Workers compensation financial and premium supervision

Discussion paper

September 2016

NSW GOVERNMENT
State Insurance Regulatory Authority

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Introduction

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

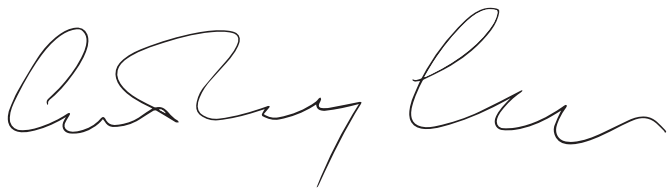
The Government's reforms were implemented by the *State Insurance and Care Governance Act 2015* which in September 2015, established three new organisations to deliver regulatory and operational functions in relation to statutory and government insurance and regulation of work health and safety. The State Insurance Regulatory Authority (SIRA) regulates NSW statutory insurance systems.

The *State Insurance and Care Governance Act 2015* included amendments to the *NSW Workers Compensation Act 1987* to strengthen the regulatory supervision of insurers. These amendments allow for the development of Workers Compensation Market Practice and Premiums Guidelines (MPPGs) and Licensed Insurer Business Plan Guidelines (LIBPGs) in consultation with licensed insurers and the power for the Government to make a regulation covering prudential standards for workers compensation insurers.

SIRA released the initial versions of the MPPGs and LIBPGs in May and June 2016 respectively. These Guidelines covered premium and business plan requirements for 2016, however they are intended to be a first step only and are due to be replaced by March 2017. The intent of the SIRA Board and Chief Executive is to implement a comprehensive evidence-informed, risk-based and outcomes focused insurer supervision model over 2017.

Incorporating the feedback received in the initial consultation, SIRA is now commencing further consultation regarding *Workers compensation financial and premium supervision*. This paper sets out key considerations and policy questions regarding the regulation and supervision of workers compensation insurer premiums, market practices, financial and prudential requirements.

We would like to hear the views of insurers, other service providers, stakeholders and, importantly, the customers for whom the workers compensation system exists – NSW workers and employers. I encourage you to have your say on development of the workers compensation regulation and guidelines to strengthen workers compensation financial and premium supervision in NSW.



Anthony Lean
Chief Executive, State Insurance Regulatory Authority
September 2016

Background

The Government's reforms were implemented by the *State Insurance and Care Governance Act 2015* (SICG Act) to establish SIRA as the regulator of NSW statutory insurance systems, and:

- ensure a sustainable workers compensation system by strengthening regulatory oversight of the affairs of insurers
- create a risk-based approach to regulation ensuring health, social and economic outcomes for workers and employers within the workers compensation system
- establish principles-based regulation and supervision of the financial and prudential requirements of workers compensation insurers.

The SICG Act introduced amendments to sections of the *Workers Compensation Act 1987* (1987 Act) that provide SIRA broad financial, premium, market practice and prudential supervisory powers to regulate insurers. A staged approach to implementation has been taken to minimise disruption and risk and enable a smooth transition to the new legislative provisions.

An open consultation process was undertaken from 16 March to 13 April 2016 covering the initial versions of the Market Practice and Premiums Guidelines and the Licensed Insurer Business Plan Guidelines. 14 submissions were received from interested stakeholders and impacted insurers.

The 2016 versions of the Guidelines were published as follows:

- 6 May 2016 – Market Practice and Premiums Guidelines (MPPGs)
- 30 June 2016 – Licensed Insurer Business Plan Guidelines (LIBPGs).

Issued in March 2016, the MPPG and LIBPG discussion paper committed SIRA to further consultation before developing revised guidelines for commencement in 2017.

The 2015 reforms also established provision for the Government to establish prudential risk management requirements.

SIRA is also consulting on revised licence conditions for workers compensation self-insurers. This consultation will inform the development of the financial and prudential licence conditions for self-insurers.

The role of SIRA

SIRA is the risk-based and outcomes-focused government organisation responsible for the regulation of workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation in NSW.

Part of SIRA's role is to approve premium, licensing and policy frameworks for insurers, ensure effective supervision of insurers, and monitor the financial solvency and performance of these insurance compensation systems.

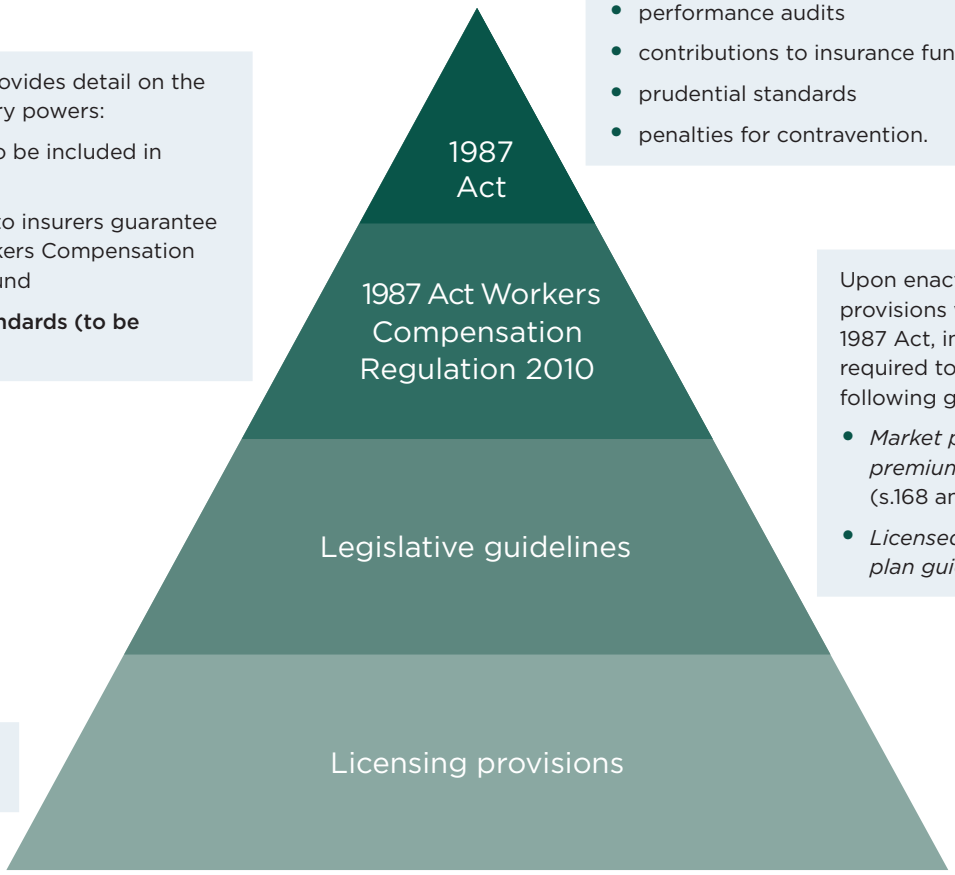
We aim to achieve key policy outcomes in relation to affordability, service delivery to injured people, and the effective management and sustainability of these insurance systems.

The 1987 Act gives SIRA the following statutory powers:

- licensing of insurers, business plans, premiums, financial accounts and returns
- performance audits
- contributions to insurance fund
- prudential standards
- penalties for contravention.

The regulation provides detail on the following statutory powers:

- components to be included in premium
- contributions to insurers guarantee fund and Workers Compensation Operational Fund
- **prudential standards (to be developed).**



Upon enactment of new provisions within the 1987 Act, insurers will be required to comply with the following guidelines:

- *Market practice and premium guidelines* (s.168 and s.169)
- *Licensed insurer business plan guidelines* (s.202B).

The licensing criteria

Consultation approach

To ensure the transition to the new legislative provisions occur with minimal disruption and risk, we are seeking further consultation with key stakeholders and propose the following approach:

(a) Issuing a detailed discussion paper (this one) identifying risk areas, guidelines and standards required by SIRA for effective financial and prudential supervision of insurers.

(b) A number of facilitated face-to-face workshops with key licensed insurers, employer groups and insurer groups. The intent of these workshops would be to:

- elicit feedback on the identified risk areas
- elicit feedback on standards, guidelines and tools
- address key issues raised during the April 2016 consultation process, and
- provide context regarding the supervisory role of SIRA.

(c) The closure of consultation through the publication of non-confidential submissions received and the provision of feedback where appropriate.

Risk areas

The following have been identified as areas that require definition and consideration for the effective financial and prudential oversight of insurers:

(a) Premium (policies of insurance):

(a) the initial 2016 MPPGs were focused on ensuring minimal change

(b) further consultation is required to develop SIRA's supervision system and ensure efficient risk-based regulation, delivering premiums in line with SIRA's workers compensation premium principles

(c) the 2017 MPPGs will need to align with government policy, address emerging issues and ensure the role of SIRA and insurers in a file and write premium system is clear.

(b) Financial and prudential: The SICG Act gives the Government power to regulate the prudential requirements of any insurer. A key focus area for SIRA is the application of these across the system noting the mix of Government insurers, Australian Prudential Regulatory Authority (APRA) regulated insurers and self-insurers. Under the 1987 Act, SIRA is required to ensure that insurers provide and maintain adequate security and pay a levy amount to the Workers Compensation Operational Fund.

(c) Market practices and competition: The initial MPPGs focused solely on premiums rather than market practices in relation to policies of insurance. SIRA is required to ensure that the workers compensation system operates in an ethical manner, encourages competition and provides appropriate consumer protection.

Guidelines and standards

The guidelines, standards and tools identified to provide SIRA with financial and prudential oversight of insurers are:

(a) Regulations: The SICG Act allows the Government to make regulations covering the prudential requirements of insurers. The scope of this regulatory power is broad, as it can include all insurer types. Feedback is sought regarding the Workers Compensation Regulation 2016 including requirements in the regulation covering instalment periods, cost of claims and other commercial insurance policy considerations.

(b) MPPGs: Legislation dictates that stakeholder consultation is required for any change to the MPPGs. The focus will be on feedback from the implementation of the 2016 assessment process, incorporation of key policies of insurance risks and achieving a balance between principles-based and prescriptive requirements.

(c) LIBPG: Focus will be on feedback received from the 2016 lodgement process and ensuring consistency in the application of the guidelines to all insurers.

(d) Licensing conditions: As the legislation limits some guidelines to 'licensed insurers' only, feedback is sought regarding the application of guidelines and other requirements through the licensing conditions required of self-insurers and where appropriate, agreed with Treasury NSW or icare.

(e) Tools or standards (requirements): Feedback is sought on the use of a number of tools and standards which support the premium market, and financial and prudential oversight of insurers. This will include but is not limited to:

  (a) The application and ownership of Workers Compensation Industry Classifications (WICs), as compared to a table of relativities maintained by SIRA based on the latest Australian Bureau of Statistics (ABS) industry classifications.

  (b) Provision and hosting of premium calculators for all insurers that issue policies of insurance on the SIRA website. Similar to the CTP green slip calculator.

  (c) Provision of performance reporting for all insurers where it is in the public interest to do so.

Key dates

Consultation activity	Dates
Discussion paper published on the SIRA/WorkCover and NSW Government 'Have Your Say' websites	16 September 2016
Facilitated face-to-face workshops with key insurer groups and other stakeholders	September/ October 2016
Discussion paper submissions received by SIRA	11 November 2016
SIRA reviews submissions and prepares summary of feedback	2 December 2016

How to make a submission

SIRA welcomes comment and feedback from all stakeholders. The preferred response format for this discussion paper is a written submission.

Submissions should be emailed to SIRA at consultation@sira.nsw.gov.au by 11 November 2016.

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.

Risk areas, policy considerations and focus questions

The risk areas, policy considerations and focus questions set out in this paper are intended to prompt and focus discussion. They are not intended to be exhaustive or otherwise restrict commentary on broader or related matters.

Premium (policies of insurance)

Context

As the initial MPPGs for 2016 were focused on ensuring minimal change, further consultation is required to understand how SIRA will provide equity and stability in the premium market. The focus will be on ensuring that Government policy is adhered to, emerging issues are addressed, and the role of SIRA and insurers in a file and write premium system is clear.

Workers compensation premiums are generally based on two factors – industry and wages. The industry represents a known risk level based on historic and trending claims experience, while wages represent an indication of the size of the employer. Through their premium formula, insurers provide incentives and allow for increases or decreases in premiums based on individual employer claims performance, timeliness of payments and other relevant factors. In considering the factors and incentives, the design and structure of the premium system should minimise the incentive to manipulate the premium system.

Risks

The key risks SIRA is attempting to mitigate through active supervision and regulation are:

- sustainable and affordable premium system
- information availability, consumer protection and review avenues for policy holders
- minimising premium volatility
- reducing incentives to game the system
- ensuring that costs by employer industry or category are reflective of their risk.

Focus questions

Premium risks:

- Are there any other key risks that SIRA should be addressing through supervision and regulation of the premium system?

Policy considerations

Definition of a worker

Given the changing nature of the workforce there can be ambiguities in regard to whether or not an individual worker or class of worker should be classified as a worker for workers compensation purposes. SIRA has a worker status ruling service which provides advice (and the option of a private ruling) to insurers and employers wishing to clarify worker status for workers compensation purposes.

Worker or contractor ('deemed worker')

Some people are 'deemed' to be workers for workers compensation purposes. These classes of 'deemed workers' include, but are not limited to:

- outworkers
- salespersons, canvassers, and collectors
- contractors under labour hire service arrangements
- rural workers, and
- boxers, wrestlers, referees and entertainers.

See Schedule 1 of the *Workplace Injury Management and Workers Compensation Act 1998* for a comprehensive list.

Several factors need to be considered to distinguish an employee from a contractor. These factors are subjective and no single factor can be regarded as decisive.

A contractor is more likely to:

- be engaged to carry out a particular task using his or her own skill and judgement
- employ others, delegate or sub-let work to another
- be paid on the basis of a quotation for the job
- supply his or her own tools and materials, and
- carry on an independent business in his or her own name or under a business or firm name.

Please note that an ABN by itself is not a definite indicator of status.

A worker is more likely to:

- be subject to direction from the employer as to the work to be performed and the time and manner in which it is performed
- be required to actually carry out the work
- be paid on a time basis
- have tools and materials supplied by the employer
- work exclusively for a single employer, and
- be affected by PAYG tax arrangements.

A person may have been hired as a contractor and be a contractor for other purposes such as tax, but still be a worker for the purpose of workers compensation. The status of a person for tax purposes bears no direct relationship to that person's status as a worker for workers compensation purposes.

Focus questions

Definition of a worker:

- Should SIRA issue guidelines regarding the definition of a worker?
- Should the workers status ruling service continue with regard to the MPPGs?
- How do changes to the economy impact on the definition of a worker?

Definition of wages

The current *Wages definition manual* was issued in January 2014. The purpose of this manual is to provide a guide to employers, accountants, scheme agents, auditors and other interested parties, on remuneration taken into account for the purposes of assessing an employer's workers compensation premiums. As this was issued by WorkCover at the time, it is primarily directed at the application of remuneration within the Nominal Insurer scheme.

Section 174 (9) of the 1987 Act defines wages as follows:

Wages in relation to a worker:

(a) includes salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors (including payments as directors' fees), payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker, and any other consideration in money or money's worth given to the worker under a contract of service or a training contract

(b) includes payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) by reason of which the person paid is deemed by Schedule 1 to the 1998 Act to be a worker, after deducting such amount for costs necessarily incurred by that person in performing that contract as may be agreed on or, in default of agreement, as may be determined by SIRA, and

(b1) includes payments for long service leave (including a lump sum payment instead of long service leave and any payment under the *Building and Construction Industry Long Service Payments Act 1986)* or the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010,* and

(b2) includes a payment made in consequence of the retirement from, or termination of, any office or employment of a worker, being:

(i) a lump sum payment paid before or after that retirement or termination in respect of unused annual leave, or unused annual leave and a bonus, loading or other additional payment relating to that leave, or

(ii) an amount paid in respect of unused long service leave, or

(iii) an amount paid in respect of unused sick leave, and

(b3) includes the amount that is the employer's fringe benefits taxable amount (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth) in respect of fringe benefits payable to the worker, and

(b4) includes a superannuation benefit, being money paid or payable by the employer in respect of the worker:

(i) to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993 of the Commonwealth,* or

(ii) as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, or

(iii) to or as any other form of superannuation, provident or retirement fund or scheme, including a wholly or partly unfunded fund or scheme, and

(b5) includes a distribution to a worker as beneficiary under a trust that is required to be included as wages by section 174AA, and

(c) does not include:

(iv) directors' fees (except to the extent that these fees are payable to working directors and are included as wages under paragraph (a)), or

(v) compensation under this Act, or

(vi) any GST component in a payment to a worker.

Focus questions

Definition of wages:

- Should the *Wages definition manual* be updated by SIRA to reflect the MPPGs?
- Should the manual be included in an Annexure of the MPPGs?
- Should the manual be updated to directly reflect the remuneration requirements of the Office of State Revenue for payroll tax purposes?

Definition of industry

Workers compensation policies of insurance as previously indicated operate on the basis of an industry of risk. Currently industries are classified within the Workers Compensation Industry Classification (WIC). WICs are used by insurers to assist in the calculation of premium; the Dust Disease Authority in the classification of industry risk for funding purposes; and by SIRA in the classification and limitation of operation of specialised insurers.

WICs are based on the ABS classification of industries ANZSIC 1993, with a greater level of granularity where industry risk experience has demonstrated the need. The classification has been regularly updated since its introduction and provides detailed information on included and excluded activities for each industry. Below is an extract from Table B of the Insurance Premiums Order (IPO), which describes some of the application rules regarding WICs.

Classification of employer's business

(a) For the purposes of this Order, the classification applicable to an employer is the class in Column 1 of Table B to which the employer's business corresponds. An employer's business means the employer's business or industrial activity.

(b) An employer's basic tariff premium is determined having regard to the rate in Column 3 of Table A for the classification applicable to the employer's business as determined in accordance with subclause (1).

(c) An employer may carry on a single business or more than one business at the same time.

(d) If an employer carries on a single business, the classification applicable to the business is that which most accurately describes the entire business of the employer. The entire business includes not only the operations and activities directly involved in the conduct of the business, but also all operations and activities incidental to the conduct of the business.

(e) If an employer carries on more than one business, so that it can be said that the employer carries on separate and distinct businesses, subclause (4) applies to each such separate and distinct business.

(f) Generally, businesses are not separate and distinct if the operations and activities carried on in those businesses are incidental to one another.

(g) In determining whether businesses are separate and distinct (for classification purposes) it is relevant to take the following into account:

(a) the nature of the operations and activities (including incidental operations and activities) respectively carried on in the businesses,

(b) differences in the identity of the workers respectively engaged in the businesses (and in particular of the workers engaged in the manufacturing or industrial activities and operations),

(c) differences in locations of the businesses, for example, differences in locations may vary from sites far removed from each other, or separate floors in a given building, or even separate parts on the one floor level of a building (the important element in relation to location is that normally separate and distinct businesses have exclusive use of the particular area in which the operations and activities of the business are carried on).

The following activities should not be considered as separate and distinct businesses (as referred to in clause 8 of Schedule 1):

(a) Clerical and/or Technical and/or Computer/Information Technology Support Services as defined in Subdivision 78 Business Services,

(b) Management Services,

(c) Administrative Services,

(d) Sales and Marketing, (including retail and wholesale trade agent),

(e) Head Office Activities,

(f) Warehousing associated with Manufacturing, Wholesaling or Retailing.

These activities are not entitled to a separate class but should be considered incidental to the employer's other activity or activities. Consequently the wages of any such workers providing these services will attract the percentage rate of the class that is appropriate to the employer's business.

Focus questions

Definition of a industry:

- Should WICs be retained and updated by SIRA?
- What should the process be for allowing updates to WICs, including included and excluded activities?
- What changes are recommended for 2017/18 in regard to the existing WICs?
- Should SIRA issue guidance regarding the application of industries to business activities as previously provided in the Insurance Premiums Order?
- Should SIRA consider moving WICs to an ANZSIC 2006 basis?
- Should SIRA consider using only ANZSIC 2006 as the basis of industry classifications?
- Should SIRA use WICs or ANZSIC 2006 to provide a table of relativities for workers compensation in NSW?

- Should SIRA provide a range of acceptable tariff rates for each WIC that a licensed insurer can provide a premium filing against?
- Should SIRA continue to use some kind of industry-based premium relativity groups as the basis for reducing the risk of unfair pricing or cross subsidies?
- Should SIRA analyse and publish the actual average underwriting cost per policy for each industry across the licensed insurers?
- Should SIRA develop a simpler method for reducing the risk of unfair premiums or cross subsidies between industries?
- What allowance should SIRA make for insurers' expenses (eg claims handling expenses, marketing costs and overhead expenses) in determining whether premiums are appropriately priced?

Apprentices/internships

For a number of years, the IPO has included an incentive scheme which provides for significant premium reductions where an employer hires a recognised apprentice. This incentive scheme is based on government policy to provide opportunities for young workers and apprentices, and limit the barriers for employers to engage these workers. The current incentive provides that the wages of apprentices are not included in the calculation of base tariff premium, however any claims experience adjustments do impact the employer premium.

Under this scheme, if you employ an apprentice then you're entitled to a premium reduction based on the wages paid to your apprentice. The scheme aims to:

- grow the NSW skills base
- encourage employers to hire apprentices, and
- improve workers compensation outcomes over time because trained workers are less likely to be injured at work.

To be eligible for the reduction you must:

- have a valid workers compensation policy, and
- have entered into a State Training Services approved contract with the apprentice. The apprentice must be identified in the training contract.

In regard to the Apprentice Incentive Scheme 'apprenticeship contract' has the same meaning as in the *Apprenticeship and Traineeship Act 2001.*

Focus questions

Apprentices/internships:

- Should the MPPGs prescribe the application of the incentive as per the IPO?
- If the MPPGs are to prescribe the application of the apprentice incentive, should the methodology be changed?
- Should the incentive be applicable to all licensed insurers?
- Should the incentive be expanded to include internships and other training programs?

Small business – employer size

The IPO has included a provision for small business premiums not to be subject to some forms of claims history 'experience rating'. The Workers Compensation Regulation 2010 (Division 2, section 147 (4)), references employer size, as defined in the MPPGs:

6.8.1 For the purposes of this Guideline, **experience rated employer** means an employer whose basic tariff premium for an insurance policy at the time at which the insurer demands a premium for the policy:

(a) exceeds $30,000 (where the period of insurance to which the premium relates is 12 months), or

(b) would exceed $30,000 (where the period of insurance to which the premium relates is not 12 months) if that premium was calculated using a period of insurance of 12 months.

Small employer means an employer whose basic tariff premium for an insurance policy at the time at which the insurer demands a premium for the policy:

(c) does not exceed $30,000 (where the period of insurance to which the premium relates is 12 months), or

(d) would not exceed $30,000 (where the period of insurance to which the premium relates is not 12 months) if that premium was calculated using a period of insurance of 12 months.

6.8.2 If an employer is a member of a group, a reference to the basic tariff premium of the employer or to total wages payable by the employer to workers (however expressed) is taken to be a reference to the sum of the basic tariff premiums of all members of the group or to total wages payable to workers by all members of the group, respectively.

Focus questions

Small business – employer size:

- Should there be provision for special rules regarding small business premiums?
- What might these rules be?
- Should SIRA define a 'small employer' within the MPPGs? If so, on what basis, wages and base tariff premium?

Availability of premium information for employers

As workers compensation insurance is required by law in NSW, there is a need for transparency and accountability to the general public. A key component of competition within any market is the availability of information to consumers. Prior to the implementation of the MPPGs, employers, brokers and insurers were able to access detailed information regarding the calculation of premiums by the Nominal Insurer through the IPO.

The following information is publicly available in the IPO:

- premium calculations
- definitions
- industry classifications and tariff rates
- discounts and incentives, and
- guidance on the application of classifications, wages and historic claims.

Formula example from the 2015/16 IPO:

3 Calculation of insurance premium payable by employer

The premium payable by an employer for a policy of insurance is to be calculated by requiring the premium to be calculated for a period of insurance of not more than 12 months and:

(a) if the employer is an experience-rated employer for the purposes of the policy, in accordance with the following formula:

P = (BTP x CPA) – ESI – ESR – PD + Q + D + M – A

(b) if the employer is a small employer for the purposes of the policy, in accordance with the following formula:

P = BTP – ESI – RTWI - PD + Q + D + M – A

Focus questions

Availability of premium information for employers:

- What information should be made publicly available regarding a licensed insurer's premium filing?
- What information about premiums and how premiums are calculated should be made public?
- What should SIRA publish and what should insurers publish?
- Should this information be made available through both the insurer and SIRA?
- What is the best way to provide this information?
- Should SIRA provide a premium comparison calculator on its website where more than one insurer is can provide a policy of insurance?
- What performance data and reporting should SIRA provide and publish regarding insurers?
- What is the best way to provide this information?

Cross subsidies – classes of employers

In general, employer premiums should strike a reasonable balance between 'user pays' (through experience rating) and 'insurance principles' (pooling the experience of all employers) based on the risk of their industry. The intention is that all employers engaged in the same or similar industry or business activities should have premium rates that are the same or similar unless influenced by the individual employer's previous claims experience and its risk management and return to work practices.

Focus questions

Cross subsidies – classes of employers:

- What is your view on the appropriate level of cross subsidies between classes of employers across industries?
- What is your view on the appropriate level of cross subsidies between classes of employers based on employer size?

Complaints, reviews and appeals

With the introduction of the MPPGs in May 2016, section 170 of the 1987 Act was repealed. This section provided for an appeal process to SIRA for determination where an employer disputed the premium. This legislative process included timeframes, requirements, recovery pathways and prescribed penalties for non-compliance. The 2016 MPPGs required licensed insurers to have a dispute process in place as per below:

6.7 Employer premium dispute process

Licensed insurers are required to have a process in place where an employer may appeal aspects of their premium determination. The dispute process must note as a minimum:

(a) timeframes for lodging and resolving disputes

(b) actions required by an employer or licensed insurer in the dispute process

(c) employers can lodge a complaint with SIRA if a resolution is not reached.

SIRA will investigate any complaint to determine if a premium has been written that is not compliant with the Guidelines.

SIRA may audit a licensed insurer under section 202A of the 1987 Act regarding compliance with the Guidelines where it is considered appropriate

Focus questions

Complaints, reviews and appeals:

- What avenues for complaints, reviews and appeals should be provided for in the MPPGs?
- Should the MPPGs be prescriptive regarding timeframes, processes and escalations that are applicable to all licensed insurers?
- Should the MPPGs allow for a final SIRA determination on premium matters regarding industry, wages, claims costs and worker classifications?

Wage audits

In the past, WorkCover carried out a wage audit program with scheme agents on behalf of the Nominal Insurer in order to ensure that employers were declaring appropriate wages and paying the correct premium. Section 174 of the 1987 Act requires employers to keep appropriate records of wages and occupations of each worker, and provides a legal obligation for the appropriate information to be supplied to SIRA.

As per section 174 (5), (5A), (6) and (6A) of the 1987 Act, an employer may be required to provide information to SIRA or an insurer in order to establish whether they are required to obtain an insurance policy under the Act, or to determine whether the correct premium has been paid under an insurance policy:

Section 174 of the 1987 Act

(5) The Authority may order an employer to do either or both of the following:

(a) to supply to the Authority, within the time specified in the order, a full and correct statement of the information required to be recorded by the employer under subsection (1) during a period so specified (being a period during which the record is required to be kept under this section), or

(b) to make available, at such time and at such place as is specified in the order, for inspection by a specified person authorised by the Authority, the records required to be kept by the employer under this section during a period so specified (being a period during which the record is required to be kept under this section), or

(c) to make available, at such time and at such place as is specified in the order, for inspection by a specified person authorised by the Authority, records of a specified kind in the possession of the employer that are relevant to the calculation of premiums payable under policies of insurance or to the determination of whether the employer or another employer is required to obtain a policy of insurance or has paid the correct premium for a policy of insurance.

(5A) The Authority may provide information supplied to the Authority by an employer under subsection (5) (a) to any insurer for the purpose of assisting the insurer to determine whether the correct premium has been paid under a policy of insurance issued by the insurer.

(6) The Authority may, by an order under subsection (5), require information to be supplied to, or made available for inspection by, an insurer who has issued a policy of insurance to the employer and who requests the Authority to make the order for the purpose of determining whether the correct premium has been paid under the policy.

(6A) The Authority may order that a person make available, at a time and place specified in the order, for inspection by a person authorised by the Authority or (at the request of the insurer) by an insurer, any records in the person's possession relating to any contract (however described) under which the person has made payments to any other person (whether or not an individual) for the performance of work by that other person during such period (subject to subsection (6AA), not exceeding 3 years after the work was performed) as is specified in the order. The order need not name or otherwise identify the person to whom those payments have been made.

(6AA) However, if the Authority is of the opinion that there has been a serious failure to comply with the requirements of this Act by the person to whom the order is to be given, the period specified in the order (or a further order) may be a period not exceeding 5 years after the work concerned was performed.

(6B) An order under subsection (6A) may be made only for the purpose of establishing whether a person is required to obtain a policy of insurance under this Act or for the purpose of determining whether the correct premium has been paid under a policy of insurance.

Focus questions

Wage audits:

- Should SIRA require each licensed insurer to establish and maintain a wage audit program?
- Should SIRA mandate the minimum requirements for a program within the MPPGs?
- How should wage audits be conducted and in what circumstances?
- What processes should be put in place regarding SIRA exercising powers under section 174?

Cross border insurance provisions

The six states and two mainland territories of Australia have each enacted 'state of connection' legislative provisions. Where a worker undertakes work across more than one state or territory (ie they are a cross-border worker), 'state of connection' provisions determine the jurisdiction in which an employer is required to obtain workers compensation insurance for that worker. In NSW, the test for determining workers compensation cover for cross-border workers (the 'state of connection' test) is set out at section 9AA of the 1987 Act.

The former WorkCover Authority of NSW issued the *Cross border arrangements for workers compensation: Guide* in March 2012. This provides some basic principles to help employers, workers, claim agents and insurers understand the cross-border provisions and how the cross-border model may apply in particular cases.

State of connection

A worker's employment is connected with:

Test A: The State/Territory in which the worker usually works in that employment, or

Test B: If no single State/Territory is identified by Test A, the State/Territory in which the worker is usually based for the purposes of that employment, or

Test C: If no single State/Territory is identified by Test A or Test B, the State/Territory in which the employer's principal place of business in Australia is located, or

Test D: In the case of a worker working on a ship, if no single State/Territory is identified by Test A, Test B or Test C, a worker's employment is, while working on a ship, connected with the State/Territory in which the ship is registered or (if the ship is registered in more than one jurisdiction) the State/Territory in which the ship most recently became registered, or

Test E: If no single State/Territory is identified by Test A, B, C or D (if applicable), a worker's employment is connected with a State/Territory if the worker is in that State/Territory when an injury happens to that worker and there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

Focus questions

Cross-border insurance provisions:

- What updates should be applied to the cross-border insurance provisions?
- Should the cross-border insurance provision be included within the MPPGs, as an annexure, or be maintained as a separate guide?

Financial and prudential

Context

Section 202C of the 1987 Act grants the Government power to make regulations regarding prudential requirements of any insurer. The requirements will establish prudential or capital adequacy standards for insurers in proportion to the risk they pose to the workers compensation system with the goal of mitigating harm to the broader scheme, and protecting employers and workers from unwanted outcomes.

A key focus area for SIRA is how these standards should be applied across the system noting the mix of government insurers, APRA-regulated insurers and self-insurers. Prudential supervision needs to balance equitable oversight across the scheme and application based on the risk of an individual insurer or insurer segment. Where an insurer is regulated by APRA, SIRA will not seek to duplicate prudential and risk management standards.

Insurers are required under the 1998 Act to contribute to the Workers Compensation Operational Fund. The Fund provides for the operation of the workers compensation regulatory operations of SIRA, SafeWork NSW, Workers Compensation Independent Review Office (WIRO) and the Workers Compensation Commission (WCC).

Risks

The key risks SIRA is attempting to mitigate through active supervision and regulation of the financial and prudential requirements of insurers are:

- sustainability of insurer participants
- minimising risks to employers and the NSW Government
- ensuring that the system is financially sustainable.

Focus questions

Financial and prudential risks:

- Are there any other key risks that SIRA should be addressing through supervision and regulation of the financial and prudential requirements of insurers?

Policy considerations

APRA capital requirements

A number of licensed insurers operating within the workers compensation scheme are regulated by APRA. These insurers must meet the prudential standards and abide by the risk and corporate governance requirements of APRA in order to maintain their authority to conduct insurance business in Australia under the *Insurance Act 1973* (Commonwealth) and provide workers compensation insurance in NSW.

While the board of directors have the ultimate responsibility for the prudential management of an insurer, APRA requires general insurers to:

- have an internal capital adequacy assessment process
- maintain the required level of capital in particular forms
- maintain a risk management framework that is appropriate to its size, business mix and complexity that also includes a specific reinsurance management framework
- comply with requirements relating to auditing, actuarial, outsourcing, business continuity management and governance, and
- regularly report on all of the above.

This presents potential risk management and fairness issues within the system as other licensed insurers (like the Nominal Insurer and Racing NSW) are not required to meet the same federal prudential requirements in order to provide workers compensation insurance in NSW.

Below is an excerpt of APRA's prudential standard for general insurers – GPS 110-7:

Prudential Capital Requirement

20. This Prudential Standard establishes a risk–based approach for measuring the capital adequacy of a regulated institution. The required level of capital for regulatory purposes is referred to as the Prudential Capital Requirement (PCR). The PCR is intended to take account of the full range of risks to which a regulated institution is exposed.

21. A regulated institution must ensure that it has a capital base, at all times, in excess of its PCR.

22. The PCR for a regulated institution equals:

    (a) a prescribed capital amount determined either:

        (i) by applying the 'Standard Method' set out in this Prudential Standard; or

        (ii) by using an internal model developed by the regulated institution to reflect the circumstances of its business – the Internal Model–based Method (IMB Method); or

        (iii) by using a combination of the methods specified in (i) or (ii) above; plus

    (b) any supervisory adjustment determined by APRA under paragraph 36.

23. Regardless of the outcome of the method used for determining the prescribed capital amount, a regulated institution's prescribed capital amount cannot be:

    (a) in the case of a regulated institution other than a Category D insurer or Category E insurer, less than $5 million; and

    (b) in the case of a Category D insurer or Category E insurer, less than $2 million.

Standard Method

24. For regulated institutions using the Standard Method, the prescribed capital amount is determined as:

    (a) the Insurance Risk Charge; plus

    (b) the Insurance Concentration Risk Charge; plus

    (c) the Asset Risk Charge; plus

    (d) the Asset Concentration Risk Charge; plus

    (e) the Operational Risk Charge; less

    (f) an 'aggregation benefit', as defined in paragraph 31.

25. The prescribed capital amount in respect of a regulated institution determined under the Standard Method is intended to be sufficient, such that if a regulated institution was to start the year with a capital base equal to the prescribed capital amount and losses occurred at the 99.5 per cent confidence level, then the assets remaining would be at least sufficient to provide for the central estimate of the insurance liabilities and other liabilities at the end of the year. The other liabilities to be provided for exclude those liabilities that satisfy the criteria for inclusion in the capital base.

Focus questions

Prudential requirements for insurers offering policies of insurance:

- How should SIRA approach the use of regulations and insurer risks in applying prudential standards to workers compensation insurers in NSW?
- How should SIRA approach the use of regulations and insurer/market risk in applying investment requirements and capital adequacy to workers compensation insurers in NSW?
- How should SIRA balance the risk that an insurer presents to the workers compensation scheme and the consistent application of general insurer prudential requirements?

Self-insurance security requirements

Self-insurers are required by law to provide security to SIRA in order to mitigate the self-insurance prudential risk. Security is required as self-insurers are not subject to APRA's prudential standards nor do they maintain separate statutory trust funds to cover their workers compensation liabilities. Providing security protects the workers compensation scheme and ultimately other employers from funding a self-insurer's outstanding claims liability should it be declared insolvent under the provisions of the 1987 Act.

All self-insurers must lodge either a deposit with SIRA or provide security to secure its total outstanding claims liabilities under section 213 of the 1987 Act (other than government employers or any other employer approved by SIRA who is exempted by section 213(6) of the 1987 Act). The security is determined by SIRA on the basis of an annual actuarial valuation provided by the self-insurer and calculated in accordance with SIRA's requirements.

In their 2016 report *Self-insurance licensing framework review*, PricewaterhouseCoopers (PwC) recommended that SIRA's prudential requirements be updated to remain fit for purpose.

SIRA is considering an appropriate level of adequacy for security to be required for self-insurance. However there are many problems with estimating risk margins for a pre-determined level of adequacy for small mono-line portfolios of workers compensation claims. As a general rule, self-insurers do not have a lot of claims data available to analyse in order to understand the underlying volatility in the portfolio and hence derive a risk margin. Instead an application of a fixed percentage margin is a commonly used approach to increasing the adequacy of the security amount, providing a greater chance that it will be sufficient in insolvency.

The issue with a fixed risk margin is that it gives a relatively low probability of adequacy for self-insurers with a small outstanding claims liability. A minimum security amount overcomes this issue to ensure an appropriate level of security is held to cover the combined risk of insolvency and the advent of a large claim.

The prudential margins and minimum security requirements for other Australian jurisdictions are provided in Table 1.

Table 1: Minimum security requirements for other Australian jurisdictions

Self-insurance security requirements		
State	Prudential margin required	Minimum security requirement ($m)
ACT	30%	0.75
Tasmania	50%	1.0
SA	50%	1.1
WA	50%	1.5
Victoria	50%	3.0
Queensland	50%	5.0
Comcare	95% probability of adequacy	2.5

Focus questions

Self-insurance security requirements:

- Should SIRA consider a level adequacy approach when determining security requirements, or a fixed prudential margin, or a combination of both? If both, at what point should a level of adequacy approach be applied?
- Given the issue with a fixed prudential margin for smaller self-insurers, should SIRA impose a minimum security requirement to cover the incidence of a large claim? If so, what should the minimum be and on what basis?
- Government entities, such as local councils and universities, are currently approved by SIRA to provide a reduced security requirement. Should these government entities continue to provide a reduced security requirement, provide the full security requirement or be excluded from the security requirements entirely? Why?
- SIRA has a minimum claims handling expense assumption of 6 per cent. Should this assumption be changed? If so, to what value and why?

Self-insurer financial requirements

Section 211 of the 1987 Act states that SIRA may take into consideration the financial ability of a self-insurer to undertake liabilities when reviewing licence applications or renewals, as self-insurers are not regulated by APRA. In choosing an appropriate methodology to assess financial ability, SIRA has undertaken a jurisdictional review and analysed the appropriateness of key financial indicators.

SIRA proposes the assessment of financial ability of self-insurers by comparing their financial performance to industry benchmarks consistent with the approach used in other jurisdictions. SIRA is considering the application of the key financial ratios below in Table 2 for private entities, and Table 3 for councils in order to undertake the financial assessment.

Table 2: Self-insurer financial indicators:

Indicator	Definition	
	Calculation	Description
1. Balance sheet test	Balance sheet: = Total tangible assets/Total liabilities	• Measures a self-insurer's balance sheet strength and financial situation. • Indicates whether the self-insurer has the tangible resources to meet the payment of liabilities. • The higher the indicator result, the better.
2. Current liquidity (Working capital)	Liquidity: = Current assets/Current liabilities	• Measures the self-insurer's ability to meet its short term obligations. • The greater the working capital, the more likely the self-insurer will be able to pay its liabilities on time. • The higher the indicator result, the better.
3. Quick liquidity	Liquidity: = (Current assets – Stock)/Current liabilities	• Indicates the relationship between the amount of assets that can be quickly turned to cash versus short term obligations. • The higher the indicator result, the better.
4. Gearing ratio	Gearing: = Loan capital/Total capital employed (Where Loan capital is defined as external third party loans, and Total capital employed is defined as the sum of Loan capital and Total equity)	• Measures the proportion of a company's assets supplied by creditors versus shareholders. • Indicates a self-insurer's sensitivity to interest rates and economic changes in the business cycle. • The lower the indicator result, the better.
5. Cash flow margin	Cash flow: Operating cash flow/revenue (net sales)	• Measure of the money the self-insurer generates from its core operations per dollar of sales. • Indicates a self-insurer's high earnings quality and efficiency at converting sales to cash. • The higher the indicator result, the better.

Table 3: NSW Local Government Councils

Indicator
Own source operating revenue ratio
Unrestricted current ratio
Debt service cover ratio
Cash expense cover ratio

Focus questions

Self-insurance financial ability requirements:

- Are the financial ratios in Table 1 and Table 2 appropriate for assessing the financial ability of private self-insurers and self-insured local councils? If not, what other financial ratios should SIRA consider and why?

Workers Compensation Operational Fund Levy

Section 39 of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act) allows SIRA to determine the amount insurers and self-insurers contribute to the Operational Fund. This amount is based on a fixed percentage (currently 4 per cent) applied to the premium income of all insurers. For self-insurers, contributions are calculated based on a 'deemed premium' established by legislation and regulation, and currently calculated by reference to the 2015 IPO.

A new methodology is required for 2017/18 implementation and beyond as the MPPGs have now replaced the IPO. The definition of deemed premium as per the 1998 Act is:

> Deemed premium income, in relation to the contribution payable by a self-insurer or Comcare employer under this Division for any period during a financial year, means the amount that the self-insurer or Comcare employer would have been liable to pay (in such circumstances as may be prescribed by the regulations) to a licensed insurer as premiums on policies of insurance that would otherwise be required under the 1987 Act during that period if the person were not a self-insurer or Comcare employer, and:
>
> (a) includes any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year, and
>
> (b) does not include any amount prescribed by the regulations for the purposes of this paragraph in relation to that financial year.

Focus questions

Determining self-insurance 'deemed premium' for Operational Fund contributions:

- How should SIRA determine the 'deemed premium' of self-insurers for 2017 onwards?

Market practices and competition

Context

The initial MPPGs only focused on premiums rather than market practices in relation to insurance policies. SIRA is required to ensure the workers compensation system operates in an ethical manner, encourages competition and provides appropriate consumer protection. Significant stakeholder feedback was received, noting the need for a balanced market where predatory behaviours are minimised and competition (which benefits employers and the efficiency of the system) is allowed to flourish.

Risks

The key risks SIRA is attempting to mitigate through active supervision and regulation of market practices and competition are:

- ensuring value for money through the promotion of effective competition
- unfair or anti-competitive practices
- ensuring compliance with NSW Government policies.

Focus questions

Market practices and competition risks:

- Are there any other key risks that SIRA should be addressing through supervision and regulation of market practices and competition?

Policy considerations

Government competition policy

The NSW Treasury's 2001 *Government Policy Statement on the Application of Competitive Neutrality* includes information on the application of competitive neutrality in relation to:

- the commercial framework applying to NSW Government businesses
- costing and pricing guidelines for Government businesses, and
- mechanisms for considering competitive neutrality complaints against Government businesses in NSW.

The application of competitive neutrality principles aims to eliminate any net competitive advantages accruing to government businesses as a result of their public sector ownership. Such action removes potential market distortions and promotes an efficient allocation of resources between public and private businesses. Typically, the application of competitive neutrality principles may require adjustments to the price of goods or services that make allowance for the following:

- taxes that may not be paid by a government business but would be paid by a private sector competitor
- the cost of capital
- any other material costs not borne by a government business purely as a result of its public ownership.

Focus questions

Government competition policy:

- What factors should SIRA consider in applying the principles of the NSW Government's competitive neutrality policy across industries and market sectors in the workers compensation system?

Anti-competitive behaviour

The NSW workers compensation scheme is a compulsory insurance scheme servicing over 300,000 employers. The Nominal Insurer, as administered by icare, represents approximately 73 per cent of the market. Given its role as regulator, SIRA has a duty to ensure all participants operate in an ethical manner.

The Australian Competition and Consumer Commission (ACCC) defines anti-competitive behaviour based on the following provisions:

- anti-competitive agreements
- cartels
- collective bargaining and boycotts
- exclusive dealing
- imposing minimum resale prices
- misuse of market power
- predatory pricing
- price signalling
- refusal to supply products or services
- unconscionable conduct.

Focus questions

Anti-competitive behaviour:

- What factors should SIRA consider in applying these provisions to workers compensation in NSW?

Guidelines and standards

Context

SIRA is able to use regulations, guidelines and standards to form the framework for insurer supervision. Positions taken regarding the policy considerations of the premium, financial and prudential, market practices and competition risk areas will be reflected in the regulations, guidelines and standards below. Consideration should be given as to the most effective mechanism for the implementation and supervision of each policy issue.

Policy considerations

Workers Compensation Regulation 2016

The Workers Compensation Regulation 2016 contains a number of provisions relating to insurance policies. Specifically these are contained in 'Part 10: Insurance Policies' and 'Part 18: Insurance Premiums'. The provisions cover:

- certificate of currency details and requirements
- administration and late payment fees for exempt employers
- declaration of wages requirements
- cost of claims requirements
- payment of premiums by instalments, and
- rebate of premium where fraud or mistake is involved in claims.

Section 202C (prudential standards) of the 1987 Act allows the Government to amend regulations to make provision for prudential standards and the application of such standards to insurers. The scope and application of the prudential regulations will be informed by the feedback and development of standards as per the prudential requirements outlined in this discussion paper.

Focus questions

Workers Compensation Regulation 2016:

- Which provisions should remain within the regulation?
- Which provisions should be moved from the regulation but maintained within the MPPGs allowing SIRA to retain regulatory control?
- How will employers/brokers be provided with information on the application of insurer provisions, noting that the information is readily available now?
- How should the Government apply prudential standards regulation, noting the considerations highlighted in the 'Prudential' section of this paper?

Market Practice and Premiums Guidelines

The Market Practice and Premiums Guidelines (MPPGs) apply to all licensed insurers offering insurance policies. The MPPGs require insurers to provide a premium filing to SIRA prior to issuing policies to employers.

The MPPGs cover a mix of premium principles and prescriptive requirements that a licensed insurer's premium filing must meet. The 2016/17 MPPGs were published in May 2016 with the intent of keeping change minimal during this transition process. The MPPGs must be replaced prior to 1 March 2017.

The MPPGs provide for a 'file and write' premium system. The file and write system requires insurers to file their premium rates with SIRA for approval within a specific timeframe, allowing the insurer to use the new rates if SIRA does not reject the premium filing. SIRA retains the right to reject a premium filing if it does not demonstrably meet the requirements of the MPPGs.

The premium filing must provide enough evidence for SIRA to assess the filing against the premium principles, premium requirements and special requirements by policy renewal year. SIRA will then undertake an assessment of the evidence against the defined criteria. If a part of the premium filing is found to be non-compliant, the premium filing will be subject to the provision under section 169 of the 1987 Act.

Premium principles

The current MPPGs requires a licensed insurer's premium filing to demonstrate that it meets the following five principles:

- Principle 1: Premiums 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.

Principle 1: Premiums fair and reflective of risk	Employer premiums should be fair and reflective of risk as indicated by the employer's industry, size, previous claims experience and risk management. In general, fairness can be assessed relative to similar cohorts of employers. The intention is that all employers engaged in the same or similar industry or business activities should have premium rates that are the same or similar, unless influenced by the individual employer's previous claims experience, its risk management and return to work practices. Insurers should not deliberately introduce cross subsidies between cohorts of employers. Where an employer's previous claims experience is taken into account, the fairness of its premium will be assessed under Principles 2 and 3. The insurer will need to provide justification that its proposed target average premium rate for a particular cohort fairly reflects the claims costs, expenses and suitable profit margin for that cohort.

Principle 2: Balance between 'user pays' and 'insurance principles'	Employer premiums should strike a reasonable balance between 'user pays' (through experience rating) and 'insurance principles' (pooling the experience of all employers). Large employers generally have more influence over their claims experience through risk management and return to work management than small employers. While they need a level of insurance protection through their workers compensation cover, especially for very large claims, they can generally operate according to premiums that are based on their claims experience, such as premiums largely determined on a 'user pays' basis. For small employers, their primary requirement is an insurance cover which provides certainty of protection against the costs of workers compensation claims for a fixed premium. Insurers therefore need to pool the premiums for smaller employers so as to spread their claims costs across the premium pool. That is the meaning of 'insurance principles' for the purpose of Principle 2. Insurers are required to apply industry-based rates to small employers in accordance with Principle 1 and very limited premium adjustments for claims experience and risk management. As employer size increases, the insurer can take into account the employer's own claims experience and risk management practices according to the their size, whereby the largest employers can be rated almost totally on their claims experience, return to work management and risk management practices.
Principle 3: Premiums should not be unreasonably volatile or excessive	This principle builds particularly on the objective that the workers compensation system be fair, affordable, and financially viable. At a system level, employer premiums should not be excessive, should be reasonably stable from year to year and fairly reflect individual employer risk, while at the same time not endangering the financial viability of the system as a whole. Affordability in this context relates to the premium burden on employers in general and the subsequent impact on the NSW economy. Protecting employers from excessive and unreasonably volatile premiums is particularly important for small employers. The claims experience of a small employer can be very volatile from period to period and can be unduly affected by one large claim. A small employer's individual claims experience should not have an unreasonable impact on their premium. From this perspective, stability of small employer premiums is consistent with the affordability objective in the legislation and the insurance principles articulated in Principle 2. Large employers have a greater capacity to pay premiums and to influence their own claims experience. The fairness of the system is more clearly served if the premiums of larger employers are more directly reflective of their claims experience. To the extent that financial viability is not unduly impacted (see principle 5), premium stability includes the consideration of a staged implementation of changes to claims experience, premium loadings, discounts and investment earning rates. This will enable employers to make plans to prepare for premium changes and adjust injury risk management and return to work practices in order to mitigate future premium expenses where there is an opportunity for projected premium changes to incentivise safe and healthy workplaces.

Principle 4: Incentives for risk management and good claims outcomes	Individual employer premiums should provide incentives for employers to undertake effective risk management aimed at improving health and safety in the workplace and work opportunities for injured employees. Employers can have their premiums discounted or loaded on the basis of their previous claims experience and the effectiveness of their return to work and risk management practices. Such discounts and loadings, which must also conform with Principles 1, 2 and 3, should be designed to generate employer incentives in the form of premium rebates or reducing future premiums for good performance or improving performance. At the same time, perverse incentives or incentives that might compromise the objectives of the scheme in relation to the effective treatment and rehabilitation of injured workers must be avoided.
Principle 5: The premium basis needs to be consistent with the insurer's capital requirements	Insurers are required to have a capital management plan that recognises the substantial financial and insurance risks inherent in workers compensation portfolios. An insurer's premium basis needs to be consistent with their capital position and their management of that capital position. For the Nominal Insurer, the premium rates as a whole are to be set so as to achieve, as far as can be estimated, an overall target premium pool for the year. The target premium pool is to be linked to the Nominal Insurer's funding plan, which will take account of its overall capital management plan, current capital position and target capital position at the end of the next year. For each specialised insurer, the premium rates as a whole are to be subject to an annual total premium revenue plan that accords with the insurer's capital management plan. For those insurers authorised by APRA, the insurer's capital management plan is to be presented to SIRA and is required to be consistent with capital management plans that the insurer has submitted to APRA. For all licensed insurers, the filing is required to justify the difference between: • the target premium rate, and • the breakeven premium rate (including cost of claims, expected investment earnings and expenses). The filing must also show how this difference impacts on the insurer's projected capital position.

Defined requirements

The 2016 MPPGs include a number of defined requirements which reflect legislative, regulatory and government policy requirements. These include:

- licensed insurers are required to comply with the provisions of the *Mine Safety (Cost Recovery) Act 2005* by making the determined contribution to the Mine Safety Fund, and advise in the premium filing the rate payable by employers whose wages or a part of their wages are attributable to Workers Compensation Industry Classification codes 120000 to 152000
- licensed insurers are required to comply with the notice issued pursuant to the *Workers Compensation (Dust Diseases) Act 1942* which determines the contributions for insurers under section 6 of that Act and published in the gazette
- licensed insurers are required to have a process in place where an employer may appeal aspects of their premium determination, and
- cost of claims calculations for non-Retro Paid Loss Nominal Insurer employers.

Timeframes

The 2016 MPPGs required all licensed insurers to provide a premium filing by 16 May 2016 for policies which were due for renewal from 30 June 2016. This provided a very short timeframe for SIRA and the licensed insurers to review and work through the premium filings prior to renewal. It is understood that standard timeframes for delivery of renewal notices were impacted.

SIRA has indicated that the date for ongoing annual submission of premium filings is 31 March each year for renewals commencing 30 June. This timeframe is set to enable SIRA and licensed insurers sufficient time to review and approve premium filings, while providing employers with adequate lead time and notice of any changes for the coming year's premiums. Feedback provided on the 2016/17 MPPGs indicated that this timeframe would be difficult to meet for insurers.

Premium filing templates

The 2016 MPPGs did not provide prescriptive templates for licensed insurers to submit their premium filings. The assessment process undertaken by SIRA identified a number of areas where further information was required from each licensed insurer. Additionally, the lack of standardisation resulted in varying quality of premium filings and increasing the complexity of the assessment process undertaken by SIRA.

Focus questions

Market Practice and Premiums Guidelines:

- Do the defined principles allow SIRA to effectively regulate and assess premium filings?
- Should the MPPGs apply to Coal Mines Insurance?
- Should SIRA alter the principles for 2017/18 MPPGs?
- What defined requirements should SIRA maintain in the MPPGs?
- What components of the Insurance Premiums Order should SIRA maintain as a requirement within the MPPGs?
- Should SIRA maintain the 31 March premium filing timeframe?
- What challenges does a premium filing date of 31 March present?
- What date may be more appropriate in allowing for a balance between claims experience accuracy and premium filing review and approval?
- Should SIRA allow an interim filing at 31 March each year which would include any major changes to premium calculations with a final annual filing to be provided by 30 April allowing for the development of claims experience?
- Should SIRA publish standard premium filing templates and information to support the premium filing process?
- What information should be required in the standard templates?

Licensed Insurer Business Plan Guidelines

Licensed Insurer Business Plan Guidelines (LIBPGs) were published on 30 June 2016 and apply to all licensed insurers offering policies of insurance. The LIBPGs require licensed insurers to provide SIRA details of their business plans and strategies for their workers compensation business. Business plans must be submitted to SIRA by 30 September 2016 for the 2016/17 financial year and subsequent forward planning.

2016 guidelines

The business plan for each licensed insurer must be prepared in accordance with section 202B of the 1987 Act. It must describe the manner in which the insurer's workers compensation insurance business is to be conducted (including premiums, claims handling, management, expenses and system).

Licensed insurer business plans must be approved by the insurer's board prior to submission to SIRA and include the insurer's strategic objectives for its NSW workers compensation business together with targets, timeframes and planned activities to achieve its strategic objectives.

The insurer's strategic objectives should align with the system objectives outlined within section 3 of the 1998 Act and include, as a minimum, objectives for the following:

- premiums are set in compliance with SIRA's MPPGs
- prevention of work related injuries
- innovative and fair injury management and return to work initiatives
- excellent customer service and complaints handling targeted to the needs of employers and injured workers
- developing and improving internal resource capability or identifying external expertise to support the plan
- building strong governance and corporate culture
- any other matters needed or sought by SIRA to respond to the system objectives and not otherwise covered in the insurer's premium filing.

Timeframes

The 2016 LIBPGs commenced on 30 June 2016 and will apply until 1 March 2017 unless rescinded and replaced prior to that date. Licensed insurers are to provide their business plans for the financial year beginning 30 June by 30 September.

Supporting documentation required

The 2016 LIBPGs provide an indication of documentation that can be provided to support the filing of licensed insurer business plans. The documentation noted in the 2016 guidelines is limited.

Focus questions

Licensed Insurer Business Plan Guidelines:

- Do the LIBPGs and defined requirements as published for 2016 meet the objectives of section 202B of the 1987 Act?
- Does the lodgement timeframe of 30 September each year meet and align with the ongoing business planning cycles of licensed insurers?
- Does the lodgement timeframe of 30 September each year meet and align with external regulatory reporting requirements of licensed insurers?
- What additional documentation should be noted in the LIBPGs?
- Should the LIBPGs stipulate particular documentation that must be provided?

Regulator premium information requirements

Currently two different information provision standards apply to licensed insurers regarding the provision of policy and premium information to SIRA.

Nominal Insurers must provide detailed policy and premium information on a monthly basis. This information is based on the premium formula and structure as per the Insurance Premiums Order.

Specialised insurers must provide summary policy information on an annual basis. This information relates to business identification, wages and employee details.

Focus questions

Regulator premium information requirements:

- What information should be provided by insurers on an individual policy level to ensure SIRA can monitor and manage the scheme?
- Should the information requirements be consistent between all licensed insurers?
- If changes are to be implemented to premium information collection, what implementation timeframe should be put in place to ensure that all insurers are able to comply?

Next steps

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

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

Catalogue no. SIRA08155

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