AUSTRALIAN INDUSTRY

GROUP

(SA BRANCH)

2009 CONSULTATION ON

A NEW FRAMEWORK FOR

EMPLOYER INCENTIVES

Extension granted to: 21 December 2009

THE AUSTRALIAN INDUSTRY GROUP IN SOUTH AUSTRALIA

The Australian Industry Group (Ai Group) is a leading industry association in Australia.

Nationally, Ai Group member businesses employ around 750,000 staff in an expanding range of industry sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other related service industries.

Ai Group's SA Branch was formed out of a merger between the Engineering Employers Association, South Australia ('EEASA') and Ai Group. The Branch was created on 1 July 2009.

Ai Group provides a range of advisory services to member companies in the areas of industrial relations, human resource management, OHS&W, workers' compensation, environment, education, training, industry development and economic performance.

WorkCoverSA's *Consultation on a New Framework for Employer Incentives* (**the Paper**) is an issue that is highly relevant to our industry sector at a State level, and is therefore of significant interest to our registered employer membership.

SUMMARY OF ANSWERS TO THE QUESTIONS IN THE PAPER

The Paper asks three questions. Our brief answers to them are as follows:

1. *Do you think there should be any financial incentives for employers in relation to workers rehabilitation and compensation?*

   YES (QUALIFIED). Ai Group believes that there should be incentives offered to registered employers. However, we are strongly of the view that such incentives should continue to be directed to a combined focus on the prevention of workplace injury and disease, as well as effective return to work.

2. *What do you think about the proposed design principles?*

   Ai Group finds the underlying tenets of the Paper to be unbalanced. We discuss this imbalance within our submissions. In respect of the specific principles laid out in the Paper, we have commented in detail in our submissions below.

   Simply put, we believe that some of the Principles proposed in the Paper are either not capable of being achieved and that many will be highly labour-intensive and therefore prone to errors. In our view, many of the Principles that are proposed will be easier to say than to do.

3. *Do you have any specific ideas for employer incentives that encourage return to work?*

   YES. As previously submitted on more than one occasion, we strongly recommend the retention of the well understood Bonus-Penalty Scheme (**the BP Scheme**), until such time as a well reasoned, properly modeled and methodically evaluated alternative is available, to be rolled out to employers in a controlled manner. This will definitely require proper stakeholder consultation and could also require an element of 'phasing in' so as not to impact too heavily on employers with marked changes to their levies.

Again, we have expanded further within our submissions and have commented on the suggestions offered by the Corporation.

As well, we have offered a number of features that might form 'discussion points' for consideration (clearly noting that Ai Group does not formally advocate any of these models).

THE BOARD'S DECISION TO TERMINATE THE BP SCHEME

We understand that WorkCoverSA has clearly signaled its intention to terminate the long-standing BP Scheme from 30 June 2010.[1]

We are surprised at the Corporation's decision to terminate this highly regarded incentive scheme, apparently without any settled idea as to what might replace it.

INTRODUCTION

At the outset it is important to record that Ai Group does not support the Board's decision for the reasons that we will set out in these submissions.

As well, we are perplexed as to why there has not been any effort to review the BP Scheme with a view to further amendments - as opposed to unilaterally discontinuing it.

After the fact of having made a decision, from which there appears to be no avenue of appeal, the Corporation now seeks stakeholder views and ideas about incentives for registered employers. We note that the Corporation proposes that any new incentive scheme will have a 'return to work' (RTW) focus.

[1] We understand that the decision first appeared in September 2009 on the WorkCoverSA website, under 'Safety Incentives', announcing the abolition of the bonus penalty scheme with a promise of something else post 2011.

In directing a future incentive system towards RTW (rather than the current OHS/ prevention focus), we find the Paper to be lacking a convincing argument.[2]

Ai Group is steadfastly of the view that a change in direction towards predominantly RTW will prove to be a significant error.[4] Further, we believe that over time such an approach will adversely affect the relationship between WorkCoverSA and registered employers.

Such a refocusing towards RTW will be a risky proposition for employers, whose levies in large part will be determined by worker and doctor behaviour (unless close constraints are placed on them) with consequential distortions in the case management process.

Also, if such an approach is adopted, those with OH&S responsibilities under statute (including WorkCover and SafeWork SA) and the State Strategic Plan will be deprived of the only mechanism providing regular access to all registered employers to influence OH&S behaviour.

Ai Group considers the timing of these consultations to be poor. Given that levies are now required to be paid in advance and that levy notices are generally posted in May, any new scheme will need to be implemented in a compressed timeframe.

Noting that the necessary software for any new incentive scheme will need to be written between March 2010 (when the Board anticipates making a decision) and May 2010, time is obviously very limited. This situation will be further aggravated by the complication that as a matter of business practice, most companies will settle their internal budgets in March 2010.

Recent experience with the implementation of legislative reforms (eg provisional liability) has demonstrated the difficulties that flow from hasty implementation. We believe that unintended consequences are much more likely to occur where there is not a measured and considered approach to the implementation of new regimes.

In strongly recommending that the Corporation take the time to 'get it right' the first time, we note the Corporation's own support for a cautious and reasoned approach outlined at page 14 of the Paper itself:

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[2] It should be noted that during the course of this consultation, Ai Group had <u>three times</u> requested to be provided with the PricewaterhouseCoopers report referred to in the Paper by WorkCoverSA. We were informed on multiple occasions that the report would be provided. However, as at the date that submission were due, that Report had not been provided to us.

[4] In making this point, we acknowledge that both an OHS preventative focus and a RTW focus will reduce overall claims costs and cannot be mutually exclusive in a levy scheme. We do however say that the current approach (claim costs) measures both prevention and RTW. We say that applying incentives and/or penalties which do not take into account the occurrence and cost of a claim will be counterproductive.

"Ideally, new models and programs should be developed carefully, based on a range of ideas that are evaluated methodically, impartially and rigorously. They should be supported by the weight of credible evidence, including academic and actuarial evaluations.

Where there is no evidence base, incentives should be piloted and evaluated. We need to know if an incentive is effective, and the only way of doing that is through evidence."[5]

SUMMARY OF Ai GROUP'S DEVELOPED POSITION

Ai Group is on the record as a strong supporter of the existing BP Scheme. However, Ai Group has not taken the view that we blindly support the BP Scheme at all costs.[6]

Ai Group is not closed off to alternative models for an incentive scheme. However on behalf of our membership, we are asking the Corporation to convince us of the case for change through a developed argument that is soundly built on firm evidence.

Transparency would seem to require that the Corporation offer a viable alternative model(s) for comparison and consideration. Any such proposal(s) should also undergo stakeholder scrutiny.

What we do say however, is that we support the current BP Scheme in that absence of any developed alternative that has been properly communicated to stakeholders, rigorously trialed and evaluated in a controlled manner.

It is fair to say that in the event that the Corporation adopted such a planned approach, we would support the Corporation in its efforts to consult with stakeholders and seek the sign off of employers.

THREE FUNDAMENTAL POINTS

In response to the Paper, Ai Group has crystallised its views to 3 fundamental points as follows:

1. In the absence of any developed alternative, the Ai Group strongly urges that the WorkCover SA Board review its decision and continue the operation of the existing BP Scheme for an extra 12 month period.[8]

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[5] At page 14 of the Paper.

[6] Ai Group has received a significant amount of feedback on the Paper. Without exception our feedback opposes the termination of the BP Scheme. We believe that the WorkCoverSA Board has misread its constituent community in considering a move away from the well known and understood BP Scheme in such a hasty manner, giving itself little time to rigorously test any replacement incentive scheme.

[8] In arriving at these recommendations, Ai Group did consider recommending that the Board defer its decision to terminate the BP Scheme for 12 months, and in the interim, freeze all current bonus/ penalty rates at their current levels (say at 31 March 2010). We believe however, that this would unfairly disadvantage many companies by locking them into penalty, where they might have otherwise migrated into

This recommendation is based on compressed timing issues. Ai Group does not believe that any new incentive scheme can be properly written, trialed and properly implemented, as well as educated to registered employers in the time period envisaged (March to May 2010);

2. During this 12 month period, the Corporation model and trial any proposed changes or model, such that any changes implemented from 1 July 2011 have firm stakeholder support and employer sign-off;

3. Finally, we do not support any refocusing of any incentive scheme away from the current 'OHS/ prevention' focus - to one that is predominantly focussed on 'return to work'. We do not believe that the Objects of the act allow such change, nor that it can be practically and objectively implemented. Ai group firmly believes that the primary focus of any incentive scheme must predominantly remain OHS/ prevention.

This approach provides a number of distinct advantages for both WorkCoverSA and registered employers. It will:

1. allow for proper stakeholder consultation on the replacement incentive scheme;

2. allow the final replacement scheme to be developed carefully, based on a range of ideas that have been evaluated methodically, impartially and rigorously;[9]

3. allow any replacement scheme to be piloted and evaluated in a controlled manner;[10] and

4. result in a more controlled roll-out of any new scheme, as well as the opportunity for it to be explained properly to employers.

Ai Group does not believe that employers should put on risk because of the compressed time window that now exists for the development of a new incentive scheme. However, should the Corporation not accept that view, prudence would seem to dictate where the implementation risks are raised, as in this situation, that back-up system be in place.

We do, acknowledge however, that a 12 month extension of the BP Scheme will require the writing of computer code and the associated (employer-funded) expense associated with that. However, this would provide the advantage that the Corporation then would have a BP Scheme code on hand. This might prove to be a very useful back-up should no viable replacement for the BP Scheme be found in the longer term, or if a replacement scheme fails quickly.

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bonus in the period of the freeze had BP continued. Accordingly, such a recommendation would be extremely prejudicial against such employers, whilst poor-performers that would have otherwise moved into penalty will reap a windfall benefit.

[9] Applying the tests cited from page 14 of the Paper and quoted above.

[10] Ibid

Given the difficulties that have accompanied the 'cut and paste' implementation of major revisions to the Scheme (such as Provisional Liability), we harbour strong concerns that a hasty and compressed implementation will not result in the controlled roll-out of any new scheme, or for it to be properly explained to employers.

THE CURRENT BONUS/PENALTY SCHEME

We understand that the BP Scheme was introduced in 1990 due to the significant number of claims.

We further understand the principle of the BP Scheme to be that the bonus or penalty for any employer location adjusts the base industry rate for that particular location. To be able to properly operate however, the business location requires a two year history. The BP Scheme is simply set out on the WorkCoverSA website (as at 16 November 2009):

> The Bonus/Penalty Scheme provides employers with a financial incentive to prevent and reduce the cost of workplace injuries. Through the scheme, WorkCover adjusts the base industry rate of a business location depending on its actual workers compensation claims experience.
>
> Claims costs are used to measure an employer's performance. Employers who maintain lower claims costs through safe work practices and by providing suitable alternative employment for injured workers can be rewarded with a lower levy.
>
> Penalties collected under the Bonus/Penalty Scheme for poor claims performance are redistributed as bonuses within the scheme.

Ai Group accords fully with this description of the BP Scheme, its purpose and outcomes.

We also note that the BP Scheme has developed over time. It has evolved to mitigate some of the volatility that can be experienced by small employers that might only experience one claim in say 5 years. Accordingly, the maximum 'swing' of the bonus to penalty varies from +10% to -15% for small entities, through to +30% to -50% for larger registered employers.
Ai Group does not accept that the BP Scheme is ineffective. We say that it cannot be proved that the BP Scheme has had any particular effect, positive or negative, due to the myriad of other factors that affect outcomes. We take this view despite the Corporation's earlier views that:

> *"The introduction of the Bonus/Penalty Scheme in 1990 was associated with a substantial reduction in the number of claims reported to WorkCover. The Scheme provided the incentive for employers to devote their attention and resources to minimising injuries at work and to closely managing claims when they occurred.*

> *There is little doubt that financial incentives are an essential ingredient to improving safety in the workplace. But there is considerable debate around what constitutes the most effective incentives, and whether different incentives are more applicable to different categories of employer."*[11] (Our emphasis)

And further, that –

> *" The proposals contained in this paper are based on a belief that experience rating does work, to get employers to devote resources to preventing injuries and to getting them to actively co-operate with others to minimise the cost of any injuries which do occur. It is also WorkCover's belief that the stronger the incentive the more effective it is in achieving commitment and resources to minimise claims costs so long as the employer is*
>
> *1. aware of how the incentive works, and*
>
> *2. able to respond to the incentives."*[12]

From our perspective, the Corporation's movement away from these views has not been adequately addressed or justified. We do however, remain of the view that the removal of the BP Scheme risks upward pressure on claim costs (since that is the basis of measurement, not claim numbers).

Ai GROUP STRONGLY OPPOSES A CHANGE OF FOCUS TO PREDOMINANTLY 'RETURN TO WORK'

We note that the Corporation seems extremely keen that any new incentive model should primarily focus on 'return to work'. The Paper notes that:

> *"because so few incentive models focus on return to work, we need to work together to make sure this one is developed and designed carefully, to minimise the risk of unintended consequences and teething problems."*

The more relevant inquiry might be why so few other models focus on a return to work (as opposed to An OHS prevention) approach?

Indeed, our observation would be that any insurer's first responsibility surely has to be to mitigate its exposure to risk through prevention of claims in the first place. Ai Group is greatly concerned that the Scheme as a whole might not closely focus on OH&S and injury prevention.

As stated throughout our submissions, we do not accept that the SA incentives model should be driven with a return to work focus. We support the current focus on injury prevention and therefore an OHS focus. One of our members relevantly comments:

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[11] December 1995 WorkCover paper, entitled *"The South Australian Bonus Penalty Scheme and Experience Rating – a review and proposal for change".*
[12] Ibid.

"In my opinion, WorkCoverSA does not seem to see the wood for trees. Getting people back to work may be a problem, but they seem to miss the cause of the problem, which is to reduce injuries and injury severity in the first place. Then there would be far fewer people to get back to work."

In Ai Group's view, the grounds canvassed in the Paper as a basis for terminating the BP Scheme are tenuous. We have sought to better understand the Corporation's view, but have not been provided with the PwC report despite repeated requests over recent weeks.

As noted above, we believe that the intricacies of the intertwined mechanisms surrounding claims data means that there cannot be any accurate evidence of the effect of the BP Scheme on behaviour. If the Corporation continues to assert that this is the case, we would ask to see and test the data that WorkCover relies on to support that conclusion.

In the alternative, how can 'return to work' be objectively measured? And when has a 'return to work' occurred:

1. Is it the minute the worker returns to the workplace regardless of capacity and return to pre-injury employment?
2. Does it need any element of being a *sustained* return to work?
3. What will be the status of partial returns to work on reduced capacity?
4. What happens in the case of a worker being unable to return to work for the myriad of reasons outside the employer's control that already confound the scheme?
5. How can all this be measured on a scheme-wide basis in a way that will accurately track RTW in each and every claim and equitably apply incentives that only reflect the factors within the employer's control?

Further, if return to work is to become the new focus for any incentive scheme, the only metric with which it will be able to be measured will be via the proxy of income maintenance payments.[13]

THE OBJECTS OF THE ACT

To consolidate our position in regards to retaining the primacy of an OHS/ prevention approach, we also look to the Objects of the Act. At section 2(1)(a)(ii), the Objects require the establishment of a scheme that provides for the early return-to-work for disabled workers. However, this is only required to be a *feature* of the Scheme (as opposed to a direct requirement of it).

In contrast, pursuant to section 2(1)(e) of the Objects, it is a <u>direct requirement</u> of the Act *"to reduce the incidence of employment-related accidents and disabilities".* In our view,

[13] We understand it to be generally acknowledged that IM payments are not a reliable indicator of 'return to work', regardless of how sophisticated a formula or definition is used.

this requires the Corporation to remain engaged in injury prevention and therefore retain an occupational health and safety perspective. In making this point, we also note that OHS and prevention is also a primary object of the Corporation itself.[14]

Section 2(1)(a)(v), also requires the establishment of a scheme to ensure that employers' costs are constrained within reasonable limits so that the impact of employment-related disabilities on South Australian businesses is minimised. In our view, these costs are best minimised if incidents are prevented (as opposed to a post-incident emphasis on return to work).

The BP Scheme in its current form is a tangible commitment to OHS and prevention, as compared to the many mechanism's that the Corporation has at its disposal to improve RTW. We would argue that shifting the BP Scheme away from prevention focus is to ignore the OH&S elements of the Objects.

We also make the make the point that we do not believe that it is possible for a centralised regulator (such as SafeWork SA) to pro-actively address safety at each and every small and medium size business. However, we do believe that WorkCover's levy arrangements are the sole OHS mechanism that actively touches every registered employer.

Accordingly, we do not support any new incentive scheme that is narrowly and predominantly focused on the unmeasurable notion of 'return-to-work'. Doing so will, in our view, ensure that OHS remains a reactive force, particularly as OHS compliance in SA primarily operates in the shadow of prosecution and penalty.

GENERAL DISCUSSION ARISING OUT OF THE PAPER

At page 4, the Paper asserts that;

> *"While WorkCover has (and has previously had) various incentives and incentive programs for employers, such as the Bonus/Penalty Scheme, few of these incentives encourage employers to help their injured workers return to work. There are also few penalties for employers who perform poorly in this area."*

We take issue with much of this assertion and the implications arising from it.

We would like to understand the evidence that can support such assertions in isolation from the myriad of other factors that affect RTW, including factors such as the quality of claims management and rehabilitation efforts. We believe these to be every bit as critical to outcomes and costs as employer attitude and behaviour is – perhaps more so (as our member has pointed out). In doing so, we note that many of these types of issues are completely out of an employer's control.

The inherent assumption embedded in the assertion is that it is the *"various incentives and incentive programs for employers, such as the Bonus/Penalty Scheme"* have failed

[14] At section 12(a) of the *WorkCover Corporation Act*.

to get injured workers back to work. In fact the underlying tenet of the entire Paper is that there is nothing wrong with the Scheme except in the area of employer behaviour.

In the same way, we take issue with the Paper's conclusion on page 18 where it asserts:

> *"There is too much evidence that experience rating systems have been ineffective in the workers compensation setting, at least for the vast majority of employers in South Australia who are not very large. If we continued with a Bonus/Penalty Scheme we would be letting down many employers by not putting their levy revenue to good and effective use.*
>
> *As a result, WorkCover is committed to developing a new best-practice incentive system for employers, in conjunction with stakeholders and based on all the available evidence. This is why your input is crucial."*

Again we would be interested to better understand this evidence.

Since 1990, the BP Scheme has allowed those employers who well manage their occupational health and safety and return to work obligations the benefit of a reduced levy payment. This has been modified over time to modulate the worst of any volatility for smaller employees. In short, it is an incentive scheme that has evolved over an extended period to offer employers a well-known and understood incentive mechanism. It is a true 'incentive' mechanism in that it provides a positive stimulus for good behavior and punitive outcomes for poor conduct.

We note that South Australia's WorkCover levies are easily the highest in the nation, and the average employer levy rates remains outside of the 2.25% to 2.75% target zone at 1 July 2009, with no foreseeable prospect of reduction. In this environment, any benefit that employers can accrue towards mitigating their levies will be most welcomed by Ai Group members.

To our knowledge, employers *are* doing all that they can to embrace the return to work culture, including the adoption of some costly measures that they would not ideally have adopted (for example RRTW Coordinators).

The Corporation properly notes that:

> *"Any new incentives will need to work with and complement existing rights and obligations under the workers compensation scheme."*

We agree and note that section 67 of the Act seems to contemplate some element of remission of levies to employers. Further, notions of secondary and unrepresentative injuries are also features of the Act itself, and unlike the termination of the BP Scheme (which has been achieved by administrative means), will require amendment of the Act itself.

Unsubstantiated assertions made in the Paper

We cite discussion from the Paper that bonus/ penalty does not affect performance:

> *"Experience rating' models solely target a business's claims history. As such, they have had little effect on return to work rates, quality or sustainability, and are out-of-step with WorkCover's return to work focus."*

One of our members makes their point well as follows:

> The return to work rate DOES affect claims history! If there is NOT a return to work there is a corresponding increased COST recorded in the claim (which of course counts towards a levy penalty)! I can assure you many employers work very hard to achieve returns to work because they KNOW that if not, the costs will be penalised in their levy!

As pointed out previously, we do not believe that there is any evidence for the proposition that the BP Scheme does not already impact on RTW. Given that claim duration is the prime driver of claim cost, most employers are aware that while a worker is away from work, those costs will escalate.

Also from the Paper:

> *"But even using claim rates as the measure, the Bonus/Penalty Scheme <u>has not caused more risky industries or employers to make their workplaces safer</u> <u>or pursue better return to work practices</u>. We need a <u>new approach with penalties powerful enough</u> to cause people to change their behaviour for the better, and rewards that recognise model behaviour and entice people to go 'above and beyond."* (Emphasis added)

Again, the response from an Ai Group member:

> What a slap in the face for the MANY employers that HAVE and DO work hard to improve safety in their workplaces! How can they make such a blanket statement? Claim rates are not purely the result of unsafe events.

From the Paper:

> *"With both secondary and unrepresentative disabilities, the worker receives compensation but the costs are not counted against the employer for the purposes of employer incentives and penalties. The rationale is that employers don't deserve to be penalised for work injuries in situations largely outside their control."*

And the response of our member:

> And nor should they be! Ever!
>
> I am in no position to dispute the research and findings of all those experts however I would like to ask - if the paper is based on research by academics and professionals in " the insurance, welfare, disability management, safety or accident compensation fields" - is that a broad enough representation of stakeholder

interests? Who spoke for or has researched and validated the views and issues of employers, workers and workplaces in this equation?

To what extent has there been any consideration the impacts of poor claims management or other factors (or other elements outside an employers control) on claims cost results before making assumptions about 'employer' performance?

THE PAPER IS UNBALANCED

The point made by our member immediately above, referring to the Paper's research by "*academics and professionals in the insurance, welfare, disability management, safety or accident compensation fields"*[15] leads neatly into the next topic that we wish to raise.

From our perspective, it would appear that the Paper has been drafted with a pronounced leaning away from any support for employer bonuses. In support of this claim we observe:

1. The Paper offers no substantiation to support many assertions that are made throughout, including "research" and/ or "evidence". No sources are quoted, nor data offered in support of these statements;
2. This series of unattributed assertions are then built upon in the Paper to underpin the Corporation's desired case for change;
3. The case for any replacement initiative(s) in the Paper is unbalanced, as no arguments or data that might be counter to the Corporation's view are put for consideration;
4. The Paper is drafted in such a manner as to imply that there are serious issues with the BP Scheme and any incentive scheme that might include some aspect of a 'bonus'; and
5. Similarly, the Paper assumes that all will accord with a change of focus for an incentive scheme from OHS prevention to 'return to work'. As stated at the outset, Ai Group does not accord with that basic tenet.

There has been no consideration of the benefits of offering bonuses. Nor has there been any assessment of the costs of the BP Scheme for comparison or critique.

Indeed the Paper seems to concentrate solely on issues that the Corporation is able to perceive in relation to the calculation and payment of bonuses. It could be perceived that the Paper has been drafted with a preferred outcome in mind when it simply dismisses any notion of bonus payments to employers *"who would have done the right thing anyway"*.[16]

Supporting that view, we note the following assertion which we would challenge:

[15] Discussed under "Literature review" at page 8 of the Paper
[16] As discussed in "Target the right employers" at page 11 of the paper.

> *"Only very weak links were found between the Bonus/Penalty rate and claim outcomes. No evidence was found to suggest that the Bonus/Penalty Scheme has delivered better health and safety outcomes for workers in South Australia."*

We reiterate our view that given the intricacies and complexities of the overall scheme, it is impossible to discern what influence the BP Scheme has in relation to claim numbers with any accuracy. We would argue that it is not possible to accurately attribute the affect of the BP Scheme in isolation from the myriad of other inputs that play a part.

The *WRMC Comparison Report 2008*, indicates a general downwards trend of claim numbers across most comparable schemes, regardless of the sorts of employer incentives that are offered. Accordingly, we are anxious to better understand the evidence that the Corporation claims to support its position:

- Where are these 'links' referred to in the Paper?
- How can stakeholders be certain that they were/ are "*very weak*"?
- How can the Corporation demonstrate with any certainty, that that there was 'no evidence' that the BP had delivered better health and safety outcomes for workers in South Australia?

The Paper goes on to state:

> *"But even using claim rates as the measure, the Bonus/Penalty Scheme has not caused more risky industries or employers to make their workplaces safer or pursue better return to work practices. We need a new approach with penalties powerful enough to cause people to change their behaviour for the better, and rewards that recognise model behaviour and entice people to go 'above and beyond'."*

Again we ask to see the data that is claimed to support this assertion, which we say is without foundation. We believe the point made about return to work is both assumptive and untenable because the Corporation can neither define nor measure 'return to work' – or the effects of the BP Scheme upon it.

The Corporation's intent to impose *"powerful penalties"*[17], with rewards only available to those that *"go above and beyond*"[18] is most clearly telegraphed in the following passage:

> *"The biggest hurdle to developing any kind of effective incentive scheme is the regulatory requirement to exclude the costs of 'secondary' and 'unrepresentative' disabilities from the calculation of bonuses or penalties. …*
>
> *The rationale is that employers don't deserve to be penalised for work injuries in situations largely outside their control. The problem with this exclusion is that it narrows the 'base' of claims on which to support an incentive scheme. This leads to unintended consequences and encourages employers to focus heavily on the coding of disabilities."*

[17] Discussing WorkCover's experience at page 6 of the Paper
[18] As part of "WorkCover's experience" discussed at page 6 of the Paper.

Ai Group would argue that the logic that underpins the notion that *"employers don't deserve to be penalised for work injuries in situations largely outside their control"* is both strong and appropriate. In fact, the Paper fails to explain why an employer should be penalised for an injury in a situation that is largely outside of their control.

While the Paper asks the fundamental question about whether there should be any incentives at all, our submissions are based on the tenet that having both financial incentives (bonuses) and disincentives (penalties) within the Scheme is beneficial.

We can find little or no balancing discussion about any benefit that flowed from the BP Scheme. However the Paper repeatedly lauds the merits of larger 'sticks' and 'harsh financial consequences' notwithstanding its concession that:

> *"One of the main problems of experience-rated incentive schemes has been their unsuitability for smaller employers, since they generally lack the resources to respond to bonuses or penalties in a meaningful way. Research has shown that smaller employers tend to respond better to constructive, education-based approaches on an industry basis, rather than blunt financial instruments targeted at their individual performance."*

In these submissions, Ai Group is asking to see and hear more of the hard evidence that the Corporation has used to:

1. terminate the existing BP Scheme (including the evidence arising out of the PwC Report – not provided upon repeated requests); and
2. underpin the suite of assertions that have been made in relation to other incentive schemes.

Finally on this point, we would challenge the views expressed in the paper that penalties have a greater influence on behaviour than bonuses (rewards).[19] OHS behaviour theory identifies that the certainty of a reward or punishment is the biggest driver of behaviour and that "consequences" that are soon, certain or positive are the best drivers of behaviour. Certainty clearly relates to the ability to understand when and how bonuses or penalties will be applied.

As well, in respect of monetary bonuses or penalties, both are financial. It seems to us that the *quantum* of the bonus or penalty would be a more significant driver of behaviour then whether an employer was going to pay say $20,000 more than base (penalty), or $20,000 less than base (bonus).

THE PRINCIPLES SET OUT IN THE PAPER

WorkCover has developed some proposed core design principles for a new framework of incentives, which are outlined in the Paper. The Paper also sets out a few examples of options for specific incentive models based on core design principles.

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[19] "*This is based on evidence that rewards are generally less effective in changing behaviour than penalties.*" at page 5 of the Paper.

1. Focus on Return to Work

We have discussed our strong disagreement with this as the predominant focus principle, and the reasons for that, above.

2. Be affordable and sustainable

We have been provided with no data as to the affordability (or otherwise) of the current BP Scheme. However, it is clear to us that the BP Scheme has to be revenue neutral by its very nature.

Neither are we provided with data to support that the current scheme is not revenue-neutral. To meet the Corporations desired tenets of transparency and hard-evidence, this data should have been (and should still be) provided to stakeholders as part of the consultation.

Again, we refer to the Corporation's earlier views on the BP Scheme:

> *"The introduction of the Bonus/Penalty Scheme in 1990 was associated with a substantial reduction in the number of claims reported to WorkCover. The Scheme provided the incentive for employers to devote their attention and resources to minimising injuries at work and to closely managing claims when they occurred."*[20]

From our perspective, the Corporation's movement away from these views has not been adequately addressed or justified such that we could adopt that approach with confidence.

3. Have a direct and substantial effect

The Paper states as follows:

> *"Incentives and penalties should be powerful. There is no use introducing a 'Mickey Mouse' system that tinkers at the edges and has a mainly symbolic effect. People must be genuinely rewarded or penalised in a way that is relevant to their actual behaviour.*
>
> *Research has shown that many models fail not because the idea is wrong but because the financial drivers are too weak.*
>
> *Incentives and penalties should also be direct. This means that timing is important. An employer should be able to understand how a reward or penalty is connected to their actions."*

Ai Group takes strong issue with any inference that the BP Scheme is a "Mickey Mouse" scheme. To the contrary, we would argue that the BP Scheme has *"the runs on the board".*

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[20] December 1995 WorkCover paper, entitled *"The South Australian Bonus Penalty Scheme and Experience Rating – a review and proposal for change".*

Under the BP Scheme, registered small employers can swing through a bonus/ penalty arc of up to 27%, and large employers as much as 80%. We do not believe the financial drivers of the current scheme to be weak – indeed many of our members suffer noticeably when they swing into penalty for 2 years for a seemingly innocuous injury.

In regards to timing, in terminating the current BP Scheme, the Corporation is ignoring that employers *know and understand* the BP Scheme very well. Our feedback from members indicates that employers *know* that injuries mean penalty based on claims costs and for up to 2 years. They *know* that severity matters and they *know* of the punitive effects of supplementary levies if they do not observe their obligations.

The Corporation seems intent on losing all of this established knowledge to invoke a new incentive regime. To us this could be likened to *"throwing out the baby with the bathwater"*. As well, the Corporation risks losing the goodwill built up with registered employers throughout the implementation of the amended Act.

We can however see that one issue arising out of the operation of the BP Scheme could be that any deterrent effect (whether it be a loss of bonus, or the imposition of a penalty) might not be as proximate in time to the injury event as it might be to achieve the best effect. The longer the response time - the less the perceived connection with the event that generated the response.

One option to investigate in addressing this shortcoming might be the consideration of the effect of 'no-claim bonuses', whereby any accepted claim places an employer 'at risk'.

4. Target the right employers

On this issue, the Paper states:

> *"Another related problem of incentive models is that they pay money to businesses who would have done the right thing anyway, or punish businesses who are not likely to change their behaviour simply because of an incentive scheme."*

We fail to see the issue here. An employer that does the right thing (regardless of whether it does it 'anyway' or not) should be able to access bonuses.

We believe that companies that will not change their behaviour and are therefore punished by penalties will soon feel the pinch in a globalised economy. Further, with the inception of *due diligence* duties for officers of companies under harmonised OHS laws, they will become exposed to massive fines. We believe that this is disincentive or 'stick' enough for employers to improve their performance.

The Paper goes on to state:

> *"Overall, an incentives model has to be carefully designed so that it rewards those whose behaviour has met the required standards, and penalises those whose behaviour hasn't."*

Ai Group is firmly of the view, that the current BP Scheme, in concert with the incoming and upgraded OHS laws, will do exactly that.

5. Tailor to specific employer groups

Ai Group agrees that all businesses are not all the same and that they do indeed have different attributes and needs. The assertion that employers *"also respond in different ways to incentives and penalties"* is again offered without support.

We make the observation that the current levy structure is tiered (self-insurers, larger companies with 200+ employees and smaller companies) and does provide differentiation within it through industry classifications. Whilst not perfect, we believe that these perform as well as any other 'simple' regime that WorkCover might contemplate.

6. Loss matters

Ai Group takes strong exception to the attitude taken in the Paper in respect of incentives, the Paper states:

> *"This is an important principle which says that 'sticks' matter more than 'carrots'. In other words punitive measures tend to change behaviour more effectively than bonuses."*[21]

Ai Group would also inquire as to from where this "important principle" was taken? Indeed on page 12 the authors seem contradict themselves when they state:

> *"Punitive systems that feature heavy penalties are usually only effective for businesses that respond to a 'stick' approach."*

We would ask about the research that shows that people are naturally 'loss-averse'? And even if this was correct, would it not also be true that the *prospect* of loss (being the penalty 'stick' or supplementary levies or a failure to achieve bonuses), does not have the same effect?

The Paper goes on to say that:

> *"There would be less need for rewards because good behaviour would be expected as the norm rather than the exception."*

It could be strongly argued that the very same good behaviour that currently allows many companies to enjoy bonuses (which of course should be the norm), has in fact been instilled by the incentive of receiving that bonus? If that is the case, then it follows that these bonuses <u>are the drivers</u> of the good behaviour. It would seem to us that the Corporation's argument on this point is self-defeating.

By way of response to such an insensitive statement in the Paper, we will allow one of our longstanding members (that runs a small business) to respond:

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[21] Under "Loss matters" at page 11 of the Paper.

First some general comments:

I believe that without the bonus penalty scheme to encourage positive action, the only incentive will be to avoid punishment for non-compliance (fear of "the stick"). This will form a fundamental and I believe detrimental affect on the Safework culture of our workplaces that many have worked long and hard to develop. That is, we will become fear driven, as opposed to outcome and reward driven (or balanced).

I have heard it argued many, many times (by WorkCover, SafeWork SA employers and others) that there needs to be a **balanced** approach to encouraging better safety - the "carrot" for those that are essentially striving to do the right thing, to help them find ways to improve; and the "stick" approach to catch out the rogues or those who don't seem to care enough. Now though, the paper seems to be cleverly building a case for more of the big stick and less incentivizing.

The BP scheme encourages **measurement** of performance results which subsequently supports management of the **improvement** of those results. It is a good "carrot" in my view. I'm no psychologist but I would have thought any psychologist would tell you that the compliance (stick) approach, being fear based, is unhealthy and not supportive of creating co-operative, enthusiastic and energetic spirit in people. (Just ask any of the companies who were affected by the GFC panic recently how enthusiastic and bright their workplaces felt when they were facing the fears of economic survival every day?). In my opinion far more good work comes from people who are in good spirits than fearful and defensive.

Fear can make people sick. As an employer I have many matters to comply and contend with every day. There is already plenty to fear. People seem to forget sometimes that employers are people too. The last thing we need is more employers becoming "sick" with fear and as a result becoming poorer managers.

Workplace safety laws are without doubt biased toward encouraging employer compliance. They give fuel to employees to 'lean on' employers with (e.g. rights and representation, etc) but little for employers to incentivize their employees with. Schemes such as the BP scheme, not only incentivize employers at the hip pocket, they also in turn provide employers with resources to incentivize their workforce toward better results (e.g. by sharing the rewards of better performance or using the financial benefits towards better working conditions).

Another 'fear' would be that in a State where safe work outcomes are driven by fear and conscience alone, eventually the size of the "stick" will need to get bigger and bigger promoting more and more fear and less and less "enthusiastic" participation in improvement.

As you are aware, our company has a strong safe work commitment and frequently extends our resources toward doing more than other companies of our type and size. This does not make us perfect but, I believe, has helped us perform better overall than others in our industry. We do not have a perfect track record. Our levy has been reduced and increased as a result of our performance. Not all our performance results have been within our control but we still bear the cost impacts of them.

Right now we sit on the brink of (if the BP system were to be continuing) swinging well back into bonus territory after the impact of one long term claim sent us into penalty territory. We have worked very hard to improve many aspects of the safety management of our business to ensure we don't get caught in such a trap again. This has involved team and management approaches to improvement as well as incentives for safety performance. You can imagine that after so much effort we are not happy at the prospect that we will not be see our expected and significant cost reductions next year.

We have been employing workers in SA for over 20 years now and without doubt, the amount of levy we have paid into the scheme well and truly exceeds the costs of any claims in that time (est between 3-4 times?). In other words we have well and truly covered the impact of any costs we were responsible for and much more. What is our levy really paying for?

As I think about it right now it's all quite de-motivating.

The above is drawn from one of many comments that we have received – each one in strong support of retaining the current BP Scheme. Clearly, away from the intellectualised arena of a literature review, incentives like the BP Scheme really do matter - and really do drive behaviour.

7. Be simple to explain and simple to run

In this respect, the Paper states:

> *"The best models should be capable of being distilled into a simple explanation, even if they are quite sophisticated. They should also be simple to run, in other words the nuts and bolts should be clear-cut and the key mechanisms simple to operate."*

Ai Group was unaware that the current BP Scheme, which is both well known and understood by employers, was not simple. Ai Group believes that the BP Scheme is simple.

The fact that it is well understood by registered employers is a key factor that should not be discounted when considering simplicity. Indeed, the Corporation's own website captures the character of the BP Scheme very succinctly as follows:

The Bonus/Penalty Scheme provides employers with a financial incentive to prevent and reduce the cost of workplace injuries. Through the scheme, WorkCover adjusts the base industry rate of a business location depending on its actual workers compensation claims experience.

Claims costs are used to measure an employer's performance. Employers who maintain lower claims costs through safe work practices and by providing suitable alternative employment for injured workers can be rewarded with a lower levy.

Penalties collected under the Bonus/Penalty Scheme for poor claims performance are redistributed as bonuses within the scheme.

8. Use a mix of solutions

Having argued for an incentive scheme that is *"simple to explain and simple to run", the Paper now offers "a mix of solutions"* as a guiding principle. It is difficult to for us to reconcile these two apparently opposing views.

In any event, we note and accord with the text where it states:

> *"Motivating stakeholders with incentives and penalties is a complex exercise in any scheme. No mechanism is perfect. Each has its merits and drawbacks. They also have natural limitations in reach – no one mechanism can be the 'cure-all' for every stakeholder or situation."*

In our view, regardless of the model(s) implemented by the Corporation, there will always be a degree of complexity involved, just as there will always be some element of cross-subsidisation.

We fail to see how the substitution of the existing BP Scheme with another complex model (which apparently might involve a mix of solutions) could possibly be simpler for any registered employer, or indeed the Corporation.

> *"Selecting the right mix of mechanisms is a bit like selecting a sporting team: there is a team plan, each member has a unique and defined role in the plan, members play to those roles, members mutually complement each other, and the whole is greater than the sum of the parts. It's all about structure, balance and teamwork."*

Again, we would like to know more about these unnamed and unattributed "researchers" that have concluded that a mix of incentive or penalty mechanisms is best. [22]

Finally, it seems to us that if a new incentive scheme is to focus on 'return-to-work' (however that is to be ascertained), that the only proxy for measurement will be approximated from amounts of income maintenance. If that is the case, bearing in mind that vast differences in the amounts that people earn and how that is constituted, then it is difficult to conceive of how this might be *"easier to explain or simpler to run"*.

9. Capitalise on the tools and resources we already have

We note that the options cited in this part of the Paper appear to pertain to 'large' employer programs. We make the point that in respect of 'large' employers and that these can be easily managed through a straightforward experience-rating process. Larger employers tend to have sufficient claim numbers and costs in its record to provide a reasonably stable population, and thereby avoid the volatility issues normally connected with smaller employers.

We see the real tests for the Scheme lying with the thousands of small to medium enterprises that comprise the rest of the registered employer population.

In any event, Ai Group strongly accords with the Paper when it says; *"we should not underrate or dismiss current and old initiatives, even if they have stopped."*

[22] Quoted from the Paper at page 12.

In our submission, this notion applies perfectly well to the incumbent BP Scheme, which has neither ceased, nor failed. In the absence of a viable alternative, we believe that the BP Scheme continues to offer the best solution to the incentives conundrum that apparently faces the Corporation. In considering the BP Scheme, the Corporation might do well to heed its own discussion in the Paper:

> *"Some [initiatives] start well but fail due to poor funding; some are poorly implemented; some are poorly communicated, and some are just the victims of bad timing. <u>But this does not mean the ideas behind these initiatives were necessarily bad."</u>* (Our emphasis)

10. Be transparent

Whilst it is a truism to say that *"any new incentives have to be trusted, and to achieve that they must work in a transparent manner",* we are bound to inquire as to how the current BP Scheme can be said to have failed on those same criteria.

Ai Group is unaware of industry raising any trust or transparency issues in relation to the BP Scheme. Indeed our feedback directly from members is quite the opposite.

11. Use an evidence-based approach

We note that the previous SABS Scheme, (which we understand has effectively stalled), did track improvements in work safety. Our experience was that in the main, this generally lead to improvements in employer performance.

We do agree that *"incentives should be based on evidence and feature concrete, measurable actions."* We would also agree that:

> *"Ideally, new models and programs should be developed carefully, based on a range of ideas that are evaluated methodically, impartially and rigorously. They should be supported by the weight of credible evidence, including academic and actuarial evaluations. Where there is no evidence base, incentives should be piloted and evaluated."*[23]

COMMENTARY ON THE 4 MODELS SET OUT IN THE PAPER

Briefly put, the Ai group cannot find sufficient merit in any of the 4 schemes discussed in the Paper to be able to recommend them to our members at this time. We offer the following comments in respect of the proposals:

1. Levy penalties suspended if employer takes remedial measures to reduce risk

To our mind, this is not an incentive scheme at all in any true sense of the word, but merely a mechanism that allows an employer's levy penalty to be suspended (not

[23] Quoted from the principle "Use and evidence based approach" at page 14 of the Paper.

waived) following a workplace injury. This suspension will be conditional on the employer meeting a set of remedial actions – presumably as determined by WorkCoverSA.

We believe that for an initiative to truly be 'an incentive' it should serve to incite action. Its nature should be proactive - not reactive, and its effects should not be purely punitive.[24] We believe that this model plays on the 'stick' without any notion whatsoever of a positive incentive.[25]

Further, this model appears to heavily rely on subjective assessments. We presume that it will be the Corporation that decides whether the remedial actions required of an employer are *"fair and tailored"* to the employer's economic capacity. We would also observe that this approach seems inconsistent with the new model OHS laws, which discuss "*grossly disproportionate*" costs, without which, an employer's economic capacity is not relevant.

We also assume that it will be the Corporation that determines an employer's economic capacity. Does this mean that WorkCoverSA will carry out a forensic examination of the employer's books to assess that capacity?

This would be a highly subjective assessment, as compared to the objective transparency offered by the current BP Scheme objectively based on actual claims costs.

We note with interest that this option does not appear to be driven by 'return to work' – the focus favoured heavily by the Corporation. Instead it seems driven by the prevention/ OHS focus – as we believe that any replacement scheme should be. On this particular aspect alone, we accord with this proposal. Again, a member relevantly comments:

> I should like to see more information on the French system mentioned in the Consultation paper. *"The French system is mainly safety-based and preventative in focus, but could be adapted to focus on return to work and other post-injury activities."* If the French system works, surely you would adopt it, not modify it to focus on post injury activities!

2. Bump-up / Bump-down levy incentive for return to work within timeframe

We note that this is a US style incentive scheme based on employers returning their injured workers to work within a given timeframe. As stated above, we do not accord with incentives being tied to return-to-work for the reasons that we have given.

Regardless of the merits or otherwise of the suggestion, we do not believe that this system can be implemented with existing claim data (unless the Corporation is of the

[24] Although there might need to be some element of punishment for non-compliant behaviour.
[25] We again refer to the feedback from our member cited at pages 19-20 of these submissions.

view that income maintenance is a viable proxy for measuring RTW). Accordingly, we would dismiss the option as not being practically viable.

Under the existing sections of the Act, there are already obligations for employers to offer regular, modified or alternative work following an injury. This obligation has recently been reinforced by the requirement for RRTWCs in workplaces with 30 or more workers.

3. '100 Points' system

Considering the discussion in the Paper, it would appear to us that this system is heavily attuned to large employers. Many of the items listed that could accrue points towards a bonus payment would be difficult for an SME to achieve.

Presumably then, this would leave SMEs, that have the least capacity to fund many of these notions, liable to penalties. This hardly seems equitable, particularly for those employers involved in the manufacturing sector that has been so hard hit during the global downturn.

For example, for a small manufacturing enterprise, the option of currently employing anyone, let alone an injured worker, would likely cause hardship - as would employer mentoring schemes or implementing voucher systems for injured workers to purchase training etc.

Further, this system appears to be inconsistent with RTW being focused on the needs of the injured worker. We are bound to ask whether it would be the employer or injured worker that decided which aspects would comprise the 100 points

4. An enhanced experience rating scheme for the largest registered employers - the Burning Cost model

We assume the 'burning cost' scheme referred to in the Paper to be the Retro-Paid Loss Premium Model from NSW. Ai Group understands the following to be relevant observations in respect of that model:

- Briefly put, 'Burning Cost' arrangements involve the payment up front of a reduced premium for the upcoming 12 months. Claims costs incurred during the 12 month window are monitored through a series of 'adjustment' or run-off periods at 15 months and then 2, 3, 4 and 5 years (post the commencement of the window). Premiums paid are adjusted accordingly. We are advised that the formulae involved are complex (note the Paper's Principle 7 – *"be easy to explain and simple to run"*), with the eventual outcome being that the worse the performance of the claims during the run-off, the higher the 'adjustments' (ie additional premiums) become.

- We also understand that employers entering the 'burning costs' scheme are required to comply with a series of qualitative and procedural criteria, as well as provide bank guarantees to the NSW Authority (under terms that we understand to be significantly more harsh than the equivalent terms for self insurers).

- Finally, we understand that from an actuarial aspect, it is generally the case with the Burning costs model that:

    1. Premium outcomes are more likely to be more volatile than the standard premium arrangements. An employer that does well is likely to get a favourable premium outcome, but if one or more large claims enter the portfolio, the results can be quite adverse. Hence the concern about volatility.

    2. That said, we understand that with 'like-for-like' modelling of an 'average' employer's outcomes, using NSW scheme statistics as a basis, the current version of NSW Burning Costs usually delivers an outcome that sits somewhere between standard premiums and self insurance. In other words, under the Burning Costs model, a typical large employer suffering no atypical events might do better than their 'standard' premium, but not as well as if it were self insured.

    3. Our information is that the original proposal for Burning Costs in NSW was heavily biased in the scheme's favour – that is, the employer had far more at risk than the scheme. We understand that WorkCover NSW was forced to revise the formulae to provide a better balance, thereby inducing reluctant employers to participate. That said, we note that the scheme has only been running for a short while. Noting that the arrangements have a 4-year run-off after the first year, the real outcomes remain too far off in the distance for a real analysis to occur.

We also understand there to be other complex considerations arising out of year-on-year participation given that the NSW model only operates on a 12 month window. Over time it is envisaged as each year's run-off adjustments can move in different directions from others – some will go up and some down. From an industry perspective, the ability of a business to forecast future premium costs in its budgeting is going to be difficult, thereby further compromising certainty.

Subject to seeing any final model however, the Ai Group would consider entry into a Burning Cost arrangement as something of a 'punt' for employers and a less conservative option than standard premiums. This would be more the case if it were one that was proposed to be based on something as subjectively assessed as 'return to work'.

POSSIBLE FEATURES OF ANY FUTURE SCHEME

Having expressed our views on the Principles set out in the Paper, we now offer some alternative concepts for the Corporation's consideration within the 12 month window that we have sought.

In doing so, it must be made absolutely clear that Ai Group does not necessarily support or advocate any of these options.

We merely "add them to the mix" as discussion points, together with the 4 models raised in the Paper. We would of course be more than willing to discuss any developed models as part of wide-ranging and frank stakeholder consultation. No doubt the Corporation will consider whether there is, in its view, merit in any of the following:

A "tiered approach" seems appropriate

Firstly, if the BP Scheme is to be replaced, it would seem that a tiered approach may be required.

For some large employers experience-rating is an option with a precedent, given that there are a relatively small number of them and that they generally have relatively stable claim numbers over time. (However, there will be some large employers that have very low claim numbers because they *"do the right thing"* in respect of injury prevention and OH&S).

Medium and small employers will present the main challenges to any incentive arrangement due to their claims volatility. For these employers, a single claim can create volatile swings, negating experience-rating at the location level as an option. Accordingly, any location-based scheme for small and medium sized companies will need to be de-sensitised in much the same way that the BP Scheme eventually was. The issue then becomes the becomes the dilution effect, which can therefore be self-defeating. As a general premise then, the smaller the size of the companies participating, the less sensitive the scheme tends to be (as now).

Having said all of this, the main problem with tiered approaches is how to treat employers that vary widely in size throughout the year, due to seasonality or other factors. Possible alternatives to a tiered approach might include:

- A no-claim bonus approach for smaller employers. This is discussed further below;

- A system of enhanced excesses distributed through the life of each claim in exchange for reduced levies. For example an employer that is confident of its performance might opt for a 30% or 50% excess on all claim costs in exchange for *x*% levy discount. We would describe this as a more direct form of experience rating;

- A BP 'type' scheme that kicks in when the employer passes through some action limit threshold - set at say 10% above or below the SAWIC median performance measured by some combination of claim numbers and costs; and/ or

- No scheme at all other than a more sensitive levy structure (noting however, that this would involve lifting the 7.5% levy cap, with all of the political ramifications that go with that).

Ai Group also raises the following discussion points for the Corporation's consideration:

For small employers – '"no claim bonuses"

Whilst we have no data on which to rely, the Corporation would seem to have an option to install a higher threshold at which the BP Scheme can be accessed.

We note that when the Corporation was considering such a change in November 2006, it proposed to raise the entry level from $200 to $100,000. The view of EEASA (as we were then) and Ai Group's view now, is that this change was too great in its scope and annexed all but 1.5% of registered employers. It could be that a more moderate change might meet with a lesser opposition. This will have the effect of annexing a pool of small employers that suffer wild volatility when they infrequently do incur a claim.

That said, the Ai Group does NOT advocate such a change which we would see as a retrograde step. We remain of the view that the existence of bonuses does drive improved preventative behaviours at the workplace, therefore reducing claims and impacting on return to work rates (albeit indirectly) by eliminating the need for RTW efforts at their source.

In relation to smaller employers, if it is the Corporations view that any deterrent motivation is not close enough in time under the BP Scheme to drive improved behaviour, then perhaps results might be improved through a scheme of 'no-claim bonuses', whereby, employers would be put 'at risk' in respect of accepted claims.[26]

Self-Managed employer schemes

We understand that at some previous stage in the Scheme's history, there was a concept of "Self Managed Employers".

We also understood that whilst this scheme had some merits, it was previously limited by IT constraints. Given advances in technology, it might be an opportune time to revisit those arrangements.

We understood this proposal to be something akin to self-insured employers, but without the "insured" element (which remains with WorkCover).

We believe that such an arrangement might be suitable for medium and large companies, or groups of smaller companies that are organised into regional groups.

As we understand the proposal, these employers effectively manage their own claims (without the assistance of say EML). Because of the proximity to, and immediacy of, any claims costs this model drives improved behaviour.

Accordingly, the employer is in a more direct control of claims costs, overall leading to a reduced liability (and therefore a reduction in premiums paid to WorkCoverSA). Overall, this type of arrangement should have the ability to drive costs down and allow the employer(s) more direct claims management and allowing EML to focus on the remainder of registered employers in the scheme.

Such grouping arrangements might possibly hold some merit for individual employers of sufficient size, or perhaps a regional pool of employers. But in any event the employer(s) will need to have a sufficient remuneration and volume of claims to administratively justify its existence.

[26] Of course, this might also create unacceptable volatility. It could also increase gaming for small employers with a lot to lose, and may form an incentive to stay out of the scheme, thus limiting the Corporation's ability to influence RTW options.

We believe that such an arrangement will incentivise employers by allowing them the local ownership of claims (and therefore an increased interest in their resolution) and of course, return to work. Subject to some regulatory oversight by WorkCoverSA, we believe that this can occur without withdrawing registered employers (and their levies) from the centralised WorkCover Scheme.

Industry-based insurance schemes or 'Mutuals'

There also exist the potential for Industry-based insurance schemes, or mutuals along the lines of the *Local Government Association* and *Catholic Church Insurance* models. We note that such models feature with specialist insurers in NSW such as Guild Insurance, the Coal Board and a Treasury Managed Fund).

We understand that the ultimate expression of such funds is in Germany where the entire system is run on an industry scheme basis.

A simple experience rating scheme for larger employers

Ai Group is of the view that for larger employers, a simple experience rating might suffice. In our view however, any scheme based upon experience rating for large employers would need to include the following considerations:

- The employer would have to have sufficient remuneration and claims costs in its record to provide a reasonably stable population, thereby avoiding the volatility issues normally connected with smaller employers. This may infer that experience rating might only be effective in high-risk industries;

- It follows then that experience-rating for large employers might only be available in selected industries where performance improvement is sought. Either this, or go with an 'opt-in' arrangement whereby an employer can choose to enter the system for a set minimum period; and

- Without this latter safeguard, volatile experience rating outcomes (calculated as a percentage of levies) might drive significant fluctuations in levy, since employers of this size pay millions in levies each year.

We understand experience-rating to have been previously implemented in SA with a degree of success. We understand that both Coles-Myer and Clipsal were both in a tailored experience rating regime some years ago.

CONCLUDING REMARKS

Despite our members' strong preference for the retention of the existing BP Scheme, Ai Group is not closed off to alternative models for a revised incentive scheme.

On behalf of our membership, we are asking the Corporation to defer its discontinuance of the BP Scheme for 12 months, and in the interim take us into its confidence and

convince us of the case for change – by way of a developed argument that is soundly built on firm evidence.

The Corporation's argument should, in our view, offer a viable alternative model(s) for comparison and consideration. This model(s) should also be offered for stakeholder scrutiny.

It is fair to say that in the event that the Corporation adopts such a planned approach, we would support the Corporation in its efforts to develop the model and communicate it to stakeholders, as well as seek the sign off of employers.

In the absence of any developed alternative model that has been properly communicated to stakeholders, rigorously trialed and evaluated in a controlled manner, we must remain committed to the current BP Scheme.

In making these submissions, Ai Group wishes to be absolutely clear on its 3 key strongly considered recommendations in response to the Paper:

1. In the absence of any developed alternative, the Ai Group strongly urges that the WorkCover SA Board review its decision and continue the operation of the existing BP Scheme for an extra 12 month period.

   This recommendation is based on compressed timing issues. Ai Group does not believe that any new incentive scheme can be properly written, trialed and properly implemented, as well as educated to registered employers in the time period envisaged (March to May 2010);

2. During this 12 month period, the Corporation model and trial any proposed changes or model, such that any changes implemented from 1 July 2011 have firm stakeholder support and employer sign-off;

3. Finally, we do not support any refocusing of any incentive scheme away from the current 'OHS/ prevention' focus - to one that is predominantly focussed on 'return to work'. We do not believe that the Objects of the act allow such change, nor that it can be practically and objectively implemented. Ai group firmly believes that the primary focus of any incentive scheme must predominantly remain OHS/ prevention.

This approach will have a number of distinct advantages for both WorkCoverSA and registered employers. It will:

- allow for proper stakeholder consultation on the replacement incentive scheme;
- allow the final replacement scheme to be developed carefully, based on a range of ideas that have been evaluated methodically, impartially and rigorously;[27]
- allow any replacement scheme to be piloted and evaluated in a controlled manner; and

[27] Applying the tests cited from page 14 of the Paper and quoted above.

- result in a more controlled roll-out of any new scheme, as well as the opportunity for it to be explained properly to employers.

Ai Group simply cannot see that any new incentive scheme that is to be implemented in the compressed timeframe that will be forced upon the Corporation out of the Board's March 2010 decision,[28] can be:

- *"developed carefully",* or
- based on a range of ideas that have been *"evaluated methodically, impartially and rigorously"*; or
- *"supported by the weight of credible evidence, including academic and actuarial evaluations."*

Ai Group does not believe that employers should put on risk by way of any compressed implementation window that is forced on the development of a new incentive scheme.

Should the Corporation not accept that view however, ordinary business prudence dictates that where implementation risks are raised, as in this situation, a back-up system should be in place.

Further, where regulators make significant changes to any established scheme, it is common practice to provide a 'phase in' period, transitional arrangements, or both. These help to soften any hardship that arises for individuals and demonstrates the regulator's intention to work cooperatively with affected industry/ business. In our view, such arrangements must be considered by the Corporation as part of any transition to a new incentive regime.

Finally, we reiterate our concerns in relation to the timing of this measure. Having closely consulted with our membership on this contentious issue, we are strongly of the view that the Corporation risks losing the goodwill built up with registered employers throughout the implementation of the amended Act.

We are keen to remain engaged with the Corporation. To that extent, we have not only expressed our views on the Principles set out in the Paper, but have offered some alternative concepts for the Corporation's consideration within the 12 month window that we are seeking.

We have made sought to make it absolutely clear that Ai Group does not necessarily support or advocate any of these options, but have merely "added them to the mix" as discussion points.

Ai Group will of course, be more than willing to discuss any developed models offered by the Corporation as part of wide-ranging and frank stakeholder consultations in the future.

On behalf of the Australian Industry Group, we have appreciated the opportunity to provide our views on an issue that is, and will remain, a key interest to our South Australian membership.

[28] That is, to devise and implement any new incentive scheme between its final decision in March 2010 and levy notices being issued in May 2010.

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