

Australian Industry Group

New South Wales
Workers Compensation financial
and premium supervision

Discussion Paper

Submission to
State insurance Regulatory Authority

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Ai
GROUP

NEW SOUTH WALES

WORKERS COMPENSATION FINANCIAL

AND PREMIUM SUPERVISION

SUBMISSION TO STATE INSURANCE REGULATORY AUTHORITY

Introduction

About Ai Group

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

We have ongoing contact with employers of all sizes across Australia, through the provision of membership, consulting and training services, with a strong focus on workplace relations, work health and safety and workers' compensation. This enables us to understand the key issues that employers are facing when managing these important issues which often overlap and interact.

An important part of our role is to develop strong relationships with governments and regulators across the country to provide a voice for employers when legislative and policy issues are being considered. Ai Group is a member of Safe Work Australia (SWA) and its related Strategic Issues Group – Workers' Compensation.

We engage with workers' compensation regulators in all states and have been involved in consultation on premiums in all the jurisdictions that do not utilise privately underwritten approaches. Our involvement in the various schemes for over 30 years has given us a unique insight into the pros and cons of approaches to premium setting in driving the behaviours of employers in relation to safety and workers' compensation outcomes.

In the NSW context we are in regular contact with senior staff within the State Insurance Regulatory Authority (SIRA) and Insurance and Care NSW (iCare), and welcome the opportunities provided by them to have input into the ongoing management of workers' compensation in New South Wales.

We have also appreciated the efforts that staff within iCare, and its predecessor have taken to help us to understand the intricacies of the premium (particularly the changes in 2015/16) and to assist employers when the scheme has delivered unintended consequences.

The 2015/16 Premium Changes

SIRA will be well aware of the issues that arose when the NSW premium formula changed significantly for premium policies commencing in 2015/16. Ai Group does not wish to revisit these issues here. However, they do serve to highlight the sensitivities associated with the determination and notification of premium from year to year.

Whilst there had been some general consultation undertaken by iCare leading up to these changes, the detail did not become available until the Insurance Premiums Order (IPO) was published on 5 June 2015. Many employers did not receive their formal premium calculations until well into their policy period. In lieu of this formal advice, Agents and brokers attempted to provide estimates to employers; some of these did not turn out to be very accurate.

Ai Group was contacted by a small number of members whose premium increased significantly under the changes. Ai Group assisted those members to understand the factors influencing the premium and also discussed with iCare the key areas of concern and confusion.

A summary of these areas of concern and confusion are outlined in the following section.

Late Notification of significant change

The late notification of changes meant that organisations had budgeted on projections that were generally based on the previous formula. Where the new formula resulted in significant increases there were both financial issues for organisations and reputational issues for the individuals involved in the projections.

Removal of estimates of future costs

The use of estimates of future costs (estimates) has always been a contentious issue in premium calculation systems (in more jurisdictions than just NSW). We understand the rationale behind their removal, as a lot of time was spent by employers and Agents in the negotiation of estimates.

However, the removal of estimates from the claims costs resulted in a perception that claim costs had reduced significantly on previous years. When this coincided with an increase in premium it was seen as particularly unfair by impacted employers.

Even where there was no increase in premium it still sent a message to businesses that their work health and safety (WHS) or return to work (RTW) performance had improved, because they compared the costs from the current year with the costs included in the previous year without understanding that estimates had been removed. For some employers this would have been an inaccurate conclusion.

Removal of the hindsight premium calculation

The removal of the recalculation of the premium at the end of the year is a much welcomed change, as it ensures certainty about premium payable for the current policy year.

However, the way in which this was managed meant that some claims are being used in the premium calculation four times (instead of three). The 2013/14 claims were used for a fourth time in calculating the 2015/16 premium and the 2014/15 claims were used for a fourth time in calculating the 2016/17 premium.

If premium formulae remain unchanged in 2017/18, the calculation will return to the historical approach of claims impacting the premium for three years.

Employers who had a better than normal claims performance in 2013/14 and 2014/15 will have benefited from this, whilst those that had claim spikes in those years would have been penalised.

This was particularly problematic in the 2015/16 year as the changes were not known early and employers were expecting the claim costs for 2013/14 claims to drop out of their calculations. This expectation was often reflected in premium projections and related budgets.

30% Cap on premium rate increases

Ai Group welcomed the introduction of a 30% cap on premium rate increases as part of the new premium calculation. However, the communication of the cap was unclear; partly due to the delays in finalising premiums and issuing formal premium notices.

In the early stages of the premium notification process Agents and brokers were advising employers that they had to apply for the cap; at the same time iCare was assuring Ai Group that the cap would apply to all employers. Once again this created unnecessary angst amongst employers who were facing significant increases.

Change to premium notices

The new premium notices provide information that is clearer than that provided in previous notices. However, some complications have arisen where the employer involved has unusual circumstances. For example:

- When the cap was applied to an employer, the Agent was required to override the information on the notice. This resulted in two issues: the description of the Claims Performance Adjustment (in the Three Easy Steps summary) did not match the calculation; and the subsets of the premium did not always add up to the total figure advised for payment.
- The illustrative minimum/maximum coloured wheel included on the premium notice only illustrates the risk premium and does not take into account the further adjustments: 10% ESI; dust diseases contribution; and apprentice incentive. For most employers this disparity is not a major concern. However, for organisations that employ a lot of apprentices, especially group training organisations, this is not a true illustration of the potential premiums. In those circumstances it portrays the possible minimum and maximum premium payable as being much higher than is the case once the apprentice incentive is applied.

Role of Agents

Acknowledging that employers generally only contact Ai Group when things go wrong, it was our experience that the Agents involved in the premium issues we were addressing were not working as an ally of iCare. This is not unique to this premium change, or to NSW.

As the Agents do not have control of the premium formula, and they generally wish to maintain a good relationship with their clients, they are unlikely to strongly defend a change that an employer is not happy about. They also may not have visibility of the rationale behind the change at scheme level.

However, it was very unhelpful when employers were being provided inaccurate information about the premium changes, and the rationale behind those changes, to employers. On occasions we found ourselves feeling like we had to defend iCare, as the Agent's feedback was not coinciding with what we had been told by iCare.

Employer perceptions

The challenge with making amendments to the workers' compensation premium scheme is that there is very often a belief amongst those employers who experience an increase that the changes have been made to increase the total amount of premium collected.

Ai Group reinforces the message with employers that, where workers' compensation is not privately underwritten, the premium collection is a closed system. Other than when there is a deliberate decision to increase or decrease the average premium, one employer's loss is another employer's gain.

However, this perception will continue amongst many involved in the scheme - that an individual employer's increasing premium is about collecting more money whereas an individual employer's decreasing premium reflects good management by that employer.

The importance of stability, predictability and transparency

Stability and predictability in premium systems achieve two important outcomes. The most obvious of these is the ability of employers to budget for their workers' compensation premium in advance. A less obvious, but possibly more important, outcome is the impact the premium can have on an organisation's approach to work health and safety and return to work.

In addition to the premium system being designed to fund the delivery of compensation and services to injured workers, the premium system should also be signalling that good WHS preventative practices and timely return to work after injury will result in reduced costs for the employer.

The current premium calculation allows employers to predict their premium much more easily than the previous approach; they can also easily calculate their minimum and maximum premiums for planning purposes.

This certainty is dependent on the premium calculation method not changing drastically or unexpectedly from one year to the next.

Transparency is essential if the above objectives are to be met. Employers and their advisers need to have access to information that assists them to understand the premium and to understand how the actions of employers can impact on that premium.

This can occur by producing a *Guide to the Premium* that is much easier to understand than the previous IPOs and by providing access to explanatory information for individual employer premium calculations.

It has been our experience in various workers' compensation schemes that a desire to "simplify" the invoicing process often results in explanatory information being removed from the premium notice. For the majority of employers, especially small employers, this is an appropriate approach. However, for experience rated employers access to this information is essential; if it is not included on the notice there must be advice on what additional information is available, and where it can be accessed.

The context of our submission

Ai Group collectively represents a range of employers, varying by: industry; size; and claims experience. Our submission considers what is fair and predictable for all employers, and how the premium system can support the desired employer behaviour of improving WHS and RTW outcomes. In the long run this will help to build a sustainable scheme that is able to deliver appropriate support to injured workers at a reasonable cost to employers.

Responding to the discussion Paper

Premium (policies of insurance)

For many years, the NSW workers' compensation premium has been established by an annual IPO made by the Governor with the advice of the Executive Council.

In 2015/16, this requirement changed and the premium governance framework is now established through the [Market Practice and Premiums Guidelines](#) (MPPGs) issued by SIRA. This is a major change for NSW; it is also a significant variation from similar premium systems in Victoria, Queensland and South Australia.

It appears that the intention is to give iCare and specialised insurers more flexibility in setting premiums; hence moving away from the government control that has been a feature of the Australian schemes that are not privately underwritten for around 30 years.

Flexibility and innovation may be welcomed by many. However, as a new feature in a compulsory insurance scheme, employers will be approaching this transition with scepticism and concern.

Hence, the role of SIRA will be crucial in assuring employers that there is an appropriate governance and oversight that ensures fair allocation of premiums across the scheme, and a competitive average premium rate for the state.

The guidelines and standards that provide SIRA with financial and prudential oversight (outlined on page 8 of the discussion paper) are important and we welcome the opportunity to contribute to their development and ongoing monitoring.

For the remainder of this submission we will follow the format of the discussion paper that poses specific focus questions for each area; the questions are repeated in dotpointed italics, with our answers following.

Risks

The discussion paper highlights that the key risks SIRA is attempting to mitigate through active supervision and regulation are:

- sustainable and affordable premium system
 - information availability, consumer protection and review avenues for policy holders
 - minimising premium volatility
 - reducing incentives to game the system
 - ensuring that costs by employer industry or category are reflective of their risk.
- *Are there any other key risks that SIRA should be addressing through supervision and regulation of the premium system?*

Ai Group agrees with the risks specified and has not identified any other risks that SIRA should be considering.

Availability of premium information for employers

The IPO has previously provided detailed information about the premium calculation. However, it did so in a way that required a strong background in premiums and some very detailed analysis. This is particularly the case for scenarios that were out of the ordinary. A key principle that should be followed when providing the information in the future is to make it as clear and succinct as possible.

- *What information should be made publicly available regarding a licensed insurer's premium filing?*

It is Ai Group's view that the default answer to this question is that, in the case of iCare, the premium filing should be publicly available unless the information may breach the confidentiality of policy holders.

Based on the current information to be included in the filing (as outlined in the MPPGs, pp.19-20), it would appear that confidentiality issues would only arise if an individual employer can be identified through their domination within a WIC.

Therefore, it may be appropriate to exclude the information about premiums and wages by WIC code, as required by subparagraphs 8.2.2(e) (i) & (ii) of the MPPGs.

In relation to licensed insurers, it would be appropriate to exclude a projection of the insurer's capital position at the end of the fund year, as required by the second 8.2.2(e) [numbering error in the document]. It may also be argued that this information should be made available to those who are eligible to be insured by the specialised insurer, but not the general public.

- *What information about premiums and how premiums are calculated should be made public?*

As the nominal insurer, all relevant information about iCare premiums should be public. Information about specialised insurer premiums should be easily available to any employer who is eligible to take out a policy with that insurer.

Clear information should be made available about the premium calculation, and should be tailored to the specific characteristics of the employer. There may need to be information targeted at specific audiences, e.g. *Calculating your premium if you employ apprentices; Calculating your premium if you are a new employer; Calculating your premium if you buy an existing business*. This approach would mean that each employer would know that all the information provided is relevant to them.

- *What should SIRA publish and what should insurers publish?*

The insurers should be responsible for producing the information that is provided to their policy holders. Without this ownership, there is a risk that SIRA and the insurer will be at odds with each other, and able to "point the finger", rather than identify solutions.

However, SIRA should have final approval of high level documents which inform policy holders about the premium calculation. This would give employers confidence that the information provided was an accurate representation of the situation.

- *Should this information be made available through both the insurer and SIRA?*

This information should be made available through both the insurer and SIRA.

- *What is the best way to provide this information?*

The information should be easily accessible on the internet in both html and PDF (or similar downloadable and printable documents) and in formats that can be easily accessed and read on mobile devices.

However, it must be recognised that smaller employers may not have the necessary skills or resources to access and/or print sophisticated documents and may not be comfortable reading documents online. For this reason printed versions should be easily available and their existence promoted to employers.

- *Should SIRA provide a premium comparison calculator on its website where more than one insurer can provide a policy of insurance?*

It is Ai Group's view that premium calculators should be developed by the insurer. It may be appropriate for SIRA to host those calculators on their website for easy access. At present there are only a small number of specialised insurers with a narrow eligibility base. Unless this changes in the future, the value of a comparison calculator will be quite limited.

It is important to recognise that the concept of a calculator can be challenging within the workers' compensation system. The current [Victorian premium simulator](#) illustrates how complex this can be.

Utilising the current premium formula, an employer would need to have easy access to the information they declared for the preceding three years' remuneration, the claims costs recorded by their current insurer and their industry rate. For a comparison calculator to be effective there would need to be a way that the employer could require that information from their current insurer in a simple and clear format in order to utilise it in the calculator.

- *What performance data and reporting should SIRA provide and publish regarding insurers?*

Performance data for specialised insurers should be made available to eligible employers.

Performance data for iCare should be publicly available to all.

There are two types of performance data relating to workers' compensation insurers that would be of interest to employers and their advisers: financial performance; and claims management and RTW performance.

Financial performance

Financial information, such as Return on Investment, Break Even premium etc. would be relatively easy to share at an insurer level. Any information about financial performance should present two headline figures: one related to *profit from operations*; the other related to *profit from investment*. This approach means that poor performance cannot be hidden by great investment returns; and a strong performing scheme is not incorrectly assessed due to a downturn in investment outcomes.

Claims management and return to work performance

Whilst this data may be relevant to the specialised insurers, in the case of iCare this performance is more a reflection of Agent performance and would only be relevant if presented for each scheme Agent, rather than collated and presented as iCare performance.

- *What is the best way to provide this information?*

The majority of employers will be interested in high level data in a *one-pager* format.

However, employer associations would welcome the opportunity to dissect iCare's data in more detail to enable them to actively engage with SIRA and iCare on the stability of the scheme before any major adjustments to premiums or benefits are needed to correct any adverse trends.

Cross subsidies – classes of employers

The question of cross-subsidies is a vexed one. In Ai Group's experience, two factors seem to influence employers' views of cross subsidies. The first of these is the premium an employer is paying compared to the tariff premium rate and the premium paid by similar employers. The second is the employer's perception of the fairness of the costs that are taken into account in calculating the premium; if the employer feels they do not have control over the claim being accepted or the costs incurred, they are more to defend cross subsidies.

As a general principle, it is Ai Group's view that cross subsidies are not an appropriate economic or system tool.

Cross-subsidies that reduce premiums for high-risk activities also have the effect of blunting the price incentive for those employers and industries to actively reduce their risk. This does them a favour in the short-term (by reducing their premium costs) but not in the longer term (by allowing their level of risk to remain higher than it otherwise might have been if the premium price were higher). In addition, the potential long-term impact on injured workers may be negatively impacted by cross-subsidies, through poor WHS and RTW outcomes.

The workers' compensation scheme allocates employers to industry classifications, largely based on ANZSIC (Australian New Zealand Standard Industry Classification) codes. Whilst this is not a perfect classification process in all circumstances, it allows for the recent claims experience of that industry to establish a tariff premium rate that reflects the risk of that industry. High claims costs will result in a high tariff premium rate, whilst low claims costs will result in a low tariff premium rate.

Two key objectives of workers' compensation systems are to provide incentives to prevent injury and illness and to facilitate return to work; the setting of tariff premium rates that reflect risk are part of the messaging to support these objectives.

In relation to workers' compensation we should start from the basis of no cross-subsidies, and then determine where there are specific circumstances that warrant a variation from this approach.

- *What is your view on the appropriate level of cross subsidies between classes of employers across industries?*

It is not appropriate to introduce cross-subsidies across industries. As outlined above, the risk profile of the industry should be reflected in the tariff premium rate. Low risk industries should not be required to subsidise high risk industries and neither should high risk industries subsidise low risk industries. This approach is based on the scheme working so as to, as far as possible, remove cost drivers that an employer cannot directly or indirectly influence or control.

- *What is your view on the appropriate level of cross subsidies between classes of employers based on employer size?*

Compulsory *insurance* is a key feature of workers' compensation systems. Whilst workers' compensation has many features that are different to other insurance offerings, for small employers it needs to operate as an insurance product.

A small employer who has one significant claim needs to be protected from huge increases in premium that would, in any event, be unlikely to cover the costs of the claim.

This does not mean that large employers need to subsidise small employers rather than for small employers the “cross-subsidy” is in the nature of risk pooling.

If the tariff premium rates are set appropriately, the pooling of risk amongst small employers should allow for sufficient premium to be collected from these employers to pool risk among this group, without the need for them to be subsidised by large employers for whom premiums can more closely reflect their individual claim experience.

Complaints, reviews and appeals

- *What avenues for complaints, reviews and appeals should be provided for in the MPPGs?*

The MPPGs must include opportunities for complaints, reviews and appeals about premium.

It has been our experience that iCare, and their predecessor organisation, have been responsive to situations where the premium formulae has resulted in unintended and expensive outcomes for employers, e.g. change of policy period resulting in an old claim being used four times instead of three; grouping provisions resulting in an 18% premium for a small employer with one claim.

Considering these scenarios it would be easy to argue that the insurer is the appropriate decision maker for complaints, reviews and appeals. However, whilst they should be the first stage of any process, there does need to be an independent review process; especially in relation to the nominal insurer.

- *Should the MPPGs be prescriptive regarding timeframes, processes and escalations that are applicable to all licensed insurers?*

Some level of prescription, particularly in relation to timeframes, is necessary to allow for stability in the scheme. However, it has been our experience that employers who have an issue with their premium often do not find their way to good advice for some time. Therefore, there should be some flexibility around these timeframes if the employer can demonstrate why they did not initiate the process earlier.

The MPPGs, or related guidelines, should also be prescriptive on forms of notifications that must be supplied to the employer in relation to having an ability to escalate their issue to an independent body.

- *Should the MPPGs allow for a final SIRA determination on premium matters regarding industry, wages, claims costs and worker classifications?*

The MPPGs should allow for SIRA to be the final determinant on these matters. As a compulsory system, it is important to demonstrate that there is a governing body that can consider the decisions of the insurers, particularly iCare. Without this, there will be no confidence in the system.

Wage audits

- *Should SIRA require each licensed insurer to establish and maintain a wage audit program?*

Wage audits are a crucial part of any workers' compensation premium system, to ensure that all employers are making their fair contribution to the scheme. Each licensed insurer should be required to establish and maintain a wage audit program.

- *Should SIRA mandate the minimum requirements for a program within the MPPGs?*

It may be appropriate for SIRA to mandate minimum requirements. However, our final view on this would depend on what was included within those requirements.

- *How should wage audits be conducted and in what circumstances?*

There should be a combination of random wage audits, and those that are targeted due to industry design or current intelligence. For example, industries with high levels of sub-contracting may get a higher focus to consider whether the employer is declaring deemed workers.

Where previous audits have identified that an employer is consistently compliant, they should be exempt from future audits unless a particular issue is identified that would lead to a targeted audit.

- *What processes should be put in place regarding SIRA exercising powers under section 174?*

Ai Group does not have a view on this issue?

Cross-border insurance provisions

- *What updates should be applied to the cross-border insurance provisions?*

The legislation

The most significant benefit of the cross-border arrangements is that the legislative provisions are consistent across all Australian jurisdictions, with some minor variations of wording without impact on intent. Most jurisdictions have also developed guidance material. In NSW, this is the [Cross border arrangements for workers compensation: Guide \(March 2012\)](#)

It is noted that, in 2014, the ACT made amendments to section 36B of their Act, which addresses the cross-border issues. This could be seen as significant given the level of cross border activity between NSW and the ACT.

However, the legislative changes involved:

- including specific examples in the legislation, that are the same as those provided in the guidance material in other states, including NSW;
- introducing an additional clarification in relation to where the worker is *usually based*, which is very similar to the information provided in section 3.3 of the NSW guide; and
- introducing additional clarification in relation to the *employer's usual place of business*, which is very similar to the information provided in section 3.4 of the NSW guide.

Ai Group is not aware of any reason why the NSW legislative provisions would need to be amended, as long as this information continues to be in the guide. If however, SIRA is aware of interpretation issues that could benefit from this information being included in the legislation, Ai Group would not object to that occurring.

Guidance Material

Ai Group has reviewed the guidance material that has been issued by a number of jurisdictions. There is a lot of consistency between the guidance material, even down to using the same examples; this is useful as it illustrates that the legislation is being interpreted consistently within the guidance material.

We note that WorkSafe Victoria updated their [Premium Guideline – Interstate Workers](#) in August 2016. A new example has been included to illustrate their Step 3, which is referred to as Test C in New South Wales. It is our understanding that this new example is based on a September 2015 decision of the Western Australian Supreme Court, [Ethnic Interpreters and Translators Pty Ltd v Sabri-Matanagh \[2015\] WASCA 186 \(16 September 2015\)](#).

There may be value in the NSW guide also being updated to incorporate this additional example.

If any more extensive amendments are made to the guidelines, we would encourage this to be done at a national level to ensure the continued consistent operation of the cross border provisions within Australia.

- *Should the cross-border insurance provision be included within the MPPGs, as an annexure, or be maintained as a separate guide?*

It may be appropriate to include information about the cross-border insurance provisions in the MPPG. However, if this occurs the material should also be maintained as a separate guide. It is important that employers have easy access to the information and including it in the MPPG would not be very user friendly for them.

Apprentices/internships

- *Should the MPPGs prescribe the application of the incentive as per the IPO?*

The apprentice incentive should be clearly specified in the MPPG.

- *If the MPPGs are to prescribe the application of the apprentice incentive, should the methodology be changed?*

When considering how the apprentice incentive may be amended, it is useful to look at how this issue is addressed in other similar Australian jurisdictions.

- Queensland does not provide any reduction in premium for apprentices.
- South Australia applies the apprentice (and trainee) incentive in the same manner as NSW: wages are declared and used, together with apprentice claims costs, in the performance calculation; an apprentice incentive is then calculated by multiplying apprentice wages by the tariff premium rate, and reducing the premium payable by that amount.
- Victoria excludes apprentice (and trainee) remuneration from the declarable remuneration; the cost of claims made by apprentices (and trainees) is used in the premium calculation, and compared to the wages of the remaining workers in the organisation.

Each of these approaches has pros and cons.

Where there is no premium reduction for engaging apprentices, cross-subsidies are avoided.

Where some premium reduction is applied to apprentices (and trainees) it reduces the disincentives associated with employing workers with low skills that require significant training.

It could be argued that the Victorian approach provides a more direct premium reduction, by excluding apprentice remuneration from the calculation. However, as the claims costs are still included, the impact of claims costs is greater as those costs are being compared to a lower remuneration base.

It is Ai Group's view that there is no perfect way to provide a financial incentive to employ apprentices, but it is important that some incentive is provided. We acknowledge that our support of financial incentives to engage apprentices (and trainees) is not in line with our general position about cross-subsidies. However, this is one of the exceptions to the rule that should be considered.

Separate consideration may need to be given to how these incentives should be applied to Group Training Organisations that provide a specialised education, training and placement role for young, inexperienced workers.

- *Should the incentive be applicable to all licensed insurers?*

It would seem appropriate that the same set of rules apply to all insurers.

- *Should the incentive be expanded to include internships and other training programs?*

Trainees

The NSW Office of State Revenue provides a payroll tax rebate on wages paid to apprentices and trainees recognised by the NSW Department of Industry and under the definition of an apprentice or trainee in the Apprenticeship and Traineeship act 2001.

It would seem to be an anomaly that trainee wages are not treated the same as apprentice wages for the purposes of workers' compensation, when there is an apprentice and trainee rebate in New South Wales for payroll tax.

Including trainees in the incentive scheme would be consistent with the approaches taken by Victoria and South Australia. In Victoria, in order to ensure that the concept of "trainee" was not abused, their scheme establishes a threshold wage level for trainees (currently \$42,920 p.a.); any "trainee" who is paid more than that is not considered to be a trainee for the purposes of workers' compensation premium.

Interns

Internships are not as well defined as apprenticeships/traineeships. Without a clear definition of what an intern is, it would be difficult to apply a rebate to this broad spectrum of employment type relationships. If the internship is required as part of the workers qualifications, it may be better to consider how they could be aligned to the exclusion that applies to high school students undertaking work experience.

Small business – employer size

- *Should there be provision for special rules regarding small business premiums?*

Most schemes that are not privately underwritten have determined that it is not appropriate to apply the experience rating to *small* employers.

It is Ai Group's understanding from various consultation processes across Australia that the main reason for this is that experience rating does not provide any real incentive for small employers to improve prevention or return to work. This is due to the complexity associated with the calculation, that small employers do not understand, and the relatively small movements in premium that experience rating produces for small employers.

- *What might these rules be?*

See our answer to the next question.

- *Should SIRA define a 'small employer' within the MPPGs? If so, on what basis, wages and base tariff premium?*

In NSW, a small employer is defined as one with a Base Tariff Premium (BTP) that does not exceed \$30,000 in the policy year. This means that small is defined by a combination of risk (as indicated by the base tariff premium rate) and remuneration. For example, this could be an employer with:

- \$3,000,000 remuneration x 1% Tariff Premium rate; or
- \$600,000 remuneration x 5% Tariff Premium rate.

These small employers are not experience rated. However, they can earn a 10% discount on premium if they have no claims, or if they return injured workers to work within 4 weeks.

In contrast:

- Victoria defines small as an employer with annual remuneration less than or equal to \$200,000; small employers pay the industry rate, irrespective of their claims experience.
- Queensland defines small as an employer with annual remuneration equal to or less than \$1.5m; 5 categories of performance are applied to these employers resulting in a premium range of 80% of industry rate (equivalent to tariff premium rate in NSW) through to 120% of industry rate.

- South Australia does not specifically define a small employer; they apply a sliding scale to their discount and penalty process, categorising employers according to base tariff premium (calculated in the same way as is done in NSW) into the following size categories:

\$0<\$10k; \$10k<\$50k; \$50k<\$100k; \$100k<\$500k; \$500k<\$1m; >\$1m.

Larger bonuses and penalties apply as the BTP increases.

Note: When SA was using an experience rated scheme, small employers were excluded from the experience rated scheme; a small employer was defined as having less than \$20,000 base premium and/or paying less than \$300,000 in remuneration.

It is Ai Group's view that it is appropriate to maintain a separate approach to calculating premium for small employers.

It is not clear whether the current approach provides a sufficient incentive for employers to improve prevention or return to work outcomes. A 10% reduction in premium would be \$3,000 for the largest small employer in the scheme; this is not a lot to spend on work health and safety improvements, or to compensate the disruption involved in facilitating return to work. However, it may provide a psychological incentive and a feeling of fairness amongst small employers.

Ai Group does not see any immediate need to change the current approach. It may be valuable to undertake an evaluation of the outcomes achieved by the Employer Safety Incentive and the Return to Work Incentive, to inform future approaches to small business.

In determining what constitutes a small employer, the current approach means that a relatively small organisation could be defined as a large employer because they have a high tariff premium rate and highly paid employees, whilst a much larger organisation could be excluded because they have a much lower tariff premium rate and pay low average wages.

A simpler, and more equitable approach, would be to utilise annual remuneration as the determinant of employer size.

Definition of a worker

- *Should SIRA issue guidelines regarding the definition of a worker?*

It is Ai Group's experience that many employers are unaware of their obligations to determine whether a contractor is really a deemed worker.

It is essential that clear guidelines are issued by SIRA regarding the definition of worker. The current online [Worker or Contractor Tool](#) and easy access to the [Subcontractors Statement](#) are essential resources for employers that must be maintained.

- *Should the workers status ruling service continue with regard to the MPPGs?*

The workers status ruling service should be continued. It is particularly beneficial for employers to receive information they can rely on when they have a complex contracting arrangement in place. Without this service, employers may need to seek expensive external advice which may be comforting to the employer but could be overturned by iCare or SIRA at a later date as the result of an audit or injury.

- *How do changes to the economy impact on the definition of a worker?*

We are already seeing the development of new working arrangements that have the potential to complicate the application of current rules.

We note the recent [UK decision regarding Uber drivers](#) (28 October 2016), where a *Reserved Judgment on Preliminary Hearing* has determined that Uber drivers could not be treated as self-employed, for the purposes of the UK Employment Rights Act 1996 and the UK National Minimum Wage Act 1998.

This move to new forms of engagement, which may ultimately be viewed as establishing at least a "deemed worker" connection is also illustrated in the current activity of Unions NSW in relation to Airtasker; the focus is on establishing that advertised rates are at least equivalent to rates that would be paid to workers.

Given the rapid changes being facilitated by what is generally being referred to as *digital disruption* it is unlikely that any of us can predict what issues will need to be addressed in coming years.

SIRA should keep a watching brief, along with other Australian regulators, to identify emerging engagement arrangements that may need to be addressed by guidance and/or legislative amendments.

Definition of an industry

The use of WICs to classify workplaces is an imperfect approach, yet no Australian scheme has identified a better approach. Over many years of advising employers on industry classification decisions and appeals we have found that some current business activities do not neatly fit into the classification that has been applied to them. However, as ANZSIC codes are updated over time, it is hoped that these new and emerging industries will be better reflected.

We note that most jurisdictions have made some adjustments to ANZSICs when adopting WICs in order to address specific nuances of the workers' compensation schemes.

Examples are outlined below:

Queensland extension of ANZSIC

The [QLD Government Gazette](#) that details the WICs states at the commencement of Schedule 2:

2 Column 2 of the WIC table contains the WorkCover Industry Classifications. The WorkCover Industry Classifications are based on ANZSIC. The following WIC codes have been created by extending the ANZSIC class:

019912, 019923, 052918, 052929, 060063, 060074, 080122, 080133, 080223, 080234, 080324, 080335, 080425, 080436, 080627, 080638, 080728, 080739, 080921, 080932, 099022, 099033, 101125, 101136, 101226, 101237, 109023, 109034, 132028, 132039, 134019, 134043, 310915, 310926, 310948, 310959, 321219, 321243, 510129, 510131, 521223, 521234, 641913, 641935, 671218, 671231, 692414, 692436, 694023, 694034, 721214, 721236, 731338, 731349, 752016, 752027, 752062, 771208, 771232, 771917, 771928, 810112, 8101G1, 8101G2, 8101G3, 8101G4, 821114, 821125, 953122, 953133, 955912, 955945.

Utilising the highlighted classifications above to illustrate: ANZSIC 0529 is Other Agriculture and Fishing Support Services, and includes a number of aerial activities within the classification. Queensland have adopted 052918 as Other Agriculture and Fishing Support Services, and then established a separate classification of 052929 as Aerial Agricultural Services.

Victoria's new approach to retirement village operation

Another example is that of WorkSafe Victoria and the allocation of retirement village operation. Under ANZSIC 2006, this activity is allocated to Aged Care Residential Services, together with aged care hostels and nursing homes. Investigations by WorkSafe identified that retirement village operation, which involved independent living, did not fit within the aged care sector which generally includes some form of assisted living, up to and including nursing care.

Subsequently, in the 2016/17 premium year, retirement village operation has been removed from Aged Care Residential Services. Instead, Agents take into account relevant factors to determine which of the following classifications should be applied to the operation of each retirement village:

- Residential property operators
- Real Estate Services
- Aged Care Residential Services (determined by the predominant activity when operating both independent living and aged care services)

It is valuable to note that WorkSafe Victoria has discussed this issue with the ABS (Australian Bureau of Statistics) which authored the ANZSIC; the ABS acknowledges the issues raised and will consider this in any future updates. However, we are not aware of any imminent plans to review the current ANZSIC codes.

Victoria separates private and non-private education

In Victoria, there has been a long standing approach to separate public and private provision of education services. It is our understanding that this was introduced to overcome concerns that private providers would be subsidising public education. The higher industry rates applied to the non-private sector in 2016/17 illustrate the reasons for this separation. It is unclear why this approach has not been applied to hospitals.

Classification	Industry Rate
P80211 Primary Education, Private Sector	0.479%
P80212 Primary Education, Non-Private Sector	0.775%
P80221 Secondary Education, Private Sector	0.559%
P80222 Secondary Education, Non-Private Sector	1.203%
P80241 Special School Education, Private Sector	1.301%
P80242 Special School Education, Non-Private Sector	2.865%

Treatment of Labour Hire

ANZSIC 2006 has one code to cover labour hire arrangements:

Class 7212 Labour Supply Services

This class consists of units mainly engaged in supplying their own employees to clients' businesses on a fee or contract basis. Assignments are usually temporary and performed under the supervision of staff of the client unit, at the client's work site.

All jurisdictions have found different ways to apply the WIC process to establish a broader application of labour hire activities that better reflects the risks associated with the placement of labour hire personnel across a range of diverse workplaces.

Considering this small selection of examples outlined above, it is clear that it will not be possible to apply ANZSIC codes to the WIC system without modification. The key is to ensure that modifications that do occur are based on sound reasoning and that appropriate consultation and communication occurs in relation to any amendments.

- *Should WICs be retained and updated by SIRA?*

As the regulator, it is appropriate for SIRA to maintain the classification system. This logically includes updating WICs.

- *What should the process be for allowing updates to WICs, including included and excluded activities?*

Wherever possible the WIC system should remain *pure*. The more changes that are made to vary the application from the base ANZSIC, the more pressure there will be for further amendments. Importantly, for a separate classification to be established there must be sufficient economic activity in that industry to enable credible experience to be established.

- *What changes are recommended for 2017/18 in regard to the existing WICs?*

Ai Group is not aware of any specific need for changes to the existing WICs, other than a general view that ANZSIC 2006 should be adopted as the basis for the WICs.

However, we have had some recent experience with employers in other jurisdictions where the application of a *manufacturing* classification has been the default position of the scheme because the final output is a manufactured product.

In today's manufacturing environment, many of the products being produced have a high level of technological input (and associated costs), and the cost of manufacturing the product is a small component of the overall inputs; these employers do not see it as equitable to be allocated to a manufacturing classification when the majority of their employees are undertaking activities that are unrelated to the risks associated with manufacturing. Consideration should be given to how this issue can be addressed in the future.

- *Should SIRA issue guidance regarding the application of industries to business activities as previously provided in the Insurance Premiums Order?*

As the regulator, SIRA should continue to issue this guidance.

- *Should SIRA consider moving WICs to an ANZSIC 2006 basis?*

The majority of Australian jurisdictions have adopted ANZSIC 2006, whilst NSW is still applying ANZSIC 1993. It is Ai Group's view that it would be appropriate for NSW to also adopt the 2006 version.

- *Should SIRA consider using only ANZSIC 2006 as the basis of industry classifications?*

As outlined above, there will need to be some adjustment to ANZSIC codes when applying them to the industry classifications to ensure that unintended cross-subsidies are not created due to the different reason for WICs (to reflect risk) from ANZSIC (to reflect economic activity).

- *Should SIRA use WICs or ANZSIC 2006 to provide a table of relativities for workers compensation in NSW?*

Ai Group does not have a view on this issue.

- *Should SIRA provide a range of acceptable tariff rates for each WIC that a licensed insurer can provide a premium filing against?*

It is important that employers have confidence that tariff rates have been set according to reliable actuarial analysis; particularly for small employers whose claims experience does not have a significant impact on the premium paid.

This could be done by SIRA setting acceptable ranges, or by SIRA's assessment of the premium filing. Ai Group does not have a view on which approach is best.

Once finalised, the final tariff rates allocated to WICs must be published by either SIRA or the insurer.

- Should SIRA continue to use some kind of industry-based premium relativity groups as the basis for reducing the risk of unfair pricing or cross subsidies?

It is important that employers have confidence that SIRA has processes in place to reduce the risk of unfair pricing and cross subsidies. Ai Group does not have a view on the best way for this to be achieved. However, any amendments that may result in a lower premium for one category of employers should take into account where the additional costs will be allocated.

- Should SIRA analyse and publish the actual average underwriting cost per policy for each industry across the licensed insurers?

This information should be available to be accessed by interested stakeholders.

- Should SIRA develop a simpler method for reducing the risk of unfair premiums or cross subsidies between industries?

Ai Group does not have a view on this issue.

- What allowance should SIRA make for insurers' expenses (eg claims handling expenses, marketing costs and overhead expenses) in determining whether premiums are appropriately priced?

Ai Group does not have a specific view on this issue. However, whilst ensuring that premiums are not artificially inflated, it is essential that the payments to insurers are calculated in a way to ensure their ongoing viability. The issue of visibility of costs, as considered elsewhere in the discussion paper would be relevant.

Financial and Prudential

It is not within Ai Group's sphere of expertise to comment on many of the issues in this part of the discussion paper. Where we do not wish to comment, we have left the questions in the document to inform our members of the issues being considered, but have not addressed the questions.

The discussion paper states the key risks SIRA is attempting to mitigate through active supervision and regulation of the financial and prudential requirements of insurers are:

- sustainability of insurer participants
- minimising risks to employers and the NSW Government
- ensuring that the system is financially sustainable.

Financial and prudential risks

- *Are there any other key risks that SIRA should be addressing through supervision and regulation of the financial and prudential requirements of insurers?*

It would be appropriate to include a reference to "minimising the risks to injured workers". Risks to injured workers may include inadequate oversight of claims management; inappropriate cost cutting; and in the most extreme situation disruption through insurer failure.

Prudential requirements for insurers offering policies of insurance

Ai Group does not have a view on the questions under this heading.

- How should SIRA approach the use of regulations and insurer risks in applying prudential standards to workers compensation insurers in NSW?
- How should SIRA approach the use of regulations and insurer/market risk in applying investment requirements and capital adequacy to workers compensation insurers in NSW?
- How should SIRA balance the risk that an insurer presents to the workers compensation scheme and the consistent application of general insurer prudential requirements

Self-insurance security requirements

Employers who are self-insurers are the ones best able to comment on the questions in this section of the document. The key requirement is for the security arrangements to be fair and to ensure that other participants in the scheme do not ultimately bear the costs of self insurers that cannot meet their liabilities.

- Should SIRA consider a level adequacy approach when determining security requirements, or a fixed prudential margin, or a combination of both? If both, at what point should a level of adequacy approach be applied?
- Given the issue with a fixed prudential margin for smaller self-insurers, should SIRA impose a minimum security requirement to cover the incidence of a large claim?
- If so, what should the minimum be and on what basis?
- Government entities, such as local councils and universities, are currently approved by SIRA to provide a reduced security requirement. Should these government entities continue to provide a reduced security requirement, provide the full security requirement or be excluded from the security requirements entirely? Why?
- SIRA has a minimum claims handling expense assumption of 6 per cent. Should this assumption be changed? If so, to what value and why?

Self-insurance financial ability requirements

Employers who are self-insurers are the ones best able to comment on the questions in this section of the document. The key requirement is for the security arrangements to be fair and to ensure that other participants in the scheme do not ultimately bear the costs of self insurers who cannot meet their liabilities.

- Are the financial ratios in Table 1 and Table 2 appropriate for assessing the financial ability of private self-insurers and self-insured local councils? If not, what other financial ratios should SIRA consider and why?

Determining self-insurance 'deemed premium' for Operational Fund contributions:

- How should SIRA determine the 'deemed premium' of self-insurers for 2017 onwards?

Market practices and competition

The discussion paper outlines that the key risks SIRA is attempting to mitigate through active supervision and regulation of market practices and competition are:

- ensuring value for money through the promotion of effective competition
- unfair or anti-competitive practices
- ensuring compliance with NSW Government policies.

Market practices and competition risks

- *Are there any other key risks that SIRA should be addressing through supervision and regulation of market practices and competition?*

In a closed premium system, where one employer's saving can be at the cost of others, it is important that the governance arrangements monitor trends in gaming behaviours (such as splitting workplaces or setting up holding companies for the sole purpose of avoiding premiums).

Government competition policy

- What factors should SIRA consider in applying the principles of the NSW competitive neutrality policy across industries and market sectors in the workers compensation system?

Ai Group does not have the expertise in the insurance environment to comment on this issue.

Anti-competitive behaviour

- What action, if any, should SIRA take in light of any increased risks where there exists a dominant market player?

Ai Group does not have the expertise in the insurance environment to comment on this issue.

Guidelines and standards

Workers Compensation Regulation 2016

In relation to the questions below, Ai Group does not have a view as to whether the insurance provisions should be in the Regulations of the MPPG. The key issue is accessibility of that information for employers and their advisers.

- Which provisions should remain within the regulation?
- Which provisions should be moved from the regulation but maintained within the MPPGs allowing SIRA to retain regulatory control?
- How will employers/brokers be provided with information on the application of insurer provisions, noting that the information is readily available now?
- How should the Government apply prudential standards regulation, noting the considerations highlighted in the 'Prudential' section of this paper?

Market Practice and Premiums Guidelines

- *Do the defined principles allow SIRA to effectively regulate and assess premium filings?*

The defined principles appear to cover all of the key areas of insurer behaviour that are relevant. They should allow SIRA to effectively regulate and assess premium filings.

- *Should the MPPGs apply to Coal Mines Insurance?*

Ai Group does not have a view on this issue.

- *Should SIRA alter the principles for 2017/18 MPPGs?*

Ai Group does not see any need to alter the principles for 2017/18 MPPGs.

- *What defined requirements should SIRA maintain in the MPPGs?*
- *What components of the Insurance Premiums Order should SIRA maintain as a requirement within the MPPGs?*

Ai Group will answer these two questions collectively.

For many years, the IPO has provided certainty and transparency in relation to the premium calculation in New South Wales. It is also a feature of the comparative schemes in Victorian, Queensland and South Australia.

Moving away from this level of prescription will be welcome by some, but approached with trepidation, cynicism and concern by others.

In the table below we have listed the items currently covered in the IPO and the MPPGs and commented on their relevance to the ongoing future scheme.

IPO	MPPG	Comment
	Premium Principles	These are a crucial requirement of an insurance scheme which will allow insurers greater flexibility than there has previously been in setting premiums.
Premium formula, including how cost of claims is determined (covered in various parts of the IPO, including schedules).	Specifies that previous calculation methods are to be maintained	Adopt an approach within the MPPGs that focuses on the principles, and ensure that the premium filing process enables SIRA to address any issues associated with predictability, stability and transparency. See also our comments below this table.
Discounts for premiums paid in full		This should be determined by the insurer.
Recovery of excess		This should be included in the MPPG.
Late payment prescribed fees		This should be prescribed in the MPPG to avoid insurers charging unregulated late payment fees.
Exemption limit for certain employers		Ai Group does not have a view on this.
Transitional adjustment provisional		This should be retained, and continue into the future.
Meaning of experience-rated employer and small employer		This should be addressed in the MPPG.
Motor vehicle and accommodation allowances		This could be determined by the insurer, but would need to be clearly documented in guidance material.
Classification of employer's business		This should be controlled by SIRA and form part of the MPPG.
Determination of wages		This could be determined by the insurer, but would need to be clearly documented in guidance material.

IPO	MPPG	Comment
Meaning of “predecessor”		This should be controlled by SIRA and form part of the MPPG.
Reduction of premium for employers of previously injured workers etc.		This should be controlled by SIRA and form part of the MPPG.
	Employer premium dispute processes	Should be included in future MPPGs
	Optional alternative method	This may become redundant as insurers have greater flexibility to set premiums.
Retro-paid loss policies		This could be determined by the insurer, but would need to be clearly documented in guidance material.

It is our understanding that one of the key objectives of splitting the regulator from the insurance operations is to create a separation of powers and responsibilities. It is also our understanding that iCare (as the nominal insurer) is seeking greater flexibility in determining and applying appropriate premium approaches.

For these reasons, it would be inappropriate for SIRA to retain control over the primary premium formula. SIRA’s role should be to provide an appropriate level of governance to ensure that the insurers apply the principles as currently written within the MPPGs.

- *Should SIRA maintain the 31 March premium filing timeframe?*

On page 35 of the discussion paper it is stated that “Feedback provided on the 2016/17 MPPGs indicated that this timeframe would be difficult to meet for insurers.”

It is Ai Group’s view that timing of premium filings is a matter for SIRA to determine with the insurers.

What is important to employers is that they get timely notification of potential changes to the premium formula, and tariff premium rates, well before the commencement of their policy year.

It may be appropriate to set two different filing dates: 31 March (or later) if the insurer does not propose to make any significant changes; and an earlier date if they do propose significant changes.

It would be appropriate for the MPPGs to set a date at which insurers are required to make their premium information available to be accessed by employers, and their advisers.

- *What challenges does a premium filing date of 31 March present?*

It is not appropriate for Ai Group to comment on this issue.

- *What date may be more appropriate in allowing for a balance between claims experience accuracy and premium filing review and approval?*

It is not appropriate for Ai Group to comment on this issue.

- *Should SIRA allow an interim filing at 31 March each year which would include any major changes to premium calculations with a final annual filing to be provided by 30 April allowing for the development of claims experience?*

This may address our issue raised above, regarding timeliness of information to employers.

- *Should SIRA publish standard premium filing templates and information to support the premium filing process?*

This is not an issue that impacts employers directly. However, anything that avoids delays should be implemented.

- *What information should be required in the standard templates?*

It is not appropriate for Ai Group to comment on this issue.

- *Given the nature of the workers compensation system, the CTP Market Practice Guidelines, requirements and accreditation processes, what additional market practice requirements should SIRA consider for inclusion in the MPPGs?*

Ai Group has not identified any other requirements that should be included.

Licensed Insurer Business Plan Guidelines

Ai Group does not have a view on questions outlined below.

- Do the LIBPGs and defined requirements as published for 2016 meet the objectives of section 202B of the 1987 Act?
- Does the lodgement timeframe of 30 September each year meet and align with the ongoing business planning cycles of licensed insurers?
- Does the lodgement timeframe of 30 September each year meet and align with external regulatory reporting requirements of licensed insurers?
- What additional documentation should be noted in the LIBPGs?
- Should the LIBPGs stipulate particular documentation that must be provided?

Regulator premium information requirements

Ai Group does not have a view on the questions outlined below.

- What information should be provided by insurers on an individual policy level to ensure SIRA can monitor and manage the scheme?
- Should the information requirements be consistent between all licensed insurers?
- If changes are to be implemented to premium information collection, what implementation timeframe should be put in place to ensure that all insurers are able to comply?