A Guide to the Workplace Injury Rehabilitation and Compensation Act 2013
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The WIRC Act honours the Victorian Government’s commitment to recast the Accident Compensation Act 1985 (AC Act) and the Accident Compensation (WorkCover Insurance) Act 1993 (ACWI Act) into a single Act that is simpler and easier to use.

The WIRC Act also delivers on the Government’s commitment to reduce regulatory burden associated with workers compensation legislation. It will make it easier for employers and workers to use the legislation and understand their rights, obligations and responsibilities.

It does not change the benefits available to injured workers and their families, or the way that premiums are calculated.

The key features of the WIRC Act include:

- Consolidated legislation - It covers the same subject matter as the AC & ACWI Acts, bringing this together into a single Act. Matters regarding compensation, rehabilitation, return to work, dispute resolution, self-insurance, WorkCover insurance, premiums and the administration of the WorkCover scheme, are now all contained in one Act.

- Streamlined legislation - Related provisions have been grouped together and placed in a more logical order. Some provisions have been reworded to express existing law more simply and clearly. Other provisions no longer needed have been removed and minor anomalies have been corrected.

- Flowcharts are included to illustrate various processes and to assist understanding of the legislation.

- Introduction of an additional right for employers to seek review of their premium at the Victorian Civil and Administrative Tribunal prior to commencing appeal proceedings in the Supreme Court to allow for a more accessible independent appeal forum in which to resolve premium disputes.

The WIRC Act will assist WorkSafe Victoria (WorkSafe) in its ongoing delivery of high quality, low cost workplace injury insurance and support to injured workers. It also provides an effective platform for WorkSafe to continue improving services for the Victorian community into the future.
Introduction

The WIRC Act aims to:

- reduce the incidence of accidents and diseases in the workplace
- provide a framework for the effective occupational rehabilitation of injured workers and their early return to work
- increase the provision of suitable employment to workers who are injured to enable their early return to work
- ensure appropriate compensation is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible
- ensure workers' compensation costs are contained so as to minimise the burden on Victorian businesses
- enhance flexibility in the system and allow for adaptation to the particular needs of disparate work situations
- maintain a fully-funded scheme
- improve the health and safety of persons at work and reduce the social and economic costs to the Victorian community of accident compensation.

The WIRC Act covers all Victorian workers compensation matters including:

- how to make a claim
- who is eligible to receive compensation
- what benefits are available and how they are calculated
- what rehabilitation services can be offered and when
- return to work rights and responsibilities
- how to dispute an adverse decision
- permanent impairment claims and benefits
- common law damages
- self-insurance
- WorkCover insurance and premiums
- the administration of the Victorian workers' compensation scheme.

How to use this guide

This guide provides a practical and easy to use overview of the WIRC Act. It is intended to be a useful resource for employers, workers, service providers and self-insurers and includes cross-references to relevant Parts, Divisions and sections to help you navigate the WIRC Act.

You can also contact your agent or WorkSafe if you need further assistance.

Further information can also be found at worksafe.vic.gov.au.

Disclaimer: The material contained in this guide is of a general nature only and is not intended to be advice on any particular matter. You should not act on the basis of any material in this guide without obtaining legal advice about your own particular situation.
Finding key provisions within the Workplace Injury Rehabilitation and Compensation Act 2013 – A quick reference table

Use this table to help find key provisions in the WIRC Act. It includes information about where to find specific topics in the WIRC Act as well as providing further information in this Guide.

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When does the Accident Compensation Act 1985 still apply?

Claims lodgement
The AC Act will continue to apply to claims received by an agent or WorkSafe before 1 July 2014.
The claims lodgement provisions in the WIRC Act apply for all claims (with the exception of maims) received by an agent or WorkSafe on or after 1 July 2014.
The AC Act claims lodgement provisions continue to apply to maims claims whether made on or after 1 July 2014.

Entitlement and benefits
The same type of compensation is available to an injured worker under the AC Act and the WIRC Act.
The AC Act will continue to apply to a worker’s entitlement to compensation for injuries occurring before 1 July 2014. This includes weekly payments, medical and like benefits, impairment or total loss benefits and entitlement to common law damages.
The WIRC Act applies to a worker’s entitlement to compensation for injuries which occur on or after 1 July 2014.

Return to work, dispute resolution and self-insurance
The WIRC Act replaces the AC Act from 1 July 2014 in respect of:
• the obligations on employers and workers in relation to return to work
• the resolution of disputes about compensation, and
• self-insurance.

What about the Accident Compensation (WorkCover Insurance) Act 1993?
The WIRC Act replaces the ACWI Act from 1 July 2014 and applies to WorkCover insurance and premium.
For a comparison of where key topics commonly referenced under the AC Act and the ACWI Act can now be found in the WIRC Act refer to Information about the Workplace Injury Rehabilitation and Compensation Act 2013 under Laws and regulations – Workplace injury rehabilitation and compensation at worksafe.vic.gov.au.
1. Preliminary

**Introductory**

**Division 1 – Sections 1 to 9**

These sections contain information about:

- the purpose the WIRC Act
- when various sections of the WIRC Act came or will come into operation (a majority of provisions in the WIRC Act came into operation on 1 July 2014)
- definitions and interpretation of key words used in the WIRC Act (further interpretation information can be found in Schedule 1 of the WIRC Act)
- the interaction between the AC Act, the Workers Compensation Act 1958 (WC Act) and the WIRC Act
- the rights of injured workers to access information held by WorkSafe, a self-insurer or an employer.

**Principles and guides**

**Division 2 – Sections 10 to 14**

This Division contains information about the objectives of the WIRC Act and a high level statement of the rights and obligations of workers and employers under the WIRC Act.

The Division does not create any legal rights or give rise to any civil causes of action and specifies that the flowcharts contained in the WIRC Act (referred to throughout this guide) are intended to be a guide only and do not form part of the WIRC Act.
Information about how to make a claim and the criteria which needs to be met to be entitled to compensation can be found in this Part of the WIRC Act.

**Injuries**

**Division 1 – Sections 15 to 28**

Information about the procedures a worker, employer, WorkSafe (via its authorised agents) or self-insurer need to follow if a worker is injured at work and wants to make a claim for compensation is contained in these sections of the WIRC Act.

If a worker is injured at work they must notify the employer of the injury.

An employer must:
- display information about how to make a claim (eg ‘If you are injured’ poster)
- maintain a register of injuries
- upon receiving notice of an injury from the worker, the employer must enter the details into the register of injuries and provide the worker with written acknowledgment.

A flowchart detailing the injury notification process can be found in Section 15 of the WIRC Act.

If a worker who is injured at work wishes to make a claim for compensation they must:
- complete an injury claim form and give it to their employer
- provide a WorkSafe approved medical certificate if they have an incapacity for work as a result of the injury and are claiming weekly payments
- attend any requested independent medical examinations.

A flowchart detailing the claim lodgement process can be found in section 19 of the WIRC Act.

For further information on the above refer to the *Injury and claims* section at worksafe.vic.gov.au.

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### Claims for compensation that may be lodged with WorkSafe

**Division 2 – Sections 29 to 36**

If a claim form cannot be given to an employer, information about how an injured worker can lodge a claim for compensation direct with WorkSafe in relation to a work-related injury is contained in these sections of the WIRC Act.

**Entitlement to compensation**

**Division 3 – Sections 37 to 51**

This section explains the criteria considered when determining whether a worker or a deceased worker’s dependants are entitled to receive compensation.

If a worker has a claim for compensation under the Victorian workers’ compensation scheme, WorkSafe (via its authorised agents) will consider if:
- employment is connected to Victoria
- the worker is a worker within the meaning of the legislation (Part 1 of Schedule 1 of the WIRC Act also contains information about when people work in specific areas and under specific conditions are to be treated as workers and are therefore entitled to claim for compensation)
- the injury arose out of or in the course of employment (or is deemed to have arisen out of or in the course of employment)
- the worker suffered an injury within the meaning of the WIRC Act
- a worker’s claim is as a result of a stroke, heart attack or worsening of a pre-existing injury. Entitlement to compensation will only arise if employment significantly contributed to the injury *(note: significant contribution means the employment must contribute to the occurrence of the injury in a way that is not insignificant, trivial or minimal – also refer to clause 25 of Schedule 1 of the WIRC Act for further information regarding significant contribution).*
Assessment of impairment

Division 4 – Sections 52 to 68

Information about the requirements and procedures that apply when conducting assessments of a worker's degree of permanent impairment is contained in these sections of the WIRC Act.

This Division includes:

- definitions
- disregarding types of impairment
- approval and accreditation required for medical practitioners to provide assessments
- when the degree of impairment can be assessed
- the effects of treatment on the impairment assessment outcome
- characterisation of compensable psychiatric impairment
- specific assessment requirements for impairment arising from hearing loss
- specific requirements in the application of the relevant American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides)
- how psychiatric, asthma and infectious disease impairment is assessed
- how spinal impairment is assessed

The degree of impairment assessed under Division 4 forms a component of the calculation used in determining non-economic loss resulting from permanent impairment (see Part 5 – Benefits – Compensation for non-economic loss).

There is no entitlement to compensation if:

- a worker makes a claim for a mental injury and the injury was wholly or predominantly caused by reasonable management action within the meaning of the WIRC Act or a decision about management action, or an expectation of management action
- the injury occurred as a result of the injured workers serious and wilful misconduct (unless the injury results in death or serious injury) or was deliberately of wilfully self-inflicted
- the worker has failed to disclose a pre-existing condition at the time of employment if requested in writing by the employer
- the injury was caused by a transport accident and the worker has been convicted or found guilty of a serious road traffic offence in relation to the driving of the motor vehicle.

An injured worker's entitlement to compensation can be reduced due to drink-driving and drug-driving offences.

There are specific provisions for where a worker is injured outside Victoria and where the worker receives compensation or damages outside Victoria.

There are also special provisions which explain when a worker may be entitled to compensation for a disease.
3. Compensation and claims

Information about employers’ obligations regarding claims made by injured workers and the obligations to pay compensation to injured workers is contained in this Part of the WIRC Act.

Preliminary

Division 1 – Section 69
Definitions of key words that apply to Part 3 of the WIRC Act are contained in section 69 of the WIRC Act.

Liability and indemnity

Division 2 – Sections 70 to 72
These sections of the WIRC Act contain information about some of the key features of the WorkCover insurance scheme, including how:

- WorkSafe and employers are liable to pay compensation to injured workers if they have an accepted claim
- WorkSafe will reimburse employers for their liability except for an employer’s excess unless the employer has a buyout option
- WorkSafe indemnifies an employer, and what WorkSafe may do under the contract of insurance, in the name of the employer.

Claims management – General

Division 3 – Sections 73 to 76
Information about the requirements and procedure for forwarding claims by the employer to WorkSafe (via its authorised agents) or self-insurer and the consequences of a decision not being made within the required timeframes are also contained in these sections of the WIRC Act.

For further information on the above refer to the Injury and claims section at worksafe.vic.gov.au.

Claims management – Employer objection

Division 4 – Sections 77 to 90
Information about the process where an employer can object to a decision to accept a claim of an injured worker is contained in these sections of the WIRC Act.

An employer:

- can request written reasons in relation to the decision to accept a claim by WorkSafe (via its authorised agents)
- may lodge an objection regarding a decision to accept a claim on the grounds that the worker was not a worker within the meaning of the WIRC Act or the employer was not the correct employer.

WorkSafe will notify the employer whether it will conduct a review of the decision or not. If a review is conducted the employer will be notified of the outcome. The employer can appeal WorkSafe's decision not to conduct a review or the decision to maintain the acceptance of the claim.

If a review is conducted and the decision is set aside the worker will be notified that payments will cease.

A flowchart detailing the employer objection process can be found in section 77 of the WIRC Act.

Section 90 of the WIRC Act also provides information about how and when WorkSafe and self-insurers can recover payments made to a worker to which a worker was not entitled.
4. Return to work

**Liability for payment of compensation**

**Division 5 – Sections 91 to 95**

This Division provides information about an employer’s obligation to pay compensation. Where the employer does not meet their liability WorkSafe becomes liable but may impose a penalty on the employer.

It also provides for compensation to be increased where there is unreasonable delay by an employer, WorkSafe or a self-insurer; and for a court to make an order for interim payments where weekly payments are payable but the appropriate rate can’t be ascertained.

Information about all matters relating to return to work including the obligations of workers and employers and the role of return to work inspectors is contained in this Part.

**Obligations of employers**

**Division 2 – Sections 102 to 109**

This Division includes information about an employer’s obligations to facilitate and support an injured worker’s return to work.

An employer’s obligations include:

- planning the return to work of the injured worker
- consulting with the injured worker, their representative, the worker’s treating health practitioners (if consent has been obtained from the worker) and the occupational rehabilitation provider if one is involved about the worker’s return to work
- notifying WorkSafe (via its authorised agents) when the injured worker returns to work in any capacity
- if employing workers from a labour hire company, cooperate with the labour hire company, cooperate with the labour hire employer in relation to return to work.

A flowchart detailing an employer’s return to work obligations can be found in section 102 of the WIRC Act.

For further information on the above refer to the Return to work section at worksafe.vic.gov.au.

**Obligations of workers**

**Division 3 – Sections 110 to 115**

This Division explains a worker’s obligations in participating in their safe return to work.

This includes:

- participating and cooperating in return to work planning
- actively using the occupational rehabilitation services provided
- making reasonable efforts to return to work in suitable employment or pre-injury employment either at the place of employment the injury occurred or at an alternative place of employment
- actively participating and cooperating in any assessment of capacity for work, rehabilitation assessment or assessment of future employment prospects if requested to do so
- participating in an interview with a representative of WorkSafe (usually a person from a WorkSafe authorised agent) for the purposes of enhancing any return to work opportunities.

A flowchart further explaining this can be found in section 110 of the WIRC Act.

For further information on the above refer to the Return to work section at worksafe.vic.gov.au.
Termination of compensation

Division 4 – Sections 116 to 117

Section 116 explains the consequences for injured workers if they don’t comply with their return to work obligations. These include suspending or ceasing weekly payments currently being received by the worker.

Section 117 requires a worker who is receiving weekly payments and who returns to work with another employer or in self-employment to immediately notify WorkSafe and (if relevant) the employer with whom they were injured.

General provisions

Division 5 – Sections 118 to 125

General obligations and powers intended to support return to work are contained in these sections of the WIRC Act. These include:

- outlining a specified procedure for the employer and worker to follow in an attempt to resolve issues about a worker’s return to work
- the requirement that WorkSafe (via its authorised agents) or self-insurer inform the worker of the employer’s obligation to provide suitable or pre-injury employment for 52 weeks and the expiry date of that period
- WorkSafe (via its authorised agents) being able to direct an employer to use the services of an approved provider of occupational rehabilitation services
- the Minister being able to approve and vary Compliance Codes to provide guidance in meeting return to work obligations.

Return to work inspectorate

Division 6 – Sections 126 to 127

These sections enable WorkSafe to appoint return to work inspectors. Return to work inspectors provide advice and information to assist employers meet their return to work obligations and enforce compliance. These sections enable inspectors to be issued with identity cards which must be produced when asked.

Functions and powers of inspectors

Division 7 – Sections 128 to 145

Information about inspectors and their powers is contained in these sections of the WIRC Act. These include the power to enter workplaces, ability to obtain information, remove items from workplaces and issue improvement notices.

An inspector’s powers under this Division are generally aligned with the powers of occupational health and safety inspectors under the Occupational Health and Safety Act 2004.

Offences

Division 8 – Sections 146 to 148

Information about certain offences in relation to return to work inspectors when certain events arise, such as hindering or obstructing, assaulting or intimidating, and impersonating an inspector, is contained in these sections of the WIRC Act.

Review of decisions

Division 9 – Sections 149 to 151

Information about the internal review and Victorian Civil and Administrative Tribunal (VCAT) appeal process in relation to decisions made by inspectors is contained in these sections of the WIRC Act.

For further information on return to work inspectors, their powers and review of inspector decisions refer to the Return to work section at worksafe.vic.gov.au.
5. Benefits

**Preliminary**

**Division 1 – Section 152 to 159 and Schedule 2**

These sections provide information on calculating a worker’s pre-injury average weekly earnings (PIAWE) to enable appropriate weekly payments to be made.

PIAWE refers to the average amount of earnings which the worker received during a specified period of time leading up to their injury.

Definitions and interpretation of the terms used in this Part of the WIRC Act such as ‘relevant period’ and ‘base rate of pay’ are contained here. It also contains information about how different pay arrangements are taken into consideration when determining a worker’s PIAWE such as commissions and non-pecuniary benefits (non-monetary benefits which have a monetary value).

Information for the calculation of PIAWE for different classes of workers (e.g., apprentices, workers who work for more than one employer, workers who are promoted, full-time students) can be found in Schedule 2 of the WIRC Act.

For further information on the above refer to the Injury and claims – Compensation and entitlements section at worksafe.vic.gov.au.

**Weekly payments**

**Division 2 – Sections 160 to 179**

**General - Weekly payment amounts (Sections 160 to 167)**

Information about how WorkSafe, self-insurers and employers are liable to pay compensation in the form of weekly payments to injured workers and the amount of that entitlement is contained in these sections of the Act.

The amount of weekly payments to which a worker may be entitled varies depending on what stage the claim is at. During the first and second entitlements period (0-13 weeks and 14-130 weeks respectively) a workers’ weekly payments are a percentage of their PIAWE minus any current weekly earnings received by the worker each week following a return to work. Details about the percentages applied and how earnings are used to determine a worker’s weekly payments is contained in these sections of the WIRC Act.

A worker is not entitled to weekly payments after the second entitlement period unless specific criteria are met in which case weekly payments will continue after the second entitlement period (post-130 weeks). Details of the specific criteria which need to be met are contained in these sections of the WIRC Act. After the second entitlement period, a worker may also be entitled to up to 13 weeks of weekly payments after surgery.

A worker must provide ongoing certificates of capacity to their employer (or WorkSafe via an authorised agent for a direct payee) or a self-insurer to be entitled to weekly payments.

**Superannuation contributions (Section 168)**

This section of the WIRC Act allows workers who have received weekly payments for 52 weeks to also receive compensation in the form of superannuation contributions paid to a complying superannuation fund of their choice.

For further details about the above refer to the Injury and claims – Compensation and entitlements section at worksafe.vic.gov.au.

**Compensation after retirement (Sections 169 to 171)**

These sections describe how a worker’s entitlement to weekly payments normally ceases when a worker reaches retirement age.

However a worker who is injured within 130 weeks before reaching retirement age or who is injured at any time after reaching retirement age is entitled to weekly payments for up to 130 weeks.

Also, where a worker receives treatment as an inpatient at a hospital in relation to their injury, after reaching retirement age, they may be entitled to weekly payments for an additional 13 weeks.
Effect of certain pensions on weekly payments (Sections 172 to 173)

Details about how a worker’s weekly payments may be impacted if a worker receives a retirement, superannuation, disability pension or other lump sum payment related to the work-related injury are provided in these sections of the WIRC Act.

Provisions relating to the payment of compensation (Sections 174 – 179)

These sections outline other circumstances that may impact on a worker’s entitlement to weekly payments which include where a worker:

- ceases to reside in Australia
- is serving a prison sentence.

Timeframes that WorkSafe (via its authorised agents) or a self-insurer must commence weekly payments after a claim is accepted or a decision is made that weekly payments are payable are also contained in these sections of the WIRC Act.

They also specify timeframes for payment of weekly payments to a worker and the penalties that apply if WorkSafe (via its authorised agents), an employer or self-insurer fails to make payments within these timeframes.

Alteration or termination of weekly payments and superannuation contributions

Division 3 – Sections 180 to 194

Information about the circumstances where WorkSafe (via its authorised agents) or a self-insurer may alter or terminate a worker’s weekly payments is contained in these sections of the WIRC Act.

WorkSafe (via its authorised agents) may alter the weekly payment amount in the following circumstances:

- the worker enters a different entitlement period
- there is a change the worker’s current weekly earnings
- payments for overtime or shift allowances are no longer included in the worker’s PIAWE
- the worker ceases to receive a non-pecuniary benefit (a non-monetary benefit with a monetary value) that was included in the pre injury average weekly earnings
- where the worker accesses income from another source related to their injury (superannuation, lump sum or pension)
- where the worker remove themselves from work for reasons unrelated to their injury.

WorkSafe (via its authorised agents) may terminate weekly payments if the worker:

- no longer has an entitlement to receive compensation (Part 2 – Workplace injuries of this guidance provides details regarding assessment of entitlement)
- is not or is no longer entitled to weekly payments because they:
  - are not or are no longer incapacitated for work
  - have an incapacity for work but it is not as a result of a work-related injury or for an accepted work related claim
  - the second entitlement period has expired
- fraudulently obtained payments.

These sections also detail when and how a worker must be notified of an alteration to their weekly payment amount or the termination of their weekly payments, and when interest is to be paid on outstanding weekly payments.

Claims for compensation for non-economic loss

Division 4 – Sections 195 to 209

Information about procedures for assessment and determination of claims for compensation for non-economic loss (permanent impairment benefit claims) is contained in these sections of the WIRC Act.

These include:

- sufficient time must have passed for the injury to stabilise before a worker can lodge a claim (normally 12 months)
- WorkSafe (via its authorised agents) or self-insurer may suspend the determination of a claim if they do not have sufficient medical information
- WorkSafe (via its authorised agents) or self-insurer can reject or accept the claim or they can accept the claim for some injuries and not others
• if the claim is accepted the agent or self-insurer will:
  − obtain an independent assessment of the worker’s impairment and decide the level of the worker’s impairment or total loss based on the available evidence
  − calculate the amount of the worker’s lump sum entitlement
• the worker will be notified in writing if the claim is accepted or rejected and if the claim is accepted the amount of the entitlement that has been decided upon
• if the claim is rejected the worker may dispute the decision at court. If the worker disagrees with the assessment of impairment WorkSafe (via its authorised agent) or self-insurer must refer the dispute to the Medical Panel (Part 6 – Dispute resolution of the WIRC Act and of this guidance provides details regarding the dispute resolution process). Alternatively the worker may advise WorkSafe (via its authorised agents) or self-insurer that they accept the determinations of impairment and the amount of the entitlement which has been determined.

A flowchart detailing the permanent impairment benefit claims process can be found in section 195 of the WIRC Act.

For further details about the above refer to the Injury and claims – Compensation and entitlements section at worksafe.vic.gov.au.

Compensation for non-economic loss

Division 5 – Sections 210 - 221

Information about how a worker’s permanent impairment entitlement to compensation is calculated is contained in these sections of the WIRC Act.

This Division provides:

• definitions
• methods for calculating non-economic loss for hearing loss, physical and psychiatric impairment
• adjustment methods for calculating compensation under the relevant chapters of the AMA Guides and spinal assessments
• compensation for loss of foetus
• a method of deeming injury date for gradual process injuries (excluding hearing loss)
• an alternative no disadvantage compensation for total loss injuries
• a maximum cap for non-economic loss compensation
• a method for deducting previous compensation for aggravation or exacerbation of previously compensated injury.

Schedule 3 of the WIRC Act provides the modification to degrees of impairment table for the purposes of this Division.

Schedule 4 provides the ‘No Disadvantage – Compensation Table’ for the purposes of this Division.

For further details about the above refer to the Injury and claims – Compensation and entitlements section at worksafe.vic.gov.au.

Rehabilitation services prior to acceptance of claim

Division 6 – Section 222

This section of the WIRC Act enables WorkSafe (via its authorised agents) or a self-insurer to pay the reasonable costs of rehabilitation services provided to a worker before an entitlement to compensation has been determined.

Compensation for medical and like services

Division 7 – Sections 223 to 233

Information about how an employer, WorkSafe (via its authorised agents) or self-insurers are liable for the reasonable costs of reasonable medical and like services which a worker (or another person in certain circumstances) incurs as a result of the worker’s injury is contained in these sections of the WIRC Act.

They contain details about:

• what is and isn’t a medical and like service
• the time period for which payment of medical and like expenses can be made, subject to having an entitlement, and associated timeframes for notification of stopping payments
• to whom compensation is paid
• restrictions that apply where the services are provided outside Australia
Voluntary settlements

Division 9
Settlements in specific circumstances (Sections 244 – 246)

Information about criteria that allow a worker to apply for a voluntarily settlement is contained in these sections of the WIRC Act.

These include the worker:
- must be receiving or be entitled to receive weekly payments
- is over the age of 55
- has no current worker capacity and is likely to continue indefinitely to have no current work capacity, and
- has been receiving weekly payment for at least 130 weeks

If the worker’s application is accepted they will receive a one-off lump sum, in place of any future weekly payments.

Schedule 5 of the WIRC Act provides ‘the table to be used to determine settlement amounts under section 246’.

Other settlements (Sections 247 – 250)

This sub-division allows for other settlement regimes to be established via regulations and Orders in Council. Currently there are no other settlement regimes approved.

Application procedure (Sections 251 – 263)

This sub-division sets out the application procedure, including timeframes that apply to voluntary settlements.

This Part provides information about the dispute resolution processes for disputes that arise under the WIRC Act.
6. Dispute resolution

Jurisdiction

Division 1 – Sections 264 to 279

Information about which Victorian courts can hear disputes in connection with statutory benefits and the determination of serious injury under the WIRC Act, the AC Act and the WC Act, and when, is contained in these sections of the WIRC Act.

They also provide details about:

- the type of information and evidence that will be allowed to be produced at court
- the requirement to attempt resolution of disputes in relation to claims (with the exception of claims involving the death of a worker or for determining the level of impairment) via the Accident Compensation Conciliation Service (ACCS) prior to issuing legal proceedings
- the power of the court to refer medical questions to the Medical Panel in certain circumstances (further information about the Medical Panel is contained later in this part of the guidance and the WIRC Act in Part 12 – Other bodies)
- legal costs and cost liabilities of legal practitioners.

Disputes and conciliation

Division 2 – Sections 280 to 301

These sections provide information about how a worker who disagrees with a decision made by WorkSafe (via its authorised agents) or a self-insurer can refer the dispute to the ACCS for conciliation and the process involved in attempting to resolve the dispute.

These section describe:

- the requirement for the dispute to be lodged with the ACCS using the appropriate form
- that a Conciliation Officer will conciliate having regard to the need to be fair, economical and quick to bring the parties to agreement
- the powers and duties of Conciliation Officers when dealing with disputes lodged, including when an unresolved matter will be referred to the Medical Panel or the worker will be informed that an application can be made for determination by a court
- when a Conciliator can give a Direction, for weekly payments or medical and like expenses
- what costs the worker can claim for attending conciliation.

A flowchart providing an overview of the dispute resolution process in circumstances where a worker disagrees with a decision by WorkSafe, its authorised agents or a self-insurer can be found in section 280 of the WIRC Act.

Medical Panels

Division 3 – Sections 302 to 313

Information about the main functions, powers and procedures of the Medical Panel is contained in these sections of the WIRC Act. The Medical Panel provides an opinion on any medical question arising from disputes referred to it by a Conciliation Officer, relevant courts, WorkSafe (via its authorised agents) or a self-insurer.

Determination of the courts and recognition of determination

Division 4 – Sections 314 to 317

These sections of the WIRC Act enable the Magistrates’ or County Courts in Victoria to decide which state or territory a worker is employed to determine which workers’ compensation scheme a worker is covered by. These sections also allow for prior decisions by Victorian and interstate courts in relation to the state or territory a worker’s employment is connected to be used to determine the state or territory in which a worker is employed.
7. Actions and proceedings for damages

Choice of law

Division 1 – Sections 318 to 323
These sections of the WIRC Act clarify which jurisdictions laws apply to a claim for common law damages.

Actions for damage

Division 2 – Sections 324 to 356
These sections of the WIRC Act contain information about:
- how the claim for damages must be for an injury incurred out of or in the course of employment and be considered a serious injury as defined in the WIRC Act
- how a worker can seek to recover damages by making a serious injury application with WorkSafe or a self-insurer
- the application process
- the requirement to attempt to resolve the action for damages before proceeding to court
- the type of damages that may be claimed and limitations on the amounts of damages
- legal costs.

A flowchart providing an overview of the process for claiming common law can be found in section 324 of the WIRC Act.

For further information on the above refer to the Injury and claims – Compensation and entitlements section at worksafe.vic.gov.au.

Actions by terminally ill workers or workers with asbestos-related conditions

Division 3 – Sections 357 to 358
Information about how a worker with a terminal illness or asbestos-related condition can commence a common law damages action without first having to comply with certain procedural requirements is contained in these sections of the WIRC Act. They also provide rules for actions brought by terminally ill workers to be continued after the death of a worker in specified circumstances.

Administration by a trustee

Division 4 – Section 359
Section 359 of the WIRC Act allows for any payment of compensation under the WIRC Act to be paid to a trustee who manages the compensation on behalf of the worker.

Conduct of common law proceedings

Division 5 – Sections 360 to 365
Information about what happens when a worker brings common law proceedings that allege injury before 31 August 1985 and after 1 July 2014 is contained in these sections of the WIRC Act. They establish procedures for the conduct of the defence of common law proceedings and for an apportionment between WorkSafe and a common law insurer of the liability to pay damages.

Other actions and rights

Division 6 – Sections 366 to 371
This Division also allows:
- dependants of a worker to bring an action of wrongful act or negligence causing death, under Part III of the Wrongs Act 1958
- WorkSafe and, in certain circumstances a self-insurer, to recover costs of compensation and damages paid under the WIRC Act from the Transport Accident Commission (TAC)
- WorkSafe, a self-insurer or employer to be indemnified by a third party in circumstances where the third party is legally liable for an injury or death for which compensation has already been paid or may be payable under the WIRC Act.
8. Self-insurers

**General**

Division 1 – Sections 372 to 374
These sections of the WIRC Act contain definitions and an explanation of terms used in this Part.

**Application for approval as a self-insurer**

Division 2 – Sections 375 to 378
Information about the pre-application and application process for an employer who would like to self-insure is contained in these sections of the WIRC Act. These sections also outline the process for determining the application fee that an employer is required to pay to WorkSafe when applying for approval to be a self-insurer.

Details about how the self-insurer-pre-application eligibility fee and the application fee for approval as a self-insurer are calculated are provided in Schedules 6 and 7 (respectively) of the WIRC Act.

**Approval as a self-insurer**

Division 3 – Sections 379 to 387
Information about the application process, the criteria used by WorkSafe when considering an employer’s application to self-insure, and the terms and conditions of approval and notification requirements is contained in these sections of the WIRC Act. These sections also allow WorkSafe to review and revoke a self-insurer’s approval.

**Contribution to WorkCover Authority Fund**

Division 4 – Sections 388 to 389
Information about a self-insurer’s obligation to make contributions into the WorkCover Authority Fund is contained in these sections of the WIRC Act. This contribution is intended to cover the costs incurred by the workers’ compensation scheme for services provided by WorkSafe from which self-insurers directly or indirectly derive a benefit.

**Review of contributions by self-insurers**

Division 5 – Section 390
This section of the WIRC Act allows the Minister to commence a review of any matter related to the amount of contributions paid by self-insurers. The review must be undertaken by an independent expert body.

**Liability for claims for compensation**

Division 6 – Sections 391 to 409
Liability of self-insurer (Sections 391 to 394)
These sections of the WIRC Act:
- confirm that a self-insurer is liable for payment of benefits to eligible injured workers under the WIRC Act and at common law
- enable a self-insurer to appoint an agent to manage its Victorian workers’ compensation claims
- require a self-insurer to provide WorkSafe with a guarantee to cover the value of the employer’s assessed liability in relation to its Victorian workers’ compensation claims
- require a self-insurer to pay an amount of compensation or damages or contributions within 28 days after a Conciliation Officer, VCAT, the Magistrates’ Court or County Court directs or determines that the self-insurer is liable.
Employer that ceases to be a self-insurer or otherwise to be liable for tail claims (Sections 403 to 409)

These sections of the WIRC Act:

- confirm that WorkSafe assumes the liability for, and responsibility for the management of an employer’s tail claims when an employer ceases to be a self-insurer
- require an employer to make payment of a settlement amount to WorkSafe for tail claims returned to the Victorian workers’ compensation scheme
- require an employer to hold a guarantee and stipulates the associated requirements
- set out the process for:
  - the initial and annual assessment of an employer's tail claims liability
  - the adjustment of payment of a settlement at the end of the three and six year liability periods, and the dispute resolution process, if an employer disagrees with the final revised assessment of its tail claims liability at the end of the six year liability period.

Miscellaneous

Division 7 – Sections 410 to 412

These sections of the WIRC Act:

- set out the process WorkSafe must follow when making guidelines about matters to which self-insurers should have regard in relation to the WIRC Act or in relation to any regulations or Ministerial Orders made under the WIRC Act
- provide details about who can divulge information and the situations when that information can be disclosed (secrecy provisions).
9. Non-WorkCover employers

Non-WorkCover employers

Sections 413 to 428

These sections of the WIRC Act:

- confirm that WorkSafe retains or assumes the liability for, and the responsibility for the management of, an employer's tail claims when an employer becomes a non-WorkCover employer
- stipulate the circumstances where a non-WorkCover employer must make payment of a settlement amount to WorkSafe for its tail claims liability

- require a non-WorkCover employer to hold a guarantee and stipulates the associated requirements
- set out the process for –
  - the initial and annual assessment of a non-WorkCover employer's tail claims liability
  - the adjustment of payment of a settlement at the end of the three and six year liability period, and dispute resolution, if a non-WorkCover employer disagrees with the final revised assessment of its tail claims liability at the end of the six year liability period.
Preliminary

Division 1 – Sections 429 to 432
Information about the criteria for when an employer will be required to pay premium and must apply to be registered as an employer with WorkSafe is contained in these sections of the WIRC Act.

Information about when WorkSafe will regard two or more employers to be part of a group for WorkCover Insurance purposes is also contained in these sections of the WIRC Act.

Registration

Division 2 – Sections 433 to 438
As from 1 July 2104, all employers will have a statutory contract of insurance with WorkSafe that will cover them for the cost of workplace injuries suffered by their workers, regardless of whether they are registered.

Information about when an employer is required to register with WorkSafe is contained in these sections of the WIRC Act.

Employers who had a current WorkCover Insurance Policy as at 1 July 2014 will be automatically registered for premium purposes from this date.

A flowchart that outlines when an employer is required to apply to be registered with WorkSafe is contained in section 433 of the WIRC Act.

Information about the obligation for registered employers to advise WorkSafe of a change of circumstances, and the imposition of associated penalties for failure to comply, are contained in these sections of the WIRC Act.

Rateable remuneration

Division 3 – Sections 439 to 446
More information about an employer’s obligation regarding their rateable remuneration is contained in these sections of the WIRC Act.

These sections provide WorkSafe with the ability to estimate an employer’s rateable remuneration and to use that estimate in the calculation of their WorkCover premium. WorkCover premiums can be recalculated if the employer provides a further, different, estimate.

A definition of the term ‘rateable remuneration’ can be found in clause 24, Schedule 1 of the WIRC Act.

Premiums

Division 4 – Sections 447 to 458
Information about the calculation of premiums in accordance with the appropriate Premiums Order, use of rateable remuneration estimates, the issuing of premium notices by WorkSafe and the imposition of associated penalties related to the payment of premiums by employers is contained in these sections of the WIRC Act.

A flowchart that outlines the premium determination process is contained in section 447 of the WIRC Act.

Premium review

Division 5 – Sections 459 to 477
Information about the premium review process is contained in these sections of the WIRC Act.

This includes that:

- the employer may make an application for review with WorkSafe and pay the amount WorkSafe believes it is owed while the review process is being undertaken
- WorkSafe has the discretion as to whether to review the application
- WorkSafe must notify the employer if it has decided to conduct a review and if a review has been undertaken, the outcome of that review

A flowchart that describes the process available to employers should they seek a review of their premium is contained in section 459 of the WIRC Act.
Review by the Victorian Civil and Administrative Tribunal (VCAT) and appeal to the Supreme Court

Division 6 – Sections 478 to 487
Information about the right for an employer to apply to VCAT about the outcome of the review of its premium undertaken by WorkSafe or to make an appeal to the Supreme Court is contained in these sections of the Act.

Recovery of premium and penalty

Division 7 – Sections 488 to 489
Information about how WorkSafe can sue for any unpaid premium or penalty imposed under the WIRC Act by commencing proceedings in an appropriate court is contained in these sections of the WIRC Act.

Review by Minister

Division 8 – Section 490
This section states that the Minister must, before 1 July 2015 and once in each five year period after that date, commence a review, to be undertaken by an independent expert review body, on any matter relating to the setting of premiums under Part 10 of the WIRC Act.

This section also states that the Minister must, before 1 July 2017 commence a review, to be undertaken by an expert review body, on the operation of the VCAT review process.
Constitution

Division 1 – Sections 491 to 501
These sections specify that WorkSafe will continue to operate under the WIRC Act and set out its objectives, functions and powers which relate to managing the Accident Compensation scheme effectively, efficiently and economically.

Delegation and appointment of authorised agents (Sections 500 and 501)
These sections allow WorkSafe to delegate its functions and powers and to appoint authorised agents to manage employers' insurance policies and injured workers' compensation claims. Agents perform most of the functions associated with premium collection and claims management. They also provide advice to help injured workers return to work.

WorkCover Advisory Committee

Division 3 – Section 512
The WorkCover Advisory Committee established under the AC Act continues in existence under the WIRC Act. It advises WorkSafe Board in relation to appropriate compensation, occupational rehabilitation and early return to work for injured workers.

Financial matters

Division 4 – Sections 513 to 518
These sections provide that the WorkCover Authority Fund will continue to operate under the WIRC Act. This is the fund into which employer premiums and other amounts are paid and out of which payments of compensation and other expenses connected to the Victorian workers' compensation scheme are made.

These sections require WorkSafe to pay a dividend to the state as determined by the Treasurer and to submit a budget and operating and financial report to the Minister each year.

Information about the establishment and governance of the Accident Compensation Conciliation Service (ACCS) and Medical Panels is contained in this Part of the WIRC Act.

Board of Management

Division 2 – Sections 502 to 511
These sections provide that the Board of Management established under the AC Act continues in existence under the WIRC Act and set out how it is constituted, directors are appointed and Board meetings are held.

The Board can exercise all the powers of WorkSafe, is required to direct the carrying out of the objectives and functions of WorkSafe and must ensure WorkSafe is managed in an efficient and economic manner.
12. Other bodies

**Accident Compensation Conciliation Service (ACCS)**

**Division 1 – Sections 519 to 536**

The ACCS established under the AC Act continues in existence under the WIRC Act. These sections provide for the appointment of the Senior Conciliation Officer and engagement of Conciliation Officers and staff at the Conciliation Service. They set out the functions and powers of the Conciliation Service including the particular functions of the Senior Conciliation Officer.

**Medical Panels**

**Division 2 – Sections 537 to 541**

These sections provide for the establishment and constitution of Medical Panels under the WIRC Act, the AC Act and Part VBA of the *Wrongs Act 1958* including the listing of medical practitioners nominated by the Minister and the appointment and powers of the Convenor of Medical Panels.
This Part contains provisions relating to the administration of the WIRC Act.

Indexation

Division 1 – Sections 542 to 547
Contains provisions about how weekly payments, weekly pensions to a deceased worker’s dependants and other specified amounts will be indexed each year.

Agreement

Division 2 – Sections 548 to 551
These sections of the WIRC Act allow WorkSafe to enter into reciprocal and incentive agreements. This includes reciprocal agreements with the workers compensation authorities of other states and incentive agreements to improve employer performance.

Access to information

Division 3 – Sections 552 to 557
WorkSafe may enter and inspect premises and obtain information and evidence from any person for specified purposes including whether any provisions of the WIRC Act, AC Act or WC Act are being or have been contravened. The penalties for obstructing or hindering the exercise of WorkSafe’s powers under this Division are also contained in these sections.

Issue of search warrants

Division 4 – Section 558
This section allows WorkSafe to obtain a search warrant to take possession of documents and records for specified purposes including whether any provisions of the WIRC Act, AC Act or WC Act are being or have been contravened.

Prohibited conduct relating to touting for claims

Division 5 – Sections 559 to 567
These sections prohibit touting by agents in relation to particular claims under the WIRC Act and the AC Act.

Regulation of providers of professional services

Division 6 – Sections 568 to 574
These sections contain rules about professional services providers who have committed an offence against the WIRC Act, AC Act, WC Act or Crimes Act or where WorkSafe is concerned about the adequacy, appropriateness or frequency of any professional service provided to an injured worker. These sections enable WorkSafe and the courts to refer service providers for conduct reviews, to suspend payments for professional services and to suspend or revoke approvals to provide services to injured workers.

Discriminatory conduct

Division 7 – Sections 575 to 580
It is an offence for an employer or prospective employer to discriminate against a worker for prohibited reasons relating to their injury, their claim for compensation or their having complied with specified sections of the WIRC Act.

Civil proceedings may also be brought in relation to discriminatory conduct. The Magistrates’ Court can order an employer or prospective employer to compensate a worker for any loss and damage caused by discriminatory conduct for a prohibited reason or to reinstate the worker in his or her former position or to employ the worker in the position for which he or she had applied.
Offences

Division 8

Fraud, bribery and false information (Sections 581 to 587)

Information about the offences of fraud, bribery and providing false information in relation to Victorian workers compensation is contained in these sections of the WIRC Act.

Other offences (Sections 588 to 589)

It is an offence for a person to:

- use information obtained under or pursuant to the WIRC Act except as authorised by the WIRC Act
- obstruct or hinder a person acting in the administration of the WIRC Act.

Miscellaneous

Division 9 – Sections 590 to 605

Division 9 contains information on the following:

- signing of certificates by WorkSafe
- the circumstances when WorkSafe may perform the functions of a State Taxation Officer
- signing of documents on behalf of WorkSafe
- rules relating to the service of documents by or on WorkSafe
- to whom WorkSafe may provide information and documents (secrecy provisions)
- the liability of a premium advisor to an employer
- a natural person’s protection against self-incrimination
- the preservation of legal professional privilege and client legal privilege despite anything in the WIRC Act, AC Act or WC Act
- the refund of certain amounts to WorkSafe, employer or self-insurer where a person is convicted or found guilty of an offence
- criminal liability of officers of bodies corporate
- enforceable undertakings as an alternative to prosecution for certain offences

Prosecutions

Division 10 – Sections 606 to 608

These sections concern the prosecution of offences.

Directions and guidelines

Division 11 – Sections 609 to 612

This Division prescribes rules for making and publishing directions and guidelines made by the Minister or WorkSafe under the WIRC Act.

WorkSafe and the IBAC

Division 12 – Sections 613 to 616

This Division requires the Chief Executive of WorkSafe to notify the Independent Broad-based Anti-corruption Commission of any matter that appears to involve corrupt conduct.

Section 85 provisions

Division 13 – Sections 617 to 619

These sections explain that it is the intention of particular sections of the WIRC Act to alter or vary the Supreme Court’s jurisdiction to undertake judicial review as provided by section 85 of the Constitution Act 1975.
General

**Regulations**

**Division 14 – Sections 620 to 621**
This Division prescribes rules for the making of regulations under the WIRC Act, AC Act or WC Act.

**Savings, repeal and transitionals**

**Division 15 – Sections 622 to 623**
This Division contains a table of sections of the WIRC Act which are to be treated as re-enacting (with or without modifications) sections of the AC Act. It also repeals the ACWI Act but provides that persons, things and circumstances appointed or created under the ACWI Act continue under the WIRC Act.
Information about amendments and repeals to other Victorian legislation as a result of the introduction of the WIRC Act is contained in this Part.

### Accident Compensation Act 1985

#### Division 1 – Sections 624 to 626

These sections of the WIRC Act amend and repeal provisions of the AC Act so that the AC Act will continue to operate but in a significantly reduced form, containing essentially entitlement and benefits provisions which apply to claims with an injury date of before 1 July 2014.

### Accident Compensation (WorkCover Insurance) Act 1993

#### Division 2 – Section 647

This section makes a minor amendment to the ACWI Act.

### Amendment of other Acts

#### Division 3 – Sections 648 to 649

These sections of the Act:

- amend section 1A of the AC Act to ensure that Act is read and construed together with the WIRC Act
- amend the definitions of Commission and Fund in section 3(1) of the AC Act to reflect the introduction of the WIRC Act
- amend the definition of average weekly earnings in section 9(5) of the WC Act to accommodate the changes made by the Australian Bureau of Statistics to the reporting frequency of average weekly earnings
- provide for consequential amendments, the detail of which is set out in Schedule 9 of the WIRC Act, to a number of other Acts which refer to and operate in relation to the AC Act and the ACWI Act.

### Repeal of Part 14 and Schedule 9

#### Division 4 – Section 650

This section of the WIRC Act allows for Part 14 and Schedule 9 of the WIRC Act to be repealed on 1 July 2015.
### Commonly used acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Acronym stands for:</th>
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<tr>
<td>AC Act</td>
<td>Accident Compensation Act 1985 (Vic)</td>
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<td>ACCS</td>
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<td>AMA Guides</td>
<td>American Medical Association Guides to the Evaluation of Permanent Impairment</td>
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<td>TAC</td>
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<td>WIRC Act</td>
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<tr>
<td>PIAWE</td>
<td>Pre-Injury Average Weekly Earnings</td>
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WorkSafe Victoria

WorkSafe Agents
Agent contact details are all available at worksafe.vic.gov.au/agents

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For information about WorkSafe in your own language, call our Talking your Language service

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普通话........................1300 662 373
Српски.........................1300 722 595
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العربية.......................1300 554 987
English.......................1300 782 442
Other.........................1300 782 343