

State Insurance Regulatory Authority (SIRA)

Review of the NSW Self-Insurance Licensing Framework

Insurance & Care NSW (icare)

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Executive Summary

icare has been invited by SIRA to provide a submission on the NSW self-insurance licensing framework review. It has provided some initial feedback on SIRA's response to the report prepared by PricewaterhouseCoopers (PwC) and welcomes the opportunity to provide further detail, especially given that there is potential for regulatory changes to impact its Self Insurance and Workers Insurance business lines and therefore its customers in the broader NSW community.

icare is of the view that the proposed standard licensing conditions are unlikely to deliver the policy objectives of maintaining a sustainable workers compensation scheme through a risk based approach to regulation for health, social and economic outcomes, as the conditions are focused too strongly on transactional testing and operational measures.

icare considers that a consistent regulatory framework for insurers should be in place and alignment with the national framework principles of the Australian Prudential Regulatory Authority (APRA) should be ensured.

In order to deliver policy outcomes related to service delivery to injured people, affordability and the effective management and sustainability of the scheme, icare suggests that oversight may be better achieved as follows:

Regulation aligned with APRA standards

icare recommends a forward-looking, principles based, risk based, consultative licensing and regulatory framework, consistent with the APRA supervisory framework and best practice.

It is noted that SIRA's proposed measures of conduct are either process or lag indicators and do not include measures of customer outcomes. Measures should be developed to both quantitatively and qualitatively assess the governance framework of self-insurers, including risk management, policy and procedure frameworks and financial sustainability.

These measures should use indicators or metrics at the highest level possible to demonstrate the satisfaction of the principles of conduct and good governance, utilising data and information from existing sources where available. SIRA should develop strategies to determine valid cost/benefit for change in both policy and regulated process.

Co-design with those being regulated

Co-design is essential to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or the people they are trying to support. Models of engagement that enable rapid decision making and execution are also essential.

In the spirit of co-design, icare would appreciate opportunities to develop better regulation through ongoing and detailed dialogue with SIRA.

There is currently little opportunity for insurers to be involved in co-design and little or no consideration given by SIRA on financial impacts in insurers to potential legislative changes. icare believes that improved co-design would allow insurers the opportunity to suggest solutions for operating within the legislation that are more customer centric.

In this regard, there is a need to consider the impact of select employers exiting the workers compensation scheme to become self-insurers, in particular in relation to scheme funding and any impact on premiums for the broader NSW community.

Avoidance of unnecessary administration burden/ cost

Regulation should be outcome focused and not unnecessarily burdensome. icare recommends a risk based, proportionate approach to compliance obligations, engagement and enforcement actions that is based on the past supervisory experience, rather than a process oriented approach.

Information requests, including in relation to business plans and data provision, should be made only to the extent necessary to secure regulatory objectives, and only then in a way that demonstrates a cost benefit for the objectives of delivering better outcomes for employers and workers.

SIRA should use all available and relevant data on governance when verification is required, including evidence of existing verification processes, with a focus on effective assurance of governance frameworks.

The outcome should be a cost effective and sustainable framework that embodies a philosophy of simplicity and transparency.

icare's focus

icare is focused on achieving outcomes for employers and injured workers and, in the interests of making it easier to do business in NSW, minimising bureaucratic processes wherever possible. Its value proposition to customers is to:

- i. **protect**, by developing products and risk based pricing that support protection and prevention activities for all insured workers and employers in NSW, and actively promoting safe work environments;
- ii. **insure**, by meeting our customers' needs with specific products, solutions and services that provide tangible and measurable value; and
- iii. **care**, by actively influencing and driving the claim and care experience to improve the opportunity for return to work and support for injured workers in NSW.

icare is focused on delivering high quality, consistent, transparent and predictable customer experiences in accordance with recognised leading principles based regulatory frameworks

It supports SIRA in its aim to:

- maintain 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; and
- establish principle-based regulation and supervision of workers compensation insurers.

To achieve these aims of the regulator and the objectives of the NSW workers compensation system, it is critical that the impact upon the key stakeholders (employers and injured workers) is considered.

icare welcomes further opportunities to engage with SIRA about matters involving the regulation of workers compensation in NSW, and to co-design a best practice regulatory model.

Comments on SIRA's responses to the PwC recommendations

Recommendation 1

SIRA will implement a tiered supervisory model for self-insurance. Assessment of a self-insurer's performance will be based on measures of conduct, claims management and prudential (financial ability) performance.

icare comments:

icare agrees that an effective and transparent tiered supervisory model is appropriate for the principles expressed, noting that the suggested measures of conduct are either process or lag indicators.

It suggests that:

- measures be developed to both quantitatively and qualitatively assess the governance framework of a self-insurer, including its governance, risk management and policy and procedure frameworks, and that these measures use indicators or metrics at the highest level possible to demonstrate the satisfaction of the principles of conduct and good governance, utilising data and information from existing sources where available;
- the model should include oversight of pricing and capital management to demonstrate financial sustainability; and
- strategies be developed to determine valid cost/benefit for any change in both policy and regulated process.

Recommendation 2

SIRA will extend the licence term for top tier performers for up to eight years. Those not in the top tier at the time of licence renewal will receive a lesser term. SIRA will determine the appropriate term of a licence at its own discretion.

icare comments:

icare would like to better understand the ability to amend a licensing agreement and/or undertake actions during the licence term if the self-insurer's performance changes.

icare suggests that a risk based framework be implemented with set standards and licence terms to avoid variability of policy application.

Recommendation 3

SIRA will gather relevant information it deems appropriate in considering the term of a self-insurer's licence and performance. This may include feedback from third parties with informed views on the workers compensation performance of the self-insured.

icare comments:

icare suggests that:

- co-design solutions are used in order to minimise unintended negative impacts as a result of policy or process decisions, and that there is a need to take into account the cost/benefit analysis in terms of both implementation and maintenance costs to and ongoing activity for self-insurers;
- regulatory activity should be evidence informed rather than relying on anecdotal feedback, a systematic approach to gathering information be developed that is proportionate, relevant to the role of SIRA as regulator and easily available, and a 'report once, use often' principle be adopted;
- proportionate continuous improvement processes be created that reflect the level of risk involved with a decision; and
- in seeking the views of the industry, consideration be given to information already received and being responded to by the insurer before further views are sought.

Recommendation 4

SIRA is adopting a tiered supervisory model to assess the performance of self-insurers. The tiered model recognises and acknowledges the performance of self-insurers by linking the level of regulatory supervision for each licence element on a risk basis to the performance of the self-insurer.

icare comments:

icare advocates a principles and risk based approach to supervision, which focusses on assurance of governance practices in place. It suggests that SIRA should recognise the internal assurance framework and processes the self-insurer may already have in place and seek to verify rather than replicate those processes. It also suggests the approach be aligned as closely as possible to the APRA supervisory framework.

Additionally, icare submits that any performance indicators should take into account measures of customer outcomes (care, claims and recovery).

Recommendation 5

The claims management audit tool will be redeveloped and will play an important role in the monitoring of performance. SIRA will place greater importance on continual monitoring and expect self-insurers to proactively inform the regulator of issues that arise.

icare comments:

It is unclear what purpose this recommendation would achieve. icare disagrees with the requirement for 'continual monitoring' and is of the opinion that clear guidance would be required regarding the criteria for when 'issues that arise' are to be raised with SIRA, and what the expectations and intended outcomes will be.

It is also unclear whether the cost impact of the claims audit process has been assessed and whether the benefits provided are commensurate with the effort to complete claims audits as prescribed.

icare suggests that:

- regulator assurance should be risk based, reflective of the risk level of the entity and/or the tier in which it sits, and economically efficient, focussing on good governance rather than compliance;
- any audit tool needs to be fit for purpose and have clearly articulated objectives;
- flexibility be allowed for self-insurers to develop alternate tools or assurance approaches, provided they can demonstrate achievement of the same assurance objectives;
- any claims auditing should be risk based and economically efficient, proportionate to the volume of claims and historical performance of the self-insurer; and
- responsibility for claims auditing should sit with the self-insurer as part of its overarching governance framework, including oversight of outsourced claims functions.

Recommendation 6

SIRA's regulatory supervision of self-insurers under the tiered model will include a broad range of measures and will be more responsive to specific risks and performance or non-compliance issues.

icare comments:

icare notes that PwC recommended supervisory arrangements including random spot checks of claims management functions, periodic surveys, regular assessment of claims management performance data. However, it is not clear that these tasks would add significant value and that they may increase the cost of an already expensive and opaque regulatory model.

It is suggested that:

- verification should focus on assurance of governance structures that support key public policy outcomes related to service delivery to injured people, affordability and the effective management and sustainability of the workers compensation scheme;
- any internal assurance framework the self-insurer already has in place be recognised and that the effectiveness of such framework be verified rather than replicating components of it; and
- SIRA should only collect information that secures justified regulatory objectives.

Recommendation 7

SIRA expects self-insurers to have privacy management plans in place that are compliant with the self-insurer's legislative obligations and consistent with privacy principles. The plans will be required to specifically address privacy management for injured workers and in workers compensation procedures. The self-insurer will be required to make the plans available to the regulator on request.

icare comments:

icare suggests that assurance of these plans should verify any internal assurance framework the self-insurer already has in place.

Recommendation 8

SIRA will remove the Occupational Health and Safety Management System (OHSMS) audit requirements from the self-insurer licence conditions. These will be replaced by a comprehensive co-regulator referral and information exchange protocol between SIRA and SafeWork NSW to ensure the work health and safety performance of self-insurers is supervised by the appropriate regulator (SafeWork NSW) while remaining visible to SIRA to be considered within the tiered supervision model. SIRA retains a clear requirement (and top tier measure) that self-insurers will maintain a high standard of workplace safety by complying with the work health and safety legislation.

icare comments:

icare suggests that the Memorandum of Understanding between SIRA and SafeWork NSW for information sharing should be limited to information that is needed by each regulator in order to satisfy its regulatory functions, and that identifying information at an employer or injured worker level is unlikely to be relevant to either regulator in order to satisfy its functions.

Recommendation 9

SIRA will establish a new framework for information management and analysis of data as part of its supervision of the workers compensation scheme.

icare comments:

icare suggests that:

- SIRA should only collect information that enables it to fulfil its responsibilities as a regulator;
- data collected should serve a clearly demonstrable regulatory outcome;
- a 'report once, use often' framework should be used to provide an economically efficient approach to data and reporting;
- insurers should be treated consistently with regard to supplying data to SIRA and due consideration should be given to privacy restrictions in data sharing; and
- noting PwC's recommendation for an integrated and automated data analysis system and its component parts, co-design of the system would avoid creating multiple pathways of information submission, allow for electronic files from standard systems, facilitate benchmarking functionality, and ensure privacy and business confidentiality.

Recommendation 10

SIRA will provide self-insurers with quarterly summary performance reports once self-insurers have transitioned to the new licensing framework.

icare comments:

It is unclear how the provision of performance reports assists the regulator in meeting the objectives of the scheme. Consequently, it seems that the administrative cost for SIRA of producing these reports is not an efficient or effective use of the regulator's resources.

Recommendation 11

Consistent with recommendation 10, SIRA will work to establish regular scheme performance reports once the new framework has been in place for sufficient time for self-insurers to transition their operations. This will include aggregated self-insurer performance compared to the rest of the NSW scheme.

icare comments:

In line with icare's comments to recommendation 10, the intended purpose/ rationale is unclear. Having agreed to provide a self-insurance licence, the performance of the particular licensee is a matter between SIRA, the licensee and its employees. Should SIRA believe the licensee is under-performing or at risk, it should take effective steps to support the licensee and protect the interests of injured workers.

Recommendation 12

SIRA expects that information held by self-insurers and reported to SIRA is current and accurate. SIRA will develop a data quality assurance program that will include audits as required.

icare comments:

icare suggests that:

- SIRA should only collect information that enables it to fulfil its responsibilities as a regulator, and the data quality and assurance program should be limited to ensuring that the data provided for regulatory purposes is accurate; and
- any assurance program should protect the identity of individuals and be focused on reviewing the quality of any internal assurance frameworks the self-insurer has in place rather than transactional testing.

Recommendation 13

SIRA expects that significant matters will be brought to the regulator's attention within required timeframes, and with sufficient detail to make an assessment of potential impacts.

icare comments:

PwC's definition of 'significant matters' is 'any cases to be litigated in a court and any cases expected to generate significant public interest'. icare has provided advice to SIRA separately on a suggested definition of significant legal matters that will assist with addressing regulatory needs in a pragmatic way. icare submits that:

- the PwC definition is excessively broad and vague and likely to require a significant volume of claims being reported without necessarily highlighting the key issues; and
- co-design would more explicitly define significant matters to clearly highlight those which are in the public interest.

Recommendation 14

SIRA will consider the recommendation to align the cost recovery model more closely with the regulatory effort and will develop an options paper for further consultation.

icare comments:

icare is of the opinion that there is little transparency around utilisation of current costs and outcomes nor is there any available data on current costs recovery allocations.

icare recommends that, in the public interest, there be greater transparency of SIRA's administration of the Workers Compensation Operational Fund established under section 34 of the *Workplace Injury Management and Workers Compensation Act 1998*. Payments out of that Fund are outlined in section 35 of that Act, and include the operating costs of SIRA, SafeWork NSW and the WIRO, as well as other payments required to meet expenditure incurred in relation to the functions of the Authority. Other payments made out of the Fund include vocational re-education and rehabilitation schemes for injured workers (see section 53 of that Act).

In icare's view, it is critical that there be a governance framework for overseeing the use of funds, clear principles for agreeing (or not) on specific decisions and transparency of expenditure, given that it is funded by contributions from insurers, self-insurers or those deemed insurers under that Act.

Recommendation 15

SIRA will consider a range of approaches consistent with the legislation to manage any exit from the self-insurance scheme. (Recommendation: to provide a mechanism by which employers that exit the self-insurance scheme are required to pass their tail claims to a licensed insurer).

icare comments:

icare advocates co-design and is willing to work with SIRA to contribute to developing approaches to the management of advanced claims that enable the best financial outcomes and support for the injured worker.

Applying the principle of fairness to employers who contribute to the workers compensation scheme (or private insurers), icare suggests that any valuation for exit from the self-insurance licence should be based on a negotiated and agreed valuation of the central estimate of the outstanding claims liability plus a risk margin, with a probability of adequacy equal to that of the receiving entity plus an agreed margin to protect the funding position of the receiving entity.

This transaction should reflect the usual requirements for a merger or acquisition. Following the transaction there is no need for further recourse, provided the due diligence was done well.

Recommendation 16

SIRA will consider updating the prudential requirements and will consult on options later this year in the context of broader consultation on prudential risk regulation of all NSW workers compensation insurers.

icare comments:

icare is keen to engage in further detailed discussion with SIRA about this issue and welcomes the opportunity to co-design a regulatory model that:

- focuses on achieving improved outcomes for injured workers and employers, rather than on defining processes;
- adopts a risk-based, consultative, proportionate and best practice approach;
- ensures information requests are tailored to the extent necessary to secure regulatory objectives and minimise the impact on operations; and
- where verification is necessary, focuses on the assurance of governance frameworks that support key public policy outcomes related to service delivery to injured workers, affordability and the effective management and sustainability of the scheme.

icare is separately providing a submission to SIRA's discussion paper on *Workers compensation financial and premium supervision* in which further comment will be provided.

Conclusion

icare would be pleased to provide any further information required to assist with the development of a regulatory framework that supports a fair, effective, affordable and sustainable workers compensation system. As indicated, icare is supportive of a transparent co-design approach to ensure the needs of all stakeholders are taken into consideration, and is keen to understand the administrative and cost implications of the proposed amendments and across the broader scheme.

icare would welcome ongoing and detailed dialogue with SIRA on this matter and other matters involving the regulation of workers compensation in NSW.