

Workers compensation financial and premium supervision

Submissions summary

December 2016



State Insurance
Regulatory Authority

Contents

Introduction	3
Consultation on workers compensation financial and premium supervision	4
Submissions	4
Background and context.....	4
Key themes	4
Key findings	5
Premium (policies of insurance).....	5
Definition of a worker.....	5
Definition of wages.....	5
Definition of industry.....	5
Apprentices, trainees and internships	5
Employer size.....	6
Availability of premium information	6
Complaints, reviews and appeals.....	6
Cross-subsidies.....	6
Wage audits.....	7
Financial and prudential	7
APRA capital requirements	7
Self-insurance security requirements	7
Workers compensation operational fund levy	7
Market practice and competition.....	7
Government competition policy	7
Anti-competitive behaviour	8
Guidelines and standards.....	8
Regulations	8
MPPG and LIBPG.....	8
Next steps	8

Introduction

In 2015, the NSW Government introduced legislative reforms to the workers compensation system to ensure a fair and sustainable scheme is maintained.

The reforms were implemented through the *State Insurance and Care Governance Act 2015* and included amendments to the *Workers Compensation Act 1987 (1987 Act)* to strengthen regulatory oversight and supervision of insurers.

The Workers compensation financial and premium supervision discussion paper was released for consultation on October 5, 2016 and sets out key considerations and policy questions regarding the regulation and supervision of workers compensation insurer premiums, market practices, financial and prudential requirements.

SIRA will use the feedback to further inform the implementation of its risk-based and outcomes-focused insurer supervision model in 2017 and beyond.

We encourage you to read the following summary of comments made in the submissions in response to the key considerations raised and the targeted questions asked.

Consultation on workers compensation financial and premium supervision

Submissions

Open 04/10/2016

Closed 18/11/2016

Source	Number of submissions
Employer	5
Government	2
Individual	1
Insurers	8
Total	16

Sixteen submissions, including fifteen confidential submissions, were received during the public consultation period. This paper provides a high level summary of the key themes articulated in those submissions.

Background and context

Stakeholders were provided with four sections, each containing a number of focus questions. The focus questions were not intended to be comprehensive or to restrict stakeholders from commenting on broader issues and concerns.

Key themes

Respondents suggested that SIRA should consider a review of the current premium formula, the impact of claims against employers, apprenticeship calculations and transparency across all types of insurers.

They indicated a need for increased transparency across the following areas:

- premium formulas
- premium calculations
- claims costs
- premium rates.

Respondents also raised concerns in context of the current mix of insurers and the level of competitiveness.

Key findings

Premium (policies of insurance)

Definition of a worker

Respondent feedback predominantly supported existing processes with agreement on SIRA continuing the ruling service on worker status. Some feedback went further to submit that the ability to issue private rulings in relation to the definition of a 'worker' should be delegated to insurers.

Definition of wages

Respondents agreed that the definition of wages should be determined by SIRA. No concerns were raised in relation to the definition being annexed within the Market Practice Premium Guidelines (MPPGs).

There was limited objection to SIRA seeking to harmonise the definition of wages with that employed by the Office of State Revenue (OSR). However, comments were made in relation to various exemptions allowed by the OSR that may erode the remuneration base used in the calculation of premiums.

Definition of industry

Respondents generally concurred with SIRA determining the Workers Compensation Industry Classification (WIC) system, including SIRA issuing guidance material in relation to the application of WICs.

Some respondents agreed that it was appropriate to shift to an updated industrial classification system in order to harmonise with all other Australian jurisdictions. This would mean moving from the WIC system, which employs the Australian and New Zealand Industrial Classification (ANZSIC) 1993 to the ANZSIC 2006 classification.

Contrary to this, other feedback suggested that given the significant scheme changes within recent policy periods, further changes would not justify the costs, effort, disruption and confusion to market that would ensue.

Respondents also advised against SIRA setting the tariff rates and that this function should be left in the hands of the insurers to ensure competitiveness in the marketplace and the removal of cross-subsidisation of premiums across industry classes.

Apprentices, trainees and internships

Respondents indicated that would like to see a continuation of the apprentice incentive scheme for employers and that it should be captured within the MPPGs to ensure consistency of approach. Additional feedback went on to say that the incentive scheme should extend beyond apprentices to include registered traineeships.

However, other feedback highlighted inherent issues with the application of the incentive scheme whereby the premiums are artificially inflated due to the apprentices' claims costs being used, but the wages excluded for the purposes of calculating a premium.

Another respondent recommended that the apprentice incentive scheme be removed entirely, stating that it provided for an over-population of injuries and a deterioration of return to work outcomes for this group of workers.

Employer size

Respondents expressed support to maintain special rules for small employers. Some also highlighted the need to consider other features in the definition of a 'small employer' for premium calculation purposes. In most responses, feedback pointed to wage levels as the fairest factor to determine who is considered a 'small employer'.

Alternatively, others said the small employer provisions should be removed to allow flexibility in setting premiums. The question of support for small employers should then fall on the discretion of insurers.

Availability of premium information

Most responses agreed that premium filing information should be made publicly available to ensure consistency across the scheme. This included information on premium filings rejected by SIRA.

Mixed responses when it came to where the information should be made public: some said insurers should publish their own premium rates on their websites. Some stated premium information should be available either on the SIRA website or insurer's website, but not both. And some said that all insurer premium calculations be made available by both SIRA the insurers.

According to respondents, the preference is for SIRA not to host a premium comparison calculator on its website. It was proposed that SIRA should link to insurer's premium calculators via SIRA's website. A premium calculator, it was reasoned, focuses specifically around the premium, not the work health and safety performance, return to work strategies or incentives that the insurer can provide to their clients.

Complaints, reviews and appeals

Some respondents wanted the complaints/review process outlined within the MPPGs, but that the process should also clarify that insurers should consider the complaint/review in the first instance. Respondents proposed delineating a reasonable timeframe for SIRA to review and determine employers' appeals and complaints, similar to that of the section 170 process of the 1987 Act.

Further feedback from submissions indicated that the MPPGs should allow SIRA to issue the final determination on premium appeals regarding industry, wages, claims costs and worker classifications.

Cross-subsidies

Respondents do not believe there is any level of cross subsidies that is appropriate among industry employers. They believe this provides a mechanism for unfair pricing and promotes unfair competitive advantage and that any cross-subsidisation should be minimal, justified and transparent.

Wage audits

Responses were mixed regarding the wage audit program and responsibility. A respondent suggested that wages declared to the insurers for workers compensation should be data matched with those submitted to OSR to try to reduce the need for wage audits entirely.

Where feedback related to SIRA assuming responsibility, respondents suggested that wage audits be aligned with MPPG compliance administration.

All respondents favoured a wage audit program, although recommendations regarding SIRA's exercise of power under section 174 of the 1987 Act suggest consideration be given to the cost/benefit of any specific process and what alternate sources of information may be available - such as data sharing.

Financial and prudential

APRA capital requirements

Feedback on this topic also resulted in mixed responses. Some respondents gave a preference for a uniform system of regulation across all insurers based on the Australian Prudential Regulation Authority (APRA) requirements. Others asserted that the five key principles within the MPPGs are sufficient supervision of an insurer's capital management policy and governance.

Self-insurance security requirements

In relation to security requirements for self-insured employers, feedback was balanced between maintenance of the current regime of a prudential margin and a 'probability of adequacy' approach. Again, responses were balanced for and against SIRA's requirement of minimum security measures for smaller self-insurers.

Additionally, where comment was provided, respondents agreed that a claims handling expense of six per cent was reasonable and reflective of administration, and therefore the figure need not change.

Workers compensation operational fund levy

Some respondents were supportive of the workers compensation operational fund levy to remain as is and others advised further discussion is required.

In particular, respondents drew attention to maintaining the existing mechanism for assessing the contributions of self-insurers and those insured under Comcare. A review to reduce the four per cent levy was proposed in response to changes to the scheme structure. Respondents also said the levy should only fund SIRA and SafeWork NSW.

Market practice and competition

Government competition policy

A similar theme was expressed across submissions: respondents felt there were disadvantages associated with the current scheme operations.

Some suggested this was due to staggered rates of cover acceptance, stemming from a lack of legislative consistency across insurers. Others asserted that insurers should be

subject to the same prudential regulations, with each insurer bearing their own regulatory costs via contributions to the Operational Levy Fund and with each insurer having equivalent ministerial access and influence.

Anti-competitive behaviour

The responses emphasised the need for SIRA to take a proactive approach to managing the risks of anti-competitive behaviour. Overall, respondents affirmed the need for SIRA's oversight to ensure an efficient, effective and sustainable scheme.

Guidelines and standards

Regulations

The regulation focus questions generated mixed feedback; some sought greater transparency across insurers while others suggested insurer co-design could improve flexibility and secure better compliance with the principles outlined in the MPPGs.

One respondent recommended a risk-based approach to compliance rather than a process oriented approach.

MPPG and LIBPG

Respondents identified consistency as key. Currently, 'insurer type' depends on whether an insurer is APRA regulated or not. APRA insurers want to see all insurers regulated the same way to provide consistency around data collection.

No concern was expressed in relation to timeframes for data submissions, however, some respondents commented on duplicated data with insurers having to complete both APRA and SIRA submissions. Suggestions included aligning the submission dates for both MPPGs and Licensed Insurer Business Plan Guidelines (LIBPG).

In addition, a standardised template was mentioned as an easy way to streamline premium submissions. It was noted that co-design of any additional documentation should be stated in LIBPGs.

Next steps

The information in this submissions summary will assist SIRA to develop and revise manuals, guidelines and other documents.

Any questions or enquiries in relation to this summary or the workers compensation financial and premium supervision discussion paper should be emailed to consultation@sira.nsw.gov.au.

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

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.

This material may be displayed, printed and reproduced without amendment for personal, in-house or non-commercial use.

Website www.sira.nsw.gov.au

ISBN 978-0-7347-4520-0 © Copyright State Insurance Regulatory Authority NSW December 2016.