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Licensing & Monitoring Manager
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By email

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Review of self-insurance licensing framework

Dear [REDACTED]

Thank you for the invitation to submit a response to the issues paper on your review of the self-insurance licensing framework. On behalf of Ausgrid, I now submit the following:

Stage 1 – Is licensing appropriate?

1.1 To what extent are the requirements of self-insurance licensing framework proportionate to any risks posed by self-insurers above and beyond those posed by other employers?

It is our view that Ausgrid's safety risks are similar to other employers in the same industry, mitigated by the effectiveness of controls in place to reduce such risks. The fact that Ausgrid is a Self-Insurer for Workers' Compensation does not alter the rating of those uncontrolled risks.

1.2 What should the government's objectives and expectations be in relation to self-insurance? How does this differ to current practices?

No comment.

1.3 What is the value of self-insurance to an employer?

Self-insurance provides a variety of benefits to employers such as:

- a reduction in workers compensation liabilities and costs
- better relationships with injured workers resulting an improved Workers' Compensation experience
- enhanced control over claims management
- enhanced WHS processes
- direct ownership and accountability on performance across the business.

Self-Insurers are required to have an extensive understanding of their own risks and cost drivers. This is managed through an effective and comprehensive WHS, claims management and injury management governance framework.

1.4 What are the intrinsic costs of being self-insured?

The intrinsic costs of self-insurance include:

- Labour Costs – as a Self-Insurer, Ausgrid manages its own claims, therefore, a team of Workers' Compensation claims and injury management staff is required to comply with our insurance obligations. Further, the effectiveness of our safety performance directly impacts our Workers' Compensation liability, therefore, Ausgrid also retains staff to fulfil its safety obligations.
- Consultancy Costs – Ausgrid is required to submit annual self-audits of its WHS compliance and claims management performance. For an impartial and expert opinion, Ausgrid outsources these audits to external consultants. Also, consultants may be engaged to implement procedural changes imposed by legislative changes, regulator directives or business improvement initiatives.
- IT Costs – ongoing subscription and maintenance costs associated with WHS and Workers' Compensation management systems.
- Insurance Costs – it is a requirement of Ausgrid's self-insurance licence that an Excess of Loss Policy is held and there is security against 150% of our future liabilities. Also, Ausgrid is required to pay a levy to the Workers' Compensation Fund, as determined by SIRA, by virtue of its Self-Insurer status.

1.5 *How does an employer demonstrate its senior executive's commitment to self-insurance and achieving better outcomes for their injured workers?*

The following demonstrates Ausgrid's commitment to self-insurance:

- Ausgrid's CEO, Deputy CEO and all General Managers have signed a WHS Statement of Commitment confirming their collective commitment to improving Safety, including 'effective rehabilitation and injury management processes'.
- Various safety performance reports are circulated to Ausgrid's Executive for review, discussion and dissemination to workers. These include a fortnightly safety metrics report, monthly Safety, HR and Environment report and quarterly Workers' Compensation report.
- Ausgrid has a robust incident investigation program, ICAM, which identifies causes of safety related incidents and corresponding corrective actions/controls for the prevention of future occurrences. The outcomes of ICAMs are communicated to Ausgrid's Executive and the wider workforce and corrective actions are monitored until completion.
- Ausgrid engages external consultants to conduct annual WHS and Workers' Compensation audits. Ausgrid's Executive also support the audit process through their attendance at WHS audit meetings.
- Engagement with injured workers by including worker representatives and Unions in policy development. Also, Ausgrid's Recover at Work Program assigns

responsibilities to Managers, Workers' Compensation and Health Services staff to communicate and guide injured workers through the Recover at Work process.

- Our 2015/2016 HSE Strategic Plan encompasses a multi-faceted strategy with the following objectives:
 - To provide the resources, skills and capability to manage health, safety and environmental risk so far as is reasonably practicable, supported by an evidence and risk based approach to decision making, responsible management, governance and assurance. Our aim is to eliminate the potential for fatalities and permanent disabilities, whilst systematically reducing high frequency, low consequence injuries.
 - Establish better practice Health Safety and Environment Management Systems that reflect the diversity, complexity and level of risk exposure of the network business' operations, in addition to being compliant with legislation, regulation and relevant codes of practice.
 - Building resilient HSE Leadership capability with a focus on developing the skills, knowledge, competency and positive safety and environmental behaviours at all levels, and in particular, of those who hold safety critical roles.
 - Developing strong, risk-minded leaders, with an uncompromising focus on promoting safe and healthy workplace behaviours. Embodied as part of the Fair and Just Culture awareness, the recognition and support of an environment of trust in which people are encouraged, motivated and expected to report safety related incidents, issues or information.
- Creating accountability by assigning Workers Compensation costs to business unit cost centres.

Stage 2 – Is licensing well designed?

2.1 *Is there an appropriate minimum number of employees or another entry level requirement that an application should have in order to be eligible and guarantee being able to perform as a self-insurer? If so, please explain why?*

No Comment.

2.2 *What feedback do you have about the effectiveness and efficiency of the licencing entry requirements?*

No Comment.

2.3 *What would define a self-insurer as a high performer?*

In defining a self-insurer as a high performer, the following should be taken into account:

- The insurer consistently meets the minimum requirements of WHS and claims management audits / self-audits over a period of time, say, the past two years.
- Demonstrated compliance with Workers' Compensation data reporting requirements.
- SIRA / SafeWork receive minimal substantiated complaints.
- Workers Compensation liabilities / costs remain consistent with, or better than, industry performance.
- Incident and/or injury occurrences remain consistent with, or better than, industry performance.

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?

Ausgrid supports the abolishment of a licence term altogether. It is our view that the licence should be open-ended with the following provisions introduced for the termination of the licence:

- The election of the Self-Insurer.
- Initiated by SIRA if the Self-Insurer repeatedly fails to comply with its Self-Insurer licensing requirements after reasonable opportunity and assistance is afforded to remediate non-compliances.

With proper controls to ensure an acceptable level of performance is maintained, there will be no impact on employees or the broader system. An open-ended licence will serve to reduce administration pertaining to the renewal process.

2.5 What would be the impact of implementing an open-ended renewal period in NSW?

As above, with proper controls to ensure an acceptable level of performance is maintained, there will be no impact on employees or the broader system. An open-ended licence will serve to reduce administration pertaining to the renewal process.

Ausgrid recommends the following controls:

- An annual WHS and case management self-audit to be conducted by an independent consultant and submitted to SIRA for review.

SIRA may choose to establish a panel of independent auditors and issue guidelines / training on the conduct of audits. Fees associated with the audit should be gazetted. This will ensure audit objectives are achieved and there is consistent application of audit processes.

- SIRA initiated audit only if a Self-Insurer's WHS and/or case management performance deteriorates or is questionable.

- Self-Insurer report to be submitted to SIRA annually, as per current practice.

2.6 *What would be the benefits of greater transparency around the calculation and use of licence fees and levies?*

Greater transparency around the calculation of licence fees and levies will lead to better financial forecasting. For employers seeking to apply for a Self-Insurer Licence, greater transparency of fees and levies will support better cost / benefit analysis of self-insurance.

By providing self-insurers with more information on how the fees and levies are used will allow self-insurers to understand and appreciate the services that are provided by SIRA and, in turn, increase the utilisation rate of services offered.

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?*

Ausgrid supports the following licensing changes:

- Transition to open-ended licences with the following provisions introduced for the termination of the licence:
 - The election of the Self-Insurer.
 - Initiated by the State Insurance Regulatory Authority on the Self-Insurer's failure to comply with its Self-Insurer licensing requirements after reasonable opportunity and assistance to remediate non-compliances.
- Abolish timetabled SIRA audits and replace with remediation audits only if a Self-Insurer's WHS and/or case management performance deteriorates or is questionable. The annual self-audits should remain.
- Financial incentives for high performing self-insurers such as:
 - a reduction in levies.
 - SIRA sponsorship of programs for the reduction of workplace injuries i.e. lung bus, audiometric testing, manual handling training, safety leadership competency training, etc.
 - a reduction in the security value required by Self-Insurers.

2.8 *What indicators or risk factors should SIRA use to measure claims management performance?*

Ausgrid recommend the following risk indicators for claims management performance:

- The insurer consistently fails to comply with the minimum requirements of WHS and claims management audits / self-audits over a period of time, say, the past two years.
- Recurring errors in Workers' Compensation data submissions.
- SIRA / SafeWork receive a high volume of substantiated complaints.
- Workers Compensation liabilities / costs deteriorate over a period of time without identifiable causes outside the Self-Insurers control i.e. legislative changes or increases in regulated Workers' Compensation costs.
- Incident and/or injury occurrences substantially increase over a sustained period of time without adequate investigation and introduction of control measures.

2.9 What would be the impact of limiting claims management audits to those self-insurers that exhibit lesser performance?

Ausgrid recommends abolishing timetabled SIRA audits and replace with remediation audits only if a Self-Insurer's WHS and/or case management performance deteriorates or is questionable based on the risk indicators described in 2.8 above.

The impact is that SIRA does not have to unnecessarily allocate resources to high performing Self-Insurers because standardised self-audits are being outsourced to SIRA approved external consultants, at the cost of the Self-Insurer.

In turn, SIRA can allocate resources to supporting other insurers with the remediation of their WHS and case management performance and, pending the level of remedial assistance required, reduce its resources and costs in this area.

2.10 How should SIRA promote best practice and/or innovation in claims management to deliver better return to work outcomes?

Ausgrid recommends the changes set out in 2.7 above.

Additionally, communicate details of the submissions for the SafeWork Awards setting out the systems, processes and behaviours of industry leaders in a manner that allows other organisations to initiate change within their own workplace. Workshops facilitated by award category winners, hosted by SIRA/SafeWork would be beneficial.

The Self-Insurer Performance Reports produced by SIRA should be circulated on a regular basis. Ausgrid recently received the Q1 2015/2016 report but did not receive the Q3 or Q4 2014/2015 reports.

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?

It is our view that Ausgrid's safety risks are similar to other employers in the same industry, mitigated by the effectiveness of controls in place to reduce such risks. The fact that Ausgrid is a Self-Insurer for Workers' Compensation does not alter the rating of those uncontrolled risks.

In fact, it can be argued that workplace safety risks of Self-Insurers are lower than other employers. Certainly, evidence from the Q1 Self-Insurer Performance Report produced by SIRA (see below) confirms that Ausgrid's safety performance is better than the average of other employers in the same industry and the average of those employers insured under the NSW Workers' Compensation Scheme for the following metrics:

- Rate of new claims reported per \$1 Million wages
- Rate of new major claims reported per \$1 Million wages
- Average Lost Time duration in days
- Rate of Lost Time Injuries per \$1 Million wages.

A.1 Headline Indicators: Claim Incidence, Cost, Lost Time and Return to Work

	Self Insurer			WorkCover Industry Classification (Excl. Self Insurer)		Scheme Insured	
	2014/2015	2013/2014	% Change Between Years	2014/2015	% Difference to Self Insurer	2014/2015	% Difference to Self Insurer
A.1.a Rate of new claims reported per \$1 Million wages	0.23	0.25	-9.6%	0.34	47.1%	0.38	66.0%
A.1.b Rate of new major claims reported per \$1 Million wages	0.02	0.03	-16.9%	0.05	115.9%	0.10	334.7%
A.1.c Rate of Gross Incurred Cost per \$1 Million wages	1,046	3,170	-67.0%	2,919	179.2%	4,582	338.3%
A.1.d Average Gross Incurred Cost per claim	\$4,566	\$12,512	-63.5%	\$8,668	89.8%	\$12,057	164.1%
A.1.e Percentage of new claims that were reported within 7 days of injury	71%	64%	10.1%	73%	4.0%	65%	-7.7%
A.1.f Average Lost Time duration in days	13	44	-70.7%	17	32.0%	32	151.4%
A.1.g Rate of Lost Time injuries per \$1 Million wages	0.05	0.06	-16.0%	0.09	66.2%	0.15	183.1%

2.12 Are OHSMS audits improving WHS outcomes? How might this be improved?

Annual WHS self-audits conducted by independent consultants have yielded demonstrable improvements in Ausgrid's WHS outcomes.

2.13 How should high WHS performance be defined?

In defining a self-insurer as a WHS high performer, the following should be taken into account:

- The insurer consistently meets the minimum requirements of WHS audits / self-audits over a period of time, say, the past two years.
- Minimal safety related prosecutions or infringements.

- Incident and/or injury occurrences remain consistent with, or better than, industry performance.
- Workers Compensation liabilities / costs remain consistent with, or better than, industry performance.
- Timely closing out of improvement notices following SafeWork investigations.
- Timely response to request for information by SIRA/Safe Work NSW.
- Compliance with notifiable injury requirements.

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?*

See 2.13.

Stage 3 – Is licensing administered effectively / efficiently?

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?*

It is Ausgrid's view that the maximum retention value for reinsurance should be increased to \$2,000,000. With increasing wages and cost of medical services, the previous retention value of \$1,000,000 is not relevant to the current day cost of living. An increase in the retention value will give Self-Insurers greater flexibility to choose the most appropriate reinsurance arrangements aligned with their claims experience and risk appetite.

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?*

It is Ausgrid's view that a prudential margin should be adopted based on a probability of adequacy to determine the security value but capped at 150% of the central estimate. If a reduction is not adopted across the board, then high performing Self-Insurers should be incentivised by a reduction in the security value as suggested in 2.7 above.

3.3. *To what extent are there potential conflicts of interest where an organisation is both the insurer and employer?*

No comment.

3.4. *What evidence is there of issues associated with the privacy of claimant information? How could these issues be addressed?*

The issues paper notes that there may be a conflict of interest when the human resources and claims management functions are not separated in an organisation. This

is not an issue in Ausgrid because these functions are separated, albeit, reporting to the same General Manager. However, at times, the two functions will converge, i.e. when managing medical retirement / termination on medical grounds. Ausgrid have a long history of self-insurance and have managed a number of these cases. The issue of privacy is not problematic within Ausgrid.

- 3.5. *What evidence is there of a conflict of interest where an employer is also the insurer in relation the appointment of independent medical examiners? How should any conflict be managed?*

We do not see this as a conflict of interest and strongly disagree that additional measures are implemented in relation to Ausgrid organising Independent Medical Examinations. In fact, Section 119 (1) of the *Workplace Injury Management and Workers' Compensation Act 1998* empowers the 'employer' to direct an injured worker to an examination by a medical practitioner. It is important to note that the legislation specifically empowers the 'employer', not the 'insurer', therefore, Ausgrid does not believe that SIRA can alter the legal intent by way of the Self-Insurer Licencing Framework.

We acknowledge the WorkCover Guidelines on Independent Medical Examinations and Reports were gazetted in 2012. Ausgrid will defer to legal opinion regarding the enforceability of the provisions in these Guidelines pertaining to restrictions on arranging Independent Medical Examinations but for the purpose of the Self-Insurer Licencing Framework, we do not believe additional SIRA intervention is required.

- 3.6. *What should SIRA's claims management compliance monitoring and enforcement activities look like and how do they differ from your experiences?*

Ausgrid recommends abolishing timetabled SIRA audits and replace with remediation audits only if a Self-Insurer's WHS and/or case management performance deteriorates or is questionable based on the risk indicators described in 2.8 above. Compliance is monitored via an annual WHS and case management self-audit to be conducted by an independent consultant and submitted to SIRA for review.

To ensure the self-audit objectives are achieved and there is consistent application of audit processes, SIRA may choose to establish a panel of independent auditors and issue guidelines / training on the conduct of audits. Fees associated with the audit should be gazetted.

As per 2.4 above, Ausgrid supports an open-ended Self-Insurer Licence with provision for the licence to be terminated by SIRA if the Self-Insurer repeatedly fails to comply with its Self-Insurer licencing requirements after reasonable opportunity and assistance is afforded to remediate non-compliances.

An open-ended licence will serve to reduce administration pertaining to the renewal process. Reduced regulator lead audits will allow SIRA to allocate resources to support other insurers with the remediation of their WHS and case management performance or, ultimately, to reduce its resources and costs associated with audits altogether.

It is also recommended that the Workers Compensation monthly data submission is utilised to supplement self-audits, thereby reducing the audit criteria and complexity.

- 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?*

The current audit tool is too focused on file notes, resulting in Self-Insurers scripting file note content in order to meet compliance at the expense of capturing details for the individual circumstances of the claim. This can sometimes be interpreted by self-insurers to be 'ticking a box' in order to pass compliance.

Also, other than legislative compliance requirements, it is Ausgrid's view that the case management audit tool should review if strategic activities such as case conferences, claim reviews and regular contact with key stakeholders have been undertaken on a file.

- 3.8. *What regulatory action should be taken to improve claims management practices and return to work outcomes?*

No comment.

- 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?*

No comment.

- 3.10. *How could OHS management system (OHSMS) audits be changed to improve their effectiveness in lifting WHS performance?*

No comment.

- 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?*

Refer to 3.6 above. It is Ausgrid's view that the monthly data submissions should be investigated to supplement self-audits.

- 3.12. *How could transparency of performance data be improved and should be it improved?*

The Self-Insurer Performance Reports produced by SIRA should be circulated on a regular basis. Ausgrid recently received the Q1 2015/2016 report but did not receive the Q3 or Q4 2014/2015 reports.

Stage 4 – Is the licensing scheme the best response?

- 4.1. *What impact does self-insurance have on the broader NSW system and the Nominal Insurer?*

It is Ausgrid's view that self-insurance alleviates the financial burden of Workers' Compensation from the State scheme. As evidenced by the \$4 billion deficit incurred prior to the 2012 legislative changes, the financial viability of the scheme is volatile, however, the cost of Workers' Compensation incurred by self-insured employers do not impact the scheme.

As discussed in 2.11 above, it can be argued that workplace safety risks of Self-Insurers are lower than other employers and this can be attributed to the Self-Insurer's interest in the health and welfare of its own employees and the financial implication of poor safety, claims and injury management practices.

- 4.2. Is there any significant evidence of adverse outcomes from self-insurers not reporting significant matters to the regulator? How could these risks be mitigated?

No comment.

- 4.3. What other policy options should be considered by the NSW Government to improve the workers compensation system in the context of self-insurance licensing arrangements?

No comment.

Yours sincerely



Shaun Soh
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