

Workers Compensation Regulation  
Attention: [REDACTED] Licensing & Monitoring Manager  
State Insurance Regulatory Authority  
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Dear [REDACTED]

**Re: Submission into the Review of Self Insurance Licensing**

Shoalhaven City Council appreciates the opportunity to provide a submission in relation to the Issues Paper for the Review of the Self Insurance Licensing Framework.

Shoalhaven City Council (Council) is self-insured for workers compensation in NSW and has been for over 20 years and therefore considers given the significant period of experience operating within the current self-insurance licensing framework is well placed to provide a response in relation to issues and opportunities identified within the above referred Issues Paper.

Council considers the starting point for the review should be the regulatory framework for self-insurers as set out in Division 5 of Part 7 of the Workers Compensation Act 1987. It is evident from the provisions within the Act that the key considerations for the licensing of self-insurers relate to financial viability and efficiency of the workers compensation scheme.

Council welcomes a risk based regulatory approach by the Authority and seeks a reduction in the regulatory burden currently being imposed on self-insurers which is disproportionate to the risk self-insurers pose to the scheme. Council would like to see the licensing framework refocus on prudential risk and scheme efficiency only and not on WHS matters and how an organisation structures and resources itself for claims management.

As a self-insured organisation we are directly liable for all costs of injuries that occur in the workplace. This financial imperative together with legal and moral obligations incentivises self-insurers to put in place appropriate systems to maintain the health & safety of workers and efficient claims management and return to work practices to minimise the risks and costs to the organisation.

## **Specific Comments & Feedback**

### **Stage 1 – Is licensing appropriate?**

As noted above Council considers the requirements of the current licensing framework are disproportionate to the risks posed by self-insurers to the Workers Compensation Scheme.

Self-insurers unlike other employers in NSW carry the direct and immediate costs that arise when an employee is injured. For this reason, there are strong incentives to minimise the risk of injuries to workers, pay workers compensation benefits in a timely and efficient manner and to proactively investigate return to work opportunities.

It is the view of Council that the government's objectives and expectations be in relation to the ongoing financial viability and sustainability of the workers compensation scheme and in particular the financial capacity of self-insurers to meet claims as and when they arise. The current licensing scheme over-regulates in areas that are not relevant to financial capacity of self-insurers and prudential requirements of licensing.

Council submits that being self-insured is valuable to an employer, providing the ability to directly influence the outcomes of an injured worker. As a self-insured employer we have a higher level of understanding of the workplace and the physical requirements of workers and can manage injured workers in collaboration with other stakeholders during the injury management process on a much more informed and personal level than a third party agent which inevitably results in better outcomes for the organisation and its employees.

Apart from the direct costs associated with workers compensation claims, other significant intrinsic costs include costs associated with WHS and claims management systems. These costs are significantly increased with the current regulatory burden imposed by the licensing framework, in particular the current WHS and claims management auditing processes for license renewal.

### **Stage 2 – Is Licensing well designed?**

Council submits that the current prudential entry requirements are designed to ensure that an organisation is sufficiently stable and has safeguards in place so that in the unlikely event that the organisation fails, its claims liabilities can be covered.

Council does not consider the number of employees, compliance of the WHS system with the National Audit Tool and claims management structures, systems and resources are relevant criteria for eligibility as a self-insurer and the ongoing maintenance of a license.

Whilst the definition of a 'High Performer' may be quite arbitrary if not clearly defined, Council submits that the ongoing performance of individual self-insurers can be monitored through the Self-Insurer Performance Reports (provided by SIRA and previously WorkCover NSW). These reports provide key performance indicators and claims information (including claims costs, claim incidence rates, lost time frequency and return to work outcomes) for self-insurers and other employers within the same industry classification. These indicators could be used to rate the performance of a self-

insurer in determining their licence period. This data is produced by the regulator and therefore takes the burden off the self-insurer to provide additional data that is already lodged in the monthly CDR submission.

Evidence of a self-insurer's performance could also be determined through other sources such as complaint rates, incidence of prosecutions, improvement & prohibition notices and enforceable undertakings.

Council submits that the license renewal period should be increased to 5+ years for all self-insurers, with extensions granted to 'High Performers' (organisations that meet key performance targets), with the possibility of an open-ended license renewal period for those who continually perform well.

Council also submits that the administrative burden for the preparation and conduct of the WHS and Claims Management Audits as part of the renewal process takes Safety and Claims Management professionals away from their core work. These audits evaluate a self-insurer's compliance in meeting timeframes and processes but do not measure outcomes.

Claims Management is already heavily regulated by the Workers Compensation Commission and the review processes in place including Workers Compensation Independent Review (WIRO) & the Merit Review office, and therefore there is no need for the self-insurance licensing framework to regulate claims management.

Council considers that sufficient resources are available to the regulator to monitor a self-insurers ongoing compliance. Resources including the Annual Section 189 Report, monthly CDR claims data submissions, audited financial reports, actuarial reports and complaints data.

Compliance to the licensing requirements, particularly the hidden costs with respect to the National Audit Tool are excessive and could be better spent within the Safety System of the self-insurer.

### **Stage 3 – Is licensing administered effectively/efficiently?**

Council submits that any perceived conflicts of interest of being both the Employer and the Insurer are significantly outweighed by the advantages to both the employer and the employee of a self-insured organisation. The benefits in respect to customer service, sourcing suitable duties and relevant return to work arrangements are best achieved through the benefit of being both the Insurer and the Employer.

Reduced costs are achieved as self-insurers have an obvious interest to ensure efficient and effective claims management and injury management processes to return the employee to their pre-injury roles sooner.

Council submits that SIRA, as the Regulator, should not be regulating how an organisation structures its workforce with respect to Case Management, WHS and Human Resources. Having these functions working collaboratively to achieve a common goal is beneficial to both the Employer and the Employee.

Council as a self-insurer does not consider there are any issues in regard to file management and confidentiality. Dealing with privacy issues are no different between

self- insurers and other employers. Claims professionals are aware of the sensitivity of the claimant's personal and medical information and ensure they carry out their duties in accordance with the relevant privacy legislation.

Council submits that the appointment of an Independent Medical Examiner should be at the discretion of the Self Insurer, just as it is for the Applicant's legal representative. Independent Medical Examiners are bound by a Code of Conduct and are required by law to assess and report on any claimant ethically and within the guidelines and legislative requirements. These Medical professionals have been approved by the regulator to perform these assessments, therefore both parties should be in a position to appoint the Independent Medical Examiner of their choice.

With respect to improving the quality of data, Council submits there needs to improved collaboration between SIRA and the relevant software providers. Currently if there are issues with monthly submission obtaining advice from SIRA and the software providers on how to correct issues can be difficult.

#### **Stage 4 – Is the licencing scheme the best response?**

Council considers self-insurance has a positive impact on the broader workers compensation scheme as it provides an alternative to the Nominal Insurer and therefore drives improvements across the scheme. Council submits the premise that changes to the licensing framework may have the potential to adversely impact on the broader scheme, does not justify the imposition of the current regulatory burden on self-insurers.

Council is not aware of any evidence of adverse outcomes from self-insurers not reporting significant matters to the regulator.

**In summary**, Council welcomes a risk based regulatory approach by the Authority and seeks a reduction in the regulatory burden currently being imposed on self-insurers which is disproportionate to the risk self- insurers pose to the scheme.

Council would like to see the licensing framework refocus on the key areas of prudential risk and scheme efficiency, a reduction in the overregulation of WHS and claims management processes within self-insured organisations and provide extended licensing periods to provide greater surety and longer term focus of self-insurers and the broader workers compensation scheme.

Yours faithfully

A black rectangular redaction box covering the signature of Melissa McCoy.

**Melissa McCoy**

**HR, Governance & Customer Service Manager**

14/12/2015