

Review of the NSW self- insurance licensing framework Final Report

State Insurance
Regulatory Authority

July 2016

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Executive summary

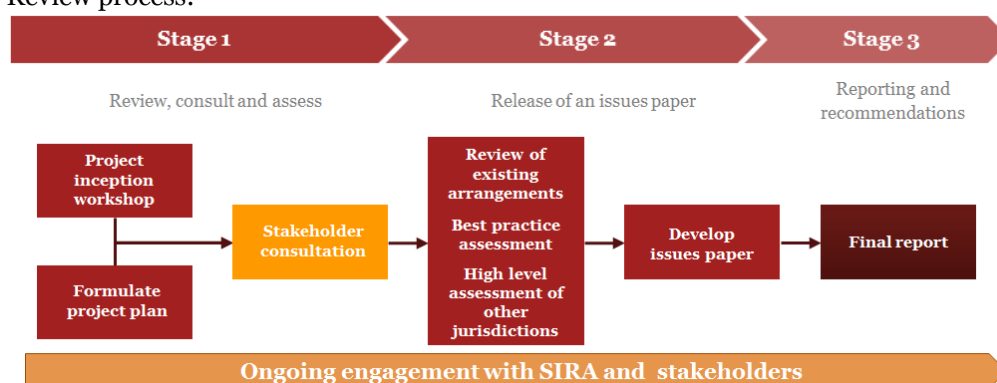
About the review

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

SIRA has engaged PricewaterhouseCoopers Australia (PwC) to undertake a review of the current licensing framework for self-insurers within the New South Wales (NSW) workers compensation system.

The aim of the review is to establish a fit for purpose, best practice self-insurance licensing framework that incentivises the performance of self-insurers to achieve better outcomes.

Review process:



Current state of self-insurance in NSW

In the context of workers compensation, self-insurance provides organisations with the opportunity to take direct responsibility for the management of their claims and payment of claim liabilities. As of July 2016, there were 56 licensed self-insurers, including a range of shire and city councils, and group self-insurers.

Coverage of organisations licensed by SIRA to be self-insured:



In 2001, SIRA (then WorkCover NSW) established the self-insurance licence criteria that remain in place today. The current requirements can be grouped into four categories. These are:

- entry and renewal requirements
- financial requirements
- claims management requirements
- workplace health and safety (WHS) requirements.

To assess the current licence requirements against best practice principles, consultation was undertaken with a broad range of stakeholders representing self-insurers, workers, regulators and service providers.

In response to an Issues Paper, the review received submissions from 36 stakeholders, ranging from self-insurers and businesses supporting outsourced self-insurer arrangements to WHS auditors and employee and injured worker representatives.

The stakeholder engagement has informed the development of the proposed framework and detailed recommendations contained in this report.

A new framework for self- insurance in NSW

A new framework for self-insurance in NSW has been designed to:

- incentivise self-insurers to improve their **performance** by redesigning the licence requirements and conditions
- provide self-insurers with a level of **earned autonomy** (and reduced regulatory burden) where they have demonstrated a high level of performance
- enable **continuous oversight/assessment** of self-insurer performance, moving away from the traditional approach of less frequent, point-in-time assessments.

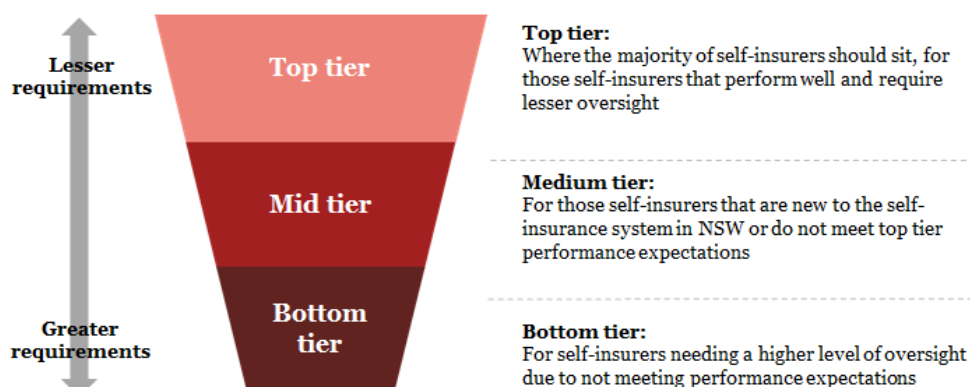


The proposed framework provides a risk-based, fit for purpose approach to better align the self-insurance framework with the new regulator's objectives.

There are a number of important benefits to the proposed framework, including that:

- it recognises the underlying incentives faced by self-insurers
- it is risk-based, as compliance monitoring activities are directly scaled against performance
- it reduces the compliance burden for many self-insured organisations
- higher performing licensees are rewarded for performance as the costs they bear for being licensed are reduced
- lesser performing self-insurers are given a direct incentive to improve performance
- it is administratively more efficient as SIRA can target its oversight activity on fewer higher risk organisations.

A three tiered operating model is proposed, with those self-insurers that exhibit high levels of performance and meet SIRA's operational and reporting obligations being subject to fewer oversight requirements. Conversely, self-insurers that do not meet performance requirements will be subject to greater oversight from SIRA to assist them to lift their performance.



Recommendations

The recommendations underpinning the proposed framework are detailed in the body of this report. They can be grouped into three categories:

- 1 **Operating model** – recommendations that relate to the operationalisation of the new model for self-insurance in NSW.
- 2 **Oversight** – recommendations relating to changes or additions to specific oversight requirements under the self-insurance licensing framework.
- 3 **Financial** – recommendations relating to financial requirements under the self-insurance licensing framework.

The recommendations are listed in Table 1.

Table 1: Recommendations – by category

Report recommendations
Operating model <p>Recommendation 1: Implement a three-tiered oversight model for self-insurance, based on self-insurer performance. Under this model:</p> <ul style="list-style-type: none"> - Self-insurers that exhibit higher levels of performance against outcome measures and meet SIRA's operational and reporting obligations will be subject to fewer oversight requirements from SIRA. Most self-insurers are expected to be in the top tier over the medium-term - Self-insurers that do not meet performance requirements and/or do not meet SIRA's operational and reporting requirements will be subject to greater oversight from SIRA. The bottom tier is intended to be a short term allocation for lesser performers, with self-insurers either improving their performance to move to the mid tier, or otherwise placing their self-insurance licence at risk - An intermediate level of oversight is proposed for medium performers (mid tier). New self-insurers would enter the scheme at the mid tier until they have proven their ability to meet SIRA's performance requirements. <p>Recommendation 2: Increase the licence term to a maximum of 8 years for higher performing self-insurers (i.e. with top tier self-insurers having a longer renewal period than other self-insurers) and maintain shorter terms for other self-insurers (including new self-insurers).</p>
Oversight <p>Recommendation 3: SIRA should consider the views of industry, employees and injured worker representatives when assessing a self-insurer's performance, tier placement and/or licence renewal. This may include:</p> <ul style="list-style-type: none"> - using its legislative authority to require licence applicants to advertise or give notice of their application - collecting feedback on self-insurers from employee and injured worker groups - incorporating stakeholder feedback into self-insurer performance measures. <p>Recommendation 4: Adopt a risk-based approach to claims management oversight, in which top tier self-insurers are subject to fewer audit requirements than middle and bottom tier employers. This could include:</p> <ul style="list-style-type: none"> - top tier employers - conducting claims management self-audits at least every 2 years and completing a claims management audit at licence renewal (or if concerns are raised) - mid tier employers - conducting annual claims management self-audits and completing a claims management audit at licence renewal (or if concerns are raised) - bottom tier employers - conducting annual claims management self-audits and completing an annual claims management audit conducted by SIRA (six months following the self-audit). <p>Recommendation 5: Redevelop the existing claims management audit tool to ensure that it:</p> <ul style="list-style-type: none"> - is fit for purpose under the new regulator's objectives - is compatible with the audit of historical claims

Report recommendations

- can be directly linked to claims management performance measures.
-

Recommendation 6: Develop complementary measures (to traditional audits) to assess claims management performance including:

- 'random' spot checks of self-insurers claims management functions by SIRA
 - a periodic survey of injured workers across both self-insured and nominally insured employers
 - regular assessment of claims management performance data by SIRA.
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Recommendation 7: Require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and an insurer for workers compensation

Recommendation 8: Remove the OHSMS self-audit and OHSMS audit requirements from the self-insurance licensing framework. Instead, rely on the existing WHS engagement and enforcement activity undertaken by SafeWork NSW that applies to all employers in NSW. Also, establish a new and contemporary framework for referring any WHS issues that come to SIRA's attention to SafeWork NSW.

Recommendation 9: Establish an integrated and automated data analysis system to enable SIRA to better assess self-insurer performance. This system will support the proposed risk-based approach to self-insurance oversight by SIRA.

Recommendation 10: Prepare a quarterly summary performance report for each self-insurer that provides transparency on its performance relative to other self-insurers and its industry.

Recommendation 11: Publish on SIRA's website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme. This could include indicators on:

- claims management and return to work outcomes
 - relative incident and claims volumes
 - compliance rates in relation to SIRA's reporting and data provision requirements
 - injured worker satisfaction.
-

Recommendation 12: Introduce a data auditing program to help to ensure that data submitted by self-insurers and published by SIRA are accurate.

Recommendation 13: Require self-insurers to formally advise SIRA of any strategically significant matters related to their management of claims, including:

- any cases to be litigated in a court
 - any cases expected to generate significant public interest.
-

Financial

Recommendation 14: Align SIRA's cost recovery model more closely with the regulatory effort incurred by the regulator by differentiating self-insurer licence fees based on their level of performance. The fee structure would be aligned with the proposed three tiered model.

Recommendation 15: Provide a mechanism by which employers that exit the self-insurance scheme are required to pass on their tail claims to a licensed insurer. This would require the employer to pay a buyout amount covering the cost of its outstanding claims liabilities.

Recommendation 16: SIRA, in consultation with its actuaries, should consider updating the prudential requirements to ensure that they remain fit for purpose, including:

- updating its guidance in relation to the calculation of outstanding claims liabilities
 - increasing the minimum claims handling expense assumption
 - introducing a minimum security requirement
 - allowing self-insurers with large amounts of claim liabilities to utilise a different valuation methodology
 - increasing the retention amount range
 - increasing the level of the retention amount beyond which approval is required from SIRA.
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1 Introduction

1.1 Purpose of the review

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

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

Under the *State Insurance and Care Governance Act 2015*, the principal objectives of SIRA in exercising its functions are to:

- promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation and motor accidents legislation and the other Acts under which SIRA exercises functions
- minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with such injuries
- promote workplace injury prevention, effective injury management and return to work measures and programs
- ensure that persons injured in the workplace or in motor accidents have access to treatment that will assist with their recovery
- provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation
- promote compliance with the workers compensation and motor accidents legislation.

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

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

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

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

1.2 Review scope

In order to develop a set of recommendations for a best practice self-insurance licensing framework, the scope of the review involves:

Stage 1 – Review, consult and assess

- development of a review methodology specifying the analytical framework to be applied (refer to section 1.5)
- a desktop review of relevant current literature along with a review of self-insurance models in other jurisdictions (refer to Appendix D)
- an assessment of current licensing requirements against the Independent Pricing and Regulatory Tribunal's (IPART's) licensing framework (refer to section 1.5.3)
- engagement with stakeholders to gather initial feedback on the current licensing framework and suggestions for potential improvements (refer to section 1.5.3).

Stage 2 – Release of an Issues Paper

- publication of an Issues Paper inviting stakeholder comment on the key issues in relation to the existing licensing framework along with components of the proposed licensing framework redesign (refer to sections 1.5.3 & 2)
- review of stakeholder responses to the Issues Paper to inform development of recommendations for the licensing framework redesign (refer to section 2).

Stage 3 – Reporting and recommendations

- development of a final report (this report) providing the recommendations flowing from the review, along with a roadmap for implementation of the recommended licensing framework (refer to sections 3 & 4).

1.3 About this document

This document is the final report outlined above, and presents the outcomes of the review of self-insurance arrangements in NSW. It draws on stakeholder comments received during all stages of the Review and presents PwC's recommendations for improving the arrangements for self-insurance. It contains 16 recommendations and provides a new framework for regulating self-insurance in NSW. In doing this, the report has five sections:

- 1 An introduction laying out the purpose, background and methodology of the Review.
- 2 A section on stakeholder perspectives, summarising the submissions that were received in response to the Issues Paper.
- 3 The proposed overarching model for self-insurance in NSW, explaining the:
 - model principles of risk, efficiency, alignment and transparency
 - proposed three-tiered self-insurance framework.
- 4 Our detailed recommendations, categorised into:
 - financial recommendations covering licence fees, tail management and prudential requirements
 - operational recommendations, dealing with licence renewal, claims management, claimant privacy and conflicts of interest, and work health and safety
 - information recommendations, discussing the use of licensee data, increased transparency and reporting of significant matters.
- 5 Six appendices, detailing the consultation schedule, submissions to the review, the current framework and requirements, and a summary of the self-insurance requirements in other jurisdictions.

1.3.2 Limitations of the analysis

A notable limitation of the analysis presented in this report is the limited availability of detailed self-insurance performance data. The limited data provided to the review by SIRA was not able to be verified. As a result, data on the performance of self-insurers has not been included in this report or the preceding Issues Paper.

1.4 Current situation

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

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

1.4.1 Number and performance of self-insurers

As of July 2016, there were 56 licensed self-insurers, including a range of shire and city councils, and group self-insurers. A list of organisations currently self-insured in NSW can be found in Appendix E. The system coverage of organisations licensed by SIRA to be self-insured is provided in Figure 1.

Figure 1: Licensed self-insured organisations



The performance of self-insured organisations varies. Research conducted in Victoria as part of a review of their self-insurance arrangements in 2005 compared the WHS and claims management outcomes of self-insurers with large scheme-insured employers with remuneration of more than \$20m. The analysis indicated that self-insurers achieved similar durable return to work rates and injured worker satisfaction, while observing higher average claims frequency rates but lower average payments per standard claim.² Due to limited data availability, the review was unable to conduct similar analysis on the performance of self-insurers in NSW.

1.4.2 Regulation of self-insurers

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

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

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

² Review of Self-Insurance Arrangements in Victoria - Report of the Self-Insurance Review Team, Victorian Workcover Authority, August 2005

1.4.3 Current requirements for self-insurance

In 2001, SIRA (then WorkCover NSW) established the self-insurance licence criteria that remain in place today. It stated that the intention of these requirements was to ensure:

- the protection of injured workers against self-insurer insolvency
- the viability and commitment of self-insurers to maintain self-insurance in the long term
- that appropriate injury and claims management and occupational health and safety systems are implemented and maintained by self-insurers
- the provision of timely and accurate data on claims to WorkCover.

The current requirements can be divided into four categories:

- **Entry and renewal requirements** – measures used when determining an organisation's eligibility to enter into and remain within the self-insurance licensing scheme
- **Financial requirements** – ongoing requirements that employers must satisfy to remain in the self-insurance system, aimed at ensuring that self-insurers are able to cover the costs of their claim liabilities while also providing for the stability of the broader system
- **Claims management requirements** – ongoing measures requiring self-insurers to demonstrate that their performance in injury and claims management is of a standard acceptable to SIRA
- **Workplace health and safety requirements** – requirements that aim to drive the continued WHS compliance of self-insurers throughout the licence term. Observance of WHS compliance should not be limited to when the audit is conducted.

The current requirements are summarised in Table 2.

Table 2: Summary of current self-insurance licence requirements

Category	Current requirements ³
Entry & Renewal	<ul style="list-style-type: none"> • Payment of an application fee of \$25K for individual SIs or \$30K for group self-insurers • Minimum 500 employees • Sufficient financial resources to meet liabilities • Deposit or bank guarantee based upon projected tariff premium for ensuing 12 months plus a prudential margin of 50 per cent • Must obtain unlimited reinsurance cover • Claims management personnel, resources and structure to perform obligations and functions as a licensed self-insurer • Injury management program • Claims management system • Must demonstrate that its Occupational Health and Safety Management System (OHSMS) is operating at an acceptable level under the National Self-Insurer OHS

³ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

Category	Current requirements ³
	Management System Audit Tool (NAT)
Financial	<ul style="list-style-type: none"> • Lodge a deposit for 150 per cent of claims liabilities • Must maintain unlimited reinsurance cover • Levy based on a percentage of deemed premium • 3-year licence renewal period
Claims Management	<ul style="list-style-type: none"> • Self-insurers must perform their obligations and functions in accordance with commercially acceptable and professional standards and demonstrate performance in injury and claims management • Self-insurers must provide SIRA with monthly claims data • SIRA will conduct injury management audits on self-insurers periodically to monitor their compliance with legislative requirements • Self-insurers are required to conduct and report self-audit results at every year and lodge any revised injury management program to SIRA
Workplace health and safety	<ul style="list-style-type: none"> • A self-insurer must demonstrate that its OHSMS is operating at an acceptable level by achieving a minimum score of 75% in each of the two categories audited under the NAT • Self-insurers must conduct annual self-audits of their OHSMS against the NAT criteria and provide a report to SIRA

The review has leveraged best practice guidance on regulatory licensing in addition to stakeholder consultation in order to identify a case for change and any opportunities for improvement to these current requirements. The related findings and recommendations are detailed in the remainder of this document.

1.5 Review methodology

1.5.1 Best practice regulation

The NSW Government's 2009 Guide to Better Regulation⁴ highlights that the benefits of regulation, when well designed and properly targeted, can substantially outweigh its administrative burden. Such regulation minimises the time and resources the community spends on compliance, freeing them up to innovate and improve productivity.

The Government has articulated seven “better regulation principles” which illustrate how regulators should approach the creation or change of legislation:⁵

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

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

1.5.2 IPART's licensing framework

The Independent Pricing and Regulatory Tribunal (IPART) recently published a best practice ‘licensing framework’.⁶ The review has been informed by this framework, as well as the better regulation principles, in its assessment of the self-insurer licensing arrangements. The framework involves a series of steps which are outlined in Figure 2. These steps are designed as questions that regulators should ask when designing licensing schemes.

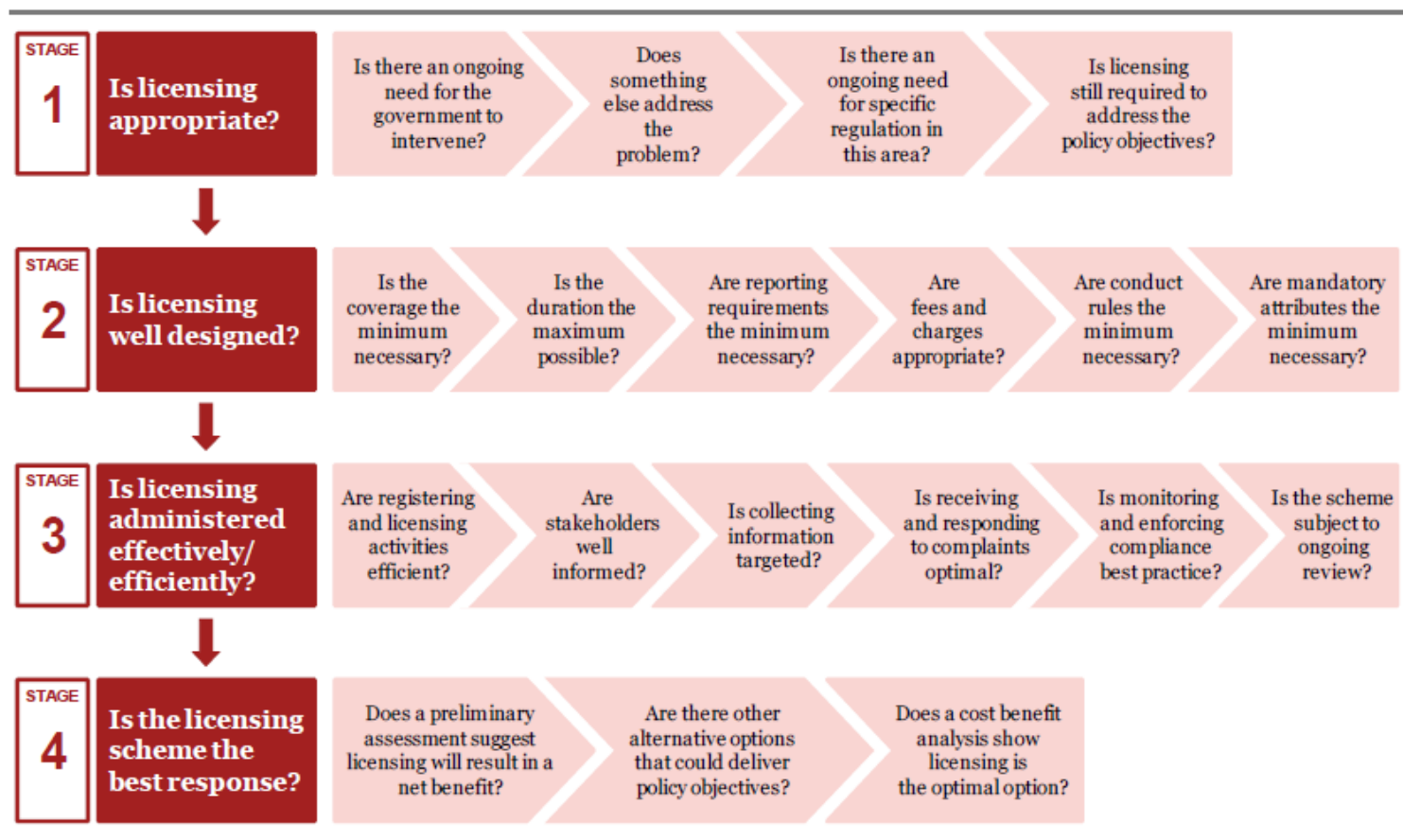
The Issues Paper drew guidance from this framework in discussing the current elements of the self-insurance licensing framework, identifying issues and posing questions to stakeholders.

⁴ NSW Government Better Regulation Office, ‘Guide to Better Regulation’, November 2009

⁵ NSW Department of Premier and Cabinet, ‘The Seven Principles of Better Regulation’, 2015

⁶ IPART, ‘PwC – A best practice approach to licensing schemes – Conceptual Framework – March 2013’, http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design/22_May_2014_-_Consultants_final_licensing_framework/PWC_-_A_best_practice_approach_to_licensing_schemes_-_Conceptual_Framework_-_March_2013

Figure 2: IPART licensing framework



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

1.5.3 Issues and opportunities identified

In assessing the current licence requirements against best practice principles and IPART's framework, the review identified a number of issues and opportunities for improvement. These issues were presented in an Issues Paper along with a series of related questions for stakeholders. The Issues Paper was released publicly by SIRA on 12 November 2015. The questions posed to stakeholders provide a summary of the issues presented; these questions are outlined in Table 3.

Table 3: Issues presented in the Issues Paper

IPART Framework element	Licence requirement	Issue questions posed to stakeholders ⁷	
1. Is licensing appropriate?	All	1.1	To what extent are the requirements of the self-insurance licensing framework proportionate to any risks posed by self-insurers above and beyond those posed by other employers?
		1.2	What should the government's objectives and expectations be in relation to self-insurance? How does this differ to current practices?
		1.3	What is the value of self-insurance to an employer?
		1.4	What are the intrinsic costs of being self-insured?
		1.5	How does an employer demonstrate its senior executive's commitment to self-insurance and achieving better outcomes for their injured workers?
2. Is licensing well designed?	Prudential requirements	2.1	Is there an appropriate minimum number of employees or another entry level requirement that an applicant should have in order to be eligible and guarantee being able to perform as a self-insurer? If so, please explain why.
		2.2	What feedback do you have about the effectiveness and efficiency of the licensing entry requirements?
	Licence duration	2.3	What would define a self-insurer as a high performer?
		2.4	What impact would a shorter or longer renewal period have on self-insurers, their employees and the broader system? What should be the maximum term of a licence?
		2.5	What would be the impact of implementing an open-ended licence renewal period in NSW?
	Fees and levies	2.6	What would be the benefits of greater transparency around the calculation and use of licence fees and levies?
		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.
	Claims management	2.8	What indicators or risk factors should SIRA use to measure claims management performance?
		2.9	What would be the impact of limiting claims management audits to those self-insurers that exhibit lesser performance?
		2.10	How should SIRA promote best practice and/or innovation in claims management to deliver better return to work outcomes?
	Work Health and Safety	2.11	Do any factors make self-insurers a greater risk to maintaining a safe workplace compared with other employers? Please describe any relevant factors and how they could be mitigated.
		2.12	Are OHSMS audits improving WHS outcomes? How might this

⁷ PwC review of self-Insurance licensing arrangements –Issues Paper 2015

IPART Framework element	Licence requirement	Issue questions posed to stakeholders⁷
		be improved?
		2.13 How should a high WHS performer be defined?
		2.14 What other indicator or compliance activities (such as prosecutions or infringements) could be considered to determine and manage WHS performance throughout a licence term?
3. Is licensing administered effectively and efficiently?	Financial Requirements	3.1 The current retention amounts for reinsurance are \$100,000 to \$1,000,000 per event. Should the excess for reinsurance be increased? If so, to what dollar amount?
		3.2 Should the security amount continue to be determined as 150 per cent of the central estimate (or forward central estimate if greater) or should employers be allowed to adopt a prudential margin based upon a probability of adequacy?
	Privacy / Separation of Functions	3.3 To what extent are there potential conflicts of interest where an organisation is both the insurer and the employer?
		3.4 What evidence is there of issues associated with the privacy of claimant information? How could these issues be addressed?
	Independent Medical Examinations	3.5 What evidence is there of a conflict of interest where an employer is also the insurer in relation to the appointment of independent medical examiners? How should any conflict be managed?
	Claims Management Audit Tool	3.6 What should SIRA's claims management compliance monitoring and enforcement activities look like and how do they differ from your experiences?
		3.7 How could the claims management audit tool be improved to deliver improved assessment on the compliance of case management practices and to improve performance?
		3.8 What regulatory action should be taken to improve claims management practices and return to work outcomes?
	Tail Management	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?
	OHS Management System Audits	3.10 How could OHSMS audits be changed to improve their effectiveness in lifting WHS performance?
	Collection and Provision of Information	3.11 Do the current requirements surrounding provision and quality of data to the regulator enable SIRA to adequately monitor self-insurer claims management and WHS performance?
		3.12 How could transparency of performance data be improved and should it be improved?
4. Is the licensing scheme the best response?	Reporting of Significant Matters	4.1 What impact does self-insurance have on the broader NSW system and on the Nominal Insurer?
		4.2 Is there any evidence of adverse outcomes from self-insurers not reporting significant matters to the regulator? How could these risks be mitigated?
		4.3 What other policy options should be considered by the NSW State Government to improve the workers compensation system in the context of the self-insurance licensing arrangements?

Application of IPART's framework in this report

In assessing the existing self-insurance requirements against IPART's framework the analysis found that under question one, "Is licensing appropriate?" that licensing is in this case justified. The prevalence of self-insurance arrangements across Australia, combined with its more direct financial and worker incentives for employers, illustrates that self-

insurance is a viable and beneficial option for managing workers compensation. To fundamentally alter or remove these arrangements, there would need to be strong evidence to suggest that the current self-insurance framework is not working or is failing to meet the NSW State Government's objectives.

As a result of this, in proposing a new framework for self-insurance licensing and a set of corresponding recommendations for changes to the existing requirements, the majority of this report focusses on stages two and three of the IPART framework.

“Is licensing well designed?”

The proposed model and recommendations outlined in sections 3 and 4 include changes to licence durations, reporting requirements, licence fees and conduct rules. These changes are aimed at improving the design of the existing framework and establishing a licensing system that meets SIRA's objectives and remains a beneficial option for self-insurers.

“Is licensing administered effectively and efficiently?”

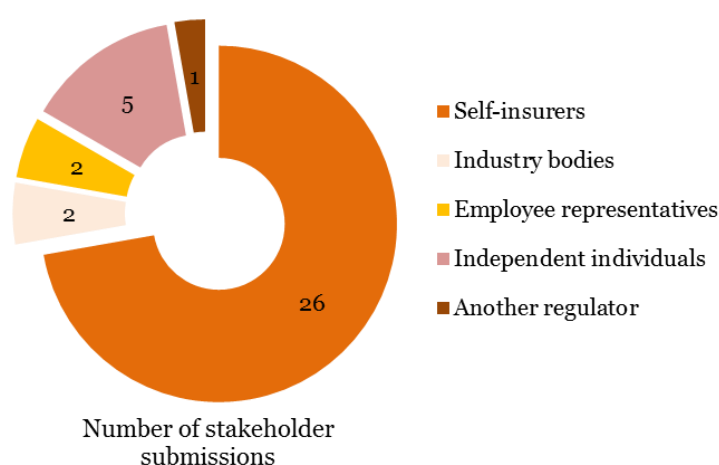
The report also discusses and makes recommendations in relation to the administration of the self-insurance licensing framework. These recommendations focus on the efficiency of oversight requirements, in relation to both SIRA's ability to apply the requirements, as well as the efficiency with which self-insurers can comply and demonstrate their compliance to the regulator.

2 Stakeholder perspectives

The Issues Paper sought stakeholder comment on opportunities to improve key areas of the framework governing self-insurance licensing in NSW. Development of the Issues Paper was supported by consultation with a range of stakeholders representing self-insurers, workers, regulators and service providers.

The review also received submissions from 36 stakeholders, ranging from self-insurers and businesses supporting outsourced self-insurer arrangements to OHS auditors and employee and injured worker representatives. Submissions were published on SIRA's website. A list of submissions received can be found in Appendix B. The majority of submissions were from self-insurers, as shown in Figure 3.

Figure 3: Composition of submissions in response to the Issues Paper



Comments from stakeholders related to the following areas of the self-insurance arrangements:

- 1 General comments
- 2 Financial comments
- 3 Operational comments
- 4 Information comments

The stakeholder comments and opportunities for improvement have informed the development of the proposed framework and set of detailed recommendations in this report. An overview of stakeholder perspectives is included below.

2.2 General comments

Self-insurers and self-insurer representatives largely argued for a reduction in licensing requirements, while employee and injured worker representatives generally advocated the maintenance or an increase in the current level of scrutiny.

For the most part, self-insurers indicated that they found the current licensing framework disproportionate to the risks posed. They believed that as they had been given a self-insurance licence due to their high performance, a greater degree of autonomy should be granted. Some self-insurers pointed to Western Australia's self-insurance framework as a best practice example of efficient and effective arrangements.

Others looked for opportunities to streamline the regulations, such as abolishing the OHSMS audits, consolidating and improving the performance data, and harmonisation of regulation across jurisdictions. One self-insurer's submission advocated maintaining the current licensing requirements, including OHSMS audits (as audit results give a lead indicator, whereas performance data, such as claim and injury rates, are only lag indicators).

Employee and injured worker representatives advocated winding back self-insurance and taking an approach where only organisations posing no risk of workplace injuries would be granted a licence. Their primary concern was that self-insurance created an unsolvable conflict of interest in claims management, where self-insurers have a financial incentive to pressure injured workers into returning to work too soon (or instead taking a medical retirement), and minimising the cost of treating their injuries.

2.3 Financial comments

Licence fees

Most submissions expressed broad satisfaction with current financial requirements. Some self-insurers commented that they would like to see greater transparency around the use of the licence fees they paid. Both an employee representative and self-insurers suggested the use of performance-based licence fees to strengthen incentives to reduce workplace injuries and properly deal with claims. A few self-insurers noted the high levels of their fees but did not explicitly seek lower fees.

Prudential requirements

Stakeholders generally thought the prudential requirements for self-insurers were appropriate. Almost all self-insurers recommended that reinsurance amounts be indexed with inflation to ensure they did not have to be manually changed. A couple of self-insurers thought the bank guarantee should be based on the probability of adequacy and capped at 150 per cent, but others were happy with the current level.

One employee representative claimed that if past company collapses in Australia were any guide, the prudential requirements would not be sufficient to cover all workers' liabilities. In the event of a self-insured company exiting the system, a number of submissions recommended that they be allowed to buy out of their tail liabilities and pass them either to the Nominal Insurer or a third-party.

2.4 Operational comments

Licence duration

The operational requirements of self-insurance licences prompted the highest level of commentary. A key source of comment was the term of licence renewal. Self-insurers advocated an open-ended or at least extended (five to eight year) licence compared to the current renewal period. Employee and injured worker representatives thought that a shorter licence term would allow for greater oversight and ensure that licence cancellations could be easily obtained if self-insurers performed poorly. They also suggested that workers be polled before a licence was granted to an organisation.

Minimum number of employees

There was some disagreement over the eligibility for a self-insurance licence. Employee representatives thought there was no evidence that 500 employees was the right number, with one advocating raising the threshold to 2000. Self-insurers also did not see why 500 was the right number, but thought that the threshold could be lowered or abolished altogether, with assessments of an application for a self-insurance licence instead made based on financial capacity. One self-insurer did note that it would be quite hard to sustain a viable and effective claims management function in a small organisation. A few self-insurers mentioned that they would like it to be easier to bring acquisitions and subsidiaries in under a group licence, and that the default should be that new acquisitions were automatically included in the licence.

OHSMS audits

There was more consensus that, at present, OHSMS audits were not improving outcomes. One employee representative commented that audits never seem to venture into assessing the effectiveness of the self-insurer's WHS practices, only the compliance with the audit tool. Feedback from self-insurers was similar, with a few saying that they would find an effective audit useful for identifying areas to improve their systems. Most, however, advocated abolishing the audit requirement altogether, or at least moving to a risk-based approach where only poor performers were audited. A WHS coordinator at a self-insurer commented that self-insurers have become very good at passing OHSMS audits without much effort, and that senior management drop the ball on WHS matters after the audit is complete. Submissions by OHS auditors themselves as well as companies supporting outsourced self-insurance functions supported maintaining the current audit requirements. Employee representatives also proposed keeping the audits, but conducting them randomly as well as at the start and end of every licence. They pointed out that if self-insurers represented seven per cent of the NSW workforce but 11 per cent of all claims, this implied that self-insurers were proportionally experiencing more injuries than non-self-insured employers and therefore needed to be monitored more closely.

Claims management

There was a similar dissatisfaction with current claims management requirements. Self-insurers largely argued that the claims management audit tool focused too heavily on process over practice, with some submissions suggesting that claims management shouldn't be monitored at all. However, others said that the claims management audits helped them learn many vital lessons. Stakeholders supporting outsourced self-insurance functions suggested new indicators such as:

- number of complaints
- recurring errors in SIRA data submissions
- high number of reversals in decision
- deterioration of costs over time
- retro-paid loss performance measures.

According to these companies, these indicators would be less easy to manipulate than the current claims management assessment. Employee and injured worker representatives asserted that in-house decisions seemed to favour the employer far more than comparable cases in iCare insurers, and that self-insurers had a financial incentive to rush injured workers back to work to minimise their costs.

Conflict of interest

Employee and injured worker representatives argued that these incentives created a conflict of interest where giving an injured worker time and resources to fully heal directly countered the self-insurer's financial and work interests. As a result, it was claimed that injured workers were coerced into going to a self-insurer-aligned doctor as well as injured workers' medical privacy being violated within the organisation. Self-insurers stated that any concerns in relation to conflicts of interest or claimant privacy are outweighed by the advantages of holding self-insurance, and that workers with grievances could contact SIRA to resolve any conflicts. Some detailed how they ensured the separation of human resources and claims management staff.

2.5 Information comments

Benchmarking performance

There was broad support for changes that would improve the level of information and transparency in relation to self-insurer performance. The majority of comments related to self-insurers wanting to benchmark themselves against other self-insurers and their nominally insured industry counterparts. Currently, self-insurers are required to provide monthly claims data to SIRA however, stakeholders indicated that under current arrangements, such data can be difficult to obtain, obscuring the flow of information between licensees, SIRA and other stakeholders.

Publication of performance information

While there was general agreement that improved transparency would be beneficial there was disagreement as to whether this information should be made publically available. The majority of stakeholders, including self-insurers and employee representatives that made comment in relation to this issue, advocated making performance information publically available in anonymised form. Others preferred that this information be limited to self-insurers and SIRA or remained silent on the subject.

Frequency of information provision

A number of self-insurers noted that they would benefit from more frequent provision of information. One stakeholder suggested that reports be provided to self-insurers on a quarterly basis. Another self-insurer suggested a 'self-service' approach in which self-insurers would have access to published tables of performance information.

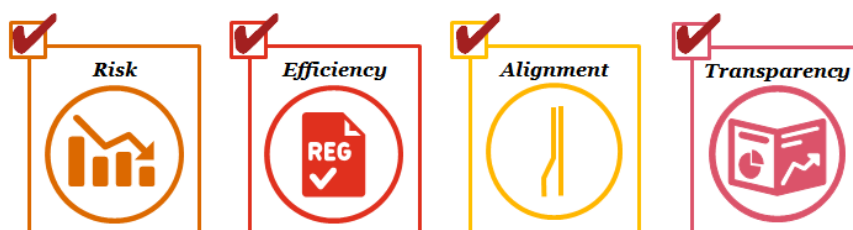
3 *A new model for self-insurance in NSW*

3.1 *Model principles*

As stated, the objective of the review has been to develop a fit for purpose, best practice self-insurance licensing framework that incentivises the performance of self-insurers to achieve better outcomes. In order to meet this objective and recommend changes, the review has identified a set of underlying principles which underpin the proposed framework.

The principles provide a lens through which the current self-insurance licensing framework can be examined and potential improvement opportunities identified. There are four principles:

- 1 **Risk:** The framework's regulatory requirements should be aligned with areas of greatest risk.
- 2 **Efficiency:** The framework's regulatory requirements should promote an optimal level of burden of regulation on licensed NSW employers in order to achieve the objectives of the regulation.
- 3 **Alignment:** The framework's regulatory requirements should align SIRA's role as an independent regulator with its priorities in relation to claims management and return to work outcomes.
- 4 **Transparency:** The framework's regulatory requirements should incentivise continuous improvement through performance transparency.

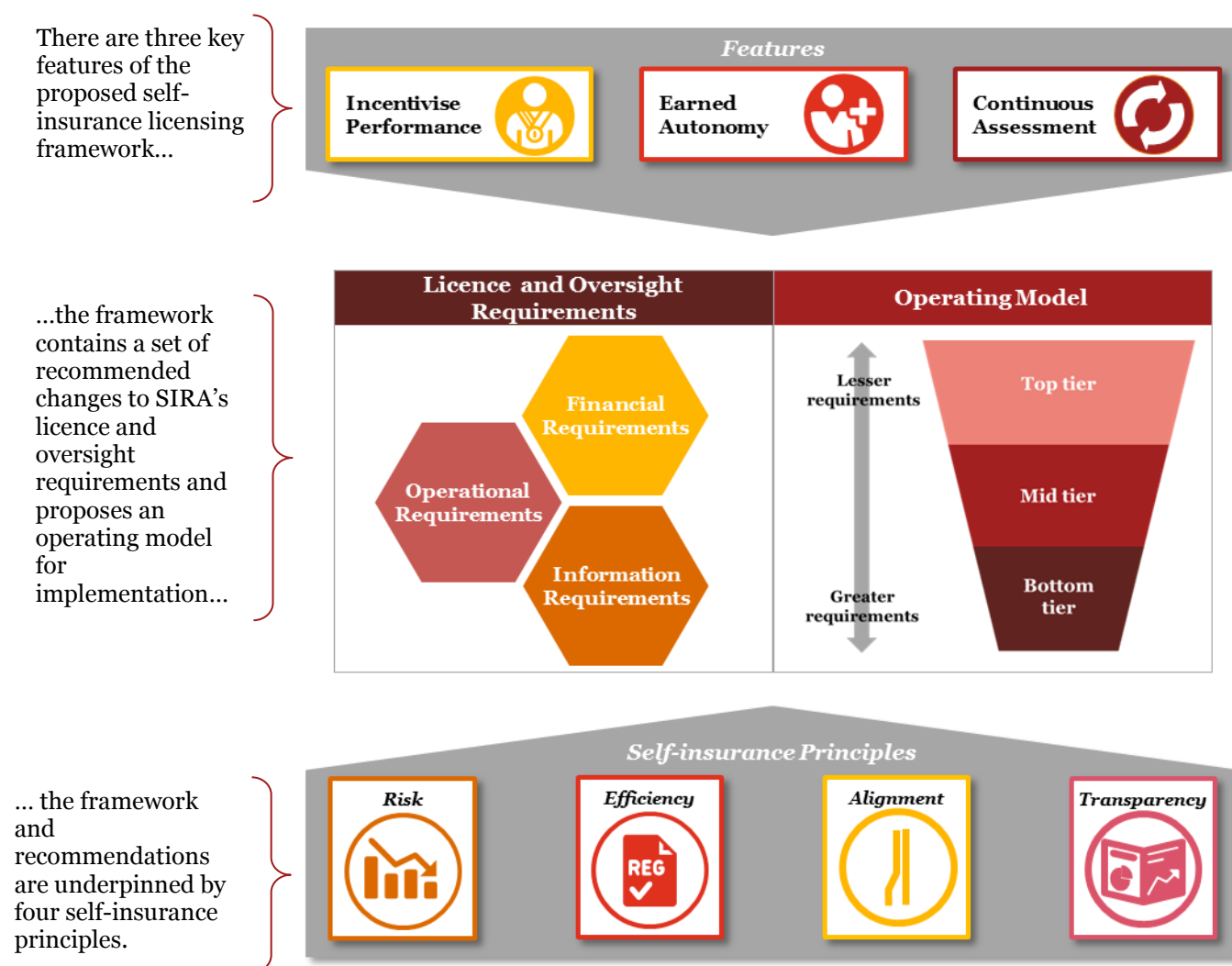


The proposed framework and set of recommendations detailed in this report flow directly from the application of these principles to current arrangements governing self-insurance licensing in NSW. Collectively the recommendations provide a roadmap detailing the path towards an effective and efficient self-insurance licensing system in NSW.

3.2 *Proposed framework*

In applying the principles listed above, our proposed licensing framework provides a risk-based approach that recognises the performance of self-insurers and promotes efficiency in its administration. Figure 4 is a visual representation of the framework, and shows the principles that underpin the remainder of the framework.

Figure 4: Proposed self-insurance licensing framework



The framework outlined above and the corresponding recommendations outlined in the remainder of this report represent a significant shift in the way self-insurance licensing is designed and administered in NSW. There are a number of important benefits to the proposed framework, such that:

- it recognises the underlying incentives faced by self-insurers
- it is risk-based, as compliance monitoring activities are directly scaled against performance
- it reduces the compliance burden for many self-insured organisations
- higher performing licensees are rewarded for performance as the costs they bear for being licensed are reduced
- lesser performing self-insurers are given a direct incentive to improve performance
- it is administratively more efficient as SIRA can target its oversight activity on fewer high risk organisations.

3.2.1 Key features

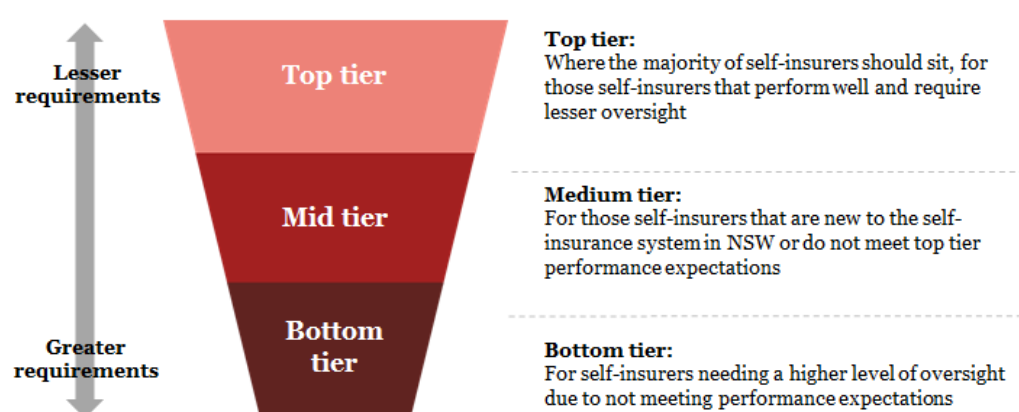
The first component/panel of Figure 4, reflects the three key features of the framework. If successfully implemented, these features will be the characteristics of the new licensing framework. The features are:

- **Incentivise performance** – A design feature of the proposed framework is that it establishes licence requirements and conditions that incentivise self-insurers to improve their performance. The proposed framework includes measures to create direct incentives in the form of reduced compliance costs for self-insurers, where they can demonstrate the required level of performance.
- **Earned autonomy** – The framework will provide self-insurers with a level of earned autonomy, in which their performance and adherence to the regulator’s requirements grants them the freedom to meet their obligations in a manner best suited to their needs. This approach allows organisations to improve the efficiency with which they meet their obligations, as well as pursue innovative approaches that may in turn benefit other self-insurers. Achieving this requires a shift away from the largely one size fits all approach in which all self-insurers are subjected to the same requirements.
- **Continuous assessment** – The proposed framework aims to shift the focus of regulatory activity away from the traditional point-in-time assessment of self-insurers during a licence renewal or audit process to one in which the performance and compliance of self-insurers is monitored continuously. This approach allows the regulator to have a view of performance throughout a licence term and adjust its oversight accordingly.

3.2.2 Licence requirements and operating model

Implementation of the framework is achieved through a tiered operating model in which self-insurers are divided into three categories as outlined in Figure 5.

Figure 5: Tiered framework for self-insurance



Under this model, those self-insurers that exhibit high levels of performance against outcome measures and meet SIRA’s operational and reporting obligations will be subject to fewer oversight requirements from SIRA. This earned autonomy for high performing self-insurers, corresponds to the level of risk they pose in their ability to fulfil their licence obligations.

Conversely, self-insurers that do not meet performance requirements and/or do not meet SIRA’s operational and reporting requirements will be subject to greater oversight from SIRA. A sample of the oversight requirements at each tier are outlined in Table 4 in the following section.

This section has presented the key features and benefits of the proposed framework. These features have been identified through application of the review principles to current arrangements and analysis of stakeholder feedback gathered through the Issues Paper. The recommendations informing the framework are detailed in the chapters to follow. The implementation of these recommendations is required in order for the proposed model to be effective.

4 Detailed recommendations

4.1 Operational performance

4.1.1 Three tiered operating model

Current requirements

The current licence requirements for self-insurers are largely a 'one size fits all' approach in which there is no strong link between oversight requirements and self-insurer performance. The exception to this being where SIRA has chosen to grant a shorter licence term to a self-insurer where it has deemed this to be warranted.

Stakeholders were not asked to comment directly on a three tiered model. However, the Issues Paper did pose a number of questions in relation to the linking of specific requirements to performance. In response to these questions, several self-insurers supported the view that oversight requirements (particularly audits) should be reduced or removed on the basis of performance. Employee representatives supported a performance based approach to licence fees but in general did not support any reduction in oversight requirements.

Opportunities for improvement

As outlined in section 3 and shown in Figure 6 below, a three-tiered oversight model for self-insurers is proposed that would provide greater flexibility in the oversight of self-insurers. Under this proposed approach self-insurers would be differentiated based on performance and be subject to a variable level of intervention and monitoring. For example, high performing self-insurers (top-tier) would be relieved of the requirement to undergo audits conducted by SIRA and be required to undertake less frequent claims management self-audit spot checks. Whereas lower performing self-insurers (bottom tier) would be subject to relatively higher levels of oversight. An intermediate level of oversight is proposed for medium performers (mid tier).

Figure 6: Tiered framework for self-insurance

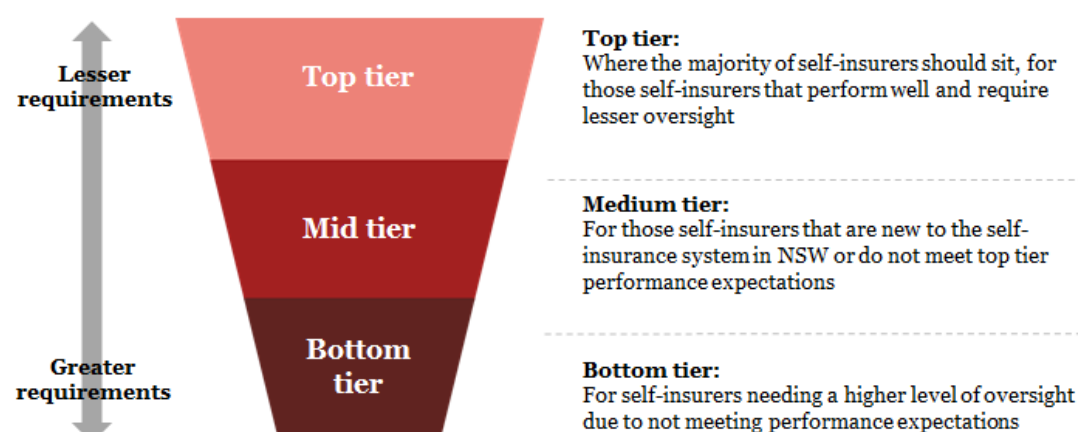


Table 4 outlines the three-tiered oversight approach under the proposed model.

Table 4: Suggested sample of self-insurer oversight and requirements under a tiered model

Category	Financial	Operational	Information
Top tier	<ul style="list-style-type: none"> • Lower licence fees reflecting reduced regulatory oversight requirements • Meet SIRA's prudential requirements 	<ul style="list-style-type: none"> • Maximum 8 year licence term • Conduct claims management self-audits at least every 2 years • Claims management audit conducted by SIRA at licence renewal or if concerns are raised • Random claims management spot checks 	<ul style="list-style-type: none"> • Timely submission of self-audit results • Timely submission of performance data • Meet top tier performance requirements against indicators
Middle tier	<ul style="list-style-type: none"> • Higher licence fees reflecting higher regulatory oversight • Meet SIRA's prudential requirements 	<ul style="list-style-type: none"> • Maximum 8 year licence term • Conduct annual claims management self-audits • Claims management audit conducted by SIRA at licence renewal or if concerns are raised • Random claims management spot checks 	<ul style="list-style-type: none"> • Timely submission of self-audit results • Timely submission of performance data • Meet mid tier performance requirements against indicators
Bottom tier	<ul style="list-style-type: none"> • Higher licence fees reflecting higher regulatory oversight • Meets SIRA's prudential requirements 	<ul style="list-style-type: none"> • Maximum 3 year licence term • Annual claims management self-audits • Annual claims management audit conducted by SIRA • Random claims management spot checks 	<ul style="list-style-type: none"> • Timely submission of self-audit results • Timely submission of performance data

Measuring performance

To enable a tiered framework, a shift away from a traditional point-in-time assessment of self-insurers is required. Traditionally, self-insurers are assessed through annual audits and licence renewals. This framework requires a less onerous but more frequent approach in which the performance of self-insurers is assessed continuously throughout a licence period.

This may be achieved through regular monitoring of key performance indicators by the regulator. In order to effectively assess the performance of a self-insurer, it is expected that these performance measures would focus on:

- claims management and return to work outcomes
- relative incident and claim volumes
- timely reporting of claims management data
- timely reporting of financial data
- timely completion and reporting of self-assessment/audits (where required)
- results of injured worker surveys.

(Specific recommendations relating to these indicators are discussed in section 4.2).

Tier placement

Self-insurers would be allocated to the tiers based on the quarterly assessment conducted by SIRA as well as at the time of licence renewal, based on the most recent relative assessment

of self-insurer performance against a set of indicators. In either case, the decision to allocate or maintain the tier of a self-insurer should be made at the discretion of SIRA as it considers appropriate.

As shown in Figure 6, the top tier is larger than the mid and bottom tiers. This represents the expected number of self-insurers at each level. The framework is designed so that the majority of self-insurers would be in the top tier. This means that as the performance of self-insurers improves, more self-insurers will move into the top tier. Hypothetically, it may be the case that self-insurer performance reaches a level where all self-insurers are in the top tier. This approach reflects that:

- self-insurers pose no greater risk to maintaining a safe workplace compared to other employers
- self-insurers have underlying incentives to achieve good return to work outcomes for injured workers, generated from directly bearing the cost of their claims
- the regulator should focus its efforts on the areas of greatest risk as additional oversight on the majority of self-insurers is unlikely to have a significant impact on their performance.

Where a self-insurer fails to meet the performance and reporting requirements they will remain in, or move to a lower tier. This determination will be made by SIRA using a clear set of performance criteria and requirements. These should be designed so that there is minimal need for interpretation or discretion from the regulator. Ensuring this means that self-insurers can begin to self-assess against the criteria and be prepared for the regulator's finding.

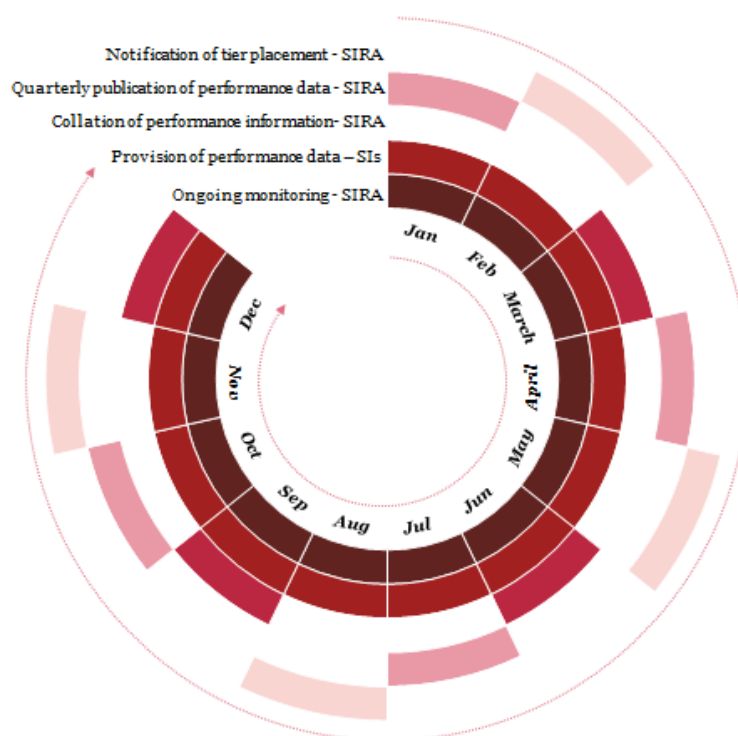
The bottom tier is intended to be a short term allocation for lesser performers, with self-insurers either improving their performance to move to the mid tier, or otherwise placing their self-insurance licence at risk.

It is recommended that new self-insurers will automatically enter the mid tier to ensure that regulators can monitor their adoption and implementation of the self-insurance licence requirements. After a year, they will be reassessed and may move tiers as their performance dictates.

Performance assessment

As discussed in section 3.2.1, one of the key features of the new framework is a shift towards a more continuous assessment of self-insurer performance. In order to operationalise this feature and the tiered operating model a new process to assess the performance of self-insurers is required. Figure 7 outlines a suggested approach for an ongoing performance assessment cycle.

Figure 7: Ongoing performance assessment cycle



The suggested approach involves the regular provision of data to SIRA by self-insurers and an ongoing process for reviewing, publishing and assessing performance information by the regulator. The key stages of the suggested assessment cycle are:

- 1 **Ongoing monitoring** – Throughout the month SIRA should conduct its ongoing monitoring of self-insurer performance gathering of performance information. This includes:
 - collection of self-audit and audit results as they occur
 - ad-hoc or one off information gathering exercises (e.g. injured worker surveys or reviews)
 - information provided to the regulator by third parties.
- 2 **Provision of performance data (SIRA)** – Each month, self-insurers should be required to submit performance information to SIRA (continuation of existing requirements).
- 3 **Collation of performance information** – Once a quarter SIRA should collate the monthly performance data, combine these with other performance measures collected by SIRA in that quarter (survey results, compliance statistics etc.) and assess each self-insurers performance against its performance requirements.
- 4 **Quarterly publication of performance information** – The following month SIRA should publish anonymised performance information on its website and prepare a regular summary performance report for each self-insurer that provides transparency on its performance relative to other employers.
- 5 **Notification of tier placement** – SIRA should notify self-insurers of its assessment against the performance criteria and any resulting impact on their tier placement.

Detailed recommendations in relation to the collection and publication of performance information can be found in section 4.2.

As with any tiered model, an appeals process is required to govern situations where a self-insurer disputes the decision of the regulator. It is recommended that, where self-insurers dispute the regulator's decision to move them to a lower tier, they are able to make their position known to the regulator in writing. The decision should then be independently reviewed by SIRA's CEO for a final determination.

It should be noted that under the recommended model, where the majority of self-insurers are expected to sit in the top tier, there are unlikely to be many appeals in relation to tier placement. This will be supported by clear and transparent performance criteria.

Recommendation 1: Implement a three-tiered oversight model for self-insurance, based on self-insurer performance. Under this model:

- Self-insurers that exhibit higher levels of performance against outcome measures and meet SIRA's operational and reporting obligations will be subject to fewer oversight requirements from SIRA. Most self-insurers are expected to be in the top tier, over time.
- Self-insurers that do not meet performance requirements and/or do not meet SIRA's operational and reporting requirements will be subject to greater oversight from SIRA. The bottom tier is intended to be a short term allocation for lesser performers, with self-insurers either improving their performance to move to the mid tier, or otherwise placing their self-insurance licence at risk
- An intermediate level of oversight is proposed for medium performers (mid tier). New self-insurers would enter the scheme at the mid tier until they have proven their ability to meet SIRA's performance requirements.

4.1.2 Licence renewal

Current requirements

Currently, organisations that are self-insured in NSW are required to renew their licence every three years unless shorter term licences are granted.⁸ This requirement is aimed at ensuring the regulator has a mechanism to periodically review the performance of a self-insurer and its ability to meet its licence requirements.

The licence duration in NSW is generally shorter than in other Australian jurisdictions. Other jurisdictions offer longer licence terms for organisations that exhibit a higher standard of performance. This variation has led stakeholders to highlight the increased compliance burden associated with more frequent renewal requirements in NSW. Current licence durations across other schemes in Australia are provided in Table 5.

⁸ Information in this section sourced largely from WorkCover NSW, 'Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987', effective December 2001.

Table 5: Licence durations in selected Australian jurisdictions

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

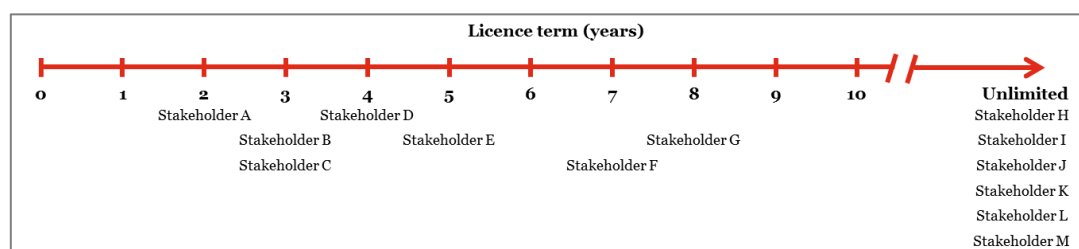
Opportunities for improvement

The proposed framework for self-insurance licensing provides a shift away from the historic approach of reviewing a self-insurer's performance at the point of licence renewal. This 'point in time' approach primarily allows the regulator to obtain a snapshot of performance in audited areas.

Industry stakeholders noted the burden associated with a more frequent licence renewal. This is mainly driven by the process involved in the current renewal process, which includes:

- the completion of an OHSMS audit
- the provision of claims and financial information to SIRA
- the payment of application fees
- the provision of information relating claims management facilities, procedures, systems and personnel to SIRA
- confirmation of prudential and insurance provisions.

Figure 8: Stakeholder views – Proposed licence term



Stakeholder views on the most appropriate licence term varied as shown in Figure 8. Many stakeholders did not make specific comment in relation to their preferred licence duration. Of those that did:

- six self-insurers preferred an open ended licence citing the view that existing prudential requirements were sufficient
- six self-insurers advocated licence terms between three and eight years, expressing satisfaction with existing requirements or a desire to bring NSW in to alignment with other jurisdictions
- one employee representative group advocated a licence term of less than three years, arguing that a shorter renewal period would provide greater capacity for oversight and intervention. This organisation also noted that an open ended licence renewal period would create a situation where licence cancellations would be harder to obtain.

A move away from the traditional approach will allow SIRA to assess performance of self-insurers more frequently while reducing the burden associated with the licence renewal process. The new framework proposes a more ongoing assessment of self-insurer performance against a set of performance indicators. This allows for an adjustment to the duration of licences, it is proposed that:

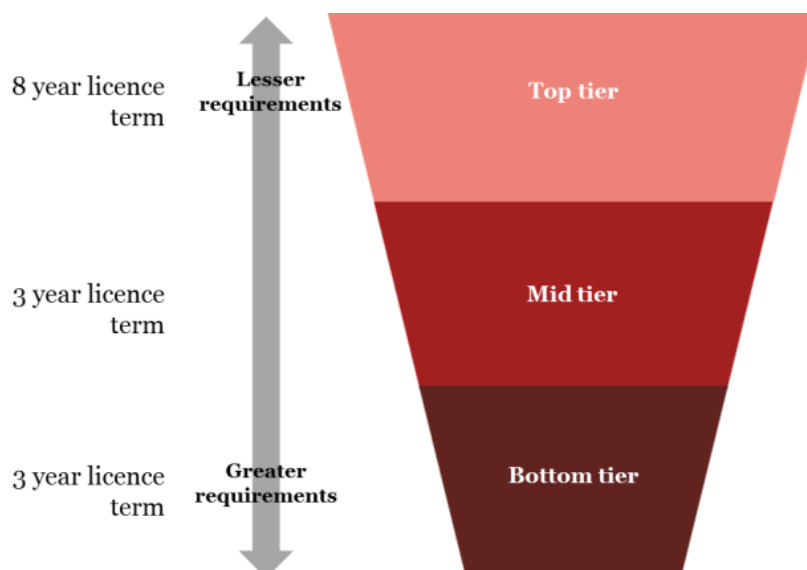
- top tier insurers be granted a licence term of up to eight years
- shorter licence terms be granted to new self-insurers and those in the mid and bottom tiers.

There are a number of benefits to the proposed approach:

- reduces the compliance burden experienced by self-insurers as a result of more frequent renewal processes
- an eight year maximum term improves the ability of NSW to remain competitive with Comcare
- aligns with a model of continuous monitoring rather than ‘point in time’ assessment
- provides performance incentives for self-insurers to be in the top tier.

Under this approach, it is expected that most self-insurers will be granted a longer renewal period than under the current arrangements. However, for a few self-insurers it may be the case that their renewal period is reduced to less than the current three year term, in line with their performance.

Figure 9: Licence duration



Recommendation 2: Increase the licence term to a maximum of 8 years for higher performing self-insurers (i.e. with top tier self-insurers having a longer renewal period than other self-insurers) and maintain shorter terms for other self-insurers (including new self-insurers).

4.1.3 Stakeholder consultation

Current requirements

The workers compensation legislation establishes that SIRA may, in determining an application for a self-insurer licence, require the applicant to advertise or give notice of its application. At present, however, SIRA does not directly consult with, or seek feedback from, industry, employee or injured worker representatives on whether an organisation is suitable for an existing self-insurance licence or to have its licence renewed.

Opportunities for improvement

Obtaining the views of industry, employee and injured worker representatives will ensure that the community's view is represented and that the regulator's actions in relation to the self-insurer are well informed.

When the regulator is considering a self-insurer's performance, tier placement and/or licence renewal stakeholder views should be considered. There are a number of options for the regulator to trigger and collate this information, including:

- using its legislative authority to require licence applicants to advertise or give notice of their application
- obtaining feedback from employee and injured worker groups
- incorporating stakeholder feedback into self-insurer performance measures
- providing an online mechanism through which employees or members of the public can submit feedback to the regulator at any point throughout a self-insurer's licence period.

The benefit of this approach is that it allows stakeholders to provide feedback on a self-insurer's performance throughout a licence term. This in turn allows the regulator to provide ongoing and transparent feedback to self-insurers.

A similar approach was advocated by a workers representative group in its submission to the review. Another workers representative group argued for a further measure which would require a vote or plebiscite of workers regarding a self-insurer's application or renewal. The remainder of stakeholders did not make direct comment in relation to this opportunity.

Recommendation 3: SIRA should consider the views of industry, employees and injured worker representatives when assessing a self-insurer's performance, tier placement and/or licence renewal. This may include:

- using its legislative authority to require licence applicants to advertise or give notice of their application
- collecting feedback on self-insurers from employee and injured worker groups
- incorporating stakeholder feedback into self-insurer performance measures.

4.1.4 Claims management

Current requirements

SIRA's current licence policy specifies that self-insurers must demonstrate performance in injury and claims management of a standard acceptable to SIRA.⁹ It expects that skilled claims staff with a thorough knowledge of workers compensation law and administration will be engaged to give prompt consideration to claims and to pay compensation in a timely manner.

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

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

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

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

Opportunities for improvement

In its role as a new regulator, SIRA is aiming to leverage its claims management requirements to incentivise innovation and high performance. It recognises that ensuring self-insurers are meeting their claims obligations is one of its primary roles as a regulator.

Claims management audits conducted by the regulator and self-audits in their current form only present a 'point in time' assessment against the areas selected for audit. With the proposed tiered approach and recommendation to extend the licence duration, an alternative approach to monitoring claims management is proposed which will enable SIRA to assess claims management performance more frequently.

⁹ Information in this section sourced from WorkCover NSW, 'Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987', effective December 2001.

Claims management audits

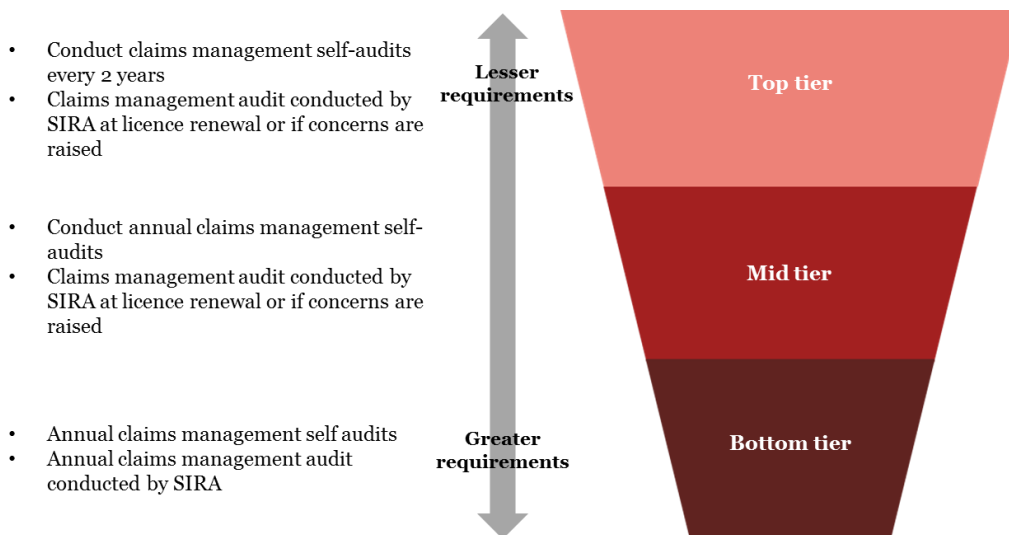
Under the proposed framework there are a number of recommendations in relation to claims management audits. The first related to the frequency of audits, it is recommended that a risk-based approach is adopted. Under a tiered model, the claims management audit requirements should be aligned to the areas of greatest risk.

As shown in Figure 10, those self-insurers that meet the performance requirement to be in the top tier should only be subject to claims management audits conducted by the regulator at the point of licence renewal or if concerns are raised to the point at which the regulator has sufficient reason to believe obligations are not being met. To supplement this approach, top tier self-insurers should be required to complete self-audits at least every two years, reporting the results to SIRA.

For mid tier self-insurers, it is recommended that claims management self-audits are conducted annually. This is in addition to the claims management audit requirements at the point of licence renewal imposed on top tier insurers.

For bottom tier self-insurers, it is recommended that SIRA conduct claims management audits annually in addition to annual self-audits conducted by the self-insurer.

Figure 10: Claims management



Recommendation 4: Adopt a risk-based approach to claims management oversight, in which top tier self-insurers are subject to fewer audit requirements than middle and bottom tier employers. This could include:

- **top tier employers** - conducting claims management self-audits at least every 2 years and completing a claims management audit at licence renewal (or if concerns are raised)
- **mid tier employers** - conducting annual claims management self-audits and completing a claims management audit at licence renewal (or if concerns are raised)
- **bottom tier employers** - conducting annual claims management self-audits and completing an annual claims management audit conducted by SIRA (six months following the self-audit).

The second consideration in relation to claims management audits is the audit tool currently being used to complete self-audits. It has been raised by stakeholders that recent changes to

the claims management requirements (and the related tool) have meant that the new assessment criteria are being applied to old claims. That is, new criteria based on current requirements are being applied to old claims under different requirements. This has created difficulties for some self-insurers in meeting the criteria, particularly for older claims that would have passed when measured against the requirements at the time of the claim. As a result it is recommended that SIRA conduct a review of the existing claims management audit tool to ensure that it is fit for purpose with the new regulator's objectives.

Recommendation 5: Redevelop the existing claims management audit tool to ensure that it:

- is fit for purpose under the new regulator's objectives
- is compatible with the audit of historical claims
- can be directly linked to claims management performance measures.

Alternative claims management performance indicators

To ensure that SIRA maintains effective oversight of claims management performance, it is recommended that the reduced audit requirements be supplemented with alternate indicators of claims management performance. This approach is consistent with a move towards ongoing monitoring of performance rather than assessment at the point of licence renewal. There are a number of options SIRA should consider for claims management performance indicators, including:

- 'random' spot checks of self-insurers claims management functions, conducted at any point during a licence term. This would involve SIRA selecting particular self-insurers and conducting checks focusing on:
 - the competence and knowledge of claims management professionals
 - the existence of required procedures and documentation
- introducing a periodic survey of injured workers, covering both self-insured and nominally insured organisations to assess worker satisfaction with claims management processes
- regular assessment of self-insurer claims management performance data (discussed further in section 4.2).

There are a number of benefits to the proposed approach to assessing claims management performance, including:

- a shift away from 'point in time' performance assessments of performance which enables a more holistic view of how self-insurers are performing on an ongoing basis
- improving the effectiveness of claims management audits and self-audits in assessing performance by ensuring the audit requirements and corresponding audit tool are fit for purpose
- reducing regulatory burden on self-insurers incurred in the claims management audit process by reducing the frequency of audits for higher performing self-insurers.

Recommendation 6: Develop complementary measures (to traditional audits) to assess claims management performance including:

- random spot checks of self-insurers claims management functions by SIRA
- a periodic survey of injured workers across both self-insured and nominally insured employers
- regular assessment of claims management performance data by SIRA.

In developing alternative measures of claims management performance, SIRA has an opportunity to adopt a set of innovative, best practice performance measures. The Productivity Commission publishes an annual report discussing best practice in comparative performance measurement.¹⁰ SIRA should use this guidance in developing claims management performance measures and any potential new indicators.

¹⁰ Productivity Commission, 'Report on Government Services: Chapter 1', 2016, <http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/approach-to-performance-reporting/chapter-1-the-approach-to-performance-measurement/rogs-2016-volumea-chapter1.pdf>, accessed 10 February 2016.

Best practice comparative performance measures

The Productivity Commission publishes the annual Report on Government Services to provide information on the equity, efficiency and effectiveness of government services in Australia. One part of the Report concerns comparative performance measurement, and proposes the following guiding principles for performance indicators:

- **Comprehensiveness** — performance indicator frameworks should be comprehensive, assessing performance against all important objectives.
- **A focus on outcomes** — high level performance indicators should focus on outcomes, reflecting whether service objectives have been met.
- **Meaningful** — reported data must measure what it claims to measure. Proxy indicators will be clearly identified as such and the Steering Committee will encourage the development of more meaningful indicators to replace proxy indicators where practicable.
- **Comparability** — the ultimate aim is data that are comparable — across jurisdictions and overtime. However, comparability may be affected by progressive data availability. Where data are not yet comparable across jurisdictions, time series data within jurisdictions is particularly important.
- **Progressive data availability** — progress may vary across jurisdictions and data are generally presented for those jurisdictions that can report (not waiting until data are available for all).
- **Timeliness** — to be relevant and enhance accountability, the data published will be the most recent possible — incremental reporting when data become available, and then updating all relevant data over recent years, is preferable to waiting until all data are available.
- **Use acceptable (albeit imperfect) performance indicators** — use relevant performance indicators that are already in use in other national reporting arrangements wherever appropriate. Adopting existing indicators can ensure consistency with other, relevant reports where this adds value, lowers the costs of data collection and avoids delays in reporting.
- **Understandable** — to improve public accountability, data must be reported in a way that is meaningful to a broad audience, many of whom will not have technical or statistical expertise.
- **Accurate** — data published will be of sufficient accuracy to provide confidence in analysis based on information in the Report.

4.1.5 Claimant privacy and conflicts of interest

Current requirements

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

Some stakeholders have indicated that this has the potential to create a conflict of interest when a self-insurer is managing an injured worker. For instance, it could create issues where human resources staff from the self-insurer may be able to access an injured worker's private medical history that has been disclosed as part of the claims management process. Some stakeholders raised concerns that access to this type of information could adversely affect the worker's future prospects for job promotion or other work opportunities within the self-insurer.

Opportunities for improvement

To manage the risk of privacy breaches, claims management functions should be clearly separated from human resources and business management. Staff outside the claims management function should not have access, formally or informally, to confidential information about an injured worker's claim or medical history.

As such, self-insurers should have processes and procedures in place to maintain the privacy of claimant information. It is proposed that SIRA require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and insurer for workers compensation. This requirement could be included in a self-insurer's licence conditions.

Recommendation 7: Require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and an insurer for workers compensation

4.1.6 Workplace health and safety

Current requirements

Under the current licensing arrangements, self-insurers are required to meet a number of requirements in relation to WHS. The licensing criteria have been established with the intention of enabling the regulator to ensure that appropriate WHS systems are implemented and maintained by self-insurers.¹¹ The SIRA self-insurance licensing policy states that self-insurers are required to:

- undergo an OHSMS audit conducted by SafeWork NSW on behalf of SIRA as a part of the licence review and renewal process
- conduct annual self-audits of their OHSMS. As part of this process, self-insurers may engage the services of an independent auditor to obtain objective verification of compliance.

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

- 24 OHSMS audits were undertaken in 2014
- the pass/fail rate of OHSMS audits has fluctuated significantly over the past 20 years. (A pass is defined as achieving a compliance rate of at least 75 per cent against the areas

¹¹ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

assessed in the OHS audit.) Some of this fluctuation is due to changes in the audit tool over time.

Stakeholder views

During the consultation process, a number of stakeholders questioned whether OHSMS audits led to improved safety outcomes. They pointed out that self-insurers have an inherent incentive to provide safer workplaces, as they directly bear the cost of any injury claim that occurs. Some self-insurers acknowledged that audits may have a role in promoting “reinvestment in safety”.

A commonly expressed sentiment was that any OHSMS audit requirements should be focused on lesser performing self-insurers. This could provide WHS teams and senior management within a self-insurer with an additional incentive to improve outcomes in order to avoid being subject to future OHSMS audits.

A counter-view from a stakeholder noted that focusing solely on those self-insurers with poor records could impose burdens on employers who may have simply experienced infrequent injuries due to ‘bad luck’ rather than targeting any systemic issues.¹²

In the submissions received, 20 respondents made direct comment in relation to the OHSMS audit requirements. Of these responses:

- seven submissions supported the need for WHS audits, with some raising issues with the existing process based criteria
- six submissions suggested the removal of WHS audits from the self-insurance licence requirements
- four submissions advocated a risk-based approach linking the WHS audit requirements to self-insurer performance
- two submissions supported the existing WHS audit requirements
- one submission advocated a random WHS audit of every self-insurer prior to the expiry of their licence, with the results reviewed by a Tripartite Body prior to the issuing of licences.

Opportunities for improvement

There are two key considerations when assessing the existing WHS requirements:

1 Additional WHS risks posed by self-insurers

The review has not found any evidence to suggest that self-insurers pose any additional WHS risk compared with other (non-self-insured) employers. That is, an employer does not pose a greater level of WHS risk simply as a result of obtaining a self-insurance licence. In this regard, there does not appear to be a risk-based rationale for imposing additional WHS requirements on an employer on the basis that they elect to manage and bear the cost of their workers compensation claims.

Further, as self-insurers directly bear the cost of any injury claim that occurs, they have an inherent financial incentive to provide safer workplaces.

¹² Information provided by stakeholders in consultations with PwC

2 SIRA's role

Self-insurers are responsible for the payment of their claim liabilities and for the management of those claims. SIRA's focus is on ensuring that self-insurers are meeting their obligations in relation to claims management and return to work outcomes.

SafeWork NSW is responsible for administering regulations in relation to WHS, focussing on harm prevention and improving the safety culture in NSW workplaces. In doing this, SafeWork NSW:

- offers advice on improving work health and safety
- provides licensing and registration for potentially dangerous work
- provides testing services
- investigates workplace incidents
- enforces work health and safety laws in NSW.¹³

These WHS activities undertaken by SafeWork NSW apply to all NSW employers, regardless of their method of insurance.

Given the lack of evidence of any additional WHS risk posed by self-insurers as a group, the nature of SIRA's role as a regulator and the oversight activities undertaken by SafeWork NSW, it is difficult to justify self-insurers having additional WHS requirements compared with other employers in NSW.

Application of IPART's framework

IPART's framework states that

“conduct rules should only be applied if the risk is great, ability to remedy is poor, financial remedies insufficient, and the risk is driven by the licence holder's behaviour. Conduct rules should focus on outcomes, not duplicate other obligations and be enforceable.”¹⁴

In considering the application of IPART's framework in relation to the existing WHS requirements on self-insurers, the 'test' is not met as:

- a self-insurer's WHS risk is not generated as a result of it being self-insured
- the current obligation is a duplication of the broader WHS obligations imposed by other regulatory bodies, in this case SafeWork NSW.

Based on this assessment, it is recommended that the requirement for self-insurers to undergo OHSMS audits conducted by the regulator and the requirement for self-insurers to undertake OHSMS self-audits be removed from the self-insurance licensing framework. The two key benefits of the proposed approach are:

¹³ <http://www.safework.nsw.gov.au/> - retrieved 11/02/16

¹⁴ IPART, 'PwC – A best practice approach to licensing schemes – Conceptual Framework – March 2013', http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design/22_May_2014_-_Consultants_final_licensing_framework/PWC_-_A_best_practice_approach_to_licensing_schemes_-_Conceptual_Framework_-_March_2013

- 1 it reduces the compliance burden for self-insured organisations
- 2 it better aligns the self-insurance licensing framework more closely with SIRA's role as an independent regulator and its priorities in relation to claims management and return to work outcomes.

In monitoring the performance of self-insurers, SIRA may become aware of WHS issues or trends (e.g. increased incidents, increased claims, workplace safety incidents etc.). These issues will influence SIRA's holistic assessment of a self-insurer. They may also have implications from a WHS point of view that are beyond the scope of SIRA. To address this situation, a new framework could be established to refer any WHS issues that come to SIRA's attention to the appropriate regulatory authority (SafeWork NSW).

Recommendation 8: Remove the OHSMS self-audit and OHSMS audit requirements from the self-insurance licensing framework. Instead, rely on the existing WHS engagement and enforcement activity undertaken by SafeWork NSW that applies to all employers in NSW. Also, establish a new and contemporary framework for referring any WHS issues that come to SIRA's attention to SafeWork NSW.

4.2 Information

4.2.1 Use of licensee data to monitor risk

Current requirements

SIRA collects data on the claims management and WHS performance of self-insurers through the claims management and OHSMS audit tools, amongst other measures. SIRA uses the data to monitor self-insurer performance and manage licences appropriately. For example, self-insurers' claims management and WHS performance data are examined as part of the licence renewal process. Self-insurers are required to provide monthly claims data to SIRA. Stakeholders indicated that under current arrangements, such data can be difficult to obtain, obscuring the flow of information between licensees, SIRA and other stakeholders.

Opportunities for improvement

There is a wide scope for improving the collection of self-insurer data by the regulator to monitor performance and identify areas where improvement is needed. The current coordination of data collection by SIRA appears to be low and involves manual and hard-copy data input.

Instead, we recommend that an integrated and automated data analysis facility be established with:

- a digital channel for data submissions
- a standardised format of data
- greater ability to view and customise data
- self-reporting functionality
- an integrated dataset
- links to other performance measurements and organisations
- links to performance indicators in other jurisdictions.

Setting up such a facility would involve an upfront cost to establish, but would provide benefits over time by allowing SIRA to reallocate its resources towards analysis of workers compensation outcomes, and reduce self-insurers' compliance burden. One self-insurer complained that they were still forced to make their monthly submissions to SIRA in hard-copy.

It would also address criticisms by self-insurers that they cannot easily benchmark their performance against a 'league table' of other self-insurers or industry counterparts. They suggested that access to de-identified data from these employers would help them improve their own outcomes, and this should be encouraged to enable best practice WHS and workers compensation methods to be acknowledged and implemented.

There are numerous examples of modern and secure data collection software across the NSW and Federal governments, including in the national body overseeing WHS and workers compensation, Safe Work Australia.

Recommendation 9: Establish an integrated and automated data analysis system to enable SIRA to better assess self-insurer performance. This system will support the proposed risk-based approach to self-insurance oversight by SIRA.

4.2.2 Increased public transparency of licensee data

Current requirements

There is currently little transparency around the performance of self-insurers and how they compare to non-self-insured counterparts. As mentioned in Section 4.2.1, self-insurers themselves cannot easily benchmark themselves against other self-insurers. The public and stakeholders such as employee representatives have no access to any data on self-insurer outcomes.

Opportunities for improvement

Increasing transparency of self-insurance performance data has the potential to further strengthen the incentives for self-insurers to avoid injuries in the workplace and improve the service for workers who do get injured. Publishing de-identified performance data will ensure that the public, the press and key stakeholders can have confidence that the self-insurance system results in better outcomes for both workers and companies. There was near-universal agreement among submissions, that there needed to be better access to data.

The data we envisage being published include:

- the rate of new claims reported per \$1m wages
- the rate of gross incurred cost per \$1m wages
- the average gross incurred cost per claim
- the percentage of new claims reported within seven days of injury
- the average lost time duration in days
- the rate of lost time duration injuries per \$1m wages
- injured worker satisfaction.

However, in implementing the proposed framework, further analysis will be required to confirm and define the appropriate measures.

While performance data should be anonymous to ensure isolated and non-contextualised information does not unfairly damage a company's reputation, we foresee that low performers will experience significant internal and implicit pressure to improve their outcomes. Furthermore, our proposed risk-based approach will provide other incentives to focus on investing in their WHS and workers compensation performance.

To ensure the data submitted by self-insurers and subsequently published by SIRA is accurate, a program of data auditing should be established. This should involve spot checks of self-insurers claims management systems to satisfy the regulator that all injuries and claims are being recorded and treated properly. Furthermore, consideration should be given to strengthening the deterrent to knowingly or negligently submitting misleading or inaccurate information, as this behaviour would severely damage community trust in the self-insurance system.

Recommendation 10: Prepare a quarterly summary performance report for each self-insurer that provides transparency on its performance relative to other self-insurers and its industry.

Recommendation 11: Publish on SIRA's website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme. This could include indicators on:

- claims management and return to work outcomes
- relative incident and claims volumes
- compliance rates in relation to SIRA's reporting and data provision requirements
- injured worker satisfaction.

Recommendation 12: Introduce a data auditing program to help to ensure that data submitted by self-insurers and published by SIRA are accurate.

4.2.3 Reporting of significant matters

Current requirements

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

Opportunities for improvement

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

Recommendation 13: Require self-insurers to formally advise SIRA of any strategically significant matters related to their management of claims, including:

- any cases to be litigated in a court
- any cases expected to generate significant public interest.

4.1 Financial

4.1.1 Performance based licence fees

Current requirements

Under current requirements, self-insurers pay an annual levy as calculated by SIRA. The calculation of this levy is based on a fixed percentage of their deemed premium. That is, a fixed percentage of the premium payable by the self-insurer had they been insured under the nominal scheme. Once an organisation has been granted a licence, they also pay an annual levy for workers compensation regulatory costs and dust diseases support (these fees are also paid by nominally insured organisations as part of their insurance premium).

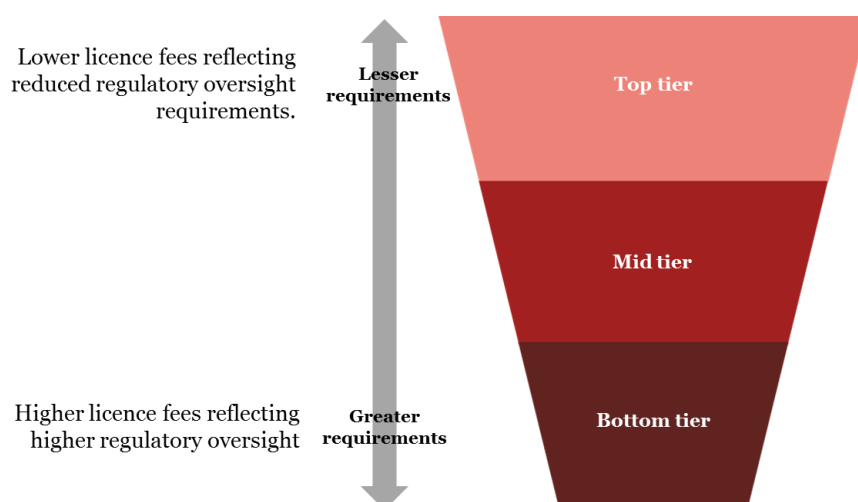
Opportunities for improvement

Self-insurance licence fees should, in general, reflect the cost of regulating self-insurers. Under the proposed tiered model, those self-insurers that perform less well than others will require greater scrutiny of their activities by the regulator. For example, where a self-insurer is required to undergo an audit conducted by the regulator, the fees payable should reflect the costs incurred by the regulator in conducting the audit (in addition to any other regulatory activity related to the oversight of that self-insurer).

In the current state, the calculated fee is independent of the regulatory effort required by the regulator. For example, where a self-insurer has a shorter licence period (less than the standard three years), SIRA's effort in relation to that self-insurer increases due to the more frequent licence renewal requirements. In this situation the levy for the self-insurer does not change, and as a result, there is a cross subsidisation occurring in which the levy paid by self-insurers with a longer licence is subsidising the cost of the regulatory effort incurred for the self-insurer with a shorter term.

As a result it is recommended that SIRA better align fees with costs incurred by the regulator. This would mean that the fees paid by self-insurers would vary depending on their tier, as shown in Figure 11; top tier self-insurers would pay the lowest fee and bottom tier, the highest.

Figure 11: Risk-based licence fees



In order to implement this recommendation SIRA would need to establish a view of the costs it incurs in relation to its oversight activities and determine what fee levels will cover those cost under the new framework. In addition there are some costs that would be incurred by other regulators and industry bodies. For example, inspection costs incurred by SafeWork NSW or dispute resolution costs incurred by the Workers Compensation Commission (WCC). As the self-insurance levy is the only mechanism to recover these costs, SIRA will need to ensure that these are incorporated in the levies collected under the new framework.

IPART's licensing framework makes specific reference to ensuring that licence fees and charges are appropriate. Its best practice guidance suggests that "fees and charges should generally be set to recover the efficient costs of administering regulation."¹⁵ The recommended approach will bring the self-insurance levy requirements closer to the suggested best practice approach.

The main benefits of the recommendation are, firstly, that it acknowledges the performance of self-insurers and provides a direct financial incentive for those in lower tiers to improve their performance. Secondly, it would allow SIRA to refresh its funding model and cover its costs, following the split from WorkSafe NSW.

In the submissions received in response to the Issues Paper a number of self-insurers and employee representatives groups welcomed the prospect of variable licence fees to encourage improved performance. Self-insurers largely saw it as an opportunity to gain a discount from their current fees for their continued performance, while employee representatives viewed variable fees as another incentive to WHS performance. Some self-insurers expressed a desire for greater transparency in relation to licence fees without making specific comment as to their calculation or level. However, it should be noted that the majority of submissions remained silent on the matter.

Recommendation 14: Align SIRA's cost recovery model more closely with the regulatory effort incurred by the regulator by differentiating self-insurer licence fees based on their level of performance. The fee structure would be aligned with the proposed three tiered model.

4.1.2 Tail management

Current requirements

Under current arrangements, employers that exit the self-insurance scheme are able to access workers compensation insurance through the licensed insurer scheme for any new claims arising following their exit from the self-insurance scheme. However, the employer is required to retain responsibility for the management of its existing long-term claims liabilities. These are known as 'long-tail' liabilities, hence the use of the expression 'tail management'.

In these circumstances, the former self-insurer bears the responsibility for managing these long-tail liabilities under the workers compensation legislation but no longer fall under the licensing and reporting requirements governing self-insurance in NSW.

Opportunities for improvement

Where an organisation has ceased to be self-insured but has existing claims liabilities a situation is created under which an organisation is managing its own claims but is no longer subject to the oversight and reporting requirements of a self-insurer. This presents the risk that the organisation does not meet its obligations to its injured workers as it is not subject to any claims management oversight requirements (e.g. audits and self-audits).

To address these risks, it is recommended that those organisations that exit the self-insurance system are required to buy out of their tail claims, with a licensed insurer taking

¹⁵ IPART, 'PwC – A best practice approach to licensing schemes – Conceptual Framework – March 2013', http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design/22_May_2014_-_Consultants_final_licensing_framework/PWC_-_A_best_practice_approach_to_licensing_schemes_-_Conceptual_Framework_-_March_2013

responsibility for these claims in return for a sum representing the central estimate of the employer's tail liabilities. As the employer is no longer self-insured, the regulator has no ability to oversee the employer's management of its tail claims.

In response to this issue, most submissions received remained silent on this issue. However, four representatives of self-insurers made specific comment. Of these, two suggested that the management and potential buyout of claim liabilities at the point an organisation ceases to be self-insured should be dealt with on a case by case basis. One self-insurer advocated an approach where self-insurers are given the option to pass their tail claims to the nominal insurer for a fee. This self-insurer also advocated the option to allow self-insurers to transfer the management of their tail claims to a third party claims management organisation. The final self-insurer that made specific comment in relation to this issue suggested that self-insurers should have the option to manage their existing tail claims with the additional provision that the prudential requirements for self-insurance continue to be met.

Recommendation 15: Provide a mechanism by which employers that exit the self-insurance scheme are required to pass on their tail claims to a licensed insurer. This would require the employer to pay a buyout amount covering the cost of its outstanding claims liabilities.

4.1.3 Prudential and actuarial requirements for self-insurers

Current requirements

SIRA's Self-insurance Licensing Policy contains prudential requirements that employers must satisfy to enter and remain in the self-insurance system. To enter the self-insurance licensing scheme, an organisation must:¹⁶

- possess sufficient financial resources to meet its liabilities
- demonstrate long term financial viability by way of audited financial statements for the previous 5 years
- lodge a deposit (either in cash or government-guaranteed securities) with SIRA or alternately provide an irrevocable bank guarantee of an amount equivalent to the projected tariff premium for the ensuing 12 months plus a prudential margin of 50 per cent
- provide a cross/holding company guarantee, in the case of group self-insurance licences, under which each of the companies guarantee the other companies' liabilities to workers.

There are also ongoing financial requirements self-insurers must meet, which are intended to ensure that self-insurers are able to cover the costs of their claim liabilities, while also providing for the stability of the broader system and include the maintenance of unlimited reinsurance cover.

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

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

Opportunities for improvement

As discussed in section 2.3, submissions received from stakeholders in relation to prudential requirements ranged from a view that current requirements were inadequate, to general satisfaction with the current prudential requirements to a view from some self-insurers that prudential requirements were overly burdensome. Among these views:

- four self-insurers advocated the indexation of reinsurance retention requirements
- three self-insurers argued that the 50 per cent prudential margin was excessive
- one self-insurer advocated an approach in which self-insurers that met outstanding prudential benchmarks should face a lower prudential margin
- an employee representative group argued that the current prudential requirements were inadequate and noted examples where large organisations around the world had collapsed (although the examples provided did not indicate that the prudential requirements of self-insurers in NSW would be insufficient to meet any outstanding workers compensation claims liabilities).

The broad objective of the prudential requirements is to ensure that where an organisation is responsible for the financial cost of its claim liabilities, protections are in place to enable those claim liabilities to be met in the event that the self-insurer becomes bankrupt.

This review has not undertaken a detailed assessment of the current prudential requirements as SIRA should determine these requirements in conjunction with its actuary. In reviewing prudential arrangements, SIRA should consider:

- updating its guidance in relation to the calculation of outstanding claims liabilities
- increasing the minimum claims handling expense assumption
- introducing a minimum security requirement
- allowing self-insurers with large amounts of claim liabilities to utilise a different valuation methodology
- increasing the retention amount range
- increasing the level of the retention amount beyond which approval is required from SIRA.

Recommendation 16: SIRA, in consultation with its actuaries, should consider updating the prudential requirements to ensure that they remain fit for purpose, including:

- updating its guidance in relation to the calculation of outstanding claims liabilities
- increasing the minimum claims handling expense assumption
- introducing a minimum security requirement
- allowing self-insurers with large amounts of claim liabilities to utilise a different valuation methodology
- increasing the retention amount range
- increasing the level of the retention amount beyond which approval is required from SIRA.

5 Issues discussed in the Issues Paper, but not addressed by recommendations

5.1 Independent Medical Examinations

Current situation

An independent medical examination (IME) is conducted by a registered medical practitioner who is engaged to provide an impartial medical assessment in relation to a worker's compensation claim. The examination can be requested by the worker, worker's legal representative or the insurer where medical information is inadequate, unavailable inconsistent or where the referrer has been unable to resolve the issues related to the problem directly with the parties involved.¹⁷

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

Reason for not proposing a change to current requirements

Issues raised by stakeholders relating to the appointment of IMEs stemmed from the potential for a conflict of interest to arise in the management of claims and rehabilitation. It was noted that, in some cases, employees that were asked to attend an IME felt that they were unable to exercise their rights for fear of jeopardising their employment situation and/or relationship with their employer. These rights include, registering an objection or complaint in relation to the IME, recovering the cost of the IME, obtaining a copy of the IME report and receiving adequate notice and information in relation to their claim.

The review notes that there are existing mechanisms in place for individuals to raise any concerns including:

- seeking the advice of employee and injured worker representative groups
- raising concerns directly with the regulator
- registering a complaint or lodging a dispute with the WCC.

These mechanisms apply equally to employees of self-insurers and employees of nominally insured organisations. As a result, the review has not made any additional recommendations in response to this issue.

¹⁷ WorkCover NSW, Workers Compensation Claims, 2015, <http://www.workcover.nsw.gov.au/workers-compensation-claims/medical-professionals/medical-practitioners/independent-medical-examiner>

5.2 *Employer size threshold*

Current situation

One criterion in SIRA's licensing policy for self-insurers is an organisation's number of employees.¹⁸ The policy specifies, upon application, that self-insurers must have a minimum of 500 employees, although on renewal, this threshold does not apply.

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

Reason for not proposing a change to current requirements

The employee size threshold serves as a proxy for an organisation's ability to sufficiently comply with the requirements of the self-insurance licence, particularly to manage claims. In theory, those applicants with under 500 employees might be expected to be able to evaluate whether they have the capabilities and capacity for self-insurance. However, in practice, there is imperfect information available to organisations wishing to apply for self-insurance as they have not had the experience of setting up the necessary structures and systems to meet the self-insurance requirements. While it may only be a proxy, the 500 employee entry criterion provides important guidance to employers that are considering self-insurance and the scale required to make it a potentially viable proposition.

¹⁸ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

Appendix A Appendix Consultation Schedule

Stakeholder	Category	Date of consultation
AMWU	Employee and injured worker representative	21 September 2015
Bluescope	Self-insurer	28 August 2015
Brickworks	Self-insurer	28 August 2015
Comcare	Regulator (Commonwealth)	16 November 2015
David Zaman	Self-insurer actuary	28 August 2015
Fairfield City Council	Self-insurer	28 August 2015
Independent Pricing and Regulatory Tribunal (IPART)	Regulator	7 September 2015
Injured Workers Support Network (IWSN)	Employee and injured worker representative	7 September 2015
Julie McMahon	Self-insurer actuary	28 August 2015
Nominal Insurer	Regulator	7 September 2015
NSW Self-insurers Association (NSWSIA)	Self-insurer representative	28 August 2015
Safe Work NSW	Regulator	21 September 2015
State Transit Authority	Self-insurer	23 September 2015
Toll	Self-insurer	28 August 2015
Transport Shared Services	Self-insurer	28 August 2015
Unions NSW	Employee and injured worker representative	7 September 2015 21 September 2015
Woolworths	Self-insurer	28 August 2015
Workers Compensation Commission (WCC)	Regulator	2 September 2015
Workers Compensation Independent Review Office (WIRO)	Regulator	7 September 2015

Appendix B List of submissions received

Submission author	Category
ANZ	Self-insurer
Ausgrid	Self-insurer
Australian Manufacturing Workers Union (AMWU)	Employee and injured worker representative
Bluescope	Self-insurer
CSR Limited	Self-insurer
Endeavour Energy	Self-insurer
Fairfield City Council	Self-insurer
Hawkesbury City Council	Self-insurer
Injured Workers Support Network (IWSN)	Employee and injured worker representative
Insurance Council of Australia	Industry body
Kelly Davies	Independent individual
Melissa Fabian	Independent individual
Minerva Consulting (4)	OHSMS auditors
National Insurance Brokers Association of Australia	Organisation supporting self-insurers
NSW Self-Insurers Association	Industry body
NSW Trains	Self-insurer
Qantas	Self-insurer
QBE	Organisation supporting self-insurers
Robert Hunter	Independent individual
Shoalhaven City Council	Self-insurer
Steve Moxham	Independent individual
Toll	Self-insurer
Vaz Vozzo	Independent individual
Wollongong City Council	Self-insurer
Woolworths	Self-insurer
Confidential	Various (9 submissions)

Appendix C Self-insurance in NSW

Self-insurance in NSW

Background

The introduction of the NSW WorkCover scheme in June 1987 required insurers to maintain separate statutory trust funds for employers' premiums and outstanding claims. Liabilities are, therefore, secured by this statutory mechanism.

Self-insurers on the other hand are not required to maintain separate trust funds to secure outstanding claims liabilities. Assets representing provisions for outstanding claims are not separated from the other assets of self-insurers.

Self-insurers are an integral part of the NSW WHS and workers compensation. Their status is derived from the Workers Compensation Act 1987, which provides for employers to be licensed by SIRA subject to meeting certain licensing criteria.¹⁹

Self-insurers are subject to rules which intend to ensure that other employers in NSW will not be required to meet the cost of claims if these entities are not able to meet their workers compensation liabilities.

Self-insurers and specialised insurers are subjected to stricter prudential management settings than the Nominal Insurer.²⁰ Unlike under the Nominal Insurer Scheme wherein employers pay a premium reflecting industry performance and the broader performance of the Scheme, employers covered by a self-insurance option pay a premium that more directly reflects their success in scheme management and claims outcomes. There is hence a stronger price signal for effective claims management under a self-insurance arrangement.²¹

Previous reviews

NSW's self-insurance policy was last revised in 2001. Since this time there have been a number of changes to the operational environment and regulation surrounding self-insurance in NSW, including the implementation of WHS requirements in NSW and other jurisdictions.

Several reviews of the broader scheme have been undertaken in recent years which have commented, to a limited extent, on self-insurance arrangements within the scheme. These include:

- the 2012 *NSW Workers Compensation Scheme Issues Paper*, which limited or capped some benefits and aimed to reduce the \$4bn deficit in the scheme

¹⁹ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers' Compensation Act, 1987, p1.

²⁰ The workers compensation Nominal Insurer is a not-for-profit legal entity established in 2005 to issue policies of insurance and manage workers compensation claims for NSW employers. All premiums received are paid into the Workers Compensation Insurance Fund (WCIF) to meet the cost of claims and the administration of the Scheme. The assets of the WCIF are owned by the employers of NSW, who are also responsible for meeting any shortfall. (Sourced from NSW WorkCover Annual Report 2013-14, p6).

²¹ Centre for International Economics, 'Statutory review of the Workers Compensation Legislation Amendment Act 2012', June 2014, p26.

- *Workers Compensation Legislation Amendment Act 2012*, which did not make any major self-insurance-specific changes
- the *Statutory Review of the Workers Compensation Legislation Amendment Act 2012*, undertaken on behalf of the Office of Finance and Services in 2014
- the *Review of the exercise of the functions of the WorkCover Authority*, undertaken by the Standing Committee on Law and Justice in 2014.

These reports did not complete comprehensive reviews of the self-insurance arrangements under NSW WorkCover, however, meaning the existing arrangements are largely unchanged since the revision in 2001.

2015 workers compensation reform package

In August 2015, the NSW Government announced a package of reforms to the workers compensation system in NSW.²² The package included three main elements, firstly the introduction of three new organisations to regulate NSW's insurance scheme's and health and safety requirements. SafeWork NSW, as a regulator for work health and safety, Insurance & Care NSW (iCare) to deliver insurance and care services and State Insurance Regulatory Authority (SIRA), to independently regulate and oversee the state's insurance schemes. Secondly, the package announced changes to benefits and entitlements for injured workers and thirdly legislated reductions in insurance premiums for NSW business.

Under the reforms announced in the package, the role of Safety, Return to Work and Support (SRWS) which previously regulated self-insurance, will fall under the jurisdiction of SIRA. While these changes are expected to have an impact on the operation of the broader system, existing self-insurance regulations and requirements remain unchanged. As a result the review remains timely and relevant.

Regulation in the context of NSW self-insurance

Government intervention in the self-insurance market has taken the form of legislation and regulation. The legislative instruments and regulatory framework are described in the following sections.

Instruments

The workers compensation system in NSW is legislated through:

- the *Workers Compensation Act 1987*
- the *Workplace Injury Management and Workers Compensation Act 1998*
- the *Workers Compensation Regulation 2010*
- the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

These instruments operate to establish the workers compensation and injury management system.

Role of self-insurance regulation

From an economic perspective, freely functioning markets generally provide the most efficient means of allocating goods and services between members of the community so as to

²² Dominic Perrottet, Minister for Finance, Services and Property, Media Release, \$1BN INSURANCE REFORM PACKAGE PUTS THE CUSTOMER AT THE CENTRE, 4 August 2015.

maximise the well-being of the community.²³ There are however cases where government intervention in markets is justified on economic efficiency grounds, or to achieve social and environmental objectives.

There are several reasons for government intervention in the operation of markets.

Addressing market failure

In some instances, the market does not deliver the best outcomes for society – for example, because of the existence of market distortions or imperfections. In some circumstances, government intervention may be justified on the grounds that economic outcomes could be improved.

Common causes of market failure include:

- external costs and benefits, generally referred to as ‘externalities’, which occur where an activity imposes costs on or generates benefits for individuals or groups not directly involved in the activity
- insufficient information, where market participants do not have access to the information they require to make well-informed decisions
- public goods, whose benefits can be enjoyed by all parties but for which it is not feasible to charge all users
- the presence of significant market power, which can arise from anti-competitive conduct or from uncompetitive market structures.

Addressing social welfare objectives

Government intervention may be justified in the pursuit of social and equity objectives. These include the redistribution of income to achieve equity goals, establishing law and order, cultural objectives, and preserving and protecting environmental resources.

For example, governments commonly use taxation and social welfare systems to redistribute resources to the socially disadvantaged, such as the unemployed. These systems are also employed to deliver core services to the community, such as health and education.

Addressing the management of public risk

A particular form of social regulation relates to requirements that seek to reduce or manage the risk of harm to health, safety or welfare of individuals or the community. Sometimes referred to as ‘protective’ regulation, this includes:

- measures to promote public health and safety, including the regulation of product and home safety
- actions undertaken to reduce the risk of harm to vulnerable individuals or groups, such as minimum quality standards in childcare
- restrictions on the practice of certain occupations to protect consumers from risky practitioners, such as medical professionals.

WHS and workers compensation regulations are considered to be measures promoting public health and safety. Such regulations seek to reduce the risk and incidence of injuries

²³ This section is based predominantly on the Victorian Guide to Regulation, *Toolkit 1: Purposes and types of regulation*, July 2014, prepared by the Victorian Department of Treasury and Finance.

and deaths in the workplace and to ensure that adequate protections are in place for injured workers.

Self-insurance arrangements in workers compensation present a distinct set of risks that require separate regulations to those in place for employers insured by the nominal insurer. These potential risks include:

- injured workers may not receive their entitlements in the event of self-insurer insolvency
- some self-insurers may not undertake to manage workers' claims appropriately.

Definition of self-insurance

In the context of workers compensation, self-insurance refers to an arrangement in which an employer or corporate group of employers is relieved from obtaining a workers compensation policy of insurance and allows such employers to carry their own underwriting risk.

Self-insurers are responsible for the payment of their claim liabilities and for the management of those claims. In NSW, SIRA bears the responsibility of ensuring that workers' outstanding claims are adequately protected and will be met.²⁴

Purpose of self-insurance

Self-insurance provides an option to an employer to manage their own claims while also bearing the costs and risks of such claims. At its core, a self-insurance system should aim to achieve the following:

- flexibility and choice for employers
- better work health and safety conditions
- fair and equitable treatment for injured employees
- improvement in rehabilitation and injury management
- incentivise employers to improve OHS performance and return-to-work outcomes
- incentivise employers to be innovative and customise approaches to the management of workers compensation claims.

Attainment of these objectives aims to facilitate knowledge transfer across the broader scheme, leading to improvement in outcomes for both employers and employees throughout NSW.

²⁴ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers' Compensation Act, 1987, p1.

Table 6: How self-insurance regulation endeavours to incentivise improved outcomes for workers

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

Source: PwC

Appendix D Summary of self-insurance requirements in other jurisdictions

Table 7 provides a summary comparison of the licensing requirements for self-insurers (SIs) in NSW compared with those of other Australian jurisdictions.

Table 7: Key components of licensing arrangements across other Australian jurisdictions

	Victoria	QLD	SA	Comcare
Overview	<ul style="list-style-type: none"> 38 SIs including 4 SIs awaiting renewal Representing 8% of Victorian WorkSafe Scheme by total remuneration Last new SI was in 2012 7.32 claims per million hours worked 9 serious injury and disease claims per 1000 employees 	<ul style="list-style-type: none"> 27 SIs 13.9 serious injury and disease claims per 1000 employees 	<ul style="list-style-type: none"> Around 38% of SA's remuneration is paid by SIs There are over 140 members of the Self-insurers of South Australia association 11.9 serious injury and disease claims per 1000 employees 	<ul style="list-style-type: none"> 33 Self-insurance licensees under the Safety, Rehabilitation and Compensation Act (1998) Moratorium on Comcare Self-insurance Licences lifted in 2013 6.2 serious injury and disease claims per 1000 employees
Entry				
Application and fees	Assessment fee is lessor of 0.033% of total wages or \$57,520	Application fee of \$15,000 for single employers and \$20,000 for group employers	Application fee of \$10 - \$40K (depends) on number of workers	Application fee is an amount estimated to be the cost of considering the application
Renewal period	Standard renewal period is 4 years , can be extended by WorkSafe to 6 years	Initial licence is 2 years , licences can be up to 4 years	ReturnToWorkSA can grant registration as a SI for no longer than 3 years	Recently extended to an 8 year renewal period for all self-insurers
Financial entry requirements	<ul style="list-style-type: none"> Able to meet its liabilities Assessed against benchmarks on primary indicators and secondary indicators 	<ul style="list-style-type: none"> At least 2000 full time employees in Queensland An unconditional bank guarantee or deposit Take on all liability for outstanding WorkCover claims 	<ul style="list-style-type: none"> Minimum of 200 employees (exceptions may be made) Assessed against 4 primary indicators and a secondary indicator An unconditional, continuing bank guarantee 	<ul style="list-style-type: none"> SRCC will have regard to "financial and prudential information" A bank guarantee based on the 95th percentile of outstanding liabilities, subject to a minimum of \$2.5m

	Victoria	QLD	SA	Comcare
WHS entry requirements	<ul style="list-style-type: none"> Satisfactorily low incidence of injuries 	<ul style="list-style-type: none"> "Occupational health and safety performance is satisfactory" 	<ul style="list-style-type: none"> Incidence and severity of injuries will be evaluated based on 3 years of previous data Applicant's performance will be considered in relation to comparable industries 	<ul style="list-style-type: none"> "Resources, the interest of employees and capacity of the applicant to meet standards set by the SRCC"
Claims management entry requirements	<ul style="list-style-type: none"> Appropriate resources planned or in place to ensure high performance "Strong claims management, occupational rehabilitation and return to work history" 	<ul style="list-style-type: none"> Adequate systems and resources for managing claims and rehabilitation Insurers submit claims data monthly and claims reconciliation data half-yearly 	<p>ReturnToWorkSA will assess the following with respect to claims management:</p> <ul style="list-style-type: none"> Qualification and experience of officers responsible Number, frequency, complexity and duration of claims Job description of officers responsible Performance of employer as measured against the Code 	<p>"Claims management systems information including accurate and quick determinations and payments, ensuring equity of outcomes and capacity to comply with conditions of licence"</p>
Risk management	<ul style="list-style-type: none"> Must have unlimited contingent liability insurance 	<ul style="list-style-type: none"> Must have reinsurance cover 	<ul style="list-style-type: none"> Must have contingency plans and test them periodically 	<ul style="list-style-type: none"> Reinsurance policy with a reinsurance retention amount as approved by the SRCC
Ongoing				
Reporting	<ul style="list-style-type: none"> WorkSafe provides an annual report to each SI: Self-insurer Performance Framework provides feedback to SIs SIs must provide: <ul style="list-style-type: none"> Self-audits of claims management, finance and WHS, financial and prudential documentation, etc. Must notify WorkSafe of "strategically significant matters": Any application for an appeal Where workers are terminally ill workers have asbestos-related conditions 	<ul style="list-style-type: none"> SIs must provide annual actuarial reports 	<ul style="list-style-type: none"> SIs must provide: <ul style="list-style-type: none"> Annual actuarial reports of outstanding liabilities A copy of audited financial statements within 5 months of every financial year 	<ul style="list-style-type: none"> SIs must provide: <ul style="list-style-type: none"> An actuarial assessment of current and projected outstanding liabilities Subject to continual financial monitoring May be subject to an annual risk based desktop review process using the licensees' audited financial statements Licensees must notify Comcare of any serious or dangerous incidents

	Victoria	QLD	SA	Comcare
OHS auditing and checking requirements	<ul style="list-style-type: none"> • Uses National Audit Tool • WorkSafe expects that 90% of the 108 criteria will be audited during approval process • Accredited auditors can be used 	<ul style="list-style-type: none"> • Uses National Audit Tool • Addresses all 5 elements • 4- and 3-year licence holders must undergo a self-audit (undertaken by internal personnel) at the two-year interval • All applications for licence renewal must undergo the two-stage audit 	<ul style="list-style-type: none"> • Organisation must carry out internal audits to ensure performance of systems and programs • Evaluations are conducted when a prospective SI applies, upon application for renewal and on an ongoing basis to monitor compliance • Evaluations will be undertaken against the methodology in the Evaluation Practice Manual • An employer may elect to be evaluated against the National SI WHSMS Audit Tool instead 	<ul style="list-style-type: none"> • Licence performance is evaluated via the annual Licence Improvement Program (LIP) • Performance outcomes are assessed against a Tier Model • All licensees are subject to external audits in their last year of licence
Actuarial requirements	Must obtain annual actuarial valuation its claims liability	Must prepare annual actuarial report	Must provide annual actuarial reports of outstanding liabilities	Must prepare an actuarial assessment of current and projected outstanding liabilities
Fees	<ul style="list-style-type: none"> • Fees are based on a proportion of WorkSafe's costs determined by total remuneration 	<ul style="list-style-type: none"> • Must pay annual levy to Workers' Compensation Regulator • WHS performance reporting fees are \$1203 and \$1601 for single and group employers respectively 	<p>The fee paid by an SI "will be a percentage of the base premium that would have been payable by the employer if the employer were not an [SI]...and will be fixed by the Corporation with a view to raising from [SIs]":</p> <ul style="list-style-type: none"> • "A fair contribution" towards administrative and dispute resolution costs 	<p>Licensees must pay a fee based on:</p> <ul style="list-style-type: none"> • A flat fee component • Licensee specific costs <p>An amount determined by the number of FTE</p>
Third-party claims management	<ul style="list-style-type: none"> • Can outsource claims after WorkSafe's assessment of agent's capabilities 	<ul style="list-style-type: none"> • Does not appear to allow outsourcing of claims management 	<ul style="list-style-type: none"> • Does not appear to allow outsourcing of claims management 	<ul style="list-style-type: none"> • Does not appear to allow outsourcing of claims management
Restructuring of company	<ul style="list-style-type: none"> • If an SI acquires a registered employer, they can assume its tail claims liability. The acquisition may also trigger a review of the self-insurers approval • Must advise WorkSafe of acquisitions or dispositions 		<ul style="list-style-type: none"> • SIs must inform ReturnToWorkSA of any restructuring and may have to reapply if there are substantial changes 	<ul style="list-style-type: none"> • Licensee must notify Comcare of any changes in legal structure, ownership or control, and of any significant change in employee numbers
Exit				
Licence suspension, cancellation, non-renewal	<ul style="list-style-type: none"> • Incapable of meeting its claims liabilities, or is not fit and proper to be a SI • Becomes a 	<ul style="list-style-type: none"> • Can appeal to a District or Supreme Court if they are unhappy with the issue, 	<ul style="list-style-type: none"> • Due to insolvency or failing to make adequate provision for claims management • If licence of a SI 	<ul style="list-style-type: none"> • If licence of a corporation is revoked, the licensee ceases to be liable for any claims after the licence was revoked

	Victoria	QLD	SA	Comcare
	subsidiary of another body corporate and it is not approved <ul style="list-style-type: none"> Failed to comply with WIRC Act 	renewal or cancellation of licence	employer is revoked, the licensee ceases to be liable for any claims after the licence was revoked and ReturnToWorkSA will take them on in return for a payment for the capitalised value of all outstanding liabilities	<ul style="list-style-type: none"> If a licence is revoked, Comcare may take all the bank guarantee money
Sources	WorkSafe Victoria, www.worksafe.vic.gov.au/insurance-and-premiums/self-insurance Accessed 13 August 2015	WorkCover Queensland, www.worksafe.qld.gov.au/insurance/self-insurance-auditing Accessed 14 August 2015	Self-insurers of South Australia, www.sisa.net.au/ Accessed 17 September 2015; ReturnToWorkSA, www.rtwsa.com/insurance/self-insurance/regulating-self-insured Accessed 13 August 2015	Comcare, www.comcare.gov.au/the-scheme/regulation Accessed 14 August 2015; Comcare, http://www.comcare.gov.au/data/assets/pdf_file/0003/134481/Self-insurance_licence_application_process_-_frequently_asked_questions_PDF_88.3_KB.pdf Accessed 14 August 2015

Appendix E List of self-insurers in NSW

Table 8 provides a list of current self-insured employers in NSW. Table 9 lists NSW employers that are currently group self-insurers.

Table 8: List of self-insured employers in NSW

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

Table 9: Group self-insurers in NSW

Group self-insurers
Arrium Limited
Australia and New Zealand Banking Group Limited
Brambles Industries Limited
Bluescope Steel Limited
Brickworks Limited
Coles Group Limited
Colin Joss & Co Pty Limited
CSR Limited
Echo Entertainment Group Limited
Holcim (Australia) Holdings Pty Limited
JELD-WEN Australia Pty Limited
McDonald's Australia Holdings Limited
Myer Holdings Limited
Northern Co-operative Meat Company Limited
NSW Self-insurance Corporation ²⁵
Primary Health Care Limited
Skilled Group Limited
Toll Holdings Limited
Unilever Australia (Holdings) Pty Ltd
Woolworths Limited

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

²⁵ NSW Self-insurance Corporation is classified as a self-insurer but is not licensed.

Appendix F Comparison of current and recommended licence requirements

Category	Current requirements ²⁶	Recommendations
Financial	<ul style="list-style-type: none"> • Payment of an application fee of \$25K for individual SIs or \$30K for group SIs. • Licence fee based on a percentage of deemed premium. • Applicants for a new self-insurer licence, either single or group, must have a minimum of 500 employees in NSW. • Sufficient financial resources to meet liabilities. • Deposit or bank guarantee based upon projected tariff premium for ensuing 12 months plus a prudential margin of 50 per cent. • Must obtain unlimited reinsurance cover. A retention amount under the above policy or policies, provided that it is within the range of \$100,000 - \$1,000,000 per event is acceptable to SIRA. • Employers that exit the self-insurance scheme are able to access workers compensation insurance through the nominally insured scheme. When this occurs, the employer retains responsibility for the management of its existing 	<p>Recommendation 14: Align SIRA's cost recovery model more closely with the regulatory effort incurred by the regulator by differentiating self-insurer licence fees based on their level of performance. The fee structure would be aligned with the proposed three tiered model.</p> <p>Recommendation 15: Provide a mechanism by which employers that exit the self-insurance scheme are required to pass on their tail claims to a licensed insurer. This would require the employer to pay a buyout amount covering the cost of its outstanding claims liabilities.</p> <p>Recommendation 16: SIRA, in consultation with its actuaries, should consider updating the prudential requirements to ensure that they remain fit for purpose, including:</p> <ul style="list-style-type: none"> - updating its guidance in relation to the calculation of outstanding claims liabilities - increasing the minimum claims handling expense assumption - introducing a minimum security requirement - allowing self-insurers with large amounts of claim liabilities to utilise a different valuation methodology - increasing the retention amount range - increasing the level of the retention amount beyond which approval is required from SIRA.

²⁶ Licensing policy of the WorkCover Authority for self-insurers and group self-insurers licensed under Section 211 of the Workers Compensation Act, 1987

Category	Current requirements ²⁶	Recommendations
Operational	<p>long-term claims liabilities.</p> <ul style="list-style-type: none"> 3-year licence renewal period. Self-insurers must perform their obligations and functions in accordance with commercially acceptable and professional standards and demonstrate performance in injury and claims management. Self-insurers must employ sufficient claims management personnel, resources and structure to perform obligations and functions as a licensed self-insurer. SIRA will conduct claims management audits on self-insurers periodically to monitor their compliance with legislative requirements. Self-insurers are also required to conduct and report self-audit results at every year and lodge any revised injury management program to SIRA. Must demonstrate that its OHS management system is operating at an acceptable level under the National Self-Insurer OHS Management System Audit Tool (NAT). Self-insurers must conduct annual self-audits of their OHS Management System against the NAT criteria and provide a report to SIRA. 	<p>Recommendation 1: Implement a three-tiered oversight model for self-insurance, based on self-insurer performance. Under this model:</p> <ul style="list-style-type: none"> Self-insurers that exhibit higher levels of performance against outcome measures and meet SIRA's operational and reporting obligations will be subject to fewer oversight requirements from SIRA. Most self-insurers are expected to be in the top tier, over time Self-insurers that do not meet performance requirements and/ or do not meet SIRA's operational and reporting requirements will be subject to greater oversight from SIRA. The bottom tier is intended to be short term allocation for lesser performers, with self-insurers either improving their performance to move to the mid tier, or otherwise placing their self-insurance licence at risk An intermediate level of oversight is proposed for medium performers (mid tier). New self-insurers would enter the scheme at the mid tier until they have proven their ability to meet SIRA's performance requirements. <p>Recommendation 2: Increase the licence term to a maximum of 8 years for higher performing self-insurers (i.e. with top tier self-insurers having a longer renewal period than other self-insurers) and maintain shorter terms for other self-insurers (including new self-insurers).</p> <p>Recommendation 3: SIRA should consider the views of industry, employees and injured worker representatives when assessing a self-insurer's performance, tier placement and/or licence renewal. This may include:</p> <p>using its legislative authority to require licence applicants to advertise or give notice of their application</p> <ul style="list-style-type: none"> collecting feedback on self-insurers from employee and injured worker groups incorporating stakeholder feedback into self-insurer <i>performance</i> measures. <p>Recommendation 4: Adopt a risk-based approach to claims management oversight, in which top tier self-insurers are subject to fewer audit requirements than middle and bottom tier employers. This could include:</p> <ul style="list-style-type: none"> top tier employers - conducting claims management self-audits at least every 2 years and completing a claims management audit at licence renewal (or if concerns are raised) mid tier employers - conducting annual claims management self-audits and completing a claims management audit at licence renewal (or if concerns are raised) bottom tier employers - conducting annual claims management self-audits and completing an annual claims management audit conducted by SIRA (six months following the self-audit).

Category	Current requirements ²⁶	Recommendations
		<p>Recommendation 5: Redevelop the existing claims management audit tool to ensure that it:</p> <ul style="list-style-type: none"> - is fit for purpose under the new regulator's objectives - is compatible with the audit of historical claims - can be directly linked to claims management performance measures. <p>Recommendation 6: Develop complementary measures (to traditional audits) to assess claims management performance including:</p> <ul style="list-style-type: none"> - 'random' spot checks of self-insurers claims management functions by SIRA - a periodic survey of injured workers across both self-insured and nominally insured employers - regular assessment of claims management performance data by SIRA. <p>Recommendation 7: Require self-insurers to have privacy management plans in place that are cognisant of the link between an organisation being both an employer and an insurer for workers compensation.</p> <p>Recommendation 8: Remove the OHSMS self-audit and OHSMS audit requirements from the self-insurance licensing framework. Instead, rely on the existing WHS engagement and enforcement activity undertaken by SafeWork NSW that applies to all employers in NSW. Also, establish a new and contemporary framework for referring any WHS issues that come to SIRA's attention to SafeWork NSW.</p>
Information	<ul style="list-style-type: none"> • Self-insurers must provide SIRA with monthly claims data. • Self-insurers must prepare and lodge with SIRA, each financial year, a copy of the annual report (including audited financial statements) for the Licensee and, if it is a subsidiary of an Australian holding company, for its ultimate holding company as well. The financial statements must be provided within 4 months of the end of the relevant financial year or such longer period as SIRA may allow. 	<p>Recommendation 9: Establish an integrated and automated data analysis system to enable SIRA to better assess self-insurer performance. This system will support the proposed risk-based approach to self-insurance oversight by SIRA.</p> <p>Recommendation 10: Prepare a quarterly summary performance report for each self-insurer that provides transparency on its performance relative to other self-insurers and its industry.</p> <p>Recommendation 11: Publish on SIRA's website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme. This could include indicators on:</p> <ul style="list-style-type: none"> - claims management and return to work outcomes - relative incident and claims volumes - compliance rates in relation to SIRA's reporting and data provision requirementsinjured worker satisfaction. <p>Recommendation 11: Publish on SIRA's website a quarterly update on the performance of self-insurers compared with the rest of the NSW scheme. This could include indicators on:</p>

Category	Current requirements ²⁶	Recommendations
		<ul style="list-style-type: none"> - claims management and return to work outcomes - relative incident and claims volumes - compliance rates in relation to SIRA's reporting and data provision requirements - injured worker satisfaction. <p>Recommendation 12: Introduce a data auditing program to help to ensure that data submitted by self-insurers and published by SIRA are accurate.</p> <p>Recommendation 13: Require self-insurers to formally advise SIRA of any strategically significant matters related to their management of claims, including:</p> <ul style="list-style-type: none"> - any cases to be litigated in a court - any cases expected to generate significant public interest.

