

11 11 2016

State Insurance Regulatory Authority
By email: consultation@sira.nsw.gov.au
 SIRA

Westpac Place
 Level 29, 275 Kent St,
 Sydney 2000

Reference: Self-insurance licencing framework review

Dear Sir/Madam,

Following our submission to SIRA dated 14 December 2015, we appreciate the opportunity to once again provide feedback upon the self-insurance licencing framework review.

We have reviewed the PWC Review of the NSW self-insurance licencing framework, Final Report (July 2016), alongside SIRA's response paper (September 2016) to the Final Report and the Self-insurer top tier expectations and measures, proposed requirements (September 2016).

We provide our feedback to each recommendation in the table below:

Recommendations	Westpac Feedback
<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 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. 	<p>The tiered model has merit insofar as to provide incentives for Self Insurers to strive for higher performance</p> <p>In principle, it allows higher performing Self Insurers the 'earned autonomy' to continue to invest in and allow continued focus on key areas without the distraction of administrative activities which may add little value, or do not impact outcomes</p> <p>The question of what defines 'high performance' needs to be defined and further consultation with each Self Insurer regarding its performance against each criterion should take place at the outset. The baseline of Self Insurers' performance and rating should be transparent. The criteria chosen and applied should be relevant to outcomes for injured employees, rather than conformance with administrative activities</p>

Recommendations	Westpac Feedback
<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>A licence term of 8 years for the higher performing Self Insurers is a positive proposition. This allows self-insurers to manage a more stable program with higher levels of autonomy. This promotes and incentivises a high performance. As long as 'high performance' is defined appropriately as discussed above.</p> <p>SIRA have noted that "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". We believe that this requires greater definition. Discretionary licence renewal should be transparent and consistent and allow for immediate remedial action if applicable</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> <ul style="list-style-type: none"> - 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 	<p>Westpac cautiously agrees with this recommendation</p> <p>Positive outcomes and experiences would now be objectively measured if applied effectively. However, views and feedback of this nature can be subjective, and can amplify isolated incidents or experiences. Any feedback must be viewed in perspective of the Self Insurer's operation</p> <p>The Self Insurer should be given the opportunity to respond to negative views and to be able to provide perspective and insight in partnership with SIRA</p> <p>Motivations of those providing feedback must be considered</p>

Recommendations	Westpac Feedback
<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). 	<p>Westpac agrees with this recommendation, in line with feedback provided above upon recommendation 1</p>
<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>We agree that the audit tool requires redevelopment and refinement to accurately capture claims performance measures</p> <p>SIRA should consult with Stakeholders, including Self Insurers, upon the development of the audit tool</p>
<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>Westpac agrees with this recommendation. 'Random' spot checks can assist in performance improvement with specific and emerging risks. It is important to adopt a partnership approach rather than be adversarial. That is, that random spot checks should not become a punitive measure</p>

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<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>Westpac agrees with this recommendation</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>Westpac agrees with this recommendation and believe it is a positive step forward in reducing unnecessary administrative burden</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>Westpac agrees with this recommendation</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>Westpac agrees with this recommendation. Performance comparisons must remain consistent across industry, size etc.</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 requirements - injured worker satisfaction. 	<p>Westpac agrees with this recommendation</p> <p>Self-Insurers should be de-identified in any publication of performance</p> <p>SIRA should ensure that only accurate and valid comparisons are made so that objective assumptions can be reached. Worker satisfaction should only be published in context of comments made against recommendation 3 above</p>

Recommendations	Westpac Feedback
<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>Westpac agrees with this recommendation as long as the auditing is transparent and consistent. We assume SIRA are referring to an auditing program which is internal to SIRA, rather than applying a new auditing burden on self-insurers</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. 	<p>Westpac agrees with this recommendation</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>Westpac agrees with this recommendation in principle</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>Westpac does not hold a view on this recommendation</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 	<p>Westpac agrees that further consultation is required upon this recommendation</p>

Recommendations	Westpac Feedback
<ul style="list-style-type: none"> - increasing the retention amount range - increasing the level of the retention amount beyond which approval is required from SIRA. 	

Additionally, the SIRA Self-insurance licensing framework review (September 2016) poses some focus questions:

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

Please see above our comments and feedback regarding the proposed recommendations.

All other requirements of the standard licence conditions appear reasonable.

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?

There is potential duplication between the Business Plan and the Injury Management Program (IMP), which is submitted yearly as part of the S189 process. However we note that the requirement for the IMP has been removed from the S189 section proposed, of which we agree.

The aforementioned data quality audit requires clarification as per our comments to the recommendation.

The measure of 'percentage of disputes and decisions that are subsequently overturned' is not a viable or timely measure. There are many variables as to whether and when a liability claim is overturned, and also in which context. As such this measure does not indicate fair claims handling. For example, a Self-insurer may overturn a liability decision upon production of further information or evidence as part of an initial Request for an Internal Review. Self-insurers should not be penalised in such instances.

If SIRA is attempting to measure adversity, it should instead rely on the complaints and disputes expectation it has put forward.

All other requirements of the top tier requirements appear reasonable and acceptable.

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

No.

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

Assessment criteria should be applied consistently.

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

Westpac does not hold a view on this.

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?

Westpac is not opposed to this, as long as the business plan is not onerous in requesting information which is irrelevant to its stated expectation to influence corporate culture. Westpac would expect to see similarities with this business plan and the Injury Management Program.

Should you wish to discuss any of the above points any further, please contact the undersigned.

Yours sincerely,



David Nines
Group Head, Health Safety and Wellbeing