

**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.

Mary¹ 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'.² 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'.³ 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.

¹ Pseudonym.

² Ibid.

³ 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.

David⁴ 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.

Michael⁵ 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.

⁴ Ibid.

⁵ Ibid.

Responses to questions on notice

1. Question from The Hon. Damien Tudhope regarding whether:⁶

‘[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*.’⁷ 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,⁸ 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.⁹
- 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.’¹⁰

2. Question from The Hon. Mark Latham regarding whether:¹¹

‘[H]ave you got costings of their net benefit and impact on both the TMF [Treasury Managed Fund] and the Nominal Insurer?’

⁶ 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.

⁷ Workers Compensation Legislation Amendment Bill 2025 (NSW) s 8G.

⁸ Ibid, s 8H.

⁹ Ibid, s 8E(e)-(g).

¹⁰ Ibid, s 8E.

¹¹ 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.¹²

3. Question from The Hon. Damien Tudhope regarding whether:¹³

‘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:¹⁴

‘[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.

¹² 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.

¹³ 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.

¹⁴ Ibid, 28.

5. Question from Ms Abigail Boyd whether:¹⁵

‘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:¹⁶

‘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:¹⁷

¹⁵ Ibid, 34-35.

¹⁶ Ibid, 35.

¹⁷ 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:¹⁸

‘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:¹⁹

‘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:²⁰

‘[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:²¹

‘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?’

¹⁸ Ibid, 43-45.

¹⁹ Ibid, 43-45.

²⁰ Ibid, 46-47.

²¹ 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'*²² 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:²³

'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:²⁴

'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:²⁵

²² 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.

²³ 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.

²⁴ Ibid, 49.

²⁵ 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:²⁶

'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

²⁶ 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.²⁷

16. Question from The Chair whether:²⁸

‘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 Nanva whether:²⁹

‘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

²⁷ 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.

²⁸ 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.

²⁹ 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.*³⁰

18. Question from The Hon. Damien Tudhope regarding whether:³¹

‘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:³²

‘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:³³

‘[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:³⁴

³⁰ 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.

³¹ 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.

³² Ibid, 91.

³³ Ibid, 92.

³⁴ 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:³⁵

'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.'*³⁶ 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:³⁷

³⁵ Ibid, 57.

³⁶ 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.

³⁷ 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