

**INQUIRY INTO PROPOSED CHANGES TO LIABILITY AND
ENTITLEMENTS FOR PSYCHOLOGICAL INJURY IN NEW
SOUTH WALES**

Organisation: SDA NSW and ACT and SDA Newcastle and Northern Branch
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Joint SDA submission to the

**Inquiry into proposed changes to liability and
entitlements for psychological injury in NSW**

LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND JUSTICE

May 2025

SDA NSW Branch
Level 3, 8 Quay Street
Haymarket NSW 2000

Mr Greg Donnelly MLC

Committee Chair
Standing Committee On Law And Justice
NSW Parliament
6 Macquarie Street
SYDNEY NSW 2000

By email to:

RE: Inquiry into proposed changes to liability and entitlements for psychological injury in NSW

Introduction

The Shop, Distributive and Allied Employees' Association is one of the largest trade Unions in NSW with over 65,000 members. This is a combined submission of the Shop, Distributive and Allied Employees' Association NSW Branch and the Shop, Distributive and Allied Employees' Association Newcastle & Northern Branch ("the SDA"). The majority of SDA members are young people and women and there is also a large proportion who live and work in regional NSW. We are the union for workers in shops, warehouses, fast food, online retail, pharmacies and pharmaceutical manufacturing.

The retail industry is Australia's second largest industry employer, employing approximately 10% of the nation's labour force. Retail workers face a range of challenges in the workplace, including excessive workloads, understaffing, high levels of customer abuse and violence, low job control, and inadequate support. These issues are exacerbated by significant changes in technologies and processes which rather than augmenting and alleviating workloads produce unrealistic, unsustainable and damaging expectations. Recent SDA research reveals an industry under pressure from mounting psychosocial hazards leading to a higher risk of psychological injury.

The result is a volatile work environment where stress, burnout, and customer aggression are common. Our members were recognised as essential workers critical to the supply of daily essential items during the pandemic, but do not feel treated as essential when it comes time for respect, care or financial support.

We adopt and support the submissions and recommendations of Unions NSW in relation to the Exposure Draft of the *Workers Compensation Legislation Amendment Bill 2025* ("the Bill") and set out below additional comments and recommendations by the SDA.

SDA supports reform that prevents psychological injuries not changes to prevent claims

The NSW Treasurer recently stated "*The government will soon present to Parliament bills designed to curb the rising number of psychological injuries people are experiencing at work*". The NSW Treasurer in his "*Workers Compensation Ministerial Statement*" ("Ministerial Statement") 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.

The SDA welcomes the sentiment of curbing the number of psychological injuries but not artificially reducing the number of claims by restricting access to making a psychological claim.

The SDA would support a shift from a system that primarily deals with the aftermath of psychological injuries in the form of compensation to a preventative framework that prioritises the elimination or mitigation of risks to prevent injuries from occurring in the first place.

However, we are concerned that many elements from the Bill are not focused on preventing injuries from occurring but rather preventing claims being made. This will not address the root cause of the rising number of psychological injuries nor the ultimate need for the community to in some way care for, support and provide treatment for people with psychological injuries. Shifting injured workers from workers compensation to social security does not address the problem, it merely shifts a financial cost whilst potentially exacerbating a social and health cost to the community.

The SDA believes that to reduce the number of psychological injuries within a sustainable system requires a two-phase approach to reform on this serious issue:

- (i) Legislating a suite of preventative measures with sufficient time allowed for them to be evaluated as effective or not;
- (ii) Legislating an independent review of the sustainability of the scheme including the efficacy of the preventative measures implemented in Phase 1, the administration of the system and options to ensure long term treatment, care and support where needed.

The two-phase approach is necessary to ensure a proper process that will deliver a better and fairer outcome for workers, their employers and for Government while avoiding unintended consequences. The two-phase approach ensures any workers who may be injured, or their injury may manifest, during the implementation of preventative measures are not denied access to compensation.

Below we set out:

- A. Specific comments on some key issues arising from the Bill that need to be addressed or withdrawn;
- B. Preventative measures SDA recommends be adopted in any final legislation; and
- C. A proposal for ongoing review

A. Key issues

1. Definition of compensable injury

The NSW Treasurer in his Ministerial Statement claimed that *“unlike other states - we prefer an inclusive definition of psychological injury. Not an exclusive definition.”* Unfortunately, the effect of sections 8E and 8G in the Bill is far from being inclusive and will actively exclude many workers. The definition of a “relevant event” is unduly narrow and excludes many instances where genuine and serious psychological injury occur. Below are just two examples that are not exhaustive of the shortcomings of the definition:

- (i) Abusive communication from a “customer” may not fall within the remit of a relevant event. Customer abuse is at endemic levels across all service industries including retail and fast food. See Appendix 1 “Case Study 1 – CW” for a practical real life example of an SDA member who may potentially fall outside the “relevant event” definition, but even if they did would then fall well short of the proposed 31% WPI for ongoing treatment and support.
- (ii) Systematic over work, workload and excessive work demands are not included as a “relevant event”. The Aldi and Amazon effect is creating a psychosocial crisis in retail. The rise of Aldi and Amazon has intensified pressure across the Australian retail industry, leading other retailers to adopt aggressive cost-cutting models. Aldi’s low staffing and physically demanding workloads, alongside Amazon’s algorithm-driven micromanagement, have introduced extreme forms of labour intensity from opposite ends of the technological spectrum. In response other retailers cut staff, increase workloads, and import a Taylorist mentality into customer-facing roles, leaving workers physically drained and psychologically strained. A long term SDA member on the NSW mid north coast recently met with the NSW Branch Secretary. This member is normally a thoughtful, relaxed and happy person. As a result of unreasonable work demands, in March this year when they met the member was not their normal self but instead heavily medicated, unable to maintain a conversation, recall recent events with any clarity and appeared depressed. They would be excluded by this definition and proposed s148B Special Work Pressure Payment in no way adequately addresses this issue.

2. Require an order from a tribunal or court for claims of sexual harassment, racial harassment or bullying

The establishment of a bullying and harassment jurisdiction in the IRC NSW as a preventative measure would be welcome. However, to use such a jurisdiction, or the equivalent FWC jurisdiction, as a gateway to making a workers compensation claim requiring “*the worker provides a copy of the finding of harassment or bullying made by the tribunal, commission or court*” is inappropriate and likely to further damage the worker forced to go through this process for support. For SDA members who would have to use the FWC it would take a minimum of 16 weeks to obtain an order, the system would be likely to be flooded with applications and the NSW Government has no ability to resource this jurisdiction to meet such an increase. This proposed change is impractical and likely to further exacerbate the time required for workers to recover. This proposal is not a trauma informed way to assist victims of sexual harassment or other forms of harassment or of bullying.

The imposition of a new gateway (hurdle) through which already traumatised workers must traverse before they are able to apply for or access benefits under the system is unnecessarily cruel and may retraumatise workers who have already suffered. It further raises issues of relative unfairness and the additional financial and legal costs borne by the worker to ensure they secure the relevant finding before they are permitted to make a workers compensation claim.

3. WPI thresholds

The proposal to increase the WPI thresholds to 31% on the PIRS scale to be eligible for ongoing weekly payments, lump sum payments or negligence will effectively exclude all SDA members who are currently entitled to these entitlements. An experienced workers compensation solicitor who represents SDA members has reviewed his files for the last 20 years and has only had one client who exceeded 30% on the PIRS scale. See Appendix 1 “Case Study 1 – CW” and Appendix 2 “Case Study 2 – DH” for practical real life examples of SDA members who exceed the current thresholds who would fall well short of the proposed 31% WPI for ongoing treatment and support. Changing the threshold will not change the fact that these members will need ongoing care and support, it will just reduce the support available.

The proposal to remove medical support 12 months after weekly payments cease will not reduce the need for medical treatment. There are already excessive waiting times to access psychologists and psychiatrists. These changes will push injured workers from their health providers back on to the already stretched public mental health system. Whilst we oppose any changes to WPI thresholds we strongly recommend that if any change is made that ongoing medical support is not made dependent on any changed WPI threshold.

The SDA also supports all of the comments of the Unions NSW submission.

B. Preventative measures to implement to reduce psychological injuries

If the primary aim of the reform is to reduce the number of psychological injuries rather than restricting access to making a psychological claim there is a need to introduce preventative measures.

The retail industry is currently stretched to breaking point with high levels of reported psychosocial hazards. The SDA has conducted extensive research on the key psychosocial risks in the retail industry and measures to eliminate or mitigate the risks.

Retail workers face excessive workloads, understaffing, customer aggression, and inadequate managerial support, worsened by rapid workplace changes. These issues contribute to high stress, burnout, and mental health struggles.

To address key psychosocial risks and curb psychological injuries in the retail industry the SDA advocates for the following preventative measures to be legislated in phase 1 of any reform aimed at curbing the number of psychological injuries:

- a) Legislate for the Industrial Relations Commission of NSW to have the power to conciliate and arbitrate unresolved WHS disputes referred to it on application by a registered organisation. Such jurisdictions exist in Queensland (<https://www.worksafe.qld.gov.au/laws-and-compliance/dispute-resolution>); and in South Australia (<https://www.safework.sa.gov.au/workers/whs-issue-resolution#:~:text=If%20the%20dispute%20is%20urgent,the%20Registry%20on%20177%203500>).
- b) Reinstate the standing for registered organisations to prosecute for breaches of WHS laws, including breaches of arbitrated outcomes of WHS disputes, before the NSW Industrial Court.

- c) Implement Recommendations 1, 2, 3, 5, 6, 7, 8 and 13 of “*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. These recommendations address issues around workplace surveillance; work intensification; the allocation of work by software/platforms/code/algorithms/apps; and automation.
- d) Legislate Workplace Protection Orders modelled on ACT laws [see s32 *Personal Violence Act 2016 (Australian Capital Territory)*].
- e) Legislate further controls on the storage and retail sale of bladed items.
- f) Review and reform the current working with children checks system to include WWCC in the retail industry to protect young workers from the risk of working with known offenders.
- g) 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.

The SDA also supports all of the recommendations of the Unions NSW submission.

C. Ongoing review

Most stakeholders accept the need to have a sustainable system. The SDA supports an independent review of the scheme that is focused on ongoing reform that prioritises the prevention of injuries, the return to work of injured workers and long term care and support where needed.

A legislated review must avoid the unfair consequences suffered by workers in previous reviews such as the Coalition Government’s harsh 2012 cost cutting measures. An Independent Review should include terms of reference to look at the design of a system that deals with psychological injuries which:

- (i) is economically sustainable;
- (ii) addresses administration of the system in an efficient manner;
- (iii) deals with psychological injuries in a way that:
 - maximises prevention;
 - maximises injured workers return to work; and
 - promotes a process that does not aggravate the underlying injury;
- (iv) considers the most appropriate means of providing long term support to people with a psychological injury; and
- (v) reviews preventative measures implemented and considers further preventative measures.

The Independent Review should have a set time period to produce a final report, however where specific opportunities for reform are identified prior to the final report, the Independent Review should also be able to bring forward recommendations and a supporting paper (ahead of a final report).

Conclusion

SDA supports reform that prevents psychological injuries and prioritises return to work but not changes that prevent claims and leave injured workers without medical care or financial support.

The current proposed changes have been rushed. A proper process will deliver a better and fairer outcome for workers, their employers and for Government while avoiding unintended consequences.

The SDA believes a phased approach will provide:

- a shift to a preventative framework; and
- a detailed review of all aspects of the system to provide considered proposals for systemic reform with the care and support of workers with psychological injuries at the forefront whilst avoiding unintended consequences.

The SDA looks forward to engaging constructively with the Parliament on this very important public policy issue.

David Bliss
Branch Secretary
SDA Newcastle & Northern

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APPENDIX 1

CASE STUDY 1 - CW

Circumstances of Injury

On 24 April 2020 CW a female, at 7.00pm, was wheeling a cage down an aisle in a store in regional NSW, when a customer covered in tattoos from the eyes down said to the worker (CW):

'Are you going to move that and its f...ing cage?'

'Are you going to move the f...ing cage you dumb f...ing c...'

'F...wit'.

The worker reported the incident to her manager.

Following this incident, the customer then put threatening comments on Facebook and another employee the store informed the customer of CW's identity.

The customer was not banned or reprimanded and continued to come into the store. When the customer would come into the store CW was directed to go out the back to avoid interaction. CW continued working however eventually she went off and has not returned to work.

Ongoing symptoms

Initially CW was treated by her general practitioner and then a psychiatrist and she is continuing to take anti-depressants and sees a psychologist every 4-6 weeks.

Symptoms include not wanting to leave her home, shaking and heart palpitations whenever she does leave her home. Any social interactions exacerbate her symptoms and she avoids family events including weddings and funerals.

CW abuses herself three or four times a week and although she occasionally cooks, often eats frozen and defrosted meals prepared by her partner. CW rarely goes to any social or recreational activities and only when prompted by a family member.

CW is able to travel to local areas without a support person but anything beyond that she needs to be accompanied by her partner or close family member. CW has not worked for four years and has persistent low mood and anxiety. She has been assessed by the Approved Medical Specialist, appointed by the Personal Injury Commission, as being totally incapacitated.

Whole person impairment

CW was assessed by the Personal Injury Commission Approved Medical Specialist, a truly independent doctor, as being 19% whole person impaired and totally incapacitated.

APPENDIX 2

CASE STUDY 2 – DH

Circumstances of Injury

On 21 October 2021 DH, a female, was taking her break from work at a store in regional NSW. She was walking to take her break outside the store when two customers who were standing at the smoke counter recognised her, allegedly due to knowing DH's son, who the customers greatly disliked. The customers called to her, but she ignored them and continued outside.

The two customers followed DH outside, where they physically assaulted her, strangling and punching her until being separated by bystanders.

Following this, the customers in question continued to attend the store, where they would intimidate DH. DH requested that the store manager ban them from the premises, but they refused to do so, despite a Personal Violence Order (PVO) being taken out against the perpetrators. As a result, DH was required to continue working at the store, constantly anxious that the perpetrators may appear again at any time.

DH was simply advised to avoid the customers if she saw them.

Ongoing symptoms

DH attends upon a general practitioner, a psychologist and a psychiatrist for treatment of her ongoing depression and anxiety. She takes anti-depressants on a daily basis.

Symptoms include greatly decreased motivation to attend to her own appearance, failure to eat for up to several days on end, anxiety attacks when leaving her home, inability to perform shopping for herself, inability to watch violent movies or television shows, inability to perform her pre-injury work and difficulties with sleeping.

Whole person impairment

DH is awaiting assessment by an IME in the coming months, but we anticipate that she will receive an assessment of whole person impairment of between 18–25%.