

SIRA compliance and enforcement policy

July 2017

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Introduction

The NSW State Insurance Regulatory Authority (SIRA) is a statutory agency that was established by the State Insurance and Care Governance Act 2015 (2015 Act).

SIRA supervises the insurance and compensation schemes that cover Compulsory Third Party insurance, workers compensation insurance and the home building compensation scheme.

The principal objectives of SIRA outlined in the Act are:

- to promote the efficiency and viability of the insurance and compensation schemes
- to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise these risks
- to promote injury prevention, effective injury management and return to work programs
- to ensure persons injured in the workplace or motor accidents have access to treatment that will assist in their recovery
- to provide for the effective supervision of claims handling and disputes, and
- to promote compliance with the relevant legislation.

The primary schemes SIRA regulates are:

- the motor accident injuries/compulsory third party (CTP) insurance scheme – governed by the:
 - Motor Accidents Act 1988
 - Motor Accidents Compensation Act 1999
 - Motor Accident Injuries Act 2017, and
 - regulations and instruments made under those Acts.
- the workers compensation scheme – governed by:
 - the Workers Compensation Act 1987
 - the Workplace Injury Management and Workers Compensation Act 1998
 - the Workers' Compensation (Dust Diseases) Act 1942
 - the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987, and
 - the regulations and instruments made under those Acts, and
- the home building compensation scheme – governed by Part 6 and Part 6C of the Home Building Act 1989.

We also have a smaller role in relation to the dust diseases scheme, lifetime care and support scheme, sports injury scheme.

Our regulatory tools

In order to pursue our regulatory objectives, SIRA uses a wide range of tools as a flexible and modern regulator. When issues are identified within the schemes, we select the most appropriate regulatory methods to address and resolve the issue. These methods include:

- education and engagement
- licensing and supervision
- complaints and dispute resolution processes
- compliance activity, and
- enforcement activities.

Education and engagement

The purpose of education and engagement process is to raise the awareness of the scheme requirements to participants and awareness of the schemes more generally to the people of NSW. This is primarily conducted through the SIRA Stakeholder Engagement team, including targeted education sessions performed by relevant departments within SIRA.

Licensing and supervision

Licensing and supervision of insurers is performed by insurer performance teams across the workers compensation and motor accidents schemes. The insurer performance team maintain the working relationships between SIRA and the insurers within the scheme, and monitor their performance.

Insurer performance teams also administer the licensing requirements for insurers within the schemes and work closely with other teams within SIRA to review encourage performance and escalate non-compliance.

Complaints and dispute resolution

The function of the Dispute Resolution process within SIRA is to mediate a dispute between two parties before a court or tribunal process is undertaken. The Dispute Resolution process can be very flexible and used for most disputes, even those that may not go to a court or tribunal.

For more information see our [website](#).

Compliance

The compliance function is used as a regulatory tool to ensure risks are managed. The objective of the compliance team is to ensure that parties within the schemes are conforming to the legislation or policy. The compliance team uses tools such as audits to review the activities of participants within the schemes including employers and insurers. Whilst compliance activities may indirectly assist an injured party, the focus of the compliance function is addressing patterns of risk and non-compliance to promote SIRA's regulatory objectives.

Enforcement

The enforcement function within SIRA is used to pursue and use the regulatory enforcement powers that are provided under the Act to apply penalties and prosecute matters. The enforcement team primarily deals with breaches of the legislation that SIRA governs and may work with other law enforcement agencies to achieve its regulatory objectives.

Compliance and enforcement policy

This policy sets out in general terms, how we approach our compliance and enforcement activities, rather than a prescriptive approach as to what action SIRA may take.

The objective of compliance is to pursue our regulatory objectives by promoting adherence with the legislation and good practice. Our compliance policy takes a risk based approach when working with our insurers and scheme participants. In ensuring compliance, we will work with all industries and partners to engage with participants within the schemes to promote voluntary compliance, conduct targeted compliance inspections where there is a greater degree of non-compliance is detected and it poses a greater level of risk to SIRA's regulatory objectives.

The objective of the SIRA enforcement activities is to ensure where non-compliance or limited compliance is identified, that an escalating method of enforcement is used.

Based upon SIRA's risk based approach, and the potential for harm, this may not escalate in a linear manner, rather, the greater the risk and potential for harm would dictate an increased and significant enforcement approach ranging from warnings to prosecutions.

Although the enforcement team is the frontline for compliance activities, all parts of SIRA may be engaged in supporting the appropriate response strategies. For example, education strategies may require the engagement of the injury management team, in the case of certain types of poor compliance by medical professionals or insurance claims officers.

Compliance and enforcement response and aims

When SIRA's compliance and enforcement team exercise any power or take any action, their aim is to:

- alter the behaviour of the industry participants from undertaking activity that may harm the schemes
- reduce the risk of harm to the schemes objectives
- improve performance of the schemes in line with the objectives
- clarify relevant legislation and educate, and
- provide compliance and deterrence for those participants that deliberately engage in non-compliance or other behaviour that targets the scheme.

In order to achieve these objectives utilising limited resources, SIRA has adopted a risk based approach, based upon global better practice and in line with SIRA's strategic objectives.

The risk based approach

Like all regulators, SIRA's resources are finite. Therefore, we cannot pursue all of the allegations of non-compliance we receive. This policy set outs the priorities adopted by SIRA in determining which complaints to further investigate based on the level of risk and other important factors.

In order to achieve SIRA's regulatory objectives, the compliance and enforcement team needs to be flexible in their approach as not every allegation of non-compliance or other complaint will require a response, or the same type of response. Rather, SIRA takes a risk based approach and responds according to the risk that the alleged behaviour poses to SIRA's regulatory objectives.

Our risk based approach means we do not treat all allegations of non-compliance the same way. We will focus our resources on matters that:

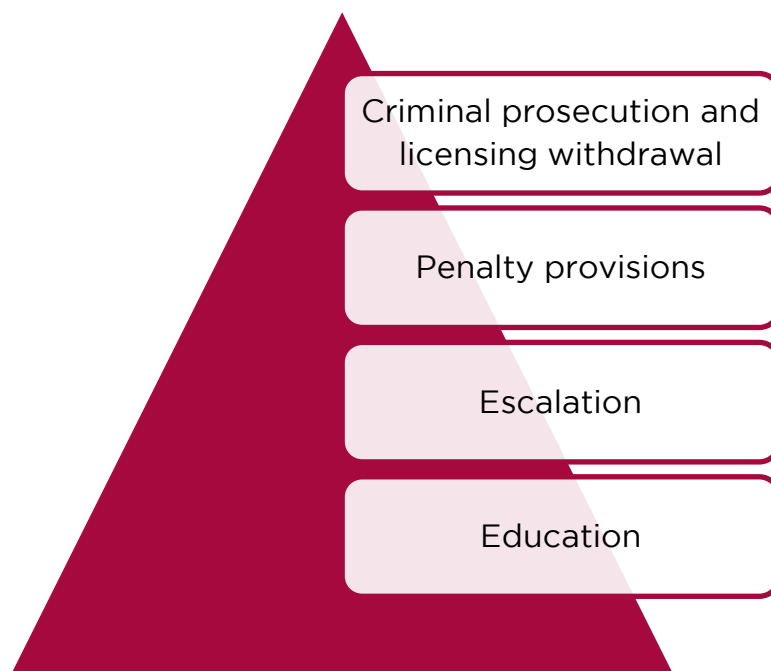
- pose a larger risk (in terms of probability and impact) to our regulatory objectives
- affect a larger proportion of scheme participants
- affect a group of people severely (whether or not that group is large)
- negatively affect a vulnerable section of the community
- have a longer-term (rather than transitory) impact on our regulatory objectives
- impact on more than one of the schemes we regulate
- have a history of systemic non-compliance and recidivism
- have a high degree of public interest, and
- create reputational risks that undermine community confidence in SIRA or the schemes we regulate.

A risk based policy allows SIRA to link its strategies to the likelihood and/or consequences of certain conduct and its impact on our regulatory objectives. This approach, also allows a targeted use of SIRA resources where they are considered to be most effective to achieve our regulatory objectives. The risk based approach involves determining the greatest risks to achieve our regulatory objectives as guidance for prioritising regulatory effort, and centrally requires rigorous use of data and business intelligence to underpin the identification of emerging risks, and to support flexible responses as new harms appear.

Regulatory compliance and enforcement options

Once a risk based determination has been made as to the strength and objective of the response required, the escalation frameworks will guide the decision-making process of SIRA in its use of regulatory tools and powers. These powers are tiered to ensure, in conjunction with the principles and outcome based approach, effective use of SIRA's powers to meet the needs of the community. The way in which SIRA approaches its regulatory role varies in accordance with different circumstances. SIRA will choose the most effective method for regulation in light of our objectives.

The chart below outlines the compliance options available to SIRA in achieving its objectives, in order of risk and harm.



The chart contains an outline of enforcement options available to the compliance and enforcement team, however, this is not prescriptive in the manner in which the severity of the issue is determined.

Ultimately however, any compliance and enforcement action will look to SIRA's regulatory objectives to ensure that the actions taken are consistent with the desired outcomes for the scheme.

Compliance and enforcement tools

A range of options are open to the compliance and enforcement in pursuing the scheme objectives, including:

Engagement

Based upon the nature of the matter and the severity identified in our risk based approach, SIRA may choose to engage the relevant party in a dialogue or written correspondence in order to achieve the most effective outcome for the scheme.

This engagement may also include:

- education and information sessions
- awareness training
- guidelines
- other guidance material to ensure compliance. This may be conducted either by the Compliance and Enforcement team, and/or in conjunction with other SIRA departments or Government regulators.

Regular and targeted audits

Based upon SIRA's risk modelling, an organisation may be asked to undertake its own audit, using internal resources or an external party, or may be subject to an audit from the SIRA compliance team.

The audit program may be requested from the compliance and enforcement team, or another SIRA department and seeks to provide assurance to SIRA that an organisations processes, structures and resourcing are sufficient to meet the objectives of the scheme.

Escalation and written warnings

Formal written warnings may be given where SIRA reasonably believes that the person or organisation has not complied with its obligations under the legislation, regulation or license condition. This provides an opportunity for the person or organisation to achieve compliance with the use of SIRA's powers.

A formal warning will not be used where an engagement strategy will achieve the best outcome for the scheme.

Investigations

An investigation may be as a result of a formal complaint, data analysis or intelligence obtained by SIRA. An investigation will utilise SIRA's legislative powers to gather evidence on a matter, and where applicable, work with other SIRA departments or Government bodies and take a risk based approach to enforcement.

Forms of enforcement outcomes may include:

- limitations on, or, license conditions
- administrative penalties such as penalty notices
- prosecution through the civil and criminal courts, or
- licence revocation.

Where another regulator's powers of enforcement are deemed more appropriate, SIRA may choose to defer any action to that regulator for appropriate action.

Media releases

SIRA may choose in the interests of transparency and public interests to release media content with respect to its activity. This may be conducted through SIRA's media or communications team and is not limited to any one particular medium.

In assessing this tool, SIRA will have regard to the objectives of the compliance and enforcement policy in promoting our regulatory objectives.

Information gathering powers

SIRA officers and inspectors have power under a number of legislative tools to perform their roles in achieving compliance with the legislation. These powers (generally) include the authority to:

- enter a premise of insurer or workplace
- search, make copies of and in some cases, seize evidence
- compel organisations or people to produce, or give evidence relating to an investigation
- conduct reviews and audits of business records
- apply administrative penalties
- commence prosecutions
- give private rulings on matters, and
- share information about its activities with other bodies.

SIRA understands its role in the operation of the schemes and seeks to employ its key principles in the utilisation of any power.

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However, to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at 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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Regulatory Reviews, Level 6, McKell Building, 2-24 Rawson Place, Sydney NSW 2000

Customer Service Centre 13 10 50

Website www.sira.nsw.gov.au

Catalogue no. SIRA08886 | © State Insurance Regulatory Authority NSW 0218