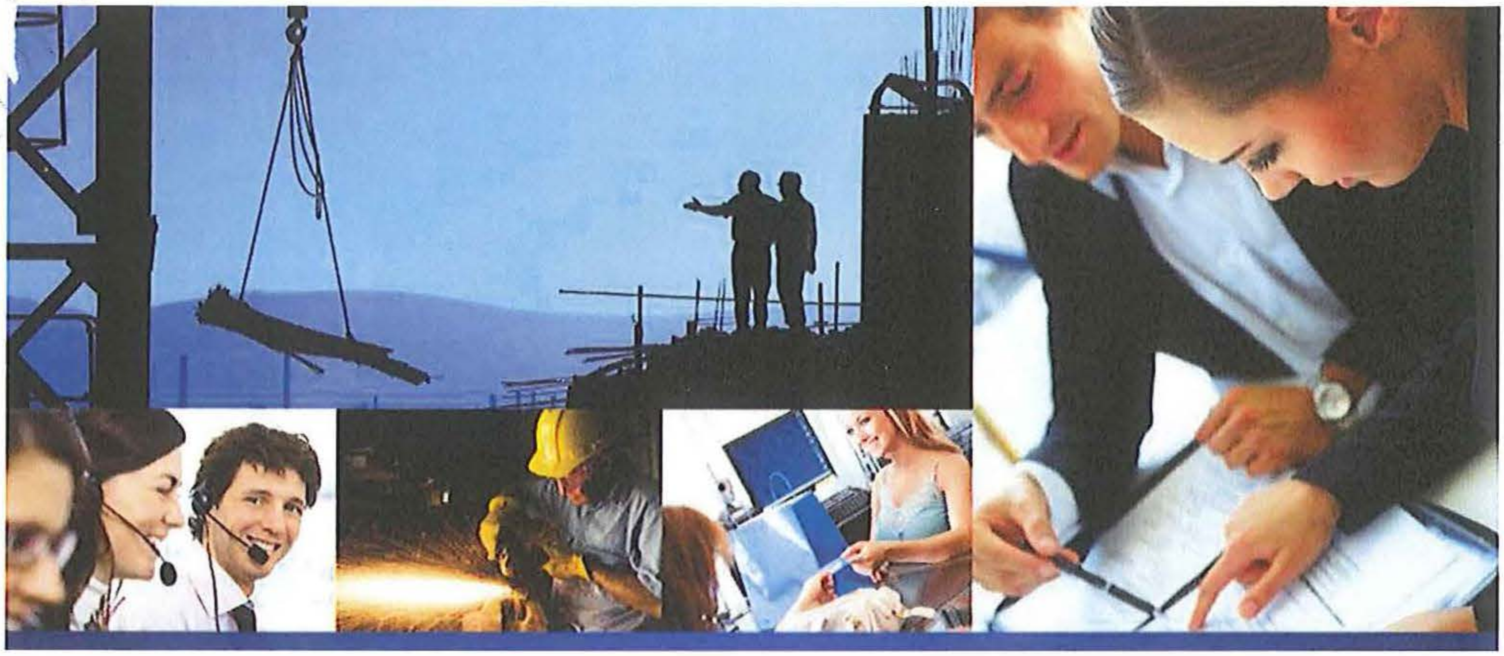

# Submission to the Queensland Legislative Assembly Finance & Administration Committee inquiry into the operation of the Queensland workers compensation scheme

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National Council of Self Insurers



**JULY 2012**

National Council of Self Insurers Inc

ABN 309 637 52940

## Contents

# About the National Council of Self Insurers (NCSI)

The NCSI is the national representative council for the state self-insurance associations of Australia. It comprises of members representing most self insurers in the State and Commonwealth workers compensation and occupational health and safety jurisdictions. At the time of writing, the Association of Self Insured Employers of Queensland (ASIEQ) was not a member of the NCSI but maintains observer status, and the self insurers in the two Territories do not have representative associations.

Each member association of the NCSI represents single-state and multi-state self insured companies in their jurisdiction. Overall, over 230 companies across Australia are represented in this way, many falling in the ASX top 100 companies list.

The NCSI has been in operation since 1992 and is an active organisation, liaising with other peak bodies involved with workers compensation and occupational health and safety.

All companies and organisations that employ staff are required by the jurisdiction under which they fall to register for, or obtain, workers compensation insurance for their employees. Self insurers choose to undertake this requirement by accepting the risk and costs associated with all of their employees' compensable injuries. Entitlements are paid by self insurers according to the jurisdictional requirements of each scheme. The legislative and prudential requirements applying in each scheme together with the extent of the risk mean that in most regimes, self insurers are large organisations. In Australia, about 15% of all employees work for self insurers, most in worksites with union representation. On an individual state basis, that proportion can be as high as 36% of State employment by remuneration.

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## Executive Summary

In making this submission, the NCSI seeks to add its views to the inquiry's consideration of the following elements of its Terms of Reference:

- The performance of the scheme in meeting its objectives under section 5 of the Act;
- How the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions;
- WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth;
- Whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment.

In the following pages, the NCSI will make its case that:

1. Self insurance, in and of itself, is in no way risky for workers compensation schemes, nor does any increase or decrease in the level of self insurance generate any particular problems for schemes.
2. Furthermore, it is arguable that self insurance generally benefits schemes by holding significant levels of industry risk out of the workers compensation insurance pool, and managing those risks in a way that significantly reduces the contingent exposure of those pools, and in particular the smaller employers in those pools that cannot themselves self insure.
3. Self insurance also delivers safer workplaces and better return to work outcomes for employees.
4. The 2,000 employee requirement for self insurance (and indeed any employee number requirement at all) provides no prudential assurance to the Queensland workers compensation scheme as the insurer of last resort of self insurer claims.
5. The requirement is nothing more than an artificial restraint on self insurance and an unwarranted barrier to an employer's choice to pursue self insurance as a better and more efficient model for the management of workplace safety and workers compensation.
6. The scheme is more than adequately protected from a prudential standpoint by:
    a. The financial criteria a self insurer must always meet.
    b. The financial guarantees that self insurers are required to maintain.
    c. Catastrophe (excess of loss and stop loss) reinsurance that self insurers carry.
7. The absence of an employee number requirement in most other jurisdictions has had no discernable impact on those schemes.
8. The 2,000 employee requirement for self insurance can safely be, and should be, removed from the Queensland Act.

## Introduction

In this submission, the NCSI seeks to add its views to the inquiry's consideration of the following elements of its Terms of Reference:

- How the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions;
- WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth;
- Whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment.

In terms of the structure and administration of the Queensland scheme, we will confine our comments to a single issue – the statutory requirement that an employer have 2,000 employees before it can apply for self insurance. We believe that it is within scope for the NCSI to make these comments as this requirement places Queensland a long way out of step with all other Australian schemes.

## Self insurance generally

The question of self insurance in any workers compensation scheme involves many of the same issues as workers compensation generally, but has additional structural and cultural aspects to be considered.

From the cultural standpoint, the first thing that needs to be addressed is the resistance to self insurance that we encounter. This resistance is seldom expressed openly by regulators. Rather, it tends to be euphemistically articulated in the form of regulatory measures that appear to be designed to make it as difficult and expensive as possible to achieve and maintain self insurance. We emphasise that this is not uniform across jurisdictions, but it is sufficiently obvious in enough places to make it an issue.

The 2,000 employee requirement in Queensland is clearly one such limitation, though rather more overt in nature than most others we encounter.

In the next section, we outline and respond to what, in our collective experience, are the main elements of the cultural opposition to self insurance that engenders artificial barriers such as the Queensland employee number requirement. In the context of the current review, we simply offer the observation that the unreasoned opposition to self insurance distorts regulatory activity and imposes inefficient burdens on both Government and business that generate no corresponding benefit in terms of safer workplaces, better legislative compliance or improved return to work rates.

Further, we would argue strongly that the artificial limitation of self insurance is actually damaging to the State and its workforce overall by depriving employers and employees of the chance to be a part of the superior safety and return to work outcomes that self insurers achieve.

# Debunking the myths about self insurance

## Introduction

Self insurance has for decades been resisted by regulators and the employee stakeholder community. This resistance has been based on various assumptions about self insurers and self insurance generally that have seldom been challenged in a systematic way at the policy level. This part of our submission is intended to place evidence on the record that these assumptions have little or no basis in fact.

Our objective is to clear the air so that the role of self insurance in overall workers compensation scheme design and regulatory policy can be considered objectively. This is intended to encourage governments, workers compensation administrators and unions to consider self insurers not as a threat to be contained, but as a resource for scheme-wide improvement of work health and safety, workplace-based injury management and return to work outcomes. In this way we aim to demonstrate that the Queensland employee number requirement is both unnecessary and ill-founded.

## The anecdotal evidence

Some opposition to self insurance has been based on anecdotal evidence brought forward by unions and injured workers involving various types of mistreatment and statutory breaches by individual self insurers. We do not doubt that such cases have occurred. To do so would be to suggest that all self insurers have always performed perfectly, and this is clearly unrealistic. However, there is no evidence that we have been able to access that suggests that such behaviour is systematic or widespread among self insurers in any jurisdiction.

To be clear, the National Council of Self Insurers and its constituent jurisdictional associations do not condone any behaviour that deprives injured workers of their statutory or human rights. As associations with no statutory functions or powers under the various Acts, we cannot direct our members in any way. However, when complaints are brought to us, we encourage the complainants to avail themselves of the relevant complaint management and dispute resolution systems[1]. We also at times provide advice to the member concerned about resolving the issue in question where we see that the self insurer's decisions are questionable.

We submit that in any workers compensation scheme, the administration of legislation will produce a small minority of erroneous behaviours by claims administrators. This is not unique to the self insured sector. Injured workers may also take exception to negative decisions that, while in line with the legislation, are not well explained. This too, is not isolated to the self insured sector. We by no means seek to justify those workers' experiences, but equally we say that tarring all self insurers with the same brush and opposing their very existence on those grounds is unjustifiable.

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[1] In 2009-10, the South Australian WorkCover Ombudsman carried out a comprehensive survey of self insurer internal complaints handing arrangements. A significant majority were found to be complete and objective processes. The few that required improvement all worked with the Ombudsman to upgrade their processes to his satisfaction. We submit that self insurers in Queensland are likely to have similar high quality processes in place.

There is also a practical aspect to this. Self insurance as a business model depends for its success on efficiency. Every self insurer is acutely aware that poor health and safety management or mismanagement of claims is inevitably going to significantly increase direct and indirect costs. Workplace injury and disease and prolonged absence from the workplace because of injury and disease incur between $9 and $15 of hidden cost to every $1 of visible cost and have deleterious long term effects on employee health and well-being that are only now being properly understood. So quite aside from wanting to do the right thing from a social responsibility standpoint, self insurers are also driven by this business imperative, which ultimately leads to better and more effective workplace safety and fewer and less severe injuries.

We would add parenthetically that at the workplace level, feedback suggests that workers are for the most part happy to be employed by self insurers because they know that they have the opportunity to participate in the management of their health and safety at work, and should they be injured, their claims and return to work will for the most part be well managed from within the workplace through an accessible system.

## *Why self insurance is not a threat to workers compensation schemes*

### Introduction

It is common practice for some stakeholders and regulators to oppose and restrict self insurance on the grounds that it poses a risk to the respective schemes. This is more common in centrally funded schemes, which are the majority of Australian schemes[2]. It is usually based on one or more of the following closely related assumptions:

1. That self insurance removes premiums from the insurance pool, increasing the average cost to other employers remaining in the pool.
2. That a high proportion of self insurance makes the remaining premium pool so much smaller that it becomes volatile and will ultimately become unviable.
3. That self insurers will, through poor OH&S and injury management practices, allow their workers compensation liabilities to increase, exposing the schemes, as insurers of last resort, to increasing contingent liabilities.
4. That self insurance is tantamount to 'letting the good risks go', leaving the scheme with all of the high risk and, therefore, mounting liabilities.
5. Self insurers do not perform as well as other employers.

In order to place the counter-argument to these assumptions on the record, the NCSI has assembled data from South Australia, the scheme with the highest proportion of self insurance in Australia[3]. That scheme also has among the highest workers compensation

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[2] Commonwealth (Comcare), Victoria, New South Wales, South Australia, Queensland are centrally funded schemes. The New Zealand ACC scheme is also centrally funded and managed.

[3] Between 36% and 40% of the SA scheme by remuneration has been self insured over the last 17 years. The entire State public sector is self insured in SA, and represents about half of all self insurance. Liabilities for the State public sector are guaranteed by the Crown rather than WorkCover SA.

entitlement levels and one of the highest average premium rates in the nation, with a correspondingly more volatile funding balance. If any of the assumptions set out above were true, they would be more likely to be manifest in South Australia than in any scheme. We therefore present the following data using South Australia as a worst-case microcosm of self insurance generally. We are confident that if asked to do so, the Queensland regulator or insurer could assemble a similar set of data for the Queensland scheme.

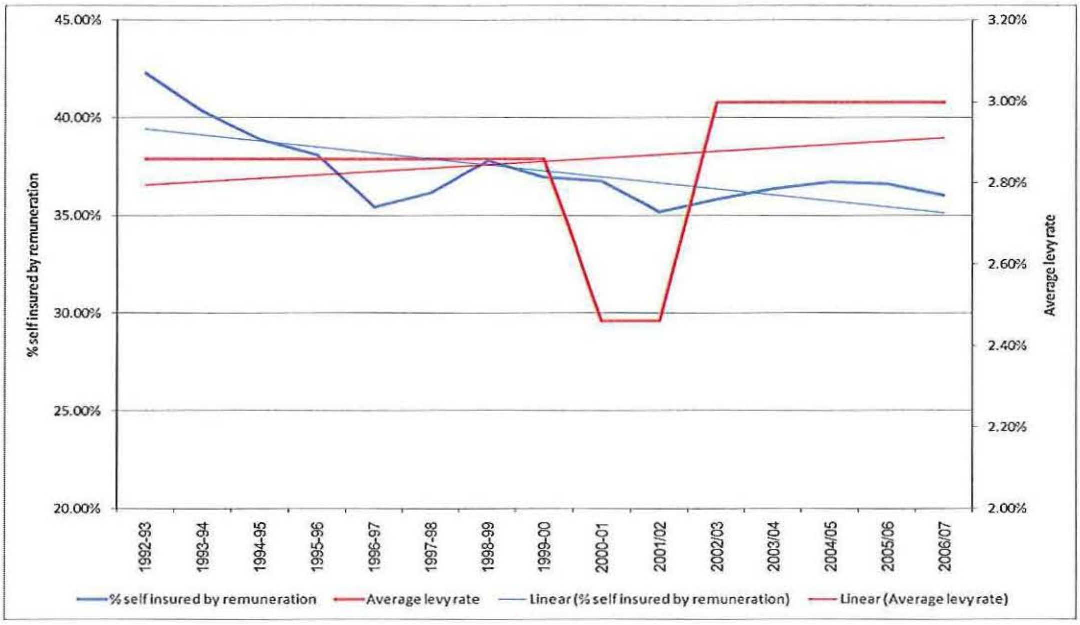
## Case 1 - Self insurance increases the average cost to other employers

This is perhaps the commonest case made against self insurance – that the concentration of liabilities left in the insured scheme leads to higher average premium rates for insured employers. For this to be so, there would be a simple connection between the scheme average premium rate and the proportion of self insurance. So, the scheme average premium rate should trend downwards when the proportion of self insurance does the same and *vice versa*.

### Figure 1

*Proportion of self insurance v scheme average premium rate in South Australia.*

(Data sources: WorkCover SA statistical reviews)



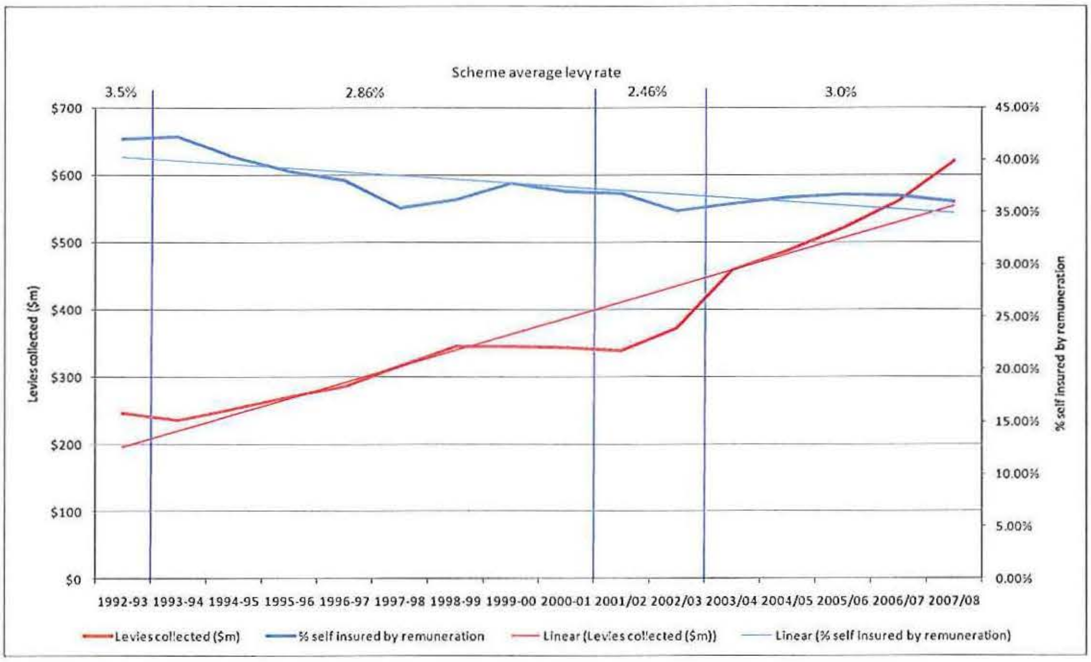

The reality is that the average premium rate trended in the opposite direction to the proportion of self insurance. Even if self insurance does have some effect on the average premium rate (and we do not believe it does), that effect is clearly insignificant compared to other influences.

This can be verified by comparing self insurance with the actual amount of premium collected by the scheme.

**Figure 2**

*% self insured (by remuneration) in South Australia v premium collected*

(Data sources: WorkCover SA annual reports & statistical reviews)




The claim that self insurance increases the cost to the remaining employers is also rebutted by the actuarial evidence cited under Case 2.

## Case 2 - Self insurance makes the pool volatile and ultimately unviable

The main rebuttal of this case comes from two sets of actuarial work commissioned by the Board of WorkCover SA, but not published.

In 1998, the then SA scheme actuary, PricewaterhouseCoopers, acting on the Board's instructions, provided a report dated 16 October 1998, with follow-up comments dated 4 November 1998. Both reports were commissioned to examine the impact on the average premium rate of increased levels of self insurance. These two documents concluded as follows:

*All of the indicators show a decrease in levy* [premium] *rate or at worst no change. Some of these categories encompass one third of the scheme and it would be unrealistic to assume that all of the employers would become self-insurers by choice especially in cases where their levy* [premium] *rate is currently subsidised compared to their claims experience.*

*The analysis shows that if exempt eligible employers were removed the average levy* [premium] *rate for the scheme would not increase regardless of the definition used. The indicators based on claim frequency and reserve amounts show a decrease for all definitions while the indicator based on payments to date shows no change for recent accident years.*

In 2004, the Board asked the then consulting actuary, Trowbridge Deloitte (now Finity Consulting) to provide further advice on the impact of self insurance on the scheme. Trowbridge Deloitte provided a report to the Board dated February 2004. It stated that "*...we* *conclude that concern over the viability of the Scheme and the Corporation through granting greater numbers of exemptions is unwarranted".*

The concurring opinions of 2 successive consulting actuaries to WorkCover SA are that not only do current self insurers not pose a risk to scheme funding, but no realistically possible expansion of self insurance will noticeably affect the average premium rate or cost to other employers. We submit that this ought to be evidence enough to rebut the suggestion that self insurance poses a risk to any scheme.

## Case 3 - Self insurers will expose schemes to increasing liabilities

Before providing data to illustrate the actual liability situation in South Australia, we should point out that schemes with these concerns have the following mandatory measures in place to control these risks:

- Financial guarantees based on an actuarial assessment of each self insurer's workers compensation liabilities multiplied by a scaling factor to allow for increases in liabilities caused by lack of employment opportunities for injured workers should the self insurer cease trading. The Heads of Workers Compensation Authorities has set a minimum scaling factor of 150%[4].
- Excess of loss/stop loss reinsurance (also called catastrophe reinsurance) to protect the self insurer against otherwise crippling losses incurred in a single event or series of events.

In South Australia, there is also an insolvency fund to which all self insurers contribute for the first ten years of self insurance. This is to protect the scheme against any shortfall in a financial guarantee should a self insurer cease trading. This fund currently exceeds $35 million.

It is therefore hard to argue that schemes are unprotected or even under-protected against self insurer liabilities.

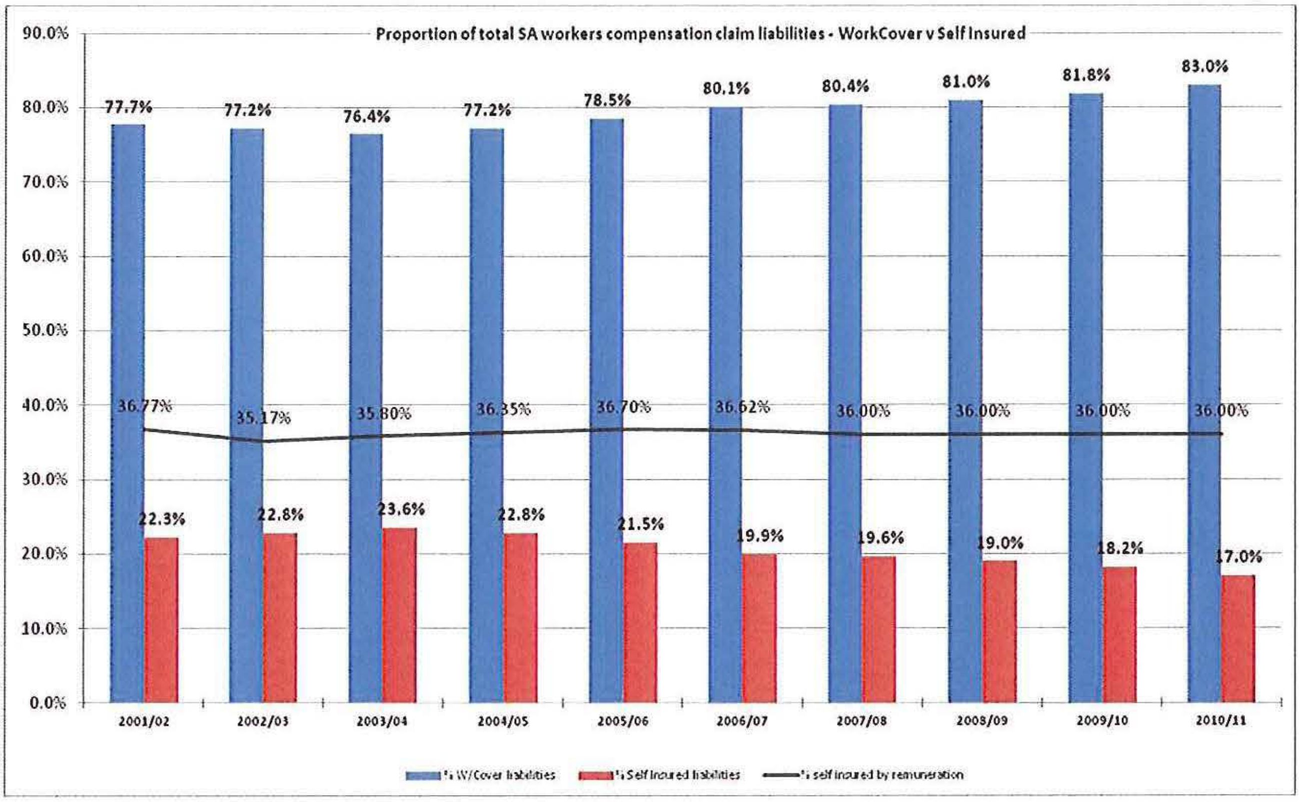
Turning to the actual liability situation in South Australia, analysis reveals that self insurers have carried far less than their 'market share' of the State's workers compensation liabilities for some years. Furthermore, that proportion has been shrinking slowly since 2003-04.

[4] In South Australia the factor is 200%.

**Figure 4**

*Proportion of total SA workers compensation claim liabilities - WorkCover v Self Insured*

(Data sources - WorkCover SA, WorkCover SA annual reports and SA Public Sector)




This data indicates that far from exposing the scheme to higher risk, self insurers are actually reducing the scheme's contingent liability, while the liabilities of the insured segment of the scheme have grown. In short, the insured scheme is a larger risk to itself than self insurers have ever been.

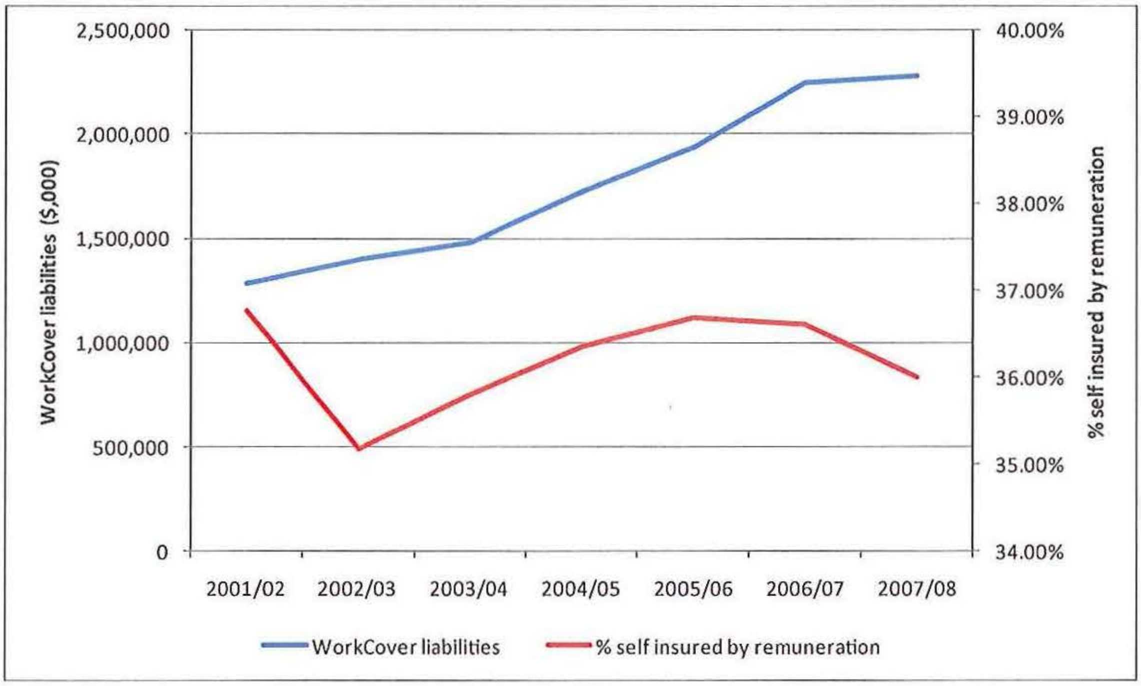
## Case 4 - That self insurance is tantamount to 'letting the good risks go'

This is related to Case 1 and can be addressed in two ways. Firstly, if this case were true, then changes in the proportion of self insurance across time will have some connection with the liabilities of the insured scheme. The following graph shows that while the proportion of self insurance in South Australia has in trend terms been relatively stable for some years (and has slightly reduced in more recent years), WorkCover SA's liabilities have escalated.

**Figure 5**

*Percentage of scheme self insured v insured scheme liabilities*

(Data sources: WorkCover SA statistical reviews and annual reports)




It is difficult to argue from this that there is any discernable connection between the trends. Clearly the scheme's liabilities are responding to other factors whose influence far exceeds any that the level of self insurance is having.

Secondly, this can also be viewed from the standpoint of distribution of risk among the South Australian self insurer population (using their industry premium rate as a proxy for risk):

**Figure 6**

| Levy range | % of SIs by remuneration | | | Industries (significant representation only) |
|---|---|---|---|---|
| 6% - 7.5% | 8.6% | 29.8% | High risk | Iron and steel manufacture, labour hire, personal care services, food manufacture |
| 4.5% - 6% | 21.2% | | | Household appliance manufacture, automotive components manufacture, community health centres, fire brigades, local government, motor vehicle manufacturing, police, cement manufacture |
| 3% - 4.5% | 21.5% | 30.3% | Medium risk | Labour hire, hospitals, grape growing, supermarkets, welfare and charitable services |
| 2% - 3% | 8.8% | | | Paper products manufacturing, wine manufacturing, community health centres, ambulance, department stores |
| 1% - 2% | 22.7% | 39.8% | Low risk | Education, employment placement services, printing and publishing |
| <1% | 17.1% | | | Higher education, religious organisations, state government administration |

This is a reasonably even spread of risk as it stands. However, as footnoted earlier, about half of all self insurance in South Australia is the State public sector, whose liabilities are guaranteed by the Crown rather than by WorkCover SA. While the public sector does have a proportion of higher-risk activities within it, a large proportion will lie in the lowest risk range. If the public sector were to be extracted from the table above to leave only those to whose liabilities WorkCover is technically exposed, the centre of gravity of risk among self insurers would be much higher.

The conclusion we draw from these figures is that if anything, self insurance is holding a large portion of high risk activity *away* from the scheme, rather than leaving it with the scheme. So instead of 'letting the good risks go', self insurance can be characterised in some cases as 'letting the high risks go'.

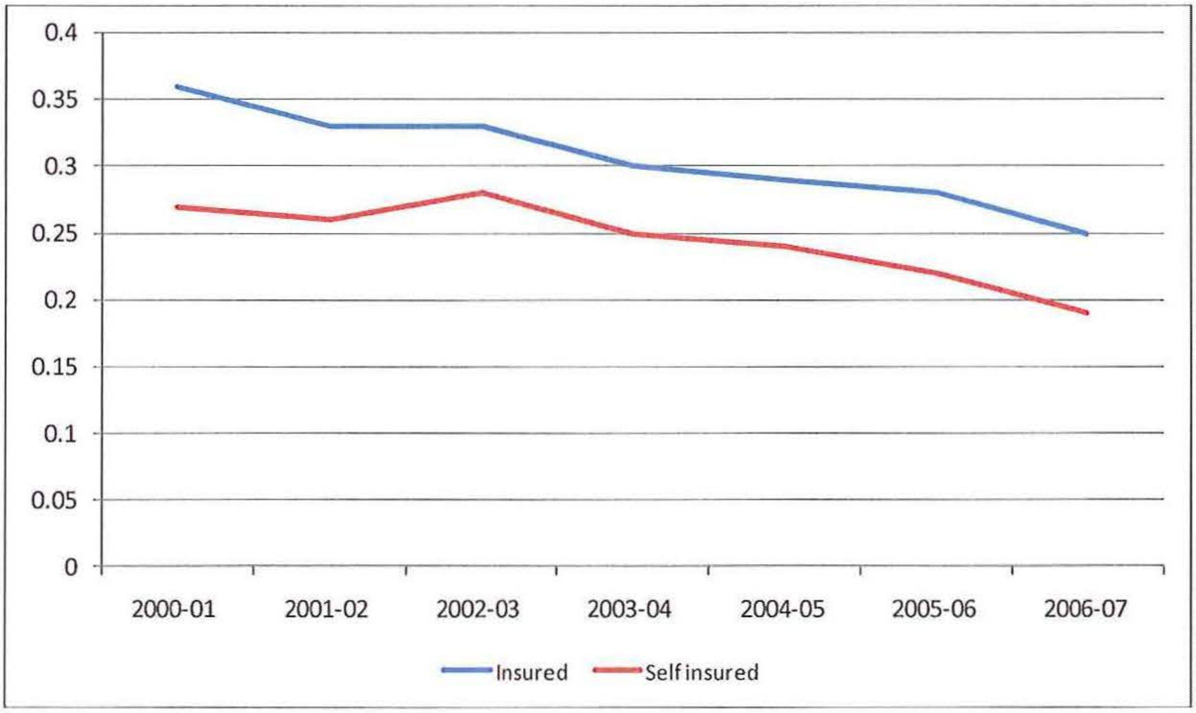
## Case 5 – Self insurers do not perform as well as other employers

We have extracted data from the 2006-07 WorkCover SA statistical review (the most recent published at the time of writing). While injury frequency rates are at best a reactive measure of OH&S outcomes, they are the only statistical indicators currently available for the whole scheme. Figure 7 shows that self insurers in South Australia have an established history of lower lost time injury frequency rates.

**Figure 7**

Frequency of lost time injuries per $ million remuneration in South Australia

(Data source: WorkCover SA statistical review 2006-07)




## Conclusions

There is a broad, if ill-founded, mistrust of self insurance in most Australian jurisdictions. Self insurers are by far the most scrutinised and regulated group of employers with the possible exception of specific high risk industries with their own regulatory apparatus[5]. They are required to comply with, and are intensively audited against, a welter of OH&S and injury management standards and performance measures in most jurisdictions. It seems to us that regulators like to be seen to be tough on self insurers by taking a fault-finding approach. Some of them expend great resources on sometimes feckless audit and regulatory activity that adds no value to workplace safety or return to work outcomes[6].

The claim frequency and liability figures we cited earlier show that in fact, South Australian self insurers perform better on average than the employers insured by that scheme[7]. This is not because of the regulatory scrutiny, but sometimes can be in spite of it. All self insurers know that their performance is driven by the self insurance model itself, which is tantamount to 100% experience rating. Every dollar of cost incurred by a self insurer has an immediate impact. Its effect as an improvement driver is not muted by a premium pooling structure that can take long periods to even take account of the cost, (if it does so at all).

We would go so far as to suggest that if any scheme was serious about improving their worst performed insured employers, it would make them effectively self insure by paying all or most of their claim costs plus a premium, at least until they clean up their acts.

It is ironic, then, that there are those who would like to see self insurance abolished. In pursuit of what is to us an ill-considered stance, the opponents of self insurance would:

- Expose workers to a less safe work environment.
- Subject injured workers to the mass-management of claims that characterises the insured environment and that does not deliver the same quality of outcomes as the face-to-face workplace-based self insurance model; and
- Place self insurers back into the amorphous mass of insured employers where they would not be subject to anything like the same degree of scrutiny.
- In some cases, increase the overall risk profile of the insurance premium pools.

So, we submit that the opponents of self insurance should be careful what they wish for. The cost of abolishing self insurance would be to increase the risk of injury, decrease the quality of care and increase risk for workers compensation schemes.

We believe that South Australia, by virtue of its high proportion of self insurance, its high entitlement and average premium rate and its volatile funding position is a sensitive and viable indicator of the impact of self insurance generally. In other jurisdictions like Queensland where the cost and liability drivers are less sensitive, the effects of self insurance will be even harder to discern. Based on the data and information set out in this submission, we submit that no case exists for in-principle opposition to and limitation of self insurance at either the operational or the actuarial level.

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[5] For example nuclear installations, offshore petroleum production and the like.

[6] Take, for example, the work injury damages audits run by WorkCover NSW a few years ago. The exercise cost a vast amount and to our knowledge generated no meaningful results or improvement opportunities.

[7] Although for a more thoroughgoing analysis, the comparison should be between self insurers and other employers of similar size and industry profile.

# The 2,000 employee requirement

We would without hesitation characterise the 2,000 employee requirement for self insurance as set out in s.71(1)(a) of the Queensland Act as an artificial and quite purposeful barrier to self insurance. The requirement was increased from 500 to 2,000 by s.17 of the *WorkCover Queensland Amendment Act*, No. 17 of 1999. It is well out of step with the rest of Australia:

| *Jurisdiction* | *No of employees required* |
|---|---|
| NSW | 500 |
| Victoria | No statutory requirement |
| Queensland | 2,000 |
| WA | No statutory requirement |
| SA | No statutory requirement |
| Tasmania | No statutory requirement |
| ACT | No statutory requirement |
| Northern Territory | No statutory requirement |
| Commonwealth | Only as set by Minister under s.100 |
| New Zealand | No statutory requirement |

## *Employee numbers – no guide to viability*

One of the ostensible purposes of employee number requirements is to ensure that an employer is large enough to be likely to continue to trade and to meet and manage its liabilities. This was the reason given when the 2,000 employee amendment was made to the Act in 1999:

*A new applicant employer, single or group, will also need to have more than 2,000 workers in Queensland to meet the application criteria. As self-insurers are running an insurance business with liabilities, risks, claims management responsibilities, etc., the Government considers that employers need to be of such a size to carry the infrastructure and costs associated with running an insurance business*[8].

It takes little effort to see that this is a fallacy. Enron failed in 2001 while employing about 22,000. Far more important from the prudential standpoint are the financial criteria that regulators apply when considering applications for self insurance and licence renewals. These cover the necessary range of factors including net worth, profitability, gearing, liquidity and so on, and are fairly consistent across all Australian schemes. The NCSI has long

[8] Hon. P. J. Braddy, Minister for Employment, Training and Industrial Relations, Queensland Parliamentary Record of Proceedings (Hansard), 25 March 1999 page 851.

concurred with the necessity and the validity of such measures to provide baseline prudential assurance to the respective schemes.

We therefore submit that an employee limit of any size is quite simply redundant from a prudential standpoint.

### *The alternatives*

There are obviously two options for changing the employee number requirement in Queensland:

- Reduce it; or
- Abolish it.

It will be clear from the above table that a majority of schemes have either never had, or have abolished, employee number requirements. In none of those schemes has the absence of such a requirement generated any scheme level funding issues. South Australia abolished its 200-employee requirement in 2008 with no change in the proportion of self insurance and no identifiable impact on the scheme. In Victoria, the absence of an employee number requirement has actually seen a fall in the proportion of the scheme that is self insured from 9% to around 7%.

The reason for this is that the financial criteria are the things that truly ensure that only larger and well-resourced organisations can self insure.

The NCSI therefore submits that Queensland should abolish the employee number requirement for self insurance and use the financial criteria and a robust system of due diligence to ensure that the State's workers compensation scheme, as the insurer of last resort, can maintain appropriate assurances that a self insurer will remain solvent and will be able to meet its workers compensation liabilities into the future.

## Summary

The NCSI submits that:

1. Self insurance, in and of itself, is in no way risky for workers compensation schemes, nor does any increase or decrease in the level of self insurance generate any particular problems for schemes.
2. Furthermore, it is arguable that self insurance generally benefits schemes by holding significant levels of industry risk out of the insurance pool, and managing those risks in a way that significantly reduces the contingent exposure of those pools and in particular the smaller employers in those pools that cannot themselves self insure.
3. Self insurance also delivers safer workplaces and better return to work outcomes for employees.
4. The 2,000 employee requirement for self insurance (and indeed any employee number requirement at all) provides no prudential assurance to the Queensland workers compensation scheme as the insurer of last resort of self insurers' claims.
5. The requirement is nothing more than an artificial restraint on self insurance and an unwarranted barrier to an employer's choice to pursue self insurance as a better and

more efficient model for the management of workplace safety and workers compensation.

6. The scheme is more than adequately protected from a prudential standpoint by:
    a. The financial criteria a self insurer must always meet.
    b. The financial guarantees that self insurers are required to maintain.
    c. Catastrophe (excess of loss and stop loss) reinsurance that self insurers carry.
7. The absence of an employee number requirement in most other jurisdictions has had no discernable impact on those schemes.
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