

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

Organisation: Australian Association of Psychologists Inc

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Feedback to the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales 2025

14 May, 2025

Dear Legislative Council's Standing Committee on Law and Justice,

The Australian Association of Psychologists incorporated (AAPi) appreciates the opportunity to provide feedback on the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025. We have responded directly to the issues posed in the Terms of Reference where they are relevant for the psychology profession.

Quote from Press Release:

Chair of the committee, the Hon. Greg Donnelly MLC, said: "It is important to support workers today and to ensure that the workers' compensation scheme can continue to support workers for generations to come. We are concerned that the NSW workplace health and safety and the workers' compensation laws are failing to prevent psychological injuries and failing to treat those with psychological injuries quickly and efficiently. The committee welcomes this referral from the Treasurer and is eager to hear from stakeholders as to whether the proposed changes will go some way towards correcting and addressing this issue".

Response:

It is AAPi's perspective that workers' compensation legislation has long been unfit for managing psychological safety and psychological injuries in the workplace. The legislation has a history steeped in management of physical hazards and physical injuries, and since the introduction of psychosocial health and safety, psychological injuries have been addressed under similar requirements as physical injuries. This is akin to trying to fit a round peg into a square hole and has created problems with the way claims are assessed and managed, which contributes to poorer outcomes and increased costs of psychological injury claims. As such, we welcome reforms to better address psychological safety and psychological injury in the workplace, with a stronger focus on prevention and increased education and support for managing injuries when they do occur.

In principle, the reforms outlined in the explanatory notes are positive with regard to their addressing of injury prevention, management of psychosocial hazards in the workplace, and improving the management of psychological injury claims. However, AAPi have concerns with regard to the proposed amendments to the Workers' Compensation Bill and the potential for such changes to undermine the legitimacy of psychological health and safety in the workplace, to transfer the burden for processing and managing psychological injuries to other systems and increase negative outcomes for injured workers.

As stated above, we welcome reforms aimed at improving the prevention and management of psychosocial hazards in the workplace and reducing the incidence of injury. We also welcome reforms to increase the efficacy of assessing and managing psychological injury claims, for improved outcomes for both workers and employers. In principle, the strategies outlined in the explanatory notes are promising with regard to this. Specifically, we believe the following proposed reforms would be beneficial to improving the way psychological safety and injury are approached within NSW workplaces:

- 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 public sector 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.
- 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.

In addition to the above, we also support the following with additional clarification or input to ensure they achieve intended outcomes:

- Establish a bullying and sexual harassment jurisdiction in the IRC with new powers to address bullying and harassment in the workplace before injuries occur. We acknowledge that workplaces and employees face several challenges in navigating issues of bullying or sexual harassment, and we support any reforms to improve how these issues are navigated by all parties to reduce psychological injury. However, we would hope that the introduction of a bullying and harassment jurisdiction would not be used to delay or remove compensation afforded to workers who have been injured because of such behaviours. We would appreciate such a jurisdiction being in a role of supporting employers and workers to better distinguish bullying and harassment from interpersonal conflict and to manage risk around such behaviours at an earlier stage. We also support a jurisdiction that supports employers and workers in resolving conflicts more effectively, or determining if greater intervention is required. We would not support the establishment of a jurisdiction that then

removes bullying and harassment related injuries from the workers' compensation system. We also would not support the establishment of a jurisdiction whose role is to determine the legitimacy of an individual's psychological injury in response to bullying and harassment. We acknowledge there has long been difficulty in managing injuries related to bullying and harassment, and that often these cases have poorer outcomes in terms of return to work than other claim types. As such, we would be supportive of a jurisdiction that works in consultation with the workers' compensation system (where a claim is accepted) to support return to work outcomes whether that be through improved relationships between employer and worker, or through earlier identification of barriers to return to work which can then be addressed through supports provided under compensation (e.g. vocational rehabilitation).

- New mental health programs for small and medium-sized businesses. This is a welcome proposal as businesses need support to better manage the general mental health and wellbeing of their staff, in addition to implementing preventative measures with regard to psychosocial hazards. This falls within the scope of practice of occupational and organisational psychologists, and we would urge consideration to be given to providers outside of Black Dog Institute and Transitioning Well to also provide such support to businesses. Having a panel of providers who can provide workplace mental health programs and who can tailor these programs to individual business needs, is essential for improved outcomes in this area.
- A stronger definition of compensable psychological injuries so that workers and employers can better navigate the workers compensation system; and clarify reasonable management action. Again, we agree that definitions in relation to psychological injury, relevant events, and reasonable management action need to be clearer and more measurable within the legislation. As such, we would urge the adoption of definitions already established by WorkSafe Australia in the Model Code of Practice: Managing psychosocial hazards at work. This document is the culmination of decades of research and practical experience in relation to managing psychological health and safety at work, and definitions included in the Model Code of Practice, are widely accepted by Psychologists and other Health and Safety Professionals. They have also been adopted within other jurisdictions to create better clarity and more practicality within health and safety and workers' compensation legislations.

Overall, it is positive that the proposed reforms are seeking to more strongly address prevention of psychological injury by supporting employers to better understand and manage psychosocial hazards in the workplace and clarifying hazards such as bullying and harassment. However, we are deeply concerned by the proposed amendments to the Workers' Compensation Bill as they related to psychological injury. Specifically:

- Division 2, Section 8E and 8F – A Relevant Event: We hold concerns for the definitions outlined under these sections as they relate to sexual harassment, racial harassment, and bullying. We note that acts of harassment and bullying would only be considered “a relevant event” if determined as such by a tribunal, commission or court. We require clarification as to this requirement as it is unclear whether this means an individual is required to seek criminal, civil, or industrial action regarding their experiences prior to a compensation being considered, or, if this is referring to the evidence submitted with a claim being assessed against standards/definitions held by a tribunal, commission or court. If the former is intended, we would object to this being introduced as it would delay an individual’s access to necessary treatment and support due to the lengthy processes involved in tribunal, commission and court proceedings. We suggest further consideration of the definitions of harassment and bullying before finalising reforms. It is essential that these definitions are clearer and more measurable; while allowing for quick determination of claims so injured workers can gain access to necessary supports as soon as possible.
- Part 4A, Section 14B – Work Pressure: Regarding work pressure, we welcome support for workers who sustain an injury because of the pressures placed on them during their employment. However, we believe there should be a differentiation between general work pressures and those that breach IR and Workplace Health and Safety legislation. For example, work overload and excessive work demands are different from work pressure and should be treated accordingly. There should be clear definitions of mechanisms of injury related to excessive or unreasonable demands made by employers that fall outside of a worker’s standard terms of employment or usual scope of work. In addition, often injuries relating to excessive demands or work overload occur over a period of exposure. As such, the definition of “a relevant event” should reflect this.
- Section 151H – Permanent Impairment threshold: We strongly disagree with the permanent impairment threshold for psychological injury claims being increased to 31%. Workers’ Compensation legislation has long been lacking in its approach to psychological injury due to its original inception being for physical injury. As such, it has been a flaw of the legislation and broader compensation scheme that psychological injuries have been assessed by similar standards as physical injuries, something which has contributed to the poorer outcomes of psychological injury claims. However, the one area where both injury types are comparable is in the assessment of impairment. It is inconceivable to assess an individual with a psychological injury to a higher degree than someone with a physical injury. At present, an impairment of 15% requires an individual to be unable to function independently in almost all domains of life.

This review of workers' compensation legislation is welcome, and we appreciate the opportunity to provide this feedback on behalf of Australian psychologists who work with injured workers. We strongly encourage reforms to better address psychological safety and psychological injury in the workplace, with a stronger focus on prevention and increased education and support for managing injuries when they do occur.

Sincerely,

Katrina Norris
Vice President
Australian Association of Psychologists Incorporated