further discussion paper will be published in August 2016. This subsequent paper will open consultation on refinements to the MPPGs and the LIBPGs as well as the application of prudential standards for the 2017–2018 policy year.

Key dates

Consultation activity	Dates
Discussion paper published on the SIRA/WorkCover website and the NSW Government 'Have Your Say' websites	16 March 2016
Submissions received by SIRA	13 April 2016
SIRA reviews submissions and prepares summary of feedback	14–28 April 2016
Submissions summary paper published	29 April 2016

This timetable is designed to enable insurers to work with and apply the new guidelines in time for the policy renewal period 30 June 2016 to 30 June 2017.

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 13 April 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.

Guidelines and focus questions

The guideline summaries and questions set out in this section are intended to prompt and focus discussion. They are not intended to be exhaustive or otherwise restrict commentary on broader or related matters.

Market practice and premiums guidelines (MPPGs)

Draft MPPGs accompany this discussion paper. The guidelines are structured as per below:

- introduction
- premium principles
- premium requirements
- special requirements by policy year
- premium filing process
- annexures.

Feedback is invited on the structure as well as the sections summarised below.

Premium principles

SIRA has developed the following premium principles to reflect the relevant workers compensation system objectives defined in section 3 of the 1998 Act. Specifically:

- to be fair, affordable, and financially viable
- to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work
- to deliver the above objectives efficiently and effectively.

The principles defined in the MPPGs are:

- Principle 1: Premiums are fair and reflective of risk
- Principle 2: Balance between 'user pays' and 'insurance principles'
- Principle 3: Premiums should not be unreasonably volatile or excessive
- Principle 4: Incentives for risk management and good claims outcomes
- Principle 5: The premium basis needs to be consistent with the insurer's capital requirements.

For further detail please refer to the draft MPPGs.

FOCUS QUESTION 1: What is your view on the suitability of the premium principles as set out in the MPPGs and the ability of licensed insurers to meet them?

Premium requirements

The MPPGs are required by legislation to define certain rates and variables that were previously defined within the IPO. Additionally, where the Regulations reference the IPO the MPPGs are required to reflect its components. These components include:

- policies of insurance must comply with all applicable Divisions and Sections of Part 7 (Insurance) of the 1987 Act
- exemption limit
- recovery of excess from employer
- late payment prescribed rates
- Mine Safety Levy
- Dust Diseases Levy
- employer premium dispute process
- employer definitions
- wages and motor vehicle and accommodation allowances (Nominal Insurer only)
- cost of claims (Nominal Insurer only).

For further detail please refer to the draft MPPGs.

FOCUS QUESTION 2: What is your view on the correctness and completeness of the premium requirements as set out in the MPPGs and the ability of licensed insurers to meet them?

FOCUS QUESTION 3: Are there any further components of the Regulations or existing IPO that should be included in the MPPGs?

Special requirements by policy renewal year

The MPPGs allow SIRA to define special requirements for a particular policy year. For the 2016–2017 policy year, SIRA will require that licensed insurers apply no or minimal changes to the processes for premium calculation that were applied for the 2015–2016 policy year.

- For the Nominal Insurer, this includes no variation in the formula, requirement to publish rates by NSW Workers Compensation Industry Classification (WIC) codes and minimal changes to tariff rates and parameters.
- For specialised insurers, this includes minimal changes to tariff rates and allowing the 2016–2017 rates to be based on the published IPO for 2015–2016.

For further detail please refer to the draft MPPGs.

FOCUS QUESTION 4: What is your view on the special requirements for the 2016–2017 policy year?

FOCUS QUESTION 5: Should any other requirements be stipulated for the 2016–2017 policy year?

FOCUS QUESTION 6: What is your view on the requirements regarding the Retro Paid Loss product and any impacts for the 2016–2017 policy year?

Premium filing process

The MPPGs define the frequency, minimum filing requirements and assessment criteria for a licensed insurer to submit a premium filing.

Licensed insurers are to provide their premium filings by 31 March each year for the year beginning 30 June.

For the 2016–2017 policy year, premium filings are to be submitted by:

- for the Nominal Insurer, 2 May 2016
- for specialised insurers, 16 May 2016.

The premium filing must provide sufficient evidence to be assessed against the premium principles, the premium requirements and the special requirements for the policy renewal year. SIRA will undertake an assessment of the evidence against the criteria defined in the MPPGs. If a part of the premium filing is found to be non-compliant, the premium filing could result in a rejection under section 169 of the 1987 Act (yet to be commenced).

For further detail please refer to the draft MPPGs.

FOCUS QUESTION 7: What is your view on the timeframe for licensed insurers to submit premium filing in general and for the 2016–2017 policy year?

FOCUS QUESTION 8: What is your view on the appropriateness of the premium filing process and appropriateness and completeness of the assessment criteria defined in the MPPGs?

Annexures

To accommodate the required legislative provision the MPPGs will be supported by four annexures:

- **Annexure A – the WIC schedule;** each industry in NSW is classified according to the NSW Workers Compensation Industry Classification (WIC) system. A WIC code is determined by assessing the predominant business activity of an employer. Some employers may be allocated to more than one industry class if they undertake two or more separate and distinct businesses.
- **Annexure B – late payment fee prescribed rates;** section 172 (5) of the 1987 Act defines the rate applicable to late payment fees. This will be defined in the annexure for each policy year.
- **Annexure C – recovery of excess;** section 160 of the 1987 Act defines the rate applicable to employer excess. This will be defined in the annexure for each policy year.
- **Annexure D – motor vehicle and accommodation allowances;** the application of motor vehicle and accommodation allowances are defined in this annexure including values for a per kilometre rate and accommodation allowances which may change from time to time.

FOCUS QUESTION 9: What is your view on the appropriateness and completeness of the annexures as set out in the MPPGs?

Licensed insurer business plan guidelines (LIBPGs)

Draft LIBPGs accompany this discussion paper. The guidelines are structured as per below:

- introduction
- business plan requirements
- business plan filing process.

Feedback is invited on the structure as well as the sections summarised over the page.

Business plan requirements

The LIBPGs define the minimum requirements for licensed insurers to provide business plans in accordance with section 202B of the 1987 Act (as amended by the SICG Act and yet to be commenced).

Licensed insurers' business plans must be board approved and include the insurer's strategic objectives for its NSW workers compensation business together with targets, timeframes and planned activities to achieve the strategic objectives. The insurer's strategic objectives should align with the system objectives outlined within section 3 of the 1998 Act.

For further detail please refer to the draft LIBPGs.

FOCUS QUESTION 10: What is your view on the appropriateness and completeness of the business plan requirements as set out in the LIBPGs?

Business plan filing process

The guidelines set out the timeframes, process and how SIRA will manage and use the business plans submitted by licensed insurers. It is intended that business plans will be submitted to SIRA in conjunction with their premium filings.

For further detail please refer to the draft LIBPGs.

FOCUS QUESTION 11: What is your view on the business plan filing process as set out in the LIBPGs?

FOCUS QUESTION 12: Noting that SIRA will be undertaking further consultation in 2016 regarding insurer financial and prudential supervision, are there other trends, issues or considerations that should be raised regarding the implementation of the guidelines?

Next steps

SIRA will review all submissions and prepare a summary of the feedback received. The feedback summary will be published on the SIRA/WorkCover website. The information provided through this consultation process will be used to develop the regulatory options for consideration by government.

Any questions or enquiries in relation to this discussion paper should be emailed to consultation@sira.nsw.gov.au.

A further discussion paper will be published in August 2016. This subsequent paper will open consultation on refinements to the MPPGs and the LIBPGs as well as the application of prudential standards for the 2017–2018 policy year.

