

# *Review of Self- insurance Licensing Framework*

## Issues paper

*State Insurance  
Regulatory Authority*

*Self-insurance Review  
– Issues Paper*

*November 2015*

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# 1 *About the review*

## **1.1 *Purpose of the review***

The State Insurance Regulatory Authority (SIRA) is the new government regulator responsible for the regulatory functions in relation to workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation. SIRA reports to the Minister for Innovation and Better Regulation.

SIRA focuses on ensuring key public policy outcomes are achieved in relation to service delivery to injured people, affordability, and the effective management and sustainability of the worker compensation and CTP insurance schemes.

In order to meet its legislative objectives, SIRA will regularly evaluate its existing guidelines and regulatory requirements. It has engaged PricewaterhouseCoopers Australia (PwC) to assist with its review of the current licensing framework for self-insurers within the New South Wales workers' compensation system.

The aim of the review is to establish a fit for purpose, best practice self-insurance licensing framework that incentivises the performance of self-insurers to achieve better outcomes. In doing this, the review will assess the self-insurance licensing framework with consideration of the NSW Government's aim to 'make it easier to do business' in NSW.<sup>1</sup>

The NSW self-insurance framework was last reviewed in 2001, and since then much has changed within the workers' compensation system, including the adoption of new health and safety requirements, increased focus on return to work and implementation of legislative structural and benefit reform.

## **1.2 *Issues paper***

This issues paper identifies and invites stakeholder comment on opportunities to improve key areas of the framework governing self-insurance licensing in NSW. Submissions received from stakeholders in response to the issues paper will inform the development of recommendations for SIRA to consider. In particular the issues paper seeks to present the issues and opportunities identified by self-insurers, workers, regulators and other stakeholders in relation to the current arrangements for self-insurance licensing.

Development of the issues paper was supported by consultation with a range of stakeholders representing self-insurers, workers, regulators and service providers.

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<sup>1</sup> NSW Department of Industry, Investment in NSW <http://www.industry.nsw.gov.au/invest-in-nsw/why-sydney-and-nsw/economic-development-framework/make-it-easier-to-do-business>, October, 2015

## 1.3 Submissions

Interested stakeholders are invited to provide submissions to the review, informed by the issues and opportunities considered in this document. Please ensure your submission:

- clearly states which review you are providing feedback on
- responds to the specific issues that have been raised
- provides relevant evidence and support to your comments where possible
- refers to any relevant papers or reports referenced.

The deadline for submissions is **14 December 2015**. We prefer to receive your submissions electronically at [SIFeedback@sira.nsw.gov.au](mailto:SIFeedback@sira.nsw.gov.au)

You can also send your comments by mail to:

**Workers Compensation Regulation**  
Attention: Sonya Jenkins, Licensing & Monitoring Manager  
**State Insurance Regulatory Authority**  
**Locked Bag 2906, Lisarow, NSW 2252**

SIRA will acknowledge your submission as soon as it is received. Any late submissions will be considered at our discretion.

SIRA will publish all submissions on its website [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au) as soon as possible after the closing date for submissions. Your contact details will not be published, and any other personal or health information you provide will be handled in line with applicable privacy legislation.

SIRA may choose not to publish a submission – for example if it contains confidential or commercially sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. If satisfied with those reasons SIRA will then make every effort to protect that information. Please be aware that the information may be required to be disclosed under the *Government Information (Public Access) Act 2009*, the *Workplace Injury Management and Workers Compensation Act 1998* or where otherwise required by law.

If you would like further information on making a submission, the submission procedures are available on SIRA's website.

## 2 *Self-insurance context*

### 2.1 *Self-insurance in NSW*

#### 2.1.1 *Introduction*

In the context of workers compensation, self-insurance refers to an arrangement in which an employer (or corporate group of employers) is licensed to carry its own underwriting risk and therefore does not need to obtain a workers compensation policy of insurance.

Self-insurance provides organisations with the opportunity to improve their workers compensation outcomes and stabilise their workers compensation costs by taking direct responsibility for the management of their claims and payment of claim liabilities. To aid in fulfilling these requirements, SIRA has an objective to incentivise self-insurers to improve workers compensation outcomes.

#### 2.1.2 *Number of self-insurers*

At October 2015, there were 58 self-insurers, including a range of shire and city councils, and group self-insurers. A list of organisations currently self-insured in NSW can be found in Appendix A. The system coverage of organisations licensed by SIRA to be self-insured is provided in Figure 1.

**Figure 1: Licensed self-insured organisations**



#### 2.1.3 *Regulation of self-insurers*

Government arrangements for the self-insurance market take the form of legislation and regulation. These arrangements are administered by SIRA with the objective of achieving public policy outcomes, which include:

- improving workers compensation outcomes for both self-insurers and injured workers
- a 'right touch' regulatory approach that incentivises performance and encourages compliance with legislation.

Appendix B further discusses the ways in which the regulatory framework aims to improve self-insurer outcomes.

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## 3 *Review methodology*

### 3.1 *Best practice regulation*

The NSW Government's 2009 Guide to Better Regulation<sup>2</sup> highlights that the benefits of regulation, when well designed and properly targeted, can substantially outweigh its administrative burden. Such regulation minimises the time and resources the community spends on compliance, freeing them up to innovate and improve productivity.

The Government has articulated seven “better regulation principles” which illustrate how regulators should approach the creation or change of legislation:<sup>3</sup>

- 1 The **need** for government action should be established
- 2 The **objective** of government action should be clear
- 3 The **impact** of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- 4 Government action should be **effective** and **proportional**
- 5 **Consultation** with business and the community should inform regulatory development
- 6 The **simplification**, repeal, reform or consolidation of existing regulation should be considered
- 7 Regulation should be periodically reviewed, and if necessary, reformed to ensure its continued **efficiency** and **effectiveness**

These principles encourage definition of specific objectives, wide consultation to understand the costs and benefits, and determination of whether there are non-regulatory options or trade-offs that can be made to repeal or simplify existing regulation.

#### 3.1.1 *IPART's licensing framework*

The Independent Pricing and Regulatory Tribunal (IPART) recently published a best-practice 'licensing framework'.<sup>4</sup> The current review will draw on this framework, as well as the better regulation principles, in its assessment of the self-insurer licensing arrangements. The framework involves a series of steps which are outlined in Figure 2. These steps are designed as questions that regulators should ask when designing licensing schemes.

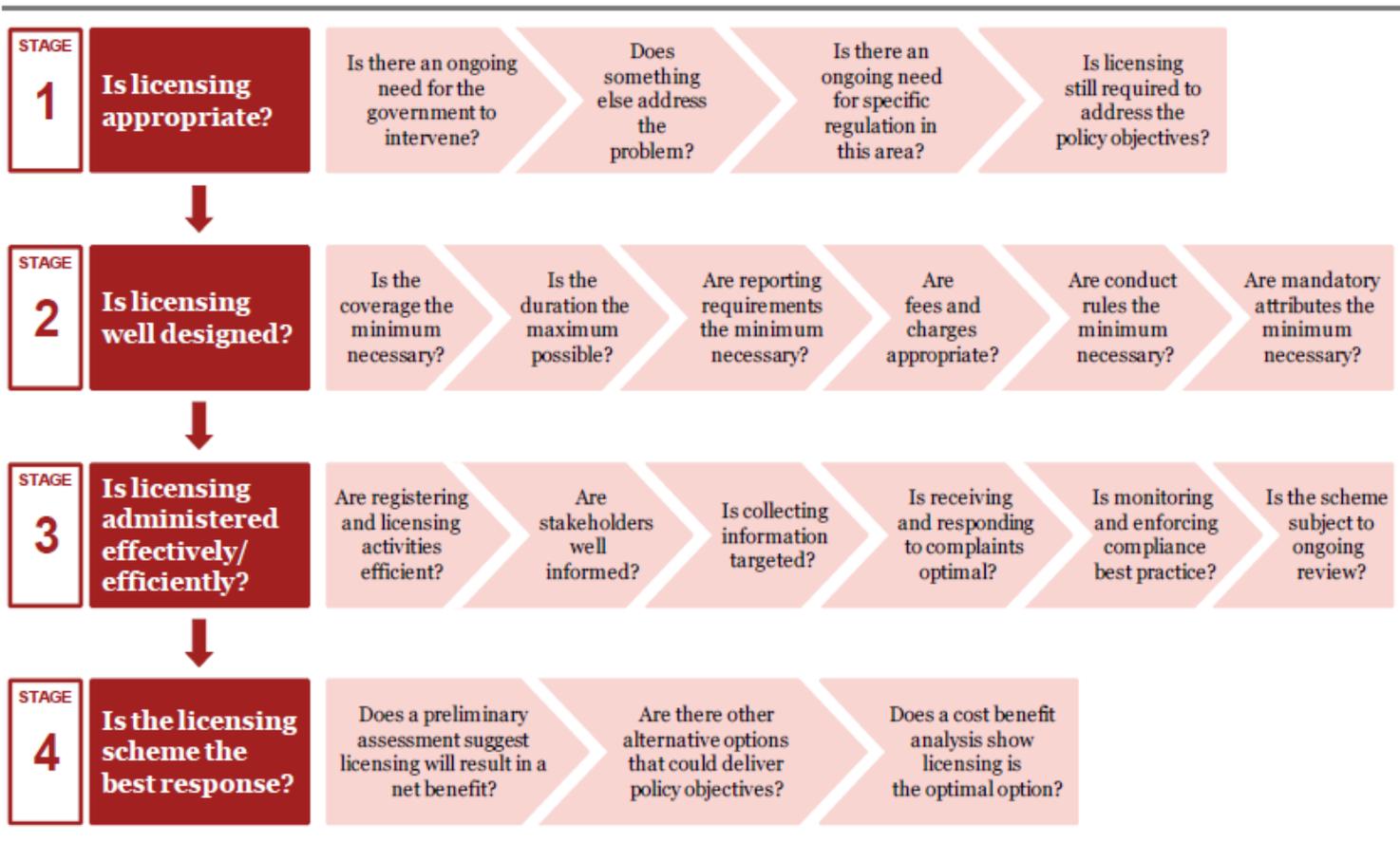
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<sup>2</sup> NSW Government Better Regulation Office, 'Guide to Better Regulation', November 2009

<sup>3</sup> NSW Department of Premier and Cabinet, 'The Seven Principles of Better Regulation', 2015

<sup>4</sup> IPART, 'PwC – A best practice approach to licensing schemes – Conceptual Framework – March 2013', [http://www.ipart.nsw.gov.au/Home/Industries/Regulation\\_Review/Reviews/Licence\\_Design/Licence\\_Rationale\\_and\\_Design/22\\_May\\_2014\\_-\\_Consultants\\_final\\_licensing\\_framework/PWC\\_-\\_A\\_best\\_practice\\_approach\\_to\\_licensing\\_schemes\\_-\\_Conceptual\\_Framework\\_-\\_March\\_2013](http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design/22_May_2014_-_Consultants_final_licensing_framework/PWC_-_A_best_practice_approach_to_licensing_schemes_-_Conceptual_Framework_-_March_2013)

**Figure 2: IPART licensing framework**



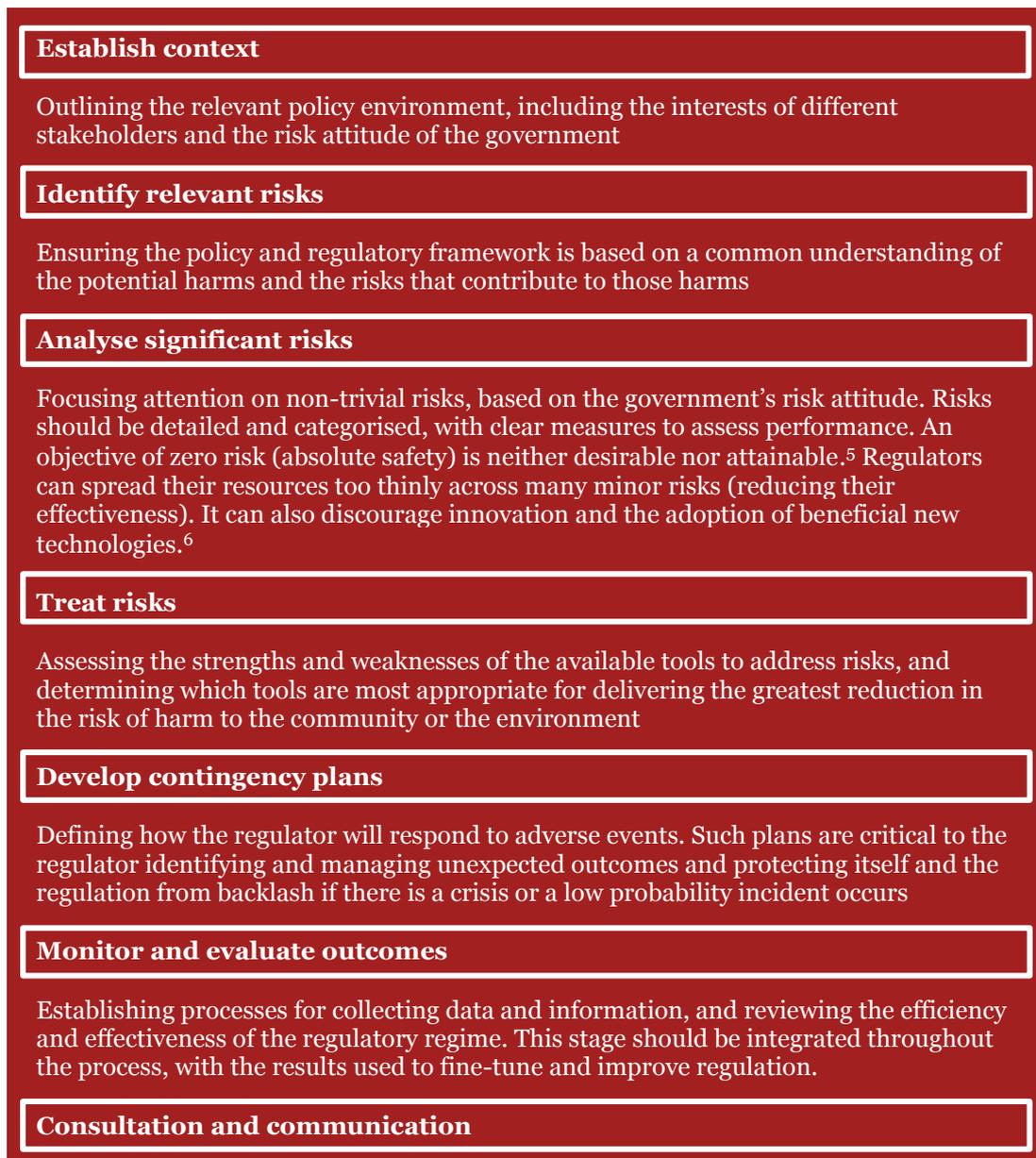
Source: IPART Final Report – Reforming Licensing in NSW – Review of licence rationale and design – September 2014

### ***3.1.2 Risk-based regulation***

In its role as a new regulator, SIRA is seeking to apply a risk-based regulatory approach to self-insurance licensing requirements. A number of potential opportunities have been identified in this issues paper that would apply a differentiated oversight approach for high performing and lesser performing self-insurers.

The review will draw on best practice risk-based regulation guidance and feedback from stakeholders on this issues paper in order to develop its recommendations. An example of best practice guidance is provided by the key elements of a comprehensive risk-based framework as shown in Figure 3:

**Figure 3: Elements of a comprehensive risk-based framework**



Source: Victorian Competition and Efficiency Commission, 'Smart Regulation: Grappling with risk, supporting paper', Version 1, April 2015

<sup>5</sup> Majone G., 'Strategic issues in risk regulation and risk management' in OECD Risk and regulatory policy: improving the governance of risk, Paris, 2010, pp. 93–132.

<sup>6</sup> Graham D.J., 'Why governments need guidelines for risk assessment and management' in OECD Risk and regulatory policy: improving the governance of risk, Paris, 2010, p239 and UNECE (United Nations Economic Commission for Europe), 'Risk management in regulatory frameworks: towards a better management of risks', Geneva, November, 2012, p30.

### 3.2 Structure of the analysis

Figure 4 outlines the structure to analyse the current issues relating to self-insurance licensing in NSW. The horizontal bars represent the key components of the self-insurance framework in NSW.

In the context of the review, each component has been overlaid with the IPART framework (as represented by the vertical bars) to consider the identified issues and assess potential opportunities for improvement.

**Figure 4: Structure of the analysis**



Source: PwC analysis

Figure 5 provides a summary of the self-insurance licensing requirements in NSW.

**Figure 5: Summary of self-insurance licensing requirements**



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# 4 Questions for stakeholders

In response to the issues and opportunities that have been identified in the issues paper (discussed in sections five to eight), there are a number of questions for stakeholders to consider which are summarised below. Additionally, if there are further options not discussed in the paper that stakeholders believe should be considered, they are invited to put these forward in their response along with relevant evidence and support where possible.

STAGE  
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?
- 1.2 What should the government's objectives and expectations be in relation to self-insurance? How does this differ to current practices?
- 1.3 What is the value of self-insurance to an employer?
- 1.4 What are the intrinsic costs of being self-insured?
- 1.5 How does an employer demonstrate its senior executive's commitment to self-insurance and achieving better outcomes for their injured workers?

**STAGE**  
**2**

**Is licensing well designed?**

**Entry**

- 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.
- 2.2 What feedback do you have about the effectiveness and efficiency of the licensing entry requirements?
- 2.3 What would define a self-insurer 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?
- 2.5 What would be the impact of implementing an open-ended licence renewal period in NSW?

**Financial**

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

**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.
- 2.8 What indicators or risk factors should SIRA use to measure claims management performance?
- 2.9 What would be the impact of limiting claims management audits to those self-insurers that exhibit lesser performance?
- 2.10 How should SIRA promote best practice and / or innovation in claims management to deliver better return to work outcomes?

**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.
- 2.12 Are OHSMS audits improving WHS outcomes? How might this be improved?
- 2.13 How should high WHS performance be defined?
- 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?

**STAGE**  
**3**

**Is licensing administered effectively/ efficiently?**

**Financial**

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

**Claims Management**

- 3.3 To what extent are there potential conflicts of interest where an organisation is both the insurer and the employer?
- 3.4 What evidence is there of issues associated with the privacy of claimant information? How could these issues be addressed?
- 3.5 What evidence is there of a conflict of interest where an employer is also the insurer in relation to the appointment of independent medical examiners? How should any conflict be managed?
- 3.6 What should SIRA's claims management compliance monitoring and enforcement activities look like and how do they differ from your experiences?
- 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?
- 3.8 What regulatory action should be taken to improve claims management practices and return to work outcomes?
- 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?

**Workplace Health and Safety**

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

**Collection and provision of information**

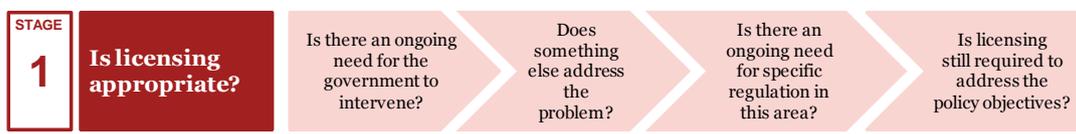
- 3.11 Do the current requirements surrounding provision and quality of data to the regulator enable SIRA to adequately monitor self-insurer claims management and WHS performance?
- 3.12 How could transparency of performance data be improved and should it be improved?

**STAGE**  
**4**

**Is the licensing scheme the best response?**

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

# 5 Issues – Is licensing appropriate?



In NSW, there are currently 58 organisations that have chosen to be self-insured and have been granted licences by SIRA under existing legislation to carry the liability of their workers' compensation claims. Licensed self-insurers represent 11 per cent of workers' compensation claims and 7 per cent of wages paid in NSW. This is a significant proportion of the NSW workers' compensation system. Self-insurance is also a feature of workers' compensation systems across Australia at both the state and Commonwealth level, although the specific arrangements vary.

The performance of self-insured organisations varies. Research conducted in Victoria as part of a review of their self-insurance arrangements in 2005 compared the WHS and claims management outcomes of self-insurers with large scheme-insured employers with remuneration of more than \$20m. That analysis indicated that self-insurers achieved similar durable return to work rates and injured worker satisfaction, while observing higher average claims frequency rates but lower average payments per standard claim.<sup>7</sup>

The prevalence of self-insurance arrangements across Australia, combined with its more direct financial and worker incentives for employers, illustrates that self-insurance is a viable and beneficial option for managing workers compensation. To fundamentally alter or remove these arrangements, there would need to be strong evidence to suggest that the current self-insurance framework is not working or is failing to meet the NSW State Government's objectives.

IPART provides further guidance on where licensing is deemed appropriate; this is outlined below:

## IPART Guidance on licensing appropriateness<sup>8</sup>

First, there must be a clear rationale for government to take action (in the form of an existing or proposed licensing scheme). Government action is often justified on the grounds that, in the absence of action, the 'market' would fail to operate efficiently and/or adversely impact on at least some segments of the community. Government action may also be necessary to achieve a specific policy objective.

Second, the regulator needs to establish whether the benefits of government action are likely to exceed the costs. Government action is only justified if it is expected that it would improve outcomes that would otherwise occur in the market in the absence of action.

<sup>7</sup> Review of Self-Insurance Arrangements in Victoria - Report of the Self-Insurance Review Team, Victorian Workcover Authority, August 2005

<sup>8</sup> IPART Final Report – Reforming Licensing in NSW – Review of licence rationale and design – September 2014

In the context of self-insurance, government action is justified against both of IPART's criteria, as licensing is imposed by a legislative provision. Specifically, there is an opportunity to generate a net benefit through improved outcomes and a reduction in regulatory burden by re-shaping the self-insurance arrangements.

*Questions for stakeholders:*

- 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?
- 1.2 What should the government's objectives and expectations be in relation to self-insurance? How does this differ to current practices?
- 1.3 What is the value of self-insurance to an employer?
- 1.4 What are the intrinsic costs of being self-insured?
- 1.5 How does an employer demonstrate its senior executive's commitment to self-insurance and achieving better outcomes for their injured workers?

# 6 Issues – Is licensing well-designed?



## 6.1 Entry requirements

### 6.1.1 Prudential

#### Current requirements

SIRA's licensing policy for self-insurers considers several measures when determining an organisation's eligibility to enter into and remain within the self-insurance licensing scheme.<sup>9</sup> The policy specifies that self-insurers must:

- have a minimum of 500 employees
- possess sufficient financial resources to meet their liabilities
- demonstrate long term financial viability by way of audited financial statements for the previous 5 years
- maintain unlimited reinsurance cover and provide SIRA with evidence of the currency of the reinsurance arrangements
- lodge a deposit (either in cash or government-guaranteed securities) with SIRA or alternately provide an irrevocable bank guarantee of an amount equivalent to the projected tariff premium for the ensuing 12 months plus a prudential margin of 50 per cent
- provide a cross/holding company guarantee, in the case of group self-insurance licences, under which each of the companies guarantee the other companies' liabilities to workers
- have claims management personnel, resources, structures and systems to perform its obligations and functions as a self-insurer
- demonstrate that its OHSMS is operating at an acceptable level under the NAT.

#### Opportunities for improvement

Submissions to earlier reviews of workers' compensation in NSW highlighted the following issues in relation to self-insurance:

<sup>9</sup> Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

Issues – Is licensing well-designed?

- The critical considerations for licensing self-insurers should be prudential; other requirements such as work health and safety audits represent an administrative burden only.<sup>10</sup>
- In evidence presented to the recent review of SIRA’s functions, it was argued that self-insurers in NSW have levels of net tangible assets such that risk is eliminated.<sup>11</sup>
- Support for the high prudential requirements was expressed to a recent review of SIRA’s functions.<sup>12</sup>

Two further issues were identified by stakeholders through consultation undertaken to develop this issues paper.

#### *Treatment of business acquisitions*

A stakeholder suggested that acquisitions by licensed self-insurers be brought within the existing licence rather than being subject to a new application. It was argued that self-insurers could leverage existing self-insurance expertise in managing their acquisitions and that the application process for a new licence was unnecessary in such cases.

#### *Employer size requirements*

The differences between entry and renewal criteria in terms of employer size were seen to establish an uneven competitive landscape for similarly sized businesses. The current requirements for self-insurance licence renewal differ for those for entry. Specifically, the 500 employee threshold requirement for new licence applicants is not applied to licence renewals.

In practice this means that an employer with an existing self-insurance licence but fewer than 500 employees could face different licensing requirements to an employer with the same number of employees applying for a licence for the first time. The latter would be unable to meet the entry requirements for a self-insurance licence but the former would be able to renew its existing licence (subject to meeting the other renewal requirements).

#### *Potential options for consideration*

The prudential entry requirements are designed to ensure that an organisation is sufficiently stable and has safeguards in place so that in the unlikely event that the organisation fails, its claims liabilities can be covered.

In response to the issues discussed above, a potential option for improvement is:

- reducing the minimum number of employees required for an organisation to be considered for self-insurance to broadly align with the number of employees of the ‘smallest’ existing self-insurer.

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<sup>10</sup> Evidence provided to the Standing Committee on Law and Justice’s *Review of the exercise of the functions of the WorkCover Authority*, 2014 by Mr Paul Macken, Honorary Lawyer, New South Wales Workers Compensation Self-insurers Association.

<sup>11</sup> Evidence provided to the Standing Committee on Law and Justice’s *Review of the exercise of the functions of the WorkCover Authority*, 2014 by Mr Paul Macken, Honorary Lawyer, New South Wales Workers Compensation Self-insurers Association.

<sup>12</sup> BlueScope Steel, Submission to the Standing Committee on Law and Justice’s *Review of the exercise of the functions of the WorkCover Authority*, 2014

### *Questions for stakeholders:*

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

## **6.1.2 Licence duration**

### **Current requirements**

Currently, organisations that are self-insured in NSW are required to renew their licence every three years unless shorter term licences are granted.<sup>13</sup> This requirement is aimed at ensuring the regulator has a mechanism to periodically review the performance of a self-insurer and its ability to meet its licence requirements.

The licence duration in NSW is generally shorter than in the other jurisdictions considered here. Other jurisdictions offer longer licence terms as a reward for organisations that exhibit a higher standard of performance. Current licence durations across other schemes in Australia are summarised in Table 1.

**Table 1: Licence durations in selected Australian jurisdictions**

	<b>NSW</b>	<b>Victoria</b>	<b>QLD</b>	<b>SA</b>	<b>Comcare</b>
<b>Renewal period</b>	<b>3-year</b> renewal period	Standard renewal period is <b>4 years</b> , can be extended by WorkSafe to <b>6 years</b>	Initial licence is <b>2 years</b> , licences can be up to <b>4 years</b>	ReturnToWorkSA can grant registration as a SI for no longer than <b>3 years</b>	Recently extended to an <b>8 year</b> renewal period for all self-insurers

### **Opportunities for improvement**

The requirement for licence duration and renewal in NSW is shorter than most other Australian jurisdictions. For example, the standard renewal period in Victoria is four years but can be extended to six years at the discretion of WorkSafe Victoria. In Queensland, the renewal period is two years for new self-insurers and up to four years for long-serving self-insurers. At the national level, Comcare has recently increased its licence duration to 8 years. This variation has led stakeholders to highlight the increased compliance burden associated with more frequent renewal requirements in NSW.

Industry stakeholders suggested that a longer or indefinite renewal period would reduce costs on self-insurers. It was noted this could improve the competitiveness of NSW as a place to conduct business.

### *Potential options for consideration*

In light of the issue discussed above, potential changes in this area could include:

- Increasing the licence duration for high-performing self-insurers. Applying differential licence durations based on continuous monitoring of self-insurer performance is consistent with a risk-based regulatory oversight approach.

<sup>13</sup> Information in this section sourced largely from WorkCover NSW, 'Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987', effective December 2001.

- An alternative option would be to increase the licence duration for all self-insurers, rather than for high-performing self-insurers only.

### *Questions for stakeholders:*

- 2.3 What would define a self-insurer 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?
- 2.5 What would be the impact of implementing an open-ended licence renewal period in NSW?



## **6.2 Financial requirements - Fees and levies**

### **Current requirements**

The Licensing Policy for Self-Insurers specifies the application fees payable for new self-insurer licences. The 2001 Self-insurer Policy<sup>14</sup> indicates that an application fee of \$25,000 is payable at the time of application. For group self-insurer licence, the fee is \$30,000.

Once an organisation has been granted a licence, they pay an annual levy for workers' compensation regulatory costs and dust diseases support.

### **Opportunities for improvement**

The main issue identified in relation to licensing levies was:

- a lack of clarity among stakeholders about what costs the self-insurer licence levies contribute to; that is, which regulatory services are being supported by the levies.

### *Potential options for consideration*

In light of the issue discussed above, a potential change in this area could include:

- providing self-insurers with more information on the fee and levy calculation methods and the specific regulatory services that are supported by the fees and levies.

### *Questions for stakeholders:*

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



## **6.3 Claims management**

SIRA's current licence policy specifies that self-insurers must demonstrate performance in injury and claims management of a standard acceptable to SIRA.<sup>15</sup> In its role as a new regulator, SIRA aims to leverage these requirements to incentivise innovation and high performance.

<sup>14</sup> Information in this section sourced largely from WorkCover NSW, 'Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987', effective December 2001.

<sup>15</sup> Information in this section sourced from WorkCover NSW, 'Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987', effective December 2001.

SIRA expects that skilled claims staff with a thorough knowledge of workers compensation law and administration will be engaged to give prompt consideration to claims and to pay compensation in a timely manner.

Licence renewal is dependent on a professional standard of injury and claims management, along with compliance with relevant guidelines issued by SIRA. This includes the preparation of return to work plans for any injured workers in collaboration with the worker and their medical practitioner.

Self-insurers are able to outsource their injury and claims management functions to a suitably qualified third party, subject to SIRA's approval of any such arrangements. SIRA must be satisfied, for instance, that such an arrangement will not lead to a decrease in established service standards to injured workers.

Information provision requirements are also in place for licensees in respect of claims management. For example, self-insurers are required to provide monthly claims data in a form approved by SIRA and within the timeframes specified by SIRA. An applicant must demonstrate that it has appropriate systems to provide timely and accurate claims data in accordance with SIRA's requirements from the commencement of the licence. Self-insurers are additionally required to undertake annual claims management self-audits.

#### *Potential options for consideration*

In its role as a new regulator, SIRA has an objective to incentivise innovation and performance through its claims management licensing requirements. To support achievement of this objective, potential options include:

- SIRA implementing a principle of earned autonomy for self-insurers, under which a sustained level of high performance over a period of time for a self-insurer would result in reduced claims management audit requirements.
- SIRA taking a more risk-based approach to claims management by undertaking more proactive checks of self-insurer claims practices, based on their past performance.

#### *Questions for stakeholders:*

- 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.
- 2.8 What indicators or risk factors should SIRA use to measure claims management performance?
- 2.9 What would be the impact of limiting claims management audits to those self-insurers that exhibit lesser performance?
- 2.10 How should SIRA promote best practice and / or innovation in claims management to deliver better return to work outcomes?



## **6.4 Work health and safety**

### **6.4.1 Objectives**

Through its WHS licensing requirements, SIRA aims to drive the continued WHS compliance of self-insurers throughout the licence term. Observance of WHS compliance should not be limited to when the audit is conducted. A more risk-based compliance approach to WHS licensing requirements could meet regulatory objectives.

### 6.4.2 Current requirements

Under the current licensing arrangements, self-insurers are required to meet a number of requirements in relation to work health and safety. The licensing criteria have been established with the intention of enabling the regulator to ensure that appropriate WHS systems are implemented and maintained by self-insurers.<sup>16</sup> The SIRA self-insurance licensing policy states that self-insurers are required to:

- undergo an OHSMS audit conducted by SafeWork NSW on behalf of SIRA as a part of the licence review and renewal process
- conduct annual self-audits of their OHSMS.

To comply with licence requirements a self-insurer must demonstrate that its OHSMS is operating at an acceptable level against each of the five elements selected for audit. As part of the audit conducted by SafeWork NSW on behalf of SIRA, self-insurers are audited against two of the five categories in the NAT. The five categories are:

- 1 Health and Safety Management Plan and Responsibilities
- 2 Training, Safe Work Procedures and Consultation
- 3 Purchasing, Document Control, Records and Emergency Response
- 4 Risk Management
- 5 Monitoring Program, Plant Maintenance, Investigations, Auditing and Management Review

Each self-insurer is also required to undergo an OHSMS audit each licence term.

Data on OHSMS audit performance provided by SafeWork NSW show:

- 24 OHSMS audits were undertaken in 2014, down from a high of 45 in 2007
- the pass/fail rate of OHSMS audits has fluctuated significantly over the past 20 years.

Self-insurers also conduct annual self-audits separate from the OHSMS audits conducted by SafeWork NSW. As part of this process, they may engage the services of an independent auditor to obtain objective verification of conformance to the elements of the NAT.

#### **Role of OHS Management System audits in improving outcomes**

A number of stakeholders questioned whether OHSMS audits led to improved safety outcomes. They pointed out that self-insurers have an inherent incentive to provide safer workplaces, as they bear the cost of any injury claim that occurs. Some self-insurers conceded that audits do have a role in promoting “reinvestment in safety” and suggested that a more frequent but less onerous audit may be more effective than the current process. Some employee representatives agreed, saying that audits in their current form were of limited value.

A commonly expressed sentiment was that OHSMS audits should be focused on lesser performing self-insurers. This would provide WHS teams and senior management within a

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<sup>16</sup> Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

self-insurer with a powerful incentive to improve outcomes and therefore avoid the requirement to prepare for the OHSMS audit.

A counter-view noted that focusing solely on those self-insurers with poor records could impose burdens on employers who may have simply experienced infrequent injuries due to 'bad luck' rather than targeting any systemic issues.<sup>17</sup>

#### *Potential options for consideration*

An underlying principle could be that self-insurers that pose no greater risk than other employers in terms of having a safe workplace should be subject to the same WHS oversight as these employers. Depending on the extent to which this principle is adopted, the following potential options could be considered:

- A risk-based approach should be applied where OHSMS audits are removed for good performers. This could be implemented on the basis that these self-insurers have sufficient incentives ensure their WHS performance and have demonstrated good WHS performance.
- Ongoing or more regular but less burdensome assessments of self-insurer WHS performance could be adopted through existing inspection programmes undertaken by SafeWork NSW.
- Continuous improvement in WHS performance could be encouraged by requiring self-insurers to identify and report annually against initiatives to improve their WHS performance. This could be undertaken in lieu of OHSMS audits.

Under these potential options, self-insurer WHS performance for the purposes of licence renewal could be assessed through reported outcome measures and SafeWork NSW inspection and other data.

#### *Questions for stakeholders:*

- 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.
- 2.12 Are OHSMS audits improving WHS outcomes? How might this be improved?
- 2.13 How should a high WHS performer be defined?
- 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?

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<sup>17</sup> Information provided by stakeholders in consultations with PwC

# 7 Issues – Is licensing administered effectively and efficiently?



## 7.1 Financial requirements

SIRA's Self-insurers Policy contains a number of ongoing financial requirements that employers must satisfy to remain in the self-insurance system. These requirements are aimed at ensuring that self-insurers are able to cover the costs of their claim liabilities while also providing for the stability of the broader system and include:

- maintaining a bank guarantee of 150 per cent of the organisation's claims liabilities
- maintaining unlimited reinsurance cover
- paying levies based on a fixed percentage of their deemed premium.

There is no direct link between the bank guarantee requirement which aims to ensure coverage of claims liabilities and the re-insurance policy which aims to mitigate credit risk.

### *Potential options for consideration*

Striking the right balance between risk management and the burden imposed on self-insurers is an important consideration when reviewing the self-insurance licensing framework. Potential options could include:

- revising the bank guarantee requirement if the current amount (150 per cent of claims liabilities) is disproportionate compared to actuarial requirements
- adjust the excess requirement for reinsurance to reduce reinsurance costs for self-insurers, subject to appropriately managing the prudential risks.

### *Questions for stakeholders:*

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



## **7.2 Claims management**

### **7.2.1 Privacy/separation of functions**

Current arrangements do not require separation of the claims management function from other management functions within a self-insurer, such as the human resources function. For those NSW employers insured by the Nominal Insurer, these functions are naturally separated as the claims management function is undertaken by a separate organisation. However, for those self-insurers that manage their claims in-house, there may not necessarily be the same physical and operational separation.

#### **Opportunities for improvement**

During stakeholder consultation, a concern was raised in the context of the potential conflict of interest that arises when an organisation is both the insurer and the employer. Specifically, it was suggested that a claimant's privacy could potentially be compromised where human resources and claims management functions are not sufficiently separated within an organisation.

For example, it was suggested that an individual's ongoing employment prospects within an organisation could be harmed where information about an injury and related claim is inadvertently made available to those engaged in decision making around human resources.<sup>18</sup>

#### *Potential options for consideration*

To the extent that there are issues associated with maintaining claimant privacy that cannot be addressed by the NSW Privacy Commissioner, and that these issues are associated with the lack of physical separation, as has been suggested by some stakeholders, the following potential options could be considered:

- Amendment of the self-insurance licensing framework to require the physical and reporting line separation of human resources and claims management functions and personnel.
- Implementation of periodic checks of self-insurer information handling processes by SIRA in relation to the privacy requirements. This could be undertaken as part of any audit conducted by the regulator or the self-insurer.
- Advising the NSW Information and Privacy Commission of any privacy issues in the claims management functions of self-insurers.

#### *Questions for stakeholders:*

- 3.3 To what extent are there potential conflicts of interest where an organisation is both the insurer and the employer?
- 3.4 What evidence is there of issues associated with the privacy of claimant information? How could these issues be addressed?

### **7.2.2 Independent Medical Examinations**

An independent medical examination (IME) is conducted by a registered medical practitioner who is engaged to provide an impartial medical assessment in relation to a worker's compensation claim. The examination can be requested by the worker, worker's

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<sup>18</sup> Information provided in consultations with stakeholders

legal representative or the insurer where medical information is inadequate, unavailable inconsistent or where the referrer has been unable to resolve the issues related to the problem directly with the parties involved.<sup>19</sup>

While these examinations are not a direct requirement of a self-insurer's licence, they do fall under the self-insurers claims management obligations. In addition, as the insurer for its employees, a self-insured organisation is in a position to request an IME.

### **Opportunities for improvement**

During the consultation process, stakeholders identified an issue in relation to the appointment of IMEs by self-insurers. This issue also stems from the potential conflict of interest that is generated when an organisation is both the insurer and the employer.

Specifically, an employee may be requested to attend an IME by their employer. Stakeholders noted that, in some cases, employees that were asked to attend an IME felt that they were unable to exercise their rights for fear of jeopardising their employment situation and/or relationship with their employer. These rights include, registering an objection or complaint in relation to the IME, recovering the cost of the IME, obtaining a copy of the IME report and receiving adequate notice and information in relation to their claim.

This issue could potentially arise because it is the employer making the request for the employee to attend a particular IME, rather than a third-party insurer as is the case with employers under the Nominal Insurer.

### *Potential options for consideration*

- Measures be implemented (potentially as part of claims management audit requirements) to ensure that employees' rights in relation to the appointment of IMEs continue to be protected.

### *Questions for stakeholders:*

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

## **7.2.3 Claims management audit tool**

An audit tool is available to licensed self-insurers to undertake claims management audits and report on these to SIRA. Currently, the claims management audit tool is being used by self-insurers to report their self-audit results to SIRA.

### **Opportunities for improvement**

It has been raised that recent changes to the claims management requirements (and the related tool) have meant that the new assessment criteria are being applied to old claims. That is, new criteria based on current requirements are being applied to old claims under different requirements. This has created difficulties for some self-insurers in meeting the criteria, particularly for older claims that would have passed when measured against the requirements at the time of the claim.

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<sup>19</sup> WorkCover NSW, Workers Compensation Claims, 2015, <http://www.workcover.nsw.gov.au/workers-compensation-claims/medical-professionals/medical-practitioners/independent-medical-examiner>

### *Potential options for consideration*

Consistent with SIRA's objective to incentivise innovation and improvement through claims management licensing requirements, a potential option would involve:

- conducting a review of the existing claims management audit tool to ensure that it is fit for purpose with the new regulator's objectives.

#### *Questions for stakeholders:*

- 3.6 What should SIRA's claims management compliance monitoring and enforcement activities look like and how do they differ from your experiences?
- 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?
- 3.8 What regulatory action should be taken to improve claims management practices and return to work outcomes?

### **7.2.4 Tail Management**

Under current arrangements, employers that exit the self-insurance scheme are able to access workers' compensation insurance through the nominally insured scheme. When this occurs, the employer retains responsibility for the management of its existing long-term claims liabilities. These are known as 'long-tail' liabilities, hence the use of the expression 'tail management'.

While such employers bear the responsibility for managing these long-tail liabilities, they no longer fall under the set of regulatory instruments governing self-insurance in NSW. Providing those self-insurers that exit the self-insurance licensing arrangements with the option of paying the Nominal Insurer to manage and take on the liability for their tail claims would remove this regulatory gap.

#### *Questions for stakeholders:*

- 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?



## **7.3 Work health and safety**

### **7.3.1 OHS Management System audits**

#### **Allocation of resources**

Stakeholders' main concerns in relation to WHS requirements relate to the OHSMS audits conducted as part of the licence renewal cycle. SafeWork NSW estimates that these OHSMS audits take four to five days for an existing self-insurer and five to eight days for a new applicant. Self-insurers commented that they spent considerable time and resources on preparing for the audits. One stakeholder estimated that their WHS team spent the year prior to the audit preparing for it, and that they engage professional consultants, lawyers and

ex-SafeWork NSW auditors to assist. Self-insurers have provided estimates of the cost of this effort that range from \$100,000<sup>20</sup> to \$1m<sup>21</sup> over the year prior to the audit.

Another issue raised in the consultation process is that some self-insurers believe OHSMS audits have diverted resources away from actual health and safety initiatives.<sup>22</sup>

### **Audit tool**

The NAT was identified as an issue by self-insurers. The NAT was described as being simultaneously too prescriptive and not focused enough on improving outcomes.<sup>23</sup>

### *Potential options for consideration*

An option to improve the effectiveness and consistency of OHSMS audits is:

- refocussing the OHSMS audit process to reduce the administrative burden on self-insurers and to better align the process with the principle of continuous improvement.

### *Questions for stakeholders:*

3.10 How could OHSMS audits be changed to improve their effectiveness in lifting WHS performance?

## **7.4 Collection and provision of information**

SIRA collects data on the claims management and WHS performance of self-insurers through the claims management and OHSMS audit tools, amongst other measures. SIRA uses the data to monitor self-insurer performance and manage licences appropriately. For example, self-insurers' claims management and WHS performance data are examined as part of the licence renewal process. Self-insurers are required to provide monthly claims data to SIRA.

During stakeholder consultation, it was suggested that improved visibility of self-insurer performance in respect of claims management and WHS could potentially be achieved through more targeted data collection. Stakeholders indicated that under current arrangements, such data can be difficult to obtain, obscuring the flow of information between licensees, SIRA and other stakeholders.

### *Potential options for consideration*

SIRA should adopt a principle of transparency and openness in relation to information provision. A number of potential options could improve transparency in relation to performance information, including:

- making self-insurer performance data publicly available, potentially in a form where individual businesses are not identified
- making de-identified performance data on self-insurers as a group available to self-insurers, in addition to the existing provision of their own performance information.

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<sup>20</sup> Evidence provided to the Standing Committee on Law and Justice's *Review of the exercise of the functions of the WorkCover Authority*, 2014 by Mr Paul Macken, Honorary Lawyer, New South Wales Workers Compensation Self-insurers Association.

<sup>21</sup> Information provided by stakeholders in consultations with PwC

<sup>22</sup> Information provided by stakeholders in consultations with PwC

<sup>23</sup> Information provided by stakeholders in consultations with PwC

*Questions for stakeholders:*

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

# 8 Issues – Is the licensing scheme the best response?



Changes to the licensing framework have the potential to impact on the broader work health and safety and workers' compensation systems in NSW.

For example, changes to the licensing requirements for self-insurers could impact the stability of the broader scheme to the extent that a large number of employers move from the nominally insured scheme to self-insurance. A discussion of this and other considerations follows below.

## 8.1 Scheme viability

The broader nominally-insured scheme for workers' compensation in NSW depends upon the premium payments from employers to the nominal insurer. Greater numbers of employers in the nominally insured scheme mean that the nominal insurer is able to more efficiently spread its risk, which can result in more stable and potentially lower premium costs for scheme employers (all else being equal).

In the event that the number of employers in the nominally insured scheme reduces significantly as a result of employers moving to self-insurance, this would result in less efficient risk pooling for the nominal insurer and potentially higher premiums for scheme employers.

This suggests that there may be some inefficient level or 'tipping point' for the proportion of NSW employers that are self-insured, beyond which the long-term financial viability of the nominally insured scheme is compromised. It is unclear at what point this tipping point would be reached.

In NSW the proportion of the workforce covered through a form of self-insurance (including state government agencies under the Treasury Managed Fund as well as licensed self-insured employers) is approximately 25 per cent.<sup>24</sup> In comparison, approximately 36 per cent of South Australia's workforce is employed by self-insured organisations and that system continues to operate.<sup>25</sup> Therefore, given the greater size of the NSW scheme relative to other Australian jurisdictions, it is not likely that the NSW scheme is at or near its tipping point in terms of its viability.

A proposal to expand eligibility to Comcare prompted concerns in the Standing Committee on Law and Justice's review that it could have a detrimental impact on the viability of the

<sup>24</sup> Centre for International Economics, 'Statutory review of the Workers Compensation Legislation Amendment Act 2012', June 2014, p26.

<sup>25</sup> Self-insurers of South Australia. [ww.sisa.net.au/FAQs.cfm#40008](http://ww.sisa.net.au/FAQs.cfm#40008), accessed 17 September 2015

NSW schemes due to low-risk ‘white-collar’ self-insurers transferring to Comcare and high-risk employers remaining under the NSW’s remit. However, given that the self-insurers in NSW are already outside the nominal insurer scheme, the actuarial impact of any self-insurers moving to Comcare is likely to be limited.<sup>26</sup>

Further work would need to be undertaken to assess the potential tipping point (if any) at which the number of self-insurers may have an impact on the long-term viability of the wider system.

## ***8.2 Reporting of significant matters***

Significant matters such as court proceedings between an insurer and an employee in relation to a workers’ compensation claim can result in a particular interpretation of legislation being tested through the court. The outcome of these cases can have a detrimental cost impact for the scheme due the flow on effects to other claims. Due to these broader impacts, SIRA should seek to be aware of matters that may impose a risk to the system. Currently, there is no requirement for self-insurers to report on such matters to SIRA.

### *Potential options for consideration*

SIRA should apply a reporting requirement on self-insurers in relation to strategically significant matters (as is done under the requirements for specialised insurance). This would enable SIRA to keep abreast of any matters that could impact public perceptions of the regulator or of potential legal precedents from court proceedings, among other considerations.

### *Questions for stakeholders:*

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

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<sup>26</sup> Evidence provided to the Standing Committee on Law and Justice’s *Review of the exercise of the functions of the WorkCover Authority*, 2014 by Mr Michael Playford, Consulting Actuary and Partner, PwC and actuary for the Workers’ Compensation Nominal Insurer Scheme.



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# *Appendices*

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# Appendix A List of self-insurers in NSW

Table 2 **Error! Reference source not found.** provides a list of current self-insured employers in NSW. Table 3 **Error! Reference source not found.** lists NSW employers that are currently group self-insurers.

**Table 2: List of self-insured employers in NSW**

Self-insurers
Ausgrid (Formerly Energy Australia)
Bankstown City Council
BOC Limited
Campbelltown City Council
Council of the City of Blacktown
Council of the City of Lake Macquarie
Council of the City of Newcastle
Council of the City of Sydney
Council of the City of Wollongong
Delta Electricity
Electrolux Home Products Pty Ltd
Endeavour Energy (Formerly Integral Energy Australia)
Fairfield City Council
Fletcher International Exports Pty Limited
Gosford City Council
Hawkesbury City Council
Inghams Enterprises Pty Limited
ISS Property Services Pty Ltd
Liverpool City Council
Mars Australia Pty Ltd
NSW Trains
Pacific National (NSW) Pty Ltd
Qantas Airways Limited
Rocla Pty Limited
Shoalhaven City Council
Southern Meats Pty Limited
Sutherland Shire Council
Sydney Trains
3M Australia Pty Limited
Transfield Services (Australia) Pty Limited
Transport Service of NSW (STA Group)
UGL Rail Services Pty Limited
University of New South Wales
University of Wollongong
Veolia Environmental Services (Australia) Pty Limited
Warringah Council
Westpac Banking Corporation
Wyong Shire Council

**Table 3: Group self-insurers in NSW**

<b>Group self-insurers</b>
Arrium Limited
Australia and New Zealand Banking Group Limited
Brambles Industries Limited
Bluescope Steel Limited
Brickworks Limited
Coles Group Limited
Colin Joss & Co Pty Limited
CSR Limited
Echo Entertainment Group Limited
Holcim (Australia) Holdings Pty Limited
JELD-WEN Australia Pty Limited
McDonald's Australia Holdings Limited
Myer Holdings Limited
Northern Co-operative Meat Company Limited
NSW Self-insurance Corporation
Primary Health Care Limited
Skilled Group Limited
Toll Holdings Limited
Unilever Australia (Holdings) Pty Ltd
Woolworths Limited

Source: <http://www.workcover.nsw.gov.au/insurance/self-insurers/list-of-self-insurers>

# Appendix B Role of self-insurance regulation

**Table 4: How self-insurance regulation endeavours to incentivise improved outcomes for workers**

<b>Risk category</b>	<b>Key potential risks of unregulated self-insurance</b>	<b>Are the potential risks present for nominally insured employers?</b>	<b>How the regulations address these risks</b>
Financial	Injured workers may not receive their entitlements in the event of self-insurer insolvency. Some self-insurers may not have the capacity to maintain self-insurance in the long term, meaning injured employees may not be sufficiently provided for.	No. An injured worker receives entitlements regardless of the financial stability of the employer.	The regulations specify licensing requirements designed to ensure that self-insurers have sufficient financial resources to cover their current and future claims liabilities. Self-insurers are required to maintain unlimited reinsurance to restrict its liabilities to a maximum amount in respect of any one event. A bank guarantee (or equivalent deposit) is also required to secure total outstanding claims liabilities. The regulations additionally specify requirements in respect of information provision SIRA. This information, which includes actuarial reports and other financial reports, allows SIRA to determine: <ul style="list-style-type: none"> <li>- the current financial stability and capacity of self-insurers</li> <li>- the quantum of self-insurers' claims liabilities</li> <li>- their capacity to meet these and potential future liabilities.</li> </ul>
Claims management	A self-insurer may not undertake to manage its injured employees' claims appropriately, presenting a risk to injured workers.	Yes. While claims for nominally insured employers are managed by scheme agents rather than by the employers themselves, the risk is still present that an employee's claim may not be managed appropriately.	Self-insurers are subject to claims management audits that are designed to ensure that appropriate claims management practices are being followed. The regulations also specify requirements in relation to the provision of information to SIRA. This information includes self-audit results, injury management programs and regular claims data submissions. This information gives SIRA an indication of claims management performance.
WHS	A self-insurer may not provide an appropriate safe working environment for its employees	Yes. Nominally insured employers could also fail to provide a safe working environment for their employees.	Self-insurers are subject to OHSMS audits as part of compliance monitoring. Under these audits self-insurers must demonstrate that they are systematically controlling the risks to all persons affected by the organisation's activities, practices and services. Self-insurers are also required to provide annual information regarding self-monitoring and internal governance within the organisation.

Source: PwC

# Appendix C Comparison with other jurisdictions

Table 5 provides a summary comparison of the licensing requirements for self-insurers (SIs) in NSW compared with those of other Australian jurisdictions.

**Table 5: Key components of licensing arrangements across other Australian jurisdictions**

	NSW	Victoria	QLD	SA	Comcare
<b>Overview</b>	<ul style="list-style-type: none"> <li>38 individual SIs, 20 group SIs</li> <li>8% of workforce is self-insured</li> <li>8.1 serious injuries per million hours worked</li> <li>11.7 serious injury and disease claims per 1000 employees</li> </ul>	<ul style="list-style-type: none"> <li>38 SIs including 4 SIs awaiting renewal</li> <li>Representing 8% of Victorian WorkSafe Scheme by total remuneration</li> <li>Last new SI was in 2012</li> <li>7.32 claims per million hours worked</li> <li>9 serious injury and disease claims per 1000 employees</li> </ul>	<ul style="list-style-type: none"> <li>27 SIs</li> <li>13.9 serious injury and disease claims per 1000 employees</li> </ul>	<ul style="list-style-type: none"> <li>Around 38% of SA's remuneration is paid by SIs</li> <li>There are over 140 members of the Self-insurers of South Australia association</li> <li>11.9 serious injury and disease claims per 1000 employees</li> </ul>	<ul style="list-style-type: none"> <li>33 Self-insurance licensees under the Safety, Rehabilitation and Compensation Act (1998)</li> <li>Moratorium on Comcare Self-insurance Licences lifted in 2013</li> <li>6.2 serious injury and disease claims per 1000 employees</li> </ul>
<b>Entry</b>					
<b>Application and fees</b>	Application fee of \$25K for individual SIs or \$30K for group SIs	Assessment fee is lessor of 0.033% of total wages or \$57,520	Application fee of \$15,000 for single employers and \$20,000 for group employers	Application fee of \$10 - \$40K (depends) on number of workers	Application fee is an amount estimated to be the cost of considering the application
<b>Renewal period</b>	<b>3-year</b> renewal period	Standard renewal period is <b>4 years</b> , can be extended by WorkSafe to 6 years	Initial licence is <b>2 years</b> , licences can be up to 4 years	ReturnToWorkSA can grant registration as a SI for no longer than <b>3 years</b>	Recently extended to an <b>8 year</b> renewal period for all self-insurers
<b>Financial entry requirements</b>	<ul style="list-style-type: none"> <li>Minimum of 500 employees</li> <li>Deposit or Bank Guarantee for an amount equivalent to the projected tariff premium for the ensuing 12 months plus a prudential margin of 50%</li> </ul>	<ul style="list-style-type: none"> <li>Able to meet its liabilities</li> <li>Assessed against benchmarks on primary indicators and secondary indicators</li> </ul>	<ul style="list-style-type: none"> <li>At least 2000 full time employees in Queensland</li> <li>An unconditional bank guarantee or deposit</li> <li>Take on all liability for outstanding WorkCover claims</li> </ul>	<ul style="list-style-type: none"> <li>Minimum of 200 employees (exceptions may be made)</li> <li>Assessed against 4 primary indicators and a secondary indicator</li> <li>An unconditional, continuing bank guarantee</li> </ul>	<ul style="list-style-type: none"> <li>SRCC will have regard to "financial and prudential information"</li> <li>A bank guarantee based on the 95<sup>th</sup> percentile of outstanding liabilities, subject to a minimum of \$2.5m</li> </ul>
<b>WHS entry requirements</b>	<ul style="list-style-type: none"> <li>Must demonstrate that its OHSMS is operating at an acceptable level</li> </ul>	<ul style="list-style-type: none"> <li>Satisfactorily low incidence of injuries</li> </ul>	<ul style="list-style-type: none"> <li>"Occupational health and safety performance is satisfactory"</li> </ul>	<ul style="list-style-type: none"> <li>Incidence and severity of injuries will be evaluated based on 3 years of previous data</li> <li>Applicant's performance will be considered in relation to comparable industries</li> </ul>	<ul style="list-style-type: none"> <li>"Resources, the interest of employees and capacity of the applicant to meet standards set by the SRCC"</li> </ul>

	NSW	Victoria	QLD	SA	Comcare
<b>Claims management entry requirements</b>	<ul style="list-style-type: none"> <li>An SI "must demonstrate a capacity for injury and claims management"</li> <li>Provide details of senior management who will be responsible for claims management</li> <li>SIs must provide injury management programs</li> </ul>	<ul style="list-style-type: none"> <li>Appropriate resources planned or in place to ensure high performance</li> <li>"Strong claims management, occupational rehabilitation and return to work history"</li> </ul>	<ul style="list-style-type: none"> <li>Adequate systems and resources for managing claims and rehabilitation</li> <li>Insurers submit claims data monthly and claims reconciliation data half-yearly</li> </ul>	ReturnToWorkSA will assess the following with respect to claims management: <ul style="list-style-type: none"> <li>Qualification and experience of officers responsible</li> <li>Number, frequency, complexity and duration of claims</li> <li>Job description of officers responsible</li> <li>Performance of employer as measured against the Code</li> </ul>	"Claims management systems information including accurate and quick determinations and payments, ensuring equity of outcomes and capacity to comply with conditions of licence"
<b>Risk management</b>	<ul style="list-style-type: none"> <li>Must maintain unlimited reinsurance cover</li> </ul>	<ul style="list-style-type: none"> <li>Must have unlimited contingent liability insurance</li> </ul>	<ul style="list-style-type: none"> <li>Must have reinsurance cover</li> </ul>	<ul style="list-style-type: none"> <li>Must have contingency plans and test them periodically</li> </ul>	<ul style="list-style-type: none"> <li>Reinsurance policy with a reinsurance retention amount as approved by the SRCC</li> </ul>
<b>Ongoing Reporting</b>	<ul style="list-style-type: none"> <li>SIs must provide:               <ul style="list-style-type: none"> <li>Annual reports</li> <li>Audited financial statements</li> <li>Independent auditors' report</li> <li>Company structure</li> <li>2 contact persons</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>WorkSafe provides an annual report to each SI: Self-insurer Performance Framework provides feedback to SIs</li> <li>SIs must provide:               <ul style="list-style-type: none"> <li>Self-audits of claims management, finance and WHS, financial and prudential documentation, etc.</li> <li>Must notify WorkSafe of "strategically significant matters":                   <ul style="list-style-type: none"> <li>Any application for an appeal</li> <li>Where workers are terminally ill workers have asbestos-related conditions</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>SIs must provide annual actuarial reports</li> </ul>	<ul style="list-style-type: none"> <li>SIs must provide:               <ul style="list-style-type: none"> <li>Annual actuarial reports of outstanding liabilities</li> <li>A copy of audited financial statements within 5 months of every financial year</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>SIs must provide:               <ul style="list-style-type: none"> <li>An actuarial assessment of current and projected outstanding liabilities</li> <li>Subject to continual financial monitoring</li> <li>May be subject to an annual risk based desktop review process using the licensees' audited financial statements</li> </ul> </li> <li>Licensees must notify Comcare of any serious or dangerous incidents</li> </ul>

	NSW	Victoria	QLD	SA	Comcare
<b>OHS auditing and checking requirements</b>	<ul style="list-style-type: none"> <li>• 3-year audit cycle</li> <li>• National Audit Tool, with 108 audit criteria under 5 categories</li> <li>• Only audited on 2 of 5 'categories'</li> <li>• Need 75% standard to pass</li> <li>• Accredited auditors can be used for self-audits</li> <li>• Audits take 4-8 days to undertake</li> </ul>	<ul style="list-style-type: none"> <li>• Uses National Audit Tool</li> <li>• WorkSafe expects that 90% of the 108 criteria will be audited during approval process</li> <li>• Accredited auditors can be used</li> </ul>	<ul style="list-style-type: none"> <li>• Uses National Audit Tool</li> <li>• Addresses all 5 elements</li> <li>• 4- and 3-year licence holders must undergo a self-audit (undertaken by internal personnel) at the two-year interval</li> <li>• All applications for licence renewal must undergo the two-stage audit</li> </ul>	<ul style="list-style-type: none"> <li>• Organisation must carry out internal audits to ensure performance of systems and programs</li> <li>• Evaluations are conducted when a prospective SI applies, upon application for renewal and on an ongoing basis to monitor compliance</li> <li>• Evaluations will be undertaken against the methodology in the Evaluation Practice Manual</li> <li>• An employer may elect to be evaluated against the National SI WHSMS Audit Tool instead</li> </ul>	<ul style="list-style-type: none"> <li>• Licence performance is evaluated via the annual Licence Improvement Program (LIP)</li> <li>• Performance outcomes are assessed against a Tier Model</li> <li>• All licensees are subject to external audits in their last year of licence</li> </ul>
<b>Actuarial requirements</b>	An actuarial report on the SIs outstanding claims liability	Must obtain annual actuarial valuation its claims liability	Must prepare annual actuarial report	Must provide annual actuarial reports of outstanding liabilities	Must prepare an actuarial assessment of current and projected outstanding liabilities
<b>Fees</b>	<ul style="list-style-type: none"> <li>• Levies based on a fixed percentage of their deemed premium</li> </ul>	<ul style="list-style-type: none"> <li>• Fees are based on a proportion of WorkSafe's costs determined by total remuneration</li> </ul>	<ul style="list-style-type: none"> <li>• Must pay annual levy to Workers' Compensation Regulator</li> <li>• WHS performance reporting fees are \$1203 and \$1601 for single and group employers respectively</li> </ul>	<p>The fee paid by an SI "will be a percentage of the base premium that would have been payable by the employer if the employer were not an [SI]...and will be fixed by the Corporation with a view to raising from [SIs]":</p> <ul style="list-style-type: none"> <li>• "A fair contribution" towards administrative and dispute resolution costs</li> </ul>	<p>Licensees must pay a fee based on:</p> <ul style="list-style-type: none"> <li>• A flat fee component</li> <li>• Licensee specific costs</li> </ul> <p>An amount determined by the number of FTE</p>
<b>Third-party claims management</b>	<ul style="list-style-type: none"> <li>• Third parties are allowed to manage claims</li> <li>• But SIRA must approve any outsourcing arrangements</li> </ul>	<ul style="list-style-type: none"> <li>• Can outsource claims after VWA assessment of agent's capabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Does not appear to allow outsourcing of claims management</li> </ul>	<ul style="list-style-type: none"> <li>• Does not appear to allow outsourcing of claims management</li> </ul>	<ul style="list-style-type: none"> <li>• Does not appear to allow outsourcing of claims management</li> </ul>
<b>Restructuring of company</b>	<p>Must advise SIRA of:</p> <ul style="list-style-type: none"> <li>• changes in control or ownership exceeding 20% of shareholding</li> <li>• Acquisition or disposition of wholly owned subsidiary companies</li> <li>• Changes to senior management responsible for claims management</li> </ul> <p>500 employee requirement is not for licence renewals</p>	<ul style="list-style-type: none"> <li>• If an SI acquires a registered employer, they can assume its tail claims liability. The acquisition may also trigger a review of the self-insurers approval</li> </ul> <p>Must advise VWA of acquisitions or dispositions</p>		<p>SIs must inform ReturnToWorkSA of any restructuring and may have to reapply if there are substantial changes</p>	<p>Licensee must notify Comcare of any changes in legal structure, ownership or control, and of any significant change in employee numbers</p>
<b>Exit</b>					

	NSW	Victoria	QLD	SA	Comcare
<b>Licence suspension, cancellation, non-renewal</b>	<ul style="list-style-type: none"> <li>Failure to meet statutory requirements and conditions of licence</li> </ul>	<ul style="list-style-type: none"> <li>Incapable of meeting its claims liabilities, or is not fit and proper to be a SI</li> <li>Becomes a subsidiary of another body corporate and it is not approved</li> <li>Failed to comply with WIRC Act</li> </ul>	<ul style="list-style-type: none"> <li>Can appeal to a District or Supreme Court if they are unhappy with the issue, renewal or cancellation of licence</li> </ul>	<ul style="list-style-type: none"> <li>Due to insolvency or failing to make adequate provision for claims management</li> <li>If licence of a SI employer is revoked, the licensee ceases to be liable for any claims after the licence was revoked and ReturnToWorkSA will take them on in return for a payment for the capitalised value of all outstanding liabilities</li> </ul>	<ul style="list-style-type: none"> <li>If licence of a corporation is revoked, the licensee ceases to be liable for any claims after the licence was revoked</li> <li>If a licence is revoked, Comcare may take all the bank guarantee money</li> </ul>
<b>Sources</b>	<p>PwC analysis of documents provided by SIRA; SIRA, <a href="http://www.workcover.nsw.gov.au/insurance/self-insurers">www.workcover.nsw.gov.au/insurance/self-insurers</a> Accessed 12 August 2015</p>	<p>WorkSafe Victoria, <a href="http://www.worksafe.vic.gov.au/insurance/ce-and-premiums/self-insurance">www.worksafe.vic.gov.au/insurance/ce-and-premiums/self-insurance</a> Accessed 13 August 2015</p>	<p>WorkCover Queensland, <a href="http://www.worksafe.qld.gov.au/insurance/self-insurance-auditing">www.worksafe.qld.gov.au/insurance/self-insurance-auditing</a> Accessed 14 August 2015</p>	<p>Self-insurers of South Australia, <a href="http://www.sisa.net.au/">www.sisa.net.au/</a> Accessed 17 September 2015; ReturnToWorkSA, <a href="http://www.rtwsa.com/insurance/self-insurance/regulating-self-insured">www.rtwsa.com/insurance/self-insurance/regulating-self-insured</a> Accessed 13 August 2015</p>	<p>Comcare, <a href="http://www.comcare.gov.au/the-scheme/regulation">www.comcare.gov.au/the-scheme/regulation</a> Accessed 14 August 2015; Comcare, <a href="http://www.comcare.gov.au/_data/assets/pdf_file/0003/134481/Self-insurance_licence_application_process_-_frequently_asked_questions_PDF_88.3_KB.pdf">http://www.comcare.gov.au/_data/assets/pdf_file/0003/134481/Self-insurance_licence_application_process_-_frequently_asked_questions_PDF_88.3_KB.pdf</a> Accessed 14 August 2015</p>

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