

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL
2025 [NSW]
STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Under the current system, only 50 per cent of workers with a psychological injury are returning to work within a year. This compares to 95 per cent for workers with a physical injury. A key objective of workers compensation is to support injured workers in returning to work. These reforms are needed to better promote return to work for injured workers, supporting their recovery, their return to good mental health, and their re-engagement with the workplace and the community. Modernising the State's workers compensation system is needed to ensure that employees injured in the workplace continue to be protected and supported to recover and maximise their lifelong social and economic opportunities.

An effective workers compensation system needs to be financially sustainable, with sufficient assets to cover its liabilities. The current scheme is not financially sustainable, with the deficit between liabilities and assets growing each year. More effective prevention of psychological injury and early intervention to support workers with psychological injuries recover and return to work will stabilise scheme liabilities and avoid the need for continual steep increases in business premiums.

Several of the reforms put forward in this Bill respond to recommendations made by the Standing Committee on Law and Justice in its 2023 Review of the Workers Compensation System.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill will improve the long-term wellbeing of workers, and help secure the financial position necessary to continue to support injured workers with the highest needs in the future. It will do this by better promoting return to work for injured workers, supporting their recovery, their return to good mental health, and their re-engagement with the workplace and the community. At the same time, provisions under the new legislation will ensure that workers with the highest needs can continue to have access to payments and to the necessary supports.

The bill recognises that recovery through work offers one of the best ways for workers to heal and maximise their lifelong social and economic opportunities. Conversely, the negative impacts on health and wellbeing of long-term absence from work suggests that there are significant benefits to workers in improving return to work rates. This supports not just worker health, but the NSW economy more broadly, through a larger and healthier labour force, and broader workforce participation.

At the same time, the Bill recognises that there will be a cohort of workers with psychological injuries that are likely to require long-term support. The ongoing provision of these benefits is supported by reforms to provide the financial sustainability necessary to ensure claims are funded into the future. These reforms will also help to mitigate ongoing increases to workers compensation premiums for employers. These premiums represent

increases in the cost of employing workers, and ultimately detract from employment, wages, and productivity.

The bill makes changes to the following aspects of the workers compensation system:

- Reforms will encourage return to work and respond to the observation that protracted engagement with or dependence on the workers compensation system tends to lead to poorer health, social and economic outcomes for injured workers.
- Reforms will establish new processes for determining facts and dispute resolution. These will support the focus on objective definitions and injury mechanisms, as well as simplifying existing processes and reducing duplication.
- Reforms will improve system efficiency by prioritising support where it is most needed and introducing a value-for-money lens around support of an administrative nature.
- Reforms will provide greater incentives for employers to provide safe workplaces and meet their legislative obligations around workers compensation. They will improve overall scheme efficiency by providing more flexibility for parties to reach agreements that benefit both parties, as well as making a range of minor administrative improvements.
- In addition, the bill includes a series of system improvement measures intended to enhance efficiency, streamline processes and strengthen the integrity of workers compensation across the State.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The default alternative option is to not reform the workers compensation system. This would require either substantial increases to employer premiums (and/or corresponding increases in taxpayer support to balance scheme expenses and funding), or would in the long run likely lead to the Nominal Insurer being unable to pay out claims against it.

A wide array of specific reforms were considered in the development of the Bill. Key considerations in identifying the best reforms to pursue included the effects on supporting return to work objectives, any potential adverse impacts on current and future claimants, and the implications of reform on financial sustainability.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Bill reforms the existing workers compensation scheme, with the major alternative option being to not pursue reform. In the scenario where no major reform is pursued, the main options are to either increase premiums and funding, or to allow the schemes' financial position to deteriorate further.

The reforms provide for more effective prevention of psychological injury and early intervention to support workers with psychological injuries recover and return to work. Key benefits for workers include:

- helping to maximise the lifelong social and economic opportunities of injured workers

- improving the timeliness of decision making – workers who experience sexual harassment, racial harassment or bullying will have their claims assessed in 42 days – half the time compared to current legislation for determining provisional liability
- improving the integrity of the workers compensation system by improving objectivity and increasing penalties for non-insurance or under insurance.

Without reforms the system will continue to fail injured workers, while eroding the financial sustainability of the Nominal Insurer and Treasury Managed Fund.

Premiums would likely need to increase by around 36 percent over the next three years. This significant additional cost of employment would erode wages and productivity. For the Treasury Managed Fund, the government could continue to make cash top-ups and divert funding from other public services to ensure it has sufficient assets to meet future liabilities. Alternatively, the financial position of the scheme could be allowed to continue to deteriorate until workers compensation claims can no longer be paid for.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The bill is intended to commence from 1 October 2025, unless otherwise agreed by the Treasurer, Minister for Work Health and Safety and the Minister for Customer Service and Digital Government. Commencement relies on the timely passage of the bill and development of key regulations to support the practical operation of the bill. The administration of the workers compensation scheme will continue where relevant across a wide range of stakeholders, including government agencies, insurers, and medical and legal professionals.

The Bill also provides for a review of the workers compensation scheme, including the sustainability of the scheme, to commence following assent, with details to be determined by the Treasurer and Minister.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The package of reforms was informed by views and submissions made during consultations on matters related to workers compensation, industrial relations and work health & safety, and findings and recommendations from independent reviews including those by the Honourable Robert McDougall KC, the Standing Committee on Law and Justice and State Insurance Regulatory Authority.

On 8 May 2025, the Government referred the exposure draft to the Standing Committee on Law and Justice for inquiry. The Committee's inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales commenced on 9 May 2025 with public hearings held on 16 May 2025. The inquiry received over 60 submissions, including from unions, industry bodies, legal representatives and insurance representatives.

On 23 May 2025, the Committee published its report, making no specific recommendations other than that the Government and the Legislative Council consider the evidence. The Government has listened to the views of stakeholders in preparing the Workers Compensation Legislation Amendment Bill.