

16 December 2015

The State Insurance Regulatory Authority

Dear Sir/Madam

Fairfield City Council Welcomes the opportunity to participate in the review of the self-insurance licensing framework and respond to the Issues Paper developed in regard to the review.

Council will respond to the specific questions directed at stakeholders in the issues paper the Association responds as follows:-

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?

Council's view is that the administrative burden of the current licencing framework is disproportionate to those posed by other employers. Self-insurers are impacted by the direct and immediate costs that arise when an employee is injured. Council has an incentive to have a robust safety system and sound claims management to minimise the statutory claims management costs.

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

It is the view of Council that a reduction of expectation by the regulator towards self-insurers is required. It would be beneficial if the regulator utilised current legislation as the minimum requirements, rather than overlaying additional requirements, where the incentive for the organisation to perform well is direct claims costs. Administrative requirements should be resolved to only be related to areas of direct risk reduction.

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

Council's view is that there are a number of elements of self-insurance which provide value to an employer:

- Direct responsibility for risks for workplace injury and a concurrent direct incentive to reduce costs
- Ability to manage structured return to work for injured employees, which generally results in an improvement in relations with employees
- Improved flexibility in the provision of assistance to injured workers
- A reduction in the administrative burden via a third party claims management.

1.4 What are the intrinsic costs of being self-insured?

There are a number of intrinsic costs in being Self-insured:

- Claims management staff,
- Costs imposed as a result of regulatory compliance and compliant against overlaid SI requirements,
- Costs associated with systems for workplace injury and compensation management,
- Costs associated with additional requirements of being self-insured e.g. audits (WHS and Claims), levies paid to regulator,
- Costs associated with holding bank guarantees,
- Additional training requirements imposed by the NAT,
- Setting aside a provision for outstanding liabilities,
- Table of current estimated cost in managing a WHSMS excluding claims.

WHS Budget 2014-15	
WHS Personnel Labour and On-costs (6 Persons)	
Uniforms and Personal Protective Equipment	
WHS Training	
Audit and Compliance Costs	
First Aid Labour	
First Aid Supplies	
WHS Consultation Framework (including ELT, Safety Leadership Team, WHS Committee and Safety Advocates)	
WHS Branch Budget	
TOTAL	

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

The manner in which senior executives of self-insurers demonstrate the commitment to both self-insurance and better outcomes for injured workers at Council is via regular reporting, annual KPI reviews, weekly Notification of Injury reporting to executive management, annual strategic plan review, Council's consultation framework, Council annual report to the community and training managers and supervisors in Injury Management.

2 IS LICENSING WELL DESIGNED?

- 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.

Council does not have a view of the number of staff that should be required to be a Self-Insurer. Administrative and underwriting costs relative to workers' compensation liabilities will usually dictate the viability or otherwise of self-insurance.

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

Council participation in the entry to become a self-insurer was under the previous Self Insurer model. The process for Council during that time was less prescriptive than the requirements today.

- 2.3 What would define a self-insurer as a high performer?

To define what a high performer looks like is difficult to deduce. The complexity of SI and requirements vary greatly and are governed by legislation, with minimum compliance. The various risk profile of self-insurers will make it difficult to determine a suitable definition and/or equitable benchmark of a high performer. It is Council's view that self-insured companies could be regarded as high performers in the area of workers compensation, work health and safety and solvency, as the threshold to be a Self-Insured organisation is higher than not.

- 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?

Longer licensing terms will have the immediate effect of reducing red tape and administrative burden within the regulation. In the view of Council, the licensing term should be open ended. Council would be open to a litmus testing approach by the regulator.

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

The impact of implementing an open-ended licence renewal period in New South Wales would be positive in reducing regulation and providing long-term security. Council does not believe performance and compliance levels would decline, as self audits and compliance audits are regulated to ensure continual improvement. Self-insurers have an internal incentive to ensure they have a compliant and implemented WHSMS to decrease injuries and lower claims costs.

FINANCIAL

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

The calculation and amounts of levies should be entirely transparent as should the specific manner in which such fees and levies are spent.

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.

Council's view is that efficient and effective claims management is in itself an incentive for a Self-Insured organisation. This is complimented with a robust Work Health and Safety Management System. Reducing regulatory and administrative burden requirements that deviate from producing positive safety and claims management outcomes would be beneficial. Resources can be focussed on direct initiatives. For example, lengthy safety audits could be replaced by a proactive Risk Based Compliance Audit schedule reported to the regulator (direct impact of safety and system performance).

- 2.8 What indicators or risk factors should SIRA use to measure claims management performance?

SIRA involvement, if required, could be advice. A self-insurer already has the most direct incentive to optimise its claims management performance and employs qualified professionals to manage this. Further, data given to SIRA is clearly sufficient to consider and assess claims risk if this was necessary in any event.

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

The impact of limiting or, preferably, removing claims management audits altogether, would be minimal. Self-insurers already self-audit and have additional regulatory oversight.

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

Council would welcome a collaborative approach to innovation. Consultation and development of new initiatives with current self-insurers may see better uptake across the industry and a reduction in administrative burden. In regards to better return to work outcomes, it is the self insurers' own incentive to have good outcomes financially and for their valued employees.

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.

In the view of Council there are generally no factors that make self-insurers any greater risk and rather self-insurers are generally a lesser risk. They are subject to the total direct cost of all claims and therefore have a greater incentive than other employers to improve safety outcomes. At present a negative impact on safety issues for self-insurers is the requirement to deploy substantial work health and safety resources and employees away from safety initiatives to accommodate Work Health Safety Audits by the regulator. The administrative burden and cost associated with this exercise is substantial. This is compounded pending the size of the self-insurer.

- 2.12 Are OHSMS audits improving WHS outcomes? How might this be improved?

Council is of the view that Self Insurance audits are not improving Work Health Safety outcomes. Self-Insurance audits focus on administrative processes and not practical safety initiatives.

For example; Council may have a robust safety culture, positive practical safety performance and low claims cost and injury notifications. However the WHSMS may have minor systemic issues that can lead to an unsuccessful audit and put at risk their licence.

Regulated compliance and self-audits allow for greater and more practical improvements to council systems rather than a one size fits all approach.

- 2.13 How should high WHS performance be defined?

This is not a matter that should be the subject of licensing conditions. However, a organisation that continually meets set objectives and KPI's (strategy) set by an Executive Management Team towards continual improvement are performing at a high level. Council can report as required to the regulator on the WHSMS performance.

- 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?

It is unnecessary for the regulator to be involved in the consideration of Work Health Safety performance so far as the issue of licensing is concerned. It would be beneficial for the regulator to work with organisations in an education capacity if an issue is

identified. Council would be agreeable for a follow up to review implementation and corrective actions. Infringements and prosecutions should only be enforced in the event that a Self-Insurer has been reckless as a PCBU.

FINANCIAL

3 IS LICENSING ADMINISTERED EFFECTIVELY/EFFICIENTLY

- 3.1 The current retention amounts for reinsurance are \$100,000.00 to \$1,000,000.00 per event. Should the excess for reinsurance be increased? If so, to what dollar amount?

Council's view is that these amounts are appropriate for present purposes but that they should be indexed.

- 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?

Council's view is that the present security arrangements are appropriate.

CLAIMS MANAGEMENT

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

Council does not consider that any conflict of interest arises by reason of self-insurance. If anything, respective interests are better served in a self-insured environment. Information gathered can only be used for the purposes it is collected.

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

Dealing with privacy issues are no different for employers generally and self-insured employers.

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

Council knows of no evidence at all of any such conflict of interest. Information gathered can only be used for the purposes it is collected. The regulator approves the independent medical examiners.

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

SIRA can provide regular updates on performance of all Self insurer and benchmarking. The requirement to conduct self-audits and report to regulator would be sufficient.

- 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?

Councils view is that the audit tool does provide a snap shot on compliance however does not improve performance in regards to claims management and achieving positive outcomes. In some instances the requirements that can fail a claims audit are non-critical in the overall outcomes for an injured worker.

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

Council view is that regulatory action is not appropriate in the areas of claims management 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?

Councils view is that this matter should be dealt with on a case by case basis.

WORKPLACE HEALTH AND SAFETY

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

In the event that a self-insurer wanted to direct Work Health Safety resources to auditing this can be done on an entirely voluntary basis. If audits are to continue they should have a greater focus on practical safety and safety results, ensuring there are no critical systemic issues rather than an administrative exercise. The NAT tool should be closer aligned to the Act, to make it less onerous and prescriptive. The rating scale also needs to be reviewed to consider critical and non-essential criteria and the removal of a pass or fail mark. A non-conformance report with timeframes for corrective action completion would be more beneficial for continual improvement than a loss of licence.

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?

Council's view is that the regulator is provided with sufficient data to monitor all areas of Self Insurance Performance.

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

Utilising the data and bench marking across the industry, individual Self Insurers can see how their risk management strategies are performing. However, individual risk profiles of Self Insurer will need to be taken into consideration.

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?

Self-insurance has a very positive impact on the broader NSW scheme and the Nominal Insurer by improving standards in case management and return to work. Self-insurance provides a critical area of competition to the Nominal Insurer which drives improved performance and lower costs.

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?

Council has a systemic reporting process to Safe Work NSW and SIRA when required. It is driven by the WHSMS and transparent across the organisation to ensure continual improvement and assistance from the regulator to resolve complex matters. Council knows of no evidence of any adverse outcomes from Council not reporting significant matters to the regulator. In fact all significant matters are reported to the regulator by Council.

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?

Council view is that Government should have a specific policy that mandates self-insurance licensing for Government entities and state owned corporations where they otherwise qualify. In addition, Government policy should actively encourage the granting of self-insurers' licence to all organisations.

CONCLUDING REMARKS

Council's view is that the following information provided allows for adequate oversight and monitoring:

- The reduction of the administrative and regulatory burden is disproportionate to the safety and claim outcomes.
- Cost benefit for self-insurance to retain the licence should be based on risk management strategies and not an overburden of administrative requirements rather positive outcomes.
- Self-insurer should be encouraged to reduce indirect cost without compromising safety.
- For the purpose of licence renewal could be assessed thorough reported outcomes measures included in monthly Workers Compensation data and the annual self-insurer performance report

- Cost of administration and underwriting are disproportionate to risk and nominal insurers,
- Greater consideration on internal and compliance audits included in annual self-insurer report, including an audit schedule, audit results, corrective actions and evidence of continual improvement.
- SafeWork NSW to visit the business (for auditing purposes) only if performance has dramatically declined, based on annual Workers Compensation data submitted and annual self-insurer report submitted

If audits were to continue, Council's view is that the following changes should be considered:

- Litmus test audits on poor performance against organisational strategy or industry benchmark
- Audit completed by a 3rd party (as is financial audits)
- A reduced NAT and claims management Audit, that is more focused on safety and claim outcomes and critical components of the WHSMS rather than an administrative exercise
- SafeWork NSW to visit the business in the interim (for auditing purposes) only if performance has dramatically declined, based on quarterly Workers Compensation data submitted and annual self-insurer report submitted

Yours faithfully,



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