



## Workplace Injury Rehabilitation and Compensation Regulations 2024 - Regulatory Impact Statement

WorkSafe Victoria

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# Glossary

<b>Acronym</b>	<b>Full name</b>
AC Act	<i>Accident Compensation Act 1985 (Vic)</i>
AWE	Average weekly earnings
BEP	Break even premium
Cth	Commonwealth
FTE	Full time employee
OHS	Occupational health and safety
OHS Act	<i>Occupational Health and Safety Act 2004 (Vic)</i>
PIAWE	Pre-injury average weekly earnings
RTW	Return to work
RIS	Regulatory Impact Statement
SRO	State Revenue Office
VCAT	Victorian Civil and Administrative Tribunal
Vic	Victorian
WIRC Act	<i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i>
WIRC Regulations	Workplace Injury Rehabilitation and Compensation Regulations 2014
WorkSafe	WorkSafe Victoria

# Executive Summary

## Context

The Victorian WorkCover scheme is a no-fault, compulsory insurance scheme that provides a range of entitlements to workers and insures employers against the impact of economic and non-economic loss suffered by them. WorkSafe Victoria (WorkSafe) is Victoria's workplace health and safety regulator and workplace injury insurer. The WorkCover scheme is a statute-based workers compensation scheme, which is governed by the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act) and the *Accident Compensation Act 1985* (AC Act). The Workplace Injury Rehabilitation and Compensation Regulations 2014 (the Regulations) are made under the WIRC Act and provide additional details and particulars surrounding compensation arrangements, including:

- necessary particulars, directions, and definitions to support the functioning of the WIRC Act
- percentage deductions for different classes of contractors used to determine premiums and compensation payments
- requirements to support compensation payments to injured workers residing overseas
- the formula for calculating contributions payable by self-insurers.

The Regulations are required to support the operation of the WIRC Act and are due to expire on 27 May 2024. They are required to be reviewed and remade by this date to continue effective administration of the regulatory framework. This Regulatory Impact Statement (RIS) will support the review into the effectiveness of the Regulations and assess the impact of any proposed changes on Victorian businesses and the community.

## Problem and objectives

The WIRC Act provides the framework for decisions about a worker's claims and the respective roles, rights and duties of the worker, employer, WorkSafe and others, and outlines what entitlements and obligations arise when a worker is injured or killed at work. The objectives of the Regulations are to facilitate the effective operation of the WIRC Act and the AC Act in a manner that is efficient, equitable, transparent, and furthers the achievement of policy objectives.

If the Regulations were to expire, there would be:

- reduced clarity and efficiency in the administration of compensation entitlements for certain injured workers and interest entitlements of employers
- additional administrative burden imposed on both employers and WorkSafe in the calculation of premiums and/or compensation entitlements
- in the event of an investigation, less protections for employers regarding the way investigations are undertaken. This may result in a higher level of burden in demonstrating evidence of amounts paid or payable by WorkSafe, including compensation payments
- compliance issues where WorkSafe would be less able to undertake some of the key operational activities required to meet its responsibilities as the workplace injury insurer (for example, the issue of warrants)
- an inability to recover costs from self-insurers for regulatory activities that they receive benefit from.

In prescribing a range of matters, the Regulations seek to provide clarity in compliance with workplace compensation requirements and improve the flow of accurate and timely information to government so that they can proportionately undertake regulatory activities.

## Options

The options presented in this RIS are based on analysis of the WorkCover scheme, along with the regulatory framework that governs it and consultation with key stakeholders. In addition to non-material language updates, a small number of potential modifications to the current Regulations are considered within this RIS, these are:

- updating percentages deemed not remuneration for contractors (Regulation 11)
- aligning information and identity requirements for workers resident overseas with local requirements (Regulation 12)
- removing or reducing the discount applied to the formula for self-insurer contributions (Regulation 14).

In testing the modifications to Regulation 11 and 12 with stakeholders during the RIS process, it was determined that the proposed changes are unlikely to impose significant additional time and cost burdens on impacted parties and would support the efficient administration of the requirements by WorkSafe. Consequently, alternative regulatory options have not been developed for these changes and the impact of the modifications are, instead, discussed qualitatively in Section 5.3.2 of this RIS.

Based on stakeholder consultation undertaken by WorkSafe and Deloitte, it was determined that any proposed amended formula for self-insurer contributions would likely have a material impact on self-insurers. As such, a series of draft regulatory options were developed for detailed analysis within this RIS that relate specifically to Regulation 14.

Currently, self-insurers only contribute towards costs associated with services they benefit from, either directly or indirectly. An overview of the components that make up the direct and common cost categories is outlined below in Table 1.1.

Table 1.1: Categories of costs under the current methodology

Category	Direct costs	Common costs	Insurance costs
<b>Definition</b>	Costs from which self-insurers derive the same benefit as members of the WorkCover scheme	Costs from which all employers receive a direct or indirect benefit	Costs relating only to members of the WorkCover scheme
<b>Inclusions</b>	<ul style="list-style-type: none"> <li>Magistrates’ Court, County Court and Tribunal Costs</li> <li>Medical Panels and interpreters’ fees</li> <li>Conciliation Services</li> </ul>	<ul style="list-style-type: none"> <li>WorkCover operating costs, including:                             <ul style="list-style-type: none"> <li>remuneration of WorkSafe staff, Board of Directors, and any member of the WorkCover Advisory Committee or the OHS Advisory Committee</li> <li>other operating costs, administration costs and expenses necessary to exercise WorkSafe functions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Actuarial services other than under Section 403</li> <li>IT costs relating to the network used by Agents</li> <li>Costs related to compliance audits for the collection and recovery of premiums</li> <li>Compensation payments</li> <li>The Victorian Ombudsman’s Office</li> <li>Repayment of capital or dividends</li> <li>Agent fees</li> <li>Investment borrowing costs</li> <li>Premiums order costs</li> </ul>

Source: WorkSafe

The proposed modifications to Regulation 14 in this RIS do not consider changes to the categories of costs, only the relative share of contribution towards costs that all employers receive a direct or indirect benefit. Three options have been analysed for remaking Regulation 14 relative to the base case (where the Regulations expire and are not remade):

**1. Regulation 14 is remade as it is currently prescribed (status quo)**

Option 1 reflects the status quo and involves remaking Regulation 14 with minor changes to modernise and clarify language. Under the status quo, each self-insurer is required to pay:

- zero contribution to costs specific to the insurance scheme
- 100 per cent of that self-insurer’s proportional share of costs for services used by both scheme- and self-insured employers, related to costs of the County Court, the Magistrates’ Court or VCAT arising out of the operation of the WIRC Act, any remuneration (including allowances) of members of Medical Panels, and such costs and expenses incurred in connection with conciliation of disputes.
- 60 per cent of that self-insurer’s proportional share of all other WorkSafe costs (equivalent to a 40 per cent discount factor), which are considered common costs to both self-insurers and scheme-insured employers. These are a subset of WorkSafe’s operating costs (excluding those costs that do not relate to self-insurers) for services that relate to both scheme- and self-insured employers.

Costs attributable to self-insurers towards which they do not contribute would need to be funded by other Scheme participants. Whether this directly results in a premium rate increase or reduction for Scheme participants in any given year is unknown, as

premium rates are set taking into consideration a broad range of factors. However, ultimately these costs need to be funded from within the overall WorkCover system.

## 2. Regulation 14 is remade with a reduction in the discount rate to 20 per cent

Option 2 would involve remaking the current formula in the Regulations with adjustments to the discount applied to the common costs. Specifically, this option will increase the proportional share contribution of common costs from 60 per cent to 80 per cent (equivalent to a 20 per cent discount factor).

## 3. Regulation 14 is remade with no discount

Option 3 would involve remaking the current formula in the Regulations with the full removal of the discount applied to the common costs. Specifically, this option will increase the proportional share contribution of common costs from 60 per cent to 100 per cent (equivalent to having no discount).

### Analysis

A multi-criteria analysis (MCA) was used to assess the impact of remaking Regulation 14 as currently prescribed and each of the incremental impacts of changes to the formula to reduce or remove the discount on the proportional share contributions relating to common costs. As Regulation 14 relates specifically to a fee-setting used to recover costs from self-insurers, in the form of quarterly contributions, the MCA criteria have been defined based on the Government's pricing principles outlined in *Pricing for Value*.<sup>1</sup> The MCA criteria used are shown in Table 1.2.

Table 1.2: MCA criteria for remaking and modifying the Regulations

Criterion	Relevance	Weighting
<b>Criterion 1: Efficiency</b>	The formula for setting self-insurer contributions should reflect the costs to WorkSafe associated with providing the regulatory services for which it is collected. Full cost recovery promotes the efficient consumption and provision of these regulatory services (for example, medical panels, court and VCAT services, and conciliation services). <b>This criterion is based on Pricing Principle 1.</b>	25%
<b>Criterion 2: Equity</b>	Costs of the provision of regulatory services should be borne by those who benefit from or create the need for them. Self-insurers derive the same direct and indirect benefits from these regulatory services as scheme-insured employers. Self-insurers only use (and therefore, create a need for) the non-insurance related services provided by WorkSafe, which is reflected in the contribution formula. <b>This criterion is based on Pricing Principle 2.</b>	50%
<b>Criterion 3: Simplicity</b>	The self-insurer contributions formula should be easy for practitioners to understand and simple for the fee-collecting entity to administer. Where possible, a simple and clear formula can reduce complexity, decreasing the amount of time spent by self-insurers in understanding the formula and the components involved. <b>This criterion is based on Pricing Principle 11.</b>	25%
<b>Total weighting</b>		<b>100%</b>

### Preferred option

The MCA criteria were used to determine the preferred options for the remaking of Regulation 14. Each option scored positively compared with the base case, meaning that they would be more likely than not to deliver a net benefit.

The results of the MCA show that Option 3 (to remove the discount completely) is preferred to both the base case of no regulations, Option 1 (where the current formula is maintained), and Option 2 (to reduce the discount by 20 per cent). Option 3 best balances the objectives of government to efficiently recover the costs of administering the regulatory scheme with the need to ensure equitable and simple fee structures.

Relative to the base case, Option 3 prescribes a formula to enable the collection of contributions towards the full costs of regulatory services used by and benefiting self-insurers. Through removing the discount, the self-insurer contributions formula under Option 3 is intended to be reflective of all the costs that WorkSafe attributes to self-insurers. Under this option, the contribution required of each self-insurer would be expected to increase by approximately 57% (relative to Option 1), using the hypothetical scenario inputs outlined in Appendix B.

<sup>1</sup> Department of Treasury and Finance, Pricing for value: a guide for government services  
<<https://www.dtf.vic.gov.au/sites/default/files/document/Pricing%20for%20Value%20Guide%20-%20Pricing%20Principles.pdf>>

## Implementation and evaluation

The proposed Regulations remake the existing Workplace Injury Rehabilitation and Compensation Regulations 2014, with amendments as considered in this RIS. Based on the analysis in this RIS, WorkSafe is recommending remaking the Regulations with a series of minor, independent improvements to the current regulatory scheme. WorkSafe will primarily be responsible for implementation of the proposed changes and will continue to have ongoing engagement with impacted stakeholder groups across Victoria through existing processes, such as Ministerial correspondence, contacts to WorkSafe and compliance activities.

WorkSafe will monitor the proposed Regulations and their ongoing effectiveness. This will include thorough on-going engagement with impacted stakeholders and other risk-based compliance and enforcement activities. WorkSafe also maintains an issue log to track issues raised in relation to the effectiveness of the Regulations. This issues log is informed by stakeholder and public feedback, received through existing processes, such as Ministerial correspondence or anecdotal feedback.

WorkSafe will review the operation of the proposed Regulations before their expiry in 2034. The review will evaluate the effectiveness of the proposed Regulations and inform whether the proposed Regulations should be remade in part or in full.

## Feedback on RIS and proposed Regulations

To support development of the RIS, WorkSafe undertook targeted consultation from February 2023 to April 2023. The consultation took the form of a series of discussion papers to capture specific and general feedback, as well as several group meetings with self-insurers. Responses from these stakeholders informed policy development and formed the basis for the development of the proposed Regulations and RIS. Additionally, through the process of developing the RIS and in analysing the defined options, Deloitte undertook subsequent targeted consultations with stakeholders from May 2023 to June 2023 to assess both the impact of the Regulations, as they are currently prescribed, and the potential impact of the changes as outlined in the options. The full list of stakeholders consulted as part of this RIS is outlined in Appendix A.

The *Victorian Guide to Regulation* also requires a RIS to assess the impact of regulations on small business and the community. In undertaking this assessment, we have considered questions such as:

- Will the proposed changes to the self-insurer contributions formula impact some employers significantly more than others (e.g. smaller businesses)?
- Does the expected increase in contributions required of self-insurers represent a significant risk to the viability of the self-insurer model in Victoria?
- Do the proposed changes to percentage deductions deemed remuneration for contractors impose a significant burden on these contractor types?
- Do the additional information requirements for injured workers residing overseas impose a significant time and cost burden? Are some injured workers more affected than others?

The proposed Regulations and this RIS are subject to a 28-day public consultation period, which will provide an opportunity for employers, employees, other interested parties, and members of the public to comment on the proposed reforms. Following the public consultation period, WorkSafe will consider all submissions made on the proposed Regulations and this RIS and will make changes as required to the proposed Regulations. Following the drafting of any required updates, WorkSafe will submit its final recommendations to the Minister for WorkSafe and the TAC for endorsement. Upon endorsement, the Governor in Council will publish a notice of decision in the Government Gazette and online on [www.publicnotices.vic.gov.au](http://www.publicnotices.vic.gov.au). These notices will outline the changes from the exposure draft of the proposed Regulations. It is anticipated the proposed Regulations would be made before the current Regulations expire on 27 May 2024.

WorkSafe will communicate the outcomes of the public consultation to stakeholders and those who made a submission upon the making of the proposed Regulations.

## 2 Introduction

This chapter introduces the context of this Regulatory Impact Statement (RIS) and provides an outline of the key steps in the RIS process and structure of this report.

### 2.1 Context

The Victorian WorkCover scheme is a no-fault, compulsory insurance scheme that provides a range of entitlements to workers and insures employers against the impact of economic and non-economic loss suffered by them.<sup>2</sup> WorkSafe Victoria (WorkSafe) is Victoria's workplace health and safety regulator and workplace injury insurer. WorkSafe regulates and underwrites the WorkCover scheme. The WorkCover scheme is a statute-based workers compensation scheme, which is governed by the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act) and the *Accident Compensation Act 1985* (AC Act). The Workplace Injury Rehabilitation and Compensation Regulations 2014 (the Regulations) are made under the WIRC Act and provide additional details and particulars surrounding compensation arrangements, including:

- necessary particulars, directions, and definitions to support the functioning of the WIRC Act
- percentage deductions for different classes of contractors used to determine premiums and compensation payments
- requirements to support compensation payments to injured workers residing overseas
- the formula for calculating contributions payable by self-insurers.

The Regulations will expire on 27 May 2024 and are required to be reviewed and remade by this date. This RIS will support the review into the effectiveness of the Regulations and assess the impact of any proposed changes on Victorian businesses and community.

### 2.2 The RIS process

The key purpose of this RIS is to assess the impact of different options for replacing the expiring Regulations. The approach to the assessment is as follows:

- 1) **Identification of the problem** – consideration of the nature and extent of the problem that the proposed Regulations aim to address, including the:
  - a. need for government intervention
  - b. risks of non-intervention
  - c. objectives of such intervention.
- 2) **Identification of options to achieve the objectives of the proposed Regulations** – the proposed Regulations and alternative options were developed by government and informed by pre-RIS consultation. The establishment of options allowed possible costs and benefits to be examined as part of the stakeholder consultation.
- 3) **Stakeholder consultations** – targeted stakeholder consultation was undertaken by Deloitte and WorkSafe to gather relevant information on the impact of the existing Regulations, as well as the impact of the proposed Regulations for different stakeholder groups.
- 4) **Assessment of costs and benefits** – consistent with the requirements of the *Victorian Guide to Regulation*, an assessment of the costs and benefits under all options, relative to a reference case (Base Case) was undertaken. The analysis included the quantification, where possible, of the benefits to industry, government, and the Victorian community.
- 5) **Assessment of the other impacts** – this RIS considers potential broader impacts of the preferred option on industry.
- 6) **Implementation and evaluation** – in reference to the preferred option, the RIS describes the arrangements and broader considerations for implementation and evaluation.

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<sup>2</sup> WorkSafe Victoria, Claims Manual <<https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Home.htm>>



### 2.3 Introduction of the Government's pricing principles

As the Regulations prescribe the formula for calculating contributions payable by self-insurers, analysis of the appropriateness of this formula is required in line with the Government's pricing principles for fee setting. In July 2021, the Victorian Government introduced a new framework for pricing government services, known as the *Pricing for Value* guide. Prior to this change, the focus for setting prices had been on cost recovery through the Victorian Department of Treasury and Finance's previous Cost Recovery Guidelines. However, over time, several limitations were identified with these guidelines, including:

- a number of government agencies experienced significant variation in the extent to which they were able to recover their costs
- some government agencies suggested that the Guidelines limited innovation.<sup>3</sup>

The new *Pricing for Value* guide introduces pricing principles which build upon the previous guidelines to go beyond cost recovery, and encourages decision makers to consider the following questions when pricing government services:

1. How much does the service cost?
2. Who benefits from the service?
3. How do different users value the service?
4. How will the price of the service impact behaviour?
5. Are there alternatives to this service?
6. How many different prices are there?
7. Are prices up to date?

Under this new framework cost recovery remains one principle among a broader range of 12 pricing principles. These include potential scenarios where setting prices of individual regulatory activities at, above, or below the cost of those activities may be warranted (e.g., by setting prices above cost in order to send price signals to regulated parties about the higher risks associated with the activities that they undertake, or by setting prices below cost to avoid creating a barrier to entry or unintended negative consequences). The 12 principles are outlined in Table 2.1 below.

Table 2.1: Pricing principles

Pricing Principle
<b>Principle 1:</b> Prices should reflect costs
<b>Principle 2:</b> Costs should be recovered from those who benefit from or trigger the need for regulation
<b>Principle 3:</b> Services creating broad benefits for the community should be priced to support efficient consumption
<b>Principle 4:</b> The cost of interagency services should be borne by the user agency
<b>Principle 5:</b> The price of services should not limit access to those with a lower ability to pay
<b>Principle 6:</b> Users should pay for differentiated service based on the value created by the differentiation
<b>Principle 7:</b> The public should share in the value generated by pricing based on user differentiation
<b>Principle 8:</b> Pricing should support positive behaviours
<b>Principle 9:</b> Pricing should ensure sustainable usage of public services and reflect the value of natural resources
<b>Principle 10:</b> Where services are in competition with the private sector, pricing should be relative to market prices
<b>Principle 11:</b> Pricing structures should be easy to understand
<b>Principle 12:</b> Pricing arrangements should be monitored annually and reviewed periodically

<sup>3</sup> State Government of Victoria. *Pricing for Value: A guide for government services – Overview*. Accessed at <https://www.dtf.vic.gov.au/sites/default/files/document/PGA%20-%20Pricing%20for%20Value%20Guide%20-%20Overview.pdf>

Source: Deloitte Access Economics

## 2.4 Public comment

The proposed Regulations and this RIS will be released via Engage Victoria for a 28-day public consultation period to provide employers, employees, other interested parties, and members of the public with the opportunity to consider and provide feedback on the proposed Regulations and RIS.

WorkSafe will consider all submissions received during public consultation and prepare a formal Response to Public Comment document detailing the submissions received, and WorkSafe's response.

## 2.5 The structure of the RIS

Following the *Victorian Guide to Regulation*, the report is structured as follows:

- Chapter 2 – Background
- Chapter 3 – Problem statement
- Chapter 4 – Options development
- Chapter 5 – Options analysis and preferred options
- Chapter 6 – Impact on competition and small business
- Chapter 7 – Implementation and evaluation
- Appendix A – Stakeholder engagement
- Appendix B – Cost analysis of changes to self-insurer contributions

In addition, relevant to all report components is an overriding requirement that the depth of the analysis must be commensurate with the magnitude of the problem and with the size of the potential impact of the proposal.

## 3 Background

This chapter provides the background to Victoria's workers' compensation legislative framework and details the provisions in the Workplace Injury Rehabilitation and Compensation Regulations 2014.

### 3.1 Legislative and regulatory framework for workers' compensation

#### 3.1.1 *Workplace Injury Rehabilitation and Compensation Act 2013*

The WIRC Act and its associated regulations, guidelines, directions, and compliance codes govern Victoria's workers' compensation scheme. The WIRC Act repealed the *Accident Compensation (WorkCover Insurance) Act 1993* and streamlined provisions of the AC Act.<sup>4</sup>

The WIRC Act serves a variety of functions in ensuring the effective and appropriate rehabilitation of and compensation for workplace injuries. Specifically, the WIRC Act:

- applies to injuries including physical and mental injuries, diseases, and industrial deafness
- defines the term 'worker' and stipulates that a worker may be entitled to compensation for an injury arising out of or in the course of any employment, or to the exacerbation of which work has been a significant contributing factor
- provides the framework for decisions about a worker's claim and the respective roles, rights and duties of the worker, employer, WorkSafe and others
- outlines what must legally happen when a Victorian worker is injured at work or loses their life because of a workplace injury
- covers insurance, workers' compensation, claims, rehabilitation, return to work, and dispute resolution
- allows for employers to apply to be self-insurers and to manage and bear the costs and risks of their own workers' compensation claims
- covers the requirements and process of registration of employers, and determination and obligations regarding premiums.

In doing so, the objectives of the WIRC Act are to:

- reduce the incidence of accidents and diseases in the workplace
- make provision 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 return to work
- ensure appropriate compensation under the WIRC Act or the AC Act is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible
- ensure workers compensation costs are contained, to minimise the burden on Victorian businesses
- establish incentives that are conducive to efficiency and discourage abuse
- enhance flexibility in the system and allow adaptation to the 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.

#### 3.1.2 *Workplace Injury Rehabilitation and Compensation Regulations 2014*

The Regulations were made in 2014 following the introduction of the WIRC Act. The Regulations set out additional details and particulars surrounding compensation arrangements, such as amounts not to be taken as remuneration for certain classes of contractors, the formula for calculating contributions payable to the WorkCover Authority Fund by self-insurers, and prescribing certain other matters or things required or permitted to be prescribed or necessary to be prescribed to give effect to the WIRC Act and the AC Act. The Regulations are important for the effective operation of the WIRC Act and prescribe the following:

- the prescribed particulars that, if certified in a certificate issued by WorkSafe, can be taken as evidence of those matters (for instance, the certificate can be used as evidence of payments made in fraud prosecutions)
- the form search warrants should take
- how inquiries and investigations into fraud should be conducted

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<sup>4</sup> The AC Act still applies for injuries or deaths from accidents and diseases in the workplace prior to 1 July 2014. The *Accident Compensation (WorkCover insurance) Act 1993* remains applicable for premiums.

- the prescribed hours an employee must work to be considered a full-time worker when there is no applicable award
- the prescribed hours for calculating injury payments when a worker works for more than one employer and there is no applicable award
- the percentage of amount payable under timber contracts to a timber contractor that is not deemed to be remuneration
- the percentage of amount payable under certain contracts to contractors deemed to be workers under the WIRC Act and the AC Act that are not deemed to be remuneration
- payments to workers residing overseas
- the period after which WorkSafe must pay interest to employers on reimbursements
- the formula for calculating contributions payable by self-insurers to WorkSafe

### 3.1.3 Role of WorkSafe

WorkSafe is Victoria's workplace health and safety regulator and workplace injury insurer, and its purpose is to reduce workplace harm and improve outcomes for injured workers.

WorkSafe aims to prevent workplace injuries, illness, and fatalities through a range of tools such as:

- workplace inspections
- campaigns
- education programs
- targeted interventions
- guidance and compliance codes
- enforcement and prosecutions.

When a workplace injury does occur, WorkSafe's focus is on supporting workers in their recovery and return to work. WorkSafe provides a range of benefits including weekly income payments, hospital and allied health treatment, lump sum payments for permanent impairment and common law damages.

WorkSafe operates through an agent model under which it outsources the management of workers' compensation claims to agents. Agents also collect premiums on behalf of WorkSafe. WorkSafe currently has four agents as well as an internal specialist team that manages a small number of claims directly.<sup>5</sup>

Victorian employers who are required to register for insurance pay an annual premium, based on a percentage of their total remuneration. The premium rate also considers the employer's compensation claim history (for employers with rateable remuneration over \$200,000) and the industry risk.<sup>6</sup> The amount of premium that needs to be collected to adequately fund the scheme is informed by independent advice and is based on both the projected costs of claims and the operation of Victoria's workers' compensation scheme. This covers entitlements to injured workers, health and safety activities, future liabilities and administration costs. The cost is then spread across all employers in the scheme.

Thirty-four Victorian employers operate as self-insurers and manage their workers' compensation claims in-house. Self-insurers pay a contribution to WorkSafe every quarter to cover regulatory costs and scheme administration activities associated with self-insurance.

### 3.1.4 Other instruments within the Victorian occupational health and safety, compensation and rehabilitation regulatory framework

In addition to the WIRC Act and Regulations, other instruments that are enforced by WorkSafe are:

- *Occupational Health and Safety Act 2004 (Vic)* and its subordinate legislation
- *Accident Compensation Act 1985*
- *Workers Compensation Act 1958*
- *Dangerous Goods Act 1985* and its subordinate legislation
- *Equipment (Public Safety) Act 1994* and its subordinate legislation

## 3.2 Self-insurer contributions

### 3.2.1 Who is eligible to self-insure?

Under the WIRC Act, eligible employers may apply to WorkSafe to become self-insured, and pay for and manage compensation claims of their workers. The WIRC Act sets out the requirements that must be satisfied before employers can be approved to be

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<sup>5</sup> WorkSafe Victoria, *WorkSafe agent contact details*. Accessed at <<https://www.worksafe.vic.gov.au/your-worksafe-agent>><https://www.worksafe.vic.gov.au/your-worksafe-agent>

<sup>6</sup> WorkSafe Victoria, *2023-24 WorkCover premium changes*. Accessed at <https://www.worksafe.vic.gov.au/2023-24-workcover-premium-changes>

self-insurers. As per section 379(4)(a) – (f) of the WIRC Act, WorkSafe must determine whether an employer is ‘fit and proper’ to be a self-insurer and must consider the following when making the determination:

- whether the employer is, and is likely to continue to be, able to meet its liabilities as and when they fall due
- the resources, including employees, that the employer has for the purpose of administering claims for compensation
- the incidence of injuries to workers, including student workers, arising out of or in the course of employment with the employer and, if applicable, its subsidiaries; and the cost of claims in respect of such injuries
- the safety of the working conditions for workers, including student workers employed by the employer, and if applicable, by its eligible subsidiaries
- if the application is for renewal of approval as a self-insurer by an employer that is or has at any time been a self-insurer, consider whether the employer has at any time failed to comply with the WIRC Act or its Regulations, or any conditions of its approval as a self-insurer, a Ministerial Order, or any other subordinate instrument made under the WIRC Act or the regulations
- such other matters as WorkSafe thinks fit.

### 3.2.2 Why do employers self-insure?

Employers may choose to self-insure for a range of commercial reasons, including cost, a desire for autonomy, and cash flow reasons. Cost factors may in turn relate to employer views on the relative efficiency of WorkSafe services or WorkCover compensation claims. Self-insurance may hold benefits in terms of providing more direct incentives for employers to provide safer workplaces and encourages ownership of the process of rehabilitation and return to work. Under the WorkCover scheme, employers pay an annual upfront premium to WorkSafe before any claims are made. For self-insurers, their liability to pay only arises when an injury occurs.<sup>7</sup>

Self-insurance has an important role within a sustainable scheme, by:

- providing incentives for larger employers to be high performing (so as to potentially become eligible for self-insurance)
- containing costs to minimise the impact on business (there are administrative and economic efficiency benefits for self-insurers to manage claims of their workers)
- reducing the social and economic costs of injury to the community (through direct incentives on self-insurers to reduce claims and the duration of time off work for injured workers).

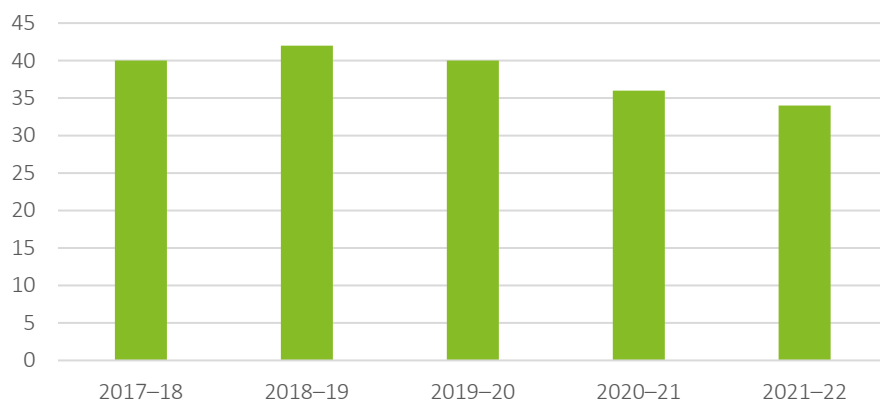
Consequently, it is typically large employers with higher total employee remuneration that become self-insurers. Initial approval to be a self-insurer is given for three years and renewals last for four years. In certain circumstances, renewal approval may last for up to six years. According to data provided by WorkSafe, there are 34 employers in Victoria authorised to act as self-insurers as of July 2022. As Chart 3.1 below demonstrates, this number has been declining over the past three years.

The declining trend is due to several factors, including the decision by some eligible self-insurers who operate nationally to move to the Commonwealth self-insurance option (which has standardised arrangements across different states and territories), mergers and acquisitions within the pool of self-insurers and the return of some self-insurers to the WorkCover scheme, either because they did not find it viable to maintain a self-insurer license or because WorkSafe determined that they did not meet the fit and proper criteria to continue as a self-insurer. These employers account for 0.01 per cent of Victorian employers. However, due to the relative size of these businesses, their employee remuneration accounts for 4.8 per cent of Victoria’s total remuneration. There were 278,587 scheme-insured employers as of July 2022 (see Chart 3.2). The breakdown of scheme-insured and self-insured employers by industry 2021-22 is outlined in Table 3.1.

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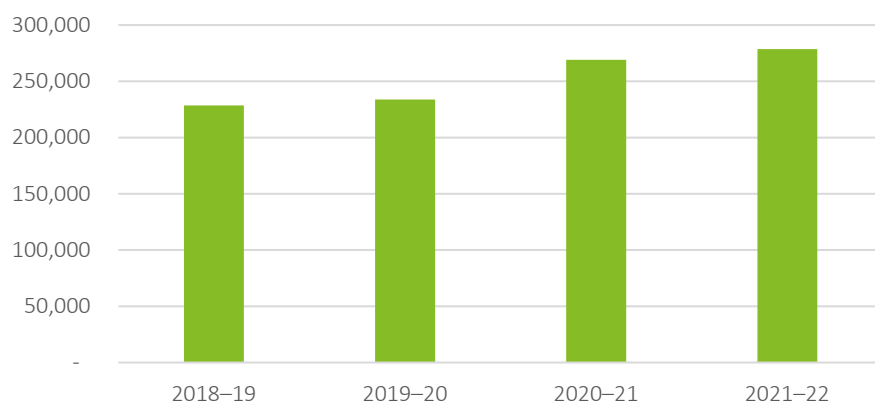
<sup>7</sup> Gallagher Bassett, ‘What are the benefits of self-insurance?’. Accessed at <https://blog.gallagherbassett.com.au/blog/what-are-the-benefits-of-self-insurance>

Chart 3.1: Number of self-insurers in Victoria



Source: WorkSafe data

Chart 3.2: Number of scheme-insured employers in Victoria



Source: WorkSafe data

Table 3.1: Scheme-insured and self-insured employers by industry in 2022

Industry	Self-insurers	Scheme-insured employers
Agriculture, Forestry and Fishing	-	10,952
Mining	15	419
Manufacturing	-	16,769
Electricity, Gas, Water and Waste Services	-	1,029
Construction	1	53,597
Wholesale Trade	3	17,249
Retail Trade	-	20,013
Accommodation and Food Services	1	20,450

Industry	Self-insurers	Scheme-insured employers
Transport, Postal and Warehousing	-	16,827
Information Media and Telecommunications	1	3,333
Financial and Insurance Services	1	7,520
Rental, Hiring, and Real Estate Services	7	6,818
Professional, Scientific and Technical Services	1	40,012
Administrative and Support Services	-	11,702
Public Administration and Safety	1	1,259
Education and Training	2	7,257
Health Care and Social Assistance	1	18,810
Arts and Recreation Services	-	4,989
Other Services	-	19,582
<b>Total</b>	<b>34</b>	<b>278,587</b>

Source: WorkSafe data

Table 3.2 below outlines the standardised claims made by self-insurers compared to scheme-insured employers in the four years between 2017-18 to 2021-22.

Table 3.2: Claims and visits/notices relating to self-insurers and scheme-insured employers from 2017-18 to 2021-22<sup>8</sup>

Claims and visits/notices	Self-insurers	Scheme-insured employers
Number of mental injury claims	831	19,097
Number of physical injury claims	8,801	123,103
Number of standardised claims	9,632	142,200
Number of inspections	4,221	228,474
Number of notices	1,118	64,796

Source: WorkSafe data

<sup>8</sup> Data presented are totals for all self-insurers and scheme-insured employers only, and data at a per-employer level is not included. This is because self-insurers only represent a very small portion of total employers (less than 0.1% of all employers) but they make up almost 5% of total remuneration, meaning they have more employees on average. However, data are not available on the number of employees for employer to assess claims per employee.

### 3.2.3 Self-insurer contributions formula

Both self-insurers and scheme-insured employers contribute financially towards WorkSafe's costs. Scheme-insured employers fund the workers' compensation system through their premiums and support the costs of WorkSafe's OHS function. As they manage their own workers' compensation claims, self-insurers do not pay insurance premiums to WorkSafe. However, in administering the regulatory framework, WorkSafe still undertakes activities and provides services that self-insurers benefit from, either directly or indirectly. Therefore, the WIRC Act requires that they make a financial contribution towards WorkSafe's operating costs, which includes the costs of OHS services.

Self-insurers only contribute towards costs associated with services they benefit from, either directly or indirectly. An overview of the components that make up the direct and common cost categories is outlined in Table 3.3 below.

Table 3.3: Categories of costs under the current methodology

Category	Direct costs	Common costs	Insurance costs
<b>Definition</b>	Costs from which self-insurers derive the same benefit as members of the WorkCover scheme	Costs from which all employers receive a direct or indirect benefit	Costs relating only to members of the WorkCover scheme
<b>Inclusions</b>	<ul style="list-style-type: none"> <li>• Magistrates' Court, County Court and Tribunal Costs</li> <li>• Medical Panels and interpreters' fees</li> <li>• Conciliation Services</li> </ul>	<ul style="list-style-type: none"> <li>• WorkCover operating costs, including:               <ul style="list-style-type: none"> <li>- remuneration of WorkSafe staff, Board of Directors, and any member of the WorkCover Advisory Committee or the OHS Advisory Committee</li> <li>- other operating costs, administration costs and expenses necessary to exercise WorkSafe functions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Actuarial services other than under Section 403</li> <li>• IT costs relating to the network used by Agents</li> <li>• Costs related to compliance audits for the collection and recovery of premiums</li> <li>• Compensation payments</li> <li>• The Victorian Ombudsman's Office</li> <li>• Repayment of capital or dividends</li> <li>• Agent fees</li> <li>• Investment borrowing costs</li> <li>• Premiums order costs</li> </ul>

Source: WorkSafe

#### 3.2.3.1 Direct costs

Direct costs are costs associated with services that self-insurers use directly and comprise the following:

- court and VCAT costs, including County Court, the Magistrates' Court or VCAT costs as specified in section 513(5)(c) of the WIRC Act
- medical panels (including interpreters) costs as specified in section 513(5)(g) of the WIRC Act
- conciliation services as specified in Division 2 of Part 6 of the WIRC Act.

#### 3.2.3.2 Common costs

Common costs (also known as residual costs) are operational costs incurred by WorkSafe business units and services from which all employers, including self-insurers, receive a benefit. This includes services that have 'public good' characteristics, in that once these services are provided by WorkSafe, self-insurers or scheme-insured employers cannot be excluded from deriving benefit from them. They comprise the elements listed below:

- Remuneration of Board and staff of WorkSafe, and any member of the WorkCover Advisory Committee or the Occupational Health and Safety Advisory Committee as specified in Section 513(5)(f): Falling under this category are employee payments (salaries, wages, on costs, benefits and allowances) and other payroll costs (for example contractor payments). Business units within WorkSafe include:
  - Health and Safety
  - Insurance
  - External Affairs
  - Strategy including Information Technology
  - Legal and Governance
  - Business Performance

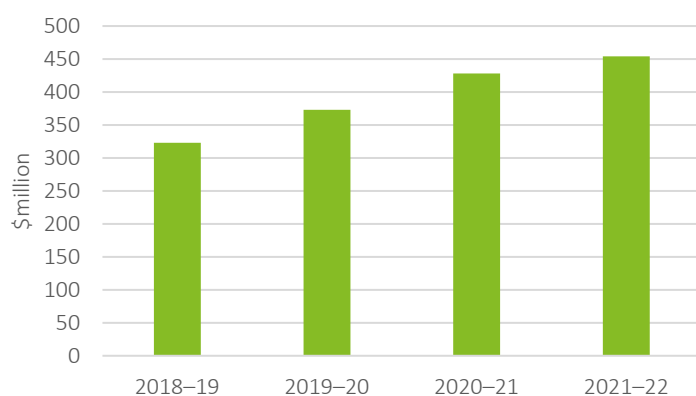


- People, Culture and Corporate.
- Costs and expenses of, or incidental to, the performance of the functions or the exercise of the powers of WorkSafe, as specified in section 513(5)(d) of the WIRC Act. These are costs incidental to the administration of the OHS Act including inspections, investigations and prosecutions of offences; costs related to WorkSafe’s functions in reducing injuries and promoting occupational health and safety such as advisory services, education and awareness campaigns, and provision and maintenance of legislation, guidance and standard setting. Falling under this category are the following operating costs:
  - professional fees (for example specialists and technical services, legal fees for prosecutions and enforcement)
  - information technology
  - finance and depreciation
  - communication, such as for workplace safety awareness campaigns, postal and courier processing, events, seminars, and workshops, sponsorships etc.
  - grants, funding and research
  - occupancy, such as rents, utilities, security etc.
  - other costs such as costs for employee training and development, motor vehicle rental and operating, document storage etc.

### 3.2.3.3 WorkSafe’s operating costs

Chart 3.3 below highlights the annual operating costs of WorkSafe that are relevant to self-insurers from the period of FY2018-19 to FY2021-22. These costs are seen to be increasing for the past four financial years. The relationship between these costs and the volume of contributions required from self-insurers is outlined in the following section on the self-insurer contributions formula.

Chart 3.3: WorkSafe’s operating costs applicable to self-insurer contributions formula



Source: WorkSafe data

### 3.2.3.4 Self-insurer contributions formula

Section 388(6) of the WIRC Act stipulates the costs incurred by WorkSafe towards which self-insurer contributions must be applied. The WIRC Regulations (regulation 14) prescribe the formula to calculate the contributions payable by self-insurers into the WorkCover Authority Fund. Under the formula, each self-insurer is required to pay:

- zero contribution to costs specific to the insurance scheme, and for which self-insured employers derive no direct benefit (see Insurance Costs in Table 3.3 above).
- 100 per cent of that self-insurer’s proportional share (based on self-insurer remuneration paid to staff relative to total remuneration by all scheme-insured employers and self-insurers (B/C in the formula below)) of costs for services enjoyed by both scheme- and self-insured employers (A in the formula below), related to costs of the County Court, the Magistrates’ Court or the VCAT arising out of the operation of the WIRC Act, any remuneration (including allowances) of members of Medical Panels, and costs and expenses incurred in connection with conciliation of disputes (see Direct Costs in Table 3.3 above).
- 60 per cent of that self-insurer’s proportional share contribution of all other WorkSafe costs (D – A in the formula below). These are a subset of WorkSafe’s operating costs (excluding those costs that do not relate to self-insurers) for services enjoyed by both scheme- and self-insured employers (see Common Costs in Table 3.3 above).

Costs for activities and services that self-insurers do not benefit from are excluded from the contribution formula. Costs attributable to self-insurers towards which they do not contribute would need to be funded by other Scheme participants.

Whether this directly results in a premium rate increase or reduction for Scheme participants in any given year is unknown, as premium rates are set taking into consideration a broad range of factors. However, ultimately these costs need to be funded from within the overall WorkCover system.

This formula as laid out in the WIRC regulations is:

$$\left[ \left\{ \frac{B}{C} \times D \right\} - \left\{ A \times \frac{B}{C} \right\} \right] \times 0.6 + \left\{ A \times \frac{B}{C} \right\}$$

Where:

- **A** is the sum of the costs incurred by WorkSafe during the preceding quarter (which is a subset of costs contained within input D below), related to:
  - the County Court, the Magistrates Court and VCAT arising out of the operation of the WIRC Act, Accident Compensation Act 1985 or the Workers' Compensation Act 1958
  - any payments required to fund Medical Panels
  - any costs incurred in connection to conciliation of disputes.
- **B** is the relevant remuneration<sup>9</sup> paid or payable by the self-insurer during the preceding financial year. This is calculated as if the self-insurer were an employer liable to pay premiums for WorkCover insurance cover.
- **C** is the sum of total relevant remuneration for all scheme-insured employers and the total remuneration for all self-insurers during the preceding financial year.
- **D** is the total of the following costs incurred by WorkSafe in the preceding quarter (which includes the costs contained within input A above):
  - costs of the County Court, the Magistrates Court and VCAT arising out of the operations of the WIRC Act, AC Act or the WC Act
  - any costs incurred by WorkSafe incidental to the performance of its functions and exercise of its powers<sup>10</sup>
  - remuneration of the Board members and staff of WorkSafe, and members of the WorkCover Advisory Committee and Occupational Health and Safety Advisory Committee
  - any costs relating to funding Medical Panels
  - any other costs and expenses incurred by WorkSafe under the WIRC Act or any other Act
  - costs incurred by WorkSafe in relation to disputes and conciliations
  - costs incurred by WorkSafe in meeting any liabilities arising from tail claims when an employer ceases to be a self-insurer.
- 0.6 (60%) is the percentage of the common costs that is recovered.

Component D represents WorkSafe's pool of operating costs that are relevant to the self-insurers. The WIRC Regulations explicitly exclude costs that are not relevant to self-insurers. Costs are allocated to self-insurers proportionally based on remuneration. 'B divided by 'C' yields the proportional remuneration of the self-insurer relative to the total remuneration in Victoria.

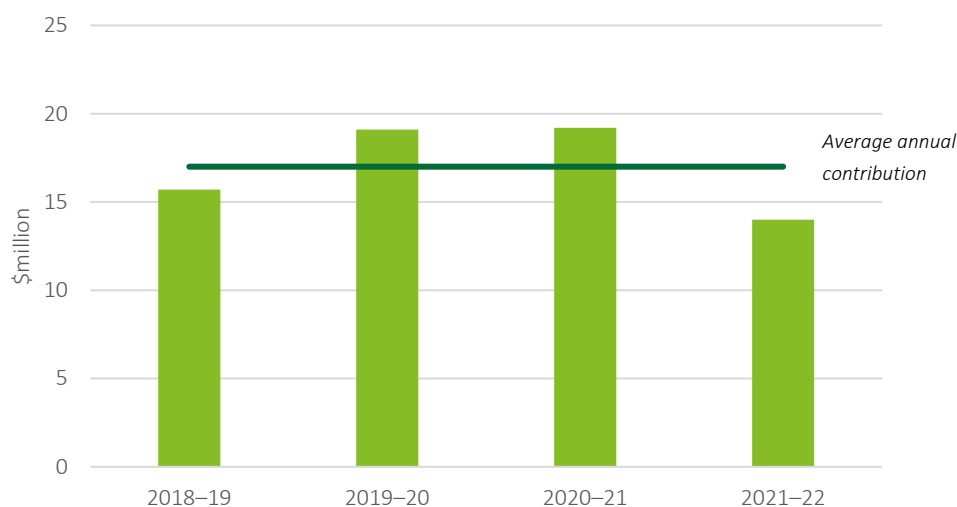
### 3.2.3.5 Current costs recovered through self-insurer contributions

Self-insurers do not pay insurance premiums to WorkSafe, however, they have a legislative obligation under the WIRC Act to make a financial contribution towards the operating costs of the scheme. These include costs associated with the Courts, Tribunals, Medical Panels, interpreters and Conciliation Services, as well as costs of safety services (such as education campaigns, inspections, and provision of legislation) from which both scheme-insured and self-insured employers benefit. Over the past four years, total self-insurer contributions have averaged at \$17 million per year (see Chart 3.4)

<sup>9</sup>The WIRC Act defines relevant remuneration as the sum of remuneration paid or payable by the employer and its eligible subsidy that would be rateable remuneration if the employer and those subsidiaries were required to pay premiums to WorkSafe. Rateable remuneration includes remuneration such as wages, salaries and superannuation that are included in the calculation of premiums for scheme-insured employers.

<sup>10</sup> These costs included those costs incurred by WorkSafe that are directly related to the central computer network used by WorkSafe's authorised agents, any costs incurred in relation to the collection and recovery of premiums payable under the WIRC Act, and costs related to actuarial services provided to WorkSafe are excluded.

Chart 3.4: Self-insurer annual contributions



Source: WorkSafe data

As outlined in Table 3.4<sup>11</sup> below, WorkSafe’s operational expenditure by core activity for 2021–22, was \$581 million. Note that occupational health and safety activities are the highest single driver of WorkSafe’s operating costs. It follows that these also constitute the majority of the common costs that are recovered from self-insurers.

Costs of WorkSafe’s agents who manage claims on WorkSafe’s behalf and those incurred for claims and support for injured workers are excluded from the table.

Table 3.4: WorkSafe’s operational expenditure by core activity for 2021–22

Core activity	Amount (\$’000s)	Percentage of total operational expenditure
Occupational health and safety	343,835	59%
Insurance and claims management	186,496	27%
Dispute resolution	50,945	14%
<b>Total operating expense</b>	<b>581,275</b>	<b>100%</b>

Source: WorkSafe’s Annual Report 2021–22

Of the \$581 million, \$454 million is relevant to the self-insurer contributions formula after excluding scheme-specific costs such as claims management costs, actuarial costs, premium compliance audit costs, depreciation costs against agent-related systems etc. <sup>12</sup> Table 3.5 provides a breakdown of the costs subject to recovery from self-insurers.

Table 3.5: Costs subject to recovery from self-insurers in 2021–22<sup>13</sup>

Cost categories	WIRC Regulations
<b>Total pool for component A costs</b>	

<sup>11</sup> Note that authorised agent fees, claims expense, investment expenses are not considered operating expenditure and consequently not included in this table.

<sup>12</sup> \$454 million comprises \$36.4 million of Component A costs and \$418 million for common costs.

<sup>13</sup> Figures presented in Table 2.3 are based on percentages that have been rounded to two decimal places.

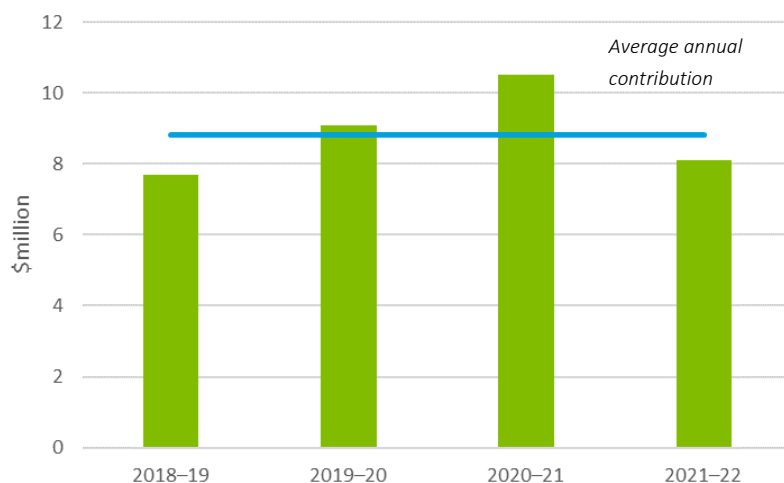
Cost categories	WIRC Regulations
Costs incurred by courts in relation to WIRC Act	\$9,329,736
Costs incurred in relation to Medical Panels	\$5,540,030
Costs incurred in relation to conciliation of disputes	\$21,533,219
<i>Total component A costs for all employers</i>	<i>\$36,402,985</i>
<b>Self-insurers' proportional share of component A costs (4.85% based on remuneration)</b>	<b>\$1,764,133</b>
<b>Total pool of common costs (D – A)</b>	
Costs incurred in the functions of WorkSafe 's duties (excluding scheme specific costs)	\$168,850,393
Remuneration for WorkSafe staff and Board, and for WorkCover Advisory Committee and Occupational Health and Safety Advisory Committee	\$251,288,323
Any other costs incurred by WorkSafe in relation to the WIRC Act	\$0
Liability arising from tail claims when an employer ceases to be a self-insurer	-\$1,704,358
<i>Total pool of common costs</i>	<i>\$418,434,357</i>
<b>Self-insurers' proportional share of common costs (2.91% of common costs after 40% discount)</b>	<b>\$12,166,705</b>
<b>Total contributions paid by self-insurers</b>	<b>\$13,930,837</b>

Source: WorkSafe data

In 2021–22, based on their share of total Victorian employers' remuneration (4.85 per cent), self-insurers' proportional share of relevant costs amounted to \$22 million. However, contributions recovered by WorkSafe from self-insurers were \$13.9 million, with the value of the discount equal to \$8.1 million and the level of cost-recovery under the current Regulations equal to approximately 63 per cent. While self-insurers pay their full proportional share of 4.85 per cent of direct costs (Component A in the table above), due to the operation of the 40 per cent discount factor, they do not pay the full 4.85 per cent of the common costs. Instead, they pay 2.91 per cent of the common costs.

The 40 per cent discount rate was introduced as a temporary measure in 2001 to assist self-insurers when the contributions formula was expanded. Despite being a transitional measure, the discount rate has been in use for over twenty years, and, over the past four years, the average value of the discount was \$8.8 million (see Chart 3.5). The value of the discount provided to self-insurers is recovered by WorkSafe from scheme-insured employers.

Chart 3.5 : Value of discount (ex GST) between 2018-19 to 2021-22



Source: WorkSafe data

### 3.2.4 Stakeholder perspectives on the self-insurer contributions formula

A range of self-insurers were consulted for their perspectives on the self-insurer contributions formula (see Appendix A for a full summary of stakeholder consultations). While self-insurers did raise specific issues regarding the formula itself, on balance, self-insurers agreed that it was appropriate for them to contribute towards the cost of services that were used by them such as the Medical Panels and arbitration services (Component A in the formula). A point of contention was that while they also considered it reasonable that self-insurers contribute to the common costs (Component 'D – A' in the formula), there was opportunity for improvement in the way WorkSafe administers the recovery of costs through the formula.

The opportunities for improvement identified by self-insurers related to WorkSafe's administrative processes for communicating costs to self-insurers, and the level of detail and clarity about what specific activities were driving those costs. Self-insurers highlighted that they did not clearly understand the reasons for the increases in costs being recovered from self-insurers, and the extent to which these increases were due to proportionate increases in costs attributable to services availed by self-insurers. Several stakeholders noted uncertainty about the efficiency of WorkSafe's costs. Some self-insurers noted that they have occasionally found inconsistencies in invoices received by them, resulting in WorkSafe issuing refunds; with administrative inconsistencies of this nature adding to the lack of clarity regarding cost drivers. As the Regulations do not prescribe administrative processes regarding disclosure of cost drivers or communication of costs by WorkSafe to self-insurers, no further analysis of or options relating to the identified areas for potential improvement are considered in this RIS.

Self-insurers consulted have also reported that there are often significant fluctuations in WorkSafe's operating costs and corresponding invoices issued to self-insurers from one quarter to the next. As self-insurers must pay contributions on a quarterly basis, the volatility in WorkSafe costs makes it harder for them to fully understand the costs they are contributing towards or to anticipate future costs that WorkSafe may recover through the formula. This makes it challenging for self-insurers to plan and manage cashflows relating to their contributions. To improve management of quarterly fluctuations in contributions, WorkSafe is proposing to introduce administrative process changes, which are noted in Section 4.1.1. As the frequency of contribution payments is prescribed in the WIRC Act and not the Regulations, no further analysis of or options relating to the frequency of payments is considered in this RIS.

In regard to the self-insurer contributions formula itself, which is prescribed in the Regulations, the current discount included in the formula was generally welcomed by all self-insurers consulted. Some stakeholders noted that due to the establishment of sophisticated in-house injury prevention and return to work frameworks, they tend to have lower injury rates compared to scheme-insured employers and do not benefit as much from the services associated with the common costs as scheme-insured employers would – reiterating the underlying argument that it is appropriate to include a discount factor in the formula.

Some self-insurers also noted that contributions from self-insured employers have been increasing year on year while premiums for scheme-insured employers had been held constant for seven years.<sup>14</sup> Self-insurers also noted that contributions in Victoria tend to be higher compared to other jurisdictions, particularly New South Wales.

### 3.2.5 Comparison with other states

In considering alternative options, the arrangements in other Australian states as well as Comcare were identified.<sup>15</sup> The Victorian Guide to Regulation requires that less onerous approaches in other jurisdictions be considered. In relation to self-insurer contributions, while some stakeholders consulted suggested that their contributions paid in Victoria were higher than the contributions they paid in other jurisdictions (where they are a similar sized self-insurer), interstate arrangements were not able to be identified as systematically more or less 'onerous'; due to differences in terms of how they are determined, and how they allocate costs between different parties (whether between scheme and self-insurer groups, or between individual self-insurers). There is also likely variation in the expected level of effort and corresponding costs for workplace health and safety regulators in different jurisdictions, which would impact the total amount of contributions to be collected.

Self-insurers in all Australian states and territories and under ComCare are required to make a financial contribution to their respective regulators. The methodology of estimating contributions varies by jurisdiction, with some of the key variances noted

<sup>14</sup> The average premium rate for 2023-24 has been increased from 1.27% to 1.8%.

<sup>15</sup> Comcare is the Commonwealth Government's regulator, workers' compensation insurer, claims manager and scheme administrator. It is the national work health and safety regulator and manages workers compensation claims for Australian Government agency employees. Eligible corporations can apply to be self-insured with Comcare. Eligible corporations include corporations that are in competition with a Commonwealth authority or former Commonwealth authority and must demonstrate that it would be desirable for the employees of the organisation to be insured under the Comcare scheme.

below. Desktop analysis of self-insurer contributions methodology in each jurisdiction was conducted, however, information around the actual amount of contributions paid by self-insurers in each jurisdiction was not publicly available.

New South Wales requires self-insurers to contribute to the Workers Compensation Operational Fund (WCOF) and the Workers Compensation Dust Diseases Fund (WCDDF).<sup>16</sup> WCOF contributions finance the regulatory oversight and administrative operations supporting the NSW workers compensation system. A formula is used to calculate this contribution which considers wages and risk of the self-insurer. Contributions to the WCDDF are based on a levy rate prescribed by the State Insurance Regulatory Authority multiplied by wages paid by each self-insurer.

In Queensland, self-insurers pay a fixed fee to the Office of Industrial Relations along with an annual levy. The levy is calculated using a formula which considers the self-insurer's estimated claims liability and a levy rate set by the Regulator (3.805 per cent for FY23).<sup>17</sup>

In South Australia, the annual fee for self-insurers is expressed as a percentage the employer would have paid in premiums had they not registered as a self-insurer.<sup>18</sup> This fee is reviewed annually.

Western Australia requires self-insurers to contribute to the WorkCover Fund. The contributions are the greater of \$40,000 or a percentage of the total amount of notional premium for the self-insurer.<sup>19</sup> The premiums are set based on the recommended industry premium rate set by WorkCover WA, and individual risk factors. The notional premium for self-insurers is calculated by applying the recommended premium rate to the self-insurer's declared wages.

An annual licence fee is payable under Comcare. Licence fees fund the regulatory activities of the Safety, Rehabilitation and Compensation Commission and Comcare to ensure that licensees are compliant with the requirements of the *Safety, Rehabilitation and Compensation Act 1988*, the *Work Health and Safety Act (Cth) 2011* and any conditions of their licence. The regulatory charging activity consists of costs incurred by the Safety, Rehabilitation and Compensation Commission and Comcare in carrying out their respective functions under the relevant legislation that are reasonably referable to a licensee.

### 3.3 Amount deemed not remuneration for contractors

Under the WIRC Act, principals and contractors can be deemed to be employers and workers in certain circumstances. Under these circumstances, the principal is required to pay premiums to WorkSafe to cover the contractor and, by being a deemed worker, the contractor is entitled to receive compensation in case of an injury. Remuneration is a key component in determining the premiums payable and, in cases of injury, the injured worker's compensation is determined based on the worker's pre-injury average weekly earnings (PIAWE).<sup>20</sup> The total amount payable to a contractor under the contract, less a prescribed percentage deduction (if any), is deemed to be remuneration for the purposes of the WIRC Act. The purpose of the deductions is to exclude the amount of materials or equipment provided by the contractor from remuneration for the calculation of premiums and compensation entitlements. It is important to note that while the WIRC Act allows for deductions to be prescribed, it does not impose a legislative requirement on WorkSafe to do so.

Schedule 3 of the WIRC Regulations prescribes the percentages of deductions for certain contractor classes. These are outlined in Table 3.6 below.

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<sup>16</sup> State Insurance Regulatory Authority (2017), 'Self-insurance licensing policy: workers compensation regulation.' Accessed at <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/Self-insurance-licensing-policy-June.pdf>

<sup>17</sup> WorkSafe Queensland (2023), 'Information for self-insurers'. Accessed at <https://www.worksafe.qld.gov.au/claims-and-insurance/self-insurance/information-for-self-insurers>

<sup>18</sup> Return to Work SA (2023), 'Becoming self-insured'. Accessed at <https://www.rtwsa.com/insurance/self-insurance/becoming-self-insured#:~:text=The%20private%20self%20insured%20fee,3.7%20percent%20of%20base%20premium>.

<sup>19</sup> SafeWork Australia (2021), 'Comparison on workers' compensation arrangements in Australia and New Zealand'. Accessed at [https://www.safeworkaustralia.gov.au/sites/default/files/2022-10/comparison\\_of\\_workers\\_compensation\\_arrangements\\_in\\_australia\\_and\\_new\\_zealand\\_2021\\_swa\\_edits.pdf](https://www.safeworkaustralia.gov.au/sites/default/files/2022-10/comparison_of_workers_compensation_arrangements_in_australia_and_new_zealand_2021_swa_edits.pdf)

<sup>20</sup> Clause 20 of Part 2, Schedule 1 of the WIRC Act defines remuneration as including, but not limited to, wages, remuneration, salary, commission, incentive-based payments, bonus, superannuation, penalty rate, loading, overtime payment, monetary allowance or shift allowance. Schedule 1 Clause 9 (Contractors), Schedule 1 Clause 7 (Timber Contractors), Section 153(7) and 153(8) are other important sections of the WIRC Act for PIAWE.

Table 3.6: Amounts deemed not remuneration for contractors

<b>Contractor type</b>	<b>Percentage</b>
Architects	5%
Draftspersons	5%
Engineers	5%
Bricklayers	30%
Building supervisors who provide their own vehicles and are required to supervise and inspect more than six different sites each seven-day period	25%
Carpenters	25%
Carpet Layers	25%
Computer programmers	5%
Driving instructors who provide their own vehicles	30%
Fencing contractors	25%
Painters	15%
Resilient floor layers	37%
Roof tilers or slaters	25%
Plasterers	20%
Cabinet makers	25%
Electricians	25%
Plumbers	25%

Source: Schedule 3 of WIRC Regulations

Allowing for deductions also brings WorkSafe in alignment with the formula used by the Victorian State Revenue Office (SRO) in relation to payroll tax. The SRO recognises that many of the contracts subject to payroll tax involve an element of reimbursement for materials and equipment supplied. Therefore, it provides deductions for certain contractor classes to prescribe the deemed amount for materials and equipment. The SRO deductions align with the deductions prescribed by the WIRC regulations, except for a small number of contractors<sup>21</sup>. The variations between the SRO and WIRC Regulations are outlined in Table 3.7.

Table 3.7: Variation between WIRC Regulations and SRO deductions

<b>Contractor</b>	<b>WIRC Regulations</b>	<b>SRO</b>
Cabinet makers	25%	30%

<sup>21</sup> WorkSafe has advised that no further information is available on why this small subset has variances with the SRO, and the SRO have also advised that they do not have a formal framework in place for a periodic review of these percentages. However, the changes in the proposed Regulations are intended to increase consistency with SRO to the extent practical. Deloitte can also confirm that no substantive issues have been raised during consultations that relate to the prescribed percentage deductions.

Contractor	WIRC Regulations	SRO
Driving instructors who provide their own vehicles	30%	NA
Timber contractors/ tree fellers*	25%	25%
Painters	15%	30% for painters who provide their own paints 15% for painters who do not provide their own paints
Wall and floor tilers	NA	25%
Blind fitters	NA	25%

Note: \*The SRO deductions only apply to tree fellers while the WIRC Regulations provide deductions for a broad range of timber contractors.  
Source: WIRC Regulations 2014

### 3.4 Payments to workers resident overseas

Under the WIRC Act, injured workers who cease to reside in Australia continue to be entitled to weekly compensation payments, if they demonstrate to WorkSafe that they have no current capacity to work and are likely to have that incapacity indefinitely. To continue to receive the compensation payments, the WIRC Act requires the injured workers to prove their identity and continued incapacity to work to WorkSafe.

Regulation 12 of the WIRC Regulations stipulates that workers must submit a Statement of Identity and a Medical Certificate in accordance with the forms prescribed in Schedule 4 of the Regulations, at quarterly intervals. The Statement of Identity captures the age, height, hair colour and eye colour of the injured worker. The Medical Certificate prescribed in the Regulations requires the medical practitioner to certify that the worker has no current capacity for work and is likely to continue indefinitely having no capacity to work.

As of 31 March 2023, there were estimated to be 31 workers residing overseas receiving payments from WorkSafe with an average claim duration of 680 weeks (approximately 13 years) and the paid compensation value to date of \$23.4 million.<sup>22</sup>

Injured workers based locally are also required to provide Medical Certificates (Certificate of Capacity) every 14 or 28 days.<sup>23</sup> The Certificate of Capacity is a detailed document that describes the worker's injury or illness, their capacity to work and any limitations they have in performing their regular work tasks. It contains information such as:

- a diagnosis
- a capacity assessment
- a treatment plan
- the period for which the worker has a capacity for pre-injury employment, suitable employment or has no capacity for employment
- a declaration signed by the worker stating whether they have engaged in any paid work.

The initial certificate must be completed by a medical practitioner, however all subsequent certificates can also be completed by a physiotherapist, chiropractor or osteopath.

The Medical Certificate prescribed in the Regulations does not require this level of detail for injured workers residing overseas. The prescribed certificate requires a medical practitioner to certify the condition the worker is suffering from, and that due to the condition the worker has no current capacity for work and is likely to indefinitely continue having an incapacity to work. The reduced requirements for overseas workers are in acknowledgement of the fact that medical practitioners overseas might not be fluent in English and may have some difficulty in providing more detailed information.

<sup>22</sup> WorkSafe data

<sup>23</sup> Section 167 of the WIRC Act allows for extended certificates for longer periods under certain circumstances.



## 4 The problem and objectives

This chapter outlines the nature and extent of the problem, which provides the case for regulatory reform.

### 4.1 General rationale for government regulation of workplace injury rehabilitation and compensation

The regulatory framework for workplace injury rehabilitation and compensation aims to provide workers with the right to claim compensation from their employer in respect of injuries that arise out of or in the course of their employment (or to which employment was a significant contributing factor in the case of recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease) and ensures that these compensation entitlements are paid. Over time, the class of persons entitled to benefit, the scope of employment, the types of injuries included, and the extent of the benefits have expanded in line with the changing nature of the workforce.

In addition, regulation also aims to reduce the social cost of workplace accident compensation through preventative measures, by reducing the incidence of accidents and diseases in the workplace.

As the regulator of the OHS Act, WIRC Act and subordinate Regulations, WorkSafe has two distinct responsibilities: to regulate workplace health and safety, and to provide workplace injury insurance. The rationale for regulation is to promote a safe working environment in Victoria through compliance with health and safety standards and prevention practices. It is also to ensure dignity, fairness and effective rehabilitation for injured workers, particularly those with long term injuries or complex claims.

### 4.2 Specific problems addressed through the Regulations

The Regulations play an important role in facilitating the operation of the workers' compensation system in Victoria by providing the necessary particulars to give effect to the AC Act and the WIRC Act and enhancing clarity of requirements that sit within the broader regulatory framework.

The Regulations also seek to provide additional detail on the manner in which certain regulatory activities are to be conducted in order to enhance protections for both employers and workers who are involved in these activities (for example, the form of warrants and the methods for inquiry into and investigations of fraud). Finally, the Regulations prescribe essential details relating to the financial operation of the scheme including the collection of contributions from self-insurers and payment terms for the reimbursement of interest to employers. Therefore, if the Regulations were to expire, there would be:

- reduced clarity and efficiency in the administration of compensation entitlements for certain injured workers and interest entitlements of employers
- additional administrative burden imposed on both employers and WorkSafe in the calculation of premiums and/or compensation entitlements
- in the event of an investigation, less protections for employers regarding the way investigations are undertaken. This may result in a higher level of burden in demonstrating evidence of amounts paid or payable by WorkSafe, including compensation payments
- compliance issues where WorkSafe would be less able to undertake some of the key operational activities required for them to meet their responsibilities as the workplace injury insurer (for example, the issue of warrants)
- an inability to effectively recover costs from self-insurers for regulatory activities that they receive benefit from.

The specific policy problems addressed by each Regulation are outlined Table 4.1.

Table 4.1 Importance of each Regulation relative to the compensation system for injured workers in Victoria

Regulation	Problem addressed through regulation
Regulation 5 – Prescribed particulars	Section 590 certificates are used in fraud prosecutions as a way of providing evidence of compensation paid by an agent. In the absence of Regulation 5, there would be an increased burden of demonstrating evidence of amounts paid or payable by WorkSafe, including compensation payments.

Regulation	Problem addressed through regulation
Regulation 6 – Form of warrant	Regulation 6 is administratively necessary to ensure that warrants to enter and search can be made under the WIRC Act. Without this Regulation, there would be no administrative process to enable the issue of warrants.
Regulation 7 – Inquiry into and investigation of fraud	If Regulation 7 were to expire, workers subject to investigations under the WIRC Act would have less protections regarding the way investigations are conducted.
Regulation 8 – Full-time worker	<p>In the absence of Regulation 8, injured workers who are not subject to an award and are employed for 35 hours a week would no longer be able to access the same entitlements for weekly payments.</p> <p>This is because the definition of full-time worker impacts the PIAWE of the injured worker and accordingly, the value of any weekly compensation payments for loss of earnings because of time spent out of the workplace due to a work-related injury.</p>
Regulation 9 – Prescribed number of hours	In the absence of Regulation 9, workers with two or more employers and no applicable award would no longer be able to access the same entitlements for weekly compensation payments. This is because Regulation 9 sets the number of hours for calculating PIAWE in these circumstances.
Regulation 10 and 11 – Amounts not remuneration	<p>The rationale for setting deductions is to recognise that the amount paid to the contractor also includes a portion to cover the costs of materials and provision of equipment such as non-labour components of the contract value). If the Regulations did not prescribe an amount deemed not remuneration for contractors, the WIRC Act would still require the deemed employer or principal to pay premiums and compensation entitlements. However, the value of remuneration in calculating both would differ and the process for calculating these may be more burdensome and inconsistent. In accordance with the WIRC Act, this occurs in the following ways:</p> <ul style="list-style-type: none"> <li>• For timber contractors, the entire contract value payable under a timber contract would be deemed as remuneration and no deductions would be applicable for the provision of non-labour components.</li> <li>• Most other contractors and employers would be required to calculate and substantiate the individual proportions of every contract that relates to either labour or materials and equipment.</li> </ul> <p>This regulation is important as a contractor deemed to be a worker should not be entitled to receive higher compensation than an employee merely because that worker supplies their own materials and equipment as part of their work in a comparable/identical circumstance. This would be inequitable in comparison to employers using employees instead of contractors (who would not pay as high a premium) and, in comparison to other workers (who would receive compensation based on their income), not based on the materials and equipment or used as part of their work.</p>
Regulation 12 – Payments to worker resident overseas	The WIRC Act provides that if a worker ceases to reside in Australia, they are still entitled to receive weekly payments if they can prove before leaving Australia that they have no current capacity to work, and this is likely to continue indefinitely. Therefore, if Regulation 12 did not exist, there would be no operational details setting out the relevant manner and intervals at which an overseas worker is required to prove their identity and incapacity to work.
Regulation 13 – Reimbursement	In the absence of Regulation 13, WorkSafe would not be obliged to pay interest to employers on reimbursements, as interest is only payable after the prescribed period

Regulation	Problem addressed through regulation
	has ended. Where there is no prescribed period, potentially there is no trigger for interest starting to accrue. This may have a negative consequence for employers, who would lose the opportunity to receive interest where they otherwise would have an entitlement.
Regulation 14 – Self-insurer contributions formula	If Regulation 14 was to expire, there would be no formula to determine the value of contributions by self-insurers towards recovering WorkSafe’s costs. As such, self-insurers would not pay contributions and these costs would be passed on to scheme-insured employers. This would result in an increase in cross-subsidisation, where scheme-insured employers bear the costs of regulatory activities which they receive no value from.

Source: Deloitte Access Economics, WorkSafe Victoria Discussion Paper – Remaking the WIRC Regulations

### 4.3 Objectives

The WIRC Act provides the framework for decisions about a worker’s claims and the respective roles, rights and duties of the worker, employer, WorkSafe Victoria and others, and outlines what entitlements and obligations arise when a worker is injured or killed at work. The objectives of the Regulations are to facilitate the effective operation of WIRC Act and the AC Act in a manner that is efficient, equitable, transparent, and furthers the achievement of policy objectives.

Specifically, the objectives are to:

- prescribe a range of other matters to enable the operation of the regulatory framework
- provide greater certainty and predictability regarding the calculations of premiums and workers’ compensation benefits in contracting arrangements, and
- ensure equitable contributions are made by self-insurers.

In prescribing a range of matters, the Regulations seek to provide clarity in compliance with workplace compensation requirements, improve the flow of accurate and timely information to government so that they can proportionately regulate risk, and ensure that regulated entities support the recording of information that can be verified and checked at a later date for the purposes of enforcement where necessary.

# 5 Identifying the options

This chapter outlines the proposed set of options considered in this RIS.

## 5.1 Development of options

As outlined in the previous chapters, the current Regulations prescribe a range of requirements that give effect to certain provisions contained within the AC Act and WIRC Act and are essential to the operation of the Victorian workers' compensation scheme. Specifically, the Regulations provide additional details and particulars surrounding compensation arrangements, including:

- necessary particulars, directions and definitions to support the functioning of the Act
- percentage deductions for different classes of contractors used to determine premiums and compensation payments
- requirements to support compensation payments to injured workers residing overseas
- the formula for calculating contributions payable by self-insurers.

The options presented in this chapter are based on analysis of the WorkCover scheme, along with the regulatory framework that governs it and consultation with key stakeholders. For regulations that are set to expire, it is necessary to assess whether the Regulations should be remade or allowed to expire.<sup>24</sup> As the current Regulations are set to expire in May 2024, the base case is a scenario where the Regulations are allowed to do so, and no new regulations are introduced. Under this scenario, the AC Act and the WIRC Act would still enable a workers' compensation system to provide injured workers with compensation. However, there would not be any Regulations prescribing several particulars necessary for the equitable and efficient operation of the scheme. These particulars, and the importance of them, are outlined in Table 3.1 in Chapter 3.

As a result, WorkSafe does not consider the base case (where the Regulations expire and are not remade) to be a viable option and therefore this RIS will focus instead on the impact of remaking the Regulations. The base case will be used as a counterfactual scenario to assess the impacts of options against.

### 5.1.1 The consideration of changes to the current Regulations

In developing and refining options for remaking the Regulations, WorkSafe undertook an internal review to identify any areas for potential change. Based on this review, extensive and targeted consultation was undertaken with stakeholder groups who may be affected by the proposed amendments to the Regulations. This included a series of discussion papers to capture specific and general feedback, as well as several group meetings with self-insurers. WorkSafe's engagement with these self-insurers aimed to outline the process for remaking the Regulations, share initial options being considered to amend the Regulations and clarify the process for calculating self-insurer contributions. These meetings also provided self-insurers with an opportunity to ask questions and raise any concerns. Additional engagement was undertaken with self-insurers outside these meetings, with the provision of additional information including a frequently asked questions document. This process provided the context and rationale for developing a set of prospective regulatory options that build on the status quo (which itself is subject to impact analysis against the base case in this RIS).

Through this process, WorkSafe first identified that minor changes would be required generally to modernise and clarify the language of the current Regulations but would not materially change the Regulations' operation. As such, these changes are not expected to have a material impact on stakeholders and have not been included within the options for analysis in this RIS. Regulations 5 to 9 and Regulation 13 will be remade with non-material changes to language and renumbering.

In addition to the language updates, WorkSafe has identified a small number of potential modifications to the current Regulations that need to be considered within this RIS, these are:

- updating percentages deemed not remuneration for contractors (Regulation 11)
- aligning information and identity requirements for workers resident overseas with local requirements (Regulation 12)
- removing or reducing the discount applied to the formula for self-insurer contributions (Regulation 14).

#### 5.1.1.1 Requirements for workers residing overseas

Modifications to Regulation 12 are being considered which include amending the Statement of Identity to add details relating to a worker's date of birth, residential address and gender. Amendments would also be considered to remove the descriptors of hair colour, eye colour and height as these descriptors can change over time. These changes are intended to provide WorkSafe

<sup>24</sup> Better Regulation Victoria, *Hints and tips for preparing a Regulatory Impact Statement for sunseting Regulations*

and its agents with greater assurance when verifying the worker's identity, to prevent incidences of scheme fraud and to improve overall claims management.

Changes considered would also include amendments to the Medical Certificate for workers residing overseas, to improve consistency with the certificate used for workers receiving weekly payments and residing in Australia (the Certificate of Capacity) to the extent practical. This would involve updating the Medical Certificate to introduce the following:

- a diagnosis
- a capacity assessment, which provides physical and/or mental health function information
- a treatment plan
- information about capacity for employment
- a worker declaration, which requires the worker to declare whether they have engaged in any paid or unpaid work.

In testing these amendments with stakeholders during the RIS process, it was determined that the proposed changes are unlikely to impose significant additional time and costs for impacted injured workers and would be expected to be carried out within typical medical treatment processes already undertaken by these individuals in the base case. This position is supported by the fact that the proposed changes are only expected to impact approximately 30 workers in total. For this reason, a series of options has not been developed for this change and, instead, impacts will be discussed qualitatively in section 5.3.2 of this RIS.

#### **5.1.1.2 Amounts deemed not remuneration for contractors**

Modifications to Regulation 11 are being considered to include specific changes to increase alignment with SRO prescribed payroll tax deductions.<sup>25</sup> The proposed changes to contractor percentages would involve:

- adjusting the percentage for cabinet makers from 25 per cent to 30 per cent
- adding wall and floor tilers as a new category of contractors and setting the amount deemed not remuneration at a rate of 25 per cent
- adding blind fitters as a new category of contractors and setting the amount deemed not remuneration at 25 per cent.

Consultation with stakeholders has determined that the proposed changes to the existing rates and introduction of new rates outlined above are representative and reflect standard industry practices. As such, the proposed changes are not anticipated to impose material burden on industry over and above the base case. To allow for proportionate analysis, a series of options has not been developed for this change and, instead, cost and benefits will be discussed qualitatively in section 5.6.4 of this RIS.

#### **5.1.1.3 The formula for calculating self-insurer contributions**

Modifications to Regulation 14 are being considered to reduce or remove the discount currently applied within the self-insurer contributions formula. Specifically, changes are being proposed to the 40 per cent discount rate which was introduced as a temporary measure in 2001 to assist self-insurers when the contributions formula was expanded. However, despite being a transitional measure, the discount rate has been in use for over twenty years. This has resulted in suboptimal outcomes including cross-subsidisation between scheme- and self-insured employers. There is therefore a need to test whether this discount rate is still warranted, or whether there may be benefits associated with reducing or removing this rate.

As noted in Section 2.2.4, the Regulations do not prescribe matters relating to WorkSafe's administration or communication of costs or the frequency of contribution payments, and so no options have been considered which affect those. Stakeholder views on these matters are noted in Section 2.2.4 and Appendix A. In recognition of the opportunities available to improve the operation and administration of the self-insurer contributions formula, WorkSafe has identified changes to administrative processes that are proposed to be implemented in conjunction with the new Regulations. The proposed changes include determining the annual contribution payment for self-insurers at the start of a calendar year, which would then be collected in the form of equal quarterly instalments. Additionally, a provision is proposed to be included within the Regulations that clearly excludes costs of services from which self-insurers do not derive any benefit.

Based on stakeholder consultation undertaken by WorkSafe and Deloitte, it was determined that any proposed amended formula for self-insurer contributions would likely have a material impact on self-insurers. As such, a series of draft regulatory options were developed for detailed analysis within this RIS. The options involve the application of different settings within the self-insurer contribution formula that relate to removing or reducing the discount applied to calculate contributions. The options

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<sup>25</sup> WorkSafe has decided to only partially align the regulations with the SRO percentages set for painters. The SRO includes two options for painters; those who do not provide their own paint (15 per cent) or those who do provide their own paint (30 per cent). WorkSafe would not be able to verify or enforce which percentage should be applied. It was considered that the creation of two different categories would add complexity and confusion, so WorkSafe recommends maintaining the current percentage set for painters in the regulations which is 15 per cent. This percentage applies whether they supply their own paint or not.

identified by WorkSafe for consideration in this RIS are outlined in section 4.1.1 below. Importantly, the options defined include changes to the discount applied to common costs only. During the options development process, consideration was also given as to the potential value of including a risk-based component within the formula (i.e. to incentivise high performing employers), however, there was consistent feedback on the limited feasibility of such changes (from both internal WorkSafe stakeholders and external self-insurer representative). Consequently, a risk-based option has not been included within this RIS.

**5.1.1 Options for detailed analysis**

**5.1.1.1 Base case (Regulation 14 will sunset in May 2024)**

The base case is a counterfactual scenario used to provide a common point of comparison for all options. In the context of this analysis, the base case represents a scenario where the current Regulations, including Regulation 14, are automatically revoked on 27 May 2024 and no new regulations are implemented. Under the Base case, there would be no formula, hence no mechanism for WorkSafe to collect contributions from self-insurers.

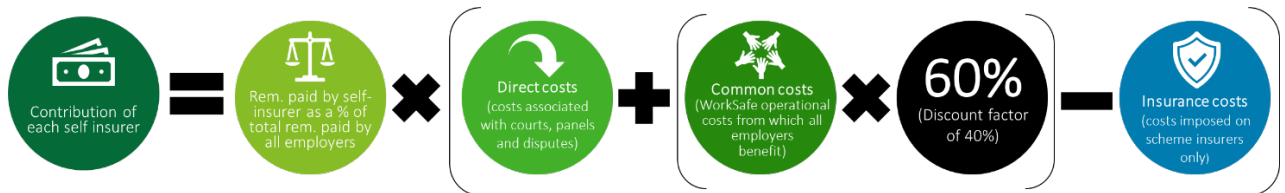
**5.1.1.2 Option 1: Regulation 14 is remade as it is currently prescribed (status quo)**

Option 1 reflects the status quo and involves remaking Regulation 14 with minor changes to modernise and clarify language. Under the status quo, each self-insurer is required to pay:

- zero contribution to costs specific to the insurance scheme, and for which self-insured employers derive no direct benefit.
- 100 per cent of that self-insurer’s proportional share of costs for services used by both scheme- and self-insured employers, related to costs of the County Court, the Magistrates’ Court or the VCAT arising out of the operation of the WIRC Act, any remuneration (including allowances) of members of Medical Panels, and costs and expenses incurred in connection with conciliation of disputes.
- 60 per cent of that self-insurer’s proportional share contribution of all other WorkSafe costs. These are a subset of WorkSafe’s operating costs (excluding those costs that do not relate to self-insurers) for services enjoyed by both scheme- and self-insured employers.

A 40 per cent discount factor is applied to the common costs, resulting in 60 per cent of the costs being recovered (see Figure 4.1). Costs attributable to self-insurers towards which they do not contribute would need to be funded by other Scheme participants. Whether this directly results in a premium rate increase or reduction for Scheme participants in any given year is unknown, as premium rates are set taking into consideration a broad range of factors. However, ultimately these costs need to be funded from within the overall WorkCover system.

Figure 5.1 Formula under Option 1 (the status quo)



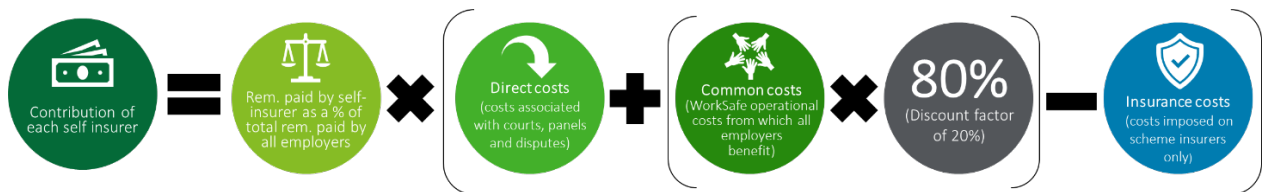
Source: Deloitte Access Economics

**5.1.1.3 Option 2: Regulation 14 will be remade with a reduction in discount rate to 20%**

Option 2 would involve remaking the current formula in the Regulations with adjustments to the percentage discount applied to the common costs (see Figure 5.2). Specifically, this option will modify the percentage discount factor from 40 percent to 20 percent. Under this option, Regulation 14 will also be remade with minor changes to modernise and clarify language.

Adjusting the formula to only have a 20 per cent discount factor would increase self-insurer contributions to 80 per cent of their proportionate share of the cost of services which benefit both scheme- and self-insured employers.

Figure 5.2 Formula under Option 2 (reducing the discount)



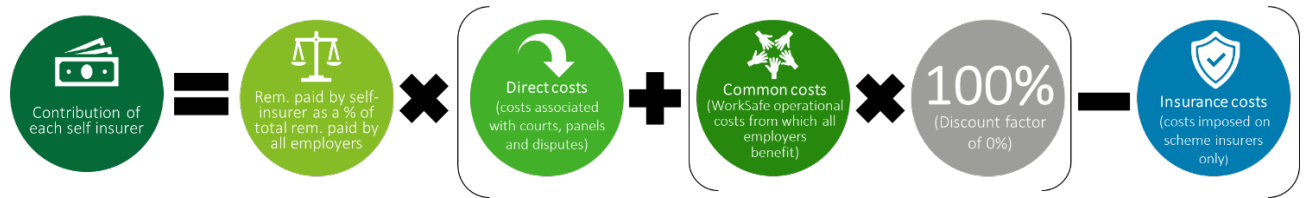
Source: Deloitte Access Economics

5.1.1.4 Option 3: Regulation 14 will be remade with discount removed completely

Option 3 would involve remaking the current formula in the Regulations with the full removal of the discount applied to the common costs (see Figure 5.3). Specifically, this option will modify the percentage discount factor from 40 percent to 0 percent. Under this option, Regulation 14 will also be remade with minor changes to modernise and clarify language.

Removing the 40 per cent discount factor would increase self-insurer contributions to 100 per cent of their proportionate share of the cost of services which benefit both scheme- and self-insured employers.

Figure 5.3 Formula under Option 3 (removing the discount)



Source: Deloitte Access Economics

## 6 Options analysis

### 6.1 Approach to options analysis

As detailed in the Background and Options chapters of this RIS, the current Regulations serve to support the AC and WIRC Acts by enabling efficient and effective operation of the Victorian workers' compensation scheme. This includes provisions which relate to cost-recovery (the contributions formula for self-insurers) as well as broader non-fee related provisions which enable the provision of compensation and rehabilitation to injured workers and compliance activities by WorkSafe.

Based on consultation with industry stakeholders, provisions relating to the recovery of WorkSafe's costs through the self-insurer contributions formula are expected to pose significant costs and benefits on industry. As such, the options relating to the self-insurer contributions formula will be assessed separately from the remaking of the other Regulations. Here, the impact of options to remake this formula will be assessed through multi-criteria analysis (MCA) and align with the principles outlined in the Victorian Government's *Pricing for Value* guide (see section 5.2).

The costs and benefits associated with the other Regulations are expected to be minor and incremental on top of the AC and WIRC Acts and are not expected to impose significant direct costs to employees, employers or WorkSafe Victoria. Therefore, as highlighted in Chapter 4, no practical and feasible non-regulatory options have been identified for analysis in this RIS. For these non-fee requirements, costs and benefits will instead be discussed qualitatively.

### 6.2 MCA methodology

The method used to compare and assess the options identified in Chapter 4 relating to the self-insurer contributions formula involves the use of MCA. MCA involves a qualitative and quantitative (where possible) assessment on how the different options perform against a series of criteria relative to the base case. This approach has been chosen as the preferred analysis tool as it provides a structured and transparent approach that can balance several distinct impacts, for example the extent to which the formula for self-insurer contributions is reflective of the benefit that a user receives versus the simplicity in which the self-insurer contribution formula is understood by users.

MCA requires judgement as to how the proposed options will contribute to a series of criteria selected to reflect the benefits and costs associated with each option. Each criterion is assigned a weight, to reflect its importance to the policy decision. A weighted score is then derived for each option, and the option with the highest weighted score is then selected as the preferred option. The MCA technique is outlined in Figure 6.1.

Figure 6.1 Multi-criteria analysis

MCA refers to a range of techniques used to assess policy options against a set of decision criteria. It enables a transparent comparison of options using a mixture of quantitative and qualitative information and allows analysis to consider a wider range of criteria (e.g. equitable considerations) which are not typically included in other common financial analyses, like break-even analysis. All necessary subjective judgements and assumptions used to determine options and criteria, and to assign scores and weights, are made explicit in the write up. The preferences of the decision maker reflected in these judgements and assumptions can be readily changed through a sensitivity analysis or by incorporating alternative indicators.

#### 6.2.1 Application of the pricing principles

Regulation 14 enables WorkSafe to recover costs from self-insurers. Therefore, in line with the objectives of Regulation 14, the relevant and appropriate pricing principles from *Pricing for Value* have then been applied in this RIS to identify options for changes to the current self-insurer contributions formula.

The primary pricing principles considered most relevant for this RIS are:

**Principle 1: Agencies should aim to recover the full costs of service provision to promote efficient consumption.** Principle 1 articulates a foundational financial sustainability aspiration for any set of fees for government services or activities and also alludes to cost recovery acting as a means for promoting efficient consumption. The aim of costs recovery from self-insurers is to promote financially sustainable and efficient regulatory activity, so principle 1 is relevant to the assessment of the self-insurer contributions formula.



**Principle 2: The cost-of-service provision should be borne by those who benefit from the service.** Principle 2 aligns with the equity objective of cost recovery for regulatory services. By shifting the cost burden of regulatory services to its beneficiaries (rather than those costs being borne by the public through consolidated revenue), it ensures that those who do not benefit from the services do not cross-subsidise those who do.

The broad concept of seeking contributions from self-insurers aspires to apportion regulatory costs in line with the benefits self-insurers receive from them. This makes principle 2 relevant to assessing fee options.

**Principle 11: Pricing structures should be easy to understand and simple to administer.** Principle 11 aligns with the efficiency objective of cost recovery for regulatory activities. Developing a pricing structure that is easy to understand promotes clarity about regulated entities’ compliance costs. This reduces queries for the regulator regarding ambiguities in the pricing structure. It also allows regulated entities to follow the pricing structure easily and quickly. In these ways, both the regulator and regulated entities operate more efficiently. Principle 11 is relevant in this instance. The formula can be amended and assessed against its ability to provide clarity for self-insurers, and simplicity of administration for WorkSafe.

### 6.2.2 Defining criteria for the multi-criteria analysis

The criteria used to assess options align with the Victorian Government’s *Pricing for Value* Pricing Principles identified above. By design, the *Pricing for Value* Pricing Principles are flexible and able to be applied in a wide range of scenarios, from the State’s provision of services to industry managed co-regulatory schemes.

While all the Pricing Principles pose relevant considerations in cost-recovery settings, the key principles below have been chosen as those that most closely align with the objectives of the proposed options to be considered in this RIS (see section 3.3). Here, the primary policy objective for self-insurer contributions within the Regulations is to recover WorkSafe’s costs of efficiently regulating workplace health and safety in Victoria. For simplicity in this RIS, Table 6.1 provides a summary of the criteria of this analysis and the Pricing Principles considered in the context of remaking the Regulations.

Table 6.1: Pricing principles and their relevance

Criterion	Relevance	Weighting
<b>Criterion 1: Efficiency</b>	The formula for setting self-insurer contributions should reflect the costs to WorkSafe associated with providing the regulatory services for which it is collected. Full cost recovery promotes the efficient consumption and provision of these regulatory services (for example, medical panels, court and VCAT services, and conciliation services). <b>This criterion is based on Pricing Principle 1.</b>	25%
<b>Criterion 2: Equity</b>	Costs of the provision of regulatory services should be borne by those who benefit from or create the need for them. Self-insurers derive the same direct and indirect benefits from these regulatory services as scheme-insured employers. Self-insurers only use (and therefore, create a need for) the non-insurance related services provided by WorkSafe, which is reflected in the contribution formula. <b>This criterion is based on Pricing Principle 2.</b>	50%
<b>Criterion 3: Simplicity</b>	The self-insurer contributions formula should be easy for practitioners to understand and simple for the fee-collecting entity to administer. Where possible, a simple and clear formula can reduce complexity, decreasing the amount of time spent by self-insurers in understanding the formula and the components involved. <b>This criterion is based on Pricing Principle 11.</b>	25%
<b>Total weighting</b>		<b>100%</b>

Source: Deloitte Access Economics

#### 6.2.2.1 Scale

A score is assigned according to the impact of the option on each of the criteria measured relative to the base case. A rating scale from -10 to +10 (as shown below in Table 6.2) is applied against each criterion listed in Table 6.1 above. The option that receives the highest weighted score of all the criteria is then selected as the preferred option. As the analysis is assessing positive of negative change from the base case, the base case receives a score of zero for all criteria.

Table 6.2 Options assessment criteria scoring

Negative					Neutral	Positive				
-10	-7	-5	-3	-1	0	1	3	5	7	10
Very high	High	Medium	Low	Very low	Nil	Very low	Low	Medium	High	Very high

Source: Deloitte Access Economics

Our broad approach to estimating costs and benefits included:

- capturing costs and benefits that are directly relevant and attributable to the proposed legislative amendments
- reporting conservative costs and benefits
- where a range of plausible values is available, selecting the average value as a representative of the sample.

The cost categories attributable to self-insurers are defined by the WIRC Act and not the Regulations. The Regulations prescribe the methodology for recovering the costs specified by the WIRC Act from self-insurers. As such, WorkSafe does not determine what costs are to be recovered from self-insurers. Consequently, the assessment of the efficiency criterion in this RIS is focused on the extent to which a fee fully reflects those costs. In addition, the equity criterion in this RIS is focused on the extent to which there is cross-subsidisation of costs that are deemed to be attributable to self-insurers but are being recovered from scheme-insured employers.

### 6.3 MCA analysis of self-insurer contributions formula

#### 6.3.1 Criterion 1: Efficiency

Table 6.3 Summary of scores for Criterion 1 Efficiency

Option	Score	Weighted Score
Base case	0	0
Option 1 (status quo)	6	1.5
Option 2	8	2.0
Option 3	10	2.5

Source: Deloitte Access Economics

##### 6.3.1.1 Base case

Under the base case, the Regulations would expire and would not be remade. This would mean that the mechanism for collecting contributions from self-insurers would no longer exist and, as a result, no costs could be recovered from self-insurers despite their use of the regulatory services provided by WorkSafe. The base case is included as a point of comparison for the other options analysed in the RIS and has been awarded a score of 0 in this MCA as a counterfactual to which Options 1, 2 and 3 may be compared.

##### 6.3.1.2 Option 1: Regulation 14 is remade as it is currently prescribed (status quo)

Relative to the base case, Option 1 prescribes a formula comprising components which represent the costs incurred by WorkSafe as a result of the regulatory services that self-insurers use and either directly or indirectly benefit from (see Background section for further description of services). This formula also specifically excludes self-insurers from contributing to services that they do not use or benefit from. As such, Option 1 would promote financial sustainability and result in more cost-reflective contributions from self-insurers towards the WorkCover scheme relative to the base case. Option 1 is therefore awarded a positive score in this MCA.

Under Option 1, there is a 40 per cent discount factor applied to the formula component that represents common costs incurred by WorkSafe business units and services from which all employers, including self-insurers, receive a direct or indirect benefit. The application of this discount factor means that Option 1 is only partially cost-reflective as self-insurers pay less than the total cost of services allocated to and used by self-insurers. As highlighted in Section 2.2, based on data from FY 2021-22, with the 40 per cent discount, self-insurers are only paying approximately 63 per cent of the costs attributed to them by WorkSafe. As a result, while Option 1 is more cost-reflective than the base case and receives a positive score, it is not fully cost reflective and is awarded a score of 6. Option 1 has not received a higher score for this criterion as the common costs category (to which the discount is applied) is proportionally much larger than the direct costs category within the contribution formula.

Under Option 1, as outlined in Table 6.4 below, the contributions required of self-insurers would have no expected increase due to changes with the formula itself. However, year on year, there may be increases to contributions due to increases in costs associated with WorkSafe activities that are included in the calculation of contributions.

##### 6.3.1.3 Option 2: Regulation 14 will be remade with a reduction in discount factor to 20%

Under Option 2, the formula remains the same except for the discount factor on the common costs, which is reduced to 20 per cent. Compared to Option 1, this option better reflects the cost of regulatory services attributed by WorkSafe to self-insurers, but still does not reflect the total cost. As a result, Option 2 is awarded a score of 8, which is a proportionally higher score relative to Option 1. Similar to Option 1, while Option 2 improves the cost-reflectivity of the formula, it receives a score of 8 as the discount, while reduced, is still applied to the largest proportional share of costs within the contribution formula.

Under Option 2, as outlined in Table 5.4 below, the contributions required of self-insurers would be expected to increase by approximately 29%<sup>26</sup> (relative to Option 1), in addition to any increases in costs that are associated with increased costs of the regulatory activities contained within the calculated inputs to the formula.

**6.3.1.4 Option 3: Regulation 14 will be remade with discount removed completely**

Relative to the base case, Option 3 also prescribes a formula to enable the collection of contributions towards the costs of regulatory services used by and benefiting self-insurers. However, relative to Option 1 and Option 2, Option 3 removes the discount factor on the common cost’s component of the equation. Through removing the discount, the self-insurer contributions formula under Option 3 is intended to be reflective of all the costs that WorkSafe attributes to self-insurers associated with providing the regulatory services for which self-insurer contributions are collected. Accordingly, Option 3 is awarded a score of 10 for this criterion.

Under Option 3, as outlined in Table 6.4 below, the contributions required of self-insurers would be expected to increase by approximately 57% (relative to Option 1), in addition to any increases in costs associated with input activities captured within the current self-insurer formula.

**6.3.1.5 Estimated changes to contributions by self-insurers (hypothetical scenario)**

Table 6.4: Estimated contributions based on example cost inputs as provided by WorkSafe and changes to the discount in the formula

Self-Insurer Example Remuneration	Option 1 (Partial Cost Recovery) - Status Quo with 40% discount on common costs		Option 2 (Partial Cost Recovery) - Formula with 20% discount on common costs		Option 3 (Full Cost Recovery) - Formula with 0% discount on common costs	
	Quarterly contribution (\$)	Percentage change	Quarterly contribution (\$)	Percentage change	Quarterly contribution (\$)	Percentage change
70,000,000	4,776	0%	6,147	29%	7,517	57%
150,000,000	10,235	0%	13,172	29%	16,109	57%
250,000,000	17,059	0%	21,953	29%	26,848	57%
400,000,000	27,294	0%	35,125	29%	42,956	57%
1,400,000,000	95,530	0%	122,938	29%	150,347	57%
<b>Total Pool 2,270,000,000</b>	<b>154,895</b>	<b>0%</b>	<b>199,336</b>	<b>29%</b>	<b>243,776</b>	<b>57%</b>

Further analysis on estimated cost impacts to self-insurers are included in Appendix B.

**6.3.2 Criterion 2: Equity**

Table 6.5: Summary of scores for Criterion 2 Equity

Option	Score	Weighted Score
Base case	0	0
Option 1 (status quo)	5	2.5
Option 2	7	3.5
Option 3	10	5.0

<sup>26</sup> Percentage increase in contributions have been estimated by WorkSafe based on approximate remuneration and cost figures that have been informed by historical actuals. Full table of cost analysis has been included in Appendix B.

Source: Deloitte Access Economics

**6.3.2.1 Base case**

In the absence of the self-insurer contributions formula under the base case, self-insurers would not pay contributions and, instead, scheme-insured employers would cover all of WorkSafe's costs through premiums. As such, even in cases where self-insurers create the need for or benefit from WorkSafe's regulatory services, self-insurers would not bear the cost of those services, which would instead be paid for by scheme-insured employers. The base case has been awarded a score of 0 in this MCA as a counterfactual to which Options 1, 2 and 3 may be compared.

**6.3.2.2 Option 1: Regulation 14 is remade as it is currently prescribed (status quo)**

Through prescribing the self-insurer contributions formula, it is likely that Option 1 would prevent the problem outlined in the base case and would reduce cross-subsidisation by enabling collection of contributions from self-insurers. This is because the formula under Option 1 is defined based on the categories of costs for regulatory services that self-insurers use or benefit from. Therefore, by design, Option 1 is expected to improve equity through the collection of contributions from self-insured employers and is awarded a positive score for this criterion.

However, the 40 per cent discount factor applied to the common cost component of the formula under Option 1 means that self-insurers pay less than scheme-insured employers for the same category of common services. In practice, this does not represent a reduction in the total value of common costs recovered but rather, a transfer of these costs from self-insurers to scheme-insured employers. This means that, while preventing total cross-subsidisation under the base case, Option 1 contributes to some level of cross-subsidisation between the users of WorkSafe's regulatory services. As a result, Option 1 receives a score of 5 for this criterion.

**6.3.2.3 Option 2: Regulation 14 will be remade with a reduction in discount factor to 20%**

Reducing the discount factor applied to the common costs will increase the contributions paid by self-insurers compared to under Option 1. Therefore, there will be an improvement, but not complete elimination, of the cross-subsidisation between scheme-insured employers and self-insurers. This would also enhance equity between the two cohorts. As a result, this option receives a score of 7 for this criterion.

**6.3.2.4 Option 3: Regulation 14 will be remade with discount removed completely**

As with Options 1 and 2, Option 3 would be expected to prevent total cross-subsidisation by enabling the collection of contributions from self-insurers. However, by removing the 40 per cent discount factor, Option 3 would require self-insurers to pay 100 per cent of their share of common costs and therefore would create the scenario that minimises cross-subsidisation as much as practically possible within the parameters of the contribution formula. As noted in the approach to options analysis, the assessment of equity within the context of this RIS is based on the current definition of the costs that WorkSafe attributes to self-insurers. Available data does not indicate that either scheme-insured employers or self-insurers benefit disproportionately from services associated with common costs. For these reasons, Option 3 receives a score of 10 for this criterion, as, by definition, costs that are attributed to self-insurers are fully recovered from the pool of self-insurers.

**6.3.3 Criterion 3: Simplicity**

Table 6.6: Summary of scores for Criterion 3 Simplicity

Option	Score	Weighted Score
Base case	0	0
Option 1 (status quo)	-2	-0.5
Option 2	-2	-0.5
Option 3	-1	-0.25

Source: Deloitte Access Economics

### 6.3.3.1 Base Case

In the base case, the formula would no longer be in effect and there would no alternative mechanism for calculating self-insurer contributions. Therefore, under the base case, there is nothing to be understood by self-insurers or administered by WorkSafe. The base case has been awarded a score of 0 in this MCA as a counterfactual to which Options 1, 2 and 3 may be compared.

### 6.3.3.2 Option 1: Regulation 14 is remade as it is currently prescribed (status quo)

This means that, relative to the base case, Option 1 would likely increase complexity by prescribing a process for determining contributions that requires time and effort to interpret or administer. As a result, Option 1 receives a negative score for this Criterion as it is more complex than the base case.

However, during consultation, stakeholders asserted that the formula under Option 1 is relatively straight forward and well understood by the majority of self-insurers. As such, this Option 1 has been awarded a score of -2 to reflect the fact that it adds a small amount of complexity and ambiguity relative to the base case.

### 6.3.3.3 Option 2: Regulation 14 will be remade with a reduction in discount factor to 20%

Under the Option 2, the components of the formula remain the same as under Option 1 with the only difference being the value of the discount factor. Therefore, this option receives the same score as Option 1 of -2.

### 6.3.3.4 Option 3: Regulation 14 will be remade with discount removed completely

Similar to Option 1 and Option 2, Option 3 prescribes a formula for the calculation of self-insurer contributions and is therefore more complex than the base case. However, relative to Options 1 and 2, Option 3 removes the discount on common costs and correspondingly, reduces the number of components within the formula. Therefore, by definition, Option 3 is simpler than Options 1 and 2. For this reason, Option 3 is more likely to be easily understood by self-insurers and is therefore awarded a score of -1.

## 6.3.4 Identification of the preferred option

The table below presents a summary of the MCA scores assigned to the criteria and reflects the discussion throughout this section of the RIS. The scores are weighted as per the framework outlined in section 5.2.3, in order to produce a weighted score for each option. This approach balances the need for an appropriately efficient, equitable and simple mechanism to calculate self-insurer contributions. The results of the MCA determine that Option 3 is preferred to the base case as it has the highest weighted score of all options considered.

Table 6.7: MCA Results

Criteria	Base Case	Option 1 <i>Impact of a 40 per cent discount on common costs (status quo) relative to the base case</i>	Option 2 <i>Impact of a 20 per cent discount on common costs relative to the base case</i>	Option 3 <i>Impact of zero discount on common costs relative to the base case</i>
Efficiency	0	6	8	10
Equity	0	5	7	10
Simplicity	0	-2	-2	-1
<b>Weighted Score</b>	<b>0</b>	<b>3.5</b>	<b>5.0</b>	<b>7.25</b>

Source: Deloitte Access Economics

## 6.4 Costs and benefits associated with the other regulations

### 6.4.1 Deemed remuneration for contractors

Under the base case, percentage deductions for contractors would not be prescribed as they are prescribed within the Regulations, however, the Act itself includes administrative requirements that specify how remuneration should be calculated

with respect to contractors<sup>27</sup>. These requirements specify that where no applicable percentage is prescribed in regulations, remuneration is calculated as the total amount due from the principal to the contractor under the contract, less any part of the total amount not attributable to the provision of labour.

The amount of remuneration is the total amount paid or payable by the principal to the contractor under the contract, less the part of the total amount that is not attributable to the provision of labour when there is no applicable prescribed percentage. Therefore, principals would need to self-assess and report to WorkSafe the proportion of labour cost for every contract. This could result in protracted negotiations and/or disputes over the level of rateable remuneration for calculating premiums, and compensation if a contractor gets injured. The base case also imposes an administrative burden on WorkSafe, contractors and principals in cases where there is a need to demonstrate evidence of expenses associated with each contract. A benefit provided by the base case is that individually determined or self-assessed deductions would more accurately reflect the true cost of the materials and equipment than when using a standard percentage. However, the administrative effort required of contractors and principals is likely to outweigh this benefit, particularly for premium purposes.

Under the status quo, the prescribed percentages provide a transparent method for ascertaining amounts not considered to be remuneration for each contract. Compared to the base case, the status quo reduces the regulatory burden and transaction costs associated with determining the appropriate proportion of remuneration for each contract. An unintended consequence of the status quo is that a standard rate for deductions might result in injured contractors receiving lower (or higher) rates of compensation than would otherwise be appropriate. Still, the prescribed percentages in the status quo do enable less administratively burdensome process for determining relevant remuneration for contractors, particularly for premium purposes. This process also reduces the likelihood of disputes between contractors, principals and WorkSafe regarding the interpretation of remuneration.

An added benefit of the prescribed percentages is that they allow for harmonisation with the payroll tax deduction rates provided by the SRO for most contractor classes. This can simplify calculations for both payroll tax and workers' compensation, resulting in more administrative efficiencies. Harmonisation with SRO rates also enables WorkSafe to compare reported remuneration with that reported to the SRO which can assist in detecting non-compliance or underpayment of premiums.<sup>28</sup>

Remaking the Regulations provides the opportunity for further harmonisation with SRO. The Regulations currently prescribe percentages for timber contractors and 17 other contractor classes. In addition to these contractors, SRO prescribes percentages for wall and floor tilers, and blind fitters. There is also a difference in percentages allowed for cabinet makers (25 per cent in the Regulations and 30 per cent from SRO). Amending the current list of eligible contractors to add wall and floor tilers and blind fitters, and aligning the percentages for cabinet makers, will provide greater harmonisation with the SRO, and could result in a less administratively burdensome process to determine remuneration for those contractor classes, as described above.

#### **6.4.2 Requirements for workers residing overseas**

Under the base case, injured workers residing overseas would not have a standard mechanism to establish their identity and to provide evidence of their continuing incapacity for work, to WorkSafe and its Agents. They would also lack clarity about the intervals at which these documents need to be provided. In the absence of the Regulations, workers might provide insufficient details to establish their identity. Given differences in health systems between countries, in the absence of the Medical Certificate prescribed in the Regulations, alternative medical certificates provided by medical practitioners overseas might not contain the required level of detail for WorkSafe or its Agents to establish incapacity for work. -

The WIRC Act sets out proof of identity and proof of continued incapacity to work as a condition for workers residing overseas to continue to receive their weekly payments. Therefore, not providing the required information at required intervals will delay or prevent workers from accessing their payments. Lack of clarity around requirements can also increase queries and complaints received by WorkSafe or their Agents, leading to increased administrative burden.

Under the status quo when compared to the base case, workers residing overseas have greater certainty of the information required of them and the intervals at which they need to be provided. The Statement of Identity provides WorkSafe and its Agents some assurance of the worker's identity and eligibility prior to making payments. The current requirements impose minimal administrative burden on the worker residing overseas.

Under the proposed amendments, the Statement of Identity will include additional details for date of birth, residential address, and gender, and remove requirements for hair colour, eye colour and height. These amendments will provide WorkSafe and its Agents with improved assurance when verifying a worker's identity, thereby preventing or reducing incidences of scheme fraud. The Medical Certificate will also require greater detail about the worker's capacity and treatment. The requirement for this

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<sup>27</sup> Refer to schedule 1, clause 9 (5)(c) and schedule 1, clause 6(3) of the WIRC Act.

<sup>28</sup> WorkSafe Victoria (2023), Discussion paper – Remaking the WIRC Regulations.

additional information will impose additional administrative burden on the worker and the medical practitioner. However, given that workers residing overseas have been on workers' compensation for an average of 13 years, it is likely that the details will already be available with their treating medical practitioner. Consequently, this would likely impose relatively low administrative burden on the medical practitioner to provide this additional detail to the worker. Also, WorkSafe reimburses the worker for their medical appointment in accordance with the standard fee structure for onshore workers and therefore there will be no additional financial burden on the worker. While WorkSafe may incur additional costs in reimbursing these claims, there are currently only 31 workers residing overseas and therefore the additional costs are not expected to be substantial. Where workers residing overseas face language barriers in getting the medical practitioner to complete the Medical Certificate, WorkSafe provides the medical practitioner the option to complete the certificate in their own language, and WorkSafe's Agents will arrange for the translation of the document once received.<sup>29</sup>

Given that workers overseas have been on WorkCover for an average of 13 years, it is important for WorkSafe to have oversight over the worker's condition and their continued eligibility to receive compensation. The current certificate does not provide sufficient insight into employment capacity. For example, the absence of information about a treatment plan means that WorkSafe does not have sufficient evidence that a worker is undergoing treatments to improve their capacity for work.

Requiring workers residing overseas to provide this level of detail increases equity and consistency of requirements between injured workers residing locally and those residing overseas. It allows for greater WorkSafe oversight over this cohort and better overall claims management. Having a return-to-work plan can also help injured workers return to the labour force. Available evidence indicates that workers are three times more likely to return to work if their medical practitioner gives them a return-to-work date.<sup>30</sup>

#### **6.4.3 Other provisions in the Regulations**

The remaining provisions in the Regulations are expected to be remade with non-material language changes and other minor amendments to improve clarity, including renumbering. Table 3.1 outlines the consequences of not remaking these individual regulations and therefore it is proposed to remake these without significant amendments. The Regulations as a whole are important for the effective functioning of the WIRC Act.

The costs associated with complying with the Regulations are minimal and negligible. On balance, the Regulations reduce regulatory burden as they provide additional information about and clarification of various provisions in the WIRC Act, as well as set out protections such as prescribing conduct of inquiries and the requirement for WorkSafe to pay interest to employers on delayed reimbursement.

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<sup>29</sup> Ibid

<sup>30</sup> Monash University COMPARE project team, *'Return to work plans for injured Australian workers: Overview and association with return to work'*.



# 7 Small business and competition impacts

This section assesses the small business and competition impacts of the preferred option.

Small businesses may experience disproportionate effects from regulation for a range of reasons. The possible reasons for this may be that the regulatory requirements apply mostly to small businesses, or because small businesses have limited resources to understand and comply with regulatory requirements compared to larger businesses. Small businesses may lack the economies of scale that allow fixed regulatory costs to be spread across a large customer base.

The Victorian *Guide to Regulation* also requires a RIS to assess the impact of regulations on competition. Regulations can affect competition by preventing or limiting the ability of businesses and individuals to enter and compete within particular markets. In undertaking this assessment, we have considered questions such as:

- Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms?
- Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure?
- Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (e.g. small firms, part-time participants in occupations etc.)?
- Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products?
- Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet?
- Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure?

An analysis of small business and competition impacts is provided in Table 7.1 below. In summary, the proposed regulatory amendments should not have a large impact on competition. In addition, the majority of proposed amendments are not expected to have a material impact on small businesses.

Table 7.1: Small business and competition impacts

Proposed regulatory amendments	Impact on small business	Impact on competition
<b>Regulation 11: Amounts not deemed remuneration for contractors</b>	Most contractors are likely to be small businesses and sole traders. The introduction of the prescribed percentages for floor tilers, wall tilers and blind fitters is expected to reduce the regulatory burden for determining premiums and compensation entitlements by standardising the percentage of a contract that is deemed to not be remuneration when the contractor supplies their own materials and equipment. There is insufficient data to analyse potential variation in premiums for individual small businesses due to the introduction of these prescribed percentages. Premiums may vary marginally depending on the relative proportion of a business's contracts that relate to labour costs.	There are no material impacts on competition as all principals and tiler and blind fitter contractors will be subject to the Regulation. The reduction in administrative costs might also act as a lower barrier for entry for new businesses and sole traders.
<b>Regulation 12: Payments to worker resident overseas</b>	Regulation 12 does not impose any costs on businesses. As such, there will be no material impacts on small businesses relative to large businesses.	There are no material impacts on competition as a result of Regulation 12.
<b>Regulation 14: Self-insurer contributions formula</b>	To be a self-insurer, there are a range of eligibility conditions prescribed in the WIRC Act that, by practice, have resulted in self-insurers in Victoria being large businesses. Besides, the structure of the current self-insurer contributions formula weights the amount of contribution from a single employer based on their relative remuneration and not specific services used by that employer. None of the proposed amendments to the contribution formula would change this. As such, there will be no material impacts on small businesses.	As there is not a market for self-insurance, the proposed changes would not impact competition within a defined market itself. However, the proposed changes could impact the financial viability of the self-insurance offering and impact the decisions businesses make.  Removing the discount could lead to some self-insurers exiting self-insurance thereby impacting competition within the self-insurance space. It could also discourage new entrants to self-insurance.

# 8 Implementation and evaluation

## 8.1 Implementation

The proposed Regulations remake the existing Workplace Injury Rehabilitation and Compensation Regulations 2014, with amendments as considered in this RIS. Based on the analysis in this RIS, WorkSafe is recommending remaking the Regulations with a series of minor, independent improvements to the current regulatory scheme. WorkSafe will primarily be responsible for implementation of the proposed changes and will continue to have ongoing engagement with impacted stakeholder groups across Victoria through existing processes, such as Ministerial correspondence, contacts to WorkSafe and compliance activities.

The proposed Regulations and this RIS are subject to a 28-day public consultation period, which will provide an opportunity for employers, employees, other interested parties and members of the public to comment on the proposed reforms. Following the public consultation period, WorkSafe will consider all submissions made on the proposed Regulations and will make changes as required. Following the drafting of any required updates, WorkSafe will submit its final recommendations to the Minister for WorkSafe and the TAC for endorsement. Upon endorsement, the Governor in Council will publish a notice of decision in the Government Gazette and online on [www.publicnotices.vic.gov.au](http://www.publicnotices.vic.gov.au). These notices will outline the changes from the exposure draft of the proposed Regulations. It is anticipated the proposed Regulations will be made before the current Regulations expire on 27 May 2024.

WorkSafe will communicate the outcomes of public consultation to stakeholders and those who made a submission upon the making of the proposed Regulations.

### 8.1.1 Amounts not remuneration – contractors

Information around the regulatory amendments to the prescribed contractor classes and the percentages will be shared with all relevant stakeholders, including employer and employee representative organisations, WorkSafe Agents, and WorkSafe internal claims teams. WorkSafe will determine key organisational impacts for WorkSafe and undertake necessary internal change management activities (i.e. operating model or process changes, communications, training etc.)

### 8.1.2 Payments to workers resident overseas

WorkSafe will ensure that appropriate records and publications are made to give effect to the proposed amendments in the medical certificate and the statement of identity for workers residing overseas. This would be done by ensuring that the new form is published, made available and communicated to those injured workers likely to be impacted by the change, along with Agents and the general public via the WorkSafe website. WorkSafe will also thoroughly review all communications, guidance and manuals to ensure that the content is updated to reflect the changes.

### 8.1.3 The proposed new self-insurer contributions formula will come into effect on 1 January 2025

From 27 May 2024 to 31 December 2024, it is proposed that the current self-insurer contributions formula, with the 40% discount on common costs, will stay in place. The quarterly contribution payments under this formula would be due on 1 August 2024 and 1 November 2024, in line with the dates prescribed as per Section 388(3) of the WIRC Act.

The proposed new self-insurer contributions formula, without the existing 40 per cent discount on common costs, is slated to come into effect on 1 January 2025. Contributions under this formula will be determined at the start of the calendar year. The new methodology is proposed to be introduced with a view to improving the operation and administration of the formula, to address feedback from self-insurers around volatility, instability, and uncertainty in quarterly contribution payments, and to reduce administrative burden on WorkSafe.

The first quarterly contribution payment under the new formula would be due on 1 February 2025, in line with the dates prescribed as per Section 388(3) of the WIRC Act.

Noting that the new contributions formula is proposed to come into effect on 1 January 2025, WorkSafe will engage with self-insurers ahead of this date to ensure they understand the new formula and have all the information they need prior to the changes coming into effect.

WorkSafe will determine key organisational impacts for WorkSafe and undertake necessary internal change management activities (i.e. operating model or process changes, communications, training etc.)

#### **8.1.4 Enforcement**

WorkSafe will be responsible for ensuring compliance with the new regulations, primarily through its existing monitoring and enforcement activity undertaken as part of its day-to-day operations. Beyond the relative increase in contributions required of self-insurers, the changes to the regulations are generally expected to impose minimal regulatory burden and reduce the administrative burden on government. Through the existing processes and tools that govern administration of the regulatory framework, WorkSafe is well positioned to enforce the regulations.

### **8.2 Evaluation**

#### **8.2.1 Evaluation approach**

WorkSafe will monitor the proposed Regulations and their ongoing effectiveness. This will include thorough on-going engagement with impacted stakeholders and other risk-based compliance and enforcement activities.

WorkSafe also maintains an issue log to track issues raised in relation to the effectiveness of the Regulations. This issues log is informed by stakeholder and public feedback, received through existing processes, such as Ministerial correspondence or anecdotal feedback.

Under the *Subordinate Legislation Act*, all regulations expire after ten years. WorkSafe will review the operation of the proposed Regulations before their expiry. The review will evaluate the effectiveness of the proposed Regulations and inform whether the proposed Regulations should be remade in part or in full. This review would commence approximately 18 to 24 months before the expiry of the proposed Regulations in 2034.

For high impact regulations a mid-term evaluation may be required after five years to assess the impact of the regulations. As WorkSafe does not believe that these regulations pose a significant regulatory burden on the community, a mid-term evaluation is not anticipated.

# Appendix A. Summary of stakeholder consultations

Deloitte consulted with a number of self-insurers and representatives for contractors to give them the opportunity to provide feedback on the proposed amendments to the Regulations being considered in this RIS. This involved conducting semi-structured interviews to gain an in-depth understanding of the potential burdens placed on relevant stakeholders by the proposed amendments and to identify any areas of potential concern. WorkSafe also shared with Deloitte feedback collected from stakeholders through their own consultation process.

The following stakeholders were consulted by Deloitte:

## Self-insurers

- Brambles Industries Ltd
- Healius Ltd
- Inghams Group Ltd
- Myer Holdings Ltd
- Qantas Airways Ltd
- Self-Insurers Association of Victoria
- Wesfarmers Ltd

## Contractors' remuneration

- Ai Group
- Victorian Chamber of Commerce and Industry
- Victorian Trades Hall Council

## Common themes and findings for the self-insurers' contribution formula

### Appropriateness of current regulatory environment

Self-insurers largely understood that it was appropriate for them to make financial contributions towards the services they used and benefited from, such as the medical panels. Self-insurers largely agreed that the regulatory settings for self-insurance were appropriate and that they felt well-supported by WorkSafe's health and safety teams.

There was mixed feedback from self-insurers about the level of oversight from WorkSafe. One stakeholder noted that WorkSafe took a disproportionate interest in the workplace health and safety systems in place at self-insured employers compared to scheme-insured employers, particularly given that self-insurers have a financial incentive to have effective health and safety systems in place. Another stakeholder also noted that they faced greater oversight and audits in Victoria compared to other jurisdictions. Conversely, another self-insurer reported that WorkSafe was relatively less intrusive compared to regulators in other jurisdictions.

### Costs recovered through the formula

A common point of feedback raised by self-insurers was the transparency over WorkSafe costs included in calculating contributions. According to some self-insurers, while the categories of costs were clear, the actual cost inputs within these categories were unclear and there were concerns about the increasing costs of operations of WorkSafe. Stakeholders also queried the appropriateness of recovering certain costs through the formula such as the cost of maintaining databases, and there was general feedback to indicate that self-insurers were concerned that they were subsidising WorkCover through their contributions, particularly as scheme-insured employers' premiums were held constant while self-insurer contributions have been increasing.<sup>31</sup>

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<sup>31</sup> The average rate of premiums has increased from 1 July 2023 for scheme-insured employers.

An indicator of complexity of the cost base is that self-insurers have stated that there are occasionally errors in the invoices received by them, which are then retrospectively rectified by WorkSafe.

#### **Administrative burden imposed by the formula**

Self-insurers consulted also reported that there are often significant fluctuations in WorkSafe's operating costs and corresponding invoices issued to self-insurers from one quarter to the next. Self-insurers consulted stated fluctuations in the contributions charged quarter to quarter made it difficult to accurately forecast and budget for the contributions.

#### **Impact of reducing or removing the discount**

Some self-insurers noted that they already pay higher contributions in Victoria relative to other comparable states where they are also self-insured. Therefore, removing the discount would further increase their costs, prompting some self-insurers to consider re-evaluating whether remaining self-insured in Victoria was financially viable for them. A big self-insurer exiting the scheme could raise contributions for the remaining self-insurers as the costs would now spread over a smaller pool of self-insurers.

#### **Opportunities for improvement**

Given the relatively higher contributions incurred in Victoria, one self-insurer recommended that WorkSafe undertake an exercise to compare their operations against comparable jurisdictions such as New South Wales and Queensland to determine the source of the relatively higher costs.

#### **Contractors' remuneration**

Stakeholders consulted for the amounts deemed to be remuneration for contractors reported that they did not have disagreements with the percentages prescribed in the Regulations. Employer groups consulted also stated that they have not received any complaints or queries from their members about the percentages. However, one stakeholder commented that having an arbitrary percentage prescribed in the Regulations may lead to situations where a contractor may lose out on workers' compensation if they have a greater percentage prescribed than their actual cost of materials. Another point raised by stakeholders was the lack of clarity about the rationale for setting the percentages at the level they were set at.

# Appendix B: Cost analysis of changes to the self-insurer contributions formula

The below data was provided by WorkSafe to illustrate the potential cost impacts to self-insurers under modifications to the self-insurer contributions formula.

Table B1: Indicative cost estimates as inputs for the contributions formula (hypothetical scenario)

Category	Description	Amount
Total remuneration of all Victorian employers	Cost input for 'C' in the formula	\$238,857,403,814
Adjusted Self-Insurer Remuneration	Cost input for 'B' in the formula	\$2,270,000,000
Formula calculation D	Cost input for 'D' in the formula	\$25,651,000
Formula calculation A	Cost input for 'A' in the formula	\$2,270,000

Source: WorkSafe data

Table B2: Estimated contributions based on provided cost inputs and changes to the discount in the formula

Self-Insurer Example Remuneration	Option 1 (Partial Cost Recovery) - Status Quo with 40% discount on common costs			Option 2 (Partial Cost Recovery) - Formula with 20% discount on common costs			Option 3 (Full Cost Recovery) - Formula with 0% discount on common costs		
	Share of common costs (D-A) with 40% discount	Share of direct costs (A) with 0% discount	Total	Share of common costs (D-A) with 20% discount	Share of direct costs (A) with 0% discount	Total	Share of common costs (D-A) with 0% discount	Share of direct costs (A) with 0% discount	Total
70,000,000	4,111	665	4,776	5,482	665	6,147	6,852	665	7,517
150,000,000	8,810	1,426	10,235	11,746	1,426	13,172	14,683	1,426	16,109
250,000,000	14,683	2,376	17,059	19,577	2,376	21,953	24,472	2,376	26,848
400,000,000	23,493	3,801	27,294	31,324	3,801	35,125	39,155	3,801	42,956
1,400,000,000	82,225	13,305	95,530	109,633	13,305	122,938	137,042	13,305	150,347
<b>Total Pool 2,270,000,000</b>	<b>133,322</b>	<b>21,573</b>	<b>154,895</b>	<b>177,763</b>	<b>21,573</b>	<b>199,336</b>	<b>222,203</b>	<b>21,573</b>	<b>243,776</b>

Source: WorkSafe data

# Limitation of our work

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