

# Independent Review into Complex Workers' Compensation Claims Management

## Victorian Government Response

### Introduction

In 2019, the Victorian Ombudsman's report *WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims* revealed disturbing examples of injured workers who had been unfairly treated and denied their legal entitlements. The report pointed to a systemic problem with the model of claims management for complex claims, and insufficient oversight and review mechanisms.

The Victorian Government commissioned Peter Rozen QC to undertake an independent review into the Agent model and the administration of complex WorkCover claims, and now welcomes his report *Improving the experience of injured workers: A review of WorkSafe Victoria's management of complex workers' compensation claims* (the Review). The Government thanks Mr Rozen and the secretariat for their work in preparing the comprehensive Review.

The Victorian Government has considered the Review's 22 recommendations and:

- accepts five recommendations;
- accepts-in-principle fourteen recommendations;
- considers that two recommendations require further consideration; and
- notes one recommendation.

An overview of the recommendations and the Government's Response is set out below.

### Improving the experience of injured workers

The challenges faced by injured workers should not be compounded by their experiences in the WorkCover Scheme. Injured workers have a right to have their claims assessed, triaged and managed appropriately and to be treated fairly and with dignity. The Victorian Government and WorkSafe Victoria are committed to improving the experience of injured workers in the WorkCover Scheme and helping them get back to work sooner.

WorkSafe has already commenced work to improve the management of complex claims and outcomes for injured workers including through enhanced screening and more tailored, person-centred interventions and support. In 2021 WorkSafe established the Claims and Recovery Support Team, a specialist team responsible for the direct management of more than 500 long-term injured workers' claims.

In line with the recommendations of the Review to establish a Complex Claims Unit, WorkSafe's Claims and Recovery Support Team will be expanded in 2022 so WorkSafe will directly manage the claims of approximately 2,000 long-term injured workers.

In addition, WorkSafe has been running a pilot known as the Recovery Model Office. Using sophisticated data and claims management analytics, the Recovery Model Office identifies workers with more complex needs so they can be allocated to higher and more tailored levels of support.

Early benefits have been observed from the Claims and Recovery Support Team and the Recovery Model Office and outcomes will be monitored closely to inform Agent contracts and any future transition of further claims to WorkSafe.

Implementation of the Review's recommendations would constitute the biggest reform to the WorkCover Scheme since its inception in 1985, so a number of key recommendations have been accepted in principle to ensure that we get the transformation right. The Government supports the intent of the recommendations relating to a new model of complex claims management, and recognises that implementation needs to be phased, with lessons from each step used to inform the next, in order to minimise the impact on injured workers.

Alongside the expansion of WorkSafe's Claims and Recovery Support Team, a Code of Injured Workers' Rights will be developed, and legislative amendments made to enshrine WorkSafe's obligation to treat workers with dignity and respect, ensure workers receive a high-quality service and are treated fairly. Stakeholders, including the Workplace Incidents Consultative Committee, will be engaged by WorkSafe in the development of these changes.

## **Continuous improvement oversight and monitoring**

The Government strongly supports the need for transparency and oversight of the WorkCover Scheme and the implementation of these recommendations. While further consideration is given to specific accountability and transparency mechanisms, WorkSafe will develop quarterly reports for the Minister for Workplace Safety and its Board on implementation of the Government Response to the Review and publish this information quarterly from mid-2022.

The Reviewer acknowledged the timelines set for implementation of this significant reform were not set in stone and may need to be modified in light of the experience 'on the ground'. Implementation will be carefully staged to ensure no injured worker is disadvantaged in the transition and there is minimal disruption to the WorkCover Scheme and its participants.

## **Further engaging with stakeholders**

The Government has asked WorkSafe to undertake further work and engage with stakeholders on a number of recommendations including the publication of information relating to Agent contracts and legislated advisory committees, as well as the recommended changes to the employment obligation period.

Following the Victorian Ombudsman's findings with respect to the use of surveillance devices on workers, the Government has also asked WorkSafe to consider greater controls on the use of surveillance, balancing the potential misuse of surveillance against the risk of fraud in the Scheme.

## Response to the Report on Complex Workers' Compensation Claims Management

#	Recommendation	Status and implementation
1	<p><b>Transparency about Agents' incentives</b></p> <p>WorkSafe should publish on its website a plain English explanation of the financial incentives and penalties it offers its Agents. This should include:</p> <ul style="list-style-type: none"> <li>• what the purpose of each incentive/penalty is; and</li> <li>• what incentives are paid or penalties imposed in each year and the rationale for these.</li> </ul>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government supports greater transparency in the workers' compensation Scheme.</p> <p>WorkSafe will engage with Agents to consider any commercial issues arising from the publication of this information.</p> <p>WorkSafe will adopt a renewed reporting approach in 2023.</p>
2	<p><b>Monitoring Agent behaviour</b></p> <p>The WorkSafe Reform Implementation Monitor should monitor and publicly report upon the effect of the changes to the financial incentives on Agent behaviour.</p>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government supports greater transparency in the workers' compensation Scheme.</p> <p>The Victorian Government will monitor and publicly report on the effect of changes to financial incentives on Agent behaviour.</p>
3	<p><b>Claims to be provided by employers to WorkSafe</b></p> <p>The Minister for Workplace Safety should amend the Claim for Compensation Ministerial Guidelines 2016 to require that employers provide claims to WorkSafe and not to WorkSafe's Agents. This should take effect from 1 January 2023.</p>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government accepts the intent of this recommendation that WorkSafe should assess all claims for complexity and triage them appropriately and has asked WorkSafe to advise the Minister on the feasibility and appropriate timing of implementation of this recommendation following consultation with Agents and employers.</p>

#	Recommendation	Status and implementation
4	<p><b>WorkSafe to identify if claims are complex or at risk of becoming complex</b></p> <p>WorkSafe should implement a triage system to assess if a claim it receives is complex or at risk of becoming complex. In this recommendation, 'complex' means that there are risk factors associated with a worker's claim that make a delayed return to work by the worker likely if those factors are not addressed. Claims should be assessed using a biopsychosocial approach based on the individual needs of the worker and not just the likely duration of the claim. The goal of the triage system should be to gather sufficient information about the claim to assess relevant risks. Wherever possible, this should occur within six weeks of the date of the injury. While the system may incorporate some form of automated algorithm, it should also incorporate the 'human touch'.</p> <p>The triage system implemented by WorkSafe should be based on the most up to date research including the 'Best Practice Statement: Risk Factor Identification for Delayed Return to Work' published by the Insurance Work and Health Group, Monash University (April 2018).</p>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government strongly supports the Review's recommendation for a more holistic and person-centred assessment of the complexity of an injured worker's claim and the development of a biopsychosocial model for triaging claims.</p> <p>WorkSafe will expand the scope of its specialist Claims and Recovery Support Team, which is responsible for the direct management of more than 500 long-term injured workers previously managed by the insurer CGU. The Claims and Recovery Support Team uses a person-centric approach to claims management.</p> <p>In 2022, a further 1,500 long-term injured workers will have their claims transferred from agents to WorkSafe's Claims and Recovery Support Team. WorkSafe will build on its successful claims management and recovery intervention approaches with this expanded number of injured workers.</p> <p>WorkSafe will closely monitor both the experience of the 2000 injured workers under its direct management, as well as the outcomes of its interventions with these injured workers to inform a future model of triage and support for newly injured workers.</p>
5	<p><b>Non-complex claims to be transferred to one of WorkSafe's Agents</b></p> <p>A claim that WorkSafe assesses as not complex and not at risk of becoming complex should be transferred to an Agent for management.</p>	<p><b><u>Accepted in principle</u></b></p> <p>Subject to the response to Recommendation 3, the Victorian Government supports the continued role of Agents in the WorkCover Scheme noting that implementation of this recommendation would ensure that the large proportion of claims not considered complex or at risk of becoming complex can continue to be suitably managed by Agents.</p>

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6	<p><b>Agents to assess for complexity every 13 weeks</b></p> <p>A claim transferred to Agents as non-complex should be reassessed by the Agent if the claim is still open after 13 weeks. The Agent should assess if the claim has become complex or is at risk of becoming complex. The same assessment should be made every 13 weeks while the claim remains open. This assessment should be made using the same methodology developed by WorkSafe to assess claims for complexity and by Agent staff approved by WorkSafe to make such assessments. Any claim that is assessed as being complex or at risk of becoming complex is to be transferred forthwith back to WorkSafe for its management.</p>	<p><b><u>Accepted in principle</u></b></p> <p>Implementation of this recommendation will ensure Agents are continually assessing claim complexity and that workers' claims are transferred to WorkSafe for direct management where appropriate.</p> <p>WorkSafe will advise the Minister on the feasibility and appropriate timing of implementation of this recommendation following consultation with Agents, including design processes that do not compromise support for injured workers.</p>
7	<p><b>WorkSafe to establish a Complex Claims Unit</b></p> <p>WorkSafe should establish a Complex Claims Unit by 1 January 2022 to manage claims that it assesses are complex or at risk of becoming complex. The Complex Claims Unit should manage claims having regard to the individual needs of the worker and using a biopsychosocial approach.</p> <p>The goals of the Complex Claim Unit will be to:</p> <ul style="list-style-type: none"> <li>• pro-actively identify appropriate and timely interventions for the claim to maximise the prospects of the worker being restored to their preinjury lifestyle, including employment;</li> <li>• ensure that those interventions are implemented for as long as the claim is open;</li> <li>• pro-actively communicate with the worker, treating health providers, the employer and any other relevant parties; and</li> <li>• ensure the claim is otherwise administered in accordance with the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i>.</li> </ul>	<p><b><u>Accepted</u></b></p> <p>WorkSafe has established a specialist Claims and Recovery Support Team to directly manage the claims of more than 500 long-term injured workers. This team will be expanded in 2022 to have direct responsibility for approximately 2000 of the longest-term injured workers in Victoria.</p> <p>The Claims and Recovery Support Team has adopted a person-centric approach which includes elements of biological, physiological and social impacts to the management of claims it is responsible for. WorkSafe will update its documentation to ensure the goals of the Claims and Recovery Team explicitly reflect the recommended goals of the Review.</p>

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8	<p><b>Staffing the Complex Claims Unit</b></p> <p>WorkSafe should staff its Complex Claims Unit with appropriately qualified, trained and experienced staff. In establishing the Complex Claims Unit, WorkSafe should:</p> <ul style="list-style-type: none"> <li>• Create job descriptions that promote the recruitment of appropriately skilled staff with a person-centred, culturally competent approach;</li> <li>• Determine appropriate team and managerial structures;</li> <li>• Develop a broader recruitment strategy; and</li> <li>• Develop best practice training, coaching, mentoring and performance management for staff.</li> </ul>	<p><b><u>Accepted</u></b></p> <p>The response to this recommendation follows from the acceptance of Recommendation 7. WorkSafe will review the operating, recruitment and training arrangements for its Claims and Recovery Support Team to ensure they align with the recommendations of the Review.</p>
9	<p><b>Regular statutory reviews of the Scheme</b></p> <p>The <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (Vic) should be amended to mandate a review on the operation of the Scheme to be completed by 1 July 2024 and thereafter at least once every five years. The Minister should table each report in Parliament and a copy should be published on WorkSafe’s website.</p>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government supports the continuous improvement of the workers’ compensation Scheme and improved oversight.</p> <p>Further consideration will be given to the implementation of this recommendation, noting existing public reporting requirements.</p>

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10	<p><b>Improved feedback procedure</b></p> <p>WorkSafe should introduce a mechanism which enables the following parties to provide feedback about WorkSafe and its Agents:</p> <ul style="list-style-type: none"> <li>workers, their family members and/or representatives</li> <li>employers</li> <li>providers of services, including, but not limited to, medical practitioners, allied health professionals, rehabilitation services.</li> </ul> <p>The feedback mechanism should allow frontline staff of WorkSafe and its Agents to receive and act on real time feedback obtained through a) – c).</p> <p>The feedback should be used to identify and respond to systemic issues within the Scheme. This systemic information should be shared with:</p> <ul style="list-style-type: none"> <li>The WorkSafe Reform Implementation Monitor; and</li> <li>The expanded Workplace Incidents Consultative Committee.</li> </ul> <p>The development of this feedback mechanism should be informed by the best practice approach of 'Heartbeat' used by the Accident Compensation Corporation in New Zealand, in combination with existing approaches used by WorkSafe to conduct 'health checks' on claims. This should occur by 1 January 2023.</p>	<p><b><u>Accepted</u></b></p> <p>Implementation of this recommendation will enable WorkSafe to collate feedback from many different users of the WorkCover Scheme including workers, their families, employers and service providers.</p> <p>This recommendation will allow continuous improvements to be made to the Scheme's general operation, as well as improving individual level service satisfaction, claims manager capability and workforce job satisfaction.</p> <p>WorkSafe will introduce a new client feedback mechanism in 2023.</p>
11	<p><b>Expand the remit of the Workplace Incidents Consultative Committee</b></p> <p>The government should expand the remit of the Workplace Incidents Consultative Committee. The expanded remit should include providing advice and making recommendations to the Minister about the development, review and improvement of policies, practices, strategies and systems relating to workers' compensation and the rehabilitation of injured workers. This could be achieved by amending s 126A(2) of the <i>Occupational Health and Safety Act 2004 (Vic)</i>.</p>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government strongly supports the Workplace Incidents Consultative Committee (WICC) and its role in providing a voice for people that have been impacted by serious workplace injuries and fatalities.</p> <p>The WICC already has broad legislated functions under section 126A of the <i>Occupational Health and Safety Act 2004 (Vic)</i>, to provide advice to the Victorian Government on how to support those impacted by serious workplace injuries and deaths and make Victorian workplaces safer. This includes advice relating to the needs of persons affected directly or indirectly by a workplace incident.</p>

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12	<p><b>Greater transparency by WorkSafe</b></p> <p>WorkSafe should amend its website to include up-to-date information about the membership and the minutes of meetings (redacted if necessary to preserve privacy or for other legitimate reasons) of:</p> <ul style="list-style-type: none"> <li>• the WorkCover Advisory Committee;</li> <li>• the Occupational Health and Safety Advisory Committee; and</li> <li>• the Workplace Incidents Consultative Committee.</li> </ul>	<p><b><u>For further consideration</u></b></p> <p>The Victorian Government considers that implementation of this recommendation requires further consideration.</p> <p>WorkSafe will consider measures to increase the transparency of the WorkCover Advisory Committee and the Occupational Health and Safety Advisory Committee, noting the need to ensure those bodies can operate effectively and consider confidential information.</p> <p>The Victorian Government will engage with the Workplace Incidents Consultative Committee on the appropriateness of similar transparency measures.</p>
13	<p><b>Future role of WorkSafe's advisory committees</b></p> <p>The scope of the review of the Workplace Incidents Consultative Committee under regulation 553O of the <i>Occupational Health and Safety Regulations 2017 (Vic)</i> should be expanded to consider the operation and potential rationalisation of the Workplace Incidents Consultative Committee, the WorkCover Advisory Committee and the Occupational Health and Safety Advisory Committee.</p> <p>To ensure that the amended regulation is within power, it should be made under the regulation-making power in the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> as well as the regulation-making power in the <i>Occupational Health and Safety Act 2004 (Vic)</i>.</p>	<p><b><u>Noted</u></b></p> <p>The Victorian Government notes the recommendation and considers that the purpose, scope and membership of each advisory committee is sufficiently different and the advisory committees should not be consolidated at this time.</p> <p>The Victorian Government has requested that WorkSafe and the Department of Justice and Community Safety monitor the role and purpose of the respective committees and advise the Minister for Workplace Safety if governance changes are required in the future.</p>
14	<p><b>A Code of Injured Workers' Rights</b></p> <p>The <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> should be amended to require WorkSafe to develop and publish on its website a Code of Injured Workers' Rights. This should be prepared in consultation with the WorkCover Advisory Committee, the Workplace Incidents Consultative Committee and any other people nominated by the Minister for Workplace Safety.</p> <p>The Code should identify the rights of workers and the corresponding responsibilities of WorkSafe, as well as the process by which rights may be enforced. In developing the Code, WorkSafe should consider other examples including the New Zealand 'Code of ACC Claimants' Rights'.</p>	<p><b><u>Accepted</u></b></p> <p>Implementation of this recommendation is in line with the Victorian Government's commitment to improving the experience of injured workers and makes public WorkSafe's commitment to person-centred service standards.</p>



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15	<p><b>WorkSafe to control when surveillance can be used on workers</b></p> <p>An Agent that wants to conduct surveillance on a worker should be required to apply to WorkSafe for permission. Any such application should be supported by evidence that grounds the Agent's 'reasonable suspicion' that the use of surveillance is necessary. Permission should only be granted where WorkSafe is satisfied that there are reasonable grounds for conducting the proposed surveillance and there is no less invasive method of investigation which would adequately address the Agent's concerns.</p> <p>The permission should identify the type of surveillance authorised and the duration for which it is authorised.</p> <p>In its annual report, WorkSafe should report on:</p> <ul style="list-style-type: none"> <li>• the number of applications made for surveillance;</li> <li>• the number of those applications approved or denied; and</li> <li>• the number of instances where the use of surveillance was relied on to reject or support claims made.</li> </ul>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government notes the Victorian Ombudsman's findings with respect to the impact the improper use of surveillance can have on injured workers.</p> <p>The Victorian Government has asked WorkSafe to consider greater controls on the use of surveillance, balancing the impact of potential misuse against the risk of fraud in the Scheme.</p>
16	<p><b>Employers' return to work obligations, extending the employment obligation period</b></p> <p>Part 4 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (Vic) should be amended to enable a worker with an incapacity for work to apply to WorkSafe for an extension of the 'employment obligation period' applying to the worker's employer. Any such application would need to be supported by evidence of the benefits that would flow to the worker from the extension being granted. An application must be made at least 60 days before the expiration of the employment obligation period.</p> <p>Upon receipt of an application, WorkSafe must consult with the worker, the worker's employer and anyone else it considers appropriate. It must grant the application for the period it considers appropriate if it is satisfied that the worker's prospects of returning to work would materially improve from the extension. The employment obligation period in a particular case must not exceed an aggregate period of 130 weeks.</p>	<p><b><u>For further consideration</u></b></p> <p>The Victorian Government has asked WorkSafe to engage with stakeholders to further consider the feasibility of this recommendation.</p>

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17	<p><b>Return to work co-ordinators should be trained</b></p> <p>Section 106 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> should be amended to impose a duty on an employer to:</p> <ul style="list-style-type: none"> <li>• provide a return to work co-ordinator with the assistance and facilities reasonably necessary for the return to work co-ordinator to perform their functions under the Act;</li> <li>• ensure that a return to work co-ordinator has received such training as is determined by WorkSafe and published from time to time on its website.</li> </ul>	<p><b><u>Accepted</u></b></p> <p>This recommendation ensures that return to work coordinators are provided with the skills and knowledge to respond appropriately to contemporary challenges in Victorian workplaces and the workers' compensation system.</p>
18	<p><b>WorkSafe to actively manage claims</b></p> <p>Section 97 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> should be amended by adding before paragraph (a): <i>That WorkSafe actively manage all aspects of a worker's injury and any claim under this Act by ensuring timely intervention occurs to improve recovery and return to work outcomes.</i></p>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government will work with WorkSafe to review the relevant section of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i>, ensuring that any changes appropriately reflect modernisation of the Victorian workers' compensation system.</p>
19	<p><b>WorkSafe to treat workers with dignity and respect</b></p> <p>Section 492 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> should be amended by adding after paragraph (c): <i>Ensure that workers who suffer injuries at work receive high-quality service and are treated with dignity and respect.</i></p>	<p><b><u>Accepted in principle</u></b></p> <p>Implementation of this recommendation aligns with the Victorian Government's commitment to workers and makes public WorkSafe's commitment to person-centred service standards.</p> <p>The Victorian Government will work with WorkSafe to review the relevant section of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i>, ensuring any changes appropriately reflect the modernisation of the Victorian workers' compensation system.</p>

#	Recommendation	Status and implementation
20	<p><b>Amend the objectives of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i></b></p> <p>Section 10 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> should be amended by the addition of the following objectives:</p> <ul style="list-style-type: none"> <li>• To ensure that injured workers or dependants are treated fairly by WorkSafe; and</li> <li>• To ensure that workers who suffer injuries at work receive high-quality service and are treated with dignity and respect.</li> </ul>	<p><b><u>Accepted in principle</u></b></p> <p>Implementation of this recommendation aligns with the Victorian Government's commitment to workers and makes public WorkSafe's commitment to person-centred service standards.</p> <p>The Victorian Government will work with WorkSafe to review the relevant section of the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i>, ensuring that any changes appropriately reflect the modernisation of the Victorian workers' compensation system.</p>
21	<p><b>WorkSafe reform implementation plan and quarterly reports</b></p> <p>By 1 September 2021, WorkSafe should develop and make publicly available a detailed implementation plan which outlines how and when the recommendations of this Review will be implemented. The implementation plan should be approved by the Minister for Workplace Safety.</p> <p>Commencing on 1 December 2021, WorkSafe should provide the WorkSafe Reform Implementation Monitor with a quarterly report outlining what it has done in that quarter to implement the recommendations in accordance with the implementation plan.</p>	<p><b><u>Accepted in principle</u></b></p> <p>This recommendation recognises the public interest in the outcomes of the Review and WorkSafe's activity in response.</p> <p>To allow development of a suitably considered implementation plan, the timeframe for its development by WorkSafe will be extended to March 2022, with the first quarterly report published on WorkSafe's website from mid-2022.</p>

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22	<p><b>WorkSafe Reform Implementation Monitor</b></p> <p>The <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> should be amended to empower the Governor in Council to appoint a WorkSafe Reform Implementation Monitor on either a full or part time basis. A WorkSafe Reform Implementation Monitor should be appointed by no later than 1 December 2021 for a term of three years. To be eligible for appointment as the WorkSafe Reform Implementation Monitor, a person should have relevant senior executive management experience and experience of providing evidence-based reports to Government.</p> <p>The WorkSafe Reform Implementation Monitor should not be subject to direction or control of the Minister. Their powers should be based on those of the Fire Services Implementation Monitor appointed under section 123 of the <i>Fire Rescue Victoria Act 1958 (Vic)</i>.</p> <p>The principal task of the WorkSafe Reform Implementation Monitor will be to inquire into and report annually to parliament on the government's and WorkSafe's progress in implementing the recommendations of this Review.</p>	<p><b><u>Accepted in principle</u></b></p> <p>The Victorian Government supports the need for public accountability and oversight of the implementation of the reforms.</p> <p>This recommendation will be considered within the broader WorkCover Scheme context and the oversight mechanisms required to ensure the best outcomes for injured workers and promote Scheme sustainability.</p> <p>While the Victorian Government determines the most appropriate mechanism to implement the intent of this recommendation, it has requested that WorkSafe develops quarterly reports for the Minister for Workplace Safety and the WorkSafe Board on implementation of the Government Response to the Review against its implementation plan. This information will be published quarterly from mid-2022.</p>