

Government Response

Inquiry into the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023*

Introduction

The Victorian Government thanks the Legislative Council Economy and Infrastructure Committee for its work in conducting the Inquiry into the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023* (the Bill) and acknowledges the significant contributions of those who made submissions and participated in hearings.

Modernisation of the WorkCover Scheme

The Bill was introduced to ensure that the WorkCover Scheme is contemporary, sustainable and well placed to support Victorian workers into the future.

The Bill has since passed Parliament and the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024* (WorkCover Scheme Modernisation Act) was enacted on 13 March 2024. The changes made by the WorkCover Scheme Modernisation Act, which took effect on 31 March 2024, include:

- new eligibility requirements for mental injury claims;
- an additional whole person impairment requirement for workers to continue to receive weekly payments after the 130 week second entitlement period;
- changes to WorkSafe's ability to share information across business units;
- changes to the disputes that can be referred to the Workplace Injury Commission for arbitration;
- an independent review of the changes introduced under the WorkCover Scheme Modernisation Act to be conducted by a panel of experts in 2027, and
- the establishment of the Return to Work Advisory Subcommittee, to provide advice to the WorkSafe Victoria Board on return to work initiatives.

Alongside the WorkCover Scheme Modernisation Act, Return to Work Victoria has been established to promote effective occupational rehabilitation of injured workers, encourage employers to provide suitable job opportunities for workers who have been injured, and identify innovative injury prevention and return to work strategies.

These reforms will ensure the WorkCover Scheme is sustainable and fit-for-purpose, and also support better health outcomes for injured workers. WorkSafe will continue to deliver enhanced, tailored support to workers through prevention, recovery and return to work.

Government Response to Inquiry recommendations

No.	Recommendation	Response
1.	That the Victorian Government conducts urgent and meaningful consultation with stakeholders, with the Bill proceeding after consultation is completed. The Government should table a consultation report in Parliament prior to the Bill proceeding.	Support in part The Bill has passed Parliament and the WorkCover Scheme Modernisation Act was enacted on 13 March 2024. Further consultation was undertaken as part of the recently completed Independent Review of the modernisation of the WorkCover Scheme, as outlined in the response to Recommendation 2. This provided businesses, unions, injured workers and their advocates with the opportunity to share their views on the impacts and efficacy of the changes implemented through the WorkCover Scheme Modernisation Act and on the establishment of Return to Work Victoria. Key stakeholders also provided input into return to work initiatives, and monitor their progress, as members of the Return to Work Advisory Subcommittee that was established through the WorkCover Scheme Modernisation Act (see response to Recommendation 17).
2.	That the Victorian Government establishes an independent inquiry by an expert panel into the operation and viability of the WorkCover scheme within 3 months, which: - obtains agreement of employee and employer organisations before the appointment of reviewers - publicly reports on the outcome of the inquiry within 12 months.	Support in principle In August 2024, the Victorian Government appointed Dr Claire Noone (Reviewer) to conduct an Independent Review of the modernisation of the WorkCover Scheme (Independent Review). The terms of reference for the Independent Review included examining: - the causes of the WorkCover Scheme's recent financial sustainability challenges; and - the expected efficacy of the amendments in the WorkCover Scheme Modernisation Act to restore the WorkCover Scheme to a financially sustainable position over a reasonable period of time. The Government consulted key stakeholders when developing the terms of reference for the Independent Review. The report on the Independent Review will be released publicly in the first quarter of 2025. Given the amendments made by the WorkCover Scheme Modernisation Act have only applied since 31 March 2024, there is not yet sufficient data upon which to assess the actual impact of these amendments. The Government notes that a statutory review of the amendments that the WorkCover Scheme Modernisation Act made to the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (WIRC Act) is to be conducted by an expert panel in 2027. This timing allows for sufficient data to emerge to inform a meaningful assessment of the impact of the WorkCover Scheme Modernisation Act.

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3.	That the Victorian Government releases the Occupational Health and Safety Amendment (Psychological Health) Regulations immediately.	Support in full The Victorian Government has confirmed Psychological Health Regulations will be introduced by the end of 2025. The new Regulations will focus on risk management and create specific obligations for Victorian employers to identify and control psychosocial hazards, such as bullying, sexual harassment, aggression or violence and exposure to traumatic events, in their workplaces. The Regulations will put psychosocial hazards on the same footing as physical ones and are expected to make a meaningful difference to safety and wellbeing outcomes across thousands of Victorian workplaces.
4.	Prior to the Parliament considering the Bill, that the Victorian Government undertakes a detailed and thorough consultation process focussed specifically on the Bill with business, unions and injured workers and their advocates. The consultation should include consideration of: - the differentiation between physical and mental injury - the exclusion of stress and burn out in mental injury assessments - degrees of impairment and the impact on injured workers - potential impacts on injured workers of limitations on payments after the second entitlement period - the timetable for review of the legislation - the establishment of Return to Work Victoria.	Support in principle As noted in the response to Recommendation 1, the Bill has passed Parliament and the WorkCover Scheme Modernisation Act was enacted on 13 March 2024. However, the intent of this recommendation has since been acquitted through consultation that was undertaken as part of the Independent Review, as outlined in the responses to Recommendations 1 and 2. The Victorian Government also notes that an independent review of the amendments that the WorkCover Scheme Modernisation Act made to the WIRC Act is to be conducted by an expert panel in 2027. This recommendation will be considered further when developing the terms of reference for this statutory review.

No.	Recommendation	Response
5.	That the Victorian Government urgently consults with peak bodies including the Australian Medical Association, Royal Australian College of General Practitioners, Mental Health Victoria, the major psychology associations, the Australian and New Zealand College of Psychiatrists and other relevant stakeholders on its proposed mental injury amendments to ensure they are fit for purpose and meet contemporary understanding of treating and supporting mental health injuries.	Support in principle The Terms of Reference for the Independent Review outlined in the response to Recommendation 2 required the Reviewer to consult medical representatives, including but not limited to the Royal Australian College of General Practitioners Victoria and the Royal Australian and New Zealand College of Psychiatrists. This consultation provided an opportunity for these medical representatives to comment on the expected impact and efficacy of the changes to mental injury eligibility. The Victorian Government also notes the existing WorkCover Advisory Committee (WAC) and Occupational Health and Safety Advisory Committee (OHSAC) provide forums for representatives of the medical profession (e.g. Australian Psychological Society and Royal Australasian College of Physicians) to be consulted on treatment and support for workers with mental health injuries.
6.	That the consultation proposed in Recommendation 5 with relevant stakeholders includes consideration of the definition of 'mental injury' and the appropriateness of the use of the word 'significant'.	Support in principle As required by the Terms of Reference for the Independent Review outlined in response to Recommendation 2, the Reviewer has consulted stakeholders involved in or impacted by the operation of the Scheme. This includes businesses, unions, legal and medical representatives, injured workers and their advocates and which provided an opportunity for these stakeholders to share their views on the definition of mental injury and the use of the word 'significant'. The WAC and OHSAC also provide forums for worker and employer representatives, as well as legal and medical professionals, to provide ongoing input on mental injury eligibility. As noted in response to Recommendation 2, a statutory review of the amendments made by the WorkCover Scheme Modernisation Act will be conducted by an expert panel in 2027 when sufficient data is available to inform a meaningful assessment.
7.	That as part of Recommendation 2, the review should also include consideration of the proposed mental injury amendments and publicly report within 12 months.	Support in principle The Independent Review, as outlined in the response to Recommendation 2, has examined the expected efficacy of the changes to mental injury eligibility that were implemented through the WorkCover Scheme Modernisation Act. The report on the Independent Review will be released publicly in the first quarter of 2025.

No.	Recommendation	Response
8.	That the independent review proposed in Recommendation 2 examine: • Clause 6 of the proposed Bill and its suitability • options for a further exception where the work-related stress or burnout has arisen from events that, whilst they are typical or usual, are objectively unreasonable • the appropriateness of the wording of 'predominant cause' in proposed s 40(2A).	Support in principle The Victorian Government considered a number of options when developing the amendments in Clause 6 of the Bill, which relate to circumstances where there is no entitlement to compensation for a mental injury. The Independent Review that was conducted in response to Recommendation 2 has also examined the expected efficacy of the amendments in the WorkCover Scheme Modernisation Act, including the amendments made by Clause 6. The report on this Independent Review, which will be released publicly in the first quarter of 2025, will provide further insights into the need for these amendments and their intended purpose. As noted in response to Recommendation 2, a statutory review of the amendments made by the WorkCover Scheme Modernisation Act will be conducted by an expert panel in 2027 when sufficient data is available to inform a meaningful assessment. This recommendation will be considered further when developing the terms of reference for this statutory review.
9.	That the Victorian Government releases the outcome of any gender impact assessments conducted in relation to the Bill. If an assessment was not conducted, the Government should release its rationale.	Support in full A Gender Impact Assessment (GIA) was conducted to understand any gendered impacts of the Bill. The GIA identified that, on average, women are more likely to lodge a mental injury claim and therefore represent a greater proportion of mental injury claims. While the Bill proposed changes to mental injury eligibility, it provided that mental injuries that are predominantly caused by work that is traumatic in nature, such as nursing or ambulance work, will remain compensable. Given women have a high representation in these frontline roles, this aspect of the Bill was expected to have a relatively neutral gender impact. In relation to the changes to the second entitlement review, the GIA found that more men were likely to be disentitled. Given this was consistent with prevailing trends, the GIA identified that this reform was expected to have a neutral gender impact relative to the current state.
10.	If a gender impact assessment has not been undertaken, that the Victorian Government conducts and releases an assessment on the proposed changes to the WorkCover Scheme as required under the <i>Gender Equality Act 2020 (Vic)</i> prior to its consideration in Parliament.	Support in principle As outlined in the response to Recommendation 9, a GIA was completed during the development of the Bill and found that the Bill as expected to have a neutral gender impact.

No.	Recommendation	Response
11.	Prior to the resumption of debate on the Bill, that the Victorian Government tables in Parliament: • an explanation of how the Victorian Government determined the 20% threshold for the assessment of a whole person impairment, including any modelling or data used to assist with decision-making • an estimate of the number of people currently on WorkCover— ○ whose injuries exceed a 20% whole person impairment ○ whose injuries do not exceed a 20% whole person impairment, including how many have not exceeded the second entitlement period.	Support in principle As outlined in response to Recommendation 1, the Bill has passed Parliament and the WorkCover Scheme Modernisation Act was enacted on 13 March 2024. The Independent Review that was commissioned in response to Recommendation 2 has examined the expected efficacy of the introduction of this threshold at a high level. As noted in response to Recommendation 2, a statutory review of the amendments made by the WorkCover Scheme Modernisation Act will be conducted by an expert panel in 2027 when sufficient data is available to inform a meaningful assessment. This recommendation will be considered further when developing the terms of reference for this statutory review.
12.	That the review proposed in Recommendation 2 include examination of Clause 16 to assess whether an alternative amendment would allow for greater flexibility and accuracy in assessing the totality of a worker's physical and mental injuries.	Support in principle The Victorian Government considered a number of options when developing the amendments in Clause 16 of the Bill, which introduced an objective assessment of permanent incapacity for weekly benefit purposes. A key consideration was ensuring consistency with existing impairment assessments under the WIRC Act which refer to Whole Person Impairment (WPI). The approaches in other Australian jurisdictions, which primarily reference WPI, were also considered. The Independent Review that was conducted in response to Recommendation 2 has also examined the expected efficacy of the amendments in the WorkCover Scheme Modernisation Act, including the amendments made by Clause 16. The report on this Independent Review, which will be released publicly in the first quarter of 2025, will provide further insights into the need for this amendment and its intended purpose. As noted in response to Recommendation 2, a statutory review of the amendments made by the WorkCover Scheme Modernisation Act will be conducted by an expert panel in 2027 when sufficient data is available to inform a meaningful assessment. This recommendation will be considered further when developing the terms of reference for this statutory review.

No.	Recommendation	Response
13.	In relation to the review proposed in Recommendation 2, that the appropriateness of Clause 9 of the Bill as it relates to s 263A of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> be considered with respect to entitlement to provisional payments.	Support in principle The Victorian Government notes that Clause 9 of the Bill simply clarified that the new mental injury eligibility requirements did not change a worker's entitlement to provisional payments. In particular, this amendment ensures that all workers who lodge a mental injury claim remain entitled to 13 weeks of provisional payments regardless of whether their claim is ultimately accepted. In addition to 13 weeks of provisional payments, Return to Work Victoria has also been established to support workers to return to work if they have the capacity to do so.
14.	In relation to the review proposed in Recommendation 2, in the context of Clause 16 of the Bill relating to s 167C of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> , that the ability of the Authority or self-insurer to make determinations without a claimant having prior access to an independent medical examiner before a determination is made be considered.	Support in principle The Victorian Government notes that section 167C, as introduced by the WorkCover Scheme Modernisation Act, allows WorkSafe or a self-insurer to determine it is not necessary or practicable to obtain an assessment of an injury for the purposes of making an impairment determination. Such a determination may only be made where WorkSafe or the self-insurer is satisfied that: • there is no reasonable prospect of the worker's whole person impairment being more than 20 per cent • where there is no reasonable prospect of the worker's whole person impairment being 20 per cent or less and this is the case permanently • the worker resides overseas, or • where it is not reasonable or practicable for the worker to attend an assessment. Section 167C(3) also requires that any such determinations have regard to: • available medical evidence • whether the worker's degree of impairment is likely to be permanent • any practical barriers to the worker being assessed in accordance with Division 4 of Part 2 • whether determining the degree of impairment of the worker without assessing the worker in accordance with Division 4 of Part 2 is likely to disadvantage the worker. The operation of this amendment will be considered as part of the statutory review of the amendments made by the WorkCover Scheme Modernisation Act that is to be conducted by an expert panel in 2027.

No.	Recommendation	Response
15.	In relation to the review proposed in Recommendation 2, the review should consider the impact of Clause 16 in relation to proposed s 167H in respect of the right of workers to arbitration.	Support in principle The Victorian Government notes that section 167H of the WIRC Act, as amended by the WorkCover Scheme Modernisation Act, means that disputes regarding whether a worker has suffered an injury or where there is a medical question regarding initial eligibility are not disputes that can be referred to the Workplace Injury Commission (WIC) for arbitration. This does not mean that a decision of WorkSafe, as the WorkCover Authority, or self-insurer concerning entitlement to compensation cannot be challenged. Injured workers will continue to be able to lodge disputes regarding workers' compensation claims with WIC. Furthermore, injured workers with genuine disputes will continue to be able to seek to have claims decisions reviewed by the Workers Compensation Independent Review Service. If a genuine dispute is not resolved through conciliation or independent review it may also be referred to courts to determine. This is intended to reduce the potential for inconsistent outcomes by requiring all eligibility disputes, not just those relating to mental injury, to be decided by the courts. As noted in response to Recommendation 2, a statutory review of the amendments made by the WorkCover Scheme Modernisation Act will be conducted by an expert panel in 2027 when sufficient data is available to inform a meaningful assessment. This recommendation will be considered further when developing the terms of reference for this review.
16.	That should the Bill be passed, the statutory review of the impacts of the legislation be conducted in 2026 and a report tabled before the end of this parliament.	Support in principle A statutory review of the amendments that the WorkCover Scheme Modernisation Act made to the WIRC Act is to be conducted by an expert panel in 2027. Given the amendments made by the WorkCover Scheme Modernisation Act have only applied since 31 March 2024, the date of this statutory review has been set to provide time for sufficient data to emerge and inform a meaningful assessment of the impact of the amendments.

No.	Recommendation	Response
17.	That the Bill be amended to create a Return to Work advisory committee responsible to the Board of WorkSafe for the coordination of return-to-work initiatives at WorkSafe. The committee should be tasked with identifying, overseeing the implementation, and monitoring the performance of Return to Work Victoria and reporting to the Board concerning return-to-work programs and outcomes. It should consist of equal representation of employees, employers and rehabilitation providers and report biannually to both Houses of Parliament.	Support in principle The WorkCover Scheme Modernisation Act amended the WIRC Act to require that the WAC establish a Return to Work Advisory Subcommittee (RTWAC). As set out in the legislation, the RTWAC: • will provide advice to the WorkSafe Board on ways to promote the occupational rehabilitation and early return to work of injured workers, and • the establishment, administration and operation of occupational rehabilitation services, vocational re-education facilities and return to work programs available to injured workers. The Chair of the WorkSafe Board is also the Chair of RTWAC. The other members of the RTWAC is drawn from the membership of the WAC. The RTWAC members are: • Bob Cameron – Chair • Dr Mary Wyatt - Occupational Physician, Royal Australasian College of Physicians • Frank Imbesi – Executive General Manager, Senior Occupational Rehabilitation Consultant, Australian Rehabilitation Providers Association • Susan Accary - Victorian President, Australian Lawyers Alliance • Wil Strake - Assistant Secretary, Victorian Trades Hall Council • Tim Piper - Head Victoria, Australian Industry Group (Victoria)

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18.	That the review in Recommendation 2 look into the composition of the WorkSafe Board to consider the representation of employees, employers and skilled representatives with appropriate expertise.	Not support The WIRC Act requires that the WorkSafe Board consist of up to eight Directors appointed by the Governor in Council on the nomination of the Minister for WorkSafe and the TAC, noting that the Chief Executive Officer is ineligible to be appointed as a Director. The Board provides general direction regarding the manner in which the objectives and functions of WorkSafe, as the WorkCover Authority, are carried out and must ensure that WorkSafe is managed and operated in an efficient and economic manner. When nominating Directors, in accordance with the Department of Premier and Cabinet's Appointment and Remuneration Guidelines (Guidelines), the Minister considers the required mix of skills and expertise, personal qualities, diversity and gender balance. Under the WIRC Act, the Minister also appoints appropriately skilled members to the WAC and OHSAC, including worker and employer representatives, legal and medical professionals (WAC), and independent persons with OHS expertise (OHSAC). Members of the Workplace Incidents Consultative Committee (WICC) are appointed in accordance with the <i>Occupational Health and Safety Act 2024</i> and includes members with lived experience of a serious workplace incident involving death, serious injury or illness. The WICC elects two members annually to attend WAC and OHSAC as observers. These governance arrangements are considered appropriate as they provide broad representation of employees, employers, and appropriately skilled representatives, as well as those with lived experience.
19.	That the review in Recommendation 2 consider the frequency and content of reporting by WorkSafe to Parliament.	Not support The Government notes that WorkSafe already publishes detailed regulatory performance, claims and financial information in its: • annual Corporate Plan • Ministerial Statement of Expectations (SoE) letter • annual reports (which includes WorkSafe's progress against the SoE), and • mid-year financial results. Information can also be requested from WorkSafe through parliamentary processes such as Question Time and the Public Accounts and Estimates Committee hearings.

No.	Recommendation	Response
20.	That the review in Recommendation 2 consider premiums.	Support in part The Victorian Government notes that, under the WIRC Act, a review of the setting of premiums is already required to be undertaken by an independent expert review body every five years. This is in addition to ongoing reviews, by WorkSafe's external actuary, of the adequacy of the average premium rate. The next such review is due to commence by 1 July 2025. As such, the Independent Review that was conducted in response to Recommendation 2 examined the efficacy of the amendments in the context of the prevailing premium rate. The Victorian Government will consider this recommendation further when developing terms of reference for the 2027 review of the operation of the amendments made by the WorkCover Scheme Modernisation Act.