

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

**Organisation:** Health Services Union - NSW ACT QLD (HSU)  
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**Health Services Union NSW/ACT/QLD**

14 May 2025

The Hon Daniel Mookhey MLC  
Treasurer of New South Wales  
NSW Government  
52 Martin Place  
Sydney NSW 2000

Dear Treasurer,

**Re: Exposure Draft – *Workers Compensation Amendment Bill* and Psychosocial Reforms**

The Health Services Union (HSU) welcomes the opportunity to respond to the Exposure Draft of the *Workers Compensation Amendment Bill* (2025), which includes long-overdue reforms to better prevent, identify, and respond to psychosocial injury in the workplace.

Psychological injury is real. Its consequences are often invisible but lifelong, devastating the lives of workers and their families. Members across our union, including paramedics, hospital workers, disability carers, and aged care staff, are disproportionately affected. They report high rates of burnout, trauma, bullying and moral injury, often resulting in complex claims that are not easily resolved within a system designed around physical harm.

We acknowledge that the existing scheme and framework to deal with psychological injuries is deeply flawed. The retrofitting of psychological injuries to the same processes that exist for physical injuries was a terrible decision that has caused the suffering of thousands of workers across NSW, at extreme expense to the NSW Government and employers. The status quo as it currently exists is not an option.

We strongly support the NSW Government's renewed focus on prevention, as this must be the system's first priority. The proposed reforms to SafeWork NSW, new mental health programs, and a shift in the *NSW Industrial Relations Act* (1996) toward addressing bullying, harassment and discrimination are welcome steps in this direction. However, the system must also remain financially sustainable. The exponential growth in psychological injury claims places mounting pressure on the scheme's financial reserves, risking a future where the funds simply run out, leaving the most vulnerable workers without the support they urgently need.

HSU supports the creation of clearer thresholds, stronger early intervention powers, and clarified definitions around “reasonable management action”, but only if these measures are designed to ensure fair, evidence-based outcomes for workers. Any changes must not result in higher barriers for those with genuine and often complex mental health injuries to access the support they deserve.

The union also supports efforts to prevent misuse of the system, whether by individuals, corporations, or insurers. However, let us be clear: the greater systemic risk is not fraudulent claims, but unsafe workplaces that push more workers to the brink. Reforms must focus on holding employers to account, especially those who create or tolerate environments that harm their staff.

We also note the proposal to expand dispute resolution pathways. Timely, fair resolution of claims is essential to recovery. Too many of our members have languished in bureaucratic limbo, retraumatised by delays and adversarial tactics. A just compensation system must be accessible, transparent, and centred on the needs of injured workers, particularly the most vulnerable.

The HSU makes the following comments on elements of the Exposure Draft of the *Workers Compensation Amendment Bill* (2025):

- i. Under Part 4A, we recommend making allowance for time off work in the framework around a worker’s entitlement of an 8-week medical treatment period under “special work pressure” payment. Existing sick leave could be used initially but if this leave is exhausted there should be the possibility of further time off up to the 8 weeks considered as a medical treatment rather than compensation. We suggest that the entitlement be expressed more flexibly, allowing for case-by-case assessment by medical professionals in line with the enhanced guidelines for medical practitioners suggested elsewhere in the act. This approach would take into account the worker’s available sick leave and the specific circumstances of their work pressure.
- ii. Under Part 4A of the bill, we recommend expanding the definition of “special work pressure” to include a distinct category of “extreme work pressure.” This addition would ensure that workers experiencing severe and sustained work pressure are eligible for an 8-week compensation period, as outlined in the current proposed section.
- iii. We also recommend that workers be allowed to make more than one claim for work pressure, as the current one claim per worker threshold disadvantages long-term employees and is not reasonable considering that changes in management and practice within an organisation, as well as movements a worker may make within an

organisation, may leave them exposed to the differing management cultures which cause this injury. Allowing one possible claim per year would fully rectify this issue.

- iv. We recommend implementing a scalable framework to determine which psychological injury claims under bullying, sexual harassment and racial harassment require tribunal involvement. To ensure tribunal resources are allocated appropriately, injury claims that can be effectively resolved at a local level should not automatically proceed to a tribunal. In contrast, more serious cases, such as those involving severe bullying or significant work pressure, should be directed to the tribunal for resolution.

A scalable framework may be best related to guidelines issued to clinicians. Where a diagnosed injury is of a shorter length (between 0-12 weeks), guidelines for proof/acceptance could be left up to the insurer, with provision of evidence from the injured worker and employer and where behaviour is admitted, cases can be resolved with support and no further testing of evidence. When an injury is of a more significant nature, tribunal-based testing of evidence appropriate with the level of seriousness could be utilised. If an injury evolves to need a longer period of treatment and compensation, tribunal proceedings could be required at a later date.

- v. The work pressure elements of the act could also be integrated into this more flexible early-stage consideration of injury, that is not likely to result in longer term treatment or time off.
- vi. In almost all cases of psychological injury that go beyond a certain threshold, there will be significant issues in terms of management culture or worker mental health which affect resolution. In cases where management culture is the cause of unresolvable claims, they should be referred to SafeWork for corrective action. In cases where the worker is the cause of the injury being unresolved, removing the current perception test and replacing with a reasonable person test will effectively resolve many cases and ensure those cases which do require longevity are appropriately treated and compensated.
- vii. Regarding amendments to Division 3A, we note that the current framework does not clarify on whether a tribunal must substantiate a claim before it can proceed. We recommend that provisional liability is granted from the moment a claim is referred to

the tribunal to ensure delays in tribunal processes do not hinder treatment for psychological injury.

- viii. In recognition that workers who are presenting to the tribunal are already experiencing psychological distress, we recommend a tribunal structure as a simple, non-legalistic forum focused on assessing evidence and making quick determinations, without requiring legal representation or cross-examination.
- ix. The proposed changes, including controlling the nature of psychological injuries and improving management of entry points, are likely to reduce costs associated with psychological injury in workers' compensation. Therefore, increasing the Whole Person Impairment (WPI) threshold should be considered in the context of these changes. The system entry changes contemplated in the Act should first be implemented. These changes, along with the significant additional focus on prevention, will reduce the number of injuries continuing through to the WPI threshold point. The need for any change to the WPI threshold should then be examined in the context of the likely new and lower cost structure of the scheme.

If introduced, we recommend a staggered approach to any increase in the WPI threshold, allowing for regular reviews and adjustments through regulation. We fundamentally reject the idea that if a worker has been found to be injured psychologically at work, that support should cease if they do not meet the significant impairment required by a 30% threshold. Whilst this mechanism is neat in terms of the cost reduction it will provide to the scheme, it is heartless and will cause significant distress to the workers and families of people injured through no fault of their own, who are still suffering significant impairment.

If the costs of a system are unsustainable, rather than moving the goalposts to deny all support, other options which allow for treatment and support (and likely far better outcomes than the current scheme) should be considered. There is an opportunity to apply actuarial analysis and an opportunity to creatively consider clinical best practice in the treatment of psychological injury. We strongly advocate that the latter approach is adopted by the Labor Government.

Finally, we encourage the NSW Government to ensure that any reforms made today are accompanied by robust public data, strong compliance and enforcement, and ongoing consultation with workers and their unions. HSU is committed to working with the NSW Government and NSW Parliament to deliver a system that genuinely protects workers, one that is both preventative and sustainable, and which ensures support is there for those who need it most, now and into the future. Any changes should be subject to ongoing and fluid

review, with regular opportunities for amendment, as the system and framework for dealing with psychological injuries on a system-wide basis are relatively untested in any jurisdiction.

Yours sincerely,

A handwritten signature in black ink, which appears to read 'Gerard Hayes'.

Secretary – Health Service Union, NSW/ACT/QLD