

PARLIAMENT OF VICTORIA

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

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

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

A Bill for an Act to amend the **Workplace Injury Rehabilitation and Compensation Act 2013**, the **Accident Compensation Act 1985** and the **Occupational Health and Safety Act 2004** and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The main purpose of this Act is to amend—

(a) the **Workplace Injury Rehabilitation and Compensation Act 2013**—

(i) to insert a definition of mental injury;
and

5

Part 1—Preliminary

- 5
- (ii) to make further provision for the circumstances in which benefits are paid for mental injuries; and
- (iii) to introduce an impairment threshold for assessing eligibility for the payment of benefits beyond a period of 130 weeks; and
- 10
- (iv) to provide for a process for the review of the operation of the proposed amendments; and
- (v) to make other miscellaneous amendments; and
- 15
- (b) the **Accident Compensation Act 1985** to introduce an impairment threshold for assessing eligibility for the payment of benefits beyond a period of 130 weeks; and
- (c) the **Occupational Health and Safety Act 2004** in relation to the use of information.

20 **2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 31 March 2024, it comes into operation on that day.
- 25

3 Principal Act

In this Act, the **Workplace Injury Rehabilitation and Compensation Act 2013** is called the Principal Act.

Part 2—Amendment of Workplace Injury Rehabilitation and Compensation Act 2013

Division 1—Mental injury amendments

4 Definitions

5 In section 3 of the Principal Act **insert** the
following definition—

"*mental injury* means an injury that—

- 10 (a) causes significant behavioural,
cognitive or psychological dysfunction;
and
- (b) is diagnosed by a medical practitioner
in accordance with the latest version of
the Diagnostic and Statistical Manual
of Mental Disorders;"

5 Entitlement to compensation

- 15 (1) In section 39(1) of the Principal Act, after "an
injury" **insert** ", other than a mental injury,".
- (2) After section 39(1) of the Principal Act **insert**—
- 20 "(1A) If there is caused to a worker a mental injury
predominantly arising out of or in the course
of any employment, the worker is entitled to
compensation in accordance with this Act."
- (3) After section 39(2) of the Principal Act **insert**—
- 25 "(2A) Despite section 40(1A) of the Principal Act,
a worker is entitled to compensation in
accordance with this Act if there is caused to
a worker a mental injury predominantly
caused by traumatic events experienced by
the worker that may be considered usual or
30 typical and reasonably expected to occur in
the course of the worker's duties."
-

6 When no entitlement to compensation

(1) After section 40(1) of the Principal Act **insert**—

5 "(1A) There is no entitlement to compensation in
respect of an injury to a worker if the injury
is a mental injury predominantly caused by
work related stress or burnout that has arisen
from events that may be considered usual or
typical and reasonably expected to occur in
the course of the worker's duties."

10 (2) After section 40(2) of the Principal Act **insert**—

 "(2A) There is no entitlement to compensation in
respect of a mental injury that is a
recurrence, aggravation, acceleration,
exacerbation or deterioration of any pre-
existing mental injury unless the worker's
employment was the predominant cause of
the recurrence, aggravation, acceleration,
exacerbation or deterioration."

20 (3) In section 40(3)(c) of the Principal Act, after
"disease" **insert** "to which subsection (2A) does
not apply".

7 Out of or in the course of employment

In section 46(1) of the Principal Act, after
"section 39(1)" **insert** ", (1A)".

25 8 Psychiatric impairment

At the end of section 64 of the Principal Act
insert—

30 "(2) To avoid doubt, the definition of *mental
injury* does not apply for the purposes of
assessing the degree of psychiatric
impairment."

9 New section 263AA inserted

Before section 263A of the Principal Act **insert—**

"263AA Definition of *mental injury* does not apply

- 5
- (1) For the purposes of this Division, the definition of *mental injury* does not apply.
- (2) To avoid doubt, a worker may be entitled to provisional payments under this Division in respect of a claimed mental injury regardless of whether the worker's claim for compensation in respect of a mental injury is ultimately accepted or rejected by the Authority or self-insurer."
- 10

Division 2—Ongoing eligibility for compensation

10 Application of this Division to Divisions 2 and 5 of Part 5 and Part 7

15

- (1) In the heading to section 53 of the Principal Act, for "**Division 5**" substitute "**Divisions 2 and 5**".
- (2) In section 53(1) and (2) of the Principal Act, for "Division 5" substitute "Divisions 2 and 5".

11 New section 53A inserted

20

After section 53 of the Principal Act **insert—**

"53A Assessment under this Division is final assessment of impairment

- (1) Subject to subsection (2), if a worker is assessed in accordance with this Division to determine the degree of impairment of the worker arising from one or more injuries, that assessment is the final assessment of the worker's degree of impairment arising from that injury or those injuries for the purposes of this Act.
- 25
- 30

- 5 (2) If a worker is to be assessed in accordance with this Division for the purposes of a claim under section 164A in respect of an injury for which the worker has undergone surgery—
- (a) despite subsection (1), the worker may be reassessed in accordance with this Division; and
- 10 (b) the reassessment is the final assessment of the worker's degree of impairment arising from that injury for the purposes of this Act."

12 Definitions

15 In section 152 of the Principal Act **insert** the following definitions—

"***compensable injury***, of a worker, means an injury in respect of which—

- (a) liability has been accepted or established; and
- 20 (b) the worker is, or has been, entitled to compensation in the form of weekly payments during the second entitlement period;

25 ***impairment determination*** means a determination under section 167A(1);

interim determination means a determination under section 167D(1);

30 ***ongoing eligibility determination*** means a determination under section 163(1), 164A(2), 165(4) or 175(1) or (2A) of the **Workplace Injury Rehabilitation and Compensation Act 2013** or section 93C(1), 93CAB(2), 93CD(4) or 97(2) or (2AAB) of the **Accident Compensation Act 1985**;"

13 Weekly payments after the second entitlement period

(1) For section 163(1) of the Principal Act
substitute—

- 5 "(1) Subject to section 165, a worker's
entitlement to compensation in the form of
weekly payments under this Part ceases upon
the expiry of the second entitlement period
unless the Authority or self-insurer
10 determines that the worker—
- (a) has no current work capacity and is
likely to continue indefinitely to have
no current work capacity; and
 - (b) has a whole person impairment of more
15 than 20 per cent resulting from one or
more compensable injuries."

(2) For section 163(3) of the Principal Act
substitute—

- 20 "(3) If a worker is receiving compensation under
subsection (2), the Authority or
self-insurer—
- (a) may review the work capacity of the
worker at any time; and
 - (b) must review the work capacity of the
25 worker as often as reasonably necessary
and not less than once every 2 years."

14 New section 164A inserted

After section 164 of the Principal Act **insert—**

30 "**164A Review of impairment arising from
surgery after second entitlement period**

- (1) A worker may apply, in a form approved by
the Authority, to the Authority or self-insurer
for compensation in the form of weekly
-

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payments in respect of incapacity and whole person impairment if the worker—

(a) has a compensable injury; and

(b) either, in respect of the injury—

5 (i) is not entitled to compensation in the form of weekly payments because of section 163; or

10 (ii) is entitled under section 165 to compensation in the form of weekly payments; and

15 (c) for at least 13 consecutive weeks immediately after the expiry of the second entitlement period, has not received compensation in the form of weekly payments other than weekly payments under section 165; and

20 (d) requires surgery for that injury (*the subsequent surgery*) for which the Authority or self-insurer has accepted liability under section 224(1); and

(e) suffers incapacity and whole person impairment resulting from or materially contributed to by the subsequent surgery; and

25 (f) has not attained retirement age.

30 (2) A worker who applies under this section is entitled to compensation in the form of weekly payments under section 163(2) if the Authority or self-insurer determines that the worker, as a result of the subsequent surgery—

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- 5
- (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
 - (b) has a whole person impairment of more than 20 per cent.
- (3) Compensation payable under this section is payable from—
- 10
- (a) if the worker receives compensation under section 164 as a result of the subsequent surgery, the date that is 13 consecutive weeks after the day on which the subsequent surgery was performed; or
 - 15 (b) in any other case, the date on which the ongoing eligibility determination is made under this section."

15 Continuation of weekly payments after second entitlement period

In section 165 of the Principal Act—

- 20
- (a) in subsection (4)(b), for "earnings." **substitute** "earnings; and";
 - (b) after subsection (4)(b) **insert**—
- 25
- "(c) the worker has a whole person impairment of more than 20 per cent resulting from one or more compensable injuries."

16 New Subdivision 1A inserted in Division 2 of Part 5

After Subdivision 1 of Division 2 of Part 5 of the
Principal Act **insert**—

5

**"Subdivision 1A—Determination of
eligibility for compensation after second
entitlement period**

**167A Authority or self-insurer to determine
degree of impairment**

10

(1) For the purposes of section 163(1)(b),
164A(2)(b), 165(4)(c) or 175(1)(b) or
(2A)(b) of this Act or section 93C(1)(c),
93CAB(2)(b), 93CD(4)(c) or 97(2)(b) or
(2AAB)(b) of the **Accident Compensation
Act 1985**, the Authority or self-insurer may
determine the degree of impairment of a
worker arising from one or more
compensable injuries, having regard to—

15

20

25

- (a) an assessment in accordance with
Division 4 of Part 2 of the degree of
impairment of the worker arising from
the injury or injuries; and
- (b) any medical reports, correspondence
and other documents provided to the
Authority or self-insurer for the
purposes of determining the worker's
entitlement to compensation; and
- (c) the A.M.A. Guides and any guidelines
referred to in section 54.

30

(2) The degree of impairment of a worker is the
greater of the worker's—
(a) degree of impairment resulting from
one or more compensable injuries that
are physical injuries; or

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- (b) degree of impairment resulting from one or more compensable injuries that are psychiatric or psychological injuries.
- 5 (3) An impairment determination must not relate to more than one compensable injury unless those injuries arise out of the same event or circumstance.
- 10 (4) The Authority or self-insurer must not make an impairment determination in respect of a worker's injury until the worker attains the age of 18 years.
- 15 (5) To avoid doubt, in making an impairment determination, the Authority or self-insurer is not bound by an assessment in accordance with Division 4 of Part 2 of the degree of impairment of the worker.
- 167B Assessment of worker's degree of impairment**
- 20 (1) The Authority or self-insurer may request a worker to attend an assessment in accordance with Division 4 of Part 2 for the purposes of an impairment determination.
- 25 (2) On the request of the Authority or self-insurer under subsection (1), the worker must attend the assessment.
- (3) The Authority or self-insurer must give the worker a written statement of each injury included in the assessment.

167C Determination that it is not necessary or practicable to obtain an assessment

- 5
- (1) The Authority or self-insurer may determine that it is not necessary or practicable to assess a worker in accordance with Division 4 of Part 2 for the purposes of an impairment determination.
- 10
- (2) The Authority or self-insurer may make a determination under subsection (1) if satisfied of any of the following—
- 15
- (a) there is no reasonable prospect of the worker having a whole person impairment of more than 20 per cent;
- (b) there is no reasonable prospect of the worker having a whole person impairment of 20 per cent or less and this is likely to be the case permanently;
- 20
- (c) the worker resides overseas;
- (d) it is not reasonable or practicable for the worker to attend an assessment.
- 25
- (3) For the purposes of making a determination under subsection (1), the Authority or self-insurer must have regard to the following matters—
- 30
- (a) the medical evidence available to the Authority or self-insurer;
- (b) whether the worker's degree of impairment is likely to be permanent;
- (c) any practical barriers to the worker being assessed in accordance with Division 4 of Part 2;
-

- 5 (d) 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.
- (4) The Authority or self-insurer must give a worker written notice of a determination made under this section in respect of the worker.
- 10 (5) A notice under subsection (1) must include a written statement of each injury to which the determination relates.
- 167D Interim determination of eligibility**
- 15 (1) For the purposes of section 163(1), 165(4) or 175(1) or (2A) of this Act or section 93C(1)(c), 93CD(4) or 97(2) or (2AAB) of the **Accident Compensation Act 1985**, the Authority or self-insurer may make an interim determination that—
- 20 (a) the worker is eligible to receive weekly payments after the expiry of the second entitlement period in respect of one or more compensable injuries; or
- 25 (b) the worker is not eligible to receive weekly payments after the expiry of the second entitlement period in respect of one or more compensable injuries.
- 30 (2) The Authority or self-insurer may make an interim determination if an impairment determination cannot be made because—
- (a) the worker's injury has not stabilised; or
- (b) the worker has been diagnosed with an eligible progressive disease which is unlikely to stabilise; or
-

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- 5
- (c) the worker is under the age of 18 years;
or
 - (d) information required to make the
impairment determination is not
available for any reason.
- (3) For the purposes of subsection (1)(a), the
Authority or self-insurer must be satisfied
that—
- 10
- (a) the worker's impairment arising from
the injury is likely to be permanent; and
 - (b) if the worker's degree of impairment
were able to be assessed, it would likely
be assessed as a whole person
impairment of more than 20 per cent;
and
- 15
- (c) the worker has no current work
capacity and is likely to continue
indefinitely to have no work capacity.
- (4) For the purposes of subsection (1)(b), the
Authority or self-insurer must be satisfied of
any of the following—
- 20
- (a) the worker's impairment arising from
the injury is not likely to be permanent;
 - (b) if the worker's degree of impairment
were able to be assessed, it would likely
be a whole person impairment of
20 per cent or less;
- 25
- (c) the worker has a current work capacity.
- (5) In making an interim determination under
this section, the Authority or a self-insurer
may have regard to any medical evidence
available to the Authority or self-insurer
about the work capacity and degree of
impairment of the worker.
- 30
-

167E Notice of interim determination of eligibility

- 5
- (1) The Authority or self-insurer must give a worker written notice of an interim determination made in respect of the worker.
- (2) A notice under subsection (1) must include a written statement of each injury to which the interim determination relates.
- 10
- (3) An interim determination in respect of a worker applies until the Authority or a self-insurer makes—
- (a) a further interim determination in respect of the worker; or
- (b) an ongoing eligibility determination in respect of the worker.
- 15
- (4) At any time, the Authority or self-insurer may review an interim determination.

167F Notice of ongoing eligibility determination

- 20
- (1) The Authority or self-insurer must give a worker written notice of an ongoing eligibility determination made in respect of the worker.
- (2) If the worker advises the Authority or self-insurer that the worker disputes the ongoing eligibility determination, the worker must not commence a proceeding in relation to the claim, except as provided in section 273(1) or (2).
- 25

167G Effect of ongoing eligibility determination made after interim determination

- 30
- (1) If the Authority or self-insurer makes an interim determination under section 167D(1)(a) that a worker is entitled to compensation after the expiry of the
-

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- 5 second entitlement period and subsequently
makes an ongoing eligibility determination
that the worker is not entitled to
compensation after the expiry of the second
entitlement period, the Authority or self-
insurer must give the worker 13 weeks of
notice for the purposes of section 191(1)(b)
before terminating the worker's weekly
payments.
- 10 (2) If the Authority or self-insurer makes an
interim determination under
section 167D(1)(b) that a worker is not
entitled to compensation after the expiry of
the second entitlement period and
15 subsequently confirms in an ongoing
eligibility determination that the worker is
not entitled to compensation after the expiry
of the second entitlement period, the
Authority or self-insurer is taken to have
20 given the worker 13 weeks of notice for the
purposes of section 191(1)(b).
- 25 (3) If the Authority or self-insurer makes an
interim determination under
section 167D(1)(b) that a worker is not
entitled to compensation after the expiry of
the second entitlement period and
subsequently makes an ongoing eligibility
determination that the worker is entitled to
30 compensation after the expiry of the second
entitlement period, the worker is entitled to
compensation from the date that the interim
determination took effect.
- 35 (4) No interest is payable to the worker on
payments made to the worker in the
circumstances described in subsection (3).
-

167H Referral of dispute to Medical Panel

- 5
- (1) The Authority or self-insurer must refer the medical question as to the degree of impairment of a worker to a Medical Panel for its opinion under section 302 if—
- (a) the worker advises the Authority or self-insurer that the worker disputes an ongoing eligibility determination; and
- 10
- (b) the dispute does not require the resolution of any issue other than the degree of impairment arising from the compensable injury or injuries to which the ongoing eligibility determination relates.
- 15
- (2) The Authority or self-insurer must refer the medical question under subsection (1) within 14 days of being advised by the worker that the worker disputes the ongoing eligibility determination.
- 20
- (3) Within 60 days of obtaining the opinion of the Medical Panel under section 302, the Authority or self-insurer must advise the worker of—
- (a) the opinion of the Medical Panel; and
- 25
- (b) the worker's entitlement, if any, to compensation in the form of weekly payments after the expiry of the second entitlement period.
- 30
- (4) Within 60 days of being advised by the Authority or self-insurer of the entitlement of the worker to compensation in accordance with subsection (3), the worker must advise the Authority or self-insurer whether the worker accepts or disputes the entitlement to
- 35
- compensation.
-

5 (5) Within 14 days of being advised by the
worker that the worker accepts the
entitlement to compensation, the Authority
or self-insurer must pay the compensation in
accordance with this Division.

**167I Ongoing eligibility determination does not
give rise to issue estoppel**

10 An ongoing eligibility determination made
by the Authority or a self-insurer in respect
of a compensable injury does not give rise to
an issue estoppel in any proceeding under
this Act in respect of the injury.

**167J No appeal from certain determinations
and opinions**

15 For the purposes of this Subdivision,
section 208 applies to an impairment
determination or any other determination or
opinion as to the degree of impairment of a
worker resulting from an injury.

167K Minister may give directions

20 (1) For the purposes of this Division, the
Minister may give directions in accordance
with section 609 for or with respect to
procedures for making any of the
25 following—

- (a) an impairment determination;
- (b) an interim determination;
- (c) an ongoing eligibility determination.

30 (2) Directions under subsection (1) may include
directions requiring that information
specified in the direction must be provided
by affidavit."

17 Absence from Australia

- 5 (1) In section 175(1) of the Principal Act, for "worker has no current work capacity and is likely to continue indefinitely to have no current work capacity." **substitute** "worker—
- (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
- 10 (b) in the case of a worker receiving weekly payments after the second entitlement period, has a whole person impairment of more than 20 per cent resulting from one or more compensable injuries."
- (2) After section 175(2) of the Principal Act **insert**—
- 15 "(2A) If a worker who ceases to reside in Australia is receiving weekly payments, the worker's entitlement to weekly payments ceases upon the expiry of the second entitlement period unless the Authority or self-insurer
- 20 determines that the worker—
- (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
- (b) has a whole person impairment of more
- 25 than 20 per cent resulting from one or more compensable injuries."
- (3) For section 175(4) of the Principal Act **substitute**—
- 30 "(4) If a worker who does not reside in Australia is receiving weekly payments because of subsection (1), (2) or (2A), the worker is entitled to receive the weekly payments if the worker proves in the prescribed manner and at the prescribed intervals to the satisfaction
- 35 of the Authority or self-insurer—
-

- (a) the worker's identity; and
 - (b) that the worker continues to have no current work capacity.
- 5 (5) If a worker who does not reside in Australia is receiving weekly payments after the second entitlement period, the Authority or self-insurer—
- (a) may review the work capacity of the worker at any time; and
 - 10 (b) must review the work capacity of the worker as often as reasonably necessary and not less than once every 2 years."

18 Initiation of claim by Authority or self-insurer

15 For section 199(1) of the Principal Act
substitute—

- "(1) The Authority or a self-insurer may request a worker to attend an independent examination under section 203(1) in respect of an injury if—
- 20 (a) liability has been accepted or determined in respect of a prior claim for compensation for the injury; and
 - (b) either—
 - 25 (i) it has been at least 18 months since the date of the injury; or
 - (ii) the degree of impairment of the worker is being assessed under Subdivision 1A of Division 2; and
 - 30 (c) the worker has not made a Division 5 claim in respect of the injury."

19 Authority may suspend a claim

(1) After section 200(1) of the Principal Act **insert**—

"(1A) The Authority or self-insurer, by notice in writing to the worker, may suspend a Division 5 claim from a worker within 14 days of the date on which the Authority or self-insurer has—

(a) received the Division 5 claim; and

(b) either—

(i) made a request under section 167B(1) for the worker to attend an assessment; or

(ii) given the worker a statement of injuries under section 167B(3)."

(2) In section 200(2) of the Principal Act—

(a) in paragraph (b), for "stabilised—" **substitute** "stabilised; or";

(b) after paragraph (b) **insert**—

"(c) if subsection (1A) applies, of giving notice under section 167F(1) to the worker of an ongoing eligibility determination in respect of the worker—".

(3) After section 200(2) of the Principal Act **insert**—

"(3) In this section—

ongoing eligibility determination has the same meaning as in section 152."

20 ACCS may give directions about payment of compensation

In section 297(1) of **the Principal Act**—

(a) in paragraph (e), for "section 26(1)." **substitute** "section 26(1);";

(b) after paragraph (e) **insert**—

"(f) a dispute as to the degree of impairment
of a worker as determined under
section 167A."

5 **21 Supreme Court—limitation of jurisdiction—
no proceedings**

After section 618(2) of the Principal Act **insert**—

10 "(3) It is the intention of section 167J as inserted
by section 16 of the **Workplace Injury
Rehabilitation and Compensation
Amendment (WorkCover Scheme
Modernisation) Act 2023** to alter or vary
section 85 of the **Constitution Act 1975**."

Division 3—Information sharing

15 **22 New Division 2A inserted in Part 13**

After Division 2 of Part 13 of the Principal Act
insert—

"Division 2A—Use of information

551A Use of information

20 (1) Information collected by the Authority under
this Act or the regulations may be used by
the Authority to perform its functions and
exercise its powers under any Act if the
use—

25 (a) is reasonably necessary for the
purposes of performing a function or
exercising a power conferred on the
Authority under that Act or regulations
made under that Act; or

30 (b) is directly related to a function or
power conferred on the Authority under
that Act.

(2) This section does not affect the operation
of—

- 5
- (a) the **Health Records Act 2001**; or
 - (b) the **Privacy and Data Protection Act 2014**; or
 - (c) the **Victorian Data Sharing Act 2017**."

Division 4—Disputes which may be referred to arbitration

10 **23 Genuine disputes about certain matters**

At the foot of section 298(1) of the Principal Act
insert the following note—

"Note

15 See section 301C(1) for matters that can be referred to
arbitration."

24 Lodging of disputes for arbitration

(1) In section 301C(1)(a) of the Principal Act **omit**
"liability for".

20 (2) After section 301C(1)(a) of the Principal Act
insert—

"(ab) the dispute is not or does not include a
dispute as to any of the following—

- (i) whether an injury is an injury under this
Act;
- 25 (ii) whether an injury has occurred in
circumstances that create a liability for
the Authority or self-insurer to pay
compensation under this Act; and".

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(3) After section 301C(2) of the Principal Act
insert—

- 5 "(2A) A dispute excluded from arbitration under
subsection (1)(ab) includes a dispute as to
any of the following matters—
- 10 (a) whether a claimant is a worker;
 - (b) whether the claimant has suffered an
injury, including a mental injury;
 - (c) whether an injury caused to the
15 claimant is an injury that arose out of,
or in the course of, or due to the nature
of, the claimant's employment;
 - (d) whether the claimant's employment was
a significant contributing factor to an
15 injury caused to the claimant;
 - (e) whether an injury caused to the
claimant is a mental injury for which
there is no entitlement to compensation;
 - (f) whether an injury caused to the
20 claimant is a disease for which there is
no entitlement to compensation;
 - (g) whether an injury caused to the
claimant is a proclaimed disease;
 - (h) any other matter that is relevant to
25 determining any of the following—
 - (i) whether an injury is an injury
under this Act;
 - (ii) whether an injury has occurred in
30 circumstances that create a
liability for the Authority or
self-insurer to pay compensation
under this Act."
-

**Division 5—Independent review of amendments to
scheme**

25 New Division 14A inserted in Part 13

5 After Division 14 of Part 13 of the Principal Act
insert—

"Division 14A—Review of amendments

620A Independent review by expert panel

- 10 (1) The Minister must cause an independent
review of the operation of the amendments
made to this Act by the amending Act to be
conducted by an expert panel.
- (2) The conduct of the review must commence
on or after 1 January 2027 and before
1 January 2028.
- 15 (3) The independent review must be conducted
in accordance with the terms of reference set
by the Minister.
- (4) The Minister must set the terms of reference
for the independent review which may
20 include an examination of and
recommendations in relation to matters
arising from the operation of the
amendments, including the operational and
financial impact of the following—
- 25 (a) the introduction of the definition of
mental injury and the amendment of
sections 39 and 40 by Division 1 of
Part 2 of the amending Act;
- 30 (b) the introduction of Subdivision 1A of
Division 2 of Part 5 and consequential
amendments relating to the introduction
of a whole person impairment test in
the second entitlement period made by
-

Workplace Injury Rehabilitation and Compensation Amendment
(WorkCover Scheme Modernisation) Bill 2023

Part 2—Amendment of Workplace Injury Rehabilitation and Compensation
Act 2013

Division 2 of Part 2 of the amending
Act;

- 5 (c) increasing the scope of claims that may
be dealt with administratively because
of the amendments made by Division 2
of Part 2 of the amending Act;
- (d) changes to the information sharing
framework under this Act by Division 3
of Part 2 of the amending Act;
- 10 (e) reducing the scope of disputes that may
be referred to arbitration because of the
amendments made by Division 4 of
Part 2 of the amending Act;
- (f) any other relevant matter.

15 (5) In this section—

amending Act means the **Workplace Injury
Rehabilitation and Compensation
Amendment (WorkCover Scheme
Modernisation) Act 2023**.

20 **620B Appointment of expert panel**

- (1) For the purposes of section 620A, the
Minister must appoint a minimum of
3 persons to form the expert panel.
- 25 (2) The Minister must ensure that each person
appointed to the expert panel has experience
in one or more of the following areas—
- (a) medicine;
- (b) law;
- (c) finance;
- 30 (d) occupational health and safety."

Division 6—Transitional provision

26 New section 625 inserted

After section 624 of the Principal Act **insert—**

5 "**625 Transitional provision—Workplace
Injury Rehabilitation and Compensation
Amendment (WorkCover Scheme
Modernisation) Act 2023**

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(1) The definition of *mental injury* as inserted by Division 1 of Part 2 of the amending Act and sections 39 and 40, as amended by that Division of that Act, apply to claims made in respect of injuries that occur on or after the date of commencement of Division 1 of Part 2 of the amending Act.

(2) Sections 163, 165 and 175, as in force immediately before the commencement of Division 2 of Part 2 of the amending Act, continue to apply to a worker who immediately before the date of commencement of that Division of the amending Act is receiving weekly payments despite the expiry of the second entitlement period.

(3) Section 301C, as in force immediately before the commencement of Division 4 of Part 2 of the amending Act, continues to apply to a dispute that relates to an injury that occurs before the date of commencement of that Division of the amending Act.

(4) In this section—

amending Act means the **Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2023**."

Part 3—Amendment of Accident Compensation Act 1985

27 Weekly payments after the second entitlement period

5

(1) For section 93C(1) of the **Accident
Compensation Act 1985** substitute—

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"(1) Subject to section 93CD, a worker's
entitlement to compensation in the form of
weekly payments under this Part ceases upon
the expiry of the second entitlement period
unless—

15

(a) subject to paragraph (c), the worker is
assessed by the Authority or
self-insurer as having no current work
capacity and likely to continue
indefinitely to have no current work
capacity; or

20

(b) the worker is a pre-12 November 1997
claimant who has a serious injury; or

25

(c) in the case of a worker whose second
entitlement period expires on or after
1 January 2024, the Authority or
self-insurer determines in accordance
with Subdivision 1A of Division 2 of
Part 5 of the **Workplace Injury
Rehabilitation and Compensation
Act 2013** that the worker—

30

(i) has no current work capacity and
is likely to continue indefinitely to
have no current work capacity;
and

(ii) has a whole person impairment of
more than 20 per cent."

Part 3—Amendment of Accident Compensation Act 1985

(2) In section 93C(2) of the **Accident Compensation Act 1985**, for "subsection (1)(a) or (b)" substitute "subsection (1)(a), (b) or (c)".

5 (3) After section 93C(3) of the **Accident Compensation Act 1985** insert—

"(4) In the case of a worker referred to in subsection (1)(c) who is receiving compensation under subsection (2), the Authority or self-insurer—

- 10 (a) may review the work capacity of the worker at any time; and
- (b) must review the work capacity of the worker as often as reasonably necessary and not less than once every 2 years."

15 **28 New section 93CAB inserted**

After section 93CA of the **Accident Compensation Act 1985** insert—

"93CAB Review of impairment arising from surgery after second entitlement period

20 (1) A worker may apply, in a form approved by the Authority, to the Authority or self-insurer for compensation in the form of weekly payments in respect of incapacity and whole person impairment if the worker—

25 (a) has an injury arising on or after 5 April 2010 in respect of which—

- (i) liability has been accepted or established; and
- 30 (ii) the worker is, or has been, entitled under this Act to compensation in the form of weekly payments during the second entitlement period; and
-

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- (b) either, in respect of the injury—
 - (i) is not entitled to compensation in the form of weekly payments because of section 93C; or
 - (ii) is entitled under section 93CD to compensation in the form of weekly payments; and
 - (c) for at least 13 consecutive weeks immediately after the expiry of the second entitlement period, has not received compensation in the form of weekly payments other than weekly payments under section 93CD; and
 - (d) requires surgery for that injury (*the subsequent surgery*) for which the Authority or self-insurer has accepted liability under section 99; and
 - (e) suffers incapacity and whole person impairment resulting from or materially contributed to by the subsequent surgery; and
 - (f) has not attained retirement age.
- (2) A worker who applies under this section is entitled to compensation in the form of weekly payments under section 93C(2)(d) if the Authority or self-insurer determines in accordance with Subdivision 1A of Division 2 of Part 5 of the **Workplace Injury Rehabilitation and Compensation Act 2013** that the worker, as a result of the subsequent surgery—
- (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
-

- (b) has a whole person impairment of more than 20 per cent.
- (3) Compensation payable under this section is payable from—
- 5 (a) if the worker receives compensation under section 93CA as a result of the subsequent surgery, the date that is 13 consecutive weeks after the day on which the subsequent surgery was performed; or
- 10 (b) in any other case, the date that it is determined that the worker is entitled to compensation."

15 **29 Continuation of weekly payments after second entitlement period**

In section 93CD of the **Accident Compensation Act 1985**—

- (a) in subsection (4)(b), for "earnings." **substitute** "earnings; and";
- 20 (b) after subsection (4)(b) **insert**—
- "(c) in the case of a worker whose second entitlement period expires on or after 1 January 2024, the worker has a whole person impairment of more than
- 25 20 per cent."

30 Provisions relating to the payment of compensation

- (1) In section 97(2) of the **Accident Compensation Act 1985**, for "worker has no current work capacity and is likely to continue indefinitely to have no current work capacity." **substitute**
- 30 "worker—
- (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
-

5 (b) in the case of a worker whose second
entitlement period expires on or after
1 January 2024 and who is receiving weekly
payments after the second entitlement
period, has a whole person impairment of
more than 20 per cent, determined in
accordance with Subdivision 1A of
Division 2 of Part 5 of the **Workplace
Injury Rehabilitation and Compensation
Act 2013**".

10 (2) After section 97(2AA) of the **Accident
Compensation Act 1985** insert—

15 "(2AAB) If a worker who ceases to reside in Australia
is receiving weekly payments and the
worker's second entitlement period expires
on or after 1 January 2024, the worker's
entitlement to weekly payments ceases upon
the expiry of the second entitlement period
unless the Authority or self-insurer
determines in accordance with
20 Subdivision 1A of Division 2 of Part 5 of the
**Workplace Injury Rehabilitation and
Compensation Act 2013** that the worker—

25 (a) has no current work capacity and is
likely to continue indefinitely to have
no current work capacity; and

(b) has a whole person impairment of more
than 20 per cent."

30 (3) For section 97(3) of the **Accident Compensation
Act 1985** substitute—

35 "(3) If a worker who does not reside in Australia
is receiving weekly payments because of
subsection (1), (2) or (2AAB), the worker is
entitled to receive the weekly payments if the
worker proves in the prescribed manner and

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Part 3—Amendment of Accident Compensation Act 1985

at the prescribed intervals to the satisfaction
of the Authority or self-insurer—

- 5
- (a) the worker's identity; and
 - (b) that the worker continues to have no
current work capacity.
- (3A) If a worker who does not reside in Australia
is receiving weekly payments after the
second entitlement period, the Authority or
self-insurer—
- 10
- (a) may review the work capacity of the
worker at any time; and
 - (b) must review the work capacity of the
worker as often as reasonably necessary
and not less than once every 2 years."

Part 4—Amendment of Occupational Health and Safety Act 2004

31 New Division 1A inserted in Part 2

5 After Division 1 of Part 2 of the **Occupational
Health and Safety Act 2004** insert—

"Division 1A—Use of information

8AA Use of information

- 10 (1) Information collected by the Authority under
this Act or the regulations may be used by
the Authority to perform its functions and
exercise its powers under any Act if the
use—
- 15 (a) is reasonably necessary for the
purposes of performing a function or
exercising a power conferred on the
Authority under that Act or regulations
made under that Act; or
- 20 (b) is directly related to a function or
power conferred on the Authority under
that Act.
- (2) This section does not affect the operation
of—
- 25 (a) the **Health Records Act 2001**; or
(b) the **Privacy and Data Protection
Act 2014**; or
(c) the **Victorian Data Sharing
Act 2017**."
-

Part 5—Repeal of this Act

32 Repeal of this Act

This Act is **repealed** on 31 March 2025.

Note

5

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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Endnotes

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

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