Self Insurers Association of Victoria Inc.

Submission

Productivity Commission Inquiry into National Workers Compensation and Occupational Health & Safety Frameworks

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Introduction

The Self Insurers Association of Victoria (SLAV) welcomes this opportunity to lodge formal submissions to the Inquiry and expresses appreciation for the additional time afforded to SLAV for preparation.

SLAV considers that this inquiry is timely and of such importance that a detailed survey of members has been conducted. As advised at the hearings in Melbourne, the Association has surveyed members on relevant issues identified from the Issues Paper and the Terms of Reference. This submission sets out the findings of that survey.

SLAV also provides positions on key issues, specifically drawing on Victorian experience that affects all self-insurers across Australia. These positions should be considered in conjunction with the submissions lodged by the National Council of Self Insurers.

About SLAV

The Victorian association represents all 37 self-insured organisations in Victoria which account for 10% (aprox.) of remuneration, (i.e. the total amount including superannuation paid to Victorian employees). In a recent straw poll, members indicated that they sub-contract a further 6% of the insured remuneration pool, i.e. employees insured through WorkCover.

SLAV has been in operation some 15 years and is an active organisation with two working committees - Health & Safety, and Claims & Injury Management, that meet regularly to exchange information on best practice. The members are mainly drawn from the top 100 companies in Australia. It can be said that the companies are committed to both occupational health & safety and human resource management as key planks in progressing business viability, effectiveness and growth. As such, the companies invest significant resources to achieving best practice.

All member companies would say that this commitment is beyond the regulatory requirements in both arenas required by the VWA for insured employers or indeed the standards required of them as self-insurers. This statement is supported by recent research that shows that in the main self-insurers produce lower claims costs, more sustainable return to work results and more attention to safety. [1]

SlAV plays a key role in advancing the positions of self-insured companies in these objectives. SIAV also represents the interests of self insurers to Government and to the Victorian WorkCover Authority and is a member of various advisory committees under the legislation. Most notably the one exception to this representation is that of the Occupational Health and Safety Working Group which reports to the WorkCover Advisory Committee, which then reports to the Minister for WorkCover. SlAV considers this omission to be of some concern given the breadth of concentrated self-insurer experience denied to the broader employer pool.

The role of self-insurance

SIAV maintains a very strong view that self-insurance is desirable in any workers compensation regime. The advantages of self-insurance for the public good are as follows:

- Comparisons with the management by existing WorkCover regimes of insured employer groups may be made with self-insurers in safety, claims management and rehabilitation. Such accountability is useful to promote better practice for both self-insurers and the regimes.

- Self-insurers have more incentive to invest in safety due to the risk that is carried by them directly, without cross-subsidisation of any kind, and will often adapt leading edge practices ahead of state based regimes.

[1] Refer to paper to the IXth Accident Compensation Institute of Actuaries, P Harris and M Fry for lower claims costs. Also 30% of certified SafetyMAP sites in Victoria are those of self-insurers. Victorian Rehabilitation Providers also report that self-insurer sites produce more durable return to work outcomes. 'Durable' means remaining at work for more than 6 months after return to work.

- Self-insurers play major roles in ensuring the safety of the growing number of sub-contractors that work on their sites many of whom are insured by the VWA.

These general views are expanded in some detail in the attached submissions made to previous inquiries.

Core positions for this submission

SLAV takes the view that there is a clear need for:

- A single national regime where self insurers are provided with a choice outside the current state boundaries.
- Consistent compliance requirements across the country
- Effective and value-added auditing requirements
- Less red tape
- Acceptance and implementation by all regulators of the principle that any intervention should meet a value- add test, i.e.- all work to be performed by the self-insurer for the regulator should provide value to the company as well as meeting the regulator's need.
- Any intervention should be transparent and accountable.

These positions are described in more detail below.

About the survey

The survey was conducted over June 2003 and represents the views of half of the membership - most of which operate in multiple jurisdictions. The members were asked to seek the responses of their respective companies rather than individual responses. As such the survey results are a clear indication of corporate views in Victoria on the issues.

The issues have been drawn from the experience of SLAV members and were worked through during a members' workshop held on 2 June 2003. Various issues raised in past submissions to the VWA were also included. Papers prepared as part of a three year negotiation with the VWA on the level of contribution legislatively required of self-insurers are attached to this submission.

Contextual information - VWA

The Association has been engaged in several major interactions with the VWA on matters relevant to self-insurers during the past 3 years. The VWA has recognised that these issues need to be worked through in a systematic manner and while commitments have been made to include a full review of the relationship of self insurers to the scheme, key issues remain outstanding.

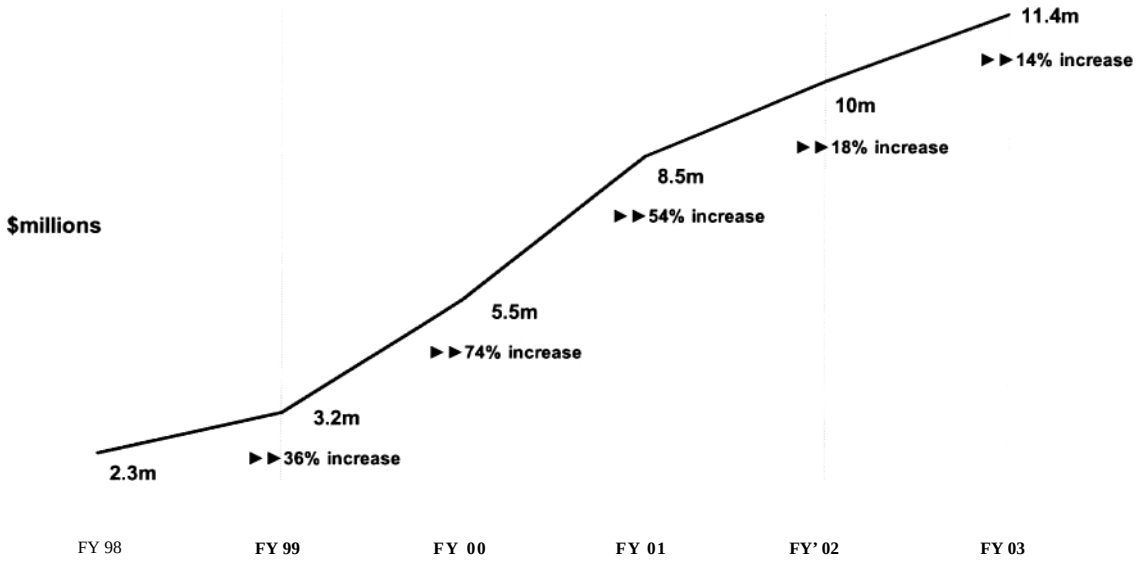
The driving force for these reviews has been the size of the **contribution fee,** well out of step with other states. The contribution fee, more correctly described as a levy, is the amount of money paid by self-insurers to the VWA as a contribution to the workings of the scheme. Two papers are attached that describe the economic and legal context under which that fee is deemed payable. Both indicate that

- The Victorian approach to the contribution is out of step with mainstream legal and economic frameworks governing the relationship between regulators and private entities.
- The fee itself is over-high
- There is insufficient accountability for the use to which the fee is made.

The chart below shows the increase in cost to self-insurers as a collective total. During the time noted, the numbers of self-insurers increased only marginally. The increase is explained by a similar increase in

administration expenditure in Victoria's WorkCover Authority. The size of the fee is linked to this expenditure via a levy style formula following regulations introduced in FY98.

5 YEAR RISE IN SELF-INSURER REGULATED FEE CONTRIBUTION TO VICTORIAN WORKCOVER



The previous Minister for WorkCover negotiated a 'freeze' in one element of the formula during 99/00. While reducing the cost otherwise, the fee continued to climb with WorkCover expenditure and is now almost double the expectations of the ongoing fee at the time of the Minister's negotiation. Even with more controlled spending by the VWA in recent times; self-insurers still consider the fee is too high. The reasons for the increase have included a dramatic expansion by the current Labour Government to employ more inspectors. It is of concern that these initiatives are part-funded by self-insurers while being appropriately targeted at insured employers, and therefore are less relevant. Reporting on the success or otherwise of these initiatives back to self-insurers is limited. In this respect the fee has all the hallmarks of a tax rather than a regulated fee. (See *Marsden* Attachment on accountability of regulators).

Previously to 97/98 there had been no real change to the contribution formula for some 20 years. The VWA last year agreed to forecast the fee for the full financial year in the first quarter following a string of increasing quarterly bills during 99/00 - 01/02 that threw self-insurer budgets into disarray. Currently, self insurers are awaiting the forecast for FY04.

Principles developed by SLAV for the calculation of the contribution fee are outlined below under 'Regulatory Efficiency'.

Data - one-way and one way only

An emerging and ongoing issue is the issue of data. Since the Survey was conducted SLAV has investigated data issues raised by members in the course of the consultative process. The essential problem is that while extensive data is provided to the VWA and on to NOHSC (See NOHSC objectives on the National Data Set), little is provided back to self-insurers for use either in in-house safety and injury management initiatives; or in comparative form with other companies in the same industry.

A survey conducted by the major provider of software to self-insurers in Australia showed that:

- Despite the costs and effort involved in transmitting data, very little if any collated data was made available from workers compensation agencies in return after lodgement via auditing requirements

- Comparative data showing benchmarking for industries and similar organisations would be highly valued if provided in any useful shape or form.

The approach taken by NOHSC is to debate in committee via regime representatives the data 'specifications for the collection of data. Compliance is then sought individually from the states. Data goes from

sophisticated technology systems into legacy workers compensation agencies systems and then is further translated to the limited fields and codes promulgated by NOHSC. The 'dumbing down' of the data is in stark contradiction to overseas models of open architecture style data collection and data mining programs used for the purposes of injury prevention.

SLAV takes the view that this one-way process needs to be overtaken by direct feedback to companies showing:

- Scheme comparisons
- Sector comparisons such as self insured versus insured
- Industry comparisons
- Individual comparisons with any or all of the above.

This data feedback role should be undertaken outside the state regulators and managed on a national basis using established database and information management protocols. The latter arrangement would ensure that the data was properly moderated, that commercial and privacy sensitivities were respected and that delivery of comprehensive data was on-line, live information, speedy and effective.
SLAV takes the view that such an approach would overcome the major deficiencies of the current arrangements - namely the failure of state regimes to feedback relevant data.

SLAV also has serious concerns over the interpretation of data within the regimes and draws on recent experience with the VWA. Surveys conducted in 2001 were found to be flawed in terms of comparisons between self-insured and insured employers. The flaws related to the interpretations drawn from and published by the VWA - a number of which were subsequently withdrawn.

Independent, evidence based and expert analysis is necessary. This will only be found using the best of technology resourced and overseen by appropriate academic institutions and with interpretive input from selfinsurers and other relevant stakeholders.

SLAV believes that this type of approach will create acceleration in knowledge and understanding of best practice safety and prevention; and injury and claims management, unprecedented in Australia.

Layout** of **remainder** of **submission

The remainder of this submission follows the layout of the issues paper - the full results of the survey may be found in the Attachments.

National frameworks

SLAV supports moves towards greater consistency between schemes in terms of regulations and entitlements. In the context of self-insurance, SLAV supports establishing the right of employers to choose selfinsurance at a state or national level. SLAV considers that self insurance is positive for both business and employees, so any legislation, regulations and their administration should facilitate self insurance rather than create unnecessary hurdles (e.g. some states require minimum employee numbers or exclude classes of employers such as the Public Sector). It does not seem too much to expect greater consistency between schemes on the requirements of self insurers such as contributions, re-insurance, bank guarantees, audit requirements, actuarial assessments etc.

Member comments - National frameworks

The survey indicated -

- **Majority support for a national framework that delivers consistent compliance regimes for workers compensation & OH&S.**
- **Less support for consistent workers compensation benefits, and**
- **Very strong support for a national option for self-insurance and the right to opt-out of local regimes**

"There should be less arbitrary restriction on access to self insurance. Employers should be able to choose national or state licences and include joint ventures or other divisions with common ownership. "

"The only restrictions should be in relation to an employer's capacity to manage and underwrite their workers comp "

"The current system of each State developing its own standards actually hampers our attempts at moving to Global best practise. The parochial attitude of some of the regulators is such that any attempt to move outside of their model in injury management, rehabilitation, claims management etc. becomes a conflict issue, even where the move exceeds legislative requirements. The VWA approach has been that their legislative requirement is best practise and no account is taken of differing business models and needs. "

"Consistency on compliance would be progress, but we should aim for greater consistency in other areas as well. "

"We currently have a division in NSW which is not self-insured; however, there may be benefits in a national regime for both sites. "

"Our preference is for a national scheme, however, the details would need to be reviewed and an analysis of the business impact made prior to any commitment being made. We would assess the viability of national self insurance before choosing such an option. "

"The industrial implications of decreasing benefits in some states would make the scheme unmanageable from our company's perspective. The alternative of increasing benefits in other States has the potential to cause us to lose the competitive edge we gain from self insurance. "

Grouping companies

Company mergers, takeovers, joint ventures and de-mergers fragment self-insurance licences. Practically, however, the workers compensation management often ends in being undertaken by one 'umbrella' company. The common denominator is common ownership. Most state regimes do not recognise these arrangements and in most instances only deal with the individual companies. The one company

office then has to deal with multiple state regimes on behalf of the smaller

companies within the group. In Victoria, a 'holding company' has the licence and only fully owned subsidiary companies fall under this licence.[2] However subsidiary companies located in Victoria cannot claim the self-insurance licence cover of a holding company located in another regime. This means that partially owned companies are omitted.

A national regime may overcome this problem entirely for national companies - some with international parents. In this instance only one licence would need to be approved.[3]

Member comments - Grouping companies

"Common ownership could be one defining criteria but there could be others. We could also consider group self insurance for aligned companies, strategic alliances etc under certain circumstances. Ownership should be the criteria for one self-insurance licence. "

"Our response would depend on an assessment of the detailed plan and its impact on our company. We would agree to this only if the national arrangement was sufficiently attractive. "

The survey indicated -

- **Majority support for easier access to self-insurance and a national option for self-insurance.**

[2] S 141 Accident Compensation Act 1985 - only 'body corporates' under the Victorian Corporations law or a partnerships under the equivalent Victorian Partnership legislation can apply.

[3] Queensland's arrangements allow for predominant shareholdings to dictate self-insurance status, although 2000 employees is a threshold requirement and not supported by SLAV.

"There should be less arbitrary restriction on access to self insurance. Employers should be able to choose national or state licences and include joint ventures or other divisions with common ownership. The only restrictions should be in relation to an employer's capacity to manage and underwrite their workers comp. "

National framework - OH&S

SLAV supports greater consistency in OHS regulations and administration at a national level, as long as this is consistent at a superior model standard. The national framework model gives an opportunity to hold the states more accountable than the current state focussed system. One view is that elements of the current standard (AS 4801) should be consistent across Australia; and that it should be improved with appropriate consultation and implementation.

The survey indicated -

- **Majority support for OH&S administration at a national level**
- **Only if a superior model is adopted**
- **Some support for AS4801**
- **Also majority support for a national framework for managing risk that was properly structured.**

Member comments - National OH&S framework

"My company believes that as self insurers are the only employers who are truly accountable for both the cost of OH&S programs and the outcomes, there is an inappropriate level of attention applied to self insurers' compliance with OH &S legislation. " "The enforcement would be better targeted at non-self insured companies who do not have the direct exposure. "

"Whichever model would be adopted the critical issue is that it is consistent across all states and territories. "

"True risk management is afar reaching issue which in its broadest sense covers all aspects of how a company operates e.g. financial, environmental, human resource etc ".

"We do not believe that a national framework is appropriate. Many of the functions involved in true risk management are the domain of the Directors and executive management of the company concerned. "

Costs of multiple jurisdictions

Multiple jurisdictions pose additional costs and restraints for self-insured national and multi-national companies that operate in Australia. While these costs and workforce impacts are largely attributable to rigid adherence to state borders, the fact of multiple jurisdictions is not the main concern. The key concern is the lack of flexibility and choice in selecting a compliance regime. A second concern is inconsistent adherence to transparency, certainty, equity and regulatory efficiency principles. The main problems arising from the current arrangements are:

- Inconsistent self-insurance access criteria
- Inconsistent audit arrangements
- Inconsistent contribution (licence fee) arrangements

- Inconsistent exit arrangements

The survey indicated -

Very strong support for the proposition that

- **'Multiple jurisdictions pose additional costs and restraints for self-insured national and multi-national companies that operate in Australia' ...and also for**
- **'Multiple OH&S regulations incur costs associated with keeping up with changes'.**

HWSCA and the Ministers Council

National coordination is non-existent from a self-insurers perspective. HWSCA is largely ineffective and an unknown body to most national companies. All relationships are with local agencies.

In self-insurance, efforts to obtain consistency across the country or any sort of cooperation are largely driven by the representative associations. In the last two years the jurisdiction-based associations have banded together to obtain consistency on a variety of positions. No interest or activity towards consistency has been evident from HWSCA in recent times. In the area of data comparison, even less has been done. Self-insurers presented comparative data at the major conference in this area - that of the Australian Institute of Actuaries in Adelaide in November of 2002. DEWR and the Ministers Council do not publish selfinsurance comparative data at all, although recently some interest has been shown.

While self-insurers provide large amounts of data to workers compensation agencies, none is fed back in any comparative form or in

detailed above. SLAV find it difficult to identify any outcomes of significance from HSWCA activities in relation to national consistency.

The survey indicated -

- **Strong support for the proposition that HWSCA and NOHSC are not effective as coordinating mechanisms**
- **However, regular comparative data on self-insurers from any source would be valued.**

Member comments - HWSCA & the Minister's Council

"Some support for a new properly resourced coordinating body cooperating with local regimes. We would be prepared to "agree" provided they were able to add value. "

"It would seem to be a necessity for a central organisation provided there was a net reduction in an overall bureaucracy. "

"It could be argued that the relevant states' WorkCover Authorities carry an independent audit of self insurers. ".

"However, some self insurers prefer to audit in-house with government overseeing as they deem necessary. "

Proposed models -1 to 6

SLAV members considered the various models proposed by the Inquiry. Briefly they are as follows:

Model 1. A cooperative model - Status quo on OH&S

Model 2. A mutual recognition model - Recognition by all schemes or subscription to one model.

Model 3. An expanded Comcare model - Capacity to subscribe to Comcare self-insurance and benefits across Australia.

Model 4. A uniform template legislation model - mirror legislation by all states.

Model 5. An extended financial sector regulation model - ASIC & APRA regulation.

Model 6. A new national regime - a new national WorkCover scheme.

The advantage to self-insurers of a **cooperative model (1)** is that a national external body would set compliance standards and this would attract some uniformity across the country. The disadvantage is that cooperation may devolve to acceptance of different interpretations or an increasing number of exclusions. In addition, local operational control would still raise multiplicity problems. For these reasons it is not supported in isolation.

Self-insurer associations, however, have previously indicated support for a **mutual recognition model (2).** This model in combination with the external standard setting body of the cooperative model is preferable. Difficulties may occur for state-based bodies attempting to enforce OH&S requirements in other states. Over time the requirements would become more consistent out of necessity. The impact of this model (2), however would be that the associated costs of keeping up with different regimes would move across from individual multi-state businesses to the local regimes administrations. It might be expected that those regimes would seek to recoup these costs then through levies or other penalties, rather than strive for consistency. Differences may become entrenched.

The disadvantage of the **Comcare model (3)** for self-insurers lies in the benefits structure of Comcare. This is perceived to be generous and longterm in nature in comparison with other schemes. The transition to a more

generous and long-term scheme would raise difficult although not insurmountable industrial relations issues. (See Redemptions below).

The **uniform legislation model** (4) is supported as a variation and advance on the mutual recognition model (2).

Self-insurers take the view that prudential regulation is the most important factor in evaluating access to self-insurance; however do not think it is appropriate to be subject to the same prudential requirements as insurance companies. Self insurers are in fact non insurers and should not be considered de facto insurance companies as they do not offer cover to third parties.

If these distinctions can be accommodated, the prudential advantages of a **financial sector regulation model (5)** are that compliance requirements would be in line with and included in general corporate compliance standards. Mainstream debate could also moderate over-regulation. A special set of prudential regulations, however, may be unduly costly and cumbersome.

A new national regime model (6) may attract all the problems associated with monopoly providers. However, it would also ensure that employees wherever located would be subject to similar benefits. Consideration of such a regime should be deferred until benefit models are proposed.

The survey indicated -

- **Some support for mutual recognition, little for Comcare, (unless benefits change), more for template legislation and more for a new national regime.**

- **Strong support for elements of all models -**
- **'My company supports a model that allows choice of regime, national application, external standard setting and auditing, and consistent prudential regulation with mainstream Australia'.**

Member comments - 6 models

"While model 6 is the most preferable option, it is the one with the potential for the greatest difficulty in implementation - one legislation, one application, choice of standards and auditing".

"Clearly if benefits are greater in the Comcare scheme therefore greater expense, we would expect nationally this would be of little interest not just to our company but one would expect to all national companies.

"We are concerned about changes to existing benefit structures. "

Combining compensation and OH&S

Many self-insurers already manage OH&S and workers compensation in one management unit. The advantages are that the cost-savings attributable to prevention activities are transparent and in turn encourage fresh safety initiatives. However, for regulators there is another view that it is better to keep the two areas separate and that this should be reflected in any new regime.

SLAV considers the inspectorate role should be separately treated. One view is that any new regime should have its own federal inspectorate to prevent inconsistencies in implementation that may occur if state based inspectors are handed the task of enforcing national standards.

The overriding view is that large companies with standards that may meet higher international standards should not be subject to as much external inspection. Some sort of exemptions should apply. (See more on this issue below).

The survey indicated -

- **Mixed views on combining the two and strong support for separate inspectors**
- **Strong support for the proposition that 'Large companies found to have equivalent or better OH&S standards to the new national standard should be deemed to comply. The level inspectorate scrutiny should align with performance.**

Access to self-insurance

Access costs are extensive and significant. In some instances these costs influence decisions to locate head offices or large employment sites within one state in comparison with others.

The survey indicated -

- **General agreement for the proposition that 'Different access arrangements generate costs for my company'**
- **One third indicated that these costs were discussed at Board level**

Maintaining self-insurance - audits

In Victoria, self-insurance is renewed every 3/4 years. This process is onerous and duplicates annual OH&S audit processes already undertaken by the company, and in some circumstances the VWA. Renewal payments are charged at $30,000; a fee not charged elsewhere. The renewal audit is very rigid and does not provide incentives to improve safety systems. Opinions vary over whether the audit adds any real value.

SLAV supports a targeted performance based use of auditors. As selfinsurers self fund their safety audit activity the need for WorkSafe participation should be minimal. WorkSafe resources should be deployed in a targeted manner across Victoria to reduce injury in all workplaces.

The survey indicated -

- **Most agreed that audits at renewal were 'largely duplicative and costly', although there was some support for the fact that audits were useful at renewal.**
- **(Accredited private auditors would be preferred - see below)**

Member comments - audits

"It depends on the timing of the audit renewal process. In this instance the renewal audit for OHS was included as our self assessment audit so removed extra cost of bringing in an auditing company. However, if it was compulsory to audit twice that year then we would be strongly opposed to it. Auditing by external organisations does give opportunity to see how we are progressing and encourages improvement. "

"It is reasonable expectation for the VWA to carry out some form of checks and balances when renewing licences ".

"Agree, but in any one year limit to one audit. "

Uniformity of access requirements to self-insurance

SLAV considers that aspects of the Victorian approach to access to self-insurance are preferable to those in other states. The arbitrary and anti-competitive requirement for a head count is not included and the existing requirements for prudential sustainability and exceptional claims management arrangements are effective, even if sometimes excessive in terms of red tape. There should be no room for an artificial cap on the percentage of the scheme available to self-insurance applications. There is no evidence that a high percentage threatens long-term viability. (See South Australian arrangements - 40% self-insured over decades).

Most companies seeking self-insurance are able to obtain it, although there are extensive costs associated with determining the feasibility of applying and then in making the application. These costs do not include the costs associated with adjusting internal systems. Overall, barriers to self-insurance are not excessive.

Victorian self insured companies represent some 10% of the remunerated pool. This could be higher if **public sector entities** were self-insured as

in other states. It is difficult to understand the rationale for the difference. In South Australia the sector operates without seeming difficulty. In Victoria, the cost of premium to Government affords a healthy income stream to the VWA, but a significant drain on the public purse. As self insurance requirements set higher standards than for other employers, the question remains as to why tax-payers and public servants are not given access to such benefits.

Uniformity of access arrangements across the country could be achieved via mutual recognition arrangements and agreed regulatory arrangements. These, however, should be subject to external high-level scrutiny and should align with regulatory efficiency principles. They should also be subject to consultation and regular review by representative self-insurance groups.

Costs should be transparent and subject to incentives to keep regulation low; i.e. pro-rata reductions in contribution levies if regulatory costs increase above a pre-set level. Another view is that such arrangements should be managed by the national regime described above.

The overriding view is that where higher standards of safety and claims management can be shown, access requirements should be minimised or stepped down.

The survey indicated -

- **Majority support for - 'Access to self-insurance should be uniform across the country, managed at a national level.'**
- **Some support for a mutual recognition process with minimal barriers to SI**

Member comments - access to self-insurance

"Caution needs to be exercised to ensure that companies seeking self insurance have the necessary financial viability and management systems are in place. This should be at a level greater than 'Minimal'. "

Impact on business location and other activities

Some SLAV members have indicated that the cost of self-insurance in Victoria is considered at Board level when determining the location of head offices. The disparity with other states arises in the way in which the VWA sets the level of contribution for individual self-insurers. The formula is linked to the total remuneration for that self-insurer. Placing the high paid executives common to head offices in Victoria in comparison to NSW results in a **four-fold disparity** in contribution levy for little or no value-add to the self-insurer.

The survey indicated -

- 2 **national companies answered yes to - 'My business's Board and senior management have included the self-insurance contribution fee as one factor in location decisions.'**
- **Several members, however disagreed that this was a consideration**

Failing self-insurers

The possibility of failing self-insurers should be subject to similar prudential requirements that govern insurance companies. Failures should be dealt with by adequate and accurate actuarial assessments and appropriate prudential margins and bank guarantees. In Victoria, Actuarial Guidelines have been developed and attract the confidence of the association and of WorkCover. These should form the basis of

acceptable prudential security via the bank guarantees - 150% of those assessments. This is a more proactive approach and builds in accuracy at the front of the process.

(Note: The 150% is at the higher end as NSW has 130%. This area requires scrutiny. There is also a current unresolved issue in Victoria over the limits on the **guarantees -** banks will offer cheaper rates for term guarantees rather than life unlimited guarantee. The difference can be .75% rather than .9%. For example, for a medium self-insurer this can represent an annual saving of some $20,000 and far greater saving if 130% was the multiplier. This is not an insignificant cost and a better approach may be to ensure that bank guarantees are renewed at the lower cost as part of the standard audit process.

N

Member comment -failing self-insurers
Bank guarantees SHOULD be sufficient and it would be an essential element of the role of the central authority.

Liability Inequities

The legislation governing workers compensation in Victoria enshrines equity as a principle and SLAV takes the view that this should operate as far as possible between insurers and self-insurers. In two areas, however, self insurers are disadvantaged.

Excess of loss insurance is required to be taken out by individual selfinsurers in Victoria. The availability of such insurance has become more

The survey indicated -

- **No support for a safety net system**
- **Strong support for 'Individual bank guarantees are sufficient to guard against failing self-insurers'.**

times. For events such as **terrorist attacks,** insured employers are covered by the VWA or the Government. Self-insured are not so covered. SLAV considers that such cover should be made available through the state based or national framework.

The survey indicated strong support for -

- **'Alternative insurance options for excess of loss should be offered'**
- **Mixed views on Government excess of loss insurance option**

Member comment - excess of loss
"Government should provide cover for community risk occurrences such as acts of terrorism which are outside the influence of individual employers. "

The second area is that of **restricted TAC indemnity.** In matters where employees are injured during work-related travel, the Transport Accident Commission, the monopoly insurer in Victoria, indemnifies scheme employers but will not indemnify self-insurers unless management of the claim is transferred to TAC. The mechanisms to establish these transfer arrangements are contractually complex representing a significant hurdle for self-insurers that none have passed to date. SLAV takes the view that self insurance status with the VWA should allow retention of the claims management role with the self-insurer if they so choose with a simplified TAC recovery process.

Exiting self-insurance

The different jurisdictions have various legislative mechanisms that govern arrangements where self-insurers 'exit' self-insurance and become re-insured as WorkCover employers. Exits may arise through:

o Breaches of the Act and regulatory action by the VWA to withdraw licences (nil incidents of this power being exercised)

- Mergers and de-mergers where companies lose their prudential status through company changes (More common now)

- Choice on the part of the company without external impetus (Extremely rare)

- Failures of self-insured companies (No incidence in Victoria)

The process of exit is that an actuary will make an assessment of the liability at the time of the cessation of self-insurance status. The company has the **choice** of maintaining liability for pre-cessation claims and paying them over a period of three years; or handing the entire portfolio to the VWA for immediate claims management.

In the former case, the remainder of the amount is assessed as a 'debt due' to the VWA at the three year point. In the latter case the debt is assessed at the time of cessation.

SLAV strongly supports these arrangements in particular the capacity of the company to make a **choice** in any of the circumstances outlined above.

Moving from insured to self-insured status - value of tail

When insured employers seek self-insurance status, the question of responsibility for the cost of outstanding and potential claims arises. There should be an option as to whether the 'tail' or liability for existing claims and IBNR claims is taken by the organisation or left with the VWA. At present it is mandatory to take the tail. The cost is assessed by the VWA or their actuaries. This can be a real disincentive to obtaining self-insurance and can impede the application. There is no clear process when a dispute arises, usually between conflicting actuarial opinions.

SLAV takes the view that there should be a choice and that processes in SA and Qld provide useful models for change. Transparency in dispute processes and choice should be the key elements of any reform. .

OH&S legislation

SLAV members deal with legislation, regulations, policies and standards from a variety of sources. The plethora of rules and regulations has been a problem in Australia for at least ten years with cost and injury consequences. For business, it means that mi$directed effort compromises better quality prevention strategies and consumes the time of scarce specialist staff. Rather than being proactive and developing better prevention and implementation strategies, internal safety management staff spend time training for and researching jurisdictional differences.

Improvements could be made at all levels - legislation, regulation, policies and standards, with more consistency in OH&S. Higher OH&S standards implemented by self-insurers could also be better disseminated to others by a more sophisticated system. The current conflicting requirements diminish the capacity of self insurers and regulators to focus on prevention issues.

A good example is training workers that have to work with heights. There are **six different regulations** that apply. For national companies this makes it extremely difficult to run an internal familiarisation program with the requisite impact. Each regime appears to operate in a 'silo' style and there is little consistency. A national platform that would remove the requirement to 'tweak, cut and paste' would be far more effective in achieving the end result of stopping falls.

The survey indicated -

- **Support for central control of regulation and less for new legislation**
- **Agreement that all aspects - legislation, regulation, codes, implementation, and practices are inconsistent between states and incur cost for companies.**

Member comment - OH&S Legislation
"There exist current OH&S legislative frameworks that could be adapted nationally ".

"There may not be a need to create yet another alternative. "

"This could be transitional until an agreed hand over to national OHS authorities was achieved. "

NOHSC

Self-insurers have strong financial incentives to focus on prevention and safety and devote considerable resources and expertise. Despite this, progressive initiatives in self-insured companies are routinely ignored by state-based regimes. Improvements that should translate to insureds are not communicated. The greater impact on safety of this failure of communication on the insured employment sector is not properly evaluated or measured.

With an increase in sub-contractors, more self-insured companies will be responsible for the safety of part of the insured sector as well as their own employees on worksites. These impacts need to be measured and resources devoted to promulgating rather than ignoring best practices. NOHSC plays no role at all in overcoming this problem.

The survey indicated -

- **Mixed support for NOHSC, however strong support for the proposition that**
- **NOHSC should add a practical industry focus to its academic emphasis.**
- **NOHSC should also report on self-insurer safety initiatives for sub-contractors.**

Member comment - NOHSC

"Currently they have had no influence at our workplace. Perhaps if the system were to become national then they would be a more active organisation in each State ".

"The national body should have a control focus and an improvement innovation focus ".

Regulatory efficiency

SLAV supports reducing the regulatory burden and compliance cost - there is a significant regulatory burden on self-insurers not all of which can be justified in value-add terms. Regulators should have to justify how value is added for self-insurers as well as for the 'public good'. We would, welcome efforts to streamline existing processes. More importantly, we would welcome moves to make regulators more accountable. Regulatory efficiency measures should be introduced, particularly in terms of financial planning and expenses. External auditing and transparency should be made mandatory.

***Contribution** fee*

Victorian self insurers similar to other states are legislatively required to 'contribute' a fee to the VWA. Changes in 1997 to the regulations linked this fee to the expenditure of the VWA. No provision for accountability back to self-insurers for the expenditure has been made.

The survey indicated - very strong support for both of:

- **'Regulatory requirements do not receive proper attention from Government and are issued and changed with limited regard for commercial impact'**
- **'Regulatory requirements must be justified on a value-add basis, be transparent and be subject to external scrutiny'**

Guiding principles - Contributions

The following principles have been developed by SLAV as essential for any contribution fee. The VWA has indicated support for most of these principles and has taken steps to reflect them in recent publications.

Guiding Principles for Calculation of Contribution Formula

1. Recognition of the risk that self-insurers carry
2. Parity in application of formula to both premium paying employers and self- insurers
3. Recognition that self-insurers spend substantially more than insured employers on workplace safety initiatives. This should be reflected in the contribution formula.
4. Incentives and disincentives to provide outcomes that support the objectives of the legislation
5. Equity - no cross subsidisation to insured and or other self-insurers 6.

Simplicity of application and administrative ease

7. Contribution to the public good, however only if subject to transparency and accountability.
8. Certainty of projection
9. Limitation of VWA costs to 'reasonable' costs rather than excessive expenditure
10. Self-Insurer contributions to the VWA should be based on the extent to which a self-insurer uses the services of WorkCover.
11. Contributions should be performance based. If a self-insurer improves its WorkCover performance, its contribution should reduce and vice versa.
12. Recognition that employers will be deterred from self-insurance if the cost to be self-insured is unreasonable. Any disincentive to self-insuring would be a detriment to VWA legislative objectives and to employers and employees in Victoria.

13. Self-insurers should not be asked to contribute to costs of the V.W.A, which do not relate to self-insurance.

14. Self-insurance benefits the VWA and improves workplace safety in Victoria. Self-insurers provide safer workplaces and actively promote the rehabilitation and early return to work of injured workers. Self-insurers improve the management of claims for employees. For these reasons there should be a commitment to removing any existing unnecessary barriers to self-insurance rather than increasing them.

15. Self-insurance contributions should be user-pays and performance linked.

16. Payment for 'public good' programs should be for those that are effective rather than experimental or duplicative of work done elsewhere. Accountability mechanisms should exist for the success of such programs and should be linked to the contribution formula.

17. The contribution formula should encourage competition and product/service delivery innovation as prevention and return to work strategies form an essential element of controlling accident risks and clients costs.

18. The contribution formula should encourage sharing of best practice strategies in claims management.

19. The contribution formula should make provision for recognition of 'group' leadership activities by self-insurers.

Competing interests - Self insurer safety record

Inspectors are reported by some members to attend member sites in apparent preference to insured sites. This is not true for general inspections, but more so for the access and auditing requirements for selfinsurance. The inspectors are used to check safety audits conducted by self insurers.

A small group in the VWA have the role of conducting the audits for an application or reapplication. This team also reviews annual self-audits and advises the self-insurance management team. At times, this causes unnecessary cost and is seen to be out of step with a **targeted performance based use of WorkSafe resources.** (See above - Data). Overall the inspectorate system is supported.

The survey indicated -

- **Support for the proposition that 'The VWA needs to provide more information about inspector outcomes to unions and other stakeholders.'**
- **Inspectors otherwise are supported in their role.**

Audit arrangements

SLAV members have experience of differing audit regimes between Victoria and other states. These differences are not justified and cause considerable cost and divert attention from safety and prevention. There is also considerable duplication with inspector visits. The effectiveness of this type of Government control has not been shown.

The audit requirements do not vary with the performance of the self-insurer. There is no recognition of performance or a lessening or increasing of the regulatory burden as an incentive for improved performance. The 'one size fits all' VWA audit approach again raises concerns over the efficacy of the entire process. (Refer above - maintaining self-insurance - audits)

The survey indicated -

- **Annual audits in Victoria cost more than other states - some $30,000 to $60,000 more**
- **Strong support for the model of using private accredited auditors.**

Coverage

SLAV would support efforts to standardise the rules concerning access to benefits and coverage between the states although we believe that employers should only be held responsible for injuries over which they have reasonable control.

We would not support models that hold employers responsible for injuries such as Motor Vehicle Accidents or heart attacks and strokes etc at work. The definition of injury should clearly link injury to the work tasks.

The survey indicated -

- **Very strong support for the proposition that 'Access to any national scheme should be contingent on coverage that is limited to employer-controlled situations'.**

Redemptions & common law

SLAV supports step down benefit structures and reasonable no fault impairment benefits for workers with more serious injuries. In the past, we have also supported limited access to common law for serious injuries, but our position has been in support of the 30% AMA threshold, not a narrative description of serious injury. Despite the flaws, we think the AMA test is the preferred model of apportioning lump sums in general. We also believe schemes should have provisions for the redemption of entitlements for defined categories of claimants. Legal activity can interfere with rehabilitation and an adversarial culture prevents return to work in some instances. Cost harvesting opportunities for lawyers are also evident in common law cases and this cost is passed directly to the employer. (See also below)

The survey indicated -

- **Very strong support for redemptions as part of any new model**
- **Support for elements of the Victorian common law model**
- **Common law however 'materially' interferes with rehabilitation** & **RTW programs**

Scheme sensitive cases

Common law claims can test the boundaries of benefit regimes in ways that impact on the viability of the VWA central fund as well as on the viability of self insurers. 'Test cases' in particular may result in judicial interpretations of the law that lead to more favourable compensation for entire classes of workers. In the past the VWA has attempted to influence the management of litigation by self-insurers when they have been the subjects of test cases. SLAV takes the view that self-insurers should be free to run these cases from beginning to end according to their own consideration of risk, the legislation and the relevant case law. Subjective views of the broader implications for the scheme made before the court's

consideration should not determine the course of the litigation. The impact on the scheme may more properly be argued by the VWA in the court forum and the outcome should then be a matter for the COUrt.4[1]

This is an example where in the past the role of the VWA as a regulator was at odds with its role as an insurer seeking to protect the viability of its portfolio. The interests of the VWA as an insurer should not drive any actions that it may take as a regulator; unless those actions are clearly mandated by legislation.

Similar principles apply in all aspects of claims management particularly in the VWA's attempts to obtain compliance with policies and procedures that have been developed for claims agents. SLAV takes the view that these have been developed by VWA as an insurer rather than as a regulator. **Therefore VWA issued policies and procedures should only be binding on the VWA and its agents. They should be no more than a useful point of reference for self-insurers.**

Member comment - Scheme sensitive cases

"Self-insurers should be free to defend claims and should not be subject to VWA involvement in the litigation processes for 'scheme viability' purposes. "

41/1 VWA and SLAV are discussing informal mechanisms where appropriate communications can be conducted in instances where self-insurers as well as the VWA may have pending cases that will impact on the viability of both. VWA is further seeking to link such mechanisms to audit requirement status thus making advice mandatory. The extent of any subsequent VWA intervention remains unclear as does the legal status of such a linkage.

"Whilst we agree it would be imprudent to allow self insurers to negotiate 'commercially' advantageous settlements that would adversely impact on other self insurers or the Scheme. At the same time the VWA should also avoid creating precedent decisions that impact on self insurers. "

Medical costs

SLAV takes the view that the employers should have the option to direct medical treatment for injured workers. Many companies have experienced doctors engaged both for immediate treatment and for a view on liability. These arrangements can be negotiated in advance in consultation with employees. If working well, a culture of trust in the doctor associated with the worksite is created both with the employer and with workers and union representatives. The doctor will have specific expertise in workplace injuries and will understand local workplace issues. Preventing further similar injury becomes part of their role and this is a benefit for all stakeholders. Best practice injury management systems require a network of skilled health providers and achieve **safe and sustainable return to work** outcomes.

Where this work-place based approach does not exist, self-insurers want higher standards in treating doctors, including knowledge of the worksite. The VWA has a major role to play in improving these standards and making treating doctors more accountable.

Member comment - Medical providers

The survey indicated -

- **Companies should have the right to immediately direct injured workers to company based or auspiced medical treatment...**

at least until..

- **Treating doctors are made far more accountable in any new regime.**

"We recognise the injured worker's right to also consult their preferred medical provider. The issue is more around the weight to be given to a medical practitioner that is unfamiliar with the workplace. "

Rehabilitation

Most self-insurers are able to respond quickly and well with private rehabilitation companies. Interference with licensing or the work practices of these companies can cause problems for self-insurers. The capacity to freely choose rehabilitation providers to provide services to injured workers is as important as the right to direct medical treatment

The survey indicated -

- **'The employer capacity to choose a rehabilitation provider is important for earlier and more durable return to work outcomes'.**

Dispute resolution

SLAV is largely supportive of alternative dispute resolution as a cost effective alternative to litigation. We support the retention of conciliation type systems. Legal costs, however, continue to be an issue and more work needs to be done to limit legal involvement.

The survey indicated -

- **Conciliation approaches are supported, with some more specialisation.**
- **Legal costs, however, could be reduced by cutting legal involvement.**

Use of third parties as claims managers

SLAV does not have a position on private insurer schemes versus managed agent models although we do note there has been greater stability from managed agent models.

Members take the view that outsourcing options should exist for claims management functions. Third party claims administrators could include specialist providers, insurers and indeed other self-insurers. This is particularly relevant for self insurers with very few claims either due to the nature of their industry or excellent safety outcomes. If sufficient volume then most claims managers prefer in-house claims management for the reasons detailed below. However, the **option** to outsource should be available in any new framework.

Member comment- outsourcing to claims agents

*"**In** our view, the outsourcing of claims management functions to a Claims Agent is counterproductive and defeats the purpose of self-insurance. We strongly believe that the real benefits of self-insurance can be achieved through the claims manager having an intimate and comprehensive knowledge of the workplace and its employees. Outsourcing the claims management function would also impede the successful interface between OHS and injury management systems. Furthermore, in having no direct financial accountability to the se f insurer, the Claims Agent has no "vested interest" in ensuring superior claims and injury management. We would rely on our pre self- insured experiences to support this view in terms of the inherent delays by the Claims Agent to complete all basic functions of claim & injury management -functions, which had they been completed in a timely manner, would have undoubtedly led to cost containment through positive outcomes. ".*

ATTACHMENTS

A. SLAV SUBMISSION -ACCIDENT COMPENSATION REGULATIONS 2000, January 2001

B. WORKCOVER AUTHORITYBEST PRACTICE ECONOMIC & PRICING PRINCIPLES, Marsden Jacob Consulting Economists, March 2002

C. Survey Questions and Results

SELF INSURERS ASSOCIATION OF VICTORIA

WORKCOVER AUTHORITY: BEST PRACTICE ECONOMIC & PRICING PRINCIPLES

19 March 2002

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1. INTRODUCTION & OVERVIEW

The Self-Insurers Association of Victoria (SIAV) is in negotiation with the Victorian WorkCover Authority (the Authority) over the fees and charges which its members should pay to the Authority. The SIAV sought advice and support from Transformation Management to assist in those negotiations. Transformation Management, in turn, requested Marsden Jacob Associates (MJA) to provide advice on what constituted best practice economic and pricing principles and practice relating to these issues.

This report provides that advice. It is deliberately set at a high level and does not attempt to address the detailed cost allocation issues involved in determining specific charges for the Authority.

The primary recommendations are that the charges levied by the Authority should:

- be restricted to those functions which clearly implement statutory duties and objectives;
- be restricted to those services which are directly 'consumed' by specified customers or groups of customers;
- be cost reflective and based on user-pays;
- not seek to cover costs of generating "public-goods" unless these clearly benefit the customer groups concerned. In all other cases those goods should be funded through taxation;
- meet any under-recovery of costs through a Community Service Obligation funded by Government rather than through additional charges to a limited group of customers.

Following these principles, the Authority should not seek to recover sums from members of the SIAV for the generation of broad-based "public-goods" unless it can be shown that those goods are relevant to this customer group. The current evidence argues that these public-goods are not significant in promoting adoption of improved OH&S practice by larger employers.

2. BEST PRACTICE PRICING PRINCIPLES

2.1. GBEs

The Authority is a Government Business Enterprise (GBE) rather than a Government Department. This status is demonstrated through a number of characteristics. The two most evident are that:

- the WCA's objectives are confirmed and limited by statutory authority, in this case the Accident Compensation Act 1985 (the Act); and
- the WCA is self-funded, through the WorkCover Authority Fund, from charges levied on its customers, rather than relying on funding through an appropriation from Consolidated State Revenue.

2.2. BEST PRACTICE PRICING PRINCIPLES

There are a number of key elements to best practice in pricing principles for GBEs, especially where they operate as a Government-owned, monopoly supplier of services, as is the case with the Authority:

- **Independent Prices Oversight:** a monopoly GBE supplier of services should be subject to independent prices scrutiny. This implements Clause 2 of the Competition Principles Agreement.
- **Corporate Objectives** & **Services:** the entity should have clearly defined functions and services which relate solely to its corporate and statutory objectives, not to wider Government policies.
- **Full Cost Recovery:** the entity should recover its full costs from the 'customers' for its services.
- **Community Service Obligations (CSOs):** where the entity is unable to achieve full cost recovery, or is required to deliver non-commercial objectives, then that under-recovery or additional cost should be funded directly by Government in the form of a CSO.
- **User-Pays Tariffs:** charges should be implemented on a user-pays basis related solely to the consumption of the defined services of the entity. This is efficient as it creates incentives for individual customers to limit consumption. The approach also meets principles of equity.
- **Cost-Reflective Tariffs:** charges for separate services should be based on the real costs of their delivery. This ensures clarity on the costs of service provision within the organisation and allows customers to adjust their consumption between different elements of the total service package.

- **Taxation:** Other forms of pricing based on, say, level of income or ability to pay are appropriate only for taxation purposes as they involve explicit re-distributive objectives.
- **Cross-Subsidies:** cross-subsidies between customer groups (ie price discrimination) should be transparent and efficient within the objectives of the entity.

3. APPLICATION OF PRINCIPLES TO WCA

3.1. PRICES OVERSIGHT

The Authority should be subject to prices oversight through the Essential Services Commission. This would ensure an independent scrutiny of costs and functions and provide confidence to all parties that the Authority was meeting its required objective to undertake its functions "as effectively and efficiently and economically as possible": (S 19(a)).

It is worth noting that, in Tasmania, the Government Prices Oversight Commission has responsibility for regulating the premiums charged by the Motor Accidents Insurance Board.

3.2. CORPORATE OBJECTIVES : PUBLIC GOODS

The Authority undertakes a wide range of functions and provides a suite of services. These are defined by reference to statutory obligations. It is appropriate to charge for these, where they involve discrete, quantifiable activities which are consistent with the status of the Authority as a GBE rather than as a Government Department.

However, the Authority suggests that their activities also generate broader positive externalities, that is persons other than the primary parties to the contract (the Authority and the individual participating company) may receive benefits. These externalities are alleged to arise in the promotion of increased health and safety standards.

Positive externalities are generally referred to as spill-over effects and classified as 'public-goods'. A public good has the property that all consumers can enjoy it jointly, without any one individual's consumption reducing others' ability to consume that good (non-rivalrous consumption). Equally, it is difficult or undue costly to prevent third parties from that consumption (non-excludability). Street cleaning and light-houses are often quoted as clear examples of public goods.

It is axiomatic that it will never be profitable to produce public goods privately, because the producer who incurs the cost of production cannot prevent consumers from using the good freely Equally, if one consumer pays for the item or service then all other parties would have access to the benefit without further payment (free-loading).

These characteristics are commonly known as market-failures. Where they exist it is probable that insufficient resources will be allocated to their production, and

> *as a result, the provision of public goods is accordingly an important, perhaps the most important, role of government. The government must be in*

charge of supplying public goods, since the private market will not be able to provide them.'

The provision of public goods, as such is, therefore, not an appropriate service for delivery through a corporatised GBE, such as the Authority. Any such services should be funded through general taxation (see Chapter 4 for an extension of this argument).

Many other GBEs also generate public goods, but none of them seek to charge customers explicitly for them. As an example, AMCOR, has a major paper manufacturing plant at Heidelberg. It purchases water and sewerage services from its monopoly supplier, Yarra Valley Water, for which it pays through a user-pays tariff, related to the volumes of water consumed and waste-water discharged. In addition, AMCOR has an extraction licence which allows it to take water directly from the Yarra River, which AMCOR uses for a range of process activities - which could also be serviced by the supply from Yarra Valley Water. Yarra Valley Water has no involvement in this direct secondary abstraction, which is, therefore, equivalent to the insurance cover which members of SIAV purchase through private providers rather than from the monopoly supplier, the WorkCover Authority.

Yarra Valley Water's corporatised functions create a range of vital public goods from the promotion of public health outcomes to controls over risks of pollution to the environment. However, there is no suggestion that AMCOR ought to pay an additional sum to Yarra Valley Water to represent the value of that general public good, even though there is a direct private benefit to AMCOR from Yarra Valley Water's actions to prevent pollution of the Yarra River.

Similar examples of positive externalities are available from other utilities such as public transport where car drivers have a faster journey and a healthier environment because other people travel by tram or train. The beneficiaries of these public goods may face some charges indirectly, through the taxation system, to provide subsidies for that public transport service. However, there is no attempt by Connex to charge car drivers directly for those benefits.

Members of SIAV have made credible submissions that their activities also generate substantial public goods in similar kind through:

- the leadership performance which they demonstrate which acts as a benchmark for other employers; and
- the performance expectations which they make towards contractors which are in excess of the minimum requirements set by Workcover.

Philip E. Graves *(2001),* "Valuing Public Goods", Department of Economics, University of Colorado, Boulder, CO *80309-0256.*

The rationale for excluding public goods from the market place can be understood from the difficulty encountered by SIAV and the Authority in trying to quantify and offset these relative benefits which each claims it generates and receives. Ultimately, this is a sterile exercise.

3.3. SOCIAL POLICY & FULL COST RECOVERY

Government clearly has it as a desired social policy objective that Victoria should have a self-funding, sustainable WorkCover scheme. A key element of this objective is that premiums for smaller employers should be affordable.

In the absence of contributions from members of the SIAV, the Authority would not be able to meet its requirement for full cost recovery because the premiums which it would have to charge would not be affordable for many smaller businesses.

Where a GBE cannot meet full cost recovery for social policy reasons then best practice pricing policy indicates that any short fall should be met through a CSO from Government.

3.4. USER PAYS & COST REFLECTIVE TARIFFS

GBEs should only charge customers for the defined services which they receive. Any such charges should be cost reflective.

Members of the SIAV consume a number of the services provided by the Authority. Those functions and services should be clearly identified and the relative costs of the Authority allocated to them. Clear separation is required in the accounting base for the different functions of the Authority so that members of the SIAV can be confident that charges can be related to costs.

Where there is a primary customer for a service and a much smaller secondary user, then there are often difficulties in deciding how to allocate common costs and charges. The two broad approaches are:

- **a fully distributed cost allocation.** This is a traditional accounting approach which would seek to allocate a percentage of all the costs of the Authority to both parties, related to some identified cost drivers. However, this approach often penalises the secondary smaller user; or
- **an avoidable cost basis.** This approach seeks to identify those activities and costs which the Authority would not incur if the smaller customer was not present. This approach would allocate a much smaller percentage of the Authority's costs to members of the SIAV. It is economically efficient, provided that all parties meet, at a minimum, the marginal costs which they impose.

In setting the charges for members of the SIAV, a compromise will need to be struck between the two approaches. However, a simple accounting allocation based on fully distributed costs would not be justifiable given that the large majority of costs are driven by the standard customer base.

3.5. CROSS SUBSIDIES & PRICE DISCRIMINATION

The principle of user-pays pricing will normally result in charges to groups of customers being broadly cross-reflective. However, some averaging of costs and charges is normal across customer groups due to the high transaction costs of implementing user-specific charges.

Some forms of price discrimination between customer groups, resulting in a crosssubsidy, may be justified where this approach is 'efficient' ie. where it generates optimal outcomes for customers as a whole.

The most commonly met form of price discrimination is known as Ramsey Pricing. This takes as its starting point the recognition that some customers are price elastic in terms of their demand (ie. they can and will reduce consumption in response to price signals) while others are effectively inelastic. In these circumstances, it may be 'efficient' to load prices preferentially on to those customers who have less elastic demand.

However, any such price discrimination can only be justified where it is efficient and relates to services purchased by the relevant customer groups. It should not be used to impose charges on customers largely on the basis of 'ability-to-pay' particularly, as in the case of members of SIAV, where those customers are minor consumers of the relevant products or services.

4. PUBLIC GOODS & CAUSALITY

The provision of Public Goods may justify the charging of beneficiaries, provided that it can be demonstrated that the actions or functions of the entity do in practice generate public goods which are relevant for the bodies on whom the charges are levied.

In the absence of this linkage then any such 'charging' for public goods should be undertaken through the general taxation system - as in the case of public schooling where all taxpayers contribute, irrespective of their level of consumption of the good.

In the case of OH&S, the evidence suggests that the activities and forms of public good generated by the Authority are not relevant or applicable to the members of SLAV.

4.1. DRIVERS OF OH&S PRACTICE

In assessing the relevance and applicability of the Authority's activities for members of SLAV, it is necessary to start with an analysis of the factors which drive improved OH&S practice.

The available evidence confirms that the relevant factors vary by the type of the employer.

The UK's Health and Safety Executive (HSE) launched a major initiative in June 2000 entitled "Revitalising Health and Safety"[2] with the laudable objective:

> *to reduce the impact of health and safety failures by 30% over 10 years.*[3]

In order to achieve this objective, the HSE needed to analyse and understand which factors were important in driving improved OH&S practice. The Report confirmed that these factors varied by reference to the size of the employer.

For small employers the critical factors for improved performance were:

- more publicity of the benefits of investing in OH&S;
- more personal contact & training from regulators; and
- cost effective, accessible and simple guidance.

Equally the report identified that the following factors were preventing Small and Medium sized Enterprises (SMEs) from taking further action on health and safety:

- cost (33%)

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2 HSE (2000), "Revitalising Health and Safety - Strategy Statement", June 2000.
3 *Op cit.* Foreword by Deputy Prime Minister.

- lack of time and resources (27%)
- apathy (14%)
- complex regulations (11 %)
- lack of knowledge (9%)
- other (6%).

Large Companies: By comparison, the factors which were identified as driving improved performance at the Board level, for publicly listed companies, were an entirely different listing.

For this sector the key elements were:

- annual reporting in Company Accounts;
- naming Directors with responsibility;
- increased penalties;
- inclusion on Board Agendas; and
- improved training.

This distinction is intuitively convincing. Other factors which are likely to drive improved performance by large companies include: public recognition through safety awards, relative performance in peer-group performance comparisons (public or private) and financial benefits through reduced insurance premiums.

In the Victorian context, this analysis would confirm that the broad-based public-goods generated by the Authority are clearly relevant in influencing the performance of small employers, for whom publicity and simple guidance are key drivers. However, the same factors are much less significant in affecting the performance of larger, professionally-managed companies with Boards of Directors.

Even the shock factor of the Authority's advertising is likely to be less significant for employees in the setting of large companies, where formal procedures and protocols are the major tool to implement OH&S, and where training is the key to engaging and maintaining employee understanding and commitment to workplace health and safety.

This argument would suggest that charges for public goods should be validated by evidence as to their relevance in driving changed behaviour or performance. It would be useful to have data from the Authority on their own analysis of the drivers of OH&S performance by industry sector and employer type.

4.2. **DIRECT BENEFITS**

An example of benefits being related to charges would be the comparable approach of the TAC in using advertising and campaigns to change the behaviour of drivers. That advertising is intended to generate a public good - in this case fewer accidents and deaths on our roads.

TAC is able to justify charging all drivers for the costs of campaigns, even though most drivers also pay for private sector insurance on top of the TAC third party cover, as:

- we are all affected by the advertising - its impact is relevant to all drivers; and
- we all receive secondary benefits through the reduced incidence of drunken and reckless driving by third parties.

It is notable that TAC does not attempt to charge other road users such as cyclists, passengers or pedestrians (who do not pay the TAC levy) for consumption of that public good.

4.3. SUPPLY CHAIN PRESSURE

HSE also endorse what they call "Supply Chain Pressure". This involves large companies including OH&S criteria in their procurement practice:

> *contract specifications should make explicit reference to health and safety requirements wherever appropriate.*[4]

This approach is directly in line with the common practice of members of SLAV and can be seen to generate benefits across a wider span of employers and employees than the immediate membership of the Association itself.

[4] *Op cit. para 91, page 30.*

5. CONCLUSIONS

The primary conclusions are that the charges levied by the Authority should:

- be subject to independent scrutiny and audit;
- be restricted to those functions which clearly implement statutory duties and objectives;
- be restricted to those services which are directly 'consumed' by specified customers or groups of customers;
- be cost reflective and based on user-pays;
- not seek to cover costs of generating "public-goods" unless these clearly benefit the customer groups concerned. In all other cases those goods should be funded through taxation;
- meet any under-recovery of costs through a Community Service Obligation funded by Government rather than through additional charges to a limited group of customers.

Following these principles, the Authority's charges to members of SIAV should:

- be limited to those functions and activities which are clearly relevant to those customers;
- exclude costs for the generation of "public-goods" unless it can be shown that those goods are relevant to this customer group. The current evidence argues that these public-goods are not significant in promoting adoption of improved OH&S practice by larger employers.

SLAV survey in reponse to the Productivity Commission

Percentage of Survey Invitees

General position - workers compensation

- My company supports a national framework that delivers consistency both on compliance and benefit regimes for workers compensation & OH&S

S.Agree 31
Agree 31
Neutral I
Disagree 6
S.Disagr 6
Dt Kn

- My company supports a national framework that delivers consistency on

S.Agree 13
Agree 31
Neutral
Disagree 13
S.Disagr 13
Dt Kn 6

- My company supports the right to opt out of local regimes and to choose self- S.Agree insurance.
Agree

Neutral

- My company supports choices that include a national level

31
44
I

compliance issues only.

38
31
6

Disagree I S.Disagr Dt Kn
S.Agree Agree Neutral Disagree I S. Disagr Dt Kn

Grouping commonly owned companies

Percentage of Survey Invitees

- My company would choose a national regime for workers compensation.

S.Agree 19
Agree 38
Neutral I 6
Disagree I 6
S.Disagr
Dt Kn 6

- My company endorses common ownership as the defining criteria for one licence to self-insure.

S.Agree 19
Agree 50
Neutral 6
Disagree
S.Disagr
Dt Kn

- My company would choose a national option to self-insure.

S.Agree 13
Agree 31
Neutral 19

	Disagree S.Disagr Dt Kn	I	13
• Self-insurance should be much easier to access	S.Agree		19
	Agree		38
	Neutral		19
	Disagree S. Disagr Dt Kn	I	

General Position - OHS Model

Percentage of Survey Invitees

- My company supports OH&S administration at a national level

S.Agree 19
Agree 50
Neutral
Disagree I
S
.Disagr Dt
Kn

- My company's support for national administration is contingent on a superior S.Agree model being adopted. Agree

13
Neutral 38
Disagree 13
S.Disagr
Dt Kn

- My company supports AS 4801 as a minimum standard. S.Agree Agree Neutral Disagree S.Disagr Dt Kn

6

- My company expects that a national standard would be properly enforced. S.Agree

6
25
Agree 31
Neutral
I
Disagree S.Disagr Dt Kn

6

S.Agree Agree Neutral Disagree S.Disagr Dt Kn

19
50

- My company would support a national framework for managing risk.

19
44

6

Multiple jurisdiction regimes - main problems

Percentage of Survey Invitees

Multiple jurisdictions pose additional costs and restraints for self-insured national and multi-national companies that operate in Australia.

S.Agree _ 50
Agree 6
Neutral I
Disagree /
S.Disagr
Dt Kn

6

13

. Multiple OH&S regulations and costs associated with keeping up with changes.

S.Agree 31
Agree 31
Neutral / 6
Disagree
S.Disagr
Dt Kn

6

Effectiveness of HWSCA and Ministers Council

Percentage of Survey

- HWSCA provides no assistance to my company that I am aware of in terms of coordination of any aspect of self-insurance.

S.Agree 50
Agree 25
Neutral

I Disagree
S.Disagr

Invitees

Dt Kn

- DEWR provides no assistance to my company that I am aware of in terms of coordination of any aspect of self-insurance.

S. Agree 38
Agree 31
Neutral 6
Disagree
S.Disagr
Dt Kn

- I would value regular comparative data from any source that shows the performance of individual self-insurers against others across the national spectrum and between jurisdictions.

S.Agree 25
Agree 31
Neutral 13
Disagree □ 6
S.Disagr
Dt Kn

- Comparative data must be independently and expertly collated and presented.

S.Agree 50
Agree 13
Neutral
Disagree I
S.Disagr □ 13
Dt Kn

- My company would welcome cooperative mechanisms.

S.Agree 31
Agree 25
Neutral 13
Disagree a 6
S.Disagr
Dt Kn

- My company would support HWSCA and the Ministers Council in a cooperative role.

S.Agree 13
Agree 31
Neutral 19
Disagree 6
S.Disagr
Dt Kn

S.Agree Agree Neutral Disagree i S.Disagr Dt Kn

- My company would support local workers compensation agencies playing a S. Agree

6

- My company would support a new dedicated central organisation with appropriate resources in this role.

25
31
13
0 6

cooperative role in such an organisation. Agree

19
Neutral 31
Disagree 13
S.Disagr Dt 6
Kn

- My company would support an independent audit style organisation playing this S.Agree role.

[redacted] 6
[redacted] 19
[redacted] 25
Agree 25
Neutral 6
Disagree
S.Disagr
Dt Kn

Preferred framework

Percentage of Survey Invitees

- My company supports a cooperative model 1

S.Agree 13
Agree
Neutral 25
Disagree - 19
S.Disagr 6
Dt Kn 6

- My company supports a mutual recognition model 2

S.Agree 19
Agree 19
Neutral 13
Disagree 6
S.Disagr 6
Dt Kn 6

- My company supports an expanded Comcare model 3

6 6
25
25
6

S.Agree

Agree
Neutral
Disagree
S.Disagr
Dt Kn 6

- My company supports a uniform template legislation model 4 S.Agree 13

Agree 25
Neutral 0 13
Disagree N 13
S.Disagr
Dt Kn

- My company supports an extended financial sector regulation model 5 S.Agree 6 Agree

Neutral 44 13
Disagree **i1** 13 S.Disagr
Dt Kn 6 25
19 6

- My company supports a new national regime 6 S.Agree

Agree Neutral
Disagree
S.Disagr
Dt Kn 6
31
31

- My company supports a model that allows choice of regime, national application, external standard setting and auditing, and consistent prudential regulation with mainstream Australia. S.Agree Agree

6

Neutral
Disagree
S.Disagr
Dt Kn

Combining workers compensation and OHS

Percentage of Survey Invitees

- Any new regime should combine OH&S and workers compensation.

S.Agree 19
Agree 19
Neutral 0 13
Disagree i® 19

S.Disagr
Dt Kn

• Inspectors with the task of issuing penalties should operate separately to any new regime.	S.Agree	6
	Agree	31
	Neutral 1	6
	Disagree ®	19
	S.Disagr	6
	Dt Kn	6
• Any new regime should have its own federal inspectorate - similarly to the Federal Police in relation to federal crimes.	S. Agree	13
	Agree	25
	Neutral □	19
	Disagree □	13
	S.Disagr	
	Dt Kn	6
• State standards and state inspectors should have no power to override such a new federal inspectorate and regime.	S. Agree	19
	Agree	31
	Neutral I	6
	Disagree I	6
	S.Disagr	
	Dt Kn	13
• Large companies found to have equivalent or better OH&S standards to the new national standard should be deemed to comply; and inspection minimised.	S. Agree	44
	Agree	31
	Neutral	
	Disagree	
	S.Disagr	
	Dt Kn	

Self-insurance under Comcare	**Percentage of Survey Invitees**
• Comcare self-insurance is desirable if alternative benefit regimes were available.	
	S.Agree 6
	Agree 31
	Neutral 19
	Disagree □ 13
	S.Disagr
	Dt Kn
• Comcare self-insurance is not desirable under any circumstances.	S.Agree
	Agree 6
	Neutral 25
	Disagree 25
	S. Disagr 13
	Dt Kn 6

Access to self-insurance	**Percentage of Survey Invitees**
• My company operates in more than one jurisdiction.	
	S. Agree 44
	Agree 31
	Neutral
	Disagree
	S.Disagr
	Dt Kn
• Different access arrangements generate costs for my company	S.Agree 25
	Agree 38
	Neutral I 6
	Disagree 6
	S.Disagr
	Dt Kn

- These costs influence some decisions at Board leve

S.Agree
Agree 31
Neutral 13
Disagree 19
S.Disagr 6
Dt Kn

Maintaining self-insurance - ongoing audits

Percentage of Survey Invitees

The renewal process is largely duplicative and costly.

S.Agree 19
Agree 50
Neutral 6
Disagree I
S.Disagr
Dt Kn

- The audit process at renewal is useful.

S.Agree
Agree 31
Neutral I• 19
Disagree I~ 25
S.Disagr
Dt Kn

Achieving greater uniformity

Percentage of Survey Invitees

- Access to self-insurance should be uniform across the country

38
38
I

- Access should be managed at a national level

31
25
I 19

- Mutual recognition with minimal barriers to self-insurance would work.

13
44
13

- Regulatory frameworks must be consistent and or uniform across Australia.

6
25
44
I
6

Failing self-insurers

S.Agree Agree Neutral Disagree I
S.Disagr Dt Kn

- Self-insurers should contribute to a safety net fund for failing self-insurers.

S.Agree
Agree
Neutral I/ 13
Disagree 38
S.Disagr 19

S.Agree Agree Neutral Disagree S. Disagr Dt Kn
S.Agree Agree Neutral Disagree S. Disagr Dt Kn
S.Agree Agree Neutral Disagree I S.Disagr Dt Kn

Percentage of Survey Invitees

. Individual bank guarantees are sufficient to guard against failing self-insurers	S.Agree	25
	Agree	50
	Neutral I	
	Disagree I	
	S.Disagr	
	Dt Kn	

Excessive loss	**Percentage of Survey Invitees**	
• Government should cover excessive loss insurance	S.Agree	6
	Agree	31
	Neutral	19
	Disagree	13
	S.Disagr	6
	Dt Kn	
. Alternative insurance options for excessive loss should be offered.	S.Agree	13
	Agree	44
	Neutral	13
	Disagree	6
	S.Disagr a	
	Dt Kn	

OH&S Legislation	**Percentage of Survey Invitees**	
• A new legislative framework is required	S.Agree	13
	Agree	31
	Neutral	19
	Disagree	6
	S.Disagr	
	Dt Kn	6
• Central control of regulations is needed	S.Agree	13
	Agree	44
	Neutral I	6
	Disagree I	6
	S.Disagr	
	Dt Kn	6
. The state should retain some control over various OH&S areas	S.Agree	6
	Agree	25
	Neutral □	13
	Disagree	19
	S.Disagr	6
	Dt Kn	6
. The greatest costs are generated by inconsistency in legislation	S.Agree	19
	Agree	31
	Neutral	6
	Disagree	6
	S.Disagr	6
	Dt Kn	6
• The greatest costs are generated by inconsistency in regulation	S.Agree	13
	Agree	25
	Neutral 0	13
	Disagree	19
	S.Disagr	
	Dt Kn	6
The greatest costs are generated by inconsistency in standards & codes	S.Agree	13

	Agree		25
	Neutral		19
	Disagree		13
	S.Disagr		
	Dt Kn		6
• The greatest costs are generated by inconsistency in implementation between jurisdictions	S.Agree		13
	Agree		31
	Neutral		25
	Disagree		
	S.Disagr		
	Dt Kn	I	.6

NOHSC performance	**Percentage of Survey Invitees**		
• NOHSC is an effective mechanism to promote consistency.	S. Agree		13
	Agree		19
	Neutral		19
	Disagree	1	6
	S.Disagr		6
	Dt Kn		13
• NOHSC is good at establishing standards.	S.Agree		6
	Agree		19
	Neutral		19
	Disagree	®	19
	S.Disagr		
	Dt Kn		13
• NOHSC should add a practical industry focus to its academic emphasis.	S.Agree		13
	Agree		31
	Neutral		13
	Disagree	I	6
	S.Disagr		
	Dt Kn		13
• NOHSC should report on self-insurer safety initiatives for sub-contractors	S.Agree		13
	Agree		38
	Neutral		
	Disagree		13
	S.Disagr		
	Dt Kn		13

Regulatory efficiency - Contribution fee	**Percentage of Survey Invitees**		
• Regulatory requirements are intrusive and excessive S.Agree			
	Agree		
	Neutral	I•	
	Disagree		
	S.Disagr		
	Dt Kn		
• Regulatory requirements do not receive proper attention from Government and S. Agree			13
are issued and changed with no regard for commercial impact	Agree		50
	Neutral	□	13
	Disagree	I	
	S.Disagr		
	Dt Kn		
• Regulatory requirements must be justified on a value-add basis, be transparent S. Agree			31
and be subject to external scrutiny	Agree		44
	Neutral	I	
	Disagree		
	S.Disagr		

Dt Kn

Inspectors - o ever kin ?

PePercentage of Survey Invitees

. Inspector wsits are not useful m terms ofimproving safety or lifting safety standards.

.Agree	13
Agree	6
Neutral □	13
Disagree	31
&engr »	6
mKn	6

.I&9eo are not sufficiently qualified to perform the tas

&Are	6
Agree	11
Neutral -	19
Disagree	19
&Dggr	6
Dt Kn	13

.Th VWA needs to provide more information about inspector outcomes to unions and other stake holders.

.Agree	25
Agree	19
-	19
Disagree □	6
&Dggr	
Dt Kn	6

Impact on business location and other activities

Percentage O Survey Invitees

. My business Bard and senior management has include the self-insurance &Are contribution @e a one factor in location decisions.

Agree	13
Neutral -	31
Disagree	13
&esgr	13
mKn	6

Audi arrangements

Percentage of Survey Invitees

. *Audit costs ts a Victoria are higher than other states*

S.A$_{gree}$	13
Agree	25
Neut^{r}a^{l}	
Disagree	19
&Dggr	
Dt Kn	

. Audit costs including our costs range from i\bobto 60,000 more man other states annually

&Agera	6
Agree	13
Disagree □	6
&22gr	6
Dt K	99

.My company would use private accredited auditors if mere was ache2.

&Are	6
Agree	56
Neutral	6
Disagree	6
&Dggr	
Dt Kn	

Coverage limited by extent of employer control

- Access to any national scheme should be contingent on coverage that is limited to employer-controlled situations.

S.Agree		44
Agree		31
Neutral		
Disagree		
S.Disagr		
Dt Kn		

Benefits - redemptions and common law

Percentage of Survey Invitees

- Redemptions should be available in any regime for self-insurers

S.Agree		44
Agree		25
Neutral	II	6
Disagree	I	
S.Disagr		
Dt Kn		

- The Victorian common law arrangements are a desirable model

S.Agree		
Agree		31
Neutral	11	6
Disagree		19
S.Disagr		19
Dt Kn		

- The availability of common law materially interferes with rehabilitation and return to work programs.

S. Agree		19
Agree		38
Neutral		19
Disagree	I	
S.Disagr		
Dt Kn		

- Common law legal costs are at least 20% of common law awards in my business.

S.Agree		13
Agree		6
Neutral		19
Disagree		31
S.Disagr		
Dt Kn		6

Scheme sensitive cases

Percentage of Survey Invitees

- Self-insurers should be free to defend claims.

S.Agree		44
Agree		31
Neutral	I	
Disagree	I	
S.Disagr		
Dt Kn		

ADR & Legal costs

Percentage of Survey Invitees

- Conciliation approaches are supported

S.Agree		31
Agree		44
Neutral	I	
Disagree		
S.Disagr		
Dt Kn		

- Conciliators should have more expertise in our particular industry

S.Agree		19
Agree		19
Neutral		31
Disagree		6
S.Disagr		
Dt Kn		

- Legal costs should be reduced by limiting unnecessary legal involvement.

S.Agree		25

Agree 44
Neutral 1 6
Disagree I
S.Disagr
Dt Kn

Percentage of Survey Invitees

S.Agree Agree Neutral Disagree I
S.Disagr Dt Kn
S.Agree Agree Neutral Disagree I
S.Disagr Dt Kn

Rehabilitation choice

Percentage of Survey Invitees

Medical treatment

- .....
• Companies should have the right to immediately direct medical treatment for injured workers

• Any regime should make treating doctors more accountable.

50
25
I

• The employer capacity to choose a rehabilitation provider is important for earlier and more durable return to work outcomes

S.Agree 44
Agree 25
Neutral I
Disagree I
S.Disagr
Dt Kn

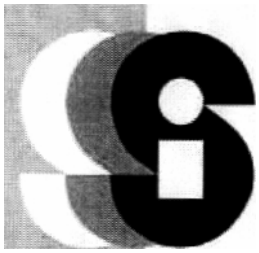
Use of private insurers by self-insurers

Percentage of Survey Invitees

• My company would consider outsourcing claims management to an insurer.

S.Agree 6
Agree 19
Neutral E 13
Disagree 25
S. Disagr 6
Dt Kn

Wednesday, August 27, 2003



SUBMISSION

Regulatory Impact Statement - Accident Compensation Regulations 2000

Self-Insurers Association of Victoria Inc.

January 2001

Foreword

This submission is made by the Self Insurers Association of Victoria (SLAV) and incorporates the views of members listed below. SLAV welcomes the opportunity to provide a response to the Regulatory Impact Statement (RIS) on the *Accident Compensation Regulations 2000,* (the **proposed regulations),** and is grateful for the short extension given to finalise the submission.

This submission incorporates an earlier submission made in 1998 to the previous RIS on the *Accident Compensation (Self-Insurers' Contributions) Regulations 1999,* (the **current regulations).** Comments are also made to the responses of the Victorian WorkCover Authority, **(WorkCover)** to the previous submission made by the SLAV in 1998.

Responses in the body of this document are organised according to headings in the RIS. References are to page numbers on the downloadable version of the RIS on the WorkCover website.

***Membership** of SIA V*

Alcoa of Australia Limited

Amcor Limited

ANZ Banking Group Ltd

Bank of Melbourne (a division of Westpac Banking Corporation) BP

Australia Holdings Limited

BHP

Brambles Industries Limited

Cadbury Schweppes Australia Limited

Carter Holt Harvey Australia Limited

Coles Myer Ltd

Commonwealth Bank of Australia

CSR Limited

Effem Foods Pty Ltd

Exxon Mobil Australia Pty Ltd

Ford Motor Company

Hanson Australia (Holdings) Pty Ltd

Inghams Enterprises Pty Ltd Kaal

Australia Pty Limited Kodak

(Australasia) Pty Ltd Kraft Foods

(Aust) Limited Mayne Nickless Limited

Melbourne Water Corporation National

Australia Bank Limited OneSteel

PaperlinX Limited

Philip Morns Australia Limited

Publishing & Broadcasting Limited

Qantas Airways Limited

Royal Automobile Club of Victoria (RACV) Limited

Shell Australia Ltd

Unilever Australia (Holdings) Pty Ltd

The University of Melbourne

Woolworths Limited

Contents

Executive Summary

WorkCover's rationale for considering and discarding alternatives to the contribution formula includes a number of internal inconsistencies.

The proposed self-insurer contribution regime is directly at odds with the recent statement of the Minister Bob Cameron MP, Minister for WorkCover, in the foreword of the *Health & Safety Review* released in October of last year.

> *"A key element of Victoria's workers' compensation insurance scheme is that premiums are experience related. This means that to the greatest extent possible the cost of insurance reflects each business' actual history of workplace injuries. "*

While SIAV appreciates that Government accepted the remuneration based regime following the previous RIS, it takes the view that the principle of **recognition of individual safety initiatives** should be incorporated in this RIS and any new formula for the future.

Self-insurers object to the additional administrative fee increase proposed under this RIS and reiterate concerns expressed in 1998 to the former regulatory impact statement review.

SLAV also reiterate to Government the benefits of self-insurance to workers compensation schemes and Government outlined in the previous submission:

> *In summary, the assumption of risk by self-insurers encourages both competition and product/service delivery innovation as prevention and return to work strategies form an essential element of controlling accident risks and clients costs. Self-insuring provides for enhanced incentives to achieve safe workplaces and more efficient claims management.*

SIAV submits that the competition and product service-delivery innovation extends not only to self-insurer workplaces but also to other workplaces in the state of Victoria. In effect, self-insurers lead industry in safety initiatives and better practises.

Specifically, SIAV objects to the RIS for the following reasons:

- The proposed regulations are anti-competitive. As a fixed impost outside the management control of the self-insurer, they represent a barrier to further and expanded initiatives to reduce injuries.
- The RIS fee calculation does not recognise the self-insurers contribution to preventing injury and lowering claims costs for their own employees and for other workers in vertically integrated industries.
- Self-insurers consider that WorkCover is taking inequitable advantage of machinery of government opportunities to introduce unjustified and accelerated increases to the fee. The sharp increase is out of line with other jurisdictions and throws into question the stability of the regulatory framework for business in the State of Victoria. This will be a factor in decisions by self-insurers to locate employment sites away from Victoria.
- Under the RIS the cost for self-insurers of locating a worker in Victoria will increase. Victoria will lose its current competitive advantage with other states, especially in decisions regarding head office location.
- Self-insurers remain concerned that further regulations will be introduced at any time as a means of raising income for the WorkCover scheme. There is no commitment that even this fee increase will not be overturned by fresh regulation. Business requires certainty and fixed timetables setting out fee payment arrangements.
- The regulation links the fee with WorkCover's administrative costs. WorkCover has an open-ended opportunity to increase the fees by simply increasing their own administrative costs. Business finds little comfort in this arrangement.

SIAV makes the following recommendations:

1. Contracted safety requirements that bind contractors should be recognised in the contribution formula so that the proportion of remuneration represented by verifiable contractor fees ("E') as a proportion of C multiplied by D is deducted from the proposed result of B over C multiplied by D.

2. The Office of the Regulator-General should undertake pricing oversight of WorkCover and benchmarking.

a. WorkCover should decrease administrative costs at the rate of 5% per annum, or some such other externally derived efficiency measure, and be subject to monitoring by the Office of the Regulator General, and

b. If this target is not achieved, the fee should incorporate the 5% reduction in any event.

Alternatively,

c. WorkCover finances should be transparent and WorkCover should be accountable to self-insurers for administrative costs through the mechanism of

i. Independent auditor review

ii. Publication of the Audit

in. Provision for self-insurers to query Audit Reports

3. The re-assessment fee should be reduced by 50% and legislative action should be taken to allow for increase in assessment periods.

4. Audit information should be used in the assessment process in order to avoid unnecessary cost.

5. Consultation process should be included in the Regulations

a. Self-insurers shall be subject to Codes of Practice on all items included in Schedule 4, such Codes to be published from time to time by the Victorian WorkCover Authority following consultation with all self-insurers.

6. WorkCover initiated audits are timed to consider the seasonal business imperatives of se f insurers.

7. Formal processes for agreeing the scope of information and software changes required by WorkCover should be incorporated in approval agreements and include:

a. Notice of proposed changes

b. Opportunity for consultation and submissions c.

Cost-benefit analysis d. Agreement to changes e.

Timetables for implementation

8. Documents should be retained for no longer than 30 years.

9. Reasonable measures should be defined through a code of practice agreed with all self-insurers in consultation with WorkCover and published by WorkCover.

10. Recognition of community safety services that are consistent with the Accident Compensation legislation objectives should be included in the contribution formula.

In particular, SIAV request that the proposals for outside scrutiny made in this submission receive serious consideration by Government.

Introduction

This submission is to a Regulatory Impact Statement that substantially confirms arrangements for setting self-insurer fees under the *Accident Compensation (SelfInsurers' Contributions) Regulations 1999.* Those regulations amended the *Accident Compensation Regulations 1990* that are now subject to a sunset clause and review.

The review includes the amendments made in 1998, in effect giving a second opportunity within 18 months for altering self-insurer fees. WorkCover will have had two opportunities to increase the fee - the first initiated and implemented by the previous Minister and the second through the operation of machinery of Government. These two opportunities occurring within 3 years are at odds with rates of change in this area. Previous opportunities for fee regime changes had only arisen at 10 yearly intervals, when the regulations had been reviewed. In fact, no change had been experienced in a thirty-year period.

1.1 SIAV Position in 1998

In 1998, SIAV argued that the changes would increase the contributions to WorkCover by 300% and opposed the increase for the following reasons:

1. Self-Insurer contributions to the V.W.A should be based on the extent to which a self-insurer uses the services of WorkCover.

2. Contributions should be performance based. If a self-insurer improves its WorkCover performance, its contribution should reduce and vice versa.

3. Employers will be deterred from self-insurance if the cost to be self-insured is unreasonable. Any disincentive to self-insuring would be a detriment to the V.W.A and to employers in Victoria.

4. Self-insurers spend substantially more than insured employers on workplace safety initiatives. This should be recognised in the contribution formula.

5. Insured and self-insured employers should contribute to the V. W.A under a common formula that applies to both of them transparently.

6. Self-insurers are being asked to contribute to costs of the V.W.A, which do not relate to self-insurance.

7. It is inequitable to increase contributions midway through a self-insurers four-year term of approval.

8. Self-insurance benefits the V.W.A and improves workplace safety in Victoria. Self-insurers provide safer workplaces and actively promote the rehabilitation and early return to work of injured workers. Self-insurers improve the management of claims for employees. Existing barriers to self-insurance need to be removed not increased.

9. The SLAV is also concerned about the process adopted this for this RIS:

- The V.W.A has a conflict interest because it will benefit financially from the proposed regulations. It would be more appropriate for an independent government department such as the Department Treasury & Finance to manage the process.
- The RIS is deficient. It considers only two alternative methods of calculating the contributions payable by self-insurers. The SLAV has put a number of other options to the V.W.A in discussions before the RIS was issued which seem not to have been considered adequately.

The submission concluded that it is critically important to the SLAV and its members that the regulatory arrangements, which apply to self-insurance in Victoria, are fair and equitable. The SLAV proposed that the government should:

- Move responsibility for the RIS to an independent government agency
- Undertake an independent assessment of the cost of V.W.A services which self insurers actually use and benefit from
- In consultation with self-insurers, develop a new formula for calculating self-insurer contributions that is user-pays and performance linked

These arguments are equally applicable to the proposed regulations.

Responses to the submissions outlined above were included in a paper published by WorkCover entitled *Review Of Public Comment Paper - Draft Accident Compensation (Self Insurers Contributions) Regulations.*

SIAV is of the view that these submissions were not adequately addressed. Where relevant the responses are briefly discussed below.

1.2 SIAVExperience Since 1998

From the introduction of the *Accident Compensation (Self-Insurers' Contributions) Regulations 1999* to December 2000, self-insurers absorbed a 140% administrative fee increase. This represents nearly half of the 300% increase proposed in the previous RIS process.

The current proposal seeks to bring in the remaining 160% over the next 2 quarters - 1 May 2001 and 1 August 2001. Self-insurers are accordingly faced with an immediate increase well beyond any comparable fee increase in any other arena.

The new regulations have also confirmed the remuneration formula applied by WorkCover. Accordingly, a self-insurer with 2% of the state's payroll and superannuation bill will pay 2% of WorkCover's non-insurer administrative costs. This is out of step with other jurisdictions that assess administrative contribution as being 5% of what the premium would have been. Premium in most jurisdictions recognises the degree of risk related to the type of work and the history of injury at that work-site. In Victoria, these factors have now been made irrelevant to self-insurers.

Four new self-insurers have been approved since the implementation of the regulations. WorkCover suggests that this is evidence that the new fee regime introduced in 1998 is no barrier to entry by other potential self-insurers. SIAV take the view that this may be overly optimistic. The more pertinent point is how many more employers may have become self-insured if the changes had not been implemented.

An estimate of the size of this untapped market can be gained by comparing Victorian and South Australia self-insurance rates. Both jurisdictions use claims agents, a variant on experience rating and a WorkCover model for insured employers.

In Victoria, self-insurers now represent between 10 and 12% of remuneration. In South Australia, this figure is approximately 40%. The relative sizes of the two states would suggest that these figures should be reversed with the more numerous, larger businesses located in Victoria seeing value in self-insurance.

WorkCover has produced no survey of large insured employers that shows other reasons for staying insured. WorkCover draws the conclusion that the few additional entrants are an indication of the success of the previous RIS. SLAV takes an opposite view.

Main submissions

1.3 Renewed Submissions

Self-insurers object to the additional administrative fee increase proposed under this RIS and reiterate concerns expressed in 1998 to the former regulatory impact statement review.

1.4 New Submissions

SLAV also reiterate to Government the benefits of self-insurance to workers compensation schemes and Government outlined in the previous submission:

> *In summary, the assumption of risk by self-insurers encourages both competition and product/service delivery innovation as prevention and return to work strategies form an essential element of controlling accident risks and clients costs. Se f ensuring provides for enhanced incentives to achieve safe workplaces and more efficient claims management.*

SLAV submits that the competition and product service-delivery innovation extends not only to self-insurer workplaces but also to other workplaces in the state of Victoria. In effect, self-insurers lead industry in safety initiatives and better practises.

Specifically, SLAV objects to the RIS for the following reasons:

- The proposed regulations are anti-competitive. As a fixed impost outside the management control of the self-insurer, they represent a barrier to further and expanded initiatives to reduce injuries.
- The RIS fee calculation does not recognise the self-insurers contribution to preventing injury and lowering claims costs for their own employees and for other workers in vertically integrated industries.

- Self-insurers consider that WorkCover is taking unfair advantage of machinery of government opportunities to introduce unjustified and accelerated increases to the fee. The sharp increase is out of line with other jurisdictions and throws into question the stability of the regulatory framework for business in the State of Victoria. This will be a factor in decisions by self-insurers to locate employment sites away from Victoria and will influence decisions to locate and expand regional workforces.
- Under the RIS, the cost of locating a worker in Victoria will increase. Victoria will lose its current competitive advantage with other states.
- Self-insurers remain concerned that further regulations will be introduced at any time as a means of raising income for the WorkCover scheme. There is no commitment that even this fee increase will not be overturned by fresh regulation. Business requires certainty and fixed timetables setting out fee payment arrangements.
- The regulation links the fee with WorkCover's administrative costs. WorkCover has an open-ended opportunity to increase the fees by simply increasing their own administrative costs. Business finds little comfort in this arrangement.

These points are discussed below in this section and in the section dealing with Legal Issues below.

1.5 SIAVMember Safety Initiatives for Non-Employees

Changes in technology, work practises and outsourcing have meant that self-insurers now actively prefer vertically integrated industry relationships with other companies and contractors. These types of changes in the delivery of services will increase in the future - a trend not necessarily recognised in the 1996 legislation governing self-insurer contributions. For some self-insurers, contracted work now represents up to 30% of the work, which might previously have been done by direct employees of the self-insurer. Now and in the future, self-insurers expect tighter interfaces with integrated companies.

SLAV members require safety and quality standards as a condition of contract in the majority of cases, and in others, mandate specific safety training before work can

commence. (Appendix 1 gives SLAV member examples). SLAV submits that thee requirements reduce claims and injury incidence in the following manner:

- Claims made against WorkCover by contractors are reduced'
- Contractors doing work for other clients that are employers covered by WorkCover translate safety practices to the work-sites of those employers. Consequently, claims arising from those worksites are reduced.

This 'ripple effect' is not recognised in the RIS.

> *For example, a nationally operating self-insurer identified packaging by a national supplier as the cause of an increased incidence of lower back injury. Representations to change the packaging reduced injuries for that national self-insurer and for all other employers supplied. The goods supplied are amongst the most commonly purchased items in Australia.*

SLAV submits that the initiatives of self-insurers in these areas should be the subject of an offset against the fee. This would provide an incentive to new self-insurers to mandate safety requirements with new contractors, and reduce the requirement for WorkCover to increase administrative costs.

As many of the general safety activities undertaken by self-insurers would be difficult to quantify, SLAV proposes that a simple approach would be to extend the remuneration model to contractor charges.

SLAV proposes that the equivalent of the contractor service charges should be deducted from the remuneration calculation set out in Draft Regulation 23 of the proposed

' WorkCover takes the view in the current RIS and in its review of public comment paper that reductions in selfinsurer claims are directly attributable to the use of WorkCover services and programmes. This statement ignores national (and international) safety initiatives conducted by self-insurers without the benefit of Victorian WorkCover imports or input from other agencies in other states. It also ignores the vast amount of information available on workplace safety from other sources, the considerable amount of work done internally by self-insurer safety units and workers compensation sections, and the considerable financial incentives that self-insurers have to invest in claims reduction strategies.

regulations. This figure should then be used as the multiplier for the proportion of administrative costs contributed to WorkCover by the self-insurer.

- *SIA V submits that contracted safety requirements that bind contractors should be recognised in the contribution formula so that the proportion of remuneration represented by verifiable contractor fees ("E') as a proportion of C multiplied by D should be deducted from the proposed result of B over C multiplied by D.*

1.6 Impact on Employment Location Decisions

SIAV argued in 1998 that an increase in the administrative fee would deter decisions to self-insure. WorkCover's response at that time was that the cost of self-insurance would still be incurred as premium in any event, so cost was no barrier. This assumed that the two costs are the same and that the choice for large companies is either; to self-insure, or to be subject to the WorkCover scheme in Victoria. This assumption is incorrect.

Large companies will self-insure in any event, largely to avoid the problems associated with outsourcing to mandated suppliers that may or may not be able to deliver standards of claims management that large companies can achieve. In Victoria, there is no other option. WorkCover insurance agents must be used. For that reason, and to maintain control of human resource management, large companies will always prefer to selfinsure. Their real choice is in which State and which country.

SIAV analysis of members with national and international operations showed that the intended fee increase will remove Victoria's advantage in attracting work-sites and employment. Most other States use 5% of the amount the premium would have been for that employer. The cost per worker ranges between $7 and $77 dollars. The increase will now place Victoria above the Australian average of $44 dollars at approximately $48 dollars per worker per annum.

While not in itself a determining factor, the previously lower rate balanced disadvantages inherent in the remuneration formula. For self-insurers with low-risk and high remuneration organisations, the costs of placing work sites in Victoria are high - particularly for national or global head offices with top-level senior executives. Conversely, self-insurers with high-risk and low paid workers benefit under a remuneration model. For both groups, the advantage that Victoria had is now lost with this RIS.

SLAV takes the view that this negative impact can be diffused through:

- Rigorous accountability and transparency mechanisms over WorkCover administrative costs, and

- Offsetting options against contributions and recognition of positive externalities

Proposals on how this may be achieved are detailed in this submission. However, SLAV also propose that the remuneration model be extended to national and global offices to reflect the national responsibilities that these executives exercise in other parts of Australia.

- *SIAV propose that the remuneration of head office employees with global and national responsibilities be incorporated in the contribution formula to reflect national total remuneration rather limited to Victorian remuneration, i.e,*
  - *Where G is the rateable remuneration of nationally responsible employees and H is the national remuneration, then the formula should be varied to deduct G from B and then add G divided by H.*

1.7 Timing

SIAV considers that the timing of the changes is unduly onerous; particularly as most self-insurer budgets for the current financial year have been set and finalised. The RIS was published in November of last year well after budget cycles had been finalised.

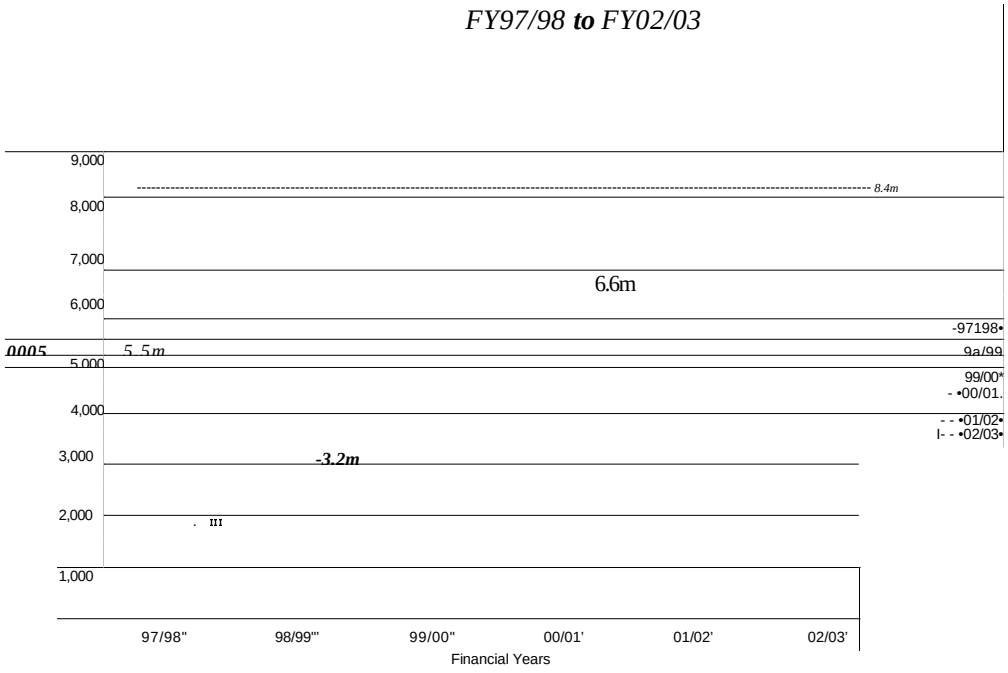
Increases proposed for the l[S1] of May of this year and the 1 [t] of August of this year should be delayed to consider this.

1.8 Impact on costs

WorkCover state in the RIS at page 26 that the total increase in self-insurer contributions following implementation of the current and proposed regulations is $4.5m. This figure appears to be incorrect. SLAV analysis of payments made to WorkCover immediately before the introduction of the current regulations, together with actual receipts and projections based on the proposed increases show that increases are approximately $6m.

Self ***Insurer Fees Paid to WorkCover - Actual and Projected***

FY97/98 ***to*** *FY02/03*



** Source: Annual Reports
*Projected figures based on Proposed Regulation

The graph shows that the published contributions in 1997/98 were $2.3m and in 1999/2000, $5.5m - an increase of $3.2m. While some of this increase can be explained by the entry of new self-insurers, the operation of the regulation will produce

contributions of $6.6m and $8.4m respectively - just with current self-insurers. These are conservative estimates that do not take into account new self-insurers or increases in WorkCover's current administrative costs.

SIAV consider that an increase from $2.3m to $&.4 m in just over two years is a dramatic increase in fee over a very short period and represents an unusual and unexpected use of the powers given under S33A of the *Accident Compensation Act 1985*. This issue is discussed more fully in the next section.

Response to Specific Regulations

1.9 Legal Issues - RIS Deficiencies

The Self Insurers Association of Victoria consider that these regulations impose an appreciable economic burden on their members, within the meaning of the *Subordinate Legislation Act 1984*, which has not been justified as required by that Act.[2]

Specifically, the RIS does not comply with the *Subordinate Legislation Act 1994* in that:

- the assessment of the costs and benefits is inadequate and does not detail the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs[3]
- it is not consistent with the general objectives of the authorising Act, the *Accident Compensation Act 1985* [4]
- it makes unusual and unexpected use of the powers conferred by the Act [5]
- it does not take into account National Competition Policy.

These concerns are explained below.

1.9.1 Costs

The assessment of costs and benefits in the RIS is inadequate for the following reasons:

- The total cost to the self-insurers is nowhere detailed in the RIS. Estimates based on internal research conducted by the SLAV indicate that WorkCover can expect contributions between 8.3 and 8.7 million in the financial year 2001/2002. This is a fundamental piece of information that should be transparent to both Government and to self-insurers.

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2 Subordinate Legislation Act 1984 S6 (b) s S10 (2)
4 S2lss (1)(c)
' S2lss (1)(d)

- The assertion that the cost of WorkCover services is currently not met by self-insurers contributions and is some 40% lower than the actual cost is not substantiated. Appendix E of the RIS refers only to administrative costs and does not provide a breakdown. Items that are readily identifiable as attributable to insured employers have been extracted from the total budget and the remainder has been lumped together as administrative costs. This is entirely unsatisfactory.
- The fee-for-service rationale is nowhere supported with clear details of the services provided, the fees for each of those services and the justification for those fees.
- Similarly the benefits of the increased contributions are not detailed apart from meeting the deficit in unidentified administrative costs that may or may not be directed to the public good.

1.9.2 Inconsistency with Legislative Objectives

SLAV consider that the RIS is inconsistent with specific legislative objectives in the *Accident Compensation Act 1985* for the reasons detailed elsewhere in this submission. The specific objectives are:

(a) to reduce the incidence of accidents and diseases in the workplace

(b) to ensure workers compensation costs are contained to minimise the burden on Victorian businesses.

(c) to establish incentives that are conducive to efficiency and discourage abuse

(d) to enhance flexibility in the system and allow adaptation to the particular needs of disparate work situations.

1.9.3 Unusual and unexpected use of power

Section 33A of the *Accident Compensation Act 1985* allows WorkCover to determine the amount of contributions having regard to various matters -

as if the self-insurer were an employer liable to pay the premium.

Parliament's intention is clear. Rather than giving WorkCover an unfettered mandate to set the contribution, the phrase linking the amount to amounts paid by employers has been deliberately inserted. From this, SLAV considers that self-insurers are to be treated in the same way as employers with regard to payments to WorkCover.

SLAV consider that the 300% increase in just over two years represents an unusual and unexpected use of the power that would not be matched in premium increases for any insured employer.

1.9.4 National Competition Policy not properly considered

The General Principle of Competition Policy is that efficient resource allocation must be achieved. SLAV considers that the administrative costs component identified in the RIS leads to an inefficient allocation of resources and that the RIS is anti-competitive.

WorkCover's conclusion that the RIS is not anti-competitive is based on a limited view of competition. This view seeks to establish whether competitive rivals have been adversely affected. However, as a Government enterprise, WorkCover must address wider concerns. A primary objective of the *Accident Compensation Legislation,* for instance, is *to reduce the incidence of accidents and diseases in the workplace.*

For self-insurers and employers, the national competition policy issue is whether efficiency in reducing injury is being rewarded. In this respect, the RIS is deficient. It proposes a pricing tariff structure that leads to inefficient outcomes. It gives a pricing subsidy to inefficient workplaces and accident-prone employers. This in turn sends signals that compound perverse outcomes to the General Principle and to the objectives of the Act.

It follows that no matter how efficient self-insurers are or become, they will still have to subsidise the inefficiencies of employers through payment of the administrative costs of WorkCover. These costs will have been driven in some measure by the inefficiencies of employers who now have a weaker incentive to improve. As the subsidy is open-ended, if costs increase, then self-insurers have no choice but to take an increase as well.

There is no corresponding offset.
WorkCover has argued that incentives outside of cutting administrative costs - keeping claims costs down for self-insurers and experience rating for employers - override the perverse outcomes. The fact remains that 10% to 12% of employer administrative costs are subsidised by self-insurers that have little or no control over poor-performing employer behaviour.

SLAV is also concerned at the lack of pricing oversight.

Self-insurers should be consulted on the cost centres that are to the included in the calculation of administrative costs. The approach of deducting easily identifiable nonself insurer costs from the total is unacceptable and depends entirely on the methods used by WorkCover to allocate costs and to organise cost centres. Self-insurers have no input into these decisions and may in fact be contributing to cost centres that are not justified as self-insurer attributable costs.

This represents an unacceptably high degree of risk in being self-insured. The perverse outcomes are exacerbated as there is no satisfactory pricing oversight of WorkCover administrative costs. Clause 11 of the Competition Principles Agreement requires prices oversight.

SLAV proposes that efficiency will be rewarded and the General principle satisfied if the following proposals are accepted.

- *The Office of the Regulator-General should undertake pricing oversight and benchmarking.* [6]
- *WorkCover decrease administrative costs at the rate of 5% per annum, or some such other externally derived efficiency measure, and be subject to monitoring by the Office of the Regulator General, and*

[6] Precedent for this arrangement exists in Tasmania where the Motor Accidents Insurance Board is subject to review by the Government Prices Oversight Commission - the Tasmanian equivalent to the Office of the Regulator General.

- If this target is not achieved, the fee should incorporate the 5% reduction in any event.

Alternatively,

- WorkCover finances should be transparent and WorkCover should be accountable-to self-insurers for administrative costs through the mechanism of

- Independent auditor review

- Publication of the Audit

- Provision for self-insurers to query Audit Reports

1.9.5 Approval Fee (Page 18 - Draft Reg. 20)

SLAV has no issue with the amount or calculation of the fee, however, it questions the need for the regularity of re-assessment and the information required for the reassessment - which drives both WorkCover costs and self-insurer costs. Currently application documentation and renewal documentation is required by the legislation, after three, then four years. As noted in the RIS, re-assessments require extensive documentation and generate administrative costs on the part of WorkCover of approximately $30,000. This figure is more than matched in the administrative costs of aspiring self-insurers. This effective annual surcharge of $8000 (or $16,000 including internal costs) represents a marked disincentive to prospective self-insurers.

- SIAV proposes that the re-assessment fee be reduced by 50% and that legislative action should be taken to increase the re-assessment periods.

- SIAV proposes that audit information be used in the re-assessment process in order to avoid unnecessary cost.

*1.10 Self **Insurer Terms & Conditions (Draft Regulation** 21)*

SIAV seeks a right to consultation on the practical operation and cost implications of all matters itemised in Schedule 4 of the proposed regulations. WorkCover's discretion is

generally increased over these aspects. Extension of this discretion is opposed by SLAV without equivalent consultation provisions.

- *SIA Vproposes that an additional regulation be included that ensures that consultation occurs with wording the same or similar to that below:*
  - *Self-Insurers shall be subject to Codes of Practice on all items included in Schedule 4, such Codes to be published from time to time by the Victorian WorkCover Authority following consultation with all self-insurers.*

SLAV concerns with each of the Items in Schedule 4 are detailed below.

1.10.1 Audit (Draft Regulation 21 Schedule 4, Item 6)

Self-insurers continue to be subject to two separate audits - an independent audit arranged annually by self-insurers; and an ad hoc audit initiated by WorkCover. The information gathered in both audits is the same as that required for assessment. Self-insurers consider that the assessment process duplicates the audits and serves little purpose except to incur the unnecessary expense.

Self-insurers are also concerned that the ad-hoc audit process be conducted at times sensitive to the business need of the self-insurer. Retailers for example should not be audited just prior to Christmas.

- *SIAV propose that audit information be used in the assessment process in order to avoid unnecessary cost.*
- *In addition, SIAV proposes that WorkCover initiated audits are timed to consider the seasonal business imperatives of self-insurers.*

1.10.2 Additional Information Requirements ((Draft Regulation 21 Schedule 4 Item 9- Page 26)

The RIS gives WorkCover a broader scope to increase the requirements for the provision of information. WorkCover have discretion to require any data that it considers

'reasonably' necessary. Self-insurers consider that information should be limited to purposes envisaged by the legislation rather than information for internal WorkCover reporting requirements or other WorkCover purposes. In addition, self-insurers should be consulted on any fresh requirements.

- *SIAV propose a formal process for agreeing the scope of information required by WorkCover. This process should include:*
  - *notice ofproposed changes*
  - *opportunity for consultation and submissions - cost-benefit analysis - agreement to changes - timetable for implementation*
- *This process should be codified and included in self-insurer approval agreements with WorkCover.*

1.10.3 Unnecessary Software Costs (Draft Regulation 21 Schedule 4 Item 8)

The current arrangements allow WorkCover to make procedural changes at any time without reference to self-insurers or with any official sanction. In most cases the procedural changes require alterations to a commercial software package used by most self-insurers. Self-insurers have experienced cost charges of up to $10,000 each on every occasion the changes are made. These represent a windfall for the software provider and unexpected and unplanned costs for the self-insurers. WorkCover offers no mechanisms to:

- Assess and agree the utility of any change
- Reduce the overall cost of software changes to self insured businesses

These issues should be included in the consultative process outlined above.

1.10.4 Document Retention (Draft Regulation 21 Schedule 4 Item 3)

The Regulations require records to be kept for a 'foreseeable' period. This is a subjective standard and should be clarified.

- *SIAV proposes that the regulation for document retention be amended to include a ceiling of 30 years, which represents the working life of most workers.*

1.10.5 Liability for agent actions (Draft Regulation 21 Schedule 4 Item 10)

SIAV notes that the item may be read as raising a statutory liability against self-insurers by persons wishing to sue agents. In order to reduce the possibility of litigation, SIAV proposes that 'reasonable measures' be defined through the mechanism of a code of practice. The Code should be agreed with all self-insurers and or SIAV, in consultation with WorkCover, and published by WorkCover. It would then become the object of 'judicial notice' in the event of litigation. Alternatively, the item should be deleted and WorkCover should rely on the obligations in the legislation on self-insurers and on agents to ensure that the Act is complied with.

- *SIAV proposes that 'reasonable measures' be defined through the mechanism of a code ofpractice. The Code should be agreed with all self-insurers in consultation with WorkCover and published by WorkCover.*

Discussion of Alternatives

SLAV proposes that WorkCover consider the alternatives proposed in the preceding sections. This section deals with WorkCover's arguments against consideration of those alternatives listed in the RIS - specifically relating to experience rating. Submissions made in 1998 are relied upon in reference to the user-pay and tariff options.

1.11 Experience Rating Component (Page 29)

WorkCover take the view that the administrative fee is tied to the 4th component - i.e. services provided to the community and the 'public good'. WorkCover further contends that as a reduction in claims does not affect this component then experience rating does not apply. On this basis the fact that self-insurers consistently have lower rates of claims should not be taken into consideration in setting the administrative fee as it is taken into consideration for the calculation of employer premiums.

SLAV have no issue with this point, however are concerned that the logic applies equally. If 'services provided to the community' is the relevant consideration then the relevant factor is not a reduced number of claims but the provision of services to the community by that self-insurer. As employers are offered consideration for reducing claims, selfinsures should be offered consideration for providing services to the community. This contribution should be recognised proportionately to the total cost. For example, spending identified should be included as a reduction factor. (Appendix 1 gives examples of programs already conducted by self-insurers).

SLAV suggest that this would provide powerful incentives to self-insurers to finance further community based safety initiatives.

- *SIAV propose that recognition of community safety services that are consistent with the Accident Compensation legislation objectives should be included in the contribution formula.*

Economies of Scale

WorkCover seeks to argue that there are economies of scale in fixed costs for these types of services, however does not provide any detail as to what types of fixed costs. Selfinsurers take the view that in many instances; they are able to achieve considerably greater economies in scale, particularly in the area of advertising and in the capacity to influence sub-contractor and safety practices through commercial arrangements outside WorkCover's capacity.

Even with an acceptance that these economies are available, the problem then is one of transparency and accountability. WorkCover should be able to provide evidence of saving similarly to any public body. This is even more important in the area of advertising. No evidence has been provided to self-insurers that improvements have occurred as the result of specific campaigns; or that placement of advertising has reaped any economies of scale.

SLAV request that the proposals for outside scrutiny made in this submission receive serious consideration by Government.

Addendum - Section 115

This section deals with issues outside the RIS. However, SLAV is of the view that recently released Ministerial Guidelines in respect of S 115 of the *Accident Compensation Legislation* are relevant to self-insurer viability and request that the views below be considered by Government.

SLAV submits that new Ministerial Guidelines that cover lump-sum payments for injured workers are in some instances impractical, increase administrative costs for self-insurers and are not in the best interests of workers.

The new Guidelines operate to prevent any lump-sum payments. Previously, for example a 30 year-old worker could claim a lump sum of some $275,000. This sum has effectively been reduced to $22,500. This worker will have little choice but to stay on weekly payments of $300 until the aged 65. This presents an administrative cost for the self-insurer. However, for the worker, a likely lapse into a compensation process that they would rather escape and reduced life opportunities.

The SLAV submits that a lump sum option facilitates the settlement of claims, allows the effective management of self-insured funds, including long-term tail, and offers better opportunities for valuable employees.

SLAV appreciates that lump sums in any workers compensation scheme have detrimental impacts both in attracting legal costs and in failing to adequately cater for injured workers in the years following payment. However, SLAV is of the view that carefully managed arrangements can overcome these difficulties. Claims under this section of the legislation represent a clearly defined group of more seriously injured workers where it would be expected that opportunities for abuse and detrimental impacts on the Fund are limited.

- *SIA Vproposes that WorkCover consider revising the Guidelines to allow scope for realistic lump-sum payments with the following criteria to be adopted:*
  - *Workers must be offered financial advice before agreeing to the lump-sum arrangements*

- *Lump sums must be lodged with trustee companies or other equivalent financial institutions for tailored distribution over a period of time according to the specific needs of the worker.*

Appendix 1

Examples of Self-Insurer Safety Programs Influencing Safety Practices and Injury Rates of External Companies and Contractors

As a contracted requirement, contract employees are required to undergo a rigorous safety induction program and this is followed up on a yearly basis. It can be demonstrated that this program has had a positive effect on the way contractor principals carry out their business activities including activities outside the self-insurer environment.

Other activities initiated include health screening for past and present and contract employees. This program has not only heightened awareness within an effected group, but also the general community having received considerable media (television, radio and newsprint) attention. Our activity in this area has altered many views with both aligned and non-aligned business industries within the State and also nationwide on hazards and dangers and the need for appropriate "on the job" personal protective equipment, reinforcing the governments' ongoing campaign on health and safety and indeed exceeding the governments' regulatory and statutory guidelines. Although the monetary value of this voluntary exercise has been considerable, the effects on community health, hazard awareness, changes to industry standards and the net effect on future claims liability has and will be significant.

Manufacturing Self Insurer

Prime contractors engaged to do work are required to provide documented evidence of an OH&S management system that would meet the requirements of SafetyMAP initial level as a minimum.

There is a cascading effect down to sub-contractors. They are required to produce evidence of an OH&S system to various degrees depending on their size and nature of work. There is, therefore, a flow on effect from this organisation to other employers contracted to do work to have, for example, OH&S Policies, defined OH&S roles and responsibilities, consultation processes, hazard management programs, training programs, etc.

National Self-Insurer

This organisation has included contractor requirements in all tenders. We have also implemented a contractor induction process.

For major works, we involve contractors and the Project Manager in discussions regarding how the job is to be done and to rectify and timing issues that result in hazardous work environment. We are

Examples of Self-Insurer Safety Programs Influencing Safety Practices and Injury Rates of External Companies and Contractors

currently working with suppliers to address a number of OHS issues. The modifications they make could be used in other industries.

Retail Self Insurer

Contractors must meet **SafetyMAP** requirements before we will use them on our sites. We have held Safety Training Courses with our Contractors to ensure they fully understand the Safety MAP requirements. Our aim in doing this is to improve the safety of our contractors and therefore the safety of our staff and customers. We have influenced suppliers to package goods in weights that are in keeping with safe lifting practices. E.g. Dog food and soft drink. We have also influenced suppliers in the glue they used between cartons when stacking stock for transport.

Self Insurer

Contractor Management Practices

All Brands include OHS obligations and workers compensation insurance requirements in the tender and contract documents. This is followed up at planning meetings. All contractors complete a safety induction and sign in/out of sites. Permit to work systems are in place

A new program has just been implemented nationally that will request safety management plans/work method statements for high risk work, evidence of safety management systems and ongoing performance measurement for all contractors, this is to be rolled out 2001.

Supplier Management Practices

All suppliers of plant/equipment receive Their OHS obligations as part of the tender for supply. This requests proof of compliance to legislation and Australian Standards. It also asks for plant risk assessments in accordance with Victorian regulations and relevant training and operating manuals.

Brands have developed merchandise guidelines for buyers to request merchandise of particular packaging to minimize risks. A specific example has been the request of multi packaging for heavy items and weight marking of all boxed stock.

National Self-Insurer