



# HEALTH AND SAFETY MONTH 2016

Planning for tomorrow





# A successful early RTW approach

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# Early Intervention

- Assist staff with injuries and illnesses (irrespective of work relationship).
- Early intervention medical services are easy to access, fast and effective.
- Temporary Work Arrangements (suitable duties are offered irrespective of work relationship).

## ‘Stay at Work’ focus

- Change the focus from ‘return to work’ to ‘stay at work’
- The Stay at Work framework has proven successful for a number of employees who have injuries and/or illnesses.
- Council’s Lost Time Injury Frequency Rate (LTIFR) has reduced from 14.51 in June 2015 to 3.91 in June 2016.
- Council assists all employees, with suitable employment whilst they recover from a medical condition.

# Manage people holistically

- Whether staff are injured on the job or at home, the Return to Work Coordinator is able to talk to the worker's manager to facilitate a suitable return to work.
- In December 2015 Council introduced on-site physiotherapy (PhysioAssist).
- In June 2016 Council began to pilot offsite consultations with an Occupational Therapist (HealthAssist).
- The Return to Work Coordinator assists with any issue the employee may have to get a positive resolution.

# The process doesn't stop for a pending claim

- Its ok for employees to lodge a workcover claim.
- The Return to Work Coordinator provides the employee with all the information they need to know.
- Honesty and transparency is paramount to maintaining the employee's confidence.
- The 'stay at work' conversation doesn't stop because a claim has been lodged, accepted or rejected....they are our employee.

# Lost Time Injury Frequency Rate

CoB: Lost Time Injury Frequency Rate (LTIFR)





**Thank you.**





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# Insights into claim eligibility decision making

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# Agenda

- The decision making framework
  - WorkSafe's role
  - The Eligibility Officer
  - Employer's role
  
- The Legislation – Assessing Entitlement to Compensation
  - Key principles
  - Overview of the legislation
  - “Arising out of ...”
  - Mental injury claims - Management Action exclusion s40 (previously s82(2A))

## WorkSafe's role

- WorkSafe has delegated the claims management functions to five authorised agents.
- Contractual relationship between WorkSafe and each agent – but work together to improve scheme performance.
- Need to ensure that the legislation is applied as Parliament and courts intended.
- WorkSafe conducts regular agent audits, training and guidance.

# Scheme objectives

- Success for Worksafe means being able to:
  - Improve the timeliness and quality of decisions (good evidence-based decisions)
  - Improve the communication of decisions – procedural fairness
  - Reduce complaints and disputes
  - Ensure the first payment is made in a timely manner
  - Improve the service experience of employers and workers entering the scheme
- Poor decisions can hamper our return to work (RTW) efforts.

# The Eligibility Officer (EO)

- There are approximately 35 EO's across the scheme – they play a critical role.
- **Gatekeeper** - Ensuring that injured workers with an entitlement are granted benefits in a timely and compassionate way.
- **First point of contact** - For injured workers and employers, setting expectations and helping them understand the system.
- **Setup for a successful RTW** - Including the early identification and intervention of cases where RTW may be a challenge.

# An Employer's Role

- Assist the investigation process
- Provide Statements
- Payroll records
- Contracts of employment
- Policies, procedures and processes
- Facilitate an early RTW
- Understand need for evidence Vs. speculation

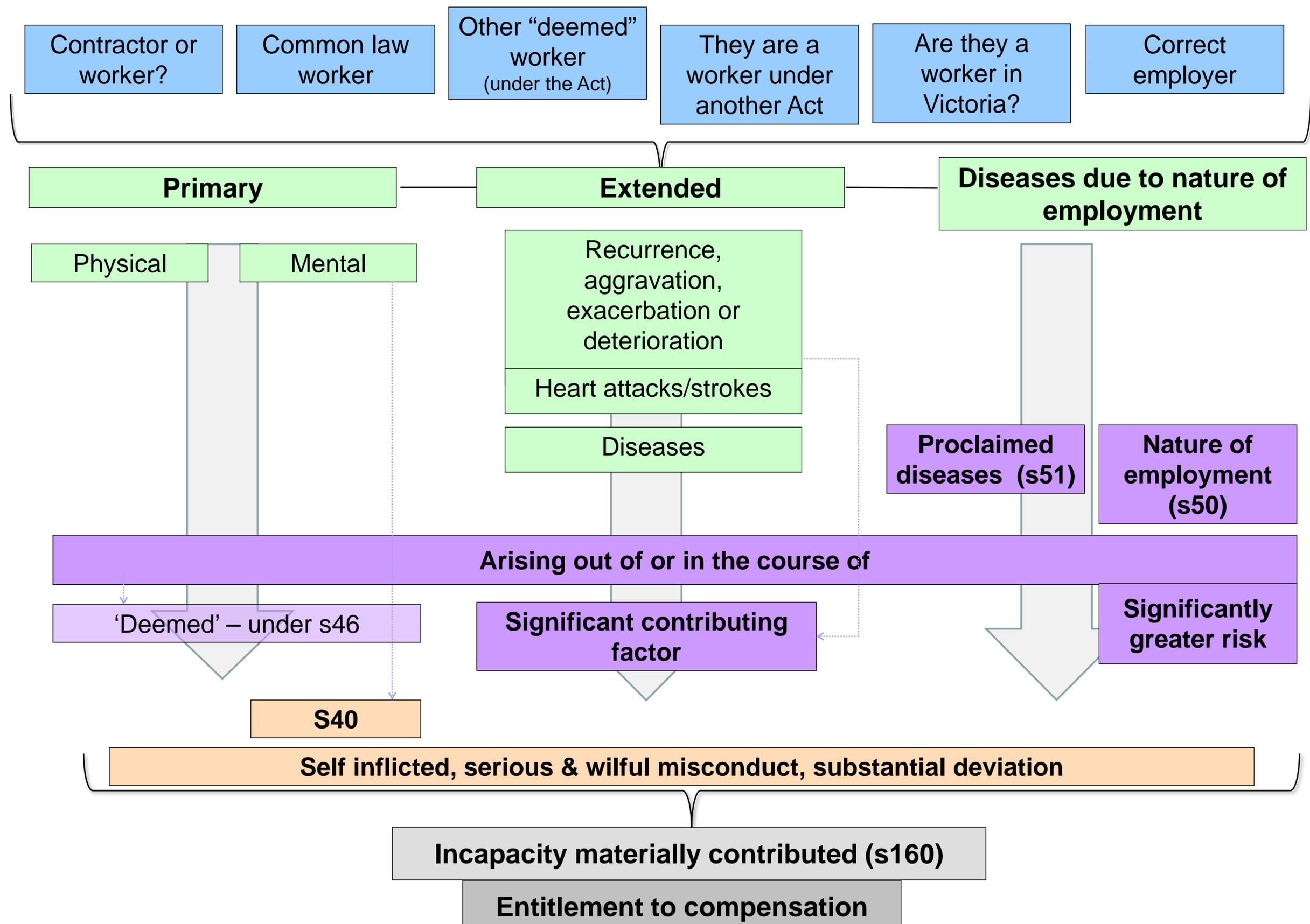
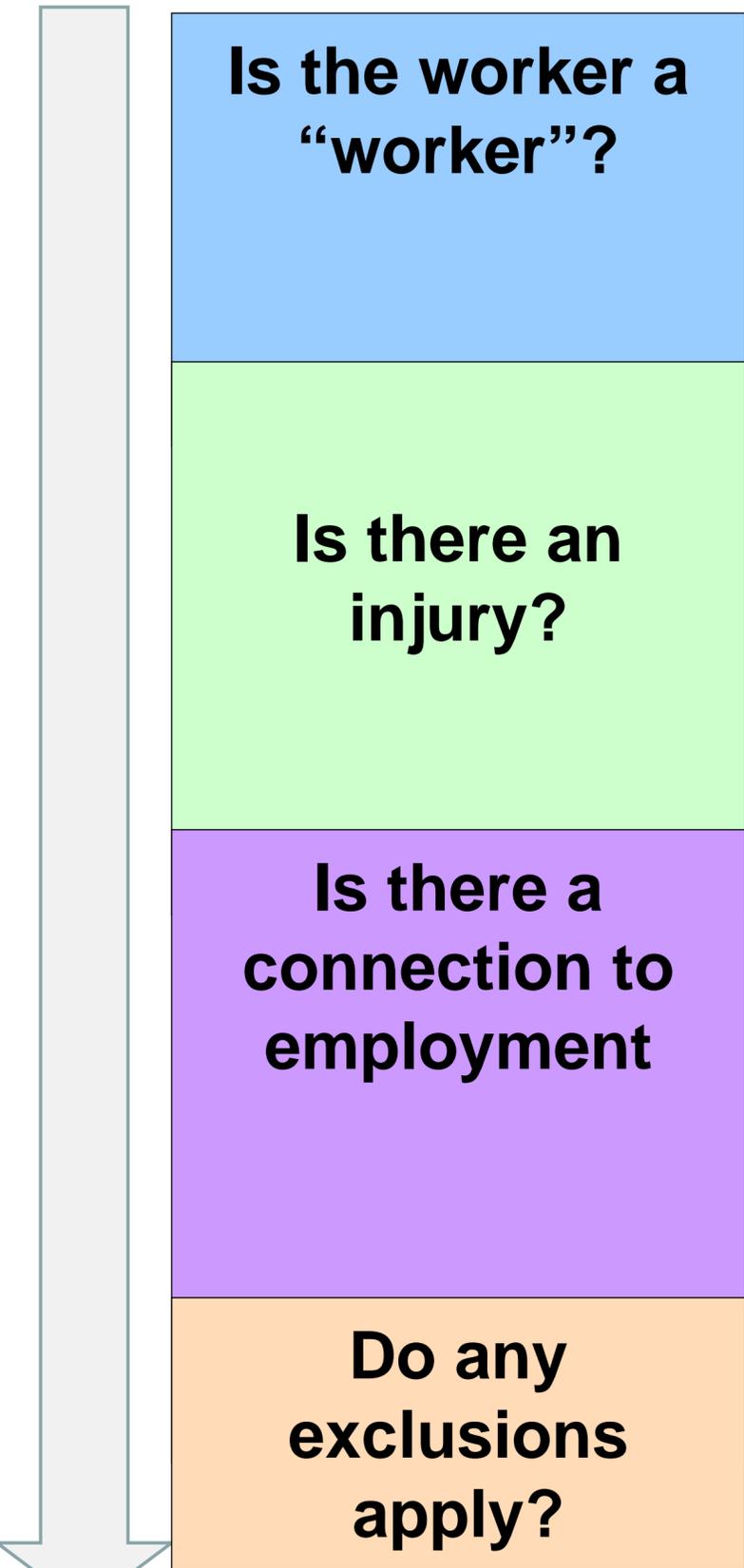


# The Legislation – Assessing entitlement to compensation

# Key principles

- *The Workplace Injury Rehabilitation and Compensation (WIRC) Act 2013* – creates a statutory obligation.
- Creates a “No fault” scheme.
- Beneficial legislation –where there is ambiguity in the Workers' Compensation Act it should be resolved in a way that is most favourable to the people the Act is intended to benefit (injured workers).
- In most cases, causation does not need to be proven - except heart attacks, strokes, diseases, aggravation of pre-existing injuries (SCF)
- Mental injury claims: the worker’s perception is often enough.

# Eligibility Decision Flowchart



# Arising out of or in the course of ...

- This eligibility test contains two separate concepts which include injuries:
  - “arising out of ... employment”, or;  
*[be caused by]*
  - sustained “in the course of” employment.  
*[temporally or otherwise connected]*
- These two concepts assist to define the required relationship between the injury and employment.
- Not necessary to demonstrate employment was either the sole or the dominant cause of the injury.

## What is the scope of the phrase “... in the course of ...”

- Sufficient if the injury occurs while the worker is performing the work he or she is engaged to do (temporal connection).
- or the worker is doing something which is part, or reasonably incidental, to work.
- or whilst the worker is doing something authorised, permitted, encouraged by employer.
- Therefore can include intervals during and between periods of work.
- This is sufficient for most physical injuries (*see Hatzimanolis v ANI Corp (192) 173 CLR 47*)
- But not if the worker is doing something considered repugnant to the contract of employment.



# Mental (Stress Claims)



# Mental injuries (MI's)

Mental injuries are subject to the same legislative tests as physical injury claims and assessed in fundamentally the same way.

The worker must be found to:

- Have an injury
- That arises out of or in the course of employment.

However, mental injury claims differ from physical injury claims as the Act specifies that some mental injuries are not eligible for compensation based on their circumstances.

# Mental injury claims not eligible for compensation

**There are circumstances where a mental injury claim is not eligible for compensation.**

- The worker must have a mental injury
- The Diagnostic and Statistical Manual of Mental Disorders – IV (DSM-IV), provides a mental injury diagnosis that medical professionals will often refer to (refer to Appendix)

**The mental injury must have been caused wholly or predominantly by any one or more of the following:**

- Management action taken by or on behalf of a worker's employer on reasonable grounds and in a reasonable manner [Section 40]; or
- A decision of the worker's employer on reasonable grounds to take, or not to take, any management action [Section 40] or
- The worker had an expectation that management action would or would not be taken or an expectation that a decision would be made to take or not to take any management action [Section 40].
- Note: the term 'management action' is separately defined in section 40(7) of the Act.

# Management action (this is not the complete list)

Management action includes, but is not limited to, any one or more of the following:

- Appraisal of the worker's performance;
- Counselling of the worker;
- Suspension or stand-down of the worker's employment;
- Disciplinary action taken in respect of the worker's employment;
- Transfer of the worker's employment;
- Demotion, redeployment or retrenchment of the worker;
- Dismissal of the worker;
- Promotion of the worker;
- Reclassification of the worker's employment position;
- Provision of leave of absence to the worker;
- Provision to the worker of a benefit connected with the worker's employment;
- Investigation by the worker's employer of any alleged misconduct – (i) of the worker; or (ii) of any person relating to the employer's workforce in which the worker was involved or to which the worker was a witness

# What is management action?

‘Management action’ is an exclusion referred to in the legislation which is specific to mental injury claims.

If this provision applies, it can disentitle a worker from compensation where the injury has been determined to have arisen wholly or predominantly from a management action.

## ‘Wholly’ or ‘predominantly’

- Wholly – ‘completely and entirely’
- Predominantly – relates to the main or most prevalent cause of the worker’s mental injury

# 'Reasonableness'

Once it is established that the mental injury has arisen wholly or predominantly from a management action taken by the employer, the onus is then on the employer to prove that the actions taken were on a reasonable basis and in a reasonable manner.

## 'just, fair, agreeable to reason'

Reasonableness applies to the employer's conduct and processes undertaken, and also how proportionate the action is to the worker's action.

- e.g. a final written notice for being 10 minutes late for work may not be seen as proportionate
- e.g. failure to adhere to documented processes, failure to allow a support person to attend a disciplinary meeting

# Some mental injury concepts

- You must take the worker as you find him/her with whatever strengths and weaknesses they might have
- The fact that another worker would not have reacted the same way is irrelevant
- One person's constructive criticism is another person's negative criticism
- A worker's perception of events can be the basis of a claim (as long as the worker's perception is grounded in fact)
- Unless an aggravation type injury, it is not necessary to demonstrate work was a significant contributing factor
- Need not be the sole or dominant cause – can be one of many causes



**Thank you.**

