



15 April 2016

Mr. Anthony Lean  
Chief Executive  
State Insurance Regulatory Authority

By email: [2015BenefitsReform@sira.nsw.gov.au](mailto:2015BenefitsReform@sira.nsw.gov.au)

Dear Mr. Lean,

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### **Workers Compensation Market Practice and Premium Guidelines**

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide feedback to the State Insurance Regulatory Authority (SIRA) on the workers compensation market practice and premium guidelines.

As you may be aware, the Chamber is one of Australia's largest business support groups, with a direct membership of more than 19,000 businesses, providing services to over 30,000 businesses each year. Tracing its heritage back to the establishment of the Sydney Chamber of Commerce in 1825, the Chamber works with businesses ranging in size from owner-operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

Operating throughout a network of offices in metropolitan and regional NSW, the Chamber represents the needs of business at a local, regional, state and federal level, advocating on behalf of its members to create a better environment for industry.

The Chamber is in broad support of the principles proposed in the consultation discussion paper. Specific responses to the focus questions are contained in the attached document. It should be noted however that the Chamber's support for these reforms is predicated on our commitment to advocate for a sustainable and competitive workers compensation system that balances the needs of injured workers and the businesses that support the scheme.

Thank you for the opportunity to contribute to this review. If you wish to discuss any aspect of this submission, please contact Craig Milton, Policy Analyst on (02) 9458 7913 or [craig.milton@nswbc.com.au](mailto:craig.milton@nswbc.com.au).

Yours sincerely

A handwritten signature in black ink that reads "Paul Orton".

**Paul Orton**  
Director, Policy and Advocacy

ABN 63 000 014 504



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# Consultation on *Market practice and premiums guidelines* and *Licensed insurer business plan guidelines* – March 2016

Please complete and attach this form to your submission, to ensure prompt and accurate receipt and processing. All submissions should be sent by email to [consultation@sira.nsw.gov.au](mailto:consultation@sira.nsw.gov.au) no later than 13 April 2016.

## SUBMISSION COVER SHEET

Name of organisation or individual making this submission

NSW Business Chamber

### Contact person/authorised delegate

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### Publication of submissions

Following processing, submissions may be published on the existing WorkCover website (a new website for SIRA is under construction). Copyright in submissions resides with the author(s), not with SIRA. Please note below if you do NOT want your submission or any part(s) of it published on the WorkCover website.

Publication of submissions will usually include your name and the name of the organisation, if relevant. We will remove contact details such as email addresses, postal addresses and telephone numbers. At our discretion we may not publish certain submissions (or part of submissions) due to our assessment of length, content, appropriateness or confidentiality.

For more information, read the SIRA submission procedure at [workcover.nsw.gov.au/about-us/have-your-say](http://workcover.nsw.gov.au/about-us/have-your-say)

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## MARKET PRACTICE AND PREMIUMS GUIDELINES (MPPGs)

**FOCUS QUESTION 1:** What is your view on the suitability of the premium principles as set out in the MPPGs and the ability of licensed insurers to meet them?

The principles set out in the MPPGs are supported.

Principle 1 - Premiums are fair and reflective of risk

SIRA will need to ensure that the justifications in support of premium rates are sustainable. Where there is a rapid change in the performance of a cohort resulting in a significant change in average premium rates (particularly increases), consideration should be given to permitting insurers to phase increases over more than one premium year.

The use of the word "profit" (p.5) is potentially misleading when it comes to the Nominal Insurer. The only reason the Nominal Insurer needs to make a profit or surplus in a premium year is to make sure it has adequate reserves to maintain scheme viability and premium stability in those years when the schemes financial performance is negative. It is suggested the wording be changed to "...., expenses and suitable margin for that cohort".

Principle 2 - Balance between 'user pays' and 'insurer principles'

Limiting the impact of claims experience for small employers is supported. With respect to larger employers, the current premium formula in the Statutory Scheme has resulted in a reduction in the level of premium discount that larger well performing employers can receive. While some of that reduction has been partially mitigated by the introduction of other discounts, better performing employers are likely to be worse-off when compared to the premiums they would have paid using the previous premium formula. Consequently, when assessing premium filings against this Principle SIRA should have regard to the impact on particular cohorts other than industry groups.

Principle 3 - Premiums should not be unreasonably volatile or excessive.

This Principle needs to be applied at both the system and individual employer levels.

At the system level, huge increases in premiums (e.g. 1995/96 and 1996/97) failed to change scheme performance, or restore the financial viability of the scheme in the absence of other reforms. Large system wide increases have a significant economic impact. NSW Business Chamber research indicated that the threatened 28% increase in premiums in 2012 would have had a negative impact on 12,000 jobs and job opportunities in NSW. Even a much more modest 10% would have had an impact on 8,000 jobs and job opportunities. It should also be noted that the need for significant premium increases since 1987 have been the result of negative trends in scheme performance being ignored and corrective actions not being taken in a timely manner. One of the significant benefits of the Statutory Scheme in NSW is that when there are adverse trends such as the GFC, and provided the scheme has maintained an appropriate funding ratio, financial health can be restored over time without precipitate premium increases.

Protecting small employers from excessive and volatile premium increases is essential. That can be readily achieved within the premium formula. However, from time to time there will be outliers (i.e. smaller employers who have consistently atypical claims experience). It is most unlikely that monetary incentive/disincentives will influence the behaviour of these employers. Consequently, insurers should be required to develop and apply other strategies to assist these employers to reduce the incidence and/or cost of claims.

Larger employers can and should be experience rated. The effectiveness of experience rating in influencing employer behaviour is dependent, in part, on the credibility of the experience rating system in the eyes of employers. The most recent changes to the claims cost estimating methodology have removed one of the most vexatious issues for employers with respect to the calculation of experience premiums. The Consultation Draft states that the largest employers "can be rated almost totally on their claims experience, return to work management and risk management practices". While this is undoubtedly true the challenge arises when factoring these elements into the premium formula, particularly risk management (See Principle 4 below). SIRA should need to be satisfied that proposed premium formulas will achieve their stated goals.

Principle 4 - Incentives for risk management and good claims outcomes

The Chamber agrees the workers compensation premium system should encourage employers to improve their risk management and return to work management. The latter is more readily identified, and rewarded. Discounts and incentives relating to injury management are also more likely to be at least self-funding as better injury management may be expected to result in better medical outcomes and faster return to work, with reduced costs to the scheme.

Incentives for risk management are more problematic. Past experience with premium discounts to employers with better safety management systems and practices suggests discounts go to employers who are already enjoying reduced premium costs because of their better systems and practices. As such, there is no reduction in scheme costs to cover the costs of the discounts. Consequently, these costs have to be met by the scheme which effectively means other employers. The Chamber is not arguing against the use of incentives/discounts. Rather, where they are to be used, they should be self-funding via incremental (and demonstrable) reductions in scheme costs.

Principle 5 - The premium basis needs to be consistent with the insurers' capital requirements

It is important the Statutory Scheme retain its capacity to absorb the impact of exogenous variables, such as the GFC, and perhaps court decisions which might have a significant impact on Scheme liabilities. Consequently, the Nominal Insurer needs to be subject to reasonable funding ratio requirements. The bandwidth of 90%-110% seems to be generally accepted as the appropriate range for centrally managed funds and the NSW Business Chamber would support the retention on this band for the NSW Scheme.

**FOCUS QUESTION 2:** What is your view on the correctness and completeness of the premium requirements as set out in the MPPGs and the ability of licensed insurers to meet them?

The premium requirements generally mirror current arrangements and insurers should be able to meet those requirements.

Premium dispute processes need to be timely. Consequently, SIRA should require insurers to commit to target times for the processing and resolution of disputed premiums and require insurers to report on their performance, including appeal outcomes and time taken for appeals to be concluded. In addition, making this performance data publicly available, even in aggregate form, would help build stakeholders confidence in the appeals process and that deviations from optimal performance will be pursued by SIRA

**FOCUS QUESTION 3:** Are there any further components of the Regulations or existing IPO that should be included in the MPPGs?

No comment.

**FOCUS QUESTION 4:** What is your view on the special requirements for the 2016–2017 policy year?

The special requirements to be applied to the Nominal Insurer for the 2016/2017 year are appropriate. The Chamber notes and supports the continuation of the premium increase cap of 1.3 times the 2015/16 premium. That said, an employer subject to the cap in both this year and next will be required to deal with premium increases of over 60% in a short period of time. Principle 3 states premiums should not be unreasonably volatile or excessive. The Consultation Draft (p.5) goes on to say that the changes should, subject to scheme viability, be staged so employers can make financial plans to accommodate the premium changes and alter their post-accident practices to reduce costs to the scheme, and as a consequence, premiums.

Premium increases can be a blunt, and not necessarily effective, instrument for change if employers do not understand why and how their premiums are changing. Consequently, insurers should be required to include in their Business Plans the desired actions and interventions to be taken when employers experience significant premium increases to ensure those employers understand the reasons for the increases, what actions they need to consider to mitigate future premium increases, and the consequence of not taking action.

**FOCUS QUESTION 5:** Should any other requirements be stipulated for the 2016–2017 policy year?

Employers, particularly large employers, are still coming to grips with the 2015 changes. SIRA should endeavour to keep changes to the minimum.

**FOCUS QUESTION 6:** What is your view on the requirements regarding the Retro Paid Loss product and any impacts for the 2016–2017 policy year?

Feedback to the NSW Business Chamber indicates employers who have opted to enter the Retro Paid Loss (RPL) Scheme are generally happy with their decision. There are some employers who were on the cusp of submitting applications, and who have made significant investments in preparing applications, that are unhappy with the suspension of applications and are keen for the RPL Scheme to be re-opened.

The Scheme has been in operation for several years and is currently being revised/reshaped by iCare. The NSW Business Chamber supports that initiative and looks forward to approved employers being able to move to RPL from the beginning of the 2016/17 Premium Year.

When the RPL Scheme was introduced, the WorkCover Authority took a cautious approach. Like self-insurance, WorkCover took the view that participation in the RPL Scheme was a privilege and not a right, and consequently placed similar requirements on applicants. Now with the benefit of several years experience it may be timely, and appropriate, to reduce/remove some of those requirements (e.g. guarantees, safety systems), provided that in doing so, there is no increased risk to the scheme in the event an RPL participant were to fail. It is also appropriate that the relationship between the RPL Scheme and the new premium system be reviewed to identify (and if appropriate remove) any anomalies (e.g. maximum premiums) which could distort behaviour.

**FOCUS QUESTION 7:** What is your view on the timeframe for licensed insurers to submit premium filing in general and for the 2016–2017 policy year?

The timelines for the 2016/17 year make it essential there be no or minimal change to the 2015/16 IPO. Most employers are well advanced on, or have completed their budgetary processes by the time the IPO is published. SIRA should aim for a process which enables it to publish the IPO in May, and ideally by the middle of May each year.

**FOCUS QUESTION 8:** What is your view on the appropriateness of the premium filing process and appropriateness and completeness of the assessment criteria defined in the MPPGs?

Premium Filings need to be in sufficient time to allow SIRA to publish the IPO ideally by mid-May and in any case, no later than the end of May. The proposed timeline for the assessment of the Nominal Insurers filing indicates a best case scenario for approval by end-May, and a more likely end date of mid-June. Maintaining this time line perpetuates long standing frustration and cause of dissatisfaction with the workers compensation system for employers. In an environment where tariff rates and the premium system are stable there is less negative impact, but when there are major changes, late announcements only add to employer frustration and reduce system credibility.

**FOCUS QUESTION 9:** What is your view on the appropriateness and completeness of the annexures as set out in the MPPGs?

Given the current interest rate regime, the late payment prescribed rate of 0.0825% per month compound (Annexure C) seems excessive and particularly punitive.

**LICENSED INSURER BUSINESS PLAN GUIDELINES (LIBPGs)**

**FOCUS QUESTION 10:** What is your view on the appropriateness and completeness of the business plan requirements as set out in the LIBPGs?

The business plan requirements appear to cover the key issues.

In our view, SIRA needs to have particular regard, not only to what a licenced insurer proposes to do, but also their capacity to deliver. Insurers should also be required to report on the delivery of the prior plan at each filing.

Cl 6.1.2 requires a new business plan be submitted if the insurer departs significantly from the objectives in the submitted plan. While it is clear no changes to the premium system being used by the insurer can be made without the prior consent of SIRA, it is not clear if the same applies with respect to the Business Plan. It is understood that is the intention, but for the sake of clarity, that should be made explicit.

**FOCUS QUESTION 11:** What is your view on the business plan filing process as set out in the LIBPGs?

No comment.

**FOCUS QUESTION 12:** Noting that SIRA will be undertaking further consultation in 2016 regarding insurer financial and prudential supervision, are there other trends, issues or considerations that should be raised regarding the implementation of the guidelines?

SIRA should be required to have regard to the potential impacts on the Statutory Scheme when considering filings from specialised insurers. The potential exists for specialised insurers to cherry pick clients and put the Statutory Scheme in the position of "insurer of last resort" for the higher risk/cost employers. This is likely to result in higher premiums for those left in the statutory scheme, both within the WIC and more widely. In this scenario, specialised insurer clients may enjoy reduced premiums, but only because other employers are paying more, not because of any reduction in claims or claims costs.

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