

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
<b>Chapter 1: Improving Clarity and Understanding of the Act</b>		
1. Recast Victoria's accident compensation legislation into a comprehensive Act, arranged logically and expressed in plain language.	Support	<p><b>Consistent with Hanks' recommendations, the Government supports recasting the accident compensation legislation in stages.</b></p> <p><b>The Government's priority will be to legislate to implement all significant policy and benefit changes arising from Hanks' review.</b></p>
<b>Chapter 2: Workers' Entitlements to Compensation</b>		
2. Streamline and consolidate the provisions in the AC Act that determine when persons are regarded as workers and employers, in order to make the provisions easier to understand.	Support	<p><b>The Government supports simplification of the deeming provisions and given the current complexity of the legislation, will allow for training.</b></p>
3. Simplify the deeming provisions in the AC Act relating to contractors to improve clarity and promote compliance.		
4. Clarify the operation of the provisions in the AC Act relating to outworkers, together with the deeming provisions, by deeming all "outworkers" to be workers.		
5. Extend scheme coverage under the AC Act to municipal councillors.	Support	
6. Reduce weekly benefits paid to workers injured as a result of driving a motor vehicle where they are found to have a blood alcohol concentration above 0.05 and below 0.24, by aligning the AC Act with the relevant provisions in the TA Act.	Support	<p><b>The Government supports this recommendation as it aligns the workers' compensation scheme with the transport accident scheme and is in line with community expectations.</b></p>
7. Amend section 82(2A) of the AC Act to clarify the exclusion from compensation of psychiatric injuries that arise from an employer's reasonable management actions.	Modify	<p><b>Although the employer actions identified in the provision should be amended to include contemporary management practices, the Government supports leaving the fundamentals of the provision unchanged.</b></p>

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8. Introduce mediation or workplace counselling at the request of any party before the determination of liability for stress-related and psychiatric claims.	Not support	
<b>Chapter 3: Ensuring Timely Access to Benefits and Support</b>		
9. Introduce a more flexible approach to injury notification and making a claim, whether by the worker, the employer, a person on the worker's behalf or a doctor, including allowing notification and lodgement to the employer, or directly to the VWA or its agents.	Support	<p><b>The Government supports introduction of a more flexible approach to claims lodgement in order to reduce delays in claims lodgement and promote faster delivery of benefits.</b></p> <p><b>The initiatives will include systems to enable electronic and telephone notification of an injury by the worker, the employer or a third party to the employer or directly to the VWA or its agents. This will assist injured workers to serve claims on their employer in a timely manner without altering the current claims lodgement process.</b></p>
10. Introduce systems to enable electronic and telephone notification of injury and lodgement of a claim.		
11. Ensure that claim forms are regarded as valid unless the VWA or employer is unable to identify adequate information to enable a decision about payment or liability. In addition remove the distinction between a claim for weekly benefits and a claim for medical and like expenses	Support	
12. Implement a system of provisional liability in Victoria, in conjunction with a streamlined injury notification process.	Not support	<p><b>The Government does not support the proposal to introduce a system of provisional liability as it believes it would put the ongoing viability of the scheme at risk.</b></p> <p><b>The Government supports Hanks' recommendations to modernise injury notification as it will reduce delays in claims lodgement and promote faster delivery of benefits, thereby delivering many of the benefits that Hanks anticipated would be achieved through provisional payments.</b></p>
13. Allow VWA and self-insurers access to necessary medical information relating to a claimed injury, without requiring the consent of the worker while respecting a worker's right to privacy.	Not support	<p><b>The Government does not support this recommendation as it considers that WorkSafe's existing claim form, which requires a worker to sign an authority to release medical information, to be appropriate.</b></p>

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14. Amend the “additional liability” provision (section 108(4) of the AC Act) for late lodgement of claims by employers to calculate the penalty by reference to the period between the date the claim was forwarded to the employer and the date the claim was received by the VWA or the agent.	Support	
15. Remove the current offence of “refusal to receive a claim for compensation” in section 242(3)(a) of the AC Act. Include an express requirement for service of the claim on an employer (either personally, or by post or electronically).	Support	

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<p>16. Provide greater protection for workers who experience discrimination for making or pursuing compensation claims by amending section 242(3) of the AC Act to ensure that:</p> <ul style="list-style-type: none"> <li>• a wider range of detrimental conduct, falling short of dismissal (such as demotion, transfer or reduction in hours) is punishable consistent with OHS, Equal Opportunity and Long Service Leave Acts;</li> <li>• prospective employees are protected in addition to current employees and other deemed workers;</li> <li>• an offence is committed by an employer where the proscribed reason was the dominant reason for the discriminatory conduct, aligning the test for liability with the test under the OHS Act;</li> <li>• where the prosecution has proved all the facts constituting an offence under section 242(3), other than the reason for the alleged discriminatory conduct, the onus of proof should shift to the defendant to prove that the dominant reason for the conduct was not a proscribed reason, further aligning the test for liability with the test under the OHS Act;</li> <li>• the maximum financial penalty for an offence under section 242(3) is equivalent to the financial penalty for the comparable offence under the OHS Act, but should not be punishable by imprisonment; and</li> <li>• orders for reinstatement and compensation and, in the case of prospective employees, orders requiring employment should be available to the Court when sentencing for a discrimination offence.</li> </ul>	<p>Support</p>	<p><b>Consistent with Government policy and recent amendments to the OHS Act, the AC Act will be amended to ensure that greater protection against discrimination is provided for workers. Penalties will be set in accordance with relevant Government policy and aligned with other comparable legislation, such as the Outworkers Act.</b></p>
<p>17. Include a provision in the AC Act, along the lines of section 131 of the OHS Act, allowing a worker to request that the VWA bring a prosecution for an alleged offence in relation to dismissal or discrimination for pursuing a compensation claim.</p>	<p>Support</p>	

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18. Amend the EO Act to ensure workers who suffer discrimination arising from making or pursuing a workers' compensation claim can make complaints to the Equal Opportunity and Human Rights Commission as the first step in seeking redress.	Support in principle	<p><b>The Government will legislate to ensure that workers who suffer discrimination arising from making or pursuing a workers' compensation claim have a private right of action and can seek redress through application to the Industrial Division of the Magistrates Court for an order for damages or reinstatement.</b></p> <p><b>This is consistent with the Government's proposed changes to the anti-discrimination provisions under the OHS Act 2004.</b></p>
<b>Chapter 4: Supporting Workers to Get Back to Work After Injury</b>		
19. The AC Act should include a set of principles that apply to return to work. The principles would help guide employers, injured workers and other stakeholders in interpreting the legislative requirements, and foster the type of relationship between the various parties that is essential to a successful return to work process.	Support	<b>The Government will amend the legislation to include return to work principles consistent with the intent of Hanks' recommendation.</b>
20. Reframe return to work obligations as performance-based duties, allowing duty holders more flexibility to suit the circumstances of the parties involved in the return to work process and in ensuring compliance with obligations.	Support	<b>The Government supports reframing the return to work obligations as performance-based duties and will develop appropriate subordinate instruments, compliance information and guidance in consultation with stakeholders.</b>

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<p>21. The VWA should, in consultation with stakeholders, develop subordinate instruments that set out how to comply with the requirements imposed by the principal legislation, and deal with issues such as:</p> <ul style="list-style-type: none"> <li>• how employers should plan for a worker’s return to work, including the development of more formal plans for workers who remain incapacitated for longer periods;</li> <li>• how and when employers should consult with injured workers and treating practitioners;</li> <li>• what policies and procedures should be maintained by employers to manage return to work and occupational rehabilitation in their workplaces;</li> <li>• how those policies and procedures should be made available to workers;</li> <li>• how employers should maintain a safe and healthy working environment for workers returning to work following injury;</li> <li>• how each of the participants in the return to work process (employers, workers, health and safety representatives (HSRs), treating practitioners and the VWA) should work together to promote return to work outcomes;</li> <li>• how host employers should cooperate with labour hire agencies on return to work; and</li> <li>• what constitutes reasonable efforts to return to work by a worker.</li> </ul>	<p>Support</p>	

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<p>22. Require employers to notify an injured worker before the employer's obligation to provide employment comes to an end. The notice period should be prescribed in an appropriate subordinate instrument.</p>	<p>Support in principle</p>	<p><b>The Government supports workers being provided with information about their rights and employers' obligations to provide pre-injury or suitable employment well in advance of the expiry of the 52-week period.</b></p> <p><b>This will ensure that workers have time to consider their options, negotiate with their employers or take steps to find alternative work.</b></p> <p><b>The Government will legislate to ensure that information is provided to workers in a timely manner by WorkSafe.</b></p> <p><b>The Government is concerned to avoid any unintended impact on the employer-worker relationship by requiring employers to give notice to workers as Hanks recommended.</b></p>
<p>23. The AC Act should specify the competencies required of each person appointed to manage return to work, without demanding training as the only way of achieving competence.</p>	<p>Support</p>	
<p>24. Return to work co-ordinators should be protected against personal liability by including in the AC Act a provision equivalent to section 58(3) of the OHS Act.</p>	<p>Support</p>	
<p>25. To avoid duplication of regulation, the requirement to establish a risk management program should be removed from the AC Act, given that the duties set out in OHS legislation clearly encompass that requirement.</p>	<p>Support</p>	
<p>26. An appropriately proportionate regime of sanctions should be constructed to underpin the recommendation that a new compliance framework be adopted to support injured workers returning to work.</p>	<p>Support</p>	

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27. The sanction for workers who fail to make reasonable efforts to participate in the return to work process should initially involve suspension of weekly benefits, with termination to follow if the failure is not remedied within 28 days.	Support	
28. The powers of the return to work inspectorate should be expanded and the inspectorate should be provided with appropriate tools to monitor and encourage compliance with the AC Act. In particular, inspectors should be authorised to direct employers to remedy contraventions “on the spot”, rather than having to rely on voluntary compliance or the threat of prosecution.	Support	
29. The return to work inspectorate should be substantially expanded to a level where the inspectorate can conduct a credible workplace intervention program.	Support	<b>The Government recognises the merits of increased resources to monitor and enforce performance-based return to work obligations and consequently supports WorkSafe's commitment to increase the number of return to work inspectors.</b>
30. Consideration should be given to whether the two inspectorates (OHS and return to work) should continue to operate as separate entities.	Support	<b>The Government supports consideration of whether the OHS and return to work inspectorates should continue to operate as separate entities and will review the merits of a joint inspectorate (see response to recommendation 29).</b>
31. The processes for review of decisions made by the OHS and return to work inspectorates should be the same, to ensure consistency and improve transparency and accountability. The AC Act should identify which decisions are reviewable and which parties are entitled to request a review of each decision.	Support	
32. The VWA should retain the exclusive right to prosecute parties for breaches of the AC Act. However, the AC Act should be amended to allow any person to seek a review of the VWA's decision not to prosecute an offence, consistent with section 131 of the OHS Act.	Support	

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33. The AC Act and the OHS Act should be amended to extend the role of Health and Safety Representatives, so that they can also represent workers in the return to work process. HSRs should be permitted to act as a worker's representative only where the worker consents to that representation.	Not support	<p><b>The Government supports Hanks' recommendation that injured workers be entitled and encouraged to seek support, assistance and representation in the return to work process.</b></p> <p><b>This entitlement will be enshrined in the legislation as a "return to work principle" (see Recommendation 19) ensuring that an injured worker's representative (including HSRs) may provide support, assistance and representation on request.</b></p>
34. A similar framework to the OHS Act should be adopted for resolving issues arising in the workplace relating to return to work. The framework should allow for issues to be resolved using an agreed workplace procedure or, if no such procedure has been agreed, a prescribed procedure set out in the AC regulations.	Support	<p><b>The Government will legislate to ensure that all workplaces have procedures in place to resolve issues about return to work. However, the Government will ensure that workplaces have the flexibility to develop these procedures in consultation with their workers.</b></p> <p><b>If agreed procedures are not in place, default procedures will apply under appropriate subordinate legislation.</b></p>
35. The time within which a worker must choose an occupational rehabilitation provider from a list provided by the employer or agent should be reduced from 14 to seven days.	Not support	<p><b>The Government considers the current timeframe of 14 days strikes an appropriate balance between providing workers with sufficient time to select an occupational rehabilitation provider, with ensuring timely commencement of services.</b></p>
36. Additional guidance material should be developed so as to assist and support healthcare professionals in their treatment of injured workers.	Support	<p><b>WorkSafe will develop appropriate guidance material to enhance its recently developed Clinical Framework for the Delivery of Health Services and further support healthcare providers' ability to participate constructively in returning injured workers to work.</b></p>

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37. The VWA should pay treating practitioners for their time in facilitating return to work, including by telephone consultations between a healthcare professional and the agent or employer.	Support in principle	<p><b>Healthcare providers play an important role in supporting workers' early and sustainable return to work</b></p> <p><b>WorkSafe is already moving towards an evidence-based approach to funding arrangements with a view to establishing appropriate incentives for healthcare providers directly involved in return to work.</b></p> <p><b>The payment of treating practitioners for their time in facilitating return to work will be considered as part of these planned initiatives.</b></p>
38. Repeal section 113 of the AC Act which allows employers to direct workers to a health professional selected by the employer to provide a certificate where capacity for work is in dispute.	Support	<p><b>It is proposed that this provision be repealed to coincide with the introduction of the reframed return to work provisions.</b></p>
39. The VWA should promote the advantages of the JSA and WISE programs to employers and workers and proactively identify eligible workers to promote access to these programs.	Support	<p><b>The Government supports moves to improve return to work outcomes.</b></p> <p><b>The JSA and WISE programs assist injured workers who cannot return to work with their current employer, to find work with a new employer and provides employers with incentives.</b></p>
<b>Chapter 5: Better Income Replacement</b>		
40. The Government should commission a further review of the method of calculating pre-injury average weekly earnings (PIAWE) with a view to incorporating changes and trends in remuneration arrangements.	Support	<p><b>The Government has conducted an expert review of the method of calculation of PIAWE. The outcomes of this review are adopted, as appropriate, within this response.</b></p>
41. Increase weekly benefits from 75% of PIAWE to 80%, after the first 13 weeks.	Support	

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42. Require the VWA to pay superannuation contributions for injured workers receiving weekly benefits after 52 weeks, for as long as the worker is eligible to receive weekly benefits with the contributions being made directly to the worker's chosen fund rather than reimbursing the employer for making superannuation payments. Payments should be based on the superannuation guarantee percentage (currently 9%) of the worker's weekly benefit.	Support	
43. Clarify that annual leave and long service leave can be taken in addition to weekly benefits.	Support	
44. Remove the "notional earnings" provisions of the AC Act which give agents a broad discretion to reduce or cease weekly benefits.	Support	

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<p>45. Consistent with the approach taken in NSW and Queensland, agents should be able to adopt a “staged” approach to motivating a worker to comply with the worker’s return to work obligations:</p> <ul style="list-style-type: none"> <li>• A worker should be given notice of the intention to cease or reduce payments unless the worker complies within a specified period with her or his return to work and rehabilitation obligations.</li> <li>• If the worker continues to fail to comply with her or his obligations, payments should be able to be suspended or reduced for a further period (of up to 28 days), during which time payments will be reinstated if the worker complies with her or his obligations.</li> <li>• If the worker continues to fail to comply with her or his obligations following the suspension period, the agent or self-insurer should be able to cease payments with a discretion to reinstate payments where the worker subsequently complies.</li> <li>• Under the proposal, payments during the suspended period will be forfeited and will count towards the calculation of entitlement periods.</li> <li>• Workers should have the right to seek a review of any suspension or termination decision or any refusal to reinstate payments.</li> <li>• Repeal the provisions making it a criminal offence for a worker to fail to attend an interview to discuss employment opportunities or to fail to notify the VWA or a self-insurer that they have returned to work whilst in receipt of benefits.</li> </ul>	Support	
<p>46. Subject to appropriate limits, provide weekly benefits to workers who have returned to work, but who must take time off work for surgical treatment for a work-related injury, after the expiry of the 130 week entitlement period.</p>	Support	
<p>47. Allow for payment of weekly benefits between the date of settlement of a common law claim and receipt of the settlement payment by the worker.</p>	Support	

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48. In relation to the payment of weekly benefits after 130 weeks for workers who have a partial capacity to work, and who have returned to work (section 93CD), amend the AC Act to: clarify benefits can be accessed (when RTW); where employment is withdrawn, worker given 13 weeks notice; clarify fluctuations in capacity or availability of work does not affect entitlement; and reduce the time within which the VWA must decide whether to accept or reject a claim from 90 to 28 days.	Support	
49. Section 96 (which provides that a worker is not entitled to receive weekly benefits in conjunction with certain other income benefits) should be amended to ensure that: workers may access additional insured benefits for loss of earnings or disability up to 100% of their pre-injury actual earnings; if workers access additional insured benefits for loss of earnings or disability beyond 100% of their pre-injury actual earnings, the VWA may offset the excess against the workers' weekly benefits; the scope of section 96 should be broadened to include all disability pensions, including pensions paid out of income protection insurance, irrespective of whether they are related to the injury employment; offsets are not to apply where a worker accesses superannuation savings in the form of a pension or a lump sum payment; and offsets are not to apply where a worker receives a redundancy, severance or termination package.	Support	
<p><b>Note:</b> The Government has also identified opportunities to enhance weekly payment arrangements beyond what is contained within the Hanks recommendations. The key features of these enhancements will be to:</p> <p>(a) Double the length of time that overtime and shift allowance may be included in the calculation of PIAWE, from 26 to 52 weeks; and</p> <p>(b) Increase the maximum weekly payment that is available to injured workers to double Victorian AWE, an increase of nearly 45% (from \$1,250 to \$1,153.80);</p>		

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<b>Chapter 6: Treatment Expenses</b>		
50. The timeframe for determining liability on claims for medical and like services should be fixed in line with the time for determining weekly benefits claims (28 days).	Support	
51. Prescribe that 28 days notice be provided to a worker when terminating a medical and like services claim.	Support	
52. Provide consistent information (in the form of guidelines) on the determination of reasonable costs and make the information easily available to all parties.	Support	
53. Introduce a discretionary power permitting the VWA to require prior approval for some medical and like services.	Support	
54. An independent review of medical and non-medical fees payable by the VWA should be conducted as soon as possible. The review should include consideration of the provision of appropriate financial incentives for service providers to treat injured workers and support return to work.	Not support	<p><b>The Government does not consider that a comprehensive review of fee schedules is warranted at this time. The Government notes that WorkSafe reviews the fees as part of normal business practice.</b></p> <p><b>Financial incentives to support treating practitioners in facilitating return to work will be considered as part of the planned initiatives outlined in response to recommendation 37.</b></p>
55. The provisions in the AC Act relating to co-ordinated care plans (section 99AAA) are redundant and should be repealed.	Support	
56. In line with the TA Act, the AC Act should be amended to authorise the Governor in Council to fix limits on the contributions payable by the worker for the cost of supported accommodation.	Support	

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57. The provisions in the AC Act for referring health care providers to their professional bodies where there are concerns about their behaviour should be maintained. However, the sanctions available to the VWA should be strengthened. In particular, the VWA should have the power to suspend future payments to service providers who are found to have engaged in unprofessional conduct.	Support	
<b>Chapter 7: Lump Sum Benefits for Significantly Injured Workers</b>		
58. Increase the maximum benefit awarded for a permanent injury under the impairment benefit regime to the equivalent of the maximum common law damages payable for pain and suffering, - that is from \$396,690 to \$484,830, to be indexed annually.	Support	
59. Workers assessed at 81% WPI or greater should be awarded an impairment benefit equal to the maximum amount of common law damages paid for pain and suffering – that is \$484,830. The amount paid to workers assessed between 71% WPI and 80% WPI should be increased proportionately.	Support	
60. The 2003 amendments relating to WPI of the spine, upper extremity, lower extremity and the pelvis should remain as a permanent adjustment to the method of assessing musculoskeletal injuries for the purpose of calculating impairment benefits.	Support	<b>The Government has already implemented this recommendation via the <i>Compensation and Superannuation Legislation Amendment Bill 2008</i>.</b>
61. Increase by 10%, the impairment benefit awarded to an injured worker with a spinal injury.	Support	
62. Increase the impairment benefit awarded for a 30% psychiatric impairment to the level of impairment benefit awarded for a 30% physical impairment. Similar adjustments should be made to the payments for psychiatric impairments assessed between 31% and 70% WPI.	Support	

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63. The VWA should initiate a review of the method of assessing permanent impairment, with all relevant stakeholders across the Victorian compensation schemes participating in the review.	Not support	<b>The Government does not support another formal review at this time. The Government notes that WorkSafe assesses new impairment guides as they become available as part of normal business practice.</b>
64. Impairment benefits should be calculated at the date of the determination of a claim rather at the date of injury, bringing the calculation into line with the current practice of the TAC.	Not Support	<b>The Government does not support the recommendation to change the method of calculating impairment benefits as it runs contrary to the promotion of early benefit delivery.</b>  <b>In addition, the proposal would impose a significant financial burden on the scheme at this time.</b>
65. Introduce consistent terminology for hearing loss claims and injuries, simplify and rationalise the provisions relating to hearing loss injuries.	Support	
66. Define the date of injury for gradual process injuries as: <ul style="list-style-type: none"> <li>• the last day of the worker’s employment out of which, or in the course of which, the injury arose, or</li> <li>• the date of the claim (if the worker is still employed in that employment at the date of the claim)</li> </ul>	Support	
67. The VWA should use the provision in the AC Act that allows it to initiate impairment benefit claims on behalf of injured workers.	Not applicable	<b>The current legislation allows WorkSafe to initiate impairment benefit claims. The Government considers the management of impairment benefit claims is an operational matter for WorkSafe.</b>
68. The VWA should consider the feasibility of introducing a “one-stop shop” for the management of impairment benefits. The “one-stop shop” could be structured in a manner similar to the Medical Panels, so that there would be a central location where all impairment benefit claims could be processed and where all independent medical assessments could occur.	Support	<b>The Government supports consideration of the feasibility of replacing the independent impairment assessment process with a direct referral to a separately constituted entity, which would manage the impairment assessment process at a single location and in a coordinated manner.</b>

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69. Lower the common law deeming test to 20% whole person impairment (WPI) for physical injuries only.	Not support	<b>The Government does not support this recommendation. The Government considers that the 30% common law deeming test remains the appropriate threshold.</b>
70. Once the assessment of permanent impairment has been reviewed (see recommendation 63), with the percentages of impairment produced by that assessment reflecting more accurately the level of impairment suffered by injured workers, a further analysis of the relevant deeming threshold for all injuries should be undertaken. If that analysis shows that the new impairment assessment tool can fairly and accurately identify the seriously injured, it might be possible to abandon the narrative test and rely on a measure of impairment as the sole gateway to common law damages (after further consultation and consideration of the effectiveness of the new assessment tool). Even if the narrative test is not abandoned, a more accurate impairment assessment tool should enable the majority of seriously injured workers to access common law through the deeming test, rather than the narrative test, as was intended when the two tests were introduced.	Not support	<b>See response to recommendation 63.</b>
71. Amending section 134AB(28) of the AC Act so that all weekly payments received after the worker's statutory counter-offer during the section 134AB(12) process are disregarded when comparing the judgment, settlement or compromise with the worker's statutory counter-offer.	Support	This recommendation will come into effect immediately and will apply to all serious injury applications lodged with WorkSafe on or after today, however, it will not apply to any serious injury application that is withdrawn and re-lodged on or after today.
72. Allow a serious injury application to continue where a worker dies before the application is heard by providing that, where the claimant dies before the determination of significant injury from a cause unrelated to the injury to which the claim relates, the Court may make a determination of serious injury.	Support	
73. Where a worker lodges a serious injury application, the worker should be taken to have given authority for the VWA to request and obtain relevant medical information. The AC Act should include a framework that supports this. The current legal costs order will also need to be amended.	Support	<b>The Government will legislate to ensure that WorkSafe is able to access medical information relevant to a serious injury application.</b>

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74. Amend the AC Act to clarify section 134AB(21).	Support	
75. A review of legal costs in work-related injury litigation is recommended in order to determine the impact of the 20% scale cost reduction on injured workers and whether the abolition of the scale cost reduction supported by legal groups is justifiable.	Support in principle	<p><b>The Government supports maintaining the 20% reduction in scale costs as a measure that supports the ongoing viability of the common law.</b></p> <p><b>The Government supports in principle the review of legal cost practices recommended by Hanks. WorkSafe will explore the development of alternative cost models with the legal profession.</b></p>
<b>Chapter 9: Benefits to Dependants Following Work-Related Deaths</b>		
76. Increase the maximum lump sum death benefit payable from \$265,590 to the max impairment benefit of \$484,830.	Support	
77. Amend the AC Act to ensure that weekly pensions for dependents are indexed annually.	Support	
78. Ensure that a surviving partner, as defined in section 5(1) of the AC Act, who is residing with a worker at the time of the worker's death, is deemed to be dependent on the deceased worker.	Support	
79. At a minimum, the AC Act should provide for a lump sum payment of reasonable expenses incurred as a result of the worker's death, including the reasonable cost to a non-dependant of administering the will of a deceased worker. Also, the AC Act should be amended to provide for lump sum payments to family members, other than dependants, who suffer financial hardship as a result of a worker's death. The entitlement to payment should only arise where the deceased worker leaves no dependants. A Court should be given power to determine the "reasonable" amount of compensation that is payable and whether financial hardship has been established as a result of the work-related death.	Support	

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80. Continue eligibility for pensions for dependent children to age of 25 years, where they are engaged predominantly in learning, whether study or an apprenticeship, with such pensions to be subject to an appropriate income cap, and indexed annually.	Support	
81. Allow a child of a deceased worker who is born after the worker's death to be treated as a dependant of the worker, where paternity can be proved	Support	
82. Allow for the provisional payment of death benefits including weekly pensions to dependants; the reasonable costs of medical and like expenses incurred between the date of injury and the worker's death; the reasonable costs of family counselling services; and the cost of burial/cremation pending the determination of liability for a death benefits claim	Support	
83. Reduce the role of the Courts in the approval of lump sum entitlements, however, retain a role for the Magistrates' Court where vulnerable dependants are to be paid their maximum entitlement under the AC Act, specifically for the purpose of appointing an appropriate trustee; where vulnerable dependants are paid a compromise amount, to ensure that the settlement is fair and reasonable in all the circumstances; and where dependants are not legally represented, to ensure that the agreed settlement is fair and reasonable in all the circumstances.	Support	
<b>Chapter 10: Transparency in Decision-Making and Efficient Resolution of Disputes</b>		
84. Provide that internal review by the VWA of agents' decisions (or by a self-insurer of its decisions) be a mandatory step following lodgement of a dispute with the ACCS, with internal review to be completed within 14 days and be limited to the evidence available to the original decision-maker (including the entire claim file)	Not support	<p><b>The Government does not support Hanks' recommendation to introduce a system of internal review of statutory benefit decisions.</b></p> <p><b>The Government considers that there are less costly and more effective ways of improving the quality of decision-making by WorkSafe's agents. WorkSafe will implement audit and incentive measures to improve decision-making.</b></p>

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85. The internal review should be completed within 14 days and be limited to the evidence available to the original decision-maker (including the entire claim file). The review unit (or self-insurer) will not have the power to substitute a new decision. but, at the conclusion of the review, the review unit (or self-insurer) will report the outcome to the ACCS, with a brief statement of reasons.	Not support	<b>See response to Recommendation 84</b>
86. The review unit's conclusion and the statement of its reasons should be provided to the injured worker, the employer, the VWA and its agent. The self-insurer's conclusion and the statement of its reasons should be provided to the injured worker.	Not support	<b>See response to Recommendation 84</b>
87. Ministerial guidelines should be developed, which set out the procedures to be followed on internal review, and those guidelines will assist self-insurers to perform their equivalent review function.	Not support	<b>See response to Recommendation 84</b>
88. The AC Act internal review unit should be operationally separate from the VWA and report directly to the CEO.	Not support	<b>See response to Recommendation 84</b>
89. Require the ACCS to notify the parties of the outcome of internal review within seven days, together with information setting out the next steps for the injured worker.	Not support	<b>See response to Recommendation 84</b>
90. Require workers to request continuation of the conciliation process within 14 days of that notification (although an extension of time should be possible in exceptional circumstances).	Not support	<b>See response to Recommendation 84</b>
91. Require the conciliation officer to request within seven days that the parties produce specified information necessary for conciliation to proceed.	Not support	<b>See response to Recommendation 84</b>

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
92. Remove the prohibition on a party, who refuses or fails to produce any document or provide any information requested by the conciliation officer, from tendering the document or information as evidence in any proceedings that relate to the dispute before the ACCS section 56(9A) of the AC Act.	Support, with modification	<p><b>Given that the current prohibition is unenforceable, the Government supports Hanks' proposal to repeal it. However, the value of the provision was that it encouraged early disclosure of information and participation in the conciliation process in good faith.</b></p> <p><b>To ensure that this policy objective is supported, the Government will legislate to require parties to produce and exchange all information that exists, is reasonably available and relevant to the dispute during the conciliation process.</b></p>
93. Require an outcome certificate to be provided by ACCS within seven days of conclusion of the conciliation conference, with the certificate setting out any terms on which the dispute was resolved and certifying that the parties acknowledge their intention to be bound by the result. The AC Act should provide that the certificate be treated as conclusive.	Support	
94. Where matters remain unresolved, require the outcome certificate to set out any bases for agreement and identify the issues that remain in dispute and that require determination.	Not support	<p><b>In cases where a dispute is not resolved by agreement, the conciliation officer determines whether a “genuine dispute” exists. In the event of a “genuine dispute” the worker is permitted to bring legal proceedings to resolve the matter.</b></p> <p><b>The Government considers that this process would not be assisted by requiring or enabling conciliation officers to attempt to dissect the matters that were “agreed” or “not agreed” between the parties. The parties are not likely to be prepared, and should not be required, to be bound by the conciliator’s findings on areas of “agreement” where the matter has not resolved.</b></p>

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
95. Remove the powers of conciliation officers to make directions.	Modify	<p><b>Hanks' recommendation to remove the powers of conciliation officers to give directions was made in the context of his recommendation to introduce an internal review system. The Government does not support the introduction of internal review and therefore proposes to retain conciliators' direction powers.</b></p> <p><b>The capacity to give a direction is an important tool which can encourage the parties to resolve disputes. Although directions are rarely used, the fact that the power is available acts as an incentive for parties to negotiate.</b></p> <p><b>In recognition of the value of the directions power, the Government proposes to enhance conciliation officers powers to give directions, up to \$5,000 for medical and like disputes (up from the existing \$2,000).</b></p>
96. Clarify that parties may not be represented at conciliation by a person who – <ul style="list-style-type: none"> <li>• is a legal practitioner; or</li> <li>• holds a tertiary degree in law or legal studies; or</li> <li>• is otherwise eligible to be admitted to practice; unless the conciliation officer and each party to the dispute agree.</li> </ul>	Not support	<p><b>The Government considers that the current provisions relating to legal representation at conciliation conferences are appropriate and the change proposed by Hanks may unnecessarily restrict the support available for workers at conciliation conferences.</b></p>
97. Provide for reimbursement of reasonable costs incurred by workers for attending conciliation, limited to reasonable travel expenses and related time lost from work.	Support	
98. Require the VWA and self-insurers to pay the reasonable costs of medical reports obtained and used for the purposes of conciliation where the medical reports have been obtained both with the consent of the worker and at the request of the conciliation officer.	Support	

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
99. Revise the ACCS's governance structure, including the establishment of a Board to give general directions to the ACCS and monitor its performance.	Not Support	<b>The Government does not support the establishment of a Board and proposes instead to make specific legislative provisions for minimum data collection and performance monitoring requirements. This will achieve the same governance improvements as a Board, with less cost and administrative burden.</b>
100. Confer increased powers on the Senior Conciliation Officer to ensure that – <ul style="list-style-type: none"> <li>• conciliations are conducted expeditiously and consistently;</li> <li>• conciliation officers comply with appropriate protocols; and</li> <li>• transparency and accountability measures are introduced.</li> </ul>	Support	<b>Giving the Senior Conciliation Officer additional powers will support the SCO in ensuring a consistent approach is taken by conciliation officers, and ensuring compliance with agreed performance standards, without undermining the integrity of the conciliation process in particular cases.</b>
101. Clarify the power of a Medical Panel to return a medical question to the referring body where the referral is unclear or otherwise inadequate. That power should be in addition to the Panels' power to return questions that relate to non-medical matters.	Support	
102. Amend the definition of "medical question" to address anomalies identified by stakeholders so as to provide greater clarity and certainty about the matters which may properly be the subject of a referral to a Medical Panel.	Support	
103. Provide rights of assistance to persons with a disability (including minors) when attending a Medical Panel, similar to those contained in sections 26LZD(2) and (3) of the Wrongs Act 1958.	Support	
104. Provide the Courts with discretion to refuse to refer medical questions to Medical Panels where the proposed question involves non-medical matters, and where the referral would not be in the interests of the proper administration of justice.	Support	
105. Place a time limit on referral by the Courts of medical questions to Medical Panels, with a power to refer after that time limit where "exceptional circumstances" exist.	Support	

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
106. Require Medical Panels to provide written reasons together with their opinions on a medical question.	Support	
107. Ensure that the Ombudsman has effective oversight of the Medical Panels' Convenor's administrative functions.	Not support	<b>The Government does not support the proposal that the Convenor's existing immunity be altered. The Convenor's role is quasi-judicial, disposing of medical questions that would otherwise be determined by the Courts. The Government believes that diminishing the Convenor's protections could undermine the finality of Medical Panel opinions and make retaining quality practitioners as panel members and in the Convenor's role difficult.</b>
108. Repeal the current restriction in section 63(4) of the AC Act on the permitted number of Medical Panel members.	Support	
109. Remove the restrictions on the jurisdiction of the Magistrates' Court with respect to disputes over statutory benefits.	Support	
110. Establish an exception to the mandatory requirement for conciliation before proceedings are issued. Subject to the views of the Court, and an appropriate court order, parties to the dispute should be permitted to amend their pleadings to ensure that all outstanding issues between the parties are brought before the Court in a timely manner.	Support	
111. Employers should have limited rights to seek internal review of decisions. In particular, they should have the opportunity to seek review of initial decisions to accept liability for a claim. The form of internal review for employers should be more extensive than the internal review contemplated for worker disputes, given the limited impact of any decision made on internal review and the fact that the employer would not be able to take the matter to the ACCS or to the Magistrates' Court.	Support, with modifications	<b>The Government supports the introduction of a legislated internal review process for employers on limited grounds.</b>  <b>Internal review should be available where an employer considers that the worker was not a worker as defined under the AC Act or where the claim was made against the wrong employer.</b>  <b>The Government does not consider that employers should have the broad right to seek internal review proposed by Hanks.</b>  <b>Hanks' recommendation is based on an earlier provision, removed</b>

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
112. The review unit should report its conclusion to the employer and to the VWA, which in turn would be required to apply a conclusion that the agent decision was not confirmed in the calculation of the employer's premium.		<p><b>from the AC Act in 1993. However, its effectiveness was undermined due to its overuse by employers.</b></p> <p><b>Further, under the Hanks model, there would be significant unfunded liabilities that would need to be borne by the scheme.</b></p>
113. The outcome of employer applications for review must be limited to premium impacts, and not affect benefits already granted to a worker.		
114. Given that the outcome of employer applications for review would be limited to premium impacts where the agent's decision is not confirmed, an employer's and worker's return to work obligations should continue to apply.		
115. Employers should be given the right to request, from their agents, written reasons for decisions, particularly in relation to initial liability, as well as at appropriate points throughout the life of a claim.	Support	
<b>Chapter 11: Employer Premiums</b>		
116. The VWA should improve its information and advice to employers regarding Statistical Case Estimates	Support	<b>The Government supports Hanks' recommendation which is consistent with WorkSafe's commitment to provide more information and support to employers. Further information regarding Statistical Case Estimates will be incorporated into future Premium advices.</b>
117. Only new claims received to the end of December should be included in the calculation of premium for the following financial year.	Support	<b>The Government supports Hanks' recommendation. WorkSafe implemented this approach in the calculation of premium for 2008/09 and this will continue to be the practice.</b>
118. Employers should have the right to seek a review of their SCEs. However, that right should be limited to data errors that lead to erroneous estimates.	Support	

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
119. Amend the contractor provisions so that only the deemed employer would declare rateable remuneration for the deemed worker. The deemed worker would be entitled to make an injury claim only against the deemed employer's WorkCover insurance policy.	Support in principle	<b>See response to Recommendation 3.</b>
120. The scheme should provide employers with the option of a higher excess of \$1,000 for medical expenses and \$15,000 for weekly payments, equivalent to around 16 weeks of salary.	Not Support	<b>The Government considers the current level at which the excess is set represents an appropriate balance between an employer's capacity to assume risk and the protection of injured workers.</b>  <b>In addition, Hanks' recommendation was premised on the introduction of a system of injury notification and provisional liability, which is not supported (see response to Recommendation 12)</b>
121. Alignment of the definitions of remuneration for workers' compensation and for payroll tax within Victoria should commence. Alignment of the definitions of remuneration for the workers' compensation schemes in Victoria and NSW should also commence, with a long term objective of aligning the definition across all Australian jurisdictions.	Support	

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
<p>122. There should be transparent and robust mechanisms for review of premium decisions made by the VWA with:</p> <ul style="list-style-type: none"> <li>• a formal internal VWA premium review process, which aims to provide a non-adversarial system for the prompt and low-cost resolution of premium disputes; and</li> <li>• a codified premium dispute resolution system which allows employers recourse to independent review (for example, VCAT, the Magistrates' Court or the Supreme Court), based on the model for Victorian State taxes.</li> </ul> <p>The dispute resolution system should include:</p> <ul style="list-style-type: none"> <li>• the right of an employer to object to a premium notice (including an adjusted premium) within a prescribed time period;</li> <li>• the requirement for the VWA to determine an employer's objection within a prescribed time period (for example 60 or 90 days);</li> <li>• the requirement for the VWA to provide written reasons for its decision so as to ensure transparency; the reasons would be provided through a formal premium review process by a VWA internal review unit with parameters codified in legislation; and</li> <li>• the right of an employer, aggrieved by a decision made by the VWA (or the failure to make a decision), to seek an independent review within a prescribed time (for example, 60 or 90 days).</li> </ul>	<p>Support with Modification</p>	<p><b>The Government supports Hanks' recommendation that a formal internal review process be introduced for review of premium determinations.</b></p> <p><b>However, the Government considers that the appropriate jurisdiction for external review (or appeal of decisions) is the Supreme Court as this will ensure a high level of rigour.</b></p>
<p>123. The VWA should be obliged to pay interest where a review finds that a lower amount of premium is payable</p>	<p>Support</p>	
<p>124. To encourage voluntary disclosure of non-compliance and help reduce the VWA's administrative burden, include provisions allowing the remission of penalties in cases of voluntary disclosure in the ACWI Act.</p>	<p>Support</p>	
<p>125. Introduce penalties for employers who enter into premium avoidance schemes and for the promoters of such schemes.</p>	<p>Support</p>	

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
126. Introduce a statutory requirement for review of the VWA's premium-setting by an independent expert body, such as the Essential Services Commissioner.	Support	
127. Amend the ACWI Act to overcome the situation where a trustee would be in breach of the legislation by holding multiple WorkCover insurance policies because the trustee is classified as the single employer for different independent businesses run under trusts.	Support	
128. Amend the ACWI Act to allow the VWA to integrate any penalties for an uninsured period into the employer's ongoing premium account, and to give the VWA the power to backdate an employer's insurance policy to the commencement of employment to cover an uninsured period. The amendment would remove the need for the current legislative provisions relating to the Uninsured Employers Indemnity Scheme.	Support	
<b>Chapter 12: Recovery from Third Parties</b>		
129. "Hold harmless" clauses in arrangements between labour hire companies and host employers should be void and unenforceable for the purposes of the workers' compensation scheme.	Support	<b>The Government will legislate to ensure that hold harmless clauses will not be a mechanism to contract out of obligations under the AC Act. Labour hire may take many forms and in order for proscription to be effective, hold harmless clauses will be unenforceable under the AC Act in any contractual relationship.</b>
130. Allow the VWA (with an employer's consent) to recover from third parties the amount of any excess paid by the employer, with the amount recovered to be paid by the VWA to the employer.	Support	

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
<b>Chapter 13: Self-insurance</b>		
131. A two-step approach, similar to that for licensing major hazard facilities as set out in the Occupational Health and Safety Regulations 2007, should be used for self-insurance arrangements, with eligibility applications remaining valid for a set period. The VWA should be able to charge a fee for the eligibility process.	Support	
132. The VWA should be given the power to set guidelines under the AC Act to support the management of self-insurers, similar to the power it has to make guidelines under the OHS Act.	Support	
133. Applications for self-insurance should be completed within 12 months of the application being made, or longer at the discretion of the VWA.	Support	
134. The formula for setting the self-insurance application fee should be modified, to allow estimates of remuneration to be used where there has been no actual remuneration paid by an employer in the relevant period.	Support	
135. The AC Regulations should also be amended to require the employer to provide the VWA with the information on which the VWA can base its estimate.	Support	
136. Extend the term of approval for self-insurance to six years, following the first approval, to reward good performance.	Support	
137. Allow the VWA to review a self-insurer's approval where the self-insurer becomes a subsidiary of an Australian parent company; fails to meet any of the requirements for approval as a self-insurer; or fails to meet any of the pre-requisites for approval as a self-insurer.	Support	
138. Remove the 28-day notice period required where the self-insurer requests revocation of its self insurance approval.	Support	

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
139. Contingent liability insurance excess requirements should be relaxed, allowing self-insurers to choose a higher or lower excess to suit their individual needs. The minimum amount for the excess for a bank guarantee should be removed and the maximum increased to \$5 million or an amount advised by actuaries.	Support	
140. Amend the self-insurance contributions formula in line with the formula proposed by Access Economics, namely: Recovery from self insured (SI) firm "I" equals: $[SI \text{ Specific Costs} + (\text{Scheme insured specific fixed costs} + \text{Common Costs}) \frac{Y}{Z}] \frac{X_i}{Y} r_i$ where: <ul style="list-style-type: none"> <li>• Y is total remuneration for self-insured firms;</li> <li>• Z is total remuneration for scheme-insured and self-insured firms;</li> <li>• <math>X_i</math> is self-insured firm's remuneration; and</li> <li>• <math>r_i</math> is the self-insured firm's risk weighting.</li> </ul>	Defer	
141. A CPI-X cap should be applied to increases in VWA's costs (with factor X to be initially set at 2% and refined over time by reference to a "self-insurer cost index" based on a study of self-insurers' costs of operating their workers' compensation schemes). In addition, an independent audit of VWA's cost base should be undertaken to ensure that costs are properly identified and categorised.	Defer	
142. Self-insurer contributions should be included in the issues that could be reviewed by the independent expert body that reviews premiums.	Support	
143. Retain the OHS audit requirement for self-insurers and implement the national OHS audit tool.	Support	
144. Self-insurers should be required to document their claims management policies, provide the policies to the VWA and make them available to workers to ensure greater transparency and accountability in decision-making.	Support	
145. Remove a self-insurer's requirement to advise the VWA annually of common law proceedings and pursue recoveries from the AC Regulations.	Support	

## Government Response to Hanks Report

Hanks Recommendation	Government response	Commentary
146. Amend the AC Act to provide that, as a condition of approval, self-insurers notify the VWA within 28 days of commencement of common law proceedings and provide any additional information relating to those proceedings as requested and within any specified time.	Support	<b>The Government will legislate to require that self-insurers provide information to WorkSafe about strategically significant common law proceedings. This will reduce the compliance burden on self-insurers, in comparison to the current requirements, and ensure that WorkSafe's ability to manage the scheme effectively is not compromised.</b>
147. Align the requirement that self-insurers provide details of rateable remuneration with other data provision requirements, so that it is due by 31 August of each year.	Support	
148. Allow increased flexibility for self-insurance in the event of major corporate restructures. Specifically, the following should be allowed: <ul style="list-style-type: none"> <li>• the extension of licence periods for specific times; and</li> <li>• a non-eligible entity's application for self-insurance in limited circumstances.</li> </ul>	Support	
149. The AC Act should be amended to allow employers who move from scheme insurance to self-insurance to elect to retain responsibility for their existing claims.	Support	
150. Align the provisions governing the movement of self-insured employers to scheme insurance or to self-insurance under the Commonwealth scheme, by setting a single period over which liabilities are measured (of six years with an interim step at three years). Introduce a defined process for resolving disputes about the value of those liabilities, to ensure certainty for self-insurers and the VWA.	Support	
151. Costs borne by the VWA in revoking a self-insurer's licence (such as the cost of the actuarial services used to determine the outstanding liabilities at the time of revocation) should be borne by the self-insurer, and the AC Act should be amended to ensure that the VWA is able to recover those costs.	Support	

## Government Response to Hanks Report