

WorkCover Modernisation Act Receives Royal Assent

On 13 March 2024, the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024* (WSM Act) received Royal Assent. The changes are aimed at addressing the sustainability of the Scheme, following the Victorian Government's admission that the Scheme was "fundamentally broken".

The changes

As a result, a number of changes to eligibility requirements for **new mental injury compensation claims** under Victoria's WorkCover Scheme will take effect from **31 March 2024**:

- a new **definition of mental injury**, diagnosed by either a general practitioner or psychiatrist;
- a new requirement that a mental injury is **predominantly caused by work**; and
- a new (limited) **exclusion** for mental injuries caused by **stress or burnout** (that does **not** include stress or burnout caused by workplace **bullying or harassment**).

Under other changes,

- from 31 March 2024, workers will need a **Whole Person Impairment of over 20%** in **addition** to meeting the existing no current work capacity test requirement, in order to receive weekly compensation payments after the **130-week second entitlement period**;
- WorkSafe will have a new ability to **share information** between its business units;
- the option of (worker-initiated) arbitration will be removed as an alternative to determination by the courts, for certain claims that are unresolved through conciliation;
- an independent review of the WSM Act changes to be conducted by a panel of experts in 2027; and
- the establishment of a Return to Work Advisory Committee, as a subcommittee of the existing WorkCover Advisory Committee, to provide advice to WorkSafe's Board on return to work initiatives.

In addition, the Victorian Government has committed to the following changes as part of the negotiations that enabled the successful passage of the WSM through Victorian Parliament:

- a **WorkCover premium freeze at the current average of 1.8 per cent** of remuneration for the **2024-25 financial year**;
- an **independent inquiry** to review the impact of these new reforms on the WorkCover Scheme, which will report back to Victorian Parliament by the end of 2024;
- the establishment of '**Return to Work Victoria**'.

VACC's Position

Members will note from recent articles, and [VACC's submission](#) to last year's Victorian Parliamentary Inquiry, that it is VACC's view that the primary cause of the current state of the WorkCover Scheme is the sustained failure in its proper administration, resulting in an unapologetically **unbalanced and unreasonable 'worker-centric' approach** to both the vetting of mental injury claims and mismanagement of return to work – worsening outcomes for injured workers, their employers, the WorkCover Scheme and the broader Victorian community.

This has been further exacerbated by the **lack of legislative clarity** on compensation eligibility for mental injury claims and by the introduction of **provisional payments** that enables workers to receive payments for medical and like expenses for mental injury claims, regardless of whether the claim is found to have been work-related. VACC is particularly concerned that in practice, the provisional acceptance of mental injury claims further encourages the acceptance of such claims for weekly compensation without proper investigation and inquiry being made by the WorkCover Agent.

Therefore, whilst **VACC welcomes the new definition of mental injury**, including that it be predominantly caused by work, **concerns remain** that the practical effect of the new exclusion to mental injuries caused by stress or burnout may be to **encourage workers to falsely claim** that their stress or burnout has been caused by **bullying or harassment**, in an attempt to have their compensation claim accepted. It remains unclear, particularly given current concerns over the current administration of the WorkCover Scheme, **how such claims will be vetted** to ensure only genuine claims are accepted. As a result, time will tell how effective this limited exclusion will be in reducing the large volume of mental injury claims that have flooded the WorkCover Scheme in recent years, particularly from the public sector.

In this context, VACC remains particularly concerned by the **new information sharing powers** between WorkSafe and WorkCover – which will, for the first time, enable WorkSafe to access **information related to a workers compensation claim** (e.g. WorkCover claim form, certificate of capacity, circumstance investigation report, etc) to form the evidentiary basis for a **prosecution of the employer** by WorkSafe.

Similarly, whilst **VACC welcomes the premium freeze for the 2024-25 financial year**, unless all necessary steps are taken to make the WorkCover Scheme **fit-for-purpose** are taken, it risks being a token-gesture that serves only to **delay larger premium increases** that will inevitably come in future.

VACC will continue in its attempts to meaningfully engage with relevant stakeholders to achieve practical and fair outcomes, leading to a sustainable WorkCover Scheme and improved health and safety outcomes in the workplace.

Action Item

To reduce the risk of the acceptance of a workers compensation claim based on stress or burnout caused by bullying or harassment, it is recommended that members **review (and where necessary, strengthen)** existing workplace **policies and complaint procedures** for the prevention and early intervention sexual harassment, bullying and occupational violence; hold **regular toolbox meetings**; and provide information and **training** to employees (including management) on the policies and procedures and to **reinforce behavioural standards**. Members are reminded that VACC can deliver customised training and provide formal complaint investigations on these issues.

Members seeking further information regarding workers compensation, the WSM Act changes and/or policies and procedures for the prevention of workplace bullying and harassment, are encouraged to contact the VACC OHSE Unit on 03 9829 1265 or the VACC IR team on 03 9829 1123 or via email ir@vacc.com.au

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