

# Self-insurance licensing policy

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Workers compensation  
regulation

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State Insurance  
Regulatory Authority

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# 1. Introduction and context

The State Insurance Regulatory Authority (SIRA) is the independent regulator of the NSW workers compensation, home building and motor accidents insurance schemes.

This self-insurance licensing policy provides self-insurers (and employers who may be interested in self-insurance) with an outline of SIRA's expectations which must be met in order to apply for and maintain a self-insurance licence.

The policy will not be applied in substitution for, or by way of restriction on, SIRA's statutory discretion to grant, refuse, suspend or cancel self-insurer licences, and should be read in conjunction with requirements of the workers compensation legislation.

This self-insurance licensing policy is subject to periodic review by SIRA and may change following a review. Where appropriate, sections of this policy are reflected in the standard licence conditions.

## 2. NSW workers compensation system

SIRA functions under the *State Insurance and Care Governance Act 2015* (2015 Act) include the protection of worker and employer interests through the achievement of the workers compensation system objectives.

The objectives of the workers compensation system are set out in section 3 of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act). These are to:

- secure worker health, safety and welfare while preventing work-related injury
- provide prompt treatment and rehabilitation to assist injured workers to return to work
- provide income and treatment payments to injured workers and their families
- provide a fair, affordable and financially viable system
- deliver an efficient and effective system.

### 3. Legislative framework

SIRA's legislative power to regulate workers compensation insurers is provided under the NSW workers compensation legislative framework. The legislative framework is represented by:

- the *Workers Compensation Act 1987*, *Workplace Injury Management and Workers Compensation Act 1998*, and the *State Insurance and Care Governance Act 2015*, referred to collectively as the 'WC Acts'
- workers compensation regulations issued under provisions of the WC Acts
- guidelines issued under provisions of the WC Acts, and
- insurer licensing provisions.

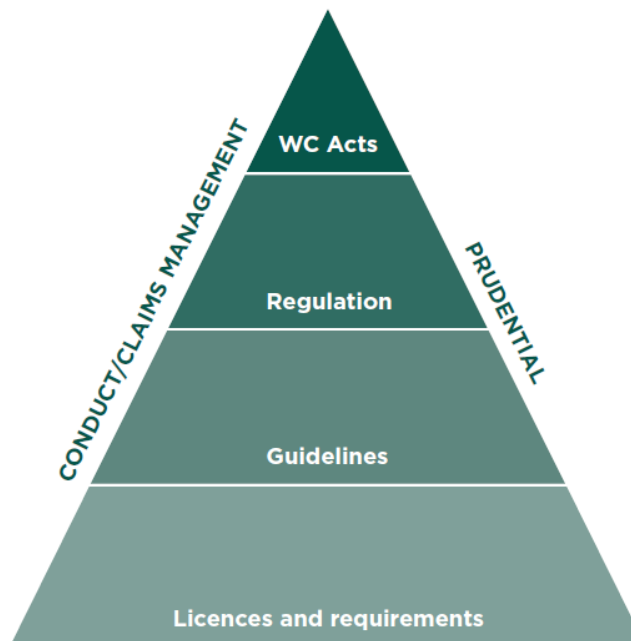


FIGURE 1: LEGISLATIVE FRAMEWORK

The NSW workers compensation legislative framework has a dual focus:

- **Conduct** focussing on the insurer's relationship with its customers: insured employers (premium setting) and injured workers (claims management).
- **Prudential strength** focussing on the financial ability of insurers and the long term financial strength of the workers compensation system.

## 4. Self-insurers

Self-insurers are an integral part of the NSW workers compensation insurance system.

Under the 1987 Act, an employer may apply to SIRA for a self-insurer (workers compensation) licence. Self-insurance allows an employer (or corporate group of employers) to carry their workplace safety and workers compensation risk by managing and funding their own claim liabilities.

By becoming a licensed self-insurer, an employer is responsible for managing employee workers compensation claims, as well as financial stability in order to fund its legislative liabilities.

## 5. Legislative provisions

Division 5, part 7 of the 1987 Act contains the licensing provisions of self-insurers. Section 210 and 211 of the 1987 Act refers to the application for and determination of self-insurer licences.

Section 211(2) states that SIRA may take the following matters into consideration in determining an application for (or renewal of) a licence:

- (a) the suitability (such as the conduct and claims management) of the applicant
- (b) the financial ability of the applicant to undertake the liabilities under this Act
- (c) the efficiency of the workers compensation system generally, and
- (d) other matters as SIRA thinks fit.

## 6. Licence conditions

A self-insurer licence establishes additional operational conditions that supplement legislative requirements.

In order for SIRA to achieve the workers compensation system objectives outlined in the 1998 Act, SIRA expects self-insurers to:

- comply with legislation
- comply with licence conditions by performing to SIRA standards in the areas of:
  - conduct (incorporating legislative compliance and regulatory reporting)
  - claims management, and
  - financial ability.

Self-insurers must comply with the legislative framework including the conditions for licence continuity.

## 7. Conduct

### 7.1 Expectation

Self-insurers must conduct themselves as licensed self-insurers in accordance with the legislation and provide acceptable reporting to SIRA.

### 7.2 Business plan

SIRA expects all insurers to adopt appropriate risk management practices in order to support their strategic direction, deliver planned outcomes, and support the State's workers compensation objectives.

Business plans must be developed and submitted in accordance with the *Self-insurer s189 business information requirements*.

### 7.3 Work, health and safety

An objective of the workers compensation system is to secure worker health, safety and welfare and, in particular, to prevent work-related injury. Under the *Work, Health and Safety Act 2011* (2011 Act) all employers have an obligation to ensure as far as reasonably practicable, the health and safety of their workers. This is particularly pertinent to self-insurers as they bear both the personal and financial risk arising from its workplace practices.

By proactively managing workplace safety risks and caring for employees, a self-insurer may improve its overall workers compensation outcomes under its licence, and facilitate the achievement of workers compensation system objectives.

SafeWork NSW is responsible for administering the work, health and safety legislation. SafeWork NSW will report the workplace conduct and legislative compliance of each self-insurer to SIRA for assessment of licence conduct.

### 7.4 Business intelligence

#### a) Corporate information

Licences are granted based on certain circumstances existing at a point in time. A self-insurer must notify SIRA in writing on becoming aware of changes in its effective control, ownership or corporate structure.

Notification must be made within the timeframes outlined in the licence so SIRA can assess any additional risk arising from these changes. In such an event, the continuity of the licence will be reviewed by SIRA.

These requirements allow SIRA to:

- monitor the strategic direction and particular circumstances of self-insurers to ensure there is no impact on the operation and outcomes of the licence granted
- ensure the timely maintenance of SIRA's legal register of self-insurers.

## **b) Significant matter notifications**

Self-insurers are required to proactively notify SIRA when significant matters (as defined in the *Self-insurer general information requirements*) arise. A self-insurer must notify SIRA in accordance with the specified notification requirements.

This notification requirement allows SIRA to monitor from an early stage, significant issues such as legal, operational or financial matters which may have a substantial impact on the operation of the self-insurer or NSW workers compensation system.

## **c) Claims data submissions**

Accurate and timely claims management information is required for SIRA to effectively regulate the workers compensation system.

Self-insurers must demonstrate that they have appropriately invested in their management information systems by being able to accurately report (with sufficient detail) in the timeframes and format outlined by SIRA.

Self-insurers are required to undertake a data quality self-audit using the self-audit tool. They must lodge the report with SIRA in accordance with the requirements and timeframe set out in the self-audit tool.

Proven instances of knowingly submitting false data will be taken seriously and may result in suspension or cancellation of the self-insurer licence.

## **d) Insurer contribution information**

SIRA is responsible for managing statutory funds to finance the system's regulatory oversight and administrative operations, and to provide for other requirements such as supporting people exposed to work-related harmful dust. Self-insurers are required to contribute to these funds.

Self-insurers are required to provide accurate wage and employee information each year in the format and within timeframes stipulated by SIRA so insurer contributions (levies) can be calculated.

## 8. Claims management

### 8.1 Expectation

Self-insurers must meet their injury and claims management obligations, and function in accordance with the legislation. They are expected to demonstrate such performance to SIRA.

### 8.2 Claims management operations

Self-insurers are responsible for operating to the intent of the workers compensation legislation to the benefit of injured workers, as such their conduct and ability to achieve good claimant outcomes will be monitored.

Investing in the appropriate resources, developing expert capabilities, and managing claims to meet established claims management principles will deliver benefits. These include:

- improved experience and outcomes for injured workers
- improved workforce relationships
- the achievement of the system's legislative objectives under section 3 of the 1998 Act.

Accordingly, self-insurer licence suitability depends on their claims management resources, capabilities, conduct and claimant outcomes. Outsourcing claims management is permitted but does not remove the self-insurer's responsibility to meet SIRA expectations.

Self-insurers are required to undertake a claims management self-audit using the self-audit tool, and lodge the report with SIRA in accordance with the requirements and timeframe established in the self-audit tool. SIRA will use the self-audit, together with other information, to monitor self-insurer performance and legislative compliance.



## 9. Financial ability

### 9.1 Expectation

Self-insurers must demonstrate ongoing financial viability and strength to undertake their obligations in order to comply with requirements of the workers compensation legislation.

### 9.2 Financial resources

The decision to become a self-insurer is a long term commitment. Self-insurers need to demonstrate that they have sufficient financial resources to cover their financial obligations, and be of a sufficient size to provide the necessary security to mitigate the risk of insolvency.

The financial strength of self-insurers will be assessed on the basis of their financial statements. Self-insurers are required to prepare and lodge a copy of their annual report (including audited financial statements) with SIRA each financial year.

If they are a subsidiary of an Australian holding company, self-insurers must also submit an annual report for their ultimate holding company.

Annual reports and financial statements must be provided to SIRA in accordance with the *Self-insurer s189 business information requirements*.

### 9.3 Security

Under sections 213-215B of the 1987 Act, self-insurers (except for NSW Government employers or other exempt employers) must provide security to SIRA in the form of a deposit, guarantee or bond to secure their total outstanding claims liability.

Providing security protects the workers compensation system, and ultimately other employers from funding a self-insurer's liability should they become insolvent.

The amount of the security (which is subject to a minimum requirement) is determined by SIRA on the basis of an annual actuarial valuation. The valuation must be prepared and submitted in accordance with the *Self-insurer s189 business information requirements*. The same actuarial valuation requirements (excluding the minimum security requirement) also apply to former self-insurers.

SIRA may hold onto the security until it is satisfied that there is no longer any outstanding claims liability or the liability is adequately provided for under section 216 of the 1987 Act.

## 9.4 Reinsurance

Reinsurance cover protects self-insurers from the cost of claims over a particular amount.

Self-insurers must obtain and maintain unlimited reinsurance cover during the currency of its licence, so as to restrict its legislative liabilities to a maximum amount approved by SIRA in respect of any one event.

The reinsurance cover must be obtained in accordance with the *Self-insurer s189 business information requirements*.

## 9.5 Provision of cross/holding company guarantee

This requirement is applicable to group self-insurer licences.

All companies in the group licence must execute a cross guarantee in a form approved by SIRA under which each of the companies guarantee the other companies' liabilities to workers under, and independently of, the 1987 Act.

In certain circumstances, SIRA may use its discretion to take a holding company guarantee as an alternative to a cross guarantee.

# 10. Compliance with statutory requirements

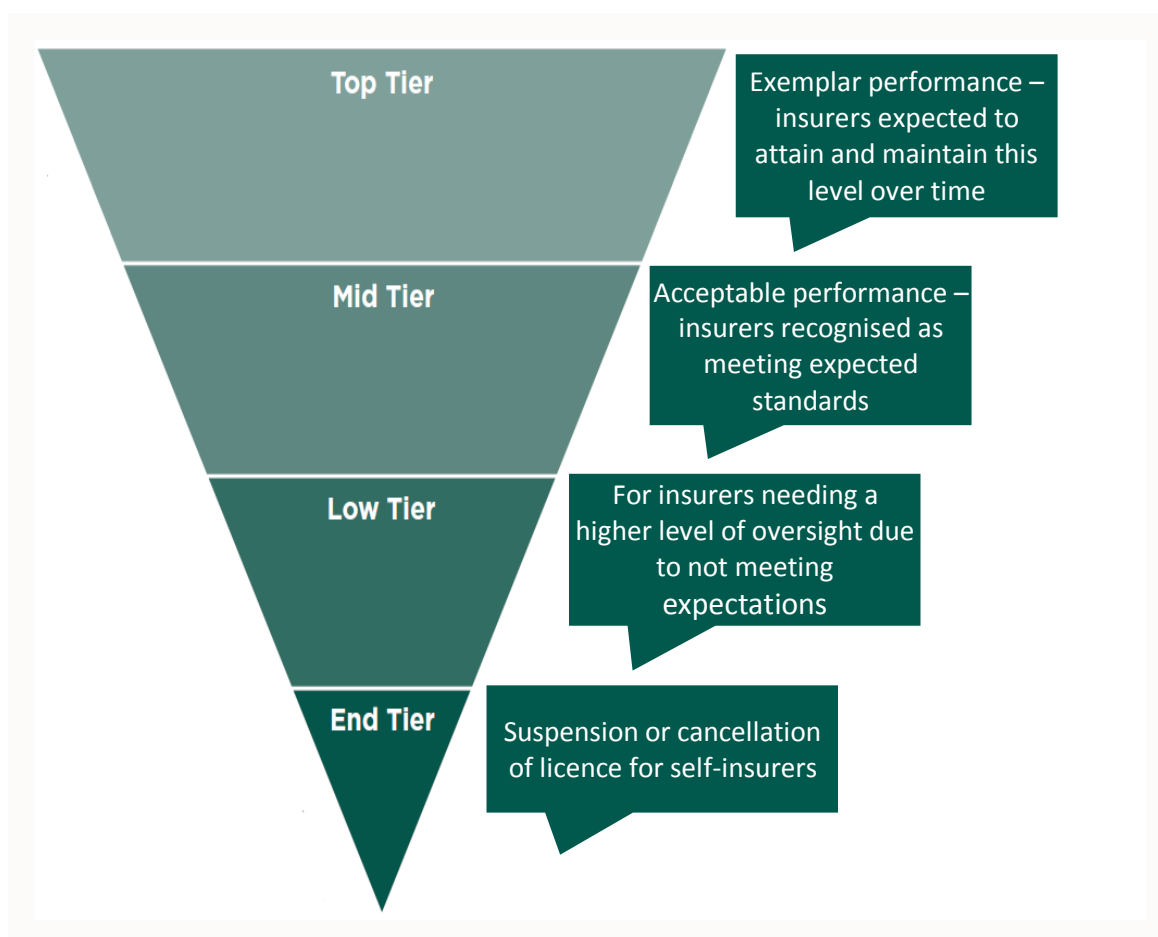
Self-insurers must comply with all statutory requirements and conditions of licence. Failure to meet such requirements may constitute a basis for:

- imposing additional licence conditions under section 181 of the 1987 Act and/or
- imposing penalties under the relevant legislative sections and/or
- imposing civil penalties or issuing a letter of censure under section 183A of the 1987 Act and/or
- licence suspension or cancellation under section 183 of the 1987 Act or
- non-renewal under section 211 of the 1987 Act.

SIRA will assess non-compliant legislative and statutory behaviour in accordance with its compliance and enforcement policy.

## 11. Tiered supervisory model

The self-insurance licensing framework is supported by a tiered supervisory model. The tiered model acknowledges the performance of self-insurers. It also detects risks to the achievement of workers compensation system objectives that will prompt a risk-based regulatory response from SIRA.



Self-insurers that demonstrate the expected levels of performance against requirements will be subject to less regulatory intervention from SIRA. This earned autonomy corresponds to the lower level of risk or harm they pose to the workers compensation system.

SIRA will regularly monitor and assess a self-insurer's performance within each of the areas of conduct, claims management and financial ability as outlined in the *Self-insurer tiering model*.

Regular reporting and feedback will be provided together with an annual formal assessment of performance and tier placement.

## 12. Types of licence – single and group licences

Section 210 of the 1987 Act states an application may be made to SIRA by any employer and accompanied by a fee as stipulated by SIRA. The employer may also be required to provide public notification of its application.

Under section 211 of the 1987 Act, SIRA may grant a self-insurer licence to an employer (single licence) or to a holding company and endorse all wholly owned subsidiaries of the company that are employers in NSW (group licence).

Under a group licence there is no provision for selective inclusion of subsidiaries by the self-insurer or applicant. The legislation specifies that only wholly owned subsidiary companies that are employers are to be included in the group licence.

For group licences the applicant company will generally be the ultimate holding company in Australia.

## 13. Term and continuity of licence

SIRA may grant self-insurer licences for a term of up to eight years. The licences can be renewed thereafter.

Licence renewals should be applied for in accordance with the process outlined in the *Self-insurer general information requirements*.

Licences continue to be in force until the expiration of the licence term, or the suspension or cancellation of the licence by SIRA.

Under section 180 of the 1987 Act, SIRA has discretion to grant licences for shorter terms if it deems such action is warranted either at the time of issuing the first licence, or on renewal of a licence.

For new applicants, SIRA will grant a self-insurer licence for a period up to three years and work with the new insurer, helping them meet their requirements. This licence can be renewed prior to its expiry date.

## 14. Scheme efficiency

SIRA may consider the general efficiency of the NSW workers compensation scheme under section 211 of the 1987 Act, prior to granting or renewing any self-insurer licence.

This assessment may consider whether granting the licence will more efficiently achieve the objectives of the workers compensation scheme under section 3 of the 1998 Act and be of benefit to the scheme's stakeholders.

## 15. New applications

SIRA expects new applicants to demonstrate their ability to meet self-insurer requirements concerning conduct, claims management and financial ability. The new applicant requirements are outlined in the *Self-insurer general information requirements*, under 'Application for a new self-insurer licence'.

### 15.1 Minimum number of employees

Applicants for a new self-insurer licence (single or group), should have a minimum of 500 employees in NSW. 'Employees' means all permanent staff of the applicant, whether full-time or part-time.

The size of the employer provides an indication of their financial ability to properly invest in the infrastructure and resources required to best meet SIRA self-insurance requirements.

SIRA may use its discretion to grant a licence to an employer that does not meet this requirement if the employer can demonstrate its ability to meet the application requirements.

The requirement to have 500 employees is not applicable for licence renewals as SIRA will continue to assess a self-insurer's legislative compliance and performance under its licensing framework to determine licence renewal.

### 15.2 Application fee

An application fee is payable at the time of application and is stated within the application requirements.

This application fee is only payable for new licence applications – not for licence renewals.

### 15.3 Contribution by exiting employers

Section 208AA of the 1987 Act provides for SIRA to request contributions to the Insurance Fund of the responsible insurer for an exiting employer (which includes an employer who becomes a self-insurer).

As an alternative to making a contribution to the Insurance Fund, the self-insurer may enter into an agreement with SIRA to assume responsibility for outstanding claim liabilities against them that would otherwise be payable by the licensed insurer who previously insured the employer.

## 16. Licence ceasing

### 16.1 Licence suspension or cancellation

SIRA has the discretion to suspend or cancel a licence for any reason it sees fit by notice served on the self-insurer under section 183 of the 1987 Act.

Cancellation of a self-insurer licence may also occur at the request of the self-insurer.

### 16.2 Claims run-off

If a self-insurer no longer holds a licence, it will still be held responsible for the management of the tail of claims incurred while licensed unless SIRA assigns the tail of claims to an insurer under section 216A of the 1987 Act.

If the former licensee remains responsible for the tail of claims, it will be expected to manage and administer run-off claims under the workers compensation legislation in a professional manner, and continue to provide claims data and other specified information as directed by SIRA. Run-off arrangements will be subject to SIRA's approval.

Outsourcing the management of tail claims does not remove the primary responsibility of the entity to ensure claims are managed at the expected standard.

### 16.3 Security requirements

Security held or re-determined by SIRA (including any guarantee arrangements) will remain in force until SIRA is satisfied that all claims have been transferred, discharged or adequately provided for pursuant to section 216 of the 1987 Act.

## 17. Ongoing contributions

Self-insurers are legislatively required to pay ongoing contributions to the Workers Compensation Operational Fund (WCOF) and the Workers Compensation Dust Diseases Fund (WCDDF).

The WCOF contribution finances the regulatory oversight and administrative operations supporting the NSW workers compensation system. Insurers are required to contribute in accordance with the 1998 Act. Former self-insurers may also need to contribute in certain circumstances.

The WCDDF contribution funds support people who have had work-related exposure to harmful dust in NSW. Insurers are required to contribute in accordance with the *Workers' Compensation (Dust Diseases) Act 1942*.

Self-insurers may also be legislatively required to make other contributions during the course of their licence.

#### Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website [legislation.nsw.gov.au](http://legislation.nsw.gov.au)

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