

[REDACTED]
Licensing & Monitoring Manager
Workers Compensation Regulation
State Insurance Regulatory Authority
Locked Bag 2906, Lisarow, NSW 2252

Your Ref:
Our Ref:
File:
Date:

H.SM
Z15/269115
HR-100.1.003
11 December 2015

Dear Sonia

Submission on the Review of Self Insurance Licensing Framework

Thank you for the opportunity to provide Wollongong City Councils response to the issues paper specifically relating to the WHS standards and requirements under the terms of the Self -Insurers licence.

Please note that Councils responses regarding the other aspects of the licence will be submitted in a separate document.

It is Councils view that the current framework of relying on the pass/ failure of WHS performance, with the “stick” that threatens of loss of the Self -Insurance licence, is ineffective and contrary to the principle of continuous improvement. It encourages behaviours that focus on passing an audit (with questionable effective outcomes) resulting in divergence from the key objective of ensuring a safe and healthy work environment. The amount of resources the audit process consumes and the outcomes achieved does warrant this review.

Resources for any Council (people and budgets) is always an issue and a challenge, particularly when revenue is based primarily upon Council rates (which are pegged by the State Government) and income streams is always difficult. The allocation of resources is always carefully considered to ensure the delivering of effective and efficient work health & safety outcomes. The possession of a self-insurers licence provides Councils with the opportunity to manage its businesses, the risks associated with its businesses and make significant savings, if managed well. Effective management of the WHS, claims and injury management processes has the benefit of direct returns that can be invested back in services, both within council and the community.

Council fully accepts its responsibility and accountability for maintaining its self-insurance licence. This submission highlights opportunities to establish a more effective methodology that enables Council to effectively demonstrate to SIRA that self-insurers meet the required WHS standards, to maintain its licence. The responses to the relevant questions are as follow:

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.

It is a statutory requirement that all employers are compliant with the WHS Act and Regulations. The question is how organisations determine how best to ensure that they comply with legislation. As a self-insurer, the National Audit Tool has additional compliance standards, that are additional to legislative requirements, to ensure maintenance of the SI Licence.

Council supports that application of the NAT Tool as a methodology to enable transparent and consistent measurement of WHS compliance.

The NAT tool provides the following advantages:

- A common methodology (NAT tool closely aligned to 4801), that define standards that need to be implemented in organisations. This enables consistency in measurement across different types of business. The NAT tool provides a consistent tool that enables SIRA to measure consistently across all self-insurers (from all different businesses).
- Provides additional focus, motivation and accountability for organisations to ensure WHS Systems are developed and implemented in the organisations. This measures such indicators as management's commitment and active involvement, allocation of resourcing and development and review of WHS systems and processes.
- Ensures accountability that WHS Systems are implemented and not "self" documents. The threat of the loss of a self-insurance licence is a "big stick" that initiates and motivates a response. The question is what that response is and what value it provides.

Councils concern is when and how the NAT tool is applied and the intent and outcomes it is attempting to achieve. Currently the NAT tool is being used as a pass/fail mechanism and therefore loses its continual improvement capability. Concerns and issues relating to the NAT tool are:

- The NAT tool introduces additional compliance standards that require resourcing. Where the NAT tool is applied in a prescriptive way, it requires additional systems development and maintenance with questionable outcomes and a significant increase in costs (people and budget).
- In our opinion, due to its prescriptive application, the NAT tool loses the intent of preventing injury and illness and continuous improvement and focuses on process. This raises questions by end users on the validity of the process considering the intent. This results in organisations focusing on the "bureaucratic" and "ticking the box" process rather than WHS behaviours. In addition, the prescriptive application is not seen as adding value to safety in its application in the workplace.

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

Auditing improves WHS outcomes based upon continuous improvement. However, it is currently being used to determine pass or fail a self-insurer in the licencing requirements. The outcome of the audit determines whether the licence is extended for a further three (3) years or a self-insurer goes back to one (1) year licence. This has significant impact on the organisation and personnel directly involved in the audit process. The focus is to pass; irrespective of the cost (hence the example of \$100k to \$1m preparation costs). Is this the best use of resources?

This also creates an adversarial environment for both auditors and self-insurers. The decision whether it is a pass or fail is a \$100k - \$1 mil decision. This has significant impact on the relationship and offers little towards continuous improvement.

In addition, the WorkSafe NSW auditors are placed in an extremely difficult position. They have to be able to substantiate their interpretation (which can be difficult to understand given those interpretation are made on their application across other businesses). The auditors understand the consequences and cost associated with their decision and the thought or discussion of continuous improvement is not considered, nor possible. The intent of the audit is not in that context.

As stated, Councils view is that the NAT Tool has relevance and can add value. The question is if and when audits should be undertaken. Council's the suggested process improvements are:

- The external Audit should only be undertaken if annual submissions by self- insurers do not satisfy or comply with licence requirements. Self- insurers should be advised of any deficiencies in the annual submission and provided with the opportunity to provide additional evidence.
- If SIRA is not satisfied with the Self-Insurers' response or level of evidence, the Self Insurer will be advised that an external audit against the NAT will be programmed.
- The intent of the audit is to identify areas of deficiencies for enabling continual improvement.
- Audits against the NAT tool should be conducted by an independent provider that is accredited by SIRA.
- The external audit should be systems based approach, with contemporary evidence to be provided. The eternal auditor would submit an audit report and corrective actions to the self-insurer and SIRA for consideration.
- SIRA representatives would follow up on the corrective actions (at an agreed time period) to assess and verify agreed outcomes. Where SIRA is satisfied with responses, no further action.
- If SIRA is not satisfied with the response, an improvement plan is developed between SIRA and senior management of the self-insurer.
- If improvement plan is not being achieved to the agreed plan, consideration of licence is then determined.

2.13. How should a high WHS performer be defined?

A high WHS performer should be defined as:

A Self Insurer who consistently submits its Annual return to SIRA (refer below of suggested content of the annual return) within identified timeframes that meets the identified performance measures (to be confirmed by SIRA).

The Annual Return could consist of:

- WHS Management Plan covering objectives, targets and performance indicators and reporting.
- Self-insurer to report on established Lead and Lag indicators as defined in the WHS Management Plan.

- Submission of its audit program. This audit plan should be strategically structured so that it covers the categories in the NAT Tool over a determined time period.
- Management Review reports demonstrating senior management.
- Reporting of prosecutions, infringements, improvement notices, injury rates, return to work completion rate and number of reported incidents to SafeWork NSW.

It is the responsibility and accountability for the organisation to demonstrate to SIRA its progress and commitment to ensuring the NAT Tool requirements are assessed through its internal audit program and demonstration of continuous improvement. If the annual returns do not provide sufficient evidence to support the commitment and continuous improvement process, point 2.12 should be applied and be measured as a low performer.

A low WHS Performer would be defined as:

If a self-insurer who is not meeting the above requirements, they would be required to comply with process in 2.12. They would be required to undergo external independent audits that identify system failures that are focussed on continuous improvement. This is then supported through a subsequent Improvement Plan. The intent needs to be on continuous improvement.

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?

Council questions the need to have a licence term; rather it should be on-going. Council's proposal is that a comprehensive annual licence submission (covering not only WHS) must demonstrate compliance on an annual basis. This removes potential complacency by ensuring accountability on self-insurers through a annual rigorous and robust reporting regime.

The process as defined above in 2.13 should be used. It is recognised that further work needs to be undertaken to specifically define the targets and measures that needs to be established

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

Refer to 2.12

I thank you for the opportunity to provide this submission. This review provides a tremendous opportunity to reduce unnecessary "red tape" and significant costs and enable self-insurers take responsibility for their licence.

Please contact me should you require further information.

This letter is authorised by

Tom Tyrpenou
Manager Human Resources
Wollongong City Council

Telephone (02) 4227 7111