Public Comment

Proposed Accident Compensation Regulations 2012
Regulatory Impact Statement

November 2011

Volume 1 - Regulatory Impact Statement

This Regulatory Impact Statement has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1994* and the Victorian Guide to Regulation.

Published by WorkSafe Victoria.

NOTICE OF PREPARATION OF REGULATORY IMPACT STATEMENT

Accident Compensation Regulations 2012

Notice is given that, in accordance with section 11 of the *Subordinate Legislation Act 1994*, a Regulatory Impact Statement (RIS) has been prepared in relation to the proposed Accident Compensation Regulations 2012 (proposed Regulations).

Copies of the RIS and the proposed Regulations are now available for public review and comment. Closing date for submissions is 9 January 2012.

The proposed Regulations will replace the Accident Compensation Regulations 2001, which are due to expire on 13 March 2012.

The objective of these Regulations is to prescribe amounts not to be taken as remuneration for certain classes of contractors, the formula for calculating contributions payable to the Authority by self-insurers and prescribing certain other matters or things required or permitted to be prescribed or necessary to be prescribed to give effect to the *Accident Compensation Act 1985* and the *Accident Compensation (WorkCover Insurance) Act 1993*.

The RIS discusses possible alternatives to the proposed Regulations including alternative options for the self-insurer contributions formula. The RIS concludes that the proposed Regulations are the best means of achieving the stated objectives.

The RIS considers the costs and benefits of the proposed Regulations and concludes that adoption of the proposed Regulations will yield net benefits over the next 10 years.

Public comments are invited on the RIS and the proposed Regulations. Copies can be obtained by downloading from WorkSafe's website www.worksafe.vic.gov.au, or ordering from WorkSafe Victoria at the address below or email to accidentcomp_regulations@worksafe.vic.gov.au.

Written submissions should be mailed **no later than close of business on 9 January 2012** to:

Manager, Legislative Services
Legislative, Policy and Employer Services
WorkSafe Victoria
222 Exhibition St
MELBOURNE VIC 3000

Submissions by e-mail should be forwarded by the same date to the following address: accidentcomp_regulations@worksafe.vic.gov.au.

All submissions will be treated as public documents unless clearly identified as being confidential.

Enquiries about the regulatory package should be directed to the Manager, Legislative Services – Heather Holt (Tel: 9641 1329) or Shevaun Reynolds (Tel: 9091 4289).

Greg Tweedly
Chief Executive
Victorian WorkCover Authority

This Regulatory Impact Statement was prepared for WorkSafe Victoria. WorkSafe Victoria is a trading name of the Victorian WorkCover Authority.

Table of contents

ABBREVIATIONS

AC Act – *Accident Compensation Act 1985*

ACWI Act – *Accident Compensation (WorkCover Insurance) Act 1993*

the current Regulations – Accident Compensation Regulations 2001

the proposed Regulations – Accident Compensation Regulations 2012

ESC – Essential Services Commission

OHS – occupational health and safety

MCA – Multi-criteria analysis

NCP – National Competition Policy

PIAWE – Pre-Injury Average Weekly Earnings

Premier's Guidelines – Subordinate Legislation Act 1994 Guidelines

remuneration – refers to 'rateable remuneration' of employees as defined in the AC Act

RIS – Regulatory Impact Statement

SIAV – Self Insurers Association of Victoria

VCAT – Victorian Civil and Administrative Tribunal

VCEC – Victorian Competition and Efficiency Commission

WorkCover scheme – the compulsory workers' accident compensation insurance scheme

WorkSafe Victoria – a trading name of the Victorian WorkCover Authority

EXECUTIVE SUMMARY

The *Accident Compensation Act 1985* ("the AC Act") and the *Accident Compensation (WorkCover Insurance) Act 1993* ("the ACWI Act") establish the current legislative framework for workers' compensation in Victoria—a scheme funded by employers to compensate workers who are injured as a consequence of their employment.

Under the scheme, workers are entitled to receive no-fault compensation, which includes compensation for loss of income, compensation for permanent impairment and payment of reasonable costs of medical and rehabilitation services. The compensation for income loss is linked to the injured workers' pre-injury average weekly earnings (PIAWE).

Insurance under the scheme is against an employer's liability to pay compensation as well as common law liabilities related to compensable injuries. Employers' premiums are calculated based on the size of their 'rateable remuneration', the risk across their industry, and their own history of injury.

The AC Act also allows for self-insurance. Self-insurance has been part of the Victorian workers' compensation scheme since the scheme's inception. Eligible employers may apply to become self-insured if they can satisfy WorkSafe that they have appropriate performance in health and safety, including safety management systems and can reliably make provision for workers' injury compensation payments and manage claims. Advantages of self-insurance include providing employers with a choice for their workers' compensation arrangements, providing a direct financial incentive to employers to improve OHS and return to work performance and enabling direct management of claims. The essence of self-insurance is that the self-insurer be able to provide at least an equivalence to having WorkCover insurance. It is not intended to permit employers to avoid the essential objectives of the compulsory insurance.

While employers can decide to self-insure, they cannot opt out of OHS laws and of the OHS services provided by WorkSafe Victoria. While self-insured employers do not pay insurance premiums to WorkSafe Victoria, there is a legislative requirement that they make a financial contribution towards the operating costs of the WorkSafe Victoria, which includes the costs of OHS services.

At June 2011 there were 36 approved self-insured employers in Victoria, down from 39 at June 2006, out of a pool of over 500 large employers that would most likely be eligible to self-insure. Self-insurers comprise only 0.02 per cent of the number of employers in the state, although they cover around 7.53 per cent of Victoria's workers (based on remuneration).

The objective of the proposed regulations is to facilitate and enable the effective operation of the AC and ACWI Acts in a manner that is efficient, equitable, transparent, and furthers the achievement of policy objectives.

The proposed Regulations and a number of feasible alternatives were assessed against the 'base case' of no regulations using a multi-criteria analysis, with the criteria being efficiency, equity and impact on achievement of policy objectives.

Amounts deemed not to be remuneration for contractors

Under the AC Act, an injured worker's compensation payments are determined on the basis of the worker's pre-injury average weekly earnings (PIAWE). PIAWE is defined in section 5A and is intended to cover trends in current remuneration arrangements such as overtime, shift allowances, piece rates, commissions and non-pecuniary benefits. For contractors, the total amount paid or payable by the principal to the contractor under the contractual arrangement, less the applicable prescribed percentage (if any), is deemed to be remuneration for the purposes of the AC and ACWI Acts.

The rationale for setting deductions is to recognise that in such circumstances, the amount paid to the contractor also includes a portion to cover the costs of materials and provision of equipment (i.e. non-labour components of the contract value).

By deeming these contractors to be 'workers', they enjoy the benefits of being able to receive compensation in case of injury. Conversely, the AC Act deems that their principals (those to whom they contract) are deemed employers and are required to pay premiums to WorkSafe.

This is a horizontal equity problem. If the insurance were based on total contract values, the principals would pay higher premiums than they would for an employee in the same situation. Therefore, it is on equity grounds that principals should not have to pay premiums on amounts that, had it been a typical employment arrangement, would fall outside the definition of remuneration. On the other hand, following an injury, a worker should not be entitled to receive higher compensation than an otherwise identical employee merely because that worker supplies their own materials and equipment as part of their work.

There is also an efficiency argument for setting deductions—the choice of using employment or contracting arrangements balances the needs of the two parties, and should not be artificially biased from differences in regulatory outcomes. The arrangements for workers compensation should not be used to either promote or discourage a type of contracting behaviour.

There are currently 18 categories of contractors for which a deduction percentage is prescribed. WorkSafe has reviewed the types of contractors covered by the current regulations and considers, based on the effectiveness of the current practices for determining remuneration, that no changes are required to the types of contractors to be included. In the absence of specific data to inform the appropriate proportions, WorkSafe has sought to rely on these percentages as determined by the SRO, and to simplify burdens on parties through harmonisation as far as possible.

The proposed Regulations address both efficiency and equity problems identified, while being simple and transparent. A key benefit is the harmonisation of the amounts with the deductions used by the State Revenue Office in calculating payroll tax. An alternative option of a single rate reduction for all contractor types was also assessed. While this would have even greater simplicity and transparency, it would dampen the efficiency and equity outcomes of the proposed Regulations.

Option	MCA Score
A separate reduction percentage prescribed for each of the listed contractor types, based on the rates used by the SRO for calculating payroll tax (*the proposed Regulations*)	+13.4
A single reduction percentage for all contractor types	+6.7

Arbitrary changes to individual percentages was identified as an option but not assessed, as the impacts on efficiency and equity are unclear. No non-regulatory options were relevant.

The proposed Regulations affect all contractors that fall within the 18 categories, but do not include contractors where WorkSafe determines that they are carrying on an independent trade or business. The proposed Regulations are the same as the current Regulations in relation to amounts deemed not to be remuneration for contractors.

Self-insurer contributions

Under section 146 the AC Act, a self-insurer must pay contributions into the WorkCover Authority Fund. WorkSafe may, in accordance with the regulations, determine the amount of contributions payable by a self-insurer having regard to the rateable remuneration of the self-insurer.

There are equity and efficiency arguments for requiring self-insurers to contribute to the Fund. The Fund is used to provide a range of services from which self-insurers benefit. Further, the decision to self-insure has consequential impacts on the remaining scheme-insured employers, which have equity and efficiency dimensions.

In addition to administering the insurance scheme to compensate injured workers and their dependants, WorkSafe Victoria provides health and safety services, a disputation service and Medical Panels and manages a range of other accident compensation programs and services, as well as rehabilitation and return to work.

WorkSafe Victoria provides a range of other services and programs consistent with its legislative function that provide benefit to both self-insured and scheme-insured employers. These include:

- Some insurance-related services which benefit both self-insured and scheme-insured employers
- Costs incidental to the administration of the *Occupational Health and Safety Act 2004* and regular programmed inspections and accident and incident investigation
- WorkSafe costs related to its functions in reducing injuries and promoting OHS, such as education campaigns, and provision of legislation and standard setting
- Costs of the Victorian WorkCover Authority board of management and its advisory committees.

These services have 'public good' characteristics, in that once provided by WorkSafe, self-insurers cannot be excluded from deriving benefit, and for which use by self-insurers does not diminish the benefit to others. The consequence of services of this nature is that non-scheme employers could "free ride"—enjoy the benefit of the services without paying for them. This is because it is usually very difficult to impose a charge on such free riders.

In a market situation, the free-rider problem leads to sub-optimal provision of services, and is typically overcome by government provision with an appropriate charging mechanism. This is achieved in Victoria by vesting these responsibilities in WorkSafe Victoria and allowing a contribution for such services to be included with insurance premiums, or direct contributions from self-insured employers. The AC Act requires that WorkSafe determine the appropriate contributions, based on remuneration of the employer, according to a methodology to be specified by regulation. In the absence of such a methodology, no contributions would be able to be recovered from self-insured employers.

The proposed regulations require that self-insurer contributions be determined as a proportional share (with shares based on remuneration of each self-insurer compared to total remuneration of employers in the state) of:

- All WorkSafe costs related to the County Court, the Magistrates' Court and the VCAT arising out of the operation of the AC Act, any remuneration of members of Medical Panels, and costs and expenses incurred in connection with conciliation of disputes
- Sixty per cent of all other "operating costs"[1], which includes items such WorkSafe administration costs not associated with the insurance scheme, remuneration of the Board of Directors and staff of WorkSafe and members of the WorkCover Advisory Committee or Occupational Health and Safety Advisory Committee, regulatory costs associated with administering the OHS legislation, and program costs such as workplace safety awareness campaigns.

The proposed regulations retain the current structure and demarcation between scheme-based costs and other operating costs, and preserve the current implicit discount to self-insurers of the other operating costs.

All 36 approved self-insurers in Victoria are affected by the requirement to make contributions. As the proposed regulations maintain the current approach, there are no new impacts on self-insurers.

The 60 per cent factor embedded in the current regulations was introduced as a transitional measure because the costs included in the formula were being significantly increased at that time. Self-insurer contributions were subject to specific review in 2003, and again as part of a review in 2008, neither of which resulted in a clearly settled position.

Compared to a base case of no contributions from self-insurers, the proposed formula will result in a more equitable recovery of costs for benefits received, either directly or indirectly, from WorkSafe in terms of programs and services. WorkSafe does not expect that the proposed regulations will change the level of services provided, and therefore no change in administration costs is expected for WorkSafe or for self-insured employers.

Overall, there is no net financial cost directly attributable to the contributions formula, as contributions from self-insured employers are offset by reductions (or smaller increases) to premiums of scheme employers. Therefore the net effect is redistribution between the parties by reducing the cross-subsidy from scheme-insured employers to self-insured employers under the base case. While over the medium to longer term, a more

[1] Excluding operating costs specifically identified as not relating to self-insurers.

efficient allocation of costs is welfare enhancing in a general sense, the impact on individual employers would be relatively negligible when any redistribution was divided amongst scheme-insured employers[2].

Retention of the 'discount' in the contributions formula means that there is a cross-subsidy from scheme-insured employers to self-insurers. Compared to an allocation of costs fully based on remuneration shares (which is only a proxy for share of benefits), the cross subsidy of $6.9 million per year is an additional average cost of around $33 per scheme employer per year (although some scheme employers will face higher or lower than average costs), with an average benefit to self-insurers of around $192,000 per year. The actual value to individual scheme-insured employers is difficult to ascertain. Any reduction in the discount could potentially result in a reduction in the scheme's "break even premium", and in turn, the scheme's average premium rate. The impact on the premiums of scheme-insured employers would depend on the magnitude of any such change in the average premium rate, which is also dependent on a number of other factors, including the discretion of the WorkSafe Board. Individual scheme-insured employers' premiums are also affected by factors such as their rateable remuneration, industry classification and claims history. The value of this cross-subsidy is around $57 million (NPV) over the life of the proposed regulations.

Feasible alternatives were identified and assessed using a multi-criteria analysis.

Option	MCA Score
The proposed Regulations—i.e. the approach in the current Regulations including maintaining an effective 40 per cent discount on the majority of the costs to be recovered from self-insurers	+45.0
The approach in the current Regulations, but with a fee-for-service arrangement where use of a service is attributable to an individual employer	+43.3
Full recovery of operating (non-scheme) costs, based on remuneration shares	+43.3
Full recovery phased in over two years	+44.0

The proposed Regulations achieved the highest score, and therefore were considered, based on this analytical approach, to be preferable to all other alternatives. This is because, within the statutory requirement for the Victorian worker's compensation scheme to be self-financing, the proposed Regulations were considered to provide an appropriate trade-off between: (i) supporting self-insurance for eligible employers, and (ii) the impacts of the residual cross-subsidy on scheme employers.

In particular, an option to remove the current 'discount' in the formula was considered. The qualitative scoring of this option reflected the risk that a significant increase in the amount of self-insurance contributions could lead to a number of current self-insurers either ceasing to be self-insurers, or exiting the Victorian scheme altogether in favour of the Comcare scheme. This was a qualitative assessment, based on a number of assumptions. These assumptions included the removal of the moratorium from joining

[2] A reduction in the discount would potentially result in a reduction in the scheme's "break even premium", and in turn, the scheme's average premium rate. The exact reduction in the premiums of scheme-insured employers would depend on the magnitude of any such change in the average premium rate, which is also dependent on a number of other factors, including the discretion of the WorkSafe Board.

Comcare (currently scheduled to end on 30 December 2011), that at least three and possibly up to ten self insurers could be eligible to join Comcare after that time, and that self-insurers exiting the Victoria system would only lead to a negligible reduction in WorkSafe operating costs. It was also assumed that, other things being equal, that employers would be likely to change systems based on costs. Data on the differences in costs between self-insurer contributions and Comcare fees was limited as Comcare bases its fees on the individual employer rather than a standard formula; therefore the analysis is based on averaged costs, with a recognition that 'low risk' employers may enjoy even greater cost savings under the Comcare scheme.

In particular, a key disadvantage of removing the current 'discount' is the risk of dissuading eligible employers from applying to become self-insured. Self-insurance is essential to meeting the objectives of the scheme, such as containing costs to minimise the impact on business, maintaining a fully funded scheme and reducing the social and economic costs of injury to the community.

Further, removing the current 'discount' could risk self-insurers exiting the Victorian system in favour of the Comcare scheme. This is not a risk that is well understood, given the uncertainty in parameters of eligibility and the intentions of employers.

The inherent limitations of this multi-criteria analysis approach, the assumptions about employer behaviours, and the sensitivity of the outcome to the choice of criteria weightings are acknowledged. For example, if the immediate removal of the discount was scored -15 (instead of -20) on the policy alignment criterion, and the phased removal was scored -12 (instead of -15), these options would have an overall score equal to the proposed option. In that regard, and given the closeness of the overall scores, retention of the current approach is appropriate at the present time, with a view to undertaking further analysis in the medium term.

An available option, not reflected in the draft Regulations, is to provide that the self-contribution formula only apply for a short, fixed period, such as 3 years. This forced expiry of the formula would enable reconsideration within a few years, allowing further analysis. Stakeholders are encouraged to provide views on this option.

Further, there is merit in considering inclusion of risk-based measures in the contributions formula, but as this is not currently feasible under the AC Act, it is something that can be considered within the context of future legislative changes.

The determination of self-insurer contributions must also comply with the government's *Cost Recovery Guidelines*. Requiring self-insured employers to make a contribution to the costs of WorkSafe, from which they benefit, is consistent with the guidelines. However, as the proposed Regulations retain an effective discount on the contributions paid (of around $7 million per annum), there remains a small amount of cross-subsidisation. As noted in this RIS, removal of the discount (either immediately or phased over a number of years) would, other things being equal, improve the efficiency and equity outcomes of the recovery of WorkSafe costs, which is the objective of the Cost Recovery Guidelines. However, the Guidelines allow departure from full cost recovery where justified on other policy grounds. In this case, the policy objective is to ensure self-insurance is retained as an important and effective part of the Workcover scheme, and to provide stability for self-insurers and therefore the scheme, in particular in the current economic climate.

This RIS finds that the small cross-subsidy between scheme employers and self-insurers is justified on the basis that increases in the self-insurer contribution is likely to discourage self insurance, which would be contrary to the policy objective of supporting self-insurance and may have negative impacts on the Workcover scheme.

An option to expand the self-insurer contribution cost pool to recover 'externality' impacts—the impact on scheme employers due to the private decisions on self-insurers leaving the scheme—was identified but not assessed, as there are not currently appropriate mechanisms in place to measure such an impact reliably or to assess the impact on WorkSafe's other objectives.

Other elements of the proposed Regulations

Other elements in the proposed Regulations are administrative in nature and are required to give operational effect to the AC and ACWI Acts.

Proposed regulation	Description	Consequence if not made
5	Prescribes the particulars that, if certified in a certificate issued by WorkSafe, can be taken as evidence of those matters, and proof of those matters if there is not contrary evidence	Section 239A would be ineffective in the AC Act, increasing the burden of demonstrating evidence of amounts paid or payable by WorkSafe, including compensation payments. There are up to 50 such certificates issued per year
6	Prescribes the form of warrant for the purposes of section 240A of the AC Act	Warrants to enter and search could not be made under section 240A of the AC Act, undermining the investigative powers in the AC Act. There are about 5 warrants granted each year
7	Requires investigation of fraud to be conducted with due care, objectively, and affording all due recognition to legal rights	This regulation does not introduce any special requirements, however due to the wording of the AC Act, there is doubt about how section 248B of the AC Act would operate without a regulation in place
8	Sets a default minimum number of hours for the definition of a full-time worker at 35 hours per week where there is no applicable award	Compensation payments for injured workers not on award would not be able to be calculated, and some workers would miss a benefit afforded under the Act
9	Sets the number of hours relevant for calculating PIAWE for workers with two or more employers and no applicable award at 38 hours per week	PIAWE could not be calculated for these workers
12	States the documents necessary for compensation payments to be made to	Payments to injured workers residing overseas could not be

Proposed regulation	Description	Consequence if not made
	workers who cease to reside in Australia	made. The AC Act requires the manner and frequency of proving identity and incapacity to be prescribed by the regulations
14	Provides that contracts of insurance prescribed under previous regulations continue in force in relation to injuries arising before 4pm on 30 June 1993	Regulation is required to ensure WorkSafe enforcement rights (in particular recovery following fraud) in relation to previous insurance contracts are preserved

Other impacts

The proposed regulations do not impose a disproportionate burden on small business or adversely affect competition. The proposed regulations essentially remake the current regulations, and therefore there is no change in the regulatory burden.

Feedback on this RIS

WorkSafe Victoria seeks comment on all aspects of this RIS, and particularly in relation to the following questions:

1. Should the self-insurer contributions formula be changed to reflect the full proportionate share of the WorkSafe operating costs? What are the likely consequences of such an increase? Does this RIS appropriately reflect the risks employers being deterred from becoming self-insured, and of self-insurers leaving the Victorian system?
2. Should the contributions formula have an automatic expiry after 3 years, requiring reconsideration of the formula?
3. Are the proposed percentages for amounts of contract payments deemed not to be remuneration reasonable?
4. Is there a basis for increasing the percentage not deemed remuneration for cabinet makers to 30 per cent to harmonise with the SRO payroll tax deductions for contractors? What would be the impacts of this change?
5. Are there any likely impacts of the proposed Regulations that have not been identified in this RIS?
6. Are there other feasible options (i.e., practical and within the authority of the AC Act) that could be considered?

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1 BACKGROUND

1.1 The Victorian workers' compensation scheme (WorkCover)

Workers' compensation schemes are designed to mitigate and, as far as possible, remove the serious disadvantage that is so frequently caused by work-related injury or illness. The Victorian WorkCover scheme provides employers with compulsory insurance against the impact of loss suffered by injured workers. The scheme provides a range of benefits to injured workers, for life if required, regardless of fault, including weekly compensation, medical and paramedical treatment, attendant care and lump sum payments. Support is also provided to dependents in the case of death of a worker.

The *Accident Compensation Act 1985* ("the AC Act") made fundamental changes to the state's workers' compensation system, including public underwriting, vocational rehabilitation, work health and safety reforms and a new dispute resolution system. The AC Act and the *Accident Compensation (WorkCover Insurance) Act 1993* ("the ACWI Act") establish the current legislative framework for workers' compensation in Victoria—a scheme funded by employers to compensate workers who are injured as a consequence of their employment.

Under the scheme, workers are entitled to receive no-fault compensation, which includes compensation for loss of income, compensation for permanent impairment and payment of reasonable costs of medical and rehabilitation services. The compensation for income loss is linked to the injured workers' pre-injury average weekly earnings (PIAWE).

Insurance under the scheme is against an employer's liability to pay compensation as well as common law liabilities related to compensable injuries. Employers' premiums are calculated based on the size of their 'rateable remuneration', the risk across their industry, and their own history of injury. The AC Act also allows for self-insurance.

Premiums are paid into the WorkCover Authority Fund. Other contributions to the Fund include all penalties, fees, investment income, proceeds of sale, borrowed amounts, grants from government and other amounts received by WorkSafe under a number of Acts[3] or in connection to insurance policies. The Fund is used to fund compensation payments to workers, as well as a range of services and programs intended to reduce accidents and diseases in workplaces.

The objectives of the scheme are to:

- reduce the incidence of workplace accidents and diseases
- assist employers and workers in achieving healthy and safe working environments
- provide effective occupational rehabilitation and early return to work for injured workers
- encourage the provision of suitable employment for injured workers
- provide fair and appropriate compensation to injured workers
- contain costs to minimise the impact on business
- establish and maintain a fully funded scheme
- reduce the social and economic costs of injury to the community.

[3] The relevant Acts include legislation in relation to accident compensation, OHS, equipment and dangerous goods.

Key features of the scheme are:

- the compulsory requirement for employers to purchase insurance
- the insurance scheme is managed by a single manager, being the regulator (WorkSafe Victoria)
- centralised premium setting
- the approval of providers of occupational rehabilitation services
- provisions relating to self-insurance requirements.

The policy reasons for the scheme arrangements are[4]:

- to make provision for the effective occupational rehabilitation of injured workers and their early return to work
- to ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses
- to establish incentives that are conducive to efficiency and discourage abuse
- to establish and maintain a fully funded scheme
- in this context to improve the health and safety of persons at work and reduce the social and economic costs to the Victorian community of accident compensation.

Due to the externalities associated with workplace injury and illness, it is in the public interest that the government takes an active role in the prevention of, and responses to, workplace injury and illness. There are associated social policy objectives that the government can seek to address by being the single manager of workplace accident compensation insurance as well as regulator of rehabilitation and return to work and OHS. It is in the public interest that injured workers who are capable of returning to work, be encouraged to do so and that the correct mechanisms are in place to facilitate this process. In the absence of sufficient government intervention, rehabilitation may not be a priority for private insurers.

The single manager is publicly underwritten to ensure that employers can fund their liabilities under the AC Act and the ACWI Act. This aims to ensure that injured employees can receive the statutory benefits to which they are entitled and it may also assist in the stabilisation of premiums.

Finally, if a community wide approach is an objective of the scheme, sufficient incentives may not exist in a privatised insurance market to ensure that the social and economic costs of workplace injury and illness are reduced for the benefit of the broader community. For example, the market may fail to provide workplace accident compensation insurance at an affordable price to smaller employers or to those in high-risk industries.

At the 2010 state election, the Victorian Liberal Nationals Coalition committed to delivering compensation and rehabilitation services that meet the expectations of victims at a cost the community can afford. The Coalition is committed to running a sustainable scheme that delivers improved OHS outcomes and meets the needs of employers and employees.

[4] See Department of Treasury and Finance, *National Competition Policy Review of Victorian Workplace Accident Compensation Legislation*, December 2000.

What does WorkSafe Victoria do?

WorkSafe Victoria is a trading name of the statutory authority established by the AC Act to manage the WorkCover insurance scheme and be the regulator of Victoria's workplace occupational health and safety (OHS) and return to work requirements. WorkSafe Victoria is the underwriter of the workers' compensation scheme.

WorkSafe Victoria administers the scheme through private insurance agents, who manage claims and collect premiums on its behalf. Agents are authorised by WorkSafe Victoria to provide services to employers and injured workers in accordance with the legislation and the standards and procedures set by WorkSafe Victoria.

WorkSafe Victoria's statutory obligations are spelt out in several Acts of Parliament including:

- health and safety at work under the OHS Act
- workers' compensation and the rehabilitation of injured workers under the AC Act
- employer insurance premiums under the ACWI Act
- explosives and other dangerous goods under the *Dangerous Goods Act 1985*
- high-risk equipment used in non-work-related situations under the *Equipment (Public Safety) Act 1994*.

Broadly, the responsibilities of WorkSafe Victoria are to:

- help prevent workplace injuries
- enforce Victoria's OHS laws (including selected Commonwealth laws)
- provide reasonably priced insurance against liability for workplace injuries and disease for employers
- help injured workers back into the workforce
- manage the workers' compensation scheme by ensuring the prompt delivery of appropriate services and adopting prudent financial practices.

1.2 Self insurance

Self-insurance permits eligible employers to pay for and manage compensation claims of their workers. Self-insurers are typically large employers, and must be regarded as "fit and proper" in order to be permitted to self-insure. Advantages of self-insurance include providing employers with a choice for their workers' compensation arrangements, providing a direct financial incentive to employers to improve OHS and return to work performance and enabling direct management of claims.

Self-insurance has an important role within a sustainable scheme, by:

- providing incentives for larger employers to be high performing (so as to potentially become eligible for self-insurance)

- containing costs to minimise the impact on business (there are administrative and economic efficiency benefits for self-insurers to manage claims of their workers)

- reducing the social and economic costs of injury to the community (through direct incentives on self-insurers to reduce claims and the duration of time off work for injured workers).

To determine whether an employer is regarded as fit and proper[5] to be a self-insurer, WorkSafe has regard to:

- financial viability: whether the employer is able to meet its liabilities
- capability and capacity to administer claims for compensation
- incidence of injuries to workers and the employer's costs of claims in respect of such injuries
- the safety of the working conditions for the employer's workers
- any other matters that WorkSafe Victoria considers relevant.

Self-insurers must provide the same compensation benefits to workers as worker are entitled to under the scheme, and they must comply with the AC Act and OHS Act. The most significant benefit of self-insurance is that the employer takes on direct liability of their workplace accident compensation responsibilities. Assuming that the eligibility requirements ensure that the employer can fund those liabilities, this delivers a direct incentive for the employer to manage their overall OHS environment.

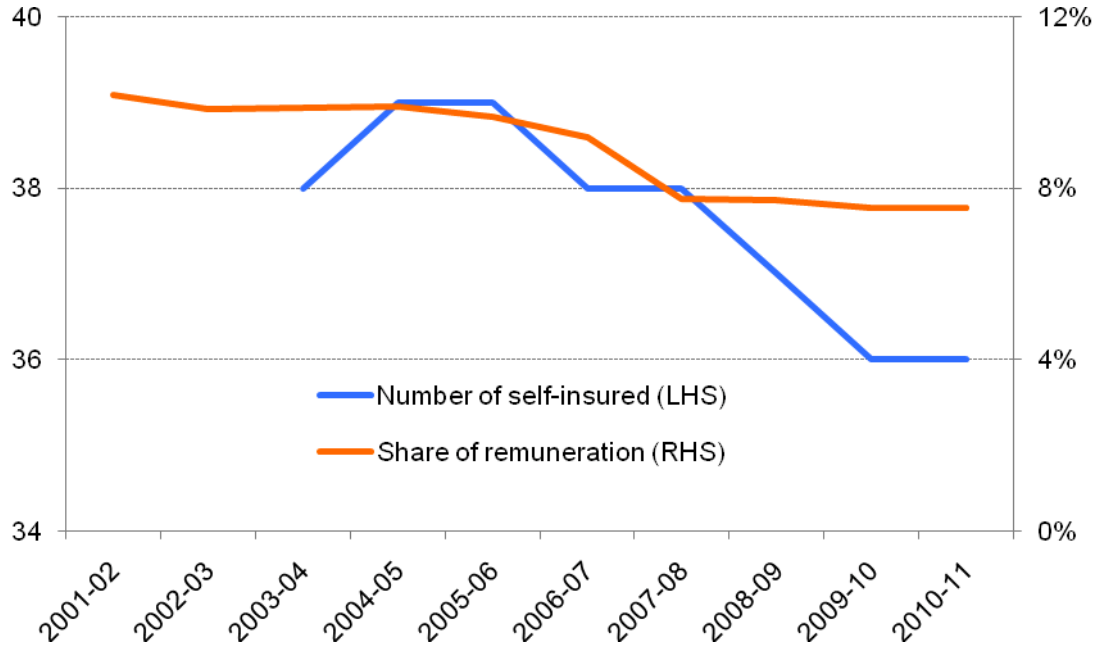
Employers can decide to self-insure, but they cannot opt out of OHS laws and of the OHS services provided by WorkSafe Victoria. While self-insured employers do not pay insurance premiums to WorkSafe Victoria, there is a legislative requirement that they make a financial contribution towards the administrative costs of the WorkCover scheme, which includes the costs of OHS services.

Alternatively, eligible Victorian employers (including self-insurers) may self-insure with Comcare.[6] There has been a moratorium on such employers joining the Comcare scheme since 2007, however this moratorium is scheduled to end on 31 December 2011. The moratorium was introduced by the Federal Government in order to examine whether the Comcare scheme provides workers with access to appropriate workplace safety and compensation arrangements. Employers that became self-insured under Comcare effectively "exited" the Victorian (or other relevant state) scheme. Under the Commonwealth legislation, employers that have workers located in Victoria but self-insure under Comcare do not contribute to the safety services provided in Victoria by WorkSafe, and are not subject to Victorian OHS laws.

At June 2011 there were 36 approved self-insured employers in Victoria, down from 39 at June 2006, out of a pool of over 500 large employers that would most likely be eligible to self-insure. Self-insurers comprise only 0.02 per cent of the number of employers in the state, although they cover around 7.53 per cent of Victoria's workers (based on remuneration).

[5] There are other requirements that also need to be met before approval to self-insure is given.
[6] Eligibility is based on whether an employer is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority.

FIGURE 1: Number of self-insured employers and share of total remuneration



Why do employers self-insure?

Employers may choose to self insure for a range of commercial reasons, including cost, a desire for autonomy, and cash flow reasons.[7] Cost factors may in turn relate to an opinion by the employer that they are over-charged in the WorkCover scheme, that they are more efficient in making provision for compensation claims than via the WorkSafe scheme, or that WorkSafe under-charges self-insured employers for services from which they benefit (relative to scheme employers).

Self-insurance may hold benefits in terms of providing more direct incentives for employers to provide safer workplaces, and encourages ownership of the process of rehabilitation and return to work.[8]

Who self-insures?

Self-insurers represent 7.53 per cent of the Victorian workforce by remuneration. Although there are a relatively small number of self-insured bodies corporate, they represent some of the largest companies in Victoria. The two biggest self-insurers, in terms of employee numbers, are Coles and Woolworths.

In 2010-11, the total 'rateable' remuneration of self-insured employers ranged from $26 million up to $1.5 billion with an average of around $280 million (their respective self-insurer contributions ranged from $32,000 to almost $2 million with an average of $355,000 (excluding GST)).

[7] Access Economics, *Pricing Methodology for Self-insurers' Contributions to the Victorian WorkCover Authority*, prepared for the Accident Compensation Act Review Secretariat, August 2008.
[8] Productivity Commission, *National Workers Compensation and Occupational Health and Safety Frameworks*, Report No. 27, 2004.

Under the AC Act, subsidiary companies cannot apply to be self-insurers; instead the approval is provided to holding companies, which covers all Victorian employees employed by all its wholly owned subsidiaries.

For the 2008 Accident Compensation Act Review (discussed below), Access Economics[9] cited data showing there were 242 self-insured employers in Australia as at 2006: 66 in New South Wales, 68 in South Australia, 38 in Victoria, 28 in Western Australia, 25 in Queensland and 17 in Tasmania.

Of relevance to the Access Economics study, South Australia had around 40 per cent of employees covered by self-insured employers, despite having a labour market around one-third the size of Victoria. In comparison to South Australia, New South Wales, and Queensland, self-insured employers represent a small proportion of the workforce.

More current data is shown in the table below, where available. Possible reasons for the wide range in use of self insurance include differences in eligibility and assessment, and whether or not public sector entities are self-insured. Costs associated with self-insurance may also explain differences. See Attachment C for further detail on arrangements in other states.

TABLE 1: Extent of self-insurance in other jurisdiction at 30 September 2010[10]

Jurisdiction	No. of employers	No. of employees
Victoria	36 licences covering 157 entities	145,400 (8%)
New South Wales	60 licences, covering 146 entities (plus 7 specialised insurers)	650,000 (17%)
Queensland	24 licences covering 237 entities (0.16%)	181 748 (10%)
Western Australia	27 entities	97 314 (8.4%)
South Australia	67 entities (0.35%)	- (36.5%)
Tasmania	13 entities	12 647 (6.1%)
Northern Territory	5 entities	4,725 (4.3%)
Australian Capital Territory	8 entities (0.07%)	-
Commonwealth (Comcare)	29 entities (13%)	160,000 (44%)
New Zealand	136 entities (0.03%)	-

Source: Safe Work Australia 2011

[9] Access Economics, op. cit., 2008.

[10] Safe Work Australia, C*omparison of Workers' Compensation Arrangements in Australia and New Zealand,* Canberra, March 2011. The figures in this table aim to give the reader an indication of the number of self-insurers in each scheme. For exact details on self-insurance statistics, readers should contact the relevant jurisdictional authority. Note that "Full Time Equivalent" estimate has been used for Victoria; this approach may vary between jurisdictions

Under section 146 of the AC Act, a self-insurer must pay contributions into the WorkCover Authority Fund. WorkSafe may, in accordance with the regulations, determine the amount of contributions payable by a self-insurer having regard to the rateable remuneration of the self-insurer.

In addition to administering the insurance scheme to compensate injured workers and their dependents, WorkSafe Victoria provides a disputation service, Medical Panels and manages a range of other accident compensation programs and services, as well as rehabilitation and return to work. These services are used by scheme- and self-insured employers.

In parallel to this, reflecting its bifurcate role, WorkSafe enforces OHS laws through the compliance, enforcement and investigation activities of the inspectorate, and promotes safe and healthy workplaces through advertising and education campaigns. WorkSafe also oversees and/or participates in the production of guidance material, compliance codes, statutory instruments and relevant legislative changes relating to both OHS and workers' compensation. These activities are designed to prevent injuries from occurring in the first place, obviate the need to pay compensation, and reduce risk and costs of the insurance scheme. All employers benefit from these activities.

1.3 Specifying 'amounts not deemed remuneration' for contractors

Under the AC Act, an injured worker's compensation payments are determined on the basis of the worker's pre-injury average weekly earnings (PIAWE). PIAWE is defined in section 5A and is intended to cover trends in current remuneration arrangements such as overtime, shift allowances, piece rates, commissions and non-pecuniary benefits. These are addressed in the sections that follow the definition.

The new Division 3 of Part 1 of the AC Act covers workers, employers and contractors, and makes special provision for particular types of contractors, including:

- Timber contractors, as defined by section 6 of the AC Act
- Other (non-transport) contractors defined in section 8 of the AC Act

Under section 6(3) of the AC Act, in relation to a timber contractor who is deemed to be a worker, the amount payable by the principal to the timber contractor, less the applicable prescribed percentage (if any), is deemed to be remuneration for the purposes of the AC and ACWI Acts.[11]

Under section 8(4)(c)(i) of the AC Act, the total amount paid or payable by the principal to the contractor under the contractual arrangement, less the applicable prescribed percentage (if any), is deemed to be remuneration for the purposes of the AC and ACWI Acts.

[11] The definition of remuneration is relevant to the operation of both the *Accident Compensation Act 1985* and the *Accident Compensation (WorkCover Insurance) Act 1993.*

1.4 The current regulations

The current regulations provide for efficient administration of the AC Act and the ACWI Act by specifying:

- various forms and evidentiary documents required for administration of the AC and ACWI Acts
- the form of warrants for entry, inspection, examination of books, and other powers as necessary to determine if the AC and/or ACWI Acts have been contravened and to enforce both Acts
- the hours that define a full-time worker for the purposes of calculating payments (in the absence of an award), and the hours relevant to calculating payments for a worker with more than one employer
- amounts not deemed to be 'remuneration' for certain type of contracts
- the manner in which an injured worker resident overseas can become entitled to payments and the forms to be used
- the time period after which WorkSafe is required to pay interest on reimbursements
- the formula to calculate contributions payable to the WorkCover Authority Fund by self-insurers

In the absence of these regulations, elements of the scheme could not operate effectively. The current regulations have been in place since 2001, although these carried forward key elements of earlier regulations, and have been subject to a number of amendments since 2001 (mostly to revoke redundant elements due to changes in the AC Act or re-align wording to other legislative changes).

The regulations deal with a relatively narrow set of items. There have not been any significant changes in the sector since 2001 that of themselves warrant material changes to these regulations. In particular, the number of self-insured employers has remained relatively stable. Further, while at the time of making the current regulations there was feedback to warrant expanding the types of contractors for which non-remuneration percentages were prescribed, there has been no such feedback since to warrant further expansion. It is noted that the current Regulations have been amended several times since 2001 to ensure they remain appropriate.

1.5 Review to date

Since the making of the current Regulations in 2001, there have been two major reviews relevant to the operation of the scheme.

In August 2003 WorkSafe Victoria commenced a Review of the Self-Insurance Arrangements in Victoria with a view to increasing the efficiency and effectiveness of the scheme. The terms of reference were established by the Board. In preparing its report, the review team consulted extensively with key stakeholders through release of a draft report for comment and a number of consultation sessions. The final report was released in August 2005. The report contains a number of recommendations for improving self-insurance in Victoria, which are being progressively implemented in a phased approach. In relation to self-insurer contributions, the report recommended referring the matter to the Essential Services Commission (ESC) for further review. The ESC released a draft report in May 2006 that recommended substantial changes to the method used to determine self-insurer contributions.

In December 2007, Peter Hanks QC was commissioned by the previous government to conduct an independent review of the AC Act and associated legislation. The terms of reference were to provide advice and recommendations in relation to:

- the need to provide fair and effective benefit and premium regimes, having regard to workers' compensation schemes in other jurisdictions and the need to secure long-term positive outcomes for injured workers;
- the fundamental need to protect the operational and financial viability of the scheme;
- identifying and resolving anomalies in the AC Act and in the operation of the scheme;
- improving employer and employee understanding of the AC Act;
- reducing the regulatory and administrative burden on employers, including through improved alignment, where appropriate, with related administrative arrangements both within the State of Victoria and with other jurisdictions; and
- improving the usability of the legislation through the removal of inoperative, irrelevant or superfluous provisions.

The review report was provided to government in August 2008. The response of the previous government on 17 June 2009 indicated broad support for many of the 151 recommendations, against which some but not all supported recommendations have been implemented. Relevantly, the review recommended expanding the pool of costs to be recovered from self-insurer contributions, and the introduction of a risk-based system to determine individual contributions of self-insurers. Consideration of this recommendation was deferred by the then government.

The Coalition government made an election commitment to undertake a full rewrite of the workers' compensation legislation, as recommended by the Hanks review. The government also committed to make premium calculations more transparent and reduce WorkSafe administration costs.

2 THE PROBLEM TO BE ADDRESSED

A Regulatory Impact Statement must articulate the rationale for government regulation, including the nature and extent of the 'problem' being addressed. These matters are discussed under each of the areas to which the proposed regulations relate.

2.1 Specifying 'amounts deemed not remuneration' for contractors

While the AC Act *allows* prescription of percentages to be deducted from contract amounts for the purposes of measuring remuneration, it does not *require* such amounts to be prescribed.

The rationale for setting deductions is to recognise that in such circumstances, the amount paid to the contractor also includes a portion to cover the costs of materials and provision of equipment (i.e. non-labour components of the contract value).

By deeming these contractors to be 'workers', they enjoy the benefits of being able to receive compensation in case of injury. Conversely, the AC Act deems that their principals (those to whom they contract) are deemed employers and are required to pay premiums to WorkSafe.

The intended coverage of the WorkCover scheme is not meant to extend to compensation of a contractor for the loss of any income that the contractor would have received from their capital. Where such contractors are injured in the performance of their work, they may be entitled to receive compensation for the loss of the labour component of their contract amount.

This is a horizontal equity problem. If the insurance were based on total contract values, the principals would pay higher premiums than they would for an employee in the same situation. Therefore, it is on equity grounds that principals should not have to pay premiums on amounts that, had it been a typical employment arrangement, would fall outside the definition of remuneration. On the other hand, following an injury, a worker should not be entitled to receive higher compensation than an otherwise identical employee merely because that worker supplies their own materials and equipment as part of their work.

There is also an efficiency argument for setting deductions—the choice of using employment or contracting arrangements balances the needs of the two parties, and should not be artificially biased from differences in regulatory outcomes. The arrangements for workers compensation should not be used to either promote or discourage a type of contracting behaviour.

A difficulty is determining the appropriate deduction. Contracts rarely stipulate the breakdown of expenses, which would enable PIAWE to be determined. In determining the correct amount, there can be high transaction costs associated with the calculation of premiums and workers' compensation benefits. Prescription of a default percentage provides employers, employees and WorkSafe with greater certainty and predictability regarding the calculations, and reduces the level of potential disputation that could otherwise result in high conciliation and legal costs.

WorkSafe does not have reliable data to establish the extent of this problem, in part because the prescription of deemed percentages has been in place for some time, and there is no comparable data for a time before the percentages were introduced. However, it is noted that in the absence of a prescribed percentage, contract principals would need to agree an amount with each contractor individually, for each contract entered. This would involve a material burden on the principal and the contractor. If subsequently disputed, which may occur if the agreed percentage is not supported by documented evidence, the matter could involve up to a day's lost time for each dispute, or more if escalated beyond a conciliation hearing.

2.2 Contributions by self-insured employers

There are equity and efficiency arguments for requiring self-insurer contributions to the Fund. The Fund is used to provide a range of services that self-insured employers use either directly or indirectly. Further, the decision to self-insure has consequential impacts on the remaining scheme-insured employers, which have equity and efficiency dimensions.

In the case of non-compensation payments from the Fund, WorkSafe seeks to recover these costs through premiums paid by insured employers, and via the contribution levied on self-insured employers. A mechanism is needed to determine the appropriate share of the cost of non-compensation services to be paid by self-insured employers. Costs of services not recovered from self-insurer contributions ultimately fall on the insured employers.

There are WorkSafe costs that relate specifically to self-insured employers, which clearly should be recovered. These include prudential oversight and administration of self-insured employers. A review[12] of WorkSafe Victoria costs in 2007 found that this represented a cost of around $2.8 million per year, or 0.7 per cent of total WorkSafe Victoria costs.

There are some services that self-insured employers use directly, contributing to the cost, and should therefore be required to contribute a share of costs. These include:

- Costs incurred by the County Court, Magistrates' Court and Victorian Civil and Administrative Tribunal (VCAT) in relation to workers' compensation matters
- Remuneration of members of Medical Panels
- The costs incurred in the conciliation of disputes

However, these are often difficult to disaggregate by end user, as these are in the nature of overheads that tend to be relatively insensitive to marginal changes in the size of the population served.

2.2.1 'Public good' services

WorkSafe Victoria provides a range of other services and programs consistent with its legislative function that provide benefit to both self-insured and scheme-insured employers. These include:

- Some insurance-related services which benefit both self-insured and scheme-insured employers, such as provision of general information

[12] PricewaterhouseCoopers (PwC), *Approach to determination of self-insurer contributions and review of calculations*, 2007; cited in Access Economics, 2008, op. cit.

- Costs incidental to the administration of the *Occupational Health and Safety Act 2004* including many regular programmed inspections, some accident and incident investigations and prosecutions of offences under the OHS Act
- WorkSafe costs related to its functions in reducing injuries and promoting OHS, such as education campaigns, and provision of legislation and standard setting
- Costs of the Victorian WorkCover Authority board of management and its advisory committees.

These services have 'public good' characteristics, in that once provided by WorkSafe, self-insurers cannot be excluded from deriving benefit, and use of such services by self-insurers does not diminish the benefit to others. The consequence of services of this nature is that non-scheme employers could "free-ride"—enjoy the benefit of the services without paying for them. This is because it is usually very difficult to impose a charge on such free riders.

In a market situation, the free-rider problem leads to sub-optimal provision of services, and is typically overcome by government provision with an appropriate charging mechanism. This is achieved in Victoria by vesting these responsibilities in WorkSafe Victoria and allowing a contribution for such services to be included with insurance premiums, or direct contributions from self-insured employers. The AC Act requires that WorkSafe determine the appropriate contributions, based on remuneration of the employer, according to a methodology to be specified by regulation. In the absence of such a methodology, no contributions would be able to be recovered from self-insured employers.

2.2.2 Consequential impacts on scheme-insured employers

The number of self-insured employers also has an impact on the remaining employers in the scheme. This is because there are certain fixed costs of operating an insurance scheme, which are shared among scheme members. As employers become self-insured, the costs are borne by a smaller number of employers. Further, as a scheme such as a centralised insurance scheme benefits from economies of scale, a smaller pool of insured employers diminishes the benefits of this scale, the consequences of which are again placed on remaining scheme-insured employers.

These impacts are characterised as negative externalities: scheme-insured employers face a higher cost of participating in the scheme as a result of the decision of an employer to self-insure.

It is difficult to determine the correct amount of 'fixed costs' without further substantial financial investigation as, to be regarded as externalities, the costs must be truly fixed, not merely 'sticky' or slow to respond to changes in the number of employers in the scheme.

Under section 146 of the AC Act, contributions made by a self-insurer to the WorkCover Authority Fund must be determined having regard to the rateable remuneration paid or payable by a self-insurer. The contributions must be applied towards the costs referred to in section 32(4)(d), (e), (f), (fa) or (i) or towards the costs incurred by WorkSafe in the administration of Division 2 of Part III or in meeting any liability incurred under section 151. These provisions relate solely to cost items that are already included in the current contribution formula.

Based on methodological limitations, WorkSafe considers there does not appear to be a sufficiently robust basis for government intervention seeking to address this 'externality' component.

2.3 Other administrative matters

The proposed regulations also prescribe a number of other administrative provisions, outlined in section 3.3 of this RIS. These specify forms, documents, and hours that are necessary for the operation of the AC and ACWI Acts. The following table summarises the impact of not having the relevant regulation in place.

These regulations are discussed in the following section, but given their nature, they are not further assessed in this RIS.

Further, proposed regulation 13 sets the period after which WorkSafe is required to pay interest on reimbursements. This is to assist businesses and encourage efficiency within WorkSafe, and is consistent with broader government policy. It is not further assessed in this RIS.

TABLE 2: Other matters covered by the proposed Regulations

Proposed regulation	Description	Consequence if not made
5	Prescribes the particulars that, if certified in a certificate issued by WorkSafe, can be taken as evidence of those matters, and proof of those matters if there is not contrary evidence	Section 239A would be ineffective in the AC Act, increasing the burden of demonstrating evidence of amounts paid or payable by WorkSafe, including compensation payments. There are up to 50 such certificates issued per annum.
6	Prescribes the form of warrant for the purposes of section 240A of the AC Act	Warrants to enter and search could not be made under section 240A of the AC Act, undermining the investigative powers in the AC Act. There are about 5 such warrants granted each year.
7	Requires investigation of fraud to be conducted with due care, objectively, and affording all due recognition to legal rights	This regulation does not introduce any special requirements, however due to the wording of the AC Act, there is doubt about how section 248B of the AC Act would operate without a regulation in place.
8	Sets a default minimum number of hours for the definition of a full-time worker at 35 hours per week where there is no applicable award	Compensation payments for injured workers not on award would not be able to be calculated, and some workers would miss out on a benefit afforded under the Act.
9	Sets the number of hours relevant for calculating PIAWE for workers with two or more employers and no applicable award at 38 hours per week	PIAWE could not be calculated for these workers.
12	States the documents necessary for compensation payments to be made to workers who cease to reside in	Payments to injured workers residing overseas could not be made. The AC Act requires the manner and

Proposed regulation	Description	Consequence if not made
	Australia	frequency of proving identity and incapacity to be prescribed by the regulations.
14	Provides that contracts of insurance prescribed under previous regulations continue in force in relation to injuries arising before 4pm on 30 June 1993.	Regulation is required to ensure WorkSafe enforcement rights (in particular recovery following fraud) in relation to previous insurance contracts are preserved.

3 THE PROPOSED REGULATIONS

3.1 Objectives

The proposed Accident Compensation Regulations 2012 prescribe certain matters authorised or required for the achievement of the objects of the AC Act and the purpose of the ACWI Act.

The objects of the AC Act are—

a) to reduce the incidence of accidents and diseases in the workplace
b) to make provision for the effective occupational rehabilitation of injured workers and their early return to work
c) to increase the provision of suitable employment to workers who are injured to enable their early return to work
d) to provide adequate and just compensation to injured workers
e) to ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses
f) to establish incentives that are conducive to efficiency and discourage abuse
g) to enhance flexibility in the system and allow adaptation to the particular needs of disparate work situations
h) to establish and maintain a fully-funded scheme
i) to improve the health and safety of persons at work and reduce the social and economic costs to the Victorian community of accident compensation.

The purpose of the ACWI Act is to provide for compulsory WorkCover insurance for employers under WorkCover insurance policies and the payment of premiums for WorkCover insurance policies.

At the 2010 state election, the Victorian Liberal Nationals Coalition committed to delivering compensation and rehabilitation services that meet the expectations of victims at a cost the community can afford. The Coalition is committed to running a sustainable scheme that delivers improved OHS outcomes and meets the needs of employers and employees. The government also committed to make premium calculations more transparent and reduce WorkSafe administration costs.

Self-insurance provides choice to high performing employers, and is an important part of achieving the policy objectives of the scheme. From the point of view of meeting the objectives of the AC Act and overall efficiency, a critical policy objective is to preserve the important role of self-insurers in the scheme and increase incentives for large employers to be more proactive in reducing risks.

Therefore, together with the nature of the problems to be addressed by the government intervention discussed in the previous section, the objective of the proposed regulations is to **facilitate and enable the effective operation of the AC and ACWI Acts in a manner that is efficient, equitable, transparent, and furthers the achievement of policy objectives.**

3.2 Authorising provisions

The proposed regulations are made under section 253 of the AC Act and section 72 of the ACWI Act.

3.3 Purpose and description of proposed regulations

The purpose of the proposed regulations is to provide for efficient administration in order to assist in achieving the objectives of the AC and ACWI Acts. The proposed regulations specify:

- various forms and evidentiary documents required for administration of the AC and ACWI Acts
- the form of warrants for entry, inspection, examination of books, and other powers as necessary to determine if the AC and/or ACWI Acts have been contravened and to enforce both Acts
- the hours that define a full-time worker for the purposes of calculating payments (in the absence of an award), and the hours relevant to calculating payments for a worker with more than one employer
- amounts not deemed to be 'remuneration' for certain type of contracts
- the manner in which an injured worker resident overseas can become entitled to payments and the forms to be used
- the time period after which WorkSafe is required to pay interest on reimbursements
- the formula to calculate contributions payable to the WorkCover Authority Fund by self-insurers.

The proposed regulations essentially remake the existing regulations in these areas. A full description of the proposed regulations is included at Attachment A. The table below compares the proposed regulations with the current regulations (Accident Compensation Regulations 2001).

TABLE 3: Comparison of current and proposed Regulations

Proposed regulation	Description	Comparison with current regulations
1	States objectives	No change
2	States the authorising provisions	No change
3	Sets the commencement date for the regulations as 12 March 2012	The current regulations sunset on 13 March 2012
4	Revokes current amending regulations	-
5	Prescribes the particulars that, if certified in a certificate issued by WorkSafe, can be taken as evidence of those matters, and proof of those matters if there is not contrary evidence	No change in evidence information; minor wording change to definition of 'provider number' as the Health Insurance Commission is now known as Medicare Australia
6	Prescribes the form of warrant for the purposes of section 240A of the AC Act	No change
7	Requires investigation of fraud to be conducted with due care, objectively, and affording all due recognition to legal rights	No change
8	Sets a default minimum number of hours for a full-time worker at 35 hours per week (where there is no applicable award)	No change
9	Sets the minimum number of hours relevant for calculating PIAWE for workers with two or more employers and no applicable award at 38 hours per week	No change
10	Specifies a percentage of payments to timber contractors that will not be included as 'remuneration' for the purposes of the AC Act	No change
11	Specifies a percentage of payments to other various contractors that will not be included as 'remuneration' for the purposes of the AC Act	No change
12	States the documents necessary for compensation payments to be made to workers who cease to reside in Australia	No change
13	Sets the period after which WorkSafe is required to pay interest on reimbursements at 30 days after receiving notification	No change
14	Provides that contracts of insurance prescribed under previous regulations continue in force in relation to injuries arising before 4pm on 30 June 1993	No change
15	Prescribed the formula for calculating contributions to WorkSafe by self-insurers	No change

3.4 Impacts of proposed regulations

3.4.1 Prescription of hours

The proposed regulation 8 specifies that, in the absence of an award, a worker who is employed for 35 hours a week is considered to be a full-time worker for the purposes of the AC Act. The term "full-time worker" appears in 3 sections (ss. 5A, 125 and 125A) of the AC Act. Section 125 deals with compensation for injuries that occurred before 4 p.m. on 30 June 1993, while section 125A deals with subsequent injuries.

The relevance of the definition of a full-time worker is that under section 125, employers assume responsibility for weekly payments for full-time workers (and a proportion for not full-time workers), and under 125A the setting of the "excess" applying to the scheme's insurance policy is dependent on the definition of a full-time worker.

The proposed regulation maintains the prescribed number of hours that exist under the current regulations. Increasing the prescribed number of hours would reduce the liability of employers.

Under s 5A(3) of the AC Act, a worker who is part-time at the time of injury, but within a certain period before the injury had been 'predominantly' full time and was seeking to be a full time worker in the future, that worker is entitled to take into account that full time work when calculating PIAWE. Increasing the defined number of hours for a full time worker would not merely affect the extent of benefit received under this section, it would mean that some workers would miss out on the benefit entirely. For example, if an injured part-time worker had previously been employed for 37.6 hours per week, their PIAWE would only take into account their part-time hours if the defined number of hours was increased to 38 hours. This concession in the AC Act was to recognise that a worker may be generally full-time but may for short periods work part-time. This should not disadvantage them if they are injured while working part-time.

The standard working hours in the mid-eighties when the hours were first prescribed were 35 hours per week. It would be to the detriment of injured workers to raise the number of hours now, as this would affect compensation entitlements of previous injuries and so contrary to "the need to secure long term positive outcomes for injured workers", part of the terms of reference of the 2008 Hank's Review.

The Australian Bureau of Statistics regards full time employees as "employees who normally work the agreed or award hours for a full-time employee in their occupation. If agreed or award hours do not apply, employees are regarded as full-time if they usually work 35 hours or more per week."[13]

As the proposed regulation continues the same number of prescribed hours, there are no new impacts expected compared to the existing arrangements. If the prescribed number of hours were increased to, say, 38 hours, then any worker who was working between 35 and 38 hours per week when injured would have their weekly payments reduced.

The proposed regulation 9 assists in calculating an injured worker's pre injury average weekly earnings (PIAWE) where the workers had more than one employer and section 5A of the AC Act is the main provision for determining PIAWE. The PIAWE is critical to the calculation of the worker's weekly payments of compensation under the AC Act. Section

[13] ABS, 6306.0 - Employee Earnings and Hours, Australia.

5A(5), together with items 3, 5, 6 and 8 of Schedule 1A, to the AC Act applies to injured workers who had more than one employer at the time of injury. It sets out 6 options for calculating the worker's PIAWE, depending on the worker's circumstances. The options are premised on the number of hours worked in each particular job. Where the worker has worked under an industrial award, the number of hours is taken as the normal number of hours per week, as fixed in that award. But where there is no applicable award, the number of hours is taken to be the number of hours prescribed in the proposed regulation 9. The relevant circumstances where the prescribed number of hours applies are where a worker is:

- employed by 2 or more employers who works for one of those employers for at least the prescribed number of hours each week and to whom no industrial award is applicable
- employed by 2 or more employers who works for one of those employers for at least the ordinary hours fixed in an applicable industrial award and works for another of those employers for at least the prescribed number of hours each week
- employed by 2 or more employers for at least the prescribed number of hours each week and to whom no industrial award is applicable
- employed by 2 or more employers in circumstances other than those described in the preceding provisions of Schedule 1A.

The prescribed number of hours is proposed to be the same as the current regulations, although it is noted that the prescribed number was increased from 35 to 38 in 2010. The reason for the increase was to align the AC Act with the *Workplace Relations Act 1996* (Cth), which states that a worker cannot be required or requested to work more than 38 hours per week (plus reasonable additional hours). The majority of Victorian workers are employed under federal awards. The increase to 38 hours was intended to harmonise Victorian and federal legislation and reflect modern employment practices in Victoria.

This inevitably has led to an apparently inconsistency between regulations 8 and 9. However, despite being regulations for very different purposes, they can be seen as defining an acceptable range of hours to define full time work.

Where a worker works at least 35 hours per week, they should be able to enjoy the benefits afforded under the Act—it would be unfair that they missed these benefits, or employers sought to reduce their liabilities, by having workers work only 37.6 hours if the required hours was 38 hours.

Conversely, the provisions related to workers with 2 or more jobs seek to limit payments to these workers to a full time equivalent. As 38 hours per week is common under modern awards, these workers should be entitled to have their earnings for up to 38 hours counted, notwithstanding that it may be more than one job. If the prescribed number of hours was only 35, a worker working one job of 36 hours per week and a second job would only be able to count the earnings from the first job for the purposes of PIAWE.

Therefore, the regulations effectively operate to recognise that work within a range of 35 to 38 hours per week should be treated as full time work in the interests of securing long term positive outcomes for injured workers.

3.4.2 Amounts not deemed remuneration in contractor payments

The proposed regulations 10 and 11 (by way of Schedule 3 to the regulations) set the percentages to be deducted from contract payments for the purposes of measuring remuneration. These are the same as the current regulations, as shown in the table below.

TABLE 4: Percentages of contract amounts deemed not to be remuneration

Contract type	Percentage of contract amount not deemed remuneration
Architects	5 per cent
Draftspersons	5 per cent
Engineers	5 per cent
Bricklayers	30 per cent
Building supervisors who provide their own vehicles and are required to supervise and inspect more than 6 different building sites each 7 day period	25 per cent
Carpenters	25 per cent
Carpet layers	25 per cent
Computer programmers	5 per cent
Driving instructors who provide their own vehicles	30 per cent
Fencing contractors	25 per cent
Painters	15 per cent
Resilient floor layers	37 per cent
Roof tilers or slaters	25 per cent
Timber contractors	25 per cent
Plasterers	20 per cent
Cabinet makers	25 per cent
Electricians	25 per cent
Plumbers	25 per cent

There are currently 18 categories of contractors for which a deduction percentage is prescribed. WorkSafe has reviewed the types of contractors covered by the current regulations and considers, based on the effectiveness of the current practices for determining remuneration, that no changes are required to the types of contractors to be included.

The prescribed percentages affect the insurance premium payments, and compensation entitlements, of principals and contractors, who are deemed to be employer and worker for the purposes of the AC and ACWI Acts. The percentages seek to adjust the amounts considered as remuneration to reflect the amount of the contract attributable to the provision of labour, excluding amounts for the supply of materials and equipment. This is to achieve equity as far as the scheme is concerned between such contractor arrangements and other employment arrangements.

A similar issue arises in relation to payroll tax—generally the full amount paid to a contractor is taxable, however the State Revenue Office (SRO) recognises that many of the contracts subject to payroll tax involve some element of materials or equipment being supplied by the contractor. The Commissioner of State Revenue has approved certain deductions for various classes of contracts to reflect a deemed amount for materials and

equipment.[14] In the absence of specific data to inform the appropriate proportions, the proposed Regulations have sought to rely on these percentages as determined by the SRO, and to simplify burdens on parties through harmonisation as far as possible. The percentages approved by the Commissioner of State Revenue are identical to those in the proposed Regulations, except for those in the following table.

TABLE 5: Differences from SRO payroll tax deductions for contractors

Contract type	Percentage in proposed regulations	Percentage approved by State Revenue Commissioner	Reason for difference
Driving instructors who provide their own vehicles	30 per cent	NA	Not included in SRO contractor deductions
Cabinet makers	25 per cent	30 per cent for cabinet makers and kitchen fitters	The SRO rate was previously 25 per cent (see SRO Revenue Ruling PT.122), but was increased to 30 per cent in 2007 when the category was also expanded to include kitchen fitters. The 25 per cent rate aligns cabinet makers with the other building trades included in this regulation
Timber contractors	25 per cent	25 per cent	SRO category applies only to tree fellers, whereas WorkSafe category includes a number of types of timber contractors

Consideration was given to changing the rate for cabinet makers from 25 per cent to 30 per cent. This would provide better alignment with the SRO rates, but would deviate from the current WorkSafe approach of having a consistent rate for all building trades. Sufficient data is not available to determine the impacts of making such a change. As part of the consultation process, specific feedback is invited on the impacts of aligning the rate for cabinet makers with the SRO rates.

The proposed regulation specifies that the percentage reductions apply only where the total amount paid by the principal to the contractor includes amounts in respect of the materials and equipment.

Such an arrangement is appropriate as it contributes to the stability in the contractual process. Deemed percentages, as opposed to estimating costs of materials and equipment for every contract, provide greater clarity and certainty, and reduce the likelihood of disputation between the parties to the contract in relation to the amount deemed to be remuneration for the purposes of calculating the WorkCover premium, and the amount used for calculating compensation entitlement in the event of a claim. In this regard, transaction costs are avoided.

Regulatory prescription will improve efficiency by streamlining the costs of administration and reducing the potential for waste of contractor, worker, WorkSafe and disputation resources. It also realises the benefits of harmonisation with the payroll tax arrangements, and provides certainty and stability. WorkSafe considers that the current

[14] See SRO Revenue Ruling PTA018.

arrangements are working effectively, and therefore does not propose any change to the types of contracts or the prescribed percentages.

3.4.3 Payments to workers resident overseas

Under section 97 of the AC Act, for a worker receiving weekly compensation payments who ceases to reside in Australia, his or her entitlement to weekly payments ceases unless the worker has, before leaving Australia, satisfied WorkSafe (or the self-insurer) that the worker has no current work capacity and is likely to continue indefinitely to have no current work capacity.

The section also provides that a worker who ceases to reside in Australia and subsequently claims to be entitled to the payment of compensation, must, in addition to establishing his or her entitlement, satisfy WorkSafe (or the self-insurer) that the worker has no current work capacity and is likely to continue indefinitely to have no current work capacity.

Subsection (3) provides that if WorkSafe or the self-insurer is satisfied that such a worker has no current work capacity and is likely to continue indefinitely to have no current work capacity, the worker is entitled to receive at quarterly intervals the amount of weekly payments accruing during the preceding quarter only if the worker proves in the prescribed manner and at the prescribed intervals his or her identity, and the continuance of the incapacity in respect of which the weekly payment is made.

Regulations are required to enable such workers to receive quarterly payments. The proposed regulation 12 prescribed the manner to prove identity and continuance of incapacity as:

- A certificate obtained from a medical practitioner following a medical examination by that practitioner (who is legally qualified in the country of residence and approved by WorkSafe or the self-insurer)
- A statement of identity.

The required form and content for both of these documents is set out in Schedule 4 to the regulations. The prescribed intervals for providing documents is quarterly, to align with the payment intervals (the forms are required to be submitted with a request for payment).

The prescribed forms and interval are the same as in the current regulations.

WorkSafe pays for and/or reimburses workers for the costs of medical certificates and medical appointments, and as such there is no financial cost to workers because of this regulation. In 2010-11 there were 39 workers who provided an international medical certificate.

3.4.4 Self-insurers

In relation to self-insurers, the current formula for determining the amount to be contributed (quarterly) is:

$$\text{contribution} = \left\{A \times \frac{B}{C}\right\} + \left(0.6 \times \left[\{D - A\} \times \frac{B}{C}\right]\right)$$

where:

A is the total WorkSafe costs in the preceding quarter related to costs of the County Court, the Magistrates' Court and the VCAT arising out of the operation of the AC Act, any remuneration (including allowances) of members of Medical Panels, and such costs and expenses incurred in connection with conciliation of disputes

B is the rateable remuneration paid or payable by the self-insurer during the preceding financial year (calculated as if the self-insurer were an employer liable to pay the premium for a WorkCover insurance policy)

C is the sum of the total rateable remuneration paid or payable by all employers liable to pay the premium for a WorkCover insurance policy, plus the total rateable remuneration calculated in accordance with B in respect of all self-insurers, during the preceding financial year;

D is the total cost incurred by WorkSafe in the preceding quarter in relation to the following:

- costs of the County Court, the Magistrates' Court and the VCAT arising out of the operation of the AC Act, and any remuneration (including allowances) of members of Medical Panels
- costs in performing WorkSafe functions under the AC Act excluding costs directly related to the administration, operation, management and maintenance of the Authority's central computer network used by authorised agents, compliance audits in relation to the collection and recovery of premium payable under the ACWI Act and actuarial services provided to WorkSafe (other than any such costs incurred under section 151 of Act)
- remuneration (including allowances) of the Board of Directors and staff of WorkSafe and members of the WorkCover Advisory Committee or Occupational Health and Safety Advisory Committee
- any other costs and expenses (not listed elsewhere in s. 32(4)) incurred by WorkSafe under the AC Act or any other Act
- costs incurred by WorkSafe in meeting any liability incurred in relation to the tail claims of an employer which ceases to be a self-insurer
- those costs incurred in connection with conciliation of disputes

In this formula, D represents the pool of WorkSafe's operating costs, less those costs which are excluded as not relating to self-insurers, while A is a subset of those costs where self-insurers already contribute a full proportional share. B/C represents a self-insured employer's remuneration as a share ("proportional share") of total remuneration of all employers (both scheme- and self-insured).

The formula operates so that a self-insured employer pays:

- **Zero contribution** to payments of compensation or any other payments required under any Act or any regulation to be paid out of the Fund, payments to the Consolidated Fund of amounts for costs incurred by the Ombudsman in enquiring into or investigating administrative actions, any payment required to meet the obligation imposed on WorkSafe by section 52L of the AC Act, all money required for the repayment of borrowings by WorkSafe and for the payment of interest payable in respect of the borrowings, any remuneration payable to authorised agents, any payment arising under or in connection with a WorkCover insurance policy, and any payment towards a claim, costs and expenses in relation to a claim, or expenses incurred by or on behalf of WorkSafe in administering the Uninsured Employers and Indemnity Scheme. These are costs specific to the insurance scheme, and for which self-insured employers derive no direct benefit.
- **Proportional share contribution** to costs in the preceding quarter related to costs of the County Court, the Magistrates' Court or the VCAT arising out of the operation of the AC Act, any remuneration (including allowances) of members of Medical Panels, and such costs and expenses incurred in connection with conciliation of disputes. These are costs for services enjoyed by both scheme- and self-insured employers.
- **60 per cent of proportional share contribution** of all other WorkSafe costs. These are a subset of WorkSafe's operating costs (excluding those costs that do not relate to self-insurers) for services enjoyed by both scheme- and self-insured employers.

The proposed regulations retain this approach. The current Regulations recover from self-insurers as a group a portion of the remuneration-based share of operating costs[15] attributable to self-insurers. This is because the current formula includes only 60 per cent of the operating costs (except for costs related to the County Court, the Magistrates' Court and VCAT, medical panels, and conciliation of disputes, for which 100 per cent is included). Hence, there is an effective 40 per cent 'discount' on the majority of costs to be recovered through self-insurer contributions.

In 2010-11, the value of this discount to self-insurers is shown in the table below.

TABLE 6: Self-insurer contributions 2010-11

	$ million
Contributions from self-insurers related to costs to the County Court, the Magistrates' Court and VCAT, medical panels, and conciliation of disputes	2.4
Contributions from self-insurers related to other (non-scheme) operating costs	10.3
Total contributions from self-insurers	**12.7**
Additional contribution if discount had been removed	6.9

[15] These operating costs exclude those operating costs explicitly identified as not relating to self-insurers.

The value of the discount has been relatively stable over the past decade, being valued at around $6.1 million in 2001-02. Excluding any policy changes, WorkSafe expects the value of the discount to remain at this level in real terms over the life of the regulations.

Overall, there is no net financial cost directly attributable to the contributions formula, as the contributions from self-insured employers are offset by lower premiums of scheme employers in the future. Therefore the net effect of self-insurer contributions is a redistribution between parties. While over the medium to longer term, a more efficient allocation of costs is welfare enhancing in a general sense, the impact on individual employers would be relatively negligible when any redistribution was divided amongst scheme-insured employers[16].

Retention of the 'discount' in the contributions formula means that there is a cross-subsidy from scheme-insured employers to self-insurers. Compared to an allocation of costs fully based on remuneration shares (which is only a proxy for share of benefits), the cross subsidy of $6.9 million per year is an additional average cost of around $33 per scheme employer per year (although some scheme employers will face higher than average costs), with an average benefit to self-insurers of around $192,000 per year. The actual value to individual scheme-insured employers is difficult to ascertain. Any reduction in the discount could potentially result in a reduction in the scheme's "break even premium", and in turn, the scheme's average premium rate. The impact on the premiums of scheme-insured employers would depend on the magnitude of any such change in the average premium rate, which is also dependent on a number of other factors, including the discretion of the WorkSafe Board. Individual scheme-insured employers' premiums can also be affected by factors such as their rateable remuneration, industry classification and claims history.. The value of this cross-subsidy is around $57 million over the life of the proposed regulations.[17] In the context of the amount of premium payable by individual scheme-insured employers, the amount borne per employer appears unlikely to have any discernible impact on scheme-insured employers.

As the self-insurer contributions are a form of cost recovery, regard has been had to the government's *Cost Recovery Guidelines*. However, it is noted that the proposed Regulations do not set or determine the actual amounts to be paid by self-insurers. Rather, under the AC Act, WorkSafe may determine the amount to be paid. Therefore, the application of the *Cost Recovery Guidelines* is to this determination by WorkSafe rather than the proposed Regulations. This is appropriate as the Act vests WorkSafe with this power, and in the absence of any regulations (or more principle-based regulations that do not specify a formula), WorkSafe would consider the Guidelines each year when determining the contributions.

Nevertheless, the proposed Regulations provide boundaries to the ability of WorkSafe to determine the self-insurer contributions, through specifying a formula, for the benefit of transparency and predictability. It is therefore useful to assess whether or not the proposed Regulations are consistent with the *Cost Recovery Guidelines*.

The proposed self-insurer contribution formula is consistent with the principles of cost recovery in that:

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[16] A reduction in the discount would potentially result in a reduction in the scheme's "break even premium", and in turn, the scheme's average premium rate. The exact reduction in the premiums of scheme-insured employers would depend on the magnitude of any such change in the average premium rate, which is also dependent on a number of other factors, including the discretion of the WorkSafe Board.

[17] Present value, using a real discount rate of 3.5 per cent.

- The proposed self-insurer contributions are appropriate, in that they are consistent with policy objectives of cost recovery, are imposed directly on self-insurers, are effective (unlikely to be evaded), and consistent with other policy objectives.
- By specifying the formula in regulations, and clearly limiting the recovery of costs to those items where scheme and self insurers enjoy a common benefit, the proposed approach reduces the risk that WorkSafe could use the determination of contributions to achieve some other unrelated objective, or cross subsidise with other groups, and ensures that the system for determining contributions is easy to understand.
- While the *Victorian Guide to Regulation* states a general government policy that regulatory fees and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met, it recognises that partial cost recovery may be justified in some circumstances, including where full cost charging could undermine other objectives. As outlined in this RIS, there is a risk of employers being dissuaded from becoming or remaining self-insured, contrary to the policy objective of retaining self-insurance as an effective part of the scheme. Retaining the current formula ensures that other key policy objectives are not undermined, and provides stability for self-insurers.
- In addition to generally discouraging self-insurance, there would also be the risk of self-insurers exiting the Victorian system if WorkSafe contributions become large relative to the costs associated with joining the Comcare scheme. This change has undesired impacts on both employees of those employers, and the employers remaining in the Victorian system. In fact, it is a real possibility that, in attempting to recover additional contributions from self-insurers, exit of a small number of employers would result in less overall contributions to WorkSafe without a material reduction in costs. Further, exiting employers would continue to enjoy some benefit of WorkSafe activities without making a contribution; these factors go against the principles of cost recovery. In order to justify a departure from full cost recovery, options to remove the effective discount (either immediately or phased out) are assessed in this RIS.
- Requiring self-insurer contributions improves both efficiency and equity among the total group of employers. It also removes a substantial part of the cross-subsidisation that would result if there were no contributions, and better matches the recovery of costs to those who gain the benefit from the WorkSafe activities. Notwithstanding that there remains an effective 'discount' in the contribution formula, it is noted that under the proposed approach, self-insurers will pay around 68 per cent of their share of operating costs, as determined by remuneration levels. As remuneration levels are themselves only a proxy of the distribution of benefits of WorkSafe activities, the proposed approach is considered by WorkSafe to be acceptable. This would be further enhanced by including risk ratings in the contribution formula, however this is not feasible under the AC Act.
- Self-insurer contributions are allowed under the AC and are administered with relative ease by WorkSafe, given the small number of employers in this group.

The *Cost Recovery Guidelines* also require WorkSafe, when determining the contributions, to consider which costs should be recovered and how recovery charges should be structured. The proposed Regulations effectively remove this choice from WorkSafe by specifying the costs that can be recovered, and by specifying that the

structure of contributions between individual employers must be based on remuneration levels. However, in both of these respects, the proposed Regulations do not provide any further restriction than that already in the AC Act.[18] In the absence of the proposed formula, WorkSafe would have the discretion to recover less than the proportionate share of operating costs. The Regulations therefore limit cross-subsidisation between groups. The proposed Regulations therefore satisfy the Guidelines requirements as to the types of costs to be recovered and the structure of recovery. The cost base included in the proposed formula includes only those cost items that are generally attributable to both scheme- and self-insured employers.

The *Cost Recovery Guidelines* generally require that recovery of costs be imposed as directly as possible, recovering costs directly from those that benefit from, or whose actions give rise to the need for, the government service. As discussed in this RIS, WorkSafe does not collect data at a disaggregated level to enable exact matching of service to beneficiary. For the costs included in the formula, WorkSafe does not have data to establish the exact proportion of each cost item that is attributable to either self-insured or scheme-insured employers. Allocating these costs based on relative remuneration levels is the best available proxy. It is also the only method currently available under the Act for calculating contributions.

The following table shows the WorkSafe costs that are included in the proposed formula, specifically identifying costs included in components 'A' and 'D' in the above formula. The table also indicates, for each cost type, the amount of the total cost base for 2010-11, whether the benefits of each activity are attributable to scheme-insured or self-insured employers, and whether contributions from self-insurers are able to be spent on these items.

TABLE 7: WorkSafe costs (2010-11)

AC Act[1]	Cost Type	Cost base ($m)	Scheme insured[2]	Self-insured[2]	Allowed under Act[3]
32(4)(d)	Court and VCAT costs	7.4	Y	Y	Y
32(4)(fa)	Medical Panels	13.1	Y	Y	Y
32(4)(i) – Part III Div 2	Conciliation of disputes	12.2	Y	Y	Y
32(4)(f)	WorkSafe Board, staff and committees	140.2	Y	Y	Y
32(4)(e),(i)	Administration of AC Act/ Other operating costs[4]	91.3	Y	Y	Y
32(4)(i)	Costs related to tail claims for employers that cease to be self-insured[5]	-	-	-	Y
32(4)(a), (b),(e),(fb), (h), (ha), (hb),(hc), (hd), (i)	Compensation scheme costs	496	Y	N	N

[18] Under the AC Act, WorkSafe may have regard to remuneration levels, and contributions from self-insurers may only be used for certain purposes.

Notes:

1 *See AC Act section 32 for allowed WorkSafe expenses.*
2 *A Y indicates that the employer group uses services in the corresponding cost type.*
3 *A Y indicates that contributions from self-insurers are able to be used for the corresponding purpose—see section 146(6) of the AC Act.*
4 *In the proposed formula, other operating costs specifically excludes cost items that are properly attributed solely to the WorkCover scheme, including the computer network used by agents, compliance audits related to premiums, and actuarial services. This amount excludes amounts already reflected in the category A components.*
5 *While the AC Act foreshadows that expenses related to the management of tail claims liabilities be included in the self-insurer contributions, the actual value of the tail claims liabilities is paid for by the individual employer to WorkSafe. Additionally, since 2010, an employer must pay the cost of conducting the assessment of tail claims liabilities and any money owed to the actuary by WorkSafe in relation to an actuarial assessment of tail claims liabilities. Other expenses relate to the cost of agents in managing the claims, which is done as part of the overall costs of the scheme. Therefore, items that fall into this category (for inclusion in the formula) are limited to cases where a ceased self-insurer has become bankrupt and unable to cover the costs of tail claims. Such an eventuality is remote, but needs to be included. This amount is not measured separately, but included in the 'other operating costs' in the table. Strictly speaking, these costs relate to neither scheme- nor self-insurers remaining in the system, and as such they are included in operating costs to be shared by all parties.*

From the above table, the total 'category A' cost base was around $33 million in 2010-11, while the 'D-A' cost base was around $230 million. The category A cost base has increased by an annual average of 8.9 per cent since 2001-02 (in part due to policy changes resulting in greater use of these services), while the D-A component has only increased by an annual average of 4.8 per cent. (This compares to the costs of administering the WorkCover insurance scheme, which have increased by 6.5 per cent per year (annual average)..

However, there are a range of aspects to cost recovery that are not addressed by the proposed Regulations. Importantly, recovery of costs should be set to recover an 'efficient' cost base, and that the overall approach should, as far as possible, avoid volatility year to year to better facilitate forward planning. As prices will change over time, and self-insurers may be concerned that WorkSafe, being a monopoly provider, has the opportunity for cost padding. This is a legitimate concern, as any increase in WorkSafe operational costs will be passed on to self-insurers via their contributions.

WorkSafe is accountable to its Minister for demonstrating the efficiency of its activities. It regularly reviews the effectiveness of its programs, and is subject to external review such as audits by the Victorian Auditor-General's Office. Being a statutory body established under an Act of Parliament, WorkSafe has its operational costs reviewed by the Department of Treasury and Finance as part of the government annual oversighting of the financial performance of government entities.

While the proposed Regulations deal with contribution from self-insurers, the same cost base is used to determine amounts to be recovered from scheme-insured employers—indeed, 95 per cent of the operating costs in the formula are recovered by surcharges on the premiums of scheme employers, albeit they represent only a marginal increment to premium amounts. In this context, it is relevant to note that Victorian premiums, as a percentage of remuneration, are low historically, falling significantly over the past decade, and are now the lowest in Australia.

Within the formula to be included in the proposed Regulations, WorkSafe determines on a year-by-year basis the amount to be recovered from the group of self-insured employers. In doing so, WorkSafe uses a 'fully distributed cost' method. This represents the most comprehensive costing approach, and allocates all costs (including direct, indirect and capital cost components) to the output, and is typically used where cost-recovered activities account for a large proportion of an agency's activities.

The values used in the proposed formula representing the WorkSafe cost items are based on relevant extracts from the VWA Operating Statements. The VWA's Operating Statements form part of the VWA's annual accounts, which are audited by both an internal auditor and an independent external auditor, from the Victorian Auditor-General's Office. An Independent Auditor's Report is included in the VWA's annual report. Adjustments are made to contribution amounts where required following reports from the auditors, with any adjustments provided to self-insurers in the first quarter of the following financial year. The allocation of these costs as 'operating costs' to be recovered from both scheme- and self-insured employers is demonstrated by this process as it ensures that cost items are authorised to be expended from the Fund, and are not costs that are attributable solely to scheme-insured employers (a separate process exists for identifying costs associated with the scheme in calculating premiums).

WorkSafe is also responsible for ensuring that the method of collecting the charge is efficient and appropriate. Contributions from self-insurers are payable on a quarterly basis as required by the AC Act. Invoices are sent to self-insurers and payment is made electronically. Given the small number of self-insurers, there is a low cost associated with administering and enforcing these payments.

3.4.5 Impact on small business

The proposed regulations do not impose any additional regulatory burden on small businesses.

TABLE 8: Impact of proposed regulations on small business

Proposed regulation	Description	Small business impact
5	Prescribes the particulars that, if certified in a certificate issued by WorkSafe, can be taken as evidence of those matters, and proof of those matters if there is not contrary evidence	None
6	Prescribes the form of warrant for the purposes of section 240A of the AC Act	None
7	Requires investigation of fraud to be conducted with due care, objectively, and affording all due recognition to legal rights	None
8	Sets a default minimum number of hours for a full-time worker at 35 hours per week (where there is no applicable award)	Small businesses tend to have lower award coverage[19] and therefore disproportionately more

[19] Burgess, J. 1992, 'Further Evidence on Small Business Employment and Industrial Relations', *Labour Economics and Productivity*, vol 4, pp 130-149.

Proposed regulation	Description	Small business impact
		affected by this regulation. However, the regulation provides certainty to the operation of the AC Act, and retains the existing definition.
9	Sets the minimum number of hours relevant for calculating PIAWE for workers with two or more employers and no applicable award at 38 hours per week	None
10/11	Specifies a percentage of payments to various contractors that will not be included as 'remuneration' for the purposes of the AC Act	Contractors are more likely to be small businesses. However, this section of the AC Act specifically does not apply in respect of a contractual arrangement if WorkSafe determines that, in providing services to the principal, the contractor is carrying on an independent trade or business.
12	States the documents necessary for compensation payments to be made to workers who cease to reside in Australia	None
13	Sets the period after which WorkSafe is required to pay interest on reimbursements at 30 days after receiving notification	Small businesses benefit from interest on reimbursements
14	Provides that contracts of insurance prescribed under previous regulations continue in force in relation to injuries arising before 4pm on 30 June 1993	None
15	Prescribed the formula for calculating contributions to WorkSafe by self-insurers	Self-insurers are large businesses. Contributions will reduce pressure on premiums for scheme-insured employers, which are mostly small businesses.

3.5 Costs and benefits of the proposed regulations

The assessment of costs and benefits in this RIS focuses on those key proposed regulations that have been identified as having the potential of imposing a significant burden on stakeholder. These are:

- Amounts not deemed remuneration by contractors
- Contributions by self-insurers

3.5.1 Approach to assessing costs and benefits

The decision criteria implied by the *Subordinate Legislation Act 1994* is that the benefits of a proposal should outweigh the costs, and that the preferred option is that which results in the largest net benefit.

Every effort was made to identify and quantify the costs and benefits imposed by the proposed regulations. However, a qualitative assessment may be made of some cost and benefit items for which quantification of values in dollar terms would be difficult.

Given the difficulty in measuring the intangible and tangible costs and benefits associated with the options, this RIS uses a multi-criteria analysis (MCA) assessment tool to assess the costs and benefits of the proposed regulations (and viable options in the next section). MCA involves identifying assessment criteria relevant to the intervention objectives, weighting these criteria, and scoring alternative options against these criteria. An overall score is derived by multiplying the score assigned to each measure by its weighting and then summing the result. The option with the highest score represents the preferred approach.

The criteria and weighting used in this RIS are described in the table on the following page.

TABLE 9: MCA criteria descriptions and weightings

Criterion	Description of criterion	Weighting
Efficiency	The extent to which an option achieves allocative efficiency across the economy—net welfare improvements to society as whole.	33
Equity	The extent to which an option achieves equity objectives—a fair sharing of costs and benefits between agents in the community. Particular for this RIS, equity refers to treating people in similar circumstances the same way (horizontal equity).	33
Policy alignment	The extent to which an option impacts on the achievement of the objects of the AC and ACWI Acts, other WorkSafe objectives, and other policy objectives such as transparency and simplicity.	33

The weightings used in the MCA method reflect the 'value' placed on each criteria: the criteria of efficiency, equity and policy alignment are each given equal weighting to reflect their equal value. The third criterion essentially reflects the 'effectiveness' of a proposal on achieving the objectives of the AC and ACWI Acts and/or other government policies. This includes costs of the insurance scheme and health and safety outcomes, as well as other policy objectives identified above, including the objective to ensure that self-insurance remains an attractive option for eligible employers, and to keep Victorian employers within the Victorian system. Relevant to this RIS, the government has indicated that transparency is an important objective.

Options are scored relative to a 'base case', which is scored zero. A score of plus 100 means that the option fully achieves the objectives; a score of minus 100 means that the proposal does not achieve any of the objectives.

The 'base case' describes the legislative and regulatory position that would exist in the absence of the proposed regulations. While the base case is not an alternative, it is necessary to establish this position in order to make a considered assessment of the incremental costs and benefits of the proposed regulations and identified alternatives.

3.5.2 Amounts not deemed remuneration for contractors

Section 8(4)(c)(ii) provides that if there is no applicable prescribed percentage, the part of that total amount not attributable to the provision of labour will be deemed to be remuneration for the purposes of the AC and ACWI Acts. Therefore the base case for this item, where there are no percentages prescribed, would result in individual contractors and principals having to determine the proportions of every contract that relates to either labour or materials and equipment.

The proposed regulations therefore do not seek to change the overall outcomes of what would happen under the AC Act, but merely to simplify the process and avoid the costs of disputes. It is expected that, on average, the amounts deemed to be not remuneration will reflect the actual proportions relevant to each contract type, but there will be cases where the deemed remuneration amount is not a reasonable approximation to the actual labour value of the contract. However, despite these exceptions, regulatory prescription will likely improve efficiency by streamlining the costs of administration and reducing the potential for waste of contractor, worker, WorkSafe and disputation resources. Therefore, in terms of the MCA framework, the proposed regulations would score a small negative on the equity criterion and a small positive on the efficiency criterion.

As noted earlier, the key benefit of the proposed regulations is to reduce transaction costs, and thereby lead to an overall improved WorkCover scheme. Such a deeming arrangement is appropriate as it contributes to the stability in the contractual process. Deemed percentages, as opposed to estimating costs of materials and equipment for every contract, provide greater clarity and certainty, and reduce the likelihood of disputation between the parties to the contract in relation to the amount deemed to be remuneration for the purposes of calculating the WorkCover premium, and the amount used for calculating compensation entitlement in the event of a claim. In this regard, transaction costs are avoided.

Lower disputes reduce the costs to WorkSafe in administering the scheme, which consequentially means that the scheme can better meet objectives of the AC Act, particularly in relation to providing adequate and just compensation to injured workers, to ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses, and to establish incentives that are conducive to efficiency and discourage abuse. The deeming approach also provides for a simple and transparent approach to premium setting and compensation payments. Accordingly, the proposed regulations are scored moderately positively against the policy alignment criterion.

Overall, the proposed regulations for deeming amounts not to be considered as remuneration for contractors were given a score of +13.3 against the base case.

TABLE 10: MCA scores for the proposed amounts deemed not remuneration

Criterion	Weighting	Score	Weighted Score
Efficiency	33	+10	+3.3
Equity	33	-20	-6.7
Policy alignment	33	50	+16.7
TOTAL	**100**		**+13.3**

3.5.3 Contributions by self-insurers

In the absence of the proposed Regulations, the base case would involve no contributions from self-insurers to the costs of WorkSafe. Self-insured employers would benefit from services provided by WorkSafe (or from the Fund) without paying for them, with the costs met by the remaining scheme-insured employers.

The proposed Regulations enable the recovery of contributions, thereby correcting the 'public good' problems identified in section 2.2, which included both efficiency and equity dimensions. Requiring self-insured employers to make a contribution to the services from which they derive benefit provides for a fairer system.

The proposed approach therefore scores highly on the equity criterion. However, it is not perfectly equitable as the share of these costs to be borne by self-insurers, and the share of those contributions as between self-insurers, is based solely on the relative remunerations paid by each employer, and is therefore only a proxy to measuring the benefit an individual employer derives from the WorkSafe services. Further, the amount recovered from self-insurers is only 68 per cent of the remuneration-based proportionate share of WorkSafe's operating costs[20].

While a remuneration-based approach may not be the perfect proxy to estimate the appropriate share of costs to be recovered from self-insurers as a group, it is likely to explain a very large proportion. When spread over the large number of scheme-insured employers, the amount recovered from scheme-insured employers (through premiums), to make up the amount not received from self-insurers because of the discount, is negligible. Therefore, the proposed approach scored a +60 on the equity criterion.

In terms of efficiency, where the free-rider problem is overcome, decisions to self-insure are made on the basis that these employers will continue to have to pay for services they consume, or to which they contribute to the cost. However, again this will not be perfectly achieved under the proposed approach as remuneration is the sole proxy for determining the relevant contribution shares, and the discount continues in relation to the cost pool to be recovered from the self-insurer group. This approach therefore scored +70 on the efficiency criterion.

The current approach aligns with the aim of the AC Act to require self-insurers to contribute to the costs of WorkSafe activities and enables WorkSafe to keep downward pressure on scheme premiums while continuing to provide an appropriate level of high quality services. It also aligns with policy objectives of encouraging, where appropriate, self-insurance, as a means to ensure a sustainable scheme that meets employer and employee needs. Maintaining the current approach also ensures that there is stability for self-insurers, and eliminates transition costs.

Limiting increases in contributions only to changes in WorkSafe services supports the policy objective of ensuring eligible employers are not discouraged to self-insure, as well as encouraging self-insurers to remain within the Victorian system. (While a portion of the costs will be borne by self-insured employers rather than being added on to the premiums of the scheme-insured employers, this impact is captured in the equity and efficiency criteria.) The proposed approach is both transparent, as the formula is fixed in the regulations and the input items can be objectively audited, and simple as it allows WorkSafe to easily calculate the required contributions for each self-insurer and advise

[20] Excludes costs specifically identified as not applying to self-insurers.

them of the amount. Therefore, on balance, the proposed approach scored a slight positive +5 on the policy alignment criterion.

TABLE 11: MCA scores for the proposed contribution formula

Criterion	Weighting	Score	Weighted Score
Efficiency	33	+70	+23.3
Equity	33	+60	+20.0
Policy alignment	33	+5	+1.7
TOTAL	**100**		**+45.0**

4 ALTERNATIVE OPTIONS

Section 10 of the *Subordinate Legislation Act 1994* requires a RIS to include a statement of other practicable means of achieving the objectives of the proposed Regulations, including other regulatory as well as non-regulatory options, and an assessment of the costs and benefits of any other practicable means of achieving the same objectives.

Paragraph 42 of the Premier's Guidelines states that subordinate legislation must be consistent with the general objectives of the authorising Act; statutory rules are often used to provide for the detailed components of a legislative scheme. However, they cannot add new aims or ideas unless expressly authorised to do so.

Paragraph 51 of the Guidelines also notes that in most cases, when a Minister is considering making a statutory rule or legislative instrument, the authorising Act will dictate what kind of instrument may be created. The example given in the Guidelines is where the authorising legislation provides for fees to be prescribed in statutory rules, there may be no discretion to set those fees by another method.

4.1 Amounts not deemed remuneration for contractors

Section 8(4)(c)(i) of the AC Act only allows a reduction in the amount deemed to be remuneration where that reduction is a percentage prescribed in a statutory rule. Therefore there is no scope for an alternative form of regulatory approach. WorkSafe has no power to implement a reduction scale other than in the form of a statutory rule, which can only be expressed as a prescribed percentage. There is no non-regulatory alternative.

Of course, the AC Act does not *compel* the prescription of percentages. In the absence of a prescribed percentage, section 8(4)(c)(ii) of the AC Act provides that the part of that total amount not attributable to the provision of labour will be deemed to be remuneration for the purposes of the AC and ACWI Acts. The exception is for timber contractors, for whom an absence of prescribed percentage means the entire contract value is deemed remuneration—see section 6(3) of the AC Act. This situation presents the 'base case' defined above, which was shown to be inferior to the proposed Regulations.

Therefore, feasible alternatives that could be considered are limited to altering the percentages to be applied for each contract type. WorkSafe does not have sufficient data to independently verify if the current (and proposed) percentages are accurate estimates of the true non-labour components of such contracts beyond the precision that they are, on average, reasonable estimates which align with the SRO and WorkSafe feedback. Therefore, it is not clear whether marginal increases in the percentages would improve or worsen either efficiency or equity (if at all). The impacts of such an option, however, include:

- A change from the current percentages, reducing stability. There has been no evidence provided to, or discovered by, WorkSafe that indicates that the current percentages are unreasonable. Arbitrary changes therefore are not justified.
- A move away from harmonisation with the payroll tax. Harmonisation of regulatory layers is of significant and growing importance, which cannot be underestimated. WorkSafe has only departed from the corresponding SRO percentages where there is a strong case for doing so.

4.1.1 Single percentage for all contract types

A feasible alternative is to prescribe a single percentage that would apply to all types of contractors. Under this option, it is assumed that WorkSafe would calculate a remuneration-weighted average of the current percentages, so that the single percentage equals the current reduction in deemed remuneration across all contract types in total. For 2010-11, this would have been a percentage of around 25 per cent.

Similar to the proposed Regulations, the benefits of this approach are to simplify the process and avoid the costs of disputes—i.e., to improve efficiency by streamlining the costs of administration and reducing the potential for waste of contractor, worker, WorkSafe and disputation resources. Relative to the proposed Regulations, a single percentage would be even simpler.

However, since a single percentage would effectively average out different kinds of contracting arrangements, the ability for a single percentage to achieve equity and other efficiency objectives is limited.

In relation to the MCA framework, this option was scored +5 in terms of efficiency—there is benefit from a more efficient process and reduced disputes, partially offset by the effect of the applied remuneration reduction being less connected with the likely non-labour component of contracts.

This option was scored -50 in terms of equity, as it would worsen the disparity in treatment of these parties relative to otherwise identical employer-employee situations. (The base case requires actual non-labour components to be determined, and the proposed Regulations deem a reasonable estimate.)

Lower disputes reduces the costs to WorkSafe in administering the scheme, which consequentially means that the scheme can better meet objectives of the AC Act, particularly in relation to providing adequate and just compensation to injured workers, to ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses, and to establish incentives that are conducive to efficiency and discourage abuse. The deeming approach also provides for a simple and transparent approach to premium setting and compensation payments. Accordingly, the proposed regulations are scored moderately positively against the policy alignment criterion, slightly higher than the proposed option as a single rate increases simplicity.

Overall, the alternative option for deeming amounts not to be considered as remuneration for contractors was given a score of +6.7 against the base case.

TABLE 12: MCA scores for single percentage reduction for all contract types

Criterion	Weighting	Score	Weighted Score
Efficiency	33	+5	+1.7
Equity	33	-50	-16.7
Policy alignment	33	65	+21.7
TOTAL	**100**		**+6.7**

4.2 Self-insurer contributions

Section 146 of the AC Act requires that self-insurers must pay contributions to the Fund. The amount of contributions payable by an individual self-insurer is to be determined by WorkSafe, however such determination must:

- be in accordance with the regulations, and
- have regard to the rateable remuneration paid or payable during the financial year and preceding financial year in respect of that year and preceding year or any quarter of that year or preceding year by the self-insurer.

In considering alternative options, the arrangements in other Australian states were identified. The Victorian Guide to Regulation requires that less onerous approaches in other jurisdictions be considered. In relation to self-insurer contributions, interstate arrangements are not able to be identified as more or less 'onerous'; they are simply different in terms of how they are determined, and therefore different in how they allocate costs between different parties (whether between scheme and self-insurer groups, or between individual self-insurers). Salient features of the interstate arrangements include:

- The relevant authority setting the total pool of costs to be recovered from self-insurers without reference to a formula or prescribed list of cost items—for example in Queensland the amount recovered through self-insurer contributions is determined by the authority and gazetted each year; in New South Wales the authority may determine the amount each year 'having regard to' the expected costs and other income.
- Using a notional premium method to allocate contributions between individual self-insurers—this is used in New South Wales, Western Australia, South Australia and Queensland. Essentially, this involves recognising different risk profiles of individual employers.

4.2.1 Using risk as a basis for calculating contributions

Both the total cost pool to be recovered from the group of self-insurers, and the individual contributions of employers within that group, could be determined using a risk rating in addition to remuneration levels. The risk rating could be applied in a number of ways:

- the self-insurer's notional industry risk rate
- the self-insurer's individual benchmark premium rate based on its claims experience
- the self-insurer's notional risk rate adjusted to take account of the performance of the large employer segment to which self-insurers belong.

There are also possible permutations within each of these options.

There is wide support for using risk in determining self-insurers contributions, including the SIAV, the ESC, Access Economics and the Hanks review (see Attachment B). WorkSafe also regards this approach as having in principle distinct advantages in that:

- Allowing for risk could give a better indication of the likelihood of WorkSafe services used by self-insurers.
- Including risk would align the method of sharing costs between self-insured employers with the method for sharing the corresponding costs between scheme-

insured employers. Non-scheme costs that are borne by scheme-insured employers are allocated as a loading on to scheme premiums; individual shares are therefore based on both remuneration and risk ratings.

- As risk ratings are included in the determination of scheme premiums, but currently not in self-insurer contributions, allowing for risk in determining the contributions would overcome a perverse incentive where high-risk employers seek to self-insure merely to avoid the risk-based allocation of non-scheme costs, or conversely low-risk employers that could otherwise beneficially self-insure do not do so.

Against this, it is recognised that risk rating methodologies can be an imperfect estimate of actual risk, which is itself only a partial indicator of how an employer is likely to use WorkSafe non-scheme services. At present there is no data available on the relative benefit that different employers receive from WorkSafe services; limited data is available on individual employers' use of medical panels and disputation services, but not other services such as prevention services and safety campaigns. While these may have low value to inherently low-risk employers, high use of these services may in fact be the cause of the low risk enjoyed by other employers.

In the absence of the legislation allowing use of an employer's risk, remuneration continues to be the most relevant indicator, and the incremental value of adding a risk factor would need to be balanced against the efficacy of achieving reliable and transparent risk ratings, and confidence that the weight given to the risk factor is correct. Even were risk to be reflected in the calculation of contributions, the remuneration levels of employers would still account for allocating up to 85 to 90 per cent of the total contribution amount, with risk adjustments representing a small component of the overall contribution.

Within the scope of this RIS, risk-based approaches have not been identified as practical alternatives. The reason is that under the AC Act, in determining the self-insurer contributions, WorkSafe may have regard to remuneration, but no other matters. The risk rating of a self-insurer is not a factor that can be taken into account. In order to do so, the AC Act would need to be amended allow risk, or other factors, to be taken into account.

For this reason, alternative approaches such as a notional premium method, which are common in other Australian states, are also not assessed.

Further examination of the merits of expanding the factors able to be taken into account in setting self-insurer contributions will occur in the context of future changes to the legislation. Should the legislation be changed to allow risk factors to be considered, the regulations in place will be reviewed.

4.2.2 Fee for service

This option would attempt to recover the cost components that can be directly attributed to individual users. These are the costs relating to courts, conciliation, medical panels, and OHS. Recovery of these costs is not limited by the need to determine contributions based on remuneration; these costs would be recovered under a general ability of WorkSafe to charge for services provided, and would not be imposed under section 146 of the AC Act.

However, there is only a small range of activities for which a 'user pays' approach could be practically applied. Other costs would need to be factored into the contribution formula. In particular, the administration costs directly associated with each class of insurer (scheme- and self-insured) would be allocated across the users in the respective classes. Other costs components not directly attributable to individual employers (e.g., general administration and advertising) would have to be recovered through a formula based on remuneration.

Essentially, this option involves the approach in the proposed Regulations (including the current effective discount on recovery of operating costs that are not charged on a user-pays basis), except that where a cost is directly attributable to an individual self-insured employer it is recovered via a fee and not through the self-insurer contributions.

The advantages of this option are equity and efficiency. Equity is achieved because, in the small category of services where user fees are feasible, payments relate to costs caused; users face an incentive to make effective use of the services and to avoid loading them with trivial or unnecessary cases, because they pay for what they receive, rather than face a price which reflects the pooling of costs across wide groups of employers. Theoretically, users fees do not create any perverse incentives, for example, an incentive to compromise safety.

There are also disadvantages of this approach. Firstly, costs would have to be calculated in greater detail than they are at present. WorkSafe do not currently discern costs at the individual use level. This, together with the need to maintain the contribution system in parallel, means that the costs to WorkSafe associated with administering the fee-for-service mechanism would increase significantly, which would then be passed back on to employers. Implementing a fee-for-service arrangement for a small number of services will increase the cost of those services and the effort required would significantly affect the efficiency of those services.

Secondly, employers are not always a willing 'customer' for some of these services. For example, WorkSafe has statutory duties in relation to inspections. Inspections are an inherent feature of a well-functioning system. In this context, the apparent efficiency advantages of this option (over the proposed Regulations) are limited as the use of services is relatively insensitive to price signals.

Further, under a user pays approach, an individual employer may be subject to unexpectedly high fees arising from a single incident; the use of services may be initiated by the employer but the ultimate cost of that service will be beyond the control or prior knowledge of the employer. Use of services is considered essential in a well-performing scheme, and concern about high costs of services may encourage some employers to not use the services as intended. Again, the apparent efficiency advantages of the price signal are limited as the price is not knowable in advance.

In terms of the MCA framework, this option is scored +75 against the equity criterion as it (the user-pays approach combined with self-insurer contributions for the residual operating costs) seeks to match payments to the benefits received. It is scored +50 against the efficiency criterion: while it improves efficiency above the base case (i.e., the free-rider problem), it also adds considerably to costs of providing such services, which do not outweigh the small improvements in efficiency.

Like the proposed Regulations, this option is consistent with the objectives of the AC Act and aligns with policy objectives, as it would support ongoing viability of the Victorian system. However, a user-pays mechanism would add to the overall costs of WorkSafe (in terms of administration), for which additional financial burden would be placed on employers. Lastly, while a fee-for-service arrangement is theoretically more aligned with the *Cost Recovery Guidelines* (although not fully consistent), in practice its transparency is made opaque by not being able to know the total cost of a service up-front, by employers not being part of the decision as to whether some services are provided, and the overall lack of simplicity in operating the scheme. Therefore, the proposed approach scored a slight positive +5 on the policy criterion.

Overall, this option scored +43.3.

TABLE 13: MCA scores for the fee for service option

Criterion	Weighting	Score	Weighted Score
Efficiency	33	+75	+25.0
Equity	33	+50	+16.7
Policy alignment	33	+5	+1.7
TOTAL	**100**		**+43.3**

4.2.3 Removing the current 'discount' on the costs to be recovered

The current Regulations recover only part of the 'operating costs'[21]. When they were introduced in 2001, the regulations significantly expanded the types of costs to be recovered from self-insured employers, to better reflect the costs attributable to both scheme- and self-insured employers. In recognition of the size of the change, only 60 per cent of the additional operating costs were included in the contribution formula.

It was intended at the time that this discount be transitional. The matter was subsequently put on hold pending reviews that began in 2003 and ended with the Hanks review in 2008 (see section 1.5). Despite these reviews, the previous government never pursued changes to the current approach.

The current Regulations therefore have a residual equity problem in that scheme-insured employers are cross-subsidising self-insured employers. The value of the discount, being the amount of operating costs[22] that are recovered from scheme-insured employers rather than self-insured is in the order of $7 million per annum. However when spread over the large number (approximately 200,000) of scheme-insured employers, any cross-subsidisation is negligible.

[21] Excluding WorkSafe operating costs that do not relate to self-insurers.
[22] Excluding WorkSafe operating costs that do not relate to self-insurers.

An alternative approach is to retain the current structure and demarcation between scheme-based costs and shared operating costs, however remove the current "discount" on the amount of other shared operating costs for which self-insurers make a contribution. The proposed formula would be simplified to the following (using the definitions outlined in section 3.4.4):

$$\text{contribution} = \left\{ D \times \frac{B}{C} \right\}$$

meaning that self-insurers will pay a contribution equal to their proportional share (based on remuneration) of *all* the costs identified as non-scheme operating costs. The 'A' (see section 3.4.4) has disappeared because it is a subset of the costs included in 'D' — currently self-insurers pay a full proportional share of A, which they will continue to do, but would under this option pay a full proportional share of the other shared operating costs (D – A) rather than a discounted share.

All 36 approved self-insurers in Victoria would be affected by this change. The application of the new formula would significantly increase the share of WorkSafe costs that is to be recovered from self-insurers. If the "discount" were removed in the 2010-11 financial year, self-insurers collectively would have paid around $7 million in additional contributions to WorkSafe, an increase of 55 per cent (in real terms). While this increase represents only 0.07 per cent of the self-insurers' aggregate remuneration, it is nevertheless a significant additional impost.[23]

This alternative formula may result in a more equitable recovery of costs for benefits received, either directly or indirectly, from WorkSafe in terms of programs and services (assuming that employer remuneration is a reliable proxy for distribution of benefits). This alternative approach would not of itself change the level of services provided, and therefore no change in administration costs would be expected for WorkSafe or for self-insured employers.

However, there is a significant risk that by increasing self-insurer contributions by this extent, this would undermine the key policy objective of encouraging eligible employers to become self-insured, thus also undermining the objectives of ensuring a sustainable scheme that meets employer and employee needs. Further, increasing the self-insurer contributions would create instability for self-insurers in an already unstable global economic climate.

Further, there is a risk that some of the current self-insurers may exit the Victorian system altogether and become part of the Comcare system.[24] The Comcare system may be attractive to large self-insured employers as its 'tiered' system (similar to a fee for service type arrangement) together with lower overall costs (as Comcare has proportionately fewer programs aimed at improving workplace safety) is likely to lead to employers regarding that system as a means to lower their overall costs.

Although calculated on a different basis, WorkSafe estimates that the costs difference of the Comcare scheme to an average large employer would currently be about 3 per cent

[23] In 2010-11, self-insurer contributions amounted to 0.126 per cent of self-insurers' remuneration, although this has steadily fallen from 0.138 per cent in 2007-08.
[24] There is currently a moratorium on joining the Comcare system, but this moratorium is scheduled to end at the end of 2011.

saving.[25] The SIAV has also provided feedback to WorkSafe that they consider Victorian costs to be higher for their members. While this may not be a large difference at present, WorkSafe believes it could be a substantial factor should Victorian self-insurer contributions increases significantly. In the current economic climate, it would be particularly feasible that an increased contribution would lead to instability for self-insurers, potentially leading to self-insurers considering other alternatives such as whether to cease self-insurance, or to apply to move to Comcare following removal of the moratorium later this year.

In a submission in October 2011, provided to WorkSafe as part of the preliminary consultation for the proposed Regulations, the SIAV stated that it considers that since the introduction of the current formula in 2001, the cost of the contribution fee to self-insurers has increased significantly, by 21% (mean) per annum[26]. This indicates that self-insurers would be very sensitive to a significant increase in contributions. The SIAV asserted that since 2001 self-insurer contributions have increased, based on the existing formula. The SIAV has also noted that WorkSafe self-insurer contribution amounts have risen faster than other business costs, and argues that Victorian contributions should be reduced.

Given the important role that self-insurance has within a sustainable scheme, by

- providing incentives for larger employers to be high performing (so as to potentially become eligible for self-insurance)
- containing costs to minimise the impact on business (there are administrative and economic efficiency benefits for self-insurers to manage their own claims)
- reducing the social and economic costs of injury to the community (through direct incentives on self-insurers to reduce claims and the duration of time off work for injured workers).

WorkSafe considers that it is essential that eligible employers are not dissuaded from becoming or remaining self-insured, by a substantial increase in the contribution fee. As an adjunct to the policy of supporting self-insurance, it is also important that self-insurers are not discouraged from remaining within the Victorian scheme.

During the period of 2006-2007, when employers were able to move to Comcare, nine large Victorian employers left the Victorian system. While decisions on eligibility lay with the Federal Safety, Rehabilitation and Compensation Commission, given the flexibility of the criteria for determining which employers can self-insure under Comcare (the employer must be carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority) possibly up to 10-15 current self-insured employers could be eligible to join the Comcare system once the moratorium is lifted. Given the current cost differentials, there is a likelihood that a material increase in self-insurer contributions could result in at least five employers exiting the Victorian system. In particular, as Comcare premiums may take account of

[25] In 2009-10, average Comcare licence fee of $372,000 compared to average Victorian self-insurer contribution of $383,000.

26 WorkSafe notes that increases in the contributions payable are the result of both increases in the rateable remuneration of self-insurers and scheme-insured employers during this period (which is affected by increases in numbers of employees and wages), being factors 'B' and 'C' of the contributions formula, as well as increases in relation to factors 'A' and 'D-A' of the formula (which are discussed on page 28 of the RIS).

risk, lower-risk employers would enjoy an even stronger incentive to exit the Victorian system.

While a decision to exit the Victorian system would be a matter for the employer, it would have significant impacts beyond the costs to the employer:

- By moving to the Comcare system, the Victorian workers of these employers would no longer enjoy the same benefits in terms of entitlements and benefits as other Victorian workers. In many respects, this would be to the disadvantage of these workers with the consequences not taken into account by the employer's decision to leave the Victorian system.

  Some advantages of WorkCover arrangements compared to Comcare are inclusion of shift and overtime allowances in payment calculations, a higher maximum lump sum payment for dependents, superannuation entitlements for long-term injured workers, access to rehabilitation services and return to work benefits prior to claim acceptance, a return to work inspectorate, faster resolution of disputes, and vocational rehabilitation services

- As the employers will leave the Victorian system altogether they will no longer make contributions to WorkSafe costs. However, many of WorkSafe activities will continue at the same level, such as education and awareness campaigns, meaning that such costs will be borne by a smaller employer group. While there are a small number of activities that would decrease as a result of employers leaving the system, such as use of medical panels, disputes services and inspections, a large amount of the costs for which self-insurer contributions are used would continue as the same level.[27]

  In addition, employers that join the Comcare scheme will continue to enjoy some benefit of the state-wide activities of WorkSafe, such as television campaigns raising awareness, for which they will not contribute to the costs.

For these reasons, as an adjunct to supporting self-insurance within the scheme, it is also important to avoid 'leakage' of Victorian employers. If the five self-insurers currently paying the highest contribution left the Victorian system, the lost contributions would more than offset the additional $7 million being sought by removing the discount.

A full contribution of costs by self-insured employers may have the consequence of allowing WorkSafe to not need to build in further costs on scheme-insured employers to cover its costs. Therefore, scheme-insured employers, which include all small businesses, would theoretically be beneficiaries of this change. However, as the increased amount to be recovered from self-insured is relatively small—around $7 million per annum

[27] Decreased use of services as a result of an employer exiting the Victorian system cannot be estimated as it would depend on the particular use of those services by the individual employer exiting the system. For example, exit of an employer that has very limited use of conciliation services and medical panels, low injuries, and infrequent inspections, would not result in any material change to WorkSafe costs. The employers most likely to exit the Victorian system are the low-risk employers, as Comcare licence premium take into account risk. Therefore, WorkSafe considers the loss of self-insurer contributions (based on remuneration) would outweigh any small reduction in WorkSafe costs.

compared with total scheme premiums of $1.7 billion—the benefit to each of the more than 200,000 scheme-insured employers would be negligible (around $33 per year[28]).

However, if a small number of current self-insurers leave the Victorian system, then scheme employers may end up with higher premiums to meet the costs of WorkSafe's activities that are not linked to the number of employers, such as promotion and education, and research. The benefit, if any, to individual employers will be reflected in their future premiums, and therefore as between employers the benefit will be dependent on the rateable remuneration, risk and claims history of each employer.

This option enables the recovery of contributions, thereby correcting the 'public good' problems identified in section 2.2, which included both efficiency and equity dimensions. However, this option may give rise to new public good problems if employers and self-insurers are deterred from becoming self-insured.. Requiring self-insured employers to make a contribution to the services from which they derive benefit provides for a fairer system, as they use many of the same services as scheme-insured employers. This approach therefore scores highly on the equity criterion. However, it is not perfectly equitable as the share of these costs to be borne by self-insurers, and the share of those contributions as between self-insurers, is based solely on the relative remunerations paid by each employer, and is therefore only a proxy to measuring the benefit received from the WorkSafe services by self-insurers as a group or as individual employers. This option scored a +70 on the equity criterion.

In terms of efficiency, where the free-rider problem is partly overcome, decisions to self-insure will be made on the basis that these employers will continue to have to pay for services they consume, or to which they contribute to the cost. Under this option, employers will not choose to self-insure on the basis that they will escape paying for services that they use. However, again this will not be perfectly achieved, as remuneration is the sole proxy for determining the relevant contribution shares. Further, the risk of employers and self-insurers being deterred from being self-insured has the real possibility that higher costs will fall on both scheme- and self-insured employers remaining in the scheme without any corresponding increase in benefit. Further, exiting employers would continue to enjoy some benefits without making a contribution. Therefore, on balance, this approach scored +80 on the efficiency criterion.

The alternative approach is consistent with the objectives of the AC Act by requiring self-insurers to make a contribution to WorkSafe costs, enabling WorkSafe to undertake a range of programs and activities. Like the proposed approach, the alternative formula would also be transparent and simple to administer. However, such a large increase has the very likely potential to discourage some employers and potentially self-insurers from becoming/remaining self-insured. For the reasons outlined above, this would be to the disadvantage of the workers of those employers, and also to the employers remaining in the Victorian system (both scheme- and self-insured).

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[28] The actual value that would be passed on to individual employers is difficult to ascertain. A reduction in the discount would potentially result in a reduction in the scheme's "break even premium", and in turn, the scheme's average premium rate. The exact reduction in the premiums of scheme-insured employers would depend on the magnitude of any such change in the average premium rate, which is also dependent on a number of other factors, including the discretion of the WorkSafe Board. Employers' rateable remuneration, industry and claims history can also affect calculation of premium.

It is a real possibility that in seeking to recover an additional $7 million from self-insured employers, this would hamper the achievement of the objectives of the AC Act, and undermine the policy objectives of preserving the role of self-insurers in the scheme (to reduce moral hazard and increase incentives for large employers to be more proactive in reducing risks), and to maintain self-insurers and employers within the Victorian system. More generally, this would potentially undermine the objectives of the scheme: to establish incentives conducive to efficiency and discourage abuse, to establish and maintain a fully funded scheme, to improve the health and safety of persons at work and reduce the social and economic costs to the community of accident compensation. It could also result in more than this amount being lost through employer exits. Given these critical concerns, this approach scored -20 on the policy alignment criterion.

The overall MCA score is +43.3.

TABLE 14: MCA scores for the removing the current discount

Criterion	Weighting	Score	Weighted Score
Efficiency	33	+80	+26.7
Equity	33	+70	+23.3
Policy alignment	33	-20	-6.7
TOTAL	**100**		**+43.3**

4.2.4 Removing the discount over two years

A variation of the above option would be to phase out the discount over a number of years. This option assesses:

- Retaining the current 40 per cent discount for 2011-12
- Reducing the discount to 20 per cent for 2012-13
- Removing the discount altogether from 2013-14 for the remainder of the life of the Regulations.

This phase out would be built into the Regulations.

In terms of efficiency and equity considerations, this option would score close to the option above to remove the discount immediately, but would be slightly lower to reflect the initial two years of retaining the discount. Therefore, in the relation to the MCA criteria, this option was scored +78.5 for efficiency and +68.5 for equity.

However, this option would still score relatively poorly in terms of policy alignment. As for the option with immediate removal of the discount, a substantial increase in self insurer contributions, even if phased in over two years, would likely lead to the same impacts of employers discouraged from self-insuring, or exiting the Victorian system in favour of Comcare. It would also introduce an element of instability for self-insurers.

Compared with removing the discount immediately, there is a slightly reduced risk as the phased approach would theoretically allow WorkSafe to monitor the impacts of the

change over a period of time and take action if negative impacts were observed. However, this is only a small advantage in reality: to make the case for changing the regulations would require negative outcomes to actually occur, and may take time to effect a response. Importantly, employers would be likely to respond to the prospective increases when the Regulations are made, not waiting until the increase actually occurs.

General concerns discussed elsewhere in the RIS, relating to the potential to discourage employers from remaining or becoming self-insured, would be unlikely to be prevented by a two-year transition. It is therefore considered that any substantial increase incorporated into the Regulations poses a significant risk to the policy objectives.

On balance, this option was scored -15 on the policy alignment criterion, reflecting the risk to achieving the government's policy objectives. Overall, this gives an MCA score of +44.

TABLE 15: MCA scores for a phased removal of the current discount

Criterion	Weighting	Score	Weighted Score
Efficiency	33	+78.5	+26.2
Equity	33	+68.5	+22.8
Policy alignment	33	-15	-5.0
TOTAL	**100**		**+44.0**

5 CONCLUSIONS

5.1 The preferred option

Based on the information available, and in consideration of the rationale and objectives of the regulations, the proposed regulations, as described in this Regulatory Impact Statement, meet the objectives better than the assessed alternative approaches.

TABLE 16: Amounts not deemed remuneration for contractors—MCA scores

Option	MCA Score
A separate reduction percentage prescribed for each of the listed contractor types, based on the rates used by the SRO for calculating payroll tax (*the proposed Regulations*)	+13.3
A single reduction percentage for all contractor types	+6.7

Arbitrary changes to individual percentages was identified as an option but not assessed, as the impacts on efficiency and equity are unclear. No non-regulatory options were relevant.

TABLE 17: Self-insurer contributions—MCA scores

Option	MCA Score
The proposed Regulations—i.e. the approach in the current Regulations including maintaining an effective 40 per cent discount on the majority of the costs to be recovered from self-insurers	+45.0
The approach in the current Regulations, but with a fee-for-service arrangement where use of a service is attributable to an individual employer	+43.3
Full recovery of operating (non-scheme) costs, based on remuneration shares	+43.3
Full recovery phased in over 2 years	+44.0

The proposed Regulations achieved the highest score, and therefore were considered based on this analytical approach, to be preferable to all other alternatives.

WorkSafe is cognisant of the limitations of this approach, and the sensitivity of the outcome to the choice of criteria weightings are recognised. For example, if the immediate removal of the discount was scored -15 (instead of -20) on the policy alignment criterion, and the phased removal was scored -12 (instead of -15), these options would have an overall score equal to the proposed option.

In that regard, and given the closeness of the overall scores, the appropriate course of action appears to be to retain the current approach at the present time, with a view to undertaking further analysis in the medium term.

In particular, a key disadvantage of removing the current 'discount' is the risk of undermining key policy objectives by discouraging employers from becoming self-insured,

and in encouraging employers to exit the Victorian system. Although it is difficult to quantify how self-insurers might respond to a large increase in self-insurer contributions, in light of comments from the SIAV that the current contributions payable are too high, have increased significantly since 2001, and should be reduced further, together with the current economic climate, it is apparent that such an increase would make self-insurance in Victoria less attractive to employers. It is not possible to accurately estimate the cost differentials between a self-insurer remaining a self-insurer in the Victorian system, or exiting to the Comcare scheme. Reliable predictions of the numbers of employers eligible to enter the Comcare scheme, or other factors that may affect employers' decisions to do so are also very difficult. This lack of information has been reflected in a conservative assessment of the impacts of increasing the contributions.

Although the inclusion of risk-based measures in the contributions formula is not currently feasible under the AC Act, it is something that can be considered within the context of future legislative changes. In addition, retaining the current formula allows for further, ongoing review of the contributions formula, not restrained by the current need under the AC Act to restrict the formula to matters relating to remuneration. In the interim, this ensures that there is stability in the formula (thus reducing administration and transfer costs), while such broader review takes place.

An available option, not reflected in the draft Regulations, is to provide that the self-contribution formula only apply for a short, fixed period, such as 3 years. This forced expiry of the formula would require reconsideration within a few years, allowing WorkSafe to undertake further analysis. Stakeholders are encouraged to provide views on this option.

The determination of self-insurer contributions must also comply with the government's *Cost Recovery Guidelines*. By requiring self-insured employers to make a contribution to the costs of WorkSafe, from which they benefit, is consistent with the guidelines. As the proposed Regulations retain an effective discount on the contributions paid (of around $7 million per annum), there remains a small amount of cross-subsidisation.

However, this minimal cross-subsidisation is justifiable in line with the *Cost Recovery Guidelines*, on the basis that in this instance full cost charging could undermine other important policy objectives, namely the government's objectives to run a sustainable scheme that delivers improved OHS outcomes and meets the needs of employers and employees, together with the objectives of the AC Act and overall efficiency. Retaining the current formula also meets the policy objective of maintaining stability for self-insurers, and eliminates transition costs.

An option to expand the self-insurer contribution cost pool to recover 'externality' impacts of self-insurers leaving the scheme was not assessed, as there are not currently appropriate mechanisms in place to measure such an impact reliably or to assess the impact on WorkSafe's other objectives.

Other elements in the proposed Regulations are administrative in nature and are required to give operational effect to the AC and ACWI Acts.

The proposed regulations do not impose a disproportionate burden on small business or adversely affect competition (see Attachment E).

In relation to whether the proposed regulations have a net benefit, it is noted that:

- In relation to self-insurer contributions, the proposed regulations do not impose net additional costs, but only affect allocation of costs from scheme-insured employers to self-insured employers. However, there is a benefit to society as this reallocation is based on a more equitable and efficiency allocation of costs compared to the base case.
- In relation to prescribing amounts deemed to be not remuneration for contractors, again there is no net additional cost of the regulations (at the margin, an increase in a prescribed rate reduces the amount of premium paid by contract principals offset by lower compensation payments). There is no available data to quantify the benefits of this measure, however, based on anecdotal evidence it appears that by prescribing such percentages, the costs of disputation will reduce, providing net benefit.
- In relation to the other elements of the proposed regulations, these are considered to have a very low or zero cost impact, but provide for effective operation of the legislation.

The impacts of the proposed Regulations on different groups were outlined in Section 3.4.

This Regulatory Impact Statement concludes:

- the benefits to society of the proposed Regulations exceed the costs
- the proposed Regulations do not impose restrictions on competition.

5.2 Consultation

Comment is sought on all aspects of this RIS, and particularly in relation to the following questions:

1. Should the self-insurer contributions formula be changed to reflect the full proportionate share of the relevant operating costs? What are the likely consequences of such an increase? Does this RIS appropriately reflect the risks of employers being deterred from becoming self-insured, and self-insurers leaving the Victorian system?
2. Should the contributions formula have an automatic expiry after 3 years, requiring reconsideration of the formula?
3. Are the proposed percentages for amounts of contract payments deemed not to be remuneration reasonable?
4. Is there a basis for increasing the percentage for cabinet makers to 30 per cent to harmonise with the SRO payroll tax deductions for contractors? What are the likely impacts of this?
5. Are there any likely impacts of the proposed Regulations that have not been identified in this RIS?
6. Are there other feasible options (i.e., practical and within the authority of the AC Act) that could be considered?

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Attachment A

DESCRIPTION OF PROPOSED STATUTORY RULE

Part 1: Preliminary – Regulations 1 to 4

Regulation 1 sets out the objectives of the proposed Regulations stated as "prescribing those matters authorised or required for the achievement of the objects of the AC Act and *Accident Compensation (WorkCover Insurance) Act 1993*".

Regulation 2 states that the proposed Regulations are made under section 253 of the AC Act and section 72 of the ACWI Act.

Regulation 3 provides that the proposed Regulations will commence on 12 March 2012.

Regulation 4 revokes the Accident Compensation (Employer Claim Report Revocation) Regulations 2007, Accident Compensation Amendment Regulations 2010, and Accident Compensation Further Amendment Regulations 2010.

Part 2: General – Regulations 5 to 7

Regulation 5 prescribes the particulars that, where included in a certificate under section 239A of the AC Act, are deemed as proven by the certificate and can cover various specified payments made under the AC Act and the ACWI Act.

Regulation 6 prescribes the form of the warrant under section 240A of the AC Act (the warrant is for entry, inspection, examination of books, and other powers as necessary to determine if the AC or ACWI Acts have been contravened and to enforce both Acts). This form is contained in Schedule 1 of the proposed Regulations.

For the purposes of section 248B of the AC Act, **Regulation 7** provides that inquiries and investigations in relation to fraud must be conducted with due care, objectively, and affording all due recognition of and respect for the legal rights of the person or persons whose activities are being inquired into or investigated.

Part 3: Compensation – Regulations 8 to 14

For the purposes of the definition of 'full-time worker' in section 5(1) of the AC Act, **Regulation 8** prescribes number of hours if there is no applicable award as 35 hours.

For the purposes of items 3, 5, 6 and 8 of Schedule 1A to the AC Act, **Regulation 9** prescribes number of hours as 38 hours.

Regulation 10 prescribes amounts not considered remuneration for the purposes of the AC Act for timber contractors. This regulation provides that if:

- the timber contractor purchases and provides his or her own materials or equipment; and
- the total amount paid by the principal to the contractor includes amounts in respect of those materials or that equipment—

that part of the total amount paid to the contractor which is not attributable to the provision of labour and which is not deemed to be remuneration pursuant to section 6(3) of the AC Act is 25 per cent.

Regulation 11 prescribes amounts not considered remuneration for the purposes of the AC Act. This regulation provides that if:

- a person (in this regulation called the principal) enters into a contract mentioned in Column 1 of the Table in Schedule 3 with any other person (in this regulation called the contractor); and
- the contractor provides his or her own materials or equipment if those materials have or that equipment has not been purchased from the principal; and
- the total amount paid by the principal to the contractor includes amounts in respect of those materials or that equipment—

that part of the total amount paid to the contractor which is not attributable to the provision of labour and which is not deemed to be remuneration pursuant to section 8(4)(c)(i) of the AC Act is the percentage specified in Column 2 of the Table in Schedule 3 opposite that contract.

Regulation 12 deals with payments to worker resident overseas. If a worker who ceases to reside in Australia has satisfied the Authority or self-insurer under section 97(2) or (2AA) of the AC Act that the worker has no current work capacity and is likely to continue indefinitely to have no current work capacity, that worker is entitled to receive weekly payments in accordance with section 97(3) of the AC Act if at quarterly intervals:

- the worker submits to an examination by a medical practitioner who is legally qualified in the country where the worker is residing and who is approved by the Authority or self-insurer under section 5(1) of the AC Act and obtains from that medical practitioner a certificate in accordance with Form 1 in Schedule 3; and
- the worker makes a statement of identity in accordance with Form 2 in Schedule 3; and
- the worker submits the statement and certificate to the authority or self-insurer, as the case may be, together with a request for payment of the amount of weekly payments accruing due during the preceding quarter.

Regulation 13 provides that the prescribed period for the purposes of section 114D(5) of the AC Act is 30 days after the date on which the Authority receives notification that the employer has made a weekly payment to the worker in respect of whom a current certificate of capacity in accordance with section 111 of that Act has been forwarded to the Authority.

Regulation 14 is a transitional measure relating to contracts of insurance in previous regulations. This regulation provides that for the purposes of section 134 of the AC Act as in force before the commencement of section 35(3) of the *Accident Compensation Legislation (Amendment) Act 2004*, the forms of contract of insurance prescribed by the Accident Compensation Regulations 1985 and the Accident Compensation Regulations 1990 continues in force in respect of injuries arising before 4 p.m. on 30 June 1993.

Part 4: Self Insurance – Regulation 15

Regulation 15 prescribes the amount of contributions payable by a self-insurer pursuant to section 146(2) of the AC Act as determined in accordance with the formula.

Attachment B

CONSULTATION

Stakeholder engagement during the development of the proposed regulations

Date	Comment
5 May 2011	Letter sent to the 36 self-insured employers as well as the following organisations, employer groups and unions: • Australian Institute of Architects (Victorian Chapter) • Australian Lawyers Alliance • Law Institute of Victoria • Self Insurers Association of Victoria • State Revenue Office • Victorian Automobile Chamber of Commerce • Australian Industry Group • Australian Retailers Association (Victoria) • Civil Contractors' Federation • Housing Industry Association • Master Builders' Association of Victoria • Master Plumbers and Mechanical Services Association of Victoria • Victorian Congress of Employers Associations • Victorian Employers' Chamber of Commerce and Industry • Victorian Farmers' Federation • Australian Manufacturing Workers' Union • Australian Workers' Union • Construction Forestry Mining Energy Union (construction and General Division Victoria) • Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia • National Union of Workers • Shop, Distributive & Allied Employees' Association • Transport Workers' Union • Victorian Trades Hall Council The letter sought any comments on the operation of the current regulations, the need for such regulations and the effectiveness of any or all of the current regulations. It also sought feedback on any challenges in working with the regulations and suggestions for improvement.
19 May 2011	Letter from the Victorian Trades Hall Council in response to WorkSafe's letter dated 5 May 2011 proposing that the Regulations should contain provisions that make it mandatory that return to work plans should be in writing and that workers should be entitled to non-legal representation at the Accident Compensation Conciliation Service. These matters are dealt with elsewhere and are not the subject of the proposed Regulations.
19 September 2011	Letter to self-insurers informing them of the review of and expiry of the current Regulation and inviting them to the 5 October meeting.

Date	Comment
5 October 2011	Meeting with self-insurers, SIAV and current applicants (to become self-insurers) to receive comments and present them with detailed information on the regulation making process.
24 October 2011	Letter from SIAV providing preliminary feedback on the current regulations to WorkSafe in October 2011. SIAV argued that self-insurer contribution costs had risen dramatically since they were introduced, higher than other private sector business costs. SIAV suggested that in response to the cost differences between Victoria and other jurisdictions, concerns about the efficiency of costs included in the contributions formula, and general uncertainty in the outlook, contributions could be lowered by reducing by 20% the current 60% applied to WorkSafe operating costs (ie changing the formula from 60% to 48% of operating costs, with an increase in the value of the discount from the current 40% to 52%). While WorkSafe considers that an increase in the discount does not appear appropriate at the present time, regard has been had to these concerns in consideration in the RIS of whether the discount should be removed.

WorkSafe is aware of other views in relation to the self-insurer contributions. In the context of the 2008 Hanks Review, it was documented that, in relation to determining the total contribution pool to be recovered from self-insured, the Essential Services Commission[29] and the Self Insurers Association of Victoria[30] preferred an activity-based approach to the total contribution pool, while Access Economics preferred a contribution model based on the Efficient Component Pricing Rule. This latter approach was endorsed by the Hanks Review.

The activity-based approach is considered in this RIS (see Section 4) and is considered to be inferior to the proposed Regulations as in its practical application, it will under-recover the actual costs attributable to self-insurers.

In relation to determining the share of contributions between self-insured, all parties supported a risk-weighted basis. It is however outside the authority of the AC Act to use risk as a basis for determining contributions (see Section 4). Further consideration of the merits of amending the AC Act to allow risk-weightings to be used in the context of future reviews of the AC Act is intended.

SIAV had previously responded to a WorkSafe Victoria review of self-insurance in 2003. SIAV advocated a "transparent contribution formula based on accepted legal and economic principles for the calculation of the formula." It argued that the contribution should be primarily on a user-pay basis with no cross subsidisation of the premium paying scheme, with and any 'public good' contribution subject to transparency and accountability. The overriding principle is that self-insurance should have neutral impact on scheme viability. SIAV agreed that self-insurers should contribute a reasonable fee for use of the Dispute Resolution Service, the Medical Panels and Courts, as well as the reasonable costs of self-insurance administration, and a proportion of costs associated

[29] ESC, *Review of self-insurer contributions to the Workcover Authority Fund*, 2006.
[30] SIAV, Submission to the Essential Services Commission Issues Paper, 2006, cited in Access Economics (2008).

with public good costs such as works safe activities and marketing campaigns. These views have been considered in this RIS.

This RIS will be publicly available on the WorkSafe Victoria website at (www.worksafe.vic.gov.au) and will be advertised in The Age newspaper on 28 November 2012 and the Victorian Government Gazette. *The Subordinate Legislation Act 1994* requires that the public be given at least 28 days to provide comments or submissions regarding the proposed Regulations. Given that the proposed Regulations are being remade with minimal changes this period is considered adequate. However, due to the public holidays at this time of the year, more than 28 days are provided as the consultation period for this RIS, with written comments required by no later than 5.00pm, 9 January 2012.

Attachment C

INTERSTATE ARRANGEMENTS FOR SELF-INSURERS

Information in this Attachment has been adapted from Safe Work Australia, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand,* Canberra, March 2011

Each jurisdiction provides for employers to self-insure for workers' compensation. Self-insured employers must conform to the specific legislative requirements of each of the jurisdictions in which they self-insure, such as the level of benefits payable to injured employees. However, self-insurance gives self-insured employers financial freedom to fund and manage their own workers' compensation liabilities.

All workers' compensation jurisdictions in Australia and New Zealand, except Seacare, allow employers to self-insure if they meet certain requirements; the most critical of which is the financial capacity to fully fund future liabilities. Regulatory authorities in each jurisdiction also need to be satisfied that self-insuring employers have adequate work health and safety, injury management and return to work arrangements, as well as the capacity to effectively manage workers' compensation without external involvement. There is no mutual recognition between the jurisdictions. If an employer qualifies for self-insurance in one jurisdiction it does not automatically qualify for recognition in another jurisdiction.

Once employers self-insure they no longer pay workers' compensation premiums. However, in all jurisdictions, they are still required to pay a contribution that is a 'fair share' towards the overheads of administering the scheme.

The table below shows the number of self-insurers in each jurisdiction and the number of employees covered by self-insurance. Victoria, along with Western Australia, Tasmania, Northern Territory and the ACT have no defined threshold, instead deciding on a case by case basis according to other criteria.

Threshold for Self-insurance Eligibility (Number of Employees)

Jurisdiction	Number of employees
New South Wales	500 permanent staff including full-time and part-time. WorkCover may use its discretion to grant a licence to an employer that does not meet this requirement if such an employer currently holds a self-insurer licence issued by another workers' compensation jurisdiction.
South Australia	There is no formal number specified in the legislation, but the number of workers is relevant to the decision to grant or renew self-insurance. By policy, employment of not less than 200 workers in South Australia is considered adequate without further evidence.
Comcare	As per any Ministerial section 100 guidelines.
New Zealand	No specific minimum employee number. In practice, the pricing mechanism makes entry to the programme not financially viable to employers whose standard levy is less than NZ$150 000.

Source: Safe Work Australia, 2011

The following tables outline the costs associated with self-insurers.

Costs to self-insurers—Application (as at 30 September 2010)

Jurisdiction	Costs
Victoria	Application fee as prescribed in schedule 5 of the *Accident Compensation Act 1985*. Application fee applies to all applications and is calculated as the lesser of: • an amount equal to 0.033% of the assessment remuneration of the employer as defined in schedule 5 of the AC Act, calculated by reference to the most recent financial year preceding the date on which the application is made, or • $48,780 (subject to indexation).
New South Wales	One-off cost on application of $25,000 for Single Self-Insurer licence, $30,000 for Group Self-Insurer licence.
Queensland	Initial set up fee: ▪ $15,000 application fee for single employers. ▪ $20,000 application fee for group employers.
Western Australia	-
South Australia	A one off application fee applies of $10,000 plus $15 per worker employed by the applicant in the state.
Tasmania	No application fee.
Northern Territory	There is no cost to employers to lodge a self-insurer application. The only fee for employers is for an actuarial assessment to be provided to NT WorkSafe's actuary.
Australian Capital Territory	Application fee to be a self-insurer - $6007.27 (updated each year) and approval fee - $6007.27 (as at 30 Jun 2010). Pay the cost of an audit conducted on behalf of the Minister to establish that the employer has adequate resources to meet the employer's expected liabilities.
Commonwealth Comcare	One off application fee based on size, complexity, need for external financial assessment etc.
New Zealand	Pay a portion of the pre-entry audit costs. Cost of the independent audit of Health and Safety.

Source: Safe Work Australia, 2011

Costs to self-insurers—Ongoing (as at 30 September 2010)

Jurisdiction	Costs
Victoria	A self-insurer must pay contributions into the WorkCover Authority Fund in accordance with section 146 of the AC Act. Quarterly contributions payable by a self-insurer are determined by WorkSafe based on the rateable remuneration return submitted by a self-insurer pursuant to the Ministerial Order made under section 142A(3) of the AC Act.
New South Wales	Insurers are required to contribute to the WorkCover Authority Fund under section 39 of the *Workplace Injury Management and Workers Compensation Act 1998* and to the Dust Diseases Fund under section 6 of the *Workers Compensation (Dust Diseases) Act 1942* on an annual basis.
Queensland	Levy is paid each financial year.
Western Australia	Self-insurers are required to contribute annually to the Authority's General Account. The contribution is a percentage (fixed by the Authority) of the total amount of the notional premium of the self-insurer. The minimum contribution is $40,000.
South Australia	Annual special levy payable by a self-insurer is a percentage of the levy that would have been payable if they were not a self-insurer and may be differentiated between different self-insured employers by reference to: **1.** the application of the natural consequences model **2.** application of remedial levy paid to reflect additional cost to WorkCover of administering the Act where self-insured employers do not comply with their obligations as a self-insured employer.
Tasmania	Requirement to make annual contributions to the WorkCover Tasmania Board and the Nominal Insurer Fund.
Northern Territory	Once a self-insurer, self-insured employers are required to pay the Territory an amount determined by the Authority as a contribution towards: • administration costs of the Work Health Court • administration costs of the Supreme Court associated with proceedings under the Act • costs incurred by the Authority in providing a mediation service, and • cost of printing scheme documents. They are also subject to contribution to the Nominal Insurer based on market share.
Australian Capital Territory	Pay the cost of an investigation by the Minister to assess the employer's injury management programs and personal injury plans. Appropriate audit costs and application fee on renewal of licence.
Commonwealth Comcare	Annual licence fee payable. The fee varies based on contributions to regulatory management of the SRC Act scheme with special emphasis on issues relevant to licensees, plus costs specifically applicable to overseeing the licence compliance evaluation program for each licence, and the size of the licensee. There is an OHS contribution to meet regulatory activities in workplace safety.
New Zealand	Pay a portion of the pre-entry audit costs. Cost of the independent audit of Health and Safety.

Source: Safe Work Australia, 2011

Attachment D

IMPLEMENTATION AND ENFORCEMENT MATTERS

There are not expected to be any implementation issues with the proposed regulations as they largely replicate the current regulations, and therefore represent a continuation of existing practice for WorkSafe and its stakeholders.

WorkSafe will be responsible for enforcing the proposed regulations. WorkSafe works in the accident compensation area together with its agents to:

- Monitor and ascertain how the regulations are working
- Identify particular problems and areas of possible change
- Develop guidelines, policies and related information material to help the industry meet their duties

Monitoring will be undertaken to verify whether these proposed changes are operating in accordance with expectations and ensure any issues are identified in a timely manner.

In most cases, the AC and ACWI Acts provide the substantive requirements, with the proposed regulations prescribing administrative or operational detail. The Acts include enforcement provisions where necessary to facilitate administration of the requirements of the Acts.

WorkSafe will remain responsible for determining the level of each self-insurer's contribution payable under the AC Act, in accordance with the formula prescribed in the proposed regulations, and for collecting these payments. The AC Act provides that if a contribution is not paid within 14 days of the due date, the amount of the contribution, together with interest at the prescribed rate and the surcharge specified in a Ministerial Order in force under section 142A(3), may be recovered as a civil debt. Each self-insurer must submit a return in accordance with the Ministerial Order under section 142A(3) to enable WorkSafe to determine the amount of contributions payable. WorkSafe may also revoke an approval for a self-insurer where the employer has failed to comply with the AC Act or the regulations, any terms or conditions of its approval as a self-insurer, a Ministerial Order, or any other subordinate instrument made under the AC Act or the regulations.

Attachment E

IMPACT ON COMPETITION

As part of the National Competition Policy *Competition Principles Agreement* agreed by the Council of Australian Governments (COAG), all governments undertook to review legislation containing restrictions on competition. The guiding principle is that legislation (including acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the regulation can only be achieved by restricting competition.

The NCP 'competition test' was used to assess the proposed Regulations against any possible restrictions on competition. The test asks whether the proposed Regulations:

- allow only one participant to supply a product or service
- require producers to sell to a single participant
- limit the number of producers of goods and services to less than four
- limit the output of an industry or individual producers
- discourage entry by new persons into an occupation or prompt exit by existing providers
- impose restrictions on firms entering or exiting a market
- introduce controls that reduce the number of participants in a market
- affect the ability of businesses to innovate, adopt new technology, or respond to the changing demands of consumers
- impose higher costs on a particular class or type of products or services
- lock consumers into particular service providers, or make it more difficult for them to move between service providers, and/or
- impose restrictions that reduce range or price or service quality options that are available in the marketplace.

The legislative framework restricts the employers permitted to self-insure to those that meet criteria determined by WorkSafe Victoria. In practice, only 'large' employers are likely to meet the relevant criteria. In an unfettered market, insurers would face competitive pressures to provide a range of services at attractive prices or risk losing business to employers who could choose to self-insure. For instance, self-insurers may determine that they can provide better tailored workers' compensation packages and claims management to their workers, and with lower administration costs. To the extent that legislative arrangements prohibit some employers from being able to self-insure who would otherwise be able to do so, the degree of competition in the market is reduced. However, this is a consequence of the AC Act, not of the Regulations.

It is assessed that the proposed Regulations meet the NCP 'competition test' as set out in the Victorian Guide to Regulation and do not restrict competition.