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D23/131192

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Dear Mr Radford

REGULATORY IMPACT STATEMENT FOR THE WORKPLACE INJURY REHABILITATION AND COMPENSATION (WIRC) REGULATIONS 2024

I would like to thank your staff at WorkSafe Victoria (WorkSafe) for working with the team at Better Regulation Victoria to prepare a Regulatory Impact Statement (RIS) for the Workplace Injury Rehabilitation and Compensation (WIRC) Regulations 2024.

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 28 August 2023 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background and problems

The Victorian WorkCover scheme, administered by WorkSafe, is a no-fault, compulsory insurance scheme that provides a range of entitlements to workers. It insures employers against the impact of economic and non-economic loss suffered by workers.

The WorkCover scheme is statute-based and is governed by the *Workplace Injury and Rehabilitation Compensation Act 2013* (WIRC Act) and the *Accident Compensation Act 1985* (AC Act). The WIRC Regulations 2014 (the current Regulations) are made under the

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WIRC Act and determine additional details related to compensation arrangements. The current Regulations sunset on 27 May 2024. WorkSafe explains that this RIS is intended to support its review of the effectiveness of the Regulations and assess the impact of any proposed changes.

In the RIS, WorkSafe explains that allowing the current Regulations to sunset without remaking them would result in the following general problems:

- reduced clarity about rights and obligations under the scheme, such as compensation payments for contractors and injured workers residing overseas and interest entitlements of employers;
- additional administrative burden for both employers and WorkSafe in providing or verifying evidence used to calculate premiums and/or compensation entitlements as well as conduct or comply with investigations;
- impediments to WorkSafe meeting its responsibilities as the workplace health and safety regulator and workplace injury insurer, given it would lack an administrative process to enable the issue of warrants or a mechanism to recover costs from self-insurers which elect not to participate in WorkCover.

WorkSafe explains that it is critical that the Regulations are remade to ensure the regulatory framework functions properly. It explains that it undertook an internal review to identify improvements to the Regulations and consulted with a range of stakeholders on options. The options are focused on three key regulations which are analysed in detail in the RIS:

1) **Regulation 11** sets deduction rates applicable to remuneration for certain occupations in which workers are engaged as contractors and typically provide equipment and materials. The applicable rate is deducted from the earnings under a contract when calculating labour income for both premiums and compensation to account for materials and equipment. The Regulations prescribe a default deduction rate for certain occupations (e.g., 25 per cent for tilers). WorkSafe explains in the RIS that without deduction rates prescribed in the Regulations, there would be increased potential for disputes over remuneration and administrative burden on all parties arising from the need to provide and verify evidence of contracts. WorkSafe further explains that a small number of the current deduction rates set under Regulation 11 differ from the payroll tax deductions set by the State Revenue Office (SRO) for the same occupations, which better reflect standard industry practice;
2) **Regulation 12** sets the required documents and reporting intervals for workers injured in Victoria to receive compensation payments while residing overseas. The WIRC Act requires injured workers residing overseas to periodically confirm their identity and prove their continued incapacity to work. If the current

Regulations were not remade (the base case), there would no longer be a standard mechanism for these workers to prove their identity and continued incapacity to work. There would also be ambiguity about the required reporting intervals and the detail needed in medical documents. This could result in delays in payments to injured workers and increased administrative burden; and

3) **Regulation 14** sets the contribution formula for eligible employers that opt out of the WorkCover scheme and self-insure. Self-insurers (34 in 2021-22) are typically large employers with high total employee remuneration, which do not pay WorkCover premiums and instead take on liability to pay compensation if their workers are injured. Self-insurers are required to contribute towards the costs of WorkSafe's activities such as administering medical assessment and dispute resolution processes, and health and safety functions from which both self-insurers and scheme-insured employers derive benefit.

The current Regulations prescribe a formula to calculate self-insurer contributions which includes:

- direct costs from court, tribunal, medical panel and dispute resolution
- common costs related to WorkSafe's operational activities such as monitoring and compliance, workplace safety campaigns, provision of guidance, compliance codes, manuals etc.

This formula includes a 40 per cent discount rate on common costs which WorkSafe explains was introduced as a temporary measure in 2001 to assist self-insurers when the contributions formula was changed to cover more of WorkSafe's expenses. According to WorkSafe, these contributions neither cover an appropriate share of WorkSafe's operating costs nor fully reflect the benefit self-insurers derive from the regulatory framework. WorkSafe explains in the RIS that self-insurers agreed during consultation that it was appropriate for them to contribute towards direct costs, but indicated the administration of the recovery of common costs through the formula could be improved to make contributions more stable and predictable.

Options and impact analysis

In the RIS, WorkSafe does not undertake options analysis for Regulations 11 and 12. It explains that options analysis for these regulatory amendments would be disproportionate because:

- Regulation 11 imposes minimal burden on stakeholders as it provides clarity about amounts not deemed remuneration, which benefits all parties to a contract
- Regulation 12 imposes requirements on less than 50 workers and aligns the evidentiary requirements for injured workers residing overseas with injured workers living in Australia.

WorkSafe's preferred option is to amend Regulation 11 and update the deduction rates for a small number of occupations to align them with the equivalent rates used by the SRO, which WorkSafe explains reflect standard industry practice and could assist WorkSafe in detecting non-compliance or underpayment of premiums.

WorkSafe's preferred option is to amend Regulation 12 to require injured workers residing overseas to provide additional information on:

- the medical certificate such as their diagnosis, capacity assessment, and treatment plan; and
- the statement of identity such as their date of birth, residential address and gender, but remove requirements to provide information about their eye and hair colour and height.

WorkSafe explains that these changes would improve consistency between the requirements for injured workers residing overseas and those in Australia.

In the RIS, WorkSafe analyses three options for setting the self-insurer contribution formula under Regulation 14:

- **Option 1** – Regulation 14 remade using the existing discount rate of 40 per cent (status quo)
- **Option 2** – Regulation 14 remade with a reduced discount rate of 20 per cent
- **Option 3** – Regulation 14 remade with no discount rate (the preferred option).

These options are compared against a base case under which the Regulations would sunset and no new regulations would be made. Under the base case, WorkSafe would lack a mechanism to collect contributions from self-insurers, which would allow self-insurers to benefit from the regulatory framework without contributing to administration costs.

The RIS uses a multi-criteria analysis (MCA) to compare the three options against the base case. The criteria and weightings in the MCA are:

- Efficiency (25 per cent) – the formula should reflect the costs WorkSafe incurs from providing regulatory services to self-insurers
- Equity (50 per cent) – costs of WorkSafe's regulatory services should be borne by those who benefit from or create the need for them
- Simplicity (25 per cent) – the formula should be easy for organisations to understand and simple for WorkSafe to administer.

Option 3 scores highest against each criterion and is therefore the preferred option. Relative to other options, Option 3 is assessed as:

- the most efficient option because self-insurer contributions to the WorkCover scheme would better reflect the costs self-insurers generate for WorkSafe. WorkSafe explains that the preferred option would increase total self-insurers' contributions by about $8 million annually (about a 57 per cent increase for a

typical self-insurer) across approximately 34 self-insurers compared to the status quo;
- the most equitable option because removing the discount rate would result in self-insurers fully contributing to costs that are attributable to them, thereby eliminating the need for scheme-insured employers to indirectly fund those costs; and
- the simplest option as it is easiest to understand because there is no need to apply a discount rate.

WorkSafe analyses the potential impacts of the proposed changes on small business and competition. It notes that the removal of the discount rate may impact on competition by increasing self-insurers' costs, but will not impact on small businesses as typically larger businesses self-insure.

Implementation and evaluation

WorkSafe explains in the RIS that it will be responsible for implementing the proposed changes and outlines its implementation plan which includes:

- sharing information about amendments to Regulation 11 with relevant stakeholders such as employer and employee organisations as well as WorkSafe agents
- updating records and publications to give effect to amendments to Regulation 12 related to injured workers residing overseas
- engaging with self-insurers to ensure that they understand the proposed new self--insurer contribution formula ahead of its introduction on 1 January 2025.

WorkSafe notes that it will undertake ongoing engagement with impacted stakeholders and monitoring of the effectiveness of the proposed Regulations.

WorkSafe also commits to conducting a thorough review of the proposed Regulations commencing 18 to 24 months before the proposed Regulations sunset in 2034.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely

Rebecca Billings

Interim Commissioner for Better Regulation