

BETRAYED! VIC STATE GOVT REDUCES WORKCOVER RIGHTS AND BENEFITS

The Victorian State Labor Government has made a shameful deal with the Liberal State Opposition to reduce injured workers rights and benefits under WorkCover.

The changes will commence from 31 March 2024.

1. Psychological claim eligibility is limited

The legislation will significantly reduce the circumstances where a WorkCover claim for a psychological injury will be accepted. The changes include:

- An aggravation or acceleration of a pre-existing psychological injury will **only** be compensable if work was the **predominant cause** of the aggravation / acceleration.
- **Entitlement to compensation:** if the psychological injury is **predominantly** caused by **traumatic events** that are **usual or typical** and **reasonably expected to occur** in the course of the worker's duties.
- **No entitlement to compensation:** if the psychological injury is **predominantly caused** by work related **stress or burnout** that has arisen from **usual or typical events** that are **reasonably expected to occur** in course of your duties.
- Entitled to retain provisional payments (medical expenses) paid for up to 13 weeks even if claim is ultimately rejected.
- A worker needs to have a specific mental health diagnosis that causes significant behavioural, cognitive or psychological dysfunction (as diagnosed under the Diagnostic and Statistical Manual of Mental Disorders (DSM)) to be entitled to compensation. The psychological injury at first instance must be significant to have an accepted claim.

2. The right for injured workers to receive weekly payments post 130 weeks is significantly reduced

Weekly payments stop at 130 weeks for **ALL** workers (for physical and psychological injuries), unless the worker has:

- No current work capacity which is likely to continue indefinitely; and
- A greater than 20% Whole Person Impairment (ie, 21% or more).

The WPI scale is a rating system used to measure the amount of permanent damage caused by the worker's injuries. It is based on the loss, or loss of use of any part of their body, or any part of their bodily system or function.

3. Disputes rights restricted

- A worker cannot go to arbitration to dispute a decision to reject a claim.

- A worker can still seek review of a decision at the Workplace Injury Commission. If that fails to resolve the dispute, they will need to issue proceedings in the Magistrates Court and/or the Workplace Compensation Injury Review Service.

4. Review of the changes

- There will be an independent review of the Act in 2027.

5. Current claims

- These changes will only apply to new mental injuries that occur on, or after 31 March 2024.
- The WPI requirement will only apply to claims that reach 130 weeks on, or after 31 March 2024.

What it means in practice for workers

- Workers who suffer injuries as a result of work-related stress or burnout are no longer entitled to compensation.

A psychological injury is as harmful as a physical injury and should not be arbitrarily treated differently. The exclusion of certain psychological injuries from the scheme reinforces harmful stigma around mental health.

Mental health claims are more expensive to resolve than physical injuries, partly due to complexity and largely because workers cannot immediately see a psychologist or psychiatrist – with average wait times between 4-6 months. With any injury, the faster you see a health professional the quicker you will recover. Speedy recovery is the best outcome for the individual, their workplace, and for the financial sustainability of the WorkCover scheme.

Early intervention is important for resolving mental health injuries. The exclusion of stress and overwork will see workers present later with more severe psychological injuries. It will mean:

- a. the injury will be harder to treat and take longer to treat,
- b. it will cost the scheme more and
- c. other Victorian Government services are more likely to be used; family violence, alcohol and drug addiction, homelessness, gambling, emergency health, and police services.

The Whole Person Impairment will kick injured workers off the scheme after 130 weeks if they do not pass the test

To continue to receive weekly payments after 130 weeks, an injured worker must already demonstrate they are injured and will continue to be unable to work.

This will leave injured workers who do not pass the test with no income and most with no further medical treatment. In nearly every case, an injured worker will not qualify for Centrelink or Disability Support Pension payments.

Where are they to go? What are they to do? The bill consigns vulnerable Victorian workers to poverty.

Why the changes?

Trade unions understand the underlying financial reasons that are driving the changes:

1. A rise in mental health claims, which are more expensive to treat
2. An increase of injured workers staying on the scheme after 130 weeks (known as the Long Tail)
3. The decision of successive Governments to not raise premiums over the last 20yrs.

We share concerns about financial sustainability and have put forward practical solutions to make WorkCover financially strong over the longer term.

However, the legislation may result in a short-term financial outcome that comes at the expense of injured workers.

Missing the point: What Really Needs to be Done

We should be looking into the root cause of why these injuries occur and implement preventative and early intervention measures to ensure that workplaces do not place workers in positions that will result in a workplace injury.

There needs to be pressure on employers to take proactive steps to prevent these injuries arising in the first place.

There needs to be stricter enforcement of occupational health and safety laws.

There needs to be greater education on workplace health and safety for employers, and greater consultation with unions, professional associations and health and safety representatives to monitor and prevent risks to the health and safety of workers.

The longer-term goal must be to adequately staff the healthcare sector, which can include incentives to join the sector by increasing student and training places and by providing scholarships and subsidies.

We have seen inappropriate practices become normalised within the sector. These include staff shortages and under-resourcing, working long hours and clinicians carrying very heavy caseloads. With these claims not being compensable, there is no pressure on employers to adequately resource health services and put in place safe and sustainable workplace practices.

These proposed changes to the WorkCover legislation have the effect of shifting the burden of risk onto the worker rather than the employer. The worker will have to use their own leave entitlements to fund a workplace injury, and then navigate a return-to-work process that is often not fit for purpose, and then face the risk of having their employment terminated due to incapacity. This creates a false economy of forcing highly qualified and trained healthcare workers out of an already understaffed sector. Inadequate return-to-work processes shift the burden to the welfare system when workers lose their jobs due to incapacity to resume their pre-injury duties. There needs to be more flexibility in allowing workers to undertake suitable duties with their injury employer.

Members are advised to contact VAHPA for assistance if you are injured or incur an illness at work, particularly after the new changes to WorkCover come into effect.