11 November 2016
The Appropriate Officer

By Email: sifeedback@sira.nsw.gov.au

Unions NSW welcomes the opportunity to comment on self-insurance licensing framework in the NSW workers compensation system.

Unions NSW re-iterates our position that we oppose self-insurance, as the moral hazard posed by such a system is unmanageable with vast incongruity between the legislation objectives and those of the company or government agency. The profit motive for corporations and budget limited state agencies, including the over-riding fiduciary duty to ensure interest of shareholders and tax payers, will always trump providing adequate support for injured workers, as a focus for self-insurers and the leaders who run them. This moral hazard is heightened when profit can be increased by placing undue pressure as both an employer and an insurer in an environment with inadequate and virtual self-regulation, gross power and information imbalance.

It appears to many injured workers that despite great deviations from conformant or compliant behaviour that self-insurers can virtually do nothing that will remove their license. The removal of the OHSMS requirement will simply allow many large employers to enter the self-insurance area with minimal regard to their ongoing risk profile. The extension of the license to 8 years will simply allow some self-insurers to avoid the ongoing effort to make their workplace safer for the OHSMS audit. This will be a bad outcome for injury prevention.

Unions NSW has recently conducted an inquiry into return to work around the state and interviewed over 130 injured workers. These stories were submitted as part of our submission to the Law and Justice Committee Inquiry in Workers Compensation. Despite the injured workers coming from across the state and different industries, there was an over-representation of injured workers from self-insurers. The submission can be viewed here http://www.unionsnsw.org.au/nswforall.

Unions NSW witnessed a number of injured workers "gamed" out of medical and income support by self-insurers in a more brutal manner than for the rest of the economy.

When talking about one of the largest employers in the country and in the Central Coast where SafeWork Head Office is located, an injured worker stated words to the effect,
"I went to my Doctor and he said that I was a tissue. He (the doctor) sees tissues all the time from that employer. They break them and unless they can do 100% they don't let them back in. They simply get another tissue (worker) out of the box and dispose of the last one used up"

SafeWork is aware of issues at this employer but has not intervened to change the practices and the Work Capacity Process allows the employer to minimise the cost to the employer by reducing access to weekly payments and medical expenses.

The WIRO Reports also regularly point to an over representation of self-insurers over scheme employers for their disputes and complaints.

We note that despite PWC making recommendations on a number of areas that SIRA has stated that they agree. However, rather than agreeing with the PWC suggestion SIRA have put a different slant on the approach to the recommendation. This often errs on the side of less support for workers of

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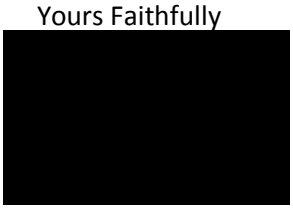
the self-insurer and often utilises words to commit to nothing. We do note that SIRA has accepted the self-insurer lobby's recommendations that increase their power over workers or their profit. This is not acceptable. We answer the questions posed and include in a table commentary on each recommendation.

Yours Faithfully



Shay Deguara
Industrial Officer

Focus Question 1
They are not yet finished. The removal of all but the minimal health and safety requirements places the workers in these privileged employers at unnecessary risk. OHSMS are audited to a standard that requires ongoing improvement. The suggested model effectively allows for self-regulation with the current WHS triage system in place that often sees many notifiable incidents without action by the employer, insurer and regulator. Self-insurance as a privilege allows for large market leaders to set examples for their many sub-contractors and leads industry as a whole to improve. Removal of exemplar safety will simply lead to reduced safety and more deaths and injuries. There will be no standard and much of the risk will be taken by the state especially of the company is liquidated. This is grossly unfair when the employer only bares less than 5% of the burden of workplace injuries according to the Productivity Commission and SafeWork Australia.

Focus Question 2
Many criteria are not yet formulated. Compliance with WHS legislation is minimalist and below the standard of conformance with OHSMS under the Australian standard. This is discussed above and is a consequence of the inadequacy and failure of WorkCover (in the past) to adequately regulate self-insurers between audits.

It also suggests non-compliance with WHS legislation will be satisfactory for tier 2 and below.
There is virtually no inclusion of worker involvement despite PWC recommendations.
The public disclosure recommendations of PWC are not included.

Focus Question 3
All injuries, incidents should be mandatorily reported regardless of whether a claim has been made for all self-insurers. This will prevent some of the chronic under reporting that occurs with self-insurers.

Focus Question 4
&
Focus Question 5
New insurers should come in with the greatest requirements at a low tier. Workers are suiciding and being harmed with secondary injuries by this system and poor performance is inadequate to make the company a few more dollars.
New self-insurers should be required to negotiate and reach agreement with workers' representatives prior to entering as a self-insurer or renewing.

Focus Question 6
Agree as long as the business plan is consulted and available for worker's representatives.

Report Recommendations

Recommendation 1	In our original submission and in the Unions NSW Return to Work Inquiry we have identified a number of areas where workplace performance is fabricated due to use of company doctors, sick leave and chronic under reporting of safety incidents. A number of self-insurers also refuse to disclose information to their workers as is required under the WHS legislation making this group of employers more powerful. This has seen workers disciplined for reporting workers compensation claims, or seeing their own NTD with self-insurers. Details can be provided but not for public display, but these are not isolated to one employer and are rarely if ever actioned by the regulators despite numerous complaints. Meaningful engagement with workers' representatives including their HSRs and unions as part of this assessment process would circumvent the perversion of conduct and performance measures. The criteria for what makes the difference between the different tiers needs careful analysis to prevent the regulator favouring relaxation on a subjective manner, to further increase profits of the self-insurer when there is a clear negative consequence to workers of lesser standards of support. These must be robust standards and be signed off by unions.
Recommendation 2	At present the re-application for the license encourages improvements at least temporarily for the duration of the period when the license reapplication is being developed. If there is a period of eight years, this will simply lock in for a longer period inaction by the employer/insurer. This licensing length locks in two future terms of government to a policy that is at odds with the opposition's current policy. This is part of the self-insurer's lobby's national ambit claim and there is no evidence that it improves outcomes in meeting the objectives of the Act. The Comcare system has recently exhibited this farcical approach by allowing John Holland with an appalling death and injury record to extend their license by eight years.
Recommendation 3	SIRA has not included in their response the requirement to consider views of workers. SIRA has turned should consider the views of injured workers and their representatives to making it that they will just gather relevant information in their consideration. It mentions third parties with informed views but this discretionary phrase is without definition nor binding on SIRA. This is business as usual and very disappointing. Health and Safety Performance has been removed which appears to be an important element for having the privilege of being a self-insurer.
Recommendation 4	Agree in principle but this should only occur if there are robust criteria to be top tier and the regulatory and enforcement interventions will be initiated on incidents or complaints from workers. This supervisory model must include mandatory consultative mechanisms with workers and their representatives.
Recommendation 5	Unions should be included in the claims management audit tool redevelopment and workers' representatives should have a role in the

	audit process. The Regulator should be aware by now that it cannot rely on the self – insurer to inform the regulator of issues that arise. There should be a binding responsibility to notify certain criteria of incidents or injuries and failure to do so should have harsh penalties including removal of license. This is not occurring with the current legislation but should occur with all injuries.
Recommendation 6	Agreed
Recommendation 7	Despite stating they agree, SIRA has failed to acknowledge the misuse of information by the employer and insurer when they are one and the same. SIRA's response has skirted around in their response and simply applied a business as usual minimalist approach. The self-insurer is in an enviable position as being the employer and the insurer and SIRA's response does nothing to remedy this situation reducing liability and often using the same information to terminate employment.
Recommendation 8	Here we have another example of the self-insurer lobby getting their national ambit included with all evidence running in the contrary as to the effect on safety. Self-insurance is a privilege. With this privilege comes responsibility. By requiring only top tier self-insurers to maintain high standards of workplace safety, by simply complying with WHS legislation, is suggesting that lower tier self-insurers can commit a criminal offence and breach WHS laws. If self-insurers breach the law they should not be able to maintain a license as a self-insurer. Both SIRA and SafeWork fail to adequately regulate self-insurer employers already. Our submission to the Law and Justice Committee clearly examines the inadequacy and failures in compliance with the WHS legislation at page 45. This suggestion to only require compliance with legislation is a poor decision and many academics have warned that the current regulatory approach will lead to a catastrophe. Unions NSW has a number of examples where SafeWork has failed to monitor let alone enforce the WHS Act 2011 despite statutorily notifiable incidents. This is worse amongst self-insurers due to the attitude by much of the inspectorate that they need to build a relationship with large employers. Unions NSW has examples of fatalities not being investigated by SafeWork Inspectors, so what hope is there that other lesser matters will be enforced? This is effectively removing the requirement of self-insurers to maintain adequate safety standards with constant improvement.
Recommendation 9	This system needs to include the grey and black data. Self-insurers employ systems to hide real figures of performance, through use of company doctors, sick leave and other mechanisms.
Recommendation 10	SIRA states they agreements but don't actually state that they will provide

& **Recommendation 11**	this information to their workers or on SIRAs website. Do they actually disagree? HSRs and workers in self insurers have great difficulty accessing this information despite legal rights under the WHS Act. They often suffer undue pressure in their role and employment security as a result.
Recommendation 12	This information is not currently current and accurate. Self-insurers use sophisticated methods to improve the performance indicators of the self-insurer through large scale under reporting.
Recommendation 13	Does this include when self-insurers employers, who hire insurers for claims management that regularly create blanket discretionary decisions to ignore guidelines, refuse or delay liability on certain types of claims? Other examples are when self-insurers refuse to have workers returned unless they are 100% fit.
Recommendation 14	This should not be at the expense of the current minimal levies but be an additional penalties such as in the Comcare system and other jurisdictions for extra required interventions, and disputes such as WCD reviews.
Recommendation 15	Agreed, but should also include provisions for when the self-insurer moves to Comcare which is not covered by the current proposal.
Recommendation 16	Agreed

End