

Self-insurer performance and compliance framework

Foreword

The Workers' Compensation Regulator is responsible for regulating the Queensland workers' compensation scheme. This function includes monitoring the compliance of insurers with the *Workers' Compensation and Rehabilitation Act 2003* (the Act), monitoring the performance of insurers under the Act (including the consistent application of the Act), and deciding applications relating to self-insurance. These functions, except for the issuing or renewing self-insurance licences, are delegated to and undertaken by the Office of Industrial Relations (OIR).

OIR is responsible for developing, implementing and maintaining policy and legislative frameworks which achieve high quality workers' compensation outcomes in Queensland, and for undertaking the regulatory functions delegated by the Workers' Compensation Regulator, to maintain an efficient and fair workers' compensation scheme for Queensland workers and businesses.

As a key function in regulating Queensland's workers' compensation scheme, OIR monitors the performance and standards of service provided by self-insurers through claims data analysis, return to work outcomes and undertaking work health and safety (WHS) and claims management audits, and investigates and manages the prosecution of certain offences under the Act.

Self-insurers must perform their obligations and functions in accordance with the legislation and demonstrate performance in injury and claims management to the standard as outlined in OIR's standards and guidelines.

The self-insurer performance and compliance framework (the Framework) outlines how OIR will monitor self-insurers performance, and assess whether a self-insurer is fit and proper and complying with their licence conditions and obligations. The Framework is supported by the establishment and publication of the monitoring element standards, and workers' compensation scheme enforcement policy.

Introduction

Fundamental to OIR's role in regulating self-insurers is developing and implementing a risk-based licensing and regulatory framework. OIR's regulatory approach is outlined in the Framework).

The Framework presents self-insurers with an opportunity to adopt innovative approaches and to manage their activities to effectively meet the standards or outcomes defined in the legislation or set by OIR.

OIR's role is to clearly articulate the expectations self-insurers must meet and outcomes to be achieved. Where the risk to the scheme is greatest, standards will be higher and if necessary, compliance and enforcement actions stronger. Regulatory effort is directed towards reducing scheme risks through a robust problem-solving approach to deliver real, measurable results. A self-insurers risk level is influenced by their level of compliance, with low levels of compliance associated with a high risk. OIR is focused on communicating with self-insurers and capitalising on risk-mitigation opportunities by establishing cooperative partnerships.

The Framework is structured to promote the Queensland workers' compensation scheme objectives, and will assist self-insurers to succeed while ensuring the scheme is well-managed and protected now and into the future.

The Framework supports OIR's objective of strong scheme management, supporting the balance of providing fair and appropriate benefits for injured workers and ensuring reasonable cost levels for employers.

The Framework enables OIR to make informed choices and appropriately target its compliance and enforcement activity. OIR can tailor these activities so that they are proportionate to the relevant risks. Stronger performance management and licence consequences are used where the risks associated with non-compliance are the highest. In contrast, where the risk associated is relatively low, different performance management options and less oversight may occur.

It is envisioned that the Framework will lead to:

- continuous improvement across claims management performance;
- improved return to work outcomes;
- streamlined licence renewal application processes;
- an increased focus on monitoring performance and standards of service; and
- a more consistent application of effective and targeted compliance activities.

The Framework also acknowledges the importance of supporting a positive culture of compliance and promote continuous improvement with self-insurers.

OIR adopts a collaborative and inclusive approach to educate and support insurers to meet their regulatory and licence obligations. To assist self-insurers to improve their compliance practices OIR will set clear expectations about acceptable standards of performance, as well as publishing easy to understand guidance material and information to assist self-insurers and drive continuous improvement.

Key principles

OIR is guided by eight principles when undertaking its compliance and performance monitoring role, exercising its regulatory responsibility and administering the legislation. The principles are:

Proportionate OIR's enforcement measures are proportionate to the context, the seriousness of the issue they seek to address, and take into account duty holder factors.

Transparent The legislation, standards, enforcement approaches and decisions are publicly available to demonstrate OIR's credibility and ensure duty holders understand what is expected of them and what they can expect from OIR.

Consistent Consistency of approach provides certainty about the types of enforcement measures OIR takes, why, and in what circumstances. The outcomes of OIR's enforcement activities are predictable and consistent, which means that similar non-compliance should lead to similar enforcement outcomes. This approach does not necessarily mean uniformity, i.e. OIR responds consistently when dealing with similar cases, but is flexible enough to take into account the specific circumstances of each case.

Accountable OIR carefully considers the action it takes around enforcement and has a sound legal basis for its enforcement decision making. Both OIR staff and duty holders are accountable for their actions. OIR is judged against certain standards by the public, and enforcement practices are open for public scrutiny. OIR has effective and easily accessible mechanisms for dealing with complaints, or reviews of its processes or actions.

Targeted OIR targets its enforcement activities to identify and remedy the most serious non-compliances, focusing on activities that give rise to the most serious risks, and OIR's strategic enforcement priorities.

Constructive OIR provides support, advice and guidance to assist compliance with the legislation and build capability.

Responsive OIR's compliance and enforcement measures are responsive to the particular circumstances of the duty holder.

Inclusive OIR engages with the community, workers, business and government to promote the legislation, set standards and exchange information to assist with compliance and enforcement.

How will OIR set the standards that self-insurers must meet?

The Act and a self-insurer's licence outline the requirements that each members of the licence must meet. A key requirement in regulating self-insurers is undertaking a continuous assessment of whether the self-insurers is fit and proper to be licensed or to have a licence renewed.

To enable this assessment, OIR will establish standards under each of the monitoring elements including financial, claims management, licence management, legislative compliance, rehabilitation and return to work, work health and safety, and other policies. These standards will be based on the latest available economic and scheme data evidence and consideration of scheme stakeholder expectations for the delivery of workers' compensation insurance.

To support self-insurers to fulfil their legislative and licence obligations appropriately, OIR will make available easy to understand education resources and information guidelines to help self-insurers better understand their responsibilities and expectations and to assist self-insurers in meeting OIR standards.

When OIR prepares new legislation or amendments to legislation, or when it updates its policies or standards, it will consult appropriately with relevant scheme stakeholders to discuss the practical implications of any proposed changes. OIR will encourage self-insurers to take responsibility for their own performance and develop their own standards of practice to demonstrate regulatory and licence compliance.

| OIR responsibility | Self-insurer responsibility |
|---|--|
| <ul style="list-style-type: none"> Clearly setting expectation and outcomes for self-insurers to meet Consult with self-insurers in setting the standards | <ul style="list-style-type: none"> Regulatory and licence compliance Positive engagement with OIR in setting the standards Implementing actions to meet the outcomes sought |

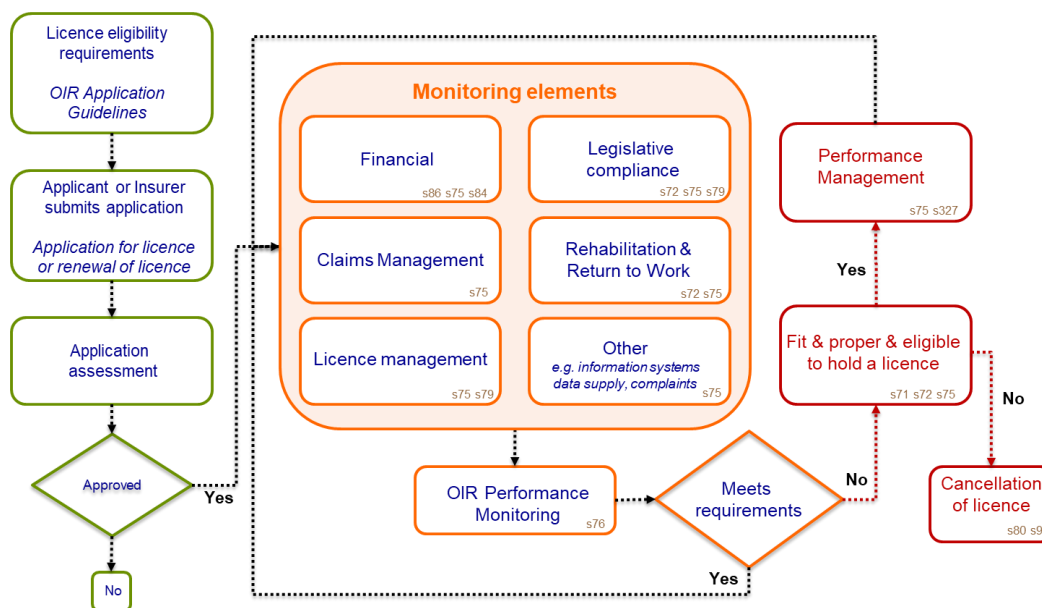
How will OIR monitor the performance of individual licence holders?

OIR will monitor self-insurers' performance to assess whether they are fit and proper and are complying with their licence conditions and other obligations. It is important to note that the acts of a third party engaged by the self-insurer for the purposes of undertaking the powers, functions and obligations of self-insurers are the acts of the self-insurer (for example, a claims agent, legal firm, medical provider, rehabilitation provider, etc. engaged by or on behalf of the self-insurer). In addition, any contravention of the Act or a condition of licence by an employer that is part of the self-insurance licence will also be considered when monitoring the performance of the self-insurer.

OIR will increase the amount of time it spends monitoring self-insurer performance, as it reduces the amount of time it spends assessing applications for licence renewal.

The risk associated with each insurer is informed by a combination of multiple information sources such as regular self-insurer self-auditing and reporting (with validation audits being undertaken by OIR), random and targeted audits of specific scheme functions (particularly associated with recent scheme changes or priority areas), analysis of scheme and insurer data, data from other Queensland and national regulatory agencies, and consultation with scheme participants and stakeholders. OIR will use this information to assist in identifying those self-insurers who are not meeting the required standards or achieving the required outcomes.

Process of self-insurer licence applications, renewals and performance management:



OIR will be targeted and transparent in deciding which self-insurers will be the focus of its compliance activities. It will be targeted by identifying the areas where poor performance and/or breaches of legislation and licence pose the greatest risk to the scheme and taking action to reduce that risk. It will be transparent by publishing information about which areas it is focusing on and what it is doing about them in compliance plans.

OIR will monitor self-insurers based on risk. Where individual self-insurers represent a higher risk to the scheme because of their poor performance, OIR will perform compliance and other monitoring activities more frequently. Where a self-insurer consistently demonstrates good performance and manages its performance appropriately, OIR will acknowledge that good performance and lower risk resulting in less frequent compliance and monitoring activities.

Education and information sharing will also be a focus to highlight and promote opportunities to continually improve performance.

| OIR responsibility | Self-insurer responsibility |
|--|---|
| <ul style="list-style-type: none"> • Conduct randomly selected validation and compliance audits • Identify areas of greatest risk and target its resources accordingly • Reduce the regulatory burden on good performers, increase the consequences for poor performers • Communicate compliance focus and actions • Educate and share information on best practice | <ul style="list-style-type: none"> • Monitor and report on its own performance • Respond to risks before they become problems • Notify OIR of non-compliance • Cooperate with OIR |

Performance management

OIR adopts a collaborative and inclusive approach to educate and support self-insurers to meet their regulatory and licence obligations. It is the goal of OIR to foster a positive culture of compliance and promote continuous improvement with self-insurers.

OIR will review self-insurers' results against the monitoring elements and all other information sources, whether or not specified in this framework, and will form an overall view about the performance of the self-insurer. In every case, OIR will apply regulatory discretion, and fair and professional judgement in the assessment of a self-insurer's performance.

OIR will regularly engage with self-insurers on their performance against the monitoring elements, and provide a performance report showing the outcomes of their performance against these measures. Self-insurers should independently use these reports to track and understand their performance.

Where OIR has assessed that a self-insurer has not met the performance requirements then a performance management plan will be developed in consultation with the self-insurer to assist them to achieve the performance requirements. The performance management plan will clearly identify the elements that the self-insurer has not achieved and any actions that will be undertaken to improve performance. OIR will undertake an audit program during the period of the performance management plan to evaluate the effectiveness of the actions being undertaken by the self-insurer. This audit program may include self-audits and OIR conducted audits or both.

If performance is assessed as posing an increased risk to the scheme or there is an increased risk that the self-insurer may not be assessed as being fit and proper to be licensed, OIR may take action in accordance with its compliance and enforcement guidelines. If the actions of the self-insurer include fraud, or providing false or misleading statements, or serious or intentional breaches of

legislative or licence obligations then OIR may recommend that the Workers' Compensation Regulator consider issuing a show cause to revoke their licence and/or consider prosecution options.

Irrespective of the performance measure of a self-insurer, OIR at its discretion may undertake compliance, investigation and enforcement activities where it is identified that a self-insurer cannot demonstrate that they have met their obligations. This may mean providing an opportunity for the self-insurer to voluntarily address the problem, or taking action in accordance with OIR's enforcement guidelines.

Actions may include but not be limited to warnings, conditions and prosecutions. The enforcement guidelines will be developed in consultation with self-insurers and relevant stakeholders and will address matters such as natural justice principles, complaints management, special licence conditions and prosecution options.

OIR will provide information to self-insurers and the community on its compliance and enforcement actions by publishing compliance alerts and prosecution bulletins.

| OIR responsibility | Self-Insurer responsibility |
|--|--|
| <ul style="list-style-type: none"> • Take enforcement action quickly, fairly and in accordance with the enforcement guidelines • Make self-insurers aware of the expectations and consequences of legislative non-compliance | <ul style="list-style-type: none"> • Legislative and licence compliance • Cooperate with OIR • Implement performance management plans |

How will OIR assess applications for licence renewal?

Applications for renewal of a self-insurance licence are submitted and assessed by OIR, but the decision on whether to renew a licence and the term of renewal are decided by the Workers' Compensation Regulator.

A renewal of licence may only be approved if the Workers' Compensation Regulator is satisfied that all the elements of section 71(1) or section 72(1) have been fulfilled. The self-insurance licence holder is responsible for providing sufficient evidence to support the application and if required, any special circumstances. When deciding the licence duration, the performance and compliance history of the self-insurer and the employer during the term of the current licence period will be considered.

To assess an application for licence renewal OIR will:

- ask for information to assess the self-insurer's entitlement to hold a licence; and
- assess the self-insurer's prior performance in achieving the standards and requirements.

OIR will encourage self-insurers to engage in pre-lodgement meetings so that they can fully understand the information that they must provide. If the information received is insufficient to satisfy OIR that the self-insurer is entitled to hold a licence then the application will normally be returned to the self-insurer.

Information received by OIR as part of an application will generally be accepted at face value. OIR will conduct validation audits and will check for obvious errors or omissions. If a self-insurer is found to have provided inaccurate or misleading information then appropriate enforcement action, including prosecution, may be taken.

OIR will publish guidance for assessing self-insurance licence renewal duration to assist self-insurers to understand matters that may be considered when advising the Workers' Compensation Regulator on the term and conditions for licence renewal. Insurers will be encouraged to self-assess the need

for special circumstances required to satisfy the requirements of the Act, the need for any special licence conditions and the potential licence duration.

OIR will assess the licence renewal application including the self-insurer's self-assessment. If OIR's assessment differs significantly from the self-insurer's assessment then OIR will meet with the self-insurer to discuss the preliminary assessment and provide an opportunity for the self-insurer to submit further information in response to OIR's preliminary assessment.

In every case, the Workers' Compensation Regulator will apply regulatory discretion in the assessment of a self-insurer's licence condition and renewal duration.

In making a decision on the application the Workers' Compensation Regulator will either:

- approve the application; or
- approve the application, with special conditions the self-insurer must achieve; or
- refuse the application.

| OIR responsibility | self-insurer responsibility |
|---|--|
| <ul style="list-style-type: none"> • Make clear what information is required from applicants • Ask only for information that is necessary to decide an application • Assess applications in the shortest time possible • Provide the applicant with a preliminary assessment of the licence renewal application | <ul style="list-style-type: none"> • Provide accurate, complete information to support an application • Provide timely response to requests for further information • Provide timely response to the preliminary assessment |