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Dear ██████████

## Submission on the Review of Self Insurance Licensing Framework

The Council welcomes the opportunity to participate in the review of the self-insurance licensing framework and respond to the Issues Paper developed in regard to the review.

Without diminishing the views which may be expressed by other stakeholders, the Council is in the best position to provide input into the review of the licensing framework having regard to the depth of experience of its members which membership includes organisations who have held a self-insurers' licence for almost 90 years.

It is the view of the Council that the starting point for the review should be the statutory framework which governs self-insurers as set out in Division 5 of Part 7 of the *Workers Compensation Act 1987* and in particular Section 211 (2) which sets out those matters which the authority can take into account in consideration of applications for a self-insurers' licence being as follows:-

- 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 the authority thinks fit.

It should be evident from this provision of the legislation that the critical considerations in the licensing of the self-insurers relate to financial viability and the efficiency of the workers compensation system generally. It is, in the view of the Council, these matters which should primarily inform the review process.

This statutory framework assumes immediate relevance in the consideration of what is set out in paragraph 2.1.3 of the Issues Paper, relating to the regulation of self-insurers.

The matters identified in the Issues Paper as being relevant to this regulation are not matters which find any basis in the legislation and while objectives such as "improving workers compensation outcomes for both self-insurers and injured workers" may be admirable it should not, in the view of the Council, necessarily inform the review process. It should, for example, be open to an organisation to secure a self-insurers licence where appropriate even if this does not result in improved workers compensation outcomes for that organisation (and

subject of course to what is meant by “workers compensation outcomes”). The Council notes in any event that the universal experience of organisations that are self-insured is inevitably improvement in workers compensation outcomes both for the organisation and for its employees.

Likewise the regulatory framework, when considered in the context of the statute, should not involve a regulatory approach that incentivises performance and encourages compliance with the legislation. Rather it should be directed to the financial viability of the self-insurer and to the efficiency of the workers compensation scheme generally only. This is particularly so because self-insurance has the inevitable consequence of incentivising performance as the self-insurer is directly liable for all of the costs that arise by reason of any injury in a workplace.

The licencing of self-insurers is not the appropriate forum by which to encourage compliance with the legislation noting firstly that the legislation itself already provides incentive for compliance (in the form of penalties) and already heavily regulates non-compliance with the legislation by means of the dispute resolution processes. These are therefore not areas which require regulatory oversighting in the licencing process.

While the Council welcomes what is said to be the adoption of a risk based regulatory approach by the authority (Issues Paper 3.1.2) this should be applied in respect of the relevant risk which is clearly identified by the legislation as being prudential risk and scheme efficiency risk only.

It is the view of the Council that when these matters are properly understood, the structure of the analysis identified in Paragraph 3.2 of the Issues Paper should be limited to considerations of “entry” and “financial” matters only and should not proceed to a consideration of claims management or Work Health and Safety issues. Further any consideration of the entry requirements should exclude any consideration of Occupational Health and Safety issues and should otherwise be limited to prudential/financial considerations and considerations of the proper resourcing of claims management.

The current opportunity to review the licensing framework for self-insurers should have, in the view of the Council, the fundamental objective of substantially reducing the regulatory burden currently imposed on existing self-insurers and removing, as far as possible, the non-prudential barriers which are currently imposed on new Applicant's for self-insurance licences.

In regard to the specific questions directed at stakeholders in the issues paper the Council responds as follows:-

## **1. IS LICENSING APPROPRIATE?**

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

The Council is of the view that the current licensing framework is disproportionate to risks posed by self-insurers beyond those risks posed by other employers. Companies that are self-insured are the only employers in New South Wales that carry the direct and immediate costs that arise when an employee

is injured. For this reason the self-insured companies have a clear and positive incentive to minimise the risk of injuries to workers, to maximise return to work opportunities at the earliest available time and to deliver the payment of statutory workers compensation benefits in a timely and efficient way in order to minimise costs. For this reason the risk profile of self-insured companies is minimal.

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

It is the view of the Council that the only objectives and expectations of the Government in relation to self-insurance should be to confirm the prudential capability of self-insurers to meet claims as and when they arise. This difference from the current practises in that the current practises impose substantial over-regulation in areas which are irrelevant to prudential considerations.

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

There are a number of elements of self-insurance which provide value to an employer including having direct responsibility for risks for workplace injury and a concurrent direct incentive to reduce costs. Self-insurance also provides an enhanced ability to manage structured return to work for injured employees and generally results in an improvement in relations with employees. Additional benefits arise by reason of improved flexibility in the provision of assistance to injured workers together with reduced costs and a reduction in the administrative burden in regard to such things as injury notification and claims.

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

The most significant intrinsic cost of being self-insured are those substantial costs imposed as a result of regulatory compliance. In addition, there are costs associated with systems for workplace injury and compensation management (such costs being increased at least in part by reason of the regulatory burden) together with substantial costs for levies paid to the regulator. Finally, additional intrinsic costs arise by reason of the requirements for bank guarantees and for setting aside a provision for outstanding liabilities.

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

The manner in which senior executives of self-insurers demonstrate the commitment to both self-insurance and better outcomes for injured workers varies however in general terms workers compensation issues form part of a monthly board report and is also part of annual reporting. Self-insurers generally evidence this commitment by providing continual staff training in areas such as injury management and notification and return to work initiatives. In addition, the very fact of being self-insured of itself demonstrates the commitment of a senior executive to better outcomes for injured workers.

## 2 IS LICENSING WELL DESIGNED?

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2.1 Is there an appropriate minimum number of employees or another entry level requirement that an Applicant should have in order to be eligible and guarantee being able to perform as a self-insurer? If so, please explain why. The Council's view is that there is no minimum number of employees which should be required for the purpose of becoming self-insured. Employees' numbers are largely irrelevant to considerations of self-insurance. The primary considerations are (and should always be) prudential and financial issues. Otherwise it is generally the case that administrative costs relative to workers' compensation liabilities will usually dictate the viability or otherwise of self-insurance.

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

The Council is strongly of the view that current licensing entry requirements are ineffective and inefficient and this is evidenced by the extremely limited number of successful self-insurance licence applications in particular in the last 15 years. The present requirements currently act as a specific dis-incentive to new Applicants.

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

The Council firstly questions the relevance of enquiring as to relative performance levels of self-insurers. It is experience of the Council that all self-insured companies could properly be regarded as high performers in the area of workers compensation. In addition the Council is of the view that the only consideration for what constitutes a high performing self-insurer should be solvency. If a self-insurer is solvent and able to meet claims as and when they arise such a self-insurer should be regarded as a high performer

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?

Longer licensing terms will have the immediate effect of reducing regulation. In the view of the Council the licensing term should be unlimited (as it is in Western Australia, which state has been excluded from the Issues Paper) or at the very least 10 years.

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

The impact of implementing an open-ended licence renewal period in New South Wales would be positive in reducing regulation and providing long-term security.

## FINANCIAL

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

The calculation and amounts of levies should be entirely transparent as should the specific manner in which such fees and levies are spent.

## CLAIMS MANAGEMENT

- 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.

It is important to understand firstly that claims management is already heavily regulated by the Workers Compensation Commission, by the review process for work capacity decisions including by merit review, by the WorkCover Independent Review Officer and by the complaints process. In the view of the Council the licensing policy should not be connected to claims management in any way.

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

SIRA should not be involved in the measurement of claims management. A self-insurer already has the most direct incentive to optimise its claims management performance. Further data given to SIRA is clearly sufficient to consider and assess claims risk if this was necessary in any event.

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

The impact of limiting or, preferably, removing altogether claims management audits would be minimal. Self-insurers already self-audit and have additional regulatory oversight in claims management as identified in 2.8.

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

SIRA should not be involved in claims management for self-insurers. Experience suggests that SIRA does not have the expertise to propagate best practise or innovative claims management in any event. Oversight of claims management should not form any part of the functions of the licence regulator.

## **WORKPLACE HEALTH AND SAFETY**

- 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.

In the view of the Council there are generally no factors that make self-insurers any greater risk and rather self-insurers are generally a lesser risk because they are subject to the total direct cost of all claims and therefore have a greater incentive than other employers to improve safety outcomes. At present the only matter that has a negative impact on safety issues for self-insurers is requirement to deploy substantial work health and safety resources away from safety initiatives at the time of and leading up to Work Health Safety Audits by the regulator.

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

The Council is strongly of the view that these audits are not improving Work Health Safety outcomes. This would be improved by the abolition of Work Health Safety audits altogether.

- 2.13 How should high WHS performance be defined?

This is not a matter that should be the subject of licensing conditions.

- 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?

It is unnecessary for the regulator to be involved in the consideration of Work Health Safety performance so far as the issue of licensing is concerned.

## **FINANCIAL**

### **3 IS LICENSING ADMINSTERED EFFECTIVELY/EFFICIENTLY**

- 3.1 The current retention amounts for reinsurance are \$100,000.00 to \$1,000,000.00 per event. Should the excess for reinsurance be increased? If so, to what dollar amount?

It is the view of the Council that these amounts are appropriate for present purposes but that they should be indexed.

- 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?

The Council's view is that the present security arrangements are appropriate.

### **CLAIMS MANAGEMENT**

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

Firstly, in the view of the Council, this issue has nothing to do with a licensing consideration. The Council does not consider that any conflict of interest arises by reason of self-insurance. If anything, respective interests are better served in a self-insured environment.

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

Dealing with privacy issues are no different for employers generally and self-insured employers.

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

The Council knows of no evidence at all of any such conflict of interest. Further the Council is of the view that this is irrelevant to licensing considerations. As no conflict exists no management 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?

SIRA should have no involvement in case management compliance for the reasons previously identified.

- 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 view of the Council is that the audit tool does nothing to improve performance and rather, if anything, detracts from performance.

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

The Council's view is that regulatory action is not appropriate in the areas of claims management and return to work outcomes. These are not matters for consideration in a licensing policy.

- 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?

In the view of the Council this is a matter which should be dealt with on a case by case basis having regard to the operational requirements of each business.

## **WORKPLACE HEALTH AND SAFETY**

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

Please refer to submission of Wollongong City Council on the WHS requirements of the Licensing Review.

## **COLLECTION AND PROVISION OF INFORMATION**

- 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?

The current data requirements are already too onerous and labour intensive and therefore, in the view of the Council, certainly provide more than enough information to enable SIRA to monitor all areas of performance.

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

Efforts regarding the provision of data should be directed at simplification and reduction of frequency rather than transparency.

## **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?



Self-insurance has a very positive impact on the broader NSW scheme and the Nominal Insurer by improving standards in case management and return to work. Self-insurance provides a critical area of competition to the Nominal Insurer which drives improved performance and lower costs.

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

The Council knows of no evidence at all of any adverse outcomes from self-insurers not reporting significant matters to the regulator. In fact all significant matters are reported to the regulator by self-insurers.

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

In the view of the Council the Government should have a specific policy that mandates self-insurance licensing for Government entities and state owned corporations where they otherwise qualify. In addition, Government policy should actively encourage the granting of self-insurers' licence to all organisations.

## **CONCLUDING REMARKS**

The Council is very strongly of the view that the current licencing framework is driving substantially increased costs for businesses in New South Wales and imposes a regulatory burden that is simply too onerous in a large number of respects. The only considerations relevant to the licensing or otherwise of a company for self-insurance should be prudential considerations and the prudential (as opposed to the) elements of the current licensing policy deal with this adequately.

As previously indicated the Council is clearly in the best position to provide input into the issues associated with the licensing framework for a self-insurer. For this reason the Council would welcome the opportunity of reviewing and where appropriate responding to any other submissions received together with the opportunity to provide further input into the review process in order to achieve the reduction in the current regulatory burden imposed that is so urgently required.

Please contact me should you require further information.

### **This letter is authorised by**

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