

Impact Analysis Statement template

Summary IAS

Details

Lead department	Office of Industrial Relations (Department of State Development, Infrastructure and Planning)
Name of the proposal	Sunset review of the <i>Workers' Compensation and Rehabilitation Regulation 2014</i> (BRP ref 1027)
Submission type	Summary IAS
Title of related legislative or regulatory instrument	<i>Workers' Compensation and Rehabilitation Act 2003</i> <i>Workers' Compensation and Rehabilitation Regulation 2014</i>
Date of issue	August 2025

What is the nature, size and scope of the problem? What are the objectives of government action?

The *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) establishes the Queensland workers' compensation scheme and imposes duties on obligation-holders in the scheme to ensure the efficient functioning of the scheme.

The *Workers' Compensation and Rehabilitation Regulation 2014* (WCR Regulation) supports substantive provisions in the WCR Act and addresses technical and procedural matters within the workers' compensation scheme, including the assessment of workers' compensation premiums and liabilities, the calculation of certain compensation entitlements, eligibility criteria for payments for serious injuries, prescribed amounts for particular heads of damages, and governance arrangements for medical assessment tribunals. The WCR Regulation runs to 273 pages, 148 sections and 13 schedules.

The WCR Regulation expires on 31 August 2025 unless it is remade. A sunset review was undertaken by the Office of Industrial Relations (OIR) with a proposal to remake the WCR Regulation with some minor amendments.

The Queensland workers' compensation scheme

The Queensland workers' compensation scheme is a no fault, centrally funded, short tail scheme with access to common law damages. The scheme covers over 191,000 employers and an estimated 2.962 million workers.

Work-related injuries, illnesses and fatalities impose significant financial costs on business, the community and the economy as a whole, in addition to the personal cost to individuals and their families. In Queensland, there has been a 12 per cent increase in claim lodgements over the last five years, with 34.0 claims lodged for every 1000 employed people in 2024-25.

In 2024-25, 80,518 statutory claims for workers' compensation were accepted with \$1.9 billion paid in compensation, and 3,753 new common law claims were made with average damages paid of \$182,296 per claim.

Operational reviews of the Queensland workers' compensation scheme

Section 584A of the WCR Act requires the responsible Minister to ensure a review of the operation of the workers' compensation scheme is completed at least once in every five year period. Three operational reviews of the scheme have been conducted to date, with the most recent review being completed in June 2023.

The terms of reference for the 2023 *Five-year review of the Queensland workers' compensation scheme* (2023 Review) required the independent reviewers to inquire into and report on the operation of the scheme as a whole, and considering the issues raised in the 2023 Review, any matters that may be relevant in the upcoming remake of the WCR Regulation.

The report of the 2023 Review did not recommend any substantive changes to the WCR Regulation. The recommendations of the 2023 Review which involved the WCR Regulation are set out below.

No.	Recommendation
3	<p>That the Minister consider introducing a Bill to amend the [WCR] Act by replacing the phrase "psychological or psychiatric injury" with "mental injury".</p> <p>Relevant regulatory and guidance documents should also be updated to incorporate this term.</p> <p>The [WCR Regulation] should be amended to update the DSM to the latest version.</p>
9	<p>That the Minister consider introducing a Bill to amend the [WCR] Act to require early intervention services for workers with relevant physical injuries, designed to minimise the development of secondary mental injuries. In particular:</p> <ul style="list-style-type: none">(a) once a claim for a physical injury is lodged, if the physical injury is likely to lead to two or more weeks off work, the insurer should identify appropriate referrals that should be made to prevent the development of a secondary mental injury, including possible workplace discussion facilitation;(b) this identification process should be done using a psychosocial assessment tool; and(c) the threshold expected period off work (initially two weeks) should be defined in the [WCR] Regulation and can be amended after evaluation of this reform.
41	<p>That the Minister consider introducing a Bill to amend the [WCR] Act to allow the Minister to set, through Regulation, maximum periods for the provision of information to insurers for the purpose of calculating the decision-making time frame in recommendation 39.</p>

The *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2024* implemented certain legislative recommendations of the 2023 Review. It made no substantive changes to the WCR Regulation other than to prescribe matters to be addressed in scheme information statements to be provided by insurers to workers and employers on the lodgement of a workers' compensation claim.

Is the WCR Regulation meeting its objectives?

The WCR Regulation is a procedural regulation that provides for ways of meeting obligations under the WCR Act, which establishes a workers' compensation scheme that provides benefits for workers who sustain a work-related injury and for the dependants of workers who are fatally injured, among other things.

The objectives of the WCR Act include encouraging improved performance in health and safety and rehabilitation and return to work by employers, maintaining a balance between providing fair and appropriate benefits for injured workers and ensuring reasonable cost levels for employers, ensuring fair treatment of injured workers by insurers, and protection of employers' interests in relation to claims for damages for workers' injuries.

The WCR Regulation addresses these objectives by providing requirements for:

- employer insurance, including policies, premium assessment and excess amounts;
- self-insurance, including calculation of levies and liabilities, license conditions, and premium;

- calculation of compensation, including normal weekly earnings, to support insurers in assessing the amount of compensation to be paid to injured workers;
- rehabilitation, including rehabilitation and return to work coordinator's functions and treatment, care and support payments;
- damages, including particulars in the notice of claim and assessment of damages;
- costs, including costs before and after proceedings commence and outlays; and
- constitution of the Medical Assessment Tribunals (MAT).

In comparison to other jurisdictions, the WCR Regulation remains relevant, effective and efficient. Since 2014-15, the average premium rate in Queensland has been the lowest of any centrally-funded state or territory workers' compensation scheme. The most recently available national comparative data also indicate that:

- in 2022-23 the disputation rate in Queensland was the lowest compared to all other states and territories; and
- 67.1% of all scheme expenditure in Queensland was spent directly on the claimant in 2021-22 (higher than the Australian average of 56.1%).

The scheme remains self-funded from employer premiums and, unlike schemes in New South Wales and Victoria, has not required capital injections from the State.

Internal analysis of the provisions of the WCR Regulation considered whether its requirements remained efficient and appropriate, using the above statistics and feedback from affected stakeholders as metrics. Feedback from external and government stakeholders has indicated the WCR Regulation is generally meeting these objectives.

What options were considered?

Option 1 – Regulation expires: under this option, the WCR Regulation would expire on 31 August 2025 without replacement and non-regulatory alternatives would be used to address the policy objective.

This option is not supported as this would render key provisions of the WCR Act inoperative. This would have significant adverse impacts on injured workers and their dependants; cause uncertainty for injured workers, employers and insurers; create legal disputes; and increase scheme administration costs.

Option 2 – Remake WCR Regulation 'as-is': under this option, the WCR Regulation would be remade without substantive changes. This option is not supported given minor amendments are required to ensure the WCR Regulation reflects contemporary drafting standards.

Option 3 – Remake WCR Regulation 'with amendments': under this option, the existing WCR Regulation would be remade with any amendments identified as necessary to ensure it continues to meet policy objectives. These proposed amendments seek to clarify the original policy position for some provisions, support the efficient functioning of the medical assessment tribunals, make minor and technical amendments, improve clarity and remove obsolete provisions.

What are the impacts?

Option 1 – Regulation expires:

Option 1 would have significant adverse impacts on injured workers and their dependants; create uncertainty for scheme stakeholders; and increase in legal disputes and scheme administration costs. If the WCR Regulation expired without remake, certain provisions would need to be transferred to the Act for the scheme to continue to function. The reason these provisions are not already in the Act is because they have been correctly identified as minor technical or procedural matters not warranting the status of primary law or the approval of Parliament.

Impacts for industry:

Option 1 would have significant adverse impacts for industry by rendering key provisions of the WCR Act and the workers' compensation scheme inoperative. This would lead to significant uncertainty for business and disruption to their operations.

By way of example, the WCR Regulation prescribes processes for employers to obtain and maintain insurance policies as required under the WCR Act, including:

- provisions requiring employers to apply for a policy in the approved form;
- provisions allowing employers to pay their premium via an instalment plan rather than as a lump sum;
- the process for cancelling an insurance policy;
- additional premium payable for late payment of premium;
- the employer's excess for each claim made against the policy; and
- provisions to determine which court has jurisdiction in an appeal about premium.

The provisions of the WCR Regulation which specify aspects of the application process for an employer to take out a policy of insurance with WorkCover Queensland (WorkCover) may have slight administrative costs due to the time taken completing and lodging forms. However, applications may now be completed over the telephone or online and is a one-time requirement. Allowing these provisions to lapse without replacement would not result in any tangible benefits for employers.

Other provisions of the WCR Regulation relevant to employers specify when insurance coverage begins (i.e., when WorkCover receives the premium in full or enters into an insurance plan). Allowing this provision to lapse without replacement would lead to uncertainty over when coverage begins. The WCR Regulation imposes an additional fee on employers for late payment of premium. The additional fee is only payable where payment is late and is therefore an avoidable requirement. However, allowing this provision to lapse without replacement may be considered beneficial to employers, though late payment of premium at a large scale is likely to be detrimental to WorkCover's operations.

Specification of the excess period is essential for employers and WorkCover to know who is liable for the payment of weekly compensation and for how long. Allowing this provision to lapse without replacement would lead to uncertainty and dispute and has potential to adversely impact injured workers.

Allowing provisions determining which court has jurisdiction in premium appeals to lapse without replacement would introduce needless uncertainty and is not considered to be in the public interest.

Impacts for insurers:

Option 1 would have significant adverse impacts for WorkCover and self-insurers in the scheme. The impacts on employers outlined above would also result in consequential impacts on critical functions of WorkCover's insurance operations. It would also restrict the ability of all insurers to consistently meet their obligations such as the ability to calculate the rate of compensation payable to an injured worker.

In addition, the WCR Regulation prescribes the methods for calculating the amounts an employer is liable for when entering or exiting the scheme as a self-insurer in various circumstances. Allowing these provisions to lapse would lead to significant uncertainty about the liabilities of self-insurers entering and exiting the scheme, leading to an increase in costs and disputes for employers.

The Regulation also provides the method for determining which court has jurisdiction in premium appeals. Allowing these provisions to lapse without replacement would introduce needless uncertainty for insurers and employers and is not considered to be in the public interest.

Impacts for community:

Option 1 would have significant adverse impacts for injured workers, their families and the community. For example the WCR Regulation contains important provisions that:

- specify the way in which compensation benefits are calculated. Allowing these provisions to lapse without replacement would be detrimental to the scheme and introduce unnecessary uncertainty for injured workers, employers and insurers.
- support the operation of the medical assessment tribunals, which provide independent non-adversarial dispute resolution regarding medical matters, including all work related psychological injuries within the scheme. Allowing these provisions to lapse without replacement would result in the abolishment of all medical assessment tribunals (which are prescribed by regulation), significantly impacting the assessment of injury and permanent impairment within the scheme.
- outline the function and appointment of rehabilitation and return to work coordinators, who play a key role within employers in supporting injured workers' recovery. Allowing these provisions to lapse without replacement would impact recovery and return to work outcomes for injured workers and employers.
- ensure there is adequate coverage at all times for workers employed by employers who become or cease to become self-insurers including the apportionment of workers' compensation liabilities between self-insurers and WorkCover. Allowing these provisions to lapse without replacement creates a significant risk to workers of self-insurers, who represent some of the largest employers in Queensland.
- ensure the Queensland Industrial Relations Commission (QIRC) is empowered to award costs in appeal proceedings. If these provisions lapse, there would be significant impacts on injured workers' ability to successfully appeal a decision on their claim.
- specify how costs in common law proceedings for damages are to be awarded. If these provisions are allowed to lapse, there would cause uncertainty for injured workers and may limit their ability to seek damages.
- outline employers' obligations to appoint a rehabilitation and return to work coordinator if criteria prescribed in a regulation are satisfied. If provisions of the WCR Regulation specifying these criteria are allowed to lapse, the relevant provisions of the Act would become inoperative. This would have a significant impact on the return-to-work process for injured workers, reduce return to work rates which in turn can increase employer claim costs and premiums.

Impacts for government:

Option 1 would have specific adverse impacts for the Regulator and the Office of Industrial Relations in regulating the workers' compensation scheme. The Regulator would have no certainty around levying annual contributions from self-insurers to fund its regulatory activities as the calculation method for the levy is prescribed by regulation. This could deprive the Regulator of a significant source of its funding and impact regulatory outcomes. The total levy contribution for 2025-26 is \$13,152,622.

Option 1 would also have broader impacts for other government agencies, courts and tribunals. For example:

- all Queensland Government departments would be impacted in their capacity as employers under the WCR Act;
- the QIRC would be unable to effectively exercise its jurisdiction to hear and determine workers' compensation appeals, as it would be limited in its ability to award costs;
- courts hearing common law damages claims concerning work-related injury would no longer be guided by provisions to support the calculation of damages for specific injury types.

Option 2 – Remake WCR Regulation 'as-is':

Impacts for industry and insurers:

The current WCR Regulation is considered to generally support flexible insurance arrangements suited to the needs of industry, insurers, the community and government.

However, remaking the WCR Regulation 'as is' would miss the opportunity to act on identified areas for improvement. Although the current WCR Regulation is working well, analysis of the current regulations has identified:

- drafting errors, including instances where provisions have been erroneously omitted and defined terms are incorrectly defined;

- duplicative and obsolete provisions;
- internal inconsistency in the use of language within the WCR Regulation;
- misalignment with language used in the WCR Act; and
- the use of words and phrases that have an operational or technical meaning within the scheme but are not clearly defined in a way that conforms with contemporary drafting practice.

It is noted the most recent sunset review of the WCR Regulation was completed in 2014 and resulted in minimal changes. Amendments to the WCR Regulation are necessary to correct the above issues and improve clarity for industry and insurers who must comply with the WCR Regulation.

Impacts for community:

The current WCR Regulation is generally considered not to impose too heavy a burden on the community and ensures that injured workers and their dependants are treated fairly by insurers. However, remaking the WCR Regulation 'as is' would miss the opportunity to act on the identified areas for improvement outlined above.

Impacts for government:

While the current WCR Regulation allows the scheme to operate effectively, it would be a missed opportunity to identify areas for improvement, particularly by enhancing clarity and removing obsolete provisions. This would increase certainty within the scheme and may reduce disputes and administrative costs, including for the Regulator in efficiently administering medical assessment tribunals, determining reviews and defending appeals in relation to decisions made within the scheme.

Option 3 – Remake WCR Regulation 'with amendments':

This option would involve remaking the WCR Regulation with minor amendments to improve clarity, remove obsolete provisions and duplication, and conform with contemporary drafting standards.

Proposed amendments include:

- clarifying actuarial requirements to enable the calculation of workers' compensation liabilities transferring from self-insured employers to WorkCover (and vice versa) where an employer becomes or ceases to be insured by WorkCover;
- clarifying procedural and evidence requirements for lodging workers' compensation claims to remove ambiguity in existing provisions;
- clarifying the original policy position that in calculating compensation entitlements of a worker working under concurrent contracts of service with two or more employers, only the earnings from concurrent employers at the time of injury may be taken into account (rather than concurrent employers over the preceding 12 months);
- clarifying the original policy position that in calculating compensation entitlements amounts that would have continued if not for the injury may only be taken into account if they were of a regular nature;
- supporting the efficient functioning of medical assessment tribunals by enabling the Workers' Compensation Regulator to designate the composition of a tribunal on delegation of the chairperson where the chairperson is unable to and requiring the chairperson to consult with the tribunal secretary;
- aligning provisions governing costs orders in the Queensland Industrial Relations Commission with their corresponding head of power in the WCR Act;
- confirming the previous interpretation that counsel's fees are excluded from recoverable outlays in certain damages claims following *Anderson v Pickles Auctions Pty Ltd* [2023] QCA 205;
- correcting erroneous omissions in the existing regulations by ensuring provisions governing the award of damages in common law proceedings align with civil liability legislation.

Impacts for industry and insurers:

Under this option, industry and insurers would have a stable continuation of the existing regulatory base.

The proposed amendments are expected to have no or negligible costs impacts for industry and insurers. They are expected to improve understanding and clarity of existing requirements and reduce opportunities for disagreement.

Industry and insurers will continue to bear existing impacts arising from requirements in the existing regulations that are carried over however these impacts are considered acceptable. As noted above, requirements in the WCR Regulation correspond to key provisions in the WCR Act and their removal would render the workers' compensation scheme inoperative (as noted under Option 1). It is noted that feedback from the Australian Industry Group (Ai Group) did not raise any issues for employers arising from existing requirements in the WCR Regulation.

The exclusion of counsel's fees from outlays recoverable in certain claims for damages is expected to lower costs payable by insurers defending a claim for damages. Data supplied by WorkCover indicates that since counsel's fees were held to be recoverable outlays by the Queensland Court of Appeal in *Anderson v Pickles Auctions Pty Ltd* [2023] QCA 205 handed down in October 2023, WorkCover's average claimant costs for litigation claims have increased by 46 per cent on average or over \$1 million as follows:

Litigated claims	Number of completed claims	Average claimant costs
Prior to Oct 2023 (1 July 2022 to 30 September 2023)	88	\$23,279
Since Oct 2023 (1 October 2023 to 8 May 2025)	96	\$35,791

Excluding recovery of counsel's fees by claimants may also indirectly benefit employers if scheme costs are reduced for insurers.

Impacts for community:

Overall, the proposed amendments are expected to have no or negligible costs impacts for the community.

The proposed amendments are anticipated to minimise uncertainty and disputes for injured workers and employers as the updated provisions provide clarity, brevity and remove obsolete provisions.

Workers (and insurers) may benefit from proposed amendments enabling the Regulator to designate the constitution of medical assessment tribunals in the chairperson's absence, as this is anticipated to improve the administrative efficiency of the tribunals.

Provisions in relation to the recovery of counsel's fees in certain claims for damages would have an adverse impact on certain workers in common law proceedings including reduced recovery of legal costs from insurers however as noted above, this is expected to lower costs for insurers.

Impacts for government:

The proposed amendments are expected to have no or negligible costs impacts for government.

Government will continue to bear existing impacts arising from requirements in the existing regulations that are carried over. In particular, the State will continue to be subject to requirements in relation to the assessment and payment of premium, and the appointment of rehabilitation and return to work coordinators, that apply to government departments in their capacity as employers. These impacts are considered acceptable noting that these requirements correspond to key provisions in the WCR Act and their removal would render the workers' compensation scheme inoperative.

Who was consulted?

To support the consultation on the sunset review, OIR prepared a discussion paper to be provided to certain key stakeholders. In particular, the discussion paper sought stakeholders views on:

- whether the WCR Regulation should expire, be remade 'as is', or be remade with any necessary amendments;
- specific issues or challenges when dealing with the WCR Regulation;

- any sections or parts of the WCR Regulation considered appropriate for amendment or omission;
- whether the WCR Regulation supports the efficient operation of the Queensland workers' compensation scheme; and
- whether the WCR Regulation has any impacts on competition in Queensland that should be considered as part of the sunset review.

The discussion paper was circulated in March 2025 and submissions were invited from key stakeholders, including:

	Organisation
Workers' representatives	Queensland Police Union
	Australian Workers' Union
	Mining and Energy Union Queensland
Employers' representatives and industry groups	Australian Industry Group
	Business Chamber Queensland
	Master Builders Queensland
	Housing Industry Association
	Queensland Resources Council
Insurers	WorkCover Queensland
	Association of Self-Insured Employers of Queensland
Legal representatives	Queensland Law Society
	Queensland Bar Association
Medical and allied health representatives	Australian Association of Social Workers
	Australian Medical Association Queensland
	Australian Rehabilitation Providers Association
	Australian Psychological Society
	Chair of the General Medical Assessment Tribunal
	Occupational Therapy Australia

All submissions received from stakeholders supported the remake of the WCR Regulation, either 'as is' or with amendments. Stakeholders sought that the following matters be considered in the sunset review, including:

- the recent decision of the Queensland Court of Appeal in *Anderson v Pickles Auctions Pty Ltd* [2023] QCA 205 (Anderson) which held that counsel's fees were not excluded from recoverable outlays in certain claims for damages under the WCR Regulation; and
- updating section 135 of the WCR Regulation to better align with the way recoverable pre-proceeding costs are calculated under comparable personal injury schemes in the *Personal Injuries Proceedings Act 2002 Act* and *Motor Accident Insurance Act 1994*. An amendment was not proposed as section 135 of the WCR Regulation incentivises claims to be settled at an early stage and aligning with the other schemes will undermine this incentive and increase costs payable to insurers.

Feedback was also sought from Queensland Government agencies. 19 agencies responded, of which eight gave a nil response. Six agencies supported remaking the Regulation 'as is', and three agencies supported remaking the Regulation with amendments necessary to ensure it continues to meet policy objectives.

The Department of Justice was consulted throughout the sunset review to ensure alignment between the WCR Regulation and the *Civil Liability Regulation 2014* (CL Regulation), which was the subject of a concurrent sunset review. The WCR Regulation and CL Regulation share common provisions, which are to remain consistent (with particular exceptions, as the WCR Regulation is limited to work-related injuries) to

ensure consistent assessment of comparable personal injuries. The common provisions relate to injury scale values and the psychiatric impairment rating scale.

Targeted consultation with specific scheme stakeholders was considered appropriate given the highly technical and procedural nature of the WCR Regulation.

What is the recommended option and why?

Option 3 (remake WCR Regulation 'with amendments') is the preferred option as it will deliver the highest net benefit in relation to the policy objective and result in streamlining processes, a simplified statutory instrument and enhance clarity for scheme stakeholders.

As noted above, allowing the WCR Regulation to expire without replacement (Option 1) would have a deleterious effect on the scheme, introduce needless uncertainty, lead to disputes, and result in poor rehabilitation and return to work outcomes.

The current WCR Regulation generally works well and does not impose unnecessary burden on employers and ensures that injured workers and their dependants are treated fairly by insurers. However, it would be a missed opportunity not to use the WCR Regulation's expiry as an opportunity to act on identified areas for improvement, reduce the regulatory burden where practicable, streamline processes, remove obsolete provisions and enhance clarity and brevity, while retaining appropriate protections for injured workers.

The majority of proposed amendments are expected to have no or negligible costs impacts to industry, insurers, the community or government.

Impact assessment

All proposals – complete [do not delete]:

	First full year	First 10 years**
Direct costs – Compliance costs*	Nil expected	Nil expected
Direct costs – Government costs	Nil expected	Nil expected

* The direct costs calculator tool (available at www.treasury.qld.gov.au/betterregulation) should be used to calculate direct costs of regulatory burden. If the proposal has no costs, report as zero. **Agency to note where a longer or different timeframe may be more appropriate.

Signed



John Sosso
Director-General
Department of State Development, Infrastructure and
Planning
Date: 22.8.2025



Jarrod Bleijie MP
Deputy Premier,
Minister for State Development, Infrastructure and
Planning and Minister for Industrial Relations
Date: 23.8.25