



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

# Evidence Consolidation Report for the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025: Report of the inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales

## Volume One

Report 85

May 2025



[www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)



Standing Committee on Law and Justice

**Evidence Consolidation  
Report for the Exposure  
Draft of the Workers  
Compensation Legislation  
Amendment Bill 2025:  
Report of the inquiry into  
proposed changes to liability  
and entitlements for  
psychological injury in New  
South Wales**

Volume One

Published on 23 May 2025 according to Standing Order 238

**New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.  
Report no. 85 – Volume One.**

Evidence Consolidation Report for the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025: Report of the inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales

"May 2025"

Chair: Hon Greg Donnelly MLC



A catalogue record for this  
book is available from the  
National Library of Australia

ISBN: 978-1-922960-86-3



## Table of contents

	<b>Terms of reference</b>	<b>v</b>
	<b>Committee details</b>	<b>vi</b>
	<b>Chair's foreword</b>	<b>vii</b>
	<b>Recommendations</b>	<b>ix</b>
	<b>Conduct of inquiry</b>	<b>x</b>
<b>Chapter 1</b>	<b>Formal request of the committee to review proposed changes to liability and entitlements for psychological injury in New South Wales</b>	<b>1</b>
	<b>Standing Committee on Law and Justice</b>	<b>1</b>
	2023 Parliamentary Review of the Workers Compensation Scheme	2
	<b>Current inquiry</b>	<b>3</b>
	Background to the inquiry	3
	Referral of the inquiry	5
	Conduct of the inquiry	5
	<b>The workers' compensation scheme in New South Wales</b>	<b>6</b>
	Legislative framework	7
	Key agencies and service providers	7
	<b>Key provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025</b>	<b>8</b>
	Overview of the Exposure Draft	8
	Changes to the threshold for psychological injury claims	9
	Shift from 'reasonably necessary' to 'reasonable and necessary'	12
	Cessation of weekly payments after 130 weeks	12
	Special entitlements for work pressure	13
	Special provisions for primary psychological injuries caused by sexual or racial harassment or bullying	13
	<b>Committee comment</b>	<b>14</b>
<b>Appendix 1</b>	<b>Ministerial Statement by the Treasurer, 18 March 2025</b>	<b>17</b>
<b>Appendix 2</b>	<b>Unions NSW Submission in response to the NSW Government's Preventing Psychological Injury: Draft Discussion Paper</b>	<b>19</b>
<b>Appendix 3</b>	<b>Protecting Workers Compensation for the next generation Consultation paper</b>	<b>87</b>
<b>Appendix 4</b>	<b>Unions NSW report, 'Cast Adrift: Cuts to Workers compensation for psychological injury'</b>	<b>109</b>

<b>Appendix 5</b>	<b>Letter from the Treasurer referring the inquiry, 8 May 2025</b>	<b>119</b>
<b>Appendix 6</b>	<b>Exposure draft of the Workers Compensation Legislation Amendment Bill 2025</b>	<b>121</b>
<b>Appendix 7</b>	<b>Explanatory document for the Workers Compensation Legislation Amendment Bill 2025</b>	<b>188</b>
<b>Appendix 8</b>	<b>Unions NSW Concerns Relating to Exposure Workers Compensation Legislation Amendment Bill 2025</b>	<b>190</b>
<b>Appendix 9</b>	<b>Unions NSW Briefing: NSW Labor Government proposed changes to workers compensation</b>	<b>195</b>
<b>Appendix 10</b>	<b>Stakeholders invited to make a submission</b>	<b>210</b>
<b>Appendix 11</b>	<b>Submissions</b>	<b>214</b>
<b>Appendix 12</b>	<b>Witnesses at the hearing</b>	<b>216</b>
<b>Appendix 13</b>	<b>Transcript of hearing on 16 May 2025</b>	<b>219</b>
<b>Appendix 14</b>	<b>Answers to questions on notice</b>	<b>310</b>
<b>Appendix 15</b>	<b>Treasury Managed Fund Review Report</b>	<b>378</b>
<b>Appendix 16</b>	<b>Minutes</b>	<b>453</b>
<b>Appendix 17</b>	<b>Dissenting statements</b>	<b>466</b>

---

## Terms of reference

That the Committee inquire into and report on proposed changes to liability and entitlements for psychological injury in New South Wales, specifically:

- (a) the overall financial sustainability of the NSW workers' compensation system; and
- (b) the provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 as provided by correspondence to the Committee.

The terms of reference for the inquiry were referred to the committee by the Hon Daniel Mookhey MLC, Treasurer, on 8 May 2025 and adopted by the committee on 9 May 2025.

## Committee details

### Committee members

<b>Hon Greg Donnelly MLC</b>	<b>Australian Labor Party</b>	<i>Chair</i>
<b>Ms Abigail Boyd MLC*</b>	The Greens	<i>Deputy Chair</i>
<b>Hon Susan Carter MLC</b>	Liberal Party	
<b>Hon Anthony D'Adam MLC</b>	Australian Labor Party	
<b>Hon Stephen Lawrence MLC</b>	Australian Labor Party	
<b>Hon Bob Nanva MLC</b>	Australian Labor Party	
<b>Hon Rod Roberts MLC</b>	Independent	
<b>Hon Damien Tudehope MLC**</b>	Liberal Party	

### Contact details

<b>Website</b>	<a href="https://www.parliament.nsw.gov.au/committees/">https://www.parliament.nsw.gov.au/committees/</a>
<b>Email</b>	<a href="mailto:law@parliament.nsw.gov.au">law@parliament.nsw.gov.au</a>
<b>Telephone</b>	(02) 9230 3081

\* Ms Abigail Boyd MLC substituted for Ms Sue Higginson MLC from 9 May 2025 for the duration of the inquiry. Ms Boyd was elected Acting Deputy Chair on 16 May 2025 for the duration of the inquiry.

\*\* Hon Damien Tudehope MLC substituted for Hon Chris Rath MLC from 12 May 2025 for the duration of the inquiry.

### Secretariat

Alice Wood, Principal Council Officer

James Ryan, Administration Officer

Gareth Perkins, Council Officer

Arizona Hart, A/Director

## Chair's foreword

Lest there be any doubt about what this two-volume report is, and is not, I draw readers attention to its title *Evidence Consolidation Report for the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025: Report of the inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales*. The title, written in these terms, is deliberate and intended to communicate a clear and specific point namely, the content of the inquiry report is substantially a consolidation of evidence provided to the inquiry by stakeholders in written and oral form.

From the first meeting of the committee, to consider the inquiry reference from the Treasurer, the Hon. Daniel Mookhey MLC, to the tabling of the report with the Clerk of the Parliaments, it has been 10 days, excluding weekends. It must be said that the 10-day deadline, if I may use this term, was not a deadline that the committee itself sought. In discussing and considering how best to proceed at its first meeting regarding the inquiry that had been referred to it, the committee clearly noted the paragraph beneath the terms of reference in the correspondence that said:

“In order that the findings of this review can be considered before legislation can be introduced on Tuesday 27 May 2025, my suggested timeline is that:

- 1) Written submissions be received between Friday 9 May and Thursday 15 May;
- 2) There be a hearing on Friday 16 May;
- 3) The Committee shall report by no later than Friday 23 May 2025.”

I draw readers specific attention to the paragraph that says “In order that the findings of this review **can** be considered before legislation **can** be introduced on Tuesday 27 May 2025 ... .” (emphasis added). While the word “can” does not mean “will”, the prospect of a parliamentary debate commencing on such a significant bill, without the committee doing everything it could, to draw together as much relevant background information, and most importantly evidence from at least key stakeholders, was unthinkable. The committee therefore determined that it would proceed over the following fortnight, concluding on 23 May, and produce the best report possible in the circumstances.

The report, in two volumes (Volume One being approximately 300 pages and Volume Two being approximately 450 pages), is the result of 10 days of busy work by the committee but in particular, an extraordinary effort by the committee secretariat. But for this extraordinary effort by committee secretariat, what has been able to be done would not and could not have been achieved.

No doubt there will be critics of the report who will deride it as a “tick and flick” or “rubber stamp” exercise. I categorically refute such claims and submit that in the circumstances before it, the committee undertook what it has done as thoroughly as is possible. The fact of the matter is that the timeframe did not permit the committee to undertake detailed examination and analysis of the volume of evidence, let alone prepare thorough and considered commentary, findings and recommendations. The committee’s number one priority was to collect and assemble the range of concerns raised by stakeholders through their evidence regarding the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025.

Recommendation 1 to this inquiry report states:

“That:

- the Government take note of the evidence received throughout the course of the inquiry when preparing the final bill(s) as introduced into the Parliament, and
- the Legislative Council take note of the evidence received throughout the course of the inquiry when the final bill(s) is introduced in the House, and where appropriate, consider amendments in the committee stage of the debate on the bill(s) that address stakeholder concerns.”

Regarding the wording of the recommendation, it speaks for itself and I provide no further commentary other than to say, the committee respectfully urges the Government to receive and take it fully into account.

Can I take this opportunity, on behalf of the committee, to sincerely thank all those stakeholders who prepared comprehensive and detailed submissions. I also express thanks to those stakeholders who appeared at the inquiry’s public hearing.

I have already acknowledged and thanked the hardworking and dedicated committee secretariat who worked on this inquiry. Nevertheless, on behalf of the committee I wish to repeat the acknowledgement and thanks to the committee secretariat for all their efforts. Can I also thank Hansard staff for the preparation of the hearing’s transcript.

Finally, can I thank my committee colleagues for their patience and forbearance, and in particular the collegiate way in which they have engaged and participated in this important inquiry.

The Hon. Greg Donnelly MLC  
**Committee Chair**

## Recommendations

### Recommendation 1

15

That:

- the Government take note of the evidence received throughout the course of the inquiry when preparing the final bill(s) as introduced into the Parliament, and
- the Legislative Council take note of the evidence received throughout the course of the inquiry when the final bill(s) is introduced in the House, and where appropriate, consider amendments in the committee stage of the debate on the bill(s) that address stakeholder concerns.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Hon Daniel Mookhey MLC, Treasurer, on 8 May 2025.

The committee received 62 submissions and one supplementary submission.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

This report is contained in two volumes. This volume is to be read in conjunction with Volume Two.



## Chapter 1      Formal request of the committee to review proposed changes to liability and entitlements for psychological injury in New South Wales

This chapter begins by outlining the functions of the Standing Committee on Law and Justice, including in supervising the workers' compensation scheme in New South Wales. It then provides an overview of the referral of this inquiry and how it was conducted. This chapter then outlines briefly the workers' compensation scheme in New South Wales, including a summary of the legislative framework, and key agencies and service providers. Finally, it provides an overview of the key provisions within the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025.

### Standing Committee on Law and Justice

- 1.1      The Standing Committee on Law and Justice was first established as a Legislative Council committee in May 1995.<sup>1</sup> It has been re-appointed at the commencement of every parliament since.<sup>2</sup>
- 1.2      Under the resolution establishing the committee in the current parliament, the committee may inquire into and report on legal and constitutional issues in New South Wales, including law reform, parliamentary matters, criminal law, administrative law and the justice system; and matters concerned with industrial relations and fair trading.<sup>3</sup>
- 1.3      As this inquiry relates to proposed amendments to the workers' compensation scheme, it falls clearly within the purview of the committee.
- 1.4      Additionally, under the resolution appointing the committee, it is to supervise the following insurance and compensation schemes in New South Wales, and must report to the House in relation to the operation of each scheme at least once every Parliament:
  - the Workers' Compensation Scheme
  - the Workers' Compensation (Dust Diseases) Scheme
  - the Motor Accidents Scheme, and
  - the Motor Accidents (Lifetime Care and Support) Scheme.<sup>4</sup>

---

<sup>1</sup>      Stephen Frappell and David Blunt, *New South Wales Legislative Council Practice* (The Federation Press, 2nd ed, 2021), p 729.

<sup>2</sup>      Stephen Frappell and David Blunt, *New South Wales Legislative Council Practice* (The Federation Press, 2nd ed, 2021), p 731.

<sup>3</sup>      *Minutes*, NSW Legislative Council, 10 May 2023, p 32.

<sup>4</sup>      *Minutes*, NSW Legislative Council, 10 May 2023, p 32.

- 1.5 The committee conducted reviews of the workers' compensation scheme in 2023, 2020, 2018, and 2015.<sup>5</sup>

### **2023 Parliamentary Review of the Workers Compensation Scheme**

- 1.6 The most recent completed review of the workers' compensation scheme was conducted by the Standing Committee on Law and Justice in 2023.<sup>6</sup> This review raised concerns about the financial sustainability of the scheme and the growth in psychological injury claims. It made 18 recommendations to the government. The review is summarised below.

#### ***Financial sustainability of the scheme***

- 1.7 The 2023 review addressed the financial performance of icare and raised concerns around the long-term sustainability of the workers' compensation scheme, particularly with respect to the performance of the Nominal Insurer and Treasury Managed Fund.<sup>7</sup>
- 1.8 The opinion of the committee was that the financial position of the scheme should 'be addressed through significant improvement to return to work rates and better claims management'.<sup>8</sup> The committee also noted that it 'would prefer to see the financial sustainability of the scheme addressed through further administrative efficiencies and operations improvements to icare, rather than an increase to premiums'.<sup>9</sup>
- 1.9 The committee made a recommendation that SafeWork NSW, as the work health and safety regulator, should collaborate more closely with the State Insurance Regulatory Authority (SIRA) to ensure safer workplaces to effectively reduce the number of workers' compensation claims.<sup>10</sup>

#### ***Psychological injury claims***

- 1.10 The 2023 parliamentary review of the workers' compensation scheme also addressed concerns with respect to the increase in workers' compensation claims for psychological injury. The committee noted the increase in the number of primary psychological claims, from five per cent of new claims in 2012-13 to eight per cent of claims by 2020-21, and found the growth to 'not be insignificant'.<sup>11</sup>

---

<sup>5</sup> For more information, see *Standing Committee on Law and Justice*, Parliament of New South Wales, <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=212#tab-inquiries>.

<sup>6</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) pp x-xii.

<sup>7</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) p 19.

<sup>8</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) p 26.

<sup>9</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) p 26.

<sup>10</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) p 27.

<sup>11</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) p 55.

- 1.11** The committee recommended that SIRA, icare and SafeWork NSW 'continue to investigate and examine in detail the factors influencing the large number of psychological claims from injured workers employed in the Stronger Communities, Education and Health clusters within the public sector, [and to] prioritise the implementation of any changes revealed as necessary by the integrated compliance audit and performance review of the Treasury Managed Fund'.<sup>12</sup>
- 1.12** The recommendations made by the committee focussed on the need for further research and investigation into the increase in psychological injury claims, implementing preventative measures for psychological injury within workplaces, and the need to undertake research into the potential options to deal with psychological injury claims.<sup>13</sup>

## Current inquiry

- 1.13** This inquiry was referred to the committee by the Treasurer, the Hon Daniel Mookhey MLC, on Thursday 8 May 2025. The inquiry, as sought by the Treasurer, has been conducted over a very short timeframe, with the committee producing its final report two weeks later on Friday 23 May.

### Background to the inquiry

- 1.14** On 18 March 2025, the Treasurer made a Ministerial Statement to the Legislative Council regarding workplace psychological injuries.<sup>14</sup> In this statement, the Treasurer announced that the government will soon present bills to reform the way psychological injuries are managed through the workers' compensation scheme.<sup>15</sup>
- 1.15** The Treasurer stated that current workplace health and safety and workers' compensation laws are 'failing both to prevent psychological injuries and to treat those with psychological injuries quickly'.<sup>16</sup> The Treasurer asserted in his explanation that the system is increasingly unable to manage claims for psychological injuries, pointing to the following:
- the number of psychological injury claims has doubled in six years, whereas all other injuries have grown by 16 per cent during the same period
  - on average, 88 per cent of workers who experience physical injuries return to work within 13 weeks, whereas 40 per cent of workers with psychological injuries have not returned to work within a year
  - psychological claims make up 12 per cent of total workers' compensation claims, but 38 per cent of the total cost

<sup>12</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) p 56.

<sup>13</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) pp 55-58.

<sup>14</sup> *Hansard*, NSW Legislative Council, 18 March 2025, pp 30-31 (Daniel Mookhey).

<sup>15</sup> *Hansard*, NSW Legislative Council, 18 March 2025, p 30 (Daniel Mookhey).

<sup>16</sup> *Hansard*, NSW Legislative Council, 18 March 2025, p 30 (Daniel Mookhey).

- the average cost of a psychological injury claim has increased from \$146,000 in 2019-20 to \$288,542 in 2024-25.<sup>17</sup>

- 1.16** The Treasurer asserted in his explanation that against this background, the costs of the workers' compensation scheme have increased. He stated that for every \$1 needed to care for injured workers, the Nominal Insurer currently holds only 85¢ in assets.<sup>18</sup> He also stated that businesses have faced an eight per cent increase in premiums for three years running and that they are expected to rise by 36 per cent over three years to 2027-28 if changes to the system are not made.<sup>19</sup>
- 1.17** The Treasurer stated that the reforms to workplace health and safety laws and the workers' compensation system would be guided by the following principles:
1. giving workers the right to call out a psychological hazard before an injury takes place, which would involve expanding the NSW Industrial Relations Commission, establishing a bullying and harassment jurisdiction modelled on federal law, and requiring a bullying and harassment claim to be heard there first before a claim can be made through the workers' compensation system
  2. providing workers and businesses with certainty by defining 'psychological injury' and 'reasonable management action' in law
  3. drawing on reforms in states like South Australia and Queensland, especially in setting the whole person impairment threshold; and adopting some of the anti-fraud measures recently adopted by the Australian Government in relation to the National Disability Insurance Scheme
  4. implementing many of the recommendations of the independent review of SafeWork NSW, as well as some of the recommendations from SIRA and the Standing Committee on Law and Justice.<sup>20</sup>
- 1.18** The full transcript of the Ministerial Statement can be found at Appendix 1.
- 1.19** Following the Ministerial Statement, the government commenced a consultation process with Unions NSW and Business NSW. A Draft Discussion Paper was presented to Unions NSW as part of that consultation process on 28 March 2025. Unions NSW provided a submission in response to the Discussion Paper, which is available as Appendix 2.
- 1.20** Briefing materials were prepared by the Treasurer regarding the proposed changes following the Ministerial Statement. They can be found at Appendix 3.
- 1.21** In early May 2025 Unions NSW produced a report entitled 'Cast Adrift: Cuts to Workers compensation for psychological injury'. This can be found at Appendix 4.

---

<sup>17</sup> *Hansard*, NSW Legislative Council, 18 March 2025, p 30 (Daniel Mookhey).

<sup>18</sup> *Hansard*, NSW Legislative Council, 18 March 2025, p 30 (Daniel Mookhey).

<sup>19</sup> *Hansard*, NSW Legislative Council, 18 March 2025, p 30 (Daniel Mookhey).

<sup>20</sup> *Hansard*, NSW Legislative Council, 18 March 2025, pp 30-31 (Daniel Mookhey).

### Referral of the inquiry

- 1.22** This inquiry was referred to the Standing Committee on Law and Justice on Thursday 8 May 2025 by the Hon Daniel Mookhey MLC, Treasurer of New South Wales.
- 1.23** The terms of reference for the inquiry, provided within the referral, requested that the committee inquire into and report on the proposed changes to liability and entitlements for psychological injury in New South Wales, specifically:
- a) the overall financial sustainability of the New South Wales workers' compensation system; and
  - b) the provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 (Exposure Draft).
- 1.24** The referral letter from the Treasurer can be found at Appendix 5.
- 1.25** The referral included:
- The Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025. This can be found at Appendix 6 and is discussed in further detail below.
  - An explanatory note outlining the government's proposed reforms to the workers' compensation scheme in New South Wales. This can be found at Appendix 7.
- 1.26** The referral stated that the government intends to introduce legislation to Parliament on Tuesday 27 May 2025. It therefore included the following proposed timeline for the inquiry:
- written submissions be received between Friday 9 May and Thursday 15 May 2025
  - a public hearing be held on Friday 16 May 2025
  - the committee report no later than Friday 23 May 2025.
- 1.27** Following receipt of the terms of reference, Unions NSW prepared and circulated broadly two documents:
- 'Unions NSW Concerns Relating to Exposure Workers Compensation Legislation Amendment Bill 2025', which can be found at Appendix 8
  - 'Unions NSW Briefing: NSW Labor Government proposed changes to workers compensation', which can be found at Appendix 9.

### Conduct of the inquiry

- 1.28** Following receipt of the terms of reference, the committee held a meeting on the afternoon of Friday 9 May. At this meeting, the committee resolved to adopt the terms of reference. The committee also agreed, despite objections from Opposition members, to the proposed timeline outlined in the letter from the Treasurer.
- 1.29** In light of the short timeframe for the inquiry, the committee agreed not to hold an open call for submissions, and therefore not to create a submission portal on the inquiry webpage.

Instead, the committee agreed to hold a closed submission process through which submissions would only be invited and accepted from an agreed list of stakeholders.

- 1.30** The list of stakeholders included all those who were invited to make a submission to the committee's last completed review of the workers' compensation scheme. It also included additional stakeholders who were nominated by committee members. An initial email to invited stakeholders was sent on Monday 12 May. Further emails to additional nominated stakeholders were sent on Tuesday 13 May.
- 1.31** The committee agreed to accept unsolicited submissions from other stakeholders not invited to make a submission, if committee members agreed. A small number of stakeholders requested to make a submission and all requests were accepted by the committee. The list of stakeholders who were invited to make a submission, or permitted to make a submission after requesting to do so, can be found in Appendix 10.
- 1.32** The closing date for submissions was Thursday 15 May. The committee subsequently agreed to accept submissions from invited stakeholders only after that deadline. A list of submissions received can be found in Appendix 11.
- 1.33** Consistent with the Treasurer's proposed timeline, the committee held a public hearing on Friday 16 May. The committee agreed over email to the list of witnesses to be invited on Tuesday 13 May. Invitations were issued to witnesses that afternoon.
- 1.34** The list of witnesses who appeared at the hearing on Friday 16 May can be found at Appendix 12. The transcript from the hearing can be found at Appendix 13. Submissions made by witnesses who appeared at the hearing can be found in Volume Two.
- 1.35** Due to the short timeframe for the inquiry, the committee agreed that answers to questions taken on notice at the hearing would be due by 5.00 pm, Wednesday 21 May. All answers received can be found in Appendix 14.
- 1.36** The Chair's draft report was prepared following the hearing on Friday 16 May and was circulated to members on Wednesday 21 May. The committee met on the afternoon of Thursday 22 May to consider and adopt the report. The report was tabled with the Clerk of the Parliaments on Friday 23 May.

## **The workers' compensation scheme in New South Wales**

- 1.37** The workers' compensation scheme supports people injured at work by providing assistance with the costs of medical and hospital expenses, and providing a range of other supports to aid recovery and return to work. The workers' compensation scheme also supervises and monitors the performance of insurers.<sup>21</sup>

---

<sup>21</sup> NSW Government, State Insurance Regulatory Authority, *Workers Compensation*, (2025) <https://www.sira.nsw.gov.au/workers-compensation>. For a brief history of the workers' compensation scheme, including reforms implemented over the years, see: Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021), p 1.

### Legislative framework

- 1.38** The New South Wales workers' compensation scheme's legislative framework includes the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998*, the *Workers Compensation (Dust Diseases) Act 1942*, and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, and other associated regulations.<sup>22</sup>
- 1.39** The *Workplace Injury Management and Workers Compensation Act 1998* is intended to provide for the effective management of work-related injuries and injury compensation and includes a number of objectives which are to be delivered efficiently and effectively.<sup>23</sup>

### Key agencies and service providers

- 1.40** The workers' compensation market comprises four categories of insurers:
- the Nominal Insurer, which is administered by icare, and offers policies for all industries except coal
  - the Treasury Managed Fund, which is managed by icare, and provides policies for government agencies
  - specialised insurers, which provide policies for certain industries
  - self-insurers.<sup>24</sup>
- 1.41** Insurance & Care Services for the People of NSW (icare) provides insurance and care services for more than 3.5 million workers across more than 338,000 businesses in New South Wales under the Nominal Insurer and Treasury Managed Fund workers' compensation schemes.<sup>25</sup> It is the single largest workers' compensation insurer in New South Wales.<sup>26</sup>
- 1.42** The State Insurance Regulatory Authority (SIRA) was established in 2015 to regulate various statutory insurance and care schemes, including the compulsory third party, home building compensation and workers' compensation schemes.<sup>27</sup> SIRA regulates all workers' compensation insurers, including the Nominal Insurer.<sup>28</sup>

<sup>22</sup> NSW Government, State Regulatory Authority, *Legislation and Regulatory Instruments*, (2025), <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments>.

<sup>23</sup> A list of objectives can be found within section 3 of the *Workplace Injury Management and Workers Compensation Act 1998*.

<sup>24</sup> NSW Government, State Insurance Regulatory Authority, *List of Workers Compensation Insurers* (2025), <https://www.sira.nsw.gov.au/workers-compensation/list-of-workers-compensation-insurers>.

<sup>25</sup> Insurance & Care NSW (icare), *Our Story*, (2025), <https://www.icare.nsw.gov.au/about-us/our-story>.

<sup>26</sup> Insurance & Care NSW (icare), *Our Story*, (2025), <https://www.icare.nsw.gov.au/about-us/our-story>.

<sup>27</sup> NSW Government, State Insurance Regulatory Authority, *About Us*, (2025), <https://www.sira.nsw.gov.au/resources-library/corporate-information/about-us>.

<sup>28</sup> NSW Government, State Insurance Regulatory Authority, *About Us*, (2025), <https://www.sira.nsw.gov.au/resources-library/corporate-information/about-us>.

- 1.43** A Treasury Managed Fund Review Report was published in April 2024. This can be found at Appendix 15. The report made several recommendations to the government of relevance to the inquiry.
- 1.44** SafeWork NSW is the regulator for work health and safety legislation in New South Wales and is funded by the workers' compensation operational fund. It provides advice to businesses and workers on how to improve work health and safety and undertakes a range of compliance activities.<sup>29</sup>
- 1.45** Inspectors from SafeWork NSW support the work of SIRA in regulating employer compliance with the workers' compensation scheme. They monitor and assess compliance in relation to the systems used by employers for workplace injury management and return to work.<sup>30</sup>
- 1.46** The Independent Review Office is an independent statutory office established under the Personal Injury Commission Act 2020. It fulfils a number of statutory functions, including:
- dealing with complaints related to claims and insurers
  - managing and administering the Independent Legal Assistance and Review Service
  - conducting inquiries into matters arising in connection with the operation of the *Personal Injury Commission Act 2020* and the workers' compensation and motor accidents legislation.<sup>31</sup>

## Key provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025

### Overview of the Exposure Draft

- 1.47** As discussed above in paragraph 1.25, an explanatory note from the government was included within the referral of the inquiry to the committee. Within the explanatory note, the government advised that the proposed reforms to the workers' compensation scheme in New South Wales are to 'address the fact that the NSW workplace health and safety, and workers' compensation laws are failing to prevent psychological injuries and failing to treat those with psychological injuries quickly'.<sup>32</sup>
- 1.48** The explanatory note advised that the proposed reforms include two bills which are designed to shift workplace, health and safety laws, and workers' compensation laws towards prevention, and include:
- the Industrial Relations Amendment Bill 2025

<sup>29</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) p 3.

<sup>30</sup> Parliament of New South Wales, Standing Committee on Law and Justice, NSW Legislative Council, *2023 Review of the Workers Compensation Scheme*, (2023) p 3.

<sup>31</sup> NSW Government, Independent Review Office, (2025), <https://www.service.nsw.gov.au/nswgovdirectory/independent-review-office>.

<sup>32</sup> NSW Government, Explanatory Note – Workers Compensation Legislation Amendment Bill 2025, (9 May 2025), p 1.



- the Workers Compensation Legislation Amendment Bill 2025.<sup>33</sup>

**1.49** According to the government, the Exposure Draft contains changes relating to workers' compensation and outlines ways to:

- clarify and update important concepts, such as reasonable management action and thresholds for accessing long-term payments
- expand early intervention powers to support rehabilitation and return-to-work plans sooner
- strengthen anti-bullying protections, allowing workers to bring claims for bullying or harassment through the industrial relations system
- establish clearer dispute resolution pathways, improving access to timely outcomes
- modernise benefits and compensation thresholds to better reflect the cost of living and community expectations.<sup>34</sup>

### Changes to the threshold for psychological injury claims

**1.50** Numerous changes have been proposed under the Exposure Draft which will affect the threshold for psychological injury claims. These changes are with respect to the interpretation of 'psychological injury' and the degree of permanent impairment required for damages to be awarded for psychological injury under the Workers Compensation Legislation Amendment Bill 2025.<sup>35</sup>

### *Interpretation of 'psychological injury'*

**1.51 Psychological injury:** Currently under the *Workers Compensation Act 1987*, no specific definition is provided for 'psychological injury'.<sup>36</sup> A definition for 'psychological injury' has been proposed under the Exposure Draft, which is as follows: 'psychological injury means an injury that is a mental psychiatric disorder that causes significant behavioural, cognitive or psychological dysfunction'.<sup>37</sup> Definitions for a 'primary psychological injury' and a 'secondary psychological injury' have also been provided.<sup>38</sup>

**1.52 Reasonable management action:** Within the Exposure Draft, under section 11A, no compensation is payable under the *Workers Compensation Act 1987* in relation to a psychological

<sup>33</sup> NSW Government, Explanatory Note – Workers Compensation Legislation Amendment Bill 2025, (9 May 2025), p 1.

<sup>34</sup> NSW Government, Explanatory Note – Workers Compensation Legislation Amendment Bill 2025, (9 May 2025), p 1.

<sup>35</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, Pt 1, Div 2 and Pt 6.

<sup>36</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, Pt 1, Div 2 and Pt 6.

<sup>37</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 8A.

<sup>38</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, ss 8A and 8B.

injury if a significant cause of the psychological injury was a 'reasonable management action' taken or proposed to be taken by an employer in relation to a worker.<sup>39</sup> This also extends to a worker's expectation and/or perception of a reasonable management action being taken.<sup>40</sup>

**1.53** The meaning of a 'reasonable management action' has been provided under section 8D of the Exposure Draft. A reasonable management action means a management action that is taken in a reasonable way, and one that is reasonable in all the circumstances.<sup>41</sup> Under the section, a reasonable management action can extend to (but is not limited to), actions such as appraisal of or feedback of a worker's performance, disciplinary action taken in relation to a worker's employment, transfer of a worker's employment, promotion of a worker, and the dismissal of a worker.<sup>42</sup>

**1.54** **Relevant event:** Under proposed section 8G, no compensation is payable for a primary psychological injury to a worker unless:

- (a) a relevant event or a series of relevant events caused the primary psychological injury; and
- (b) there is a real and substantial connection between the relevant event or series of relevant events and the worker's employment; and
- (c) employment is the main contributing factor to the primary psychological injury.<sup>43</sup>

**1.55** The meaning of a 'relevant event' is detailed in section 8E of the Exposure Draft and includes being subject to an act or threat of violence, being subject to indictable criminal conduct, witnessing an incident that leads to death or serious injury (or the threat of death or serious injury), experiencing vicarious trauma, or being subject to conduct that a tribunal, commission, or court has found to be sexual harassment, racial harassment or bullying.<sup>44</sup>

**1.56** **Vicarious trauma:** The following definition for vicarious trauma has been provided under section 8H:

A worker experiences vicarious trauma if a worker becomes aware of any of the following acts or incidents that resulted in the injury to, or death of, a person with whom the worker has a close work connection:

- (a) an act of violence
- (b) indictable criminal offence
- (c) a motor accident, a natural disaster, a fire or another accident

<sup>39</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 11A (1).

<sup>40</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 11A (1)(b) and (c).

<sup>41</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 8D.

<sup>42</sup> An exhaustive list is provided in NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 8D.

<sup>43</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 8G.

<sup>44</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 8G.

(d) an act or incident prescribed by the regulations.<sup>45</sup>

1.57 The definition is limited and only applies where there is a 'close work connection'. A definition for 'close work connection' is provided under section 8H(2).<sup>46</sup>

### ***Degree of permanent impairment***

1.58 Under section 151H of the Exposure Draft, no damages may be awarded unless an injury results in the death of a worker, or a degree of permanent impairment of the injured worker that meets the following threshold:

- at least 15 per cent for a physical injury, and
- at least 31 per cent for a psychological injury.<sup>47</sup>

1.59 The provisions of the Exposure Draft provide that the 31 per cent impairment threshold for psychological injury must be met for access to weekly payments beyond 2.5 years, lump sum payments for permanent injuries and access to work injury damages.<sup>48</sup>

1.60 Under current legislation, there is no specific reference for the degree of impairment required for psychological injuries. Under the *Workers Compensation Act 1987* no damages may be awarded unless an injury results in the death of a worker, or in a degree of permanent impairment of the injured worker that is at least 15 per cent.<sup>49</sup>

1.61 The following definitions have been provided under section 152:

**Permanent impairment assessment** means –

- (a) A principal assessment, or
- (b) A dispute assessment.

**Principal assessment** means an assessment of the degree of permanent impairment of an injured worker under Division 2 by an assessor included on the SIRA register of permanent impairment assessors.

**Permanent impairment assessor** means –

- (a) An assessor included in the SIRA register of permanent impairment assessors, or
- (b) A medical assessor.<sup>50</sup>

<sup>45</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 8H.

<sup>46</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 8H(2).

<sup>47</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 151H.

<sup>48</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 39A, s 151H.

<sup>49</sup> *Workers Compensation Act 1987*, Pt 5, Div 3, s 151H (1).

<sup>50</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 152.

- 1.62** Section 152, provides for how the degree of permanent impairment is to be determined.<sup>51</sup> Section 153A stipulates that before an injured worker is seen by a permanent impairment assessor to start the permanent impairment assessment, the injured worker must obtain independent legal advice about the full legal implication of the assessment.<sup>52</sup>
- 1.63** Other proposed sections outlined in Part 6 of the Exposure Draft contain specific details with respect to the permanent impairment determination process.<sup>53</sup>

### **Shift from 'reasonably necessary' to 'reasonable and necessary'**

- 1.64** An amendment to section 60 of the *Workers Compensation Act 1987* has been proposed within the Exposure Draft. Under the current legislation:

If, as a result of an injury received by a worker, it is reasonably necessary that:

- (a) any medical treatment or related treatment be given, or
- (b) any hospital treatment be given, or
- (c) any ambulance service be provided, or
- (d) any workplace rehabilitation service be provided,

the worker's employer is liable to pay, in addition to any other compensation under [the] Act, the cost of treatment or service and the related travel expenses...<sup>54</sup>

- 1.65** The amendments within the Exposure Draft propose to omit 'reasonably necessary' from section 60 and to instead insert 'reasonable and necessary'.<sup>55</sup>

### **Cessation of weekly payments after 130 weeks**

- 1.66** Under current legislation, if total or partial incapacity for work results from an injury, the compensation payable by the employer to the injured worker shall include a weekly payment during the incapacity. Under section 39 of the *Workers Compensation Act 1987*, a worker has no entitlement to weekly payments of compensation in respect of an injury after a period of 260 weeks (five years).<sup>56</sup>

<sup>51</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 152.

<sup>52</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 153A.

<sup>53</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, Pt 6.

<sup>54</sup> *Workers Compensation Act 1987*, s 60.

<sup>55</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 60.

<sup>56</sup> *Workers Compensation Act 1987*, s 39. Under section 39(2) for workers with more than 20% permanent impairment, entitlement to compensation may continue after 260 weeks, subject to section 38.

- 1.67** Under the proposed reforms, under section 39A, weekly compensation payments are to cease after 130 weeks (two and a half years) for workers who are deemed to have sustained a primary psychological injury.<sup>57</sup> Further limits on compensation are provided in section 59A.<sup>58</sup>

### **Special entitlements for work pressure**

- 1.68** Section 148B of the Exposure Draft proposes to introduce a new special entitlement for work pressure. Under the section, if, as a result of a work pressure disorder experienced by a worker, it is reasonable and necessary that medical or related treatment be provided to the worker, the worker's employer must pay the cost of the medical or related treatment to the worker.<sup>59</sup>
- 1.69** A work pressure disorder is defined as 'a mental or psychiatric disorder caused by or arising from the pressures placed on a worker in the course of the worker's employment but only if the employment was the main contributing factor to the worker experiencing the disorder'.<sup>60</sup> Further details, including the entitlements, requirements and limitations are set out in section 148B.<sup>61</sup>

### **Special provisions for primary psychological injuries caused by sexual or racial harassment or bullying**

- 1.70** Amendments to the *Workplace Injury Management and Workers Compensation Act 1998* are proposed under the Exposure Draft, which includes the addition of special provisions for primary psychological injuries caused by sexual or racial harassment or bullying.<sup>62</sup>
- 1.71** Under the proposed reforms, Division 3A is to apply to claims made in relation to a primary psychological injury caused by conduct that a tribunal, commission or court has found is sexual harassment, racial harassment or bullying.<sup>63</sup> Under this provision, workers experiencing sexual harassment, racial harassment or bullying would need to remain at work, until a determination is made by the relevant tribunal, commission or court, before they are able to proceed with a claim under proposed Division 3A. Section 280AAA stipulates that a claim must be made in accordance with the applicable requirements of the Workers Compensation Guidelines

<sup>57</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 39A. Under section 39A (2) for workers with more than 31% permanent impairment, entitlement to compensation may continue after 130 weeks, subject to Part 3, Division 2 of the Act.

<sup>58</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 59A.

<sup>59</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 148B.

<sup>60</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 148B (8).

<sup>61</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 148B.

<sup>62</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, Div 3A.

<sup>63</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 280AA. A 'commission' includes the Fair Work Commission and the NSW Industrial Relations Commission.

(Guidelines) and provides a list of matters in connection with making a claim, that the Guidelines may provide for.<sup>64</sup>

- 1.72** Under the Exposure Draft, section 280AAB stipulates the time within which a claim for compensation must be made. The section states that 'compensation must not be recovered unless a claim for the compensation has been made within 6 months after a finding by a Tribunal, Commission or Court that the relevant injury was caused by conduct that is sexual harassment, racial harassment or bullying'.<sup>65</sup>

### **Committee comment**

- 1.73** The committee has endeavoured to respond to the terms of reference referred to it by the Hon Daniel Mookhey MLC, Treasurer of New South Wales provided on 8 May 2025, to the best of its ability, with the resources available in the nominated timeframe.
- 1.74** The committee notes this inquiry was conducted in a very short timeframe. Due to the strict timeline, the inquiry has particularly focused on securing as much detailed evidence as possible from stakeholders regarding the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025.
- 1.75** The committee acknowledges the efforts of all stakeholders to, as thoroughly as possible in the circumstances, contribute to the inquiry with very short notice and is grateful to those who were able to provide a submission to the inquiry and give evidence at the public hearing on Friday 16 May 2025.
- 1.76** Due to the timeline, the committee was unable to examine in detail, or provide thorough analysis of, the bill, the financial sustainability of the New South Wales workers' compensation system, and evidence received. The committee therefore strongly encourages the reader to examine in detail the transcript of the public hearing on Friday 16 May 2025, which is provided in Appendix 13, and thoroughly review the submissions made by stakeholders to the inquiry, a list of which can be found in Appendix 11.
- 1.77** The committee encourages the Government to take note of the evidence received throughout the course of the inquiry when preparing the final bill(s) as introduced into the Parliament. The committee also encourages the Legislative Council to take note of the evidence received throughout the course of the inquiry when the final bill(s) is introduced in the House, and where appropriate, consider amendments in the committee stage of the debate on the bill that address stakeholder concerns.

---

<sup>64</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 280AAA.

<sup>65</sup> NSW Government, Exposure Draft – Workers Compensation Legislation Amendment Bill 2025, s 280AAB.

---

**Recommendation 1**

That:

- the Government take note of the evidence received throughout the course of the inquiry when preparing the final bill(s) as introduced into the Parliament, and
  - the Legislative Council take note of the evidence received throughout the course of the inquiry when the final bill(s) is introduced in the House, and where appropriate, consider amendments in the committee stage of the debate on the bill(s) that address stakeholder concerns.
-





## Appendix 1 Ministerial Statement by the Treasurer, 18 March 2025

### *Ministerial Statement*

#### WORKPLACE PSYCHOLOGICAL INJURIES

**The Hon. DANIEL MOOKHEY (Treasurer) (16:16):** The Government will soon present to Parliament bills designed to curb the rising number of psychological injuries that people are experiencing at work. The reforms will recognise that our workplace health and safety and our workers compensation laws are failing both to prevent psychological injuries and to treat those with psychological injuries quickly. This failure hurts workers, punishes large and small businesses, and wastes billions of dollars of public resources. Simply put, the State's workplace health and safety laws and workers compensation scheme have not kept pace with the needs of the four million people working in New South Wales today, nor with the 338,000 businesses that employ them. Today I intend to shed more light on the rise of workplace psychological injury in our workplaces, and I outline to the House the principles guiding the Government's reforms.

Let me begin by first explaining important elements of our workplace health and safety and workers compensation systems. Workers compensation insurance has been compulsory in New South Wales since 1924. Today two separate insurers cover close to four million employees. There is the Nominal Insurer. It protects about 3.5 million private sector workers, and it is funded from premiums collected from nearly 340,000 mostly small businesses. Then there is the Treasury Managed Fund [TMF]. It covers more than 400,000 public sector workers. The taxpayer funds the TMF. Icare administers both schemes. Most experts agree that neither scheme has ever dealt very well with psychological injury. Historically, the small number of complaints has kept this hidden. But a recent and dramatic rise in cases, coinciding with social and technological changes and growing awareness of mental health, is exposing the system's inability to prevent and treat this type of injury.

Here is how to appreciate the scale at which the problem is growing. The number of psychological injury claims has doubled in six years. By comparison, all other injuries have grown by just 16 per cent during the same period. Here is how different the outcomes are for people with psychological injuries compared to those with physical injuries: On average, 88 per cent of workers who suffer from physical injuries have returned to work within 13 weeks, but 40 per cent of workers with psychological injuries are still languishing in the system after one year off work, still separated from their workplace and more likely to be socially isolated. Predictably, a system that fails to prevent and fails to heal is becoming increasingly expensive. Psychological claims now make up 12 per cent of total workers compensation claims but 38 per cent of the total cost. The average cost of a psychological injury claim has increased from \$146,000 in 2019-20 to \$288,542 in 2024-25. Why? Because the system is not returning workers to health, and then to work, effectively. In fact, it is likely that treating workplace conflict like a physical hazard is exacerbating the problem.

As claim numbers rise and claim durations increase, so do premiums. Businesses have faced an 8 per cent increase in premiums for three years running. Much of those increases followed the scandals that this House exposed in the previous Parliament. Even with those increases, the assets held by the Nominal Insurer do not equal its liabilities. For every \$1 needed to care for injured workers, the Nominal Insurer currently holds only 85¢ in assets. I advise the House that if claims continue growing at recent rates, icare expects that an additional 80,000 people will be injured over the next five years. I further advise the House that the cost of the system is expected to rise too. An employer facing no claims against them, operating a psychologically safe workplace, can expect their premiums to rise by 36 per cent over three years to 2027-28 if we do nothing. On top of that cost, the system severely disrupts their businesses. It sends staff that they have recruited and trained home and impairs their ability to manage interpersonal conflict and run productive workplaces.

The waste of precious time, talent and money has wider implications for our State. Billions of dollars could be better used to invest in capital and people. That is crucial for driving the State's economic growth. Allowing the system to stay on autopilot will only trap more employees, employers and the State of New South Wales in a fate that can be avoided. That is why the system as it currently stands is not sustainable. Our workers compensation system was designed at a time when most people did physical labour—on farms and building sites, in mines or in factories. A system that approaches all psychological workplace hazards the same way as physical dangers needs to change.

New South Wales should have workplace health and safety laws and a workers compensation system that places prevention ahead of compensation in responding to psychological safety. Hence, the legislation that the

Government is developing is guided by the following key principles. First, it will give workers the right to call out a psychological hazard before an injury takes place. In practice, that means the Government will look to expand the NSW Industrial Relations Commission, establishing a bullying and harassment jurisdiction modelled on Federal law and requiring a bullying and harassment claim to be heard there first before a claim can be made through the workers compensation system. Second, it will let employees and employers know where they stand. New South Wales defines neither "psychological injury" nor "reasonable management action" in law. The Government seeks to provide both workers and businesses with certainty. Unlike other States, we prefer an inclusive definition of psychological injury, not an exclusive definition.

Third, we must learn from States like South Australia and Queensland, which are ahead of us in the reform task, especially in setting the whole person impairment threshold. The Government will look to adopt some of their reforms. It will also look to adopt some of the anti-fraud measures recently adopted by the Commonwealth to protect the National Disability Insurance Scheme. Finally, we must administer the workers compensation scheme better. The Government will look to implement many of the recommendations that Robert McDougall made in his independent review of SafeWork NSW, as well as some of the recommendations that the State Insurance Regulatory Authority and the Legislative Council's Standing Committee on Law and Justice have made.

The pending legislation is the next step that the Government is taking to modernise New South Wales's workplace health and safety, workers compensation and industrial relations systems. Since the Government's election two years ago, it has restored the independence of the Industrial Relations Commission, led the nation in combating the return of silicosis as an occupational disease by standing up to the big engineered stone multinationals, and overhauled icare's governance and taken steps to rein in its spending. It is also establishing SafeWork NSW as a standalone regulator. This week the Government will ask this Parliament to lead the world in responding to the gig economy. The changes that the Government intends to introduce are part of its comprehensive strategy to ensure that the workers compensation system, the workplace health and safety system and the industrial relations system all work together and remain fit for purpose.

Shortly, the Government will commence deeper consultation with Business NSW and Unions NSW. I thank both of those organisations for the work that has been done so far. The Government also intends to work with all parties in this place and the other place who recognise the need for reform. This House excels when it grapples with complex reforms that are sorely needed. Undoubtedly, in recent years, the Legislative Council has acquired vast expertise in WHS law and workers compensation. It will soon get the opportunity to use it for the sake of the State's workers and businesses.

## **Appendix 2   Unions NSW Submission in response to the NSW Government's Preventing Psychological Injury: Draft Discussion Paper**

**Unions NSW Submission in response to  
the NSW Government's *Preventing Psychological Injury:*  
*Draft Discussion Paper***

**April 2025**

**Contents**

Introduction .....	4
Summary of Recommendations.....	7
Preventative measures to reduce the number of psychological injuries .....	14
Slide 7: IRC given bullying and harassment jurisdiction.....	16
Creating a general WHS jurisdiction in the NSW IRC .....	16
Prosecuting breaches of WHS laws .....	17
Empowering the NSW IRC to resolve bullying and harassment disputes.....	17
Empowering the NSW IRC to resolve disputes of return-to-work provisions.....	18
Reviewing SafeWork NSW decisions to not enforce compliance.....	18
Resourcing the NSW IRC with WHS specialists.....	19
Slide 3: New Strategy, regulation, research and RTW programs.....	20
Implementing new WHS strategies.....	20
Targets to deliver by 2026 .....	20
Reviewing new injury prevention strategies.....	21
Specialist SafeWork NSW Inspectors .....	21
Improving iCare.....	22
Other insurers.....	22
Slide 4: Whole of Government Return to Work and new wellbeing offices.....	24
Whole of Government Return to Work Strategy.....	24
Extending the strategy to the private sector .....	24
Improving RTW rates in both public and private sectors.....	25
Requiring employers to do their part to improve RTW rates.....	25

Slide 5: Employer Excess.....	29
Calculation of weekly payments.....	29
Early intervention support.....	29
Impact of PIAWE on excess .....	29
Disincentivising unsafe workplaces for larger employers .....	30
Underreporting of safety incidents.....	31
Expanding the employer excess to physical injuries.....	31
Questions about Slide 5:.....	31
Slide 6: New Underinsurance offence and greater penalties.....	32
Empowering iCare to prevent non- and under-insurance .....	32
Slide 9: Define Psychological injury.....	33
Defining psychological injuries in legislation.....	33
Entrenching Codes of Practice in NSW WHS law .....	36
The proposal to require bullying and sexual harassment victims and survivors to run a dispute before accessing workers compensation .....	37
Slide 10: Clarifying reasonable management action .....	40
Establishing a presumption of reasonable management action .....	40
Slide 11: Align WPI thresholds for psychological injury.....	43
State workers compensation whole person impairment (WPI) thresholds comparison.....	46
Slide 13: Standing Committee on Law & Justice.....	50
Recommendation 14 .....	50
Review finding 1 .....	50
Slide 14: The Hon. Robert McDougall Review 2021 .....	51
Recommendation 37 .....	51
Recommendation 39 .....	52
Discussion regarding further areas for reform .....	54
Injury prevention in the retail and fast-food industries.....	62
Workforce surveillance and automation .....	62
Workplace protection orders.....	62

Controlling blades in retail.....	63
Working with children checks in retail.....	63
Conclusion .....	64
References.....	66

## **Introduction**

A sustainable workers compensation (WC) scheme is important and in the interests of workers. Proposed reforms require adequate time for consultation to achieve the best public policy outcomes and to avoid unintended consequences.

On Tuesday 18 March 2025, the NSW Treasurer Daniel Mookhey delivered a ministerial statement outlining proposals for reforms to the way the NSW WC scheme deals with psychological claims. The NSW Government committed to a consultation process with Unions NSW and Business NSW. A *Draft Discussion Paper* was presented to NSW Unions as part of that consultation process on Friday 28 March 2025.

The Treasurer in his *Workers Compensation Ministerial Statement* stated, '*The government will soon present to Parliament bills designed to curb the rising number of psychological injuries people are experiencing at work*' and noted three key principles in reviewing psychological injuries at work:

1. First, give workers the right to call out a psychological hazard before an injury takes place.
2. Second, let employees and employers know where they stand by defining 'psychological injury' and 'reasonable management action'.
3. Third, learn from states like South Australia and Queensland especially in setting the whole-person impairment threshold.

(NSW Government 2025).

Unions NSW does not oppose measures to improve certainty within WC regarding 'reasonable management action', provided it does not act to unjustly exclude workers.

Where psychological injuries do occur, we support a sustainable system that primarily addresses the care of injured workers and preferences their return to work (RTW) where possible.

Where injuries are longer lasting, ongoing treatment and support should be provided through the most appropriate channels. The concept of WPI should not be used to deny support where needed.

Following consultation, we:

- (a) Support legislating preventative measures with funding and set times for implementation agreed through the consultation process;

- (b) Support legislating agreed reforms arrived at through the consultation process;
- (c) Where proposed measures or reforms are not agreed, we support legislating an independent review, to commence upon the legislation of the reforms in (a) and (b), with terms of reference to investigate the design of a system that deals with psychological injuries which:
  - is economically sustainable;
  - addresses administration of the system in an efficient manner;
  - deals with psychological injuries in a way that:
    - o maximises prevention;
    - o maximises injured workers' RTW; and
    - o promotes a process that does not aggravate the underlying injury;
  - considers the most appropriate means of providing long term support to people with a psychological injury; and
  - reviews measures implemented in (a) and (b) and considers further preventative measures.

The independent review would have an agreed timeframe in which to produce a final report. However, where specific opportunities for reform were identified prior to the final report, the independent review could bring forward recommendations for immediate action.

Whilst the stated intention of the NSW Government's *Discussion Paper* is to curb the rising number of psychological injuries workers are experiencing, unfortunately the proposals are focused on the financial sustainability of WC through limiting access to the scheme. Whilst some of the proposed actions reflect a shift towards prioritising prevention and early resolution of workplace psychological issues, their dominant effect would be to significantly hinder workers seeking and being able to obtain compensation for psychological injuries.

That is, the purpose and effect of the changes will be to drastically reduce the circumstances when a worker with a psychological injury can be compensated, and to place hurdles in the way of making a claim.



Unions NSW rejects this approach, particularly reflected the Government's harmful proposals to increase the WPI threshold, require bullying and sexual harassment victims and survivors to run a dispute before accessing WC, and limiting the definition of 'psychological injury' in a way unsupported by legislation and WHS codes. Instead, Unions NSW embraces the stated intention to reduce workplace psychological injuries. We recommend alternative measures the Government should implement that can achieve the outcome of a sustainable WC scheme.

Our recommendations address:

- (i) preventative measures to reduce the number of psychological injuries,
- (ii) prioritising RTW,
- (iii) issues raised in the 28 March *Discussion Paper* and,
- (iv) a concurrent review of the system including sustainability.

## **Summary of Recommendations**

### **Preventative measures to reduce the number of psychological injuries**

**Recommendation 1:** The NSW Government should delay considering introduction of its proposed changes to workers compensation to provide an opportunity to consider a range of options, in consultation with unions and other key stakeholders. Consideration should be informed by a clearer understanding of the impact that new and recommended measures, strategies, and regulations can have on preventing workplace injuries.

### **Slide 7: IRC given bullying and harassment jurisdiction**

**Recommendation 2:** The NSW Government should help prevent physical and psychological injuries and improve WC sustainability by empowering the NSW IRC to conciliate and arbitrate unresolved WHS disputes referred to it by unions, as part of a general WHS jurisdiction as already operates in QLD and SA. This should be achieved by adopting Division 7A of the *Work Health and Safety Act 2011* (Qld).

**Recommendation 3:** To help prevent and deter injuries and improve the financial sustainability of WC, the NSW Government should reinstate standing for unions to prosecute breaches of WHS laws, including arbitrated WHS dispute outcomes, before the NSW IRC, and regrant unions access to a moiety of any penalties awarded.

**Recommendation 4:** To help prevent and deter injuries, the NSW Government should consult with unions on ensuring that there is the necessary powers and capacity for matters of bullying and harassment to be dealt with through orders within the general WHS jurisdiction of the NSW IRC recommended by Unions NSW. This must be used for injury prevention, not as a gateway to access WC.

**Recommendation 5:** To improve RTW rates and WC sustainability, include return to work provisions for injured workers as a matter for which unions may lodge a dispute with the NSW IRC for resolution. This should apply to workers in the public sector, local government and private sector.

**Recommendation 6:** To help prevent and deter injuries the NSW Government should amend sections 223 and 229 of the *Work Health and Safety Act 2011* (NSW) to recognise unions as 'eligible persons' for the purposes of seeking internal and external reviews of SafeWork NSW decisions, including decisions to not take enforcement action.

**Recommendation 7:** The NSW Government should help prevent injuries and improve WC sustainability by resourcing the NSW IRC with WHS specialists and funding it to deal with WHS matters.

Slide 3: New Strategy, regulation, research and RTW programs

**Recommendation 8:** The NSW Government should review the funding of SafeWork NSW against its targets and outcomes within the *Psychological Health and Safety Strategy 2024-2026* (SafeWork NSW 2024, p. 14) and increase funding where necessary to ensure it has the capacity to meet its goals and its obligation to enforce WHS compliance.

**Recommendation 9:** The NSW Government should legislate a review of its new injury prevention reforms within an agreed timeframe, linked to a review of WC that is conditional on whether preventative measures have reduced the frequency and severity of claims.

**Recommendation 10:** To increase the capacity of SafeWork NSW to prevent injuries, an agreed number of its inspectors should specialise and have appropriate training and qualifications in industry-specific psychosocial hazards.

**Recommendation 11:** The NSW Government should increase RTW rates and WC sustainability through reforms to iCare including better valuing case managers and expanding the Test and Learn model.

**Recommendation 12:** To expand the scope of benefits to RTW rates and WC sustainability through iCare reforms, the NSW Government should develop a strategy to embed iCare's professional standards within other insurers.

**Recommendation 13:** To improve RTW rates and WC sustainability, the NSW Government should review the powers of SIRA and empower it to regulate and penalise insurers outside of iCare.

Slide 4: Whole of Government Return to Work and new wellbeing offices

**Recommendation 14:** The NSW Government should delay considering introduction of its proposal until its *Whole of Government Return to Work* strategy has had an opportunity to impact on the overall scheme.

**Recommendation 15:** To improve private sector RTW rates and WC sustainability, NSW Government procurement processes should give additional weight to tenders from businesses with the best WHS standards and sustainable RTW rates.

**Recommendation 16:** To improve private sector RTW rates and WC sustainability, the NSW Government should require that businesses and funded organisations employ an agreed quota of injured workers on meaningful suitable duties as a term of procurement contracts.

**Recommendation 17:** To improve RTW rates and WC sustainability, the NSW Government should work with unions and SIRA to review and improve SIRA's vocational programs.

**Recommendation 18:** To improve RTW rates and WC sustainability, the NSW Government should legislate clear boundaries for employers and insurers attending medical appointments and processes for workplace injuries. This must be actively communicated to workers in different languages to ensure workers are aware of their rights.

**Recommendation 19:** The NSW Government should increase RTW rates and WC sustainability by amending ss. 49(2) and 49(3)(a) of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (WIM Act) to require employers to provide injured workers with suitable and meaningful alternative duties 'so far as possible'.

**Recommendation 20:** To improve RTW rates, s 49 *Workplace Injury Management and Workers' Compensation Act 1998* (NSW) be amended to require suitable duties to be provided within 2 weeks of receiving a request for suitable duties from an injured work and, where an employer fails to provide suitable duties, a requirement that the employer provide detailed reasons for its failure to do so.

**Recommendation 21:** To improve RTW rates and WC sustainability, the *Workplace Injury Management and Workers' Compensation Act 1998* (NSW) be amended to increase the civil penalty provision in s 49 to 100 penalty units, payable to the injured worker.

**Recommendation 22:** To improve RTW rates and WC sustainability, the *Workplace Injury Management and Workers' Compensation Act 1998* (NSW) be amended to require an employer, found to have contravened s 49, to pay the insurer an amount equal to the compensation paid to the injured worker since the contravention.

**Recommendation 23:** The NSW Government should increase RTW rates and WC sustainability by amending part 8 of the *Workers' Compensation Act 1987* (NSW) to require the Industrial Relations Commission to reinstate any worker who satisfies the existing jurisdiction preconditions for reinstatement, is fit for work and the work is otherwise available.

**Recommendation 24:** The NSW Government should increase RTW rates and WC sustainability by amending s 243(3) from '*can reasonably make available*' to '*can, so far as possible, make available*'.

**Recommendation 25:** To improve RTW rates and WC sustainability, the NSW Government should empower SIRA's Return to Work Inspectorate to require employers to find suitable duties where possible.

**Recommendation 26:** To improve RTW rates and WC sustainability, the NSW Government should encourage employers to facilitate RTW by legislating to extend the time before an injured worker can be dismissed.

**Recommendation 27:** To improve RTW rates and WC sustainability, the NSW Government should legislate to explicitly prohibit employers from discriminating against injured workers by asking job applicants if they have previously made a workers compensation claim.

#### Slide 5: Employer Excess

**Recommendation 28:** To improve RTW and WC sustainability, the NSW Government should require employers to provide early intervention support during the first two weeks of a claim, modelled off 'Critical Incident Leave' in the Sydney Trains EA.

**Recommendation 29:** To disincentivise unsafe workplaces without the risk of delayed weekly payments, the NSW Government should structure the employer excess as a payment made by the insurer and recoverable against the employer.

**Recommendation 30:** The NSW Government should introduce a sliding scale for employer excess that protects small organisations and businesses while incentivising larger businesses to improve safety.

**Recommendation 31:** The NSW Government should consider options to ensure that incidents and injuries are not under-reported by employers because of the introduction of an employer excess.

**Recommendation 32:** To expand the scope of benefits to WC sustainability from an employer excess, the NSW Government should introduce it across both psychological and physical injuries.

#### Slide 6: New Underinsurance offence and greater penalties

**Recommendation 33:** To prevent non- and under-insurance and improve WC sustainability, the financial penalty for non-compliance should represent three times the financial benefit obtained by employers.

**Recommendation 34:** To prevent non- and under-insurance and improve WC sustainability, the NSW Government should empower and task iCare with enforcing insurance requirements amongst employers.

Slide 9: Define Psychological injury

**Recommendation 35:** In identifying psychological hazards, the SafeWork NSW *Code of Practice: Managing Psychological Hazards at Work* should form the principal guiding material and injuries caused by all hazards should be compensable.

Hazards must include:

- Role overload
- Role underload
- Exposure to trauma and traumatic events
- Role conflict or lack of clarity
- Low job control
- Conflict or poor workplace relationships between workers & supervisors, managers and co-workers
- Poor support from supervisors & managers
- Poor co-worker support
- Workplace violence
- Bullying
- Harassment including sexual harassment
- Inadequate reward & recognition
- Hazardous physical working environments
- Remote or isolated work
- Poor procedural justice
- Poor organisational change culture

**Recommendation 36:** To help prevent workplace injuries, the NSW Government should review s26A of the Work Health and Safety Act 2011 (Qld) and s149 of the Occupational Health and Safety Act 2004 (Vic), and develop a NSW model to entrench Codes of Practice in law.

**Recommendation 37:** The NSW Government should **not** create a legal maze that undermines RTW, exacerbates injuries, compounds injustice, and creates inequitable access to WC by requiring injured workers to first have bullying and harassment claims resolved by the IRC/FWC before they can make a WC psychological injury claim.

Slide 10: Clarifying reasonable management action

**Recommendation 38:** The NSW Government should **not** amend s11A of the *WIM Act* which would risk undermining its successful operation and risk undermining provisional liability for psychological claims under s247.

Slide 11: Align WPI thresholds for psychological injury

**Recommendation 39:** To help prevent secondary psychological injuries through severe financial stress, the NSW Government should legislate to tie WC weekly payments to an injured worker's applicable enterprise agreement, award, or employment contract.

**Recommendation 40:** The NSW Government should follow Recommendation 37 of the *McDougall Review* and conduct a study into the WPI threshold test. If the study reveals flaws in the accuracy of WPI, the Government should consult on changes with key stakeholders, including unions, based on these findings.

The NSW Government should **not** change the threshold as it has proposed in its *Discussion Paper*.

Slide 13: Standing Committee on Law & Justice

**Recommendation 41:** The NSW Government should implement Recommendations 14 and 15 of the 2023 *Review of the Workers Compensation System and Review* finding 1 of the *SIRA Pre-injury Average Weekly Earnings (PIAWE) post-implementation review report*. However, the Government should not undermine the medical and legal cost savings from these reforms by increasing WPI thresholds and creating a presumption of reasonable management action.

Slide 14: The Hon. Robert McDougall Review 2021

**Recommendation 42:** The NSW Government should not deny injured workers reasonably necessary medical treatment through its proposal to change to the test for accessing medical treatment, from '*reasonably necessary*' to '*reasonable and necessary*'.

Injury prevention in the retail and fast-food industries

**Recommendation 43:** Implement Recommendations 1, 2, 3, 5, 6, 7, 8 and 13 of the '*Final Report - Workforce Surveillance and Automation*' by the NSW Legislative Council Select Committee on the Impact of Technological and Other Changes on the Future of Work and Workers in NSW (NSW LC 2022). These recommendations address issues around workplace surveillance; work intensification; the allocation of work by software/platforms/code/algorithms/apps; and automation.

**Recommendation 44:** To help prevent harm and threats to workers, legislate Workplace Protection Orders modelled on ACT laws (see s32 *Personal Violence Act 2016* (ACT)).

**Recommendation 45:** To reduce retail worker exposure to traumatic knife/blade related incidents, the NSW Government should legislate further controls on the storage and retail sale of bladed items.

**Recommendation 46:** Review and reform the current working with children checks (WWCC) system to include WWCC in the retail industry to protect young workers from the risk of working with known offenders.



### **Preventative measures to reduce the number of psychological injuries**

The Government's *Discussion Paper* proposals occur in the context of our negotiations with it regarding Tranche 2 of reform to the NSW industrial relations system. A framework of these reforms is provided in *Appendix A: Framework of Tranche 2 IR Reforms* which includes the following important and agreed changes:

- Creation a new object at s3(f), being: *to achieve gender equality in the workplace including by ensuring equal remuneration for men and women employees for work of equal or comparable value and eliminating gender-based undervaluation of work.*
- Amendment to the objects of the *Industrial Relations Act 1996* (NSW) (NSW IR ACT) at s3(f), being: *to prevent and eliminate discrimination, bullying and sexual harassment in the objects.*
- Amendment of the Good Faith Bargaining provisions at s129M(1)(b), to include references to the provision of information regarding gender equality.
- Implementation of a functioning and effective bullying and harassment scheme, whereby an individual worker (or an industrial organisation on behalf of one or more workers) is able to make an application for a remedy to stop bullying or sexual harassment. Further, that the IRC is provided the appropriate powers and options to remedy the alleged bullying or sexual harassment, based off the powers vested in NSW Civil and Administrative Tribunal and will include: enforcement of a public apology, ability to issue orders for conduct rendered unlawful and importantly, the ability to award damages of up to \$100,000, along with penalties for an employer's non-compliance.
- Return to work provisions for injured workers.
- Amendments to freedom from victimisation provisions.

Unions NSW supports increasing the sustainability of WC through measures such as these, which help prevent the injury of workers.

In addition to the above, multiple *new* and agreed injury prevention measures are in various stages of implementation across NSW and discussed throughout this submission.

Likewise, in this submission Unions NSW *recommends* further measures not yet implemented which would help prevent injuries and improve WC sustainability.

All these strategies, *new and recommended*, should be given the opportunity to impact the system, and then reviewed, before the Government considers introduction of its proposed *Discussion Paper* WC changes.

**Recommendation 1:** The NSW Government should delay considering introduction of its proposed changes to workers compensation to provide an opportunity to consider a range of options, in consultation with unions and other key stakeholders. Consideration should be informed by a clearer understanding of the impact that new and recommended measures, strategies, and regulations can have on preventing workplace injuries.

### **Slide 7: IRC given bullying and harassment jurisdiction**

Unions NSW supports the expansion of the NSW IRC with a jurisdiction to deal with WHS issues such as bullying and harassment. The expansion of IRC jurisdictions was a key feature of negotiations between the NSW Union Movement and the NSW Government for inclusion in Tranche 2 reforms to the NSW industrial relations system. However, it is not, nor has it ever been, the intent of the parties for the use of that expanded jurisdiction to be a precondition for psychological injury to be compensated as now proposed by the NSW Government.

### **Creating a general WHS jurisdiction in the NSW IRC**

To help prevent injuries, Unions NSW recommends the NSW Government create a general WHS jurisdiction by adopting Division 7A of the *Work Health and Safety Act 2011* (QLD).

WHS issues often arise well before a serious incident occurs — particularly in the case of psychological hazards like trauma, bullying, and overwork. However, NSW's current WHS framework remains largely reactive, relying on regulator intervention after the fact. To improve prevention, the NSW Government should empower the NSW IRC to conciliate and arbitrate unresolved WHS disputes referred by unions, as already occurs in QLD and SA.

This reform would strengthen early intervention by providing workers and unions with a fair, independent pathway to resolve safety concerns before harm occurs. It would encourage employers to take safety consultations seriously, reduce the burden on the regulator, and improve compliance through constructive dispute resolution.

Empowering the IRC in this way would help prevent injuries and psychological harm, reduce pressure on the workers compensation system, and support safer, more engaged workplaces. As an expert body familiar with industrial settings, the IRC is well placed to deliver timely, practical decisions that improve workplace safety outcomes and restore balance in WHS consultation processes.

**Recommendation 2:** The NSW Government should help prevent physical and psychological injuries and improve WC sustainability by empowering the NSW IRC to conciliate and arbitrate unresolved WHS disputes referred to it by unions, as part of a general WHS jurisdiction as already operates in QLD and SA. This should be achieved by adopting Division 7A of the *Work Health and Safety Act 2011* (QLD).

### **Prosecuting breaches of WHS laws**

To increase deterrence and help prevent further injuries, the Government should reinstate the standing of unions to prosecute breaches of WHS laws. This should include the ability to take all disputes, including category 3 breaches of the *Work Health and Safety Act 2011* NSW (NSW WHS ACT), before the NSW IRC. To assist unions in covering the cost of prosecutions, a moiety should be returned to the union if the employer is fined.

Currently, only SafeWork NSW can prosecute breaches, or s231 of the *NSW WHS Act* allows a person to request the regulator prosecute a suspected breach if no prosecution has been brought after 6 months but no later than 18 months. Unions can bring forward proceedings for category 1 and 2 offences, but only if the regulator has declined to follow the advice of the Director of Public Prosecutions to bring forward the proceedings. The barriers to unions prosecuting category 1 and 2 offences are extremely high. Category 1 and 2 offences are also the most serious breaches and costly to prosecute. Allowing unions to prosecute all breaches, including category 3 breaches, would enable unions to prosecute lower-level misdemeanours before they become serious offences and would take the burden off the regulator.

These reforms would restore the pre-2011 ability for unions to take proactive enforcement action. To ensure unions can effectively resource these proceedings, they should be regranted access to a moiety of any penalties awarded.

**Recommendation 3:** To help prevent and deter injuries and improve the financial sustainability of WC, the NSW Government should reinstate standing for unions to prosecute breaches of WHS laws, including arbitrated WHS dispute outcomes, before the NSW IRC, and regrant unions access to a moiety of any penalties awarded.

### **Empowering the NSW IRC to resolve bullying and harassment disputes**

Bullying and harassment is a significant workplace hazard. Unions NSW rejects the Government's proposal that victims and survivors should be required run a legal dispute before accessing WC. Nevertheless, it is important that the NSW IRC is empowered to resolve these disputes when they arise. However, given the failure of the

Federal jurisdiction to provide justice to victims and survivors, our proposal is that this should be dealt with through a general WHS jurisdiction.

**Recommendation 4:** To help prevent and deter injuries, the NSW Government should consult with unions on ensuring that there is the necessary powers and capacity for matters of bullying and harassment to be dealt with through orders within the general WHS jurisdiction of the NSW IRC recommended by Unions NSW. This must be used for injury prevention, not as a gateway to access WC.

### **Empowering the NSW IRC to resolve disputes of return-to-work provisions**

Within the general WHS jurisdiction should exist the ability for unions to dispute an injured worker's RTW provisions. As discussed on pp. 23-26 of this submission, successful RTW is in the interest of workers and unions, while employers are often resistant. Empowering the NSW IRC to resolve disputes regarding RTW would improve RTW rates while reducing discrimination towards injured workers.

**Recommendation 5:** To improve RTW rates and WC sustainability, include return to work provisions for injured workers as a matter for which unions may lodge a dispute with the NSW IRC for resolution. This should apply to workers in the public sector, local government and private sector.

### **Reviewing SafeWork NSW decisions to not enforce compliance**

Additionally, the NSW Government can help prevent and deter injuries by empowering unions to address compliance gaps. SafeWork NSW inspectors sometimes do not act following a safety breach by, for example, issuing an improvement or prohibition notice. An important means of holding the regulator to account and ensuring WHS compliance is to allow unions to seek reviews of SafeWork NSW decisions, through the recommended expanded WHS jurisdiction.

**Recommendation 6:** To help prevent and deter injuries the NSW Government should amend sections 223 and 229 of the *Work Health and Safety Act 2011* (NSW) to recognise unions as 'eligible persons' for the purposes of seeking internal and external reviews of SafeWork NSW decisions, including decisions to not take enforcement action.

### **Resourcing the NSW IRC with WHS specialists**

A crucial aspect to ensure the effective functioning of any form of WHS jurisdiction is the resourcing of the NSW IRC with WHS specialists and funding to deal with WHS disputes.

**Recommendation 7:** The NSW Government should help deter and prevent injuries and improve WC sustainability by resourcing the NSW IRC with WHS specialists and funding it to deal with WHS matters.

### **Slide 3: New Strategy, regulation, research and RTW programs**

The strategies listed on Slide 3 can improve the financial sustainability of the NSW workers compensation (WC) system by helping to prevent injuries in the first place and assisting injured workers in return to work (RTW) more quickly and easily. However, these proposed strategies are new, and many are not yet operational. They have not been given the necessary time to have their intended positive impact on the overall system. The NSW Government should delay considering the introduction of its proposed changes to WC until it has a clearer view of the impact of existing strategies.

#### **Implementing new WHS strategies**

There are several examples of strategies which must be given more time.

The new *Psychological Health and Safety Strategy 2024-2026* lists five targets and five outcomes that SafeWork NSW seeks to achieve by 2026 that would help prevent psychological injuries. They are:

#### **Targets to deliver by 2026**

1. 80% of workplaces revisited after six months sustain their compliance improvements,
2. Increase planned inspector compliance visits by 25% per year between 2023 to 2026,
3. 125,000 workplaces are taking effective action to become mentally healthy,
4. Deliver workplace mental health training to 21,000 individuals and coach 960 businesses and,
5. Complete a Psychosocial WHS Check for all inspector visits to organisations with 200 or more workers.

#### **Outcomes to deliver by 2026**

1. Increased awareness and understanding in NSW workplaces of how to comply with their duty to manage psychosocial hazards,
2. Increased capability in high-risk industries to comply with their duty to manage psychosocial hazards,
3. Workplaces in high-risk industries sustain their compliance improvements,
4. Improved regulatory action on psychosocial matters,
5. More workplaces taking effective action to become mentally healthy.

(SafeWork NSW 2024, p. 14).

Additionally, the NSW Government intends to employ 50-60 new SafeWork NSW inspectors, critical for injury prevention. However, they are not yet recruited, let alone trained and deployed.

The NSW Government should give SafeWork NSW a chance to deliver on these goals by 2026 before it considers its other proposals.

The NSW Government must also provide additional funding where necessary to ensure the regulator has the capacity to meet its goals and its obligations to enforce WHS.

**Recommendation 8:** The NSW Government should review the funding of SafeWork NSW against its targets and outcomes within the *Psychological Health and Safety Strategy 2024-2026* (SafeWork NSW 2024, p. 14) and increase funding where necessary to ensure it has the capacity to meet its goals and its obligation to enforce WHS compliance.

### **Reviewing new injury prevention strategies**

After the new strategies (and additional recommendations by Unions NSW) have been implemented and given a chance to make an impact, the NSW Government should then conduct an independent review. The review would assess whether the reforms have succeeded in reducing the frequency and severity of WC claims. This will enable more informed consideration of what still needs improvement to prevent injuries and make WC more sustainable.

**Recommendation 9:** The NSW Government should legislate a review of its new injury prevention reforms within an agreed timeframe, linked to a review of WC conditional on whether preventative measures have reduced the frequency and severity of claims.

In the meantime, the NSW Government should increase the capacity its strategies have to improve scheme sustainability.

### **Specialist SafeWork NSW Inspectors**

To increase the capacity of SafeWork NSW to prevent injuries, an agreed number of its inspectors should specialise and have appropriate training and qualifications in industry-specific psychosocial hazards.



**Recommendation 10:** To increase the capacity of SafeWork NSW to prevent injuries, an agreed number of its inspectors should specialise and have appropriate training and qualifications in industry-specific psychosocial hazards.

### **Improving iCare**

Case management within the Nominal Insurer, iCare, has suffered due to the devaluation of the case manager role. The NSW Government should take steps to strengthen professional standards within iCare by recognising case management as a skilled profession. Improving outcomes for both injured workers and employers requires valuing this workforce through ongoing professional development, clear career pathways, and competitive remuneration.

The iCare Test and Learn model has been successful in rehabilitating workers and returning them to employment. However, the model is currently small in scale. It should be expanded to assist more workers to RTW. This will also improve professional standards by reducing case manager caseloads.

**Recommendation 11:** The NSW Government should increase RTW rates and WC sustainability through reforms to iCare including better valuing case managers and expanding the Test and Learn model.

### **Other insurers**

To expand the scope of iCare's reforms, the NSW Government should develop a strategy to embed improvements to iCare's professional standards within other insurers.

**Recommendation 12:** To expand the scope of benefits to RTW rates and WC sustainability through iCare reforms, the NSW Government should develop a strategy to embed iCare's professional standards within other insurers.

Other insurers can also be improved by empowering SIRA to regulate and penalise them for breaches, with the outcome of increased RTW rates.

**Recommendation 13:** To improve RTW rates and WC sustainability, the NSW Government should review the powers of SIRA and empower it to regulate and penalise insurers outside of iCare.

## **Slide 4: Whole of Government Return to Work and new wellbeing offices**

### **Whole of Government Return to Work Strategy**

The NSW Government should continue to facilitate the *Whole of Government Return to Work Strategy*. The strategy utilises departmental mobility and redeployment to identify temporary and permanent opportunities for suitable work for injured public sector workers. However, like the strategies on Slide 3, this is new and has not yet been given the opportunity to impact on the overall WC scheme.

**Recommendation 14:** The NSW Government should delay considering introduction of its proposed changes to WC until its *Whole of Government Return to Work* strategy has had an opportunity to impact on the overall scheme.

### **Extending the strategy to the private sector**

There are also additional measures that could improve RTW rates that the Government should implement before considering introducing its changes to WC.

The NSW Government should extend its attempts to improve RTW rates into the private sector by utilising its procurement power. A business' RTW rates should be considered during procurement processes and additional weight given to tenders from businesses with higher RTW rates.

**Recommendation 15:** To improve private sector RTW rates and WC sustainability, NSW Government procurement processes should give additional weight to tenders from businesses the best WHS standards and sustainable RTW rates.

Furthermore, considering the *Whole of Government Return to Work Strategy*, the NSW Government can use procurement processes to take the same approach across the whole economy. It should be a term of procurement contracts that a business will employ an agreed quota of injured workers on meaningful suitable duties. This quota should be further discussed and agreed upon with Unions NSW.

**Recommendation 16:** To improve private sector RTW rates and WC sustainability, the NSW Government should require that businesses and funded organisations

employ an agreed quota of injured workers on meaningful suitable duties as a term of procurement contracts.

### **Improving RTW rates in both public and private sectors**

In both public (including government funded community sector) and private sectors, there are additional measures the NSW Government should implement to improve RTW rates.

SIRA funds 8 vocational programs to assist injured workers to develop new skills and/or obtain qualifications to remain at work with their pre-injury employer or to commence work with a new employer.

**Recommendation 17:** To improve RTW rates and WC sustainability, the NSW Government should work with unions and SIRA to review and improve SIRA's vocational programs.

### **Requiring employers to do their part to improve RTW rates**

#### ***Boundaries for employers attending medical appointments***

In both public and private sectors, some employers are resistant to injured workers remaining at work or becoming employed with them. The NSW Government should implement measures to reverse this and require employers to do their part in improving RTW rates and WC sustainability.

To hamper RTW, some employers and insurers attempt to influence or disregard medical advice. Some employers insist on attending injured workers' medical appointments. Through this process, some employers and insurers attempt to influence certificates of capacity. This is not the employer or insurer's role and contradicts the Government's commitment to doctor-led care. The NSW Government should protect the doctor-patient relationship to increase RTW rates. To support this, injured workers must be informed of their right to private medical consultations.

**Recommendation 18:** To improve RTW rates and WC sustainability, the NSW Government should legislate clear boundaries for employers and insurers attending medical appointments and processes for workplace injuries. These boundaries and

the right to private medical consultations must be actively communicated to workers in different languages to ensure workers are aware of their rights.

### ***Suitable redeployment provisions***

The redeployment provisions for injured workers can also harm RTW rates. Currently, it is too easy for employers to prevent RTW even when it is within their means. Employers should be required to provide suitable alternative duties to injured workers '*so far as possible*', not just '*so far as is reasonably practicable*' as is the current requirement.

**Recommendation 19:** The NSW Government should increase RTW rates and WC sustainability by amending ss. 49(2) and 49(3)(a) of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) to require employers to provide injured workers with suitable and meaningful alternative duties '*so far as possible*'.

In the interests of transparency and compliance, s 49 of the WIM Act should be further amended to require employers to provide suitable duties within 2 weeks of receiving a request for suitable duties from an injured worker. If the employer fails to provide suitable duties within 2 weeks of receiving the request, the employer must provide detailed reasons for its failure to do so.

**Recommendation 20:** To improve RTW rates, s 49 *Workplace Injury Management and Workers' Compensation Act 1998* (NSW) be amended to require suitable duties to be provided within 2 weeks of receiving a request for suitable duties from an injured work and, where an employer fails to provide suitable duties, a requirement that the employer provide detailed reasons for its failure to do so.

To complement the greater requirement on employers to provide suitable duties, the civil penalty provision in s 49 of the WIM Act should be amended to ensure compliance with this obligation. The civil penalty should be increased to 100 penalty units payable in favour of the injured worker. With a view to reduce liabilities under the scheme, an employer found to have contravened the obligations under s 49 of the WIM Act, is to pay the insurer an amount equal to the compensation paid to the injured worker since the contravention.

**Recommendation 21:** To improve RTW rates and WC sustainability, the *Workplace Injury Management and Workers' Compensation Act 1998* (NSW) be amended to increase the civil penalty provision in s 49 to 100 penalty units, payable to the injured worker.

**Recommendation 22:** To improve RTW rates and WC sustainability, the *Workplace Injury Management and Workers' Compensation Act 1998* (NSW) be amended to require an employer, found to have contravened s 49, to pay the insurer an amount equal to the compensation paid to the injured worker since the contravention.

Since the decision of the Commission in *Potter v Industrial Relations Secretary in respect of the Department of Regional New South Wales* [2022] NSWIRComm 1077 (and confirmed by the Full Bench on appeal), the Commission has considered its discretion in determining whether to reinstate an injured worker to permit consideration of matters unrelated to the worker's capacity for employment or the availability of work. Consistent with the underlying statutory purpose of part 8, to provide a mechanism for injured workers terminated because of their injury to return to work (and off the scheme), part 8 should be amended to require reinstatement where a worker satisfies the existing jurisdictional prerequisites, is fit for work and work is available.

**Recommendation 23:** The NSW Government should increase RTW rates and WC sustainability by amending part 8 of the *Workers' Compensation Act 1987* (NSW) to require the Industrial Relations Commission to reinstate any worker who satisfies the existing jurisdiction preconditions for reinstatement, is fit for work and the work is otherwise available.

For consistency, s 243(3)(b) should also be amended to mirror the obligation to provide suitable alternative duties under s 49 of the WIM Act from '*can reasonably make available*' to '*can, so far as possible, make available*'.

**Recommendation 24:** The NSW Government should increase RTW rates and WC sustainability by amending s 243(3) from '*can reasonably make available*' to '*can, so far as possible, make available*'.

Additionally, the NSW Government should better utilise SIRA's Return to Work Inspectorate to facilitate suitable duties for injured workers. Currently, the Inspectorate can only encourage but cannot require employers to find suitable duties for injured workers.

**Recommendation 25:** To improve RTW rates and WC sustainability, the NSW Government should empower SIRA's Return to Work Inspectorate to require employers to find suitable duties where possible.

### ***Employment protections for injured workers***

The RTW rate can also be improved through better employment protections for injured workers. Currently, employers can dismiss an injured worker after only 6 months. Many employers simply wait out this short timeframe instead of genuinely attempting to facilitate RTW.

**Recommendation 26:** To improve RTW rates and WC sustainability, the NSW Government should encourage employers to facilitate RTW by legislating to extend the time before an injured worker can be dismissed.

### ***Discrimination towards injured workers during recruitment***

Resistance from some employers to employ injured workers extends to recruitment processes, where injured workers frequently face discrimination. Workers applying for jobs are frequently asked by prospective employers if they have a history of WC.

**Recommendation 27:** To improve RTW rates and WC sustainability, the NSW Government should legislate to explicitly prohibit employers from discriminating against injured workers by asking job applicants if they have previously made a workers compensation claim.

## **Slide 5: Employer Excess**

### **Calculation of weekly payments**

Slide 5 indicates the NSW Government proposes to require employers to pay the first two weeks of WC income support payments for a psychological injury claim without reimbursement from the insurer. This is intended to act as a financial disincentive for unsafe workplaces. However, if this is not the intention of this proposal, we seek urgent clarification to amend our feedback.

Unions NSW in principle supports the introduction of an employer excess into WC to increase the financial costs of unsafe workplaces for employers, adding financial incentives for employers to ensure their workplaces are safe.

Nevertheless, we outline below some areas for improvement and clarification.

### **Early intervention support**

During this two-week period and to improve RTW rates, employers should be required to provide early intervention support. A successful precedent for this is '*Critical Incident Leave*' in the Sydney Trains EA. It runs for two weeks and provides the employee an opportunity to access support services and often results in no WC claim being progressed.

**Recommendation 28:** To improve RTW and WC sustainability, the NSW Government should require employers to provide early intervention support during the first two weeks of a claim, modelled off '*Critical Incident Leave*' in the Sydney Trains EA.

### **Impact of PIAWE on excess**

Workers receiving WC income support payments do not receive their full pay but rather a '*pre-injury average weekly earnings*' (PIAWE) which is a percentage of their income prior to the injury. The PIAWE is often disputed by workers and their unions, often due to outdated calculation methods from insurers. Regarding employer excess, we seek clarification on whether the amount paid by the employer will be the full value of the workers' pay or rather two weeks of the PIAWE amount. If the PIAWE is disputed and changed, it is unclear whether this would impact the employer's excess.



A solution to this issue would be to allow excess payments to be payable by the insurer and then recoverable by the insurer against the employer. This would remove the question of disputes as the system would operate as before. The insurer would decide PIAWE and recoup the excess from the employer. This would have the same financial disincentive as intended without the risk of delaying weekly income support to the injured worker.

**Recommendation 29:** To disincentivise unsafe workplaces without the risk of delayed weekly payments, the NSW Government should structure the employer excess as a payment made by the insurer and recoverable against the employer.

### **Disincentivising unsafe workplaces for larger employers**

We are also concerned that a flat two-week excess of income support per employer will disproportionately affect small businesses and the non-for-profit sector while providing no meaningful cost or financial disincentive for larger employers.

As such Unions NSW recommends the NSW Government increase the excess to up to 4 weeks for larger employers. There are several definitions available to the Government to define larger employers including the SafeWork NSW *Psychological Health and Safety Strategy 2024-2026* which targets employers with 200 or more employees (SafeWork NSW 2024).

Many NGOs and community service providers are subject to fixed funding agreements. Amongst these providers, there are no 'co-payments' due to their often 100% reliance on government funding. An employer excess may have a 'double whammy' effect on these employers who are both out of pocket and commonly without labour until the injured worker returns. In most cases, these employers with fixed funding and few financial assets will use remaining staff to cover the injured worker, potentially exposing them to new WHS hazards.

We are not advocating for small businesses to be exempt from their employer excess. Rather, we demonstrate that a flat excess fee across employers regardless of size or funding arrangements may have adverse effects.

Conversely, for sufficiently large employers, a two-week excess payment would be an insignificant cost to the business and provide no real incentive to improve safety.

**Recommendation 30:** The NSW Government should introduce a sliding scale for employer excess that protects small businesses while incentivising larger businesses to improve safety.

### **Underreporting of safety incidents**

The proposal to introduce a financial disincentive may result in employers underreporting incidents and injuries.

**Recommendation 31:** The NSW Government should consider options to ensure that incidents and injuries are not under-reported by employers because of the introduction of an employer excess.

### **Expanding the employer excess to physical injuries**

It is unclear whether the proposed excess would apply only to psychological injuries or also to physical injuries, as currently applies in other jurisdictions.

**Recommendation 32:** To expand the scope of benefits to WC sustainability from an employer excess, the NSW Government should introduce it across both psychological and physical injuries.

### **Questions about Slide 5:**

We seek clarification from the NSW Government regarding the following;

- Does the Government believe the proposed excess will impact provisional liability, which requires the insurer to start payments within 21 days under s274 of the WIM Act?
- Employers are obligated to notify their insurer of a claim within 48 hours of being notified of a claim by a worker. Does the government believe the proposed excess may deter employers from reporting as per the s44 (2) WIM Act requirement, and if so, how might this be mitigated?

### **Slide 6: New Underinsurance offence and greater penalties**

Unions NSW supports the proposal to introduce a new offence for businesses which underinsure themselves by recklessly under-declaring wages, and the Government's proposal to increase penalties for the existing offence of non-insurance. It is our experience that non- and under-insurance is rampant and practiced by employers to lower their insurance costs. It is usually an indicator of a PBCU that takes a poor approach to WHS.

However, the penalties currently outlined in the Government's *Discussion Paper* are inadequate to change employer behaviour and will in most cases be absorbed as the cost of doing business.

To ensure the penalties are sufficient to change employer behaviour, the NSW Government should increase them to three times the amount the employer has under-insured by. Employers will continue to consider non-compliance a viable cost of doing business until the penalty represents multiple times the value of the benefit they obtained.

**Recommendation 33:** To prevent non- and under-insurance and improve WC sustainability, the financial penalty should represent three times the financial benefit obtained by non-complying employers.

### **Empowering iCare to prevent non- and under-insurance**

iCare's ability to help prevent non- and under-insurance should be leveraged to improve WC sustainability. iCare should be given greater power to enforce insurance requirements amongst its users. It is appropriate that iCare play a greater compliance role because it is their financial sustainability that is undermined by under- and non-insurance.

**Recommendation 34:** To prevent non- and under-insurance and improve WC sustainability, the NSW Government should empower and task iCare with enforcing insurance requirements amongst employers.

### **Slide 9: Define Psychological injury**

Unions NSW oppose the proposed definition of psychological injuries.

We also oppose the proposed requirement for bullying and sexual harassment victims to have to run a dispute at the NSW IRC or Fair Work Commission (FWC) before accessing WC. It should not be harder to access support for psychological injuries caused by bullying or sexual harassment than it is for other hazards.

#### **Defining psychological injuries in legislation**

The current NSW Government was elected to reform WC to the benefit of injured workers – many of whom were being injured by the scheme – and not to the detriment of injured workers. The Government agreed that a focus on doctor-led care would assist in providing injured workers with timely and appropriate medical treatment as advised by their nominated treating doctors. In doing so, costs to the scheme would be reduced for several reasons. The use of independent medical examiners (IMEs) would be reduced, therefore reducing the medical costs associated with a claim. There would also be a reduction in harm to injured workers who suffer secondary psychological injuries due to the adversarial nature of IMEs. In most cases, the worker's nominated treating doctor has a thorough understanding of their health history and has a good patient-doctor relationship with the worker and is therefore best placed to provide the right diagnosis, care, and treatment for the worker.

A psychological injury should be determined by the nominated treating physician and should not be defined by legislation. Currently, the recognition of a psychological injury requires a specific medical diagnosis of a psychological or psychiatric disorder. A worker needs to establish the condition can be diagnosed and treated and is more than 'stress' or 'anxiety'. Reliance is generally placed on the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), developed by the American Psychiatric Association (SIRA 2023). While not a requirement under legislation or regulations, psychiatric conditions are generally given diagnoses arrived at using the DSM 5 (5<sup>th</sup> edition) (SIRA 2023). Decisions of the Personal Injury Commission (PIC) have held that DSM should be followed as an important guide.

Psychiatric conditions are considered diseases of the mind. The legislation establishing entitlement for a psychological disease condition, s. 4 (b)(ii) of the *Workers Compensation Act 1987* (NSW) (WC Act), has a stricter test than that for a physical condition. This is because having identified a psychiatric condition that arose out of the

course of employment, a worker would need to establish that employment was the main contributing factor to that condition (WC Act 1987 ss. 4 & 9A).

The Government's *Discussion Paper* suggests 'psychological injury' will be defined for the purpose of WC; this would be inappropriate and would contradict the Government's commitment to doctor-led care. However, it also appears that this will be achieved not by providing a definition of 'psychological injury', but rather through creating a finite list of the hazards that cause psychological injuries.

The hazards that may cause a psychological injury are numerous. The SafeWork NSW *Code of Practice: Managing psychosocial hazards at work* is an authoritative resource for defining the hazards that overwhelmingly cause workplace injuries (SafeWork NSW 2021). This code of practice was written by a tripartite committee in 2019, comprising academics, employer representatives, and unions. At its conclusion all parties agreed it was a sound document that would provide detailed information for both employers and workers as to what constitutes a hazard and what hazard elimination and minimisation should look like.

To further support hazard identification, the former Government added Division 11 clause 55A *Meaning of "psychosocial hazard"* to the *Work Health and Safety Regulation 2017* (NSW) (WHS Regulation). This defines psychosocial hazard as a hazard that arises from the design or management of work, or the work environment, or plant at a workplace, or workplace interactions or behaviours. Clauses 55B, C and D inform PCBU's of their duty to control these hazards. A PCBU must eliminate or minimise these hazards so far as is reasonably practicable. The WHS Regulation is law and defines hazards, along with the SafeWork NSW *Code of Practice*. However, the Government's proposal is inconsistent with these. It is unclear whether the NSW Government proposes to remove *Division 11 Psychosocial risks* from the WHS Act and alter the *Code of Practice* to align with proposed changes to WC. If so, Unions NSW would strongly oppose this.

Unions have campaigned for years for the recognition of these hazards in legislation. If only some hazards are compensable, this would contradict the WHS Regulation and the SafeWork NSW *Code of Practice*. It would also create a disincentive for PCBU's to control these hazards and potentially for the regulator to police them. For many years under the previous Coalition Government the regulator argued that these were industrial issues and not safety hazards. This is incorrect and fortunately this view is slowly changing. The regulator is now recognising these hazards as safety hazards. This is a monumental shift in the regulator's approach. Over time, continuing this

approach will help to reduce the number of incidents and therefore the number of claims.

Hazards rarely exist in a void, but the list of compensable hazards proposed by the government does not account for this. For example, workplace violence often occurs because other hazards are not controlled. The failure of PCBU's to control hazards, and the known risks that could eventuate, causes psychological injuries.

Another hole in the Government's proposed definition is near misses. Especially in the context where a particular safety incident is common, a worker can still be injured if that type of incident nearly occurs. An example is a person jumping in front of a train but not actually being hit.

#### **Recommendation 35:**

In identifying psychological hazards, the SafeWork NSW *Code of Practice: Managing Psychological Hazards at Work* should form the principal guiding material and injuries caused by all hazards should be compensable.

Hazards must include:

- Role overload
- Role underload
- Exposure to trauma and traumatic events
- Role conflict or lack of clarity
- Low job control
- Conflict or poor workplace relationships between workers & supervisors, managers and co-workers
- Poor support from supervisors & managers
- Poor co-worker support
- Workplace violence
- Bullying
- Harassment including sexual harassment
- Inadequate reward & recognition
- Hazardous physical working environments
- Remote or isolated work
- Poor procedural justice
- Poor organisational change culture

## **Entrenching Codes of Practice in NSW WHS law**

In NSW, Codes of Practice provide guidance on how to meet the standards required under the Work Health and Safety (WHS) Act 2011. They are not mandatory but can be used as evidence in court proceedings, aiding understanding and demonstrating compliance. These codes offer practical advice for specific work tasks and are not a substitute for the WHS laws themselves.

Because they are not mandatory, PCBU's sometimes argue that they do not need to follow them precisely. A PCBU may argue that they believe they are controlling a hazard appropriately, even if they don't follow the advice set out in the relevant Code of Practice.

Codes of Practice provide expert advice and offer the best guidance for hazard detection, elimination and or minimisation. To prevent workplace injuries, all Codes of Practice should be followed by the PCBU when identifying, eliminating and minimising hazards.

To elevate the status of the Codes of Practice, NSW should follow the lead of Queensland and Victoria, where Codes of Practice must be adhered to.

### ***Queensland***

#### ***S26A of the Work Health and Safety Act 2011 (Qld)***

##### **Duty of persons conducting business or undertaking—codes of practice**

A person conducting a business or undertaking must, if the Minister approves a code of practice for the purposes of this Act—

(a)

comply with the code; or

(b)

manage hazards and risks arising from the work carried out as part of the conduct of the business or undertaking in a way that is different to the code but provides a standard of health and safety that is equivalent to or higher than the standard required under the code.

### ***Victoria***

In Victoria Codes of Practice are referred to as Codes of Compliance. Under s149 of the Occupational Health and Safety Act 2004 the Minister can make an order approving a

compliance code. This gives a Code of Practice a higher legal status and compliance with the code is mandatory and enforceable.

### **149 Compliance codes**

(1) For the purpose of providing practical guidance to persons who have duties or obligations under this Act or the regulations, the Minister may make an order approving a compliance code.

**Recommendation 36:** To help prevent workplace injuries, the NSW Government should review s26A of the Work Health and Safety Act 2011 (Qld) and s149 of the Occupational Health and Safety Act 2004 (Vic), and develop a NSW model to entrench Codes of Practice in law.

### **The proposal to require bullying and sexual harassment victims and survivors to run a dispute before accessing workers compensation**

The NSW Government proposes that workers must first have a bullying and sexual harassment claim dealt with by the IRC/FWC before they can file a psychological injury claim through WC. This would reduce RTW rates, lead to further injuries and injustice, and will not help prevent injuries. It will also lead to a maze of illogical legal processes for injured workers that unions are not resourced to navigate, leaving many without support. Unions NSW opposes this proposal in the strongest possible terms.

### ***The requirement further stigmatizes mental health illness***

Workers with a physical injury are not required to have an order or finding first in order to be compensated. To require this of a person with a psychological injury is a clear differentiation at a time where societal awareness of mental health is becoming more progressive.

### ***The requirement undermines RTW***

The proposed requirement would undermine workers' RTW prospects because their relationship with their employer would be destroyed through the forced adversarial legal process.

### ***The requirement will exacerbate injuries***



An adversarial legal process through the IRC is also contrary to the intended WC outcome of rehabilitation. Instead, the proposed requirement to dispute bullying/sexual harassment will cause further injuries.

The requirement for victim-survivors of sexual harassment to conduct a dispute before accessing support from WC is particularly abhorrent. The proposed approach is not trauma informed: it is likely to either silence people or cause their re-traumatisation. Many workers whose injuries prevent them from engaging with a legal dispute will effectively be cut off from support.

Further, psychological injury because of bullying or sexual harassment can be caused by the cumulative impact of several events, rather than one single event within the workplace over time. To expect a victim to have proof of instances over time to win their case in the IRC or FWC simply serves as a barrier to taking a stand against sexual harassment or bullying, further enabling the continuation of the actions causing harm. At any rate, such an injured worker will not meet the 30% WPI and will not be eligible for on-going compensation regardless of the severity of the harassment or bullying.

***The requirement will not achieve justice or prevent injuries***

The current bullying and harassment jurisdiction within the Commonwealth system currently sees very few disputes because it fails to achieve justice for workers. These cases are notoriously difficult to win, lengthy, stressful, time-consuming, and, if the workers are not union members, expensive. Expanding this broken model to the NSW IRC will fail to act as a deterrent to bullying and harassment and may in fact enable the continuation of the harm. The dispute process is also restricted to those still at work, effectively barring all others from support.

***The requirement will create an illogical and lengthy legal maze***

The process for disputing bullying and harassment in the NSW IRC is at odds with the process for accessing workers compensation. Bullying and harassment are only considered as a causative factor once a psychological injury has already been demonstrated and deemed compensable under WC. This creates an absurd and lengthy cycle where, for example, a disputed injury would first need to be determined by the Personal Injury Commission (PIC), then presumably proceed to the NSW IRC for conciliation on the bullying and harassment aspect, and if unresolved, return to the PIC — effectively sending the matter in circles.

As a result, meritorious claimants may be left languishing in a drawn-out process with no clear path to resolution.

***Unions are not resourced to navigate this requirement, leaving workers without support***

The requirement for workers to dispute bullying and harassment in the NSW IRC prior to making a WC claim would significantly increase the number of bullying, harassment or sexual harassment matters unions would have to run. Unions do not have the resources to take forward many of these cases. The differing capacity between unions to take on these cases means WC access will arbitrarily discriminate between workers based on industry.

***The NSW IRC is not resourced to deal with this requirement***

The resource burden that the new bullying and sexual harassment requirement would place on the NSW IRC would be immense. The Government has not proposed providing the Commission adequate time to establish new procedures and/or practices. The Government would be sensible to establish the general WHS jurisdiction recommended by Unions NSW and then give it time to develop before considering routing WC cases through it.

***It is unclear how the requirement impacts provisional liability***

It is unclear how the requirement for bullying and sexual harassment would interact with provisional liability. It is unclear whether workers would receive payments during the dispute, especially given they may or may not be working. The Government has not proposed any guarantee regarding a timeline for disputes. While the Government has indicated a timeline of 8 weeks for the NSW IRC, it would be unable to provide similar certainty for the FWC, the resourcing of which is outside the Government's control.

**Recommendation 37:** The NSW Government should **not** create a legal maze that undermines RTW, exacerbates injuries, compounds injustice, and creates inequitable access to WC by requiring injured workers to first have bullying and harassment claims resolved by the IRC/FWC before they can make a WC psychological injury claim.

## **Slide 10: Clarifying reasonable management action**

### **Establishing a presumption of reasonable management action**

Unions NSW opposes the establishment of a presumption of reasonable management action which must be overturned by a worker to access WC.

Currently, 11A of the WIM Act works as a defence for employers when a claim for psychological injury has been accepted through provisional liability. It gives the employer an opportunity to show that the worker was subject to reasonable management action. If the employer has performed some form of reasonable management action, and can prove this, the claim will then be denied.

Reasonable management action is explained clearly in many online resources including the Fair Work Commission website and the Fair Work Ombudsman website. The Fair Work Ombudsman website provides the guide, *Managing underperformance best practice guide* (FWO 2025).

In the Australian legal context, 'reasonable' generally refers to a standard of conduct or decision-making that aligns with what a hypothetical, average person would consider just, rational, and appropriate in similar circumstances considering the specific facts and context.

Reasonable management action may be necessary to, for example:

- Help an employee improve their work
- Address poor performance
- Restructure a role

It is reasonable for an employer to take reasonable management action to:

- Start a performance improvement plan
- Take disciplinary action for misconduct
- Inform a worker about unsatisfactory performance
- Inform a worker that their behaviour is not appropriate
- Ask a worker to perform reasonable duties as part of their job
- Take action to maintain reasonable workplace standards

The way the employer takes these actions must be reasonable and carried out in a reasonable manner. If the employer conducts themselves unreasonably, these actions

could be considered bullying. Aggressive conduct and threatening behaviour would not be considered reasonable management action.

Unions have noticed an increase in workplace performance management in contexts of work overload which represents a hazardous work environment. This can be particularly hazardous in patient-, client-, and customer-facing roles, where the worker is likely to receive abuse for waiting times and delays, and mistakes can be extremely dangerous. Managing a worker who is working in a hazardous environment without putting control measures in place to reduce the hazard does not constitute reasonable management action. However, it is an extremely common approach by employers who do not wish to place extra resources into the workplace to reduce the hazards.

A worker may approach their employer to discuss work overload issues which make it difficult to perform their work safely and complete tasks adequately. Rather than addressing the hazards by putting in place control measures, the employer may suggest the worker is at fault for not managing their workload better. This is likely to result in a psychological injury because the worker has been blamed for the poor systems of work which they have no control over. A worker in this situation is more likely to make mistakes, leading to management action. Arguably, it is unreasonable to discipline a worker for making a mistake when this was foreseeable due to the hazardous situation.

The information provided by the NSW Government suggests that workers would have to prove that any management action taken was unreasonable. S11A of the WIM Act would no longer act as a defense for employers but would instead provide a mechanism for the automatic denial of a claim by a worker when the employer tells the insurer that management action was undertaken. This leaves the worker to prove that management action was unreasonable. This appears to reverse the onus of proof and creates an unfair barrier to workers accessing compensation. It is also unclear how this proposal would operate alongside s247 of the WIM Act regarding provisional liability.

Status-quo should be maintained because workers are less well placed to demonstrate that management action was unreasonable than employers are to demonstrate that it was reasonable. How a worker would prove that management action was unreasonable remains unclear from the proposal. It is less likely a worker would have sufficient documentation to prove unreasonable management action: they would be at a disadvantage to an employer who should have kept adequate records of any management action that has occurred. It may be impossible for a worker to access evidence to meet this burden of proof if they are not working due to injury.

--

**Recommendation 38:** The NSW Government should **not** amend s11A of the WIM Act which would risk undermining its successful operation and risk undermining provisional liability for psychological claims under s247.

### **Slide 11: Align WPI thresholds for psychological injury**

Unions NSW opposes increasing the Whole Person Impairment (WPI) threshold to 30% for an injured worker to receive weekly payments beyond 130 weeks for psychological injuries.

The proposed changes for psychological injuries would lift the threshold from 15% to 30% as per the South Australian legislation. This would require a worker to establish a level of impairment so high that the vast majority of workers (95% of psychological injuries according to advice provided to Unions NSW), would be denied weekly payments beyond 130 weeks or Work Injury Damages. The worker would have to be catastrophically injured to reach this threshold, and in our experience even the most seriously ill worker would fail to meet this threshold.

Consultant psychiatrist, Dr Dinnen, when advised of the proposed changes advised one affiliate in writing that:

*"For a rating of 30% WPI it would be necessary for the patient to rate at Class 5 on all six scales, which in my experience is almost an impossibility.*

*I repeat, that the patients I assess with severe impairment are restricted in most areas of function, are chronically and severely ill, unable to work, unable to enjoy life, often with disrupted family relationships, and in need of long-term psychiatric and psychological care. Such individuals that I have examined and reported on over the years are seldom rated at above 20 to 25% WPI."*

Slide 11 falsely claims the proposal is to 'align' the NSW thresholds with other states including Queensland and Victoria. The ACT and Queensland have no thresholds at all to access Work Injury Damages. Queensland does not have a 30% threshold for anything. Victoria has an alternative 'narrative test' threshold for seriously injured workers that enable them to access work injury damages irrespective of their WPI. The proposal would put NSW on par with the harshest scheme for workers – South Australia's. NSW should have the best scheme in the country, not the worst. It is also misleading to cherry-pick the worst parts of other state's schemes and to characterise this as 'alignment'.

Only 13 years ago, all NSW workers had an income support safety net until age 68. The Government now proposes to leave 95% of psychologically damaged workers without any income support safety net after 2.5 years, even where the injury was caused by their employer's proven negligence. It goes too far to redesign the scheme in such a way that it serves only 5% of long-term psychologically injured workers.

This policy is a proven failure. In 2012, the Coalition Government introduced a 30% threshold for weekly payments, which Labor strenuously opposed. The threshold proved to operate so harshly on injured workers that the Government was forced to lower the threshold to 20% in 2015 and to backpay workers who had been deprived of benefits in the meantime. The repeal of the 30% threshold was championed by Labor, who now proposes to introduce an even harsher 30% threshold. Whereas the 30% threshold introduced in 2012 applied after 5 years of weekly payments did not apply to Work Injury Damages, the new proposed threshold would apply after only 2.5 years and would apply to Work Injury Damages claims as well. To resurrect a policy that was a demonstrated failure that had to be repealed because it proved to operate so punitively is difficult to understand.

Unions NSW accepts there is a valid basis for proposals that will reduce unmeritorious or minor claims, however there is no justification for cutting benefits to seriously injured workers. Workers assessed at 15% WPI are usually assessed with severe or total incapacity for work.

A worker assessed with 3 of the 6 categories at severe (class 4) on the PIRS scale would still be severely impaired but would not be entitled to weekly payments, medical support, or the ability to make a negligence claim under the Government's proposal. This is simply a way of cutting off workers from receiving benefits.

For example, a hypothetical person called 'Worker A', who has class 4 injuries in 3 of 5 categories, could be described as follows according to the PIRS scale:

*Worker A needs supervised residential care. If unsupervised, Worker A may accidentally or purposely hurt themselves. Worker A can only read a few lines before losing concentration. Worker A has difficulty following simple instructions. Worker A's conversation deficits are obvious even during brief conversations. Worker A is unable to live alone and needs regular assistance with relatives and community services. Worker A cannot work more than one or two days at a time, less than 20 hours per fortnight, with reduced pace and erratic attendance.*

(see SIRA 2023 for PIRS scale categories).

Worker A received their injuries from working in NSW, but they will be cut off from all support under the Government's proposals two and half years earlier than under the amendments made by the NSW Liberal-National Government in 2012.

This completely undermines the commitment by the government to provide ongoing financial compensation and medical treatment to all workers who need it because they are unable to re-enter the workforce. Workers do not cease to be injured because the

scheme no longer deems them qualified to receive compensation and are unable to meet unrealistic medical targets. These workers go on to lose their homes, their friends and families, their social lives and connections to society. Some take their own lives.

The cost is shifted to the taxpayer and these workers are forced to live on the little that the federal welfare system can offer them. Many are thrust into further depression and despair as they are forced to apply for jobs they will never attain to receive Job-Seeker payments. The 2022 McKell Institute Report *It's Broken: Workers' compensation in New South Wales since 2012* found that 87% of injured workers found it difficult to meet the cost of living, and suffered severe financial stress, often leading to secondary psychological injury (McKell Institute 2022, p.36). This severe financial stress is caused by the harmful and unjust progressive reductions in the payment of weekly benefits, which must be reconceptualised as income replacement payments. They should increase in line with the applicable enterprise agreement, award, or employment contract.

**Recommendation 39:** To help prevent secondary psychological injuries caused through severe financial stress, the NSW Government should legislate to tie WC weekly payments to an injured worker's applicable enterprise agreement, award, or employment contract.

Slide 11 falsely states that 30% WPI is the '*top of the moderate PIRS scale*'. A score of '*moderate*' in all 6 PIRS categories gives 15% WPI – this is the '*top of the moderate PIRS scale*'. A person who has moderate impairment in 4 of the 6 classes needs to satisfy two of the following criteria to be rated at 30%:

- Cannot work at all.
- Needs constant supervision and assistance within an institutional setting.
- Unable to function within society. Living away from populated areas, actively avoiding social contact.
- Requires 2 or more persons to supervise while travelling.
- Cannot tolerate living with anybody, extremely uncomfortable when visited by close family member.



- Needs assistance with basic functions, such as feeding and toileting.

The idea that a person who fits into two of these categories has a moderate impairment is self-evidently false.

A worker assessed as being permanently unable to work at all can be assessed with as little as 5% WPI. Being permanently unable to work in any capacity should entitle an injured worker to benefits beyond 130 weeks, and access to Work Injury Damages if the injury was caused by the employer's negligence

The Government's proposal indicates changes to ss39 and 59a of the WIM Act. The slide suggests that workers with a psychological injury will only be covered for 130 weeks as opposed to 260 weeks, or from 5 years down to 2.5 years for financial compensation and the continuance of medical treatment for 3.5 years after compensation ends. Physical injuries are covered for 5 years compensation followed by a further 2 years of medical treatment. Given the difficulty many people have in accessing mental health treatment, coupled with its cost and limitations to Medicare, this creates a two-tier system which disadvantages workers with psychological injuries and appears punitive.

Increasing the threshold to a level that will exclude 95% of psychologically injured workers is so extreme and harmful a measure that it should only be revisited for consideration if the other proposals, after implementation and review, do not improve the scheme's financial performance.

The Government's comparisons between its proposal and other state systems are misleading. Below is a comparison table between states and territories regarding compensation for psychological injuries.

**State workers compensation whole person impairment (WPI) thresholds comparison**

	Weekly payment after 2.5 years (130 weeks) for psychological injury	WPI requirement for weekly payments after 2.5 years	WPI requirement for medical costs after 3.5 years
NSW now	80% of pre-injury earnings	No requirement until 5 years, then 20%	11%, then 21% after 5 years
NSW proposed	80% of pre-injury earnings	30%	30%
Vic	80% of pre-injury earnings	21%	21%
QLD	75% of normal weekly earnings or 70%	15%, otherwise single pension rate	No requirement

	Queensland full-time adult ordinary time earnings	payment, up to 5 years	
WA	100% of pre-injury earnings	No requirement	No requirement until \$75,817, then 15% up to \$250,000
SA	80% of pre-injury earnings	30%	30%
TAS	80-85% of pre-injury earnings	No requirement until 9 years, then 15%	No requirement until 10 years, then 15%
NT	75-90% of pre-injury earnings	No requirement until 5 years, then 15%	No requirement until 6 years, then 15%
ACT	65% of pre-injury earnings or national minimum wage	No requirement	No requirement

Legend:

Purple = proposal

Red = worse than proposal

Yellow = same as proposal

Green = better than proposal

It is unclear from the Slide how the Government's proposed changes will affect lump sum payments for permanent psychological injuries. The Government must clarify this as soon as possible.

The Slide falsely conflates the thresholds for weekly payments in other jurisdictions with the thresholds for Work Injury Damages. The current 15% NSW threshold for Work Injury Damages is already harsher than the narrative test threshold in Victoria and the absence of any thresholds at all in Queensland and the ACT. Additionally, damages in NSW are already far lower than in those jurisdictions because in NSW, only damages for loss of earnings can be claimed: i.e. there is no entitlement to treatment and care compensation as in other jurisdictions. Increasing the threshold to 30% will put NSW even further behind those jurisdictions at the expense of 95% of workers psychologically injured due to their employer's negligence.

An increase in the Work Injury Damages threshold would mean there would be no repercussions for employers who negligently psychologically injure their workers, which will only entrench unsafe workplace cultures by removing deterrence. This will lead to increasing injury rates and increasing costs to the scheme.

As NSW only compensates loss of earnings in a Work Injury Damages claim, the only threshold for accessing such benefits should be the assessment of the worker's work capacity. The other PIRS classes dealing with social and recreational activities, hygiene, travel, and family relationships that need to be satisfied to reach the proposed 30% threshold are irrelevant to an injured person's capacity to earn an income to support themselves and their family. Any change to the WPI threshold for damages should be to align it with Victoria's narrative test that is focussed on incapacity for work. Damages claims allow workers to exit the scheme, saving significant ongoing claims management costs. Barriers to damages claims should be lowered, not raised.

Victoria recently passed amendments to restrict compensation for psychological injuries without increasing their thresholds. The fact the NSW scheme is already less generous than the Queensland and Victorian schemes and that such Draconian measures have not been enacted in those states strongly suggests that the NSW scheme's financial woes are not the result of the level of benefits, but rather scheme mismanagement. If the scheme's financial woes were caused by too-generous benefits, financial trouble should have befallen the far more generous schemes in other states before NSW, but this has not occurred. It is no solution to the budgetary hole caused by mismanagement to remove the safety net of the most vulnerable members of the workforce who were not responsible for the problem.

The proposed increase in the threshold will disproportionately impact frontline workers who cannot avoid the psychological trauma involved in providing essential services that benefit all residents of NSW. Frontline workers heed the call of danger at great personal risk for the good of the community. They witness the most psychologically traumatic events that occur in the state in dealing with emergency situations, fatal accidents, rescues, suicides, murders, and their aftermaths. The State should be supporting and protecting workers whose jobs require them to put themselves in harm's way for the greater good, rather than relegating them to Centrelink benefits and public housing after 130 weeks.

As is clear from the comparison, almost all other states have more favorable WC entitlements than the Government's proposal for NSW.

**Recommendation 40:** The NSW Government should follow Recommendation 37 of the *McDougall Review* and conduct a study into the WPI threshold test. If the study reveals flaws in the accuracy of WPI, the Government should consult on changes with key stakeholders, including unions, based on these findings.

The NSW Government should **not** change the threshold as it has proposed in its *Discussion Paper*.

### **Slide 13: Standing Committee on Law & Justice**

Unions NSW supports Recommendations 14 and 15 of the 2023 *Review of the Workers Compensation System* and Review finding 1 of the SIRA, *Pre-injury Average Weekly Earnings (PIAWE) post-implementation review report*.

#### **Recommendation 14**

Recommendation 14 indicates a reduction in the number of IMEs injured workers will be required to attend. This will improve sustainability by reducing waste and will improve the choice that injured workers have over their care. The intent of Recommendation 14 is to reduce waste. However, this will be undermined by the increased legal and medical costs that will occur by increasing WPI thresholds as proposed on Slide 11, and creating a presumption of reasonable management action as proposed on Slide 10. Both proposals will increase the requirement for injured workers to obtain multiple specialist opinions and pay legal costs to litigate outcomes, increasing costs and waste.

Provided that injured workers have access to independent financial advice and are not pressured to take or not take a commutation, Recommendation 14 improves choice for injured workers regarding how they should be compensated. Appropriate commutation arrangements can assist employees to move on from the past and can open the way for employees to engage in a new career.

#### **Review finding 1**

Review finding 1 indicates PIAWE will be removed from the definition of a work capacity decision. The current use of PIAWE in this context is an unnecessary technicality and the proposed reform is sensible.

**Recommendation 41:** The NSW Government should implement Recommendations 14 and 15 of the 2023 *Review of the Workers Compensation System* and Review finding 1 of the SIRA *Pre-injury Average Weekly Earnings (PIAWE) post-implementation review report*. However, the Government should not undermine the medical and legal cost savings from these reforms by increasing WPI thresholds and creating a presumption of reasonable management action.

## **Slide 14: The Hon. Robert McDougall Review 2021**

Unions NSW supports Recommendations 37, 38, and 40 but opposes Recommendation 39 of the *McDougall Review*.

### **Recommendation 37**

Reflected in Recommendation 37, the *McDougall Review* found WPI is a poor measure for WC assessment. The NSW Government should consider this finding in the context of its proposal on Slide 11 to increase WPI thresholds for accessing WC. In making its findings, the *McDougall Review* considered the following argument from the Law Society of NSW, which described the WPI test as:

*'...an [in]appropriate threshold test for recovery of medical treatment expenses, noting that injured workers may sustain injuries that require ongoing medical attention regardless of their WPI assessment. Further, we consider that restricting injured workers' access to medical benefits without considering the nature of their injury and recovery requirements leads to arbitrary, counterintuitive and unfair outcomes for claimants.'*

(Law Society of NSW 2021, in McDougall 2021, p. 265).

In its submission to the McDougall Review, the NSW Bar Association added:

*'it is the Association's view that it is not appropriate to use WPI assessments as a way of determining entitlements to medical expenses.'*

(NSW Bar Association 2021, in McDougall 2021, p. 265).

The report then concluded:

*'an assessment of WPI does not always yield an appropriate indicator of either capacity for work or the need for and expense of medical treatment.*

*The use of the concept of WPI as the test for entitlement to weekly and medical benefits does not reflect the policy objective of ensuring that the most injured workers should receive appropriate support. That policy would be better served by a test that assessed the severity of an injury by reference to the treatment and support necessary to manage its consequences, as well as its impact on the worker's capacity for work.'*

(McDougall 2021, p. 266).

Based on Recommendation 37 of the Review which followed, the NSW Government has committed to investigating an alternative test to WPI. However, this activity is entirely out of step with the Government's concurrent proposal to increase the scheme's reliance on WPI as an access threshold. This highlights the incoherence of the Government's WPI proposal. The NSW Government is right to explore alternatives to WPI but should not be ratcheting up WPI requirements at the same time.

As per Recommendation 32 of this submission, the NSW Government should be exploring alternatives to WPI assessments as per Recommendation 37 of the *McDougal Review* instead of its inconsistent proposal to increase WPI thresholds.

### **Recommendation 39**

While reform based on Recommendation 37 supports a more medically informed WC scheme, Recommendation 39 on the other hand risks denying workers reasonably necessary medical care.

According to the McDougal Review, the proposal to change the test, from '*reasonably necessary*' to '*reasonable and necessary*', for access to a medical treatment, was opposed by the Australian Medical Association (AMA). The AMA warned this change would introduce a more restrictive test that would raise the bar for medical benefits to be paid.

Under the current test of '*reasonably necessary*', if a doctor certifies that an injured worker needs treatment, their opinion is generally respected. However, if the test were changed to '*reasonable and necessary*', insurers may be able to oppose treatments against medical advice based on additional considerations such as cost or perceived effectiveness. This could increase costly disputation and make it harder for workers to challenge insurers' decisions, especially if courts adopt a deferential approach to what insurers deem '*reasonable*'. This risk is illustrated by cases such as *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; (2010) 240 CLR 611 at 648-650 and *A v Corruption and Crime Commissioner* [2013] WASCA 288 at [123], which highlight the broad discretion afforded to decision-makers under a '*reasonable*' standard in administrative law.

Ultimately, this proposal could unjustly deny injured workers reasonably necessary medical treatment.

<p><b>Recommendation 42:</b> The NSW Government should not deny injured workers reasonably necessary medical treatment through its proposal to change to the test</p>
---

for accessing medical treatment, from '*reasonably necessary*' to '*reasonable and necessary*'.



### **Discussion regarding further areas for reform**

Unions NSW would like to table other areas for discussion to prevent injuries and improve the WC system. These areas are presented as follows.

Key problem with current model	Change we would advocate for	Any precedent
Lack of structure of providing suitable duties	No need for vacant position. Employer must provide suitable duties.	N/A
RTW officers attempting to get Med Officers to change certificate of capacity or ignoring it going against medical advice	Clear boundaries of roles when attending medical appointments	N/A
Continuity of care of member, becomes very confusing and disjointed	Need IRO intervention at times.	N/A
Inadequate work being done to educate employers and employees of rights and responsibilities of WHS legislation, guidance notes etc, and available resources as part of prevention strategies to prevent psychological injuries within WHS framework.	Approved package of WHS training and resources, specifically addressing psychological injury prevention, identification and management strategies for all Government employers and government funded services to support a review of workplace strategies to prevent psychological injury, improve identification and management of psychological injury, particularly in relation to exposure to trauma and vicarious trauma, work pressure, harassment, bullying and other mental stress factors. <i>(including violence - our edit)</i>	SIRA rec 7 Treasury Managed Fund Review Report
Government employers non-compliant with legislation	Introduction of whole-of-government training requirement, including government funded services on WHS	SIRA rec 8 Treasury Managed Fund Review Report

	<p>legislation, guidance notes etc and available resources to assist in understanding legislated WHS obligations, prevention, identification and management of psychological injury within WHS framework. Government employers, including government funded services review and update their systems, policies and procedures where required to improve compliance with their employer obligations, with a particular focus on:</p> <p>Consistent and timely injury notification</p> <p>Compliant return to work programs</p> <ul style="list-style-type: none"> <li>• Enhancing annual internal audit and risk management policy attestation processes to include workers compensation legislative breaches.</li> </ul>	
Poor return to work	<p>Government employers and government funded services must explore and address causal factors of poor return to work with a focus on identifying opportunities for improvement of return to work for psychological injury claims, particularly injuries relating to work pressure, harassment, bullying or other mental stress factors. Those factors should include workplace education for managers and employees on how to effectively support workers who are returning to work and addressing issues including unhealthy workplace cultures</p>	SIRA rec 9 Treasury Managed Fund Review Report

	(bullying, excessive workloads, lack of opportunity to disconnect etc)	
Poor return to work	<p>NSW Treasury continue to facilitate The Whole of Government Recovery through Work Strategy to utilise mobility and redeployment across government employers to ensure temporary and permanent opportunities for suitable work are identified within and across the public sector and government funded community sector (including consideration of smaller agencies).</p> <p>Chief People Officers within government employers regularly review injured workers who are either under-utilised or not working for potential inclusion in the work participation program referenced in suggestion 11.</p>	SIRA rec 10 & 11 Treasury Managed Fund Review Report
Failure to prioritise RTW	NSW Treasury to work with relevant NSW Government stakeholders, including unions to review, revise or develop as required, the implementation of psychological injury prevention, identification, management strategies, performance indicators, targets and incentives for government employers to improve return to work outcomes by supporting and implementing workplace training and culture change in support of effective RTW strategies.	SIRA rec 12 Treasury Managed Fund Review Report

Poor claims management	<p>SiCorp review and enhance claims management strategies where possible to address opportunities to improve worker and employer experience and outcomes identified from the claims file review, with a particular focus on:</p> <ul style="list-style-type: none"> <li>•Tailored injury management planning for workers, driving early recovery, support and return to work</li> <li>•Maintaining appropriate, supportive contact and review of RTW management with workers, employers and other stakeholders throughout the life of the claim</li> <li>•Assessing risks for delayed recovery with appropriate actions matched and implemented</li> <li>•The appropriate use of legal and factual investigations in the early stages of psychological injury claims</li> <li>•The appropriate application of reasonable excuse</li> </ul>	SIRA rec 13 Treasury Managed Fund Review Report
Delays in approving claims leading to delays in workers receiving support despite evidence that the longer this takes, the worse the RTW outcomes	Reduce the proportion of psychological injury claims that are referred for legal advice prior to initial liability decision, decrease the proportion of claims where factual investigations and IMEs are requested early in the claim.	Issues noted in the SIRA TMF review
Significant barriers to stay at work and return to work for employers,	Improve access to resources that support development of skills and commitment of management, workplace supervisors, HSR's, team leaders and workers in	<a href="#">Monash report for SIRA</a>

	identifying and managing psychological conditions in the workplace and attitudes of managers and co-workers towards workers with psychological injury.	
Significant barriers to stay at work and return to work for healthcare providers	Provide greater guidance for healthcare professionals in multiple areas, including most notably approaches to certification of capacity for workers with psychological injury. Enhancing the ability of providers to support employers to identify suitable duties and support injured workers in undertaking those duties was considered a valuable opportunity.	<a href="#">Monash report for SIRA</a>
Significant barriers to stay at work and return to work for insurers	Ongoing education, support and upskilling Programs, including access to current resources for case managers, HSR's and management are an important part of any attempts to improve outcomes in the sector.	<a href="#">Monash report for SIRA</a>
Improved model of care required for workers with psychological injury	Tailored, person specific Multi stakeholder (including unions, HSR's etc) approach Importance of early action	<a href="#">Monash report for SIRA</a>
Lack of evidence informed interventions	Development of evidence informed care and management practices to underpin workplace specific education, training and development of resources as the best means to prevent, identify and manage	<a href="#">Monash report for SIRA</a>

	psychological hazards within the WHS framework.	
No presumption for psychological injury for nurses – delaying access to support	Introduce a presumption for healthcare and other workers identified as at-risk of exposure to trauma, vicarious trauma, violence, and related workplace risk experiences.	e.g. <a href="#">British Columbia</a> provides presumptive coverage for mental disorders for nurses, paramedics, health care assistants
Work duties where practicable. Employers use this against staff.	Employers must provide suitable duties in consultation with unions, HSRs and other key stakeholders (RTW providers etc) to support sustainable RTW in a more timely manner.	
Resistance to provide or look for suitable duties	Recruitment and Selection Policy 2.5. RTW coordinators must seek alternate positions for staff in consultation with unions, HSR's and other stakeholders, including RTW providers not leave it just to staff to find another position.	
RTW officers often do not have experience or knowledge, support, access to training and resources to do their roles, Public, Private and Aged care and community services sector.	Minimum standards for positions. Need training, support, access to relevant and current resources and relevant experience also CPD to maintain knowledge.	
Lack of understanding of RTW officer related to particularly psychological injury	Training and support, access to current and relevant resources, and recognition from management of their role so that they can effectively work to support and manage injured worker RTW.	

<p>If claim denied employers immediately treat worker as non-work related injury. Review for disputes process takes a long time and disadvantages worker</p>	<p>Once notification of a dispute being looked at W/C should continue</p> <p>CHAPTER 3 - WORKPLACE INJURY MANAGEMENT WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998 - SECT 41A Chapter applies even when liability disputed 41A Chapter applies even when liability disputed The requirements of this Chapter apply even when there is a dispute as to liability.</p> <p>RTW Inspectors must be given powers to enforce this section of the 1998 Act</p>	
<p>Staff have 13 weeks for job searching, often this timeframe too short especially in rural areas</p>	<p>Extend the time for job searching</p>	
<p>When on W/C Super is not being paid for staff if totally unfit, if injury lasts for extended period this adds greater financial insecurity for workers, impacts on women at a much greater rate who already are impacted by less super</p>	<p>Review options for Super to be paid</p>	

Currently A/L and LSL cannot be reinstated if used whilst waiting for W/C payments to be accepted	Leave should be reimbursed once claim accepted.	
Members currently asked at times to attend FFI's whilst unfit for any work	All employer investigations need to cease until NTD gives clearance to attend	
Lack of clarity regarding definition of 'reasonable additional hours' exposes workers to WHS risks.	Review options for definition informed through understanding of WHS and injury prevention.	
Lack of coordinated time off work to reduce burnout and improve productivity. NSW workers have the equal-least access to public holidays in Australia, despite shouldering one of the heaviest workloads in the country.	Recognise the preventative benefits of shared community time for the mental health and wellbeing of workers and address the current imbalance of shared time in NSW in the form of public holidays compared to other jurisdictions like SA, Qld, Vic and ACT by introducing a new public holiday.	a study examining the wellbeing benefits of national holidays across 200 countries found that having one fewer public holiday decreases the likelihood of feeling happy by 0.8 per cent.



## **Injury prevention in the retail and fast-food industries**

Unions NSW makes the following recommendations pertaining to the retail and fast-food industries which will help prevent injuries and take pressure off WC.

### **Workforce surveillance and automation**

**Recommendation 43:** Implement Recommendations 1, 2, 3, 5, 6, 7, 8 and 13 of the *'Final Report - Workforce Surveillance and Automation'* by the NSW Legislative Council Select Committee on the Impact of Technological and Other Changes on the Future of Work and Workers in NSW (NSW LC 2022). These recommendations address issues around workplace surveillance; work intensification; the allocation of work by software/platforms/code/algorithms/apps; and automation.

### **Workplace protection orders**

Customer service workers often bear the brunt of abusive and violent behaviour with much of it coming from a small but significant group of offenders. The Australian Capital Territory has recently shown how Workplace Protection Orders (WPOs) can be used to keep repeat offenders out of stores, leading to safer environments for both workers and customers.

#### ***Success Stories from the ACT***

In the ACT, some retailers have embraced Workplace Protection Orders (WPOs) as a tool to prevent known offenders from entering their stores. These orders, which function like restraining orders, are applied for by the retailer and issued by the court. They legally prohibit individuals who have repeatedly caused harm or posed threats from accessing the premises.

We are aware of over 12 such orders being issued and the results have been encouraging. Reports indicate that keeping habitual offenders out has led to a noticeable reduction in incidents of abuse and violence.

#### ***Is This A Solution for New South Wales?***

The initial success of WPOs in the ACT raises an important question: should similar measures be adopted in NSW?

Introducing WPOs in NSW could be a game-changer. These orders would empower retailers to take a proactive approach to safety, ensuring that offenders who pose a

danger to staff are kept out of stores rather than having to deal with the aftermath of violent incidents.)

**Recommendation 44:** To help prevent harm and threats to workers, legislate Workplace Protection Orders modelled on ACT laws (see s32 *Personal Violence Act 2016* (ACT)).

### **Controlling blades in retail**

**Recommendation 45:** To reduce retail worker exposure to traumatic knife/blade related incidents, the NSW Government should legislate further controls on the storage and retail sale of bladed items.

### **Working with children checks in retail**

Australia's retail and fast-food industries depend heavily on young workers, with more than half a million children employed across the country. But many young workers are vulnerable to exploitation with current inadequate protections from harassment and predatory behaviour. This is a serious risk for young workers to psychological injury. Whilst not eliminating the risk, requiring WWCC in retail would reduce risk from known offenders.

**Recommendation 46:** Review and reform the current working with children checks (WWCC) system to include WWCC in the retail industry to protect young workers from the risk of working with known offenders.

## **Conclusion**

Unions NSW supports consultation regarding an injury prevention approach to WHS and WC. Sustainability can be improved within the NSW WC scheme by preventing injuries and improving RTW rates.

The NSW Government is in the process of implementing several reforms designed to promote these aims. Unions NSW has also recommended significant important additions and improvements to these reforms that will increase WC sustainability.

They include:

- A general WHS jurisdiction modelled on the SA and QLD jurisdictions, where unions can help address WHS risks and support injured workers to RTW,
- A reinstatement of the ability for unions to prosecute all WHS breaches, with a regranting of moiety, to help deter injuries and prevent risks from escalating,
- Improvements to iCare and other insurers to promote RTW,
- Improvements to employer RTW processes which require employers to do their part improve RTW rates and,
- Numerous other reforms which will help take pressure off WC.

In contrast to these recommendations, it is disappointing that the Government through its *Discussion Paper* is predominantly proposing to reduce costs to the scheme by reducing the support that injured workers receive through WC.

Unions NSW strongly opposes the Government's proposals to make bullying and harassment disputes in the NSW IRC/FWC a prerequisite to WC, increasing the WPI thresholds, and its proposed limitation to the definition of 'psychological injury'. If implemented, these proposals will reinjure seriously injured workers, undermine their RTW, and cut them off from support only because they have a psychological injury and not a physical one.

Rather than expose thousands of workers to these unintended consequences, the NSW Government should focus on its stated goal of injury prevention. In addition to current strategies, the Government should legislate the important recommendations in this submission, with funding and set times for implementation agreed through the consultation process. If the Government requires more information to progress any of these recommendations, Unions NSW would support an independent review.

Unions NSW strongly recommends the Government delay considering implementation of its *Discussion Paper* proposals until it has a clearer view of how new and recommended strategies will improve sustainability in the NSW workers compensation scheme.

## **References**

- FWO (2025) (Fair Work Ombudsman), *Managing underperformance best practice guide*, Australian Government, accessed 11 April 2025, <https://www.fairwork.gov.au/sites/default/files/migration/711/managing-underperformance-best-practice-guide.pdf>.
- McDougal, R. (2021), *iCare and State Insurance and Care Governance Act 2015 independent review: report by the Hon Robert McDougall QC, independent reviewer*, accessed 11 April 2025, <https://www.nsw.gov.au/sites/default/files/2021-04/Independent-Review-Report.pdf>.
- Mckell Institute (2022), *It's broken: workers' compensation in New South Wales since 2012*, accessed 11 April 2025, <https://www.unionsnsw.org.au/publication/workers-compensation-in-new-south-wales-since-2012/>.
- NSW Government (2025), *Workers compensation ministerial statement*, accessed 11 April 2025, <https://www.nsw.gov.au/ministerial-releases/workers-compensation-ministerial-statement>.
- NSW LC (NSW Legislative Council) (2022), *Final report - workplace surveillance and automation*, NSW Government, accessed 11 April 2025, <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No.%2020-%20Future%20of%20work%20and%20workers%20in%20New%20South%20Wales.pdf>.
- SafeWork NSW (2021), *Code of practice: managing psychosocial hazards at work*, NSW Government, accessed 11 April 2025, <https://www.safework.nsw.gov.au/resource-library/list-of-all-codes-of-practice/codes-of-practice/managing-psychosocial-hazards-at-work>.
- SafeWork NSW (2024), *Psychological Health and Safety Strategy 2024-2026*, NSW Government, accessed 11 April 2025, <https://www.safework.nsw.gov.au/resource-library/mental-health/psychological-health-and-safety-strategy-2024-2026>.
- SIRA (2023), *Psychiatric and psychological disorders*, NSW Government, accessed 11 April 2025, <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/health-professionals-for-workers-compensation/workers-compensation-guidelines-for-the-evaluation-of-permanent-impairment/11.-psychiatric-and-psychological-disorders>.

## **Legislation**

- Industrial Relations Act 1996 (NSW) (NSW IR Act)
- Personal Violence Act 2016 (ACT)
- Workers Compensation Act 1987 (NSW)
- Work Health and Safety Act 2011 (NSW)
- Work Health and Safety Act 2011 (Qld)
- Work Health and Safety Regulation 2017 (NSW)
- Workplace Injury Management and Workers Compensation Act 1998 (NSW) (WIM Act)

## Appendix 3 Protecting Workers Compensation for the next generation Consultation paper

# Protecting Workers Compensation for the next generation

Consultation paper

May 2025



OFFICIAL

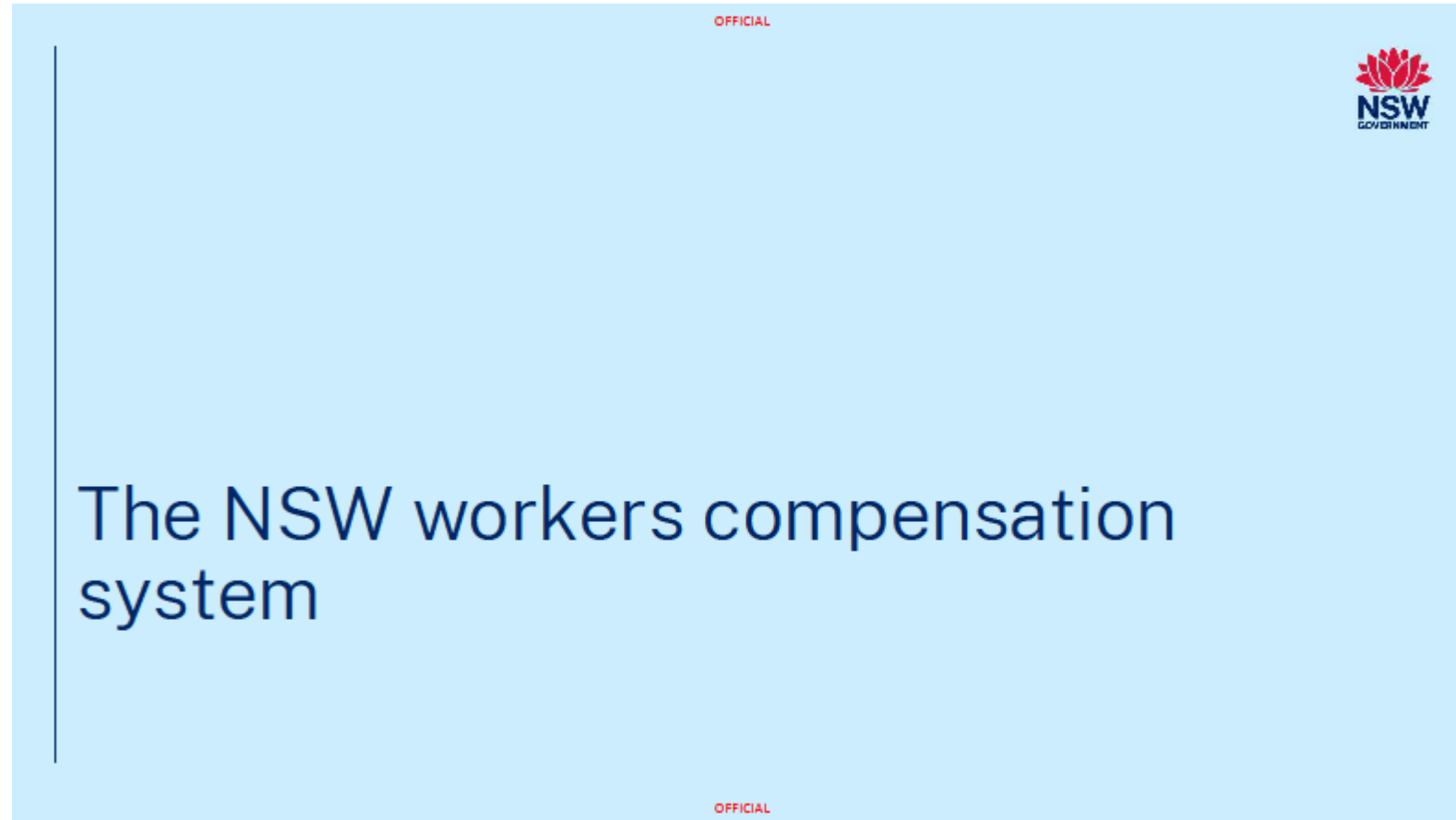


## Presentation outline

---

- Overview of the NSW workers compensation system
- The system is failing people with psychological injury
- Physical injury and psychological injuries need different treatment
- Since we took Government
- The workers compensation system is at risk of collapse
- Working with unions and business to fix the system
- The importance of acting now





OFFICIAL

## System overview



- 
- Founded in 1924
  - Now covers 4 million workers
  - Provides for income replacement, medical treatment and assistance returning to work
  - Also provides damages and ongoing income support in the case of serious and untreatable injury
  - Historically built to cover physical injury
  - Still predominantly physical injury (88% of cases are for physical injury)
  - Facing a sharp increase in interpersonal workplace conflict and general mental health

---

OFFICIAL

OFFICIAL

## Two insurers cover around 4 million NSW workers



---

### Nominal Insurer

- 3.5 million **private sector** workers
- funded by premiums collected from nearly 340,000 mostly small businesses.

### Treasury Managed Fund (TMF)

- over 400,000 **public sector** workers
- funded by the government.

- 
- iCare administers both insurers
  - Self-insurers cover a smaller number of workers – usually for specific industries

OFFICIAL

OFFICIAL



The system is failing people with  
psychological injuries

OFFICIAL

OFFICIAL

## Psychologically injured workers are not getting better in the current system



After 1 year, **only 50% of psychological injuries can return to work**, compared to 95% of physical

Time since injury	Proportion returned to work	
	Physical injuries	Psychological injuries
13 weeks	88%	42%
52 weeks	95%	50%
104 weeks	95%	~60%

OFFICIAL

7

# Ineffective treatment is draining funding without helping workers recover



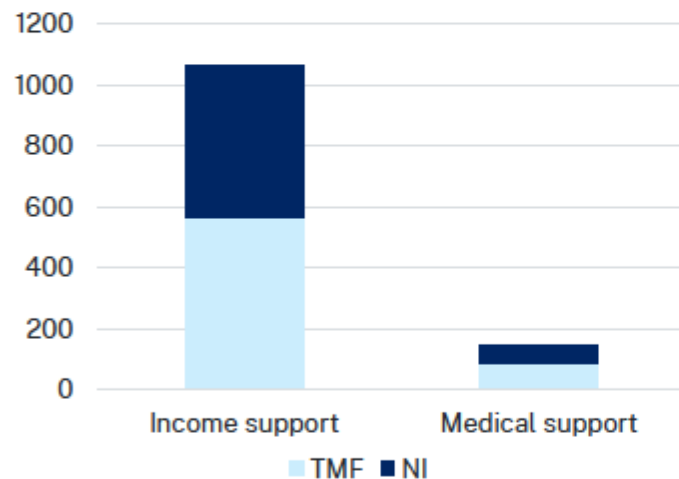
Average benefits paid for psychological injuries are 5 times more than physical injuries (FY 24/25)	
Physical	Psychological
\$57,616	\$288,542

OFFICIAL

## Not enough money is going to recovery



Payment Cost – Psychological Injury  
2023-24



For psychological injury claims, the cost of keeping someone away from work is 7 times what is being spent on getting a person back to work.

Income replacement payments (i.e. weekly & damages) are the largest cost category. For the public sector:

- \$564m for income support
- \$90m for medical support

OFFICIAL

OFFICIAL



We started with prevention

OFFICIAL



OFFICIAL

## New Programs



- New Psychological Health and Safety Strategy 2024-2026 focused on enforcing compliance in workplaces.
- SafeWork now a standalone regulator with a Commissioner.
- Expanded iCare Workplace Mental Health Coaching and Workplace Mental Health Training for small and medium businesses and all not for profits.
- iCare governance improved:
  - worker representation on the board
  - new statutory objectives to protect injured workers.
- Research programs to prevent and manage psychological injuries for first responders and frontline workers.
- Work re-design in the health sector.
- Expanding workplace inspections with new safety inspectors

SHEWEN &amp; HOWE



Psychological Health  
and Safety Strategy  
2024-2026



OFFICIAL

11

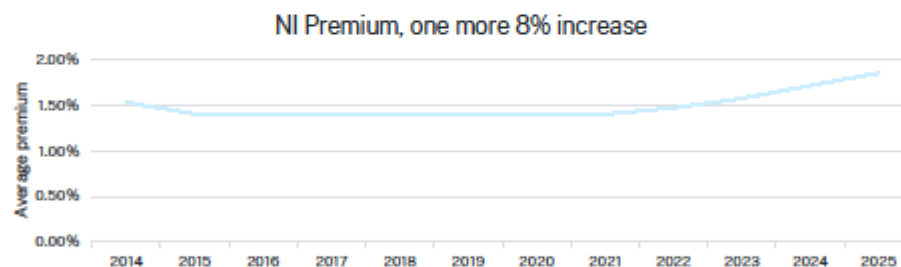
OFFICIAL

## Increased premiums for workers compensation



**Three years of 8% average increases in workers compensation premiums**

**NSW has the highest average premiums compared to other states across most industries**



OFFICIAL

OFFICIAL



# The workers compensation system is at risk of collapse

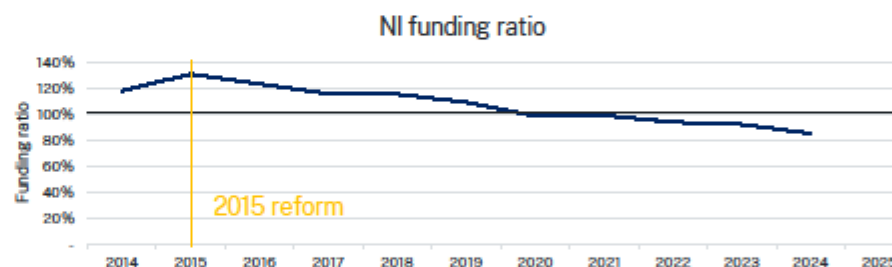
OFFICIAL

OFFICIAL

## 20% of workers compensation liabilities will soon be unfunded



- An APRA standard insurer typically holds a funding ratio of \$1.70 for every \$1 insured.
- Sustainable funding requires a minimum ratio of \$1 for \$1.
- The Nominal Insurer's asset to liabilities fell to 85 cents in 2023-24.
- The funding ratio is set to fall below 80 cents.



OFFICIAL

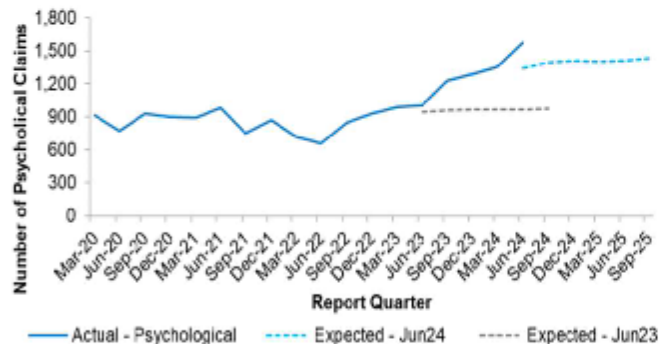
OFFICIAL

## A lack of prevention, inappropriate diagnosis and treatment for psychological injury, is increasing claims

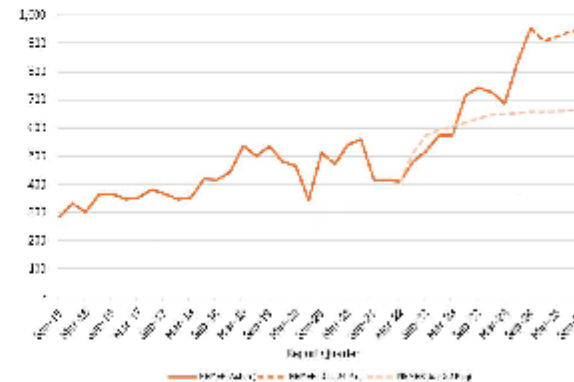


- Psychological claims have doubled in 6 years (compared to 16% for all injuries)
- Claims for people under 40 have increased by 90% in 4 years
- Private sector claims are up 45% in one year (average annual increase of 9.5% for the last 5 years)
- Public sector claims are up 25% in one year (average annual increase of 15% for the last 5 years)

Private Sector



Public Sector



OFFICIAL

OFFICIAL

## Huge premium increases are not helping people back to work, but they are hurting businesses



**Private sector** payments have risen **↑80%** in the last 5 years

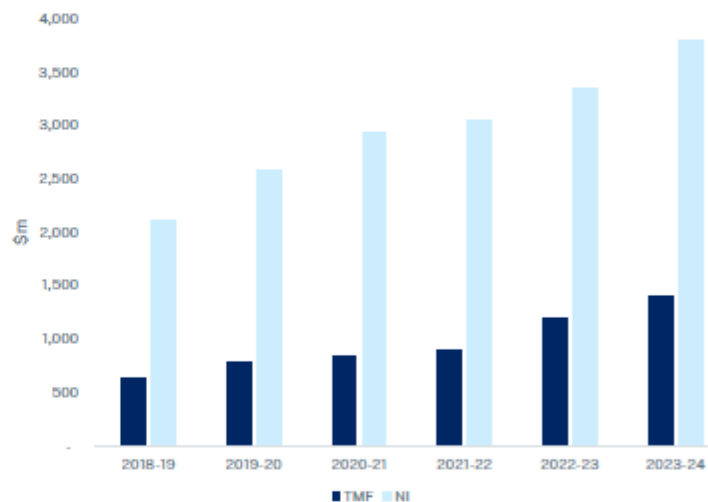
**\$2.1b to \$3.8b** in 2023-24



**Public sector** payments have risen **↑120%** in 5 years

**\$0.6b to 1.4b** in 2023-24

Workers compensation costs



OFFICIAL

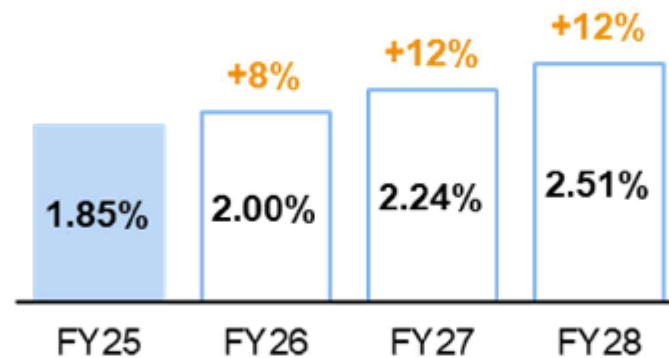
OFFICIAL

## Continuing the current broken system is unaffordable



**Business has already paid three years of 8% average increases in workers compensation premiums**

**Premium rates are forecast to increase 36% in 3 years if claims growth trends continue**



OFFICIAL

OFFICIAL



# Reform: Working with unions and business to fix the system

OFFICIAL



OFFICIAL

## New workers' rights to improve prevention



- 
1. A bullying and harassment division will also be created in the Industrial Relations Commission:
    - New rights for local government and public sector workers
    - Stop-bullying orders, conciliation, conferences, hearings
    - Fines for deterrence
  2. Strengthening SafeWork NSW's response to psychological hazards in the workplace as part of the *Psychological Health and Safety Strategy*:
    - Strengthening SafeWork NSW's capacity to intervene and enforce compliance in workplaces
    - Delivering workplace mental health programs for small and medium business through the Black Dog Institute and Transitioning Well.
  3. New wellbeing units to roll out workplace behaviour and psychological injury support tailored to the NSW Government health service, police service, education service and public service.
  4. iCare governance improved with worker representation on the board and new statutory objectives to protect injured workers

---

OFFICIAL

OFFICIAL



Action is needed urgently

OFFICIAL

OFFICIAL

## What if we don't act now?

---



### For workers:

- There are 19,000 workers with psychological injuries in the NI and TMF.
- At existing rates, an additional 80,000 more will enter the system over the next five years.
- This means more and more injured workers becoming trapped in a complex cycle of insurance payments, and other workers facing no prospect of change.

### For employers:

- Premiums will keep going up.
- They are forecast to rise by 36% over three years to 2027-28 if we do nothing – having already risen by 8% per year over the past two years.
- The two-year rise has been the equivalent of a \$2bn payroll tax rise.

---

OFFICIAL

21

END

**Appendix 4   Unions NSW report, 'Cast Adrift: Cuts to  
Workers compensation for psychological  
injury'**

**Cast Adrift**  
***Cuts to Workers***  
***compensation for***  
***psychological injury***

**Unions NSW – May 2025**

---

## Executive summary

In April and May 2025, Unions NSW surveyed essential workers to understand the impact of the state government's proposed changes to the workers compensation system, which would make it more difficult for seriously injured workers to access mental health support and financial support.

More than 10,000 essential workers — including teachers, disability workers, firefighters, health services workers and emergency services personnel — responded to the survey. The results and accompanying testimonies show workers overwhelmingly reject the NSW government's proposed changes, with many indicating they would be put at extreme risk of further harm or would face severe financial hardship if they are passed by Parliament.

A firefighter from southwest Sydney shared the following account:

*"The workers compensation system is the only reason I am still alive. I had suicide attempts as a result of my workplace culture and psychological injury. Without being able to access essential mental health services and receive diagnosis, treatment, education and support to begin my recovery, I would have certainly taken my own life. My whole person impairment is 24% which is a very significant injury. If the threshold was increased to 30% and that affected me by taking away my entitlements again, I would be destitute and would have no hope of survival or recovery."*

This report details the survey results and examines feedback from workers about how the NSW government's proposed cuts would impact on them and their families.

The Conclusion (p7) outlines Unions NSW's proposed alternative to the government's cuts. This five-point plan charts a path to financial sustainability without abandoning frontline workers, focusing on prevention, improving return-to-work rates, reducing waste, and creating sustainable funding models without cutting benefits to injured workers.

A work place injury is just that, whether physical or psychosocial, an injury sustained doing essential jobs which are very difficult and confronting.

## Key findings

- Far from helping to reduce workplace psychological injuries, the majority of respondents said the NSW government's proposed measures would force injured workers to return to work before it is safe (83%) and prevent workers from taking action in response to bullying, sexual harassment (79%).
- Psychosocial hazards are rife within the workplaces of frontline essential workers.
- Workers with psychological injuries who are cut off from support will be put at risk of significant further harm to their health.
- Seriously injured workers cut off from support will suffer devastating financial hardship including homelessness.
- There are common-sense steps the NSW Government can take to reduce workplace psychosocial hazards. Respondents pointed to employing additional

staff (67%), improving pay and conditions (58%), and allowing unions to ask the Industrial Relations Commission to help fix issues (55%) as examples.

- Most respondents (65%) who had to access workers compensation for a psychological injury said more could have been done by their employer to return them to work sooner after their injury.

### Survey methodology and demographics

The survey was conducted in April and May 2025. Participants were asked about psychosocial safety hazards in their workplace, and their experiences with the NSW workers compensation system regarding workplace psychological injuries.

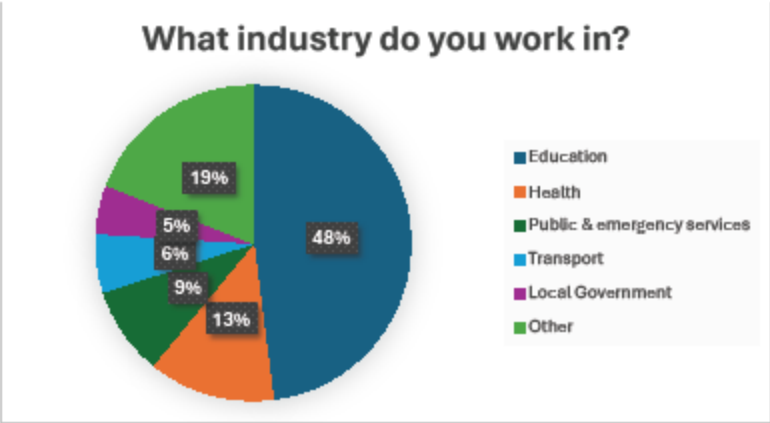
In total, 10,690 workers completed the survey.

#### Gender and age of respondents

Gender	%	Age	%
Female	64.2%	18-24	1%
Male	33.7%	25-34	11%
Intersex, non-binary, own gender	0.6%	35-44	21%
Prefer not to say	1.5%	45-54	29%
		55-64	30%
		65+	8%

#### Industry representation

Workers from a wide range of industries and sectors responded to the survey, with respondents primarily from the education (48%), health (13%), public and emergency services (9%), and transport sectors (6%).



### The NSW government’s proposed changes

The NSW government released an Exposure Draft for legislation to change the workers compensation system on 9 May 2025. The proposed changes would make it harder for seriously injured workers to access long-term care and support for the mental health impacts of their work.

Key changes include:



- Requiring workers who suffer bullying, sexual and racial harassment in the workplace to go through a lengthy and expensive legal process to access treatment and support.
- Making it almost impossible for seriously injured workers to receive long-time care and support.
- Declaring serious workplace injuries caused by work pressure and burnout cannot be compensated.

## Survey responses and discussion

### Widespread psychosocial hazards in frontline workplaces

Survey responses reveal psychosocial hazards are rife within the workplaces of frontline essential workers. A confronting 60% reported **exposure to trauma and traumatic events**, while **bullying** (44%), **hazardous physical working environments** (30%), **workplace violence** (28%), and **harassment, including sexual harassment** (22%), were alarmingly common.

The impacts of poor management and chronic overwork were also unmistakable: 76% of workers reported **role overload**, while more than half (52%) said they received **poor support from supervisors and management**.

In total, more than **96% of respondents** identified at least one psychosocial hazard in their workplace.



Despite the prevalence of psychosocial hazards in the workplace, 65% of respondents who had to access workers compensation for a psychological injury said **more could have been done by their employer** to either prevent the injury or help them return to work sooner after their injury.

## The impacts of the NSW government's proposal on workers

Survey responses highlight the serious risks associated with cutting off support for workers with psychological or other serious injuries. Without access to mental health support, these workers would be at risk of significant deterioration in their mental health, alongside severe financial hardship — in some cases leading to housing insecurity and homelessness.

### Mental health impacts

A clear theme emerged from respondents' feedback that losing access to support could further harm workers' mental health. A firefighter from southwest Sydney shared the following account:

*"The workers compensation system is the only reason I am still alive. I had suicide attempts as a result of my workplace culture and psychological injury. Without being able to access essential mental health services and receive diagnosis, treatment, education and support to begin my recovery, I would have certainly taken my own life. My whole person impairment is 24% which is a very significant injury. If the threshold was increased to 30% and that affected me by taking away my entitlements again, I would be destitute and would have no hope of survival or recovery."*

A teacher from western Sydney had a similar experience:

*"I would not have returned to work at all if I had not been approved for Workers Comp and received treatment for the psychological injury. To be honest, with my mental health being the worst it had ever been, I would not be alive. I had never experienced panic attacks before all this occurred. I have been back at work full time since."*

### Financial impacts

Many workers highlighted the severe financial impacts being cut off from mental health support would entail.

*"Loss of housing, loss of food, bills won't be paid, savings will be drained, stress and anxiety, relationship breakdowns,"* a transport worker from south Sydney shared.

Another worker said losing support would force them to:

*"...[e]xhaust personal leave till a point where I cannot provide an income for my family and therefore increase household debt, breakup of family relationships due to stress of finances."*

A concerning theme was the impact the proposed changes would have on workers' families, exemplified by this statement from a Sydney corrective services worker:

*"It would be devastating for my family, I support my family and if I am unable to work or have an income, we will lose everything and won't be able to pay our bills and mortgage. We will end up on the street."*

Many other respondents listed impacts including homelessness, or housing insecurity, increased debt, forced home sales and relationship breakdowns.

An administrative worker from Western Sydney said:

*"It would cause immense financial hardship, likely leading to mortgage collapse. It would also drastically increase the risk of suicide. Workers need to be supported to recover, the additional stress of the system is not conducive to recovery,"*

### Workplace impacts

Rather than helping to reduce workplace psychological injuries, most respondents said the NSW government's proposed measures would **force injured workers to return to work before it is safe** (83%) and **prevent workers from taking action in response to bullying, sexual harassment** (79%).

*"It would likely prevent workers from taking action or seeking help, and potentially make the situation worse by increasing the stress for the individual leading to significant decline in mental health and potential risk of suicide,"* one worker said.

Another worker added, as well as preventing workers from taking action, the proposed changes would *"embolden perpetrators,"* while a further response suggested the changes would:

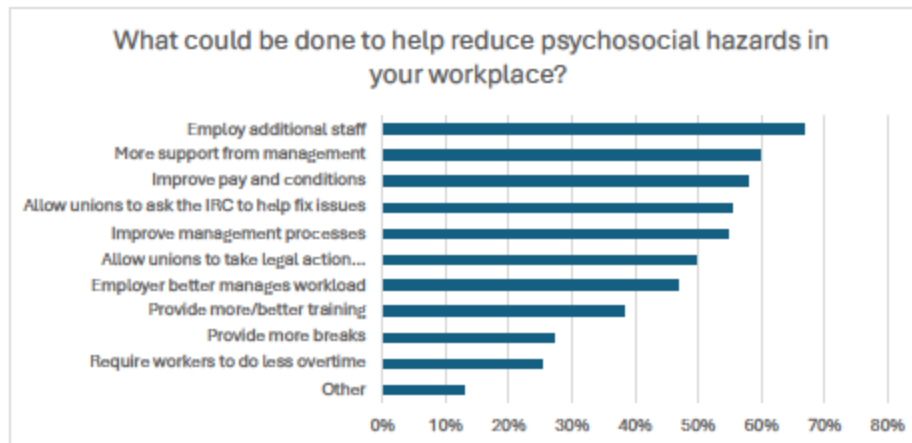
*"...[i]ncrease the likelihood of suicide amongst frontline staff unable to deal with the process."*

### A better way forward

Almost all workers surveyed (97%) said the NSW Government and employers **should do more to support mental health in the workplace to prevent injuries**, before they consider restricting access to workers compensation. And an overwhelming majority (92%) of respondents said **employers should do more to help injured workers get back to work sooner** — for example, by changing their duties where possible or hiring workers who have been injured previously.

Additionally, workers identified a number of steps employers could take to help reduce psychosocial hazards in their workplaces. These included:

- **employing additional staff** (67%);
- **improving pay and conditions** (58%);
- **allowing unions to ask the Industrial Relations Commission to help fix issues** (55%); and
- **allowing unions to take legal action to stop employers from continuing to break safety laws** (50%).



## Conclusion

The NSW Workers Compensation system is failing workers and employers through poor claims management, needless bureaucracy and falling return-to work-rates.

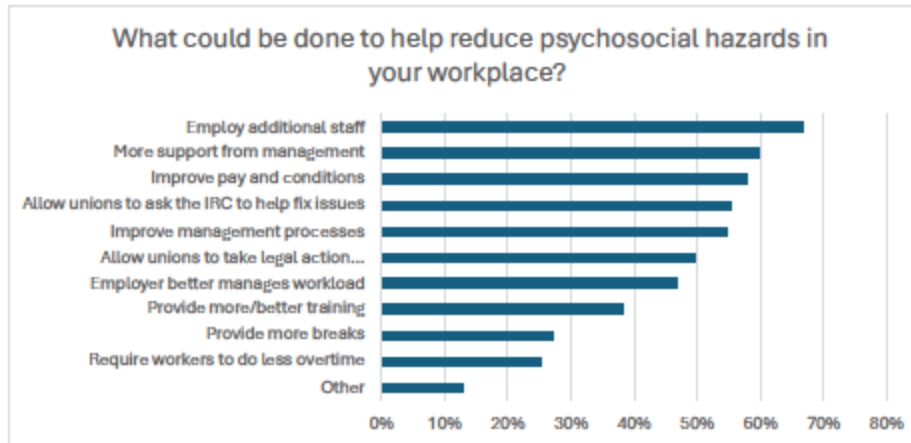
However, as the survey responses detailed in this report clearly show, the NSW government's proposed solution to deny injured workers access to crucial support would have severe and damaging consequences.

Critically injured workers who lose support would be at risk of falling through the gaps in the system. Many would face worsening mental health outcomes, further time off work and significant financial hardship and falling back onto their families and the welfare system to survive.

There are other options to improve the financial sustainability of the scheme. Unions NSW has proposed an alternative to the NSW Labor government's position. The five-point plan focuses on preventing injuries and trauma, returning injured workers back to work quicker, and reducing waste and inefficiencies within the current scheme.

The plan includes:

1. **Adopting best practices from other states to prevent injuries before they happen.** This includes empowering the NSW Industrial Relations Commission to resolve safety hazards raised by workers and making WHS Codes of Practice enforceable.
2. **Making it easier for injured workers to return to work.** This includes empowering the NSW Industrial Relations Commission to resolve return-to-work disputes and preventing termination of injured workers.
3. **Incentivising employers to prioritise safety and return to work** by reintroducing premium loadings based on claims performance—to reward safety-conscious employers.
4. **Cleaning up waste and inefficiency within the scheme.** This includes expanding the State Insurance Regulator Authority's powers to reduce insurer waste and addressing under-insurance by employers



## Conclusion

The NSW Workers Compensation system is failing workers and employers through poor claims management, needless bureaucracy and falling return-to-work-rates.

However, as the survey responses detailed in this report clearly show, the NSW government's proposed solution to deny injured workers access to crucial support would have severe and damaging consequences.

Critically injured workers who lose support would be at risk of falling through the gaps in the system. Many would face worsening mental health outcomes, further time off work and significant financial hardship and falling back onto their families and the welfare system to survive.

There are other options to improve the financial sustainability of the scheme. Unions NSW has proposed an alternative to the NSW Labor government's position. The five-point plan focuses on preventing injuries and trauma, returning injured workers back to work quicker, and reducing waste and inefficiencies within the current scheme.

The plan includes:

- 1. Adopting best practices from other states to prevent injuries before they happen.** This includes empowering the NSW Industrial Relations Commission to resolve safety hazards raised by workers and making WHS Codes of Practice enforceable.
- 2. Making it easier for injured workers to return to work.** This includes empowering the NSW Industrial Relations Commission to resolve return-to-work disputes and preventing termination of injured workers.
- 3. Incentivising employers to prioritise safety and return to work** by reintroducing premium loadings based on claims performance—to reward safety-conscious employers.
- 4. Cleaning up waste and inefficiency within the scheme.** This includes expanding the State Insurance Regulator Authority's powers to reduce insurer waste and addressing under-insurance by employers

- 5. Diversifying the insurance pool** by abolishing self-insurer and specialised insurer arrangements to create a more sustainable funding model.

## Appendix 5 Letter from the Treasurer referring the inquiry, 8 May 2025

OFFICIAL

**The Hon Daniel Mookhey MLC**  
Treasurer



Ref: 20250808DM4LJC  
8 May 2025

Mr Greg Donnelly MLC  
Committee Chair,  
Standing Committee on Law and Justice  
[law@parliament.nsw.gov.au](mailto:law@parliament.nsw.gov.au)

Re: Referral of proposed changes to liability and entitlements for psychological injury in NSW

Dear Mr Donnelly,

I am writing to you in your position as Chair of the Standing Committee on Law and Justice to formally request that the committee review proposed changes to liability and entitlements for psychological injury in New South Wales

Please find enclosed the Exposure Draft of a proposed *Workers Compensation Legislation Amendment Bill 2025*. This Exposure Draft may be made public.

### Terms of reference

That the Committee inquire into and report on proposed changes to liability and entitlements for psychological injury in New South Wales, specifically:

- a) the overall financial sustainability of the NSW workers' compensation system; and
- b) the provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 as provided by correspondence to the Committee.

In order that the findings of this review can be considered before legislation can be introduced on Tuesday 27 May 2025, my suggested timeline is that:

- 1) Written submissions be received between Friday 9 and Thursday 15 May 2025;
- 2) There be a hearing on Friday 16 May;
- 3) The Committee shall report by no later than Friday 23 May 2025.

If you require any additional information, please do not hesitate to contact me or my office.

Sincerely,

A blue ink signature of Daniel Mookhey MLC, consisting of a stylized 'D' and 'M'.

**Daniel Mookhey MLC**  
Treasurer

Enc. Explanatory Note - Workers Compensation Legislation Amendment Bill 2025  
Exposure Draft - Workers Compensation Legislation Amendment Bill 2025





## **Appendix 6 Exposure draft of the Workers Compensation Legislation Amendment Bill 2025**

Exposure draft

Workers Compensation Legislation  
Amendment Bill 2025

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Workers Compensation Act 1987 No 70	3
Schedule 2	Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86	35
Schedule 3	Amendment of Personal Injury Commission Act 2020 No 18	42
Schedule 4	Amendment of other legislation	43

---

Exposure draft

---

## **Workers Compensation Legislation Amendment Bill 2025**

No. , 2025

---

### **A Bill for**

An Act to amend workers compensation legislation and related legislation to implement changes to liability and entitlements for psychological injuries; and to make miscellaneous amendments to improve the effective operation of the workers compensation scheme.

---



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]

---

The Legislature of New South Wales enacts—

**1 Name of Act**

This Act is the *Workers Compensation Legislation Amendment Act 2025*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

### Schedule 1      Amendment of Workers Compensation Act 1987 No 70

[1] Part 1, Division 1

Insert before section 1—

#### Division 1      General

[2] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

*AIDS* means Acquired Immune Deficiency Syndrome.

*AWE* means the average weekly total earnings of adults in full-time employment in New South Wales issued by the Australian Bureau of Statistics.

*CPI* means the consumer price index for Sydney issued by the Australian Bureau of Statistics.

*HIV* means Human Immunodeficiency Virus.

*indictable criminal conduct*—

- (a) means the commission of an indictable offence, and
- (b) includes conduct of a person that would constitute an indictable offence were it not for the fact the person must not, or may not, be held to be criminally responsible for the conduct because of the person's age or mental illness or impairment.

*lump sum death benefit*—see section 25(1)(a).

*primary psychological injury*—see section 8B.

*procedural directions* has the same meaning as in the *Personal Injury Commission Act 2020*.

*psychological injury*—see section 8A.

*reasonable management action*—see section 8D.

*relevant event*—see section 8E.

*secondary psychological injury*—see section 8C.

*WPI* means the wage price index ordinary time, hourly rates of pay excluding bonuses, all sectors (NSW) issued by the Australian Bureau of Statistics.

[3] Part 1, Division 2

Insert after section 7A—

#### Division 2      Interpretation provisions—psychological injuries

##### 8 Purpose of division

- (1) This division provides for—
  - (a) interpretative provisions relating to psychological injuries, and
  - (b) other matters relating to the application of the Workers Compensation Acts to psychological injuries.
- (2) This part does not—
  - (a) extend the definition of *injury* in section 4, or
  - (b) affect the requirement in section 4 that—

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (i) a personal injury is an injury that has arisen out of or in the course of employment, and
- (ii) a disease injury is a disease that is contracted in the course of employment but only if the employment was the main contributing factor to contracting the disease.

### 8A Meaning of “psychological injury”

In this Act, *psychological injury* means an injury that is a mental or psychiatric disorder that causes significant behavioural, cognitive or psychological dysfunction.

### 8B Meaning of “primary psychological injury”

In this Act, *primary psychological injury* means a psychological injury that is not a secondary psychological injury.

### 8C Meaning of “secondary psychological injury”

In this Act, *secondary psychological injury* means a psychological injury to the extent the psychological injury arises as a consequence of, or secondary to, a physical injury.

### 8D Meaning of “reasonable management action”

- (1) In this Act, *reasonable management action* means management action—
  - (a) taken in a reasonable way, and
  - (b) that is reasonable in all the circumstances.
- (2) Without limiting subsection (1), reasonable management action in relation to a worker includes each of the following actions, if taken in a reasonable way and reasonable in all the circumstances—
  - (a) appraisal of or feedback about the worker’s performance,
  - (b) counselling of the worker,
  - (c) suspension or stand-down of the worker’s employment,
  - (d) disciplinary action taken in relation to the worker’s employment,
  - (e) transfer of the worker’s employment,
  - (f) demotion, redeployment or retrenchment of the worker,
  - (g) dismissal of the worker,
  - (h) promotion of the worker,
  - (i) reclassification of the worker’s employment position,
  - (j) provision of leave of absence to the worker,
  - (k) provision to the worker of a benefit connected with the worker’s employment,
  - (l) training a worker in relation to the worker’s employment,
  - (m) investigation by the worker’s employer of alleged misconduct—
    - (i) by the worker, or
    - (ii) of another person relating to the employer’s workforce in which the worker was involved or to which the worker was a witness,
  - (n) communication in connection with an action mentioned in paragraph (a)–(m),
  - (o) another action prescribed by the regulations.





---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

### 8E Meaning of “relevant event”

- (1) In this Act, a *relevant event* means—
- (a) being subjected to an act of violence or a threat of violence, or
  - (b) being subjected to indictable criminal conduct, or
  - (c) witnessing an incident that leads to death or serious injury, or the threat of death or serious injury, including the following—
    - (i) an act of violence,
    - (ii) indictable criminal conduct,
    - (iii) a motor accident, a natural disaster, a fire or another accident, or
  - (d) experiencing vicarious trauma within the meaning of section 8H, or
  - (e) being subjected to conduct that a tribunal, commission or court has found is sexual harassment, or
  - (f) being subjected to conduct that a tribunal, commission or court has found is racial harassment, or
  - (g) being subjected to conduct that a tribunal, commission or court has found is bullying, or
  - (h) another event prescribed by the regulations.

- (2) In this section—

*act of violence* has the same meaning as in the *Victims Rights and Support Act 2013*.

*bullying*, in relation to a worker, means an individual or a group of individuals repeatedly behaving unreasonably towards the worker or a group of workers of which the worker is a member.

*racial harassment*, in relation to a worker, means an act that is—

- (a) reasonably likely in all the circumstances to offend, insult, humiliate or intimidate the worker, and
- (b) done because of the race, colour or national or ethnic origin of the worker.

*sexual harassment*, in relation to a worker, means a person who makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the worker or engages in other unwelcome conduct of a sexual nature in relation to the worker.

### 8F Primary psychological injuries—sexual harassment, racial harassment and bullying

Notification of a primary psychological injury caused by sexual harassment, racial harassment or bullying is taken not to be an initial notification for the 1998 Act, Chapter 7, Part 3, Division 3A unless the worker provides a copy of the finding of harassment or bullying made by the tribunal, commission or court.

**Note—** See section 8E(1)(e)–(g) which provides that a tribunal, commission or court must have found the conduct to have been sexual harassment, racial harassment or bullying for the conduct to be a relevant event and section 8G which provides that no compensation is payable for a primary psychological injury to a worker unless a relevant event or series of relevant events caused the primary psychological injury.

### 8G Primary psychological injuries

- (1) No compensation is payable for a primary psychological injury to a worker unless—

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (a) a relevant event or a series of relevant events caused the primary psychological injury, and
  - (b) there is a real and substantial connection between the relevant event or series of relevant events and the worker's employment, and
  - (c) employment is the main contributing factor to the primary psychological injury.
- (2) No compensation is payable for a primary psychological injury caused by a worker experiencing vicarious trauma if the act or omission that caused the injury was an act or omission for which the worker has criminal responsibility.  
**Example—** the worker is an accessory to the act or omission that caused the injury
- (3) The regulations may provide for matters relating to primary psychological injuries, including—
- (a) the type of matters or circumstances an insurer must take into account when determining whether an injury is a primary psychological injury, and
  - (b) the evidence a worker must provide for a claim in relation to a primary psychological injury.

### 8H Vicarious trauma

- (1) A worker experiences *vicarious trauma* if the worker becomes aware of any of the following acts or incidents that resulted in the injury to, or death of, a person (the *victim*) with whom the worker has a close work connection—
- (a) an act of violence,
  - (b) indictable criminal conduct,
  - (c) a motor accident, a natural disaster, a fire or another accident,
  - (d) an act or incident prescribed by the regulations.
- (2) The worker has a *close work connection* with the victim only if—
- (a) there is a real and substantial connection between the worker and the victim, and
  - (b) the connection arose because of the worker's employment.

### 8I Physical and primary psychological injuries caused by same act or omission

- (1) This section applies if a worker has a physical injury and a primary psychological injury caused by the same act or omission.
- (2) The worker is entitled to compensation on the basis of whichever injury gives the worker the greater entitlement to compensation.

### [4] Section 11A No compensation for psychological injury caused by reasonable actions of employer

Omit section 11A(1) and (3). Insert instead—

- (1) No compensation is payable under this Act in relation to a psychological injury if a significant cause of the psychological injury was—
- (a) reasonable management action taken or proposed to be taken by an employer in relation to a worker, or
  - (b) a worker's expectation of reasonable management action being taken in relation to the worker, or
  - (c) a worker's perception of reasonable management action taken or being taken in relation to the worker.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

**Note—** A psychological injury includes a primary psychological injury and a secondary psychological injury.

**[5] Section 11A(6)**

Omit the subsection.

**[6] Section 19 Presumptions relating to certain employment**

Omit section 19(1)(b). Insert instead—

(b) either—

- (i) for a person to whom Schedule 6, Part 19H, clause 20 or 25 applies—the employment is deemed to have been a substantial contributing factor to the disease, or
- (ii) otherwise—the employment is deemed to have been the main contributing factor to the disease.

**[7] Section 19B Presumptions relating to certain employment in relation to COVID-19**

Omit section 19(5). Insert instead—

- (5) For this Act, it is presumed, unless the contrary is established, that a worker the subject of a presumption under subsection (1) is incapable of work as a result of COVID-19 for the period—
  - (a) starting on the date of the injury, and
  - (b) ending on a date established in accordance with the regulations, unless sooner ended by the death of the worker.
- (5A) The regulations may provide for when a worker is incapable of work for subsection (5).

**[8] Section 25 Death of worker leaving dependants**

Omit “\$750,000” from section 25(1)(a). Insert instead “\$955,950”.

**[9] Section 25(1)(b)**

Omit “\$66.60”. Insert instead “\$171.10”.

**[10] Part 3, Division 1A**

Insert after section 32—

**Division 1A Compensation payable on death—death benefit disputes**

**32AA Interpretation**

- (1) In this division—  
*death benefit dispute* means a dispute about liability for a lump sum death benefit that has been referred for determination by the Commission.
- (2) For the purposes of determining whether a person is a dependant of a deceased person under this division—
  - (a) the deceased person is taken to be a worker, and
  - (b) the death of the person is taken to have resulted from an injury.

**Note—** See the 1988 Act, section 4, definition of *dependants*.

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

### **32AB Application**

- (1) This division applies to a claim that is the subject of a death benefit dispute.
- (2) This division has effect despite the 1998 Act, section 234.

### **32AC Settlement of claim where liability disputed**

- (1) A party to a death benefit dispute may lodge with the Commission a proposed agreement for an amount to be paid in settlement of the part of the claim that relates to the lump sum death benefit under Division 1.
- (2) The amount proposed to be paid in settlement must not be more than the amount of the lump sum death benefit otherwise payable under Division 1.
- (3) The parties to the agreement must include the insurer and—
  - (a) each dependant of the deceased person, or
  - (b) if there are no dependants—the legal personal representative of the deceased person.
- (4) The Commission must not entertain proceedings to give effect to the agreement unless satisfied—
  - (a) there is a reasonable basis for the insurer to dispute liability for the death benefit compensation, and
  - (b) the amount of compensation proposed to be paid in settlement of the claim is reasonable in the circumstances, and
  - (c) each dependant of the deceased person is a party to the agreement or, if the Commission is satisfied there are no dependants, the legal personal representative of the deceased person is a party to the agreement.
- (5) For subsection (4)(a), there is a reasonable basis for an insurer to dispute liability only if the dispute is based on—
  - (a) facts provable on the material available to the Commission, and
  - (b) a reasonably arguable view of the law.
- (6) In proceedings for the death benefit dispute, each party to the agreement must be represented by an Australian legal practitioner unless otherwise directed by the Commission.
- (7) If the Commission makes a determination to give effect to an agreement under this division—
  - (a) the insurer is taken to have accepted liability for death benefit compensation for the death, and
  - (b) subject to paragraph (c), death benefit compensation is payable in accordance with Division 1 as if the death had resulted from an injury, and
  - (c) the amount of lump sum death benefit payable under section 25 is the amount provided by the agreement as executed.
- (8) The Workers Compensation Guidelines may make provision in relation to the management of a claim to which an agreement under this division relates.
- (9) The Commission rules and procedural directions may provide for matters relating to—
  - (a) applications under this section, and
  - (b) the procedure for making a determination to give effect to an agreement under this division.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- [11] **Section 34 Maximum weekly compensation amount**  
Omit “\$1,838.70” from section 34(1). Insert instead “\$2,569.60”.
- [12] **Section 38, heading**  
Insert “—injuries other than primary psychological injuries” after “130”.
- [13] **Sections 38(3)(b), 40(1)(d) and 41(5)(b)**  
Omit “\$155” wherever occurring. Insert instead “\$225”.
- [14] **Section 38(9)**  
Insert after section 38(8)—
- (9) This section does not apply to a worker who has a primary psychological injury unless the injury results in a degree of permanent impairment of at least 31%.
- Note—* Under section 39A, the maximum duration of weekly payments for primary psychological injuries is 130 weeks. However, section 39A does not apply to primary psychological injuries that result in a permanent impairment of at least 31%.
- [15] **Section 38A Special provision for workers with highest needs**  
Omit “\$788.32” from section 38A(1) wherever occurring.  
Insert instead “\$1,020”.
- [16] **Section 39, heading**  
Insert “—injuries other than primary psychological injuries” after “years”.
- [17] **Section 39(3)–(5)**  
Omit subsection (3). Insert instead—
- (3) For this section, the degree of permanent impairment that results from an injury must be assessed under Part 6.
- (4) If weekly payments of compensation become payable to a worker after compensation under this division ceases to be payable to the worker, compensation under this division is once again payable to the worker but only from the date of—
- (a) the worker’s further principal assessment under Part 6, or
- (b) an assessment under the 1998 Act, Chapter 7, Part 7.
- (5) This section does not apply in relation to primary psychological injuries.
- Note—* Under section 39A, the maximum duration of weekly payments for primary psychological injuries is 130 weeks.
- [18] **Section 39A**  
Insert after section 39—
- 39A Cessation of weekly payments after 130 weeks—primary psychological injuries**
- (1) Despite any other provision of this division, a worker has no entitlement to weekly payments of compensation under this division in relation to a primary psychological injury after an aggregate period of 130 weeks, whether or not consecutive, for which a weekly payment has been paid or is payable to the worker in relation to the primary psychological injury.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (2) This section does not apply to an injured worker whose injury results in permanent impairment if the degree of permanent impairment resulting from the injury is at least 31%.
- Note—**For workers with at least 31% permanent impairment, entitlement to compensation may continue after 130 weeks but entitlement after 130 weeks is still subject to this division.
- (3) For this section, the degree of permanent impairment that results from an injury must be assessed under—
- (a) Part 6, or
  - (b) the 1998 Act, Chapter 7, Part 7.
- (4) If weekly payments of compensation become payable to a worker after compensation under this division ceases to be payable to the worker, compensation under this division is once again payable to the worker but only from the date of the worker's further assessment.
- [19] **Section 43 Work capacity decisions by insurers**  
Omit "pre-injury average weekly earnings or" from section 43(1)(d).
- [20] **Section 43(2)(b)**  
Omit "1998 Act." Insert instead—
- 1998 Act,
  - (c) a decision about the amount of an injured worker's pre-injury average weekly earnings.
- [21] **Section 44BAA**  
Omit the section. Insert instead—
- 44BA Decision may be determined by Commission**  
A work capacity decision under section 43 may proceed to determination by the Commission.
- 44BB Regulations**  
The regulations may provide for the procedures to be followed by insurers in connection with—
- (a) the making of work capacity decisions, including the adjustment of an amount of weekly payments as a result of work capacity decisions, and
  - (b) the making of decisions about pre-injury average weekly earnings, including the adjustment of weekly payments as a result of decisions.
- [22] **Section 59A Limit on payment of compensation**  
Omit section 59A(2). Insert instead—
- (2) The compensation period in relation to an injured worker is as follows—
    - (a) for an injury other than a primary psychological injury—
      - (i) if the injury has resulted in a degree of permanent impairment assessed under Part 6 to be 10% or less, or the degree of permanent impairment has not been assessed as provided by that part, the period of 2 years starting on—
        - (A) the day on which the claim for compensation in relation to the injury was first made, if weekly payments of



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- compensation are not payable or have not been paid to the worker, or
- (B) the day on which weekly payments of compensation cease to be payable to the worker, if weekly payments of compensation are payable or have been paid to the worker, or
- (ii) if the injury has resulted in a degree of permanent impairment assessed as provided by Part 6 to be more than 10% but not more than 20%, the period of 5 years starting on—
- (A) the day on which the claim for compensation in relation to the injury was first made, if weekly payments of compensation are not payable or have not been paid to the worker, or
- (B) the day on which weekly payments of compensation cease to be payable to the worker, if weekly payments of compensation are payable or have not been paid to the worker,
- (b) for a primary psychological injury—the period of 1 year starting on—
- (i) the day on which the claim for compensation in relation to the primary psychological injury was first made, if weekly payments of compensation are not payable or have not been paid to the worker, or
- (ii) the day on which weekly payments of compensation cease to be payable to the worker, if weekly payments of compensation are payable or have been paid to the worker.
- [23] **Section 59A(4)**  
Insert at the end of section 59A(4)—  
Note— See sections 38, 39 and 38A which limit the weekly payments of compensation to a worker.
- [24] **Section 59A(5)**  
Omit the subsection. Insert instead—
- (5) This section does not apply to—
- (a) for an injury other than a primary psychological injury—a worker with high needs, as defined in Division 2, or
- (b) for a primary psychological injury—a worker with highest needs, as defined in Division 2.
- [25] **Section 60 Compensation for cost of medical or hospital treatment and rehabilitation etc**  
Omit “reasonably necessary” wherever occurring in section 60(1), (2B) and (2C)(a).  
Insert instead “reasonable and necessary”.
- [26] **Section 60AA Compensation for domestic assistance**  
Omit “reasonably necessary” from section 60AA(1) wherever occurring.  
Insert instead “reasonable and necessary”.
- [27] **Section 65 Determination of degree of permanent impairment**  
Omit the section.

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- [28] **Section 65A, heading**  
Omit the heading. Insert instead—
- 65A Special provisions for primary psychological injuries and secondary psychological injuries**
- [29] **Section 65A(3)**  
Omit “15%”. Insert instead “31%”.
- [30] **Section 65A(5)**  
Omit the subsection.
- [31] **Section 65B**  
Insert after section 65A—
- 65B Special provision for HIV/AIDS**
- (1) Permanent impairment compensation is not payable for permanent impairment that is HIV/AIDS if the impairment resulted from voluntary sexual activity or illicit drug use.
- (2) This subsection does not limit the operation of section 14.
- [32] **Section 66 Entitlement to compensation for permanent impairment**  
Omit “\$19,540” from section 66(2)(a). Insert instead “\$25,070”.
- [33] **Section 66(2)(a)**  
Omit “\$2,940”. Insert instead “\$3,770”.
- [34] **Section 66(2)(b)**  
Omit “\$78,200”. Insert instead “\$100,350”.
- [35] **Section 66(2)(b)**  
Omit “\$4,840”. Insert instead “\$6,210”.
- [36] **Section 66(2)(c)**  
Omit “\$242,010”. Insert instead “\$310,580”.
- [37] **Section 66(2)(d)**  
Omit “\$309,020”. Insert instead “\$396,570”.
- [38] **Section 66(2)(e)**  
Omit “\$376,030”. Insert instead “\$482,560”.
- [39] **Section 66(2)(f)**  
Omit “\$443,030”. Insert instead “\$568,550”.
- [40] **Section 66(2)(g)**  
Omit “\$510,040”. Insert instead “\$654,540”.
- [41] **Section 66(2)(h)**  
Omit “\$577,050”. Insert instead “\$740,550”.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- [42] **Section 66A Agreements for compensation**  
Omit the section.
- [43] **Section 67A Special provisions for HIV/AIDS**  
Omit the section.
- [44] **Section 68B Deductions for previous injuries and pre-existing conditions—operation of sections 15, 16, 17 and 22**  
Omit the section.
- [45] **Section 73 Reimbursement for costs of medical certificate and examination**  
Omit the section.
- [46] **Section 79 Definitions**  
Omit the section.
- [47] **Sections 80 and 81**  
Omit the sections. Insert instead—
- 80 Adjustment of amounts of benefits by WPI**
- (1) An adjustable amount for a year under a relevant provision must be calculated in accordance with the following formula—
- $$A \times \frac{B}{C}$$
- where—
- A* is the adjustable amount for the previous year.  
*B* is the index number for the previous year.  
*C* is the index number for the year before the previous year.
- (2) If an amount calculated under subsection (1) for a year (the *current year*) would, for any reason, be less than the amount calculated for the previous year, the adjustable amount for the current year must be same as the previous year.
- (3) If an amount calculated under subsection (1) for a year is expressed as including cents, the amount must be rounded up to the next higher whole number of dollars.
- (4) In this section—
- adjustable amount* means—
- (a) for the 12 months starting on 1 April 2025—each of the amounts specified in a relevant provision, and
- (b) for each subsequent period of 12 months starting on 1 April in a year—the amount specified in a relevant provision as adjusted under this division.
- index number* means—
- (a) the number prescribed by the regulations, or
- (b) if a number is not prescribed by the regulations—the WPI for December.
- relevant provision* means—
- (a) the following provisions—

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (i) sections 25, 34, 37 and 40,
- (ii) Schedule 6, Part 19H, clause 2, and
- (b) the 1998 Act, section 297(2), and
- (c) the *Workers' Compensation (Dust Diseases) Act 1942*, section 8(2B)(b)(i).

**[48] Section 82A Indexation—weekly payments**

Omit section 82A(1), formula, definitions of *B* and *C*.

Insert instead—

*B* is—

- (a) the number prescribed by the regulations, or
- (b) if a number is not prescribed by the regulations—CPI for December of the previous year.

*C* is—

- (a) the number prescribed by the regulations, or
- (b) if a number is not prescribed by the regulations—CPI for December of the year before the previous year.

**[49] Section 82A(2)**

Omit the subsection. Insert instead—

- (2) In this section—

*review date* means 1 April in each year.

**[50] Section 82B Indexation of certain amounts—according to average weekly earnings**

Omit “the financial year beginning on 1 July 2012 and each subsequent financial year” from section 82B(1).

Insert instead “the year beginning on 1 April 2026 and each subsequent year starting on 1 April”.

**[51] Section 82B(1)**

Omit “\$155” from section 82B(1), formula, definition of *A*. Insert instead “\$240”.

**[52] Section 82B(1)**

Omit the formula, definitions of *B* and *C*. Insert instead—

*B* is the AWE for November of the previous year.

*C* is the AWE for November of the year before the previous year.

**[53] Section 82B(2)**

Omit “the start of each financial year”. Insert instead “each review date”.

**[54] Section 82B(2)**

Omit “that financial year”. Insert instead “the year beginning on the review date”.

**[55] Section 82B(3)**

Omit “the start of a financial year”. Insert instead “a review date”.





---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- [56] **Section 82B(3)**  
Omit “that financial year is”. Insert instead “the year starting on the review date is”.
- [57] **Section 82B(3)**  
Omit “effect for that financial year”. Insert instead “effect for that year”.
- [58] **Section 82B(4)**  
Insert after section 82B(3)—  
     (4) In this section—  
         *review date* means 1 April in each year.
- [59] **Section 82BA Indexation—compensation amount for workers with highest needs**  
Omit “\$788.32” from section 82BA(1), formula, definition of *A*. Insert instead “\$1,020”.
- [60] **Section 82BA(1)**  
Omit the formula, definitions of *B* and *C*. Insert instead—  
     *B* is the CPI for December of the previous year.  
     *C* is the CPI for December of the year before the previous year.
- [61] **Section 82BA(2), definition of “review date”**  
Omit “and 1 October”.
- [62] **Section 82C**  
Omit the section. Insert instead—  
**82C Indexation—no reduction**  
     If an amount calculated under section 82A, 82B or 82BA for a year (the *current year*) would, for any reason, be less than the amount calculated for the previous year, the adjustable amount for the current year must be same as the previous year.
- [63] **Section 82D**  
Omit the section. Insert instead—  
**82D Rounding up**  
     If an amount calculated under this division for a year is expressed as including cents, the amount must be rounded up to the next higher whole number of dollars.
- [64] **Section 82F Indexation—compensation for permanent impairment**  
Omit “the financial year beginning on 1 July 2016 and each subsequent financial year” from section 82F(1).  
     Insert instead “the year beginning on 1 April 2026 and each subsequent year beginning on 1 April”.
- [65] **Section 82F(1)**  
Omit section 82F(1), formula, definitions of *B* and *C*. Insert instead—  
     *B* is the CPI for December of the previous year.  
     *C* is the CPI for December of the year before the previous year.

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- [66] **Section 82F(2)**  
Omit the subsection.
- [67] **Section 82F(3)**  
Omit “the start of each financial year”. Insert instead “each review date”.
- [68] **Section 82F(3)**  
Omit “that financial year”. Insert instead “the year beginning on the review date”.
- [69] **Section 82F(4)**  
Omit “the start of a financial year”. Insert instead “a review date”.
- [70] **Section 82F(4)**  
Omit “that financial year is”. Insert instead “the year beginning on the review date is”.
- [71] **Section 82F(4)**  
Omit “effect for that financial year”. Insert instead “effect for that year”.
- [72] **Section 82F(5)**  
Insert after section 82(4)—  
     (5) In this section—  
         *review date* means 1 April in each year.
- [73] **Section 82G**  
Omit the section. Insert instead—  
**82G Indexation—no reduction**  
     If an amount calculated under section 82F for a year (the *current year*) would, for any reason, be less than the amount calculated for the previous year, the adjustable amount for the current year must be same as the previous year.
- [74] **Section 82H Indexation—rounding**  
Insert at the end of section 82H—  
     (2) If an amount calculated under this division for a year is expressed as including cents, the amount must be rounded up to the next higher whole number of dollars.
- [75] **Section 87E Compensation that may be commuted**  
Insert after section 87E(2)—  
     (3) If compensation referred to in subsection (1) is commuted to a lump sum as provided by this division, any liability for work injury damages in relation to the same injury is extinguished.
- [76] **Section 87EAA Medical expenses compensation not to be commuted for catastrophic injuries**  
Omit “Authority is satisfied that, and certifies that it is satisfied that,” from section 87EAA(1).  
Insert instead “President is satisfied that”.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

**[77] Section 87EA Preconditions to commutation**

Omit “Authority is satisfied that, and certifies that it” from section 87EA(1).

Insert instead “President”.

**[78] Section 87EA(2) and (2A)**

Omit section 87EA(2). Insert instead—

- (2) Despite subsection (1), a liability in relation to an injury may be commuted to a lump sum under this division in a particular case if the President is satisfied—
  - (a) the case is of a class prescribed by the regulations as a class to which this subsection applies, and
  - (b) the circumstances of the case satisfy the requirements prescribed by the regulations as requirements that must be satisfied for this subsection, and
  - (c) unless the regulations otherwise provide, the lump sum to which the liability will be commuted is not inadequate and not excessive.
- (2A) In considering whether the lump sum to which a liability will be commuted is not inadequate and not excessive, the President may have regard to the following matters—
  - (a) a dispute about liability to pay compensation under the Workers Compensation Acts,
  - (b) each of the following—
    - (i) the injury,
    - (ii) the worker’s age,
    - (iii) the worker’s general health,
    - (iv) the worker’s occupation at the time the injury occurred,
    - (v) any other relevant matter,
  - (c) the worker’s ability to compete in an open labour market,
  - (d) benefits from another source that the worker may be entitled to.

**[79] Section 87EA(3)**

Omit “Authority”. Insert instead “President”.

**[80] Section 87EA(4)**

Omit the subsection.

**[81] Section 87EB**

Insert after section 87EA—

**87EB Commission rules**

The Commission rules and procedural directions may provide for—

- (a) the procedure for an application for a determination under section 87EAA(1) or 87EA(1) or (2), and
- (b) the documentation to accompany the application.

**[82] Section 87F Commutation by agreement**

Insert after section 87F(2)—

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (2A) The regulations may require the provision of independent financial advice to a worker, at the expense of the insurer, before the worker enters into a commutation agreement and the requirement applies despite any other provision of this section.
- [83] **Section 87F(4)**  
Omit “has 14 days after entering into a commutation agreement in which to withdraw from the agreement by giving notice in writing to the insurer”.  
Insert instead “may withdraw from a commutation agreement by giving written notice to the insurer and the President at any time before the commutation agreement notice is approved under this division”.
- [84] **Section 87F(6) and (7)**  
Omit “registered” wherever occurring.  
Insert instead “approved”.
- [85] **Section 87F(6)**  
Omit “Registration”. Insert instead “Approval”.
- [86] **Section 87H, heading**  
Omit the heading. Insert instead—  
**87H Approval of commutation**
- [87] **Section 87H(1)**  
Omit “registration of the agreement by the President”.  
Insert instead “approval of the agreement”.
- [88] **Section 87H(1), note**  
Omit “registered”. Insert instead “approved”.
- [89] **Section 87H(1A)**  
Insert after section 87H(1)—  

(1A) The Commission rules and procedural directions may provide for the procedure for making applications under this division.
- [90] **Section 87H(2)**  
Omit the subsection. Insert instead—  

(2) The President must refuse to approve a commutation agreement unless the President is satisfied—  

(a) about the matters referred to in section 87EA(1) or (2), and  

(b) for a liability to which section 87EAA applies—that the injury is not a catastrophic injury within the meaning of that section.
- [91] **Section 87H(3)**  
Omit “registering”. Insert instead “approving”.
- [92] **Section 87H(3)**  
Omit “register”. Insert instead “approve”.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

**[93] Section 87H(3), (4) and (6)**

Omit “registered” wherever occurring. Insert instead “approved”.

**[94] Section 87H(5)**

Omit the subsection. Insert instead—

- (5) In reviewing a commutation agreement, the Commission may have regard to the following matters—
  - (a) a dispute about liability to pay compensation under the Workers Compensation Acts,
  - (b) each of the following—
    - (i) the injury,
    - (ii) the worker’s age,
    - (iii) the worker’s general health,
    - (iv) the worker’s occupation at the time the injury occurred,
    - (v) any other relevant matter,
  - (c) the worker’s ability to compete in an open labour market,
  - (d) benefits from another source to which the worker may be entitled.

**[95] Section 87I Payment**

Omit “The annual report of the Authority” from section 87I(3).

Insert instead “The annual review of the Commission”.

**[96] Part 4A**

Insert before Part 5—

### **Part 4A Special entitlement to expenses for medical or related treatment**

**148B Work pressure**

- (1) If, as a result of a work pressure disorder experienced by a worker, it is reasonable and necessary that medical or related treatment be provided to the worker, the worker’s employer must pay the cost of the medical or related treatment (a *special work pressure payment*) to the worker.
- (2) An employer is not required to make a special work pressure payment to a worker for medical or related treatment provided more than 8 weeks after the worker is first provided with medical or related treatment for the work pressure disorder after the employer is notified of the work pressure disorder.
- (3) A worker is not entitled to a special work pressure payment from an employer if the employer has made a special work pressure payment to the worker in relation to a previous instance of a work pressure disorder experienced by the worker.
- (4) The maximum amount an employer is liable to pay for workplace rehabilitation services as part of a special work pressure payment must be determined by the Authority.
- (5) Except as provided by the regulations, the provisions of the workers compensation legislation apply in relation to a work pressure disorder in the same way the provisions would apply if—

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (a) a work pressure disorder were an injury, and
  - (b) a special work pressure payment were a payment of compensation for injury, and
  - (c) an application for payment of a special work pressure payment were a payment for compensation.
- (6) To avoid doubt, an application for payment of a special work pressure payment is not a claim for compensation.
- (7) Workers Compensation Guidelines may provide for the following—
- (a) the form and way in which an application for a special work pressure payment must be made,
  - (b) requirements for notification of a work pressure disorder in connection with an entitlement to a special work pressure payment,
  - (c) requirements about the evidence of a work pressure disorder that must be provided in connection with an application for a special work pressure payment.
- (8) In this section—  
*medical or related treatment*—
- (a) has the same meaning as in Part 3, Division 3, but
  - (b) includes out-patient hospital treatment and workplace rehabilitation services.
- work pressure disorder* means a mental or psychiatric disorder caused by or arising from the pressures placed on a worker in the course of the worker's employment but only if the employment was the main contributing factor to the worker experiencing the disorder.

**[97] Section 151H**

Omit the section. Insert instead—

**151H No damages unless permanent impairment at certain threshold**

- (1) No damages may be awarded unless the injury results in—
  - (a) the death of the worker, or
  - (b) a degree of permanent impairment of the injured worker, assessed under Part 6 or the 1998 Act, Chapter 7, Part 7, that meets the threshold specified in subsection (2).

**Note—** Part 6 provides for how the degree of permanent impairment is assessed.
- (2) The threshold for the degree of permanent impairment is—
  - (a) at least 15% for a physical injury, and
  - (b) at least 31% for a psychological injury.
- (3) In assessing whether the threshold has been met—
  - (a) impairment resulting from physical injury must be assessed separately from impairment resulting from psychological injury, and
  - (b) in assessing impairment resulting from psychological injury, no regard must be given to impairment that results from secondary psychological injury.

**Note—** Subsections (2) and (3) do not prevent an award of damages for both a physical and psychological injury together once the permanent impairment threshold has been met for one or the other.





---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (4) In assessing the degree of permanent impairment that results from a physical injury, no regard must be given to any impairment or symptoms arising from a psychological injury.
- (5) The degree of impairment that arises from an injury must be assessed under—
  - (a) Part 6, or
  - (b) the 1998 Act, Chapter 7, Part 7.

**[98] Part 6**

Insert after Part 5—

### **Part 6 Determination of degree of permanent impairment**

#### **Division 1 Preliminary**

##### **152 Definitions**

In this part—

*dispute assessment* means an assessment under the 1998 Act, Chapter 7, Part 7 of the degree of permanent impairment of an injured worker.

*further principal assessment* means the second or subsequent principal assessment made of a worker in relation to an injury for which a principal assessment has been made.

*permanent impairment agreement*—see section 153O(1).

*permanent impairment assessment* means—

- (a) a principal assessment, or
- (b) a dispute assessment.

*permanent impairment assessor* means—

- (a) an assessor included on the SIRA register of permanent impairment assessors, or
- (b) a medical assessor.

**Note.** See the 1998 Act, section 4(1), definition of *medical assessor*.

*principal assessment* means an assessment of the degree of permanent impairment of an injured worker under Division 2 by an assessor included on the SIRA register of permanent impairment assessors.

*principal assessment certificate* means a certificate issued under section 153L.

*SIRA register of permanent impairment assessors* means the register kept under section 153J(3).

**Note.** Consequential amendments are to be drafted to ensure that references in the *Workers Compensation Acts* to the 'assessment of the degree of permanent impairment' means references to permanent impairment that is the subject of a permanent impairment assessment under this Part or an assessment under the 1998 Act, Chapter 7, Part 3.

##### **153 Degree of permanent impairment to be assessed under this part**

The degree of permanent impairment that results from an injury must be assessed as provided by this division.

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

### 153A Requirement for legal advice before permanent impairment assessment

Before an injured worker is seen by a permanent impairment assessor to start the permanent impairment assessment the injured worker must obtain independent legal advice about the full legal implication of the assessment, including—

- (a) implications in relation to any entitlement of the injured worker to compensation under this Act or to benefits under another law, including a law of the Commonwealth, and
- (b) the desirability of the worker obtaining independent financial advice about the financial consequences of the impact of the assessment.

### 153B Assessment of permanent impairment

- (1) A permanent impairment assessment of an injured worker for the purposes of the Workers Compensation Acts must be made in accordance with—

- (a) this part, and
- (b) Workers Compensation Guidelines—
  - (i) issued for that purpose, and
  - (ii) as in force at the time the assessment is made.

*Note—* Section 85A provides for impairment arising from psychological injuries to be assessed separately from impairment arising from physical injuries.

- (2) Impairments that result from more than one injury arising out of the same incident are to be assessed together to assess the degree of permanent impairment of the injured worker.
- (3) Impairments that result from the same injury must be assessed together to assess the degree of permanent impairment of the injured worker.
- (4) A permanent impairment assessment must not be completed unless the permanent impairment assessor is satisfied—
  - (a) the impairment is permanent, and
  - (b) the degree of permanent impairment is fully ascertainable
- (5) If a permanent impairment assessor is not satisfied of the matters mentioned in subsection (4)(a) and (b), the permanent impairment assessment of the worker must not be completed until a permanent impairment assessor is satisfied of the matters.
- (6) If a permanent impairment assessor declines to complete a permanent impairment assessment under subsection (4), proceedings before a court or the Commission may be adjourned until the assessment is completed.
- (7) A permanent impairment assessment may be conducted outside New South Wales.

### 153C Deduction for previous injury or pre-existing condition or abnormality

- (1) In assessing the degree of permanent impairment resulting from an injury, there must be a deduction for any proportion of the impairment that is due to—
  - (a) a previous injury, whether or not it is an injury for which compensation has been paid or is payable under Part 3, Division 4, or
  - (b) a pre-existing condition or abnormality.
- (2) If the extent of a deduction under this section, or a part of a deduction, will be difficult or costly to determine, for example because of an absence of medical evidence, it must be assumed, to avoid disputation, the deduction, or the



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

relevant part of the deduction, is 10% of the impairment, unless this assumption is at odds with the available evidence.

**Example of deduction**— If the degree of permanent impairment is assessed as 30% and this subsection operates to require a 10% reduction in that impairment to be assumed, the degree of permanent impairment is reduced from 30% to 27%, a reduction of 10%.

- (3) The reference in subsection (2) to medical evidence is a reference to medical evidence accepted or preferred by the permanent impairment assessor in connection with the permanent impairment assessment of the matter.
- (4) The Workers Compensation Guidelines may make provision for or with respect to the determination of the deduction required by this section.

**Note**— Section 153D makes provision for how this section applies for the purpose of determining the degree of permanent impairment and associated pain and suffering for injuries to which section 15, 16, 17 or 22 applies.

### **153D Deductions for previous injuries and pre-existing conditions—operation of sections 15, 16, 17 and 22**

- (1) In assessing the degree of permanent impairment resulting from an injury for the apportionment of liability under section 22—
    - (a) there must be no deduction under section 153C for any proportion of the impairment that is due to an injury for which liability must be apportioned, but
    - (b) without affecting any deduction under that section for any proportion of the impairment that is due to—
      - (i) another injury, or
      - (ii) a pre-existing condition or abnormality.
  - (2) In assessing the degree of permanent impairment resulting from an injury to which section 15 applies, section 153C applies to the assessment subject to the following—
    - (a) there must be no deduction under section 153C for a proportion of the permanent impairment that is due to the worker's employment in previous relevant employment except any proportion for which compensation under the following provisions has been paid or is payable—
      - (i) Part 3, Division 4 as in force at any time,
      - (ii) the former Act, section 16,
    - (b) for paragraph (a), *previous relevant employment* is employment to the nature of which the disease was due by a previous employer who—
      - (i) is liable under section 15 to contribute in relation to the degree of permanent impairment resulting from an injury, or
      - (ii) would be liable as mentioned in paragraph (a) if the requirement to contribute were not limited to employers who employed the worker during a particular period,
    - (c) for permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.
- Note**— Section 15 applies to injuries that are diseases of a nature contracted by a gradual process.
- (3) In assessing the degree of permanent impairment for an injury to which section 16 applies, section 153C applies to assessment subject to the following—

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (a) there must be no deduction under section 153C for a proportion of the permanent impairment that is due to the worker's employment in previous relevant employment except any proportion for which compensation under the following provisions has been paid or is payable—
  - (i) Part 3, Division 4 as in force at any time,
  - (ii) the former Act, section 16,
- (b) for paragraph (a), *previous relevant employment* is employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration by a previous employer who—
  - (i) is liable under section 16 to contribute in relation to the degree of permanent impairment being assessed, or
  - (ii) would be liable as mentioned in paragraph (a) if the requirement to contribute were not limited to employers who employed the worker during a particular period,
- (c) for permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.

**Note—** Section 16 applies to injuries that consist of the aggravation, acceleration, exacerbation or deterioration of a disease.

- (4) In assessing the degree of permanent impairment resulting from an injury to which section 17 applies, section 153C applies to the assessment subject to the following—
  - (a) there must be no deduction under section 153C for a proportion of the permanent impairment that is due to the worker's employment in previous relevant employment, except any proportion for which compensation under the following provisions has been paid or is payable—
    - (i) Part 3, Division 4 as in force at any time,
    - (ii) the former Act, section 16,
  - (b) for paragraph (a), *previous relevant employment* is employment to the nature of which the disease was due by a previous employer who—
    - (i) is liable under section 17 to contribute in relation to the degree of permanent impairment being assessed, or
    - (ii) would be liable as mentioned in paragraph (a) if the requirement to contribute were not limited to employers who employed the worker during a particular period.

**Note—** Section 17 applies to an injury that is a loss, or further loss, of hearing which is of a nature to be caused by a gradual process.

### 153E Special provisions for HIV/AIDS

- (1) For the purposes of determining the degree of permanent impairment as a result of an injury, HIV and AIDS are each considered to result in a degree of permanent impairment of 100%.
- (2) The regulations may provide for methods for determining, for the purposes of this Act, whether a person is living with HIV/AIDS.
- (3) Regulations need not be made under subsection (2) and, in the absence of regulations, the determination of whether a person is living with HIV/AIDS must be on the basis of medical opinion.

**Note—** The amendment of this section, formerly section 67A, by the *Equality Legislation Amendment (LGBTIQA+) Act 2024* to refer to "living with HIV/AIDS" merely



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

modernises language and not intended to change the application of workers compensation legislation and other applicable legislation.

### 153F Costs of permanent impairment assessment

- (1) An employer is not liable to pay the costs of or in relation to a permanent impairment assessment incurred by the insurer or worker unless the assessment is—
  - (a) a principal assessment or further principal assessment, or
  - (b) a dispute assessment, or
  - (c) another assessment permitted by the Workers Compensation Acts or regulations made under the Workers Compensation Acts.
- (2) Costs will not be payable to an insurer or worker for more than 1 permanent impairment assessment of the worker unless—
  - (a) for the purposes of disputing a permanent impairment assessment, or
  - (b) in circumstances where the parties agree there appears to be an unexpected and material deterioration in the worker's condition since the original permanent impairment assessment was conducted.
- (3) The Authority may, for the purposes of meeting the costs, set fees, by order in the Gazette, for the carrying out of permanent impairment assessments or make other arrangements for meeting the costs.
- (4) If a worker is required to submit for examination under this part, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided—
  - (a) the amount of any wages lost by the worker by reason of submitting for examination, and
  - (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting to the examination.
- (5) If it is necessary for a worker to travel for an examination for the purposes of a permanent impairment assessment and the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to be examined.
- (6) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, the cost must be calculated at the rate fixed for the purposes of section 64.
- (7) The regulations may provide for matters relating to legal costs relating to permanent impairment assessments.

## Division 2 Principal assessment

### 153G Who must carry out permanent impairment assessment

A principal assessment must be made by an assessor or assessors—

- (a) included on the SIRA register of permanent impairment assessors, and
- (b) either—
  - (i) agreed by the insurer and worker, or
  - (ii) if the insurer and worker are unable to agree on the assessor or assessors within a period specified in the Workers Compensation Guidelines—appointed by the Authority.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

### **153H Permanent impairment assessment process**

- (1) An application may be made to the Authority for a principal assessment.
- (2) An application under subsection (1) must be made in accordance with the regulations.
- (3) The following matters relating to the principal assessment must be agreed between the insurer and the worker—
  - (a) the body system, body structure or disorder to be assessed,
  - (b) all medical and allied health information, including results of clinical investigations, relevant to the assessment of the injury,
  - (c) other matters specified in Workers Compensation Guidelines.
- (4) If the principal assessment relates to 2 or more body systems, body structures or disorders, the assessment must be conducted by 2 or more permanent impairment assessors.
- (5) For subsection (4), one of the permanent impairment assessors must be the lead assessor, appointed by the Authority, to coordinate and calculate the final degree of permanent impairment resulting from the individual assessments of permanent impairment by the individual assessors.

### **153I One assessment only of degree of permanent impairment**

Subject to section 153M, only one principal assessment may be made of an injured worker in relation to—

- (a) the same injury, or
- (b) more than one injury arising from the same incident.

### **153J Permanent impairment assessors**

- (1) The Workers Compensation Guidelines may provide for matters relating to the approval of permanent impairment assessors for principal assessments under this division.
- (2) Without limiting subsection (1), Workers Compensation Guidelines may provide for—
  - (a) the approval of permanent impairment assessors, including the processes and procedures for the approval of assessors, and
  - (b) the functions of permanent impairment assessors, and
  - (c) conditions to be imposed on the approval of permanent impairment assessors, and
  - (d) training requirements for permanent impairment assessors, and
  - (e) the monitoring of services provided by permanent impairment assessors, and
  - (f) how the performance of permanent impairment assessors must be assessed.
- (3) The Authority must—
  - (a) keep a register of permanent impairment assessors approved under this section, and
  - (b) publish the register on the Authority's website.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (4) The Authority may, in publishing the register under subsection (3)(b), include the names and contact details of permanent impairment assessors approved under this section.
- (5) The maximum amount an employer is liable for in relation to the cost of a permanent impairment assessor must be set by the Authority by order published on the NSW legislation website.
- (6) A permanent impairment assessor whose approval under this section is revoked may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision to revoke the approval.

### 153K Powers of permanent impairment assessor on assessment

- (1) The permanent impairment assessor conducting a principal assessment may—
  - (a) consult with any medical practitioner or other health care professional who is treating or has treated the worker, and
  - (b) call for the production of the medical records, including X-rays and the results of other tests, and other information the permanent impairment assessor considers necessary or desirable for the purposes of assessing the degree of permanent impairment, and
  - (c) require the worker to submit for examination by the permanent impairment assessor.
- (2) If a worker refuses to submit for examination by the permanent impairment assessor if required to do so, or in any way obstructs the examination, the following are suspended until the examination has taken place—
  - (a) the worker's right to recover compensation in relation to the injury,
  - (b) the worker's right to weekly payments.
- (3) The Workers Compensation Guidelines may provide for matters relating to the medical records and other information to be produced by the insurer or the worker under subsection (1)(b), including the nature and volume of information to be provided.

### 153L Referral of medical dispute to Commission

A medical dispute, within the meaning of section 319, arising from a principal assessment may be referred to the Commission under the 1998 Act, Chapter 7, Part 7.

### 153M Certificate of principal assessment

- (1) The permanent impairment assessor to whom a principal assessment is referred must give a certificate (*a principal assessment certificate*) about the worker's degree of permanent impairment to—
  - (a) each of the parties, and
  - (b) the Authority,
- (2) A principal assessment certificate must be in a form approved by the Authority and must—
  - (a) set out details of the degree of permanent impairment, and
  - (b) certify the permanent impairment assessor's assessment of the degree of permanent impairment, and
  - (c) set out the permanent impairment assessor's reasons for the assessment, and

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (d) set out the facts on which the assessment is based.

### 153N Further principal assessments

- (1) A further principal assessment may be made of an injured worker only—
  - (a) if the permanent impairment assessor declined, under section 153B(4), to make a principal assessment when a principal assessment was last conducted in relation to the worker, or
  - (b) if the worker and insurer agree that it appears there has been an unexpected and material deterioration in the worker's condition since the last principal assessment of the worker was conducted, or
  - (c) in circumstances prescribed by the regulations.
- (2) For subsection (1)(b), an unexpected and material deterioration in the worker's condition since the original principal assessment was made occurs only if—
  - (a) at the time of the original principal assessment there was no reasonable cause to believe the worker's condition would deteriorate, and
  - (b) the deterioration results in an increase in the worker's degree of permanent impairment of at least a further 20 percentage points.

**Example—** A worker was originally assessed at 25% permanent impairment under this part. For a further assessment to be treated as a further principal assessment, the worker must have an assessment of at least 45% permanent impairment, in addition to otherwise meeting the requirements of this section.
- (3) For subsection (2), age-related deterioration must not be taken into account in deciding whether an unexpected and material deterioration in a worker's condition has occurred.

### 153O Personal liability of assessors on SIRA register of permanent impairment assessors

- (1) An assessor included on the SIRA register of permanent impairment assessors is not personally subject to liability for anything done—
  - (a) in good faith, and
  - (b) for the purpose of exercising a function under this Act.
- (2) In this section—
 

*done* includes omitted to be done.

*liability* means civil liability and includes action, claim or demand.

## Division 3 Permanent impairment agreements

### 153P Entering into permanent impairment agreements

- (1) After a principal assessment is conducted of an injured worker, the worker and the employer or insurer may enter into a written agreement (a *permanent impairment agreement*)—
  - (a) under which the worker and the employer or insurer agree as to the degree of permanent impairment that has resulted from the injury, and
  - (b) in which there is a provision in which the employer or insurer certifies the employer or insurer is satisfied the worker obtained independent legal advice before entering into the permanent impairment assessment.

**Note—** If the injured worker and the employer or insurer cannot agree on a permanent impairment agreement, a dispute about the degree of permanent impairment of the injured worker is a medical dispute for the purposes of the 1998 Act, Chapter 7, Part 7.
- (2) A permanent impairment agreement is of no force or effect if—



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (a) the agreement does not include a provision in which the employer or insurer certifies the employer or insurer is satisfied the worker has obtained, or has waived the right to obtain, independent legal advice before entering into the agreement, or
  - (b) it is established the worker was induced to enter the agreement as a result of fraud or misrepresentation.
- (3) Subsection (2) has effect despite the 1998 Act, section 234.  
**Note—** The 1998 Act, section 234 provides that the 1998 Act and this Act apply despite any contract to the contrary.
- (4) If an insurer and worker fail to enter into a permanent impairment agreement—
  - (a) the insurer must give notice of the decision not to enter into the agreement in accordance with the 1998 Act, sections 78 and 79 and the regulations, and
  - (b) the decision not to enter into the agreement may be referred to the Commission for determination.**Note—** The 1998 Act, section 105 provides that the Commission has exclusive jurisdiction to examine, hear and determine all matters arising under this Act and the 1998 Act.
- (5) If a worker enters into a permanent impairment agreement in relation to an injury, the permanent impairment compensation to which the worker is entitled in relation to the injury is the compensation payable in relation to the degree of permanent impairment agreed.
- (6) The parties to a permanent impairment agreement may agree to change the degree of permanent impairment of the injured worker by—
  - (a) agreeing to vary the permanent impairment agreement, or
  - (b) entering into a further permanent impairment agreement in place of the original permanent impairment agreement.
- (7) Permanent impairment agreements, and the payments made under the agreements, must be recorded in accordance with the Workers Compensation Guidelines.
- (8) Nothing in this section prevents a permanent impairment agreement from containing provisions about the payment of costs.

### 153Q Permanent impairment agreement evidence of certain matters

- (1) The permanent impairment agreement must be used for the purposes of establishing entitlement for the following—
  - (a) weekly payments,
  - (b) medical expenses compensation,
  - (c) lump sum compensation,
  - (d) commutations,
  - (e) work injury damages.
- (2) A permanent impairment agreement is, in relation to the following matters, conclusive evidence of—
  - (a) the degree of permanent impairment of the worker as a result of the injury,
  - (b) whether any proportion of permanent impairment is due to a previous injury or pre-existing condition or abnormality,

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (c) the nature and extent of any loss of hearing suffered by the worker,
  - (d) whether impairment is permanent,
  - (e) whether the degree of permanent impairment is fully ascertainable.
- (3) A permanent impairment agreement is, for a matter not mentioned in subsection (2)(a)–(e), evidence but not conclusive evidence of a matter stated in the agreement.
- (4) Subsection (2) does not apply to proceedings in the Commission or a court about the degree of permanent impairment of the injured worker.
- 153R Permanent impairment agreement does not prevent further principal assessment**

A permanent impairment agreement does not prevent a further principal assessment being made of an injured worker under section 153N.

**Note—** A further principal assessment may result in a dispute about the degree of permanent impairment of the injured worker that is a medical dispute for the purposes of the 1988 Act, Chapter 7, Part 7. See also section 153P(6) which provides the degree of permanent impairment may be changed by varying the permanent impairment agreement or entering into a further permanent impairment agreement.
- 153S Division subject to decisions of the Commission**

This division is subject to a decision made by the Commission determining permanent impairment and entitlements of injured workers.
- [99] Section 160 Recovery of excess from employer**

Omit “prescribed excess amount determined by the Workers Compensation Market Practice and Premiums Guidelines in respect of that policy” from section 160(1), definition of *prescribed excess amount*.

Insert instead “excess amount prescribed by the regulations”.
- [100] Section 160(1), definition of “small business employer”**

Omit the definition.
- [101] Section 160(4A)**

Omit the subsection.
- [102] Section 160(9)**

Insert after section 160(8)—

  - (9) The regulations may provide for matters relating to the payment of the prescribed excess amount including the circumstances in which the prescribed excess amount must be paid.
- [103] Section 173AA**

Insert after section 173A—
- 173AA Offence for large employers to fail to give insurers information relevant to underinsurance**
  - (1) A large employer must not recklessly fail to comply with a requirement under workers compensation legislation for the large employer to give an insurer the following—
    - (a) information about the wages of workers employed by the large employer,





---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- (b) other information that enables the insurer to accurately calculate a workers compensation premium for workers employed by the large employer.

Maximum penalty—

- (2) For subsection (1), recklessness may also be established by proof of intention or knowledge.
- (3) In this section—  
*large employer* means—

**[104] Part 7, Division 4A**

Insert after Division 4—

**Division 4A Enforceable undertakings**

**209A Definition**

In this division—

*insurer* means—

- (a) a licensed insurer, or
- (b) a self-insurer.

**209B Authority may accept undertaking**

- (1) The Authority may accept a written undertaking given by an insurer in relation to a contravention or alleged contravention by the insurer in relation to the Workers Compensation Acts.
- (2) The giving of an undertaking does not constitute an admission of guilt by the insurer in relation to the contravention or alleged contravention to which the undertaking relates.

**209C Notice of decision**

- (1) The Authority must give the insurer seeking to give an undertaking under this division written notice of—
  - (a) the Authority's decision to accept or reject the undertaking, and
  - (b) the reasons for the decision.
- (2) The Authority must, as soon as practicable after making a decision to accept or reject the undertaking, publish notice of the decision on the Authority's website.

**209D When undertaking is enforceable**

An undertaking under this division takes effect and becomes enforceable—

- (a) when the insurer receives notice of the Authority's decision to accept the undertaking, or
- (b) at a later date specified by the Authority.

**209E Compliance with undertaking**

An insurer must not contravene an undertaking given by the insurer under this division that is in effect.

Maximum penalty—

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

### **209F Contravention of undertaking**

- (1) The Authority may apply to the District Court for an order if an insurer contravenes an undertaking given under this division.
- (2) If the Court is satisfied the insurer that made the undertaking has contravened the undertaking, the Court, in addition to imposing a penalty, may make one or both of the following orders—
  - (a) an order directing the insurer to comply with the undertaking,
  - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make other orders the Court considers appropriate in the circumstances, including orders directing the insurer to pay to the State—
  - (a) the costs of the proceedings, and
  - (b) the reasonable costs of the Authority in monitoring compliance with the undertaking in the future.
- (4) This section does not prevent proceedings being brought for the contravention or alleged contravention of this Act to which the undertaking relates.

### **209G Withdrawal or variation of undertaking**

- (1) An insurer who has given an undertaking under this division may at any time, with the written agreement of the Authority—
  - (a) withdraw the undertaking, or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking may not be varied to provide for a different alleged contravention of the Workers Compensation Acts.
- (3) The Authority may at any time, with the written agreement of the insurer, withdraw its decision to accept an undertaking.
- (4) The Authority must, as soon as practicable after an undertaking is withdrawn or varied, publish on the Authority's website notice of—
  - (a) the withdrawal or variation, and
  - (b) the reasons for the withdrawal or variation.

### **209H Proceedings and civil penalties for alleged contravention**

- (1) No proceedings may be brought against an insurer, and a civil penalty may not be issued to an insurer, for a contravention or alleged contravention of the Workers Compensation Acts if—
  - (a) an undertaking under this division is in effect in relation to the contravention, or
  - (b) an undertaking under this division has been given and completely discharged by the insurer.
- (2) The Authority may accept an undertaking in relation to a contravention or alleged contravention before proceedings in relation to the contravention have been finalised.
- (3) If the Authority accepts an undertaking before the proceedings are finalised, the Authority must take all reasonable steps to have the proceedings discontinued as soon as possible.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- [105] **Section 225 Definitions**  
Insert in alphabetical order in section 225(1)—  
*ICNSW* has the same meaning as in the *State Insurance and Care Governance Act 2015*.
- [106] **Sections 227, 229–236 and 238**  
Omit “the Authority” wherever occurring. Insert instead “ICNSW”.
- [107] **Sections 229–231 and 238, headings**  
Omit “Authority” wherever occurring. Insert instead “ICNSW”.
- [108] **Schedule 6 Savings, transitional and other provisions**  
Omit “\$76,700” from Part 3, clause 2(2) and (4) wherever occurring.  
Insert instead “\$197,100”.
- [109] **Schedule 6, Part 3, clause 2(3)(b) and (4)**  
Omit “\$38.30” wherever occurring.  
Insert instead “\$98.40”.
- [110] **Schedule 6, Part 4, clause 4(b)(i) and (2)**  
Omit “\$44.80” wherever occurring.  
Insert instead “\$115.10”.
- [111] **Schedule 6, Part 4, clause 4(1)(b)(ii) and (2)**  
Omit “\$22.50” wherever occurring.  
Insert instead “\$57.80”.
- [112] **Schedule 6, Part 4, clause 4A(2)(a) and (3)(a)**  
Omit “\$196.00” wherever occurring.  
Insert instead “\$503.60”.
- [113] **Schedule 6, Part 4, clause 4A(2)(b) and (3)(b)**  
Omit “\$155.90” wherever occurring.  
Insert instead “\$400.60”.
- [114] **Schedule 6, Part 4, clause 4A(2)(c) and (3)(c)**  
Omit “\$141.60” wherever occurring.  
Insert instead “\$363.90”.
- [115] **Schedule 6, Part 4, clause 4A(2)(c) and (3)(c)**  
Omit “\$127.50” wherever occurring.  
Insert instead “\$327.60”.
- [116] **Schedule 6, Part 4, clause 7(2)(a) and (4)**  
Omit “\$341.30” wherever occurring.  
Insert instead “\$877.00”.

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

---

- [117] **Schedule 6, Part 19H, clause 2(1)**  
Omit “\$906.25”. Insert instead “\$1,266.50”.

- [118] **Schedule 6**  
Insert before Part 20 with appropriate part and clause numbering—

**Part Provisions consequent on Workers Compensation  
Legislation Amendment Act 2025**

**Definition**

In this part—

*amendment Act* means the *Workers Compensation Legislation Amendment Act 2025*.

**Note.** Transitional provisions and consequential amendments to this Act and other relevant Acts are to be inserted after the substantive amendments are finalised.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
 Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

---

### Schedule 2      Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

**[1] Section 45B**

Insert after section 45A—

**45B Independent allied health consultants**

- (1) The Workers Compensation Guidelines may provide for matters relating to the approval of independent allied health practitioners to assist with proactively managing claims.
- (2) Without limiting subsection (1), the Workers Compensation Guidelines may provide for the following—
  - (a) the approval of independent allied health practitioners, including the processes and procedures for the approval,
  - (b) the functions of approved independent allied health practitioners,
  - (c) conditions to be imposed on the approval of independent allied health practitioners,
  - (b) the monitoring of services provided by approved independent allied health practitioners.
- (3) The names and contact details of approved independent allied health practitioners may be made available by publication on the Authority's website.
- (4) An independent allied health practitioner who is aggrieved by a decision of the Authority to revoke the practitioner's approval under this section may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (5) The maximum amount an employer is liable for the cost of an approved independent allied health practitioner must be set by the Authority by order published on the NSW legislation website.

**[2] Section 78 Insurer to give notice of decisions**

Omit "the compensation" from section 78(1)(b). Insert instead—

- the compensation, or
  - (c) to not enter into a permanent impairment agreement following the issue of a principal assessment certificate under the 1987 Act, Part 6.
- Note—** Section 105 provides that the Commission has exclusive jurisdiction to examine, hear and determine all matters arising under the Workers Compensation Acts.

**[3] Section 231A**

Insert after section 231—

**231A Employers not entitled to attend medical treatment or medical examination**

Neither an employer nor the employer's representative is entitled to attend either of the following unless the worker requests the attendance—

- (a) medical treatment of the worker,
- (b) a medical examination of the worker.

**[4] Chapter 7, Part 3, Division 1AA**

Insert after Chapter 7, Part 3, heading—

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
 Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

---

### Division 1AA Application of part

#### 264A Application of part

- (1) Divisions 1–3 do not apply in relation to a primary psychological injury caused by sexual harassment, racial harassment or bullying.
- (2) Division 3A applies in relation to primary psychological injuries caused by conduct that a tribunal, commission or court has found is sexual harassment, racial harassment or bullying.

#### [5] Section 280 Provisional acceptance of liability

Insert after section 280(2)—

- (3) This section does not apply to liability for medical expenses compensation to which the 1987 Act, section 148B applies.

#### [6] Chapter 7, Part 3, Division 3A

Insert after section 280—

### Division 3A Special provisions for primary psychological injuries caused by sexual or racial harassment or bullying

#### 280AA Application of division

This division applies to a claim in relation to a primary psychological injury caused by conduct that a tribunal, commission or court has found is sexual harassment, racial harassment or bullying (a *relevant injury*).

*Note—* This division applies only in relation to claims made after the commencement of this section.

#### 280AAA How claim is made

- (1) A claim must be made in accordance with the applicable requirements of the Workers Compensation Guidelines.
- (2) The Workers Compensation Guidelines may provide for the following matters in connection with the making of a claim—
  - (a) the form in which a claim must be made,
  - (b) the way in which a claim must be made,
  - (c) the information that a claim must contain,
  - (d) specified documents and other material required to accompany or form part of a claim,
  - (e) other matters prescribed by the regulations.
- (3) Without limiting this section, the Workers Compensation Guidelines may require that a claim be accompanied by a form of authority signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or workplace rehabilitation services to the claimant in connection with the injury to which the claim relates to give the insurer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.
- (4) The failure to make a claim as required by this section is not a bar to the recovery of compensation or work injury damages if it is found that the failure was occasioned by ignorance, mistake or other reasonable cause or because of a minor defect in form or style.





---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
 Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

---

- (5) Except to the extent that the Workers Compensation Guidelines otherwise provide, an insurer can waive a requirement of the Guidelines in relation to the making of a claim on the insurer.
- (6) The Workers Compensation Guidelines may require an insurer to notify a worker of a failure by the worker to comply with a requirement of the Guidelines in relation to the making of a claim, and may provide for the waiver of the failure by the worker if the insurer fails to give the required notification.

**280AAB Time within which claim for compensation must be made**

- (1) Compensation must not be recovered unless a claim for the compensation has been made within 6 months after a finding by a Tribunal, Commission or Court that the relevant injury was caused by conduct that is sexual harassment, racial harassment or bullying.
- (2) If a claim for compensation was made by an injured worker within the period required by this section, this section does not apply to a claim for compensation in relation to the death of the worker resulting from the relevant injury to which the worker's claim related.
- (3) For this section, a person is considered to have made a claim for compensation when the person makes any claim for compensation relation to of the relevant injury, even if the person's claim did not relate to the particular compensation in question.
- (4) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if it is found that—
  - (a) the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and
  - (b) the claim is made within 3 years after a finding by a Tribunal, Commission or Court that the relevant injury was caused by conduct that is sexual harassment, racial harassment or bullying.
- (5) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if the insurer determines to accept the claim outside that period.
- (6) An insurer must not determine to accept a claim made more than 3 years after the relevant injury happened except with the approval of the Authority.
- (7) If 2 or more persons are liable or partly liable for compensation, whether or not that liability arises from the same or from different injuries, a claim is, for this section, taken to have been made when a claim is made on any one of the persons.

**280AAC Time within which claim for work injury damages must be made**

Court proceedings for the recovery of work injury damages must not be commenced until a claim for the damages has been made.

**280AAD Lump sum compensation claims must made at same time**

- (1) All claims for permanent impairment compensation for a relevant injury must, as far as practicable, be made at the same time.
- (2) A legal practitioner or agent who acts for a worker when a claim is made is not entitled to recover costs from the worker or the employer in relation to a claim made later, including a claim made by later amendment of proceedings, unless there is a good reason for the claim being made later.

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
 Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

---

### **280AAE Action by employer in respect of claims, injuries and compensation**

- (1) An employer, not being a self-insurer, who receives a claim or other documentation in relation to a claim for a relevant injury must, within 7 days after receiving the claim or documentation, forward it to the employer's insurer.  
 Maximum penalty—
- (2) An employer who receives a request from the employer's insurer for specified information or documentation in relation to a claim for a relevant injury, must, within 7 days after receipt of the request, give the insurer the specified information or documentation that is in the employer's possession or is reasonably obtainable by the employer.  
 Maximum penalty—
- (3) An employer who has received compensation money under this Act for a relevant injury from an insurer must, as soon as practicable, pay the money to the person entitled to the compensation.  
 Maximum penalty—
- (4) A person is not guilty of an offence for a failure to comply with a provision of this section if there was a reasonable excuse for that failure.
- (5) In this section—  
*employer's insurer* means the insurer who the employer believes is liable to indemnify the employer for the claim or injury.  
*notified injury* means an injury to a worker notified to an insurer.

### **280AB Liability to be accepted and weekly payments commenced within 21 days**

- (1) Within 21 days after a claim for weekly payments is made the insurer on whom the claim is made must determine the claim by—
  - (a) accepting liability and commencing weekly payments, or
  - (b) disputing liability.
 Note— Section 280AE makes failure to comply with this section an offence. Section 280AC requires notice of a dispute to be given.
- (2) Subsection (1) does not apply if the insurer has a reasonable excuse for not determining the claim within 21 days after the claim is made.
- (3) The Workers Compensation Guidelines may provide for what constitutes a reasonable excuse for subsection (2).
- (4) If liability is accepted, the entitlement to weekly payments is taken to have commenced from the date of lodgement of an application or initiating process in the tribunal, commission or court that determined the worker had been subject to conduct that is racial harassment, sexual harassment or bullying.

### **280AC Disputing liability**

- (1) If an insurer disputes liability in relation to a claim or an aspect of a claim, the insurer must give notice of the dispute to the claimant.
- (2) The notice must contain the following—
  - (a) a statement of the reason the insurer disputes liability,
  - (b) a statement to the effect that the worker can also seek advice or assistance from the worker's trade union organisation or from a lawyer,
  - (c) other information prescribed by the regulations.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
 Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

---

- (3) A statement of reasons in a notice under this section must indicate the provision of the workers compensation legislation on which the insurer relies to dispute liability.
- (4) A notice under this section must be expressed in plain language.

### **280AD Claims for weekly compensation—commencement of payments**

- (1) Weekly payments of compensation must commence as soon as practicable, but not later than 21 days, after the claim for compensation is made.
- (2) If the person on whom a claim is made disputes liability in accordance with section 280AC to make the weekly payments within 21 days after the claim for compensation is made, the obligation under this section to commence the weekly payments, or the balance of the weekly payments in dispute, does not apply.
- (3) If an insurer has a reasonable excuse for failing to commence weekly payments of compensation, or the balance of weekly payments in dispute, within 21 days after the claim for compensation is duly made, subsections (1) and (2) apply to the weekly payments as if a reference in the subsections to 21 days were a reference to the period that ends on the earlier of the following—
  - (a) 56 days after the claim is made,
  - (b) when the person ceases to have the reasonable excuse.
- (4) An insurer who has or anticipates having a reasonable excuse for failing to commence weekly payments of compensation, or the balance of weekly payments, must notify the claimant in writing as soon as practicable.
- (5) This section ceases to apply if the claim for compensation is withdrawn.

### **280AE Offences—weekly payments**

- (1) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person fails to commence the payments within the time required by section 280AD.  
Maximum penalty—
- (2) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person refers a matter which the person knows is not a genuine dispute for the purpose of delaying, without good cause, the commencement of weekly payments of compensation.  
Maximum penalty—

### **280AF Commission may determine matter arising under division**

The Commission has jurisdiction to determine a matter arising under this division.

#### **[7] Section 297 Directions for interim payment of weekly payments or medical expenses compensation**

Omit “\$7,500” wherever occurring in section 297(2), including the note.

Insert instead “\$11,080.20”.

#### **[8] Section 314 What constitutes threshold dispute**

Omit “is at least 15%, or” from section 314(1) and (2) wherever occurring.

Insert instead “meets the threshold set out in the 1987 Act, section 151H”.

---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
 Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

---

- [9] **Section 314(1), note**  
 Omit “section 322 (4)”. Insert instead “the 1987 Act, section 153B”.
- [10] **Section 314**  
 Insert after section 314(3)—
- (4) A permanent impairment agreement that specifies the degree of permanent impairment of an injured worker also constitutes acceptance by the parties to the agreement of the degree of permanent impairment for the claim for work injury damages.
- [11] **Part 7, heading**  
 Omit “assessment”. Insert instead “disputes”.
- [12] **Section 320**  
 Insert after section 319—
- 320 Application of part**
- This part applies only to a medical assessment conducted for the purposes of a medical dispute before the Commission.
- [13] **Section 322**  
 Omit the section.
- [14] **Section 322A, heading**  
 Insert “for medical dispute” after “impairment”.
- [15] **Section 322A(1)**  
 Omit the subsection.
- [16] **Section 322A(1A)**  
 Omit “A reference in subsection (1) to an assessment includes an assessment of the degree of permanent impairment”.  
 Insert instead “Only one assessment of the degree of permanent impairment may be”.
- [17] **Section 322A**  
 Insert at the end of the section—
- Note—** The assessment of permanent impairment under this part must be conducted in accordance with the 1987 Act, Part 6.
- [18] **Section 323**  
 Omit the note to the section. Insert instead—
- Note—** The 1987 Act, Part 6 makes provision for the purposes of calculating workers compensation lump sum benefits for permanent impairment and associated pain and suffering in cases to which the 1987 Act, section 15, 16, 17 or 22 applies.
- [19] **Section 337 Maximum lawyer and agent costs**  
 Omit “reports)” from section 337(1)(b). Insert instead—
- reports),
- (c) funding for ILARS within the meaning of the *Personal Injury Commission Act 2020*, Schedule 5,



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

---

- (d) a scale of maximum costs for legal and associated costs provided by the Independent Review Officer under the *Personal Injury Commission Act 2020*, including providing for no costs to be payable for certain matters or in particular circumstances.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
 Schedule 3 Amendment of Personal Injury Commission Act 2020 No 18

---

### **Schedule 3      Amendment of Personal Injury Commission Act 2020 No 18**

#### **Section 43A**

Insert after section 43—

#### **43A      Commission may appoint tutor for person under legal incapacity**

- (1) This section applies if proceedings directly or significantly affect a person under legal incapacity.
- (2) The Commission may appoint a person the Commission considers appropriate, including a person from the Guardian Ad Litem Panel, to—
  - (a) separately represent the person, and
  - (b) support the person.
- (3) A tutor must not commence or carry on proceedings except by a solicitor, unless the Commission orders otherwise.
- (4) The Commission may give directions in relation to the conduct of a tutor.
- (5) The Commission rules and procedural directions may provide for matters relating to tutors, including the conduct of tutors.
- (6) In this section—

*Guardian Ad Litem Panel* means the Guardian Ad Litem Panel constituted under the *Children and Young Persons (Care and Protection) Act 1998*.  
*person under legal incapacity* has the same meaning as in the *Civil Procedure Act 2005*.



---

## Exposure draft

---

Workers Compensation Legislation Amendment Bill 2025 [NSW]  
Schedule 4 Amendment of other legislation

---

### **Schedule 4    Amendment of other legislation**

#### **4.1   Workers Compensation Regulation 2016**

**[1]   Clause 5C COVID-19—matters relating to incapacity**

Omit clause 5C(1) and (2). Insert instead—

- (1)   For the 1987 Act, section 19B(5), the relevant date is the date that marks the end of the expected duration of the worker's incapacity for work as a result of COVID-19 that is specified in the certificate of capacity.

**[2]   Clause 5C(3)(a)**

Omit "in relation to whom the presumption under section 19B(5) of the 1987 Act is rebutted".

# Appendix 7 Explanatory document for the Workers Compensation Legislation Amendment Bill 2025

## Proposed Reforms to the NSW Workers Compensation System

### Overview

The NSW Government is committed to reform that supports workers today and ensures the workers compensation scheme, which has been compulsory since 1924, can continue to support workers for generations to come.

This is to address the fact that the NSW workplace health and safety, and workers' compensation laws are failing to prevent psychological injuries and failing to treat those with psychological injuries quickly.

The release of an Exposure Draft Amendment to the Workers Compensation Act is the next step in stakeholder consultation on workers compensation reform.

The final reforms will include two Bills which are designed to shift workplace, health and safety laws, and workers compensation laws towards prevention.

1. IR Amendment Bill
2. Workers Compensation Amendment Bill

### Overall reforms

The two Bills will be part of broader workplace interventions designed to prevent injury in the workplace. The overall reforms include:

- Establish a bullying and sexual harassment jurisdiction in the IRC with new powers to address bullying and harassment in the workplace before injuries occur.
- Enshrine gender equality and the elimination of discrimination, bullying and harassment into the objectives of the Industrial Relations Act.
- Standing up SafeWork NSW as a standalone agency with bolstered capacity to investigate psychological injury.
- A new Psychological Health and Safety Strategy to improve SafeWork NSW's
- capacity to enforce compliance safety in workplaces.
- New mental health programs for small and medium-sized businesses through the Black Dog Institute and Transitioning Well.
- New public sector wellbeing units to roll out workplace behavior and psychological injury support tailored to the NSW Government health service, police service, education service and public service.
- New iCare Workplace Mental Health Coaching and Workplace Mental Health Training for small and medium business, and all not for profits.
- New Whole of Government Return to work policy to give public sector workers more opportunities to find suitable employment after being injured.
- Expansion of SafeWork inspectors with industry and psychological specialisation.
- Stronger definition of compensable psychological injuries so that workers and employers can better navigate the workers compensation system.
- Clarify reasonable management action.
- New offence for underinsurance.
- A two-week employer excess to incentivise safer workplaces.

## Exposure Draft purpose and outline

This exposure draft contains changes relating to Workers Compensation only. It outlines ways to:

- Clarify and update important concepts, such as reasonable management action and thresholds for accessing long-term payments.
- Expand early intervention powers to support rehabilitation and return-to-work plans sooner.
- Strengthen anti-bullying protections, allowing workers to bring claims for bullying or harassment through the industrial relations system.
- Establish clearer dispute resolution pathways, improving access to timely outcomes.
- Modernise benefits and compensation thresholds to better reflect the cost of living and community expectations.

These changes anticipate further reform to create a bullying and sexual harassment jurisdiction within the IRC.

The exposure draft is the next step towards the NSW Government determining a final package of reforms.

Consultation to date has helped shape the exposure draft.

Further suggestions are still being considered as part of the final reforms.

Possible changes include strengthening WHS enforcement, and improved guidelines for the use of medico-legal practitioners.

## Parliamentary Inquiry

The Treasurer has referred the exposure draft to a parliamentary inquiry to allow for further feedback.

## Appendix 8 Unions NSW Concerns Relating to Exposure Workers Compensation Legislation Amendment Bill 2025



### Unions NSW Concerns Relating to Exposure Workers Compensation Legislation Amendment Bill 2025

#### Summary Notes

Please note these are initial summary of issues by Unions NSW.

We are continuing to review the Bill for further issues.

In summary the Bill:

1. is poorly drafted;
2. opens the door for extensive legal challenges and relegalising the system;
3. removes existing limited rights of workers sustaining a psychosocial injury;
4. prevents workers from claiming compensation for psychological injuries from the outset of their injury and will remove those workers from the scheme earlier (after 2.5 years);
5. will cause further psychological harm to injured workers;
6. contains no preventative measures or additional support initiatives; and
7. transfers the cost of poor workplace health and safety risk management to the taxpayer and the federal system.

#### **Section 8D Meaning of “reasonable management action”**

- **Section 8D** of the bill defines ‘reasonable management action’. Section 8D (1) (a) introduces a new concept ‘reasonable way’ in relation to reasonable management action. This is untested and will result in high levels of disputation for the courts, tribunals or commissions to build case law which will clarify this new term.

#### **Section 8E Meaning of “relevant event” and Section 8F Primary psychological injuries—sexual harassment, racial harassment and bullying**

- **Sections 8E & 8F** Defines and reduces hazards that are compensable. Does not include many common hazards like work overload, work underload, lack of role clarity, role conflict, low job control, poor support, inadequate resourcing, isolated work and more.

S8E defines 'relevant events' that are compensable, in effect defining and limiting the hazards that that are compensable. Section 8F requires the court, commission or tribunal to find the conduct to be a 'relevant event' which caused the injury, or worker cannot take the matter further.

- **Section 8E** is in conflict with the Work health and Safety Act 2011 NSW which does not define or limit hazards. To be compliant with workplace health and safety legislation, a Person Conducting a Business or Undertaking (PCBU) must monitor and manage the risks associated with hazards through hazard elimination and minimisation.
- **Section 8E (2)** provides a new definition of sexual harassment which is not in line with the Sex Discrimination Act 1984 and could cause high disputation as the definition is disputed in a court, commission or tribunal.
- Reference to tribunal, commission or court is found throughout the Bill. This is unclear language. Which tribunal, commission or court? Without clarity this will lead to disputation as to what court, commission or tribunal is the correct avenue for the notification of an injury caused by sexual, racial harassment or bullying.
- **Section 8F** of the Bill introduces the concept of 'racial harassment' which contradicts other legislation such as the Anti-Discrimination Act 1977 NSW, where the term racial discrimination is used. This will lead to high disputation as the personal injury commission (PIC) determines which authorities relating to race discrimination will apply.
- **Section 8F** creates hurdles for victims of bullying, racial discrimination and sexual harassment and assault, forcing a victim to take these matters to a preliminary court, tribunal or commission, which is tasked with validating the cause of the injury, before compensation is payable. An insurer can still dispute a claim even if the court, tribunal or commission find in favour of the applicant.
- **Section 8F** appears to operate to determine whether or not the worker's injury fits the meaning of 'relevant event' as per s8E. A worker takes a matter to a court, commission or tribunal, so that the court, commission or tribunal can determine whether the hazard that caused the injury falls within the limited scope of hazards which are compensable. Not to determine whether an injury has occurred.
- Currently the Fair Work Act 2009 s789FF allows a worker to seek a stop bullying order. This does not align with the purpose of s8F of this Bill, which appears to seek to determine whether the injury was caused by a 'relevant event' as per s8E. How a federal system employee would seek a remedy through s8F of this Bill is unclear. The Fair Work Act 2009 cannot be amended by the State government.

#### **8H Vicarious Trauma**

- **Section 8H (1)** defines vicarious trauma. Section 8H (2) limits vicarious trauma compensation by requiring the worker to have a close work connection with the victim, which arose through the course of the worker's employment. There is a lack of clarity as to

what constitutes a 'close work connection'. This could mean many workers will not be compensated for serious trauma and PTSD. This will cause high levels of disputation.

- It is unclear whether or not first responders will be captured by s8H?
- Vicarious trauma has been defined by *Kozarov v State of Victoria* [2022] HCA 12. Given this is a High Court decision, it is unclear how the new definition will work in relation to this decision.

***Section 11A No compensation for psychological injury caused by reasonable actions of employer***

- The current s11A operates as a defence for employers where the injury is caused by reasonable management action alone. The Bill is unclear as to whether this still acts as a defence. Currently this defence works as intended and should remain a defence.
- **Section 11A (1) introduces a new test.** An injured worker cannot access compensation if a significant cause of the injury was (a) reasonable management action taken or proposed to be taken by an employer in relation to the worker. This could limit the injured worker's access to compensation when management action is taken after a worker has already been exposed to another type of hazard.

***Section 19B Presumptions relating to certain employment in relation to COVID-19***

- **Section 19B (5)** appears to replicate the current s19B, the presumption that Covid was contracted at work. The purpose of this section is unclear.
- **Section 38 (8)** raises permanent impairment to 31%. This is an unachievable threshold for most injured workers. Even very seriously injured workers.
- **Section 39A (1)** reduces the period a worker with a psychological injury can claim compensation payments to 130 weeks. After this period payments cease.

***Section 60 Compensation for cost of medical or hospital treatment and rehabilitation etc and Section 60AA Compensation for domestic assistance***

- **Sections 60 and s60 AA** will limit the treatment and assistance injured workers can receive. Omitting reasonably necessary and replacing with reasonable and necessary creates a higher bar and a different test for medical expenses. This has been settled law since *Rose v Health Care Commission (NSW)* 1986. This will make accessing some treatments and support more difficult.

***65B Special provision for HIV/AIDS***

- **Section 65B** will mean sexual assault victims may have to undergo a rape trial through the criminal jurisdiction to receive medical treatment and financial compensation.



**Part 4A Special entitlement to expenses for medical or related treatment****148B Work pressure**

- **s148B (1)** introduces the term 'work pressure disorder'. This is not a psychiatric or psychological disorder or illness as is currently compensable, and as listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), the leading diagnostic tool published by the American Psychiatric Association (APA).
- **Section 148B (1)** - Section 27 of the Fair Work Act 2007 outlines jurisdictions that remain within state jurisdiction. Workers compensation law remains a state jurisdictional area of law. Paragraph 6 of s148B of this Bill creates a process which sits outside of workers compensation legislation, and possibly outside of the State's jurisdiction. Section 148B (1) explicitly states that a 'special work pressure payment' is not 'a claim for compensation' under s148B (6). This moves this section outside of workers compensation law. This may not be constitutionally sound.
- **s148B (1) and (2)** limits compensation for treatment only, for work pressure injuries and limits this to 8 weeks.
- **148B (4) and (6)** The employer must pay for treatment relating to work pressure, not the insurer. This appears to be a payment in addition to premium payments.
- **A section 148B (6) payment is not a 'claim for compensation'**. It is unclear how this payment by the employer would be enforced under workers compensation legislation given it is not a 'claim for compensation'.

**151H No damages unless permanent impairment at certain threshold**

- **Section 151H (2)** limits the payment of damages for permanent impairment by increasing the threshold for whole person Impairment (WPI) to 31%. This is an unachievable threshold which only a small percentage of workers will achieve.

**153I One assessment only of degree of permanent impairment**

- **Section 153I** allows for only one assessment for the degree of permanent impairment. All injuries can change. Injuries can decrease or increase in impairment. One assessment is inadequate.

**173AA Offence for large employers to fail to give insurers information relevant to underinsurance**

- **Section 173AA** creates an offence for underinsurance however this provision only applies to large employers. This provision should apply to all workplaces. Large employers are more likely to be correctly insured. It is unclear why some employers will not be held to the same standard.

***Division 3A Special provisions for primary psychological injuries caused by sexual or racial harassment or bullying*****Section 280**

- **Section 280** removes provisional liability under s280 of the Workplace Injury Management Act 1998 NSW (WIM), preventing workers from accessing an initial medical assessment by a general practitioner and a referral to a psychiatrist, ultimately preventing an initial diagnosis of a psychiatric or psychological disorder. In effect this prevents all workers from making a workers compensation claim for a psychological injury.

Removes provisional liability for psychological injury also because of the requirement to take a matter to a court, tribunal or commission before a claim can be made and by s280 (3) of the Bill. Provisional liability exists to provide immediate treatment and a better return to work (RTW) outcome.

***280AB Liability to be accepted and weekly payments commenced within 21 days***

- **Section 280AB (1)(a)** gives the insurer 21 days to accept liability and commence payment, or (b) dispute liability. If an injury falls within the scope of s8E according to a commission, court or tribunal. The insurer then has a 21-day period before payment to the injured worker is to be made, alternatively the insurer can dispute liability.
- Forcing a worker who has been sexually assaulted, physically assaulted, bullied or racially victimised to go to a court, commission or tribunal, then allowing the insurer 21 days to make payment, or dispute the claim, will prevent workers from making claims. This is another barrier to compensation, it is not a preventative measure.

## Appendix 9 Unions NSW Briefing: NSW Labor Government proposed changes to workers compensation



### Unions NSW Briefing

#### NSW Labor Government proposed changes to workers compensation

On 18 March 2025, the NSW Treasurer Daniel Mookhey delivered a ministerial statement outlining proposed reforms to how the NSW workers compensation scheme deals with psychological claims. According to the Treasurer, the intention of the proposals is to reduce the psychological injuries workers are experiencing in order to reduce workers compensation claims and improve the financial sustainability of the scheme.

Unions NSW recognises the need for system reform and supports a move towards a greater focus on injury prevention. However, after considering the NSW Labor Government's proposals it is our view their main effect will be to significantly hinder workers from obtaining compensation for psychological injuries, undermining principles of doctor-led care and pushing the costs of supporting severely injured workers onto already overwhelmed mental health services.

Financial issues in NSW's scheme significantly stem from mismanagement, not overly generous benefits, as there are more generous scheme such as in Queensland that remain financially stable.

Furthermore, we are concerned the NSW Labor Government's goal to have these proposals legislated by 1 July 2025 does not provide adequate time for all stakeholders to contribute to the process, or for the NSW Government to fully understand the effect of its proposals. We call on the NSW Government to delay its proposals to provide an opportunity to consider a range of options, in consultation with unions and other key stakeholders.

Below, we highlight key areas of concern plus alternative solutions to prevent injuries, increase return-to-work rates, and improve the sustainability of workers compensation.

### Current preventative and return-to-work measures

Unions NSW and other stakeholders have worked extensively with the NSW Government over many years to develop strategies to prevent injuries and increase return-to-work (RTW) rates.

As a result, numerous actions are currently in their early stages of implementation. However, we are concerned the NSW Labor Government is rushing ahead by proposing reactive measures without providing enough time for existing strategies to reduce costs across the scheme.

New and agreed strategies include:

#### Tranche 2 Industrial Relations Reforms

Unions NSW has been negotiating with the NSW Government regarding several reforms to improve mental health in the workplace.

Not yet legislated, these include:

- Legislating a Gender Equity objective for the NSW IR Act to support better pay for female dominated industries to alleviate staffing pressures,
- Objectives to prevent and eliminate discrimination, bullying, and sexual harassment,
- Improved return to work (RTW) provisions for injured workers and,
- Stronger protections against victimisation.

It is our view that these industrial reforms would have a significant positive effect on moving towards a preventive system and supporting the ongoing financial sustainability of the workers compensation system.

#### New SafeWork NSW inspectors and *Psychological WHS Strategy*

Following years of campaigning by unions to strengthen the safety regulator, the NSW Government has agreed to employ 50-60 new SafeWork NSW inspectors, who will support WHS compliance. However, they still need to be recruited, trained, and deployed.

In 2024, the regulator also set itself a target of increasing planned inspector compliance visits by 25% yearly and delivering mental health training to 21,000 employees and 960 businesses by 2026.

#### Whole of Government Return to Work Strategy

The NSW Government has just begun implementing its '*Whole of Government Return to Work Strategy*'. Through this strategy, public sector workers can be offered alternative duties across the entire public service, boosting return-to-work through departmental mobility.

### Reviewing these strategies against the goal of financial sustainability

New and agreed strategies must first be implemented and given time to make an impact. Following this, their effectiveness should be assessed through an independent review to enable more informed consideration of what still needs improvement.

### NSW Government proposals to restrict access to workers compensation

The NSW Labor Government is considering moving ahead with reforms, outlined below, that will cut injured workers off income support and medical treatment without addressing underlying workplace psychosocial hazards.

#### Creating a legal prerequisite for bullying claims

The NSW Labor Government is proposing that workers who experience bullying will be required to undertake legal proceedings at the NSW Industrial Relations Commission (IRC) or Fair Work Commission before being able to access workers compensation.

While the NSW Labor Government presents this as helping to resolve a safety hazard, in practice it will just serve as a barrier to bullying victims accessing workers compensation. Workers would be forced to remain at work experiencing continued abuse, while becoming further traumatised through an adversarial legal process which ruins their relationship with their employer and therefore any prospect of their return-to-work.

Unions NSW supports having the ability to dispute bullying and harassment in the NSW IRC, but not as a gateway to accessing workers compensation.

### Introducing **Australia's** harshest Whole Person Impairment thresholds

#### *The current WPI threshold*

'Whole person impairment' (WPI) is a measure of injury severity used to determine access to certain benefits under workers' compensation. Currently, workers can receive income support for up to 5-years and medical treatment for up to 7-years without any WPI threshold. If a worker is assessed with a WPI above 21%, benefits can continue beyond these timeframes.

Accessing a lump sum payment or work injury damages currently require a WPI of 15%.

#### *Aligning NSW with other states?*

The NSW Labor Government has proposed a 30% WPI threshold for lump sum payments, work injury damages, and to access weekly payments after 2.5 years and medical benefits after 3.5 years for psychological injuries.

However, the NSW Labor Government's claim that the proposal would align NSW with other states is inaccurate. Queensland and the ACT have no WPI thresholds for damages, and Victoria uses a narrative test for serious injuries, allowing access regardless of WPI.

According to advice from Mr. Greg Masselos, personal injury lawyer, the Government's proposal is also incomparable with South Australia's WPI threshold of 30%. This is because South Australia uses different and far more generous Guidelines for assessing WPI. A 30% WPI under the South Australian guidelines aligns with 15% under the NSW Guidelines. Therefore, the WPI thresholds for accessing certain benefits in NSW are already 'aligned' with South Australia, while the Government's proposal would reverse this alignment.

*The changes will cut seriously injured workers from critical mental health support*

A 30% WPI threshold for weekly payments was introduced in 2012 in NSW but repealed in 2015 due to its harsh impact, with back-payments issued. The new proposal is more severe, applying after 2.5 years (vs. 5 years) and extending to damages claims.

Clinical psychiatrist Dr. Dinnen asserts that the 30% WPI threshold is extremely difficult to achieve for workers with work-related psychological injuries. Even severe cases – marked by chronic incapacitation, inability to work, disrupted family life, and long-term psychiatric care, typically do not exceed 20–25% WPI using the PIRS.

The following is a description of a hypothetical worker with a 22% WPI:

*'An injured worker with a 22% impairment is likely to struggle to live independently without support. They probably cannot prepare their own meals and may need prompting to shower and a community nurse or family member may be required to regularly visit them to ensure minimum levels of hygiene and nutrition.*

*They will be withdrawn from sports, hobbies, and other social and recreational activities they enjoyed before their injury. In many instances their capacity to travel beyond their local area or shops will be restricted. Their personal relationships are likely to be severely strained with both a loss of friendships and separation from their partner or spouse likely.*

*Their ability to read and comprehend more than a newspaper article is restricted and they will find it difficult to follow instructions and may even struggle to concentrate sufficiently to follow a conversation. They will be restricted in their ability to work and will be unlikely to work more than 20 hours per week. If they can work, it will be in a less demanding and less stressful role.'*

- Scott Dougal, accredited specialist in personal injury law

According to Dr. Dinnen, the NSW Government's proposed threshold would exclude nearly all psychologically injured workers from compensation, worsening financial hardship, despair, and risks of self-harm or suicide, particularly for frontline workers.



It is understood that the 30% threshold would likely exclude 95% of psychologically injured workers, including those permanently unable to work, who may score as low as 5% WPI.

#### *The impact of these cuts*

Frontline workers (e.g., emergency responders, nurses) who face significant psychological trauma will experience the brunt of these changes. Denying compensation after 130 weeks risks relegating them to welfare, despite their critical community service.

Additionally, higher thresholds reduce employer accountability for negligent psychological harm, potentially entrenching unsafe workplace cultures and increasing injury rates.

#### *Proposal is contrary to independent review*

Contrary to the NSW Labor Government's proposal, the 2021 *McDougall Review* found that WPI is a poor test for entitlement to compensation and recommended reviewing its use entirely. This review should come before the NSW Labor Government's proposal to increase the WPI threshold.

#### **Restricting the definition of 'psychological injury'**

The NSW Government has said it will define 'psychological injury' for the purpose of workers compensation. However, this definition will effectively limit what counts as a compensable injury to only those caused by a specific list of hazards. This is akin to saying a broken arm is only compensable if you fall over a chair, but not a bench.

The Government's proposal undermines the process of doctor-led care and progress to recognise workplace psychosocial hazards. If implemented, we are concerned about how SafeWork NSW will regulate non-compensable hazards, leading to compliance gaps.

Unions NSW has recommended that in identifying psychosocial hazards, the NSW Government utilises the SafeWork NSW *Code of Practice: Managing Psychological Hazards at Work* as its principal guiding material, which contains a more accurate list of hazards.

#### *Changes to the assessment of reasonable management action*

The NSW Treasurer has indicated a change to how 'reasonable management action' will be assessed in the context of claims.

While Unions NSW does not oppose improving certainty in this area, such a change is likely unnecessary as the term is already defined in legislation.

A change that limits access to care and compensation for workers with legitimate psychological injuries would be unjust. Moreover, it does nothing to support prevention or address the causes of harm in workplaces.



## **Financial sustainability through prevention: A better way for NSW Workers Compensation reform**

---

The NSW Workers Compensation system is failing workers and employers through poor claims management, needless bureaucracy and falling return-to work-rates.

It is no wonder there are claims its financial sustainability may be under threat.

However, the NSW Government's solution of complicating the processes for making claims and cutting mental health services and support for seriously injured essential frontline workers is short-sighted, does not address the causes of trauma, and is unnecessary.

There are other options to improve the financial sustainability of the scheme.

This five-point-plan is Unions NSW's alternative to the NSW Labor Government's position. Our plan focuses on preventing injuries and trauma, returning injured workers back to work quicker, and reducing waste and inefficiencies within the current scheme.

If these problems are not addressed and critically injured workers are denied support, this means they fall through the cracks in the system, pushing them onto their families for care and welfare and charity to survive.

## Action Point 1: Adopting the best practices from other states to prevent injuries before they happen

NSW's current WHS framework is reactive and relies on regulator intervention after an injury occurs. Furthermore, some employers choose not to follow WHS Codes of Practice in their workplaces which contain best-practice hazard reduction measures developed by experts.

### Empower the NSW IRC to resolve safety hazards raised by workers

Unions can only prosecute Category 1 WHS breaches, which are the most serious type of offence risking death or serious injury/illness. By this stage it's often too late, especially for trauma and psychological injuries which develop over time. We need to remove workplace safety hazards before they cause injuries that leave injured workers dependent on a failing workers compensation system.

**Recommendation:** The NSW Government should empower the NSW Industrial Relations Commission (IRC) to resolve general WHS disputes over safety and worker protection referred by unions, as already occurs in Queensland and South Australia.

This provides an opportunity to remove workplace trauma hazards before they turn into serious injuries and claims.

### Entrenching Codes of Practice in NSW WHS law

In NSW, Codes of Practice provide information for employers on how to maintain safe workplaces and practices required under the *Work Health and Safety Act 2011* (NSW). Codes of Practice provide expert material and contain the best methods for hazard detection and the elimination and/or minimisation of those hazards.

However, because Codes of Practice are not mandatory, some employers choose not to follow them and cut corners to save time and money at the expense of workers' safety.

**Recommendation:** To prevent workplace injuries, the NSW Government should follow the lead of Queensland and Victoria and make Work Health and Safety Codes of Practice enforceable.

## Action Point 2: Making it easier for injured workers to return to work

Return to work rates have continued to fall over recent years which places pressure on the financial sustainability of workers compensation. Unions NSW has received feedback from workers regarding the multiple barriers they face to a successful return-to-work.

### Empowering the NSW Industrial Relations Commission to resolve return-to-work disputes

Returning to work after an injury is in the interest of employers and workers. The barriers to a successful return-to-work process are often just as complex and difficult for an employer as they can be for an employee. In some cases employers may wish to avoid having to accommodate the needs of an injured worker returning to the workplace. There needs to be more support to assist employers manage injured workers returning to work.

Situations in which an employee is able to return to work, but is prevented from doing so, often lead to a dispute with their employer. This often remains unresolved when there is no avenue for the worker to have their case resolved.

**Recommendation:** Include return-to-work provisions for injured workers as a matter for which unions may lodge a dispute with the NSW IRC for resolution. This should apply to workers in the public sector, local government and private sector and will assist workers to return to the workplace when they are fit to do so.

### Encourage employers to facilitate return-to work

Currently, employees can be terminated if, after 6-months, they still have not received 'suitable duties' from their employer which enable them to return-to-work. This means some employers simply 'wait out the clock' rather than making a genuine effort to provide suitable duties.

**Recommendation:** The NSW Government should legislate to prevent termination of an injured worker unless the injury management plan states the return-to-work goal is a different job with a different employer.

### Action Point 3: Incentivising employers to prioritise safety and return to work

Currently, employers have little incentive to provide suitable duties to enable injured workers to return-to-work. The current premium model is industry-based and does not reward good employers who facilitate return-to-work for injured employees. Nor does it address the issue of employers who unnecessarily keep employees on workers compensation.

Such practices lead to reduced return-to-work outcomes and diminished employer engagement in injury management. The NSW Government's reliance on rehabilitation providers to bridge this gap has proven costly and ineffective, adding hundreds of millions of dollars to the scheme without improving outcomes.

#### Restructuring premiums to promote return to work

The NSW workers compensation scheme should return to a premium model which takes into account an employer's individual claims history. Prior to the 2012 reforms to the scheme, employers with a higher incidence of injuries faced higher premiums, creating a financial incentive to improve workplace safety, provide suitable duties, and facilitate early return-to-work. This system contributed to significantly better return-to-work rates, as employers were commercially incentivised to minimise lost time and offer meaningful alternative duties.

**Recommendation:** Reintroduce a loading based on claims performance to restore meaningful incentives for employers to prevent injury and support timely return to work and to reward safety-conscious employers.

## Action Point 4: Cleaning up waste and inefficiency within the scheme

### Expanding the powers of SIRA to reduce insurer waste and inefficiency

Insurers are not being held accountable for declining return-to-work rates and increasing costs to the scheme.

The NSW Auditor General has criticised icare for not focusing on making improvements in these areas (NSW AG 2024, pp. 4-5). In recent years icare has directed its resources to outsourcing claims management and developing a new IT system, both of which have contributed to declining return-to-work rates (NSW AG 2024, pp. 4-5).

Between 2018-19 and 2022-23, the fees icare paid to outsourced claims service providers increased by around 40% (NSW AG 2024, p. 5). Between 2020-21 and 2022-23, icare's spending on labour-hire increased to more than \$100 million per year (NSW AG 2024, p. 6).

The lack of effective regulation has allowed inefficiencies and non-compliant practices amongst insurers to persist. In 2024, there was only one civil penalty issued of \$11,000 to an insurer for breaching its regulatory obligations (SIRA 2024).

**Recommendation:** The lack of accountability amongst insurers is leading to unnecessary waste, inefficiencies, and poor return-to-work outcomes. To improve scheme sustainability, the NSW Government should extend SIRA's regulatory capacity across all insurers in the scheme.

### Stop bad employers increasing everyone's premiums by under- or non-insuring workers

When employers under-insure (e.g. insure for significantly less workers than they employ), the costs of their claims are absorbed by the scheme, effectively redistributing the risk and financial costs to compliant employers and the broader system. As of December 2023, uninsured employers were expected to cost the system around \$191 million in unpaid workers' compensation claims (icare 2023).

However, this illegal behaviour is not adequately policed. When employers are caught, the fines are so low they are not a disincentive to future bad behaviour and are seen by some employers as 'the cost of doing business'.

**Recommendation:** Improve SIRA's capacity to enforce compliance and increase the financial penalty for non-compliance to at least three-times the financial benefit obtained by employers.

### Improving SIRA's complaints handling process

In 2024, an independent inquiry examined SIRA's handling of long-standing, unresolved complaints against insurers. The findings of the inquiry are yet to be made public.

**Recommendation:** To improve efficiency and reduce waste within workers compensation, the NSW Government should publish the recommendations of the 2024 Independent Inquiry into SIRA's regulatory operations and consult with stakeholders on their implementation.

### Action Point 5: Diversify the insurance pool to make iCare sustainable long-term

Unions NSW has for many years expressed its concern about the negative financial impact of extending specialised insurance licences and the increasing number of self-insurers. Private insurers target better performing policyholders, making the nominal insurer the 'insurer of last resort' and negatively impacting its financial sustainability.

Consolidating all employers into the nominal insurer's pool would diversify risk, enhance scheme sustainability, and ensure consistent claim management standards. This reform would protect both workers and the broader workers' compensation system from the adverse impacts of risk segmentation and insurer cherry-picking.

**Recommendation:** To promote long-term financial stability and equitable treatment of injured workers, the NSW Government should abolish self-insurer and specialised insurer arrangements in NSW.

## Conclusion

Recent increases in workers compensation mental health claims are extremely concerning. The first step the NSW Government should take is to focus on preventing injuries before they occur. There are common-sense measures available, such as a general WHS jurisdiction and entrenched Codes of Practice. These operate in other jurisdictions and the NSW Government should adopt them before considering its current proposals.

Falling return-to-work rates are another concerning outcome of a poorly structured workers compensation scheme. We can help workers get back to work by enabling the NSW IRC to resolve return-to-work disputes. We can also improve this through individualised premiums, which incentivise employers to facilitate return-to-work, and by making it harder to sack injured workers. Employers should not be able to block a worker returning to work after recovering from a workplace injury, shifting the costs to the NSW workers compensation scheme. Conversely, the system should reward safe employers with good return-to-work practices.

The NSW Government can save millions of dollars by reforming insurance industry practices, especially regarding return-to-work practices. SIRA should be empowered to make insurers accountable to their responsibility to improve return-to-work rates and reduce their costs to the scheme. This must include removing private insurers which drive up premiums within the nominal insurer.



## References

- icare (Insurance and Care) (2023), *Nominal insurer liability valuation as at 31 December 2023*, accessed 6 May 2025, <https://icare.nsw.gov.au/-/media/icare/unique-media/about-us/annual-report/media-files/files/related-downloads/nominal-insurer-liability-valuation-as-at-31-december-2023.pdf>.
- NSW AG (NSW Auditor General) (2024), *Workers compensation claims management*, Audit Office of NSW, accessed 6 May 2025, <https://www.audit.nsw.gov.au/our-work/reports/workers-compensation-claims-management>.
- SIRA (State Regulatory Insurance Authority) (2024), *Regulatory activity*, accessed 6 May 2025, <https://www.sira.nsw.gov.au/resources-library/regulation-and-fraud/regulatory-activity>.

## **Appendix 10 Stakeholders invited to make a submission**

- Alcohol and Drug Foundation
- Allianz Australia Insurance Limited (TMF)
- Allianz Australia Workers' Compensation (NI)
- Audit Office of NSW
- Australasian Meat Industry Employees Union (AMIEU) - NSW Branch
- Australian Association of Medico-Legal Providers
- Australian Association of Psychologists
- Australian Centre for Disability Law
- Australian Constructors Association
- Australian Council of Trade Unions
- Australian Educations Union – NSW Teachers Federation Branch
- Australian Federation of Employers and Industries
- Australian Industry Group
- Australian Institute of Marine and Power Engineers - NSW
- Australian Lawyers Alliance
- Australian Licensed Aircraft Engineers
- Australian Manufacturing Workers' Union
- Australian Maritime Officers Union
- Australian Medical Association (NSW)
- Australian Psychological Society
- Australian Rehabilitation Providers Association
- Australian Road Transport Industrial Organisations (NSW Branch)
- Australian Salaried Medical Officers Federation
- Australian Services Union (ASU) - NSW & ACT
- Australian Workers' Union (NSW Branch)
- BEING - Mental Health Consumers, Inc
- Beyond Blue
- Black Dog Institute
- BullyZero
- Business Council of Australia
- Business NSW
- Catholic Churches Insurance Ltd
- CEPU - Plumbing Division NSW
- CEPU - Postal & Telecommunications Division
- CFMEU - Manufacturing Division
- CFMEU - Northern Mining & NSW Energy District

- Coal Mines Insurance Pty Ltd
- Community and Public Sector Union (CPSU) - PSU Group
- Community Legal Centres NSW
- Construction Forestry Maritime Mining Energy Union
- Council of Small Business Organisations Australia
- Deloitte
- Dr Julian Parmegiani
- DXC Technology
- Electrical Trades Union NSW & ACT
- Employers Mutual NSW Ltd (EML) (TMF and NI)
- Equality Australia
- Exercise and Sports Science Australia
- EY
- Finance Sector Union of Australia (FSU) - NSW & ACT
- Finity
- Fire Brigade Employees' Union of NSW
- Flight Attendants Association of Australia (FAAA) - International Division
- Gallagher Bassett
- GIO General Limited (NI)
- Guild
- Headspace
- Health Justice Australia
- Health Services Union (NSW Branch)
- HEM
- Hunter Workers (Newcastle Trades Hall)
- Independent Education Union
- Injured Workers Support Network
- Insurance and Care NSW (icare)
- Insurance Council of Australia
- JK Incorporate Resourcing
- KPMG
- Law Society of NSW
- Legal Aid NSW (Mental Health Advocacy Service)
- Legal Government Engineers Association (LGEA)
- Lifeline
- Maritime Union of Australia (MUA)
- Master Builders Association of NSW
- Matt and Sarah U'Brien
- Maurice Blackburn Lawyers

- Media Entertainment & Art Alliance
- Mental Health Australia
- Mental Health Careers NSW
- Mental Health Commission of NSW
- Mental Health Coordinating Council
- Mental Health Foundation Australia
- Mr Chris Gall, Lawyer
- Mr Chris Gambian, Executive Director, Australians for Mental Health
- Mr Connor Nimmons
- Mr Craig Tanner, Barrister
- Mr David Baran, Barrister
- Mr Kim Garling
- Mr Peter McCarthy
- Mr Richard Hoskins
- Ms Anna Ward, Tutor, UTS, Media Law and Ethics
- Ms Krystal Parisi, Lawyer
- Ms Kylie Simpson
- Ms Lyn Magree
- Ms Patricia Kennedy-Wood
- Ms Roshana May
- National Disability Services NSW
- National Insurance Brokers Association of Australia
- National Tertiary Education Union
- NSW Bar Association
- NSW Council of Social Service
- NSW Health
- NSW Nurses & Midwives' Association
- NSW Self Insurers Association
- NSW Small Business Commissioner
- NSW Teachers Federation Branch (NSWTF)
- NSW Treasury
- Occupational Therapy Australia
- Police Association of NSW
- Professionals Australia
- Professor Michael Robertson
- Public Service Association
- PWC
- QBE Insurance (Australia) Limited (TMF)
- QBE Workers Compensation Ltd (NI)

- Racing NSW
- Rail, Tram and Bus Union (NSW Branch)
- Redfern Legal Centre
- Royal Australian and NZ College of Psychiatrists
- SafeWork Australia
- SafeWork NSW
- Shop, Distributive and Allied Employees' Association (Newcastle & Northern Branch)
- Shop, Distributive and Allied Employee's Association NSW
- Slater and Gordon Lawyers
- Small Business Association of Australia
- South Coast Labor Council
- St Vincent de Paul Society NSW
- StateCover Mutual
- State Insurance Regulatory Authority
- Suicide Prevention Australia
- Suncorp
- Sutherland Shire Council
- Taylor Fry
- The Development and Environmental Professionals' Association
- The Doctors Union (ASMOF NSW)
- Transport Workers' Union NSW
- Unions NSW
- United Services Union
- Women's Legal Service NSW
- Workers Compensation Commission
- Workers Compensation Independent Review Office
- Workers Health Centre
- Workplace Tragedy Inc

## Appendix 11 Submissions

No.	Author
<a href="#">1</a>	Exercise & Sports Science Australia
<a href="#">2</a>	SDA NSW and ACT and SDA Newcastle and Northern Branch
<a href="#">3</a>	National Disability Services
<a href="#">4</a>	Mental Health Coordinating Council (MHCC)
<a href="#">5</a>	Name suppressed
<a href="#">6</a>	Health Services Union - NSW ACT QLD (HSU)
<a href="#">7</a>	Australian Association of Psychologists Inc
<a href="#">8</a>	Council of Small Business Organisations of Australia
<a href="#">9</a>	Auditor-General for New South Wales
<a href="#">10</a>	NSW Workers Compensation Self Insurers Association
<a href="#">11</a>	Public Service Association of New South Wales
<a href="#">12</a>	AEU NSW Teachers Federation
<a href="#">13</a>	Independent Education Union of Australia NSW ACT Branch
<a href="#">14</a>	Finance Sector Union
<a href="#">15</a>	Australian Workers' Union NSW Branch
<a href="#">16</a>	Mr Craig Tanner
<a href="#">16a</a>	Mr Craig Tanner
<a href="#">17</a>	Insurance Council of Australia
<a href="#">18</a>	Australian Lawyers Alliance (ALA) NSW
<a href="#">19</a>	Australians for Mental Health
<a href="#">20</a>	Unions NSW
<a href="#">21</a>	National Insurance Brokers Association
<a href="#">22</a>	United Services Union
<a href="#">23</a>	Sarah U'Brien
<a href="#">24</a>	Roshana May
<a href="#">25</a>	Australian Manufacturing Workers' Union NSW ACT
<a href="#">26</a>	Australian Services Union NSW & ACT (Services) Branch
27	Confidential
<a href="#">28</a>	Kim Garling
<a href="#">29</a>	Chris Gall
<a href="#">30</a>	Women's Legal Service NSW

<b>No.</b>	<b>Author</b>
<a href="#">31</a>	St Vincent de Paul Society NSW
<a href="#">32</a>	Occupational Therapy Australia (OTA)
<a href="#">33</a>	CFMEU Construction and General Division NSW Branch
<a href="#">34</a>	The Law Society of New South Wales
<a href="#">35</a>	Sutherland Shire Council
<a href="#">36</a>	Insurance & Care NSW (icare)
<a href="#">37</a>	NSW Council of Social Service (NCOSS)
<a href="#">38</a>	New South Wales Nurses and Midwives' Association
<a href="#">39</a>	Australian Industry Group (Ai Group)
<a href="#">40</a>	Krystal Parisi
<a href="#">41</a>	NSW Bar Association
<a href="#">42</a>	Slater and Gordon Lawyers
43	Confidential
<a href="#">44</a>	Australian Rehabilitation Providers Association
<a href="#">45</a>	Black Dog Institute
<a href="#">46</a>	JK Corporate Resourcing
<a href="#">47</a>	David Baran
<a href="#">48</a>	Taylor and Scott Lawyers
<a href="#">49</a>	Redfern Legal Centre
<a href="#">50</a>	Royal Australian and New Zealand College of Psychiatrists
<a href="#">51</a>	Maritime Union of Australia
<a href="#">52</a>	StateCover Mutual
53	Confidential
<a href="#">54</a>	Richard Hoskins
<a href="#">55</a>	Patricia Kennedy-Wood
56	Confidential
57	Confidential
58	Confidential
<a href="#">59</a>	Kylie Simpson
<a href="#">60</a>	The Doctors Union (ASMOF NSW)
<a href="#">61</a>	CFMEU Manufacturing Division
<a href="#">62</a>	Australian Medical Association (NSW)

## Appendix 12 Witnesses at the hearing

Date	Name	Position and Organisation
Friday 16 May 2025 Macquarie Room Parliament House, Sydney	Hon Daniel Mookhey MLC	Treasurer
	Hon Sophie Cotsis MP	Minister for Industrial Relations, and Minister for Work Health and Safety
	Mr Mark Morey	Secretary, Unions NSW
	Ms Natasha Flores	Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW
	Mr Bernie Smith	Branch Secretary-Treasurer, Shop, Distributive and Allied Employees' Association NSW Branch
	Ms Amber Flohm	Deputy President, NSW Teachers Federation
	Mr Michael Whaites	Acting General Secretary, NSW Nurses and Midwives' Association
	Mr Gerard Hayes AM	Secretary, Health Services Union NSW, ACT and QLD Branch
	Mr Jack Ayoub	NSW Organiser, Australian Workers' Union NSW Branch
	Mr Angus McFarland	Branch Secretary, Australian Services Union NSW & ACT (Services) Branch
	Mr Troy Wright	Acting General Secretary, Public Service Association of NSW
	Mr Daniel Hunter	Chief Executive Officer, Business NSW
	Mr Sam Moreton	General Manager, Government and Corporate Affairs, Business NSW
	Mr Tony Wessling	Group Executive, Workers Compensation, icare
	Mr Dai Liu	General Manager, Actuarial Services, icare
	Ms Sonya Campbell	Deputy Secretary, Commercial, NSW Treasury
	Ms Andrée Wheeler	Executive Director, State Insurance Schemes, NSW Treasury
	Mr Dominic Toomey SC	Senior Vice-President, NSW Bar Association



Date	Name	Position and Organisation
	Mr Tony Bowen	Member of the NSW Bar Association's Common Law Committee
	Mr Tim Concannon	Chair, Injury Compensation Committee, Law Society of NSW
	Mr Shane Butcher	Member, Injury Compensation Committee, Law Society of NSW
	Mr Ivan Simic	Solicitor, Taylor & Scott Lawyers
	Ms Michelle Meigan	Solicitor, Taylor & Scott Lawyers
	Mr David Jones ( <i>via videoconference</i> )	Partner, Carroll & O'Dea Lawyers
	Mr Scott Dougall	Partner, Carroll & O'Dea Lawyers
	Mrs Ramina Dimitri	Head of Work & Road, NSW ACT + WA, Slater & Gordon Lawyers
	Ms Larissa Atkinson	Legal Counsel, Slater & Gordon Lawyers
	Ms Rita Yousef	Senior Member, NSW Branch Workers Compensation Subcommittee, Australian Lawyers Alliance
	Ms Roshana May	Individual with workers' compensation expertise
	Mr Kim Garling	Individual with workers' compensation expertise
	Dr Julian Parmegiani	Psychiatrist and assessor
	Dr Anthony Dinnen ( <i>via videoconference</i> )	Consultant psychiatrist and assessor
	Mr Chris Gambian	Executive Director, Australians for Mental Health
	Professor Pat McGorry AO ( <i>via videoconference</i> )	Founder, Australians for Mental Health
	Ms Mandy Young	Chief Executive, State Insurance Regulatory Authority (SIRA)
	Mr Trent Curtin	A/Deputy Secretary, SafeWork NSW
	Ms Samantha Taylor PSM	Independent Review Officer, Independent Review Office (IRO)

Date	Name	Position and Organisation
	Ms Cara Varian	CEO, NSW Council of Social Service (NCOSS)
	Mr Ben McAlpine	Director, Policy and Advocacy, NSW Council of Social Service (NCOSS)

## **Appendix 13 Transcript of hearing on 16 May 2025**

**REPORT ON PROCEEDINGS BEFORE**

**STANDING COMMITTEE ON LAW AND JUSTICE**

**PROPOSED CHANGES TO LIABILITY AND ENTITLEMENTS FOR  
PSYCHOLOGICAL INJURY IN NEW SOUTH WALES**

<b>UNCORRECTED</b>
--------------------

**At Macquarie Room, Parliament House, Sydney, on Friday 16 May 2025**

**The Committee met at 8:40.**

**PRESENT**

The Hon. Greg Donnelly (Chair)

Ms Abigail Boyd (Deputy Chair)

The Hon. Susan Carter

The Hon. Anthony D'Adam

The Hon. Damien Tudehope

The Hon. Mark Latham

The Hon. Stephen Lawrence

The Hon. Bob Nanva

\* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.











**The CHAIR:** Welcome everyone to the hearing of this one-day inquiry of the Standing Committee on Law and Justice into proposed changes to the liability and entitlements for psychological injury in New South Wales. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders, past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Greg Donnelly and I am the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent, if you have not done so already. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

Due to the time frame of the inquiry, I advise witnesses that the Committee has resolved that, with respect to any questions taken on notice today, the return of answers to the secretariat will be by close of business—that is, 5.00 p.m.—next Wednesday 21 May. Members of the Committee, witnesses over the course of the day and the public at large should also note that there will be no provision for supplementary questions to witnesses after the hearing that otherwise would be normally provided through the Committee secretariat from members of the Committee.

**The Hon. DANIEL MOOKHEY**, Treasurer, before the Committee

**The Hon. SOPHIE COTSIS**, Minister for Industrial Relations, and Minister for Work Health and Safety, before the Committee

**The CHAIR:** Good morning, Treasurer and Minister Cotsis. Welcome, and thank you for being available as our first witnesses today. I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament. Just so we are clear for our witnesses and other witnesses today and the public at large, we are, in effect, starting 15 minutes late today and I do apologise for that to our first witnesses and the consequential knock-on effect for all the witnesses for the rest of the day. That will simply push everything forward 15 minutes. I want to make that very clear. That is the effect of the delay that we have and, once again, through no fault of any of the witnesses but some work that needed to be done through deliberation by the Committee before we formally started. With that introduction, I think there is no more to say at this stage. I make the point for anyone watching that there are representatives on this Committee from the Government, the Opposition and the crossbench who will be participating today. Treasurer and Minister, would you like to start by making a short statement?

**The Hon. DANIEL MOOKHEY:** Thank you, Chair, and thank you to the Law and Justice Committee for permitting our appearance today. The exposure draft this Committee is inquiring into arises from the failure of our existing workplace health and safety laws, industrial relation laws and our workers compensation system to prevent psychological injuries and return those with psychological injuries to their health and to their work. I set out the reasons why in my statement to the House in March. But since March there have been some further developments—namely, the finalisation of the December valuations, and I want to brief the Committee on those changes.

At the June 2024 valuation, the Nominal Insurer held 85¢ for every dollar it expected to pay in compensation. Since then, the scheme has plunged further into deficit. I regret to inform you that, as of 31 December, the scheme is only holding 82¢ in assets for every dollar it expects in future claims. Absent reform, I expect the scheme to plunge further into deficit when the scheme is revalued in six weeks' time. Vast deterioration has real implications for the sustainability of the scheme.

Workers get less; businesses pay more. Put simply, you can have the best workers compensation scheme in the world on paper. If it has no money, it's not helping anyone.

Turning to the TMF—the Government's self-insurer—I regret to inform the Committee that, as a result of the December valuation, absent reform, the forthcoming budget will report another \$2.6 billion writedown, just six months since the half-year review. With reform, that cost might be avoided. By way of context, the half-year review reported a \$204 million writedown. The 2024 budget recorded a \$2.4 billion writedown. The 2023 half-year report reported a \$170 million writedown. My first budget recorded a \$1.3 billion writedown. In fact, the State budget has recorded a cumulative \$4.1 billion in writedowns arising from the TMF in my two-year tenure as Treasurer.

As the TMF continues to deteriorate, the pressure for cash injections grows. Since I became Treasurer, the Government has authorised an additional \$1.2 billion in cash injections to keep the public insurer funded. Treasurers Perrottet and Kean authorised an earlier \$4.9 billion. Since 2018, governments have borrowed \$6.1 billion, so the TMF's assets equal its liabilities. I will not be authorising any further injections—not until Parliament decides its collective response to a scheme that most acknowledge is failing and not when that money is coming at the expense of schools, hospitals or kids in need of out-of-home care. That choice is clear for me.

Turning to the state of the system, as I said in my ministerial statement in March, claims for psychological injury have doubled in just six years. While 91 per cent of physical injury claims resolve within 13 weeks, 50 per cent of psychological claims are not resolved after a year. The average cost for a psychological claim has also massively increased from \$146,000 in 2019 to \$288,542 in 2024. Those costs have increased premiums for businesses by 8 per cent annually for three years. Without reform, claim-free businesses will see a 36 per cent rise in premiums by 2027-28. Those costs are, in turn, having very real consequences, of course, in the viability of those businesses as well as our broader economy. But, beyond that cost, the system is disrupting workplaces by sidelining trained staff and worsening conflict. The impact on injured workers is no better. These facts demand reform.

The exposure draft of the Workers Compensation Legislation Amendment Bill takes the first step. It is important for us to say it's not the Government's final position. Your deliberation and our consultations with the New South Wales trade union movement, employers and members of Parliament will shape the bill the Government intends to introduce shortly. The bill aims to stabilise the scheme, but ultimately more reform will be needed. New South Wales needs to break the habit of set and forget when it comes to WHS laws, IR law and workers compensation scheme design. The State needs to make a decisive shift towards fostering a culture of prevention. Us parliamentarians need to lead it. Ultimately, the best workers compensation scheme is one no-one ever needs to use. Until that is possible, I urge Parliament to act to save the scheme we have and fight to stop people from being injured in the first place.

**Ms SOPHIE COTSIS:** Chair, it is clear to everyone—injured workers, unions, business and the Government—that the current New South Wales workers compensation system is failing, especially for psychological injuries. A change in volume of claims impacts revenues. There is no doubt mental health is a societal issue, but the increase in psychological claims

would indicate that the system has become a place where industrial relations and general health issues are being managed through a system that was designed to support those injured at work to recover and to return to work.

The Minns Labor Government is committed to reforms that ensure these type of injuries are prevented from occurring in the first place. We have restored SafeWork NSW as a standalone regulator, with more inspectors. We will have a new commissioner at its head. We are investing in stronger enforcement of psychological-risk regulations, and we have launched the 2024-2026 Psychological Health and Safety Strategy, shifting focus from education to compliance. We have also implemented the Government's whole-of-government return to work strategy, to find suitable job pathways for injured public sector workers with a capacity and desire to work. Last year, Mr Chair, we identified over 3,068 New South Wales public sector workers on workers compensation who have claims in this position. This is unacceptable because these public sector workers have capacity to work but the system has these artificial barriers that doesn't allow them to get back into the system. What we are doing is implementing this strategy, backed by \$1.2 million, that is led by a team in the Premier's Department.

The Government has also been clear that icare needs to get better with both governance and claims management after the errors of the last 10 years. Since coming to office, the Government has established statutory objectives for icare, mandated that an employee and employer representative must be on the board of icare, put a Treasury official on the board of icare and required that icare must table a statement of business intent to Parliament each year. Icare has also now implemented professional standards for claims managers across the Nominal Insurer and the Treasury Managed Fund for the first time and is also now looking at ways to expand its test-and-learn model into the broader scheme. Claims managers are at the front line of our workers compensation system, and it is critical that they have the skills to support injured workers recover. These professional standards are an important step in that direction. Mr Chair, we want to build a system that both respects and treats injured workers and gives confidence to New South Wales' businesses that the premiums they pay are fair and are being used in the best possible way to return workers back to work.

**The CHAIR:** Thank you, Minister Cotsis. We will move to questions from Committee members. It's been previously resolved that we will divide the time between the three groups represented at the table here in the order of Opposition, crossbench and Government.

**The Hon. DAMIEN TUDEHOPE:** Minister Cotsis, if I can start with you. This is an inquiry into the exposure bill, so I am not going to ask you questions about the statement you have just made. It is an inquiry into the bill which you put before us. Just in relation to that bill, Minister, the Fair Work Commission says that its aim is to resolve most bullying and sexual harassment cases within 16 weeks. Are you aware of that?

**Ms SOPHIE COTSIS:** The Fair Work Commission does have a bullying jurisdiction. That's right.

**The Hon. DAMIEN TUDEHOPE:** And it tries to resolve those within 16 weeks? You are aware of that?

**Ms SOPHIE COTSIS:** Yes.

**The Hon. DAMIEN TUDEHOPE:** What is the likely time frame that you perceive for resolving such applications under your proposed new industrial relations jurisdiction? Can you confirm that no weekly payments will be made or medical treatment will be able to be claimed for workers compensation during those weeks or months while the commission is hearing the application?

**Ms SOPHIE COTSIS:** Mr Tudehope, this is an exposure draft. It is a pathway to reform, because what we have seen, particularly over the last five to 10 years—as the Treasurer noted, we have seen a doubling of psychological claims—

**The Hon. DAMIEN TUDEHOPE:** I am just asking you about—Minister, I have got very limited time this morning, and this is a very quick inquiry.

**Ms SOPHIE COTSIS:** I've got limited time as well, and this is very important. I want to explain.

**The Hon. DAMIEN TUDEHOPE:** Chair, I have to say this is a very direct question in relation to the new proposed Industrial Relations Commission jurisdiction. Will people making a claim under that jurisdiction have no access to workers compensation payments or medical payments pending the outcome of that inquiry?

**Ms SOPHIE COTSIS:** Mr Tudehope, this is a proposal in the exposure draft. The Government has committed to expanding the industrial relations remit—

**The Hon. DAMIEN TUDEHOPE:** Is it in the exposure draft? Is that the submission?

**Ms SOPHIE COTSIS:** Mr Tudehope, we are expanding the bullying and harassment jurisdiction in the New South Wales industrial commission, unlike you. You stripped the Industrial Court. What we are going to do in this process is to have a stop bullying, stop sexual harassment order with damages. This is a road map to reform. We are listening to what everybody is saying about this process. And I hear what—

**The Hon. DAMIEN TUDEHOPE:** Minister, I am aware of what you are submitting to me. In the circumstances and under the exposure draft which you have submitted, a sexual harassment claimant who is suffering from a psychiatric disorder caused by sexual harassment would either have to keep attending work or take leave, if available, and pay for their own medical treatment. Is that what is provided under the exposure draft?

**The Hon. DANIEL MOOKHEY:** Can I just—

**The Hon. DAMIEN TUDEHOPE:** No, I am asking the Minister, Treasurer.

**The Hon. DANIEL MOOKHEY:** I can provide you information.

**The Hon. DAMIEN TUDEHOPE:** I'm asking the Minister. Is that the case?

**Ms SOPHIE COTSIS:** I am happy for the Treasurer to respond to that.

**The Hon. DANIEL MOOKHEY:** Your point, Mr Tudehope, is taken. You are quite right to say that, in the absence of a determination by a tribunal, the concept of being able to access what is currently termed provisional liability is affected. But I just take one step back. You are referring to cases which are complex. The current system isn't resolving them quickly. The cases you are pointing to, which are valid points, under the existing status quo are not being resolved. Second point—

**The Hon. DAMIEN TUDEHOPE:** But the payments are being made, aren't they, Treasurer?

**The CHAIR:** Order!

**The Hon. DANIEL MOOKHEY:** Yes. And I do take your point. And I make the point to you, Mr Tudehope: The point you're making is something we're seriously considering, about how you consider the application of a concept like provisional liability in such a scheme. Part of the reasons why, I think, we issued the exposure draft is to tease out these issues and to bring them to the fore and to allow us to respond to them.

**The Hon. DAMIEN TUDEHOPE:** Thank you, Treasurer. When you sat in this chair, you had very limited time.

**The Hon. DANIEL MOOKHEY:** I know.

**The Hon. DAMIEN TUDEHOPE:** And you have given us very limited time in relation to this inquiry. If you'd bear with me in relation to these questions, I can get through them. Back to you, Minister Cotsis. Under the Work Health and Safety Regulation, employers are required to address psychosocial hazards in the workplace, which, according to Safe Work Australia, can include conflict or poor workplace relationships and interactions; job demands such as sustained high mental, physical or emotional effort required to do the job; and shifts that do not allow adequate time for sleep or recovery. Can you confirm that the draft bill will remove the existing right for workers to claim common-law damages if an employer's negligence in addressing such psychosocial hazards causes a permanent psychological injury?

**Ms SOPHIE COTSIS:** Mr Tudehope, as you know, and as the Treasurer stated, this is an exposure draft. We're—

**The Hon. DAMIEN TUDEHOPE:** Again, Treasurer, can you say that this is a—

**The Hon. DANIEL MOOKHEY:** Yes, I can talk to you about this. Actually, the answer in accordance to the exposure draft is that the requirement I think you are referring to is under the provision that affects work injury damages. The work injury damages provision at the existing status quo requires the establishment of negligence. Under the exposure draft provisions, that wouldn't change, but the level of impairment required would change. That is the way, technically, the exposure draft works. I just stress again that the concept of work injury damages obviously is very important, because it is there to stand in the place of common-law rights. But the requirement to prove negligence is unaffected by the exposure draft. That remains. What is changing is the threshold of impairment under the exposure draft.

**Ms SOPHIE COTSIS:** Can I also—

**The Hon. DAMIEN TUDEHOPE:** Let me just ask you then—

**Ms SOPHIE COTSIS:** Sorry, can I just respond?

**The Hon. DAMIEN TUDEHOPE:** No. I just want to take up the—just so we have some clarity on this, has this exposure draft been to Cabinet or caucus?

**The Hon. DANIEL MOOKHEY:** Yes. I won't comment on Cabinet deliberations but, yes, we have obviously published the exposure draft. Yes, we have referred it to our caucus. Yes, we've referred it to you. Yes, we've referred it to all members of the Parliament and, yes, we are inviting feedback from our caucus, from you, from this Committee and from members of the crossbench.

**The Hon. DAMIEN TUDEHOPE:** Has the exposure draft been approved by Cabinet?

**The Hon. DANIEL MOOKHEY:** Again, I won't comment on Cabinet deliberations other than to say that of course the decision to publish the exposure draft was authorised.

**The Hon. DAMIEN TUDEHOPE:** So, Minister Cotsis, do you agree with the provisions contained in this exposure draft?

**Ms SOPHIE COTSIS:** As the Treasurer said, a decision has been made to release the exposure draft for the simple fact that we're here today to listen to what stakeholders have to say, and we have been listening particularly over the last couple of years—as you know, Mr Tudehope—that there has been a rise in psychological claims.

**The Hon. DAMIEN TUDEHOPE:** I was probably aware of that before you were, Minister.

**The CHAIR:** Order!

**Ms SOPHIE COTSIS:** There are responsibilities that employers have in the Work Health and Safety Act. We do need to tighten those, because we have to go back to the cause. This is looking at everything holistically. This is looking at what is the cause, what are the things that we need to be doing, what are the things that employers need to be doing—

**The Hon. DAMIEN TUDEHOPE:** This bill represents your considered view of what we should be doing?

**Ms SOPHIE COTSIS:** There are a number of things that the Government—

**The Hon. DAMIEN TUDEHOPE:** Is this your considered view of what we should be doing?

**Ms SOPHIE COTSIS:** Mr Tudehope, this is a road map to fixing a broken system that was left by your Government. What we are trying to do here is we are trying to—

**The Hon. DAMIEN TUDEHOPE:** We dealt with exactly the same problem.

**Ms SOPHIE COTSIS:** We are investing in preventative programs. We are doing a lot of work at the front end. One of the things that the Government has achieved is we have been working with public sector agencies, with public sector unions, to establish a whole-of-government return to work. What I see is that there are 3,068 public sector workers who—

**The Hon. DAMIEN TUDEHOPE:** Let me ask you about that. Let me ask you about your consultation, Minister, because the Public Service Association says this:

These proposed changes will not improve workers health but will instead exacerbate their injuries and cause further harm.

As Minister for Work Health and Safety, do you agree with the PSA?

**Ms SOPHIE COTSIS:** With respect to the whole-of-government return to work?

**The Hon. DAMIEN TUDEHOPE:** Yes.

**Ms SOPHIE COTSIS:** The actual strategy that we've established—

**The Hon. DAMIEN TUDEHOPE:** With this exposure draft—

**Ms SOPHIE COTSIS:** No, I'm talking about the strategy. I'm talking about—

**The Hon. DAMIEN TUDEHOPE:** The exposure draft, Minister, suggests that—and this is what they say in their submission:

These proposed changes will not improve workers health but will instead exacerbate their injuries and cause further harm.

Is that improvement to work health and safety?

**Ms SOPHIE COTSIS:** Mr Tudehope, we are expanding the bullying and harassment jurisdiction of the Industrial Relations Court. We have established the whole-of-government return to work strategy. There are over 3,000 public sector workers today that have capacity to work, and there are artificial barriers that your Government didn't take on the challenge to fix. And we have spent—

**The Hon. DAMIEN TUDEHOPE:** Let me just ask you about that.

**The CHAIR:** Order! The Minister is answering the question.

**The Hon. DAMIEN TUDEHOPE:** Well, Chair, I have limited time. This is not helpful in terms of getting through the question.

**The CHAIR:** I am not interrupting you. I'm just asking you to come to order, to get on with it.

**The Hon. DAMIEN TUDEHOPE:** Minister, let me just ask you this: There is another bill, is there not, in relation to the amendment of the Industrial Relations Act?

**Ms SOPHIE COTSIS:** A proposal will come to—

**The Hon. DAMIEN TUDEHOPE:** Why haven't we seen that?

**Ms SOPHIE COTSIS:** What do you mean?

**The Hon. DAMIEN TUDEHOPE:** Why isn't there an exposure draft of the—

**Ms SOPHIE COTSIS:** I don't work on your timetable.

**The Hon. DAMIEN TUDEHOPE:** Well, Treasurer, can you tell us—

**The Hon. DANIEL MOOKHEY:** Mr Tudehope, when this bill—obviously it is an exposure draft. As I said at the outset of my ministerial statement, it is not the Government's final position. In fact, whilst I well and truly accept the view that exposure drafts are simply that, we think it is a good thing we've released it to allow people to see the detail, in time, before we present it to Parliament. You are also right to say that, accompanying such changes, the Government intends to introduce the biggest shake-up to WHS laws in New South Wales to help us shift towards a culture of prevention. That will establish a bullying and harassment jurisdiction as effectively the third wave of the work that this Government has done in two years. We obviously restored the independence of the umpire by removing the wage cap. We've then, in the last Parliament, expanded the system in respect to gig economy workers.

The third component of what we wish to do, amongst other changes, is to establish a bullying and harassment jurisdiction. Because a person who works for the public sector should have the same right as a person who is in the private sector. Equally, you're quite right to say that the exposure draft contemplates a system in which the two systems often work in parallel. The reason why that's important is because no workers compensation scheme could order any employer to change anything—nothing. And part of the reasons why having a modern industrial tribunal that is capable of concurrently exercising power on WHS law at the same time as it is making workers compensation determinations is to remove psychological hazard. I think, Mr Tudehope, what you and I agree on is that we want to prevent people from being injured, and we actually want the legal edifice to reflect that.

**The Hon. DAMIEN TUDEHOPE:** Is it your belief that this solves a financial problem, or does it solve workers getting injured, Treasurer?

**The Hon. DANIEL MOOKHEY:** Well, both. And I would just say—

**The Hon. DAMIEN TUDEHOPE:** But the exposure draft you have given us, and your opening statement today, is not about preventing injuries. It is about your bottom line, isn't it, Treasurer?

**The Hon. DANIEL MOOKHEY:** No, Mr Tudehope, because—I go back to the same point, which is it is not like these resources are being expended particularly well. It is not like this is a system that is working and we are taking money out of a system that is succeeding. What is happening here is that a system that was built predominantly to treat physical injury is now having to respond to psychological. Yes, it's going to need to adapt. Yes, it is going to need to modernise. But I think we have to all acknowledge the existing system is doing a terrible job, and that is failing businesses—

**The Hon. DAMIEN TUDEHOPE:** And this bill is the solution, is it, Treasurer?

**The Hon. DANIEL MOOKHEY:** Well, it is certainly part of it, Mr Tudehope, is what I would put forward. And I would simply reflect on this: Other States have had to modernise their systems too. They did it from a position that is far more financially precarious than our system is, albeit our system is very financially precarious. The reason why, even under these changes, this will remain the only system in the nation that is prepared to offer lifetime income support for injured workers is because we are responding at a time where the finances permit us to think about it as a task of modernisation and not as a pure task of crisis intervention. When other States, including other Labor States, have had to reform this—in places like Victoria, South Australia and Queensland—when you find yourself in a situation in which the finances deteriorate even further, you end up with a scenario in which the changes need to be more dramatic.

We accept the fact that these are hard changes that are involved. But I am here to say to the Parliament that doing nothing is not an option. Doing nothing is to lock in a system we know is failing. Doing nothing is to condemn even more workers to a system that is not succeeding and to ask businesses to pay more and more, knowing full well that those resources are not being well expended. That is the reason why we say, yes, these changes are hard, but the broader change that New South Wales needs to make is to break this set-and-forget mentality which means that we ignore these problems for 10 years, we find a system that is under pressure and then we have to change it rapidly. I would prefer a scenario in which we are regularly making adjustments to reflect the conditions that are emerging at the time. That can't be achieved in any one set of reforms. But I say that, right now, in the absence of reform, we are running the risk of an entire system collapse, and I don't think that is acceptable.

**Ms ABIGAIL BOYD:** Good morning, Treasurer. Good morning, Minister. Treasurer, you have said a number of times already that you are open to changing from what you've presented in this draft.

**The Hon. DANIEL MOOKHEY:** Indeed.

**Ms ABIGAIL BOYD:** But you've come here this morning and given quite a brazen ultimatum as well, where you've said to us—as reported in the SMH as well—that if we don't pass reforms, you aren't going to pay what is owed by your Government into the TMF for the next year. Is that correct? How do those two things—

**The Hon. DANIEL MOOKHEY:** I said I won't be putting cash injections. Just to be clear, that doesn't affect claims. What it does mean is that, over time, liabilities exceed assets. I would simply say that I've also made it clear that reform is needed. I didn't say these reforms, I said reform. I simply make the point that we are open to change but we are absolutely up-front about the fact that continually having to borrow money to put into a system is getting more expensive, it's not sustainable, and we cannot continue to borrow money and cash inject, because it absolutely is crowding out our capacity to respond to so many of the State's other pressing needs.

**Ms ABIGAIL BOYD:** Can we just come back to that, though? Because you've shown your hand this morning, where we finally have heard that this is about the TMF and not the Nominal Insurer, which is what we had suspected all along, and what is borne out by the Nominal Insurer liability valuations that were finally released.

**The Hon. DANIEL MOOKHEY:** I don't agree with that premise, Ms Boyd. The Nominal Insurer is in equal distress, it's just that that distress doesn't belong to the State.

**Ms ABIGAIL BOYD:** Let's just talk about the TMF, then, because the TMF is effectively where you put in premiums to cover the workers compensation for public sector workers.

**The Hon. DANIEL MOOKHEY:** Yes.

**Ms ABIGAIL BOYD:** You're basically saying this morning, then, that, just like we had the discussion with so many other stakeholders who don't want to pay their bills, like the private health insurers last year, you don't want to pay what—

**The Hon. DANIEL MOOKHEY:** No, that's an incorrect rendering of the way it works, Ms Boyd. Bear in mind, the budget position of the TMF is affected by three dimensions. The first is premiums. The second is the liability record, which impacts the operating result. The third is the cash position. Just to be very clear here, the premiums aren't affected by any position I made this morning. In fact, my expectation is that premiums have got to go up for ever public sector agency year on year on year, and that absolutely is going to crowd out the other forms of spending. As it is, if you simply pick up the annual report of every agency in the New South Wales Government over the last five years, you will see the biggest increase in employee expenses is not wages, it's premiums. That's going to continue. There is absolutely no doubt that's going up. The view that's been put forward that somehow the premiums are not going to be paid, that's not correct.

**Ms ABIGAIL BOYD:** Okay, but as the employer—

**The Hon. DANIEL MOOKHEY:** The second dimension is the \$2.6 billion dollars liability will be booked in the budget and that will be booked on the operating result. The third part is the cash position of the TMF. That is the money that is required to keep assets equal to liabilities in cash terms. That, absolutely is crowding out our capacity to invest in schools, to invest in hospitals, and to meet the State's other pressing needs, because when we borrow money—

**Ms ABIGAIL BOYD:** Let me just stop you there, because my time is limited. How exactly are we going to have well-functioning hospitals, and schools, and everything else, if we have public sector workers with psychological injuries that aren't supported by the State under its workers compensation system?

**The Hon. DANIEL MOOKHEY:** It's a great question. That's why we have to have a culture of prevention. But right now, not one dollar that I'm injecting into TMF, not one, is going to any preventative measure in the public sector.

**Ms ABIGAIL BOYD:** Do you think that these workers—

**The Hon. DANIEL MOOKHEY:** Sorry, Ms Boyd—

**The CHAIR:** Order! The Treasurer is answering the question.

**The Hon. DANIEL MOOKHEY:** Not one dollar. In fact, because we're having to put so much money into the TMF, it's stalling our ability to fund preventative measures in the broader public sector. I made this point in March. I would much prefer to put the money up front and invest earlier in the prevention cycle. That is not happening when every six months we're booking a \$2.6 billion deterioration. That is just the reality of it.

**Ms ABIGAIL BOYD:** Can I just ask the Minister, then, there have been so many great initiatives that have been initiated under your department, in relation to improving prevention measures. All of those things that you have set in train, do you expect them to actually have an impact on reducing psychological injuries?

**Ms SOPHIE COTSIS:** Ms Boyd, it's a good question, and I think that you need to look at this holistically. What is the cause? As I said in my opening statement, we've seen a large volume of psychological claims. The issue is that a lot of these claims unfortunately are interwork relationships, they're industrial relations matters and we don't have a system to deal with those.

**Ms ABIGAIL BOYD:** But the question was, "Do you think your prevention measures are going to work?" Is that why you've put them in place?

**Ms SOPHIE COTSIS:** I believe so. We're working with the Black Dog Institute.

**Ms ABIGAIL BOYD:** Yes, exactly.

**Ms SOPHIE COTSIS:** We're working with renowned organisations that are helping the Government and helping support agencies. We're also investing in our strategy—

**Ms ABIGAIL BOYD:** Apologies for interrupting. My time is so limited.

**Ms SOPHIE COTSIS:** No, I understand.

**Ms ABIGAIL BOYD:** Treasurer, given that all of these things have now been put in place, why on earth wouldn't you let those prevention measures play out before cutting people out of the system and making them sicker?

**The Hon. DANIEL MOOKHEY:** Ms Boyd, I well and truly understand the point you're making. I absolutely would like to say to you and to the Committee that, should we find ourselves in a situation in which the parallel reform had the prospects of working, we absolutely would have. We had been doing it for two years.

**Ms ABIGAIL BOYD:** Can I ask—

**The Hon. DANIEL MOOKHEY:** Sorry, Ms Boyd, I need to finish. You asked a very good question. I'd simply say that the rate of improvement as a result of the preventative ideally should have started in 2018. That's when the claim numbers went from 5,000 to 6,000 to 12,000. Had that investment taken place in 2018, we would have been in a very different scenario today, but the rate of improvement that the Minister's excellent initiatives are engendering have a reasonable prospect of working, but not at the rate in which it's deteriorating. That's the issue.

**Ms ABIGAIL BOYD:** It's almost like this isn't about prevention then, isn't it?

**The Hon. DANIEL MOOKHEY:** Ms Boyd, I accept the point that it's a hard reform. I accept the fact that it's hard, but that is the answer.

**The Hon. MARK LATHAM:** Thanks, Chair, and thank you to the two Ministers who have attended. Treasurer, you've given us a 43-page exposure draft to analyse in one day of hearings, and I've got a big pile of submissions that have lobbed on my desk as the hearing began. They're from serious organisations. I think it would help the Committee in the various elements of the exposure draft, have you got costings of their net benefit and impact on both the TMF and the Nominal Insurer?

**The Hon. DANIEL MOOKHEY:** Yes, I do. Do you wish to ask about any specific component?

**The Hon. MARK LATHAM:** You've got them tabulated, have you?

**The Hon. DANIEL MOOKHEY:** I do.

**The Hon. MARK LATHAM:** Perhaps for saving time, if you could table those for the benefit of the Committee.

**The Hon. DANIEL MOOKHEY:** I might be able to provide—

**The Hon. MARK LATHAM:** I don't think they've been otherwise available.

**The Hon. DANIEL MOOKHEY:** Yes, we can provide you some information today.

**The Hon. MARK LATHAM:** No, all information about the cost impact and savings of each of the elements of the bill.

**The Hon. DANIEL MOOKHEY:** Yes, I think we can provide you some of that further information.

**The Hon. MARK LATHAM:** Following from that, Treasurer, is it possible, given your emphasis on this as an exposure draft, that this is in some way an ambit claim, in the lingo of the union movement, that you're going to find out what you can get through in terms of union consultation, the caucus, this Committee, and then trim it back to what you need to do in the aggregate of those savings? Or do you need it all? Can you tell the Committee you need it all?

**The Hon. DANIEL MOOKHEY:** I would simply point out, the reform as contemplated in the exposure draft will only return the scheme to solvent. It will not return the scheme to surplus. There is no margin being put into this.

**The Hon. MARK LATHAM:** Return it to "solvent", is that the word you used? Not to surplus?

**The Hon. DANIEL MOOKHEY:** Solvent. Not to surplus.

**The Hon. MARK LATHAM:** Okay, so you need it all. It is not an ambit claim.

**The Hon. DANIEL MOOKHEY:** Yes, but I would just simply say, to be very up-front, we are getting very good suggestions from the trade union movement, we're getting very good suggestions from the business community, we're getting very good suggestions from members of Parliament about ways in which the same problem could be solved through alternative remedies. We're contemplating that. But I would say that certainly the exposure draft would put us back to a position of stability. I want to be very clear here, the need for reform will have to continue. One of the points that has been made to me and the Minister, certainly by the business community and by the trade union, but especially by the trade union movement, is that, again, more reform is going to be needed if we're serious about engendering a change to prevention. We're taking those suggestions very seriously.

**The Hon. MARK LATHAM:** Thank you for clarifying the rules of financial engagement that we get out of this bill. Congratulations on your ballsy approach of threatening the Parliament not to top up the TMF unless we pass your reforms, but do you think your credibility in that area is absolutely shattered by the fact that the Government in other areas is contemplating and indeed encouraging the most lavish, opulent public outlays you could possibly imagine and, indeed, it's an insult to the injured workers of New South Wales that you make that threat while entertaining those other outlays that are off the radar in terms of their lack of public interest and dimension of spending?

**The Hon. DANIEL MOOKHEY:** I will leave it to others to judge my credibility, but I don't know which initiatives you're referring to as being lavish.

**The Hon. MARK LATHAM:** Your Premier, through his Labor colleague Steve McMahon, is actively facilitating a gross expenditure to buy a racetrack of \$8 billion to \$9 billion—\$5 billion net. In that context, to buy a racetrack, including a hundred million dollar subsidy—\$8,000 for the high-income earners of the ATC—I think it absolutely shatters your credibility in making this threat to the Parliament and the Committee today. If you can rule it out on the TMF, you're not going to put any more money in, don't you think your credibility would restore if you ruled out other areas that are off the radar, opulent and lavish, including the \$8,000 subsidy to ATC members—people living in mansions, millionaires, getting an \$8,000 subsidy from a Labor Government—when you say you can't put more money in for injured workers in the public sector.

**The Hon. DANIEL MOOKHEY:** Mr Latham, I'd simply respond to that by saying that the Government is not, at this point, in a position to make a decision on that, because no proposal has come forward. But I take your point about the need, obviously, for us to be very careful in every dollar we're spending, and I take your point that you certainly will reflect on my credibility depending on or according to the position we take.

**The Hon. MARK LATHAM:** What about your Premier?

**The Hon. DANIEL MOOKHEY:** Again, I would simply refer you to what the Premier has said, which is that the Government, when it comes to the matter of the ATC and Rosehill submission, should there be a submission that is made, in the first instance the ATC membership needs to decide whether or not they are interested in making a proposal.

**The Hon. MARK LATHAM:** Well, he said more than that. He said he's entertaining and he's quite encouraged by the proposal. Anyway, we'll set that aside. Treasurer, overall, isn't this a case of chickens coming home to roost in that, for a generation, left-of-centre politics has encouraged a snowflake society of hurt feelings, worrying too much—things like trigger warnings and microaggression. Now, isn't this just the quantification, in money terms, of what all that nonsense means?

**The Hon. DANIEL MOOKHEY:** Mr Latham, I think workers are psychologically capable of being injured at work. And, psychologically, I do believe that workers are entitled to a system that can respond to them. Whether you wish to attribute it to broader changes in culture and whether you wish to attribute it to one side of politics over another, I can't comment on. I can only deal with the situation that's in front of me, and I would simply say that we want a workers compensation system that is responsive to this modern workforce.

**The Hon. MARK LATHAM:** But, essentially, the snowflake society has gone too far. You or your office have briefed *The Daily Telegraph* today on a case of a fellow claiming up to \$1 million because he was targeted and micromanaged at work. Isn't this indicative of the thing that I'm talking about?



**The Hon. DANIEL MOOKHEY:** My office hasn't briefed anyone like that. We don't do that.

**The Hon. MARK LATHAM:** Well, where do you think the Telegraph got that case study from? I mean, old poisoned dwarf could barely spell his name, let alone do his research.

**The CHAIR:** Order!

**The Hon. DANIEL MOOKHEY:** Mr Latham, the only point I would observe is that I'm hearing and meeting lots of workers, and there are lots of case studies of workers coming forward who've had terrible experiences with the workers compensation scheme. I'm also hearing lots of businesses that are coming forward with terrible experiences of the workers compensation scheme.

**The Hon. MARK LATHAM:** Well, why are you doing this reform?

**The CHAIR:** Order!

**The Hon. MARK LATHAM:** If it's all terrible, why are you doing this?

**The Hon. DANIEL MOOKHEY:** Because I'm making the point that it's failing—

**The CHAIR:** After this answer, the questioning moves to Government members.

**The Hon. DANIEL MOOKHEY:** Just on why we're doing it, my other point is, when you have businesses coming forward with case studies and you have unions coming forward with case studies of workers being terribly treated, it just shows the point I'm making, which is that the system is failing workers, it's failing businesses and it's failing the State.

**The Hon. BOB NANVA:** Treasurer and Minister, thank you for your time today. You have both indicated your concerns about the poor underwriting position of the scheme and the risks to the solvency and the sustainability of the scheme without reform. Do you have any indicative figures of the deterioration that might be attributable to the scheme without the reforms being proposed through the exposure draft?

**The Hon. DANIEL MOOKHEY:** Yes. The best way of me being able to answer that is to simply say, when it comes to the Nominal Insurer—I will just go back. The Nominal Insurer is the predominant insurer. It is covering 3.6 million workers, and roughly 340,000 businesses pay into it. By way of reference, there are only 52,000-ish businesses that pay payroll tax. In the absence of reform on the NI, we expect at the next valuation for its liabilities to exceed its assets by more than 20¢. That is, we expect the funding ratio to be dropping below 80. Of course the final determination needs to be made, but that's what our expectation is. I previously said to the Parliament that the consequence of that is that businesses will certainly face premium increases of 12 per cent if they have no claims, but it's entirely possible it may well be more in the event that the scheme deteriorates further. There are other experts that are coming today from icare and from Treasury. They will be able to provide you with some more information on that.

**The Hon. BOB NANVA:** Presumably the premiums are currently set at levels that will cover the cost of the scheme?

**The Hon. DANIEL MOOKHEY:** No, currently the premiums are—the technical term is "the break-even premium". The break-even premium is what's required for claims that are coming in today and the cost of those claims. Currently premiums have to meet the cost of expected future claims but, in effect, have to collect the previous claims that weren't funded. Actually it's likely to be higher. The break-even premium is going to be required to effectively mean that anyone who joins the scheme today, their claim can be funded. But we still have this backlog of underfunding in the scheme, and that is still going to remain.

**The Hon. BOB NANVA:** The funding ratio of the scheme is obviously a mixture of what's happening in the current financial year and what has been happening over the long term to the scheme. What are the other financial risks that have been posed to the sustainability of the scheme? Obviously the increase in psychological injury is one component of the risk to financial sustainability. What are the other components of pressures that are faced by the Nominal Insurer?

**The Hon. DANIEL MOOKHEY:** Fraud is definitely one. The second is of course the investment performance obviously does affect the financial sustainability of the scheme. Taking one step back, because the investment performance has been good, it has actually bought us more time, not less. But it's really at max capacity in terms of its ability to function. Then of course the third dimension is that the cost of the scheme itself is another risk that the Minister has already been acting in terms of reforming and lowering its cost. The final component of that is, really, it all turns on how quickly we get people back to work.

Ultimately, though, I would just stress again, on financial sustainability, the best thing we can do to protect the financial sustainability of the scheme is to prevent people from being injured. The big macro change we need to do is to engender a change in the culture towards prevention. I'm not going to sit here and say there is any one scheme structure that you can put up that will permanently protect the workers compensation scheme. Actually the WHS laws and our capacity to use our workplace health and safety laws to stop people being injured is the long-term solution, medium-term solution and short-term solution to a lot of these problems.

**The Hon. BOB NANVA:** In terms of the principal risks to the financial sustainability of the scheme, so if you just sort of run through them in descending order of financial significance, what are they?

**The Hon. DANIEL MOOKHEY:** In macro terms, it's definitely return to work rates. We have to get people back faster. Right now we're asking a workers compensation system that was really determined there for physical injury to now make very complex decisions around psychological injury. Taking one step back, a workers compensation scheme has to do two

things: It has to determine whether you're injured but it also has to determine whether your injury was caused by work. That causal element is—the first part is actually the least contentious, as to whether you're injured. The second part is the most: It's whether or not you've been injured by work. What we are seeing is, of course, when it comes to physical injury, that's just a clearer cut fact pattern in general.

Trips and falls are still the most common form of injury that the system deals with. If you trip at work and sprain your ankle, or if you cut yourself, they are easy to determine, frankly, that you are injured and the injury was caused by work. That is what the system was designed to determine. Obviously when it comes to issues like psychological, it's just more complex. In terms of the category of psychological injury claims, we are, in the exposure draft, drawing special attention to the fact of bullying and harassment. Bullying and harassment is—interpersonal workplace conflict is the other way it has been described. Obviously, in order for a claim to be established for bullying and harassment, someone has to be deemed to effectively have been the bully. Often that's another worker. Often that's what leads to contest. That's often what is slowing down the system from making any liability determination whatsoever.

That is a large part of why psychological injury is half the rate of return to work of physical, because, frankly, the system has to respond to a set of questions it wasn't built to answer fast. That is part of the reasons why we want to use expertise in the industrial relations system to help with that task. The IR system has been built more to help answer that question than the workers compensation system. But, ultimately, I would just remind the Committee it's an insurance scheme. It's designed to determine whether or not care should be provided through this scheme, which requires the causal element to be met. That is what often creates the conflict when it comes to psychological injury, and which delays treatment.

**The Hon. BOB NANVA:** If we're to assume these reforms do pass through the Parliament, how long would you expect for the impacts to flow through to the system with respect to securing the financial sustainability of the scheme?

**The Hon. DANIEL MOOKHEY:** Again, as I said to Mr Latham, these changes would respectively restore solvency is my expectation. That would be clear from the point of next valuation. That's why there's an urgency to the matter. The next valuation is in six week's time and that will determine the extent of its technical insolvency, and the further it falls into insolvency, then the more changes the Parliament will need to contemplate to restore it. Part of the reasons why I am making a case for why change is needed now is not because of things to do with the budget—albeit, I am not going to lie, avoiding the cost will be reflected in the budget—actually, it is the valuation cycle, which then determines the premium cycle, which then determines the state of the scheme's finances and the state of the scheme's sustainability.

Right now, our issue is, in large part—it is actually not that the system is poorly defined, it is that the system contains no definitions whatsoever. This is why I say it is a task of modernisation. Other States have had to put down the basic ground rules of what is a psychological injury, what treatment do you get, how is the system going to assess it. Our system does not do that. That is why I say in respect to Mr Latham and to Ms Boyd's questions, which we are pretty clear about—and to Mr Tudehope's—which is the exposure draft is designed to show us meeting that first task of, actually, the rules need to be written in law. Yes, we should contest what the rules should be. Yes, we should contest whether they are the right forms of rules. Yes, that is why we are here. But at this point, the New South Wales system provides no guidance to this, which is why there is so much litigation, which then creates further psychological injury.

Again, as I think most of this Committee would already know, the biggest cause of psychological injury that the workers compensation system treats is the workers compensation system. It creates more injury, secondary psychological injury. That is why we want less people in it and that is why we want to shift towards prevention. But that is also why we are saying that the need to act is urgent and the need to act prior to July 1 frankly means that we are making these decisions with a better set of finances than we would be on July 2.

**The Hon. BOB NANVA:** Just a final question from me. Again, assuming these reforms pass through the Parliament, has the Government given some consideration to some specific services that may be rolled out to workers who may drop off the scheme as a result of the reforms?

**The Hon. DANIEL MOOKHEY:** Yes, we are contemplating that. I think it is a very fair point that people have raised, which is, "If care cannot be provided through the workers compensation system, where can care be provided?" We would absolutely be looking to see what we can do on that question, as well. We would be open to it, as well. The other point I should just make is that we are also mindful of the fact that when it comes to the law—the earlier question you asked was, "When do we expect impact?" There are two dimensions to that: there is the financial, but then there is the practical. On the practical aspects, we are very eager to hear feedback from this Committee, from the witnesses to this Committee today and from all the other consultations about what is the right time to activate each part of the system. Certainly, this system would have to commence, various changes have to commence at different points in time. We do want to hear from the experts to make sure that is being calibrated correctly and built appropriately because we are wanting to understand, as well, that the system, obviously, is dealing with real people. We take that very seriously, so we are certainly open to feedback on that question, too.

**The CHAIR:** Can I just jump in—we have got one minute and 33 seconds. Treasurer and Minister, are there any final comments you would like to make before the bell goes?

**The Hon. DANIEL MOOKHEY:** Other than we are very grateful to the Committee, we are very grateful for the questions and very eager to continue working with you in this forum and elsewhere in the Parliament to see if we can resolve a solution to these problems.

**The Hon. MARK LATHAM:** Chair, have those costings been tabled so we can access them?

**The Hon. DANIEL MOOKHEY:** I will get a version sent to you. Probably on notice, I suspect. I just have to double-check that—we will provide the information, but we are looking to provide more information.

**The Hon. DAMIEN TUDEHOPE:** Treasurer, can I ask when you expect a bill to be available?

**The Hon. DANIEL MOOKHEY:** We will respect, obviously, this process, but yes, I expect the bill to be available actually after we hear from this Committee, the witnesses today, further consultation, but my expectation is that the bill will be available when Parliament resumes.

**The Hon. DAMIEN TUDEHOPE:** So, by the time we get back to Parliament in two weeks time, a bill should be available for consultation?

**The Hon. DANIEL MOOKHEY:** Well, the Government will make a decision as to whether or not we are introducing the bill at that point in time.

**The Hon. DAMIEN TUDEHOPE:** In respect of the NI, of course—

**The CHAIR:** Order! I sought to give the two witnesses an opportunity to make any final comments so we could keep things on track today. I was not intending to open up again for a round. I was trying to give deference to the Treasurer and the Minister just to make concluding comments. That was my intention.

**Ms SOPHIE COTSIS:** Chair, can I just make a final comment?

**The CHAIR:** Yes, that was my intention.

**Ms SOPHIE COTSIS:** I just wanted to let the Committee know, as well, that one of the other things is that when people do go on a psychological claim, they have to wait, on average, 76 days to see a psychologist. So, just to make that point that where we are trying to help people, at the same time, the system is making them worse. Because as we know from research, if you are not—if there is no intervention in the first four weeks while you are on workers compensation, and if there is no intervention, no contact, you are going through a system that—you are being retraumatised, because you keep retelling the same story, but nobody is assisting you. By the time you reach that 76 days to see a psychologist, you are at a point of no return, and this is what we are trying to avoid. And this is why the Government is putting in serious and—actively doing everything it possibly can at the front end, and this is why we are looking at this holistically.

**The CHAIR:** On behalf of the Committee, thank you, Treasurer, and thank you, Minister.

**(The witnesses withdrew.)**

**Mr MARK MOREY**, Secretary, Unions NSW, affirmed and examined

**Ms NATASHA FLORES**, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW, affirmed and examined

**The CHAIR:** We welcome our next panel of witnesses. Thank you very much for your submission to this inquiry. Would you like to make an opening statement?

**MARK MOREY:** Throughout its history, the union movement has campaigned to preserve basic rights to compensation for injured workers, ensuring that workplaces are safe and that work is meaningful and can support financially the needs of workers. In my time in the movement, this is the third time we have had to stand up to attempts to slash support for injured workers when a Treasurer has looked at the budget and decided that cuts must be made ahead of a broadly unspecific pending financial crisis. But what is different this time is, it is happening at a time when we are all just beginning to understand and accept that injuries to our mental health wellbeing require equal standing to an injury of a leg or an arm. Psychological injury is not a new phenomenon. We just know now, for the sake of our society, it should not be ignored as it was in the past.

It is in this new context, recognising the link between mental health and work, that we must do more, not less, to support workers injured at work. There is ample room for reform if we all work together to achieve this. But what this Government is proposing is not reform. It is dragging us back to a time where we ignored psychological injury and mental health wellbeing. In March this year, the Treasurer delivered a ministerial statement calling for reform to the system, with a new focus on prevention, interstate alignment and ensuring financial viability. Last week, the Government released its exposure bill—a hastily pulled-together bill—and an inquiry.

It is our view the bill is in direct opposition to the very principles outlined by the Treasurer. The new requirement to use either the Federal or yet-to-be legislated New South Wales bullying and harassment jurisdiction, will only create a culture of litigation amongst workers and employers and undermine doctor-led care. We are turning the system into an adversarial lawyer's picnic. The proposed definitions of psychological injury and reasonable management actions will undermine existing work to prevent injuries and deny thousands of legitimate claimants from receiving the support and care they deserve.

The proposition to align the whole person impairment threshold for psychological injury with that of South Australia is a myth. We have been repeatedly advised by practitioners that due to the different diagnostic guidelines underpinning the system, our WPIs are effectively already aligned—that is, if New South Wales was to increase its WPI to 30 per cent, for the equivalency to remain in South Australia, they would have to increase theirs to 60 per cent. We are not, as they say, comparing apples with apples. Beyond that, the bill is riddled with legal loopholes to prevent workers receiving care and support. It is both a lawyer's picnic and a roadblock to workers getting the help they so desperately need. Most workers will struggle to get through the door of this new system. When they do, if that is even possible, they will enter a world of barriers, hurdles and further trauma. It seems this bill is less about preventing injuries and more about preventing claims. The New South Wales workers compensation system is broken. There is no doubt about that. It fails workers and employers through poor claims management, needless bureaucracy and falling return to work rates. But the blunt instrument approach taken with this exposure bill will only create further cracks for injured workers to fall through, repeating the mistakes of previous Labor governments and the Coalition in 2012. Now, in 2025, we are advocating for a new approach. Please delay this bill, establish a real review to consider all the options on the table, bring in the experts, hear directly from workers and employers and give the range of the currently underway processes for prevention and whole-of-government return to work programs a chance to have an impact. When we run our campaigns, we usually have workers speak out. Unfortunately, many of the workers who wish to speak out cannot. We released a report today of 10,000 responses from workers. I want to read one of the comments that came through that I think typifies why this system is so important. The person said:

The workers compensation system is the only reason I am still alive. I had suicide attempts as a result of my workplace culture and psychological injury. Without being able to access essential mental health services and receiving diagnosis, treatment, education and support to begin my recovery, I would have certainly taken my own life. My whole person impairment is 24 per cent, which is a very significant injury. If the threshold was increased to 30 per cent and that affected me by taking away my entitlements again, I would be destitute and would have no hope of survival or recovery.

In the Treasurer's submission and public statements, he has failed to focus on one person and that is the injured person. That is the problem with this system. Thank you.

**The Hon. DAMIEN TUDEHOPE:** Mr Morey, you sit on the board of icare, don't you?

**MARK MOREY:** I do, but I have taken a leave of absence.

**The Hon. DAMIEN TUDEHOPE:** I accept that. I am not suggesting that you are acting inappropriately. In that capacity, has icare considered partnering with other organisations for prevention activities in relation to psychological injuries?

**MARK MOREY:** My understanding is that there are partnerships going on and projects going on in relation to that.

**The Hon. DAMIEN TUDEHOPE:** And there is research being done in conjunction with icare in relation to that?

**MARK MOREY:** That is my understanding, yes.

**The Hon. DAMIEN TUDEHOPE:** Is the Black Dog Institute involved in providing some of that?

**MARK MOREY:** I am not completely sure, but I know a number of institutions are involved.

**The Hon. DAMIEN TUDEHOPE:** When is icare's funding for research by the Black Dog Institute due to finish?

**MARK MOREY:** Soon I think, but I am not across that detail.

**The Hon. STEPHEN LAWRENCE:** Point of order: These questions are my appropriately directed to icare, which is appearing later today.

**The Hon. DAMIEN TUDEHOPE:** He's a director of icare. He's on the board of icare.

**The Hon. STEPHEN LAWRENCE:** In terms of operational questions, I think icare are more appropriate.

**The CHAIR:** I will not rule against the questions for the moment. We know this is an inquiry into the exposure draft.

**MARK MOREY:** I am saying I don't know. I am here as the Unions NSW secretary, not as an icare board director.

**The Hon. DAMIEN TUDEHOPE:** Let me ask you this: Are you aware of any injured workers who have been assessed for a psychological injury with a whole person impairment of 31 per cent or more?

**MARK MOREY:** I am not directly aware of any workers over 31 per cent, but we have spoken to a number of experts—a couple of them are appearing here today. There are a few that are over 31 per cent, but it is a very small amount—minute. The vast majority are between 15 per cent and 20 per cent. Some of the most severe ones that I have heard of are 24 per cent or 25 per cent. They are very, very—workers have been both physically and psychologically injured terribly. So no, with that threshold of 31 per cent, my understanding from talking with doctors and psychiatrists is that 99 per cent of claims will never get over that threshold.

**The Hon. DAMIEN TUDEHOPE:** What are your observations about the provisions contained in the exposure draft that require a finding by a court—being the Industrial Relations Commission or a tribunal—before an initial notification of a workplace psychological injury relating to bullying and harassment can be made for an injured worker?

**MARK MOREY:** Firstly, our position is that we are opposed to that proposed jurisdiction. Secondly, that proposal will only retraumatise workers who have to appear. Thirdly, it actually says to those workers "we don't believe you and you have to jump additional hurdles." We think that jurisdiction will become a lawyer's picnic and it will reintroduce lawyers to the system. As we know, lawyers are paid by the hour and not the outcome. We think this will become a very litigious area and very problematic for injured workers. Finally, the claims have to be dealt with within eight weeks under this proposal. Firstly, we don't think the commission has got the resources to do it within eight weeks. Secondly, for workers to be without support or payment for that eight-week period only compounds their psychological injury.

**The Hon. DAMIEN TUDEHOPE:** Was there any consultation done with you prior to this exposure draft?

**MARK MOREY:** We have been meeting with the Government in relation to broad topics based on the Treasurer's statement. We have put a series of proposals to the Government on the problems we see with what they had articulated to us. Nothing has really moved since then.

**The Hon. DAMIEN TUDEHOPE:** Have you identified improvements to prevention measures that the Government could be looking at as the correct model for dealing with these sorts of claims?

**MARK MOREY:** Yes, we have.

**The Hon. DAMIEN TUDEHOPE:** On the face of the exposure draft, there is nothing that addresses that issue.

**MARK MOREY:** That has been one of our greatest concerns—that these reforms will go through. We haven't seen any articulation of funding provided to preventative programs. There are programs that are being initiated in education—they are in their infancy. The police service are doing a similar thing around wellbeing and keeping people at work. But, for example, an institution like NSW Health has no programs in place that we believe are effective.

**The Hon. DAMIEN TUDEHOPE:** That could all be addressed by a different model than this one?

**MARK MOREY:** Our preferred position is that we should be looking at a preventative approach, that the Government should articulate and fund a preventative approach over the next couple of years. We are happy for there to be an expert panel that is picked that oversees those as trials to see what happens. The Treasurer talks about cases staying in the system. A preventative approach would assist in ensuring that people don't enter the system at all. If you finish a shift in the health system and you've had people dying on you during that shift, there is no-one at the end of the shift to say, "How are you going? Are you all right? Just checking in." That's true in education if you have been threatened in the classroom and those sorts of things. There is no process to debrief people and support them to continue to do their jobs. In some jobs—and some of the unions will be on after me—such as child protection workers, there is a 20 per cent shortage of staff. They are overworked. They are removing children from their parents, sobbing and crying. That is not an easy job. It's not a job I would want to do. I don't think there are appropriate support mechanisms in place for those workers.

**The Hon. DAMIEN TUDEHOPE:** Prior to the election, did the Treasurer, the Premier or the Minister for Industrial Relations ever suggest to Unions NSW or the Injured Workers Campaign Network that their pledge of support for injured workers excluded workers with psychological injuries?

**MARK MOREY:** No, and I think you would have seen the story in *The Sydney Morning Herald* last week where we had photos of 20 of the 22 current Ministers signing the pledge. A number of backbenchers have also signed the pledge.

**The Hon. DAMIEN TUDEHOPE:** What commitments were given to you at that meeting on 14 March 2023? Were there actual commitments that there would be no change?

**MARK MOREY:** No, there were commitments that they were going to work to improve the system. They signed on to look at the provisions that cut people off their payments after five years and out their medical two years later. There was a commitment to look at the system and try to improve return to work rates. There were commitments to make it a better system that wasn't simply about cutting benefits and cutting people off the system.

**The Hon. DAMIEN TUDEHOPE:** Is it your assessment of this exposure draft that it is completely contrary to the pledge which they made?

**MARK MOREY:** I think the ad that I'm currently running on television and radio is a testament to answer that as yes.

**The Hon. DAMIEN TUDEHOPE:** In respect of the bullying and harassment division of the IRC, do you expect that that will have the effect of deterring people from actually making claims in circumstances where they have a legitimate claim?

**MARK MOREY:** I think it will be a deterrent. It legalises a process that should be dealt with medically. I note the comment yesterday by Ian Hickie, who will be appearing today. He said he was concerned that this reform was being dealt with by a treasurer from a financial perspective, not from a health perspective. It is a significant issue that that process will re-traumatise workers and, as a result of that, it will be a deterrent to workers coming forward and making claims.

**The Hon. DAMIEN TUDEHOPE:** You're a board member of icare. The Treasurer's told us today that icare would be insolvent in circumstances where this legislation, or a variation of it, was not adopted in terms of dealing with psychological injury. Is that your understanding?

**MARK MOREY:** My understanding is that there has been an ongoing problem with the financial sustainability of the system. For us, there's a number of problems. They include return to work rates and getting people to get the help they need when they are injured. As the Minister for Industrial Relations says, there's a massive wait to get in to see a psychologist or a psychiatrist. People sit at home. There's problems there. There are also problems with the medical profession, and the way in which they talk about, when you're actually performing an operation or dealing with it, you can charge up to a certain amount. The full amount is always charged. I think there's a number of providers who are supposed to manage claims and return people to work who are not doing that effectively. I think there is a lot of waste and inefficiency in the system itself. It doesn't return workers to work, and it's problematic. I think we need to reform the system to ensure that it is solvent and it is delivering not just for workers and unions, but also for employers.

**The Hon. DAMIEN TUDEHOPE:** The Treasurer also made reference to the fact that part of the sustainability of icare is also impacted by fraud. Is that your understanding?

**MARK MOREY:** Yes, I believe there is fraud. I don't believe it's just injured workers. The medical profession, there is fraud going on there. I believe there is fraud going on with the way in which claims are dealt with. And one of the big frustrations in this bill, although it catches on large businesses and small business underinsuring for the number of workers they have, many of the large corporations—

**The Hon. DAMIEN TUDEHOPE:** But that impacts the NI, not the TMF.

**MARK MOREY:** Yes, but it's still the scheme. That is a drag on the system as well. When people say "fraud," people always jump to the injured worker. There are a lot of other people in the system who are perpetrating fraud. They underinsure. They put it in as a cost of doing business because the fine is so minimal that what do they care? That is, I would say, a great example of if you find an employer doing that, then you will find an employer that doesn't have safe work practices in its organisation, and that is what is contributing to injured workers, and that's why these workers are in the scheme.

**The Hon. DAMIEN TUDEHOPE:** Would you summarise this exposure draft as a betrayal of what was put to you prior to the election by the Treasurer and the Minister in relation to amendment of this Act?

**MARK MOREY:** I think it's a poorly drafted piece of proposed legislation. I am angry, disappointed and very frustrated with commitments that were given about protecting injured workers and about the process this Government has taken, given the commitments it had given prior to the last election.

**Ms ABIGAIL BOYD:** Good morning to both of you. This is not the first time that you have appeared before an inquiry in relation to workers compensation. You have contributed on many occasions to reports or inquiries of this Committee, but also of a number of other inquiries that have been conducted. Given all the recommendations that have been made over the body of all that work over all of those years, were you surprised to see these recommendations being put forward by the Government?

**MARK MOREY:** Yes, I was.

**Ms ABIGAIL BOYD:** Given that these reforms don't appear to be based on any sort of evidence or prior reviews, do you think that they are primarily driven by the Government's budget bottom line and not by the interests of workers of the State?

**MARK MOREY:** Yes, I do. I would also say that there have been a number of reports done, probably enough to keep my front door open forever. McDougall, except for one recommendation we disagree with, has a series of

recommendations on how to fix this. Recommendations in relation to the WPI shouldn't be used to assess the psychological health or injuries of workers. It's not a good diagnostic tool. We have been here so many times, as you say, with recommendations of how to make the system better to return workers to work. The fundamental question remains: How do you get a worker back to work quickly? We know once they get back to work quickly, they're more likely to stay in the job and continue to be there. There are some areas where I think we need to do more work to make the workplace suitable for workers returning to work.

There needs to be more support. I'll even say there needs to be more support for small business to enable them to be able to do this and manage this. That's where the preventative stuff comes in. That's where we reduce the number of people on the system, and that's where we return the system to solvency. But just simply cutting workers off—I've seen this three times over the last 20-odd years, they keep cutting workers off and they keep cutting premiums, yet the scheme remains in deficit. There is a fundamental problem with the scheme and the way in which this system operates. The Government needs to address that as the underlying cause, not cutting people off the system.

**Ms ABIGAIL BOYD:** The previous recommendations have looked at things like the problems with claims processing and the adversarial nature of the system, but it's made clear recommendations that psychological injury is injury, in the same way as physical injury, and that they should be treated the same on that basis.

**MARK MOREY:** Yes.

**Ms ABIGAIL BOYD:** Also they've talked about the problems with delaying the response to psychological injury and the extra costs that has on the system over time. Given that you've seen this before—and in your submission you talk about the impacts that these sort of changes have had, like the ones in 2012—are you concerned about the unintended consequences of untested non-evidence-based reforms like this leading to even further damage to people who are already on the scheme?

**MARK MOREY:** I think one of the reforms that's in there is around provisional liability and people not getting that. The reason that provisional liability is in the scheme is that no matter who you are, when you make a claim, that claim should be assessed quickly, and you should be given the assistance you need at that point. Removing that means that, again, people will have to go into an adversarial process to get a claim recognised. The provisional liability is important because the vast majority of people are not trying to rip the system off. They need that support.

I would say where there are problems with people trying to get money out of the system not for real injury, that should be dealt with harshly because that's making it worse for everyone else who's there. But the system doesn't do that. The system just lets people through, and there aren't those accountabilities for those areas. I'm not saying that's a massive problem, but certainly using that as a basis to remove the provisional liability will disadvantage hundreds of workers who are coming into this system—if this legislation is passed—who will not get any treatment and who will end up destitute. It is not a way to address mental health problems in a modern society.

**Ms ABIGAIL BOYD:** There's obviously a difference in reducing the numbers of people coming into the scheme by preventing them getting injured in the first place versus just saying, "No, you can't come into the scheme." What will happen to people who are left out of the scheme who have suffered a genuine psychological injury? Where will those people go? What will happen?

**MARK MOREY:** I've spoken to my counterpart in Victoria, where similar sort of legislation was proposed and implemented. They are now seeing people who are unable to hold down a job. It often leads to family breakup. It then leads to people taking out their superannuation and spending that, losing their houses, becoming destitute and on the streets.

What this Government is doing in New South Wales is shifting the problem from being a New South Wales Government problem to being a Federal Government problem to push people on to the Federal health system, to push people on to the welfare system and not deal with the fundamental problem, which is this system isn't working and the system needs to be changed.

**The Hon. MARK LATHAM:** Thank you and good morning to the two witnesses. What we're looking at here in the exposure draft is a fairly long and complex proposed bill, probably with about 20 different aspects to it, initiatives?

**MARK MOREY:** Yes.

**The Hon. MARK LATHAM:** Are there any of those that you support?

**NATASHA FLORES:** A couple.

**The Hon. MARK LATHAM:** What are they, Natasha, if I can ask please?

**NATASHA FLORES:** There is one provision in here around the right to privacy in medical examinations, and we support that. That is a right anyway that exists, but it's been abused over time. I think the information about death benefits, that's sort of okay, and the PIAWE provisions are okay.

**The Hon. DAMIEN TUDEHOPE:** The indexation.

**The Hon. MARK LATHAM:** What are those other two? The indexation provisions and what was the second?

**NATASHA FLORES:** PIAWE and death benefits.

**The Hon. MARK LATHAM:** Mr Morey, you're running these ads and it's a fairly stark demonstration of what appears to be a significant broken promise—the 20 Ministers with the pledge held up for theatrical effect. Do you think there's any excuse for the breach of promise, broken promise, because of changed circumstances over the past two years?

**MARK MOREY:** I take the approach that workers compensation is not a sexy industrial issue. It's never going to get on the front page. It's not about changing workplace rights. It's an issue where the union movement is fundamentally obliged to advocate for these workers because, if we don't do it, nobody will.

**The Hon. MARK LATHAM:** Yes, sure, but that's not what I'm asking. I'm asking, over the past two years, are there changed circumstances which, in your eyes, justify this sort of legislation in defiance of what was promised at election time?

**MARK MOREY:** As I've said before, this is the third time I've gone through this. This is the third time I've heard the same arguments. They're tired old arguments about the system being in deficit and workers are the ones who lose out. I don't think there's any justification for cutting injured workers off the workers compensation system.

**The Hon. MARK LATHAM:** Okay, I'll take that as a no. You mentioned earlier, in your opening statement, fraud within the medical profession. Can you elaborate on that, please, as to what that involves in detail?

**MARK MOREY:** We believe that there is doctor-shopping that goes on with different companies. These are the things that we hear from our injured workers—their experiences. Where one doctor doesn't give the right diagnosis, the person is sent to another doctor. They go around and around in circles seeing doctors. That is additional cost upon additional cost.

**NATASHA FLORES:** I can provide a bit of an example, if you'd like?

**MARK MOREY:** Yes.

**NATASHA FLORES:** Something that sometimes happens is companies will send people, or injured people, to a preferred doctor, people—injured workers—not realising that they can choose their own doctor. There has been, in some cases, a history of poor outcomes in that experience where perhaps someone, I'm referring to a physical injury here, but workers were not diagnosed correctly and sent straight back to work. When that occurred, the injury worsened over time. Eventually they got back to their own doctor only to find that there had been a broken bone et cetera and that had worsened in the two weeks that they'd been back at work. That's a physical example, so it doesn't necessarily help here, but there are problems in the scheme.

**The Hon. MARK LATHAM:** Yes, thank you. Obviously, we need to get those doctors out of the system because just because you've got a medical degree doesn't mean you're not money hungry and open to this sort of abuse. In the second sentence of your conclusion, Mr Morey, in your submission, you state:

The first step the New South Wales Government should take is to focus on preventing injuries before they occur.

But in one of the morning newspapers you give the example—I don't know if it's hypothetical or not—of students corralling a young, presumably female, teacher in the school education system and barking at her. Andrew Tate quotes—which is what you've said.

**MARK MOREY:** Yes.

**The Hon. MARK LATHAM:** Isn't that an example, though, of something that shouldn't be happening in any workplace? There are schools, of course, in New South Wales where it doesn't happen—they have very strong evidence-based behavioural standards and practices that ensure that there are no disciplinary problems—whereas other schools are a jungle. Isn't the onus on the Government to stop this from happening, even if you accept the proposition that anyone talks about Andrew Tate anymore?

**MARK MOREY:** This occurs in public and private sector schools. Both the unions have said that to us. One of the reasons that young female teachers are leaving the profession is because of this sort of behaviour in the classroom.

**The Hon. MARK LATHAM:** But isn't it easily preventable? There are schools where this doesn't happen.

**MARK MOREY:** Yes.

**The Hon. MARK LATHAM:** Why don't we employ their policies to ensure that your sort of example is just not feasible. The thing about school education is it's being studied all around the world. There's no argument, left or right; we know what works and we know what doesn't. Why don't we just have the behavioural standards and practices that ensure we don't have psychological injuries for teachers in these circumstances, that it's a controlled, orderly, well-behaved school environment?

**NATASHA FLORES:** Speaking as an ex-teacher myself and having a partner who is currently a teacher who has actually experienced what you've just commented on, it's not necessarily that simple. You're dealing with parents who don't want to necessarily do what they need to do, and that's a problem in schools. You can be as harsh as you like with pupils, but if you've got very difficult parents—and, unfortunately, we're living in a society which is very customer-focused and at the moment schools behave very much in that way. The parents are the customers and we want to make them happy.

**The Hon. MARK LATHAM:** That's your choice to make them happy.

**The Hon. ANTHONY D'ADAM:** I think earlier you said in your evidence that there was one recommendation of McDougall that you disagreed with.

**NATASHA FLORES:** "Reasonable and necessary", the inclusion of the "and".

**The Hon. ANTHONY D'ADAM:** Can you perhaps elaborate on why?

**NATASHA FLORES:** The inclusion of "and" creates a higher barrier to getting the services and treatment that you might need. As I said, we don't necessarily agree with all of McDougall's findings in everything that was done over the time that it was done. Reasonable and necessary could—for example, the case of, I think, *Goode v New South Wales Racing*. You've got a



jockey who's been injured. He's a paraplegic. In that case it was determined that it was reasonably necessary to provide the payment for him to go home to England, where his family was, as part of his compensation and other things that were necessary for him on that flight medically to make it comfortable for him as a paraplegic. That could maybe not occur under this example where reasonable and necessary creates a higher barrier and you're looking at what is a lower—you know, "We're only giving you the basics here; we're not going to look at things like your comfort on a flight", which is a long, prolonged thing, as a person with that sort of injury.

There was also an injured worker that we dealt with many, many years ago, who was undergoing a specific sort of therapy for his psychological injury, which was a water-type therapy. I'm not an expert on these things but he was a worker that came out and spoke on *Four Corners* about his experience—with the Treasurer, who supported him at that time—and he spoke about this therapy being very beneficial for his psychological injury, which was quite severe. It was an unusual therapy but in this circumstance it might not be covered. But that was helping him.

**The Hon. ANTHONY D'ADAM:** Ostensibly, is it correct to say that this change enhances or detracts from the principle of an injured worker's care being directed by their treating doctor?

**NATASHA FLORES:** I would say it detracts from that.

**The Hon. ANTHONY D'ADAM:** Can I ask about the underinsuring issue? I think the proposed section 173 AA only applies to large employers.

**MARK MOREY:** Yes.

**The Hon. ANTHONY D'ADAM:** Can you explain?

**NATASHA FLORES:** That is very unusual because you would expect that large employers would probably be more likely to do the right thing, or they would also be outsourcing a lot of their business so they might only have a small number of employees on the books, but a large number because there is a supply chain, so to speak, so I don't know why you would only go after large employers when there's very likely middle-sized—and I'm not picking on small business here, but, you know, they should be wearing the cost as well if they're not doing the right thing.

**MARK MOREY:** The other problem with that is the regulators don't regulate. There's just no regulation going on.

**The Hon. ANTHONY D'ADAM:** I have got one more question. Then I will hand to my colleague, Mr Nanva. One of the issues, obviously, with psychological injuries is the poor return to work rates. Can you talk about the elements in the proposed bill that will improve the return to work rates?

**NATASHA FLORES:** Nothing.

**MARK MOREY:** We don't think there is anything in there. As I said before, one of the biggest problems is getting access to psychologists or psychiatrists. I think the Minister said there was 76 days wait to get in. One of the biggest problems is that people, when they are identified as having injury, are not getting treatment at that point. They're having to wait. They're having to wait at home. It compounds the injury, and it frustrates them being able to get back to work.

**NATASHA FLORES:** Section 8A here defines a psychological injury. From my understanding, that needs a diagnosis from a psychiatrist. The injury also has to be a significant behavioural, cognitive or psychological dysfunction. This is suggesting that, before you even get through the door to get a diagnosis you have to be extremely impaired. Someone who's at the beginning of breaking—for lack of a better word—is not included in this bill. This delays treatment significantly and then at that point too it requires a diagnosis from a psychiatrist. Treatment is not covered for that. So the worker, I would assume, has to cover that cost themselves. So, at the outset, there's a big "closed" sign on the door of psychological injuries—closed for business; no access. You as a worker have to fund that diagnosis yourself. That's not an easy thing. Then, to be allowed through the door, you need to be extremely significantly behaviourally, cognitively and psychologically dysfunctional. By the time you even get through the door, you have got to be in a really bad state. I don't see what that does for prevention, return to work. That's actually very—at this stage, you're not going to get someone back to work. It's just preventing compensation for psychological injuries. That's where I see this bill. It just stops you walking through the door, at the very outset. If you do get through that door, the hurdles are enormous. The hazards are defined. In a bizarre situation where we've got a piece of legislation here that says, "Only these hazards apply"—it is like saying, "If you trip over a chair and break your arm, we'll compensate that. But, if you trip over the carpet and break your arm, we're not going to compensate that." It's quite strange.

**The Hon. BOB NANVA:** Just in the time left, Mr Morey, I'm just interested in your public comments that icare is the insurer of last resort. Obviously, the sustainability of any insurance product or scheme is predicated on the ability to spread risk across the class insured. What impact does the rise of self-insurance have on the sustainability, do you think, of the Nominal Insurer?

**MARK MOREY:** We believe it has a dramatic effect because what you're doing is—self-insurers are taking the best bits of the scheme out, the most profitable parts of the scheme out, and the businesses, as well, that are self-insurers are the ones that actually provide safe workplaces. So what you're actually doing is no longer spreading risk evenly across everyone; you're concentrating all the risk in icare. That's why it's constantly under financial pressure. We think self-insurers should be gotten rid of. Everyone should be brought back into the scheme so that the risk is spread across all groups, all employers. Having said that, there were changes in 2012 where employers previously got incentives and their premiums were reduced

where they weren't making claims. We think that is something that should be brought back in, because we should be rewarding good employers who provide safe workplaces as part of the scheme. But taking out all the good bits—you're basically setting up a Fannie Mae sort of scheme where all the risk is concentrated in one place, and it just can't continue to maintain that risk, and that's why we see the scheme collapsing.

**The CHAIR:** Thank you, Mr Morey and Ms Flores. Thank you for what's been a very rapid response, if I can describe it that way, for your submission and also making available today. It's much appreciated. Thank you very much.

**(The witnesses withdrew.)**

**Mr BERNIE SMITH**, Branch Secretary-Treasurer, Shop, Distributive and Allied Employees' Association NSW Branch, sworn and examined

**Ms AMBER FLOHM**, Deputy President, NSW Teachers Federation, affirmed and examined

**Mr MICHAEL WHAITES**, Acting General Secretary, NSW Nurses and Midwives' Association, affirmed and examined

**Mr GERARD HAYES**, Secretary, Health Services Union NSW, ACT and QLD Branch, sworn and examined

**Mr JACK AYOUB**, NSW Organiser, Australian Workers' Union NSW Branch, sworn and examined

**Mr ANGUS McFARLAND**, Branch Secretary, Australian Services Union NSW & ACT (Services) Branch, affirmed and examined

**Mr TROY WRIGHT**, Acting General Secretary, Public Service Association of NSW, affirmed and examined

**The CHAIR:** Welcome. First of all, I sincerely thank you all very much for making yourselves available at what is, I accept, short notice with respect to this inquiry. Can I also, at the same time, thank you for what's been an equally rapid response, if we could use that phrase, to put together what are very comprehensive submissions that have been received to the inquiry and are, indeed, obviously, written evidence to the inquiry. I just make those opening remarks if I could, please.

I might also say, just so we're clear up-front, there was a delay—first of all, the Committee was 15 minutes late in starting. We've lost some further time as witness have progressed this morning, through no fault of anyone. I don't intend to crimp the time of the organisations represented here at the table, so I will be proposing, when we get through the rest of the formalities, whether or not—and you can consider this; it's in very much your hands—that, with respect to your opening statements, if let to read them all, would, obviously, in aggregate, cut into the time significantly. So my proposition is for you to consider—and you can answer it collectively in a moment, if you wish, if you think about it—is that you table those opening statements. If they're not typed, they can be typed after and got to us.

They will be received as evidence, as aggregate evidence of your opening statements, which, obviously, would be helpful and provide then more time, effectively, the better part of the time allocated to you, to be able to deal with questions and answers from the Committee members. Does that make sense? If people want to make an opening statement, obviously, you're entitled to do so, but I'm trying to maximise the time. Think about that as I go through the rest of the formalities of swearing the witnesses in. Just going back to the point I raised just before that formality, as I said, your opening statements, through the mechanism I described or the avenue, will be fully incorporated as evidence to the inquiry in its totality. Is there a consensus that that is a way to proceed? Or does anyone particularly like to make an opening statement? Thank you for that. We will move to questions from the Opposition.

**The Hon. DAMIEN TUDEHOPE:** You will excuse me. There are a lot of you. Some of these questions may refer to all of you or some of you. If I don't ask you specifically and you want to contribute, feel free to contribute.

**The CHAIR:** We have, including the Hon. Damien Tudehope, all your submissions in front of us, if that helps. You have got your submissions. We have all got the submissions, in case there is reference.

**The Hon. DAMIEN TUDEHOPE:** Mr Whaites, since you are in the middle, I will start with you. When did you first get a copy of the exposure draft?

**MICHAEL WHAITES:** We received that at some stage last week.

**The Hon. DAMIEN TUDEHOPE:** Have you made an assessment of the exposure draft in general terms?

**MICHAEL WHAITES:** The team at the association has had an assessment of that, yes.

**The Hon. DAMIEN TUDEHOPE:** From your perspective—and this can be contributed to by others—in respect of the proposals which are contained in the exposure draft and the impact in relation to psychological injury, do you anticipate that would have an imbalance in relation to gender, in terms of that cohort which are impacted mostly by the proposals contained in this exposure draft?

**MICHAEL WHAITES:** Our understanding is, yes, 85 per cent of people who suffer a psychological injury at work are women. We see the proposed changes as, quite frankly, abhorrent. There are systems of work within health, whether it is NSW Health or other healthcare providers, that are injuring nurses, midwives and carers, who are predominantly women. This proposed legislation will exclude them from compensation.

**The Hon. DAMIEN TUDEHOPE:** I take it you agree with that, Ms Flohm?

**AMBER FLOHM:** Perhaps, yes. If I could almost supplement—with a workforce 80 per cent also who are women, we see this as a significantly gendered issue for our membership. If I may outline just a couple of case studies that relate specifically to the matters of sexual harassment and sexual assault and how these examples highlight the risks that are before us all should this proposed draft bill proceed, two recent and ongoing cases that we have—and unfortunately there are many—actually illustrate the concerns of the federation and the impacts that that's going to have on our members. Both of these teachers that I will refer to work in schools that already have unfilled vacancies for their staffing entitlement. The first is a teacher in her thirties who was repeatedly sexually harassed at work and has an accepted workers compensation claim for a psychological injury. She continues to access treatment and engage with mental health professionals but is significantly injured and currently has no capacity to work. The other teacher that I will refer to is in her forties. She was sexually assaulted at work. Her accepted workers compensation claim enabled her to access urgent—and I repeat, urgent—

and immediate psychological services. Her injury, however, is very severe. It is unlikely that she will ever return to the teaching profession. Without ongoing support, she may never return to any type of work at all.

Both of these teachers really illustrate the need to access financial support and medical treatment while they engage in that recovery process, with the consistent aim, I think, of all parties, which is to return the teacher to work when they are well. They also would not have been able to use the Government's proposed bullying and harassment jurisdiction to resolve these matters, because they are just not well enough. We will not drag members like that through the courts to get an assessment of their injury.

**The Hon. DAMIEN TUDEHOPE:** Mr Smith, I think you've made a submission or case studies along similar lines in relation to your members. I think you have also, have you not, Mr Whaites?

**BERNIE SMITH:** Yes.

**MICHAEL WHAITES:** Yes.

**The Hon. DAMIEN TUDEHOPE:** One of the principles you raised, Mr Whaites, is in relation to psychological injuries caused by excessive workloads. Would you like to comment on what this would particularly mean for nurses?

**MICHAEL WHAITES:** We provided NSW Health a copy of a report that we had commissioned in 2023 out of South Australia. It showed that, of the participants in that survey, 15 per cent had indications of PTSD. A significant other amount had indications of burnout. This was related, in the post-COVID setting, to workloads: workloads generated by being short-staffed, poor skill mix and increasing activity through those hospitals and aged-care facilities. We provided that to government. Health representatives dismissed it out of hand. We prosecuted, or attempted to prosecute, NSW Health for chronic understaffing at the Central Coast LHD. Rather than accept that, they argued a creative line that said they didn't have to provide staffing on the day, they just had to roster it, so it didn't matter what turned up. They won on that technicality.

We know that the thing that will fix the workload issues for our members is restoration from the wage suppression that they've experienced over the last 10 years, and more nurses and midwives on the floor. But we see through the Government's actions that they don't actually value nurses and midwives, because they are fighting that pay rise that will fix the issue. With the changes to this legislation, we see they just don't care. Those workloads are injuring our members. They will not be compensable injuries under the proposed legislation. They will just be left to the social security services and no longer work. It's appalling.

**The Hon. DAMIEN TUDEHOPE:** Both the Treasurer and the Minister have indicated that this is a complete package and they want to talk about preventive measures. What discussions have you had—and this is to all to either take on notice and potentially provide a response to—in addition to what you just outlined, about preventive measures for psychological injuries? Has the Government actually engaged with you about a system of preventive measures to reduce the number of psychological injuries?

**MICHAEL WHAITES:** The Government has agreed to introduce the safe staffing levels. That will go some way, once it is implemented, but the rollout of that has been hampered by a lack of accountability in the proposed clauses that will go with that. We see the healthcare system occasionally try to address the wellbeing of our members. Post-COVID we saw one significantly large hospital in New South Wales offer staff to come down and listen to some jazz and have some pizza during lunchbreak. Nurses and midwives don't get a lunchbreak. So sometimes the attempts at addressing wellbeing may be well intended but appear to me to be tone-deaf.

**BERNIE SMITH:** In terms of the issue of workload, people might not appreciate it but the retail industry is an industry under extreme pressure at the moment, both labour shortages and also what we call the ALDI/Amazon effect, where both of those international global players are squeezing our industry and leading to chronic understaffing and chronic workload depression inside workplaces. Just this March, I caught up with a bloke I have known for 15 years up on the Mid North Coast, Dwayne. I would have normally described him as relaxed, even laconic, and a person who enjoyed his life. I saw him in March this year. He is off work at the moment because of extreme workload pressures in his particular workplace. I would describe him—the man I saw in March was a man who was heavily medicated, unresponsive and couldn't get out of the house to enjoy life. That's the impact these things have on people, and so we do need preventive measures. In our submission we call for the Industrial Relations Commission to be empowered, like in other States, to actually deal with some of these issues to prevent the systematic understaffing of stores so that we can avoid people like Wayne ending up in that situation and we can return him—he doesn't get injured in the first place. But if he is injured, we need a system that looks after him in the long term.

**JACK AYOUB:** Mr Tudehope, if I may, we heard lot of language this morning from the Treasurer about cultural change and all these things. Yes, that has to take place, but we've also got to acknowledge—particularly as it concerns our members—that there are some psychological injuries that aren't preventable, that will occur. I've got many case studies here, but our members, more often than not, are dealing with dead bodies and body parts in tragic incidences, work that is not often acknowledged because there are not red-and-blue lights. The Government saw fit to make our members first responder status, and then they turn around in a sort of dark alley abacus stabbing with this bill that really has the moral integrity of a Kings Cross rubbish bin and expect us to cop it. I mean, our members will not be covered for psychological injury.

**The Hon. DAMIEN TUDEHOPE:** It won't be a relevant event.

**JACK AYOUB:** It won't be a relevant event. They won't have a close personal connection to someone who's committed suicide in the national park. They won't witness the multi-car accident that happened near their worksite that they were the first responders to. So, really, section 8 is trash. That is the underlying point. But we've got to acknowledge that we can't prevent all psychological injury.

**The Hon. DAMIEN TUDEHOPE:** Have you, though, in terms of with your members, engaged in putting together a submission about not so much limiting their ability to make claims but to in fact change workplaces?

**JACK AYOUB:** We have actively in workplaces tried to get those supports in place. That was part of why we pursued the first responder status. We have been doing that for a decade. It took us a decade to get there. So we have taken those active steps. We've also taken active steps—and I can tell you what, you get a hell of a lot of resistance from bureaucracy if it just takes changing a shift to get someone out of a difficult bullying situation. They would much rather have them out of their hair. But we have taken active steps. What hasn't occurred—and I think it's to great insult to the heavy people we got in this Committee—is this hasn't gone through a proper process. That's why it's the dark alley abacus stabbing, because we've just had this coughed on us in the last few days. We're expected to turn up and have a reasonable contribution, when we are starting from a point of consensus that we want to make the system sustainable.

**The Hon. DAMIEN TUDEHOPE:** Mr Wright, you made an observation which I put to the Minister, that these proposed changes will not improve workers' health but instead exacerbate their injuries and cause further harm. Would you like to elaborate on that?

**TROY WRIGHT:** I would, thank you. I would go to your first question, though, as well, and add that whilst the Treasurer may talk specifically about return to work programs and putting a greater onus on getting people back to work, we have, to the Government's credit, worked closely with them around a mobility process where displaced workers through redundancy are able to find jobs in other departments. We have advocated for years that that be extended to the return to work system, that people who are injured in one department and cannot return to that organisation are found a like job in another department.

**The Hon. DAMIEN TUDEHOPE:** That was a recommendation, if I recall.

**TROY WRIGHT:** Correct. That's yet to materialise. It's still in discussions. The Treasurer may well wish that such a program is rolled out in the private sector and responsibilities are placed on private sector employees, but if they cannot organise that in their own departments then what hope is there for that to occur? In respect to further injuring workers, I think our union's experience with our members is similar to everyone else here at the table, that it is a system where the delays, the poor case management, the poor resourcing of treatment, lead an injured worker often to feel worse for having been exposed to the system than had they not gone into it in the first place. We agree with the Treasurer's remarks in that respect, but we do not believe that the solution to that problem is locking people out of the system; it's improving the system.

**The Hon. MARK LATHAM:** Mr Hayes, you haven't said anything yet and you work in the health services space. Have we got an issue here in the whole nature of medical science and its understanding of the human brain? I think it's broadly acknowledged medical science is a wonderful thing, and so many breakthroughs of use to humanity, but it knows less about the brain than any other part of the human body, or indeed the natural world. It's often said about mental illness we know everything about it except two things: what causes it and how to solve it. Have we got an issue there, particularly with doctor fraud or diagnosis fraud in this space, that it's such a poorly formed area of medical science as to what is actually a psychological injury?

**GERARD HAYES:** Absolutely. I think we're in a situation at the moment where we're working with a system which really is designed for physical injury and we're trying to deal with psychological injury. Psychological injury can be manifest in a whole range of matters, whether it's a personal matter or it's a professional matter. We are trying to do the best with what we have. What we have is just not enough. Recently, over the last 18 months, there's been the special commission of inquiry into health expenditure. That's taken 18 months and it's dissected to see where wastage is. We're going so fast at this at the moment. My point is the system needs to change. There is no doubt about that.

My concern, very seriously, is that people who are seriously affected, who have major problems, who become suicidal, what we do at the moment is we take them from work, we let them go and sit in their home by themselves and percolate further and further. At a point in time, we may try to get them to return to work. That is an incredibly frustrating process in itself. You may try to see a psychiatrist, which will take you at least three to four months. There will be people defrauding the system. Where there's a pot of money, there will be a lot of people who want to get into it. I don't see going so fast at the moment resolving this system the way we need to have it resolved. I do not want to see many of our members—and I think the nurses and the teachers have said very correctly it's 70 per cent of their members, something equivalent with us, or it's a gender issue.

We need to be able to engage and get this right, because it's not going to stop now. Society has changed. I think that was raised previously. The way teachers are treated—your point is right, there should well be a way of accepting, acceptable behaviour. Unfortunately, you go out in the street today, that doesn't happen anymore. We are in a changed culture and we need to come to terms with that culture. At the front face of that culture is, whether it's teachers, nurses, certainly

paramedics, the whole range of our health workers, allied health professionals, all these people are confronting it and they're taking the load home with them. My concern here at the moment is if we go too fast on this, yes, we'll tick a few boxes, but we're going to kick this problem down and in the next five or 10 years it's going to get worse.

**The Hon. MARK LATHAM:** I agree. It needs a lot more analysis and thought put into it, and certainly parliamentary deliberation, what we're dealing with. But do you think, Mr Hayes, there's been an evolution of what is a psychological injury? I think it's established in medical science that some conditions are debilitating and severe—for clinical depression, schizophrenia and those sorts of conditions it's pretty well established—but we seem to have dropped down into what I would probably think of as social injuries: hurt feelings, worrying too much, a breakdown in resilience, "I'm feeling tired from the workload." That, obviously, once it's included in these schemes, is massively expensive. Don't you think there's an argument here about thinking about a tighter, more realistic definition of what's a psychological injury in the workplace?

**GERARD HAYES:** I think it's difficult to get to that point, because what you say is correct: There is a whole range of different levels. How many layers to this onion are there? Going back to your first point, we don't understand the brain as much as we could. So this is a rapidly evolving area. If you go back into the '60s and the '70s, this wasn't even spoken about. This has really come in over the past 10 to 15 years, so we are rapidly trying to catch up with it. You are absolutely correct: Some of these injuries could be facilitated elsewhere, but they manifest in the workplace. I'm certainly not a professional who is going to be able to deal with that. Sadly, given that post-COVID and the resourcing issues of health professionals, there's not enough of them out there to be able to actually get ahead of this at the moment.

**The Hon. MARK LATHAM:** There's sort of a dark joke on the streets that if you don't plead mental illness in the courts, or schools, or a doctor, or in the workplace, you're the one that's mentally ill. It's sort of like Yossarian in *Catch-22*. In terms of the medical profession, how do we weed out the doctors who are taking advantage of these loose definitions and opportunities to diagnose people as having a psychological injury when that's not the case? They do it for financial reasons, with our open-ended health system, in terms of their own charging practices. How do we identify them and get them out and make sure that the real resources go to the workers who need it most?

**GERARD HAYES:** Compliance is just so important. Compliance with teeth is really important. There would be a whole range of issues that could occur at the moment. Nobody does anything about it. The more you walk past it, the more you accept it. I think that is what has got to take effect here. There could well be the situation, which I argued in the SCOI—the money is there. It is being spent inappropriately. Redistribute that to where it needs to be spent and maybe you don't need to talk about 30 per cent, or 25 per cent, or even 20 per cent WPI. It's making sure the money that is spent is spent appropriately as opposed to inappropriately.

**Ms ABIGAIL BOYD:** We've talked a lot this morning about prevention, and the need for prevention. We heard from the Government about changing workplace culture. But of course when it comes to public sector employees, the employer is the Government itself. If I could start with you, Mr Whaites. The Beasley Special Commission of Inquiry into Healthcare Funding made very damning comments about the failure of the Government to justly compensate workers within the health system for labour and services, and also focused on this concept of burnout for workers in the medical profession, due to a bunch of different things, and actually made the comment, "Some might regard this as a work topic. It is not. Workforce stress, fatigue and burnout are serious issues, and particularly so in a public health system." What does it say to your workers that they have an employer who is not only not going to pay them properly, and is not going to take actions required to attract and retain workers, but is now going to turn their backs on them when the result of that is burnout?

**MICHAEL WHAITES:** As I said earlier, the only summation we can make is that, through both the previous Government and the current Government, their actions demonstrate that they don't value nurses and midwives. If the draft legislation goes through as it is now written, it will prove that they don't care. The injuries that our members suffer—I take umbrage with Mr Latham's approach to the questioning there. Our members watch people die every day. They deal with extreme circumstances every day. But they also know, every day, they could be providing a better level of care than they are. They know that the person in that bed should be getting attention straightaway when the buzzer goes, but they are with this patient here. That is a moral injury. This is not someone feeling tired at work. This is a workforce that is burnt out and crying out for help. This proposal simply takes away the safety net.

**Ms ABIGAIL BOYD:** If the Government were serious about prevention, would they just instead fund properly the workers in the health system to begin with?

**MICHAEL WHAITES:** More funding for more staff, more funding for better-paid staff—but also within Health we don't have the safety and support services around us that other public sector workers do. So there is a paucity within Health that is contributing to this. There is a lot that can and should be done in the preventive way. What must not happen is take away the safety net before those preventive measures are put in place and able to work.

**Ms ABIGAIL BOYD:** Mr Smith, this Parliament has in recent times taken action to better support retail workers when they are facing abuse from customers, for instance. We know that retail can be an incredibly hostile environment, as you have laid out. What is your view on where these changes would leave workers in retail?

**BERNIE SMITH:** Well, the concern we have is multifaceted. We had a member, for example, in April this year who came across the body of someone who suicided at Westfield Parramatta, jumping off the fifth floor of the shopping centre there.

They probably fall outside the event requirements of this Act. We have members every day facing abuse and violence in the workplace. Sometimes they would be covered, because it is an indictable offence. But if I was a worker—I went out to Bondi Junction the day we reopened the centre out there. A lot of our members who had finished their shift before the event occurred were just as deeply affected as everybody else. They would fall outside the definition of the event, because the people who sadly died on that day were not their work colleagues. They are deeply affected. Some of them can't go back to work at that workplace. Some of them are likely to return to other workplaces, but it has deeply affected people. Again, people don't often think of what our members see every day. We welcomed the Government's changes in relation to the offences, and we have seen some impact of those, but there is more to be done. In our submissions we have called for more measures again to be preventive measures, to prevent that happening in the first place. Things like workplace protection orders that we have seen effective in the ACT at the moment. But how do we prevent these things in the first place? We are all up for that. We are up for things that prevent injuries rather than prevent claims.

**Ms ABIGAIL BOYD:** Mr Ayoub, it is not necessarily well known across society but construction workers have some of the highest rates of suicide in Australia and in the State. What do you think these changes will mean for workers getting the help they need before they suicide?

**JACK AYOUB:** Well, not only construction workers—I mean, our members across National Parks, Roads and Transport and Forestry Corp. Just about every organiser you talk to has a member who has attempted suicide or who has committed suicide. These people are being dropped by helicopter into fires. They are not captured. We had an incident on the Sturt Highway, I think last week or the week before, where our members were sealing a road. They were about 500 metres away from where a rear of queue crash happens, multiple fatalities. One of our members is holding the driver of a truck who is hanging out the front of a truck, severely lacerated. I mean, you can imagine the scene. He is not captured. He didn't witness it; he is just the first to arrive.

Our National Parks workers are often responsible for search and rescue in concert with Emergency Services. They often find people who have jumped off cliffs, who have fallen, who have committed suicide. I have had many members break down in tears when you just give them that safe space—to use that language—and say to them, "Are you okay?" One of our members in Transport, 83 bodies. I repeat, 83 bodies. None of those instances are captured under this trashy, trashy bill.

**The CHAIR:** The case studies that have been presented this morning, which are either picked up in your respective submissions or additional, are very powerful and significant in framing thinking around the proposed legislation. But in terms of taking an example, Mr Smith, can I take you to page 8 of your organisation's submission, about Case Study 1 - CW? There are two parts to the question: One is that in light of some of the questions already responded to, and particularly by Mr Hayes, about the cultural issue and attitudes of the population at large, tragically and sadly, with respect to respect for people, particularly where they are dealing face to face with the public at large, could you elucidate on Mr Hayes's point that he made, if you would be prepared to do so? And perhaps, if you are able to do so, could you make some specific comments about this individual case study—of course de-identified—and its implications on the new legislation as proposed under the exposure draft, and how that would affect this person, or not, as the case may be?

**BERNIE SMITH:** Yes. Sadly, these are everyday events. This person was in regional New South Wales. I could take you to outer suburbs, I could take you to inner suburbs, I could take you everywhere across this State and these are everyday occurrences that happen to our members. This case study probably illustrates two things: Firstly, this was effectively the straw that broke the camel's back for this worker, in this particular instance, where she had been abused in the workplace by a heavily-tattooed individual. She comes from a small community. She's known in the community. This person knows who she is. So she has got nowhere to go in relation to it. The person was not banned from the workplace. They kept coming back to the workplace and they kept abusing her in the workplace.

But it may not have got to the level where you would say this is an indictable offence against this particular individual. The person started abusing her on Facebook but then identified who the person was and kept abusing her online. And again, that may not have reached the level of being an indictable offence, so she may not reach the first hurdle of the relevant event for a psychological injury. But let's say she does make it to that first hurdle, she has been off work for four years now. The extent of damage—she rarely leaves home. She has to leave home with a member of the family or with a carer when she does, if it is outside her immediate area. Her personal hygiene and personal care are severely compromised.

She has been assessed by an independent medical examiner. Our assister who dealt with this matter made the point that this was a truly independent medical examiner, and she comes up at 19 per cent whole person impairment. Under the proposed exposure draft she would have lost income support 18 months ago and she would have lost her medical support six months ago. She still needs those things. It just means that we further stretch other public resources to try to look after her, or she gets more damaged in the process. And the assister who does a lot of our work in regional New South Wales gave us this example: I asked him to review all of his cases for the last 20 years, and he came up with one case that got over the 30 per cent threshold—one case in 20 years, and he specialises solely in workers compensation across many industries. That particular case was not in our industry, as well.

**The CHAIR:** Does this case study also provide some insight into what may be, as a result of either neglect, indifference, systemic failure or organisational failure, or whatever the case may be, of employers, with respect to dealing with matters and intervening in a timely fashion to, dare I say, get on top of them and protect an employee, in this case?

**BERNIE SMITH:** Yes, it does, on two levels. Firstly, the person should not be back in the store, for one thing, and they haven't taken the steps to protect them by preventing them from being in the store. But can I say that the traditional methods available in New South Wales of a banning notice have no effect. I use the example again of the ACT. The first person who had a workplace protection order issued against them in the ACT had previously had seven traditional banning notices issued against them. They had breached every one of them. They put a security guard in hospital and received a \$50 fine. They had no effect whatsoever. So we need to have reform to prevent these things. Once the workplace protection order was put in place, yes, that person is no longer in the workplace.

But it is not just that. It is the staffing levels and the intensity of work that we see. We need a means to properly address this. Traditionally staffing levels have been seen as an industrial matter—sorry, a managerial prerogative matter. If you go to the industrial tribunal, they say, "We can't deal with this. It's a matter of managerial prerogative." But it is not. It is a health and safety issue. That is why we need to empower the Industrial Relations Commission to properly deal with these sorts of disputes. Because if you have got enough people on the floor, you minimise this sort of behaviour as well. Sometimes the "heroes" in our shops who abuse our members wouldn't do it if there were more people around.

**The Hon. STEPHEN LAWRENCE:** Mr Hayes, the Treasurer this morning talked about the workers compensation system being one originally designed for physical injury and now being used for psychological injury, and you said something similar. It seems that the bill, and particularly section 8E in its definition of "relevant event", seeks to respond to that issue by basically excluding certain people from the scheme. I'm interested in what alternatives you see—and not so much in terms of prevention, because we've heard evidence on that. I'm wondering what alternatives you see to dealing with that issue apart from simply excluding people from the scheme. I've been thinking about things like is there a case for maybe a higher standard of proof in respect of psychological injury or is there a case for maybe a lower payment for psychological injury? Are they more appropriate ways of, in a more fair way, responding to this quite complex issue about causation and also what actually contributes to the injury? Is it exclusively the workplace or is it a range of factors more inherent to the person?

**GERARD HAYES:** I think one of the concerns I've got here is we talk about dollars all the time. The dollars aren't going to resolve this matter. There's plenty of people in my experience and my history that have been subject to these matters. You can get half a million dollars, you become an alcoholic or a drug addict, we put you in isolation and we don't care about you anymore. It is not so much the process of being proactive, which is really important, but looking at when you are injured, what are we doing? And what we are doing is sending you home. And if you're not covered by it, we're barely doing anything at all then.

But the reality is, if we actively intervene, actively have, for want of a better idea, a commission of rehabilitation as opposed to compensation just as it is, then we go some way to actually resolving the problem. Whereas it's the easiest thing in the world—albeit the Government says they don't have the money—to say, "We'll just throw money at this. We'll move you on," and that's the way it settles. But my view is that an injured worker should be rehabilitated and money should be going into the rehabilitation to ensure that they have a life after that injury, whether it be at the same workplace or any other workplace, but we rehabilitate them. I think that goes somewhat to the holistic approach to what we're talking about, as opposed to a somewhat punitive approach to say that you're in, and you're out.

And as Jack indicated, many of our members, who are virtually exempt from the paramedic sphere, we can see that a tragedy can occur where they deal with every day—Jack's people do the same thing, maybe not every day and so what's the difference there? And I think it's really important: I never want to get into career elitism or anything along those lines, but everybody has a focus in terms of what they are confronted with and how they deal with that. Some people are more resilient than others. But we can't let the others fall through the gaps. My view is that a longer review of what we're doing, a holistic review of what we're doing—rehabilitation has to be front of mind. Compensation is there, but if we're just focusing on compensation, people will fall through the cracks.

**The Hon. STEPHEN LAWRENCE:** In terms of the definition of "relevant event" and this requirement that a person actually witness an event, I'm specifically interested in—Mr Whaites, Mr Hayes and Mr Ayoub—your thoughts about how that particular part, the proposed section 8E, could be amended. And I'm particularly concerned about this idea that people witness death, and they might witness death on a regular basis, but it doesn't fall within those terms in 8E. Is there a way to broaden that definition that includes people who, according to a certain percentage of them, are probably invariably going to suffer illnesses as a consequence of certain work?

**MICHAEL WHAITES:** I don't have an immediate answer for you today. The rush with which this legislation is being proposed, the rush of this inquiry—yes, there has to be alternatives to that. When our members are on a shift and there is an adverse event, that affects the whole shift: everyone contributes, because of the teamwork approach. So these things have to be taken into consideration. I think one of the risks with the draft legislation is that it proposes to try and define what is a psychological injury. There are trained healthcare professionals who do that, there is evidence-based literature that does that, not a piece of legislation that says whether or not a nurse, a paramedic, a shoppie or a teacher is suffering an injury because of their workloads. That's for the realms of the healthcare professionals.

**The Hon. STEPHEN LAWRENCE:** Have you got any thoughts on that, Mr Hayes?

**GERARD HAYES:** I'll take that on notice, if you don't mind.



**The Hon. STEPHEN LAWRENCE:** Sure.

**GERARD HAYES:** I think it's a very serious question, and I'd like to give it a little bit more thought.

**The Hon. STEPHEN LAWRENCE:** Sure. Have you got any thoughts on that, Mr Ayoub?

**JACK AYOUB:** I think, just broadly, a bit of context on it, the Hunter bus crash was widely publicised. Mr Hayes' and my members were both there. Our members were responsible for the aftermath. They had to roll the bus back up, get rid of it, and clean off intestine and blood from guard railings. They didn't witness the event, they didn't have a close personal connection, nor did the ambos who arrived there. There's no way that is workable. As for another set of words, it just goes to the point that we've not actually had from the officialdom the honour and decency to consider this thing properly. That's really what's hamstringing us here. There's a starting point of consensus, which is we all want the system to work better, all of us collectively—business, everyone—but that's been blown up by this exposure draft coming out, which we were never consulted on, for example. The only way forward, I think, is for members of the Legislature, and certainly this Committee, to ask themselves, can you seriously lay your conscience on this draft bill, that has no policy rationale, no moral integrity and no heart?

**The Hon. STEPHEN LAWRENCE:** Just to be clear, your contention is that the words in 8E (c) that a person must "witness an incident that leads to death or serious injury" wouldn't bring within it a person, for example, who turns up in the aftermath and is responsible for removing corpses?

**JACK AYOUB:** There are people better on interpretation than me, but I think, as a fair reading, the emergency services who respond and our members who respond after that, they're not witnessing the event. They're not going to be captured by that. But even if they do witness the event, how do they fall within 8H (2), because they don't have a close work connection? How are these things interacting? I don't know.

**The Hon. ANTHONY D'ADAM:** Point of order: Mr McFarland has been invited to this Committee to give evidence. He hasn't been given a question. He wasn't afforded an opportunity to make an opening statement. I think we should give him at least some opportunity to say something.

**The Hon. DAMIEN TUDEHOPE:** I did foreshadow that if any of the questions applied to him, they could be assumed to take them on notice.

**The CHAIR:** I'm in the hands of the Committee.

**The Hon. ANTHONY D'ADAM:** It's appropriate and courteous to our witness.

**The CHAIR:** Indeed. I just want to point out, I don't think that's intentional, Mr McFarland. Mr McFarland is a highly regarded union official in this State of some standing. I was going to, in fact, make a comment at the end about any omission in terms of an opportunity, so I think we need to make that point. It's not deliberate, and nor would it ever be deliberate.

**ANGUS MCFARLAND:** I just wanted to say two things. I think 8H is another example of this bill being rushed and not—the advice I've sought from experts in vicarious trauma in family domestic violence services is that that definition is going to cause more harm. In summary on behalf of, I think, everyone here, I can say that that gets to the crux of this: This reform will cause more harm. This reform will leave people behind. This is not about prevention; it's about punishment. This is about lawyers making decisions about people's health, not doctors. That's why we urge you to not support this legislation and take, I think, as we've all said, the time to get reform right. We are all up for reform. We are not saying the current system is perfect. But we want to be part of a proper conversation so no-one is left behind.

**The CHAIR:** That was very comprehensive. Thank you very much, Angus. With respect to the return of answers to questions taken on notice, we have the time set at 5.00 p.m. Wednesday 21 May 2025. This is currently the case. It may or may not change over the course of the day. If it changes, you will be told, but that is the date and time of cut-off with respect to submitting answers to questions taken on notice. As for your opening statements, if you have it in typed form I invite you to hand it over to one of the members of the secretariat staff before you leave. If you don't have it in a form that you're completely happy with—and I don't mean changing the words, but if it hasn't been typed up for whatever reason—get that done and then email your opening statement to the Committee secretariat. That will help in facilitating the development of the report.

Finally, as I said at the start, thank you to all around the table. I might say there are other union officials who I'm sure would have dearly loved to have joined this panel, because it does affect all workers covered by the trade union movement in the State, in all industries. We could not practically invite everyone for obvious reasons, but we have amongst the most senior trade union officials in the State, at least the general secretary level. Thank you all very much. Your evidence has been most helpful.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Mr DANIEL HUNTER**, Chief Executive Officer, Business NSW, sworn and examined

**Mr SAM MORETON**, General Manager, Government and Corporate Affairs, Business NSW, sworn and examined

**The CHAIR:** I welcome our next witnesses. You now have the opportunity to make an opening statement. Once that's done, we'll move to questioning by Committee members.

**DANIEL HUNTER:** New South Wales has always been the engine room of the Australian economy, and it is businesses that drive that economy. When we talk about business, we're talking about people and communities right across New South Wales. We know that for businesses to thrive they need employees who are healthy, motivated and engaged. That's why Business NSW—the peak business organisation for 199 years—fully supports workers' rights to care, rehabilitation and fair compensation for workplace injuries. In fact, we were instrumental in establishing the State's workers compensation scheme over a century ago.

We also support a reasonable mechanism to hold managers to account when they are not doing the right thing by legitimately injured workers. However, we have a workers compensation scheme in New South Wales that is broken. It is broken because not-for-profit disability providers are seeing their premiums go up by over 400 per cent in five years. It is broken because 50 per cent of our members tell us that once a person goes off on a psychological injury claim, they never return—this is 50 per cent. And 90 per cent of businesses we surveyed last week also said that the system needs urgent reform. It's broken because legitimate performance management issues are being wrongly turned into workers compensation claims. It's broken because it is not sustainable.

For the private sector workers compensation scheme, the Nominal Insurer, current premiums are already rising by 8 per cent each year, while the funding ratio falls by about 5 per cent per year. So, in dollar terms, the scheme went backwards by \$1.8 billion last year, all while premiums went up by more than double CPI. To bring the scheme funding ratio back to what is considered a healthy level of 110 per cent—it's currently, I believe, as of this morning, at 82 per cent—would require huge premium increases under the settings of the current system. We fear the increases required to achieve this are actually far higher than the 36 per cent over three years already quoted.

Adding to the problem is that the degradation of the scheme is getting exponentially worse each year. It has gone down 3 per cent in the last six months. If we do nothing, then the scheme costs will send some businesses bankrupt. There is also a human cost to this. Ironically, it is the pressure and stress it places on business owners struggling to survive. New South Wales has a once-in-a-generation opportunity to reform the workers compensation system and ensure that genuinely injured workers get the help they need, and that businesses can survive and ensure a safe workplace for their employees. Without significant changes, the weight of the scheme will crush businesses, leaving workers and the communities they serve for good. Thank you, Chair.

**The Hon. DAMIEN TUDEHOPE:** Thank you for being here today. I just want to start with urgency. Why is this urgent? When did you first see this exposure draft of this bill? Why is it so urgent that we actually implement it this year?

**DANIEL HUNTER:** I think it's the speed the scheme is degrading by. We heard from the Treasurer this morning around the TMF. That's still up over 100 per cent, and he's not going to tip in any more money into saving that public sector scheme. The scheme is degrading by 3 per cent.

**The Hon. DAMIEN TUDEHOPE:** Is it important, though, to get it right?

**DANIEL HUNTER:** Yes, it is important to get it right.

**The Hon. DAMIEN TUDEHOPE:** Is this the right model for getting it right?

**DANIEL HUNTER:** I think that this model picks up on a lot of things that have been done successfully in other States, particularly in South Australia. South Australia at the moment is considered the business-friendly State. New South Wales has always been the State that has attracted investment to Australia. As I said in my opening statement, it is the engine room. We need investment. We need successful businesses, and we are losing them. Business defaults are higher than they have been year on year. I can get you stats on that if you need to. But, in short, in answer to your question, Rome is burning. The degradation of the scheme is really problematic. It will likely be, by the end of this financial year, under 80 per cent.

**The Hon. DAMIEN TUDEHOPE:** Just in relation to South Australia, part of the evidence we also heard this morning was that the diagnostic tools in relation to psychological injury and the determination of a 30 per cent cut-off was, if you applied the same test in South Australia as you are applying in New South Wales, effectively, their test is 60 per cent and not 30 per cent. So it is not really comparing apples with apples, is it?

**DANIEL HUNTER:** I would like to see the facts behind that before commenting on it. I think, though, to go to your point about getting those medical assessments right, that is needed, and the detail is needed on that for the WPI threshold to raise to 30 per cent. We need very clear assessment protocols and medical assessments on that. I don't purport to know what those assessments are. I wouldn't comment on whether it is 30 per cent in one State equals 60 per cent in another, because I haven't seen any facts behind that.

**The Hon. DAMIEN TUDEHOPE:** I'm just putting to you the submission. If that was true though, that would make this a very draconian scheme because it would eliminate most people who have psychological injury from making claims.

Whereas if the South Australian model was being applied, you wouldn't have the same number excluded from making claims—if that is true.

**DANIEL HUNTER:** What you have at the moment, though, is that you have a very low threshold and you have psychological injury claims that have doubled in cost and have gone up by 65 per cent in terms of volume in the last two years. So something needs to be done. I agree there is work to be done on the detail of this. I totally acknowledge that consultation needs to happen. I actually wouldn't put a time frame on it. I am saying "urgent" because it is a really big problem, and it is dragging our State down in terms of competition.

**The Hon. DAMIEN TUDEHOPE:** Premium increases have been fixed for next year, haven't they, at 8 per cent?

**DANIEL HUNTER:** Yes, they have.

**The Hon. DAMIEN TUDEHOPE:** So it's not urgent in terms of a pending premium increase?

**DANIEL HUNTER:** But that funding ratio—every day that goes past, that scheme goes backwards by 5 per cent, and that is with 8 per cent premium increases.

**The Hon. DAMIEN TUDEHOPE:** Let me ask you about that. One of the things which was put to us this morning is the problem of the self-insurer. Would the NI be under as much pressure if in fact the safer—potentially—workplaces were not able to opt out and become the self-insurers?

**DANIEL HUNTER:** I don't know the answer to that question, because I have never seen any analysis done on it.

**The Hon. DAMIEN TUDEHOPE:** Should you?

**DANIEL HUNTER:** I don't know that that would be the case. Businesses need the right to choose. They should be able to choose. I think that that self-insurance question needs to be looked at a bit more carefully before we can comment on it.

**The Hon. DAMIEN TUDEHOPE:** If in fact this draft bill became law, what would you say would be the saving available in premiums for small business?

**DANIEL HUNTER:** Again, we are unable to model that at the moment, because we would need to see actuarial calculations. I am not here to purport to be an insurance actuary. But the scheme, as I understand it, would be revalued, and the future liabilities would be revalued. We could see a pretty immediate uplift on funding ratio, which should put downward pressure on premiums. More to the point, it should help to fix the problem of illegitimate psychological claims going through the system.

**The Hon. DAMIEN TUDEHOPE:** What do you say are the illegitimate claims that are going through at the moment?

**DANIEL HUNTER:** There are a few. There is one here where a worker claims a psychological injury after a heat stroke incident. That person had a history of psychiatric illness and substance abuse. The Personal Injury Commission found a whole-of-person impairment of 23 per cent, and they only applied a 10 per cent deduction due to pre-existing conditions. This person had pre-existing psychiatric illness conditions and substance abuse conditions. At 23 per cent, they qualified for a WPI under the current system. In that example, that has equated to around \$250,000 so far. What is happening in this case is a great example of some societal issues being lumped in together and becoming the responsibility of the workers compensation system.

**The Hon. DAMIEN TUDEHOPE:** How would you resolve that? If that was the case study and Business NSW was involved in a preventative regime, what would be the tools for resolving that?

**DANIEL HUNTER:** I think you have got to prevent them in the first place. I am a firm believer—and there were some interesting examples given just earlier, which I support, and the definition of trauma will still be in there and things like that. I think it was the Hunter Valley bus crash incident that was used—

**The Hon. DAMIEN TUDEHOPE:** Yes, but if it doesn't get to 30 per cent?

**DANIEL HUNTER:** You need prevention programs, which are contemplated in these reforms. You need prevention programs and training, and you need workplace disputes that are solved quickly, and you need a mechanism for that. Because what is happening at the moment is there are workplace disputes by default just being accepted into a workers compensation system that it is not designed for. I'll go back to that example, if you will indulge me. I used to sit, in a previous life, on the board of NSW Ambulance and I've got a pretty good understanding of those traumatic events and the PTSD associated with them. When you talk to well-credentialed people, the people who run those organisations and have been at that frontline, the answer is training and resilience, and then, when things like that happen, getting around people so they don't create issues.

The other point I would add is when people are off work and funnelled through this workers compensation system, it makes the problem exponentially worse. People need meaning in their life; I think we can all probably agree on that. People need to go to work and need to feel valued. What we're doing at the moment, as Mr Hayes said in his previous evidence, is we are sending people home. I don't think that's a good outcome.

**SAM MORETON:** To the point of urgency we were mentioning earlier, Mr Hunter mentioned some figures. I'll give them to you now. Businesses don't need certainty just for the next 12 months but, as Mr Tudehope would be aware, it can be two, three, four years for their planning and solvency. In March alone, we had 575 businesses enter administration in New South Wales, up from 478 in the equivalent period a year ago; year on year, 4,236, up from 3,292. So yes, it would not necessarily be solved by—

**The Hon. DAMIEN TUDEHOPE:** You are not suggesting, though, that they're all caused by—you're not suggesting for one moment, are you?

**SAM MORETON:** No, I'm not drawing a causation line directly to that. But the broader business environment we're talking about, with the sector that employs six out of seven workers in the State, or close to 86 per cent—figures we're obviously very familiar with—is in the private sector and doing it tough at the moment. That's the context.

**The Hon. DAMIEN TUDEHOPE:** But there is a range of cost of doing business measures, which I am sure you are very aware of, which impact on their ability to remain solvent.

**SAM MORETON:** That's true. Absolutely, yes. And insurance is at the top of that list.

**The Hon. DAMIEN TUDEHOPE:** Insurance is a big one. I want to put this to you. COSBOA in their submission stated:

COSBOA supports the objectives of preventing workplace psychological injuries and ensuring appropriate compensation for affected workers. However, we are concerned that the proposed amendments in their current form will disproportionately impact small businesses through increased costs, compliance burdens, and complexity.

What do you say in relation to that?

**DANIEL HUNTER:** Sam, you might jump in here. I think what COSBOA is referring to there—and I spoke to a couple of other business organisations yesterday, and it is something that concerns us as well—is the detail around the new IRC jurisdiction.

**The Hon. DAMIEN TUDEHOPE:** But where's that? Have you seen that?

**DANIEL HUNTER:** No, we want to see it. Don't mistake my need for urgency as a way of not consulting and getting into the detail. I fully agree with you that we need to get into the detail of this and we need to take some time to go through that detail. What I don't want to do is be sitting here in a year's time without workers compensation reforms, with pricing about to be handed down and a scheme funding ratio that's in the 70 per cent range, or late 70 per cents, that's targeting to get back to a healthy level of 110 per cent, because those bill increases are not going to be 36 per cent over three years. They're going to be higher because it's spiralling. It's getting exponentially worse.

**The Hon. DAMIEN TUDEHOPE:** Which industries do you say will be impacted the most?

**DANIEL HUNTER:** By the price increases?

**The Hon. DAMIEN TUDEHOPE:** Yes.

**DANIEL HUNTER:** It's pretty well documented, but I'd say a lot of family businesses, a lot of small to medium businesses, so the 50 to 100 range. Manufacturing is a great example. Any industry that we're trying to hold on to here in Australia. Great example, manufacturing. We were up in the Hunter Region recently visiting some members up there. At Tomago there is still quite a lot of Australian manufacturing going on—high-end stuff, vehicle fit-outs, all those sorts of things. They're in high-risk areas, so they have some claims experience. Some of them are multi-generational businesses. If your workers compensation bill is already a pretty big chunk of your P and L and it's going to double in the next three years, that could put you pretty close to the edge or help you make a decision to move offshore or anything.

**The Hon. DAMIEN TUDEHOPE:** Therefore, prevention should be a bigger—you're on the board of icare and the CEO of Business NSW.

**DANIEL HUNTER:** Yes.

**The Hon. DAMIEN TUDEHOPE:** What preventative programs are you promoting, in either capacity, for in fact getting people back to work or reducing psychological injury in the workplaces?

**DANIEL HUNTER:** Icare, I've only had one board meeting, so I'm just getting my head around that stuff. The preventative programs that we run are mainly training prevention-type programs—how to have an appropriate performance management conversation, things like that. We need to do more of that. It's a bit like the health system in general: The more effort you put into prevention and up-front, the more dividends it pays at the backend and you avoid these situations. I think that's one thing. The other one is having a very quick mechanism to solve these sorts of disputes, or bullying-harassment claims, in a fast and efficient way so people can stay in the workplace. Our ultimate goal here is not to deny people claims that they're due; it's to keep people at work and keep businesses humming. Do you have anything to add to that?

**SAM MORETON:** Yes. Chair, in a knowledge-based workforce, in particular, these are key issues for employers and particularly challenging for the smaller end of employers. You asked about what we do at Business NSW. It's a matter of record that we work with a number of providers, in particular EML, on better ways to get injured workers back to work. The general principles there are really around, as has been said by both sides today—well, not sides, unions and employers—that work improves health and recovery, that delays of returning to work can worsen mental health. We know that early return to work improves outcomes—depending on, obviously, the environment in particular which you're in—and that good work is better than no work.

These are well-known principles in the space that we're talking about. These are the general principles we work towards with practical programs on how to—we want to avoid these injuries in the first place. It's not just about large corporations. It's also about the vast majority of firms in this State who are SMEs, who are often family businesses where the person running

the business is also effectively labour in the business and working in the business. The more we can get from the broad principles down to the practical day-to-day support for owners and managers of enterprises across New South Wales, that's where we seek to go, and to avoid people being off on psychological injury when they could be better cared for or better looked after through the reforms that are proposed.

**Ms ABIGAIL BOYD:** Thank you both for coming along today. I just want to pick up on that comment about small business and the submission we've received from COSBOA. We've also received a submission from the NSW Self Insurers Association. Both of them talk about the increased costs that some of these reforms would have. To what extent are you here representing the whole of business as opposed to the larger businesses that have the HR function that maybe can afford to go through this system a bit easier?

**DANIEL HUNTER:** We're a very broad church at Business NSW. We have 50,000 members that we represent across the State, from microbusinesses and one-person businesses right up to larger businesses here in the CBD. We run under our brand Business Sydney, Business Western Sydney, Business Hunter and Business Illawarra. They represent medium to larger businesses, and then we have grassroots membership as well. We represent all regions. We have regional offices right across New South Wales.

**Ms ABIGAIL BOYD:** So in forming your opinion on this set of proposed reforms, did you consult with small business, the self-insurers, all the rest of them? What was the process then within Business NSW?

**DANIEL HUNTER:** We consult mainly via a business conditions survey and by talking to our members. We run around 300 events a year, where we engage with our members. We run business condition surveys quarterly, where we ask our members what they think of particular workers compensations. Last week, for example, we ran a survey where 90 per cent of businesses told us that it needed urgent reform. That is where we mainly get our information from.

**SAM MORETON:** To further answer that question, we've just kicked off an extensive three-year program. It's very much targeted at businesses that, like you said, don't necessarily have fully fledged legal or HR departments. We are kicking off that project—that's the EML project—to provide a kind of information loop and also practical workshops and information.

**Ms ABIGAIL BOYD:** There is widespread agreement across everyone who has made a submission that there are serious problems with the workers compensation system and that a lot of aspects of it are actually making workers sicker when they go through that process. The disagreement is around how we reform the system. Your submission—and I apologise, we have only just received it—appears to be broadly in favour of the reforms. How did you get informed that this was something that would benefit most businesses?

**DANIEL HUNTER:** Again, I would go back to the detail part. We see that there are more benefits in this than downsides. We do see some downsides. We are concerned about the new IRC jurisdiction, as has been written up by others, and about the layering in of more red tape and cost. However, we do support a mechanism and a need to examine bullying and harassment disputes in the workplace outside of the workers compensation system. I would say that in that respect most business groups are driving at the cost associated with that new IRC jurisdiction. In that respect, we would need to see the detail of that. We have given feedback that we would like a system that is vast, where urgent claims can be expedited—that is to look after injured workers as well—and where there is an appeal mechanism. But we would need to see the detail on that before we can form a view. We do see some downsides and risks in what is proposed here.

**Ms ABIGAIL BOYD:** Have you done any independent modelling or seen any actual modelling to identify what the impact of these reforms would be on future premiums or are you relying very much on what is being said to you by the Government?

**DANIEL HUNTER:** We haven't seen modelling on it. We would like to see modelling.

**Ms ABIGAIL BOYD:** We all would.

**DANIEL HUNTER:** I think everyone would. Anecdotally, there is enough evidence on the reforms to show that they would put downward pressure on premiums.

**Ms ABIGAIL BOYD:** When you look at, for example, the Nominal Insurer statements that came out from icare just this week, they do talk about a small increase coming from psychological injuries for the Nominal Insurer. But they also talk about huge increases from things like inflation and wages increases. There is a much larger rise in dollar terms when it comes to physical injury claims. Are you convinced that the way to make the scheme more viable is to pick just one aspect of the system—psychological claims—and then say, "That's the one we're going to deal with and exclude"?

**DANIEL HUNTER:** I think that's a really good question. There is no silver bullet to solve this issue. In answer to your question, this is a step forward. But I think we would all agree that claims management needs to be continually looked at and be part of a continuous improvement program. But my point would be that you're not going to fix a funding ratio that is going backwards at more than 5 per cent per year by just addressing claims management and efficiency. At the moment, the settings of the system are such that you cannot get ahead.

**Ms ABIGAIL BOYD:** Given that these reforms could have significant unintended consequences that could lead to more people going without the help they need and a less productive workforce, and also could lead to significant increased costs for small businesses that far outweigh any premium gains, do you acknowledge that rushing this legislation through in the next month is perhaps not the best way forward?

**DANIEL HUNTER:** I think we need more detail. I'm not going to comment or put a time frame around it because, again, we need to take as long as we need to take to get this right. I don't think it would put increased costs on small business from what they're experiencing now. I think the overall outcome of these reforms will put overall downward pressure on costs for small and medium businesses. Again, I would go back to the urgency. We need to take the time that we need to get this right, but it needs to be done urgently. We can't be sitting here in 12 months with a scheme that has the same funding ratio. Every day that passes is a day that we need to recover. You cannot have funded liabilities at 75 per cent. The scheme also has to recover. If it was at 100 per cent and we had time then sure. But we simply don't have the time. The scheme needs to recover.

**Ms ABIGAIL BOYD:** I presume you have background knowledge in business and finance and other things—I have some background, but I am by no means an expert. I am looking at some reforms that have just come through in relation to the Australian Accounting Standards Board rule 17. I don't know if you are aware of the rule, but it talks about the valuation of premiums and liabilities within publicly run insurance and compensation schemes. Back in 2022—I am not sure if you were on the board of icare at that point?

**DANIEL HUNTER:** No, I've only just joined.

**Ms ABIGAIL BOYD:** Back in June 2022, the icare board made a submission to the Australian Accounting Standards Board that said that if the changes went through, which they will, from the beginning of the next financial year, it would result in a \$3.64 billion hit to both sides—the TMF and the Nominal Insurer. I think it was roughly half and half, from memory. They went on to say that obviously that \$3.64 billion could be used for essential services instead of complying with an accounting standard. Are you aware of what has happened to that accounting standard and is any of this accounting revaluation, in your view, leading to the supposed pressure on the scheme?

**DANIEL HUNTER:** I would next to take the accounting standard question on notice. I am an accountant but I don't really practice anymore, so I am not reading a lot of accounting standards at the moment. It will be around valuations of liabilities and the provision mechanisms around that. They can have an impact because those accounting standard changes need to be funded properly. I think that submission is probably accurate. What I know about publicly funded schemes—and again, in my former life, I worked in government—is that government spending is about choice. If you're having to top up a TMF scheme on a regular basis, you don't have that money to spend somewhere else. Knowing the current budget position for the State Government, there are some pretty hard decisions to be made. Anything that pushes up any sort of top up that the Treasurer needs to make is money that can't be spent elsewhere.

**Ms ABIGAIL BOYD:** If you are taking that question on notice, could you also come back with what the impact would be on the accounting standards and the treatment if the Government wholeheartedly supported and backed the scheme, compared to when it does not? I understand that there is a difference between States and Territories on the treatment under this standard based on how much of a guarantee the government is giving behind the scheme, just in light of the ultimatum the Treasurer gave this morning.

**DANIEL HUNTER:** We can have a look at that. I think the organisation—and I know you have them this afternoon—probably best placed to answer that and that has a deep expertise is icare themselves. They will have that expertise around those accounting standards and the actuarial assessments.

**The Hon. MARK LATHAM:** I am sorry I wasn't here for your opening statement due to a prior commitment. I just had one question in the galaxy of material, and this hefty bill we are analysing in just one day. Obviously, they're setting up a new jurisdiction through the industrial relations system via this gateway process. There seems to be also, in the material, an assumption if the gateway system makes a ruling against the business that you're guilty of having created this psychological injury, the business will now pay the compensation rather than the schemes. Is that your understanding? Or pay directly in a civil liability payout?

**DANIEL HUNTER:** I would need to see the detail on that.

**SAM MORETON:** We've engaged in good faith around things like public accountability for employers. I'm not sure that premise is one that we have gone into the details of.

**The Hon. MARK LATHAM:** What would your reaction be to that, that through your own insurance business would have to pay, rather than the schemes?

**DANIEL HUNTER:** We'd have to have a good look at the detail on that. That, in my mind, should become an insurable event, if that is the case, and go through the workers compensation system.

**The Hon. MARK LATHAM:** Will you take that on notice and provide any information?

**SAM MORETON:** Yes, I think we can. I mean, there's obviously a lot of interplay between employment law and the scheme as it stands at the moment.

**Ms ABIGAIL BOYD:** We talk about this having a disproportionate impact on women, but also the data shows that there is actually a far greater percentage of regional workers with psychological injuries than metropolitan. How do you think that sort of rate of injury, if left untreated, would then impact on regional businesses and the ability to get more employees in?

**DANIEL HUNTER:** I'm not sure of the gender weighting and the basis for that. I presume that's an industry analysis of some sort and female-dominated industries that have high psychological claims; I'm not sure. In terms of the regions, I

think what would be driving that is access to specialists, to be honest. And again, knowing what I know about health systems, it's very challenging to find psychiatrists and allied health professionals once you get out of the metropolitan regions. I would say that is what is more driving that. That is of concern, because it impacts—when we talk about business, we can often sit here in a room like this in suits and ties and imagine we're talking about large, tall buildings with glass down the road. We're actually talking about, often, people's life work, multi-generational family businesses. They are businesses that support their community and employ people. I think we're all almost on the same team here when we talk about that. I think that the regions do need to be looked at and have the appropriate support in place to keep people in the workplace.

**The Hon. BOB NANVA:** Thank you, Mr Hunter and Mr Moreton, for your evidence this morning. I am going to take you to a quote from the last time this reform was pursued in a similar nature, with respect to the eligibility of the claims and the quantum of claims. It was Minister Dominello who said:

... we have a system now that is sustainable. You have to remember that we inherited a scheme that was fundamentally broken. It was \$4 billion in deficit. We were having suboptimal return to work rates. The premiums were going to go up by about 28 per cent. It was simply unsustainable.

Here we are seven years later, having the same debate and tackling the same nature of reform. What confidence do you have that, this time around, in tackling the eligibility of workers to make claims, and the quantum of those claims, we are going to finally resolve this issue without making more structural changes?

**DANIEL HUNTER:** I'm an optimist. I think it will be addressed, because I think there is broad agreement, in a room like this, that we have to do something. It might surprise you, but Business NSW do work in a tripartite way. We have ongoing conversations with business and unions, and we're on several tripartite committees. The best example of that which was mentioned is the board of icare, where myself and Business NSW now both occupy a seat on that. I think that is the way through this. The way through this is collaboration from both Government and Opposition and Independents and all parties in order to recognise the problem and make some changes. I think that is the job of good government, and I look forward to the outcome.

**The Hon. BOB NANVA:** I suppose I asked that question because the McDougall review into icare and the State Insurance and Care Governance Act stated:

... the principal risks to the financial stability of the NI as being, in decreasing order of significance:

- a) the amount of premiums that will be collected;
- b) the investment return on financial assets;
- c) claims costs (of both existing claims and future underwriting); and
- d) other expenses of the NI.

Noting that "claim costs" was further down, but descending order of financial significance. I suppose I am wondering, in terms of pursuing reform, wouldn't it be worthwhile looking at the impacts of self-insurance, the impacts of psychological claims, return to work rates, medical interventions and treatments and other costs—looking at those things and what impact they have on the capital adequacy of the fund before embarking on a reform of this nature?

**DANIEL HUNTER:** I think with some of the stats that we have got coming through at the moment on volume of claims and cost of claims, we can see quite plainly that there's a problem with the settings of the system, if you like. So, going back to my earlier comments, we could and should always look to improve claims management, how we handle that, and get return to work rates and all those sorts of things. Fundamentally, we have to stop what's happening upstream through prevention and through the right legislative settings. So we need to get that right. In answer to your question on the self-insurance, that's, I think, a matter that needs to be looked at, but I'm not convinced that is the answer, either. Because, again, you are forcing people down a certain path if you make changes to that system. We don't want to penalise anyone in current settings either, I don't think.

**SAM MORETON:** The quote from McDougall and the hierarchy of needs, if you like, in insurance, just a general observation that it's a pretty standard hierarchy of inputs for insurance categories, globally. I think often people underestimate the importance of the investment structures behind it for sustaining insurance. Then, of course, claims handling and so on is a key lever that people can actually pull.

**The Hon. BOB NANVA:** Before I hand over to my colleague, McDougall's report stated:

Changes to benefits should only be considered if they are seen to create perverse disincentives to recovery, or if, even if properly controlled, they are placing an unmanageable burden on the scheme.

We have received a number of submissions to suggest that we should perhaps look at reform to improving return to work rates, improving claims management, going through a first phase of reforms in that space before we pursue reforms for the eligibility of workers to seek claims. Do you agree with that assessment?

**DANIEL HUNTER:** I think you need to do both. I think it has gotten so dire that, unfortunately, benefits need to be looked at, and access to those. It happens fairly regularly in a workers compensation system that these things need to be relooked at and modernised. It's not just about costs; it's about human costs. We've got examples of individuals in their

twenties that are never to work again because of psych injuries. That may or may not be legitimate, but when you have a lot of those coming through, that can't be good for society. It can't be good for the individual.

We've got examples here of people who are clearly—like one case, a worker was doing half the workload of others, a measurable workload. They got a performance management conversation and they put in a psych claim. They logged off and put in a psych claim for bullying and stress. That's cost half a million dollars so far. So I think access to claims has become too easy. It's become a soft entry point for workplace disputes, essentially, the workers compensation system, and it's not designed for that. It was originally designed for physical injuries. I think these things need to be revisited from time to time. Again, I think, with the numbers we see in front of us, the number of psych claims going up, the cost of those psych claims going up, the degradation of the scheme by the day, I think it's an "and", not an "or".

**The Hon. ANTHONY D'ADAM:** There's a quote in the icare submission. They say that:

Scheme sustainability requires incentives for employers that reflect risk ...

Do you agree with that proposition?

**DANIEL HUNTER:** I don't really follow the context of that, I've got to say. I haven't read the submission.

**The Hon. ANTHONY D'ADAM:** The proposition is that the scheme has to be structured in a way so that employers mitigate their risks.

**DANIEL HUNTER:** Yes.

**The Hon. ANTHONY D'ADAM:** That's the incentives.

**DANIEL HUNTER:** Yes.

**The Hon. ANTHONY D'ADAM:** And premiums are supposed to encompass the risk in the scheme. That's correct?

**DANIEL HUNTER:** Yes.

**The Hon. ANTHONY D'ADAM:** So irrespective of what happens, workers are going to continue to be injured, right?

**DANIEL HUNTER:** Yes.

**The Hon. ANTHONY D'ADAM:** Those injuries incur costs.

**DANIEL HUNTER:** Yes.

**The Hon. ANTHONY D'ADAM:** At the moment, those costs are being incurred through the scheme. Shouldn't employers pay for that risk? Those injuries are occurring through work. Isn't the responsibility ultimately for employers to bear that risk? Or do you think that employers should be able to shift that risk to other sectors of society?

**DANIEL HUNTER:** I think what we're seeing now—and I haven't heard anyone disagree with this—is that we are seeing a lot of illegitimate claims coming through that system, a system that is unsustainable. What's happening at the moment—and there are victims in this, right? So you're seeing sometimes societal issues, sometimes illegitimate claims going through the workers compensation system, and the cost of that getting passed back to businesses. That can put pressure on businesses, can send them bankrupt et cetera—all the things we've talked about. Ultimately, they pass on that cost as well. So if we're wondering why we're going to be paying seven bucks for a cup of coffee in the next 18 months—I know that's a long bow to draw—these are the things that are adding to that. And there's other mechanisms in Australia, lots of good mechanisms, in the wonderful country we live in, to look after people, and to look after those societal issues that are happening, around psych and things like that, and mental health. Those are real, I don't debate that they are, but I don't know that the burden for that should be going through a workers compensation system.

**The Hon. ANTHONY D'ADAM:** I'll give you an example. So the proposition is to effectively eliminate occupational stress as a compensable injury. Doesn't that create a perverse incentive? Effectively, employers can then ignore the factors that are contributing to occupational stress. And, obviously, that cost is then borne by society. If those workers are injured as a consequence of that, employers aren't incentivised to address occupational stress, then ultimately that's a cost shift to somewhere else. The business really should be paying.

**DANIEL HUNTER:** I don't quite agree with the logic, because I don't think any business or business owner wants to put stress on their employees. I think there's a natural stress in life that we all have—I'm sure everyone in this room has pretty stressful days—but I think the premise that businesses are going to use this to put more stress on their employees is wrong. We have one of the lowest unemployment rates in history.

**The Hon. ANTHONY D'ADAM:** That's not exactly what I'm saying. I'm saying that currently, because occupational stress can give rise to a workers compensation claim, businesses are incentivised to avoid those kinds of claims by addressing the hazards in the workplace that are causing the injuries. If you take that compensable incentive out, then they'll perhaps have less of an incentive to address those drivers.

**DANIEL HUNTER:** My point would be that they are still incentivised to provide a safe and happy workplace and a good workplace, for so many other reasons. If you look at the best-performing businesses, they do the right thing because it's good for business. They don't do it because they want to avoid workers compensation bills.

**The Hon. ANTHONY D'ADAM:** One of the major issues in terms of the cost to the scheme around psychological injuries is weekly benefits and the poor return to work rates for psych injuries. What do you say we can do in the private sector to improve those return to work rates?



**SAM MORETON:** I just have a point of clarification, Chair. It is generally a good discussion that you're raising, but poorly managing or not managing workplace stress is still something that has to be dealt with under WHS law.

**DANIEL HUNTER:** It's an offence. It's still a WHS offence.

**The Hon. ANTHONY D'ADAM:** But the prosecution, the enforcement regime is equipped to actually enforce that across systems—

**SAM MORETON:** Sorry to jump in. In the context of the draft exposure bill before us today—I'm not sure if you're heading into the discussion of what we do with 11A, what we might call 11B if we had a chance to redraft. The intent, broadly speaking—and we've had broad discussions—is to maintain protections for workers but to shift, as people have said previously, the emphasis towards prevention. So it's not an either/or in quite the way it's just been described. There is more nuance there. Yes, there will need to be very clear definitional discussions. I think from observing the Committee's hearing earlier today, people are even asking questions about the very first definitions in 8A, so these are legitimate questions and discussions to be had. We'd certainly like to work through those details with our own best take on how to prevent these issues in the first place. We're now getting into stress as just being in life. Obviously, if it's not managed properly in the workplace, particularly in a knowledge-based workplace, then these are genuine issues.

**The Hon. ANTHONY D'ADAM:** Can I just clarify, did you want to take that second question of mine, about return to work—

**DANIEL HUNTER:** I can take it now. So the question is around how to improve return to work rates?

**The Hon. ANTHONY D'ADAM:** For psych injuries in the private system, yes.

**DANIEL HUNTER:** So return to work rates on psych injuries are really challenging, because it's hard to see a medical professional in the required time frame. It's hard to get a diagnosis. And psychological injuries are much harder to see than a physical injury, for example. So I think that the return to work needs probably focused programs, like they're doing in claims management. As I've continually said, claims management for the psych claims needs to be continually improved and continually looked at to help that return to work, yes.

**SAM MORETON:** The same issue phrased another way is "time away from work", which is just a huge concern and hugely costly to employers, particularly in smaller firms. So, yes, it is definitely an issue of key concern—time away from work.

**The CHAIR:** I'm sure if we had time, there would be many more questions today. Your expertise is greatly appreciated. Mr Hunter and Mr Moreton, thank you so much for coming along. I think there may have been some questions on notice, I'm not sure how many, but the Committee secretariat will liaise with you about what is a more rapid return than normally with respect to those.

(The witnesses withdrew.)

**Ms ANDRÉE WHEELER**, Executive Director, State Insurance Schemes, NSW Treasury, affirmed and examined

**Ms SONYA CAMPBELL**, Deputy Secretary, Commercial, NSW Treasury, sworn and examined

**Mr DAI LIU**, General Manager, Actuarial Services, icare, affirmed and examined

**Mr TONY WESSLING**, Group Executive, Workers Compensation, icare, affirmed and examined

**The CHAIR:** Welcome to you all, and good afternoon. I thank you all for coming along this afternoon and making yourselves available to provide evidence to this important inquiry. We're grateful for the receipt of the submission that stands in the name of Insurance and Care NSW, icare, which is submission No. 36 to this inquiry. It's been processed and uploaded onto the inquiry website, and it is considered evidence to this inquiry. The opportunity that is provided this morning is for members across the Opposition, Government and the crossbench to ask you questions in regard to this matter before the Committee and its terms of reference. You can take your submission as read by all Committee members. How many opening statements are there—is it just the one?

**SONYA CAMPBELL:** And Treasury as well.

**The CHAIR:** I don't know how long they are. I invite you both to keep it nice and tight. Obviously, I'm not forcing you to do this, but please keep it nice and tight so we can have sufficient time for Committee members to ask you questions.

**TONY WESSLING:** Good afternoon to the Committee. Thank you for the opportunity to contribute to the Committee's proceedings today. My name is Tony Wessling, and I'm privileged to lead the workers compensation team at icare. Icare's role is to administer the workers compensation scheme to the legislation that is in place. We do that alongside policymakers and regulators, including the likes of SIRA. I lead a team that are on the front line of serving the injured workers and employers who rely on the schemes we operate. Like my team at icare, I joined icare to fulfil the purpose of supporting injured workers to return to health and work. We all have a genuine commitment and passion to prevent injuries and support workers and employers in the recovery process when an injury occurs. Icare has been in the spotlight over recent years. It's clear that we don't always get things right, but I can assure you that is our goal.

As icare has expressed in the submission that you have, the workers compensation system, as it was first introduced a hundred years ago, was designed to support people with work-related injuries, at that time predominantly resulting from manual labour. The establishment of workers comp in the early 1900s made insurance compulsory for all employers. It widened the definition of worker, increased benefits, set premium rates and legislated a more secure way of life for those unfortunately incapacitated due to work. The workers comp system has been periodically reformed to respond to changing workplace risk and practices. We've seen many iterations of the legislation since that time, emphasising prevention of accidents, rehabilitation of workers and fair compensation. The legislative framework that's currently in place and our operations need to reflect the current nature of work and workplace injuries. We know that we need to further modernise ourselves.

For both psychological and physical injuries, a greater proportion of injured workers are now being assessed with higher whole-person impairments, and the number of psychological injuries does continue to increase. These factors are greatly impacting the scheme we operate within. That includes the increasing cost of injuries, the poorer return to work outcomes that we're seeing and the greater demands on our frontline claims managers. Ultimately, all of this is impacting the scheme's financial sustainability for the generations to come. As evidence of this, the funding ratio for the NI has been declining over several years. As you heard this morning, at December of last year, the Nominal Insurer had a funding ratio of 82 per cent. Increases in psych injury are not unique to New South Wales, nor isolated to a particular injury. Psychological claims are complex, which can result in people needing longer periods off work and higher cost per claim, covering both the medical requirements as well as weekly benefits. On top of this, we know there are increasing challenges in finding early treatment options with mental health service providers. We all agree that returning to work soon as safely as possible is good for health and wellbeing, and research has consistently found a correlation between early return to work and improved health outcomes. Early return to work also improves the opportunity for financial independence and social inclusion. The challenges of returning to work can be even greater for those who have experienced psychological injuries and for those unable to return to their pre-injury role.

Icare would agree that the issues associated with increasing psychological claims numbers will persist in the absence of both reforms and actions to modernise the scheme. The changed work environment of increasingly demanding work and declining community mental health is going to require employers to make similar mindset shifts, similar to what occurred in the 1970s and 1980s in relation to reducing physical injuries in the workplace. These issues require a holistic response. Icare continues to play our role, working with a range of stakeholders across government and the private sector. In response to recommendations from this Committee and other inquiries, icare is continuing to work on improvements to the claims model to emphasise specialised psychological claims management and enhanced case manager capability, and raise professional standards. We're focused on improving return to work and other claims outcomes.

We are also reviewing pathways to expand suitable work opportunities across government agencies and are looking at opportunities for injury prevention through the reduction of workplace risk and staff engagement as part of our work with the New South Wales Government's whole-of-government return to work strategy. Despite all the extensive work underway today, the issues associated with increasing psychological claim numbers will persist in the absence of both further

conservative management action and reform. Icare stands ready to help. A sustainable workers comp scheme is one that is affordable, focuses on prevention, provides best support for those injured at work and enables support to those that may be injured well into the future. Today we will do our best to provide full responses to help inform your work and to respond to any further questions you have.

**SONYA CAMPBELL:** Chair and Committee members, thank you for the opportunity to contribute to the Committee's inquiry today. I'm going to provide an overview and some context of Treasury's evolving role in managing the State's workers compensation schemes. As a system steward of the State's insurance scheme, Treasury has an eye to maintaining community confidence in the Nominal Insurer to protect workers now and in the future, reducing disruption to essential services and businesses—our workforce is the State's most valuable asset—and, most importantly, alleviating the personal costs to a worker when they suffer an injury. The financial consequences of not properly achieving these outcomes have been summarised by Mr Wessling.

From the outset, the Government has sought to lift return to work outcomes and put the system on notice that it would be verifying premiums were being spent wisely. Treasury has been on a journey to identify and understand the underlying risks in workers compensation schemes and the challenges of how to pivot a large, complex system to effectively respond to new and emerging risks. In July 2023, we met with this Standing Committee ahead of the finalisation of the Committee's 2023 review of the workers compensation scheme. At that time, our focus was on governance arrangements in place for the Nominal Insurer and the Treasury Managed Fund workers compensation schemes.

This was in step with the Government's immediate priorities early on in its term, which were to establish statutory objectives for icare, change the composition of the icare board to include employer and employee representation, establish a whole-of-government plan to improve return to work outcomes for New South Wales public sector workers and to scrutinise icare's operational expenditure and performance. Through developing the whole-of-government return to work strategy, many stakeholders were consulted, including workers with lived experience of workplace injury, return to work officers across government, claims managers, agency representatives and public sector unions. A recurring theme was the importance of return to work in promoting a worker's recovery. Workers who kept in touch and connected to work recovered quicker and experienced improved health outcomes in the longer term. This operational experience is consistent with research published by experts.

Return to work rates are lower amongst those with psychological injury claims. Return to work rates for psychological injury are 50 per cent within a year compared to physical injury, which is 95 per cent who return to work within a year. This suggests we are not as effective as we could be in providing return to work pathways for workers with psychological injury claims. Other emerging themes include how the complexity of existing scheme settings can impede return to work. We've now completed our operational expenditure review of icare and that review highlighted that operational efficiency and non-legislative reforms to support workers to rehabilitate and return to work are likely insufficient to address the financial challenges of the schemes.

There is an opportunity for a sharper focus on the growth in the State's insurance liabilities and financial sustainability and the performance of the Nominal Insurer. The complexity of our workers compensation system and the difficulty of measuring and holding the system accountable for outcomes effecting change across the entire system will require a sustained concerted effort across government. As this was all happening, the Committee's review of the workers compensation scheme and the Auditor-General's report into the workers compensation claims management were released. The reports made findings for stronger New South Wales Government involvement and Treasury involvement to improve workers compensation scheme outcomes. The Government committed to action in its formal response to the Committee's report, which was tabled in March 2024.

The Committee's review has deeply influenced how we in Treasury view the financial sustainability challenges of our workers compensation schemes. In particular, workers compensation has difficulty helping those with psychological injuries. The legislative framework treats psychological injury like a physical injury and the financially sustainable workers compensation system is focused on workers' recovery and safe return to work. We're hesitant to tell any person who is injured that the system has no expectation that they will recover. We acknowledge there is a small cohort of workers who are profoundly injured, such that they may struggle to socially connect with and participate in their community. The Government's proposed reforms preserve protections for those workers. All other workers should be encouraged and supported to recover and return to work. At a system level, workers and employers need greater certainty on their obligations and what is reasonable behaviour. We need to set the right incentives for the system to promote the right behaviours, recovery and connection to work. A key part in providing early intervention that gives people the right help at the right time to shift the trajectory of their recovery. The best outcome for workers does not equate to more time on the scheme, but a safe and supported exit.

Reform is urgently needed to stabilise the scheme costs. At the June 2024 valuation, the Nominal Insurer only had 85¢ to every dollar it expected to pay in compensation and, as you've heard, at December the scheme now holds 82¢ in assets for every dollar. Premiums follow scheme costs. If growth in scheme costs does not stabilise, employing people in New South Wales will increasingly become less affordable. Getting people back to work faster after an injury is not just about premiums and the sustainability of the schemes, but about the impact on real people. Positioning the State's workplace systems to

prevent and better respond to new and emerging risks of modern ways of working requires a multi-pronged approach. The draft bill under consideration by this Committee is part of a broader package of interventions to shift workplace health and safety laws and workers compensation law towards prevention against psychosocial harm.

**The Hon. DAMIEN TUDEHOPE:** Ms Campbell, thank you for being here. You might be able to answer this question, or alternatively Ms Wheeler might be able to answer it. I take it an amount of modelling has been done in relation to the proposal which we are now considering?

**SONYA CAMPBELL:** That's correct.

**The Hon. DAMIEN TUDEHOPE:** If in fact the claims model of 30 per cent whole of body impairment was imposed, how many claims does that modelling show for psychological injury would be maintainable?

**SONYA CAMPBELL:** I might refer that question to either Ms Wheeler or Mr Liu.

**DAI LIU:** Based on the current data we have we believe it is 27 injured workers who will make it past the WPI threshold.

**The Hon. DAMIEN TUDEHOPE:** Did you say 70?

**DAI LIU:** It's 27.

**The Hon. DAMIEN TUDEHOPE:** You agree with that, do you, Ms Campbell?

**SONYA CAMPBELL:** Yes, that's the modelling that we have been provided from icare.

**The Hon. DAMIEN TUDEHOPE:** How many claims are there at the moment?

**DAI LIU:** In terms of claims, there are about 350 odd claims—psychological claims—that get a WPI threshold of 21-plus. For the team of non-emergency services, there are around—these are all per annum numbers—200 psychological claims per annum that get WPI assessments about 21 and above.

**The Hon. DAMIEN TUDEHOPE:** So all those people who would currently have claims would not be covered by this new 30 per cent model, except for the 27?

**DAI LIU:** It's not that straightforward, I must admit. Part of it is there will be behavioural changes as the bars change. There will be behavioural changes in that, so these are the data I can provide that we know of. How it will play out—there's a bit more complexity to that, especially around the behavioural changes.

**The Hon. DAMIEN TUDEHOPE:** But the modelling must indicate to you the reduction in claims on the scheme if this was put in place?

**DAI LIU:** It does.

**The Hon. DAMIEN TUDEHOPE:** You say that will be reduced by what percentage?

**DAI LIU:** Those are the numbers I've just talked through. I've got the numbers. I don't have the percentages. I can calculate them, if you'd like.

**SONYA CAMPBELL:** Mr Tudehope, I believe the Treasurer agreed this morning that we would provide modelling to this Committee and I think that's being worked on currently to provide—

**The Hon. MARK LATHAM:** Costings.

**SONYA CAMPBELL:** Yes, the costings.

**The Hon. MARK LATHAM:** He had them in front of him, but you're working on them separately.

**SONYA CAMPBELL:** No, the costings—

**The Hon. DAMIEN TUDEHOPE:** It's the sanitised model we're going to get, is it?

**SONYA CAMPBELL:** That's not what I've said.

**The CHAIR:** Order! I think we should deal with one witness at a time, firstly.

**The Hon. DAMIEN TUDEHOPE:** Yes, thank you.

**The CHAIR:** Secondly, there is an opportunity to put the question in very clear terms and an answer is to be returned. That's the way we do it and that's the way we've always done it.

**The Hon. DAMIEN TUDEHOPE:** Has the modelling been done in relation to premiums—premium reductions or premium increases if, in fact, this model was put in place?

**TONY WESSLING:** Maybe I can take that question, Mr Tudehope.

**The Hon. DAMIEN TUDEHOPE:** For the NI, I'm obviously talking about.

**TONY WESSLING:** For the NI, as you are aware we go through a premium review process every year. The challenge we have at the moment is that our current premiums are below the break-even rate for the scheme. At this stage, our view is that—and there's a deficit that needs to be recouped, so we would go through a process to look at the needs of the scheme, both in terms of operational break-even rate as well as the deficit that exists. That work would have to happen through our regular annual premium setting process. What these reforms would help contribute to is further deterioration in that operational break-even premium rate.

**The Hon. DAMIEN TUDEHOPE:** So there may be no reduction in premiums. Is that what you're telling me?

**TONY WESSLING:** We'd have to go through a process for it.

**The Hon. DAMIEN TUDEHOPE:** That modelling has not been done?

**TONY WESSLING:** Our current premiums are set upon a journey over the next several years to close that deficit. At the moment, with the funding ratio of 82 per cent, our target funding ratio sits at 130 per cent. We will need to charge premiums to get back to that target ratio. These reforms help to address the ongoing deterioration of that operational break-even premium, but it will still take many years to close the deficit that exists.

**The Hon. DAMIEN TUDEHOPE:** If we adopted a more preventive approach in relation to claims, we could, in fact, achieve the same result, could we not?

**TONY WESSLING:** If you look at what's proposed in the exposure draft, it talks a lot to modernising the scheme, both in terms of the benefits but also greater prevention activities. So, yes, you're right.

**The Hon. DAMIEN TUDEHOPE:** What we've heard is that, in fact, at 30 per cent, WPI is going to reduce the number of psychological claims down to 27.

**TONY WESSLING:** I think the modelling that Mr Liu has done in that regard is in relation to looking at existing whole person impairment thresholds. The behaviours will change as the scheme changes. In the exposure draft, there are a number of different measures that will change the number of injuries through greater prevention activities that work through the system.

**The Hon. DAMIEN TUDEHOPE:** What behavioural changes do you anticipate?

**TONY WESSLING:** From prior experience, we've seen that the way the scheme is set up will change the behaviour of the scheme as it progresses.

**The Hon. DAMIEN TUDEHOPE:** But what does that mean?

**TONY WESSLING:** Since the reforms were introduced in 2012, we've seen the number of claims reaching higher whole person impairments at much greater rates than when the legislation was introduced back in 2012, by example.

**DAI LIU:** Can I clarify an earlier answer, please? The numbers given are for ongoing benefits past the entitlement period, not the total number of psychological injury claim numbers. The other thing to note in terms of behavioural impacts around thresholds is we often observe that wherever you set thresholds, you have a bulk of injured workers who just pass the threshold when that is reasonable, because once past that point, your entitlements aren't the same. If you set new thresholds, we think some of these assessments and how they turn out would be different because, all of a sudden, the bar is higher. People would do more to obtain the higher WPI assessments.

**The Hon. DAMIEN TUDEHOPE:** Ms Campbell, the Treasurer threatened this morning to make no further contributions to the TMF. What would be the impact of that?

**SONYA CAMPBELL:** Mr Tudehope, as you know, the NAHLP policy is no longer in place—

**The Hon. DAMIEN TUDEHOPE:** Yes, I was going to come to that.

**SONYA CAMPBELL:** —and the new contributions and transfer framework is operating. We are continuing to monitor the liability valuations for the TMF, together with investment returns, to provide advice around whether contributions would be required. But as the Treasurer said this morning, he is not proposing to make a cash injection into the TMF until the reforms are considered before Parliament.

**The Hon. DAMIEN TUDEHOPE:** What will be the impact on the TMF be if he in fact does that?

**SONYA CAMPBELL:** At the moment, Mr Tudehope, the ratio is in excess of 100 per cent, in terms of assets to liabilities. There are various factors that will influence that, and that would be a decision for the Treasurer, under the new framework, as to whether new contributions would be made.

**The Hon. DAMIEN TUDEHOPE:** But what's the impact of not making any further contributions?

**SONYA CAMPBELL:** At the moment, there is no impact because icare has sufficient assets to meet its liabilities under the ratio.

**The Hon. DAMIEN TUDEHOPE:** What you're saying is, then, that the threat this morning was an idle threat. Is that what you're telling me?

**SONYA CAMPBELL:** That's—

**The CHAIR:** Can I just intervene here. This is for the benefit of the witness. The language being used is "threat", and that's okay. I understand the language you're using. But I don't think it's fair on the witnesses, who are not politicians, to be led into answers where the word "threat" is placed. The Treasurer was here today. He explained and announced the position. I simply make the point that the witness just ought not be presumed to have accepted that word you're using. That's the only point I make.

**SONYA CAMPBELL:** Thank you, Chair. Obviously I can't speak to opinions of the Treasurer, Mr Tudehope. But the position I'm stating is around the short term, and what we're looking at—or what they're talking about as part of the reforms is the long-term sustainability.

**The Hon. DAMIEN TUDEHOPE:** But the TMF is a self-insurer, is it not?

**SONYA CAMPBELL:** Yes.

**The Hon. DAMIEN TUDEHOPE:** So it insures government workplaces?

**SONYA CAMPBELL:** Correct.

**The Hon. DAMIEN TUDEHOPE:** In those circumstances, there would be no reduction in the ability to make claims on the TMF.

**SONYA CAMPBELL:** I'm not sure I understand the question that you're asking.

**The Hon. DAMIEN TUDEHOPE:** The current claims model remains in place, and you'd be able to continue to make claims on the TMF, and the self-insurer would be responsible for those claims, would they not?

**SONYA CAMPBELL:** Correct.

**The Hon. DAMIEN TUDEHOPE:** So the decision—if that was the Treasurer's decision—not to make the payment in accordance with the current guidelines relating to the net asset holding policy, in effect, would not have any impact in relation to the ability to make claims.

**SONYA CAMPBELL:** Yes, I think that's correct, Mr Tudehope.

**The Hon. DAMIEN TUDEHOPE:** And the liability of the government for those claims would remain the same?

**SONYA CAMPBELL:** That's correct.

**The Hon. DAMIEN TUDEHOPE:** It would just be a different manner in which you enter that potential liability on your balance sheet.

**SONYA CAMPBELL:** Well, the liability valuations are reflected in the budget and the balance sheet on an annual basis.

**The Hon. DAMIEN TUDEHOPE:** Yes, but the scheme at the moment requires the Government to, in fact, transfer money to the TMF to make sure that it reaches a particular percentage relating to the net asset holding policy, does it not?

**SONYA CAMPBELL:** No, the net asset holding policy no longer applies. The contribution and transfer framework has taken its place, and there are various principles in there that will determine whether a contribution should be made in the context of the whole one fund.

**The Hon. DAMIEN TUDEHOPE:** So what you have indicated is that there is a new contribution and transfer policy?

**SONYA CAMPBELL:** Correct.

**The Hon. DAMIEN TUDEHOPE:** Is that in a document?

**SONYA CAMPBELL:** It is in a document.

**The Hon. DAMIEN TUDEHOPE:** Can we have a copy of that document?

**SONYA CAMPBELL:** It's not published. It's a Treasury internal document. I'd have take that on notice and come back to you, Mr Tudehope.

**The Hon. MARK LATHAM:** Thank you to the witnesses. Just following up there, Ms Campbell, what would be the medium-term impact if the Treasurer's quasi threat was carried out?

**SONYA CAMPBELL:** I can't speak for the Treasurer, Mr Latham.

**The CHAIR:** I think that's slightly cavilling with what I said earlier.

**The Hon. MARK LATHAM:** We can use plain English here, can't we? What are we, the PC society?

**SONYA CAMPBELL:** Our job in Treasury is to provide advice. We will monitor the asset to liability ratios, and the Treasurer will make decisions on whether contributions would be made.

**The Hon. MARK LATHAM:** But what's your projected impact of no further contributions to the top-ups?

**SONYA CAMPBELL:** I can't speak to that.

**The Hon. MARK LATHAM:** Why can't you speak to that?

**SONYA CAMPBELL:** There are a range of varying factors, Mr Latham, that would make that determination.

**The Hon. MARK LATHAM:** Has Treasury got any forecasts that it has provided to the Treasurer?

**SONYA CAMPBELL:** We receive the liability valuations from icare. In relation to the TMF, we also monitor the investment returns, and there's a combination of those that determines the position of the TMF at any particular point in time.

**The Hon. MARK LATHAM:** What do those forecasts show three years from now if there's no top-up?

**SONYA CAMPBELL:** I don't have those numbers, Mr Latham.

**The Hon. MARK LATHAM:** Can you take that on notice?

**SONYA CAMPBELL:** I can, yes.

**The Hon. MARK LATHAM:** The Treasurer painted in his evidence quite a dire picture of the position of the TMF. He said that there's been a \$2.6 billion writedown to be reported in the next State budget, which is next month. Sans reform, that is 2.6 down, and that's just six months after the last writedown. Is that a correct assessment of the writedowns?

**SONYA CAMPBELL:** The budget will be released next month and those numbers I don't think have been finalised, but that's the advice that has been given to the Treasurer, based off the valuations from icare.

**The Hon. MARK LATHAM:** Okay. They're your numbers that he has repeated today about the valuation, the writedown.

**SONYA CAMPBELL:** Based off the valuations from icare.

**The Hon. MARK LATHAM:** Right, and is it six months after the last writedown?

**SONYA CAMPBELL:** Well, icare undertake their liability valuations on a six-monthly basis.

**The Hon. MARK LATHAM:** Mr Liu, is that right?

**DAI LIU:** That is correct.

**The Hon. MARK LATHAM:** What was the previous writedown amount six months ago? You can take that on notice.

**DAI LIU:** Can I please take that on notice?

**The Hon. MARK LATHAM:** Maybe give us the writedowns for the last couple of years, and any projections you've got for the future forecast.

**SONYA CAMPBELL:** We'll have that information, Mr Latham. Just give us a moment.

**The Hon. MARK LATHAM:** Just take it on notice. We're not going to solve the problems of the world here today, or this bill. If you can just provide it at your convenience, that would be helpful. Ms Campbell, what are the origins of this exposure draft? To the best of your knowledge, where did the process start and what was the input of Treasury?

**SONYA CAMPBELL:** I might actually hand to my colleague Ms Wheeler if you'd like to answer that.

**The Hon. MARK LATHAM:** Ms Wheeler, please.

**ANDRÉE WHEELER:** Certainly, Mr Tudehope.

**The Hon. DAMIEN TUDEHOPE:** No, I'm better looking than him, come on.

**The Hon. MARK LATHAM:** Don't tell me that.

**ANDRÉE WHEELER:** Sorry, Mr Latham. My apologies.

**The Hon. MARK LATHAM:** I've got a psychological injury now. I'm buggered.

**ANDRÉE WHEELER:** The exposure draft is the result of a series of advice that has been provided to government with Treasury working in collaboration with the Department of Customer Service, SIRA and icare and a taskforce that was formed from 10 March this year.

**The Hon. MARK LATHAM:** What are the origins of the taskforce that was to deal with this looming financial crisis?

**ANDRÉE WHEELER:** There has been proceeding advice provided to government both from ourselves as well as from icare and SIRA in relation to the financial positions of each of the schemes and the growing trends in relation to psychological injury.

**The Hon. MARK LATHAM:** Could you take on notice the membership of the taskforce for the benefit of the Committee, please?

**ANDRÉE WHEELER:** Certainly.

**The Hon. MARK LATHAM:** Who set up the taskforce?

**SONYA CAMPBELL:** I believe I did, Mr Latham, at the request of the Treasurer.

**The Hon. MARK LATHAM:** At the request of the Treasurer?

**SONYA CAMPBELL:** At the request of the Treasurer.

**The Hon. MARK LATHAM:** What was the nature of that request?

**SONYA CAMPBELL:** I think there are various different agencies and Ministers across government that have responsibility for aspects of the scheme. The taskforce was a request to co-locate everybody in one place so that we could have a focus on developing the options and advice to government that have informed the bill.

**The Hon. MARK LATHAM:** Right. Mr Liu or Ms Wessling, is the first you heard of the development of this legislation when they put you on the taskforce?

**TONY WESSLING:** Since this Government came to power, we've had ongoing, frequent discussions with Ministers' offices, with SIRA, with Treasury around the challenges that we are facing. We've been working with those same parties around areas like whole-of-government return to work. We've been discussing for over two years the need for some sort of reform, so it's been a very long, ongoing discussion.

**The Hon. MARK LATHAM:** Right, so ongoing and as soon as the Treasurer came into office, knowing how much he's loved and taken an interest in icare over the years, you briefed him on the financial difficulty and the needs for these kinds of reforms.

**TONY WESSLING:** We've been providing regular briefings to the Minister's office, yes.

**The Hon. MARK LATHAM:** Did you suggest at any time in this process the type of reforms that are in the bill?

**TONY WESSLING:** That's not a role for icare. We've been providing advice on the experience we're seeing in the scheme.

**The Hon. MARK LATHAM:** Just on those, to the Treasury representatives, have you been involved in the drafting of the bill as such? The different provisions. Section 8E is particularly contentious, meaning a "relevant event". Some of these things contradict each other or are open-ended defined. Who actually put these provisions together?

**SONYA CAMPBELL:** I would say it's a combination of the taskforce—

**The Hon. MARK LATHAM:** The taskforce did?

**SONYA CAMPBELL:** The Department of Customer Service led on the drafting instructions, but the taskforce together debated different aspects of the policy positions to give advice to government and, ultimately, government direction has informed the bill.

**Ms ABIGAIL BOYD:** When you say you have done modelling to work out the impact of this, have you done modelling based on every single aspect of this discussion paper that's been given to us today, or just on the obvious things like the WPI and those things? As in, have you looked and gone each claim, if it was to jump through all the hoops, how many would be excluded?

**DAI LIU:** I should probably explain the actual nature of actuarial work.

**Ms ABIGAIL BOYD:** Don't take very long, though, please.

**DAI LIU:** I will try to be short.

**The CHAIR:** You can answer the question as required, okay.

**DAI LIU:** We look at how the claims will go through the various entitlements and thresholds and barriers. We then actually look at it at a portfolio level. It's not an assessment of every individual, but at a portfolio level cut up to the dimensions required depending on what we're looking at. We provide a lot of actuarial advice to government regularly on things that impact the scheme.

**Ms ABIGAIL BOYD:** Apologies, if it's okay with you, if I could just interrupt you there because I have a very short period of time. If I could just ask instead, if I can go to Mr Wessling, the impact of AASB 17, which takes effect from the beginning of the next financial year—so in just a month and a bit. What is the impact on the bottom line for icare, and would that change if the Treasurer didn't put money in as he's threatening to do?

**TONY WESSLING:** Ms Boyd, I might ask Mr Liu to give you the proper answer to that.

**DAI LIU:** I'll be quick. The AASB 17 does not apply to the TMF. The TMF is a self-insurance scheme so that accounting standard does not apply. The accounting standard does apply for the Nominal Insurer as it issues insurance policies. It is a brand-new insurance reporting standard. There are two larger financial pieces. One is around the concept of risk adjustment.

**Ms ABIGAIL BOYD:** Sorry to interrupt again. In icare's submission in June 2022 in relation to the TMF, it talked about a \$3.68 billion hit to icare. Would the accounting treatment you're talking about where it's not applying apply if the Treasurer did not put in the money required to run the scheme?

**DAI LIU:** No, it won't apply. We've done more work since AASB 17 won't apply to the TMF.

**Ms ABIGAIL BOYD:** Can you provide on notice perhaps the analysis of how that works?

**DAI LIU:** Of course.

**Ms ABIGAIL BOYD:** Thank you. I just want to move on. Does icare still collect data on the number of injured workers who suicided as a result of section 39 and section 59A?

**TONY WESSLING:** Thank you for your question, Ms Boyd. At the last budget estimates you asked me that question. We had stopped reporting to SIRA through the midpoint of last year. We do continue to collect information on injured workers who self-harm and suicide, yes.

**Ms ABIGAIL BOYD:** I've spoken to a lot of people. My office comes into contact with a lot of injured workers. I have spoken now to multiple injured workers who have psychological injuries above the 20 per cent threshold who tell me that if they were to have been cut off at 2½ years, for instance, because they wouldn't have met this new threshold of 31 per cent, that would have been just at the point where they were particularly at risk of suicide, or that they would have been needing to sell their house, for example. Have you modelled the potential number of suicides that these reforms would likely result in?

**TONY WESSLING:** No, we haven't.

**Ms ABIGAIL BOYD:** Is that a concern for you?

**TONY WESSLING:** Clearly, we take self-harm and suicide very seriously. Over the last years we've set up a team to deal with that. We've set up programs and processes to help manage, with the introduction of section 39, the exit of injured workers off the scheme. That is very central to us. We, obviously, maintain the statistics around that. We have a team who is continuing to focus on ensuring the wellbeing of those injured workers.

**Ms ABIGAIL BOYD:** Given the evidence that the performance of the claims managers has been responsible for some of the return to work problems—I am talking about the inquiries we've had before where we have talked at length about the involvement of lawyers and people surveilling workers and all of these other issues that have led people to not only delay their payments and actually getting to the point of being given compensation, but then the high rates of when those claims actually make it through the system to have actually been found to be valid all along. What work has icare done to actually hold those claims managers to account for their involvement in stopping people getting better and getting back to work?

**TONY WESSLING:** Perhaps I will just outline that. Since I have been in this role, we have had a significant focus on lifting the empathy and the way in which claims managers work with injured workers. As you are aware, we have rolled out professional standards, which do deal with that as well. We've rolled out guidelines in areas around managing sensitive claims. In regards to claims service providers, our contract has a minimum standard of service. There are quality measures that we track. As you know, we've introduced our complaints process over the last few years. We have a standard complaints system and a standard way of tracking complaints and escalating complaints.



**Ms ABIGAIL BOYD:** I apologise for interrupting, but could you please take on notice the number of workers in the NI and workers in the TMF who have a WPI of more than 15 per cent, more than 20 per cent and more than 30 per cent? That would be very useful. Thank you.

**The Hon. BOB NANVA:** I want to follow up on one of Ms Boyd's questions from a little bit earlier about the projections for the number of workers who might be affected by the reforms. I will quote from a submission that the Committee received from Ms Roshana May. She states:

If the exempt workers are not affected by the Bill then the numbers of workers with psychological injury claims within the public sector (Government/TMF) to whom the bill is addressed is significantly reduced due to the fact that the largest number of psychological injury claims arise in 'Public Administration and Safety' ...

Do you agree with that observation?

**TONY WESSLING:** I haven't read the submission that you're referencing but my understanding of the exposure draft is that a lot of the psychological injury claims that we see in the TMF today—and a large part of that is the emergency services exempt portfolio—would not be subject to these reforms. So, yes.

**The Hon. BOB NANVA:** I might move on very briefly to the report of the Cumpston Sarjeant independent review of icare's financial sustainability, which was published a few years ago. It identified the principal risks to the financial sustainability of the Nominal Insurer as follows, in decreasing order of financial significance:

- (a) the amount of premiums that will be collected;
- (b) the investment return on financial assets;
- (c) claims costs ... and
- (d) other expenses ...

Has there been an assessment of the deterioration made to the scheme that is attributable to each of those principal risks and the significant changes to them?

**TONY WESSLING:** I don't believe I can pull something for you right now on that over time. But I probably would add that of the four things that you just called out, premiums are obviously extremely important. We collect premiums to pay for claims for the lifetime of the claims. We have clearly been under pricing premiums over a long period of time. We are in the process of closing that. A large chunk of the deficit has been a result of the under collection of premiums against the break-even premium that I spoke about. The second one you mentioned is claims. Through the valuation, you can see the deterioration over time of claims, which, in large part, is to do with the volume of psychological claims and the number of claims reaching higher whole person impairment thresholds.

There are many other drivers, but they are certainly two big drivers. That has been a very big driver of the funding ratio decline over time. The third is investments. Generally, our investments portfolio has worked quite well. There is a volatility at the moment, but that has generally met the targets that we set. The forth one, the operational expenses, makes up a very small proportion of the costs of the scheme. It is really the first two—the premium deficit and the claims experience over time.

**The Hon. BOB NANVA:** Do you agree with the conclusion from that report that the principal risks to the financial stability of the Nominal Insurer are those risks, in that order?

**TONY WESSLING:** Yes.

**The Hon. BOB NANVA:** Has an assessment been made with respect to the deterioration of the scheme with respect to the rising number of self-insurers and the reduced return to work rates over time?

**TONY WESSLING:** That would be a matter for SIRA, which regulates the scheme at that level. You would probably see in the Cumpston Sarjeant report a reference to the nature of that risk to the Nominal Insurer. I think that's a question for SIRA.

**The Hon. BOB NANVA:** I will turn to "other expenses". If my numbers are right, approximately 67 per cent of benefits paid under workers compensation are paid directly to workers and approximately 30 per cent are direct benefits paid to rehabilitation services and medical specialists. If that is the case, can we be sure that we are getting value for money for the 30-odd per cent that is spent on rehabilitation and medical expenses, particularly with medical fees?

**TONY WESSLING:** That's something that we have work to do on over time to make sure that we do get the best outcomes for the services that are provided to injured workers, whether they are medical services or rehabilitation services.

**The Hon. BOB NANVA:** It's not an insignificant amount of money and it's not an insignificant impost on the scheme. Obviously, one way of ensuring the sustainability and solvency of the scheme is through access to benefits and the quantum of benefits, but, surely, a significant 30 per cent impost on the scheme warrants a fair bit of attention, doesn't it?

**TONY WESSLING:** It does. Through our day-to-day management action, we are looking at the effectiveness of that spend. We are looking at reducing leakage. You have heard about fraud. We are looking at managing, where we can, the quality of the services for injured workers.

**The Hon. BOB NANVA:** Have the costs been tracked over time and benchmarked against other schemes in other jurisdictions?

**TONY WESSLING:** We certainly track all of those expenses over time. Maybe we can ask Mr Liu?

**DAI LIU:** One of the primary purposes of the workers compensation scheme is to support injured workers in their recovery to work. Medical treatments are a very key part of that.

**The Hon. BOB NANVA:** I suppose I am talking about the cost and the schedule fees of the medical treatments.

**DAI LIU:** I understand. I just want to say that a huge cut to medical treatments may look good but it could actually potentially increase the cost of the scheme.

**The Hon. BOB NANVA:** I am certainly not talking about a cut in medical treatments. I am talking specifically to the specific fees.

**DAI LIU:** Yes, the medical costs are tracked. In recent years, they have been reasonably stable. Quite a time period back, we had a period where medical costs increased quite significantly, but that has since stabilised for the last three years or so. We monitor it pretty much every quarter. In the most recent quarters there have been some increases in medical costs that we have seen. We are analysing that and trying to work out what is actually happening. We are providing feedback to the business and responding to that appropriately.

**SONYA CAMPBELL:** If I may add, SIRA has a regulatory function in respect of this. You may wish to ask those questions when they appear this afternoon.

**The Hon. BOB NANVA:** I may change tack very briefly before I pass to my colleague. In terms of return to work rates for non-physical injuries, there seems to be a significant differential between return to work rates for psychological injuries with the Nominal Insurer compared with self insurers. Do you have any observations on why there might be such a difference in the return to work rates? In the numbers I have for February 2025, at four weeks the return to work rate for the Nominal Insurer was 19 per cent, versus 33 per cent for self-insurers. At 26 weeks, it was 47 per cent versus 65 per cent. At 52 weeks, it was 57 per cent versus 68 per cent. Is there an obvious explanation for that?

**TONY WESSLING:** I might start and then Mr Liu might jump in as well. There are approximately 70 self-insurers. They tend to be the very large organisations, which have a greater scope for the provision of suitable duties to return injured workers to the workplace. For the Nominal Insurer, the vast majority of the employers are small employers. They're structurally quite different in terms of the opportunities to return to work. If you overlay that with psychological injuries, we have heard that the growth of psychological injuries has been around work conflict-type claims, and the larger organisations and corporations have a greater opportunity to move people around and find suitable duties than small businesses that might only have a handful of people working for them. That's the primary explanation for that quite substantial difference that you see. In the Nominal Insurer, we can see differences in return to work between our smallest businesses and largest businesses that reflect that, as well.

**The Hon. BOB NANVA:** Whatever the merits of the situation, doesn't that mere fact alone suggest that the rise of self-insurers and the inability of the Nominal Insurer to spread risk do have a substantial impact on the sustainability of the Nominal Insurer scheme?

**TONY WESSLING:** That would be a consideration for SIRA.

**The Hon. ANTHONY D'ADAM:** Can I just take you to your submission on page 6. There is a graph there of the TMF claims indicating an increase from 18 per cent in 2022-23 to 21 per cent, and then it gives the raw numbers. Of that 4,555 in 2023-24, how many of those would be emergency services employees that are not covered by these reforms?

**TONY WESSLING:** Mr D'Adam, we'll just see if we've got that.

**DAI LIU:** We don't readily have it. We might just take that on notice. It is roughly half—

**The Hon. ANTHONY D'ADAM:** Roughly half?

**DAI LIU:** —but maybe we'll come back with the actual numbers.

**The Hon. ANTHONY D'ADAM:** So we are talking about maybe in the order of 150 more claims than the previous, in terms of the ones that would be affected by these reforms. Is that correct?

**TONY WESSLING:** Can you outline your maths again for me?

**The Hon. ANTHONY D'ADAM:** Well, because you were saying that half the difference between 443 to 550—sorry, 250 of those would be claims that are covered by the reform proposal.

**TONY WESSLING:** Perhaps we could come back to you on notice to answer your question.

**The Hon. ANTHONY D'ADAM:** I suppose I wanted to come back to this question around the long-term trajectory of the schemes, both Nominal Insurer and the TMF. We had an inquiry by this Committee in 2022. Icare appeared, and there was no warning of catastrophic collapse of the scheme back then. The increases don't seem like huge numbers in relation to TMF. Certainly, Nominal Insurer, similar—the numbers don't seem huge. Is it being over-egged that this is an impending crisis? The Treasurer was talking about insolvency earlier today. How long has the Nominal Insurer got before it is insolvent?

**TONY WESSLING:** As we shared today, the funding ratio is 82 per cent. That means there is a deficit of funding in the Nominal Insurer, and that has grown over time. That funding ratio has been reducing for the best part of—for many, many years. That funding ratio has gradually declined, so, as that deficit grows, that burden needs to be borne by future premium

payers. The issue is if we don't stem the ongoing growth of that deficit, the future generations of employers will have to pay a much higher—

**The Hon. ANTHONY D'ADAM:** Insolvency, is that?

**TONY WESSLING:** Every year we publish our accounts and the Audit Office reviews those accounts. We have no issue paying claims over the short term. We've got assets to cover the cost of claims for years to come. This is about the long-term sustainability of the scheme and the ability to continue to pay claims well into the future and for the next generations.

**Ms ABIGAIL BOYD:** So not insolvency.

**The CHAIR:** I am just conscious of the time. That gets us to 12.59 p.m. I thank you all very much for coming along to provide answers to questions, both technical and more broad. We appreciate that very much. For questions taken on notice, the secretariat will liaise with you.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**Mr SHANE BUTCHER**, Member, Injury Compensation Committee, Law Society of New South Wales, affirmed and examined

**Mr TIM CONCANNON**, Chair, Injury Compensation Committee, Law Society of New South Wales, sworn and examined

**Mr DOMINIC TOOMEY, SC**, Senior Vice-President, New South Wales Bar Association, affirmed and examined

**Mr TONY BOWEN**, Member of the New South Wales Bar Association's Common Law Committee, sworn and examined

**The CHAIR:** I confirm that the submissions of both organisations have been received, and we're grateful for that. The New South Wales Bar Association's submission, No. 41, has been processed, uploaded to the inquiry's webpage and, stands as evidence to this inquiry. With respect to the Law Society, your submission, No. 34, has been formally processed, uploaded to the webpage, and stands as evidence to the inquiry. We now have the chance to hear oral evidence from yourselves. We have Committee members from Government, crossbench and Opposition. We share out equally with the time available, but we'll first invite both organisations, if you wish to do so, to make an opening statement.

**DOMINIC TOOMEY:** I'm happy to commence. Mr Chair, we would like to make some very brief opening remarks. The Bar Association thanks the Committee for the opportunity to address it. At the outset, we wish to say that the consultation in respect of these undoubtedly wide-ranging proposed changes—potentially affecting millions of workers and their families—has, in the association's view, been unduly rushed; meaning, among other things, that the association has been denied the ability to offer all the assistance it would otherwise have wished to, particularly if we had been granted access to the latest financial data and actuarial modelling. It is, with respect, unsatisfactory that we should be asked to address this important inquiry blindfolded and that this Committee should be asked to report perhaps from a similarly disadvantaged position.

That said, we can address the effect of the proposed changes on workers who suffer mental health disorders which have arisen out of, or in the course of, their employment. The impact on many would be quite devastating. At the most fundamental level, there will be workers who have an undisputed, ongoing and very serious psychological injury who will be denied access to both medical treatment and income-replacement compensation. Moreover, the requirement that there be a "relevant event", as defined in proposed section 8E, before any compensation will be payable represents a very significant narrowing of eligibility for compensation. It removes, for one, the right to recover for workers who have suffered psychological injury by reasonably inherent pressures and stresses of their work. For many, those pressures are real and the psychological effect debilitating.

The fig leaf offered to workers with a work-pressure disorder, in the form of the payment of medical expenses, is quite inadequate and unfairly places the obligation on employers personally to pay those expenses, even though they have taken out compulsory insurance. Even more concerning is that section 8E would, on one reading—indeed, perhaps on a plain reading—not even afford compensation to those who witness the immediate aftermath of catastrophic accidents, either in their workplace or, in the case of frontline workers, in the community which they serve. The definition refers only to:

(c) witnessing an incident that leads to death or serious injury, or the threat of death or serious injury, ...

If that is the intended effect, it is radical. I wish to make one correction to our written submission. Paragraph 70 in our submission is in error, and we, with respect, withdraw it.

**The CHAIR:** Thank you. That is noted and will be done.

**DOMINIC TOOMEY:** Thank you. The requirement in respect of cases involving workplace bullying and harassment that a finding be obtained, presumably from an IRC with expanded jurisdiction, before a claim can even be notified flies in the face of the accepted wisdom that the earlier a person receives treatment for their condition, the more likely they are to recover and to return to work. The combined effect of proposed section 8E (e) to (g), 8F and the existing section 254 (1) of the WIM Act will be to deny genuinely injured workers the compensation they are entitled to, even under the more stringent injury definition proposed, perhaps for many months, and to subject vulnerable workers to the additional stress of adversarial proceedings. In many cases, that will effectively kill any prospect of an early recovery and return to work and in the long term add to, rather than contain, the cost to the scheme. Such an outcome is not only self-evidently anathema to the most fundamental objectives of a functioning workers compensation scheme but is indeed contrary to the stated objectives of these amendments.

I will briefly address the proposed 31 per cent whole-person-impairment requirement. The threshold of 31 per cent affects numerous entitlements. It is a threshold which will be met in a mere handful of cases. I understand that the Committee has already heard evidence today as to those numbers, and to use the term "handful", based upon my understanding of the evidence that has been given, is apposite. Many of our members—that is, members of the Bar Association; indeed, an overwhelming majority—have never seen a case involving such a high assessment. An assessment of that magnitude would necessarily involve profound occupational and domestic dysfunction and almost certainly hospitalisation, perhaps for multiple and extended periods. Assessments below 21 per cent, let alone 31 per cent, will almost inevitably involve incapacity for work, often for a prolonged period, and the requirement for medical treatment, again, often for extended periods, many as inpatients.

The proposed change in the threshold operates against injured employees in three respects. First, it removes the entitlement to lump sum compensation for all but the most extreme cases. Secondly, it caps at 2.5 years the entitlement to any income replacement payments, and thirdly, it prevents a claim for damages even where there is plain negligence on the employer's part and the worker is profoundly and chronically debilitated by psychiatric injury. We are asked to comment on all these proposed changes and more. The driver for these changes is said to be an increase in the number of claims for psychological injury and a corresponding increase in the cost to the scheme.

As I said earlier, we do not have the most recent financial data or access to any of the actuarial modelling. Though there is publicly available data on the SIRA and icare websites, that data concerns the 2023-24 financial years. An analysis of that data has helpfully been undertaken by Mr Kim Garling in his submission. Given the time constraints, we would simply commend Mr Garling's submission to this Committee. He has debunked some of the hyperbolic language and unfounded assertions that have been made from some quarters. Mr Garling's analysis of the data calls into question the assertion that there has in fact been a dramatic increase in psychological injury claims.

So far as actuarial modelling is concerned, there will be undoubted savings to the scheme in the proposed amendments to the provisions concerning the commutation of entitlements and the ability to resolve by compromise those death claims where there is a dispute as to liability. They are both changes that have been supported by the Bar Association for some time. Without access to the modelling concerning the savings that will inevitably be made from those sensible amendments, we are being asked to comment on other radical changes to workers' rights. The Bar Association wishes to urge the Government to hasten slowly. Savings can undoubtedly be achieved without drastic effects on the rights of the psychologically injured. We have suggested some ways in which that can occur in our written submission. A sober analysis of the data and projections is called for. All stakeholders, workers and employers alike, are entitled to expect it.

Just two further matters, if I may. There are no proposed transitional provisions in the exposure draft. It is presently unclear when such changes as are proposed to be made will take effect and whether they will affect workers who have already sustained psychological injury in the workplace. The final but by no means unimportant matter which we wish to emphasise in the time available is the extensive reliance in the draft bill on regulations or delegated legislation. This is, as we have said in our written submission, to be strongly discouraged. It makes it difficult, if not impossible in some respects, to address the true effect of the proposals. A prime example is in the resort to delegated legislation in the critical definition of the term "relevant event", which affects the question of the entitlement to compensation in every primary psychological injury case. I thank you again for the opportunity to appear, and we hope to assist this Committee as much as possible in the circumstances.

**The CHAIR:** Thank you, Mr Toomey. That is a very helpful and valuable opening statement. I appreciate it.

**TIM CONCANNON:** Thank you for inviting the Law Society to give evidence at today's hearing. I am here in my capacity as chair of the Law Society's Injury Compensation Committee. I am joined by Shane Butcher, a member of the Law Society's Injury Compensation Committee. The draft bill proposes significant changes to liability and the ability of workers to commence claims to be awarded compensation for psychological injuries. Our members, who represent claimants, insurers and employers, agree that reform of the New South Wales workers compensation system is overdue and appreciate the importance of a scheme that is financially viable and not open to abuse. We are disappointed, however, with the limited consultation process for these reforms, which will have a marked impact on the existing scheme.

As set out in the Law Society's submission, the proposed changes, in particular the 31 per cent WPI threshold, will mean that almost all claimants who experience psychological injury in New South Wales will be precluded from making a claim. We suggest, in the interests of compromise, and noting the Government's clearly stated intention to enact immediate savings to the scheme, that changing the WPI threshold to 21 percent would ensure that some workers generally recognised by community standards as being severely impacted by mental health would be able to make a claim, while easing upward pressure on workers compensation insurance premiums.

We draw the Committee's attention to the way in which the combined effect of section 8E and 8G means that no compensation is payable for a primary psychological injury outside of a relevant event or events as set out in section 8E. This would preclude injuries caused by overwork, for example, nurses and doctors subject to continuous un-rostered overtime; verbal aggression from customers or clients of a business, for example, a person who is abused in the course of their work in the hospitality industry; exposure to emotionally distressing material in a high-stress work environment, for example, persons working in child protection and with victim-survivors of domestic violence; a single act of bullying or discrimination on the basis of religion, gender, sexual preference or marital status and other attributes that fails to be protected by this legislation; or attending the aftermath or treating the victims of a motor accident, natural disaster, fire or other accident, given that, arguably, this does not fall within the definition of "witnessing the incident or accident".

We are concerned that some of the proposals will not promote psychological safety in the workplace nor return to work objectives but result in compensation costs shifting to other sectors, including longer term health care and social security. In particular, we draw the Committee's attention to our comments on the operation of the special provisions for primary psychological injuries caused by sexual or racial harassment or bullying. Our submissions have also focused on changes which are not limited to psychological injury claims but will impact the scheme as a whole, such as the new assessment process, which, we suggest, will increase disputes and discourage settlement. It is in the interests of transparency,

accountability and sound law reform and policymaking that the Government provide statistical data on psychological claims which may assist in providing a more nuanced understanding of the pressures facing the scheme. We suggest further discussion with stakeholders about the design of the scheme to ensure it achieves an appropriate balance.

**The Hon. DAMIEN TUDEHOPE:** I probably don't have a lot to add, I must say. Thanks to all of you for being here at such short notice, given the exposure draft and the short time frame. Mr Toomey, is it paragraph (7) that you have withdrawn?

**DOMINIC TOOMEY:** No, it was 70. The submission has unduly confined to the effect of the provision to which it is referring and is therefore invalid for that reason.

**The Hon. DAMIEN TUDEHOPE:** I suppose this arises by virtue of the fact that you have not seen any exposure draft of amendments to the Industrial Relations Act about the new system of having to obtain a certificate from this forum in relation to being able to commence proceedings for bullying and harassment allegations. Do you want to expand on, potentially, the defects of adding this new jurisdiction and what the impact of this process would be on litigants with psychological injuries relating to those particular events, whether it is serious bullying or sexual harassment or racial harassment, as I understand it?

**DOMINIC TOOMEY:** Yes, I'm very happy to and I thank you for the question. One of the matters I should have mentioned in my opening remarks is that it's entirely unclear to us at this stage whether there would be the provision for paid legal representation, for example, for someone who finds themselves in the position of having to seek such a certificate. We would also observe that the person who is being required to seek the certificate is already, by definition, vulnerable by reason of the reasons for their having to do so. We would expect that without legal representation they would be greatly disadvantaged in that process, which we expect would be an adversarial process because there would be another—at least one other—interested party in the outcome.

It is possibly also conservative, what I said in my opening, that it might delay by a matter of months the making of a notification of injury. It could go for many months. We don't know whether there would also be provision for an appeal from any such decision. The combined effect of the proposed provisions and the existing section 254 of the workplace injury management Act is that a notification of the injury cannot even be given until that process has been undertaken. We, with respect, think that this is a misguided reform.

**The Hon. DAMIEN TUDEHOPE:** If the proposal was that there were no benefits payable until such time as that certificate had been issued, in those circumstances the complainant would be required to rely on their own resources.

**DOMINIC TOOMEY:** Indeed. And I might add it's not only that no benefits are payable. All those things have to occur even before notification of the injury can be given, which sets the claim process in train. Once that happens, of course, there may well be some contest about any medical condition, its extent, the extent to which it causes incapacity et cetera.

**The Hon. DAMIEN TUDEHOPE:** Can I ask you to comment on section 11A and the manner in which that operates? The evidence that is often provided is that employers are never successful under the existing section 11A. Is that your experience?

**DOMINIC TOOMEY:** I think I might defer to Mr Bowen on that matter, if I may.

**TONY BOWEN:** I'm happy to take that. I think there is truth to the basis of your question, but it's not unheard of. It's actually addressed in our submission whereby the resources deployed at that stage of a claim and how it's undertaken—in a sense, that it may not be world's best practice, but I don't think it would be fair to say that it's a defence that's never made out.

**The Hon. DAMIEN TUDEHOPE:** Is there a case for strengthening?

**TONY BOWEN:** I think there's a case for discussion about it. I suppose, to give a balanced position, you would have to say that there would be some case for that, particularly in the context of the types of claims that we're discussing, of psychological injury, but I don't see it as a major part of the problem or that would need to be addressed or what is sought to be addressed by these amendments.

**The Hon. DAMIEN TUDEHOPE:** The evidence often is that an employee gets placed under a performance review and, as soon as they get a performance review, they're off on stress leave and the employer, in those circumstances, even seeking to rely on 11A, is rarely successful.

**DOMINIC TOOMEY:** I would only say, if I may, that section 11A covers precisely that situation and it's really a question of the evidence that is marshalled to make out the defence, as we've said in our written submission. Having said that, we would not die in a ditch over the extension of section 11A.

**The Hon. DAMIEN TUDEHOPE:** It wasn't one of the sections you identified as being supportable. The replacement 11A wasn't what you identified as one of the potential sections which you would support.

**DOMINIC TOOMEY:** It's not, that's true, but it's only on the basis that we consider that 11A is sufficient in its present terms and that it's really a question of the evidence that's been marshalled to make out the defence.

**The Hon. DAMIEN TUDEHOPE:** Some other evidence we've also heard is that part of the justification for some of these changes relates to fraud.

**DOMINIC TOOMEY:** Yes.

**The Hon. DAMIEN TUDEHOPE:** Often when the word "fraud" is used in the context of workers compensation everyone thinks that it's the worker who is in fact defrauding the system, but in fact some of the evidence is that it's lawyers and doctors—there's a plethora of people potentially gaming the system. What do you say in answer to that allegation?

**DOMINIC TOOMEY:** Quite plainly, we would decry any instances of fraud on anyone's part. We have not approached this Committee or these reforms as addressing the question of fraud. Fraud, if it exists, should always be weeded out.

**The Hon. DAMIEN TUDEHOPE:** To the extent that there is potential doctor-shopping or the like, does this legislation potentially address some of that issue relating to fraudulent claims?

**DOMINIC TOOMEY:** I don't see how, with respect, but I would be happy to be taken to specific provisions.

**The Hon. DAMIEN TUDEHOPE:** Mr Concannon, do you get complaints in relation to the manner in which the workers compensation scheme currently works in terms of potential fraudulent use or fraudulent claims? And I use the word "fraudulent" liberally.

**TIM CONCANNON:** I think this is the same problem you had in the CTP scheme leading up to the 2017 amendments. It's a question of how you define fraud. Fraud can be someone who decides to see one doctor rather than another. That's not fraud. It may be advantaging the system to the person's benefit, but I don't see that as being fraud. I act for workers solely. I don't act for employers. I don't think I've ever seen a worker that's come to my table who I can say is clearly a fraud, and I've been practising for over 30 years, and frequently in this area of workers compensation. There are certainly claimants who sometimes exaggerate their symptoms, absolutely. There may be a number of reasons why they do so, consciously or subconsciously.

**Ms ABIGAIL BOYD:** Good afternoon to all of you. Thank you very much for your submissions and turning it around in such a short period of time. There's a lot that we could talk about, but can I just ask you about the definition of psychological injury. It's been put to us by some people that we needed to have a definition around psychological injury in order—actually, I don't know. I think the argument is perhaps to only capture so-called genuine psychological injury. I'm really not sure where that has come from and what that means. But from your perspective, if we were to have a definition of psychological injury, would it look like this? If not, what could it look like instead? And should we have one?

**TIM CONCANNON:** Personally, I don't see the need for it. There's a guide called DSM-5 that psychiatrists apply when assessing psychological injury, and there's plenty of evidence there from specialists as to what is and what is not a psychological injury. To require there to be a significant behavioural, cognitive or psychological dysfunction, in my view, places an extra burden on those looking to establish a psychological injury. For the most part, the workers compensation legislation doesn't talk about psychological injury or physical injury; they just talk about injury or disease. So this reference to psychological injury, really, for the most part, I don't think is required. The only references to psychological injury that I can recall in the legislation are those that restrict lump sum impairment compensation, let's say unless you get to a threshold of 15 per cent, and those associated with that part of the legislation. This is certainly a higher bar to jump over, to require there to be significant behavioural, cognitive or psychological dysfunction.

**Ms ABIGAIL BOYD:** How does that work? If you've got a diagnosis of a psychological injury and you can show that it was work related—that you incurred it at work—but, under this legislation, you also have to show that it is causing significant impairment et cetera, unlike you would for a physical injury, how does that then—

**TIM CONCANNON:** It's a higher bar, and it's one—for instance, in the motor accident legislation there is no such requirement for there to be a significant psychological injury. There just needs to be a recognised psychiatric disorder within the meaning of DSM-5. This is an extra burden on top of that.

**Ms ABIGAIL BOYD:** Would this leave it then so that when it comes to a physical injury, we trust a doctor to tell us whether or not someone has a physical injury, but when it comes to a psychological injury, we are putting a legal definition in rather than relying on a medical opinion? Is that the effect?

**TIM CONCANNON:** I think I would say yes to that. But I have to say I don't know whether this psychological injury definition has borrowed from somewhere else, given that we've had only three days to review it. It may come somewhere in DSM-5, but I am not sure.

**DOMINIC TOOMEY:** If we can return to basics, the way the Act operates presently is first to ask whether there has been an injury. That injury will then sound in compensation if it causes incapacity. So, to some extent, the proposed definition of psychological injury is redundant because, unless there is some impairment in earning capacity by reason of the injury, no compensation flows in any event. In respect of medical expenses, unless the injury has given rise to a reasonable need for medical treatment, then medical treatment will not be paid for. I'm wary too of being invited to engage in a drafting process on the run.

**Ms ABIGAIL BOYD:** Would it be fair to say, though, that this is just going to result in more litigation? These are more points then for someone to have to go to litigate these additional hurdles to prove that they have got this psychological injury in the first place?

**DOMINIC TOOMEY:** That is the position that we have advanced in our written submission and I believe that it is a sustainable submission. As I understand it, also, there's some reservation amongst the medical practitioners as to how such a definition would be addressed.

**Ms ABIGAIL BOYD:** There has been some suggestion that certain types of workers would be excluded as they currently are exempt from some of this scheme. Unfortunately my knowledge is patchy on what happened back in 2012, but I understand there are exemptions provided for certain types of workers. It is unclear to me whether those exemptions will continue or not—I am not sure if you picked it up from the draft—but to the extent they do continue in some form, how does that then interact when you've got a multi-contributor claim? You've got different WPIs, for instance, for different employers, or for someone who has had multiple roles—in one exempt role and one non-exempt role—and then you've got this multi-contributor claim. Has that been something that you've thought through at all?

**SHANE BUTCHER:** This is something that has caused great confusion for everyone. We are running multiple different schemes in New South Wales for different workers. We have got coalminers as well. You were referring to emergency service workers. We are creating different classes of workers with different classes of rights. It's challenging, it's complex, and I don't know how an injured worker can easily navigate what they are entitled to if it requires navigation of complex legislation.

**Ms ABIGAIL BOYD:** So, for instance, if you were an RFS worker—which I understand is not exempt—and also you were doing that on a voluntary basis but then you were also in the police, and there were multiple issues that led to your injury—

**TIM CONCANNON:** That's the inequity of the situation. You can have the same rescue scene, let's say, and certain people will be subject to the restrictions of this Act. Those who are not paramedics might be associated with the rescue performance—nurses and the like—yet some will be subject to this legislation and some will be exempted, from what we understand, although I didn't see anything in this draft to confirm that those exempted under the 2012 amendments are also exempted here. The police, the paramedics and firefighters are the most obvious, and coalminers have always been exempted since 1987.

**Ms ABIGAIL BOYD:** Right. Just in the time I've got left, there's been some assertions—and it comes back to what I said about the additional litigation if we've got lots of different hurdles—that that will lead to, effectively, a cost shifting from the scheme onto individuals, particularly businesses having to then bear the cost of defending themselves in front of the bullying and harassment jurisdiction or whatever. Do you have a view, as lawyers—sorry, this is a bit of an ill-formed question—what will happen when we lose a lot of that sort of background precedent for the existing scheme and move to a whole set of new things? Sorry, I've asked two questions there: the impact of that litigation risk on individuals falling outside the system, because of these changes, but then also the change away from established precedent around definitions et cetera to something else. What is the impact in terms of cost?

**TIM CONCANNON:** Those that are forced to mount their argument initially in the Industrial Relations Commission will probably not see a workers compensation lawyer at all in many instances, which is a real concern because the area is a distinct area of practice from industrial relations, in my experience. These people will just be trying to navigate a system without appropriate legal advice, and that is a real concern—quite apart from the health risk associated with the fact that they're going to remain untreated for at least six months whilst their industrial relations dispute is determined by the commission.

**The Hon. STEPHEN LAWRENCE:** Thanks to all the witnesses for coming along. It is much appreciated. Maybe a question for the Law Society reps firstly. In terms of this new jurisdiction in the IRC to determine bullying and certain types of harassment complaints, could you give us a sense of how an average worker would navigate that process: What sort of applications and paperwork would they have to do? If they were to retain a lawyer, how much would it cost them? It's obviously going to depend on the type of claim but, as an approximate starting point, could you give us a sense—

**SHANE BUTCHER:** I think that is really challenging to answer when we haven't seen the bill that goes along with the provisions. There is so much we don't know about what we can expect in that jurisdiction. We don't know whether there will be representation. We don't know whether evidence will be given orally or on papers. We don't know whether there will be right of cross-examination. We don't know whether people are accusing someone of racially harassing them will be cross-examined by the same person. If a worker is accusing their employer of sexually harassing them, we don't know whether they can be cross-examined by the same person. The legal process is complex, and the emotional toll is going to be another layer for the injured worker. It's going to be extremely difficult.

**TIM CONCANNON:** I think it would be fair to say, though—we practise in the work. As I said in answer to the last question, I think you will generally find that workers compensation practitioners are different from employment law practitioners. I don't think either myself or Shane has a lot of experience in the Industrial Relations Commission. There are practitioners on my committee, though, that do have some experience of such matters. We can take that question on notice and see what we can do to find out a more accurate answer to the question you've posed, if that's acceptable to you.

**The Hon. STEPHEN LAWRENCE:** Sure. If you were talking about a discrimination tribunal type of action, which I think is one of the tribunals that are meant to operate informally to some degree, you would certainly be talking about written applications and the cross-examination of witnesses, wouldn't you, in order to substantiate that sort of claim, which has a degree of seriousness to it.



**TIM CONCANNON:** My limited understanding is that you're dealing with two organisations: the equal opportunity tribunal in New South Wales and the Human Rights Commission in the Commonwealth area. As I understand it, a majority of cases exclude legal involvement, but there can be lawyers with leave. Other than that, I must say, I would have to defer to those on my committee with a bit more experience of such matters.

**The Hon. STEPHEN LAWRENCE:** Mr Toomey, we heard some evidence from the Treasurer this morning to the effect that the workers compensation system was designed for physical injuries and is obviously now being used for psychological injuries. In summary, he said that there are quite complex questions in terms of assessing psychological injuries, particularly when assessing their connection to work, as opposed to contributions by virtue of the person's inherent make-up or other problems that they might have outside of the workforce. I think it could be said that the bill—particularly section 8E and the meaning of "relevant event"—is an attempt to engage with that by excluding certain people from the scheme. Do you have any thoughts about alternatives? Accepting the premise that there is a certain type of crisis in the scheme and accepting the premise that some form of limitation might be needed to address that, is there a way to address the issue that is more fair than the exposure draft? For example, are there issues with the standard of proof? Is that something that could be looked at? Is there a case to limit payments overall in psychological cases, as opposed to other cases? Is there some other way, apart from the wholesale exclusion of access to the scheme?

**DOMINIC TOOMEY:** What immediately springs to mind is that there could be further expansion on what constitutes bullying. It has to be accepted that in workplaces around the State, there are, undoubtedly, tense interpersonal relationships between workers, and between workers and employers et cetera. I think that those claims could be further confined by proper definition. That is what immediately springs to mind. I don't have all of the statistics available to me, but going from the 2023-24 annual report from icare, in respect of the claims that fall to be indemnified by the Nominal Insurer, it is said in that report that the drivers for psychological claims are 70 per cent in respect of harassment and work pressure. That is one obvious point where further definition could achieve confinement in the scheme if it be necessary. I would like to take the question on notice, if it is of any assistance to you, because it's an interesting question and one that we, perhaps, ought to have foreseen.

**The Hon. STEPHEN LAWRENCE:** In terms of standard of proof, do you think there is an issue here in the sense that the scheme depends on doctors and psychologists to render opinions? They are normally people who have a therapeutic role. Do you think that the fact that they normally have a therapeutic role means they are not, perhaps, ideally equipped in terms of objective assessments and might tend to favour the patient, in some sense? Is that a dynamic that can be addressed through legislation, do you think?

**DOMINIC TOOMEY:** I might defer to Mr Bowen.

**The Hon. STEPHEN LAWRENCE:** I accept they all have professional obligations. I assume they sign certificates and have codes of conduct and what not. But I wonder whether there is an inherent tension between those two roles. Is that something legislation can engage with?

**TONY BOWEN:** Speaking from my experience—and I have been involved for 20-plus years—I haven't really encountered that. There may be an impression that a particular doctor might be seen as a bit more favourable one way or the other, for the worker or the employer. But it is a fairly independent process. All the assessors have to be appointed, effectively, by SIRA. I don't get the impression—having acted on both sides of the equation—that it is a particular problem, that there is a bedside manner, if you will, that is coming into play. I think, as it is, the system is robust in the sense of the independence of the medical opinions that are being deployed into these disputes. That would be my experience. As you touched upon, they are bound by their own professional obligations of independence. I don't see that as a major issue.

**DOMINIC TOOMEY:** I should add that in the case of—as has been touched on by Mr Bowen—disputes about whole person impairment, there is provision for the referral to a panel, which is appointed by the commission.

**The CHAIR:** I need to draw this session to a conclusion. Thank you all very much for coming along today at relatively short notice. The Law and Justice Committee always enormously appreciates submissions and appearances from the two peak law bodies in this State. It has always been important for us to have that high level of professional and detailed legal knowledge brought before any inquiry. Certainly, this is an important inquiry. I thank both organisations very much. The turnaround time for questions taken on notice is relatively quick. Answers to those questions are due at 5.00 p.m. next Wednesday 21 May. Once again, on behalf of the Committee, thank you all very much.

**(The witnesses withdrew.)**

**Mr IVAN SIMIC**, Solicitor, Taylor and Scott Lawyers, sworn and examined

**Ms MICHELLE MEIGAN**, Solicitor, Taylor and Scott Lawyers, sworn and examined

**Mr SCOTT DOUGALL**, Partner, Carroll and O'Dea Lawyers, sworn and examined

**Mrs RAMINA DIMITRI**, Head of Work and Road, NSW, ACT and WA, Slater and Gordon Lawyers, sworn and examined

**Ms LARISSA ATKINSON**, Legal Counsel, Slater and Gordon Lawyers, affirmed and examined

**Ms RITA YOUSEF**, Senior Member, NSW Branch Workers Compensation Subcommittee, Australian Lawyers Alliance, affirmed and examined

**Mr DAVID JONES**, Partner, Carroll and O'Dea Lawyers, before the Committee via teleconference, sworn and examined

**The CHAIR:** We put it to a group of witnesses this morning the possibility that, with respect to your opening statements—and I expect each organisation represented, at least, and maybe each person here giving evidence will have an opening statement. If everyone makes their opening statement, that will significantly depreciate the amount of time left for our members to ask questions. But if you're prepared to provide us with your opening statements, they will be tabled and incorporated as evidence to the inquiry. If anyone particularly wants to make an opening statement, I am obviously not pressuring you otherwise, but it would expedite the next session and enable the maximum amount of time for questioning, which may be of particular value to members.

I am sorry there was no notice about that consideration I've just raised with you, but if there is no objection to that course of action, I am very grateful for that. Thank you. The Committee secretariat will organise to collect your opening statements, and we'd also like you to email them when back in your offices, if you could. On that basis, expediting that, could I just say that the submissions have been received, processed and those that have made them and others may be on the way, stand as evidence to this inquiry. We are grateful for that. This is obviously an opportunity to provide some oral evidence and some additional evidence.

**The Hon. DAMIEN TUDEHOPE:** I take it you were all in the room while the Bar Association and the Law Society were giving their evidence. Does anyone at the table quibble with any of the submissions made by the Bar Association or the Law Society? Is silence no?

**SCOTT DOUGALL:** Perhaps on one point. With respect to section 11A, I can understand the rationale behind those amendments to some extent, but I think it's otiose. There is no practical benefit to that provision at all. Section 8E (1) defines what is a claimable circumstance, and that does not include action by management. On that basis, there is no reason you would have a defence that the management action was reasonable if you cannot even bring a claim for a management action. So that section is now almost meaningless. That is the only comment I would make with respect to that.

**The Hon. DAMIEN TUDEHOPE:** In summary of that position, your position is that 11A, as it currently stands, is perfectly well functioning and, in fact, the amendment doesn't add or subtract anything from the current position which is adopted by the section?

**SCOTT DOUGALL:** Not quite, no. I would concede that the current provision may benefit from some modification. My point is that if this new section 8E is the law, and that precludes you making a claim because of management action, then there is no need to have a defence that the management action was reasonable, because there just isn't a claim made on management action. It's not available under section 8E.

**The Hon. DAMIEN TUDEHOPE:** Does anyone have any cases where the WPI is more than 30 per cent?

**RITA YOUSEF:** No.

**IVAN SIMIC:** No, not in my over 25 years of experience.

**RITA YOUSEF:** Never.

**SCOTT DOUGALL:** I've had one.

**The Hon. DAMIEN TUDEHOPE:** One? So, effectively, in your experience, if collectively on the table this provision adopted by this new scheme would be to eliminate just about every claim for psychological injury?

**IVAN SIMIC:** Yes. In fact, one of my main concerns is that it pretends to make a carve out for people who have been involved in serious trauma, first responders and things like that—say, a train driver who has the bad luck to have somebody throw themselves in front of the tracks. They're just going to be excluded from the Act.

**The Hon. DAMIEN TUDEHOPE:** If it was, say, 20 per cent or 21 per cent, what then? Is the current level, if it was to be increased from 15 per cent to 21 per cent, what impact would that have on your respective practices?

**RAMINA DIMITRI:** It would still exclude a high number of claims, because the majority of the claims do fall within 15 to 20 per cent.

**The Hon. DAMIEN TUDEHOPE:** There is a number under the proposed scheme—a definition or a number of listed relevant events. Do you have any observations in relation to the manner in which the draft, or the exposure bill seeks to define "relevant events"?

**SCOTT DOUGALL:** I certainly do. I think what is most noticeable about section 8E (1) is just how much is excluded—

**The Hon. DAMIEN TUDEHOPE:** This is back to Simic's point, I assume?

**SCOTT DOUGALL:** Yes. That involves any number of forms of discrimination, which could be based on gender, age, disability, family responsibilities, pregnancy, breastfeeding. It would exclude any adverse comment or act to make someone uncomfortable with respect to their competence, their intelligence, their appearance, their education, their command of English, their political and social views, from the categories where you could make a claim. And I think the majority of what's excluded would be inconsistent with most employers' codes of conduct, and it's certainly inconsistent with Federal and State laws with respect to discrimination. So there's a whole range of categories that would be discrimination that do not give you a right to make a claim under this proposed section.

**The Hon. DAMIEN TUDEHOPE:** Does anyone else want to comment in relation to "relevant events"?

**RITA YOUSEF:** It also excludes examples like overwork—nurses, teachers, doctors, they'd be excluded—and events that are not quite violence or criminal conduct but are still abuse that lead to a psychological injury, as well as, for example, retail workers suffering abuse day in, day out. That's not necessarily violence or criminal conduct, and they'd be excluded.

**The Hon. DAMIEN TUDEHOPE:** There appears to be, amongst a lot of the witnesses that we've heard from, including the union movement, a necessity to amend or have some sort of re-look at the manner in which workers compensation works in relation to psychological injury. If you were doing this and you were in the Government's shoes, what would you be doing in relation to psychological injury? The Treasurer argues that psychological injuries are making the scheme unworkable. Is that your experience? What would you be saying in terms of giving advice in respect of what the Government should be doing to fix this scheme, if it needs fixing? Or is it your view that it doesn't need fixing?

**SCOTT DOUGALL:** I'm happy to answer that if no-one else is. I think there is scope to certainly make some changes. There's a concept of provisional liability, which is a claim being accepted without any real rigour or process to investigate the merits of that claim. That can cover an injured worker for up to 13 weeks. It may well be that for a psychological injury, that period is too long. It would be nice if there was a mechanism—and this might involve the IRC or another tribunal—where if there is an issue of bullying or harassment, there's a fast track to somehow get that issue to be fundamentally addressed so that the root problem and the root cause of that circumstance leading to injury can be addressed. That, to me, would be a proactive way to get people back to work quicker, to reduce any incentive to remain on workers compensation for a longer period of time and to fix the underlying cause of the injury.

**The Hon. DAMIEN TUDEHOPE:** But it could have an adverse consequence that if in fact you've potentially fixed the problem, you may still have an injured worker who has no further entitlement to compensation.

**SCOTT DOUGALL:** That's certainly possible, but—I don't mean to change topic on you—when you have a definition of "bullying" which requires there to be a significant injury, it means that if somebody's unwell and would actually benefit from treatment and the opportunity to resolve the underlying concern with the employer, if they don't have a basis to bring a claim, they've effectively got to wait until they break down and it becomes significant before either their health or the cause of the injuries is dealt with. I'm all for early intervention, but it needs, I think, a two-pronged approach. It can't just be a stick to take away people's entitlements. There needs to be some mechanism to allow the fundamental underlying cause of the injury to be addressed.

**The Hon. DAMIEN TUDEHOPE:** Could I ask you, the solicitor from Slater and Gordon—in your submission, you state:

Access to common law damages serves a broader public purpose and holds negligent employers accountable and incentivises safer workplace practices. Raising the threshold to 31% WPI would severely undermine this deterrent, removing any real consequence for employer negligence in the majority of psychological injury cases.

Do you want to expand on that?

**RAMINA DIMITRI:** I do, because I want to differentiate the no-fault scheme, where people are lodging psychological claims, from the 15 per cent work injury damages threshold that allows people to bring common law claims in negligence. That's a distinction that's not currently made in this exposure draft. So, your traditional person is injured, they claim bullying and harassment, they will lodge a claim, provisional liability will be accepted, and then they either return to work in a gradual way or they access their medical entitlements, they get better and it's all over—the claim is closed. Not all of your people accessing the no-fault scheme will actually move on to be assessed at 15 per cent or over. Those are the people that potentially would have common law claims in negligence against their employer, and there are two gateways to open that. The first is a percentage of 15 per cent whole-person impairment, and that's a medical diagnosis. Then there is an assessment of the facts and circumstances that have actually given rise to the bullying and harassment—either the frank incident or the nature and conditions that have actually culminated in that injury. There are sufficient safeguards in the existing legislation, and the differentiation between no-fault statutory benefits—which are access to your medicals for psychological treatment, focus on a return to work strategy and then, on top of that, weekly benefits while a person is incapacitated and receiving medical certificates—is to be distinguished from a common law claim where someone achieves 15 per cent. We say that that's quite a high bar as is. Not all people will have that. Even if they do get assessed at 15 per cent, the facts and circumstances aren't necessarily negligent so they're not culminating in those common law claims.

**The Hon. DAMIEN TUDEHOPE:** I just want to lastly in this process touch on the process by which we're asking bullying complaints to be handled by getting a certificate from the Industrial Relations Commission. You heard the Law Society give evidence that they have a lot of concerns in relation to how that would work. Do you have any observations or

any concerns about requiring workers to obtain a certificate before they're entitled to lodge a claim for workers compensation in relation to bullying and harassment claims?

**SCOTT DOUGALL:** I've got one further comment. Depending on which tribunal you go to, there is the risk of an adverse costs order against you.

**The Hon. DAMIEN TUDEHOPE:** That's presuming it's a cost jurisdiction.

**SCOTT DOUGALL:** Correct, but some of them are. That would depend which tribunal we're talking about. There's also the risk that there's a finding that the behaviour was obscene, inappropriate, but didn't meet the "bullying" definition so that person's left without any remedy at all.

**IVAN SIMIC:** I'd just like to make a few comments about that. The Industrial Relations Court of New South Wales has only been recently reinvigorated. We're being put in the ridiculous situation to try to do law reform and we haven't even seen what the other major Act is, that is, the amendments to the Industrial Relations Act. Having a bit of experience in that jurisdiction, no lawyer's going to go down there for nothing. The worker will have to pay for it. It will be a not inexpensive process—it will cost some substantial money unless they have the backing of a union who's willing to fund it—to get that finding. It's such a high benchmark, it's almost ridiculous. In our submission there's a good example of a young shop assistant from country New South Wales and what her experience was under the present system. If you can imagine these new laws applying to her situation—it's case study A—you'll see that it's just ridiculous, particularly for people that have suffered severe harassment or acts of violence in the workplace.

**The CHAIR:** Before I pass to the Deputy Chair, Mr Jones had his hand up.

**DAVID JONES:** One further point in relation to that. If people have to go off to another jurisdiction to get their certificate, that very process of delay can delay their recovery. It may well, as a consequence of that delay, cause the condition to be worsened such that there won't be a reasonable return to work outcome. The other thing is this: Many people who are affected by psychological injury will find the process overwhelming, and the thought of having to go somewhere else for the purpose of getting a certificate for the purpose of accessing benefits will be so overwhelming that they won't even go through that process. That's my additional comment.

**Ms ABIGAIL BOYD:** Thank you all for coming along this afternoon. I want to pick up on a couple of points that have already been mentioned. In relation to the section 11A expansion, it's my read that it's still possible for that to come into play, even though it's not included in "relevant event". For instance, if you have an injury caused by one of those relevant events that is not a reasonable management action, but then a reasonable management action was a significant but not the main or predominant cause of the overall injury, you could still get excluded because of that section 11A defence. Is that your understanding as well?

**SCOTT DOUGALL:** Yes, that's correct. If there was an act of violence between two workers and they are both stood down, there could be a contest as to what's causing the incapacity, what's causing the injury—was it the management action or the act of violence? It would have some application in that kind of situation.

**Ms ABIGAIL BOYD:** It seems difficult to meet the definition of vicarious trauma at the moment, but could you also have a situation, for instance, where somebody suffers some sort of vicariously traumatic event, but then the management actions also escalate that—for instance, by not allowing time off, not allowing time to debrief or not having policies in place to allow vicarious trauma debriefing, whatever that happens to be? Could you imagine a case where the reasonable management action was then part of the picture and could be seen as significant?

**SCOTT DOUGALL:** I think that's a good example. That's where it would have some application, yes.

**Ms ABIGAIL BOYD:** Regarding the 30 per cent WPI—I think it's actually 31 per cent, isn't it; it's more than 30—we talked about how that would knock out a huge number of people, not from the scheme as a whole but from certain aspects of the scheme. We are talking about going from five years to 2½ years before you're effectively chucked off the scheme or getting a lump payment at that 31 per cent. In your experience, what would be the impact on people who are currently above, say, 15 per cent but not meeting the 31 per cent, who get chucked off? In your experience, would that cover a significant number of people at the 2½ year mark? Does anyone have anything to say about what the impacts will be?

**LARISSA ATKINSON:** It would effectively mean that there is a large group of people who are without benefits because to meet even the 15 per cent threshold, we have effectively usually got a worker who has never returned to work. We often can't even get workers assessed because they don't meet the criteria to be medically stable to be assessed within 2½ years. It's most often the case that it is coming up on the five-year mark or perhaps beyond that before we can even establish that we can have the assessment performed—let alone resolve any dispute that arises about the percentage—and have that confirmed so that the worker can then access the benefits that come along with being over 20 per cent, which is the payments past five years. If we increase the threshold further, we will have people who have to wait longer because they will need to reach a higher threshold to even have a chance of getting there. That means they are going to have to solidify the level of their dysfunction before they can even make an application.

**Ms ABIGAIL BOYD:** I have met people who say that they were assessed at about 22 per cent or 24 per cent WPI when they were effectively suicidal. If you got chucked off at the 2½-year mark and then that lack of support led you to, for

example, lose your house or have a family breakdown—whatever it happens to be—and you then get worse and got over the 31 per cent at a separate diagnosis, do you get to go back on the scheme?

**IVAN SIMIC:** You've raised a very good question there. This proposed legislation has got some absolutely draconian provisions that will affect not just people with psychiatric claims but also people with serious, serious physical injuries. Let's just talk about a really serious physical injury—somebody with severe burns. Let's forget about the psych, just for a moment. You may have to go through a long process of medical treatment and multiple medical procedures possibly going over five years. Your condition may not be able to be assessed for a long, long time in terms of WPI—whatever that means. That person will get kicked off the scheme. Later on, they may get assessed at 21 per cent or 30 per cent, but they won't be allowed to get the arrears of weekly compensation whilst they've been kicked off. That is extraordinary. That is for all injuries.

These draft proposals are actually quite—there is almost a sleight of hand with some of the stuff that has been put in. If you go to section 153N, again this affects people with physical injuries as well. You may have a young apprentice who has lost part of his toe and part of his foot who doesn't get over 15 per cent. He makes his best effort to get back to work. Medicine is complicated. I don't pretend to understand it. But this legislation is certainly bereft of any understanding of the human condition or medicine. That apprentice may have further medical treatment and may eventually get over that threshold. But section 153N says it's not enough to get over 15 per cent; you've got to get an extra 20 per cent. I don't know whether the Government has thought about that. It is embarrassing. It's not just psychiatric injuries. It will affect physical injuries as well—people with severe injuries from the worst sort of trauma you can think of. It's extraordinary.

**The Hon. MARK LATHAM:** I thank the panel for your attendance and input today. Coming to the two Slater and Gordon representatives, Mrs Dimitri and Ms Atkinson, your submission takes particular objection to the new section 8A, meaning of "psychological injury". It goes to what does appear to be an omission in the exposure draft in that "significant" is left undefined. Is it that hard to define the meaning of "significant" in the context of "significant behavioural, cognitive or psychological dysfunction", and what would you suggest?

**LARISSA ATKINSON:** It will be difficult to define what that is. It will take many litigated claims to decide what that is. It is not currently, as I understand matters—and, once again, I echo the submissions made on behalf of the Law Society and the Bar Association that we haven't had enough time to go through and find if there is a source for this particular wording—the definitions of psychiatric injury are well established and have been since the early 1990s. They have been tested many times. All of the practitioners practising in the area, the independent medical experts and the decision-makers are across what is a psychiatric injury and what is not. I echo the submission made by Mr Toomey, SC, that changing the definition adds nothing. It won't change anything about what is a successful claim and what is an unsuccessful claim. It's simply adding extra administrative cost and appears to ask for a higher threshold to be achieved than presently, in circumstances where, in our experience, we can't see that there is a problem with things that are not injuries—that are something less than psychiatric injuries—getting through as successful claims.

**The Hon. MARK LATHAM:** Hasn't the definition of psychological injury evolved, particularly in recent times? I looked at this a while back. I think it's factual to say that the term anxiety/depression in Australia was first invented by Jeff Kennett, the former politician, as the head of Beyond Blue, and the rise of these sort of quasi-medical outfits in the mental health space has been striking. But once invented and used by the head of Beyond Blue, it becomes embedded in the various sectors and industries that, for want of a better term, can make money out of it. So it has evolved pretty quickly, hasn't it, into areas that weren't necessarily based in medical science.

**RAMINA DIMITRI:** If I could provide some comment to that. Ultimately, a psychological injury is a medical diagnosis. We have diagnostic criteria that is utilised by experts to assess whether a claimant is psychiatrically impaired. So I feel like these changes actually add a legal definition to something that is quite well established in a medical sense. If we are asking a clinician to make a diagnosis of medical injury, psychiatric in this sense, or a physical, why are we trying to interpret that in a legal sense?

**The Hon. MARK LATHAM:** We've heard evidence that these clinicians aren't necessarily genuine. There's a lot of fraud out there and, quite frankly, it's no secret in the suburbs—you can find a whole range of doctors that will tell you that you're mentally ill and get you off work—so this is what the Parliament is grappling with. But for the whole panel, can I come to a—

**The Hon. DAMIEN TUDEHOPE:** Do you want to agree with that or not?

**RAMINA DIMITRI:** I can't comment on that, and I suppose the medical experts can unravel that mystery for us.

**The Hon. MARK LATHAM:** Well, the Treasurer probably is onto it. The exposure draft deals in large part with the changing nature of definitions around mental health. But should it also be dealing with the changing nature of work itself? What's your experience with the rise, and what looks like the permanent rise now, of work from home, and claims to that effect? Doesn't that change the whole question of the basis of evidence about an injury? Are you guys getting experience? You must be getting work-from-home claims. The Treasurer said if someone cuts themselves, it's a physical injury; everyone knows the evidence for that. Well how do we know they cut themselves in the kitchen or they cut themselves in the exercise of work from home?

**RAMINA DIMITRI:** Very few. I haven't seen—

**The Hon. MARK LATHAM:** Is this becoming an issue? No? No work-from-home claims have come through at any of your practices??

**RAMINA DIMITRI:** No.

**The Hon. MARK LATHAM:** That's pretty good. How do we convert that to the real workplace? Then we wouldn't be here. Slater and Gordon, are there any other definitional issues that you have got problems with? Contentious 8E, meaning a "relevant event". In the mother Act, are there clear definitions about the meaning of "threat of violence"? Because it seems to me that can be across a whole spectrum of possibility. A big difference between saying to a workmate, "I'd wring your neck over that," compared to, "Mate, I want to kill you." Have we got an established definition about "threat of violence"? Because it's used in 8E, but then for some reason it drops out under "Vicarious Trauma" in 8H; it's not a factor at all. Anyone?

**RAMINA DIMITRI:** I haven't looked at that in detail, no.

**The Hon. MARK LATHAM:** Do you get cases where people have been traumatised by a threat of violence? How is it currently defined?

**SCOTT DOUGALL:** We need to establish they've had an injury.

**The Hon. MARK LATHAM:** If there's a psychological injury?

**SCOTT DOUGALL:** Yes.

**The Hon. MARK LATHAM:** If someone threatened you?

**RAMINA DIMITRI:** And then that comes back to a medical assessment.

**The Hon. MARK LATHAM:** Or you just go—

**SCOTT DOUGALL:** That would also require it to be in the course of their employment.

**The Hon. MARK LATHAM:** Yes, sure. I'll take that up with the Treasurer on notice. Thank you, Chair.

**The CHAIR:** Mr Jones, I'm sorry, you did have your hand up, probably now about 10 minutes ago. It's my fault; I didn't see that raised. You may well have even forgotten by now, and this is no fault if you forget what, in fact, you were going to speak to. If you do recall, can I invite you to speak? If not, I apologise for not identifying you quickly enough.

**DAVID JONES:** Chairman, I don't recall what I—

**The CHAIR:** I do apologise.

**DAVID JONES:** That's okay. But just in relation to the member's comment in respect of doctor shopping and fraud, is that there are within this scheme already processes and procedures which deal with fraud, and people can be subject to criminal charges and sanctions in respect of that. Where a case is considered not to be legitimate, an insurer can take action to investigate a claim and then put on a notice to discontinue benefits. Just in relation to that, I now recall what I was going to talk about. Where the previous member talked about being chucked off benefits after 2½ years and the effect of that and, in particular, by reference to the increasing of the threshold, the scheme, as it current stands, is if you were assessed between 0 and 10 per cent permanent impairment, you are entitled to medical treatment expenses for two years from when your weekly payments cease.

If you are between 11 and 20 per cent, you have five years of medical treatment from when your weekly payments cease. And if you're 21 per cent and above, you'll have medical treatment expenses for life, provided they're reasonably necessary. I think all of my colleagues will tell you that in the case of psychological injuries, we see medical treatment extending well beyond 3½ years from the date of injury. So what is proposed will have a significant impact upon the injured workers.

**The CHAIR:** Thank you very much, Mr Jones. I'm glad I did circle back; that was valuable evidence.

**The Hon. ANTHONY D'ADAM:** I'd like to ask about the proposed part 6, which relates to a change in the mechanism for assessing permanent impairment. I wonder if there's anyone who has some comments on whether that's a positive change or a negative change and what the implications might be in relation to SIRA appointing permanent impairment assessors.

**The Hon. MARK LATHAM:** Which page is that, sorry?

**The Hon. DAMIEN TUDEHOPE:** Of the exposure draft?

**The Hon. ANTHONY D'ADAM:** Yes, page 21, part 6, "Determination of degree of permanent impairment".

**SCOTT DOUGALL:** My friend Ivan did talk about section 153N and the requirement for a further 20 per cent for a further principal assessment. That seems to be an excessively high threshold. I would have thought the more logical principle would be that if your additional impairment is going to see you reach a higher threshold—for example, if you went from 18 per cent to 21 per cent, that's significant. Whether it's only 3 per cent or not, it's a significant improvement to your rights. But the idea of a further 20 per cent, that's very unlikely that anyone's ever going to be able to do that.

**The CHAIR:** Mr Jones, would you like to respond to that?

**DAVID JONES:** Just in relation to the regulator having involvement in respect to the assessment of permanent impairment, it's not something that the regulator should involve itself in. There is already a process and procedure for the determination of permanent impairment to take place. That is, a worker can obtain their assessment, make a claim, the insurer can respond to their claim by obtaining their own assessment, and if there continues to be a dispute, there's a

mechanism within the Personal Injury Commission that an independent medical assessor can go on and assess impairment. That impairment can then be the subject of a medical assessment certificate, and there are appeal rights which arise as a consequence of the issue of the certificate. So this is an unnecessary duplication. It's likely that some workers may not be legally represented, won't know what matters are to be assessed. The items to be assessed may not be agreed upon between the parties. So it's a furphy for this process to be introduced within the Act.

**The Hon. ANTHONY D'ADAM:** An observation that's made in the CFMEU submission around potential constitutional issues associated with the proposal for the work stress payments, I think they're called—

**DAVID JONES:** I can indicate that I haven't had the benefit of reading that submission, but I assume it says that Fair Work has a certain jurisdiction in respect of New South Wales workers for some of the things that are expected being the subject of certificates before they will be entitled to benefits. But, as I say, I haven't had the benefit of reading the submission.

**The Hon. ANTHONY D'ADAM:** The contention is that effectively this is an impost on employers outside the insurance scheme, therefore it's potentially an industrial question affected by the cover-the-field provisions of the Fair Work Act, and therefore would be excluded. I wonder whether you've got any observations about this schema that's being proposed around work pressure that effectively places an obligation on employers outside of the system of the insurance question.

**The Hon. DAMIEN TUDEHOPE:** It's a jurisdictional issue.

**The Hon. ANTHONY D'ADAM:** Yes, it's a jurisdictional issue.

**IVAN SIMIC:** We've only had a very short time to consider these reforms. I can certainly see this being a very fertile ground for litigation. As you know, most people are actually covered by Federal legislation in New South Wales, so how this is going to work with the New South Wales Industrial Court, I am not sure. But it is a very good and valid point that has been raised by the CFMEU. It's going to be a fertile ground for litigation, and you could be waiting for a finding for a long, long time.

**The Hon. DAMIEN TUDEHOPE:** You could find yourself in the High Court, mate.

**The Hon. STEPHEN LAWRENCE:** Mr Dougall, we have had some things drawn to our attention this morning in relation to the definition of "relevant event" in proposed section 8E and the fact that it requires a worker to have witnessed an incident that leads to death or serious injury. We've had witnesses talk about people who might, for example, deal with the aftermath of a road tragedy, be involved in removing corpses perhaps on multiple occasions and they wouldn't have witnessed an incident, even though they've obviously been exposed to trauma. I am just curious. Do you see any anomaly between that restriction in section 8E and the vicarious trauma provisions that follow in 8G?

**SCOTT DOUGALL:** To answer the first part of your question, if you don't witness the incident itself—if you see the aftermath—I don't think you're covered by 8E (1) (c). I don't think you're covered by that. There was reference before to a train accident. The train driver might feel a bump, he's not sure what it is, he stops, it's a dead animal or potentially a dead person. He hasn't witnessed that. He's dealing with the aftermath, as is the cleaner, so I don't think they're covered by—it would be my view that they're not covered by that section.

**The Hon. STEPHEN LAWRENCE:** I was curious how you think that sits then with 8H, which seems to recognise liability when something happens to a work colleague, and you hear about it, so, therefore, you experience vicarious trauma.

**SCOTT DOUGALL:** Yes.

**The Hon. STEPHEN LAWRENCE:** They are obviously different issues, but do you see that on a policy basis as anomalous—that one would be recognised and the other wouldn't?

**SCOTT DOUGALL:** I think so. What sprung to mind was the death at the Bondi Junction shopping centre where a guard was killed. If a fellow guard had an adverse reaction to that event but didn't actually know that person, would he have a close work connection? I don't know. Again, it's coming back to you really either have to know the person for 8H, or you have to have witnessed the event for 8E. That leaves a very large grey area where people will have exposure to trauma but not be covered.

**The Hon. STEPHEN LAWRENCE:** My further question is quite a general one. We heard evidence this morning that the workers compensation system was designed for physical injury, and now it's obviously being applied to psychological injury and claims of psychological injury. Is there something about the system that is able to be reformed that is inapposite to psychological injury? Is there something about the nature of psychological injury and the fact that it is an internal thing, by and large? Obviously you can have objective evidence of stressors and so forth, but it's ultimately an internal assessment about what's going on inside someone. Is there something about the nature of it that means that the standard of proof we're applying, the procedures we're applying, are not apposite and we're basically opening the door for a class of claims that we keep hearing about? We heard some evidence this morning from businesspeople talking about people subject to performance management and whatnot putting in stress claims and that costing the system half a million so far et cetera. Is there something inherent in this type of claim that we just haven't got the system right yet, and do you have any ideas about how to address that?

**RAMINA DIMITRI:** That specific example you gave about management action I think is adequately covered in 11A.

**The Hon. STEPHEN LAWRENCE:** By 8E and all that, yes.

**RAMINA DIMITRI:** Correct. There is so much jurisprudence about that and interpretation, and, if anything, that could be tightened. But 11A, ultimately, the burden of proof is on the employer. I don't know whether those reforms or those proposed reforms are so bad, in that they do provide further clarity. Perhaps that should be the focus as well as return to work strategies. At the moment, though, there is really no data to say what the drivers of this reform are. Is it the people on statutory benefits for a long time who don't get to the 15 per cent or is it people over 15 per cent? Is it people in the 20 per cent to 25 per cent cohort? Absent that information, there is really nothing that we can say that will inform the Government's position on what should be tweaked to fix this problem.

**SCOTT DOUGALL:** I have just one further point. The idea that the scheme has to remain static and that it cannot evolve I think does not serve workers in the twenty-first century. We've had dust diseases evolve and we're able to incorporate that. We've had skin cancers and hearing loss. These things evolved. To say it was just designed for physical injury and, therefore, everything else should be excluded, seems overly simplistic.

**The Hon. STEPHEN LAWRENCE:** I wasn't suggesting that everything else should be excluded; I suppose I was just pondering. The path that the exposure draft takes is to limit certain classes from the scheme in order to deal with this explosion in claims, if you like, and the threat to the financial viability. Is there some other way of doing it—whether to reduce payments to impose a higher standard of proof—that might not arguably be so unfair in terms of just excluding categories of people?

**IVAN SIMIC:** We had the benefit of hearing from Mr Toomey from the Bar Association in the previous session, and I thought he actually addressed this question very, very well. I think it's worth revisiting that evidence. One of the problems with this whole law reform process is that really the lawyers haven't been consulted or asked, "How do we fix it?", and we've just had this thrown at us at very short notice. I would encourage the Committee to go back to the evidence of Mr Toomey and some of the ideas he suggested there about how you might reform the area to address the issues you're concerned about.

**RITA YOUSEF:** One point is also if the WPI percentage has to change—we don't necessarily think it should change, but if it has to—perhaps a consideration of 21 per cent. Also, coming back to the point about common-law claims and the current percentage being at least 15 per cent, if a person, especially with a psychological injury that's been going on for years, can get to a point where they close a common-law claim and they are out of the system, that can have instrumental impacts on their life, and for the system and the employer—arguably more so than someone who is suffering a physical injury only. We see day to day in our jobs people who experience that kind of relief when the common-law claim is done. They don't have to deal with the insurer anymore, they get a lump sum, and they don't have to go back to the insurer for approvals of treatment or anything else. It does make a big difference to close off a claim. So that's part of why that percentage really needs a lot more consideration. The 31 per cent is just not adequate.

**The CHAIR:** Mr Jones, would you like to jump in? I believe you had your hand up first, so I think you want to make a contribution?

**DAVID JONES:** Thank you, Mr Chair—just one comment in relation to amendment of the scheme. One of the issues will be: How will it deal with existing claimants? The exposure draft provides no information as to how existing claimants are to be dealt with. The transitional provisions are silent. I did hear some evidence from the earlier part of the proceedings where there were questions in respect to first responders. First responders were exempted from the 2012 amendments and are subject currently to the 15 per cent whole person impairment threshold. If those first responders are not exempted from these proposed amendments, you will simply not have police officers, ambulance officers, paramedics and firefighters in the State of New South Wales because they won't be willing to go to work where they're subjected to a 31 per cent impairment threshold and these types of reforms. So they're matters which will need to be considered in the drafting of any proposal to amend the scheme.

**The CHAIR:** Mr Dougall, I think you may have had a final contribution you wanted to make?

**SCOTT DOUGALL:** To answer the earlier question, I think the problem is that the rates of people getting back to work are falling away. The incentives aren't there for an employer to provide suitable duties. The model in place with rehab providers is not working. Their costs are going up and yet the rates of people getting back to work are going down, and that's not being considered in this process at all. I think there are some significant savings to be made there.

**The CHAIR:** Before I conclude, I have a point of clarification. Damien, going back to your first question, you put a broad question to the panel asking whether any of them have anything to say about or disagree with anything that was said by the peak law bodies. In the exchange, the only person who responded was Mr Dougall and then we moved on to another line of questioning. I want to make it clear that I'm not sure whether silence meant consent or not in that case. Are there any other parties at the table here or on the videoconference who want to demur from what the consensus position that was arrived at, subject to Mr Dougall's comments? Or do we take it as consent to the positions reflected in the two peak law bodies contributions, both through submissions and orally today?

**DAVID JONES:** I was in the waiting room for the last 15 minutes of the evidence so without the benefit of viewing the transcript, I can't indicate if I agree with the propositions which were made.



**The CHAIR:** That's a completely reasonable answer. Perhaps you might wish to take that on notice. That might be the way of dealing with it. I sincerely thank you, on behalf of the Committee, for what's been a very quick and, dare I say, rapid response—if I could use that phrase—to what's now before us. I appreciate deeply the expertise, experience and insights that firms represented here today were able to bring to a very important—more than a discussion—and serious debate about workers compensation reform in this State. That information, through your submissions, is very detailed, and well supplemented by your contributions today. On behalf of the Committee, thank you very much. Some have taken some questions on notice. The return time and date for those is 5 o'clock next Wednesday, for any questions that you may have taken on notice. The Committee secretariat will liaise with you, if that's the case. Once again, thank you very much.

**(The witnesses withdrew.)**

**Ms ROSHANA MAY**, Individual, affirmed and examined

**Mr KIM GARLING**, Individual, sworn and examined

**The CHAIR:** Would either of you like to make an opening statement? Please bear in mind that the longer your opening statement, there'll be a compression of time for questions. I'll leave it in your hands.

**KIM GARLING:** I don't have an opening statement. I might mention that, having been cautioned by the office about my submission, I did suggest it might have been confidential. To the extent that I thought it should've been confidential, I don't need it to be confidential anymore.

**The CHAIR:** That's your position?

**KIM GARLING:** Yes, it was absolute caution, and I can waive that.

**The CHAIR:** Members, who I believe would have a copy of Mr Garling's submission, it stands in the form he has said he would like it to be in. Ms May, do you have an opening statement you'd like to make?

**ROSHANA MAY:** I'd prefer to receive the questions.

**The CHAIR:** And, indeed, I think the Committee members want me to shut up and do just that—allow the questions to flow. We will start with the Hon. Damien Tudehope.

**The Hon. DAMIEN TUDEHOPE:** Mr Garling, you did make an opening statement. You had an article published in the *Newcastle Herald* or *The Sydney Morning Herald* yesterday that was an appraisal of what you perceive this exposure draft to encapsulate. Do you want to go through what you observed in relation to that editorial piece that you wrote?

**KIM GARLING:** You're ahead of me. I haven't seen it, but I think I know the gist.

**The Hon. DAMIEN TUDEHOPE:** Would you like me to give you a copy?

**The CHAIR:** I don't think it can be taken officially as an opening statement.

**KIM GARLING:** No, I think I know the gist of it.

**The Hon. MARK LATHAM:** Are you saying he wrote it?

**KIM GARLING:** I certainly played a large part in it. The essence of what I was saying there was that there were a large number of comments by various different commentators about the fact that the scheme protects workers. I was trying to make the point that that's not the case. It never has been the case with workers comp; workers comp protects the employer. In the course of protecting the employer, there's a fund established, to which the employer contributes, which pays the compensation to the worker arising out of a workplace injury. So we're not talking about protecting four million workers; we are talking about protecting some employers, and they're saving being sued at common law. Now they only have to contribute to a fund which picks up the liability they previously had. So it's a huge benefit for the employers; it's not necessarily for the workers. That was the gist of the first part of that article. The second part of that article was questioning the statements about financial sustainability. They're difficult to convey in an article such as that, but that was my attempt to cover that area, as best as I can recall.

**The Hon. DAMIEN TUDEHOPE:** We've heard a lot of evidence that this is an unsustainable scheme because of the blowout in relation to psychological injury claims. This scheme, or the exposure draft, is an attempt to deal with non-physical injuries to the extent that they are now a major component of the manner in which both the TMF and the NI need to deal with workers compensation. The corollary is that, certainly in the NI, premiums are going to blow out to unaffordable levels.

**KIM GARLING:** I find those statements that have been made—and I'm not an actuary—rather startling because, as I think I said in my submission, in the icare annual report it talks about claims increasing year on year when the fact is they haven't. There has been a lot of talk about an explosion of claims, and the fact is they haven't. The simple answer is—we're talking in the NI scheme—an increase from 5 per cent of the total to 7 per cent of the total. Looking at individual claims numbers is helpful, but it's got to be seen in the context of the whole number of claims. Claims dropped significantly after the 2012 reforms. I think they probably dropped by 25 per cent, and they've slowly come back up, but so have the numbers of workers, so have the number of employers and so have the wages covered in this scheme, so one would expect it to have a different impact. But it's simply not correct, in my humble opinion, to say that there has been an explosion of claims, because the fact is there hasn't.

**The Hon. DAMIEN TUDEHOPE:** However, there is a difference in the nature of those claims in that often, because it's a psychological claim, they're a lot harder to resolve. Would you accept that as a proposition?

**KIM GARLING:** I think the difficulty is that psychological injuries are difficult to manage medically and, for many of the employers, present an issue which they're not capable of dealing with or understanding. If you take a toxic workplace, and there are examples of those where the worker has an emotional—if I can use a neutral term—difficulty with returning to work, that is a real barrier to them coming back. But the 2012 amendments were supposed to deal with that. We've been through that extensively.

The 2012 amendments said you either have capacity for work—and I think I made a famous statement back in 2012, which is going to haunt me, that you don't have capacity only if you're in a coma. That was a bit of a stretch, but the fact is most people have capacity. The next part is they're obliged to return to work or not get compensation. We've dropped that

practice or procedure, in my humble opinion, which would address a lot of the comments that have been made. The legislation is quite clear. It's a matter of process, in my humble opinion. But coming back to the claims issue, I'm talking only about psychological claims when I say it's 5 per cent to 7 per cent of the total. So the 93 per cent of payments and claims are unrelated altogether to psychological injuries.

**The Hon. DAMIEN TUDEHOPE:** If I'm reading your position, you say that the current scheme is working perfectly well—it might not be perfect, but it is working well—and the amendments foreshadowed here, which reduce claims and entitlements, are unnecessary within the current scheme?

**KIM GARLING:** Having been involved in looking at the workers compensation system since 1985, when I was closely involved in the 1985, '86 and '87 reforms by the then Wran-Unsworth Government, there can never be a position where a scheme such as this is in terrific shape. I don't have the precise figures, but if you look back at the Workers Compensation Insurance Fund over the last 20 or 30 years, you'll find it's almost always been in deficit. There's a good reason for that, because we don't want to over-fund it particularly; we want to keep it on a balance. A slight deficit or a slight surplus is good. If it shifts either way, you'd want to think about it, but there are a large number of factors that affect that. If I can add to that—I'm not sure I mentioned it—if there's \$16 billion in claims reserved at the moment, which is out of the last report, it is not payable in one year; it's payable over 20 or 30 years. It's not really difficult in the next five or six years. I challenge anyone who would have the wealth to take over that \$16 billion worth of estimated claims, because they might end up being extremely wealthy at the end of the day. They're only guestimates—I'm not being critical—but that's the only way the actuaries can do it, and they do it very skilfully, but it's over a long period. The philosophy is, do we fund everything up-front with 100 per cent plus knowing that that will end up in a surplus down the track, or do we measure it according to current conditions, workplace conditions and costs? To look at it, a \$1,500 a year average premium is not excessive. That's what, in the NI, you pay. It is an average of \$1,500. I acknowledge there are all sorts of other mathematical issues.

**The Hon. DAMIEN TUDEHOPE:** There are more dangerous industries.

**KIM GARLING:** But, roughly, that's not a big impost, so I don't understand the urgency. I can see the argument that maybe in a year or two or three we might have to increase premiums. Maybe the test is to do a three-year rolling valuation and view rather than do it as at 30 June one year. We are not an insurance scheme. This is a compensation scheme. It's totally different.

**The Hon. DAMIEN TUDEHOPE:** Can I take you to some specifics of the scheme? There is a proposal to amend section 11A in relation to the defence available to an employer in relation to various claims. Do you think the current section 11A is fit for purpose?

**KIM GARLING:** I'd pose the question the other way. How does someone obtain or have a psychological injury as a result of being told that they're no longer working at work? I find it extraordinary that someone would have a psychological injury as a result of that type of definition and that type of workplace incident. However, in the current system they do. Under the new definition of psychological injury they won't. I see it as irrelevant at the moment because, to get through the gate, you've got to be seriously psychologically injured, and have all the evidence to support it, and then succeed in proving the case. Lawyers, in practice, often have to deal with pub tests. The number of clients you have who come in and say, "This is what my colleague did. I was talking to him in the pub last night and he got \$5 million worth of workers compensation benefits." You go, "I don't think so."

When you actually look at the case, he lost the case. With all the examples that we've been given, I would encourage each of those people who have suggested those to refer them to Geniere Aplin at icare and ask her to investigate them as to whether they're true. You might find a totally different story. That's not to say there aren't claims that go through that are unjustified. You've also got to remember that, in litigation, there are two sides. The system we have ends up in a dispute resolution place called the Personal Injury Commission, where both sides go to argue their cases. One wins and one loses. Often the case is that they both lose, because the person who was expecting the \$5 million doesn't get it, and the person who was expecting to win didn't want to lose, anyway. You've got to balance those stories and just look at the fundamental principle. Workers comp is there to compensate workers with an injury. If you want to take out psychiatric injuries, that's a matter for the Government. It may be better to think about how we define the psychiatric injury a little bit more kindly than at the moment.

**The Hon. DAMIEN TUDEHOPE:** Could I take you back to the previous observation you were making about the current viability of the scheme? The Premier has said that this is an insolvent scheme. The Treasurer this morning was saying he's not going to fund it anymore if we don't amend this legislation. What I'm hearing from you is: What is the matrix that they use for saying it's insolvent, and that matrix is probably wrong if they are wanting to fund it of assets in excess of liabilities, because that's the wrong way of looking at the financial viability of the scheme. Is that a fair call?

**KIM GARLING:** As I've mentioned, the scheme is not one scheme in the sense that you're talking about with funding. There are two separate funds. They're completely different and they're not related.

**The Hon. DAMIEN TUDEHOPE:** One funded by premiums and—

**KIM GARLING:** The NI is funded by business premiums. The TMF is a bit of a myth, because the Government is the defendant. Whether the TMF has enough funds is interesting, but the Government has to have enough funds because

they're the defendant. The fact that the TMF helps fund it is very wise. It's very sensible to put aside some money. But it's not the end of the story. If the Treasurer doesn't want to put any more money into the TMF, which is quite well funded at the moment, that's a matter for him. But if the claims go up, the Government's going to have to foot the bill anyway.

**The Hon. DAMIEN TUDEHOPE:** They're a self-insurer at the end of the day.

**KIM GARLING:** Self-insurer.

**The Hon. DAMIEN TUDEHOPE:** Can I ask you about one further issue in respect of a specific proposal? I'm sorry I haven't got to you, Roshana.

**ROSHANA MAY:** It's fine with me.

**The Hon. DAMIEN TUDEHOPE:** There is a proposal to require claimants in relation to bullying and harassment claims to go through a process with the Industrial Relations Commission to get a certificate. In relation to the Government, you'd expect a circumstance potentially where the Government is defending a claim against itself from a claimant in its own workplace. Do you see any issue in relation to that?

**KIM GARLING:** The Government has been a defendant in multiple cases for 100 years. I don't think the fact that they're a defendant is going to be a problem. How it works is something we're still to see. I observed yesterday that two of my former colleagues were appointed as commissioners to the Industrial Court, presumably to deal with these. I'm sure they'll be particularly clever and very capable.

**The Hon. DAMIEN TUDEHOPE:** Do you have any observations on that?

**KIM GARLING:** We just don't know.

**The Hon. DAMIEN TUDEHOPE:** We haven't seen a bill.

**KIM GARLING:** No.

**ROSHANA MAY:** I don't particularly see a problem with the IRC having a jurisdiction—whatever they want to call it—in relation to harassment and bullying, similar to the Fair Work Act provisions which seemingly apply to the private sector employees in New South Wales. I think the Government needs to be held to account for its own workplaces. That's a simple observation, but tying it to workers compensation is an irrelevant consideration.

**The Hon. MARK LATHAM:** As we're falling behind time, I'll cede my time to help us out. I forfeit my six minutes.

**The Hon. ANTHONY D'ADAM:** As in we'll just cut it short by six minutes?

**The CHAIR:** Is that agreeable?

**The Hon. MARK LATHAM:** We're behind time yet again.

**The CHAIR:** I understand that. We are doing our very best. Thank you, the Hon. Mark Latham. We'll go to the Deputy Chair.

**Ms ABIGAIL BOYD:** Good afternoon to both of you. I'll start with you, Mr Garling. You have an incredible way of myth-busting in what is a very complex area. Just to recap, from what I'm hearing you say, there is no great urgency when it comes to fixing the solvency of the TMF or the NI. Is that correct?

**KIM GARLING:** The TMF is the Government, so there is no issue about solvency.

**Ms ABIGAIL BOYD:** Because it's always going to be—

**KIM GARLING:** It's always going to be the Government.

**Ms ABIGAIL BOYD:** —effectively a self-insurance scheme.

**KIM GARLING:** The NI is not going to go broke tomorrow. But I don't oppose reform and working through some of these issues. I think everyone is concerned about how we deal with psychological claims, whether they're minor or major. That's a really difficult issue that needs some further inquiry. This Committee has already looked at that sort of issue before. Maybe we need to refresh that and look at that separately. How do we treat it? How do we deal with it?

**Ms ABIGAIL BOYD:** I agree, but it's not urgent. Take the urgency out of it, though.

**KIM GARLING:** There's no reason to stop moving at all.

**Ms ABIGAIL BOYD:** When we come to the Nominal Insurer, if we are looking at psychological claims going from 5 per cent of total claims to 7 per cent of total claims, just imagine that this entire package of reforms goes through unamended and a huge number of these psychological claims get excluded. From what you were saying before about the NI effectively being a scheme that ensures employers as opposed to employees, if there's no cover for an employer, does that mean that a worker could go to court then to claim against their employer to get some compensation?

**KIM GARLING:** It's an interesting question. I'm told more by gossip than anything else that there are a number of barristers sharpening their pencils at the moment on that very point. One of the questions that needs to be considered is that the definition for injury is such that if you're not determined to have a psychological injury as defined, then you have no injury and you have no right to submit a notification to the insurer under the Workers Compensation Act. If that be the case, then the question arises as to whether you then have full common law rights outside the scheme. But I'm not offering an opinion on that. I'm not qualified. I know that there is some sharpening of pencils going on about whether that's possible.

**Ms ABIGAIL BOYD:** So it's feasible to think that even if there was to be some relief from premiums for a business through these changes, you may then also be faced with needing to cover yourself somehow for liability that then arises from all of the claims that are no longer under your workers comp?

**KIM GARLING:** I think that most significant employers, whether small or large, would already have management liability insurance. There's a question of whether the employment practices section of that management liability policy would cover you. At the moment, most of those policies exclude bodily injury, but the question then arises as to what else they exclude.

**Ms ABIGAIL BOYD:** So these reforms are then gutting not only compensation entitlements for workers but potentially coverage for employers.

**KIM GARLING:** Correct. Possibly. I'm not expressing an opinion.

**Ms ABIGAIL BOYD:** Of course not. I think that answers it for me. Ms May, it's proposed that SIRA will have primary responsibility for appointing an assessor for WPI assessments. Can you see any difficulties with that proposal?

**ROSHANA MAY:** Yes.

**Ms ABIGAIL BOYD:** Can you explain that to us?

**ROSHANA MAY:** I think I've tried to explain it in my submission. If we go back to 2014, when the WorkCover Authority was all things to all people, there was an inquiry of this Committee that said that there were many conflicts of interest in them being the insurer, judge, jury and executioner, as I think it was explained by some person. Opinions have been expressed since then, before then and even post-2015 that the regulator should regulate and have no part in claims management.

I think that SIRA removing the ability of workers and insurers to obtain their own medical opinion as to the position of the workers assessment or capacity, or anything, is very dangerous. The process within SIRA would be more costly than it is now. There are impacts to freedom of choice, access to justice and the ability to resolve matters which often happen between a worker and an insurer by a single assessment. I understand the purpose of potentially trying to confine parties to one assessment, but I don't think this is the way to do it. I would prefer to keep the status quo.

**Ms ABIGAIL BOYD:** Can you tell us what the impact of changing the reasonably necessary test to the reasonable and necessary test would mean?

**ROSHANA MAY:** The changes would mean that there has to be a greater level of necessity for treatment. When we talk about the objectives of the system being access to prompt treatment and early return to work, "reasonably necessary" means someone can front up and say, potentially with any injury, "I might need some acupuncture or some medication or some form of treatment." That will allow them either to remain at work—to prevent deterioration of their current condition so they can remain at work—or improve with surgery or anything else. The reasonable and necessary test requires both those limbs to be satisfied, which means there will be more challenges to the offers of treatment. The principles behind "reasonably necessary" will be lost. They were to facilitate, effectively, early return to work.

They are captured, remarkably, in section 297 of the 1998 Act. It actually captures the principles which were espoused in the case of *Rose v Health Commission* in getting an interim payment direction, which is something that a worker would get within the early confines of their claim to facilitate them getting access to treatment. It says that, despite liability, if you've got an injury management plan that says you need a treatment we will consider the four limbs—whether or not it either heals or cures—but maintain a certain status quo so a person can continue to work and it does not worsen the condition. That's much easier to satisfy than "reasonable and necessary".

**The CHAIR:** Before I pass to Government members, the next tranche of witnesses kicks off at 3.45 p.m. If we take our full allotted time, it will effectively get us to 3.45 p.m. In light of that, because I think that members need to stretch their legs, could we keep the questions nice and tight?

**The Hon. BOB NANVA:** I will just ask one question, perhaps to you, Ms May. I hope you'll forgive me if I refer to an article which you co-authored in 2014, *Principles of an effective workers' compensation scheme*, which I found fascinating. You talk about the compensation effect on health and wellbeing—

**The Hon. MARK LATHAM:** And you found it yourself?

**The Hon. BOB NANVA:** I did, actually.

**The Hon. MARK LATHAM:** Good on you.

**The Hon. BOB NANVA:** With the compensation effect on health and wellbeing, you look at the two broad categories of secondary gain and secondary victimisation. You conclude:

Taking this evidence together, effort is required to minimise system-generated stressors and to improve scheme design so that people are supported to exit the schemes as quickly as possible.

With that lens, what are your reflections on the scheme as it exists and the reforms proposed? If you had your hands on the levers, what would you do with that in mind?

**ROSHANA MAY:** I had my hands on the levers, basically, in the Parkes inquiry, which is where I was contracted to WIRO with Mr Garling to direct an inquiry into the mechanical and operational difficulties with the Act. There are lots of things I could do. You asked a three-limb question, and my brain is so fried from having written a submission that is about 32 pages long and has about 60 pages of annexes.

**The CHAIR:** I don't want to interrupt, but I will for this reason—you are entitled to take parts on notice to enable you that scope to fully deal with it. I don't wish to cut you off. You might want to put the difference on notice.

**ROSHANA MAY:** Thank you, Chair.

**The Hon. BOB NANVA:** You can answer any part of it that you wish.

**ROSHANA MAY:** You'll have to repeat the question. I will take it on notice, and I'd be happy to answer it.

**The CHAIR:** I apologise to Mr Nanva. I don't want to cut you off, but I also don't want to short-change your opportunity by having you think you've got to deal with it now.

**ROSHANA MAY:** Thank you.

**The Hon. ANTHONY D'ADAM:** I'll just ask one question because we're short on time. In his evidence, the Treasurer made great store about getting to break-even premiums. Is that something that we need to prioritise?

**KIM GARLING:** I haven't carefully looked at the last 20 years. My recollection, when I did look at it carefully, is that we have always operated in deficit or close to it. I'm not sure we've ever had break-even premiums. In my submission, I pointed out that last year the premiums received in cash and the claims paid in cash resulted in a \$600 million surplus. Going to the actual basics—if I was running my household—I've got \$4 billion or more in cash and I spent \$3.5 billion or \$3.6 billion. That's not the answer, because there's a lot of other issues, but it reflects on break-even. At the moment, that's a significant issue.

I'm conscious of the shortness of time, and I wanted to raise one other quick thing if I could, because I think it might answer some of the earlier questions. As a matter of interest, there is this difference between doctors' opinions. It's very hard to deal with, because some doctors say, "I don't know why you can't walk just because you don't have two legs," and the other doctors say, "You've got a slight cut on your ankle, so you can't walk." We did an exercise at WIRO which was very interesting, but I don't think we published it. We dealt with hearing loss. I invited the top six medico-legal hearing loss reporters in, and they turned up. We sat around the table and said, "Do you realise, individually, I can tell you how you do your reports? I can tell you the outcomes. I can tell you over there, Dr X, when you're acting for the insurer you go 3 per cent to one side of the norm, and when you're acting for the worker you go 3 per cent to the other side of the norm. We're tracking you." We track every report because that's the information I was obtaining from the applications. Six months later, we had them in again for a cup of coffee, and it was extraordinary. They were all about the same.

There are issues like that which, with a bit of left-wing thinking, you might just be able to improve the position. The WIRO has every medical report and every circumstance. It's simply a matter of collecting the data. There is one answer, if you're looking for alternatives to try and bring the scheme back together, but it's not easy. I think it's important that this Committee deals with the alternatives that exist, and you're not going to be able to do that in five minutes. Thank you very much to all of you for inviting me in the first place and for listening. I'd be happy to help anytime and give you my thoughts, right or wrong. I'm sure there are others who will have the suggestion that they know better, and I'm sure they do.

**The CHAIR:** I might take the Chair's option to ask the final question, which I'm sure we'll all support. On notice, would you be able to tell us what brand of coffee you served the representatives when you sat down with them? On that note, we'll break for afternoon tea.

**The Hon. ANTHONY D'ADAM:** I like the left-wing thinking, and I'm sure Damien does too.

**The CHAIR:** We'll take a short break until 3.45 p.m.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Dr JULIAN PARMEGIANI**, Retired Psychiatrist and Assessor, sworn and examined

**Dr ANTHONY DINNEN**, Consultant Psychiatrist and Assessor, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Welcome back. We have our two witnesses who are experts in the area of psychiatry and related fields.

**JULIAN PARMEGIANI:** Thank you for inviting me. I am a retired psychiatrist and the principal architect of the psychiatric impairment rating scale. I was also one of the most senior psychiatrists within the Workers Compensation Commission system, or the Personal Injury Commission, for over 20 years. I am now here in my personal capacity because I have been invited by this Committee to attend.

**The CHAIR:** We are grateful to you for making your time available.

**ANTHONY DINNEN:** I am a clinical psychiatrist in private practice. My background is I went into private practice after being in charge of the neuropsychiatric unit and being a research psychiatrist. I have been in private practice on my own for well over 50 years. My earlier special interest has always been in military veterans and post-traumatic stress, as it became known from the 1980s onwards. I have been giving evidence in court over many years for claims that have been disputed in veteran affairs or workers compensation. For many years I have been assessing for one particular law firm in relation to war pensions and also nurses who have got work-related claims.

**The CHAIR:** I don't mean to cut you off. That is a very helpful background. There may be some questions arising that will be directed to you on that, but I don't believe qualifications are being contested. Sorry to cut you off. It will just mean that we'll have less time to ask you questions. We'll now commence by giving you the opportunity to make opening statements.

**JULIAN PARMEGIANI:** First of all, I would like to thank you for inviting me because I called a number of senior colleagues still working within the Personal Injury Commission and they have told me they've all been gagged and directed not to make a submission to this Committee and not to give evidence unless invited, which to me was very disappointing, given the importance of this Committee.

**The CHAIR:** Can I just commence, and you may or may not be in a position to answer now. You used the word "gag"—your word, not mine. With these individuals who you say have been gagged, this Committee would like to know more detail about that. I will leave that general statement with you. I believe I speak on behalf of the Committee when I say we would like to know more details about that.

**JULIAN PARMEGIANI:** Of course. You may at any time request from the Personal Injury Commission whether they have sent an email to the medical assessors in the last few days to that extent. I'd be happy with that.

**The CHAIR:** That was your statement, so I thought I would respond immediately. We have limited opportunity in the time available in this inquiry to follow that up, but I'll leave that with you.

**JULIAN PARMEGIANI:** Yes, thank you. My opening statement is this Committee really needs to ask cui bono: Who benefits from the current workers compensation system? It is clearly not the employers, who are paying increasing premiums, which they're finding unaffordable; it is clearly not the State Government because of the cost of the scheme; and it is clearly not the worker who finds themselves stripped of their dignity, their income, their privacy and ultimately their mental health. My understanding and my observation is that there is only one organisation, or an alliance of organisations, that actually benefits from this scheme, and that is SIRA, the workers compensation insurers as agents and the medico-legal industry, of which I was part. Looking through that prism, I am happy to answer any questions about the harmful effects of the scheme, which I have tried to change over many years but of course was precluded from doing so. I found that ultimately it was easier for me to leave the scheme because I saw it as being so harmful and toxic as to be perhaps the future equivalent of asbestos exposure.

**ANTHONY DINNEN:** I would like to address the Committee about the concern that has been raised about the increased level of impairment from 15 to 30 per cent as the threshold for a person receiving compensation. My background is that I have been clinically involved, as I say, in a range of compensable causes and have treated many patients in both State and Federal compensation schemes. I am aware of the difficulties my patients have encountered always in negotiating the systems to enable them to get the full benefit of their entitlements. But my focus has always been on trying to help them as well as I can under the circumstances. I am involved in addressing this Committee, I believe, because I was asked by the law firm that I have been providing assessments for in treating patients on federation law to give an opinion about that increased threshold. I have sent them a report or an opinion about that matter.

That led to me being invited to attend a meeting at Parliament House last Thursday with the unions that were dealing with some members of Parliament, to give them background as to what was their concern. That led to me being asked to address this Committee. I can only give my assistance to the Committee from the viewpoint of a clinical psychiatrist. I have not ever worked as a member of the system as Dr Parmegiani has indicated that he has. My role has always been as a clinician treating someone and from time to time giving advice and helping them to deal with the systems. But I know, from my patients and my clinical experience over many years, because I've been in practice for many years, that an increase in

threshold from 15 to 30 per cent would eliminate virtually every patient I've ever seen, except for maybe one or two, from being eligible for the scheme.

**The CHAIR:** Thank you both for the very helpful opening statements, which I know will stimulate some questions from Committee members.

**The Hon. DAMIEN TUDEHOPE:** Thank you both for making yourself available for the Committee. Dr Parmegiani, we have heard a lot of evidence today—we've had a lot of people come forward. One of the themes has been that psychological injuries are really very hard to assess. You're the author of the psychiatric injury—what is it?

**JULIAN PARMEGIANI:** Psychiatric impairment rating scale, PIRS.

**The Hon. DAMIEN TUDEHOPE:** Is it your view that assessing psychological injuries is so difficult that it requires its own scheme for determining liability for employers relating to assessing those injuries?

**JULIAN PARMEGIANI:** No, the assessment has changed from diagnoses, which are difficult to make, to function. The PIRS, or psychiatric impairment rating scale, is an assessment of function—that is, the impact of the psychological illness. You are looking at areas of function like relationships, capacity to enjoy recreational activities, capacity to work and travel, and capacity to concentrate. Those are all of the effects of a psychological injury. They're observable by a third party. They're not subjective, like a symptom might be.

**The Hon. DAMIEN TUDEHOPE:** Then perhaps I'm concentrating on the wrong thing. I should be looking at the *Diagnostic and Statistical Manual of Mental Disorders*.

**JULIAN PARMEGIANI:** A diagnosis under DSM is required, but it has very little relationship with the level of impairment as measured by function.

**The Hon. DAMIEN TUDEHOPE:** Are we really saying that there is a problem in terms of the way that psychological injuries are assessed?

**JULIAN PARMEGIANI:** No, I don't think there is a problem there. I think the problem is with the system, and I am happy to expand. The problem is that there is an event, as defined, in the workplace. There is a psychological reaction to that event, which may be a perfectly normal psychological response to, perhaps, bullying or disciplining, and it upsets people. Once you embark on a system which requires you to lodge a claim and then go through the assessment process—and this is an assessment process which stretches over months if not years, if you include disputes and appeals—you have a person who has gone from having a dispute and a range of perfectly normal symptoms and responses, to having a conflict which is then stretched over months and years. There is sleeplessness, loss of identity and basically loss of dignity because you are now a workers compensation case.

By the end of that trajectory, which has taken long time, the injury becomes real and people have lost sleep over it. People have committed themselves. If you go to a no-win, no-fee firm, you sign your rights away and you can't withdraw from it. If you withdraw, you are liable for all costs associated with the case. Basically, you lose your house. You are committed. You've signed a contract which makes it mandatory for you to be in this state of paralysis for 18 months, two years or sometimes even longer. Then you get all the anxiety arising from disputes between assessors and your lack of capacity to generate any money to feed your children or pay the mortgage. By the end of it, you have created a mentally crippled person.

**The Hon. DAMIEN TUDEHOPE:** There is a whole lot of issues that arise from what you've said there. The same set of facts and circumstances in a work environment, for example, Mr Latham might take very easily and with no worries. You can't bully him. I might be much more sensitive and, for me, it's a bullying event. How does an employer deal with that?

**JULIAN PARMEGIANI:** That situation needs to be addressed as quickly as possible, perhaps independently or perhaps by a government organisation. Someone needs to go there and make a judgement, a little bit like the unfair dismissal claims, where you resolve it and let people move on with their lives and look for another job without necessarily labelling them as mentally ill. If the assessor under these reforms, whether or not they be a tribunal—and I'm scared to think how long it would take to arrange a hearing under such circumstances—finds that the employer is liable, then you have to be psychiatrically assessed. Then the insurer will get a psychiatric assessment. If the other side doesn't like it, they will get their own assessment. Then it will be a dispute, which goes to the Personal Injury Commission. If they don't like that, it will go on forever.

**The Hon. DAMIEN TUDEHOPE:** The model which the exposure draft seems to indicate is that for that scenario, where there is an allegation that I was bullied in the workplace, you have to get a certificate from the Industrial Relations Commission. Do you see that as the right model for quickly resolving whether a bullying event may or may not have occurred in relation to the environment in which it has been suggested?

**JULIAN PARMEGIANI:** The devil is in the detail. Superficially, it sounds great—a very attractive proposition. The issue is the time that it takes to get that certificate and what happens after that certificate. What happens is not, "You have suffered an injury. Here is a certain amount of money. Take it or we can go through the courts." That is how it used to happen in the nineteenth century with injury cases. Now it is, "You have an injury. You have to be assessed. Now you will embark on this long path which will strip you of your mental health."



**The Hon. DAMIEN TUDEHOPE:** There is an equally problematic part of that process—that the person making the allegation would potentially be the subject of an extensive cross-examination process and be retraumatised in respect of the circumstances. This may involve sexual harassment, racial bullying or workplace bullying.

**JULIAN PARMEGIANI:** You do need to find the facts. An investigator—someone who is properly qualified—needs to go to the workplace as quickly as possible, find out what has happened and, if the employer is liable, quickly bring the case to its conclusion and not let it stretch on indefinitely.

**The Hon. DAMIEN TUDEHOPE:** You've identified the nature of the system that people then get involved in. After they get their certificate, they have to continue it.

**JULIAN PARMEGIANI:** Yes.

**The Hon. DAMIEN TUDEHOPE:** Is there a problem in the system which exists because we now need to adapt our persona to being a continuing litigant in that system?

**JULIAN PARMEGIANI:** Absolutely, because the more you enter that role, the more you become that person. You are the injured worker who has been damaged and you will hear "permanent impairment" and "permanent damage". You start to think and behave like a you are permanently damaged. You don't look for other work because that is going reduce your chance of getting any compensation. Lawyers and others will advise you, "You embarked on this path. Stop trying to go back to normal. Stop trying to get a job because then you have no case." That in itself is stripping the person of their role within society.

**The Hon. DAMIEN TUDEHOPE:** Effectively, what you are saying is that lawyers or doctors at that point will coach you about how you have got to behave to reach the 25 per cent or, as is suggested by this exposure draft, the 30 per cent level of whole-person incapacity to be able to continue your claim.

**JULIAN PARMEGIANI:** I don't think lawyers or doctors coach claimants. They just help them understand the criteria by which they are going to be assessed. If those are the criteria, that's how they prove that a great injustice has occurred. They have got to be compensated because they are angry. This is before they actually develop a mental illness, while they are still angry. They lose sleep over it; they lose their appetite. They become grumpy and irritable. Their relationship suffers. Before you know it, the relationship has broken down. Their friends have avoided them. They look like they've got a mental illness, and they do.

**The Hon. DAMIEN TUDEHOPE:** In terms of getting to a scheme which deals with that in a much more compassionate way, or a way which doesn't exacerbate the injury, this needs a lot more potential thought than exists in this exposure draft.

**JULIAN PARMEGIANI:** Yes. First of all, I see the current Act and the exposure draft as being basically written by lawyers. The claim-handling process goes as fast as a car designed by lawyers. It does not have any input by people with knowledge. On the icare board, there is no occupational psychiatrist and they are overseeing the whole system. As an expert within the system, basically we couldn't do anything because we were always told what to do, where to turn up and where not to turn up.

**The Hon. DAMIEN TUDEHOPE:** I suppose the length of time that it takes for a claim to be resolved would impact on the person. Can I ask you this: I think you started your position by suggesting that, in your experience, no-one would reach the 30 per cent whole-of-body impairment. Is that right?

**JULIAN PARMEGIANI:** Very rarely. I can see, over 22 years, perhaps a handful of people. I could count on one hand the people who have reached 31 per cent.

**The Hon. DAMIEN TUDEHOPE:** This scheme certainly allows the claimant 2½ years to make a claim and allows them medical expenses for 12 months after that date but then cuts off their entitlements for any further claims and any lump sum claims after that date if they are below the 31 per cent.

**JULIAN PARMEGIANI:** Yes, but the 31 per cent, or any percentage of permanent impairment, does not kick in until the person is assessed as being permanently impaired and therefore let go. That process is the damage—the two years or 18 months that it takes for the system to say, "This is your permanent impairment rating." By that stage, you have already damaged the person.

**The Hon. DAMIEN TUDEHOPE:** But Ms Boyd made the point earlier on: At what point do you make that assessment? A person at the commencement of the process might be 20, 22 per cent, but by the time they get to 2½ years and one day they might be 30 per cent. Would that person be required to start again? They have gone through this process; you have cut them off.

**JULIAN PARMEGIANI:** When you look at the criteria, if you read the PIRS, to get to 31 per cent, basically you are not working, your relationships have broken down and you are unable to look after yourself. Basically, after that time if you cut them off the system, you might as well give them a cardboard box and they can move into the street because they have got no agency left.

**The Hon. DAMIEN TUDEHOPE:** You have had an opportunity of looking at the exposure draft.

**JULIAN PARMEGIANI:** Yes.

**The Hon. DAMIEN TUDEHOPE:** Are there any aspects of it which you would embrace in terms of, "This looks like a good initiative"?

**JULIAN PARMEGIANI:** I'm sure the exposure draft is paved with good intentions. But, because of the further delays that are built in or suggested in the claims-handling system and the process, I fear that it is going to be causing more harm because you are now going to stretch the process by another few months while you get the—I don't know if it is going to be the IRC or Fair Work Australia—to assess whether they have had a workplace injury or not. So I take into account the harm caused by further delays, and I think it will more than counteract any good intentions of the draft reforms.

**The CHAIR:** Before I pass to the Deputy Chair, Dr Dinnen, if you have got any contribution you'd like to make as the questions progress, could you just put your hand up, please? That's the signal for me to throw to you.

**ANTHONY DINNEN:** Mr Chair, I didn't want to interrupt Dr Parmegiani, but I must endorse everything he said. The other thing that occurs to me is that when we are talking about assessment, we are talking about a way of calibrating the number that we would give on the scale that Dr Parmegiani developed 20-odd years ago. That, I think, can be confused with what we psychiatrists normally regard as assessment, which is when you see a patient and you examine them and you come to an opinion as to what's wrong with them. That's really a medical-type assessment. So I wasn't sure whether that was part of what was being asked. If it is, then clearly—I don't think there is any difficulty in making diagnoses, but I agree with Dr Parmegiani. Even if there are some patients where it is not that straightforward, what's involved in the compensation process is looking at how much impairment there is. That really doesn't depend on the diagnosis; it depends on the clinical features that you are dealing with.

**The CHAIR:** Thank you, Doctor. That is very helpful.

**Ms ABIGAIL BOYD:** Good afternoon to both of you. Dr Dinnen, a lot of people have made the point that there is a need to distinguish between physical and psychological injury claims when it comes to a lot of aspects of the workers compensation system, particularly the management of those claims, but that when it comes to the assessment process for an impairment, an injury is an injury and that's the spot where psychological and physical injuries should really be treated the same. Would you agree with that statement?

**ANTHONY DINNEN:** Yes, I do. The only other thing I would say is that psychiatry is starting to evolve in a way that we have been hoping to see for a long time. It's starting to move towards a biological basis to understand psychiatric illness, which has been lacking until now. There is a lot of research being carried on around the world at the moment into genetics of psychiatric disorders. We know now increasingly a lot more about the neurobiology of psychiatric disorders. The distinction you are making between physical and psychological makes sense, except that a lot of the patients that I deal with, the way I manage is to tell them, "If you haven't got a psychological injury where you can be talked out of it or you can talk yourself out of it or you may be reacting psychologically, what you have got, essentially, is a brain injury." I think that's increasingly an understanding of where psychiatry is going nowadays. If you're with people who have been traumatised, as Dr Parmegiani has described, once they get to that point where they really feel incapacitated, it is not a question of psychological therapy getting them better. Their illness is going to persist—the impairment is going to persist—and the long-term consequences often lead to permanent disability, and that is often poorly understood. That happens in physical injury, but it is also very relevant to psychological.

**Ms ABIGAIL BOYD:** The workers compensation scheme is designed around the principle that you are compensated because you are injured, not that you are compensated because your employer did something wrong. It has been pointed out by other witnesses that if you injure your leg because you trip over a chair, that's not treated any differently to if you injure your leg because you tripped over a couch or anything else, for that matter. Whereas these reforms are looking at psychological injury and saying, "Yes, you are injured, but unless it is because of a particular reason, we are not going to cover you." Dr Dinnen, does that make you question whether the designers of this proposal understand that psychological injury is just as valuable or just as valid as a physical injury?

**ANTHONY DINNEN:** It's a very important question you ask. If it's true that, with a psychological injury in the workplace, you have to look at the events and categorise them—is it bullying and harassment? Is it overwork? Is it unsuitable working conditions? Is it being subjected to assaults or something which could be seen as an injury physically that gives rise to a psychological injury—someone who works in a mine and gets injured and develops a secondary psychological injury, for example? I agree with you. To try and compartmentalise as far as the elements—and if it's going to apply in psychology, it should also apply with regard to physical injury.

It seems to me this whole issue really is an unclear approach to the management of psychological injury. That was my initial reaction when I got told that the threshold has been raised to 31 per cent—or 30 per cent, I was told—for psychological injury, but that doesn't apply to any other injury in the workplace. If there are increasing claims, which apparently is the problem for psychological injury, the problem is not then to say, "Therefore we won't pay those because we will make it more difficult." The problem is to find out why and what is going on here. One of the things that I have seen already from this brief involvement with this critical process is that it's not well understood as to how this is all coming about when a psychological injury is essentially, in my experience, a medical issue in the same way that a physical injury would be a medical issue.

**Ms ABIGAIL BOYD:** Dr Parmegiani, there has been discussion about the similarities or not between the 30 per cent test under the South Australian legislation and the proposed 31 per cent test here, in terms of that threshold being based on a different scale. Obviously, you are the person to ask about this. Would you agree that there is a difference between the two?

**JULIAN PARMEGIANI:** I'm not familiar with what scale South Australia has introduced, so I can't really comment on that. But if I could just clarify, a very important point made by Dr Dinnen is that we are now converging physical and—psychiatric injuries seem to be also physical because of the stress hormones like cortisol and the lack of sleep. What happens is you get real changes on MRIs. Parts of the limbic system, which is a part of the brain, start shrinking because neurons die. Then you remove the stress and the person remains broken. That is a physical injury in the brain. You can cause psychiatric injury. If it was just a reaction, you remove the stressor and the person within days or weeks goes back to normal, which is probably what would happen in the initial phases of an incident, unless you just keep stressing that person.

**The Hon. MARK LATHAM:** Thank you to the two doctors. To both of you, you've been around a while and seen the emergence of new trends and patterns in this space. How do you explain the rise of psychological injuries? I think reasonably you can say workplaces themselves over the last 20 or 30 years haven't become more dangerous and damaging to people. We've got a multitude of DEI programs, identity programs, all sorts of consideration and compassion for people in the workplace that wouldn't have been there, say, 30 years ago. For goodness sake, you can even work from home; you don't even have to turn up in many categories. What has been the trend in that environment that has led to this increase in the injuries that we are dealing with in this draft exposure bill?

**JULIAN PARMEGIANI:** Clearly, the culture has changed, as you pointed out. Had you been born 150 years ago you would have lost various brothers and sisters and family members either through war or diseases that can now be treated. So you are not exposed to stressors and that, in a way, does not forge you into a stronger individual. We're not as used to—we're not learning how to cope with stress early in life because we're all being very well looked after. You probably wouldn't have it any other way these days. You wouldn't go and brutalise children just to make them tougher. But, yes, we are a little bit more prone to getting upset and getting angry, but then again, I don't think that's something that should necessarily lead to a psychiatric injury or claim, unless something else comes on top of it and makes your life hell.

**The Hon. MARK LATHAM:** What's the something else that's changed? I agree with what you're saying about the general outlook on resilience. You don't have to be brutalised as a child to toughen up.

**JULIAN PARMEGIANI:** Toughen them up.

**The Hon. MARK LATHAM:** You can grow up in a tough area and in tough financial circumstances. Anyway, be that as it may, what are the other things that have changed that you have just mentioned there?

**JULIAN PARMEGIANI:** As I said, there is a culture of being a victim and feeling hard done by. All those things certainly do apply. But I think for our purposes you may argue that we have some less resilient individuals, so we don't need a system that basically makes them into more grist for the mill—a sort of sausage machine of compensation—because that really breaks people.

**The Hon. MARK LATHAM:** So, too, in the finances of these schemes—if we've now got a culture of victimology, that doesn't mean people have got real injuries.

**JULIAN PARMEGIANI:** People feel it; they believe it.

**The Hon. MARK LATHAM:** They believe it? Okay.

**JULIAN PARMEGIANI:** They feel they are the victim of an injustice. They lose sleep over it.

**The Hon. MARK LATHAM:** It's like the Costanza principle. If you feel like you are injured, then you are.

**JULIAN PARMEGIANI:** Certainly you can talk yourself into it.

**The Hon. MARK LATHAM:** You can talk yourself into it?

**JULIAN PARMEGIANI:** Yes. It's current culture, but that doesn't make it any less suffering.

**The Hon. MARK LATHAM:** Dr Dinnen, what say you?

**ANTHONY DINNEN:** If I could come in, the notion that people are facing psychiatric injury is an easy one to [inaudible] but in reality I don't think it's an issue. What is an issue is that if there has been a very big increase in psychological injuries in the workplace, you have to understand what's caused it. Dr Parmegiani has given some reasons. To give you an illustration, I have patients who have developed PTSD and get medically retired from the Police Force after 30 years of frontline service. That makes sense. If you know what happens on general duties in the Police Force, I wouldn't want to do a day's work. But those 30-year police retiring on medical grounds from PTSD are now becoming very uncommon. What is common is young policemen with five or 10 years service are also not able to continue any further and are being medically retired from the police. I ask my police patients what's going on. I say, "How long can you last as a young person coming into the Police Force nowadays?", and I'm told five to seven years.

I asked ambulance officers that I encountered when I had an unfortunate incident and was in an ambulance. I said to them, "It's very nice to see you. How long have you been an ambo?" "Ten years." I said, "That's impressive. How long can people expect to be in the ambulance service today when they join up?", and they said, "Five years." There is something going on. Maybe it's because benefits are accessible and maybe that allows people to say, "Well, I am sick." I don't want to push it any further. Dr Parmegiani, I'm sure, would agree with me that the earlier you identify yourself as having mental health problems and get attention for that and get out of the situation that caused it—whether it's a bad marriage, a bad workplace, a home environment, whatever—the sooner you get out of it and get back to something alternative, the more than likely it is

that you're going to get a reasonable level of recovery. I think there are a lot of answers to the question, but it's an important issue.

**The Hon. MARK LATHAM:** To both of you on this trend, just away from the workplace, is there a comparable rise in non-workplace psychological injuries, and what does that tell us about the workplace environment?

**JULIAN PARMEGIANI:** I think there are various areas where people do come to compensation, whether it's medical negligence or public liability. I haven't been around for 100 years, but I suspect that people are probably more vulnerable these days. Being told that they've been injured or they're the victim of an injustice and there is a system to compensate them to bring this justice, some people take advantage of that and will pursue that path.

**The Hon. MARK LATHAM:** Is there a rise in the non-workplace psychological injuries, or is Dr Dinnen's point valid, that it's happening in the workplace because benefits are available?

**ANTHONY DINNEN:** I would say there is a very good answer to that, which is that the model that has been used now for the past years since the Government started to fund psychological services—a person would go to the doctor and say, "I'm stressed and anxious because my nephew died," or "The workplace is difficult," or "I've had an illness." And the doctor will say—because you've only got six minutes—"Well, I'll send you to a psychologist." When this scheme started to fund psychologists, there were about 5,000 or 6,000 in the Commonwealth. I think that is now above 30,000, so they are looking for work. They very rarely would ask the psychiatrist, "What do you think the diagnosis and management should be?" They are not medically qualified. They are in need of patients. They are in need of clients. They want to keep working. They're not going to send people away. I think that is part of the problem.

**The Hon. MARK LATHAM:** In economics we call that Say's law—supply creating its own demand.

**JULIAN PARMEGIANI:** Just to follow up with that question, I did see a study, which was interesting, looking at the cause of post-traumatic stress disorder in the community. One of the highest causes was watching a relative die in a hospital. This is something that used to occur commonly throughout the history of mankind, but now it is the biggest cause of post-traumatic stress disorder, or one of the biggest ones.

**The Hon. MARK LATHAM:** Watching a relative die in a hospital?

**JULIAN PARMEGIANI:** Yes.

**The CHAIR:** They used to die at home.

**JULIAN PARMEGIANI:** You shouldn't see it; you shouldn't watch it because this is so upsetting. You've never seen a dead body before.

**The Hon. MARK LATHAM:** Yes, they'd be killed at work accidents.

**The Hon. ANTHONY D'ADAM:** I want to take both members of the panel to proposed section 8A, which is the meaning of "psychological injury". Presumably, if this is legislated, there will be a judicial consideration. What is a mental or psychiatric disorder?

**JULIAN PARMEGIANI:** Clinically, we use the DSM—the *Diagnostic and Statistical Manual of Mental Disorders*—which is an American classification system with criteria that we mostly agree with, talking to each other. That's what we use. I'm not sure whether there's a legal definition that they want to work in there.

**The Hon. ANTHONY D'ADAM:** How would you assess, because under the definition it causes—you've seen the definition, I'm assuming?

**JULIAN PARMEGIANI:** Let me bring it up again.

**The Hon. ANTHONY D'ADAM:** Under the definition it causes "significant behavioural, cognitive or psychological dysfunction". How would we determine what "significant" is?

**JULIAN PARMEGIANI:** Again, that is subjective. I think what is significant—

**The Hon. ANTHONY D'ADAM:** Presumably the court is going to ask someone like yourself for an explanation of that. What are you going to say?

**JULIAN PARMEGIANI:** Yes. We, as in treating psychiatrists and assessors, have an experience of what is a normal reaction to a stressful event and what is abnormal. Clearly, they are a continuum, and somewhere you have to draw the line and say, "This is definitely abnormal. This is pathological. This is a psychiatric disease or injury." But it is subjective and that's why sometimes you find a difference in opinion in diagnoses between psychiatrists. Someone will think, "Oh, no, that cognitive response or that behavioural response to me seems to be within the normal range," and someone might say, "No, I think that's outside the normal range."

**The Hon. ANTHONY D'ADAM:** Can it be a temporary thing?

**JULIAN PARMEGIANI:** Of course. My point is that most reactions to stress, even major stressors, are temporary.

**The Hon. ANTHONY D'ADAM:** So how do you distinguish between something that's temporary and a permanent disorder? At what point do you make the assessment that it's no longer a temporary thing?

**JULIAN PARMEGIANI:** Generally they put a limit of about four weeks. If you're still suffering symptoms after four weeks, then perhaps you've got something diagnosable. Most people are still resilient enough, Mr Latham, to come good eventually, but there is something else going on here with this compensation system.

**The Hon. ANTHONY D'ADAM:** So you can have a psychiatric disorder that's temporary, where the symptoms, for want of a better description, have disappeared before you've had a diagnosis?

**JULIAN PARMEGIANI:** Then you don't have a diagnosis; they've gone. It's a normal psychological response.

**The Hon. ANTHONY D'ADAM:** Surely you've still sustained an injury under this definition?

**JULIAN PARMEGIANI:** Legally, you've had something unhappy at work. It's an event. If the employer was negligent in what they did, the lawyers will say, "Yes, that's an injury." But when you're speaking medically, if there are no symptoms, if there are no consequences or no problems in everyday life, then you don't have a disease or a diagnosis.

**The Hon. ANTHONY D'ADAM:** But surely you could imagine a situation where someone experiences a psychiatrically traumatic event and has behavioural or cognitive psychological dysfunction as a result of that event—

**JULIAN PARMEGIANI:** Yes, which goes away.

**The Hon. ANTHONY D'ADAM:** —and then they recover. They need time off from work in that period but it won't be diagnosed. It'll never be able to be diagnosed. How does that work in terms of the compensation system?

**JULIAN PARMEGIANI:** What I'd like to stress is that that is a normal psychological reaction. We don't live in an emotional vacuum. Things that happen upset us and we lose sleep over it. We might become irritable and we might even go off our food for a little while and not want to socialise. That's a normal response to an unhappy event or incident, but that's part of the human condition. That's how we function.

**The Hon. ANTHONY D'ADAM:** Can I ask about causality? How do you assess that a relevant event has caused a psychological injury? Presumably psychiatrists are involved in that assessment, I would say?

**JULIAN PARMEGIANI:** The issue of liability is not for the psychiatrist. Clearly someone has to determine—

**The Hon. ANTHONY D'ADAM:** Causality.

**JULIAN PARMEGIANI:** —the facts in the workplace. If it did, and there's a close temporal relationship with an incident and the development of symptoms and there are no other explanations for that person developing that set of symptoms, such as other incidents—relationship breakdowns, drug or alcohol problems, pathological gambling—so you have event A leading to condition B, then you can be confident, because of the temporal relationship, that A caused B.

**The Hon. ANTHONY D'ADAM:** What if it's not as clear as that? How do you—

**JULIAN PARMEGIANI:** Then what caused it? It just comes out of the blue?

**The Hon. ANTHONY D'ADAM:** It could be there are other factors that are exterior to the workplace but there is obviously some strong countervailing evidence that suggests that it was—how do you draw that line of distinction?

**JULIAN PARMEGIANI:** Then you have to apportion how much is causing what. Then you try to, in your mind, work out that, in the normal person, event A would cause these symptoms and event B would have caused greater symptoms or lesser symptoms. It's not uncommon for people to have a number of incidents occurring. For me to be asked in the past to apportion the causality, I would say, "60 per cent is due to A, 10 per cent is due to B, 5 per cent is due to C," and so on. We try to put it together; that's why we're called experts. We've got clinical experience in assessing the psychological response to incidents and their magnitude.

**The Hon. ANTHONY D'ADAM:** In an earlier answer you referred to the process of doing the whole person impairment assessment looking at functional capacity. Presumably that's also how you assess work capacity. Can you talk a little bit about the intersection between the process of how you look at someone's functional capacity and how you might make an assessment of whether they're capable of working one or two or three days a week?

**JULIAN PARMEGIANI:** Clearly all of those areas of functions are intertwined. If you can travel to your workplace, if you can relate normally to other people, if you can concentrate and you're carrying out activities which require a degree of concentration, such as doing a university course, clearly your concentration is fine. If you are able to look after yourself, all those things can translate into work capacity. We assess what people do. Clearly they're not at work, otherwise they wouldn't be seeing you, but you take a screenshot of their lives and what they're doing. If that translates into being able to function at work—concentrate and get there and relate to others—then they've got work capacity.

**The Hon. ANTHONY D'ADAM:** Are psychiatrists involved in work capacity assessments?

**JULIAN PARMEGIANI:** I think they are. They have been asked, but it depends on psychiatric injuries. We are often asked to assess work capacity.

**The CHAIR:** If there is any opportunity to bring the Government questioning to a conclusion at this point, that would help us get to the next witnesses on time—without being disrespectful to Government members.

**The Hon. ANTHONY D'ADAM:** I have no further questions.

**The Hon. STEPHEN LAWRENCE:** I've got no questions, Chair.

**The CHAIR:** On that basis, that brings us to the allotted time. Doctors, thank you very much to both of you for making yourself available. We know you are very busy. We respect your training and experience and capacity to bring some real expert knowledge before the Committee this afternoon.

**(The witnesses withdrew.)**

**Mr CHRIS GAMBIAN**, Executive Director, Australians for Mental Health, sworn and examined

**Professor PAT MCGORRY, AO**, Founder, Australians for Mental Health, before the Committee via videoconference, sworn and examined

**The CHAIR:** Thank you for making yourself available on a Friday afternoon. Would either of you like to make an opening statement?

**CHRIS GAMBIAN:** Thanks for the opportunity to say a few words today. The workplace mental health system is in urgent need of reform. On that much, at least, we and the Government are in heated agreement. Workers in New South Wales need jobs that support mental wellbeing and, when things go wrong, quick access to quality mental health care and support. The draft legislation will not achieve that. Changes that make it harder for workers to get help through the workers compensation system for psychological injury will push thousands of injured employees straight into a public mental health system that is already at breaking point. To force workers who are experiencing what is likely to be the worst moment of their lives to commence and win legal action before being able to get support for a mental health issue is to punch down on some of the most vulnerable people in New South Wales.

Everyone knows someone who has struggled with their mental health. Mental health issues affect every family in New South Wales. Our research tells us time and time again that work is one of the leading causes of mental distress, but this draft law is built around the idea that workers are faking it. I wonder if the drafters of this law would be willing to look a firefighter or a nurse or a paramedic or a social worker in the eye and tell them they are faking their mental distress. Would they sit in the waiting room of a mental health service or the emergency department of a New South Wales public hospital on any night of the week and tell the people who are struggling with mental ill health that they are faking it? People who work in the construction industry make up about 9 per cent of the workforce but 21 per cent of the deaths by suicide. Are these people faking their mental distress?

Change is needed, to be sure. But this is change designed by lawyers, accountants and politicians for a fundamental question of health, wellbeing and workplace design. There is a better way. Slow down. Make this reform count, to improve workplaces and improve lives. Bring mental health experts together with workers and employers to do the things that reduce harm in the first place. As a start, we could design jobs to meet workers' wellbeing needs, including those with pre-existing conditions; hold employers accountable for maintaining psychologically safe workplaces; resolve workplace relationship issues quickly and focus on rebuilding trust rather than litigating; provide adequate interim supports so distressed workers can focus on recovery; and ensure that long-term care is available for those who need it. Let's design a system that improves human outcomes. Doing that will save even more money and get workers back to work and healthy much faster.

**The CHAIR:** Thank you, Mr Gambian. That was a very concise but very helpful and thorough opening statement. Professor McGorry, do you wish to add to that opening statement of Mr Gambian?

**PAT MCGORRY:** I don't think so, but I'm very happy to answer any questions in relation to what Chris has said and any other questions that the inquiry might have.

**The Hon. DAMIEN TUDEHOPE:** Thanks, Chris, for coming along. In your submission you warn that the bill, if it were to pass, would push thousands straight into a public health system that is already at breaking point, overwhelming services and leaving many people without care. What are the elements of the bill that lead you to that conclusion?

**CHRIS GAMBIAN:** First and foremost, when a person is injured—when their mental health has been injured in any context, work or otherwise—they need to go and seek out supports. There are already massive shortages of those supports. I think that's been traversed pretty thoroughly. Getting in to see psychologists, psychiatrists, counsellors—it's all under a lot of pressure. The benefit we have with the workers compensation system is that people who are able to access insurance are able to access a range of services that a person whose means might not extend to private psychiatrists or private psychology are unable to access. That's the first thing.

The second thing is just the fact of being able to take some time off work. One of the points that I think we made in the submission but has been canvassed more publicly in the last couple of days is that the quicker a person can get assistance, the less severe their conditions are going to be. If we're saying to somebody, "You can't even have time off work that is covered by workers comp", then what possible hope do they have of being able to recover from their injuries? It does force people into the more publicly available options for mental health care, like the public system, like emergency wards and things like that. If people aren't getting care through the workers comp system, the problem doesn't go away; it just changes who's responsible for it. Right now, the supports that we've got in place for people who need mental health care in New South Wales are woefully inadequate.

**The Hon. DAMIEN TUDEHOPE:** One of the proposals is to amend section 39 to require 30 per cent or 31 per cent WPI before you can continue claims after 2½ years and continue to get access to medical treatment for a further 12 months. Some of the evidence we've heard says that would, in fact, just about include everyone and there would be no-one else. Is that your experience?

**CHRIS GAMBIAN:** Look, I'm not going to claim expertise adequate to answer that question, Mr Tudehope. As people on the Committee would know, I'm relatively new to this space. But certainly the briefings that we've had and the

information that we've had from some of our experts that support us is that there are two problems. One is, if you get a person who doesn't meet the criteria for 30 per cent—which, yes, we've heard is very, very, very few people—those injuries don't go away, so then what? Who's looking after them at that point? It is already—

**The Hon. DAMIEN TUDEHOPE:** It might be forcing them onto social security.

**CHRIS GAMBIAN:** You might be forcing them onto social security. I'm sure the life insurance industry would say you'd be forcing them into claims for permanent disability through the superannuation system. Certainly the need for care doesn't go away just because the Government decides it's not workers comp, and I think that's a pretty fundamental problem.

**The Hon. DAMIEN TUDEHOPE:** Dr McGorry, what's your assessment? Would a 30 per cent WPI exclude most claimants?

**PAT MCGORRY:** I think so. I think it's lifting the bar too high. As Chris is saying, what's the alternative pathway for people that are in between that 15 per cent and 30 per cent? There's a whole swathe of people whose longer term care would be severely compromised, with very few other options for them, I would say, based on the initial statements that Chris just made.

**The Hon. DAMIEN TUDEHOPE:** Some of the anecdotal evidence that people always put up in relation to the workers compensation system is that, anecdotally, someone is put under a pressure situation at work and their response is to go away on stress leave or some sort of other leave because of the stress situation they've been exposed to. We also heard evidence just prior to yourselves that there are mental reactions or emotional reactions to just about everything in life. We either like it, don't like it or react to it in some other way. How do you differentiate between a mental health issue in response to a workplace issue and one which is just a normal human reaction to a potential stress situation?

**PAT MCGORRY:** That is such a great question. I've been addressing that in my career more widely for a long time, and also even just recently in the media, because there is an issue with the boundaries of mental illness. There is an issue about that. We know in Australia from the national mental health survey that the prevalence of mental illness is going up dramatically, in a genuine sense, because the national mental health survey has got a very tough and rigorous methodology. It measures things very accurately using objective diagnostic criteria, so it is going up in a genuine sense.

On the other hand, there's another layer on top of that of people who are in distress or where the boundaries of diagnosis have softened. Two examples of that would be ADHD and ASD, where we're seeing a huge increase of diagnosis of people that probably don't necessarily have a need for care. That is the issue that needs to be decided in these cases: Is it something that's just part of life and will be transient and not have a need for professional health, and it will resolve with support in a short time frame, or is it something that needs care? That is a skilled decision that has to be made by an expert, not by lawyers or accountants or people seeking to constrain government expenditure or insurance expenditures in different ways. It's been a battle over things like back pain and all sorts of other things in this domain for many, many years. I've seen many cases where that decision in a physical health sense is called into question. But there's no doubt that workplace stress and things that happen in the workplace—unsafe environments, whether they're physical or mental, can contribute to a need for health care generally, and also mental health care. It's a little bit more difficult to define that, in some ways, in mental health, but it has to be defined. What is the accurate level of need for care amongst these workers? That is a decision that should be made by clinicians, not by accountants and lawyers.

**The Hon. MARK LATHAM:** Thank you to the two witnesses. Dr McGorry, in your submission, there's an expression used that we haven't see in any other part of the day, to my knowledge: psychosocial injury. What exactly is meant by that?

**PAT MCGORRY:** It's where the causes of the onset of an episode of mental ill health are psychological or environmental. That's probably the best way to explain it. Obviously, there are causes of mental illness that are fairly intrinsic to the brain, genes or biological vulnerability, but we know that risk factors that transform that vulnerability into manifest disease or need for care are very often psychological stress of various kinds or social environmental factors. Workplace stress would be one. Even stressors like unemployment or housing difficulties can tip people over from a healthy state into a state of acute depression, psychosis or other forms of mental illness. The onset of mental illness is often a complex interplay of these things. That term "psychosocial" is used to capture the external triggers or risk factors. Does that make sense?

**The Hon. MARK LATHAM:** It makes perfect sense. On page 3 of your submission, in the second last paragraph, you write about the impact of clause 8H in the exposure bill, where, if a paramedic who attended a crime scene where a child had died had experienced vicarious trauma in the workplace, lawyers and the legal system would judge that, rather than mental health practitioners. You say it's plainly absurd. You can only imagine how bad that circumstance in that job is, but we live in a society where, for a range of reasons, we need people who do that kind of work.

Doing that work, no matter the human tragedy and difficulties that must confront a lot of those paramedics on a daily basis, it does help a lot of other people to have them on the job. It doesn't necessarily follow, does it, that every paramedic will suffer vicarious trauma by virtue of being in that job? In terms of prevention, are we doing enough in the selection of people in those occupations to ensure that they're of a mental framework, an outlook or a life experience where they're less susceptible to the type of trauma that we're talking about? I think that selection process, as opposed to strictly equal employment opportunity, is actually good for the workers, isn't it? If you throw people in who aren't able to confront these problems, you've got twice the problems, haven't you?

**PAT MCGORRY:** That's a good question and a good area to discuss. I think you're right to say that there are certain personality characteristics or strengths that should be valued when you're recruiting people for these types of jobs. That's a very good point. Some people are more vulnerable than others to the exposure to trauma. I have treated and seen a lot of first responders over my career, including police, paramedics, firefighters and other people, who do a fantastic job for the community, as you pointed out. They are often not well enough supported by their organisation. I've got a friend in Sydney who was a fantastic paramedic on the helicopters for many years. He performed heroic acts and was highly respected by all of his colleagues. When he reached the tipping point of too much exposure to these very traumatic experiences, he was not well supported by his organisation.

No matter how strong and resilient the person is—and we see this with military personnel. For example, in the First World War, when you were in those trenches on the Western Front, very large numbers of very strong men had major nervous breakdowns and there were psychiatric casualties as a result of exposure to extreme, overwhelming trauma. If you think about the police, for example, who are exposed to dozens of hideous and traumatic car accidents over a period of time, the cumulative effect of trauma will probably overwhelm most people if they experience enough of it. It's a complex interplay of how vulnerable you are in the first place, as you pointed out, and then what they actually get exposed to. To say that, because they don't have a personal relationship with the person who's affected, it rules out vicarious trauma, goes against all the research and evidence. Vicarious trauma can happen to anyone.

**The Hon. MARK LATHAM:** The biggest thing the police talk about is that it's horrific having to cut down people who have hung themselves.

**PAT MCGORRY:** Exactly. I couldn't agree with you more.

**The Hon. MARK LATHAM:** It goes also to leave conditions, pay and support, as you say. I would've thought leave conditions need to be reassessed to give people a break from these sorts of jobs.

**PAT MCGORRY:** There are a lot of factors involved there. Thank you very much for bringing up that point.

**Ms ABIGAIL BOYD:** Thank you to both of you for coming along today. I'm going to start with Mr Gambian. We know that there are a lot of different rising costs within both sides of the system. A very good example is silicosis. We ended up with an increase in rates of silicosis. It's only to do with part of the scheme, but the Government's response to that was as you would expect: to take very serious preventative action and also to give better support to workers who were suffering from that. What does it tell you about this Government that they have taken psychological injury and decided that that's the one they're going to turn their backs on and exclude? What does that mean in terms of stigma around mental health?

**CHRIS GAMBIAN:** As I said in both the submission and my earlier remarks, the whole construct of this piece of so-called reform seems to be that we have a financial problem—I don't know enough about the financial problem to tell you whether or not there is a financial problem; I take it on faith that there is—and we have growing prevalence, so it follows that the solution to the financial problem is to deny the prevalence. One hundred years ago, there were no claims for psychosocial injury, I wouldn't have thought, because we didn't accept that it was an injury. I don't think that's because there was no psychosocial injury; I think that is because we didn't accept that there was an injury. It is a terrible both missed opportunity and shame that an area that needs attention—and we're not arguing that workplace mental health is not in need of some attention—is getting that attention through what I would say is a quick, hasty process, designed for financial outcomes and not for better mental health outcomes.

The problem with that, apart from the obvious problems and all of the rhetoric that's going around, is that if we were to get this right, if we were to change how we looked at workplace mental health—because I don't argue for a second that the current system works. As somebody who was a trade union official for 16 years, I've supported numerous workers with very extreme mental health problems at work. I was an official with the Finance Sector Union. Twenty to 25 years ago, in the finance industry and the banking industry in New South Wales, there was, on average, an armed robbery once a week. That is to say that once a week, in metropolitan Sydney, a worker, usually a woman, would have a gun pointed at her in the context of an armed robbery.

The PTSD injuries that arose from that kind of crime prevalence were absolutely devastating for any number of people. There's famous examples of times when workers who had been injured multiple times couldn't work anymore. Their employer's response was to hire a private investigator to prove that they were lying rather than give them the support they need to get back to work. That's where we've been at in the past. The solution came from the banking industry when we started getting serious about reducing armed robberies. Today there are no armed robberies in metropolitan Sydney. That is psychosocial injury that has been prevented. That is literally hundreds, if not thousands, of people who are not needlessly suffering.

It is fundamentally cheaper for the insurance system as well. If we were to take this seriously, and if Parliament was to say this shouldn't be a financial exercise—we've absolutely accepted that there is a financial dimension to this, and I'm not trying to argue otherwise. If we started to say, "What is it going to take to make the workplaces in New South Wales safe for the mental health and wellbeing of workers," we will end up with less pressure on the insurance system, more productive and more profitable workplaces, more effective public services and less harm done to both the workers themselves and their families and communities.



**The Hon. BOB NANVA:** This Committee is looking into measures to improve the financial sustainability of the workers compensation system. One way of doing that is to improve return to work rates. That's not just about financial sustainability, though. Would you agree that improving our return to work rates would also improve the health and wellbeing of individuals that do suffer from a psychological injury at work?

**CHRIS GAMBIAN:** Absolutely. I couldn't agree more. I will let Professor McGorry say a few words on this, because he is certainly the clinical expert. From a practical standpoint, let's talk about the fabled case—and, as an employer, I've experienced this—where a person feels like they're under a bit of pressure at work and they decide to take some so-called stress leave. What does it take in those circumstances to remedy that situation? You've got, probably, some sort of breakdown in communication between at least two people. You've got a person who is probably feeling quite distressed and not necessarily able to work, and an employer who might, quite reasonably, be trying to get an employee to work in a particular way or to change their behaviour or do something different. What is the remedy in that situation? I'll tell you what it's not—it's not to say to that worker, "The only way you're going to get any support in this situation is to start a legal action and start with litigation."

Let's use another realm. Could you imagine a situation where we said we're going to have people go to the Family Court and try to get back together? Is that the time you're going to get back together—when you've started litigation? Could we have a system that recognised some of these fundamental relationship issues and provided support at an early level, intervened quickly, assessed for genuine psychological injuries quickly with clinicians, and then said what it is going to take to either fix the situation, so this person can go back to work really fast, or recognise that this ain't ever going to work and move that person somewhere else. That is, in my view, a far better outcome for both employer and employee, and a cheaper outcome for the insurance system.

**PAT MCGORRY:** I also very much agree with the premise of the question. In fact, we've carried out research here at Orygen showing that if you provide—this is to young people who have dropped out of employment or education because of their mental ill health—what's called an IPS, or individual placement and support worker, which is almost like a coach alongside the clinical care, you get return to work rates which jump from between 30 to 40 per cent to between 80 to 90 per cent. That actually saves on welfare and other clinical costs. It also rescues the person from a life of disadvantage and poverty in the welfare system. We definitely want to do that with people with mental ill health and mental illness. Even with severe forms of mental illness it's quite possible. That workforce has not been properly developed by State governments in their mental health services, and only to a limited extent in headspace centres by the Federal Government. There is a very big, missed opportunity by governments here across the whole mental health spectrum, and even beyond workplace injury, in terms of helping people with mental illness get back into mainstream work and education. We've been advocating with governments for many years to invest in this workforce and this component of mental health care that helps people recover functionally and socially and not just symptomatically.

**The Hon. BOB NANVA:** The anecdotal view is that the longer someone takes to return to work, the chances are they may never return to work. The longer they are off work, the more they are at home passively sliding into depression. The downstream effect of that is that the medical costs intuitively then increase with respect to the claim. That's the anecdotal evidence, but that's the clinical view as well, is it?

**PAT MCGORRY:** It's not just the clinical view. It is the evidence-based, research-backed view which we've spent years developing an evidence base for. Sadly, governments are very slow to respond to—if it was a cancer treatment, it would be delivered tomorrow. There are many other examples of that in mental health care where things that we've worked hard to create—new treatments and new ways of working—are not implemented by health departments and by governments.

**The Hon. BOB NANVA:** There was criticism today that the scheme operates reasonably well with respect to physical injuries, but its ability to cater for those that suffer from non-physical injuries obviously leaves a lot to be desired. The return to work rates for non-physical injuries have remained stubbornly low, both in the public and private sectors. Is there a secret sauce that you're aware of in other jurisdictions that we should be looking at but haven't previously explored in New South Wales?

**PAT MCGORRY:** Without getting too much off track here, the mental health system in Australia is in crisis. It's actually good to see the Federal Government starting to invest more strongly in it with the election commitments. We saw deinstitutionalisation happen about 30 years ago in all States. What's happened since then is a complete failure to develop public mental health services capable of responding to filling that hole. That is why you're seeing, in New South Wales at the moment, 200 psychiatrists resigning from the public sector because it's falling apart. We had a royal commission in Victoria because the Premier, Daniel Andrews, admitted that the system was broken and had steadily fallen apart since deinstitutionalisation. He held a royal commission into broadening the levy to fund the rebuilding of the system. That is underway. It's been slow as well.

On the Federal side, we spent \$4 billion a year federally in mental health care for the whole country. As you're probably aware, we're spending \$40 billion a year for a relatively small number of people funded through the NDIS. The asymmetry of funding and the neglect of funding of the mental health system, both Federal and State, is the reason you're not seeing any improvement in these recovery rates, not just in relation to people injured at work but also in relation to anyone with a

mental illness. The return on investment with recovery rates could be dramatically better if we flipped around or at least rebalanced the investment on the NDIS versus mental illness. It's actually not happening at a State nor a Federal level.

**The CHAIR:** There are many more questions that we'd like to ask, but the time has come. On behalf of the Committee, thank you very much, Mr Gambian and Professor McGorry. As usual, it is quality evidence that will be taken into account by the Committee. Thank you very much for appearing today.

**(The witnesses withdrew.)**

**Ms SAMANTHA TAYLOR, PSM**, Independent Review Officer, Independent Review Office, affirmed and examined  
**Mr TRENT CURTIN**, Acting Deputy Secretary, SafeWork NSW, affirmed and examined  
**Ms MANDY YOUNG**, Chief Executive, State Insurance Regulatory Authority, affirmed and examined

**The CHAIR:** Good afternoon. Thank you for making yourselves available late on a Friday afternoon, going into the evening. Are there any opening statements?

**TRENT CURTIN:** I've got a short statement, Chair, if you'd like me to read it.

**MANDY YOUNG:** I do as well.

**SAMANTHA TAYLOR:** No, Chair. I am happy to just take questions.

**The CHAIR:** You can imagine that Committee members are keen to engage and ask questions. With that in mind, please proceed with your opening statements.

**TRENT CURTIN:** Thank you for the opportunity to appear before the Committee today. I would like to give a quick overview of SafeWork's framework for regulating psychological health and safety. This framework is important for guiding our actions to enable workplaces to develop a culture of psychological injury prevention. The SafeWork NSW strategic plan outlines our purpose, our objectives, the outcomes we want to achieve and how we're going to measure that. It is underpinned by an annual regulatory statement that focuses on five high-priority areas.

One of the areas is managing psychosocial risks at work, including the risk of sexual harassment. The *Psychological Health and Safety Strategy 2024–2026* further guides our work in this area. It has a strong focus on compliance by supporting New South Wales businesses to manage psychosocial risks and use good work design to prevent psychological harm. This has guided key initiatives for us, such as statewide inspection programs, psychological WHS checks and mental health training programs for small businesses. All these initiatives will continue to ensure that businesses meet their obligations under work health and safety laws to identify psychosocial hazards and put in place appropriate control measures.

The SafeWork NSW respect at work strategy also reflects our focus on preventing sexual harassment at work. Since 2023 we've conducted statewide awareness-raising campaigns, released a code of practice for sexual and gender-based harassment, and published a suite of resources to help businesses take proactive action to address this harm. On the new horizon, SafeWork NSW is being established as a standalone agency from 1 July. A key part of this change is the establishment of the SafeWork Advisory Council. I am confident that the advisory council tripartite membership will play a vital role in guiding SafeWork NSW towards making a greater impact in all areas of workplace safety, but especially in addressing psychosocial hazards in workplaces across New South Wales, which remains a regular priority for SafeWork NSW.

**MANDY YOUNG:** Thank you for the opportunity to appear before you. As the independent regulator of the New South Wales workers compensation system, SIRA plays a vital role in ensuring that the system operates in the public interest, supporting workers, employers and the broader community. Our role is set out in the legislation to implement and uphold Government policy, advise Government based on data and evidence, and ensure the scheme's affordability, sustainability and fairness. For clarity, SIRA is the regulator, not an insurer, and we do not manage claims. SIRA's focus is to ensure that people injured at work receive timely access to the treatment, support and services they need to recover and, where possible, return to safe and suitable work.

We know that effective early intervention and high-quality injury claims management and return to work management practices are important factors for a person's successful recovery. We recognise the need for reform and have contributed to many key reviews, included the McDougall review, the Treasury Managed Fund review, as well as the various inquiries undertaken by this Committee. These reviews are essential to improving system performance, return to work outcomes and financial sustainability. Our independence is a critical feature of our regulatory role. While we operate within the policy framework set by Government, we are not subject to direction on how we exercise our regulatory functions. That allows us to uphold integrity, accountability and oversight of the system.

Today I wanted to address two key areas. One is improving return to work outcomes, which is a system priority. While most people with physical injuries return to work within 13 weeks, return to work rates for people with psychological injuries remain significantly lower. Only four in 10 return in that time frame. These injuries are also more complex and costly, and disproportionately affect certain sectors including the New South Wales Government sector. To address this, we have implemented a range of initiatives, including regulatory audits, insurer workshops and improvements in risk assessment practices. Our focus is on early intervention, person-centred care and ensuring that insurers meet standards of practice. We are currently evaluating our funded programs to determine whether they're fit-for-purpose and identify opportunities to expand and develop new programs to better meet the needs of workers and employers. Our value-based healthcare strategy is the cornerstone of this work. It prioritises integrated person-centred care for people with psychological injuries or complex physical injuries, based on data insights and lived experience.

The second key area is ensuring accountability and scheme performance. Since the last committee review, SIRA has undertaken significant compliance and performance review of the Nominal Insurer, including a targeted audit of psychological injury claims. I am sure the Committee is aware we also completed a detailed review of the Treasury Managed Fund, with a focus on psychological injury trends across the public sector. These reviews will inform ongoing system

improvements and support Government decisions-making. We remain committed to supporting Government through evidence-based policy advice and regulation that improves system performance and better outcomes for workers and employers. The challenges we face—rising psychological claims, post-pandemic pressures and a changing workplace—also present an opportunity to evolve the scheme to be more responsive, integrated and sustainable.

I am pleased to appear today alongside my colleagues at SafeWork and the Independent Review Office. Together we're working in close partnership to improve the return to work outcomes through strengthened prevention, early intervention and enhanced employer supervision. This coordinated whole-of-system approach is essential to delivering better outcomes for workers and ensuring long-term effectiveness of the workers compensation system in New South Wales. Thanks again for this opportunity. I'm looking forward to assisting in the inquiry.

**The CHAIR:** Thank you for those very good opening statements, which set a nice context now for questions from Committee members.

**The Hon. DAMIEN TUDEHOPE:** Thank you for being here this afternoon. I don't know how much of the evidence today you've watched, but it has been a very full day. Ms Young, did you lodge a submission?

**MANDY YOUNG:** No, we did not.

**The Hon. MARK LATHAM:** Why not?

**The Hon. DAMIEN TUDEHOPE:** I'll ask the question. You were consulted in relation to a working group which Treasury asked you about the framework for what we now have as an exposure draft of a bill, yet you didn't lodge a submission in respect of this inquiry today.

**MANDY YOUNG:** We have been providing advice to Treasury, to the Treasurer and the taskforce that he has set up to do that piece of work. We didn't provide a submission, primarily because most of what we would say is in the public, generally. Additionally, we've been putting inputs into that work as well and figured that, to be honest, you would ask whatever it was that you would need from this space if it's not already in the open public domain.

**The Hon. DAMIEN TUDEHOPE:** Who else was involved in the taskforce?

**MANDY YOUNG:** I think Treasury may have answered this question this morning. The taskforce includes Treasury, the Department of Customer Service, icare and ourselves provide input to that.

**The Hon. DAMIEN TUDEHOPE:** You were involved in a review of the Treasury Managed Fund in relation to psychological injuries?

**MANDY YOUNG:** I personally was not, but SIRA undertook the review.

**The Hon. DAMIEN TUDEHOPE:** Given the nature of this legislation and given that SIRA had conducted a review into the Treasury Managed Fund, don't you think it would have been helpful to have had some insight into the pressures on the Treasury Managed Fund arising from psychological claims?

**MANDY YOUNG:** The information that we would have provided would have been what was in the report of the TMF.

**The Hon. DAMIEN TUDEHOPE:** Has the Government responded to that report?

**MANDY YOUNG:** As I understand it, work has been undertaken on that. I would need to check whether the Government has formally responded. I can come back to you.

**The Hon. DAMIEN TUDEHOPE:** I don't have the report in front of me. Is it public?

**MANDY YOUNG:** The report into the Treasury Managed Fund? Yes, it is.

**The Hon. DAMIEN TUDEHOPE:** Do you recall what the recommendations were?

**MANDY YOUNG:** There is a range of recommendations within that. I don't want to miss them all. There is a range of recommendations in the report.

**The CHAIR:** Could you, for the record, specify the name of the report that you are referring to, please?

**MANDY YOUNG:** It's the *Treasury Managed Fund Review Report*.

**The CHAIR:** What is the date of that, please?

**MANDY YOUNG:** April 2024. There are a range of recommendations in that. Some are around governance; some are around return to work and particularly psychological injury. We provided a range of recommendations to the New South Wales Government to review their claims process and undertake some work in that space, to review the process for engagement with the government employers and looking at some of the rising costs. We looked at considering how that continued and the entitlements that sat in that space. There is a significant number of recommendations that sit within that report.

**The Hon. DAMIEN TUDEHOPE:** Is this exposure draft a response to that report?

**MANDY YOUNG:** That would be a matter for the Government, but it is my understanding that it would be a component part to how they manage the scheme more broadly. But it's a decision for Government.

**The Hon. DAMIEN TUDEHOPE:** Did SIRA form the view at the time that the Treasury Managed Fund was unable to continue in a solvent state in terms of assets to liabilities?

**MANDY YOUNG:** The Treasury Managed Fund is, in itself, like a self-insured model. We don't look at solvency or the financials of the Treasury-managed funds, and we don't have oversight over that.

**The Hon. DAMIEN TUDEHOPE:** There was no recommendation, was there, for legislation of this sort as a result of that review?

**MANDY YOUNG:** No, there wasn't—not as far as I'm aware.

**The Hon. DAMIEN TUDEHOPE:** When would you say that any of the changes that are recommended as part of this exposure draft would have an effect on the Nominal Insurer?

**MANDY YOUNG:** It would be dependent on when they were introduced and begun.

**The Hon. DAMIEN TUDEHOPE:** Take the premiums payable in respect of workers compensation by those who are insured with the Nominal Insurer. If this exposure draft was adopted by 1 July, would you expect to see changes to the premiums payable for the Nominal Insurer?

**MANDY YOUNG:** We wouldn't expect to see premiums change in the next financial year. The filings would have already been completed for this financial year, so we wouldn't see it in that. We would expect to see it in following years.

**The Hon. DAMIEN TUDEHOPE:** You would expect it the following year?

**MANDY YOUNG:** In the following years I would expect that we would see some change.

**The Hon. DAMIEN TUDEHOPE:** Would you expect that they would be reduced?

**MANDY YOUNG:** I think that's a matter for icare, who set those premiums.

**The Hon. DAMIEN TUDEHOPE:** But you have to approve—

**MANDY YOUNG:** We can reject a premium but we don't actually approve a premium filing. We have the option to object it, based on its reasonableness. Dependent on what they put in front of us, it's essentially a reasonable test and we can reject.

**The Hon. DAMIEN TUDEHOPE:** One of the things that the report suggests is that government employers are not meeting their current legislative requirements, and that is incurring the likelihood of an impact on positive outcomes for injured workers. That was contained in the report, wasn't it?

**MANDY YOUNG:** Yes.

**The Hon. DAMIEN TUDEHOPE:** So it was the Government not complying as a self-insurer, as you have described them, that are contributing to their own difficulties in relation to the management of the Treasury Managed Fund, because they are not meeting their own obligations.

**MANDY YOUNG:** As an employer, they should improve their processes.

**The Hon. DAMIEN TUDEHOPE:** How would you say that they should improve their workplace arrangements?

**MANDY YOUNG:** Some of the things we talked about were consistent and timely injury notification, compliant return to work programs, enhancing their internal audit and risk-management policies and processes, and a range of work around how they manage the claims and what that looks like.

**The Hon. DAMIEN TUDEHOPE:** It would be your recommendation, would it not, that those things ought to be engaged in before you would to start think about reducing workers entitlements?

**MANDY YOUNG:** I think that's a matter for—

**The CHAIR:** I don't want to interrupt the flow of questions, but there is an issue in terms of policy and what the Government policy may be, and the person who works in the public service being expected to, perhaps, reflect on policy matters. I am simply making the point that we are getting near the line and noting the ability for people to take a question on notice if they are not completely sure.

**The Hon. DAMIEN TUDEHOPE:** You are the regulator and have produced a report in relation to this workplace. Would you expect that those things would be looked at before you were seeking to reduce entitlements to workers?

**MANDY YOUNG:** To the Chair's point, that would be a matter for the Government in terms of how they want to manage that policy.

**The Hon. DAMIEN TUDEHOPE:** Was there any recommendation by you in that report that workers' entitlements be reduced for the financial benefit of the fund?

**MANDY YOUNG:** No, there was no recommendation.

**The Hon. DAMIEN TUDEHOPE:** There was no recommendation, was there, to increase to 30 per cent the WPI for psychological injuries?

**MANDY YOUNG:** Not in this report, no.

**The Hon. DAMIEN TUDEHOPE:** Was there any recommendation to set up a new bullying tribunal and harassment tribunal, and for certificates to be obtained?

**MANDY YOUNG:** Not in these reports.

**The Hon. DAMIEN TUDEHOPE:** Have you actually read the exposure draft of the legislation?

**MANDY YOUNG:** Yes, I have.

**The Hon. DAMIEN TUDEHOPE:** Is it something which you would say, as a result of the consultation you were involved in, is a reflection of the sustainability of the scheme?

**MANDY YOUNG:** It's not a matter for my opinion. We simply provide inputs and advice to the Government, and they make that decision.

**Ms ABIGAIL BOYD:** Thank you for coming along this afternoon. I want to take you to the evidence that you presented to this Committee as part of our inquiry into psychological claims. Specifically, there was a submission that SIRA made in that inquiry that set out really nicely for us what the impact was of the first psychological payment for a claim being made within the first two months. In that, there's a lovely table that says, effectively, there is about one-sixth of median payments if you get the first psychological payment within two months. The total payments to a person end up being somewhere around 1/19 to 1/20 of the total if you wait until after two months. Importantly, it says that return to work goes from being 49 per cent to 73 per cent if you get those payments to a person in the first two months. You then say, in the report that has just been referred to—the great work you have done looking into the TMF—that the per cent of workers covered by the workers compensation insurance in New South Wales by the TMF is about 8 per cent but that active psychological injury claims on the TMF represent 48 per cent of all active psychological claims. You then go on to say:

The review identified a significant lack of compliance with legislative requirements and conformance to SIRA's Standards of Practice in what are the basic obligations at the start of the claim, and in the provision of injury management planning, an essential in supporting injured workers in their return to work ...

Given the evidence you have given—that the sooner you get a person their payments, the cheaper it is for the system, and that the Government itself is not following practices that it should be in order to get those payments out to people quickly—would you still be recommending that the Government work on reducing its obstacles to claims management and improving its claims management as a way to reduce overall scheme costs?

**MANDY YOUNG:** To clarify, in that I was not in this role for those two previous reports, I am more familiar with the TMF report; I am not clear on the first report that you are referring to, so it would be helpful to understand that. But I would say that we would always be asking government and any employer to continue to improve their claims management and their compliance with legislation.

**Ms ABIGAIL BOYD:** You say in this TMF review that 90 per cent of government agencies failed to have a compliant return to work program and that 50 per cent of agencies failed to notify all injuries within the required time frame or at all. That is pretty damning on the government agencies when it comes to their responsibility for returning workers to work after they have had a psychological injury. Again, wouldn't you expect the Government to actually improve its own processes as an employer and prevent these injuries getting worse rather than simply cutting off these workers?

**MANDY YOUNG:** I do understand that the Government is working on that, whether the formal response is out there or not yet, but they have been working on a whole-of-government return to work strategy. We've been working with them on a return to work best practice framework. We've been providing data and expertise to them to help them to uplift, and we are doing a claims management review of the TMF, a further one, and developing some vocational support programs. There is a range of work that is happening in response to that work and to improving the outcomes that they have in this space.

**Ms ABIGAIL BOYD:** If we look at the Nominal Insurer now, your audit report from July '23 stated that for psychological injuries audited by SIRA, in only 42.5 per cent the employer had actually notified the insurer of the injury within the time frame as required by the legislation. Is that correct?

**MANDY YOUNG:** Again I wasn't in the role. I would need to take that on notice, check that and come back to you.

**Ms ABIGAIL BOYD:** Okay. Similarly, in that report, from what I can see, it says that, for psychological claims audited by SIRA, 40 per cent of claims within the NI failed to have a subsequent liability decision made within the legislative time frames.

**MANDY YOUNG:** I am sure if the report says that then it is true.

**Ms ABIGAIL BOYD:** This pattern of not managing claims in an appropriate time frame in both the NI and the TMF indicates quite a severe failing on the parts of claims management and claims managers. What is SIRA doing to ensure that the claims management process is up to scratch?

**MANDY YOUNG:** There's a range of things that we have been working on, particularly—as I say, I have not been in the role for very long, almost a year now. But, since coming into the role—and I asked similar questions, I suppose, coming into the role, as would be expected—we have established a nominal insurance performance framework that we are setting up. That's some key performance metrics for the Nominal Insurer and the TMF. What we have set out is a 12-month supervision plan to start to look at that uplift and what that can be. That will include some further claims management reviews. We will continue to look at—various areas in which we are doing that are their policy and underwriting, a claims management focus, some real oversight of their information technology processes, looking at where they are and how they are delivering on their recommendations and commitments through the various reports and inquiries, and understanding that. We have actually started to set that plan in place and done that with icare so that it is very clear that these are the things that we are going to focus on to uplift the performance of the NI and the TMF.

**The Hon. MARK LATHAM:** Just to follow up, Ms Young, having a look at this report, which is quite stunning and perhaps could have been lodged as some form of submission to inform the Committee, it says here:

SIRA found that the TMF, which represents approximately eight per cent of workers covered by workers compensation insurance in NSW, was responsible for 20 per cent of claims in the 2021/22 financial year. Significantly, the review has confirmed that in the same period, active psychological injury claims in the TMF represent 48 per cent of all active psychological injury claims in the system—

I assume that is in the TMF; the State average is 37, so, again, massively over-represented—  
and of those 48 per cent, Stronger Communities represented over half.

What is going on in Stronger Communities that has led to this outcome? Is it really that stressful and devastating to make a community stronger?

**MANDY YOUNG:** The statistics only really tell part of the story in that.

**The Hon. MARK LATHAM:** Tell us more.

**MANDY YOUNG:** The public sector has some unique roles that are very high risk, from a workers compensation perspective, that is not generally seen in the private sector. They're police officers; firefighters; ambulance officers; correction officers; hospital emergency departments' doctors, nurses; child protection caseworkers. Those roles face a different set of issues and a different set of things that come through with that. So I don't think it is unreasonable that, given in those roles and those caring roles people would have and be seeing quite traumatic things, it often would result in those particular results.

**The Hon. MARK LATHAM:** But it goes to the heart of the financial stress on the system and the reason for this initiative by the Treasurer. Most importantly, you say in the very next sentence:

Eight out of ten psychological injury claims are from preventable workplace behaviours like work stress, bullying and harassment, and other mental stress factors.

What is being done to actually have prevention? If eight out of 10 could be prevented, we've certainly got no need for this legislation, have we?

**MANDY YOUNG:** I think that that statistic is true—so the eight out of 10 is workplace stresses and other issues. I think that's where we work very closely with our SafeWork colleagues on how do we actually get employers to do more in that space, because, if we can prevent these issues, that is all the better for everyone involved.

**The Hon. MARK LATHAM:** SafeWork has got its own set of challenges and changes that we have examined at budget estimates. But can I come to your statement. Did you say earlier on there were no recommendations out of this report?

**MANDY YOUNG:** Which report?

**The Hon. MARK LATHAM:** The TMF review report.

**MANDY YOUNG:** No. There were multiple recommendations.

**The Hon. MARK LATHAM:** Yes. There were 15 suggested courses of action, mainly reviews. Perhaps on notice can you give us some detail about what has happened over the past 13 months in these reviews and suggested courses of actions—a pseudonym for "recommendations"? I would have thought—if action had been taken, why is this bill necessary?

**MANDY YOUNG:** I can get that to you on notice. We track the—

**The Hon. MARK LATHAM:** And we would like a lot of detail as to the 15 courses of action, a lot of reviews: What have these reviews resulted in and what progress has been made in dealing with these horrendous statistics, which embed and demonstrate the particular problem that the TMF is under? Could you do that?

**MANDY YOUNG:** Yes.

**The Hon. MARK LATHAM:** It would be in lieu of making a submission to inform the Committee. Then I would come to Mr Curtin and ask what improvements are you making at SafeWork, particularly in getting ahead of the curve with prevention. I don't want to be rude about it, but your Minister did point to systemic failures in the institution. I think across the Parliament there's a lot of disappointment about the past performance of SafeWork. And you are, obviously, crucial in dealing with these types of issues by way of prevention.

**TRENT CURTIN:** Yes. SafeWork NSW inspectors have a really important role to play in providing advice and guidance and support for businesses and also for undertaking compliance activities to ensure compliance with our laws. Our current Psychological Health and Safety Strategy lays out a number of actions for us. Some of that is undertaking training with small and medium businesses. Some of it is having direct one-to-one coaching with psychologists with small businesses to help them lay out their risk assessments and to set their safe systems work up, and that's progressing extremely well. Then SafeWork inspectors are also taking a stronger compliance focus for large and well-resourced organisations. Our inspectors who attend businesses with more than 200 employees will always undertake a check in relation to psychological health and safety.

**The Hon. MARK LATHAM:** Can we get from both SafeWork and SIRA some breakdown of the industries that have a high prevalence of these psychological injuries? We've obviously got the Stronger Communities department that you've mentioned, but it would be good to get a breakdown, sector by sector, as to where the problems are, again to inform the Committee and give us a handle on the nature of the challenge by way of prevention. Is that okay on notice?

**TRENT CURTIN:** Yes. I've got something. We can take it on notice if you want.

**The Hon. ANTHONY D'ADAM:** Mr Curtin, is it fair to say that SafeWork's priority is actually in the private sector? In terms of the public sector, it tends not to devote a lot of resources to compliance work, given there's an expectation. There's

also a principle around Crown shield and the Crown not prosecuting itself, effectively. Can you perhaps comment on what the rough balance is in terms of the resource allocation towards public sector compliance versus compliance in the private sector around psychosocial aspects?

**TRENT CURTIN:** We've been increasing our focus on government departments in relation to psychological health and safety. We've been doing that over the last 12 and 18 months with a new Psychological Health and Safety Strategy. The recommendations from the Committee on Law and Justice as well set out for us to work closely with SIRA, icare and some of the government departments to do more to increase the health and safety for workers in those departments. We have undertaken a number of specifically targeted psychological health and safety compliance campaigns. We've looked into occupational violence in emergency departments in the health department.

We've been looking at occupational violence and psychological health and safety in the education department, undertaking a range of visits across the State to confirm compliance to do two things—to help those schools get more advice and to become more compliant with our legislation, but also to provide advice back to the education department to see where those systemic changes might be, where they could continue to do more to help those schools. We have also undertaken compliance programs in relation to the hospitality industry and looking at sexual harassment there, so we've been learning a bit about that so that we can scale that across other organisations and see where we're seeing some of the failure points and where we can see opportunities for improvement across both government departments and private industry.

**The Hon. ANTHONY D'ADAM:** How does your record stand in terms of prosecutions around psychosocial hazards?

**TRENT CURTIN:** We've had very little prosecutions in the psychosocial space. It's a new and emerging area. New South Wales was the first State to adopt the national model code of practice for psychological health and safety. We do have investigations underway. We have initiated prosecutions. We have had a successful prosecution, but we are continuing to increase the number of prosecutions we're doing at the moment.

**The Hon. ANTHONY D'ADAM:** Can I ask about underinsuring? The main enforcement responsibility sits with SafeWork. You've got the inspectorate, I'm assuming, in terms of actually enforcing underinsuring, the primary load is borne by SafeWork? Is that fair to say?

**TRENT CURTIN:** We do that under delegation from SIRA but, yes, our inspectors have the power to go and check that.

**The Hon. ANTHONY D'ADAM:** How many prosecutions have you done around underinsurance in, say, the last five years?

**TRENT CURTIN:** My understanding is we have not prosecuted for underinsurance.

**The Hon. ANTHONY D'ADAM:** None?

**TRENT CURTIN:** That's my understanding, yes.

**The Hon. ANTHONY D'ADAM:** Can I ask about some earlier evidence, Ms Young, that we heard from Dr Parmegiani? A set of circumstances which I found alarming around the nexus between no-win, no-fee law firms taking on workers with psychological injuries and effectively the set of circumstances that you described seem to positively disincentivise return to work for workers who have sustained psychological injury. Did you hear the evidence?

**MANDY YOUNG:** No, I don't think I heard that part of it, sorry.

**The Hon. ANTHONY D'ADAM:** Perhaps on notice you might want to review the transcript on that. I wondered whether this is something that is on the radar for SIRA because, as the steward of the workers comp system, it seems to be something that clearly is working against improving the rates of return to work for psychological injuries, and it looks like something that perhaps needs to be addressed, if it's not currently being addressed. If it is being addressed, my question is what are you doing about it? If it's not being addressed, what do you propose to do about it?

**MANDY YOUNG:** The workers compensation legal supports are primarily run through the ILARS scheme through the IRO. It's a fee-based service where the fees are set. I'll have a look at the transcript and come back to you on what the particular issue might be, unless Samantha is aware of anything else.

**The Hon. ANTHONY D'ADAM:** Ms Taylor, the exposure draft bill envisages the situation where, effectively, a tribunal is the gateway before an application. Is ILARS resourced to support injured workers going through that gateway process? How would that process impact on the obligations currently for ILARS?

**SAMANTHA TAYLOR:** Thank you for that dream question for a bureaucrat—to ask about resourcing. I appreciate it. For the Committee's reference, we in IRO deal with the back end of the process where there is a dispute or disagreement between a worker and their insurer under workers compensation laws. We address those issues in three ways—one through our solutions function where we seek to broker a change in the position of the insurer, and that is a very successful function. It is a very small function. I have 15 expert people who manage that and negotiate with insurers on behalf of injured workers to get good outcomes. We then have an inquiry power which can assist in getting the insights from that particular function, and also what we do in the grants line, which I'll talk to in a moment, to make recommendations or to make observations about what is happening in the system more broadly and the impact on injured workers arising from those experiences and what might need to change.

I am three months into the job and I'm already looking at how we can use that inquiry power to influence some of those behaviours of insurers and their case managers more positively. Then we have the grants line, which is effectively the



assistance that's provided to injured workers through lawyers for legal representation. My assessment is that if the inclusion of a provision for a representation at the IRC is part of the workers compensation framework and Acts, then it would be covered by ILARS. At present, ILARS costs are determined through a demand and forecast arrangement and on recommendation or a request from me to SIRA around our share of the workers compensation fund. We would need to assess, depending on what the outcome of the bill is and its ultimate passage, what the demand and forecast projections would be in that context depending on that design. It's not a straightforward volume issue; there are a number of considerations that we would need to take into account in making that request.

I have initiated a project around redesigning our demand and forecast model for ILARS. At the moment, it's a relatively naive and flat model of projection which is based on the experience within the grants program itself, with little reference to the policy environment within which that fund operates. It's important that we have an actuarial view of the demand and, therefore, forecasted costs for ILARS. Basically, we're looking to see as a result of whatever might pass through the Parliament what the implications would be, have a model ready that enables us to build that in so we can have a conversation with government about what a reasonable level of resource would be so that workers have access to legal representation to secure their rights under workers compensation law.

**The Hon. ANTHONY D'ADAM:** Ms Young, is that element factored in, in terms of consideration of the taskforce, when providing advice to government?

**MANDY YOUNG:** That would be a matter for the taskforce lead. We provide inputs; the decisions that are taken are done through the Treasury process and through the Treasurer, so we would've provided advice. We would not have yet provided advice on this because it depends on how the bill ends up.

**The Hon. ANTHONY D'ADAM:** Surely, in terms of the advice around the proposal, you would've had some idea about whether it would involve additional funding to resource workers to be represented in this additional stage that's required in order to access workers compensation?

**MANDY YOUNG:** They certainly would've provided advice that would need to be considered, depending on what model they came out with.

**SAMANTHA TAYLOR:** If I can add that whilst there may be the need for people to have representation—if they need to go through a process which is confronting, legalistic, and they're not prepared to represent themselves and all the things, it's important that happens. But depending on what the Parliament determines around this, there may be other adjustments to IRO's costs down the track with things that we are currently handling and they may no longer be part of the infrastructure of workers comp. So it is important that we understand what all the changes look like, and then anticipate, based on what we've seen both through the program and through the Personal Injury Commission's experience and so forth, what the actual impacts would be in terms of legal representation costs.

**The CHAIR:** That brings this session to conclusion. Thank you very much for the great work you do for the Government through your respective agencies. It's very important and we appreciate it. We also appreciate you coming along this afternoon and providing some very helpful evidence to the inquiry. Some questions taken on notice. You will receive them from the secretariat. Please respond by 5.00 p.m. next Wednesday 21 May.

**(The witnesses withdrew.)**

**Ms CARA VARIAN**, Chief Executive Officer, NSW Council of Social Service, affirmed and examined

**Mr BEN McALPINE**, Director, Policy and Advocacy, NSW Council of Social Service, affirmed and examined

**The CHAIR:** First of all, thank you both of you for your forbearance with respect to the time slot provided to you to participate in this inquiry. The second thing I want to say is please do not think that the time slot reflects in any way a disregard or disrespect for the most important work that NCOSS does. Would either of you like to make an opening statement?

**CARA VARIAN:** As you know, we are from the NSW Council of Social Service. We advocate for the needs of individuals and communities experiencing disadvantage in New South Wales and represent the community services sector. They're a dedicated group of people who provide essential services to support the people, families and communities of New South Wales. We welcome our invitation to participate in this Committee today. Community service work is deeply rewarding. It's profoundly personal work, and there can be a toll supporting people experiencing poverty, violence and trauma.

Our sector faces critical challenges. Service demand is increasing without commensurate resources to meet that demand, and this is causing ballooning workloads, burnout and job insecurity, amid rising living costs. Simultaneously, provider organisations struggle with escalating operational expenses including sharp increases in workers compensation premiums. Given these pressures, getting this reform right is crucial. It will be important that the right balance is struck between effectively supporting the psychological welfare of workers, supporting employers and managing scheme sustainability. In this recently released exposure draft, there are a number of issues that require further clarity. The success of the reforms will depend on achieving that clarity with the input of experts and people with lived experience, balancing the needs of workers, employers and scheme sustainability and ensuring transition arrangements support the people and the organisations with the knowledge to move into these new arrangements. We welcome the proposed preventive measures that have been flagged by the Government and request that these measures are extended to support the social services sector. We advocate for reforms that balance the scheme's financial sustainability with ensuring the wellbeing of essential workers and the organisations who fulfil the Government's social policy objectives. Without protecting these organisations, the broader social policy goals are compromised.

**The Hon. DAMIEN TUDEHOPE:** I'm sorry it's so late. What reforms contained in the exposure draft do you say are worth embracing and would benefit the social services sector?

**CARA VARIAN:** Certainly, we acknowledge that reform is required. The premiums at the moment are putting an enormous amount of pressure on community service organisations. We also support that there will be stronger definitions around psychosocial injuries. The intent to address unsustainable insurance costs is important but, given the amount of time that we've had, I would say our main message is that greater clarity is required.

**The Hon. DAMIEN TUDEHOPE:** Would you agree that there will be a lot less people able to make claims for psychological injury at work as a result of this exposure draft?

**CARA VARIAN:** Yes.

**The Hon. DAMIEN TUDEHOPE:** And that's part of the intent of the bill, or the exposure draft?

**CARA VARIAN:** I wouldn't want to comment on the intent of the Government's bill, but there is a balance here between making sure that workers are safe in their workplace and also ensuring that organisations have sustainability. It's a tension that we need to acknowledge. We want to make sure that what reforms do happen will support both the workers and the employers.

**The Hon. DAMIEN TUDEHOPE:** Have you been able to identify any provisions in the legislation which would impact on workers in a way that is detrimental to workers and which may impact in terms of the services you would be required to provide?

**CARA VARIAN:** I refer back to my previous comment. I think the issue here is that we need some greater clarity. Our submission included a number of items within the exposure draft that we request additional clarity on. I have a further list from our members of things that require greater clarity. Of course there will be impacts but, at the moment, there is an onus on the Government to provide a bit more detail.

**The Hon. DAMIEN TUDEHOPE:** Part of the potential here is that if you increase the WPI in relation to workers to 30 per cent, a lot of workers who currently have psychological injury claims will not be able to continue making those claims after 2½ years and a lot more potential services will need to be provided by the organisations that you represent.

**CARA VARIAN:** That's true. We do have concerns that if the right thresholds are not met, then the people who don't get support through this scheme will end up with the community service organisations, which are already stretched. That is a concern.

**The Hon. DAMIEN TUDEHOPE:** That would be a significant drain on the resources of your member organisations. On the one hand, they're seeking to ensure their liability by a reduction in workers compensation and insurance premiums, which is obviously an expense that they have to bear. But on the other hand, the resources would be impacted potentially by a cohort of people who would be making further claims.

**CARA VARIAN:** It's complex reform. I would say that with what information we have now, we don't have enough clarity to know whether the thresholds are—

**The Hon. DAMIEN TUDEHOPE:** So you would support, would you, further work being done in relation to making sure that we've got the balance right?

**CARA VARIAN:** I think that is important.

**The Hon. DAMIEN TUDEHOPE:** And the short time frame for some inquiry in relation to this legislation hasn't been all that helpful.

**CARA VARIAN:** It has been a tricky week.

**The Hon. DAMIEN TUDEHOPE:** Who prepares the submission? Mr McAlpine, do you prepare the submission?

**BEN McALPINE:** I led the work, yes.

**The Hon. DAMIEN TUDEHOPE:** When was the first time you saw the bill?

**BEN McALPINE:** I believe it was when the exposure draft was released. I think it was last Friday.

**The Hon. DAMIEN TUDEHOPE:** You saw it last Friday?

**BEN McALPINE:** We were invited on Monday to provide a submission by midday on Thursday.

**The Hon. DAMIEN TUDEHOPE:** Were you given much time to consult with your membership?

**BEN McALPINE:** I think it's safe to say that 3½ days is a small window in which to do detailed consultation.

**The Hon. DAMIEN TUDEHOPE:** If the stated object is that potentially the TMF or, alternatively, the NI are financially unsustainable in circumstances where we didn't pass this legislation, would you say that is the correct lens through which to be looking at withdrawing benefits for injured workers?

**BEN McALPINE:** Sorry, Mr Tudehope, I think I may have lost the train of that question a bit.

**The Hon. DAMIEN TUDEHOPE:** If the motivation for this legislation was the solvency of the NI and the TMF, and that was achieved by withdrawing benefits from injured workers, would you be supporting that legislation, if that was the purpose driving this exposure draft?

**BEN McALPINE:** Our focus would be ensuring that workers are getting the coverage and support that they need and that our members—the frontline, essential community service organisations—are getting the sustainable premiums and the support that they need. That would be where our focus would be.

**The Hon. DAMIEN TUDEHOPE:** Where's the balance?

**BEN McALPINE:** That is, I suspect, exactly the challenge for this Committee and the Government.

**The Hon. DAMIEN TUDEHOPE:** I have no further questions.

**Ms ABIGAIL BOYD:** Thank you very much for appearing today and within the very short time frame. Your members know better than anyone, whether they're working in homelessness, mental health services, DV services or anything else, that early intervention is key in terms of saving society and the Government money in the long run. That's correct, right?

**CARA VARIAN:** As a principle, preventative care efforts are very important to NCOSS and the community services sector.

**Ms ABIGAIL BOYD:** You are in a very difficult position, if I may say so, because you are, as you say, not only looking at the long-term prospect of people not getting the help they need and then putting more pressure on your services, but you also have the immediate pressure right now of needing some sort of assurance from the Government that your premiums aren't going to go up as well. This is all in the context of a government that is under-resourcing community services. Would it be better, in an ideal world, if the grant funding and the ongoing frontline service funding for services like the ones that you are here representing actually took into account things like increasing premiums? If your baseline funding for a service increased over time, if there was an increase in something like workers compensation, wouldn't that be a fairer situation to be in and put you in a less difficult situation today?

**CARA VARIAN:** I think you would have seen in our submission that we raised the issue about making sure that the funding arrangements are sustainable for community service organisations. It does cause stress and an impact on community service organisations and their ability to deliver those services to the New South Wales community. Most recently, the Government has announced the secure jobs funding framework. It's a great plan, but it's not the delivery of longer term contracts yet. And it's not a delivery of recognising the real cost of service. That's what I would hope to be the next step. It is urgently required.

**Ms ABIGAIL BOYD:** We all hope to see that. We all hope to see procurement at all levels take into account the real cost of labour and move with it when it's government money that is being spent. When it comes to your own members, in my portfolio responsibility for domestic and family violence and gender violence I speak to a lot of services that point to the lack of government funding as itself creating psychological stress and moral injury within their services. Where are those employees going to turn in such terrible times if we also take away their cover under the workers compensation scheme?

**CARA VARIAN:** As per our submission, we have made this exact point. Not only is workers compensation scheme reform required—it's a complex and difficult balance to make that reform—but so are funding models for community service organisations. They are entwined. Environmental circumstances will contribute to injury in the workplace as well.

**The Hon. MARK LATHAM:** Thank you to the witnesses. I can understand, having had the exposure draft for just a week, why your submission basically calls for clarity, but aren't there some things that are particularly objectionable? I support some of the things in the bill. I think it needs some extra measures. The one that seems very problematic is section 8F, the so-called gateway. For the people you represent across the community, if you are genuinely traumatised, mentally ill and psychologically injured out of this process, it's going to be particularly horrendous, isn't it, to have to jump through two hoops to get your workers compensation? Imagine having to go to the police and wait while they investigate. Then you might have lawyers involved to go to a tribunal, commission or court to prove your finding of harassment or bullying to then be eligible for workers compensation. Isn't this something that, instead of calling for more detail, we should just rule out straightaway as unsatisfactory?

**CARA VARIAN:** I agree that it's problematic. It's one of the reasons why we wanted to get more information. It would not be a bad thing if we could find a different mechanism to ensure that people can get the support that they need. Again, we did this quickly. We wanted to make sure that—

**The Hon. MARK LATHAM:** I'm not against gateways or triaging your way through to a more cost-effective system, but I just don't think this is it.

**CARA VARIAN:** I think it's problematic.

**The Hon. MARK LATHAM:** Given the time of day, I'll leave my questions there. I thank the witnesses for their patience in appearing here when it's dark outside and the footy has started on a Friday afternoon.

**The CHAIR:** I appreciate that there is 10 minutes left for Government questions, but I won't press you really hard with 10 full minutes of questions.

**The Hon. ANTHONY D'ADAM:** I have just one question. One of the issues that has been identified is the impact of single claims in terms of the penalty premium when you have a psychological injury in a small business. For example, where a worker goes off, and they are off for a very long duration and are unlikely to return to work. It's a high-value claim, and there is a consequential penalty increase in premiums for that business. Do you have a view about how that element of the system's premium settings should be reformed? Obviously the bigger the business, the easier it is to absorb those kinds of costs. For a small business, it could be the difference between them staying—I am using a small business, but most in the community sector would fall into that category in terms of the number of employees. The impact, particularly for funded services, is quite dramatic if they've got a big hike in their premiums arising out of a single claim. Can you provide some comments on that?

**CARA VARIAN:** I can confidently tell you that members have raised this with me as something that is very challenging for them to manage. We talk about the importance of place-based organisations, and as you rightly point out, there are many very small community-service organisations where a single incident like this would jeopardise the viability of their organisation. I don't think I'm the best-placed person to give you a suggestion on exactly how that should be reformed because I'm not a workers compensation expert. I am a community service advocate. I think it is a problem that is tricky and it is worth spending time on how to resolve it better.

**BEN McALPINE:** I think this links back to Ms Boyd's commentary around the general underinvestment in the sector. Some of these issues have been brought up in the last week, and certainly for many years before. What would actually support frontline service organisations prevent psychological injury happening in the first place, and therefore avoid the ramp-ups in these premiums, would be investment in learning and development, professional supervision and getting the manager to work a ratio to be at a better level. All of these things create an environment where it can increase risk of psychological injury. If you are then to introduce additional costs that are adding more financial burden to organisations that are already struggling to meet community need, then I think that could be problematic and create a very difficult cycle for a lot of organisations in our sector.

**The Hon. ANTHONY D'ADAM:** The whole purpose of a workers compensation system is to spread the risk around, but clearly the risk impact is actually greater in those smaller businesses and smaller entities. Perhaps we need to spread the risk in a different way.

**CARA VARIAN:** Yes. I think spreading risk would be a good idea. I think the other part of it is that, inherently, there is great risk in community service organisations because of the trauma-based work that they do. It looms large in the eyes of all of our members. They're very concerned about how this is going to move forward.

**The Hon. BOB NANVA:** There's just one question from me. I'm conscious of the difficulty of your position, and I certainly won't ask you anything about the fraught nature of workers compensation reform and the specific nature of it. Just as a general proposition, would you agree that changes to workers' benefits should only be considered if they're seen to create this sort of perverse disincentive to returning to work or if they are putting an unmanageable burden on the scheme? Would you agree with that as a general proposition?

**CARA VARIAN:** They should only be put in place if they're creating an unreasonable burden?

**The Hon. BOB NANVA:** An unreasonable burden or an unsustainable burden on the scheme, or if it is a disincentive to an individual's return to work.

**CARA VARIAN:** You should only reform the scheme if it is going to cause—

**The Hon. BOB NANVA:** Make significant changes to workers' benefits, specifically.

**The CHAIR:** Can I say, with no disrespect, if you wish to take it on notice—

**The Hon. BOB NANVA:** You can take it on notice.

**The CHAIR:** The question has some complexity to it, and it has been asked to other witnesses during the day. I know it's hard to drop that one on you at the end of the day. If you'd like to, you can take it on notice so you can have it in front of you and respond.

**CARA VARIAN:** Maybe I should do that so that I can give you a sensible answer.

**The CHAIR:** I'm sure you'll give a sensible answer. Perhaps having more time to read the full question might be a bit easier for you.

**The Hon. BOB NANVA:** It would help if I'd asked a sensible question.

**CARA VARIAN:** I'm sorry for my blank stare. I would like to answer that question properly. I will take it on notice.

**The CHAIR:** That's what I was thinking you might want to do. On that note, I conclude by thanking both witnesses for coming along this afternoon. The submission is very helpful. I appreciate the six recommendations, which are carefully thought through, and particularly part B of the submission, which gives us a particular focus on sections in the exposure draft that you wish to draw to our attention. I appreciate the effort that has gone into that. Once again, I apologise for the lateness of the day. Thank you very much for coming along and for the work that you do. This brings today's hearing to a conclusion.

**(The witnesses withdrew.)**

**The Committee adjourned at 18:15.**

## **Appendix 14 Answers to questions on notice**

**Hon Daniel Mookey MLC, Treasurer**

OFFICIAL

**Proposed changes to liability and entitlements for psychological injury in New South Wales**  
**Questions on notice**

QoN	Question and response
1	<p><b>The Hon. DAMIEN TUDEHOPE:</b> Minister, I am aware of what you are submitting to me. In the circumstances and under the exposure draft which you have submitted, a sexual harassment claimant who is suffering from a psychiatric disorder caused by sexual harassment would either have to keep attending work or take leave, if available, and pay for their own medical treatment. Is that what is provided under the exposure draft?</p> <p><b>The Hon. DANIEL MOOKHEY:</b> Can I just—</p> <p><b>The Hon. DAMIEN TUDEHOPE:</b> No, I am asking the Minister, Treasurer.</p> <p><b>The Hon. DANIEL MOOKHEY:</b> I can provide you information.</p>
	<p><b>Response</b></p> <p>Please refer to my response given on page 4 of the transcript.</p>
2	<p><b>The Hon. MARK LATHAM:</b> Thanks, Chair, and thank you to the two Ministers who have attended. Treasurer, you've given us a 43-page exposure draft to analyse in one day of hearings, and I've got a big pile of submissions that have lobbed on my desk as the hearing began. They're from serious organisations. I think it would help the Committee in the various elements of the exposure draft, have you got costings of their net benefit and impact on both the TMF and the Nominal Insurer?</p> <p><b>The Hon. DANIEL MOOKHEY:</b> Yes, I do. Do you wish to ask about any specific component?</p> <p><b>The Hon. MARK LATHAM:</b> You've got them tabulated, have you?</p> <p><b>The Hon. DANIEL MOOKHEY:</b> I do.</p> <p><b>The Hon. MARK LATHAM:</b> Perhaps for saving time, if you could table those for the benefit of the Committee.</p> <p><b>The Hon. DANIEL MOOKHEY:</b> I might be able to provide—</p> <p><b>The Hon. MARK LATHAM:</b> I don't think they've been otherwise available.</p> <p><b>The Hon. DANIEL MOOKHEY:</b> Yes, we can provide you some information today.</p> <p><b>The Hon. MARK LATHAM:</b> No, all information about the cost impact and savings of each of the elements of the bill.</p> <p><b>The Hon. DANIEL MOOKHEY:</b> Yes, I think we can provide you some of that further information.</p>
	<p><b>Response</b></p> <p>See attachment A – Impact on TMF and Nominal Insurer.</p>
3	<p><b>The Hon. MARK LATHAM:</b> Chair, have those costings been tabled so we can access them?</p> <p><b>The Hon. DANIEL MOOKHEY:</b> I will get a version sent to you. Probably on notice, I suspect. I just have to double-check that—we will provide the information, but we are looking to provide more information.</p>
	<p><b>Response</b></p>

OFFICIAL

OFFICIAL

	Please refer to above response.
--	---------------------------------

OFFICIAL



OFFICIAL

## Attachment A - Impact on TMF and Nominal Insurer

### Key messages

1. Claim payments from the Nominal Insurer (NI) have risen 80 per cent in five years (from \$2.1 billion in 2018-19 to \$3.8 billion in 2023-24). TMF claim payments have risen 120 per cent over the same five years from \$636.9 million in 2018-19 to \$1.4 billion in 2023-24.
2. Liabilities in the NI are expected to grow from \$21.6 billion in 2024 to \$35.0 billion in 2034, aided by a government decision to approve average premium increases of eight per cent for three years (expiring in 2025-26). Similar premium increase cannot be sustained going forward – presenting profound risks to the financial sustainability of the NI over the longer term.
3. Psychological claims have increased by approximately 9.5 per cent a year for the last five years.
4. At the same time, return to work rates are lower for psychological injury (50 per cent return within a year) compared to physical injury (95 per cent return within a year).
5. The average cost of psychological injury is five times greater than physical injury (\$288,542 compared to \$57,616 in 2024-25). Weekly payments are the single largest driver of claims costs – with weekly payments for psychological injury accounting for 45 per cent of costs, and medical care around 22 per cent of total costs.
6. Without reform, employer premiums will be \$2.5 billion higher over the next five years, and taxpayers, through the TMF, will pay an extra \$3.8 billion over the next five years to meet the rising cost of psychological injury across both schemes.

### 7. Liability trends

8. The number of workers compensation claims, and their cost to the NI and TMF, have all been rising rapidly in recent years. NI claim payments have risen from \$2.1 billion in 2018-19 to \$3.8 billion in 2023-24, representing an 80 per cent increase.
9. Funds in the NI already fail to cover expected future liabilities – and these liabilities are forecast to grow by more than 60 per cent between June 2024 and June 2034 – at twice the expected rate of inflation.
10. TMF workers compensation claim payments have risen by 120 per cent between 2018-19 and 2023-24 (\$636.9 million rising to \$1.4 billion). TMF agency contributions for workers compensation have tripled from \$698 million in 2018-19 to \$2.1 billion budgeted for 2024-25.
11. During 2023-24, icare received 10,366 workers compensation claims. Of those, 2,360 claims were either declined or reasonably excused at the outset, while 1,933 claims were ultimately declined.
12. While the number of total new claims entering the scheme each year – across all claim types – has increased by around 16 per cent in the six years to 2023-24, the number of new psychological injury claims has doubled.
13. Over the past five years, the number of psychological claims has, on average, increased annually by approximately 9.5 per cent for the NI, and 15 per cent for the TMF.
14. If these growth trends continue, over the next five years:

1

OFFICIAL

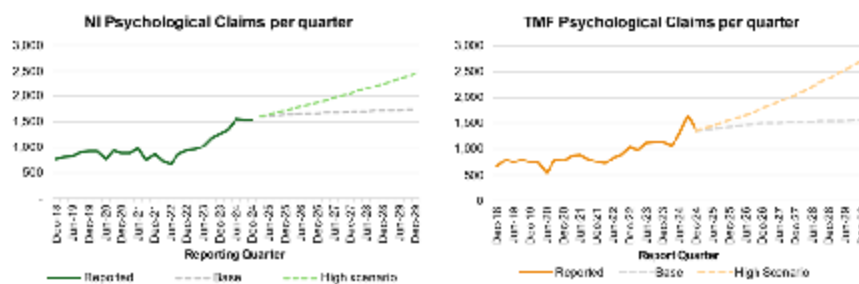


**OFFICIAL**

- the NI will cost employers an additional approximate \$2.5 billion, and
- the TMF will cost the government an extra approximate \$3.8 billion.

15. The reforms reduce the likelihood that claims volumes will continue to grow by recent historical trend. This is because fewer of the claims from the categories that drive this risk will be compensable.

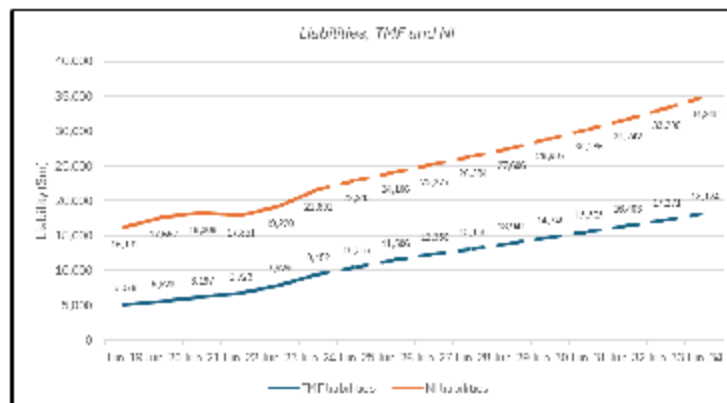
*Box 1: Effect of no reform on expected volumes of claims*



### Future growth in scheme liabilities and costs

16. Expected future costs of the schemes are reflected in estimates of the schemes' liabilities, which are expected to grow rapidly over the next ten years - liabilities represent the net present value of all future payments for existing claims.
17. TMF liabilities in relation to workers compensation are expected to increase from \$9.5 billion in June 2024 to \$18.2 billion in 2034. This expected annual growth rate of 6.7 per cent significantly exceeds forecast total government revenue growth of 4.2 per cent per annum during this period. For the NI, liabilities are expected to increase over this period from \$21.6 billion to \$34.9 billion – an expected annual growth rate of 4.9 per cent.

**Box 2: Forecast growth in liabilities across the TMF and NI**



2

OFFICIAL

OFFICIAL

- 18. Importantly, the proposed reforms to scheme settings are expected to stall the impact of these trends on costs.
- 19. Workers with psychological injuries spend longer on workers compensation than workers with physical injuries. The proposed reforms limit the duration of payments for all but the most serious injuries to a maximum of two and a half years, which reduces costs while allowing time for recovery where recovery is likely. Medical benefits continue for a further year.
- 20. Return to work rates are significantly lower for psychological injuries than for physical injuries, and have been trending downwards.
- 21. Around 38 per cent of psychological injury claimants have still not returned to work after two years (versus five per cent for physical). This percentage has been trending upwards.
- 22. The longer a worker spends on the scheme, the less likely they are to recover. Return to work metrics beyond 104 weeks are stable. This suggests existing arrangements may have limited effectiveness at supporting return to work for this class of injuries.

Table 1: Return to work rates for primary psychological and non-psychological injuries

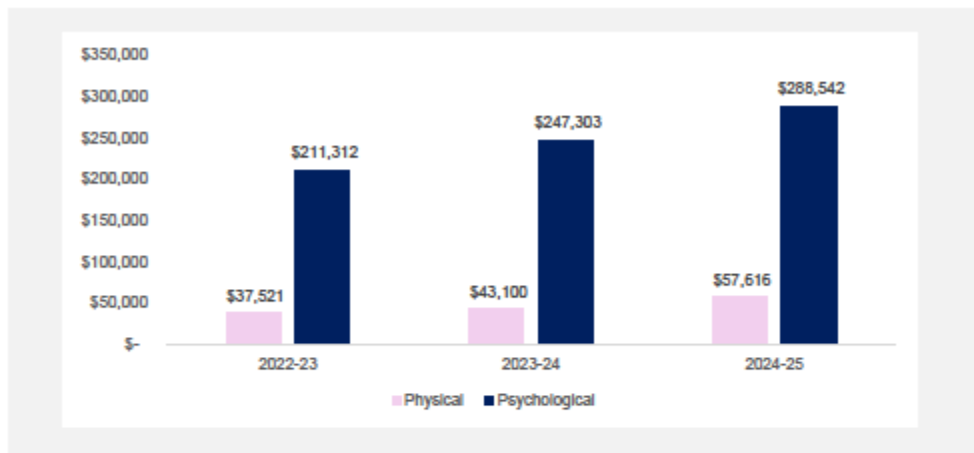
Time since injury	Proportion returned to work	
	Physical injuries	Psychological injuries
13 weeks	88%	42%
52 weeks	95%	50%
104 weeks	95%	~60%

- 23. Psychological injuries cost a lot more than physical injuries. The duration and severity of psychological claims means that, on average, a psychological injury costs around five times as much as a physical injury.

OFFICIAL

## OFFICIAL

Box 3: Average cost of psychological and physical injury claims



24. The biggest payment for psychological injuries is weeklies, so focus on weeklies reform (and, to a lesser degree, WIDs) is likely to be more effective.
25. Weekly payments are the largest payment class for psychological injuries, comprising around 45 per cent of total workers compensation costs. In contrast, medical payments comprised only around 22 per cent. Work injury damages payments are somewhat similar to weekly benefits in that they are based on lost earnings, albeit calculated in a different way and expressed as a lump sum.

WC (NI+TMF) Risk Contribution/Premium (Breakdown by Payment Type)



'Other' items include non-economic loss lump sums for permanent impairment, death benefits, investigation payments, and rehabilitation payments.

#### Financial impacts if Exposure Draft reforms progress

26. The NI per annum breakeven premium could be 34 basis points lower than otherwise. The breakeven premium does not address the current deficit.
27. Without action, costs to the TMF are expected to rise by around \$600 million a year.

**Mr Michael Whaites, Acting General Secretary, NSW Nurses and Midwives' Association**



NEW SOUTH WALES NURSES AND MIDWIVES' ASSOCIATION  
AUSTRALIAN NURSING AND MIDWIFERY FEDERATION NEW SOUTH WALES BRANCH



SC:MWH  
Ref:  
21 May 2025

Dear Secretariat

**Re: Questions on Notice and Response to Transcript**

I refer to a question put by The Hon. Stephen Lawrence MLC, and taken on notice at the *Standing Committee on Law and Justice* inquiry *Proposed changes to the liability and entitlements for psychological injury in New South Wales* at which I appeared on 16 May. I further seek to correct a comment made by myself during the hearing.

The question was:

In terms of the definition of 'relevant event' [8E] and this requirement that a person actually witness an event. I'm specifically interested in Mr. Whaites, Mr. Hayes, and you, Mr. Ayoub, your thoughts about how that particular part, the proposed section 8E could be amended, and I'm particularly concerned about this idea that people witness death and they might witness death on a regular basis, but it doesn't fall within those terms in 8E. So, is there a way to broaden that definition that includes people who, according to a certain percentage of them, are probably invariably going to suffer illnesses as a consequence of certain work?

In response it may be argued by those who proposed these amendments, that "*relevant event*" is sufficiently wide noting it includes "*vicarious trauma*" which is defined in s 8H. However, the definitions of those terms fail to include the kind of trauma and psychological distress which is contemplated by the question; the exposure to trauma to which healthcare workers are exposed day after day, month after month, year after year, which is insidious and can lead to serious psychological distress. Such trauma can be caused by persistent paucity of resources (not enough staff on shift, poor skill mix on shift, not enough equipment at hand, over utilisation of unfunded bed space, as examples), leading to decreased quality of care, episodes of missed care or recognition of a deteriorating patient, with nurses and midwives finishing their shift knowing it should have been different. These are injuries we say are caused by employer action/inaction combined with a failure to implement preventative measures necessary.

Excluded by the definitions is the healthcare worker who is treating children battling cancer, a nurses treating a neonates on life support in an overcrowded Neonatal ICU, nurses and midwives offering support to a relative whose partner is slowly dying before their eyes on a palliative care ward, or the worker left to speak to the parents of a young child who has finally succumb to their rare genetic disorder. It is these healthcare workers, and their daily exposure to death and human suffering that these amendments do not adequately support. These are injuries which may occur even where there are preventative measures are in place.



NEW SOUTH WALES NURSES AND MIDWIVES' ASSOCIATION  
AUSTRALIAN NURSING AND MIDWIFERY FEDERATION NEW SOUTH WALES BRANCH



A broadening of the definition of relevant event and/or vicarious trauma is one way of acknowledging and supporting these workers when they are exposed to trauma in this way. A widening of the definition to achieve that *"any event which leads to the development of, aggravation, acceleration, exacerbation or deterioration of a psychological injury"* within the meaning of section 8A is one way of covering those workers, noting that 8A also needs to be amended as per recommendation 7 in the submission made by Unions NSW.

The Association further recommends that amendments to section 8E occur so as to achieve that:

*"a series of events which include one or more relevant events, shall be considered to be a relevant event for the purposes of the legislation".*

This would recognise the fact that events which trigger psychological injury do not often occur in isolation. Triggers may build up over time, or indeed a lifetime, involving a wide array of incidents. Whilst section 8G as drafted does reference *"a series of relevant events"*, this would only cover situations where each and every event in the series is a relevant event for the purposes of the legislation.

The definition of *"relevant event"* and *"vicarious trauma"* if passed in its current form will disentitle many from compensation for genuine psychological injury caused by their work environment.

On the transcript: During the hearing a question was put regarding gender. In my response I stated that 85% of psychological injuries occurred to women. This figure ought to have been 83%, it relates to the odds of women claiming psychological injuries compared to men<sup>1</sup>.

Nationally, Safe Work Australia reports<sup>2</sup> that 57.8% of serious claims for mental health conditions were among women. NSW Government is the largest employer in the Southern Hemisphere. For both health and Education, two of the largest portfolios, women represent the majority of the workforce. For nurses, midwives and carers, the second highest cause of psychological injury is work pressure (workloads and work overload) at 28%. Removing workloads as a compensable cause for psychological injury, and raising the WPI to 30%, will have a detrimental impact on the rights of women at work.

Yours sincerely

**MICHAEL WHAITES**  
Assistant General Secretary  
NSW Nurses and Midwives' Association

<sup>1</sup> [https://www.monash.edu/\\_data/assets/pdf\\_file/0018/3103029/designforcare-psychological-injury-in-the-nsw-healthcare-and-social-assistance-industry-report-web-spread.pdf](https://www.monash.edu/_data/assets/pdf_file/0018/3103029/designforcare-psychological-injury-in-the-nsw-healthcare-and-social-assistance-industry-report-web-spread.pdf)

<sup>2</sup> [https://data.safeworkaustralia.gov.au/sites/default/files/2024-02/Psychological-health-in-the-workplace\\_Snapshot\\_February2024.pdf](https://data.safeworkaustralia.gov.au/sites/default/files/2024-02/Psychological-health-in-the-workplace_Snapshot_February2024.pdf)



**Mr Gerard Hayes, Secretary, Health Services Union NSW, ACT and QLD Branch**



**Health Services Union NSW/ACT/QLD**

**21 May 2025**

**Committee Members**

**Standing Committee on Law and Justice**

**6 Macquarie Street**

**Sydney NSW 2000**

Dear Committee Members,

**Re: Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales**

During the hearing on Friday 16 May 2025, I took a question on notice from the Hon. Stephen Lawrence. This response addresses that question.

The question concerned section 8E of the exposure draft, specifically the definition of “relevant event”. As currently drafted, section 8E requires that a person must either directly witness a traumatic event, or experience vicarious trauma resulting from an incident involving someone with whom they have a close work connection.

However, it is well established that psychological injury can also result from exposure to the aftermath of traumatic events, particularly when the exposure is prolonged or repeated. This includes workers who are required to attend to the victims of or clean up after traumatic incidents, involving serious injury or death, whom they do not have a close connection. Workers such as healthcare workers, emergency responders, cleaners, security or maintenance staff.

As the wording currently stands, many of these workers, who deal with tragedy every day, would be excluded.

To address this, I propose the following revision to section 8E(1)(c) of the exposure draft:

(1) In this Act, a relevant event means—

(c) witnessing an incident, or being exposed to the scene, or the aftermath of such an incident, that lead to death or serious injury, or the threat of death or serious injury, including the following—

- (i) an act of violence,
- (ii) indictable criminal conduct,
- (iii) a motor accident, a natural disaster, a fire or another accident, or

The broadening of this definition to include exposure to traumatic scenes would ensure these workers are not excluded from the scheme and to address the complex issue of causation.

Yours sincerely,

Gerard Hayes AM  
Secretary - Health Services Union NSW/ACT/QLD

**Mr Tony Wright, Acting General Secretary, Public Service Association of NSW**

**Response to questions on notice from the Standing Committee on Law and Justice arising from the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales at Parliament House on Friday 16 May 2025**

Dear Chair and members of the Standing Committee on Law and Justice,

Thank you for the opportunity to provide a post-hearing response to the questions taken on notice.

As requested, please find below the opening statement delivered by the Public Service Association of NSW (PSA) Acting General Secretary Troy Wright, followed by our detailed responses to each of the Committee's questions.

**Opening statement from Acting General Secretary Troy Wright to the Inquiry.**

*Provided on notice as requested by the Standing Committee on Law and Justice on Friday 16 May 2025.*

The Public Service Association of NSW has some 40 000 members employed primarily by the NSW State Government in delivering public services we all rely upon daily. The Association does not appear today with the intent of arguing for the status quo with respect to the statutory workers compensation scheme. We appreciate that there are economic trends and metrics of concern but what we deal with is a failure of this system more profound than what any spreadsheet can convey – the human toll on workers and their families who experience an incapacitating injury at work and a combative system that does nothing to support them.

That said, this Bill does nothing to address that problem. Rather than seek to remedy the causes of psychological injuries at work, it clearly only aims to reduce or completely abolish the capacity to make a claim for workers compensation when one occurs.

The Association in its brief allocated time before you intends to provide real life examples from its membership of how this Bill if passed would effectively raise the bar beyond current claimants reach and leave them uncompensated.

A significant swathe of the Association's membership work in roles that expose them to subject matter beyond the normal human experience. One such group are those who work in statutory child protection functions, receiving and investigating reports of families in dysfunction, with allegations of neglect, physical abuse and/or sexual assault.

This Bill provides a prescriptive definition of a relevant event that serves as a gatekeeping criteria that must be satisfied to make a workers compensation claim for psychological injury. Within that criteria, one of the relevant events named is vicarious trauma, and notwithstanding that this is never caused by a single standalone event itself, it goes on to add an additional definition of it at a new section 8H.

That sections provides that vicarious trauma can only be compensable if it is in relation to one of the expressly provided incidents including an act of violence, indictable criminal conduct or accidents/natural disasters and/or fires, AND the worker had a "close work

connection" with the victim. Seemingly not satisfied that it has restricted the criteria enough, the Bill then defines a "close work connection" as a "real and substantial connection".

This many definitions in an Act creates what a law lecturer once coined to me "a fertile field" for litigation. But let me provide a real life example as to how this would be applied.

Mary<sup>1</sup> is an Association member who worked on the Community Services Domestic Violence Line from December 2018, providing support, referrals and information to members of the public who may have experienced domestic violence. It is harrowing work not just because callers are often disempowered, frustrated and desperate for help that does not appear to be easily accessible, but for the subject matter itself. Operators on the DV Line listen to these calls, hours after hour, day after day, week after week, year after year.

On 19 January 2024 Mary received a phone call during her shift, from a client named 'YC'.<sup>2</sup> YC. stated she needed assistance with temporary accommodation, after experiencing emotional abuse from an ex-partner that day prior to ringing the service. YC did not disclose exactly what had occurred, and she was reluctant to confirm the perpetrator was her ex-partner.

In Mary's words:

*"...as the call progressed, I felt myself becoming increasingly overwhelmed, fearful and distressed – the longer I spoke with YC. I felt this call was bringing up emotions associated with a previous (unrelated) Caller named 'BM'.<sup>3</sup> I found myself breathing heavily, feeling in shock, my hands were shaking, and I had an overwhelming urge to flee, to exit the call as soon as possible. I kept thinking I needed to get away from the client YC. as I did not safe with her.*

*I was struggling to manage the call, instead feeling focused on my worry that I was in danger. I felt like I was drowning and the call was out of my control, deteriorating rapidly. At the time, I genuinely believed I was unable to get past these feelings and just wanted to escape.*

*In any case, my interactions with YC, left me feeling panicked and incompetent. That I had failed at my job and I was unable to cope. I advised YC. This resulted in YC. stating she did not like my attitude, and again questioning my motivations for ending the call with me. This resulted in a further feeling that I was drowning and needed to exit the call for my own safety."*

Mary was subsequently performance managed in relation how she managed this call by her supervisor. She took five months sick leave before her workers compensation claim for a psychological injury, incurred through vicarious trauma, was accepted in October 2024.

<sup>1</sup> Pseudonym.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

Mary did not have a "real and substantial connection" with YC or any other caller to the DV line for that matter.

Mary therefore under this Bill would not be considered to have a "close work connection" with the victim.

Mary therefore under this Bill would not be found to have experienced vicarious trauma, and then, Mary would not be ineligible under the provisions of this Bill to claim workers compensation for a psychological injury inflicted by her work.

If that outcome is a result of an error in the drafting of the Bill, we urge the committee to recommend to take the time to amend it.

If that outcome is the intention of the Bill, on behalf of Mary and her colleagues we urge the committee to recommend to reject it.

The Association would also quickly like to address the proposed increase in the threshold for the degree of permanent impairment to 31% for psychological injury by providing two examples of recent cases that would not meet it.

David<sup>4</sup> was a Special Constable deployed at NSWPF HQ in Parramatta in 2015 when he was engaged in a firearms exchange with an offender. The offender was killed in the exchange and David was then required to attempt to resuscitate him. David received commendations for his bravery in the incident and returned to work after a period of workers compensation however his PTSD was ultimately too debilitating for him to continue. He was medically retired in 2024. His degree of permanent impairment? 19%. Under the proposed Bill he would be ineligible for continued support.

Michael<sup>5</sup> was a Correctional Officer employed at the MNCCC in 2020 when he was taken hostage in an officer's station by two inmates, repeatedly stabbed, burned with chemicals and ruthlessly beaten for six hours. He held a real expectation based on threats and knowledge of the inmates involved that he was going to be killed. He has been assessed as not being fit to work on account of his psychological injury. Leaving aside that it his psychological injury was a secondary one, his degree of permanent impairment? 22%. Under the proposed amendments to the threshold Bill he would be ineligible for continued support.

Again, if these outcomes are a result of an error in the drafting of the Bill, we urge the committee to recommend to take the time to amend it.

If these outcomes are the intention of the Bill, on behalf of David, Michael and their colleagues we urge the committee to recommend to reject it.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

**Responses to questions on notice****1. Question from The Hon. Damien Tudhope regarding whether:<sup>6</sup>**

*'[A] sexual harassment claimant who is suffering from a psychiatric disorder caused by sexual harassment would either have to keep attending work or take leave, if available, and pay for their own medical treatment. Is that what is provided under the exposure draft?'*

- a. As presently read, the current exposure draft would exclude treatment to the class of worker as set out above, unless it was caused by a 'relevant event'.<sup>7</sup> This includes:
  - i. victim of violence,
  - ii. indictable criminal conduct,
  - iii. witness to death or serious injury caused by violence/crime/accident,
  - iv. vicarious trauma if there is a 'real and substantial connection' between the worker and victim,<sup>8</sup> or
  - v. bullying/sexual harassment/racial harassment.
- b. However, bullying, sexual harassment and racial harassment constitute a 'relevant event' only if a court/tribunal/commission has found that the conduct occurred.<sup>9</sup>
- c. In the case of sexual harassment in relation to a worker, the Exposure Draft of the *Workers Compensation Legislation Amendment Bill 2025* defines this as:

*'[A] person who makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the worker or engages in other unwelcome conduct of a sexual nature in relation to the worker.'<sup>10</sup>*

**2. Question from The Hon. Mark Latham regarding whether:<sup>11</sup>**

*'[H]ave you got costings of their net benefit and impact on both the TMF [Treasury Managed Fund] and the Nominal Insurer?'*

<sup>6</sup> New South Wales, Transcript [Uncorrected] on proceedings before Standing Committee on Law and Justice: *'Proposed changes to liability and entitlements for psychological injury in New South Wales'* Parliamentary Committee, Standing Committee on Law and Justice, 16 May 2025, 4.

<sup>7</sup> Workers Compensation Legislation Amendment Bill 2025 (NSW) s 8G.

<sup>8</sup> Ibid, s 8H.

<sup>9</sup> Ibid, s 8E(e)-(g).

<sup>10</sup> Ibid, s 8E.

<sup>11</sup> New South Wales, Transcript [Uncorrected] on proceedings before Standing Committee on Law and Justice: *'Proposed changes to liability and entitlements for psychological injury in New South Wales'* (n 6), 9.



- a. The PSA has not been made aware to the best of our knowledge or belief, or otherwise reviewed any costings of the net benefit or positive impact on both the TMF and/or the Nominal Insurer.
- b. As outlined in our Submission paper, it is still our position that as evidenced in previous cuts to the WC scheme, the net benefit will be negligible and only cause further harm to injured workers.<sup>12</sup>

3. Question from The Hon. Damien Tudhope regarding whether:<sup>13</sup>

*'Has the Government actually engaged with you about a system of preventive measures to reduce the number of psychological injuries?'*

- a. The PSA has worked with the Government on positive initiatives in the past such as a safe staffing award for members within Corrective Services New South Wales, however we believe that more can be done within this area and others, especially in relation to returning more injured workers to work and providing suitable duties.
- b. Further to Mr Jack Ayoub's evidence, it is of great concern that the '*relevant event*' requirements will greatly impact many members of the PSA in accessing the WC scheme.

4. Question from The Hon. Stephen Lawrence regarding whether:<sup>14</sup>

*'[T]he proposed section 8E, could be amended... Is there a way to broaden that definition that includes people who, according to a certain percentage of them, are probably invariably going to suffer illnesses as a consequence of certain work?'*

- a. It is our position that this section should not be included in any form. As it stands, this is currently not in the Act and there would be no benefit, other than removing such decisions from trained medical professionals and into the sphere of the courts, thus exacerbating prompt treatment and attempts to return the injured worker to work on a graduated basis.
- b. Early treatment and intervention to ensure a worker is returned to work as soon as possible has been shown to be one of the best measures in curbing falling RTW rates. The longer an injured worker is off work, the greater the likelihood that they will struggle to recover from their injuries.

<sup>12</sup> Public Service Association of NSW, Submission '*to the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales*' 15 May 2025, 1-3.

<sup>13</sup> New South Wales, Transcript [Uncorrected] on proceedings before Standing Committee on Law and Justice: '*Proposed changes to liability and entitlements for psychological injury in New South Wales*' (n 6), 23.

<sup>14</sup> Ibid, 28.

5. Question from Ms Abigail Boyd whether:<sup>15</sup>

*'Are you aware of what has happened to that accounting standard and is any of this accounting revaluation, in your view, leading to the supposed pressure on the scheme?'*

- a. The PSA has not been made aware to the best of our knowledge or belief, or otherwise aware of any accounting revaluation, in your view, leading to the supposed pressure on the scheme.
- b. In broad terms, and in line with our submission to the Inquiry into NSW Government's use and management of consulting services, it is our position that the Government must limit its use of external consultants and adequately staff and empower the public service to carry out functions which could include auditing or accounting services.

6. Question from The Hon. Mark Latham regarding whether:<sup>16</sup>

*'There seems to be also, in the material, an assumption if the gateway system makes a ruling against the business that you're guilty of having created this psychological injury, the business will now pay the compensation rather than the schemes. Is that your understanding? Or pay directly in a civil liability payout?... What would your reaction be to that, that through your own insurance business would have to pay, rather than the schemes?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response.
- b. However, as outlined in our submission, evidence overwhelmingly supports the conclusion that trade unions play a critical role in improving workplace health and safety. Their presence not only reduces injuries and fatalities but also fosters a culture of safety, empowers workers, and ensures better compliance with health and safety standards.
- c. Reinstating standing for unions to prosecute breaches of WHS laws, including arbitrated WHS dispute outcomes, before the NSW Industrial Relations Commission ('IRC'), and regrant unions access to a moiety of any penalties awarded. Such reform would empower unions to continue to hold employers accountable and ensure workers health and safety.

7. Question from The Hon. Damien Tudhope regarding whether:<sup>17</sup>

---

<sup>15</sup> Ibid, 34-35.

<sup>16</sup> Ibid, 35.

<sup>17</sup> Ibid, 43-44.

*'Can we have a copy of that document? [Treasury internal document regarding is a new contribution and transfer policy?'*

- a. The PSA to the best of our knowledge or belief, has not viewed or possessed a copy of any such document.

8. Question from The Hon. Mark Latham regarding whether:<sup>18</sup>

*'Has Treasury got any forecasts that it has provided to the Treasurer?'*

- a. The PSA to the best of our knowledge or belief, has not viewed or possessed a copy of any such document.

9. Question from The Hon. Mark Latham regarding whether:<sup>19</sup>

*'What are the origins of the taskforce that was to deal with this looming financial crisis?... Could you take on notice the membership of the taskforce for the benefit of the Committee, please?'*

- a. The PSA to the best of our knowledge or belief, is not aware of the composition or any further details of this taskforce.

10. Question from Ms Abigail Boyd whether:<sup>20</sup>

*'[T]he impact of AASB 17, which takes effect from the beginning of the next financial year—so in just a month and a bit. What is the impact on the bottom line for icare [sic], and would that change if the Treasurer didn't put money in as he's threatening to do?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response.
- b. The PSA is not aware of the impact of AASB 17 at this stage.

11. Question from Ms Abigail Boyd whether:<sup>21</sup>

*'What work has icare [sic] done to actually hold those claims managers to account for their involvement in stopping people getting better and getting back to work? and would that change if the Treasurer didn't put money in as he's threatening to do?'*

<sup>18</sup> Ibid, 43-45.

<sup>19</sup> Ibid, 43-45.

<sup>20</sup> Ibid, 46-47.

<sup>21</sup> Ibid, 46-47.

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response.
- b. Further to the above, the case study *'An example of a broken system: WC in CSNSW leads to multiple investigations'*<sup>22</sup> highlights the risks of adversarial and profit-driven claims management and the potential for system improvement through regulatory oversight and organisational reform.

12. Question from Ms Abigail Boyd whether:<sup>23</sup>

*'What the number of workers in the NI and workers in the TMF who have a WPI of more than 15 percent, more than 20 per cent and more than 30 percent?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response.
- b. Anecdotally speaking, it is uncommon to see a worker with a WPI of more than 20 percent, and extraordinarily rare to find a worker with a WPI of more than 30 percent.
- c. As evidenced in the statement above, and in our submissions – we have provided several examples which illustrate that workers with seemingly catastrophic injuries rarely reach a threshold of 30% WPI.

13. Question from The Hon. Anthony D'Adam whether:<sup>24</sup>

*'Of that 4,555 in 2023-24, how many of those would be emergency services employees that are not covered by these reforms?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however;
- b. As it currently stands, emergency services employees are not exempt from the proposed amendments in the exposure draft, and therefore will be severely impacted – along with all other workers in the scheme.

14. Question from The Hon. Stephen Lawrence whether:<sup>25</sup>

<sup>22</sup> Public Service Association of NSW, Submission *'to the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales'* (n 12), 6.

<sup>23</sup> New South Wales, Transcript [Uncorrected] on proceedings before Standing Committee on Law and Justice: *'Proposed changes to liability and entitlements for psychological injury in New South Wales'* (n 1), 47.

<sup>24</sup> Ibid, 49.

<sup>25</sup> Ibid, 56.

*'In terms of this new jurisdiction in the IRC to determine bullying and certain types of harassment complaints, could you give us a sense of how an average worker would navigate that process: What sort of applications and paperwork would they have to do? If they were to retain a lawyer, how much would it cost them? It's obviously going to depend on the type of claim but, as an approximate starting point, ...'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however;
- b. In general terms, any individual who files for relief would have to pay a filing fee at the rate set in accordance with the Civil Procedure Rules.
- c. Individuals and/or Unions from time to time engage solicitors to represent them on their behalf, with costs exceeding \$10,000 at times for matters of moderate complexity. Bullying and Harassment matters tend to be highly complex and litigious, so an assumption could be made that costs for these matters may exceed this amount.
- d. Whilst a union generally absorbs these costs on behalf of a member, an individual may be exposed to a high financial burden to ensure adequate representation.

15. Question from The Hon. Anthony D'Adam whether:<sup>26</sup>

*'Do you have any thoughts about alternatives [to section 8E]? Accepting the premise that there is a certain type of crisis in the scheme and accepting the premise that some form of limitation might be needed to address that, is there a way to address the issue that is more fair than the exposure draft? For example, are there issues with the standard of proof? Is that something that could be looked at? Is there a case to limit payments overall in psychological cases, as opposed to other cases? Is there some other way, apart from the wholesale exclusion of access to the scheme.'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however;
- b. It is our position that this section should not be included in any form. As it stands, this is currently not in the Act and there would be no benefit, other than removing such decisions from trained medical professionals and into the sphere of the courts, thus exacerbating prompt treatment and attempts to return the injured worker to work on a graduated basis.
- c. As articulated in our Submission, better regulation, and proactive approaches to preventing injuries before they occur are far superior alternatives than introducing

<sup>26</sup> Ibid, 57.

amendments which will carve out a substantial class of injured workers and deny them with adequate support for treatment and the ability to return to work.<sup>27</sup>

16. Question from The Chair whether:<sup>28</sup>

*'Are there any other parties at the table here or on the videoconference who want to demur from what the consensus position that was arrived at, subject to Mr Dougall's comments? Or do we take it as consent to the positions reflected in the two peak law bodies contributions, both through submissions and orally today?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however,
- b. We reiterate our support for the submission provided by Unions NSW in their submission which we believe adequately addresses the issues with the proposed amendments.

17. Question from The Hon. Bob Narva whether:<sup>29</sup>

*'What are your reflections on the scheme as it exists and the reforms proposed?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however,
- b. As outlined in the summary of our submission:

*'[T]he purpose and effect of the proposed changes in the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 as it currently stands will be to significantly reduce the circumstances when a worker with a psychological injury can be compensated, and to place hurdles in the way of making a claim.*

*The Government's predominant method towards improving WC sustainability should be geared towards stopping workplace injury before it occurs. When dealing with the system itself, the focus should be on addressing a complex and inefficient system with better regulation and administration, rather than relying on denying injured workers entitlements as currently proposed.*

*The PSA would welcome the opportunity to be involved in developing a new path which will contribute to improving the fiscal outlook for the WC scheme in a way*

<sup>27</sup> Public Service Association of NSW, Submission 'to the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales' (n 12), 3-4.

<sup>28</sup> New South Wales, Transcript [Uncorrected] on proceedings before Standing Committee on Law and Justice: 'Proposed changes to liability and entitlements for psychological injury in New South Wales' (n 6), 66.

<sup>29</sup> Ibid, 71.



*which will not outcast injured workers. It is clear from the evidence provided, that many aspects of the WC scheme require meaningful reform.*<sup>30</sup>

18. Question from The Hon. Damien Tudhope regarding whether:<sup>31</sup>

*'Has the Government responded to that report?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however;
- b. The PSA would welcome the release into the review of SIRA's handling of long-standing, unresolved complaints which was conducted in 2024 has yet to be made publicly available, along with any Government response.

19. Question from Ms Abigail Boyd whether:<sup>32</sup>

*'If we look at the Nominal Insurer now, your audit report from July '23 stated that for psychological injuries audited by SIRA, in only 42.5 per cent the employer had actually notified the insurer of the injury within the time frame as required by the legislation. Is that correct?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however we believe that SIRA would be best placed to inform the Standing Committee on such statistics.

20. Question from The Hon. Mark Latham regarding whether:<sup>33</sup>

*'[C]an you give us some detail about what has happened over the past 13 months in these reviews and suggested courses of actions—a pseudonym for "recommendations"?''*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however we believe that SIRA would be best placed to inform the Standing Committee on such matters.

21. Question from The Hon. Mark Latham regarding whether:<sup>34</sup>

<sup>30</sup> Public Service Association of NSW, Submission 'to the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales' (n 12), 11.

<sup>31</sup> New South Wales, Transcript [Uncorrected] on proceedings before Standing Committee on Law and Justice: 'Proposed changes to liability and entitlements for psychological injury in New South Wales' (n 6), 88.

<sup>32</sup> Ibid, 91.

<sup>33</sup> Ibid, 92.

<sup>34</sup> Ibid, 92.

*'[C]an we get from both SafeWork and SIRA some breakdown of the industries that have a high prevalence of these psychological injuries? We've obviously got the Stronger Communities department that you've mentioned, but it would be good to get a breakdown, sector by sector, as to where the problems are, again to inform the Committee and give us a handle on the nature of the challenge by way of prevention.'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however we believe that SIRA and SafeWork NSW would be best placed to inform the Standing Committee on such matters.
- b. The last statistics provided by SIRA to us regarding employer engagements regarding RTW matters advised us that the top 3 industries based on engagements were Health and Community Services, Education, and Manufacturing.
- c. Anecdotally speaking, we have members in Law Enforcement who present with a high number of psychological injuries.

22. Question from The Hon. Anthony D'Adam whether:<sup>35</sup>

*'I wondered whether this [prosecutions for psychological injuries] is something that is on the radar for SIRA because, as the steward of the workers comp system, it seems to be something that clearly is working against improving the rates of return to work for psychological injuries, and it looks like something that perhaps needs to be addressed, if it's not currently being addressed. If it is being addressed, my question is what are you doing about it? If it's not being addressed, what do you propose to do about it?'*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however;
- b. As evidenced in our submissions and earlier above – we seek a review in allowing unions to be empowered to undertake a larger enforcement and compliance role within the broader Industrial Relations System.
- c. Further to the above, the case study *'An example of a broken system: WC in CSNSW leads to multiple investigations.'*<sup>36</sup> Reiterates the need for ongoing vigilance, transparent processes, and a focus on worker wellbeing remain critical to ensuring the workers compensation system functions as a genuine safety net.

23. Question from The Hon. Bob Nanva whether:<sup>37</sup>

<sup>35</sup> Ibid, 57.

<sup>36</sup> Public Service Association of NSW, Submission *'to the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales'* (n 12), 6.

<sup>37</sup> New South Wales, Transcript [Uncorrected] on proceedings before Standing Committee on Law and Justice: *'Proposed changes to liability and entitlements for psychological injury in New South Wales'*, (n 6) 98.



*'[W]ould you agree that changes to workers' benefits should only be considered if they're seen to create this sort of perverse disincentive to returning to work or if they are putting an unmanageable burden on the scheme? Would you agree with that as a general proposition?*

- a. Based on the short time available to prepare this reply, we are unable to provide a detailed response, however;
- b. We entirely reject this proposition. As outlined in our submission, previous cuts to the WC scheme and provisions for injured workers have done nothing to curb rising claims and falling RTW rates.

We appreciate the Committee's consideration of our submissions and remain available should you require any further information or clarification.

Yours sincerely,

Marko Petrovic  
Industrial Officer (WHS) & Educator

## Business NSW

# **BUSINESS NSW**

Standing Committee on Law and Justice  
NSW Parliament  
6 Macquarie Street  
Sydney NSW 2000

21 May 2025

Dear Committee,

**RE: Proposed changes to liability and entitlements for psychological injury in  
New South Wales**

We write in response to the inquiry questions on notice arising from the 16 May hearing.

### Questions on notice

1. Business NSW does not possess expertise in relation to the subject matter contained in this question and is of the opinion that this question is best answered by icare and NSW Treasury. They would have access to the most accurate information about the fund, as well as the ability to model scenarios under different accounting and regulatory standards and assess their impact on the viability of the scheme.
2. With respect to The Hon. Mark Latham's question, our current state of knowledge is limited to the terms of the Exposure Bill, which implies that, once an adverse finding (of bullying etc) has been made against a business, and as long as the definition of psychological injury is also met, the incident in question would then become an insurable event under the NSW workers' compensation system and trigger liability under the 1987 Act. We would need clarification on that point.
3. In relation to liability on the business itself, outside of the above scenario, before we would be in a position to respond to that question, we would need to seek formal legal advice in relation to the interplay between the contents of this bill on the one hand and the relevant laws contained in both the common law and the other regulatory regimes (such as Industrial Relations, Work Health and Safety and Human Rights) on the other.

If you have any further questions, please do not hesitate to get in touch.

Regards,

Mustafa Agha  
Head of Policy

icare

OFFICIAL



**Standing Committee on Law and Justice -  
Proposed changes to liability and  
entitlements for psychological injury in  
New South Wales**

**RESPONSES TO QUESTIONS ON NOTICE  
FROM HEARING ON 16 MAY 2025**

**DUE TO COMMITTEE ON 21 MAY 2025**

OFFICIAL

Page 1 of 5

## OFFICIAL

1. PAGE 49 OF TRANSCRIPT

**Ms ABIGAIL BOYD:** Apologies, if it's okay with you, if I could just interrupt you there because I have a very short period of time. If I could just ask instead, if I can go to Mr Wessling, the impact of AASB 17, which takes effect from the beginning of the next financial year—so in just a month and a bit. What is the impact on the bottom line for icare, and would that change if the Treasurer didn't put money in as he's threatening to do?

**TONY WESSLING:** Ms Boyd, I might ask Mr Liu to give you the proper answer to that.

**DAI LIU:** I'll be quick. The AASB 17 does not apply to the TMF. The TMF is a self-insurance scheme so that accounting standard does not apply. The accounting standard does apply for the Nominal Insurer as it issues insurance policies. It is a brand-new insurance reporting standard. There are two larger financial pieces. One is around the concept of risk adjustment.

**Ms ABIGAIL BOYD:** Sorry to interrupt again. In icare's submission in June 2022 in relation to the TMF, it talked about a \$3.68 billion hit to icare. Would the accounting treatment you're talking about where it's not applying apply if the Treasurer did not put in the money required to run the scheme?

**DAI LIU:** No, it won't apply. We've done more work since AASB 17 won't apply to the TMF.

**Ms ABIGAIL BOYD:** Can you provide on notice perhaps the analysis of how that works? The analysis on how the TMF works in respect of not being affected by the AASB17 policy.

ANSWER

The Australian Accounting Standards Board (AASB) issued the final exposure draft (ED319) in March 2022, and icare submitted its response in June 2022. Following this response and the release of final AASB17 standard in December 2022 via AASB 2022-9 "Amendments to Australian Accounting Standards - Insurance Contracts in the Public Sector", icare assessed and documented in a formal Accounting Policy ("Scope") the applicability of AASB17 for each relevant scheme, and has determined AASB 17 will be applicable from 1 July 2026 for the following schemes:

- NSW Workers Insurance Scheme (NI)
- Construction Risk Insurance Fund (CRIF)
- Home Building Compensation Fund (HBCF)
- Sporting Injuries Compensation Authority (SICA)
- Lifetime Care and Support Fund (LTCS)
- Motor Accidents Injuries Benefits Fund (CTP Care)

The Scope Accounting Policy has been provided to the Audit Office via EY.

The key pre-requisite in AASB 17 2022-9 for an arrangement to fall within AASB 17, the arrangement needs to:

- be enforceable; and
- have an identifiable coverage period.

TMF is out of scope for the following reasons:

- a. The TMF is a statutory, administrative self-insurance arrangement for the State. The TMF is not insurance nor is SiCorp an insurer in respect of the TMF. The TMF is a "Government managed fund scheme" operated by the NSW Self Insurance Corporation (through Insurance and Care NSW) pursuant to section 8 of the NSW Self Insurance Corporation Act 2004 (the SiCorp Act).

OFFICIAL

Page 2 of 5

## OFFICIAL

- b. TMF cover is discretionary and operates as "Government managed fund scheme" as defined under section 3 of the SICorp Act because it is: "an arrangement under which...liabilities of the State, an authority of the State or an eligible State official... are managed as a self-insurance scheme (including the collection of contributions from the State, an authority of the State or an eligible State official towards the cost of claims), and... are paid, or otherwise settled, by the State or by the Self Insurance Corporation on behalf of the State, an authority of the State or an eligible State official".
- c. The Statement of Cover provided to the agencies at the commencement of the "coverage" period states that "The TMF is not insurance and is not subject to the *Insurance Act 1973* (Cth), ... The TMF forms part of the NSW Government's self-insurance arrangements. It provides no risk cover in the nature of a contract of insurance and is exempt from claims for dual insurance".
- d. The Statement of Cover is also not binding on the TMF and is specifically noted TMF can alter the terms and conditions at its discretion. Further it states that " This Statement of Cover specifically notes that is not intended to, and does not, give rise to any legally enforceable rights on the part of TMF Agencies or Covered Individuals."

OFFICIAL



OFFICIAL

2. PAGE 50 OF TRANSCRIPT

Ms ABIGAIL BOYD: I apologise for interrupting, but could you please take on notice the number of workers in the NI and workers in the TMF who have a WPI of more than 15 per cent, more than 20 per cent and more than 30 per cent? That would be very useful. Thank you. Number for injured workers (NI and TMF) who are above 15%, 20%, and 30% - both actual and forecast

ANSWER

Psychological Claims with a Whole Person Impairment (WPI) Assessment with NI and TMF for FY2024/25, up to March 2025.

WPI	NI	TMF	Total
15%+	537	853	1,390
21%+	175	271	446
31%+	9	3	12

Actuarial Projection of Psychological Claim Numbers by Whole Person Impairment (WPI) for Accident Year FY2024/25:

WPI	NI	TMF	Total
15%+	1,041	1,568	2,609
21%+	346	636	982
31%+	17	10	27

3. PAGE 52 OF TRANSCRIPT

The Hon. ANTHONY D'ADAM: Can I just take you to your submission on page 6. There is a graph there of the TMF claims indicating an increase from 18 per cent in 2022-23 to 21 per cent, and then it gives the raw numbers. Of that 4,555 in 2023-24, how many of those would be emergency services employees that are not covered by these reforms?

TONY WESSLING: Mr D'Adam, we'll just see if we've got that.

OFFICIAL



OFFICIAL

DAI LIU: We don't readily have it. We might just take that on notice. It is roughly half—

The Hon. ANTHONY D'ADAM: Roughly half?

DAI LIU: —but maybe we'll come back with the actual numbers.

The Hon. ANTHONY D'ADAM: So we are talking about maybe in the order of 150 more claims than the previous, in terms of the ones that would be affected by these reforms. Is that correct?

TONY WESSLING: Can you outline your maths again for me?

The Hon. ANTHONY D'ADAM: Well, because you were saying that half the difference between 443 to 550—sorry, 250 of those would be claims that are covered by the reform proposal.

TONY WESSLING: Perhaps we could come back to you on notice to answer your question

**ANSWER**

About 1,600 of the 4,555 TMF psych claims reported in 2023/24 were EMER claims

Given there are a range of factors and circumstances for individual claims, we cannot comment on the exact numbers that would have been impacted by the proposed reforms for the 2023/2024 period.

## NSW Treasury

OFFICIAL

## Proposed changes to liability and entitlements for psychological injury in New South Wales

## Questions on notice

QoN	Question and response
1	<p><b>The Hon. DAMIEN TUDEHOPE:</b> The current claims model remains in place, and you'd be able to continue to make claims on the TMF, and the self-insurer would be responsible for those claims, would they not?</p> <p><b>SONYA CAMPBELL:</b> Correct.</p> <p><b>The Hon. DAMIEN TUDEHOPE:</b> So the decision—if that was the Treasurer's decision—not to make the payment in accordance with the current guidelines relating to the net asset holding policy, in effect, would not have any impact in relation to the ability to make claims.</p> <p><b>SONYA CAMPBELL:</b> Yes, I think that's correct, Mr Tudehope.</p> <p><b>The Hon. DAMIEN TUDEHOPE:</b> And the liability of the government for those claims would remain the same?</p> <p><b>SONYA CAMPBELL:</b> That's correct.</p> <p><b>The Hon. DAMIEN TUDEHOPE:</b> It would just be a different manner in which you enter that potential liability on your balance sheet.</p> <p><b>SONYA CAMPBELL:</b> Well, the liability valuations are reflected in the budget and the balance sheet on an annual basis.</p> <p><b>The Hon. DAMIEN TUDEHOPE:</b> Yes, but the scheme at the moment requires the Government to, in fact, transfer money to the TMF to make sure that it reaches a particular percentage relating to the net asset holding policy, does it not?</p> <p><b>SONYA CAMPBELL:</b> No, the net asset holding policy no longer applies. The contribution and transfer framework has taken its place, and there are various principles in there that will determine whether a contribution should be made in the context of the whole one fund.</p> <p><b>The Hon. DAMIEN TUDEHOPE:</b> So what you have indicated is that there is a new contribution and transfer policy?</p> <p><b>SONYA CAMPBELL:</b> Correct.</p> <p><b>The Hon. DAMIEN TUDEHOPE:</b> Is that in a document?</p> <p><b>SONYA CAMPBELL:</b> It is in a document.</p> <p><b>The Hon. DAMIEN TUDEHOPE:</b> Can we have a copy of that document?</p> <p><b>SONYA CAMPBELL:</b> It's not published. It's a Treasury internal document. I'd have take that on notice and come back to you, Mr Tudehope.</p> <p><b>Response</b> Please refer to Attachment A.</p>
2	<p><b>The Hon. MARK LATHAM:</b> Has Treasury got any forecasts that it has provided to the Treasurer?</p>

OFFICIAL



OFFICIAL

	<p><b>SONYA CAMPBELL:</b> We receive the liability valuations from icare. In relation to the TMF, we also monitor the investment returns, and there's a combination of those that determines the position of the TMF at any particular point in time.</p> <p><b>The Hon. MARK LATHAM:</b> What do those forecasts show three years from now if there's no top-up?</p> <p><b>SONYA CAMPBELL:</b> I don't have those numbers, Mr Latham.</p> <p><b>The Hon. MARK LATHAM:</b> Can you take that on notice?</p> <p><b>SONYA CAMPBELL:</b> I can, yes.</p>
	<p><b>Response</b></p> <p>Forecasts are still in the process of being finalised as part of the 2025-26 Budget and in part will depend on the nature of the reforms currently being debated. We will thus be able to provide these forecasts once the 2025-26 Budget is released.</p>
3	<p><b>The Hon. MARK LATHAM:</b> What are the origins of the taskforce that was to deal with this looming financial crisis?</p> <p><b>ANDRÉE WHEELER:</b> There has been proceeding advice provided to government both from ourselves as well as from icare and SIRA in relation to the financial positions of each of the schemes and the growing trends in relation to psychological injury.</p> <p><b>The Hon. MARK LATHAM:</b> Could you take on notice the membership of the taskforce for the benefit of the Committee, please?</p> <p><b>ANDRÉE WHEELER:</b> Certainly.</p> <p><b>Response</b></p> <ul style="list-style-type: none"> <li>• The Taskforce includes representatives from NSW Treasury, the Department of Customer Service (DCS), State Insurance Regulatory Authority (SIRA) and icare, including: <ul style="list-style-type: none"> <li>○ Deputy Secretary, Commercial, NSW Treasury</li> <li>○ Deputy Secretary Policy, Strategy and Governance, DCS</li> <li>○ Chief Executive, SIRA</li> </ul> </li> <li>• A full list of members can be found at Attachment B.</li> </ul>

OFFICIAL

OFFICIAL

## Attachment A

## Contributions and Transfers Framework

### Context:

Over time, the State has established several schemes to meet certain liabilities and/or achieve policy purposes. For efficiency and prudential purposes, investment funds have been set up to support the aims of these schemes. Scheme sustainability is ensured by maintaining an appropriate ratio of assets to liabilities, or by seeking to achieve a target funding ratio over time.

Investment returns contribute to the funding of these liabilities and purposes. Long term, these investment returns reduce the reliance on Consolidated Revenue to pay for these schemes and should reduce/optimize the level of required Government contributions.

Returns are generated by taking on investment risk. While this risk is expected to be rewarded in the long term, it also means that investment performance will vary over shorter periods. As such, depending on the nature of the liabilities and their key sensitivities, the State may need to contribute from time to time to smooth the impacts of return volatility and ensure ongoing scheme sustainability. Contributions may be funded through operating surplus cash, other assets, or borrowings as a last option. If funded through borrowings, it will need to be well-managed, with the State's overall fiscal sustainability and legislative commitments being key considerations.

This framework articulates principles to guide Government when deciding how best to ensure the various schemes remain either appropriately funded or remain on a path to be appropriately funded, consistent with policy objectives or legislation. These principles are to be considered within the context of the recently established OneFund and the Government's aim of maintaining fiscal sustainability, particularly with respect to debt levels.

While there are some commonalities in liability drivers between the various schemes, differences in value, asset bases, policy, legislation, timeframes and arrangements need some difference in approach. As such, this framework comprises general principles applying to all schemes and more specific principles applying to:

1. Schemes in or related to OneFund (Appendix A)
2. The Defined Benefit Superannuation Schemes (Appendix B)

### General Principles

1. Where Government establishes a scheme that is to be backed by an investment trust, then either:
  - a. Sufficient assets are set aside at the outset to ensure an appropriate scheme funding level, and/or
  - b. A contributions plan is established to achieve an appropriate scheme funding level over time.
2. Contributions and transfers should be made in a way that is efficient and minimises the need to borrow.
3. The need to contribute or transfer should be reviewed periodically, considering updated liability positions and asset valuations, scheme cashflow needs and policy parameters.

OFFICIAL

OFFICIAL

## Attachment A

4. Contributions are to be made, or other action taken to promote scheme funding sustainability, when it is assessed that a change in a scheme's funding target is structural (a 'sufficiency' issue) or where it is not otherwise possible to transfer between funds.
5. Transfers between schemes invested in OneFund (subject to any ring-fencing under legislation, direction or otherwise) are to be made where it is assessed that a change in a scheme's funding target is temporary (e.g. a 'liquidity' issue) and there is capacity and no policy restriction within other schemes to make a transfer.
6. Whether a scheme is underfunded temporarily or structurally will mainly be a function of how large the shortfall is and how long it is expected to last. Liability values will be based on either an 'accounting' or 'funding' ratio, as appropriate for each scheme<sup>1</sup> and applying the relevant liability horizon for the scheme.
7. Funding adequacy assessments should be made annually, and no later than April of each year, so they may be considered as part of the annual Budget process.
8. Sensitivity analysis around the base case funding position should be provided to Treasury by scheme so that potential vulnerabilities are better understood.
9. This framework and its appendices are to be reviewed periodically, including consultation with relevant stakeholders, to ensure they remain fit for purpose and approved by the Expenditure Review Committee.

## Appendix A – Schemes in or related to OneFund

The purpose of the OneFund Contributions and Transfers framework is to:

1. Provide high level guidance on when to contribute to participating schemes, and how they should be made
2. Enable transfers between participating schemes
3. Efficiently manage the funding of cashflow needs of participating schemes
4. Minimise the frequency and amount of additional appropriations to maintain scheme funding adequacy

## Principles:

- a) Funds invested in OneFund are to be managed as if they are a single fund, with a common risk appetite statement and investment strategy approved by the Treasurer.
- b) Although the funds will be invested in the same way, the schemes or programs they support remain distinct, such that scheme funding adequacy will continue to be considered at the individual level in the first instance.
- c) Whether a scheme within OneFund is supported by a transfer or a contribution will depend on:

---

<sup>1</sup> The accounting ratio is that which uses relevant accounting standards to determine liability values, consistent with Budgeting and Annual reporting practices. The funding ratio is that which may be used from time to time to determine contributions plans for various schemes (e.g. some defined benefit superannuation schemes).

OFFICIAL

## OFFICIAL

## Attachment A

- i. The nature, magnitude and duration of the shortfall – e.g. a liquidity issue (short-term – implies transfer) or sufficiency issue (long-term – implies contribution),
- ii. Ensuring a source scheme is not left inadequately resourced after a transfer to a recipient scheme.
- iii. Contributions not materially worsening the State's broader fiscal position where financially feasible alternatives exist.

These factors will determine if funds are to be transferred between schemes or if an appropriation into a scheme is needed.

**Assessing funding adequacy**

- a) The funding adequacy of OneFund and its participating funds is to be calculated monthly and assessed annually in the lead-up to the Budget, to determine the ability to meet future cashflows and/or liabilities.
- b) The funding adequacy ratio will be calculated as the value of scheme assets relative to the net present value of scheme liabilities expected for the annual Budget.
- c) The funding adequacy of each fund will be assessed individually in the first instance and may take into account scheme assets not held in OneFund (e.g. cash at bank).
- d) The funding adequacy of all funds in OneFund will also be assessed collectively (the 'Collective Funding Ratio'), excluding the DRF and any other ring-fenced schemes.
- e) The funding adequacy of all funds in OneFund will also be assessed collectively, including the DRF.
- f) Annual funding adequacy assessments should occur no later than April each year and be presented to ALCO for endorsement.

**The transfer mechanism**

- a) Subject to funding adequacy, both cash and non-cash transfers across the participating schemes should be permitted however, there are exceptions to this:
  - iv. The NSW Generations (Debt Retirement) Fund (DRF) is to be excluded from the transfer mechanism to keep its ring-fencing for credit rating purposes but may be used to retire debt to support contributions to a fund where Collective Funding Ratio criteria are met (see below).
  - v. The Long Service Corporation (LSC), Lifetime Care and Support Authority and Dust Diseases Authority funds are also to be excluded from the transfer mechanism because their contributions have been made by, and are held for the benefit of, third parties.
  - vi. Other funds and schemes may, over time, be ring-fenced under legislation, direction or otherwise.
- b) Agencies responsible for impacted schemes will agree transfer terms, with the transfer to be endorsed by Treasury's Asset and Liability Committee (ALCO) and approved by the Treasurer.

## OFFICIAL

OFFICIAL

## Attachment A

- c) Investment returns will accrue to the fund receiving the transfer.

**Criteria for transfers and contributions**

1. A transfer between funds will be made where:
  - a) The funding adequacy of a recipient fund is assessed to be less than [95] per cent, and
  - b) This deficiency is not expected to persist beyond a period of [24] months, and
  - c) A donor fund(s) post-transfer funding adequacy remains above 100 per cent, and
  - d) The Collective Funding Ratio of those funds included in this OneFund Contributions and Transfers Framework remains above 100 per cent.
2. Where the criteria under (1) are not met, the Debt Retirement Fund will be used to retire state debt, and the resultant borrowing capacity used to *contribute* to the recipient fund, provided the Collective Funding Ratio including the DRF remains above 120 per cent.
3. Where the criteria under (2) are not met a *contribution* to the recipient fund will be made using other available state resources (cash, borrowings, other suitable assets).
4. Where the shortfall is considered to be structural (e.g. the nature of the liabilities/cashflows has changed, or the change is expected to be significant and persistent), Treasury will work with the relevant administering agency to assess what other action may be needed to maintain scheme sustainability.

Periodically Government may choose to contribute to State funds within OneFund where it is considered prudent and there is fiscal capacity to do so.

Where legally allowed, Government may choose to withdraw amounts previously contributed to State funds within OneFund, where it is considered prudent to do so.

Proposed contributions will be endorsed by ALCO and approved by the Treasurer or the Expenditure Review Committee.

**Appendix B – SAS Trustee Corporation (State Super) Sustainable Funding Framework****Scope**

This framework applies to the General Government Sector's (GGS) defined benefit liabilities that are managed by SAS Trustee Corporation (State Super). This includes the:

- i. State Superannuation Scheme (SSS),
- ii. State Authorities Superannuation Scheme (SASS),
- iii. State Authorities Non-contributory Superannuation Scheme (SANCS), and
- iv. Police Superannuation Scheme (PSS).

OFFICIAL



OFFICIAL

## Attachment A

## Objectives

- a) To ensure that, at the close of each financial year, the Crown Contribution Plan is forecast, within a Threshold Range, to be sufficient to achieve 'full funding'<sup>2</sup> of STC's GGS defined benefit superannuation liabilities by 2040, and
- b) To support State Super and Pooled Fund annual financial statements disclosures.

## Threshold Range

- a) The Threshold Range is the present value of the forecast funding position at 30 June 2040 (based on the AASB 1056 methodology) that is between:
  - i. an underfunded position of \$4 billion, and
  - ii. an overfunded position of \$2 billion.
- b) Note that the Threshold Range will be reviewed triennially. The magnitude of the Threshold Range will be reduced at each review (and would approach zero by 2040).

## Contribution Plan Review Mechanism

- a) In preparation for its annual Asset and Liability Modelling (ALM) review (conducted in Q1 each calendar year), State Super will share its key economic assumptions with Treasury, by 31 January. State Super will provide Treasury with its:
  - i. short and long-term forecasts of the Sydney CPI, and
  - ii. expected long-term investment return/required rate of return/discount rate.
- b) By 15 February, Treasury will respond with its views on the assumptions.
- c) State Super's ALM review will forecast the net defined benefit superannuation liabilities for its GGS members as at the prior year end (30 June) as at 2040 (and the present value of that net liability).
- d) State Super will update its ALM Review forecast of the net liability in 2040, as at 28 February, based on:
  - i. actual CPI and investment return experience since 30 June of the prior year, and
  - ii. any changes to short and long-term forecasts of the Sydney CPI and expected long-term investment return/required rate of return/discount rate.
- e) By 15 March, STC will provide the forecast, the impact of actual experience and assumption changes post 30 June, sensitivity analysis around the key assumptions and any implications for the funding position and level of contributions required will be presented to Treasury for discussion.
- f) By 31 March, STC will provide a letter to the Treasurer (with a copy sent to Treasury), detailing:
  - i. The present value of the forecast net funding position at 2040, and
  - ii. Either:
    - i. STC's request for an amendment to the contribution plan to return the forecast net funding liability in 2040 to zero, if the present value of the net funding position in 2040 is outside the Threshold Range, or

<sup>2</sup> 'Full funding' in this context means the situation where the projected funding ratio (assets/liabilities) for the Schemes is equal to (or greater than) 100% at 30 June 2040.

OFFICIAL

OFFICIAL

**Attachment A**

- ii. That STC is satisfied with the current contribution plan if within the Threshold Range.
- g) Where STC requests a change in the Crown Contribution Plan, Treasury will provide a brief to the Treasurer by 30 April containing its advice relating to any change to the Crown Contribution Plan.
- h) The Treasurer will respond to STC in writing by 15 May, with the Treasurer's preferred Crown Contribution Plan.
- i) Treasury and STC may agree to amend the timeline stated above in certain years to accommodate unusual budget release dates.
- j) Note that this framework does not preclude STC or Treasury from recommending an amendment of the Crown Contribution Plan at any other point in the year if either party believes it is appropriate to do so.

**Framework Review**

- a) The framework will be reviewed triennially (in the same year as STC's formal triennial review) by Treasury, in consultation with STC. The first such review is proposed for the end of 2026.
- b) Any proposed changes to the framework must be approved by the Treasurer.

OFFICIAL

OFFICIAL

## Attachment B

**Taskforce membership****Executive Coordination Committee (ECC) – Workers Compensation Reform Modernisation Project**

Organisation	Title
Treasury	Deputy Secretary, Commercial
Department of Customer Service (DCS)	Deputy Secretary Policy, Strategy and Governance
State Insurance Regulatory Authority (SIRA)	Chief Executive

**Taskforce Leads – Workers Compensation Reform Taskforce**

Organisation	Title
Treasury	Executive Director, State Insurance Schemes
DCS	Executive Director Portfolio, Policy and Cabinet

**Other supporting members**

Organisation	Title
SIRA	Director Scheme Design Policy and Performance
SIRA	Manager Media and Communications
Treasury	Director State Insurance Schemes
Treasury	Associate Director Policy
Treasury	Associate Director Policy
icare	General Manager Technical & Scheme Design Workers Compensation
icare	General Manager, Actuarial Services
icare	Head of Policy Stakeholder Relations & Policy Risk & Governance
icare	Head of Customer Outcomes
DCS	Director Workers Compensation Project

OFFICIAL

OFFICIAL

Attachment B

DCS	Principal Policy Officer
DCS	Principal Policy Officer
DCS	Senior Policy Officer
DCS	Legal Administrator

OFFICIAL

## NSW Bar Association



### **NSWBar Association response to question on notice from the Standing Committee on Law and Justice's Inquiry into "proposed changes to liability and entitlements for psychological injury in New South Wales"**

#### Question from the Hon. Stephen Lawrence MLC:

*"Mr Toomey, we heard some evidence from the Treasurer this morning to the effect that the workers compensation system was designed for physical injuries and is obviously now being used for psychological injuries. In summary, he said that there are quite complex questions in terms of assessing psychological injuries, particularly when assessing their connection to work, as opposed to contributions by virtue of the persons inherent make-up or other problems that they might have outside of the workforce. I think it could be said that the bill-particularly section BE and the meaning of "relevant event"-is an attempt to engage with that by excluding certain people from the scheme. Do you have any thoughts about alternatives? Accepting the premise that there is a certain type of crisis in the scheme and accepting the premise that some form of limitation might be needed to address that, is there a way to address the issue that is more -fair than the exposure draft? For example, are there issues with the standard of proof Is that something that could be looked at? Is there a case to limit payments overall in psychological cases, as opposed to other cases? Is there some other way, apart from the wholesale exclusion of access to the scheme?"*

#### Answer:

1. The NSW Bar **Association** thanks the Hon. Stephen Lawrence MLC for his question regarding potential alternative approaches to the exposure draft of the Workers Compensation Legislation Amendment Bill (**draft Bill**) to address the "crisis in the scheme" that was identified in the evidence provided by the NSW Treasurer. The response below should be considered alongside the Association's written submission, the opening remarks from the Senior Vice-President, Dominic Toomey SC, and the answers provided to the Standing Committee on Law and Justice at the Inquiry hearing held on 16 May 2025.
2. At the outset, the Association reiterates the significant challenge of addressing these identified issues without the most recent financial modelling and without an understanding of the proposed Industrial Relations Amendment Bill and the yet unreleased delegated authority or regulation that supports the draft Bill. With those qualifications acknowledged, the Association suggests that the Standing Committee should address the following matters to produce a fairer outcome than that proposed by the draft Bill:
  - (a) During the Inquiry, the Standing Committee received evidence that, based on iCare's modelling, only 27 employees impaired by workplace psychological injury per year would be eligible to claim long term benefits under the new threshold of 31% Whole Person Impairment (WPI).<sup>1</sup>

---

<sup>1</sup> Evidence provided to the Standing Committee by Mr Dai Liu, General Manager, Actuarial Services, icare on page 41 of the uncorrected transcript.

(b) The Association notes that the definitions of the required "relevant event" in proposed subsection SE for sexual harassment, racial harassment or bullying will require a finding from a Tribunal, Commission or Court (presumably the Industrial Relations Commission). The introduction of a preliminary litigated step in the claim process for psychological injury within these categories will dissuade bona fide injured workers and militate against the stated intention of producing a more efficient, quick and fair process.

Mr David Jones, Partner, Carroll & O'Dea Lawyers

#### Response to Questions on Notice

The CHAIR: Before I conclude, I have a point of clarification. Damien, going back to your first question,

you put a broad question to the panel asking whether any of them have anything to say about or disagree with

anything that was said by the peak law bodies. In the exchange, the only person who responded was Mr Dougall

and then we moved on to another line of questioning. I want to make it clear that I'm not sure whether silence

meant consent or not in that case. Are there any other parties at the table here or on the videoconference who want

to demur from what the consensus position that was arrived at, subject to Mr Dougall's comments? Or do we take

it as consent to the positions reflected in the two peak law bodies contributions, both through submissions and

orally today?

DAVID JONES: I was in the waiting room for the last 15 minutes of the evidence so without the benefit

of viewing the transcript, I can't indicate if I agree with the propositions which were made.

The CHAIR: That's a completely reasonable answer. Perhaps you might wish to take that on notice. That

might be the way of dealing with it.

#### Section 11A

The responses of the NSW Bar representatives to questions posed at the hearing on 16 May 2025 did not indicate a proper understanding of the operation, content and effect of the amended section 11A.

Currently, that section provides a defence in cases in which the injury results from action taken or proposed to be taken by the employer "with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers".

The employer is required to demonstrate that:

1. That the worker's injury was wholly or predominantly caused by management action falling within one or more of the seven specified categories of action, and,
2. That such action is reasonable.

Employers routinely fail to satisfy the criteria of section 11A, because

- the worker's injury is either found to result from causes other than any of the seven section 11A categories,
- because any management action is not the whole or predominant cause of the worker's injury, and/or
- because the action in question is found not to be reasonable (for substantive and procedural reasons).

The scope of the proposed section 11A is substantially expanded by reason of a proposed definition of "reasonable management action" which will include 14 categories of management action, with scope for even further expansion via the regulations. That of itself might not be a matter worth dying in a ditch over, as Senior Counsel remarked.

What should be cause for concern however is the way in which section 11A will be capable of being used to defeat a claim in respect of an injury which does satisfy the definition of "relevant event", and which would otherwise be compensable.

This is illustrated by the following example:

Worker A is involved in an altercation in the workplace with worker B, is assaulted by Worker B, and suffers physical injuries to his body and a psychological injury (PTSD).

Both workers are suspended, pending an investigation. Worker A, considering himself to be a victim, is aggrieved by the action of being suspended, and develops depression.

The circumstances of injury included in the above example involve "being subjected to an act of violence or threat of violence" as contemplated by the proposed section 8E(1)(a). The PTSD symptoms would satisfy the proposed definition of psychological injury", being "a mental or psychiatric disorder that causes significant behavioural, cognitive or psychological dysfunction".

Notwithstanding the occurrence of such an injury giving rise to significant dysfunction, an employer would be able to rely upon section 11A to defeat a claim in respect of such injury by asserting that "a significant cause" of the worker's psychological injury was reasonable management action taken or proposed to be taken in relation to the worker, which had resulted in a depressive disorder. In this respect, an employer would, as held in *Northern NSW Local Health Network v Heggie* [2013] NSWCA 255, not be considered to have acted unreasonably when conducting an investigation and suspending a worker pending the outcome of such





investigation. This would be so, even if the suspended worker is ultimately found to have committed no act of misconduct.

Under the proposed section 11A, the management action causing injury is required to be merely "significant". This marks a departure from the current requirement that such action be established as the "whole" or "predominant" cause of the worker's injury. It needs to be appreciated that notwithstanding that the main or predominant cause of the worker's injury is, as illustrated by the above example, the act of violence to which the worker was subjected, the worker's suspension will defeat any claim of psychological injury if that diminished cause is determined to be "significant".

### Additional Evidence regarding evidence of Dr Parmegiani's

**The Hon. DAMIEN TUDEHOPE:** Are we really saying that there is a problem in terms of the way that psychological injuries are assessed?

**JULIAN PARMEGIANI:** No, I don't think there is a problem there. I think the problem is with the system, and I am happy to expand. The problem is that there is an event, as defined, in the workplace. There is a psychological reaction to that event, which may be a perfectly normal psychological response to, perhaps, bullying or disciplining, and it upsets people. Once you embark on a system which requires you to lodge a claim and then go through the assessment process—and this is an assessment process which stretches over months if not years, if you include disputes and appeals—you have a person who has gone from having a dispute and a range of perfectly normal symptoms and responses, to having a conflict which is then stretched over months and years. There is sleeplessness, loss of identity and basically loss of dignity because you are now a workers compensation case.

By the end of that trajectory, which has taken long time, the injury becomes real and people have lost sleep over it. People have committed themselves. If you go to a no-win, no-fee firm, you sign your rights away and you can't withdraw from it. If you withdraw, you are liable for all costs associated with the case. Basically, you lose your house. You are committed. You've signed a contract which makes it mandatory for you to be in this state of paralysis for 18 months, two years or sometimes even longer. Then you get all the anxiety arising from disputes between assessors and your lack of capacity to generate any money to feed your children or pay the mortgage. By the end of it, you have created a mentally crippled person.

I would welcome the opportunity to provide comment in respect of the above-mentioned exchange which is extracted from page 77 of the transcript.

Dr Parmegiani criticised the conduct of solicitors who represent injured workers, suggesting that they subject workers to "no win, no fee" costs agreements which exacerbate the condition of injured workers.

No such costs agreements apply to proceedings in the Personal Injury Commission in respect of statutory entitlements pursuant to the Workers Compensation Act 1987. The fees incurred by solicitors who represent workers in such proceedings are paid by IRO grants unless the worker is an exempted worker in which case the costs are paid by the relevant insurer if the claim for the statutory benefit is successful.

Contested proceedings in the Personal Injury Commission are adversarial and obviously cause for continuing distress and exacerbation of the condition of the worker, but the suggestion that fee arrangements are a contributing factor is wholly unfounded.

The comments may be directed towards fee arrangements for workers who pursue a claim for work injury damages. As regards fees to be incurred in work injury damages proceedings, a "no win, no fee" arrangement does not preclude the right of the worker to seek a costs assessment. Moreover, contrary to Dr Parmegiani's assertion, workers are not forced to proceed with claims, against their will, and they do not risk losing their house unless they proceed. A worker is also at liberty to instruct a different law firm (whilst remaining liable to pay the fees of the former law firm at the conclusion of the matter).



The vast majority of work injury damages matters settle at mediation on terms acceptable to the worker. A handful of cases proceed to trial in the District Court, and it is only a miniscule number of cases which result in an adverse outcome for the worker which could lead to an insurer enforcing a costs order against the worker which could potentially involve the insurer recovering the quantum of costs by selling a home. The costs that an insurer can recover are restricted by Schedule 7 of the *Workers Compensation Regulation 2016* and it is highly unlikely that those costs would exceed the sum of \$75,000 in the vast majority of cases. If a worker fails with a work injury damages claim they remain entitled to statutory benefits including weekly payments and medical treatment if they meet the relevant thresholds within the Act.

Yours faithfully

David Jones  
Partner  
Carroll & O'Dea Lawyers

## **Slater & Gordon Lawyers**



**Matters taken on Notice from  
the Parliamentary Inquiry into  
proposed changes to liability  
and entitlements for  
psychological injury in New  
South Wales**

---

Submitted by  
Slater and Gordon Lawyers

21 May 2025

Hon Greg Donnelly MLC  
Chair, Legislative Council Standing  
Committee on Law and Justice  
Parliament House Macquarie Street SYDNEY  
NSW 2000

Dear Chair,

**Re: Matters taken on Notice from the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales**

Slater and Gordon thanks the Committee for the opportunity to contribute to this critical inquiry and confirms its concurrence with the oral and written submissions made by the New South Wales Bar Association, particularly in relation to the impacts of the proposed reforms on workers suffering psychological injury.

We wish to specifically reaffirm the following key concerns raised:

1. The 31% Whole Person Impairment (WPI) threshold for psychological injuries is unreasonably high and would result in nearly all affected workers being excluded from accessing lump sum compensation, extended income support, and common law damages.
2. The requirement for a "relevant event" in order to trigger compensation under proposed sections 8E and 8G would exclude a wide range of legitimate injuries arising from the inherent pressures of work, including vicarious trauma, customer aggression, and cumulative exposure to distressing content – especially affecting workers in healthcare, education, and human services.
3. Mandating findings by the Industrial Relations Commission (IRC) or other tribunals prior to claim notification undermines the principle of early treatment and will delay access to medical care and support. This creates unnecessary procedural hurdles, particularly for vulnerable or unrepresented workers.
4. The new definition of psychological injury, as proposed in the Bill, imposes a more restrictive and medically unjustified threshold than currently exists for physical injury. It is legally problematic and likely to increase litigation without improving claim quality or system efficiency.

**Section 11A – Burden of Proof and Limited Success as a Defence**

Slater and Gordon also supports the Bar Association's comments regarding section 11A of the *Workers Compensation Act 1987 (NSW)* and its sufficiency as currently drafted. Under s11A, compensation is not payable in respect of psychological injuries that are "wholly or predominantly caused" by "reasonable management action" taken or proposed to be taken by or on behalf of the employer. However, the burden of proof under this provision rests entirely on the employer or insurer. They must establish not only that the injury was predominantly caused by management action, but also that the action was reasonable in all the circumstances. This is a high evidentiary threshold, and for that reason:

- The defence is rarely successful in practice, particularly where there is evidence of multiple causative factors or where the employer's conduct was flawed, disproportionate, or poorly executed.
- Determinations often turn on factual disputes and credibility assessments, making early resolution more difficult and protracted.



- The courts and tribunals have applied the defence narrowly, in line with the principle that workers compensation legislation should be construed beneficially in favour of injured workers.

### Medical Experts in NSW

Concerns regarding malingering by Claimants are occasionally raised, but Slater and Gordon joins the Bar Association in confirming that medical practitioners appointed for the purposes of assessment in NSW particularly those authorised under the State Insurance Regulatory Authority (SIRA) and in medico-legal contexts operate under strict ethical and professional obligations.

- Practitioners utilise recognised diagnostic tools such as DSM-5 criteria, structured clinical interviews, and psychological testing to assess authenticity and symptom consistency.
- Indicators of malingering such as exaggerated presentation, inconsistent history, or non-compliance with treatment are professionally scrutinised and documented. Where such concerns arise, they are addressed through independent peer review, dispute resolution pathways, and cross-examination in contested matters.
- Allegations of malingering by Claimants are rarely substantiated and must not be used as a pretext to limit legitimate access to compensation. The current system includes adequate safeguards to identify and address dishonest claims without imposing disproportionate barriers on genuinely injured workers.

Slater and Gordon urges the Committee and the NSW Government to proceed with caution in implementing reforms that risk excluding psychologically injured workers from compensation.

A balanced approach is both achievable and essential. Reforms must not come at the cost of equity, fairness, and the foundational principle that the scheme exists to support recovery.

Measures that deny recognition, restrict access to treatment, or undermine protections in the name of efficiency risk doing lasting harm to the very people the scheme is meant to serve.

We remain available to assist the Inquiry further and thank the Committee for its ongoing commitment to consultation.

Yours sincerely,

**Ramina Dimitri**  
Head of Work and Road Claims – NSW, ACT & WA  
Slater and Gordon Lawyers

**Ms Roshana May**

## Roshana May

### Lawyer

R. May: 2025 SCLJ

21 May 2025

The Chair, Mr Greg Donnelly  
Standing Committee on Law & Justice  
Legislative Council  
Parliament of NSW

Dear Chair

**STANDING COMMITTEE ON LAW AND JUSTICE INQUIRY  
PROPOSED CHANGES TO LIABILITY AND ENTITLEMENTS FOR PSYCHOLOGICAL INJURY IN NEW  
SOUTH WALES - Question on Notice to Roshana May Page 71 uncorrected Transcript**

I thank the Committee for the opportunity to provide further material to assist with the Inquiry.

**Transcript of the QON**

**The Hon. BOB NANVA:** I will just ask one question, perhaps to you, Ms May. I hope you'll forgive me if I refer to an article which you co-authored in 2014, *Principles of an effective workers' compensation scheme*, which I found fascinating. You talk about the compensation effect on health and wellbeing—

**The Hon. MARK LATHAM:** And you found it yourself?

**The Hon. BOB NANVA:** I did, actually.

**The Hon. MARK LATHAM:** Good on you.

**The Hon. BOB NANVA:** With the compensation effect on health and wellbeing, you look at the two broad categories of secondary gain and secondary victimisation. You conclude: Taking this evidence together, effort is required to minimise system-generated stressors and to improve scheme design so that people are supported to exit the schemes as quickly as possible. With that lens, what are your reflections on the scheme as it exists and the reforms proposed? If you had your hands on the levers, what would you do with that in mind?

**ANSWER:**

Thank you for the question which is an important one. Unfortunately, there is insufficient time for me to give the answer the proper attention it deserves. This serves as the best answer I can provide in the time permitted noting the urgency of the Committee's considerations and the shortness of the Committee's timeframes for deliberations and reporting. I am also conscious of the Government's intention to enter a Bill into the parliament very soon.

I **attach** the article co-authored with Dr Petrina Casey in 2014 in order to give the context to the question(s) posed by the Member. I ask the Committee to note that I do not support the initial premise of the paper advocating harmonisation of workers compensation systems in Australia.

The concepts of 'secondary gain' and 'secondary victimisation' are referenced in a Dutch article authored in 2011 which involves a study of participants who were individuals injured

Liability limited by a scheme approved under Professional Standards Legislation

in traffic accidents and involved in a compensation process in the Netherlands. The final outcome would be an award of damages paid in one lump sum. That is not the context in which I am asked to examine psychological injuries here.

The article emphasises the health benefits of work, now universally accepted, and the consensus that:

*"long-term work absence, work disability and unemployment all have a negative impact on health and wellbeing; that work must be safe so far as is reasonably practicable; and that work practices, workplace culture, work-life balance, injury management programs and relationships within workplaces are key determinants, not only of whether people feel valued and supported in their work roles, but also of their individual health, wellbeing and productivity."*

#### **Reflections on the existing scheme(s)**

I refer to my submission and what I consider the fundamental principle of workers compensation: A worker who has received an injury shall receive compensation from the worker's employer. Injury is defined as personal injury arising out of or in the course of employment (see section 4 1987 Act).

Psychological injury is not a new phenomenon. It was first recognised by the NSW workers compensation system in 1995 with the introduction of section 11A to the 1987 Act in response to a growing number of teacher stress cases in the preceding years. The section contained the first mention of psychological injury in the Act and included the definition of psychological injury and the 'reasonable management action' defence, that no compensation was payable for psychological injury "if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers."

Section 11A(3) provided that psychological injury is a "psychological or psychiatric disorder. The term extends to include the physiological effect of such a disorder on the nervous system".

In 2001, assessment of impairment arising from psychological injury was introduced with the implementation of the whole person impairment assessment rating and adoption of the AMAV Guides. Section 65A was inserted prescribing that only impairment arising from a primary psychological injury could give rise to a claim for lump sum compensation and setting a threshold impairment of "at least 15%". Section 151H relating to the threshold for work injury damages claims was amended to include provisions restricting such claims to primary psychological injuries and imposing a threshold degree of permanent impairment of at least 15% for all injuries.

In 2012, the system changed significantly shifting the focus to the 'capacity' of a worker from 'incapacity'.

There has been a gradual fragmenting of the application of the legislation since 2001 such that the 1995 amendments apply to all New South Wales workers (including coalminers). The 2001 amendments only apply to 'non-coalminer workers'. The significant 2012 amendments only apply to workers not exempted from the changes (dubbed Non-Exempt workers).

Workers exempted from the 2012 amendments are dubbed 'Exempt Workers'<sup>1</sup>, generally understood as active police officers, paramedics, and firefighters.

For each 'cohort' of workers the NSW workers compensation system provides a slightly different statutory no fault benefits scheme where benefits are paid as they accrue. Benefits fall roughly into the following types: Weekly payments (income replacement or support), medical and treatment expenses, and a lump sum for permanent impairment. The scheme also gives access to common law damages ("work injury damages" - modified common law damages - for exempt and non-exempt workers).

Each benefit regime is subject to regulation and a specific set of Guidelines.

The present legislative framework is extremely complex and difficult to navigate. It is virtually impossible for any NSW worker to understand their rights and obligations under the legislation without assistance.

The current framework generally provides adequate coverage and benefits although for non-exempt workers access to benefits is complicated and restricted by the imposition of multiple impairment thresholds across all benefit types.

The system objectives can be read as "to restore the (mental) health of a worker, provide income and other supports and return them to meaningful and gainful employment as promptly as possible".

In my opinion psychological injury claims made by **non-exempt workers**<sup>2</sup> are not optimally managed by the system due to a number of factors, including:

- Delays in notification by workers due to stigma attached to mental ill health and fear of reprisal
- Confusing and complex claims processes
- Insufficient early access to medical, social and vocational supports for workers who with psychological injuries
- Little or no early intervention
- Avoidance of **provisional liability** (up to 13 weeks weekly payments) by "reasonable excuse" (see *Workers Compensation Guidelines*), typically "insufficient medical evidence" or "The injury is not work related"
- Absence of a dedicated 'short term' benefits and supports 'regime' to provide early treatments, assistance and income support to facilitate an early return to work (a form of 'provisional liability without eligibility rules for workers with psychological injuries)
- Underutilisation of work capacity assessments and work capacity decisions (incentive measures) by insurers (resulting in long duration of weekly payments and time off work)

<sup>1</sup> Workers covered by: Schedule 6, Part 19H, cl.25, 1987 Act (police officers, paramedics, or firefighters), Schedule 6, Part 19H, cl.4, 1987 Act and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* (volunteer bush firefighters, lifesavers, and emergency services personnel), or *The Police Regulation (Superannuation) Act 1906* (PRS Act) (which applies to NSW police officers who were attested prior to 1 April 1988 and who contributed to the Police Superannuation Fund).

<sup>2</sup> The Exposure Draft Bill does not contain reference to amendment of the prior savings and transitional provisions. For example, exempt workers are not subject to work capacity decisions, a current 260 week cessation of weekly payments, or limitations on medical and treatment expenses under section 59A 1987 Act.



- Poor appreciation and understanding by employers of their primary duty of care under work health and safety laws<sup>3</sup> with respect to ensuring the health and safety of workers while at work and minimising risks to the health and safety of workers from work
- Perverse and inappropriately targeted incentives including marrying benefit duration to impairment thresholds and theoretical and unrealistic definitions (e.g. suitable employment)
- Delayed outcomes and perceived injustice
- Little education of key service providers about the concept of 'capacity' for work
- No measures aimed at prevention of injury
- Difficulties within the current legislation (not addressed by the exposure draft Bill)<sup>4</sup>

#### **Reflections on the reforms proposed in the exposure draft**

In my submission to the Inquiry, I have attempted to identify and explain the effects of the reforms proposed on non-exempt workers. Without the benefit of clearly articulated reasons for the reforms I conclude the proposed reforms concerning psychological injuries will have serious consequences including immediately severing access to compensation benefits and recognition of psychological injury except in the most extreme circumstances or as a consequence of the most egregious of behaviours ("bullying" and "harassment"). At best they will result in a carve out another cohort of workers creating further system complexity and inequality. The impact of the reform proposals will be negative for both workers and employers.

Some of the reform proposals are not restricted to psychological injuries and affect the rights and entitlements arising from any injury. I remain unclear as to why such major reforms have been included in the exposure draft Bill where no evidence has been made available justifying change and there has been no consultation or discussion with stakeholders.

I have identified which of the reform proposals deliver system wide assistance to workers and will improve outcomes, and I identify those which won't. Even the beneficial proposals require consideration before implementation to ensure that the desired effect is achieved.

Without fully understanding the extent of the problems and the intent of the reforms I am at this point unable to provide any further answer.

#### **If I had my hand on the levers, what would I do?**

The workers compensation system is extremely complex. The problems/issues with psychological injuries have not been properly articulated to the extent that any sensible proposal could be put forward at this time and at such short notice.

The reforms in the exposure draft Bill are significant and extend well beyond addressing psychological injury claims. They require careful thought, expert input, and more information than is currently publicly available.

<sup>3</sup> Section 19, *Work Health and Safety Act 2011* NSW

<sup>4</sup> Refer to the *Parkes Inquiry 2014-2015*, Workers Compensation Independent Review Office, in which stakeholders identified key areas within the legislation for consideration and attention and issued a unanimous Statement of Principles and Recommendations for consideration by government. refer to previous Law & Justice Committee review of the NSW workers compensation schemes.

5

In due course, if the opportunity arises I would like to be involved in ongoing conversations and consultations with decision makers, external stakeholders and local and international experts in the field about the status and operation of the system and the potential for reform.

For the benefit of the Committee, I **attach** the following:

**ACOEM Guideline: Preventing Needless Work Disability by Helping People stay employed.**  
Journal of the American College of Occupational and Environmental Medicine 2006  
pages 972 – 987

**The Role of Incentive Measures in Workers' Compensation Schemes,** Prepared by Peter Hardy, Ben Knight and Ben Edwards for the Institute of Actuaries of Australia 2011 Accident Compensation Seminar.

**A How-To Guide for Injury and Work Disability Prevention 01/22/2021,** An Issues paper of the International Association of Industrial Accident Boards and Commissions (IAIABC) (an organisation which empowers, educates, and connects the global workers' compensation community to reduce harm and aid recovery from work injuries and illnesses.)

Yours faithfully

Roshana May





## **Appendix 15 Treasury Managed Fund Review Report**

SIRA

---

# Treasury Managed Fund Review Report

An integrated compliance audit and performance review of  
the Treasury Managed Fund government employers' workers  
compensation claims

April 2024





# Acknowledgement of Country

SIRA acknowledges, respects and values Aboriginal peoples as the Traditional Custodians of the lands on which we live, walk and work. We pay our respects to Elders past, present and future. We recognise and remain committed to honouring Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships, and continuing connection to their lands, waters and seas. We acknowledge their history here on these lands and their rich contribution to our society.

We also acknowledge our Aboriginal employees who are an integral part of our diverse workforce, and recognise the knowledge embedded forever in Aboriginal and Torres Strait Islander custodianship of Country and cultures.



# Contents

<b>Acknowledgement of Country</b>	<b>ii</b>
<b>Contents</b>	<b>iii</b>
<b>Definition of Terms</b>	<b>1</b>
<b>Executive Summary</b>	<b>3</b>
<b>Conclusions</b>	<b>6</b>
<b>Background</b>	<b>12</b>
4.1. SIRA	13
4.2. Treasury Managed Fund	13
4.3. Reason for the review	14
4.4. SIRA's regulatory powers	14
4.5. Funding of the Treasury Managed Fund	15
4.6. Annual workers compensation contributions to the Treasury Managed Fund 2023/24	15
4.7. Treasury Managed Fund financial performance	16
4.8. NSW government sector structure	17
4.9. Claims management by cluster	18
4.10. Features unique to the Treasury Managed Fund	18
<b>Review approach</b>	<b>19</b>
<b>Claims data</b>	<b>21</b>
6.1. Summary of key findings	23
6.2. Summary of Treasury Managed Fund performance by key workers compensation indicators	24
6.3. Treasury Managed Fund in context	26
6.4. Treasury Managed Fund performance	29
6.5. Performance of large clusters	34
6.6. Performance of Claims Service Providers	35

<b>Claims file review</b>	<b>38</b>
7.1. Summary of key findings	39
7.2. Findings by Claims Service Providers	40
7.3. Findings by clusters	41
7.4. Key findings for psychological and non-psychological injuries	42
7.5. Further observations	44
<b>Other inputs</b>	<b>45</b>
8.1. Summary of key findings	46
8.2. Government employer compliance and performance review	46
8.3. Research and other evidence	48
8.4. Environmental context	50
8.5. Stakeholder insights	50
8.6. Claims service provider staff survey	56
8.7. Claims service provider interviews	57
<b>Summary of suggested actions</b>	<b>59</b>
<b>Glossary</b>	<b>62</b>
Glossary of Terms	63
Relevant legislation and regulatory instruments	68
<a href="#"><u>Appendix 1 – Claims File Review</u></a>	
<a href="#"><u>Appendix 2 – Government Employer Compliance</u></a>	

# Definition of Terms



## The Treasury Managed Fund

The Treasury Managed Fund (“the Fund”) is administered by the NSW Self Insurance Corporation (SICorp) which was established under the *NSW Self Insurance Corporation Act 2004* (the SICorp Act). It is used to meet the workers compensation and other liabilities of government managed schemes.

Any reference to the fund itself is referred to as “the Fund”.

For the purposes of this review, the Treasury Managed Fund (“the TMF”) is used as it applies to workers compensation liabilities of NSW government employers and is referred to as “the TMF”.

In conducting this review, SIRA is exercising its functions as outlined in section 22 of the *Workplace Injury Management & Workers Compensation Act 1998* (1998 Act).

## NSW Government sector clusters

This review uses the term “cluster” to describe the structures within government as at the commencement of this review, this was the term used. In addition, most data gathered is currently referred to and grouped in this way. SIRA acknowledges that the NSW Government is transitioning away from the cluster model.

## Government employers

The Crown or any Government agency whose workers compensation liabilities are covered by the Fund, and a deemed self-insurer under section 211B of the *Workers Compensation Act 1987*.

## Government workers

An employee of the Crown or any Government agency whose workers compensation liabilities are covered by the Fund, and a deemed self-insurer under section 211B of the *Workers Compensation Act 1987*.



# Executive Summary

# 2

---

In August 2022, the State Insurance Regulatory Authority (SIRA) commenced a compliance audit and performance review of the Treasury Managed Fund Government employers' workers compensation claims ('the TMF'). In conducting this review SIRA is exercising its functions as outlined in section 22 of the *Workplace Injury Management & Workers Compensation Act 1998* (1998 Act).

Prior to this review, SIRA undertook an integrated compliance audit and performance review of Corrective Services NSW (CSNSW). That review found a small number of claims had been mismanaged and though not systemic, highlighted the need to make sure these issues were not occurring across the public service more broadly. Data collected by SIRA was also showing a deterioration in performance, particularly in psychological claims.

**The review began with two clear objectives:**

1. To assess whether workers compensation activities within the TMF agencies were being conducted in accordance with the Workers Compensation legislation and best practice expectations.
2. To evaluate the interplay between TMF agencies, claims managers and SICorp/icare in the administration of workers compensation claims.

What soon became apparent was the need for a broader and deeper investigation to deliver a comprehensive review of the performance of the Treasury Managed Fund in relation to workers compensation claims. This review delivers an insight into the current situation and provides the foundation for improvement and change, identifying key issues and suggested courses of action to resolve them.

The TMF review is the largest of its kind undertaken by SIRA and looked at 951 claim files, with psychological injury claims comprising 54 per cent of that sample.

---

In the course of the review SIRA interviewed representatives of stakeholders including unions, government employers, claims service providers (CSPs) and icare. The review also considered the 2022 SIRA commissioned Social Research Centre customer experience survey of over 300 people with lived experience of a workplace injury and reviewed all available claims data.

SIRA found that the TMF, which represents approximately eight per cent of workers covered by workers compensation insurance in NSW, was responsible for 20 per cent of claims in the 2021/22 financial year. Significantly, the review has confirmed that in the same period, active psychological injury claims in the TMF represent 48 per cent of all active psychological injury claims in the system and of those 48 per cent, Stronger Communities represented over half. Eight out of ten psychological injury claims are from preventable workplace behaviours like work stress, bullying and harassment, and other mental stress factors.

The review identified a significant lack of compliance with legislative requirements and conformance to SIRA's Standards of Practice in what are the basic obligations at the start of the claim, and in the provision of injury management planning, an essential in supporting injured workers in their return to work (RTW).

SIRA has identified five key areas of concern: structural complexity, financial performance, government employer compliance, return to work challenges and claims management practice and are dealt with in detail in the review.

SIRA has addressed each identified area of concern with a range of suggested courses of action that are targeted to lift the performance of all government employers and also ensure that claims service providers comply with the workers compensation legislation to meet system objectives. The proposed actions take an holistic approach and are designed to deliver improved customer experiences and outcomes.

# Conclusions

3

# The structural complexity of the TMF results in lack of clarity and functional ownership in relation to obligations under workers compensation legislation and greater accountability is required to enable more effective regulation by SIRA.

The TMF structure is complex. Part of the complexity relates to the way the TMF is legally constructed and the roles of the key stakeholders: SICorp, icare, claims service providers (CSPs) and government employers. This is evident through case law, has been identified in other reviews/investigations and verified through interviews with various stakeholders for this review.

For example, although government employers are considered self-insurers under the legislation, the TMF is a fund administered by SICorp<sup>1</sup>. icare has the statutory functions to provide services to SICorp (as a 'relevant authority') in managing the Government's managed fund scheme and includes administration, payment of claims and other services. In providing services for SICorp, icare has entered into agreements with a number of CSPs for the purpose of managing TMF claims. Despite being deemed self-insurers and their contributions and funding being dependent on claims management performance, government employers don't have visibility over these contractual arrangements or the performance of CSPs. Government employers also note that the reporting they receive about their performance is not frequent or timely enough to enable them to make changes to improve their performance. On the other hand, icare reported that it provides regular feedback and substantial reporting to agencies, including self-service reporting options which can be accessed at any time. These differing accounts suggest that there is an opportunity for improvement in terms of communication, awareness of and access to reporting available. Contribution calculations were reportedly complex and difficult to understand relative to their performance against key claims management performance indicators.

From a regulatory perspective, claims management obligations under the workers compensation legislation are generally imposed on employers or insurers/self-insurers. In circumstances where the obligations under the workers compensation legislation are not explicitly imposed on SICorp, icare and CSPs, SIRA's regulatory reach in respect of the management of TMF workers compensation claims is limited.

Other layers of complexity include multiple CSPs managing claims for a cluster resulting in inconsistent customer experience; complexity in the actuarial calculations to determine the contributions payable by employers different categories of workers compensation entitlements (i.e. those that are exempt from the 2012 benefit reforms); and the availability of multi-scheme concurrent entitlements for some government workers. The latter two factors, both separately and in conjunction, may also contribute to disincentives for recovery through work and consequent rising costs of claims.

## Suggested courses of action to support conclusion:

1	NSW Treasury review, and revise as required, its engagement and communication with relevant stakeholders to improve clarity of roles and responsibilities within the TMF.
2	SICorp review, and revise as required, its claims service provider performance and compliance program to ensure workers compensation system objectives are met.
3	SICorp review its feedback and reporting to government employers, NSW Treasury and SIRA to provide improved transparency in respect of claims service provider performance against key claims management indicators.
4	NSW Treasury review the process for engagement with government employers, including timelines for information sharing to assist agencies' understanding of funding and contribution calculations and impacts on operational budgets.

<sup>1</sup> section 10 of the *State Insurance and Care Governance Act 2015* (SICG Act)

# Rising costs in the TMF are driven by several factors including increasing claim numbers, high proportions of psychological injury claims and concurrent scheme entitlements.

The review found that there are numerous elements contributing to the increasing costs in the TMF. Although the TMF provides self-insurance for some government workers whose occupations are inherently high risk, the TMF has higher incidence rates compared with the system, elevating costs and indicating there is a need for a greater focus on injury prevention.

The public sector makes up approximately eight per cent of workers covered by workers compensation in NSW, yet accounts for 20 per cent of all workers compensation claims. While the TMF is performing better than the system on a range of indicators for non-psychological injury claims, it is performing worse than the system for psychological injury claims, and accounts for 46 per cent of all new psychological injury claims in the NSW workers compensation system.

The growth in psychological claims and overall performance of the TMF is largely driven by the Stronger Communities cluster. While in 2021-22 exposure to trauma and workplace violence resulted in 21 per cent of these psychological injury claims, 79 per cent arose from work pressure, harassment and /or bullying and other mental stress factors, across the TMF. Evidence suggests many of these factors are more modifiable, providing opportunities for improvement in government sector workplaces.

Psychological claims are more complex, take longer to resolve, and have poorer RTW outcomes leading to greater numbers of government workers becoming job-detached. This increases the number of active claims in the TMF, which is another driver of rising costs.

During the review, several stakeholders raised whether section 11A of the *Workers Compensation Act 1987* is fit for purpose and may be a factor in the increase in acceptance of psychological claims. Other stakeholders expressed a contrary view that section 11A was used to dispute liability for claims without due consideration to the context leading to the making of a claim. It is noted that section 11A was canvassed in the McDougall review resulting in a conclusion that the section was clear and there was no requirement to amend the language of the section.

Another potential contributor to increasing costs is, as noted above, the interaction between workers compensation and concurrent entitlements. Workers who are receiving payments from two or more sources may have less incentive to return to work and remain in receipt of weekly compensation payments longer, delaying recovery and leading to increased claim duration and costs.

Suggested courses of action to support conclusion:	
5	NSW Treasury review the TMF workers compensation contributions, levies and funding arrangements to determine that performance and outcomes are appropriately incentivised and reflective of risk, and make any required adjustments.
6	Government employers that have schemes offering concurrent entitlements examine the interaction of those schemes, the impact on injured workers and system objectives, and work with other relevant government employers to minimise impacts on return to work.
7	Stronger Communities, Health and Education review their workplace strategies to identify opportunities to reduce incidence of psychological injury, particularly in relation to work pressure, harassment, bullying and other mental stress factors.

---

# Government employers are not meeting legislative obligations that directly impact the likelihood of positive outcomes for injured workers.

The employer audit conducted as part of the review revealed that there were significant opportunities for government employers to improve their compliance with legislative obligations.

These include providing registers of injuries that are accessible to all employees, ensuring all injuries are notified to the insurer within 48 hours and having a compliant return to work program.

Stronger Communities has the shortest notification timeframes of the TMF clusters, suggesting that they do have adequate notification systems in place, while some other clusters and smaller government employers lacked robust systems and processes.

Delays observed in notification of injuries through the claims file review, government employer compliance review and also evident from the review of claims data means opportunities for early intervention in those cases are reduced, which may have an impact on return to work outcomes.

The demonstrated non-compliance with workers compensation employer obligations presents a risk to injured government workers. An enhanced annual attestation process undertaken by government employers may provide an appropriate mechanism to enhance transparency and monitoring of legislative breaches in relation to workers compensation.

Suggested course of action to support conclusion:	
8	<div>Government employers review and update their systems, policies and procedures where required to improve compliance with their employer obligations, with a particular focus on:</div> <ul style="list-style-type: none"><li>• consistent and timely injury notification</li><li>• compliant return to work programs</li><li>• enhancing annual internal audit and risk management policy attestation processes to include workers compensation legislative breaches.</li></ul>

---

## Challenges in finding suitable work for injured workers are impacting return to work rates in the TMF and there are significant opportunities for improvement through a whole of government approach.

Almost all stakeholders identified challenges in finding suitable work opportunities within government employers and the falling RTW rates identified in the data review confirm this. RTW outcomes for the TMF have deteriorated by seven per cent since 2016/17. A similar deterioration of six per cent is noted across the system. The deterioration for psychological injury claims is worse and fell by 23 per cent in the TMF, compared with 16 per cent for the system. This resulted in TMF claims representing 55 per cent of all job-detached workers in the system. Of those job-detached workers, as at 28 February 2023, 957 injured government workers had some capacity for work but were not working. High incidence rates, poor RTW and consequent high rates of job-detachment have an impact on outcomes for these workers and on costs to the scheme.

While there are particular challenges for government employers in the provision of suitable work, including the levels of fitness and skills required for certain frontline roles, shift work, roles requiring certainty and consistency, and casual workers, there is potential to improve RTW outcomes by removing barriers within and between clusters/government employers for suitable work placements to enable upgrading or potentially for redeployment where necessary.

Given the over-representation of government workers in the job-detached cohort and the high number of job-detached workers with capacity, it is evident that in order to address poor return to work rates, sharper focus on outcomes is required. At an employer level, this focus should stem from the leadership of government employers. The development of targets and commitment through key performance indicators would increase oversight and accountability of return to work rates.

The injured person surveys found that a relatively low percentage of workers had RTW plans in place. Evidence about RTW highlights that having a written RTW plan increases the likelihood of RTW in the early stages of a claim and becomes even more important after 30 days. This provides another opportunity for improvement.

### Suggested courses of action to support conclusion:

9	Government employers within their respective agencies explore and address causal factors, of poor return to work with a focus on identifying opportunities for improvement of return to work for psychological injury claims, particularly injuries relating to work pressure, harassment, bullying or other mental stress factors.
10	Chief People Officers within government employers regularly review injured workers who are either under-utilised or not working for potential inclusion in the work participation program referenced in suggestion 11.
11	NSW Treasury continue to facilitate The Whole of Government Recovery through Work Strategy to utilise mobility and redeployment across government employers to ensure temporary and permanent opportunities for suitable work are identified within and across the public sector (including consideration of smaller agencies).
12	NSW Treasury to work with relevant NSW Government stakeholders to review, revise or develop as required, performance indicators, targets and incentives for government employers to improve return to work outcomes.



## Uplifts in claims management practice and systems are required to ensure TMF claims are managed fairly, effectively and efficiently.

Findings from the numerous data inputs to the review show there are substantial opportunities for improvement in claims management practice.

The poorest area of conformance in the claims file review was injury management planning, including reviewing and updating plans. Section 45 of the 1998 Act imposes important obligations on an insurer to establish an injury management plan (IMP) to support the injured worker's recovery and return to work. It is an important tool used to coordinate and manage all aspects of injury management to support recovery throughout the life of a claim, and there is a clear need to improve performance in this area.

The high usage of factual investigations was also noted through the claims data and through stakeholder insights for psychological injury claims in the Stronger Communities cluster. While factual investigations may be utilised by insurers to assist in making decisions about liability, they should be utilised judiciously and only at an appropriate time in the claim.

Observations from the claims file review also included that there was evidence of a high turnover of claims managers, which had a particularly negative impact for workers with psychological injury. It is possible that there is a link between high case volumes raised as an issue in the CSP staff surveys, and the turnover of claims staff.

The complaints data highlights the difficulties that some workers experience in relation to their claim for weekly and medical payments. The evidence reviewed also indicates that delays in decision making can have an adverse impact on outcomes for workers.

Interviews with stakeholders and insights from complaints data highlighted the need for improved access to treatment and timely payment for medical costs. However, performance for medical, hospital and rehabilitation expenses decision making was not identified as a significant issue from the claims file review. Feedback from stakeholders also raised the need for improved quality of medical assessment. This may warrant further review and action to address the issues identified.

The review has highlighted a range of opportunities for improvement that could also be included to enhance the performance of the TMF from a claims and injury management perspective. CSP staff survey results revealed that claims systems were a common barrier to the performance of claims management services. Specific feedback from staff cited outdated and inefficient systems. Given these insights, enhancements to technology have the potential to drive more efficient claims management practice and produce better outcomes. icare has informed SIRA that it is developing a TMF transformation plan primarily aimed at consolidating CSP systems to one claims management system, and this presents an opportunity for claims management system efficiency to be improved more holistically.

### Suggested courses of action to support conclusion:

13	<p>SICorp review and enhance claims management strategies where possible to address opportunities to improve customer experience and outcomes identified from the claims file review, with a particular focus on:</p> <ul style="list-style-type: none"><li>tailored injury management planning for workers, driving early recovery and return to work</li><li>maintaining appropriate, supportive contact with workers and stakeholders throughout the life of the claim</li><li>assessing risks for delayed recovery with appropriate actions matched and implemented</li><li>the appropriate use of legal and factual investigations in the early stages of psychological injury claims</li><li>the appropriate application of reasonable excuse.</li></ul>
14	<p>SICorp continues to develop and regularly communicate with relevant stakeholders a workers compensation claims management data and digital roadmap to leverage technological advances and drive efficiencies and improved outcomes.</p>
15	<p>SICorp, NSW Treasury and government employers carefully consider the findings, conclusions and suggestions in this report and engage with SIRA as required in driving the opportunities for improvement identified through the review.</p>

Background

4

## 4.1. SIRA

The State Insurance Regulatory Authority (SIRA) is an independent agency within the NSW Customer Service portfolio. SIRA was created under part 3 of the *State Insurance and Care Governance Act 2015* (SICG Act) and regulates three statutory insurance and care schemes in NSW – Workers Compensation, Compulsory Third Party and Home Building Compensation. SIRA's core purpose is to make sure that NSW insurance schemes protect and support the people who need them, now and in the future.

## 4.2. Treasury Managed Fund

The Treasury Managed Fund (TMF) is a fund administered by the NSW Self Insurance Corporation (SICorp) which is established under the *NSW Self Insurance Corporation Act 2004* (the SICorp Act) and is used to meet the workers compensation and other liabilities of government managed schemes. The term is often used to describe the government managed scheme by which government employers self-insure their risk such as workers compensation liabilities. For the purposes of this review, the term TMF is used as it applies to workers compensation liabilities of NSW government employers.

### 4.2.1. Key roles within the Treasury Managed Fund:

#### Government employers

These employers are required to be self-insured for the purpose of workers compensation (and other liabilities) under Treasury Circular TC-20-05<sup>2</sup>. Section 211B of the *Workers Compensation Act 1987* (the 1987 Act) puts this into effect by deeming the government employers (referred to as government employers covered by the Government's managed fund scheme) as self-insurers. The term government employers is used in both the 1987 Act and the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) and is defined under section 4 of the 1998 Act.

#### Self Insurance Corporation (SICorp)

Established by the SICorp Act and creates a fund (the TMF) for the payment of claims to which a Government managed fund scheme applies. Section 9 of the SICorp Act allows SICorp to delegate any of its functions (apart from the power of delegation) to an 'authorised person', which includes a member of staff of icare.

#### Insurance and care NSW (icare)

Insurance and care NSW (icare) has functions under section 10 the SICG Act to provide services for SICorp (as a 'relevant authority') in managing the Government's managed fund scheme and includes administration, payment of claims and other related services. In providing services for SICorp, icare has entered into agreements with a number of claims service providers for the purpose of managing claims for workers compensation liabilities of government employers.

#### Claims Service Providers (CSPs)

Claims Service Providers (CSPs) have been engaged by icare, on behalf of SICorp, to provide claims management services for government employers' workers compensation claims, and for the period of this review include Allianz, EML and QBE. Under the agreement with icare, the CSPs have the responsibility for the management of workers compensation claims including decision making on liability and the payment of compensation.

<sup>2</sup> Treasury Circular TC-20-05 *Mandatory use of the Treasury Managed Fund (TMF) for all Government Insurance Requirements*.

## 4.3. Reason for the review

The performance of the TMF, particularly in relation to psychological injury claims, has deteriorated over time. This is evidenced by increasing claims costs and duration and RTW outcomes from 2016 to 2022.

Following SIRA's review of the Nominal Insurer (NI) in 2019, and SIRA's investigation in 2020 in response to complaints from Corrective Services NSW (CSNSW) employees regarding the management of their workers compensation claims, SIRA committed to conducting a review of 100 CSNSW workers compensation claims, as well as a broader review of the TMF.

The 2020 investigation highlighted the limitations on SIRA in taking regulatory action due to the ambiguity in the legal construct of relationships between CSNSW, SICorp and QBE as a CSP.

SIRA provided information and observations regarding these issues and the resultant limitations on SIRA's ability to take effective regulatory action to the McDougall<sup>3</sup> review for consideration.

The updated [Terms of Reference](#) for the review were published on SIRA's website on 6 October 2022, and outlined the objectives, scope and outcomes for the review.

## 4.4. SIRA's regulatory powers

SIRA's regulatory powers in respect of the TMF are derived from the 1987 Act and the 1998 Act and are limited to government employers/self-insurers and do not extend to SICorp, icare and CSPs.

Government employers are deemed self-insurers under the workers compensation legislation, however, they are not licensed and accordingly their licence cannot be revoked. Under s211B of the 1987 Act, SIRA may impose conditions (similar to self-insurer licence conditions) on government employers with the approval of the Treasurer. Similarly, SIRA may issue a direction under s194 of the 1987 Act to government employers, however, none of these regulatory options extend to SICorp, icare or CSPs.

This lack of regulatory capacity was highlighted as part of the McDougall review and resulted in a recommendation, "that the legislature give consideration to amending the *Workers Compensation Act 1987* and *Workplace Injury Management and Workers Compensation Act 1998* to state that all statutory provisions expressed to apply to a licensed insurer apply to the NI [nominal insurer], icare and any subsidiaries (to the extent necessary for SIRA to perform its functions), SICorp (to the extent necessary for SIRA to perform its functions) and any government self-insurer (to the extent necessary for SIRA to perform its functions), unless expressly exempted."<sup>4</sup>

In response, the State Insurance and Care Legislation Amendment Bill 2022 (the Bill) was introduced on 29 March 2022. The Bill proposed to extend insurer obligations with respect to certain claims management provisions to CSPs and SICorp. The Bill passed the Legislative Assembly with amendment but lapsed when Parliament was dissolved in February 2023, prior to the election in March 2023.

A recent decision of the Court of Appeal (*Heise v Employers Mutual Limited* [2022] NSWCA 283) has confirmed the position that CSPs do not have insurer obligations under the NSW workers compensation legislation and therefore cannot be prosecuted for failure to comply with claims management obligations, such as determining liability within the required timeframe.

The lack of clarity and functional ownership in relation to obligations under workers compensation legislation highlights the need for improved clarity of roles to ensure greater accountability and to enable more effective regulation by SIRA.

<sup>3</sup> *icare and State Insurance and Care Governance Act 2015 Independent Review*

<sup>4</sup> Recommendation 46, *icare and State Insurance and Care Governance Act 2015 Independent Review*

## 4.5. Funding of the Treasury Managed Fund

The primary source of funding for the TMF is the compulsory annual contributions by government employers. While different government employers have different funding models and sources, most are primarily funded by government appropriations (authorised spending of the Consolidated Funds). Investment returns account for a relatively small portion of the funding.

The process broadly operates as follows:

- On an annual basis, icare acting for SICorp determines the contribution required by each government employer and advises NSW Treasury.
- NSW Treasury allows for the contribution as part of the budget process and allocation for the government employer as appropriate. Not all government employers receive 100 per cent of their workers compensation cost and must fund the remainder of the cost from operational budgets. Government employers that are not funded from consolidated funds are required to fund their workers compensation costs from operational budgets.
- icare invoices the government employer.

Government employers are incentivised to improve claims management performance through two mechanisms:

- **Funding of annual contributions:** Government employers with improving trends in workers compensation claims (relative to peers) receive more budget funding towards their annual contribution (up to full funding).
- **Agency Performance Adjustments (APA):** Government employers with material workers compensation costs are assessed periodically (at 18 and 30 months) following a particular claims year. Government employers performing better than they were initially estimated to perform receive a refund, whereas those who have not performed to expectation are required to make further contributions.

Under the current incentive arrangement, Government employers required to make further contributions are generally expected to do so out of their existing budget allocation

## 4.6. Annual workers compensation contributions to the Treasury Managed Fund 2023/24

icare has provided a breakdown of expenditure of annual government workers compensation contributions, outlined in Figure 2.

icare has indicated that the deposit contribution is comprised of the following:

- Claims costs: account for 88 per cent of the annual contribution and include benefits to be paid to injured workers across all benefit categories set out by legislation from injuries occurring during the period of insurance.
- Claims management costs: represent 8 per cent of annual expenditure and include expenses paid to CSPs to manage claims in accordance with their agreement
- Internal management expenses: account for 2 per cent of annual expenditure and include the cost of icare operations (including internal employment costs).
- Reinsurance: accounts for 0.002 per cent (rounded to 0 per cent) of annual expenditure and includes the cost of cover to protect the workers compensation portfolio against catastrophic events.
- Total levies: account for 2 per cent of annual expenditure and includes the SIRA levy and the dust diseases levy, which are prescribed by legislation.

Figure 2: Breakdown of FY2023/24 workers compensation deposit contribution:

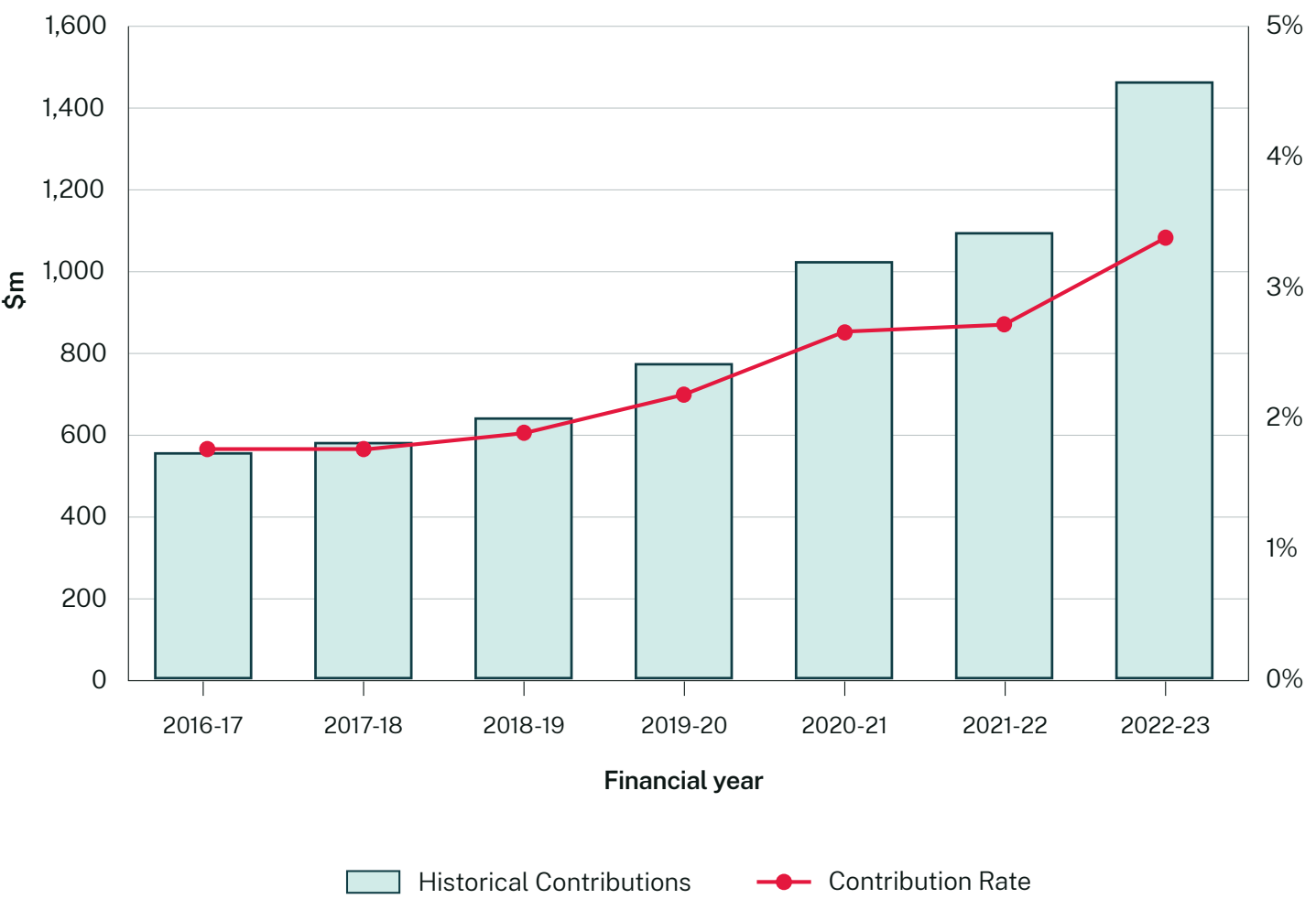
FY2023/24 Workers compensation deposit contribution	('\$000) (ex. GST)	Percentage of total (%)
Claims Cost (Risk contribution)	1,479,129	88%
Claims Management Expenses	141,531	8%
Internal Management Expenses	35,911	2%
Reinsurance	3,898	0%
Total Levies	29,343	2%
Total Contribution before adjustments	1,689,811	
Total Contribution after adjustments	1,688,869	

Source: icare

# 4.7. Treasury Managed Fund financial performance

Between 2016/17 and 2022/23, annual contributions by government employers into the TMF increased significantly. Based on current trends, including a continuation of current psychological injury trends, it is anticipated that they will continue to increase. Figure 3 shows this increase and past workers compensation contributions for the TMF, as well as the contribution rate (contributions divided by declared wages) which normalises for wage growth over the period shown.

Figure 3: Treasury Managed Fund Workers Compensation Contributions













Source: icare

## 4.8. NSW government sector structure

At the time the review commenced, the NSW government sector was divided into ten operational clusters<sup>5</sup> responsible for coordinating, developing and providing related services and policy. Each cluster administered the delivery of government services across NSW. Approximately 200 government employers were grouped within these clusters. For the purposes of this report, data is presented at cluster level and results may be influenced by the varying size of government employers within each cluster.

**Figure 4: Head count of employees by cluster**

Cluster	Head count	% of public sector workforce
 Health	202,362	37%
 Education	181,121	34%
 Stronger Communities	66,459	12%
 Transport	37,096	7%
 Planning & Environment	18,046	3%
 Customer Service	13,607	3%
 Treasury	6,909	1%
 Regional NSW	6,222	1%
 Enterprise, Investment & Trade	5,923	1%
 Premier and Cabinet	2,163	0%

Source: Public Service Commission<sup>6</sup>

<sup>5</sup> TMF organisational structure/clusters used in this report are aligned to the Public Service Commission (PSC) structure as at June 2022 (AS 2023-070).

<sup>6</sup> State of the NSW Public Sector report 2022



## 4.9. Claims management by cluster

Table 1 shows the CSP(s) managing claims for the ten clusters within the scope of the review.

**Table 1: Claims management by cluster**

Cluster	Headcount	Allianz	EML	QBE
Health	202,362		✓	✓
Education	181,121	✓		
Stronger Communities	66,459		✓	✓
Transport	37,096			✓
Planning Industry & Environment	18,046	✓	✓	✓
Customer Service	13,607	✓	✓	
Treasury	6,909	✓		
Regional NSW	6,222	✓		
Enterprise, Investment & Trade	5,923	✓		
Premier and Cabinet	2,163	✓	✓	✓

## 4.10. Features unique to the Treasury Managed Fund

In order to understand the context in which the performance of the TMF occurs, it is important to outline the application of the workers compensation legislation and the concurrent entitlements available to some government workers.

### 4.10.1. 2012 legislative changes

In 2012, amendments were made to the workers compensation legislation however these did not apply to emergency services workers (police officers, fire fighters and paramedics employed by agencies in the Stronger Communities cluster and the Health cluster). These workers are referred to as “exempt workers”.

The 2012 amendments were designed to encourage earlier RTW through a step-down in weekly payments at 13 weeks (except for workers working 15 hours/ week or more). New thresholds were also introduced for continuation of weekly and medical payments, and lump sum compensation.

The workers compensation scheme benefits structure that remained in place for exempt workers is less focused on early return to work.

### 4.10.2. Interaction with concurrent benefits

Employees of some government employers also have access to concurrent benefits for workplace injury and death, in addition to their workers compensation benefits. Each of the three emergency service agencies have their own Total and Permanent Disablement (TPD)/income protection arrangements with benefits payable on medical discharge and death, or through staff top-up awards.

The objectives of the workers compensation scheme and income protection schemes are different. Whereas a central feature of the NSW workers compensation scheme is on early return to work, the focus of income protection is on compensation and support as workers potentially transition out of their employment.

Claims data analysis, examined at section 5 of this report, shows growth in psychological claims in the TMF. This growth is largely driven by the Stronger Communities cluster with its significantly higher incidence rates (the frequency of injuries per 1000 workers). Psychological claims are generally more complex, take longer to resolve, and have poorer RTW outcomes.

Significantly lower RTW rates and higher job-detached<sup>7</sup> rates for workers with psychological injury are leading to higher average duration and costs per claim for the Stronger Communities cluster.

The concurrent entitlements available to some exempt workers may also be a factor contributing to increased costs in the workers compensation scheme in the TMF.

<sup>7</sup> A person who is not working because of an injury, illness, or work disability over the preceding 13-week period



# Review approach

5

The review considered a broad range of information, insights and data, including:




1	Review of NSW workers compensation claims and outcome data to compare the TMF performance with the system, performance by cluster and psychological injury compared with non-psychological injury, for the period 2016/17 to 2021/22 financial years.
2	Claims file review of 951 claims across the TMF weighted to the three largest clusters (Stronger Communities, Education and Health). Of these claims, in line with the scope of the review, 54 per cent of the sample comprised psychological injury claims. Using this targeted methodology allowed a more nuanced evaluation of potential issues, which may not have been achieved if a standard sample approach had been adopted.
3	Audit of ten TMF government employers' compliance with workers compensation obligations. This involved site visits and reviews of policies and procedures for the management of work-related injuries.
4	Review and consideration of a range of studies and evidence relevant to return to work, psychological injury and decision making in claims management.
5	Analysis of the current structure, funding arrangements and findings from a range of inquiries and reviews relevant to the TMF.
6	Analysis of claimant survey data - responses from 300 TMF claimants in 2022 for the SIRA Customer Experience, Trust and Outcomes Survey conducted by the Social Research Centre.
7	Review of TMF complaints data from SIRA and Independent Review Office (IRO).
8	Interviews with targeted Unions.
9	Interviews with administrators of the TMF.
10	Interviews with stakeholders from six targeted TMF government employers and cluster representatives, icare and NSW Treasury to gain their perspective of workers compensation in the TMF.
11	Survey of CSP claims staff to understand their experience of working with TMF claims.
12	Interviews with CSP representatives from Allianz, EML and QBE.

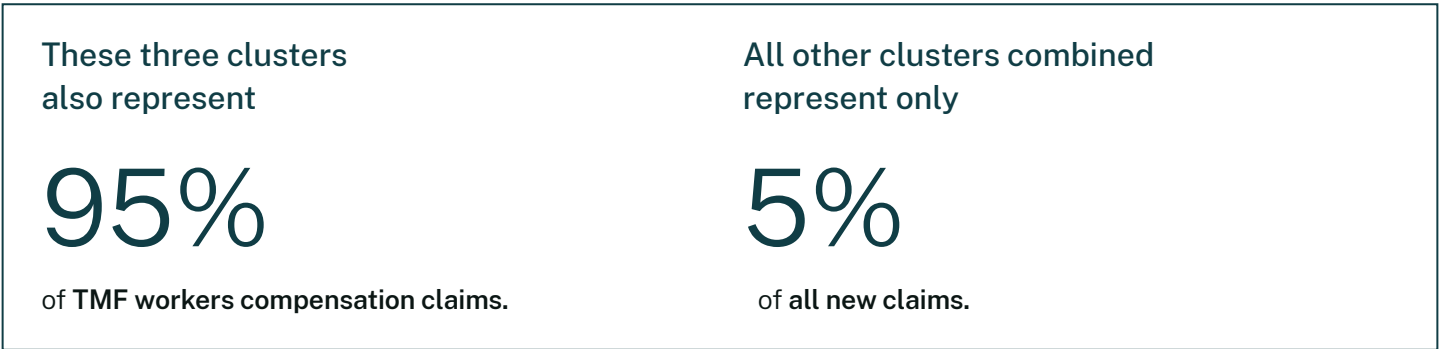
Claims data

6

Claims data from the 2021/22 financial year (as at 28 February 2023) was interrogated. Furthermore, an historic comparative review of trends between 2016/17 and 2021/2022 was conducted. The claims data for the TMF was examined against the whole workers compensation system (the system)<sup>9</sup>, as well as individual TMF clusters in place at the time of the review.



	Headcount	% of all active claims
 Stronger Communities	12%	45%
 Health	37%	25%
 Education	34%	23%



For the purposes of this review, having consideration to claim sample sizes, findings are presented individually for the Education, Health and Stronger Communities clusters, while all smaller clusters are grouped together as ‘Other’

9 The workers compensation system includes all insurer types i.e., nominal insurer, self and specialised insurers and TMF.

---

## 6.1. Summary of key findings

The TMF has an incidence rate (number of injuries per 1000 workers) two and a half times that of the system and while it is generally performing better than the system for non-psychological injury claims it accounts for 46 per cent of all new psychological injury claims.

A significant eight out of ten psychological injury claims are in response to work pressure, workplace related bullying and harassment and work-related mental stress.

The TMF is performing worse than the system for psychological injury claims across all performance indicators including worker outcomes, costs and duration. Total claims payments have seen a 71 per cent increase since 2016/17, compared with 58 per cent for the system.

Stronger Communities has a significant influence on the performance of the TMF. Despite representing only 12 per cent of the public sector workforce, they have an incidence rate for psychological injury almost 18 times higher than the system and over three times higher than the TMF. The cluster has the highest average claims payment for psychological injury and accounts for 49 per cent of new psychological injury claims in the TMF (2012/22). Stronger Communities has the lowest 13-week RTW rate for psychological injury at 25 per cent compared with a rate of 40 per cent for the system. They have the highest job-detached rate at 40 per cent overall and 65 per cent for psychological injury.

While Health has an incidence rate lower than the TMF, it is three and a half times that of the system. The sector performs better than the TMF and the system for liability acceptance, 13-week RTW rate and the job-detached rate.

Education represents 28 per cent of all new psychological injury claims in the TMF (2021/22) with an incidence rate for psychological injury almost six times higher than the system. The education sector performs better than the TMF and the system for liability acceptance, 13-week RTW rate, 13-week stay at work (SAW) rate and the job-detached rate.

‘Other’ clusters represent five per cent of all new claims and have less impact on the overall performance of the TMF, however do have high average claims payments for psychological injury compared with the TMF and the system.

The performance of the CSP’s and the government employers they manage are highly interdependent. EML and QBE have high numbers of investigations, longer average lost time early in the claim, longer claim duration and higher claim costs. These factors result in poorer performance for workers with psychological injury claims in Stronger Communities and Health clusters.

## 6.2. Summary of Treasury Managed Fund performance by key workers compensation indicators

**Table 2: Comparison of performance of the TMF, with the system and clusters.**

Cluster	Injury type	New claim numbers (21/22)	Active claim numbers 21/22)	Median notify- (days) (cal year 22)	Liability accept. (last 5 years) %	Investigation (last 5 years) %	Incidence rate <sup>10</sup> 21/22	13 wk RTW rate 21/22	13 wk SAW rate 21/22	13 wk Working rate <sup>11</sup> 21/22	Job -detached rate (last 6 years) %	Average weeks lost 21/22	Average payments 21/22	Median duration (weeks)
System	Psychological	6,900	22,617	12	66	72	1.48	40	6	44	51	13.7	\$49,639	-
	Non-psychological	91,592	185,836	5	76	6	19.38	87	29	91	23	4.6	\$18,196	-
	<b>Total</b>	<b>98,492</b>	<b>208,453</b>	<b>5</b>	<b>76</b>	<b>10</b>	<b>20.86</b>	<b>84</b>	<b>28</b>	<b>88</b>	<b>28</b>	<b>5.3</b>	<b>\$21,608</b>	<b>26</b>
TMF	Psychological	3,172	10,865	8	74	58	8.34	37	8	42	55	15.1	\$51,806	-
	Non-psychological	16,137	30,332	6	80	2	42.12	92	27	94	15	3.9	\$14,528	-
	<b>Total</b>	<b>19,309</b>	<b>41,197</b>	<b>6</b>	<b>79</b>	<b>12</b>	<b>50.46</b>	<b>83</b>	<b>25</b>	<b>87</b>	<b>30</b>	<b>5.8</b>	<b>\$24,359</b>	<b>28</b>
Stronger Communities	Psychological	1,518	6,235	6	74	83	26.44	25	8	31	65	17.2	\$58,469	-
	Non-psychological	6,662	12,198	5	67	3	116.04	93	27	95	15	3.1	\$13,450	-
	<b>Total</b>	<b>8,180</b>	<b>18,433</b>	<b>5</b>	<b>68</b>	<b>19</b>	<b>142.48</b>	<b>79 (64)<sup>12</sup></b>	<b>23</b>	<b>84</b>	<b>40</b>	<b>6</b>	<b>\$28,678</b>	<b>23</b>
Health	Psychological	669	1,831	10	78	60	5.07	53	8	56	40	13	\$45,543	-
	Non-psychological	4,859	8,479	8	94	3	36.85	91	21	93	17	5	\$17,357	-
	<b>Total</b>	<b>5,528</b>	<b>10,310</b>	<b>8</b>	<b>92</b>	<b>10</b>	<b>45.24</b>	<b>87</b>	<b>20</b>	<b>89</b>	<b>23</b>	<b>6</b>	<b>\$22,363</b>	<b>27</b>

<sup>10</sup> Incidence rate is the frequency of injuries per 1000 workers.

<sup>11</sup> Working rate measures the number of workers who returned to work or stayed at work after an injury. It is a combination of the RTW and SAW measures.

<sup>12</sup> RTW rate with COVID 19 claims excluded.

Cluster	Injury type	New claim numbers (21/22)	Active claim numbers 21/22)	Median notify- (days) (cal year 22)	Liability accept. (last 5 years) %	Investigation (last 5 years) %	Incidence rate <sup>10</sup> 21/22	13 wk RTW rate 21/22	13 wk SAW rate 21/22	13 wk Working rate <sup>11</sup> 21/22	Job -detached rate (last 6 years) %	Average weeks lost 21/22	Average payments 21/22	Median duration (weeks)
Education	Psychological	868	2,448	8	72	13	8.46	52	8	55	37	12.8	\$38,975	-
	Non-psychological	3,775	7,167	6	93	1	36.78	93	32	96	12	3.5	\$13,247	-
	<b>Total</b>	<b>4,643</b>	<b>9,615</b>	<b>6</b>	<b>89</b>	<b>3</b>	<b>45.24</b>	<b>86</b>	<b>29</b>	<b>90</b>	<b>18</b>	<b>5.2</b>	<b>\$19,797</b>	<b>21</b>
Other	Psychological	116	350	38	66	79	1.77	0	9	36	39	13.6	\$55,579	-
	Non-psychological	841	2,478	9	81	2	12.85	89	64	96	13	4.7	\$14,233	-
	<b>Total</b>	<b>957</b>	<b>2,829</b>	<b>10</b>	<b>75</b>	<b>11</b>	<b>14.63</b>	<b>79</b>	<b>55</b>	<b>90</b>	<b>23</b>	<b>6.2</b>	<b>\$19,243</b>	<b>-</b>

## 6.3. Treasury Managed Fund in context

The following indicators describe the key features of the TMF's workers compensation portfolio. It includes the number of claims, the nature and mechanism of injury and the types of occupations within the government sector.

### 6.3.1. Number of claims

In 2021/22, of the 19,308 new claims across the TMF:

- Stronger Communities had the highest proportion of new claims at 42 per cent despite representing only 12 per cent of the public sector workforce.
- Health had the next highest proportion of new claims at 29 per cent whilst representing 37 per cent of the public sector workforce.
- Education had the third highest proportion of new claims at 24 per cent whilst representing 34 per cent of the public sector workforce.

The table below shows the comparison of new and active claim numbers, by system, TMF and clusters. New claims are claims that have commenced in the last financial year. Active claims are claims with payments in the latest 12 months. Key observations:

- New claims have increased by 8 per cent from 2016/17 to 2021/22.
- Increases in new claim numbers and worsening working rates<sup>13</sup> have resulted in the number of active claims increasing from 2016/17 to 2021/22 for both the WC system and TMF.

**Table 3: New and active claims by injury type, insurer type, cluster and financial year**

Cluster (FTE <sup>14</sup> number of workers 2021/2022)	Injury type	New claims 2016/17	New claims 2021/22	% change	Active Claims 2016/17	Active claims 2021/22	% change
<b>System (4,590,082)</b>	Psychological	5,039	6,900	37%	11,761	22,617	92%
	Non-psychological	86,058	91,592	6%	158,939	185,836	17%
	<b>Total</b>	<b>91,097</b>	<b>98,492</b>	<b>8%</b>	<b>170,700</b>	<b>208,453</b>	<b>22%</b>
<b>TMF (361, 015) (% of system)</b>	Psychological	2,088 (41%)	3,172 (46%)	52%	6,014 (51%)	10,865 (48%)	81%
	Non-psychological	12,846 (15%)	16,137 (18%)	26%	24,163 (15%)	30,332 (16%)	26%
	<b>Total</b>	<b>14,934 (16%)</b>	<b>19,309 (20%)</b>	<b>29%</b>	<b>30,177 (18%)</b>	<b>41,197 (20%)</b>	<b>37%</b>
<b>Stronger Communities (51,102)</b>	Psychological	815	1,518	86%	4,855	6,235	79%
	Non-psychological	4,174	6,662	60%	3,488	12,198	46%
	<b>Total</b>	<b>4,989</b>	<b>8,180</b>	<b>64%</b>	<b>8,343</b>	<b>18,433</b>	<b>56%</b>
<b>Health (130,963)</b>	Psychological	432	669	55%	11,831	1,831	99%
	Non-psychological	4,015	4,859	21%	919	8,479	13%
	<b>Total</b>	<b>4,447</b>	<b>5,528</b>	<b>24%</b>	<b>7,423</b>	<b>10,310</b>	<b>24%</b>
<b>Education (111,185)</b>	Psychological	741	868	17%	8,342	2,448	75%
	Non-psychological	3,650	3,775	3%	1,400	7,167	13%
	<b>Total</b>	<b>4,391</b>	<b>4,643</b>	<b>6%</b>	<b>6,337</b>	<b>9,615</b>	<b>24%</b>
<b>Other (67,765)</b>	Psychological	99	116	17%	7,737	350	70%
	Non-psychological	1,005	841	(-16%)	206	2,478	22%
	<b>Total</b>	<b>1,104</b>	<b>957</b>	<b>(-13%)</b>	<b>2,038</b>	<b>2,829</b>	<b>26%</b>

<sup>13</sup> Measures the number of workers who returned to work or stayed at work after an injury. It is a combination of the return to work and stay at work measures

<sup>14</sup> Full time equivalent (FTE) for government workers, was obtained through PSC.



## 6.3.2. Nature and mechanism of psychological injury

The following information includes all psychological injury claims between 2016/17 – 2021/22 grouped into nature and mechanism of injury for the TMF, then by cluster.

### Treasury Managed Fund

The TMF has a significantly higher proportion of psychological injury claims. As at 2021/22, the proportion of new psychological injury claims within the TMF is 17 per cent and 26 per cent for active claims. This is higher than the proportion within the system at 7 per cent for new claims and 11 per cent for active claims.

#### TMF psychological injury claims account for

46%

of all new psychological injury claims

48%

all active psychological injury claims in the system.

#### By nature of injury:

- 22% have a post-traumatic stress disorder
- 78% have a common mental health condition (e.g. anxiety, depression, stress).

#### By mechanism of injury:

- 21% were in response to exposure to a traumatic event or occupational violence
- 79% were in response to work pressure, workplace related bullying and harassment and work-related mental stress
- the most significant mechanism for psychological injury claims was work pressure (26%).

These mechanisms are modifiable and provide opportunities to focus on prevention and/or early intervention.

#### Education represents

28%

of all new psychological injury claims in the TMF (2021/22)



#### Nature of injury:

- 5% have a post-traumatic stress disorder
- 95% have a common mental health condition (e.g. anxiety, depression, stress).

#### Mechanism of injury:

- 11% were in response to a traumatic event or occupational violence
- 89% were in response to work pressure, work related mental stress, workplace related bullying and harassment
- the most significant mechanism for psychological injury claims was work pressure (40%).

#### Stronger Communities represents

49%

of all new psychological injury claims in the TMF (2021/22).



#### Nature of injury:

- 35% have a post-traumatic stress disorder
- 65% have common mental health conditions (e.g. anxiety, depression, stress).

#### Mechanism of injury:

- 25% were in response to a traumatic event or occupational violence
- 75% were in response to work pressure, work related mental stress, workplace related bullying and harassment
- the most significant mechanisms for psychological injury claims were mental stress (29%) followed by work pressure (21%).

#### Health represents

20%

of all new psychological injury claims in the TMF (2021/22)



#### Nature of injury:







- 18% have a post-traumatic stress disorder
- 82% have a common mental health condition (e.g. anxiety, depression, stress).

#### Mechanism of injury:

- 30% were in response to a traumatic event or occupational violence
- 70% were in response to work pressure, work related mental stress, workplace related bullying and harassment
- the most significant mechanism for psychological injury claims was workplace related bullying and harassment (28%).

### 6.3.3. Occupation

Between 2016/17 – 2021/22, 62 per cent of all claims in the TMF arose from the following six occupations:

 Police officers	23,806
 School teachers	19,500
 Registered nurses	9,809
 Prison and security officers	6,863
 Fire and emergency workers	5,710
 Ambulance and paramedics	5,140

It is recognised that the duties performed by police, prison and security officers, fire and emergency workers, ambulance and paramedics contain inherent risks such as exposure to unpredictable hazards, traumatic events and workplace violence. Despite this, psychological injury claims due to exposure to trauma and workplace violence make up only 25 per cent of psychological injury claims for these workers.

## 6.4. Treasury Managed Fund performance

The following indicators provide comparative performance information about the TMF's workers compensation portfolio. It includes incidence rates, work outcomes and costs.

### 6.4.1. Incidence rates

Incidence rates provide a way of measuring the safety of a workplace using the frequency of injuries per 1,000 workers. TMF incidence rates for 2021/22 are significantly higher than the workers compensation system rate.

For every 1,000 government workers, an average of 50 will have injuries leading to a workers compensation claim each year. Of those 50, eight will be a psychological injury. Across the whole workers compensation system, for every 1,000 workers in organisations, an average of 20 workers will have injuries leading to a workers compensation claim each year. Of those 20, one will be a psychological injury. The table below provides a comparison of incidence rates by system, the TMF, clusters and injury type.

**Table 4: Incidence rate by insurer type, injury type for 2021/22**

Insurer type/ Cluster	Injury type	2021/22
System	Psychological	1.48
	Non-psychological	19.38
	<b>Total</b>	<b>20.86</b>
TMF	Psychological	8.34
	Non-psychological	42.12
	<b>Total</b>	<b>50.46</b>
Stronger Communities	Psychological	26.44
	Non-psychological	116.04
	<b>Total</b>	<b>142.48</b>
Health	Psychological	5.07
	Non-psychological	36.85
	<b>Total</b>	<b>45.24</b>
Education	Psychological	8.46
	Non-psychological	36.78
	<b>Total</b>	<b>45.24</b>

- The incidence rate for psychological injury in TMF is almost 6 times higher than the system.
- The incidence rate for psychological injury in Stronger Communities is almost 18 times higher than the system and over 3 times higher than the TMF.
- The incidence rate for non-psychological injury in TMF is more than twice as high as the system.
- The incidence rate for non-psychological injury in Stronger Communities is almost 3 times higher than TMF and almost 6 times higher than the system.

## 6.4.2. Work outcomes

RTW rates are a key performance measure of the system. The health benefits of good work mean that staying at work to recover or timely return to work is an important part of rehabilitation and recovery.

SIRA uses a wide range of RTW measures to analyse outcomes at 4, 13, 26 and 52 weeks. In this review, data from the 13-week measures were examined.

### Treasury Managed Fund 13-week return to work rate (2021/22)

The RTW rate measures the number of workers who took at least one day off work before getting back to work after an injury. The following table presents the average of 12 months data for the 2021/22 financial year. The data is by date of injury cohort as at 28 February 2023 at the 13 week reference period.

**Table 5: 13-week return to work rate by injury type, insurer type, cluster and financial year.**

Insurer type/ Cluster	Injury type	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	Difference in % points 16/17-21/22 (COVID-19 excl.)
System	Psychological	56%	53%	47%	45%	44%	40%	-16
	Non-psychological	89%	85%	83%	86%	85%	87% (85%)	-2 (-4)
	All claims	87%	83%	80%	83%	82%	84% (81%)	-3 (-6)
TMF	Psychological	60%	64%	54%	52%	46%	37%	-23
	Non-psychological	93%	94%	92%	91%	90%	92% (89%)	-1 (-4)
	All claims	88%	89%	85%	84%	80%	83% (81%)	-5 (-7)
Stronger Communities	Psychological	45%	46%	40%	39%	31%	25%	-20
	Non-psychological	88%	90%	89%	89%	88%	93% (86%)	5 (-2)
	All claims	78%	79%	75%	75%	69%	79% (64%)	1 (-14)
Health	Psychological	63%	66%	63%	61%	56%	53%	-10
	Non-psychological	95%	93%	92%	91%	90%	91% (89%)	-4 (-6)
	All claims	92%	90%	88%	87%	86%	87% (83%)	-5 (-9)
Education	Psychological	72%	83%	67%	66%	64%	52%	-20
	Non-psychological	96%	98%	95%	94%	92%	93% (92%)	-3 (-4)
	All claims	91%	95%	90%	89%	86%	86% (83%)	-5 (-8)
Other	Psychological	69%	63%	53%	55%	100%	50%	-
	Non-psychological	95%	91%	91%	89%	87%	89%	-6
	All claims	93%	88%	86%	84%	81%	82%	-11

SIRA data as at 28 February 2023. Brackets indicate results when COVID-19 claims are excluded.

### The Treasury Managed Fund 13-week RTW rate:

- is currently 83 per cent for all claims, performing one per cent lower than the system
- has experienced a decline<sup>15</sup> of five per cent from 2016/17 to 2021/22, which is greater than system decline of three per cent
- is higher than the system in respect of non-psychological claims (92 per cent)
- is lower than the system in respect of psychological claims (37 per cent)
- has experienced a slightly greater decline when COVID-19 claims<sup>16</sup> are removed (seven per cent decline from 2016/17 to 2021/22). This is likely due to the higher proportion of COVID-19 claims (27 per cent) in the TMF 13-week RTW cohort
- has experienced a more pronounced decline from 2016/17 to 2021/22 for psychological injury claims, with TMF psychological injury claim RTW rates dropping by 23 per cent to 37 per cent, compared with the system which reduced from 56 per cent to 40 per cent over the same period
- the proportion of new psychological claims is higher in TMF compared with the system (17 per cent compared with seven per cent in 2021/22) and therefore has a greater impact on TMF's overall performance.

### Cluster 13-week RTW rate:

- Education performed better than the system in respect of:
  - all claims (86 per cent, or 83 per cent with COVID-19 claims excluded)
  - psychological injury claims (52 per cent)
  - non-psychological injury claims (93 per cent).
- Health performed better than the system in respect of:
  - all claims (87 per cent, or 83 per cent with COVID-19 claims excluded)
  - psychological injury claims (53 per cent)
  - non-psychological injury claims (91 per cent).
- Stronger Communities performed worse than the system in respect of:
  - all claims (79 per cent, and significantly worse at 64 per cent with COVID-19 claims excluded)
  - psychological injury claims (25 per cent), reflecting a decline of 20 per cent when compared with performance in 2016/17.
- Stronger Communities performed better than the system for
  - non-psychological injury claims (93 per cent). This result reflected an improvement of five per cent when compared with performance in 2016/17.
- Stronger Communities' overall lower RTW rate has a significant impact on the RTW rates for all psychological injury claims in the TMF.

<sup>15</sup> A decline of the 13 week RTW rate as a percentage, meaning that there is an increase in the number of workers that have not returned to work at the 13 week mark.

<sup>16</sup> Claims due to exposure to COVID-19 in the course of employment tend to result in a shorter than average period off work, so when included in RTW data, if in a high enough proportion, may inflate metrics.

## Treasury Managed Fund 13-week stay-at-work rate (2021/22):

Stay-at-work (SAW) measures the number of workers who took no time off work after an injury.

The table below shows a comparison of SAW rates.

**Table 6: 13 week SAW rate by injury type, insurer type, cluster and financial year.**

Insurer type/ Cluster	Injury type	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	Difference 16/17-21/22 (COVID-19 excl.)
System	Psychological	13%	11%	9%	8%	6%	6%	-7
	Non-psychological	43%	44%	45%	36%	34%	29% (33%)	-14 (-10)
	All claims	42%	43%	43%	34%	33%	28% (31%)	-14 (-27)
TMF	Psychological	9%	10%	8%	9%	7%	8%	0
	Non-psychological	41%	42%	37%	35%	34%	27% (37%)	-14 -4
	All claims	37%	38%	33%	31%	30%	25% (32%)	-12 (-5)
Stronger Communities	Psychological	11%	13%	12%	9%	7%	8%	-3
	Non-psychological	53%	57%	53%	46%	43%	27% (44%)	-26 (-9)
	All claims	47%	51%	45%	39%	35%	23% (35%)	-24 (-12)
Health	Psychological	11%	11%	7%	12%	9%	8%	-3
	Non-psychological	40%	39%	31%	30%	29%	21% (26%)	-19 (-14)
	All claims	38%	36%	29%	28%	27%	20% (24%)	-18 (-14)
Education	Psychological	4%	5%	4%	5%	4%	8%	4
	Non-psychological	25%	26%	21%	20%	27%	32% (37%)	7 (12)
	All claims	22%	23%	18%	18%	23%	29% (32%)	7 (10)
Other	Psychological	17%	12%	12%	10%	7%	13%	4
	Non-psychological	49%	53%	56%	54%	51%	52%	3
	All claims	47%	50%	53%	50%	47%	46%	-1

Brackets indicate results when COVID-19 claims are excluded.

### Treasury Managed Fund 13 week:

- has declined by 12 per cent from 2016/2017 to 25 per cent in 2021/22
- remains lower than system SAW rates which sit at 28 per cent.

### Cluster 13-week SAW rate:

- Stronger Communities has the highest number of new claims (42 per cent of all new TMF claims) but represents 12 per cent of all government workers by headcount and one of the lowest SAW rates (23 per cent).
- Health has the second highest number of new claims (29 per cent of all new TMF claims) but represents 37 per cent of all government workers by headcount and the poorest SAW rate (20 per cent).
- Education has the third highest number of new claims (4,643, or 24 per cent of all new TMF claims) and represents 34 per cent of all government workers by headcount. It also has poor SAW rates (29 per cent), despite being better than the system.

### Job-detachment

Public sector workers are over-represented in the system's job-detached cohort. An individual is considered job-detached if they have not worked because of an injury, illness, or work disability over the preceding 13-week period.

As at 28 February 2023, TMF had 5,979 job-detached workers. Of these:

- 81 per cent had no capacity for work
- 16 per cent had capacity to participate in suitable work but were not working.

70 per cent of job-detached government workers have a psychological injury, compared with 30 per cent for the system. Of these:

- 85 per cent have no current capacity for work
- 14 per cent have current capacity to participate in suitable work but are not working.

### 6.4.3. Claims costs

Claims costs refer to total claim payments including medical, investigations, legal, lump sum payments, recoveries and refunds, weekly payments, rehabilitation payments, death payments, commutations, and common law damages.

### System

- Average payments for all claims increased by 30 per cent in 2021/22 compared with 2016/17.
- There was a 32 per cent increase in average payment per psychological injury claim (\$49,639) and a 20 per cent increase in non-psychological injury claims (\$18,196).
- Average payment increases and increases in number of claims meant total payments also increased since 2016/17.
- Total payments for all claims increased by 58 per cent in 2021/22 compared with 2016/17.
- For psychological injury claims the total payments increased by 154 per cent, while non-psychological injury claims increased by 41 per cent.

### Treasury Managed Fund

- Average payments for all claims increased by 25 per cent in 2021/22 compared with 2016/17.
- There was a 13 per cent increase in average payment per psychological injury claim (\$51,806) and a 20 per cent increase in non-psychological injury claims (\$14,528.)
- Average payment increases and increases in number of claims meant total payments have also increased since 2016/17.
- TMF psychological injury average payments in 2021/22 were significantly higher (\$51,806) compared with non-psychological injury claims (\$14,528).
- Total payments for all claims increased by 71 per cent in 2021/22 compared with 2016/17.
- For psychological injury claims the total payments increased by 104 per cent to \$562,872,190 whilst non-psychological injury claims increased by 42 per cent to \$1,003,517,723.

### Clusters

- Stronger Communities' average payment of \$58,469 for psychological injury claims has remained stable since 2017/16, however, the amount was, and still is, above the system average of \$49,639 (18 per cent higher).
- Stronger Communities' total payments for psychological injury claims has increased by 81 per cent since 2016/17.
- Education's total payments for psychological injury claims has increased by 172 per cent since 2016/17 (from \$35,044,800 to \$95,410,800).
- Despite this increase, Education's average payments for all claims (\$19,797) remains less than Stronger communities (\$28,678) and Health (\$22,363).



## 6.4.4. Factual investigations

When further information is required, factual investigations may be used by insurers to assist in making decisions about liability. The following data represents use of factual investigations over the period from 2016/17 to 2021/22.

- Within the TMF, factual investigations are commissioned more frequently for psychological injury claims (at 58 per cent) than for non-psychological injury claims (at 2 per cent), which is below the system at 72 per cent for psychological claims and 6 per cent for non-psychological injury claims.
- Stronger Communities commissioned the most factual investigations of all clusters (at 83 per cent for psychological injury claims and 3 per cent for non-psychological injury claims), followed by Health (at 60 per cent for psychological injury claims and 3 per cent for non-psychological injury claims).
- Education's usage of factual investigations was significantly lower than the system, TMF and other clusters for all claims (at 13 per cent of psychological injury claims and 1 per cent of non-psychological injury claims).

## 6.5. Performance of large clusters

### 6.5.1. Stronger Communities

Despite representing only 12 per cent of the public sector workforce, Stronger Communities has the highest proportion of new TMF claims (42 per cent).

In addition, this cluster has the highest number of active claims within the TMF (45 per cent), the highest average payments per claim (\$28,678), the highest number of psychological injury claims, the highest number of post traumatic stress disorder (PTSD) claims and anxiety/stress disorder claims within the TMF.

Stronger Communities has the shortest notification of injury timeframe. It also has the highest incidence rate of all clusters, at over seven times higher than the system and nearly three times as high as the TMF for all claims. Its incidence rate for psychological injury is nearly 18 times that of the system, and more than three times that of the TMF. Stronger Communities also have a lower rate of liability acceptance for all claims and significantly lower 13-week RTW rates for psychological injury (25%).

These factors, when combined with Stronger Communities' higher job-detached rate for workers with psychological injury (leading to high average duration and costs per claim) strongly influences the overall performance of the TMF.

## 6.5.2. Health

Health represents 37 per cent of the public sector workforce and accounts for 29 per cent of new TMF claims. It comprises 26 per cent of active TMF claims and average payments per claim total \$22,363.

Health's most prevalent injury is traumatic joint and ligament injury, followed by musculoskeletal injury and then psychological injury. Of all clusters, Health has the highest count of anxiety/stress disorder claims. Registered nurses have the highest number of psychological and non-psychological injury claims in Health, followed by Ambulance Officers and Paramedics.

Health has a high incidence rate compared with the system but lower than the TMF overall. Health has higher RTW and working rates for both psychological and non-psychological injury claims but poorer SAW rates. Health has higher time lost and higher average payments whilst duration is similar to the system. Health has a higher rate for accepting liability (at 92 per cent) compared with the system (at 76 per cent).

Health performs better than the TMF and the system for many performance indicators when managing both psychological and non-psychological injury claims.

### 6.5.3. Education

Education has the third highest proportion of TMF new claims (at 24 per cent) whilst representing 34 per cent of the public sector workforce. Education holds 25 per cent (9,615) of active claims within the TMF with average payments of \$19,797 per claim. Education's highest injury is traumatic joint and ligament injury followed by psychological injury having the highest count of reaction to stressors claims in the TMF cohort. Primary and secondary school teachers have the highest psychological and non-psychological injury claims in Education, followed by Education aides.

Education has a high incidence rate compared with the system but lower than the TMF. Education has higher RTW and working rates for both psychological and non-psychological injury claims compared with both the TMF and the system. Education has lower time lost, lower claim duration and lower average payments compared with the TMF and the system.

Based on review of the available data Education is performing significantly better than TMF and the system for many performance indicators when managing both psychological and non-psychological injury claims.

### 6.5.4. Other findings

Smaller clusters (by head count and claim count) have a significantly higher median time to notify the insurer of a worker's injury, lower liability acceptance rates, higher numbers of factual investigations, poorer RTW rates and higher costs, for psychological injury claims. As the numbers of claims are lower for smaller clusters, they have less impact on the overall TMF performance.






# 6.6. Performance of Claims Service Providers

icare contracts three CSPs, Employers Mutual (EML), Allianz and QBE to manage TMF claims.






The EML portfolio is comprised of claims from the following clusters<sup>17</sup>:

Cluster	% of claims
 Stronger Communities	75%
 Health	25%
 Other clusters	A small number





The QBE portfolio is comprised of claims from the following clusters<sup>17</sup>:

Cluster	% of claims
 Stronger Communities	38%
 Health	52%
 Other clusters	10%



The Allianz portfolio is comprised of claims from the following clusters:

Cluster	% of claims
 Education	94%
 Other clusters	6%

17 As outlined in section 4.10.1 of this report, the Stronger Communities and Health clusters include some workers who are exempt from 2012 legislative changes.

The table below shows the performance of CSPs across a range of indicators.

**Table 7: Comparison of performance of CSPs.**

Cluster	Injury type	New claim numbers ( 21/22)	Active claim numbers 21/22)	Median notify - (days) (cal year 22)	Liability/ Provisional Liability accept % (last 5 years)	Investigation (last 5 years) %	13 wk RTW rate 21/22	13 wk SAW rate 21/22	13 wk Working rate 21/22	Average weeks lost 21/22	Average payments 21/22	Median duration (weeks)
System	Psychological	6,900	22,617	12	66	72	40	6	44	13.7	\$49,639	62
	Non-psychological	91,592	185,836	5	76	6	87	29	91	4.6	\$18,196	25
	<b>Total</b>	<b>98,492</b>	<b>208,453</b>	<b>5</b>	<b>76</b>	<b>10</b>	<b>84</b>	<b>28</b>	<b>88</b>	<b>5.3</b>	<b>\$21,608</b>	<b>27</b>
TMF	Psychological	3,172	10,865	8	74	58	37	8	42	15.1	\$51,806	68
	Non-psychological	16,137	30,332	6	80	2	92	27	94	3.9	\$14,528	25
	<b>Total</b>	<b>19,309</b>	<b>41,197</b>	<b>6</b>	<b>79</b>	<b>12</b>	<b>83</b>	<b>25</b>	<b>87</b>	<b>5.8</b>	<b>\$24,359</b>	<b>29</b>
EML (502)	Psychological	1,350	4,755	8	71	88	28	8	33	16.5	\$56,566	81
	Non-psychological	6,845	11,721	6	69	3	89	24	95	3.1	\$12,186	22
	<b>Total</b>	<b>8,195</b>	<b>16,476</b>	<b>6</b>	<b>69</b>	<b>18</b>	<b>82</b>	<b>22</b>	<b>86</b>	<b>5.5</b>	<b>\$24,994</b>	<b>26</b>
Allianz (501)	Psychological	907	2,541	8	72	16	52	8	55	12.8	\$40,696	54
	Non-psychological	4,048	7,489	6	92	1	92	33	95	3.5	\$12,793	27
	<b>Total</b>	<b>4,955</b>	<b>10,030</b>	<b>6</b>	<b>89</b>	<b>4</b>	<b>86</b>	<b>30</b>	<b>90</b>	<b>5.2</b>	<b>\$19,862</b>	<b>31</b>
QBE (503)	Psychological	911	2,511	8	82	64	41	8	46	14.8	\$55,049	69
	Non-psychological	5,232	8,715	6	90	3	85	28	93	5.1	\$15,937	25
	<b>Total</b>	<b>6,143</b>	<b>11,226</b>	<b>6</b>	<b>89</b>	<b>12</b>	<b>82</b>	<b>26</b>	<b>87</b>	<b>6.6</b>	<b>\$24,685</b>	<b>29</b>

### 6.6.1. EML

EML manages the highest proportion of new claims (42 per cent) and active claims<sup>18</sup> (40 per cent) within TMF. EML also manages the highest number of new non-psychological and psychological injury claims, including the highest number of claims for PTSD and claims for anxiety/stress disorder within the TMF. As 75 per cent of the EML portfolio is comprised of claims from Stronger Communities, its performance is strongly influenced by Stronger Communities' performance.

For non-psychological injury claims, EML:

- has RTW rates higher than the system (89 per cent) but lower than TMF (92 per cent)
- has lower average payments and claim duration compared with the system and the TMF
- has an acceptance rate (provisional liability and liability accepted) of 69 per cent which is lower than the system (76 per cent) and the TMF (80 per cent)
- uses factual investigations three per cent of the time, lower than the system (six per cent) and higher than the TMF (two per cent).

For psychological injury claims, EML:

- has significantly lower RTW rates (28 per cent) than the system and the TMF
- has higher time lost, higher average duration and higher costs per claim compared with both the system and the TMF
- has an acceptance rate of 71 per cent which is higher than the system (66 per cent) but lower than the TMF (74 per cent)
- uses factual investigations 88 per cent of the time, which is significantly higher than the system (72 per cent) and the TMF (58 per cent).

### 6.6.2. QBE

QBE manages the second highest proportion of new claims (32 per cent) and active claims (27 per cent active) within the TMF. As the QBE portfolio is comprised of claims from Stronger Communities (38 per cent) and Health (53 per cent), its performance is strongly influenced by these clusters' performance.

For non-psychological injury claims, QBE:

- has lower RTW rates (85 per cent) compared with the system (87 per cent) and the TMF (92 per cent)
- has higher time lost, lower average payments and similar duration compared with the system
- uses factual investigations three per cent of the time, lower than the system (six per cent) and higher than TMF (two per cent)

- has an acceptance rate (provisional liability and liability accepted) of 90 per cent which is higher than the system (76 per cent) and the TMF (80 per cent).

For psychological injury claims, QBE:

- has higher RTW, SAW and working rates compared with the system and the TMF
- has higher time lost than the system, but lower than the TMF
- has higher average duration and higher average payments compared with the system and the TMF
- uses factual investigations 64 per cent of the time, which is lower than the system (72 per cent) but higher than the TMF (58 per cent)
- has an acceptance rate of 82 per cent which is higher than the system (66 per cent) and the TMF (74 per cent).

### 6.6.3. Allianz

Allianz manages the third highest proportion of new claims (26 per cent) and active claims (24 per cent) within the TMF. As 94 per cent of the Allianz portfolio is comprised of claims from Education, its performance is strongly influenced by Education's performance.

For non-psychological injury claims, Allianz:

- has higher RTW, SAW and working rates compared with the system and the TMF
- has lower time lost and lower average payments compared with the system and the TMF, but higher claim duration
- uses factual investigations one per cent of the time, lower than the system (six per cent) and higher than the TMF (two per cent)
- has an acceptance rate (provisional liability and liability accepted) at 92 per cent which is higher than the system (76 per cent) and the TMF (80 per cent).

For psychological injury claims, Allianz:

- has higher RTW, SAW and working rates compared with the system and the TMF
- has lower time lost, lower claim duration and lower average payments compared with the system and the TMF
- uses factual investigations 16 per cent of the time, lower than the system (72 per cent) and the TMF (58 per cent)
- has an acceptance rate at 72 per cent which is higher than the system (66 per cent) but lower than TMF (74 per cent).

Allianz performs significantly better than the TMF and the system for many performance indicators when managing both psychological and non-psychological injury claims.

<sup>18</sup> Total TMF active claim numbers include claims (10%) that cannot be allocated to CSPs due to data errors prior to 2016.

# Claims file review

7

The claims file review assessed 951 workers compensation claims files from across all government clusters for conformance against review criteria which incorporated obligations under the workers compensation legislation and expectations set out in the SIRA Standards of practice: Expectations for insurer claims administration and conduct (SOPs).

The SOPs contain overarching claims management principles. These principles apply generally and guide all claims management activity to meet the system objectives outlined in section 3 of the 1998 Act. They set clear, consistent and accessible expectations that are designed to guide insurer conduct and claims management. While the SOPs represent best practice expectations, due to the legal construct of the TMF, CSPs and Government self-insurers are not legally bound to adhere to them.

Criteria for the review focused on six areas: claims management engagement, injury management, return to work, claims liability decisions, customer service conduct and employer actions. The claims sample enabled comparison between the management of psychological injury claims compared with non-psychological injury claims.

Claims selected for review were entered into insurer systems in the 2019/20 to 2021/22 financial years and selected in accordance with a risk and outcomes-based methodology. The sample was weighted towards psychological injury claims, claims entering the system in more recent calendar years and the TMF clusters with a higher number of more complex claims. To ensure that the most recent claims management practices were assessed, selected claims were measured against the review criteria in respect of claims activity occurring between 1 January 2022 to 31 December 2022.

As noted above, Allianz, EML and QBE are contracted by SICorp/icare to manage claims across the TMF Clusters.

The review was designed to assess CSPs conformance against the review criteria, how they manage claims within the clusters and whether there was a difference in conformance between the management of psychological injury claims compared with non-psychological injury claims<sup>8</sup>. The full report is Appendix 1 to this report.

## 7.1. Summary of key findings

In assessing CSPs conformance against the review criteria Allianz rated highest with a total average conformance rating of 89 per cent, followed by QBE at 83 per cent and EML having the lowest result at 81 per cent.

Conformance rates against measures that support timely, safe and durable return to work were of concern. Injury management planning had the lowest overall conformance with claims managed by EML having the lowest result measuring 42 per cent compliant. Assessment of risk for delayed recovery was not consistently being undertaken and while suitable work was offered where appropriate, there was a lack of RTW plans evident on file.

The results for clusters and CSPs together show that claims managed by Allianz for Education had the highest conformance results to the review criteria and claims managed by EML for Stronger Communities had the lowest conformance results to the review criteria.

When comparing psychological injury claims and non-psychological injury claims there was no material difference in the total average conformance. The difference is visible in the frequent requests for legal advice, factual investigations and independent medical examinations that were observed in the early stages of psychological injury claims.

---

<sup>8</sup> SIRA provided Claims Service Providers (CSPs) with the opportunity to validate suspected legislative non-conformances. SIRA did not require CSPs to validate suspected standard of practice non-conformances due to their status as guidelines and best practice expectations, rather than legal obligations.

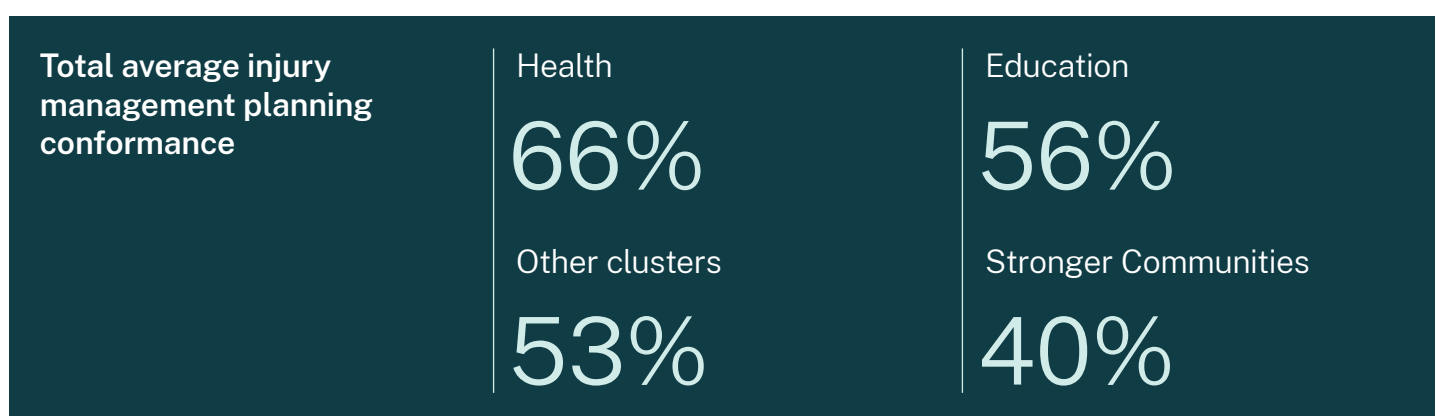
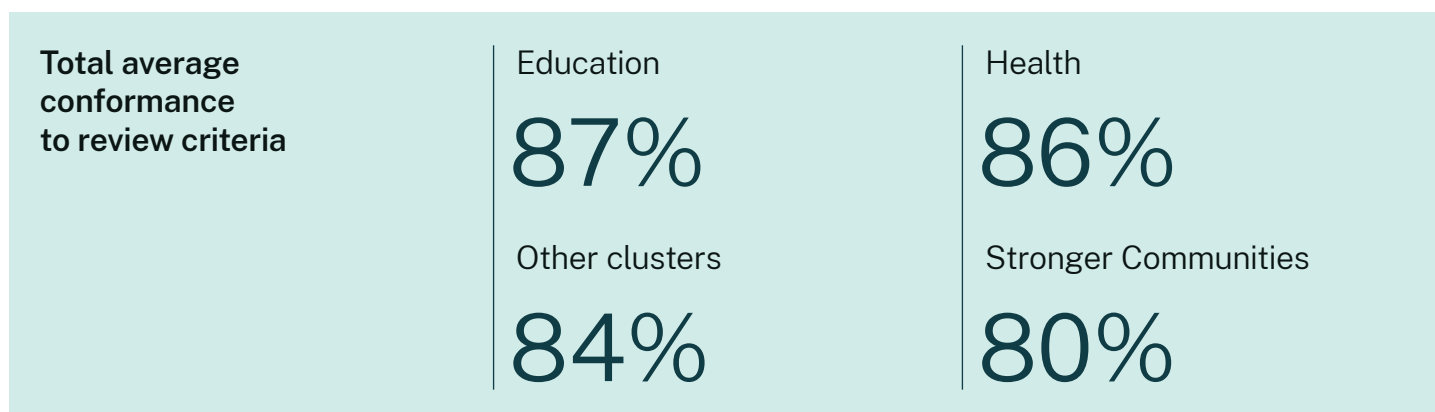
## 7.2. Findings by Claims Service Providers

Claim file review findings are presented by the three CSPs responsible for managing claims.

Total average conformance to review criteria	Allianz 89%	QBE 83%	EML 81%
Total average injury management planning conformance	Allianz 59%	QBE 58%	EML 42%

- Review criteria measuring conformance with injury management plans produced the lowest results for the review. The average results found Allianz was the highest (59 per cent), QBE was second (58 per cent), and lowest result was for EML (42 per cent).
- Review criteria measuring conformance with ongoing contact and support from CSPs with workers, employers and treating doctors, produced lower results than for early contact. The average results found Allianz was the highest (91 per cent), QBE was second (83 per cent), and lowest result was for EML (78 per cent).
- Review criteria measuring conformance with how CSPs undertook assessment of risks for delayed recovery and return to work and implementing actions to address risks, found the average result was highest for Allianz (83 per cent) then QBE (79 per cent), and the lowest result was for EML (74 per cent).
- Review criteria measuring conformance with claims liability decisions showed that:
  - For full liability decisions, the average result was highest for QBE (98 per cent), then Allianz (96 per cent) and the lowest result was for EML (93 per cent).
  - Results for provisional liability decisions were lower than for full liability decisions. The average result was highest for QBE (89 per cent) and Allianz (89 per cent) and the lowest result was for EML (83 per cent).
  - Results for reasonably excused liability decisions were the lowest for this category. The average result was highest for QBE (84 per cent), then Allianz (79 per cent) and the lowest result was for EML (73 per cent).
  - For medical expense liability decisions, the average result was highest for Allianz (96 per cent) then EML (92 per cent), and the lowest result was for QBE (88 per cent).
- Review criteria measuring conformance with government employers providing suitable work for return to work, found the average result was highest for QBE (95 per cent), then Allianz (94 per cent) and the lowest result was for EML (91 per cent).

## 7.3. Findings by clusters



- Review criteria measuring conformance with ongoing contact and support from CSPs with workers, employers and treating doctors, produced lower results than for criteria measuring early contact. The average results found Education was highest (91 per cent), then Health (83 per cent), then Stronger Communities (78 per cent) and the lowest result for other clusters (69 per cent).
- Review criteria measuring conformance with how CSPs undertook assessment of risks to delayed recovery and return to work and implementing actions, found the average result was highest for Education (82 per cent) then other clusters (84 per cent), then Health (79 per cent) and the lowest result for Stronger Communities (73 per cent).
- Review criteria measuring conformance with claims liability decisions found that:
  - For full liability decisions, the average result was highest for other clusters (100 per cent), then Health (92 per cent), then Education (88 per cent) and the lowest result for Stronger Communities (82 per cent).
  - For provisional liability decisions, the average result was highest for other clusters (100 per cent), then Health (98 per cent), then Education (90 per cent) and the lowest result for Stronger Communities (85 per cent).
- Results for reasonably excused liability decisions were the lowest for this category. The average result was highest for other clusters (100 per cent), then Health (84 per cent), then Education (82 per cent) and the lowest result for Stronger Communities (79 per cent).
- For medical expense liability decisions, the average result was highest for Education (97 per cent), then Stronger Communities (93 per cent), then Health (88 per cent) and the lowest result for Other clusters (87 per cent).
- Review criteria measuring conformance with employers' notification of injury requirements to their CSP, found the average result was highest for Stronger Communities (81 per cent) then Other clusters (76 per cent) and the lowest result jointly for Education (68 per cent) and Health (68 per cent).
- Review criteria measuring conformance with employers providing suitable work for RTW, found the average result was highest for Other clusters (100 per cent) then Education (94 per cent) then Health (93 per cent) and the lowest result for Stronger Communities (91 per cent).

The results for clusters and CSPs together show that claims managed by Allianz for Education had the highest conformance results to the review criteria and claims managed by EML for Stronger Communities had the lowest conformance results to the review criteria.



## 7.4. Key findings for psychological and non-psychological injuries

Claim file review findings are presented by psychological injury claims and non-psychological injury claims.

The total average result for conformance to the review criteria was 83 per cent for both psychological injury claims and non-psychological injury claims.

The following results were identified for the clusters:

### Education:



The overall average result for conformance with review criteria was higher for psychological injury claims (89 per cent) than non-psychological injury claims (88 per cent).

#### For psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for reasonably excused claims
- lowest scores were for injury management plan reviews (IMP) (50 per cent) and IMP requirements (53 per cent).

#### For non-psychological injury claims:

- highest scores were for resolving complaints (100 per cent) and gathering evidence for subsequent liability decisions (100 per cent)
- lowest scores were for IMP reviews (54 per cent) and IMP requirements (60 per cent).

### Health:



The overall average result for conformance with review criteria was lower for psychological injury claims (83 per cent) than non-psychological injury claims (87 per cent).

#### For psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for fully accepted claims
- lowest scores were for IMP reviews (49 per cent) and timely notification of injuries (57 per cent).

#### For non-psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for fully accepted claims
- lowest scores were for IMP reviews (57 per cent) and notice requirements for reasonably excused claims (60 per cent).

### Stronger Communities:



The overall average result for conformance with review criteria was 80 per cent for both psychological injury claims and non-psychological injury claims.

#### For psychological injury claims:

- highest scores were for gathering evidence for a permanent impairment claim (97 per cent) and notice requirements for fully accepted claims (96 per cent)
- lowest scores were for IMP reviews (39 per cent) and IMP requirements (45 per cent).

#### For non-psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for permanent impairment claims
- lowest scores for injury management plan (IMP) requirements (38 per cent) and IMP reviews (40 per cent).



## Other smaller clusters:

The overall average result for conformance with review criteria was higher for psychological injury claims (87 per cent) than non-psychological injury claims (83 per cent).

### For psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for reasonably excused claims
- lowest scores were for IMP reviews (51 per cent) and maintaining contact with the worker (54 per cent).

### For non-psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for reasonably excused claims
- lowest scores were for maintaining contact with the worker (54 per cent) and maintaining contact with the employer (43 per cent).

## Similar findings are shown by CSPs:

### Allianz:

The overall average result for conformance with review criteria was higher for psychological injury claims (91 per cent) than non-psychological injury claims (84 per cent).

### For psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for reasonably excused claims
- lowest scores were for IMP reviews (51 per cent) and IMP requirements (54 per cent).

### For non-psychological injury claims:

- highest scores were for resolving complaints (100 per cent) and gathering evidence for subsequent liability decisions (100 per cent)
- lowest scores were for conformance to criteria for making decisions on time (27 per cent) and notice requirements (27 per cent) for reasonably excused claims.

### QBE:

The overall average result for conformance with review criteria was lower for psychological injury claims (82 per cent) than non-psychological injury claims (85 per cent).

### For psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for fully accepted claims
- lowest scores were for IMP requirements (55 per cent) and IMP reviews (55 per cent).

### For non-psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for reasonably excused claims
- lowest scores were for notice requirements for reasonably excused claims (50 per cent) and IMP reviews (56 per cent).

### EML:

The overall average result for conformance with review criteria was 81 per cent for both psychological injury claims and non-psychological injury claims.

### For psychological injury claims:

- highest scores were for notice requirements for fully accepted claims (95 per cent) and notice requirements for a permanent impairment claim (96 per cent)
- lowest scores were for IMP reviews (36 per cent) and IMP requirements (46 per cent).

### For non-psychological injury claims:

- highest scores were for gathering evidence (100 per cent) and making decisions on time (100 per cent) for permanent impairment claims
- lowest scores were for IMP requirements (40 per cent) and IMP reviews (44 per cent).

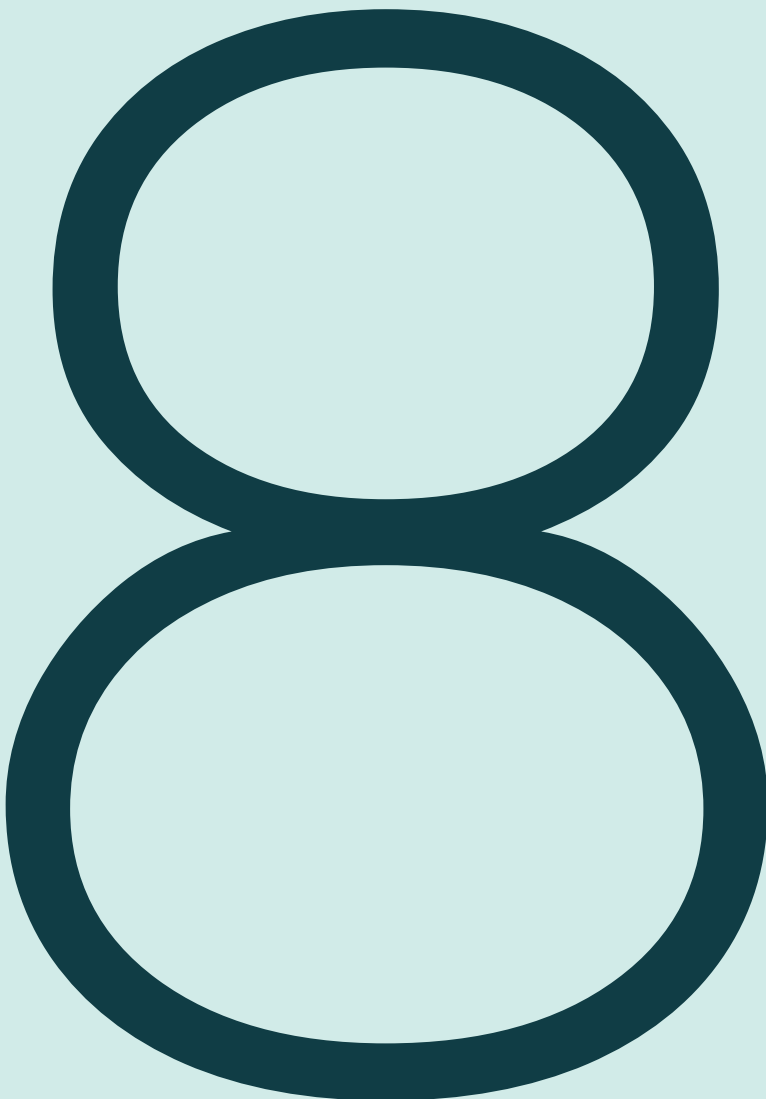
---

## 7.5. Further observations

The following observations were outside the scope of the review criteria but have relevance to this review:

- Frequent changes in claims manager appeared to be particularly challenging for workers with psychological injury claims.
- It was common practice for psychological injury notifications to be referred for legal advice prior to an initial liability decision being made. This was seen to incur unnecessary activity and costs on the claim and was not observed with non-psychological injury notifications.
- It was also common practice to request factual investigations and independent medical examinations early in psychological injury claims, which may have an impact on establishing early empathetic engagement with workers.

Other inputs



SIRA has considered a broad range of information, insights and data to obtain a holistic view of the current state of the TMF. A summary of this information is outlined below. The insights have been drawn from a range of research methods including face-to-face interviews, information exchange, surveys and further analysis from the claim files review. To encourage transparency SIRA engaged an independent provider to conduct all face-to-face interviews with stakeholders.

## 8.1. Summary of key findings

Analysis of the various other inputs highlighted three areas of concern: the rise of psychological injury, finding suitable work for injured workers when returning to work and the complexity of the TMF.

Three registered trade unions were interviewed and highlighted the importance of early intervention to improve outcomes, noting that a large and growing volume of medical discharges are on psychological grounds.

The findings of interviews with representatives from six government employers, NSW Treasury and icare indicate that there is an opportunity to improve the ability to find suitable work within and across clusters. They also noted that concurrent entitlements available to some workers do not promote return to work.

Interviews and surveys with CSP staff indicated that the complexity of the TMF across a range of issues created unique challenges in the management of claims and that the greatest barrier they faced in their roles was case volume.

## 8.2. Government employer compliance and performance review

A sample of ten government employers with claims reviewed in the claims file review cohort were selected for an audit of their compliance with workers compensation employer obligations. The audit was conducted between March and April 2023 and the audit criteria covered the employer's register of injuries and RTW program.

**Of the ten government employers assessed:**

9

failed to have a compliant RTW program.

5

failed to notify all injuries within the required timeframe of 48 hours or did not notify at all.

1

could not demonstrate that all workers had access to their electronic register of injuries.

For the full report refer to Appendix 2. A summary is provided below.

SIRA will utilise the findings from the audit of the government employers to consider opportunities to improve the Guidelines for Workplace Return to Work Programs, including clarifying SIRA's expectations and reducing confusion or inconsistencies, specifically in relation to roles and responsibilities.

### 8.2.1. Findings

In assessing the ten government employers' RTW programs against the 27 audit criteria, nine were deemed to not have compliant RTW programs and one was excluded as the agency was less than 12 months old and not legislatively required to have a program in place at the time of the audit.

Of the nine government employers, the majority demonstrated their commitment to helping workers recover at work, how positive and effective communication with injured workers and their RTW team would be maintained following an injury and how the RTW program was made available to their workforce.

Common areas of non-compliance included demonstrating the RTW program's connection to work, health and safety (WHS) policies and procedures and documents and implementing a workforce-wide approach to the communication and training arrangements for their RTW program.

Some RTW programs were established at a cluster level and applied to all government employers within that cluster. In other circumstances, individual government employers within clusters had their own tailored RTW program.

It was also noted that five of the government employers failed to notify all injuries within the required timeframe of 48 hours or did not notify at all. Delays in injury notification were also identified through the data and claims file reviews, confirming this is a significant issue with some government employers.

One government employer could not demonstrate that all workers had access to their electronic register of injuries.

### 8.2.2. Regulatory action

As a result of the audit of employer compliance, SIRA has issued:

6

Employer Improvement Notices (EINs) for failure to have a compliant RTW program

3

EINs for failure to notify injuries to the insurer within 48 hours

2

Penalty Notices for failure to have a compliant RTW program

17

Penalty Notices for failure to notify injuries to the insurer within 48 hours

4

Caution letters for failure to notify injuries to the insurer within 48 hours.

SIRA continues to engage with four government employers to secure their compliance with their workers compensation obligations.

## 8.3. Research and other evidence

SIRA has also reviewed research and other evidence to understand what is known about recovery through work, psychological injury and the impact of delays in decision making in workers compensation claims given these areas were identified as in scope for the review.

A summary of the relevant research and evidence is provided below.

### 8.3.1. Recovery through work evidence

Research consistently shows that returning to good work after illness or injury can deliver many benefits. Remaining in the workforce and staying active while recovering from illness or injury prevents or reduces disability, facilitates shorter recovery times, and maintain social connections which is beneficial for mental health<sup>19, 20</sup>.

Similarly, absence from work for extended periods of time is detrimental to a person's health. Evidence shows the longer a person is not at work, the less likely they are to ever return. Once a person has been away from work for 45 days, the chance of them returning to work reduces to 50 per cent<sup>21</sup>.

Recovery through work is heavily influenced by four factors – personal, workplace, insurance/system and healthcare. Most of these factors are modifiable if identified and addressed early, and improve recovery and RTW outcomes,<sup>22, 23</sup> highlighting the importance of effective, pro-active, supportive and timely intervention by employers and insurers.

In addition, there is strong evidence that RTW improves when the process is planned and the actions of the worker, the workplace and external parties are coordinated<sup>24</sup>. In the early stage of a claim, a RTW plan increases the likelihood of RTW by up to 1.7 times. After 30 days, a written plan becomes more important and increases the likelihood of RTW by 3.4 times<sup>25</sup>.

### 8.3.2. Psychological injury management

Psychological claims have poorer outcomes than other types of claims. Reasons for this include the identification of psychosocial risks late in a claims process, and a lack of work focus in treatment.<sup>26</sup>

Employers and workplaces can play an active and significant role in maintaining the health and well-being of their workers as well as assisting the recovery of mental health disorders<sup>27</sup>. Strong evidence indicates that work is a significant protective factor for improving general mental health and reduces the risk of depression<sup>28</sup> and that for those experiencing psychological symptoms, health and return to work outcomes are improved by work-focused treatment combined with work accommodations and/or counselling about return to work.

19 Ibid

20 van Vilsteren M, van Oostrom SH, de Vet HCW et al. 2015. The Cochrane Collaboration Workplace interventions to prevent work disability in workers on sick leave.

21 AFOEM. 2010. Helping people RTW: Using evidence for better outcomes: a position statement.

22 Collie, A., Lane, T., Di Donato, M. and Iles, R. August 2018. Barriers and enablers to RTW: literature review. Insurance Work and Health Group, Monash University: Melbourne, Australia

23 Cullen K.L., Irvin E., Collie A., et al. Feb 2017. Effectiveness of workplace interventions in RTW for musculoskeletal, pain-related and mental health conditions: an update of the evidence and messages for practitioners. Journal of Occupational Rehabilitation.

24 Collie, A., Lane, T., Di Donato, M. and Iles, R. August 2018. Barriers and enablers to RTW: literature review. Insurance Work and Health Group, Monash University: Melbourne, Australia.

25 Sheehan LR, Lane TJ, Gray SE, Beck D, Collie A. Return to Work Plans for Injured Australian Workers: Overview and Association with Return to Work. Insurance Work and Health Group, Monash University: Melbourne; 2018. DOI: 10.26180/5c35458082082

26 Palmer, J., Feyer, A.M., Ellis, N (2015) Taking Action a Best Practice Framework for the Management of psychological claims – Evidence Review and examples of innovation, Superfriend, Melbourne

27 Developing a mentally healthy workplace: A review of the literature. A report for the National Mental Health Commission and the Mentally Healthy Workplace Alliance. School of Psychiatry, University of New South Wales, Sydney, Australia. Black Dog Institute, Sydney, Australia. 2014 Harvey.S. Ms Sadhbh Joyce, Ms Leona Tan, Dr Anya Johnson, Dr Helena Nguyen, Mr Matthew Modini, Mr Markus Groth p.45

28 Van der Noordt, M., IJzelenberg, H., Droomers, M & Proper, I.K (2014) Health effects of employment: a systematic review of prospective studies. Occupational and Environmental Medicine. Vol 17: 730-736

There is substantial evidence emphasising the importance of early intervention and that SAW and RTW following injury is an important component of rehabilitation<sup>29,30</sup> and are important markers for functional recovery<sup>31</sup>. Research demonstrates that early activity (i.e. within the first three months following injury) in psychological claims, in terms of perceived support and setting treatment/recovery expectations, has a profound effect on longer term health and return-to-work outcomes<sup>32</sup>. Conversely, failure to provide suitable work (graded activity programs and work accommodations) results in poorer RTW outcomes.<sup>33</sup>

There are a range of key workplace factors that hinder or facilitate RTW for psychological injury. Many of these can be modified to improve RTW outcomes:

- **Availability of suitable work** (modified /alternative/ accommodations)
- **Role of supervisor** (support, early and ongoing contact)
- **Work demands** (high demands/low control)
- **Organisational culture** (respectful culture and support)
- **Occupational violence**
- **Perceived injustice** (worker's perception of unfair treatment)
- **Job satisfaction**

### 8.3.3. Delays in decision-making

Delays in claim decision-making have been associated with an increase in self-reported stress that in turn has been associated with higher incidence of anxiety and depression, increased lost work time, greater disability, and lower quality of life<sup>34,35</sup>.

The claims file review found varying levels of conformance with liability decision timeframes overall. Delays in decision making were also the primary topic of complaint for government workers to the Independent Review Office (IRO), analysed in further detail in section 7 of this report.

### 8.3.4. Summary

The research provides further context for the findings of SIRA's TMF Review, together with further evidence and support for the opportunities for improvement identified by the review.

Delays in notification of injuries observed through the claims file review, government employer compliance review and also evident from the review of claims data means opportunities for early intervention are reduced in those cases, which may in turn have an impact on RTW outcomes.

Findings from the claims data review reveal the influence of psychological injury claims on the performance of the TMF and in particular those from Stronger Communities. The high percentage of psychological claims across the TMF that are due to work pressure, workplace related bullying and harassment and work-related mental stress indicate there is an opportunity to address the incidence of these claims given the modifiable nature of many of the workplace factors identified from the evidence.

29 Waddell G, Burton K. Is work good for your health and well-being? London, United Kingdom. 2006.

30 Rueda S, Chambers L, Wilson M, et al. Association of returning to work with better health in working-aged adults: a systematic review. *Am J Public Health*. 2012;102(3):541-556.

31 Pransky G, Gatchel R, Linton SJ, Loisel P. Improving return to work research. *J Occup Rehabil*. 2005;15(4):453-457

32 Cotton, P.,(2014) Workplace psychological health and wellbeing: An overview of key trends. In *Psych* December, APS. 2014

33 Hart PM & Cotton P (2003). Conventional wisdom is often misleading: Exploring police stress within an organisational health framework. In M.F. Dollard, A.H. Winefield & H.R. Winefield (Eds), *Occupational Stress in the Service Professions*. London: Taylor & Francis

34 Grant GM et al, 2014. Relationship Between Stressfulness of Claiming for Injury Compensation and Long-term Recovery: a Prospective Cohort Study. *JAMA Psychiatry* 71(4):446-53.

35 Gray SE, Sheehan LR, Lane TJ, Beck D, and Collie A. Determining the Association Between Workers' Compensation Claim Processing Times and Duration of Compensated Time Loss. Insurance Work and Health Group, Monash University: Melbourne; 2018. DOI: 10.26180/5c35490c3f305



## 8.4. Environmental context

Return to work is a key performance metric in personal injury schemes and has shown an ongoing gradual decline since 2006. More recent data (2015/16-2020/21) indicates a steeper decline in RTW rate trend in NSW. This is consistent with four out of seven workers compensation jurisdictions in Australia/NZ (NSW, Vic, Comcare, NZ). The decline in NSW is more significant than in the other jurisdictions. Two states have remained stable (ACT and SA), and one has improved (Qld).

Within Australian, the COVID-19 pandemic and natural disasters (which have increased in frequency and intensity) have had a profound impact on the work environment and in particular return to work for injured people. Disrupted economies and work patterns have forced businesses to adapt to these challenges, reshaping job roles, skills requirements, and the overall work environment. For injured people returning to this new work environment, these factors can present as obstacles but also as opportunities. The increase in remote work<sup>36</sup> and flexible arrangements, hybrid work models<sup>37</sup>, digital transformations, technological integration, emphasis on WHS protocols and evolving communication channels and in NSW specifically, the high job vacancy<sup>38</sup> and low unemployment rates<sup>39</sup> (NSW at 3.3 per cent), can provide opportunities to facilitate return to work.

## 8.5. Stakeholder insights

SIRA engaged with numerous stakeholders to ensure that the experience of key participants in the TMF scheme was captured and considered. Key stakeholders identified by SIRA were categorised into five groups:

- **injured workers**
- **unions**
- **icare and NSW Treasury**
- **government employers**
- **claims service providers.**

The method of engagement varied depending on the stakeholder, and included face to face interviews, information exchange, surveys and analysis of data.

To encourage transparency, SIRA engaged an independent provider to conduct all face-to-face interviews with stakeholders.

### 8.5.1. Injured workers

The following information is based on surveys of injured workers, analysis of complaints data and interviews with unions.

#### Key findings

- Compared to other injured workers, surveyed injured government workers:
  - were less satisfied with the support they received from their employer than other injured workers surveyed
  - were less trusting of the scheme than other injured workers surveyed
  - had a poorer outlook on recovery with only 31 per cent believing they would make a full recovery.
- The delay in determining liability was the primary complaint issue to IRO.
- Medical payments, workplace injury management and case management account for over 70 per cent of complaints made to SIRA.
- Union representatives indicated that finding suitable duties and supporting RTW was their biggest challenge.
- Union representatives observed that the experience of the worker is largely driven by the CSP claims manager, the actions they take, and pressures applied throughout the claim.

<sup>36</sup> “Exploring the Benefits and Challenges of Remote Work: A Qualitative Study” by Golden et al. (2019)

<sup>37</sup> Understanding the Impact of Hybrid Work Arrangements: A Mixed-Methods Study” by Hirsch-Kreinsen et al. (2019):

<sup>38</sup> Business NSW.com [Survey February 2023](#)

<sup>39</sup> [ABS Labour Force](#), release 18 May 2023



## Surveys of injured workers

In 2022, SIRA commissioned the Social Research Centre to undertake the Customer Experience, Trust and Outcomes survey. Of the 991 people surveyed, 300 responses were received from injured government workers. The findings are categorised under four main areas:

- **return to work**
- **trust and customer service**
- **perceived justice of the compensation process**
- **health outcomes.**

The injured government workers surveyed were less satisfied when compared with other surveyed injured workers with the support they received from employers. In particular, they were least satisfied with the assistance they received with recovery and finding suitable work. From the evidence review, support provided by the employer is an important factor in a worker's recovery through work, which may explain poorer RTW outcomes for workers with a psychological injury.

While injured government workers surveyed were less trusting of the scheme, they largely reported positive perceptions of insurer customer service. They were most satisfied with the dignity and respect with which they were treated by their insurers<sup>40</sup>, but least satisfied with the speed at which their concerns were addressed and resolved. The review of the evidence provides insight into the impact of delays in decision making on a worker's mental health which in turn results in increased lost work time.

Following injury, injured government workers have a poorer outlook on recovery, with only 31 per cent believing they would make a full recovery. They reported challenges with their mental health and with carrying out their usual activities. A higher proportion of injured government workers (17 per cent) reported feeling anxious/depressed when compared with other surveyed injured workers (14 per cent) and are more likely to act on these feelings and contact a health professional (83 per cent versus 68 per cent).

## Review of complaints data

Both SIRA and the IRO have functions under legislation to deal with complaints. Section 22 of the 1998 Act provides SIRA with the general function to establish procedures for dealing with complaints made by employers and injured workers. Under part 4 of schedule 5 of the *Personal Injury Commission Act 2020* (the PIC Act) IRO has the function of dealing with insurer complaints.

## Complaints received by IRO

TMF complaints accounted for over 15 per cent of all workers compensation issues raised with IRO between 1 January 2020 and 31 May 2023. 4,825 complaint issues were raised with IRO during this period with three issues accounting for over 53 per cent of all issues raised.<sup>41</sup> Delays in determining liability, payments, and general case management concerns account for over 2,500 of the 4,825 issues raised with IRO during this period.

The greatest number of complaint issues related to claims managed by QBE, then EML and Allianz. The top seven issues are shown in the table below, broken down by CSP.

**Table 8: Numbers of complaint issues raised with IRO regarding CSP<sup>42</sup>:**

Issue	Allianz	EML	QBE
Delay in determining liability	242	332	576
Delay in payment	191	224	427
General case management	147	198	271
Denial of liability	138	161	187
Weekly benefits	102	114	174
No response to claim (NRTC)	93	84	174
Request for documents	76	73	158
Total	989	1,186	1,967
Percentage of TMF claims managed	26%	42%	32%

<sup>40</sup> For government workers this means claims service providers.

<sup>41</sup> A complaint may contain more than one issue.

<sup>42</sup> More than one issue can be raised in a single complaint

## Complaints received by SIRA

SIRA received

**273** complaints

relating to TMF claims between **January 2020 to May 2023**.

Three issues (medical payments, workplace injury management and case management) accounted for over

**70%** (191) of the complaints.

In particular:

- 183 complaints related to insurers (or CSPs). Of these, 113 related to complaints about medical payments (96) or fees/billing (17), 35 related to case management practices (with 31 specifically about insurer conduct/behaviour), and 14 concerned weekly payments. The remaining 21 related to various matters. Of these complaints, 50 related to Allianz, 47 to QBE, and 30 to EML.
- 25 complaints concerned the conduct/performance of providers funded under the TMF. These relate to allied health providers, independent medical examiners, injury management consultants, permanent impairment assessors, and rehabilitation providers. Of the 25 complaints received, 13 relate to claims managed by EML, eight by QBE and four by Allianz.
- 65 complaints were about TMF employers between January 2020 and May 2023. 23 of these were received for Education, 21 for Health, and 14 for Stronger Communities. The remaining seven complaints were received across the other clusters.

Of the matters raised with SIRA, 43 relate to workplace injury management and approximately 50 per cent of those were about suitable work.

“Our biggest challenge is the perception that having an injured worker with any sort of restriction coming back to work is an operational burden to carry, that it makes it harder for them to meet their operational needs.”

### 8.5.2. Interviews with unions

SIRA engaged an independent provider to conduct interviews with three registered trade unions representing some government sector workers. The union representatives stated their role is to provide information, guidance and advice to workers regarding rights, obligations, entitlements and protections.

Primarily their advocacy role is worker-specific and usually involves liaison with the RTW coordinator at the government employer. Occasionally they have contact with a CSP when participating in case conference calls. Only with specific consent of the worker do they become involved to advocate on their behalf in the claims process.

Union representatives spoke of the potential competing demands of the parties involved and the inherent tension this can create. They also noted their role in supporting workers to access legal support for claims disputes and funding from IRO for Independent Legal Assistance and Review Service (ILARS).

#### Psychological injury

The increase in number and complexity of psychological claims within TMF was acknowledged by the union representatives. They highlighted the importance of early intervention to improve outcomes, and the impact of negative workplace interactions and lack of perceived workplace support of workers with a psychological injury. They noted that a large and growing volume of medical discharges are on psychological grounds.

#### Return to work

Union representatives indicated that finding suitable duties and supporting RTW was their biggest challenge and raised the following barriers for RTW:

- lack of collaboration within and between government employers/clusters
- financial impact of funding concurrent roles (i.e., the worker on suitable duties and a casual to backfill their role)
- views of some frontline leaders that a worker with reduced work capacity is a burden
- lack of flexibility and creativity with roles
- lack of compassionate transfers on psychological grounds
- too strict a requirement on workers being 100 per cent fit for work
- lack of job control and job design.

A desire for further education programs to better equip managers to assist workers to RTW was highlighted.

#### Claims management

The union representatives raised the issue that on many occasions workers will be told there will be a factual investigation to establish the facts of their injury as part of their claim before making a final liability decision. They noted that “factual investigation” was a loaded term that implies that the truth of a claim is in question.

They also noted the use of section 11A of the 1987 Act<sup>43</sup> to decline claims rather than a full consideration of the background context and events that may have led to the lodgement of a claim.

It was also noted that the experience of the worker is largely driven by the CSP claims manager, the actions they take, and pressures applied throughout the claim.

<sup>43</sup> Section 11A provides that no compensation is payable for a psychological injury that was wholly or predominantly caused by reasonable action of the employer

### 8.5.3. Engagement with NSW Treasury and icare

SIRA met separately with both NSW Treasury and icare, to gain their perspective about the operation of the TMF for workers compensation to inform this review.

#### Self-insurance

NSW Treasury informed SIRA that they have reviewed the insurance model in the past three years and the existing model was retained.

#### Roles and responsibilities

icare informed SIRA that most of the government employers agree that all claims liability decisions are to be made by either the CSP or icare in providing services for SiCorp (in accordance with the *Decision Rights Framework* in the CSP Contract). However, icare also advised a number of the larger government employers challenge this. In general, the government employers exercise decision rights around RTW and other employer-related issues.

Further, icare indicated they are working with the government employers to develop a TMF Workers Compensation Roles & Obligations Policy (Policy) document. The Policy will clarify the roles and accountabilities of all the parties involved in the management of TMF workers compensation claims to ensure appropriate responsibility and accountability for decision-making. A draft of the Policy was provided to SIRA in July 2023.

In addition to SIRA's meetings with NSW Treasury and icare, they were also included in the TMF stakeholder interviews (section 7.5.4. below).

### 8.5.4. Government employers

Representatives from six government employers, NSW Treasury and icare were interviewed by an independent provider during June 2023 to understand how the TMF operates from their perspective.

The interviews covered barriers and challenges, perception of obligations and roles, the interplay between government employers, CSPs, SiCorp/icare in the administration of workers compensation claims and how TMF could operate more effectively.

#### Key findings - TMF stakeholder interviews

- There is mixed understanding of how the funding arrangements for government employers work and in particular how premiums are calculated.
- Some government employers may have to fund poor claims performance from their budget, potentially affecting frontline services.
- The increased number and complexity of psychological injury claims is challenging for government employers to manage, particularly when finding RTW opportunities.
- Government employers struggle to find suitable work across clusters and have added complexities including taking public and worker safety into consideration when offering duties.
- Government employers noted concurrent entitlements available to government workers do not promote RTW.

#### Funding arrangements

Some stakeholders indicated that the funding model was well understood and incentivised positive claim performance.

Other stakeholders reported frustration with the funding arrangements, stating there was no incentive to perform well as performance targets and key performance indicators were raised the following year, making them hard to achieve. They also described premium calculations as very complex and difficult to understand. There was a desire for more timely data and information ideally quarterly to enable positive changes to be made over the course of a year.

Government employers also indicated that where there is poor claims performance, they are required to meet the funding shortfall from their budgets, and this could potentially have an impact on delivery of frontline services.

#### Clarity of roles and accountability

Government employers noted a lack of clarity about roles and responsibilities in the TMF regarding SiCorp, icare, CSPs and whether they are viewed as self-insurers. They expressed a desire to have more transparency about the performance agreements between SiCorp/icare and the CSPs and felt there were opportunities to improve efficiency, but it was also noted that targets are set for CSPs across government employers so some information isn't able to be shared. To this point, government employers acknowledged that work was underway between themselves and icare to improve systems and greater sharing of information where possible.



Given the size of NSW public service there should be no issues / challenges finding suitable duties for people



### Claims management

Government employers indicated they are typically not involved in liability decisions but have a role in providing objective information to the CSP. Claim reviews are used to progress RTW, discuss barriers and actions to address worker needs and sometimes discuss avenues of treatment. Government employers expressed a desire for better oversight, governance and accountability of medical providers.

### Psychological claims

Stakeholders observed that psychological claims were increasing, are more complex and RTW takes longer and this is placing increased pressure on the system. The complexity arises from the interaction of workplace issues and RTW strategies.

They suggested that the increase in psychological claims can be explained in part by workers feeling more confident to seek help given broader conversations about mental health and wellbeing. They also indicated poor job design, work pressure, burnout and the challenges of dealing with shift work also contribute to growing numbers of claims and create additional challenges for managing psychological injury and RTW. Rising numbers of workers off work also creates operational/frontline capacity issues.

Stakeholders also noted that many government sector workers have been on the frontline through a series of natural disasters and during the COVID 19 pandemic which has put a further strain on the mental health of frontline workers. In 2022, the Public Service Commission introduced a survey question for public sector workers on burnout in its annual People Matters Employee Survey. In 2023 the result showed 39 per cent of employee who completed the survey felt burnt out by their work, which is comparable with other jurisdictions<sup>44</sup>.

### Return to work

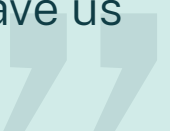
Government employers suggested there are opportunities to improve finding suitable work within and across clusters. Challenges can include rural/remote work locations, shift work, “emotive and tough” roles, and fitness for work in roles where safety of the public is also a consideration.

They reported there are financial disincentives for RTW, particularly for exempt workers, and also where top-up schemes (multi-scheme concurrent entitlements) are in place.

Government employers were generally aware of and used SIRA-funded programs to assist RTW but felt they could be made easier to access.



It's one of our great challenges, we have no financial incentive to get people back to work, in fact we financially incentivise them to leave us



44 State-of-the-nsw-public-sector-report-2022



Claims management systems could be improved — do not seem to be fit for purpose for compliance, efficiency, consistency, and continuity of claims management



## 8.6. Claims service provider staff survey

As part of this review in June 2022, SIRA surveyed claims service provider staff across Allianz, EML and QBE. The survey was made available to approximately 500 CSP staff to gain an understanding of:

- their experience managing TMF workers compensation claims
- the extent to which they understand their role and obligations
- the interplay between government employers, claims managers and icare in the conduct and administration of workers compensation claims
- barriers they experience in managing TMF workers compensation claims.

95 complete responses were received from CSP staff with experience across the Stronger Communities, Health, Education, Department of Customer Service and Transport clusters. Of those respondents, 54 per cent were case managers.

### 8.6.1. Key findings – claims service provider staff surveys

**Survey respondents identified that the greatest barrier they faced in their role was case volume.**

Most survey respondents indicated that government employers are regularly involved in decisions about liability, RTW and treatment as shown below. Overall, the majority of CSP staff viewed their engagement with government employers as collaborative.

The majority of survey respondents indicated they were clear about the roles of TMF stakeholders. There was relatively greater clarity about their role as CSPs, followed by that of TMF government employers and then the role of icare.

Survey respondents generally felt supported by their employer to carry out their role and were satisfied that they had been provided with appropriate training to perform their role efficiently and effectively.

Survey respondents stated the greatest barrier they faced in their role was case volume. Other barriers included claims management technology/systems, agency demands, and injured worker demands.



“When you look at the workers compensation legislation (as we are charged to do), you can only make the decision that’s relevant to that particular facet, that can cause friction undoubtedly.”

## 8.7. Claims service provider interviews

Representatives from the three CSPs, Allianz, EML and QBE were also interviewed by an independent provider in July 2023 as part of this review.

### 8.7.1. Key findings – CSP interviews

- The complexity of the TMF across a range of issues created unique challenges in the management of TMF claims.
- Finding suitable work and facilitating return to work was a significant challenge.

### 8.7.2. Complexity

CSP representatives noted that there were a number of unique challenges when managing TMF claims. These included:

- different legislative requirements being applicable for different claimants (e.g., emergency workers being exempt from the 2012 benefit reforms)
- rising numbers of psychological injury claims
- views of government employers about claim liability decisions
- poor HR practices of some government employers
- a broad range of government employers in size and sophistication requiring different RTW strategies
- funding model with complex actuarial calculations
- lack of clarity of roles of government employers (e.g. employers as self-insurers) and who has ownership of and accountability for claim decisions
- difficulty finding suitable work within and across government employers
- distributed accountability for claims management with two or more CSPs managing claims on behalf of some government employers.

### 8.7.3. Claims management

The CSP representatives described a collaborative approach with government employers including in relation to liability decision making and used regular claims reviews tailored to the differing needs of the government employers to review subsets of claims.

### 8.7.4. Return to work

The CSP representatives described finding suitable work and facilitating RTW as challenging.

Challenges included:

- some roles needing certainty and consistency (e.g., education roles)
- roles with specialist skills
- finding suitable work for casual workers
- inability of some workers to RTW as they are unable to work with particular individuals or at specific locations
- smaller government employers having less robust processes and knowledge for managing RTW
- lack of cross-agency collaboration
- frontline roles requiring a high level of capacity for RTW.

### 8.7.5. Psychological injury

CSP representatives highlighted the complexity of psychological injury claims. They noted:

- managing these claims had an emotional toll on claims staff
- accessing the right treatment for injured workers was difficult given the high demand for treatment providers and lack of available appointments
- government employers using section 11A of the 1987 Act as a defence for psychological injury claims.

---

## 87.6. Corrective Services NSW review findings

SIRA completed a review of 100 Corrective Services NSW (CSNSW) claims in 2022 and published its findings in early 2023. The findings of the CSNSW review were considered in formulating recommendations of this broader review of the TMF.

The findings of the CSNSW review closely align to the findings of this review. The CSNSW review identified the following opportunities for further improvement in claims and injury management:

- timely notification of injury by CSNSW to QBE
- the application of a 'reasonable excuse' to delay fulfilling the requirement to commence weekly payments following notification of injury
- the use of surveillance, factual investigations and independent medical examinations (IMEs) in the early stages of a claim, particularly for psychological injuries
- the turnover of case managers, the quality and timeliness of consequent handovers and record keeping.



# Summary of suggested actions



## SIRA has suggested a course of actions to support the conclusions of the review.

Suggested actions	
1	NSW Treasury review, and revise as required, its engagement and communication with relevant stakeholders to improve clarity of roles and responsibilities within the TMF.
2	SICorp review, and revise as required, its claims service provider performance and compliance program to ensure workers compensation system objectives are met.
3	SICorp review its feedback and reporting to government employers, NSW Treasury and SIRA to provide improved transparency in respect of claims service provider performance against key claims management indicators.
4	NSW Treasury review the process for engagement with government employers, including timelines for information sharing to assist agencies' understanding of funding and contribution calculations and impacts on operational budgets.
5	NSW Treasury review the TMF workers compensation contributions, levies and funding arrangements to determine that performance and outcomes are appropriately incentivised and reflective of risk, and make any required adjustments.
6	Government employers that have schemes offering concurrent entitlements examine the interaction of those schemes, the impact on injured workers and system objectives, and work with other relevant agencies to minimise impacts on return to work.
7	Stronger Communities, Health and Education review their workplace strategies to identify opportunities to reduce incidence of psychological injury, particularly in relation to work pressure, harassment, bullying and other mental stress factors.
8	Government employers review and update their systems, policies and procedures where required to improve compliance with their employer obligations, with a particular focus on: <ul style="list-style-type: none"> <li>• Consistent and timely injury notification</li> <li>• Compliant return to work programs</li> <li>• Enhancing annual internal audit and risk management policy attestation processes to include workers compensation legislative breaches.</li> </ul>
9	Government employers within their respective agencies explore and address causal factors of poor return to work with a focus on identifying opportunities for improvement of return to work for psychological injury claims, particularly injuries relating to work pressure, harassment, bullying or other mental stress factors.
10	Chief People Officers within government employers regularly review injured workers who are either under-utilised or not working for potential inclusion in the work participation program referenced in suggestion 11.
11	NSW Treasury continue to facilitate The Whole of Government Recovery through Work Strategy to utilise mobility and redeployment across government employers to ensure temporary and permanent opportunities for suitable work are identified within and across the public sector (including consideration of smaller agencies).

Continued over page

Suggested actions	
12	NSW Treasury to work with relevant NSW Government stakeholders to review, revise or develop as required, performance indicators, targets and incentives for government employers to improve return to work outcomes.
13	<p>SICorp review and enhance claims management strategies where possible to address opportunities to improve customer experience and outcomes identified from the claims file review, with a particular focus on:</p> <ul style="list-style-type: none"> <li>• Tailored injury management planning for workers, driving early recovery and return to work</li> <li>• Maintaining appropriate, supportive contact with workers and stakeholders throughout the life of the claim</li> <li>• Assessing risks for delayed recovery with appropriate actions matched and implemented</li> <li>• The appropriate use of legal and factual investigations in the early stages of psychological injury claims</li> <li>• The appropriate application of reasonable excuse</li> </ul>
14	SICorp continues to develop and regularly communicate with relevant stakeholders a workers compensation claims management data and digital roadmap to leverage technological advances and drive efficiencies and improved outcomes.
15	SICorp, NSW Treasury and government employers carefully consider the findings, conclusions and suggestions in this report and engage with SIRA as required in driving the opportunities for improvement identified through the review.

# Glossary

10

## Glossary of Terms

Term / short title	Definition / long title
<b>A</b>	
<b>Allianz Australia Insurance Limited (Allianz)</b>	Allianz is engaged by icare to provide claims management services to NSW government employers.
<b>Agency Performance Adjustment (APA)</b>	In 2020-21, the TMF introduced the Agency Performance Adjustment (APA), which is calculated at six months, 18 months and 2.5 years, based on actual claims experience. The APA is assessed at 31 December annually and invoiced in July the following year.
<b>Agency Performance Adjustment (APA) top-ups</b>	Agencies which have not performed to expectation are required to make further contributions ("top-ups") to the TMF.
<b>C</b>	
<b>Certificate of capacity</b>	A medical certificate completed by the worker's treating doctor, used in the NSW workers compensation system to describe the nature of a worker's injury/illness, their capacity for work and the treatment required for a safe and durable recovery.
<b>Claim</b>	A claim for compensation or work injury damages a worker has made or is entitled to make.
<b>Claims management</b>	The management of a worker's claim by an insurer, self-insurer or claims manager in accordance with legislative and regulatory requirements.
<b>Claims manager</b>	An individual who manages claims for an insurer or claims service provider.
<b>Cluster</b>	A grouping of NSW Government departments, agencies and organisations now referred to as a portfolio of agencies.
<b>Common Law damages</b>	A worker injured in circumstances where his/her employer was negligent may be able to claim work injury damages under the common law remedies set out in Part 5 of the of the <i>Workers Compensation Act 1987</i> .
<b>Compliance</b>	This measures insurer activity in relation to the obligations and timeframes placed upon them by the workers compensation legislation and the Workers Compensation Guidelines.
<b>Conformance</b>	Achieving the standard required to meet the audit criteria.
<b>Corrective Services New South Wales (CNSW)</b>	A government employer and workers compensation self-insurer within the Stronger Communities portfolio, responsible for NSW prisons and programs for managing offenders in the community.
<b>Claims Service Provider (CSP)</b>	Claims service providers manage public sector employees' workers compensation claims on behalf of icare.
<b>D</b>	
<b>Dispute</b>	A decision by the insurer not to accept liability for all or part of a claim.

Term / short title	Definition / long title
<b>E</b>	
<b>Early intervention</b>	The active management of a claim in the four weeks following notification of injury which can include establishing effective relationships, identifying risks of delayed recovery and work loss and setting tailored actions to optimise recovery and work outcomes.
<b>Employer</b>	An individual, a corporation, a firm, an unincorporated body of persons, a government agency or the Crown and can also include the legal personal representative of a deceased employer, or a former employer.
<b>Employers Mutual NSW Limited (EML)</b>	EML is engaged by icare to provide claims management services to NSW Government employers.
<b>Exempt worker</b>	A group of workers (including police officers, paramedics and firefighters) to whom the amendments introduced in the <i>Workers Compensation Legislation Amendment Act 2012</i> do not apply. Claims by exempt workers are largely managed as though the 2012 amendments never occurred.
<b>F</b>	
<b>Factual investigation</b>	An investigation by a third-party service provider into the facts of an injury and/or claim, the results of which may inform decision making with respect to liability and other claim entitlements.
<b>G</b>	
<b>Government agency</b>	Any department, person or body exercising executive or administrative functions on behalf of the NSW Government.
<b>Government employer</b>	The Crown or any Government agency.
<b>Government self-insurer</b>	Any NSW Government employer covered by the Government's managed fund scheme (TMF).
<b>I</b>	
<b>Incidence rate</b>	The frequency of injuries per 1,000 workers.
<b>Independent medical examination</b>	An assessment conducted by an appropriately qualified and experienced medical practitioner to help resolve an issue in injury or claims management.
<b>Independent medical examiner (IME)</b>	An appropriately qualified and experienced medical practitioner who can help to resolve an issue in injury or claims management.
<b>Injury</b>	A personal injury arising out of or in the course of employment and includes a disease injury where employment was the main contributing factor to contracting the disease, and includes the aggravation, acceleration, exacerbation, or deterioration of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease.
<b>Injury management consultation</b>	An assessment conducted by an appropriately qualified and experienced medical practitioner to who helps the nominated treating doctor, worker, insurer, employer and other service providers to progress a worker's recovery at/return to work and optimise health and return to work outcomes.
<b>Injury management consultant (IMC)</b>	A registered medical practitioner experienced in occupational injury and workplace-based rehabilitation.
<b>Injury management plan (IMP)</b>	A written plan developed by the insurer in consultation with the worker and other stakeholders, to identify the actions of all parties in helping the worker recover from their injury and recover at/return to work.

Term / short title	Definition / long title
<b>Injury management program</b>	A document which outlines insurer procedures to optimise results for injured workers through the coordination of timely, safe and durable return to work, reasonably necessary treatment, rehabilitation, retraining, and claims management.
<b>Insurance and Care NSW (icare)</b>	icare provides workers compensation insurance in the NSW workers compensation system. Through delegation from SICorp, icare operates and provides claims management services to the TMF for public sector employee in NSW.
<b>Insurer</b>	The various insurers in the NSW workers compensation system, including the Workers Compensation Nominal Insurer, specialised insurers, self-insurers and Government self-insurers.
<b>Independent Review Office (IRO)</b>	The independent statutory office that manages complaints from workers with a work-related injury/illness.
<b>J</b>	
<b>Job detached</b>	A person who is not working because of an injury, illness, or work disability over the preceding 13-week period.
<b>M</b>	
<b>McDougall Review</b>	An independent review of icare and the <i>State Insurance and Care Governance Act 2015</i> , conducted by retired Supreme Court Judge, the Hon Robert McDougall QC
<b>N</b>	
<b>Nominal Insurer</b>	Established under section 154A of the <i>Workers Compensation Act 1987 Act</i> , icare acts for the Nominal Insurer and exercises the functions of the Nominal Insurer as required by the NSW workers compensation legislation.
<b>Nominated treating doctor</b>	Where an injury prevents the worker from performing their pre-injury duties for seven days or more, they must nominate a treating doctor (typically, their GP or treating doctor).
<b>Non-exempt worker</b>	A worker whose claim is not exempt from the amendments introduced in the <i>Workers Compensation Legislation Amendment Act 2012</i> .
<b>NSW Court of Appeal</b>	The Court of Appeal hears applications for leave to appeal and appeals from single judges of the Supreme Court and from other NSW courts and tribunals. It has both appellate and supervisory jurisdiction in respect of all other courts in the State system.
<b>NSW Self Insurance Corporation (SICorp)</b>	SICorp is a statutory body created by the Crown, whose primary function is to manage government managed fund schemes, such as the TMF, for the purposes of paying the self-insurer liabilities incurred by the relevant government employers. SICorp may and has delegated its functions to icare.
<b>NSW Treasury</b>	NSW Treasury is the NSW Government's principal whole-of-government financial and economic adviser.
<b>P</b>	
<b>Permanent impairment</b>	A worker who sustains an injury that results in a degree of permanent impairment greater than 10% is entitled to receive compensation for that permanent impairment from the worker's employer. Permanent impairment compensation is in addition to any other compensation.
<b>Permanent impairment assessment</b>	An assessment obtained by the worker or insurer which certifies the degree of permanent impairment resulting from a work-related injury and is conducted by a registered medical practitioner trained to assess a worker's permanent impairment.

Term / short title	Definition / long title
<b>Personal Injury Commission (PIC)</b>	A single, independent tribunal for injured people claiming against the workers compensation and compulsory third party (CTP) insurance schemes. The PIC replaced the former Workers Compensation Commission (WCC) from 1 March 2021.
<b>Pre-injury duties</b>	The duties a worker performed before they were injured.
<b>Provisional liability</b>	"An insurer can accept liability for weekly payments and medical expenses on the basis of the provisional acceptance of liability."
<b>Psychological injury</b>	A psychological injury is a personal injury arising out of or in the course of employment that is a psychological or psychiatric disorder and extends to include the physiological effect of the disorder on the nervous system.
<b>Public Service Commission (PSC)</b>	The Public Service Commission supports the Public Service Commissioner in the exercise of their functions, as an advisor to the NSW public sector.
<b>Q</b>	
<b>QBE Insurance (Australia) Limited (QBE)</b>	QBE is engaged by icare to provide claims management services to NSW government employers.
<b>R</b>	
<b>Reasonable excuse</b>	An excuse not to comply with <i>Workplace Injury Management and Workers Compensation Act 1998</i> requirement that provisional weekly payments of compensation by an insurer are to commence within seven days of initial notification of an injury to a worker. A list of 'reasonable excuses' is included in the Workers Compensation Guidelines.
<b>Register of Injuries</b>	Employers must keep a record of injuries regardless of whether there has been a workers compensation claim. This is called a register of injuries.
<b>Return to Work (RTW)</b>	Return to work (whether to pre-injury duties or suitable duties) by an injured worker after having one day or more off work.
<b>Return to Work (RTW) coordinator</b>	The RTW coordinator is responsible for implementing an organisation's return to work program, supporting workers as they recover at work and assisting employers to meet their obligations as required under workers compensation legislation.
<b>Return to Work Plan</b>	A statement of goals and objectives (and services required to achieve them) for a worker undergoing recovery at work. It should clearly outline the worker's capacity for work including hours, supervision requirements, treatment times and review dates. Also referred to as a RTW plan or suitable duties plan.
<b>Return to Work Program</b>	A formal policy that outlines general procedures for handling work related injury or illness. It represents an employer's commitment to the health, safety and recovery of workers following an incident. All employers in NSW are required by law to have one.
<b>Return to Work Rate</b>	Return to work rate measures the number of workers who took at least one day off work before getting back to work after an injury. The measures are made at 4, 13, 26, 52 and 104 weeks.
<b>S</b>	
<b>Secondary psychological injury</b>	A secondary psychiatric or psychological condition which arises as a consequence of, or secondary to, a physical injury.
<b>Self-insurer</b>	Employers approved by SIRA to manage their own workers compensation claims.
<b>Suitable duties/suitable work</b>	The work duties an employer provides to a worker to recover at work and/or return to work by for which the worker is currently suited for.



Term / short title	Definition / long title
<b>Specialised Insurer</b>	Licensed insurer whose licence is endorsed with a specialised insurer endorsement that allows them to underwrite workers compensation liabilities and manage workers compensation claims for employers in a defined industry.
<b>State Insurance Regulatory Authority (SIRA)</b>	SIRA was established in 2015 to steward and regulate the workers compensation insurance, motor accidents CTP insurance, and home building compensation schemes in NSW.
<b>Standards of Practice (SoP)</b>	Expectations for insurer claims administration and conduct published by SIRA, which require insurers to apply principles across a range of processes and procedures.
<b>Stay at work (SAW) rate</b>	Stay at work rate measures the number of workers who took no time off work after an injury.
<b>Stronger Communities Cluster</b>	Includes NSW Police, NSW Fire and Rescue and Corrective Services NSW and other agencies.
<b>T</b>	
<b>Total and Permanent Disablement (TPD)</b>	TPD is a lump sum benefit paid out if an illness or injury that leaves a worker totally and permanently disabled.
<b>Treasury Managed Fund (TMF)</b>	The government self-insurance scheme, administered by SICorp. SICorp delegates its functions in operating the TMF to icare and icare appoints Claims Service Providers to provide claims management services to the TMF portfolio.
<b>U</b>	
<b>Union representatives</b>	Associations or unions that represent their worker membership.
<b>W</b>	
<b>Whole person impairment (WPI)</b>	WPI is used to measure the degree of permanent impairment suffered as a result of an injury.
<b>Work capacity</b>	The worker's functional ability to return to their pre-injury employment taking the nature, duties, tasks, and hours of work of their pre-injury employment into consideration.
<b>Work capacity assessment</b>	An assessment of an injured worker's current work capacity conducted in accordance with the Workers Compensation Guidelines.
<b>Work injury</b>	An injury that occurs in the course of the worker's employment and for which compensation is or may be payable.
<b>Work injury damages</b>	Damages payable in the event that a worker is injured in circumstances where the employer was negligent. Damages are limited to past economic loss due to loss of earnings and future economic loss due to the loss or impairment of earning capacity as a result of the work injury.
<b>Worker</b>	A person who has entered into, or works under, a contract of service or a training contract with an employer whether by way of manual labour, clerical work or otherwise, whether the contract is expressed or implied, and whether the contract is oral or in writing.
<b>Workers compensation</b>	Compensation under the Workers Compensation Acts and includes any monetary benefit under those Acts.
<b>Workers Compensation Acts</b>	The <i>Workers Compensation Act 1987</i> and the <i>Workplace Injury Management and Workers Compensation Act 1998</i> .
<b>Working rate</b>	Measures the number of workers who returned to work or stayed at work after an injury. It is a combination of the RTW and SAW measures.

## Relevant legislation and regulatory instruments

Long title	Short title
<i>Insurance Act 1973 (Cth)</i>	Insurance Act 1973
Guidelines for Workplace Return to Work Programs	Guidelines for Workplace RTW Programs
<i>Government Sector Employment Act 2013 (NSW)</i>	GSE Act
<i>NSW Self Insurance Corporation Act 2004</i>	SICorp Act
Workers Compensation Guidelines for the Evaluation of Permanent Impairment	WC Guidelines for Evaluation of PI
<i>Personal Injury Commission Act 2020</i>	PIC Act
SIRA Standards of Practice	Standards of Practice
<i>State Insurance and Care Governance Act 2015 (NSW)</i>	SICG Act
<i>Workers Compensation Act 1987 (NSW)</i>	1987 Act
<i>Workers Compensation Amendment Regulation 2018 (NSW)</i>	WCA Reg
SIRA Workers Compensation Benefits Guide	WC Benefits Guide
SIRA Workers Compensation Guidelines	WC Guidelines
<i>Workers Compensation Regulation 2016 (NSW)</i>	WC Regulation
<i>Workplace Injury Management and Workers Compensation Act 1998 (NSW)</i>	1998 Act

---

SIRA, Level 14-15, 231 Elizabeth Street, Sydney NSW 2000

Website: [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au)

Catalogue no. SIRA09184 | ISBN 978-0-7347-4782-2

© State of New South Wales through the State Insurance Regulatory Authority NSW. This copyright work is licensed under a Creative Commons Australia Attribution 4.0 license, <http://creativecommons.org/licenses/bynd/4.0/legalcode>





## Appendix 16 Minutes

### Minutes no. 14

Friday 9 May 2025

Standing Committee on Law and Justice

Via videoconference at 3.01 pm

#### 1. Members present

Mr Donnelly, *Chair*

Mr Rath, *Deputy Chair*

Ms Boyd (substituting for Ms Higginson for the inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales)

Mrs Maclaren-Jones (substituting for Mrs Carter)

Mr D'Adam

Mr Lawrence

Mr Nanva

Mr Roberts

#### 2. Correspondence

The committee noted the following items of correspondence:

##### *Received*

- 8 May 2025 – Letter from the Hon Daniel Mookhey MLC, Treasurer to the Chair, requesting the committee to consider terms of reference for an inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales, and attaching an exposure draft for the Workers Compensation Legislation Amendment Bill 2025 and an explanatory note for the Bill titled 'Proposed Reforms to the NSW Workers Compensation System'
- 8 May 2025 – Email from Ms Boyd to secretariat, advising she will be substituting for Ms Higginson for the proposed inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales.

#### 3. Consideration of ministerial terms of reference

The Chair tabled the following terms of reference for an inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales, received from the Hon Daniel Mookhey MLC, Treasurer on 8 May 2025:

That the Committee inquire into and report on proposed changes to liability and entitlements for psychological injury in New South Wales, specifically:

- a) the overall financial sustainability of the NSW workers' compensation system; and
- b) the provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 as provided by correspondence to the Committee.

Mr Rath noted his objection to the short timeline proposed for the inquiry.

Resolved, on the motion of Mr Lawrence: That the committee adopt the terms of reference.

Resolved, on the motion of Mr D'Adam: That the committee authorise the secretariat to advise the office of the Treasurer that the committee has adopted the terms of reference.

Resolved, on the motion of Mr Lawrence: That the committee publish the exposure draft for the Workers Compensation Legislation Amendment Bill 2025 and the explanatory note for the Bill titled 'Proposed Reforms to the NSW Workers Compensation System' on the inquiry webpage.

#### **4. Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales**

##### **4.1 Proposed timeline**

Resolved on the motion of Mr D'Adam: That the committee adopt the following timeline for the administration of the inquiry, noting the report will be distributed less than 7 days prior to the deliberative:

- Friday 9 May 2025 – submissions open
- Thursday 15 May 2025 – closing date for submissions
- Friday 16 May 2025 – hearing
- Wednesday 21 May 2025 – circulation of chair's draft report
- Thursday 22 May 2025 – report deliberative
- Friday 23 May 2025 – report tabling.

##### **4.2 Stakeholder list**

Resolved, on the motion of Mr Lawrence: That the stakeholders in the stakeholder list for the 2022 Review of the Workers Compensation Scheme be invited to make a submission to this inquiry.

Resolved, on the motion of Mr D'Adam: That members be provided with the opportunity to nominate additional stakeholders to make a submission by 3.00 pm, Monday 12 May 2025 and that the committee agree to additional stakeholders by email, unless a meeting of the committee is required to resolve any disagreement.

Resolved, on the motion of Mr D'Adam: That

- no submission portal be created on the inquiry webpage, and
- submissions not be accepted from anyone except the stakeholders in the stakeholder list from the 2022 Review of the Workers Compensation Scheme and other stakeholders agreed to by the committee.

Resolved, on the motion of Mr D'Adam: That the Treasurer, the Hon Daniel Mookhey MLC and the Minister for Industrial Relations and Minister for Work Health and Safety, the Hon Sophie Cotsis, be invited to appear as the first witnesses at the hearing on Friday 16 May.

##### **4.3 Post-hearing responses**

The committee noted that there will be insufficient time for witnesses to provide answers to questions on notice or supplementary questions.

Resolved, on the motion of Mr D'Adam: That transcript corrections, clarifications to evidence and additional information be provided within 24 hours of the receipt of the transcript by the witness.

#### **5. Adjournment**

The committee adjourned at 3.55 pm, until Friday 16 May 2025, Macquarie Room, Parliament House, Sydney (public hearing – inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales).

Alice Wood

**Committee Clerk**

#### **Minutes no. 15**

Friday 16 May 2025

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 8.17 am

#### **1. Members present**

Mr Donnelly, *Chair*

Ms Boyd

Mrs Carter

Mr D'Adam

Dr Kaine (substituting for Mr Nanva)

Mr Latham (substituting for Mr Roberts)

Mr Lawrence

Mr Nanva

Mr Tudehope (substituting for Mr Rath for the inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales)

## 2. Draft minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 14 be confirmed.

## 3. Correspondence

### *Received:*

- 12 May 2025 – Email from Ms Deyi Wu, Whip's Advisor, Office of the Hon Chris Rath MLC, Opposition Whip in the Legislative Council, to secretariat, advising that the Hon Damien Tudehope MLC will substitute for the Hon Chris Rath MLC for the duration of the inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales
- 12 May 2025 – Email from the Hon Rod Roberts MLC to secretariat, advising that he will be substituted by the Hon Mark Latham MLC for the first hearing for the inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales
- 13 May 2025 – Email from Ms Caroline Stephens, private individual to committee, expressing concern regarding proposed changes to the NSW workers' compensation scheme
- 14 May 2025 – Letter from The Hon Judge G.M. Phillips, President, Personal Injury Commission of New South Wales to Chair, declining to make a submission to the inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales
- 14 May 2025 – Email from Mr Peter Newling, National Manager – Public Policy, Maurice Blackburn Lawyers, to Chair, declining the invitation to give evidence at the public hearing on 16 May
- 14 May 2025 – Email from Ms Julie Petering, Principal Policy Advisor, Headspace, to Chair, declining to make a submission to the inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales
- 14 May 2025 – Email from Tegan Carrison, Executive Director, Australian Association of Psychologists Inc, to Chair, declining the invitation to give evidence at the public hearing on 16 May
- 14 May 2025 – Email from Ms Lauren Gillin, Media and Communications Manager, Redfern Legal Centre to secretariat, requesting to appear at the hearing on 16 May
- 14 May 2025 – Email from Ms Emily Gray, Law Reform and Advocacy Lead, Working Women's Centre NSW, Women's Legal Service NSW to committee, requesting to appear at the hearing on 16 May
- 15 May 2025 – Email from Hensley Richard, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), to secretariat, declining the invitation to give evidence at the public hearing on 16 May
- 15 May 2025 – Email from Mr Jonathan Harrison, Group General Counsel, Acciona, advising that Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, will be available to appear before the committee on behalf of Acciona Construction Australia Pty Ltd (*attached*)
- 15 May 2025 – Email from Jimmy Bai, Office of the Hon Daniel Mookhey MLC, to the secretariat, advising that the Treasurer will appear alongside Minister Cotsis at the hearing on 16 May 2025, and that Minister Dib will not appear.

### *Sent:*

- 9 May 2025 – Email from the secretariat to Mr Jimmy Bai, Parliamentary Affairs Director, Office of the Hon Daniel Mookhey MLC, Treasurer of New South Wales, confirming that the committee has agreed to adopt to the Terms of Reference and the Treasurer's suggested timeframes for submissions, hearing and tabling.

Resolved, on the motion of Mr Nanva: That the committee authorise the publication of correspondence from Ms Caroline Stephens, regarding changes to the NSW worker's compensation scheme, dated 13 May 2025, with the exception of identifying information which is to remain confidential, as per the request of the author.

Resolved, on the motion of Mrs Carter: That the committee hold a one hour hearing on Monday 26 May 2025 with Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, on behalf of Acciona Construction Australia Pty Ltd, at a time to be determined in consultation with the committee.

#### **4. Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales**

##### **4.1 Election of a Deputy Chair**

The Chair noted that the Deputy Chair of the committee, Mr Rath, will be substituted by Mr Tudehope for the duration of the inquiry.

The Chair called for nominations for Deputy Chair for the duration of the inquiry.

Mrs Carter moved: That Ms Boyd be elected Deputy Chair for the duration of the inquiry.

There being no further nominations, the Chair declared Ms Boyd elected Deputy Chair for the duration of the inquiry.

##### **4.2 Public submissions**

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-3.

Resolved, on the motion of Mr D'Adam: That, notwithstanding the submission deadline of Thursday 15 May 2025, the committee accept submissions from invited stakeholders after the deadline.

Resolved, on the motion of Mr Nanva: That the following wording be placed on the inquiry webpage: 'Due to the short timeline for the inquiry, the committee can no longer accept submissions from individuals or uninvited stakeholders.'

##### **4.3 Report deliberative**

The committee noted it previously agreed to hold the report deliberative meeting on Thursday 22 May 2025.

Resolved, on the motion of Mrs Carter: That the report deliberative be held at 2.30 pm on Thursday 22 May 2025.

The committee noted that in order to table the report by close of business Friday 23 May 2025, a shortened period for provision of dissenting statement is required.

Mr Tudehope and Mrs Carter noted their objection to the short timeframe for the inquiry.

Resolved, on the motion of Mr D'Adam: That dissenting statements be provided by 12.00 pm, Friday 23 May 2025.

##### **4.4 Post-hearing responses**

The committee noted it previously noted that there will be insufficient time for witnesses to provide answers to questions on notice or supplementary questions.

Mrs Carter moved: That, in the circumstances of the tight timeframes of the inquiry, questions taken on notice be due 5.00 pm, Wednesday 21 May 2025. Further, for the same reasons, there will be no provision of the opportunity for committee members to submit supplementary questions regarding today's hearing.



Mr Nanva moved: That the motion of Mrs Carter be amended by omitting '5.00 pm, Wednesday 21 May 2025' and inserting instead '5.00 pm, Tuesday 20 May 2025'.

Amendment put.

The committee divided.

Ayes: Mr D'Adam, Mr Donnelly, Mr Nanva.

Noes: Ms Boyd, Mrs Carter, Mr Latham, Mr Tudehope.

Question resolved in the negative.

Original question put and passed.

#### **4.5 Public hearing**

Resolved, on the motion of Mr Latham: That the allocation of questions to be asked at the hearing be divided equally between opposition, crossbench and government members, in that order.

Witnesses, the public and the media were admitted.

The Chair made an opening statement.

The Chair noted that Members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

The Hon Daniel Mookhey MLC, Treasurer and the Hon Sophie Cotsis MP, Minister for Industrial Relations and Minister for Work Health and Safety were admitted and examined.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Mark Morey, Secretary, Unions NSW
- Ms Natasha Flores, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Bernie Smith, Branch Secretary-Treasurer, Shop, Distributive and Allied Employees' Association NSW Branch.
- Ms Amber Flohm, Deputy President, NSW Teachers Federation
- Mr Michael Whaites, Acting General Secretary, NSW Nurses and Midwives' Association
- Mr Gerard Hayes, Secretary, Health Services Union NSW, ACT and QLD Branch
- Mr Jack Ayoub, NSW Organiser, Australian Workers' Union NSW Branch
- Mr Angus McFarland, Branch Secretary, Australian Services Union NSW & ACT (Services) Branch
- Mr Troy Wright, Acting General Secretary, Public Service Association of NSW.

Mr Whaites tendered the following document: Opening statement.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Daniel Hunter, Chief Executive Officer, Business NSW
- Mr Sam Moreton, General Manager, Government and Corporate Affairs, Business NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tony Wessling, Group Executive, Workers Compensation, icare
- Mr Dai Liu, General Manager, Actuarial Services, icare
- Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury
- Ms Andrée Wheeler, Executive Director, State Insurance Schemes, NSW Treasury.

Mr Wessling tendered the following document: Opening statement.

Ms Campbell tendered the following document: Opening statement.

The evidence concluded and the witnesses withdrew.

The following witnesses was sworn and examined:

- Mr Dominic Toomey SC, Senior Vice-President, NSW Bar Association
- Mr Tony Bowen, Member of the NSW Bar Association's Common Law Committee
- Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW
- Mr Shane Butcher, Member, Injury Compensation Committee, Law Society of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses was sworn and examined:

- Mr Ivan Simic, Solicitor, Taylor & Scott Lawyers
- Ms Michelle Meigan, Solicitor, Taylor & Scott Lawyers
- Mr David Jones, Partner, Carroll & O'Dea Lawyers (via videoconference)
- Mr Scott Dougall, Partner, Carroll & O'Dea Lawyers
- Mrs Ramina Dimitri, Head of Work & Road, NSW ACT + WA, Slater & Gordon Lawyers
- Ms Larissa Atkinson, Legal Counsel, Slater & Gordon Lawyers
- Ms Rita Yousef, Senior Member, NSW Branch Workers Compensation Subcommittee, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The following witnesses was sworn and examined:

- Ms Roshana May, Individual with workers' compensation expertise
- Mr Kim Garling, Individual with workers' compensation expertise.

The evidence concluded and the witnesses withdrew.

The following witnesses was sworn and examined:

- Dr Julian Parmegiani, Psychiatrist and assessor
- Dr Anthony Dinnen, Consultant psychiatrist and assessor (via videoconference).

The evidence concluded and the witnesses withdrew.

The following witnesses was sworn and examined:

- Mr Chris Gambian, Executive Director, Australians for Mental Health
- Professor Pat McGorry AO, Founder, Australians for Mental Health (via videoconference).

Mr Gambian tendered the following document: Opening statement.

The evidence concluded and the witnesses withdrew.

The following witnesses was sworn and examined:

- Ms Mandy Young, Chief Executive, State Insurance Regulatory Authority (SIRA)
- Mr Trent Curtin, A/Deputy Secretary, SafeWork NSW
- Ms Samantha Taylor PSM, Independent Review Officer, Independent Review Office (IRO).

The evidence concluded and the witnesses withdrew.

The following witnesses was sworn and examined:

- Ms Cara Varian, CEO, NSW Council of Social Service (NCOSS)
- Mr Ben McAlpine, Director, Policy and Advocacy, NSW Council of Social Service (NCOSS).

Ms Varian tendered the following document: Opening statement.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 6.11 pm. The public and the media withdrew.

#### ***Tendered documents***

Resolved, on the motion of Mrs Carter: That the committee accept and publish the following documents tendered during the public hearing, along with any other opening statements from today's hearing provided by witnesses after the hearing:

- Opening statement, tendered by Mr Michael Whaites, Acting General Secretary, NSW Nurses and Midwives' Association
- Opening statement, tendered by Mr Tony Wessling, Group Executive, Workers Compensation, icare
- Opening statement, tendered by Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury
- Opening statement, tendered by Mr Chris Gambian, Executive Director, Australians for Mental Health
- Opening statement, tendered by Ms Cara Varian, CEO, NSW Council of Social Service (NCOSS).
- Opening statement, tendered by Mr Angus McFarland, Branch Secretary, Australian Health Services Union NSW & ACT
- Opening statement, tendered by Ms Rita Yousef, Senior Member, Australian Lawyers Alliance
- Opening statement, tendered by the Hon Daniel Mookhey MLC, Treasurer
- Opening statement, tendered by Ms Amber Flohm, Deputy President, NSW Teachers Federation
- Opening statement, tendered by Mr David Jones, Partner, Carroll & O'Dea Lawyers

#### **4.6 Report – format and content**

The committee noted that Hansard advised the transcript from today's hearing will be available close of business Tuesday 20 May 2025.

The Chair discussed the proposed approach to the format and content of the report in light of this timeframe.

### **5. Next meeting**

The committee adjourned at 6.39 pm until Thursday 22 May 2025, 2.30 pm, Room 1043, Parliament House, Sydney (report deliberative - inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales).

Alice Wood

**Committee Clerk**

**Draft minutes no. 16**

Thursday 22 May 2025

Standing Committee on Law and Justice  
Room 1043, Parliament House, Sydney at 2.30 pm

**1. Members present**

Mr Donnelly, *Chair*  
Ms Boyd, *Deputy Chair*  
Mrs Carter  
Mr D'Adam (via videoconference)  
Dr Kaine (substituting for Mr Lawrence)  
Mr Latham (substituting for Mr Roberts via videoconference)  
Ms Suvaal (substituting for Mr Nanva)  
Mr Tudehope

**2. Previous minutes**

Resolved, on the motion of Mrs Carter: That draft minutes no. 15 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 15 May 2025 – Email from Mr Craig Tanner, Barrister to committee, enclosing examples of psychological injuries which will cease to be compensable if the proposed changes in the Exposure Draft are enacted
- 16 May 2025 – Email from Mr Mark Morey, Secretary, Unions NSW to committee, regarding cuts to workers compensation for psychological injury
- 17 May 2025 – Email from Dr Julian Parmegiani to secretariat, enclosing an email from Judge Gerard Phillips, President, Personal Injury Commission regarding medical assessors commenting on proposed changes to workers compensation laws
- 19 May 2025 - Email from Dr Julian Parmegiani to secretariat, enclosing another email from Judge Gerard Phillips, President, Personal Injury Commission regarding medical assessors commenting proposed changes to workers compensation laws.

**4. Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales**

**4.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-4, 6-22, 24-26, 28-42, 44-47, 49-52, 54-55, 59-62.

**4.2 Partially confidential submissions**

Resolved, on the motion of Mrs Carter: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission no. 5.

Resolved on the motion of Ms Suvaal: That the committee authorise the publication of submission nos. 23 and 48, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author.

**4.3 Confidential submissions**

Resolved, on the motion of Mrs Carter: That the committee keep submission nos. 27, 43, 53, 56 and 57 confidential, as per the request of the author.

Resolved, on the motion of Dr Kaine: That the committee keep submission no. 58 confidential, as per the recommendation of the secretariat, as it contains potential adverse mention.

**4.4 Late submissions**

The committee noted that it previously agreed to accept submissions from invited stakeholders after the deadline of Thursday 15 May.

The committee noted that the latest submissions can be received for processing and incorporation in the report by the secretariat is 12.00 pm, Thursday 22 May.

#### **4.5 Supplementary submission**

Resolved, on the motion of Mr Tudehope: That the correspondence received from Mr Craig Tanner, Barrister, enclosing examples of psychological injuries which will cease to be compensable if the proposed changes in the Exposure Draft are enacted, dated 15 May 2025, be accepted as a supplementary submission and published by the committee clerk.

#### **4.6 Answers to questions on notice**

The committee noted the following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Carroll & O'Dea Lawyers, received on 21 May 2025
- answers to questions on notice from Ms Roshana May, received on 21 May 2025
- answers to questions on notice from Slater and Gordon, received on 21 May 2025
- answers to questions on notice from Business NSW, received on 21 May 2025
- answers to questions on notice from NSW Bar Association, received on 21 May 2025
- answers to questions on notice from Health Services Union NSW, ACT and QLD Branch, received on 21 May 2025
- answers to questions on notice from Public Services Association of NSW, received on 21 May 2025
- answers to questions on notice from New South Wales Nurses and Midwives' Association, received on 21 May 2025
- answers to questions on notice from NSW Treasury, received on 21 May 2025
- answers to questions on notice from icare, received on 21 May 2025
- answers to questions on notice from Hon Daniel Mookhey MLC, Treasurer of NSW, received on 21 May 2025.

#### **4.7 Correspondence to icare**

Resolved, on the motion of Ms Boyd: That the secretariat:

- contact icare to provide them with the opportunity to correct their answers to questions taken on notice received on 21 May 2025, and
- that the corrected version of the answers to questions taken on notice replace the original version.

#### **4.8 Consideration of Chair's draft report**

The Chair submitted his final report entitled *Evidence Consolidated Report for the Workers Compensation Legislation Amendment Bill 2025 – Report of the inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales*, which having been previously circulated, was taken as read.

Resolved, on the motion of Ms Boyd: That paragraph 1.15 be amended by omitting 'The Treasurer explained that the system' and inserting instead 'The Treasurer asserted in his explanation that the system'.

Resolved, on the motion of Ms Boyd: That paragraph 1.16 be amended by omitting 'The Treasurer explained that' and inserting instead 'The Treasurer asserted in his explanation that'.

Resolved, on the motion of Mr Tudehope: That paragraph 1.28 be amended by inserting 'despite objections from Opposition members' after the word 'The committee also agreed'.

Mrs Carter moved: That the following new paragraph be inserted after paragraph 1.42:

'SIRA gave evidence to the inquiry about its April 2024 Treasury Managed Fund Review Report. This can be found at Appendix X. That report made several recommendations to the Government of relevance to

the inquiry but there was no opportunity to seek information from the Government about whether those recommendations had been fully implemented'.

Dr Kaine moved: That the motion of Mrs Carter be amended by:

- a) omitting 'SIRA gave evidence to the inquiry about its April 2024 Treasury Managed Fund Review Report.' before 'This can be found in Appendix X' and inserting instead 'A Treasury Managed Fund Review was published in April 2024.'
- b) omitting 'but there was no opportunity to seek information from the Government about whether those recommendations had been fully implemented.'

Question put.

The committee divided.

Ayes: Ms Boyd, Mr D'Adam, Mr Donnelly, Dr Kaine, Ms Suvaal.

Noes: Mrs Carter, Mr Latham, Mr Tudehope.

Amendment of Dr Kaine resolved in the affirmative.

Original question of Mrs Carter, as amended, put and passed.

Mr Tudehope moved: That the following new paragraph be inserted after paragraph 1.47:

'No Exposure Draft of the proposed Industrial Relations Amendment Bill 2025 was provided to the inquiry, nor was any evidence given on the details of its proposed operation in relation to obtaining a finding of bullying or of sexual or racial harassment by the Industrial Relations Commission for the purposes of notifying a workers' compensation claim'.

Question put.

The committee divided.

Ayes: Ms Boyd, Mrs Carter, Mr Latham, Mr Tudehope.

Noes: Mr Donnelly, Mr D'Adam, Dr Kaine, Ms Suvaal.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mrs Carter moved: That the following new paragraphs be inserted after paragraph 1.71:

**'Gendered impact of proposed changes**

**1.72** Evidence to the inquiry suggested that the proposed changes to how psychological injuries are treated in the workers' compensation system would have a disproportional impact on women, including in relation to the proposed new approach to psychological injuries caused by sexual harassment.

**1.73** The AEU NSW Teachers Federation stated "The Federation cannot ignore the evidence that the NSW Treasurer's attack on mental health support is gendered. Of the Federation's approximately 60,000 members, 80% are women." [ FOOTNOTE: Submission 12, AEU NSW Teachers Federation, p 1.]

**1.74** The New South Wales Nurses and Midwives' Association advised that "Data from SafeWork Australia (2024) showed ... a disturbing gendered dimension where women are significantly more likely to be exposed to harmful behaviours at work, including violence, bullying and harassment. This reinforces the urgent need for strong protections and trauma-informed approaches in predominantly female workforces." [FOOTNOTE: Submission 38, New South Wales Nurses and Midwives Association, p 8.]

**1.75** Michael Whaites, Acting General Secretary, NSW Nurses and Midwives' Association, gave evidence that "85 per cent of people who suffer a psychological injury at work are women. We see the proposed changes as, quite frankly, abhorrent. There are systems of work within health, whether it is NSW Health or other healthcare providers, that are injuring nurses, midwives and carers, who are predominantly

women. This proposed legislation will exclude them from compensation.” [FOOTNOTE: Evidence, Michael Whaites, Acting General Secretary, NSW Nurses and Midwives' Association, 16 May 2025, p 22.]

**1.76** The Women's Legal Service NSW stated “We are gravely concerned that the proposed changes set out in the Bill to the way psychological injury is regulated in NSW will have a deleterious and disproportionate effect on women.”; and that “the requirement that employees must have a positive determination from “a Tribunal, Commission or Court” that “sexual harassment, racial harassment or bullying” has occurred prior to making a claim for psychological injury in the workplace ... will present an almost insurmountable barrier, especially for women, to obtain workers compensation for psychological injury.” [FOOTNOTE: Submission 30, Women's Legal Service, p 5.]

Question put.

The committee divided.

Ayes: Mrs Carter, Mr Latham, Mr Tudehope.

Noes: Ms Boyd, Mr D'Adam, Mr Donnelly, Dr Kaine, Ms Suvaal.

Question resolved in the negative.

Resolved, on the motion of Mr Tudehope: That paragraph 1.75 be amended by inserting ‘the financial sustainability of the NSW worker’s compensation system’ after ‘or provide thorough analysis of the bill’.

Mr Tudehope moved: That the following new paragraph be inserted after paragraph 1.75:

'In relation to several of the key provisions of the Exposure Draft, substantial evidence from witnesses, including experienced lawyers, psychiatrists and unions, suggested that the proposed changes were not evidence based, were likely to be unworkable and would have an adverse impact on injured workers. These provisions include:

- Changing the whole person impairment threshold for psychological injuries from 15% to 31%;
- Excluding claims for psychological injuries unless caused by a specified “relevant event”;
- Requiring a finding by a tribunal, commission or court, that bullying, sexual harassment or racial harassment had occurred before an initial notification of the injury could be made by the injured workers to the employer; and
- Giving the regulator, the State Insurance Regulatory Authority, a new role in managing whole person impairment assessments'.

Question put.

The committee divided.

Ayes: Mrs Carter, Mr Latham, Mr Tudehope.

Noes: Ms Boyd, Mr D'Adam, Mr Donnelly, Dr Kaine, Ms Suvaal.

Question resolved in the negative.

Mr Latham moved: That the following new paragraph be inserted after paragraph 1.76:

'While various stakeholders were able to express their views about the Treasurer's proposals at the one-day hearing on 16 May and in their submissions, the Committee itself did not have enough time and opportunity to seek expert opinion on three vital matters:

1. The origins of the rise in psychological injuries, both as a question of medical science and social change. The Parliament needs to have an understanding of this matter in protecting the NSW workers compensation system from fraud and excessive legalism and cost, thereby minimising premiums while preserving justice for workers.

2. How international bodies like the World Health Organisation (WHO) categorise mental injuries, as perhaps these categories can be used in containing the escalating costs and premiums (public and private sector) of the NSW system.
3. The Australian interstate experience in dealing with this issue, as it appears that NSW is the last State to act. The Treasurer is following elements of the reforms in Queensland and South Australia (the so-called inclusion model), while in March 2024 the Victorian Labor Government legislated a different approach to cost containment through an 'exclusion' model. It is essential that NSW learn from these varying experiences interstate, in their strengths and weaknesses.

The Committee regrets the faulty process by which it has been unable to study, report and recommend on these relevant interstate and international matters'.

Question put and negatived.

Mr Latham moved: That the following new paragraph be inserted after proposed paragraph 1.77:

'Given the deficiencies in the Committee reporting process, and recognising that the Committee's members have strong views and valuable insights into the proposed workers compensation reforms, the Committee encourages its members to express their policy views in Dissenting Statements. This way, the work that went into the 16 May hearing and reading of submissions to the inquiry will not be totally wasted. In the circumstances, the Committee will allow these statements to be a maximum of 2000 words, rather than the usual 1000'.

Question put and negatived.

Mrs Carter moved: That the following new paragraph be inserted after paragraph 1.76: 'The Committee acknowledges that this report contains no discussion of the evidence provided on the hearing day. Such discussion – which could have highlighted the central themes emerging from this evidence – was deliberately omitted as the time frame for reporting did not allow a fair consideration of this evidence'.

Question put.

The committee divided.

Ayes: Ms Boyd, Mrs Carter, Mr Latham, Mr Tudehope.

Noes: Mr D'Adam, Mr Donnelly, Dr Kaine, Ms Suvaal.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Ms Boyd: That paragraph 1.76 and recommendation 1 be amended by:

- a) omitting 'Workers Compensation Legislation Amendment Bill 2025 for introduction into the Parliament' and inserting instead 'final bill(s) as introduced into the Parliament'
- b) omitting 'Workers Compensation Legislation Amendment Bill 2025 is introduced in the House' and inserting instead 'final bill(s) is introduced in the House'.

Resolved, on the motion of Mr Tudehope: That

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, tabled documents, submissions, correspondence, and answers to questions taken on notice relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, tabled documents, submissions, correspondence, and answers to questions taken on notice related to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee;



- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat by 12.00 pm, Friday 23 May 2025;
- The secretariat table the report at 3.00 pm, Friday 23 May 2025.

Resolved, on the motion of Ms Boyd: That the committee thank the Chair, secretariat, Hansard and all staff involved in facilitating the inquiry.

**5. Adjournment**

The committee adjourned at 3.40 pm, until Friday 30 May 2025 (2024 Review of the Dust Diseases scheme - hearing).

Alice Wood  
**Committee Clerk**

## Appendix 17 Dissenting statements

### Hon Mark Latham MLC

In his Exposure Draft, Treasurer Mookhey is engaged in an exercise in economic rationing. He is trying to prevent the long-term collapse of the workers compensation system in NSW from the rapid proliferation of claims and expenses for psychological injuries. This is particularly a problem in the public sector (TMF) where such claims now represent 40% of the cohort (compared to 7% in the private sector).

Statewide, the number of psychological injury claims has doubled in six years; and also doubled in average cost (to \$288,500 per worker/patient in 2024/25). These injuries now represent 12% of total claims but 38% of the total cost, mainly because the system is not returning these workers to health and work. While 95% of physically injured workers return to work within a year, only 50% of mentally injured workers do the same.

This relatively new category of claims cannot not be allowed to overwhelm the traditional role of workers compensation in funding the consequences of physical injuries (which are verifiable in medical science).

The Treasurer's rationing method is to define psychological injuries in an 'inclusive' way (counting claims in, subject to tighter definitions) and paring back payment durations. The problem with this approach is that medicos and lawyers will adapt to any new definitions by simply reclassifying the meaning and impact of psychological injuries. Within the space of two decades, mental health in Australia has become a multi-billion dollar industry, subject to vast amounts of inexactitude, fraud and profiteering. Nothing in the Mookhey Bill will change that.

Unlike physical injuries, there is no X-ray for the human mind. Medical science knows less about the brain than any other part of the body or natural world. This inexactitude, in the way of any financial system, has led to significant amounts of fraud. Streetwise opportunists will say: If you're not pleading mental illness in the courts, schools and workplaces, you're the one who is mentally ill. In every town and suburb, you can find a doctor who will certify you as mentally unwell for work..

Governments have thrown vast amounts of money at the problem - a new manifestation of Say's Law, with supply creating its own demand. The real problem is where the money is going. Longstanding, serious mental illnesses, such as clinical depression and schizophrenia, remain under-funded, while the new generation of 'social injuries' soak up most of the system.

What is a social injury? These occur in the social relationship between people: where feelings, emotions, self-esteem and morality are damaged. The human traits of resilience and determination are set aside, as anxiety and trauma are said to take hold. Anxiety (worrying too much) used to be seen as a normal part of life. Now it's a compensable condition; part of the medicalisation of normality.

Where have these social injuries come from? They are political, not accidental.

In its self-image, Australia has changed from a nation of tough, resilient Anzacs to a snowflake society of victims. This can be seen in the rise of identity politics, cancel culture, trigger warnings, unconscious bias, workplace Broderickism, LGBTQIA+ pleading, colonisation impacts, hidden disabilities and welfare dependency.

Hurt feelings, offensive words, micro-aggressions, workload stress and anxiety now form the basis of workers compensation claims. There is no end to the inventiveness of medicos in developing new forms of trauma. The latest is called 'inherited trauma', through the study of epigenetics. This means people can be born traumatised, with the past experience of their ancestors (suffering from colonial, sexual, racial and other prejudices) hardwired into their existence. Workplace aggravation of this trauma is likely to stimulate new injury claims.

There's a reason why the NSW public sector is more prone to psychological injury claims than the private sector. Ministers and managers have been running political programs in the workplace to not only tell public servants they could be victims, but they should be. Starting with the Jim Betts era, I have listed in the House the 30 woke programs of this genre.

The NSW public sector has become a woke political indoctrination factory to the point of unreality. The Health Secretary, for instance, cannot say what a woman is (even though she is one). From top to bottom, this type of identity confusion is creating victimhood with its consequent surge in psychological injury claims. Hurt feelings are everywhere. In particular, standard workplace disagreements are being monetarised into bullying and harassment claims.

For the government, as an employer, the wounds are self-inflicted. Woke social change is not cost-free. The Treasurer has quantified the financial cost and implications of these snowflake political programs weakening the State's workers compensation system.

In these circumstances, the only effective way of containing the system's costs is to ration by way of exclusion: to omit certain (social) injuries and workplaces. This is the best safeguard against fraud and excessive legalism. The Victorian Government has shown the way forward with its reforms.

I support the following legislative changes:

1. Adopting the World Health Organisation (WHO) classification of eight types of Mental Disorders: Clinical Depression, Post-Traumatic Stress Disorder (PTSD), Anxiety, Bipolar, Schizophrenia, Neurodevelopmental, Dissocial and Eating Disorders; and making only the first two claimable for workers compensation. That is, the definition of workplace psychological injuries should be by clinical classifications.
2. Ensuring that a worker's mental injury or aggravation of that injury is caused directly by their work employment. The funds should not be expected to pay for pre-existing conditions or side-effects.
3. Other than for First Responders, trauma should not be claimed if the mental injury is caused from typical workplace events that are reasonably expected to occur in the conduct of a worker's duties.

4. Bullying and Harassment should be defined as: The persistent abuse of a position of workplace power and authority to threaten, intimidate or torment a worker in a way not related to the reasonable exercise of workplace duties.

## Hon Susan Carter MLC

The Exposure Draft: Workers Compensation Legislation Amendment Bill 2025 proposes changes to how psychological injuries are to be treated in the workers' compensation system. We heard that these changes would disproportionately impact women. Good reform should be gender neutral. It certainly should not disadvantage women *vis-à-vis* men – as these 'reforms' appear to do.

Uncontested evidence about the disproportionate impact on women was presented in several submissions.

The AEU NSW Teachers Federation stated:

*The Federation cannot ignore the evidence that the NSW Treasurer's attack on mental health support is gendered. Of the Federation's approximately 60,000 members, 80% are women.* [ Submission 12, p.1]

Amber Flohm, Deputy President, NSW Teachers Federation, gave evidence to the inquiry about “*a teacher in her thirties who was repeatedly sexually harassed at work and has an accepted workers compensation claim for a psychological injury. She continues to access treatment and engage with mental health professionals but is significantly injured and currently has no capacity to work.*”

The Government's proposed new approach to psychological injuries caused by sexual harassment and by bullying would require this teacher – and others like her – to first prove her claim in a (yet to be established) tribunal before she could access financial support and medical treatment. Ms Flohm testified that: “[*She*] ...*would not have been able to use the Government's proposed bullying and harassment jurisdiction ..., because [she is] ...just not well enough.*” [Transcript, 16 May 2025, p.23] But without proving her claim first, this teacher would have no access to financial support and medical treatment while she engaged in the recovery process. This is inconsistent with what Ms Flohm expresses as the “*aim... of all parties... to return the teacher to work when ... well.*” [Transcript, 16 May 2025, p.23]

In the absence of a draft Bill to establish the proposed bullying and harassment jurisdiction in the Industrial Relations Commission, or even any evidence as to how this would work in practice, this raises a real concern that women who experience a psychological injury caused by sexual harassment many never notify a claim as the challenge of commencing a case against the perpetrator is too overwhelming.

The NSW Nurses and Midwives' Association advised that:

*“Data from SafeWork Australia (2024) showed ... a disturbing gendered dimension where women are significantly more likely to be exposed to harmful behaviours at work, including violence, bullying and harassment. This reinforces the urgent need for strong protections and trauma-informed approaches in predominantly female workforces.”* [Submission 38, p.8, para 44].

Michael Whaites, Acting General Secretary, NSW Nurses and Midwives' Association, gave evidence that *"85 per cent of people who suffer a psychological injury at work are women. We see the proposed changes as, quite frankly, abhorrent. There are systems of work within health, whether it is NSW Health or other healthcare providers, that are injuring nurses, midwives and carers, who are predominantly women. This proposed legislation will exclude them from compensation."* [Transcript, Hearing 16 May 2025, p. 22]

Mr Whaites clarified and expanded this evidence in answers to question on notice, stating:

*During the hearing a question was put regarding gender. In my response I stated that 85% of psychological injuries occurred to women. This figure ought to have been 83%, it relates to the odds of women claiming psychological injuries compared to men.*

*Nationally, Safe Work Australia reports that 57.8% of serious claims for mental health conditions were among women. NSW Government is the largest employer in the Southern Hemisphere. For both Health and Education, two of the largest portfolios, women represent the majority of the workforce. For nurses, midwives and carers, the second highest cause of psychological injury is work pressure (workloads and work overload) at 28%. Removing workloads as a compensable cause for psychological injury, and raising the WPI to 30%, will have a detrimental impact on the rights of women at work.*

The Women's Legal Service NSW stated:

*We are gravely concerned that the proposed changes set out in the Bill to the way psychological injury is regulated in NSW will have a deleterious and disproportionate effect on women.*

and that

*the requirement that employees must have a positive determination from "a Tribunal, Commission or Court" that "sexual harassment, racial harassment or bullying" has occurred prior to making a claim for psychological injury in the workplace ... will present an almost insurmountable barrier, especially for women, to obtain workers compensation for psychological injury.* [Submission 30, p.5]

As a community we are engaged in building a safer and more respectful community for women. However, the changes proposed appear to be moving in the opposite direction.

Trent Curtin, Acting Deputy Secretary, SafeWork NSW, told the inquiry that *"Since 2023 we've conducted statewide awareness-raising campaigns, released a code of practice for sexual and gender-based harassment, and published a suite of resources to help businesses take proactive action to address this harm."* [Transcript, Hearing 16 May 2025, p. 87]

As commendable as an awareness-raising campaign may be, it is insufficient if women are denied access to effective support for recovery from a psychological injury incurred as a result of workplace

harassment or bullying by setting the bar to access these supports at an unrealistically high level – as many witnesses indicated it would be if these changes are implemented.

Before changing criteria for financial and medical supports for workers who are psychologically injured in the workplace, more consideration needs to be given to the disproportionate adverse harms such changes will impose on women, as well as to the adverse impacts on all workers with a psychological injury.

Both business and unions agree that the workers' compensation system is under strain and needs repair. As Angus McFarland, Secretary, Australian Services Union NSW/ACT out in his opening statement, *"We are up for reforming the system - but it must be done through a considered independent review that takes the time to get it right, so that no one is left behind."*

I also fully endorse the dissenting statement of my colleague the Hon Damien Tudehope MLC.

## **Hon Damien Tudehope MLC**

The Committee was requested by the Treasurer on 8 May 2025 "to inquire into ... the overall financial sustainability of the NSW workers' compensation system; and the provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025"; and to report by 23 May 2025 "In order that the findings of this review can be considered before legislation can be introduced on Tuesday 27 May 2025."

This timetable reveals the farcical nature of the inquiry and its political motivation. No reason was given for the need for the legislation to be introduced on 27 May 2025.

The Treasurer's timetable, with a one-day hearing, adopted by the Committee despite the objection of Opposition members, has proved to be grossly inadequate.

In relation to "the overall financial sustainability of the NSW workers' compensation system" while evidence was received about the challenges both to the Treasury Managed Fund and to the Nominal Insurer, the inquiry did not receive any modelling on distinct elements of the Exposure Draft (despite requesting this), let alone any evidence about other possible approaches to improving the financial sustainability of the system. It therefore could not weigh these against reducing support for workers with a psychological injury as the main way of reducing the overall cost of the system.

Consequently, the inquiry could only focus on the Exposure Draft.

A broad independent review is needed to identify the best path to reform and financial sustainability.

The Exposure Draft includes proposed amendments to Acts, which are relevantly the responsibility of the Minister for Customer Service and Digital Government. The failure of the Minister to attend the inquiry, as well as the prominent role taken by the Treasurer, suggests the driving force behind the Exposure Draft is to address fiscal and budgetary concerns. There was no evidence that due consideration has been given to the impact on injured workers of the proposed changes. The inability to question the responsible Minister did not help allay this concern.

In relation to several of the key provisions of the Exposure Draft, substantial evidence from experienced lawyers, psychiatrists and unions suggested the proposed changes were not evidence based and would have a profoundly adverse impact on injured workers.

- **Changing the whole person impairment (WPI) threshold for psychological injuries from 15% to 31%.**

There was no evidence provided to the inquiry as to why there should be a higher WPI threshold for psychological injuries or why the threshold should be raised to 31%.

Data from icare showed that only 24 (1%) of the 2000+ workers with a psychological injury and a WPI of 15% or more would meet the proposed new WPI threshold of 31% cutting off hundreds of injured workers each year from current supports.

There was substantial persuasive evidence from psychiatrists, lawyers and unions based on experience with the workers compensation system (including 5 case studies presented in correspondence from Mr Craig Tanner), that ending financial support at 130 weeks and support for medical treatment 1 year later for psychologically injured workers with a WPI of up to 30%, as well as preventing claims for damages based on negligence, would have a severely adverse impact on the well-being of these workers.

- **Excluding claims for psychological injuries unless caused by a specified “relevant event”.**

This provision would create a real gap between the comprehensive approach to psychosocial hazards identified by SafeWork Australia as potentially leading to psychological injuries and which NSW employers have a duty to address under amendments to the Work Health and Safety Regulation 2017 introduced by the former Coalition Government in 2022.

No justification was provided to the inquiry for this significant restriction on claims for psychological injury.

- **Requiring a finding by a tribunal, commission or court, that bullying, sexual harassment or racial harassment had occurred before an initial notification of the injury could be made by the injured workers to the employer.**

Despite the stated intention of the Government to introduce a new bullying and harassment jurisdiction at the Industrial Relations Commission, without which the new gateway provision would not be available for State system workers in relation to bullying as there is no existing jurisdiction empowered to make a finding of fact on a bullying claim for such workers, the inquiry was not provided with a draft of that Bill, nor even any outline of its proposed provisions. The Minister for Industrial Relations was unable to inform the inquiry when it would be introduced, telling the inquiry dismissively “*I don’t work on your timetable.*” [Transcript, Hearing 16 May 2025, page 6]

There was no evidence provided as to what the injured worker was expected to do while waiting for the finding of the tribunal, commission or court.

There was evidence provided that this delay was likely to cause an increased level of injury in some cases; that many workers with a psychological injury would not have the personal or financial resources to pursue a claim in the judicial system; and that many claims would fall outside the relevant jurisdiction and could never be heard (for example, the Fair Work Commission will not hear a bullying claim if the alleged perpetrator has been removed for his or her position).

- **Giving SIRA a new role in managing whole person impairment assessments.**

Prior to presenting the inquiry with the Exposure Draft of the Bill there was no indication from the Government that a major change would be made to the process of obtaining a WPI assessment physical injuries as well as psychological injuries.

Witnesses raised objections to the new role for the State Insurance Regulation Authority (SIRA) in choosing who would provide a whole person impairment assessor for a single assessment if the injured worker and the insurer could not agree on an assessor. This is particularly concerning while the Minister for Customer Service and Digital Government has not yet released a report into SIRA's complaint handling procedures which the Minister received in December 2024.

I also fully endorse the dissenting statement of my colleague the Hon Susan Carter MLC.





