



WorkCover



Application for a new specialised insurer licence: requirements

2014 version

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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1. Introduction

WorkCover NSW may approve an application for an insurer licence and endorse the licence with a specialised insurer endorsement in accordance with the *Workers Compensation Act 1987* (1987 Act).

Once endorsed, a specialised insurer is licensed to underwrite workers compensation risks for employers within an approved Defined Industry agreed by WorkCover.

WorkCover expects specialised insurers, in respect of their defined industries, to deliver optimum workers compensation outcomes to employers and workers sustainably by:

- promoting work health and safety, recovery outcomes and return to work practices for the Defined Industry
- providing access to fair and reasonable workers compensation insurance in connection with suitable risk assessment
- satisfying the requirements of the Australian Prudential Regulation Authority (APRA) to demonstrate the solvency of the specialised insurers
- investing in appropriate systems and infrastructure to meet the legislative requirement, as well as the expectations of employers, workers and WorkCover, in respect of:
 - support to the employer's work health and safety practices
 - underwriting and premium calculation
 - claims management
 - return to work planning and administration
 - data and information required to assist WorkCover in its ongoing monitoring, regulation and review of the specialised insurers.
- complying with legislative requirements, licensing framework and conditions, and statutory guidelines as required.

These requirements describe what is required of applicants to demonstrate their ability to meet WorkCover's expectations and application assessment process.

Prospective applicants are encouraged to contact WorkCover as early as possible to discuss their intent to apply for a licence and to understand WorkCover's expectations of the applicant. WorkCover will assist prospective applicants on any aspects relating to their licence application, including the assessment of their proposed Defined Industry.

2. Legislative requirements

WorkCover assesses applications for a specialised insurer licence against the requirements in the 1987 Act and its *Licensing framework for specialised insurers* (catalogue no. WC01637).

Under section 178 of the 1987 Act, WorkCover may take the following matters into consideration in its determination of an application for a new licence:

- the suitability of an applicant
- the capital position and articles of association of an applicant that is a corporation
- the orderly run-off of claims for compensation
- the efficiency of the workers compensation system generally
- such other matters as WorkCover thinks fit.

In accordance with section 177A of the 1987 Act, WorkCover will consider the following matters as it determines the merits of an application for a new specialised insurer licence:

- that the insurance business to be carried on under the licence will not have an adverse effect on the efficiency of the NSW Workers Compensation Scheme (the Scheme) generally
- that the applicant is limited to a clearly defined industry agreed to by WorkCover and that the application is supported by relevant professional, business and other industry bodies involved in the particular industry
- that the applicant is authorised under relevant Commonwealth legislation to carry on insurance business in Australia (where applicable)
- any other matters as WorkCover considers relevant.

Other matters WorkCover considers relevant include:

- the applicant must be able to fund the establishment of an insurance operation and meet future liabilities
- the applicant must have an appropriate reinsurance plan and proposed arrangements for its operations
- the applicant must be a company that is owned and controlled by a relevant professional, business or other industry body
- the directors of an applicant collectively must have extensive experience and skills in the Defined Industry, workers compensation insurance and underwriting
- the applicant must demonstrate its capability and capacity to undertake workers compensation insurance business in NSW and comply with all workers compensation statutory requirements.

3. Assessment process

When an application is received it will be reviewed for completeness and the assessment process will commence.

In determining a new licence application, WorkCover will give due weight to the consideration of the overall financial and operational impacts on the NSW workers compensation system. This will include the consideration of the interests of the employers and workers in the Defined Industry proposed to be covered by the licence, relative to the impacts on the interests of all other employers and workers in NSW remaining covered under the Scheme.

WorkCover will consider information from a variety of sources including information received from the applicant and may include on-site audits, interviews and inspections.

Additional information may be requested from the applicant during the assessment and meetings may be held to discuss the application. WorkCover will keep the applicant informed of progress of the assessment.

4. Information to be provided

These requirements outline the information required to support an application in order for WorkCover to determine the eligibility of the applicant and be satisfied with the application pursuant to sections 177A and 178 of the 1987 Act and the licensing framework. Failure to provide the information as required may result in your application being suspended or refused.

Applicants may state in their application why the licensing framework, or aspects of it, should not apply to their application.

Applications for a new licence must be accompanied with a written authority (Appendix A)

The information contained within your application should be referenced in accordance with these requirements otherwise your application may not be accepted.

Where a requirement of the applicant is to demonstrate a capacity, capability or other such item, the applicant must provide sufficient evidence to support a reasonable conclusion by WorkCover in respect of the requirement.

The applicant may wish to provide additional information or comments in support of its application.

5. Administrative, corporate and financial information

The applicant is required to provide the following administrative details:

- name of applicant (and trading name if applicable)
- registered office of applicant
- directors and related companies of the applicant including:
 - names and addresses
 - other directorships held
- contact person and their contact details
- details of any workers compensation licence held by the applicant or related company in other Australian states or territories. Details should include the date the licence was first granted and the outstanding claims liability for each licence held
- details of any cancellation, suspension or refusal of a workers compensation licence or other insurance licence of the applicant or related company
- copies of audited financial statements for the past three years for the applicant company, ultimate Australian holding company and if applicable the overseas holding company.

6. Business case

The applicant is required to submit its business case for applying for a specialised insurer licence.

The applicant's business case must establish eligibility to apply for a licence and demonstrate reasonable plausibility and viability of the proposed intention to establish and operate a specialised insurance licensing arrangement for a Defined Industry.

Information to be provided as part of the business case overview must include, although is not limited to, the following:

- eligibility of the applicant for a specialised insurer licence
- proposed operating model for the delivery of workers compensation outcomes for employers and workers specific to the defined industry
- outline of proposed key resources including systems and infrastructure that will support the intended licensee's business including all branch locations in NSW
- analysis of the financial viability of establishing and maintaining a specialised insurer licence for the defined industry including actuarial projections of premiums written and outstanding liabilities for the first three years
- financial arrangements for this class of business including any plans for additional capital to be raised
- anticipated outcomes to be delivered to employers and workers of the defined industry under the proposed specialised insurance arrangement, and
- proposed application and implementation timeframes.

7. Defined Industry

An application must relate to a clearly Defined Industry agreed by WorkCover as part of the application process. The Defined Industry will be an industry that contains primary activities, these activities being described by reference to the WorkCover Industry Classification (WIC) codes in the Insurance Premiums Order. Prospective applicants should contact WorkCover as early as possible to discuss application requirements including a proposed industry definition. WorkCover will assist prospective applicants on the assessment of their proposed industry definition.

To be considered for a new licence, the application must include a clear description of the Defined Industry (in the form of primary activities within the WIC codes in the Insurance Premiums Order) that a specialised insurer proposes to cover under the licence. The description will allow for the determination of whether an employer falls within, or outside, the scope of that Defined Industry.

The description of the Defined Industry to be included in the application may consider matters such as the:

- similarity of goods and services provided by the employers or businesses
- similarity, connection and relationship of business activities across employers
- relationship between the types of employers or business activities targeted by the application.

The applicant is required to provide formal evidence of the support of employers and employees within the Defined Industry to operate a specialised insurer licence.

Industry support and feedback will be obtained for the purpose of licence applications and considered by WorkCover in making a decision.

The applicant must identify and contact in writing its employees, representatives of employees and employers that have an interest in the licence application, and provide WorkCover with evidence of this consultation. WorkCover will post a notification on the WorkCover website upon receipt of an application for a new licence (under the relevant section below) in order to consider and assess the likely impact on employees and employers to be covered by the applicant.

When a new licence is approved, WorkCover will:

- allocate a three digit unique identifier to the specialised insurer
- assign the specific primary activities within WIC Codes covered by the agreed Defined Industry. Once a Defined Industry is approved by WorkCover for a specialised insurer, WorkCover will not allocate this Defined Industry or part thereof to any other specialised insurer.

8. APRA authorisation to carry on insurance business

The applicant must hold an authority granted by APRA to carry on workers compensation insurance business in Australia under section 12 of the *Insurance Act 1973*, unless exempt from this requirement.

The applicant must provide:

- evidence of this authority or, if in the process of applying for an authority, advice of the status of their negotiations with APRA and copies of any correspondence to/from APRA regarding the application
- details of any other general insurance authorities held by related companies, if applicable
- copies of the last two calculated minimum capital requirement multiples, as required and defined by APRA
- copies of the last three audited annual returns lodged with APRA, together with auditor's certificates
- copies of the latest returns lodged with APRA, if these are for a period after the latest annual return lodged under the requirement above
- copies of correspondence for the past six months with APRA (to and from the applicant)
- evidence that the following arrangements and systems are acceptable to APRA:
 - insurance, accounting and underwriting systems
 - reinsurance arrangements for NSW workers compensation business.

9. Control and ownership

An applicant for a specialised insurer licence must be a body corporate that is owned and controlled by a relevant professional, business or other industry body with substantive and long established peak (and publicly recognised) involvement with the particular industry or class of business that is the subject of the proposed specialised insurance arrangement.

The applicant must satisfy the following criteria of ownership and control of the specialised insurer applicant whereby the relevant professional business or industry body has:

- ultimate beneficial ownership of at least 50 per cent of the shares and paid up capital of the applicant
- control of at least 50 per cent of the votes at a general meeting of the applicant.

The applicant must provide evidence of the above, including:

- details of the group corporate structure in Australia that clearly identifies the applicant, the principal shareholders of the applicant and the related companies of the applicant, together with the percentage of share ownership held – also advise the ultimate overseas holding company, if applicable
- notifications and information lodged with the Australian Securities and Investment Commission
- details of the corporate structure that demonstrate the applicant's ownership and control criteria as described above.

10. Governance – appointment of directors

The directors of an applicant, collectively, must have extensive experience and skills in:

- the industry that is the subject of the specialised insurance arrangement
- workers compensation insurance
- underwriting.

The applicant must provide the proposed board structure, voting power and a short biography of each proposed director outlining their connection with the defined industry, together with their experience in workers compensation and underwriting.

The applicant must advise WorkCover if there are changes to the board during the assessment of the application.

11. Workers compensation operational capability

The applicant must demonstrate its capability and capacity to undertake workers compensation insurance business in NSW and comply with all workers compensation statutory requirements

The capacity and capability may include, but is not limited to, the following matters:

- strategic plans and organisational structure specific to the applicant's underwriting and claims businesses
- human resources specific to the applicant's underwriting and claims businesses
- IT architecture, system and processes
- customer service model
- complaints handling
- fraud identification and management model
- quality assurance approaches and activities specific to the applicant's claims and underwriting businesses
- strategies for building capability and promoting continuous improvement in its businesses
- agility to adapt to change in the claims and underwriting environments
- any proposed outsourcing arrangements for key operational functions.

12. Work health and safety

The applicant must provide a copy of its Work Health and Safety Loss Management Program, which will advise and assist insured employers to meet their work, health and safety obligations.

13. Notice of licence application

WorkCover will post a notification on the WorkCover website upon receipt of an application for a new licence.

The period of notification and the content of the response will be as stated in the *Specialised insurer stakeholder consultation: requirements* (catalogue no. WC01639).

WorkCover will consider all submissions received in response to the notification as part of its determination of the application for a new licence.

WorkCover may also make direct contact with relevant industry stakeholders and other parties that may be impacted by the proposed licence.

14. Application fee

An application fee of \$50,000 is payable to WorkCover upon submission of an application for a new licence. The fee is GST exempt and non-refundable, irrespective of the outcome of the application.

15. Security

Prior to WorkCover approving an application for an insurer licence and endorsing the licence with a specialised insurer endorsement, security will be required to be provided in accordance with WorkCover's security policy outlined in *Security deposits for self-insurers, specialised insurers and retro-paid loss participants: Policy* (catalogue no. WC01089). The security for a new applicant will be determined by WorkCover on the basis of the actuarial report provided by the applicant forecasting outstanding claims liability as at the end of the first year of the licence measured at the greater value that is:

- determined on a basis that is intended to value the claims liabilities of the insurer at a 75 per cent level of sufficiency
- the central estimate plus one half of a standard deviation above the mean for the claims liabilities of the insurer.

16. Contact and lodging an application

For any questions regarding the application process, please contact:

Manager – Licensing and Compliance
Workers Compensation Regulator
Email: self&specialisedinsurers@workcover.nsw.gov.au

You should lodge your application with the:

Manager – Licensing and Compliance
Workers Compensation Regulator
WorkCover NSW
92–100 Donnison Street, Gosford, NSW 2250
Locked Bag 2906, Lisarow, NSW 2252

WorkCover Customer Service Centre **13 10 50**
Email: self&specialisedinsurers@workcover.nsw.gov.au

17. Confidentiality

Where information is provided to WorkCover, the information is protected by provisions in the *Workplace Injury Management and Workers Compensation Act 1998* and may only be disclosed externally in very limited circumstances. These provisions do not inhibit WorkCover's ability to:

- create comparative data to conduct research and assess the performance of the workers compensation scheme
- publish de-identified statistical, performance and research reports
- provide information to the responsible Minister or as directed by the Minister
- provide information to APRA.

Apart from these protections, personal information or health information provided to WorkCover can only be dealt with in accordance with the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

Although the *Government Information (Public Access) Act 2009* (GIPA) creates a presumption in favour of the disclosure of government information when an access application is made, this can be overcome where there is an overriding public interest against disclosure. GIPA provides a specific public interest consideration against disclosure of information held by WorkCover if (amongst other things) disclosure of the information could prejudice the business interests of any person or corporation.

GIPA provides a mechanism for consultation with a person or corporation if an access application is made for information that concerns the business, commercial or financial interests of that person or corporation. Any objection to disclosure received in the course of consultation must be taken into account in determining whether there is an overriding public interest against disclosure. Any decision by WorkCover to make available that information contrary to an objection made in the course of consultation would be subject to a right of review by the Information and Privacy Commissioner or by the NSW Civil and Administrative Tribunal.

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