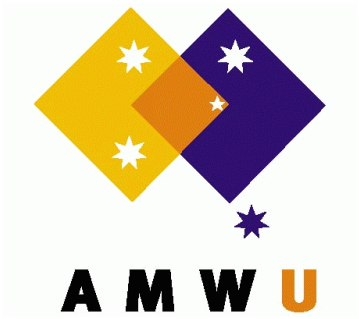
AUSTRALIAN MANUFACTURING WORKERS' UNION



Review of Self-Insurance Licensing Framework

December 2015

Principal Contact: Dave Henry

Organisation: Australian Manufacturing Workers' Union

Postal Address: [redacted]

Contact (phone/email): [redacted] / [redacted]

Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission with relation to the Review of Self-Insurance Licensing Framework.

2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU NSW Branch has 20,000 members. Our members are employed in the private and the public sectors, in blue collar and white collar positions, and in a diverse range of industries, vocations and locations.

3. A significant portion of our members are employed by employers who have been given the privilege of self-insurance for the purpose of workers compensation.

4. At the outset of this submission the union wishes to set on the record our opposition to the concept of allowing self-insurance in the arena of social insurance such as workers compensation. Reflective of the broader community's views of social insurance, it is inconceivable that CTP insurance would be allowed to be done via self-insurance arrangements. It begs the question why has it been allowed to encroach on workers compensation?

5. Self-Insurance creates a conflict of purpose between the objectives of workers compensation and the desire of the employer to make profit. Accordingly self-insured employers should be wound back and subject to strict audits resulting in removal of a license where non-compliance is identified. Until such a process is carried out the following should apply to self-insurers:

    - That SIRA conduct random audits on every self-insurer prior to the expiry of their license and provide a Tripartite Body with the result of such audits prior to the issuing of licenses. The audit would assess viability, work health & safety (WHS) and case management performance.

    - Prior to commencing in the role of a claims manager, or in any other role with responsibility for the management or oversight of workers compensation claims, a mandatory training course be completed delivered by SIRA. Such a course should provide a practical understanding of the role and associated legislation. The course should also contain topics geared towards improving communication and general people skills.

6. Is Licensing Appropriate?

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

The issues paper has limited the approach to this matter to a financial point of view. Where government allows for the use of self-insurance models, the government, or in this case 'the scheme' takes on risk which is not present with premium paying employers. Should the entity fail, or in the case of James Hardies with their asbestos liabilities, restructure the business and move offshore so as to avoid their liabilities, the burden will fall to the scheme and/or the community. History has shown whenever the scheme is financially strained it is injured workers and only injured workers who bear the costs.

Of concern to the union is the realised risk of self-insured employers using their privileged position to allow their primary interest of profit generation, determine their behaviour in the case management of injured workers.

Evidence of this can be seen when looking at the level of disputation created by self-insurers. Based on the figures provided in the WIRO Annual Report 2014[i], 25.4% of all disputes were generated by self-insurers. This is despite self-insured employers (as tabled in figure 1 of the issues paper) only representing 7% of wages and 11% of claims in the NSW scheme.

This evidence supports the view that many self-insured employers have taken a strategic position that creating barriers to injured workers by disputing their claims are beneficial to the organisations bottom line. This is likely as a result of the expected drop off by workers who either are not aware of their rights, or find the process of disputation to difficult and don't challenge the insurers' decision.

The current self-insurance licensing framework has failed to address these issues, as such the controls to manage these risks to the scheme either financially or in delivering legal entitlements as set out in the legislation are missing.

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

   The expectations of government should be reflective of the community's. Where an employer is granted the privilege of self-insurance it should be on the basis of 'zero risk' to the scheme as oppose to 'acceptable risk', which is subjective. The government should expect that their performance is as an exemplar employer particularly with respect to WHS and workers compensation.

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

   The value to an employer in dollars can only be answered by those with self-insurance; it is known it runs into many millions of dollars, creating a commercial advantage over its

competitors. Part of that value is the unprecedented level of control they can have over the lives of injured workers.

Evidence supporting this can be seen in matters like [redacted][redacted][ii], where the employer had sort to refuse the injured worker the basic right of choosing her own doctor, insisting that she attend a company doctor.

This manipulative control is played out regularly within other self-insurers. Another example can be found with AMWU members in [redacted] who have been directed to attend "company doctors" in strict contravention to the return to work program. Despite the program acknowledging the right of a worker to attend their own doctor, instructions have been issued to Managers directing them to send workers to [redacted] doctors, an organisation whose practices were discredited in relation to its dealings with [redacted] workers[iii].

Control is set beyond just choice of doctors, it includes control over rehabilitation providers, treatment including timeliness of decisions regarding treatment, suitable duties, in fact every aspect of an injured workers matter.

4. What are the intrinsic costs of being self-insured?

   Historically most self-insurers managed their claims in-house. For those insurers the limits of any costs were related to engaging, developing and maintaining the claims management skills and the initial development of systems to support the necessary processes. Those costs are quickly overtaken by the financial and control benefits which flow. Some self-insurers now outsource their claims management, typically to one of the Nominal Insurers scheme agents.

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

   A commitment to self-insurance and achieving better outcomes for their injured workers is diametrically opposed. Find a self-insurer who has not terminated an injured worker as a result of their injury? Find a self-insurer who has not initiated a workers compensation dispute?

7. Is Licensing Well Designed?

   Entry

   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.

There is no evidence to suggest that 500 is an appropriate minimum number. The argument that this number should be reduced is an argument to lower the bar further for more entrants and serves no benefit to the scheme, community or the injured workers.

It is noted the only stakeholders identified in the issues paper (Part 6) are the Self-Insurers Association and BlueScope Steel, in all instances the propositions put forward are self-serving.

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

When presented with the level of disputation and harm to injured workers by self-insurers, the evidence does not support that the current licencing entry requirements have the robustness to ensure only exemplar organisations are privileged with self-insurance. Further conflict arises when a significant portion of the self-ensured entities are NSW government.

The suggestion that uncapping or lengthening the period of a self-insurance licence "could improve the competitiveness of NSW as a place to do business" is unsupported by any evidence and has not been realised in any of the other jurisdictions which have longer licence periods. These suggestions are notions put forward by parties motivated by self-interest.

The issues paper fails to appreciate that shortened self-insurance periods are set where poor performance has been identified, normally as a result of the audit by the regulator. This is one of the tools available to the regulator to drive compliance.

3. What would define a self-insurer as a high performer?

- Professional, respectful and dignified engagement with injured workers
- Zero (non-consensual) terminations of injured workers
- Suitable duties found every time an injured worker is medically able
- Low rate of injuries
- Low rate of disputed matters
- Timely claims decisions
- Fast track treatment decisions
- Exceptional health and safety
- Meaningful & timely consultation with workers, HSRs and their unions

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?

The AMWU does not support any further lengthening of the licence period from the current 3 years.

The suggestion that uncapping or lengthening the period of a self-insurance licence "could improve the competitiveness of NSW as a place to do business" is unsupported by any evidence and has not been realised in any of the other jurisdictions which have longer

licence periods. These suggestions are notions put forward by parties with a vested self-interest.

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

   The implications for workers employed by self-insured employers if open-ended licences were adopted would be catastrophic both for injured workers & health and safety. Even with 3 year licences the evidence supports workers in a self-insured workplace are worse off than workers covered under the nominal scheme. Open-ended licences would be akin to self-regulation which equates in this area to no regulation.

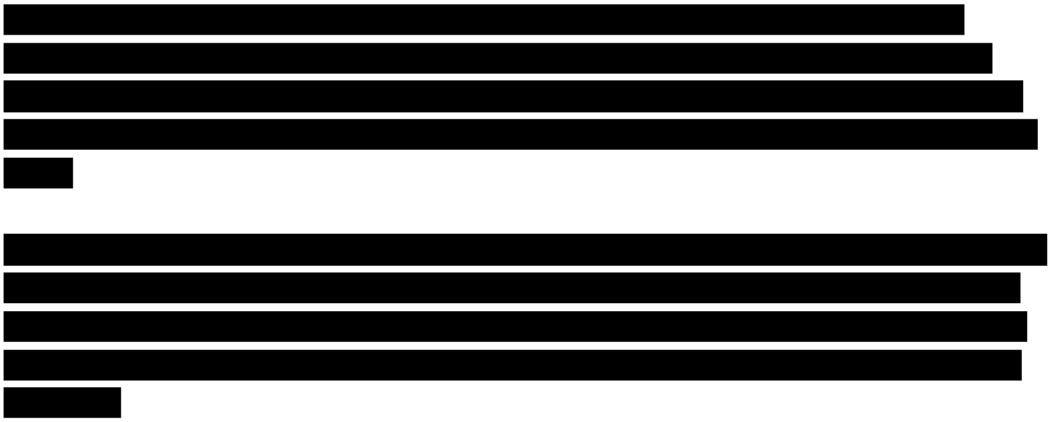
Financial

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

   The union supports the concept of transparency, whether an employer is a self-insurer or a premium payer there should be transparency in what is being paid for. The issues paper suggests however self-insurers are not paying in the annual levy for WHS regulatory services, this matter needs to be addressed.

Claims Management

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.



   Another issue is the NSW government has significant areas covered under self-insurance, based on historical performance this disempowers the regulator from taking the actions required as set out in their functions under the legislation and expected by the broader community.

   Evidence identifies that not one insurer has ever had action taken against it by the regulator under the current penalty provisions as found in NSW workers compensation

legislation, self-insurers have been emboldened to ignore the current legislative requirements as a result of this abandonment of duty.

Until robust regulation of the current claims management by self-insurers is enacted it is difficult to suggest what further mechanisms need to be adopted with the exception of penalties which will create a real disincentive for noncompliance. Current penalties provided under the legislation fail to achieve a disincentive even if they were utilised.

8. What indicators or risk factors should SIRA use to measure claims management performance?

   Claims management by self-insurers needs to be measured against a number of criteria. If self-insurers are indeed the exemplar performers purported by the regulator, then the standards should be set to meet this level of performance. There are key timeframes set within legislation which should be met without exception, this flows into the quasi-legislation which exists within the gazetted guidelines i.e. WorkCover Guidelines for Claiming Compensation Benefits 2013[iv].

   Self-insurers should also be bound by the regulators Operational Instructions, which set expected performance of the scheme agents.

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

   The union does not support the limiting of any audits on any self-insurers. As stated, self-regulation equated to no regulation. How do you determine lesser performing self-insurers if it is not measured?

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

    The Operational Instructions are an opportunity to establish best practice for all workers compensation insurers, this can also be accompanied by training provided (not outsourced) by the regulator. Participation in the training and adherence to the operational instructions should be set as a condition of licence.

    Disincentives also need to be introduced through the rigorous application of penalties for noncompliance and suspending or revoking licences, followed by broad publication.

Workplace Health and Safety

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.

    The union is aware of practices engaged by some self-insurers which make them a significantly greater risk of failing to maintain a safe workplace.

An example is [redacted] which has a recorded practice of using discipline and threating the employment of workers who report a workplace injury. As a result of this practice, workers are reluctant to report workplace injuries leading to hazards remaining in the workplace till another worker is injured. It also has led to workers being reluctant to participating in hazard identification or participating in post incident investigations as they don't want to get one of their workmates in trouble.

As a result of the control self-insurers are allowed to impose over injured workers, the union is aware of entitled workers who withhold making a compensation claim as a result of having seen workmates who have made a claim for workers compensation put through the 'wringer'. Practices include the abundant and unnecessary use of Independent Medical Practitioners, often in contravention of the WorkCover Guidelines on Independent Medical Examinations and Reports 2012[v] and the practice of terminating injured workers.

Where workers do not feel secure in making a workers compensation claim, safety matters are not being identified or fixed.

12. Are OHSMS audits improving WHS outcomes? How might this be improved?

The results to this question are mixed. The union has been encouraged by the engagement by a few self-insured employers with its members, its Health and Safety Representatives and the union in constructively developing, monitoring and reviewing safe systems of work and consultation mechanisms. As a result of this approach there has been a notable improvement to health and safety in these workplaces.

This however does not reflect the norm. Many self-insured employers continue to adopt a hierarchical, corporate structure to health and safety, dictating safe systems of work which often don't reflect or control the risks. These systems are designed by these employers to enable a demonstration of compliance to the regulator when auditing.

The unions experience is that many audits never venture into assessing the effectiveness of these systems or whether they were developed in accordance with Part 5 of the NSW Work Health and Safety Act 2011[vi]. Also of concern is the practice of employers coaching HSRs in the lead up to audits[vii] and the auditors allowing employers to direct them to the worker representatives to be engaged as part of the audit.

As is done in some jurisdictions the union recommends that audits should not be limited to a sampling practice but should be across all 5 elements of the National Audit Tool. The requirement should be to achieve 100% compliance with the criteria. Failure to achieve 100% should then have a direct relationship with the length a licence is offered for i.e. 100% compliance = offer of 3 year licence.

Workers and their representatives should be invited to review and contribute to the criteria and content of the audit tool and methodology employed when conducting audits.

Workers and their representatives should be empowered to choose who from amongst their number SIRA discussed the employers' safety systems/practices and a prohibition of coaching practices employed.

13. How should high WHS performance be defined?

    Compliance with the NSW Work Health and Safety Act 2011 would be a good start. There should also be enquiry as to how the self-insured employer is striving to achieve the objectives of the health and safety legislation as set out in section 3[viii].

    It is noted that the self-insurance audit tool fails in some areas to mirror the Work Health and Safety Act 2011 and as such fails to give a clear picture of whether high performance has been achieved. i.e. *3.4.2 The organisation, in consultation with employees, has determined the number of employee representatives required to effectively represent all employee work groups* Vs section 52 of the Act[ix].

    This failure is as a result of the secretive Heads of Workers Compensation Authorities (HWCA) being the body that developed the audit tool. It is the unions view the audit tool should have been developed by a tripartite body which would have been a more appropriate mechanism given the broader scrutiny required.

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?

    The Commonwealth "ComCare" scheme requires self-insured employers to consult with their employees and any union as part of the application and renewal process. Evidence of support from these sources is sort as an administrative requirement. The intent is that this process creates accountability towards those whom are subjected to the self-insurance arrangement. Unfortunately to date this process has been tokenistic.

    This process should be duplicated and enhanced, so that where workers and their unions don't support the employer's application or renewal i.e. as a result of poor performance or practice, the employer would be required to table an action plan for improvement agreed with the parties as part of their application.

    The other area that needs to be adopted is complaints to the WHS regulator (SafeWork NSW) and PINS or cease works issued by trained HSRs.

8. Is Licensing Administered Effectively/ Efficiently?
   Financial
   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?

      The union is not in a position to provide detailed financial and risk management advice with respect to workers compensation. Our position is that the regulator needs to ensure that a self-insured employer is able to meet their liabilities at any point in time both now and future liabilities. Further, the scheme needs to be protected from liabilities which arise from

employers who were self-insured and are no longer as a result of insolvency or company restructure.

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?

   See previous answer.

Claims Management

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

   Self-Insurance creates a conflict of purpose between the objectives of compensating injured workers and the desire of the employer to make profit. This conflict of interest is all encompassing and effects every facet or workers compensation without exception.

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

   What evidence has been provided with regards to the privacy of claimants' information which would suggest it is not an issue? This question has been presented with a clear bias.

   The issue of failure to provide adequate privacy is prevalent with all self-insurers. Some of the larger self-insurers are big enough to be able to separate the private documentation from the workplace, but often the information leaks back and is used at a later stage as a weapon against the worker or as a justification for dismissal (medical retirement).

   It is common for a union to be representing an injured worker at a meeting discussing sacking the worker due to their injury, with both the employer and the insurer at the table exchanging documents to enable a justification of the action.

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?

   The union is aware that all insurers whether scheme agents or self-insured employers have their pet doctors. The term **independent** medical examiner makes mockery of what is in reality occurring. This area is a clear example of where self-regulation fails to protect the people at the centre of the scheme as the influence of profit corrupts.

   The selection and making of an appointment of an IME should be via the regulator (SIRA) on application by the self-insurer. In doing this the scheme could remove the practice of non-compliance with the gazetted guidance and remove any selection bias. This would also enable the regulator to vet out medical examiners that consistently provide poor quality reports or miss reporting timeframes and leave compliant examiners on a rotary allocation system.

6. What should SIRA's claims management compliance monitoring and enforcement activities look like and how do they differ from your experiences?

   The union is unable to comment in relation to the current practice for auditing claims management as workers and their representatives are sidelined from this hidden process. As previously stated "*The evidence at hand indicates that not one insurer has ever had action taken against it by the regulator under the current penalty provisions as found in NSW workers compensation legislation, self-insurers have been emboldened to ignore the current legislative requirements as a result of this abandonment of responsibility.*

   Until robust regulation of the current claims management by self-insurers is enacted it is difficult to suggest what further mechanisms need to be adopted with the exception of penalties which will create a real disincentive for noncompliance, currently the penalties provided under the legislation would fail to achieve this even if they were utilised".

   This claim is further supported by the WorkCover Independent Review Officers (WIRO) submission to the Functions of WorkCover Authority Review which submits in relation to insurer noncompliance, "*Section 23(l) provides the specific function for compliance and enforcement activity in relation to injury management, worker rehabilitation, workers compensation insurance and insurance licencing.*

   A review of the WorkCover and lawlink websites do not disclose any compliance or enforcement activity in relation to offences created under the workers compensation acts, despite there being many offences"[x].

   Moving forward it is apparent at a minimum that all matters regarding claims management compliance raised with SIRA from the WIRO or a registered trade union should be thoroughly investigated and if noncompliance is uncovered prosecuted, as they are strict liability offences. Further, offences should have an immediate impact on a self-insurers licence and not be set aside until such time as the current licence has expired.

7. How could the claims management audit tool be improved to deliver improved assessment on the compliance of case management practices and to improve performance?

   The current claims management audit tool is limited to broad requirements conducted under a self-audit which is reported to the regulator i.e. self-regulation.

   This submission recommends that there be a review of the tool and how it is applied via a tripartite committee. Due to the exclusions of workers and their representatives in the development of this tool the underpinnings of the document require examination.

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

   This submission has previously provided comment with regards to regulatory action to improve claims management practices. With regards to return to work, the inconsistent

approach of the regulator has left a self-regulated environment which has degenerated into chaos.

As this paper is being written the union has two stark examples which highlight this inconsistence. At one site, a food manufacturer in Western Sydney where the employer has threatened to not provide suitable employment, the regulator was notified and within days of the complaint an inspector had visited the site and notified the employer if suitable employment was not provided that a notice would be issued.

At a second site, a ship maintenance facility on Sydney Harbour in circumstances where the employer has refused to provide suitable employment, the union is still waiting for the regulator to service the complaint some 4 weeks after it was made.

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?

Injured workers would benefit from their claims being transferred away from their employer for the reasons stated above. There should be no 'additional' liability costs for self-insurers as the employer would have to meet the costs of the claims regardless. With the transfer of a worker(s) to the nominal insurer, it is imperative to ensure that actuarial advice of future claims costs (including IBNR's[xi]) is provided at cost but independent (i.e. selected by the regulator) of the employer to the nominal insurer. This should not be done on a central estimates basis but on a much narrower risk margin.

Workplace Health and Safety

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

During the Review of the exercise of the functions of the WorkCover Authority, a number of concerns were expressed by review participants coloured by self-interest, about the regulatory requirements imposed on self-insurers, particularly in regard to the financial cost of the health and safety audits and the capacity of self-insurers to meet the prudential risk of self-insurance. Some review participants proposed changes to the current regulatory framework to ease the burden on self-insurers[xii].

The union noted the position put forward by Mr Watson (WorkCover) during the enquiry, who advised the Committee that "*the rationale behind the audits being to ensure that self-insurers are 'exemplar performers' in regard to workplace health and safety*"[xiii].

The New South Wales Workers Compensation Self Insurers Association asserted that "*the auditing requirements faced by self-insurers are overly arduous, particularly in regard to the financial and time costs of completing the audits*". The association was adamantly opposed to "*the imposition of health and safety audits on its members, deeming the audits to be an example of costly 'over-regulation'*", "*the cycle of audits is costly and time consuming to prepare for, with many self-insurers engaging specialists to assist in audit preparations*".

Mr Watson's correctly responded to these baseless allegations when he stated, "*audits should review normal operations and documentation, and accordingly not involve extensive extra preparation time or additional costs*".

It is clear from the evidence provided by the self-insurers and their association that they have been 'fixing the system', not presenting the norm but an illusion of how the employer manages health and safety and workers compensation. The regulator (who has been aware of this practice) turning a blind eye, has created a situation where self-insurers unjustifiably feel hard done by that they have to pay a cost for rorting the system. It is not the schemes fault that self-insured employers bear a cost when they engage in the perversion of a regulators audit. This activity should be considered a criminal matter.

The union recommends that the OHSMS component of the audit have a 100% compliance requirement. That SIRA conducts random (unannounced) audits on every self-insurer during the course of the license and provide a Tripartite Body with the result of such audits for consideration prior to the issuing of licenses.

Collection and provision of information

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?

    No. The regulator has identified that the same reporting requirements which are placed on the nominal insurers scheme agents does not apply to self-insured employers. This has not only lead to an increase in non-compliance with regards to claims management but hides WHS performance which in some instances would warrants further investigation by SafeWork NSW. This issue is exacerbated when it is understood that the scheme agents only provide the information as a data dump monthly as oppose to real time.

    The regulator needs to develop system's which can be integrated with scheme agents and self-insurers which will provide real time data by which claims management and WHS performance can be measured.

12. How could transparency of performance data be improved and should it be improved?

    The union was critical of the fact that the results of self-insurer audits are not publicly available during the Review of the exercise of the functions of the WorkCover Authority. Where there is privilege there should also be higher levels of accountability.

    The union agrees with the issues paper option that *Making self-insurer performance data publicly available, potentially in a form where individual businesses are not identified*, would be a positive step. Not only would this create a greater level of public transparency, but would give other self-insurers an opportunity by which to benchmark themselves.

9. Is the Licensing Scheme the Best Response?
    1. What impact does self-insurance have on the broader NSW system and the Nominal Insurer?

    Social insurance is in part based on the concept of all potential liable parties sharing the risk, so as to ensure that in the occurrence of a liability being realised it does not lead to unreasonable hardship or default of the liable party.

    In allowing privileged employers to self-insurer, particularly with a minimum employee criterion, this weakens the remaining pool and undermines the concept of social insurance in essence it is contrary to the intention of workers compensation legislation.

    It is noted that within the WorkSafe Tasmania Consultation Overview Paper, Red Tape Reduction in Rehabilitation and Compensation Act 1988, Stage 2, Potential Amendments (August 2015). One of the areas of consideration was in relation to, *employers who wish to self-insure against workers compensation liability. The Act currently allows employers to apply for permits to self-insure, and contains a number of requirements for these. The WorkCover Tasmania Board must consider a number of factors before issuing a permit, including the employer's financial history, ability to satisfy prudential standards, capacity to comply with the Act and commitment to health and safety, amongst others.*

    The conclusion was;
    Potential amendment:
    Proposal 1: Remove the provision for permits
    In this scenario, employers would no longer have the ability to self-insure. Self-insurance provides minimal additional benefit to the workers compensation scheme but creates additional complexity to the Act's requirements and removal of these sections would streamline the Act.

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

    Define significant matters?
    Is there any evidence of self-insurers reporting significant matters to the regulator?

    The total lack of transparency when it comes to self-insurers effectively hides what little reporting does occur. If it is to be accepted that self-insurers are not reporting significant matters to the regulator, then it is a reasonable conclusion that there are adverse outcomes for the effected workers.

    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?

        - An employer granted the privilege of self-insurance must be on the basis of 'zero risk' to the scheme as oppose to 'acceptable risk' which is subjective and prone to failing safeguards. Performance as an exemplar employer, particularly with respect to WHS and workers compensation, must be demonstrated and transparent.

- Penalties which will create a real disincentive for noncompliance, currently the penalties provided under the legislation would fail to achieve this even if they were utilised.

- Key timeframes set within legislation which should be met without exception, this flows into the quasi-legislation which exists within the gazetted guidelines i.e. WorkCover Guidelines for Claiming Compensation Benefits 2013.

- The Operational Instructions are an opportunity to establish best practice for all workers compensation insurers, this can also be accompanied by training provided (not outsourced) by the regulator. Participation in the training and adherence to the operational instructions should be set as a condition of licence.

- Disincentives also need to be introduced through the rigorous application of penalties for noncompliance and suspending or revoking licences, followed by broad publication.

- As is done in some jurisdictions the union recommends that audits should not be limited a sampling practice but should be across all 5 elements of the National Audit Tool. The requirement should be to achieve 100% compliance with the criteria. Failure to achieve 100% should then have a direct relationship with the length a licence is offered for i.e. 100% compliance = offer of 3 year licence.

- Workers and their representatives must be invited to review and contribute to the criteria and content of the audit tool and methodology employed when conducting audits.

- Workers and their representatives should have the right to choose who, from amongst their number, SIRA discussed the employers' safety systems/practices and a prohibition of coaching practices employed.

- The Commonwealth process should be duplicated and enhanced, so that where workers and their unions don't support the employer's application or renewal i.e. as a result of poor performance or practice, the employer would be required to table an action plan for improvement agreed with the parties as part of their application.

- The union recommends that the OHSMS component of the audit have a 100% compliance requirement. That SIRA conducts random (unannounced) audits on every self-insurer during the course of the license and provide a Tripartite Body with the result of such audits for consideration prior to the issuing of licenses.

- The introduction of a new criminal provision for organisations and their Officer, applied where evidence is found that they have or have attempted to pervert the regulators audit.

- The regulator to develop system's which can be integrated with scheme agents and self-insurers which will provide real time data by which claims management and WHS performance can be measured.

- The union agrees with the issues paper option that Making self-insurer performance data publicly available, potentially in a form where individual businesses are not identified, would be a positive step. Not only would this create a greater level of public transference, but would give other self-insurers an opportunity by which to benchmark themselves.

End

[i] http://wiro.nsw.gov.au/media/43410/wiro_ar_2014.pdf

[ii] [redacted]

[iii] [redacted]

[iv] http://www.workcover.nsw.gov.au/__data/assets/pdf_file/0020/16580/claiming-compensation-benefits-work-capacity-and-review-of-work-capacity-decisions-guidelines-3895.pdf

[v] http://www.workcover.nsw.gov.au/__data/assets/pdf_file/0016/25171/independent-medical-examinations-reports-guidelines-3740.pdf

[vi] http://www.legislation.nsw.gov.au/maintop/view/inforce/act+10+2011+cd+0+N

[vii] See paragraph 9.23, Standing Committee on Law and Justice, Review of the exercise of the functions of the WorkCover Authority.
https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/b1ca15445d2e3779ca257d560003d91b/$FILE/Final%20Report%20-%20Report%20No.%2054%20-%2017%20September.pdf

[viii] 3 Object
(1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:

(a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant, and
(b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety, and
(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment, and
(d) promoting the provision of advice, information, education and training in relation to work health and safety, and
(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures, and
(f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act, and
(g) providing a framework for continuous improvement and progressively higher standards of work health and safety, and
(h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.

(2) In furthering subsection (1) (a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant as is reasonably practicable.

[ix] 52 Negotiations for agreement for work group
(1) A work group is to be determined by negotiation and agreement between:

(a) the person conducting the business or undertaking, and
(b) the workers who will form the work group or their representatives.

(2) The person conducting the business or undertaking must take all reasonable steps to commence negotiations with the workers within 14 days after a request is made under section 50.
(3) The purpose of the negotiations is to determine:
(a) the number and composition of work groups to be represented by health and safety representatives, and
(b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected, and
(c) the workplace or workplaces to which the work groups will apply, and
(d) the businesses or undertakings to which the work groups will apply.
(4) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.
(5) The person conducting the business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.
Maximum penalty:
(a) in the case of an individual—$10,000, or
(b) in the case of a body corporate—$50,000.
(6) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of agreements concerning work groups.

[x] http://wiro.nsw.gov.au/media/32905/WIRO_Submission_to_Law_And_Justice_Review_of_WorkCover_2014.pdf

[xi] Injured but not reported i.e. latency disease etc.

[xii] See paragraph 9.11 Standing Committee on Law and Justice, Review of the exercise of the functions of the WorkCover Authority.

[xiii] See paragraph 9.8 Standing Committee on Law and Justice, Review of the exercise of the functions of the WorkCover Authority.