

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

Organisation: Mental Health Coordinating Council (MHCC)

Date Received: 14 May 2025

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The Hon Mr Greg Donnelly, MLC
The Director, Standing Committee on Law and Justice

**Subject: Proposed changes to liability and entitlements for
psychological injury in New South Wales**

Dear Mr Donnelly,

Mental Health Coordinating Council (MHCC) is the peak body largely for community-managed mental health organisations (CMOs) in New South Wales (NSW) and is a registered training organisation. We mostly represent community-based, not-for-profit/non-government organisations who support people living with mental health and psychosocial challenges. MHCC provides policy leadership, promotes legislative reform and systemic change, and develops resources to assist community-based organisations build their capacity to deliver quality services informed by a human rights-based, trauma-informed, recovery-oriented practice approach.

We also work closely with our members to present their funding and operational concerns to governments. One matter causing considerable alarm throughout our membership and the entire not-for-profit sector is the need for reform in relation to significantly increasing workers' compensation premiums and psychological claims overseen by SIRA (State Insurance Regulatory Authority), which regulates the system, and icare, which manages the insurance and care services.

MHCC welcome the NSW Government's recent announcement indicating reform and the Government's intentions of supporting those who initiate a claim for psychological injury, without exacerbating their distress and causing a delay in their recovery.

In the first instance MHCC stress the importance of supporting people with legitimate claims in relation to psychological injury. Prioritising prevention, workers compensation must address systemic obstacles leading to psychological claims and should propose improvements for recovery-focused responses that facilitate return to work. We are committed to upholding employees' rights to care, rehabilitation, recovery, and equitable compensation for workplace injuries. We look forward to working with Government to achieve the reforms necessary to ensure a sustainable system for employers, whilst upholding the genuine rights of these individuals.

We understand that key points from the NSW Treasurer's recent announcement include:

- Reforms that aim to prevent psychological injuries through workplace health and safety laws rather than relying solely on the workers compensation system, thereby establishing a psychological safety focus.

- A bullying and harassment jurisdiction that will require the NSW Industrial Relations Commission to handle bullying and harassment cases before they can proceed as workers compensation claims.
- New statutory definitions for "psychological injury" and "reasonable management action" will be established to provide legal clarity.
- Whole-person impairment thresholds will be aligned with standards already established in South Australia and Queensland.
- Anti-fraud safeguards similar to those in the NDIS will be adopted.
- Further responses to recommendations from the independent review of SafeWork NSW will be implemented.

We agree that these reforms go a long way to establishing a more sustainable and effective system for managing workplace psychological injuries in NSW. Nevertheless, the complexity of the issues requires us to draw your attention to specific details affecting the mental health not-for-profit sector that we are keen to highlight.

In relation to insurance and claims management, MHCC have been advised by our members for at least 3 years that their premiums and the experience of insurers has been a major challenge. In fact, premiums (including premium adjustments where applicable) are becoming so high that it is beginning to threaten the viability of some service delivery providers. We note that many of these service providers are funded by the NSW Government, and many do not maintain significant reserves.

Members had also reported that the Provisions in the *Workers Compensation Act 1987* that allowed for the excusal of claims in certain circumstances (i.e. s11A defences), such as reasonable actions of an employer and, notably, the commencement of disciplinary action, seem not to be appropriately considered. We note that if the IRC legislative interpretation of bullying and harassment changes considerably therefore broadening the scope of s11A, under a new statutory definition, and this may certainly assist employers in terms of reasonable management directives.

The sector is keen to raise a number of other issues that can be considered under the four headings identified as follows:

1. Liability and Claims Processing

- The liability decision window of seven days is too narrow. This provides insufficient time for insurers to make an informed determination on liability, including considering submissions from employers.
- There have also been many reported cases of no submissions being sourced from employers. This must be rectified.
- Workers' compensation certificates are often not completed correctly or signed, but are accepted.
- No penalties exist for employees providing false/misleading information about their injury/claim, so there is no measure serving as a deterrent.

2. Premiums and Reporting

- There is a general understanding that the Workers Compensation Industry Classification (WIC) rates are designed to most closely reflect a business risk profile based on the predominant business activities and are assigned by icare in accordance with the provisions set by SIRA in its Market Practice and Premium Guidelines.

- There is also clarity that premiums are calculated by taking an employer's industry classification rate and multiplying it by the wages (*or estimated wage figure that is based on the previous actual wage declarations the employer has submitted for prior policy periods*) paid, known as average performance premium (APP). There is however no clear visibility or explanation for the significant premium increases.
- icare provides delayed reporting and expects employers to pay significant premium increases with little notice, imposing fines if conditions are not met.

3. Appeals and Oversight

- There is no truly independent appeals process. SIRA appears to lack the power to step in when poor claims decisions are enforced.

4. Medical Examinations and Pre-existing Conditions

- Independent Medical Examiners (IMEs) are difficult to access, often requiring months of waiting, and rarely review any worksite investigations.
- The approach towards exacerbation of pre-existing injuries discourages employers from hiring individuals with disabilities and mental health issues.

MHCC would appreciate the opportunity to sufficiently review the Exposure Draft which was only publicly released on Friday 9 May. Invitations for submissions were sent out to some organisations on Monday 13 May 2025 with the deadline for submissions required by 12pm Thursday 16 May 2025. We respectfully request additional time to review and consult members and to provide further commentary on these important issues and express our willingness to be consulted in relation to any further proposed legislative amendments.

We thank our members who were consulted about their concerns and generously provided details of their experiences over many years of operating in the sector.

Yours sincerely,

Dr Evelyne Tadros
Chief Executive Officer
Mental Health Coordinating Council