

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

**Organisation:** Public Service Association of New South Wales  
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## Submission to the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales

The Public Service Association of New South Wales (**PSA**) is the primary union within the New South Wales public sector, representing more than 40,000 members. We have a significant interest in the matters before this Inquiry.

In presenting our case, we draw upon data from several sources. The PSA's Work, Health, and Safety (**WHS**) professional, Marko Petrovic, has experience in the areas of WHS and Risk Management. If afforded an opportunity to do so, it is our intention to have Mr Petrovic attend a public hearing to support our submission.

### Executive summary

On 19 June 2012, then NSW Government Treasurer Mike Baird, in the second reading speech of the *Workers Compensation Legislation Amendment Bill 2012*, outlined the need to introduce urgently needed reforms to the New South Wales workers' compensation (**WC**) scheme. He claimed these were required to address the scheme's ongoing sustainability issues.<sup>1</sup> The purpose of the bill and its cognate, the *Safety, Return to Work and Support Board Bill 2012*, included the objectives of ensuring better protection for injured workers, saving businesses from unnecessary premium hikes, and getting the scheme back into surplus.<sup>2</sup>

The changes, which also were applied retrospectively, included cuts to weekly payments, cuts to medical expenses,<sup>3</sup> cuts to cover during travel<sup>4</sup>, and limits to occupational diseases.<sup>5</sup> These changes did not achieve the primary objective of reducing costs, with the WC deficit hitting \$3.6 billion as of 2025. The increasing costs, growing by \$1.8 billion in 2024 alone, are an indication that cuts to WC entitlements did not work towards increasing the sustainability of the scheme.

Further reforms in 2015 outline the current structure of the WC system arises from legislative changes in 2015 with the commencement of the *State Insurance and Care Governance Act*. This led to the formation of a tripartite approach with Insurance and Care NSW (**ICARE**), the State Insurance Regulatory Authority (**SIRA**), and SafeWork NSW (**SW**).<sup>6</sup> The WC system saw an additional agency established in 2021 in the form of the Independent Review Office (**IRO**).<sup>7</sup> The bulk of the work these agencies undertake was predominantly managed by WorkCover NSW prior to these reforms.<sup>8</sup>

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<sup>1</sup> Mike Baird, 'Second Reading Speech: Workers Compensation Legislation Amendment Bill 2012' (Parliamentary Speech, Legislative Assembly, 19 June 2012).

<sup>2</sup> Ibid.

<sup>3</sup> *Workers Compensation Legislation Amendment Bill 2012* (NSW) sch 4

<sup>4</sup> Ibid sch 4.

<sup>5</sup> Ibid sch 7.

<sup>6</sup> *State Insurance and Care Governance Act 2015* (NSW) sch 4 pt 2 div 1.

<sup>7</sup> *Personal Injury Commission Act 2020* (NSW).

<sup>8</sup> *State Insurance and Care Governance Act 2015*.

A decade later, on 18 March 2025, the current Treasurer Daniel Mookhey, echoed similar remarks to Mr Baird in 2012, of the need to introduce reform and address the WC schemes ongoing sustainability issues and the way the system deals with psychological claims.<sup>9</sup>

The proposed amendments are principally directed towards limiting the ability of workers who suffer primary psychological injuries to access workers' compensation and work injury damages. The reforms achieve this purpose by, saliently: narrowing the definition of '*psychological injury*',<sup>10</sup> limiting compensation to psychological injuries caused by certain '*relevant events*',<sup>11</sup> expanding the concept of '*reasonable management action*'<sup>12</sup> as a defence and by increasing the Whole Person Impairment (**WPI**) threshold.<sup>13</sup> The purpose and effect of the changes will be to drastically reduce the circumstances when a worker with a psychological injury can be compensated, and to place hurdles in the way of making a claim. This is the predominant method the Government proposes to improve WC sustainability.

These proposals come amid ongoing reform of the NSW Industrial Relations System, with future important and significant changes yet to be finalised in the areas of bullying and harassment, return to work provisions, and amendments to freedom from victimisation provisions. There has also been ongoing reform in the Work, Health, and Safety space, with SW finally becoming an independent Agency<sup>14</sup> and becoming increasingly focused on psychosocial hazards and risks. These changes are intended to improve return to work (**RTW**) rates and serve as injury-prevention measures, taking financial pressure off WC. Any proposed changes would be premature without allowing these reforms to come into effect.

None of the proposed actions reflect a shift towards early resolution of workplace psychological issues; the dominant effect would be to significantly hinder workers seeking, and being able to obtain compensation, for psychological injuries.

Our submission will outline our opposition to any wholesale changes to legislation which will adversely affect all public sector workers who proudly serve the State, many of whom risk their lives in protecting the public and deliver essential services. The changes to WC as proposed by the Government are premature given the significant reforms that should be undertaken in the regulatory framework, in addition to allowing recent reforms to take place which will relieve some of the strain that the system has been experiencing for decades.

Below we respond to the individual Inquiry Terms of Reference.

- a. The overall financial stability of the WC scheme has been an issue which has plagued successive governments. Successive amendments and policy decisions such as the cuts in 2012, and establishment of numerous agencies to administer the system have failed to

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<sup>9</sup> Daniel Mookhey (NSW), '*Workers Compensation Reform to Address Psychological Safety*' (Media Release, 18 March 2025).

<sup>10</sup> *Workers Compensation Legislation Amendment Bill 2025 (NSW)* s 8G.

<sup>11</sup> *Ibid* sch 1 s 8E.

<sup>12</sup> *Ibid* sch 1 s 11A.

<sup>13</sup> *Ibid* sch 1 ss 59A, 65A, 151H

<sup>14</sup> *Work Health and Safety Amendment (Standalone Regulator) Bill 2025 (NSW)*.

deliver on the goals of stemming costs of WC claims and abysmal RTW rates within the public sector. As referenced in the *SIRA Annual Report 2023-24*, the proportion of new psychological injury claims has also risen.<sup>15</sup> The report outlines that NSW Government workers are disproportionately affected, accounting for 44% of all new psychological injury claims in the NSW Workers' Compensation Scheme.<sup>16</sup> Their rate of psychological injury claims is significantly higher at 19% in comparison to 8.5% in the private sector.<sup>17</sup> SIRA data further shows that people with psychological injuries are less likely to return to work than those with non-psychological injuries. Specifically, by the 13-week mark in 2023-24, 79% of people with non-psychological injuries had returned to work, while only 41% of those with psychological injuries had done so.<sup>18</sup>

Despite falling RTW rates, SIRA has not seen an increase in funding, and a review of SIRA's handling of long-standing, unresolved complaints which was conducted in 2024 has yet to be made publicly available.

### **A case for better regulation?**

Both ICARE<sup>19</sup> and SW<sup>20</sup> have also been subject to reviews, with all recommendations yet to be implemented in full.

ICARE itself in a 2021 Independent review was criticised for its '*sloppy*' execution of its program,<sup>21</sup> including the disregard for establishing and following proper and prudent procurement practices.<sup>22</sup> Further, it is our understanding that SIRA is currently undergoing a '*functional review*' into its practices. After nearly 10 years of existence, it is struggling to clearly establish its mandate and reliance on SW inspectors to assist with investigations.

As it stands, the current system inherently relies on a standard of double handling when it comes to investigating and resolving issues within the WC scheme. An example of such can be found in the disparate rates of inspectors at SIRA and reliance on SW to assist in investigations. As it currently stands, SIRA has a total of seven inspectors in comparison to SW with over 300.

Despite this, it appears that the government does not seem to have the appetite to address these systemic issues and is instead focused on demonising injured workers and driving them towards financial destitution.

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<sup>15</sup> State Insurance Regulatory Authority, *SIRA Annual Report 2023–24* (Report, 2024) 36.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> The Hon Robert McDougall KC, *iCare and State Insurance and Care Governance Act 2015 Independent Review* (30 April 2021).

<sup>20</sup> The Hon Robert McDougall KC, *The Independent Review of SafeWork NSW: Final Report* (15 December 2023).

<sup>21</sup> The Hon Robert McDougall KC, *iCare and State Insurance and Care Governance Act 2015 Independent Review* (n 19) para 4.

<sup>22</sup> *Ibid* para 6.

- b. The increase in WPI for compensation after two-and-a-half years or for work injury damages<sup>23</sup> will, in effect, exclude all but the most catastrophically injured. The amendments will also have a particularly unfair effect on areas of the public service with high workloads and poor workplace culture or support as these psychological hazards would not be considered as '*relevant events*.'<sup>24</sup>

**Decorated for valour but left to fend for themselves.**

On 2 October 2015, a 15-year-old boy carried a S&W .38 revolver to the street outside NSW Police Headquarters at Parramatta, walking past an unarmed plainclothes female detective.

At 4:30pm, the assailant killed 58-year-old unarmed police civilian accountant Curtis Cheng as he was walking out of the building. The shooter remained at the scene and continued firing into the police headquarters. He was shot dead by one of three special constables who responded to the shooting.

This special constable, who is one of our members, was awarded the *New South Wales Police Commissioner's Valour Award* in recognition of their efforts, without any pomp and ceremony due to the requirement to suppress his identity for his safety.

This incident had a serious psychological impact on our member, and they have not been fit to return to work since the incident. Despite the seriousness of the incident and the recognition of the bravery of our member, they currently have a WPI of less than 20% and will likely never be able to return to work again due to crippling post-traumatic stress disorder. In fact, they face the likelihood that they will be medically retired within the next year or so, left to pick up the pieces without any further support from the WC system.

The PSA has had to step in and fill the gaps of the WC system to ensure that they, along with many others are not left behind. Champions of the State are treated as villains by the WC system.

- c. The proposed narrow definition of '*vicarious trauma*' will exclude members who suffer vicarious injuries without having a '*real and substantial relationship*' with the victim.<sup>25</sup> The requirement for members to establish that they have been the victim of '*repeated*' and '*unreasonable*' bullying<sup>26</sup> will also have a broad and adverse effect. Either because the conduct does not match the definition of bullying or because the member is not prepared to seek a finding of bullying from a court/commission/tribunal before making a claim.<sup>27</sup>

<sup>23</sup> *Workers Compensation Legislation Amendment Bill 2025 (NSW)* s 39A.

<sup>24</sup> *Ibid* s 8E.

<sup>25</sup> *Ibid* s 8H.

<sup>26</sup> *Ibid* s 8E.

<sup>27</sup> *Ibid*.

**Frontline workers make the ultimate sacrifice, but proposed changes to the WPI and vicarious trauma will leave them left behind.**

On the morning of Saturday 19 December 2020, a serious hostage incident occurred at the Mid North Coast Correctional Centre. Two inmates – aged 20 and 23 – armed with makeshift weapons, assaulted two Prison Officers, taking one Officer hostage.

Following extremely intense negotiations and assistance from the Corrective Services NSW (CSNSW) Special Operations Group, the situation was resolved around 6:00pm. The Officer was treated at the scene by NSW Ambulance paramedics before being taken to Port Macquarie Base Hospital for treatment for several serious injuries.

The inmates were arrested at Goulburn Police Station on 4 February 2021 and charged with the offences including; *‘Cause wounding/grievous bodily harm to person with intent to murder,’ ‘Detain person in company with intent to obtain advantage,’ ‘Cause grievous bodily harm to law enforcement officer reckless as to actual bodily harm,’ ‘Take/detain in company with intent to get advantage occasion actual bodily harm,’ ‘Assault law enforcement (not police) inflict actual bodily harm,’ and ‘Intentionally or recklessly destroy or damage property in company.’*

In a lengthy victim impact statement read to the NSW District Court, an officer described the long aftermath of the incident, which left him with permanent loss of feeling in his feet and hands, partial blindness, and major burns on his body. *‘I once believed that scars were tattoos that told better stories,’* The officer wrote.

*‘The scars that cover my body tell a different story: one of abuse and trauma and events beyond my control.’* The constant, writhing pain from his injuries made it impossible for him to touch anyone else and severely impacted the lives of his friends, family, and partner.

*‘The actions of others have sent both of our lives’ trajectories spiralling into a place no one should have to tread,’* he said. *‘Every day I deal with a mind-boggling sense of betrayal ... the people I trusted should not have had that trust.’*

Such extraordinary testimony led to Judge Wendy Strathdee being visibly emotional when reading the statement and thanking the officer for his bravery. Despite this ordeal, as it stands both officers would not meet the 30% WPI threshold as proposed.

This and the earlier example are two of many which reinforce the manifestly absurd outcome that will arise from raising the WPI threshold.

- d. Our members frequently report negative experiences, particularly when claims managers change frequently or when communication is poor. Some practices such as using *‘reasonable excuse’* provisions to delay payments<sup>28</sup> can still create unnecessary hardship

<sup>28</sup> Workplace Injury Management and Workers Compensation Act 1998 (NSW) s 268.



and delay recovery. The workplace environment in CSNSW and within other areas remains challenging, with a significant proportion of psychological injuries linked to workplace culture and interpersonal conflict.<sup>29</sup>

The case below highlights both the risks of adversarial and profit-driven claims management and the potential for system improvement through regulatory oversight and organisational reform. While past practices included collusion to deny claims and manipulation of evidence, recent reviews suggest these are no longer systemic. However, ongoing vigilance, transparent processes, and a focus on worker wellbeing remain critical to ensuring the workers compensation system functions as a genuine safety net.

#### **An example of a broken system: WC in CSNSW leads to multiple investigations.**

In 2015, three CSNSW employees lodged workers' compensation claims for psychological injury, alleging bullying and harassment at the Silverwater Correctional Facility. Their claims became the subject of a forensic investigation by KPMG, commissioned by ICARE, after allegations that CSNSW and QBE colluded to deny these claims.

The KPMG draft report uncovered a conversation where Corrective Services urged QBE to reject a claim so the worker would *'be left short of money and has to return to work due to... financial hardship.'* QBE responded affirmatively, indicating awareness and complicity in this approach.

The draft report also highlighted practices such as altered evidence, *'doctor shopping'* (using medical examiners likely to reject claims), missing files, and directed questioning of doctors to support claim denial.

Media at the time reported that the final KPMG report, however, was *'watered down,'* with several recommendations and findings-including the incriminating conversation-removed. The report stopped short of finding collusion, citing lack of documentation, but called for further investigation.

One of the affected workers, described feeling ostracised, unsupported, and left to *'rot'* by both his employer and insurer. The experience led to significant psychological distress and ongoing legal action for damages.

The investigation revealed that such adversarial tactics can worsen workers' mental health, delay recovery, and undermine trust in the compensation system.

The ABC *Four Corners* investigation found that financial incentives for insurers to close claims can drive questionable practices, such as prematurely terminating payments or disputing legitimate claims at key milestones (e.g., the 130-week mark).

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<sup>29</sup> State Insurance Regulatory Authority, *Corrective Services NSW review* (Report, Updated 4 March 2025) 4.4.3.

The Victorian Ombudsman and other inquiries have identified similar issues in other jurisdictions, suggesting broader systemic problems in Australia's workers' compensation schemes.

SIRA's 2020 investigation confirmed a '*concerted approach by CSNSW and QBE to dispute and deny the workers' claims*,' often defending claims on the basis that no work injury occurred or that the injury was a reasonable employer action.

Following these findings, SIRA conducted a broader 2022 review of 100 CSNSW claims.

This review found that opportunities for improvement remain, particularly in timely communication of injuries, use of surveillance and investigations (especially for psychological injuries), high turnover of claims managers, and record-keeping. The review highlighted that almost half of psychological injury claims were due to interpersonal conflict or workload issues, and nearly 40% were due to bullying and harassment.

- e. There are two key themes which are dominant here: the overriding need to maintain a sustainable WC system, and the ongoing erosion of injured workers entitlements rather than fixing a broken system. These proposed changes will not improve workers health but will instead exacerbate their injuries and cause further harm. This will also lead to more workers who will be unable to find a job and rely on government or other assistance, thus shifting the problem into another area such as health and social services which will inevitably cost the taxpayer much more in the long run.
- f. Proposed changes to defining a psychological injury will effectively carve out a substantial class of workers and create uncertainty. The proposed amendments would limit a primary psychological injury to be compensable if (1) the injury is caused by a '*relevant event*,' (2) there is a real and substantial connection between the event and the employee's work, and (3) the employment is the main contributing factor to the injury.<sup>30</sup>

The proposed changes are significant.

### **Changes to what is a '*relevant event*'.**

A '*relevant event*' is confined to specific events which include being the subject to an act of violence or indictable criminal conduct, witnessing a death or serious injury, experiencing '*vicarious trauma*,'<sup>31</sup> being subject to conduct that a court, tribunal, or commission has found to be sexual harassment, bullying or racial harassment.<sup>32</sup>

There are various difficulties with the '*relevant event*' definition, including:

<sup>30</sup> *Workers Compensation Legislation Amendment Bill 2025* (NSW) s 8G

<sup>31</sup> *Ibid* s 8H.

<sup>32</sup> *Ibid* s 8E.



1. the absence of common psychological hazards such as workload, poor work culture, lack of administrative or organisational support.
2. the requirement that a court or commission must make a finding of bullying, sexual harassment, or racial harassment to be entitled to claim compensation in respect of injuries caused by those events.
3. The definition of '*bullying*' being repeated unreasonable acts. Whether an act is '*unreasonable*' must be determined objectively (i.e., would a reasonable person with knowledge of all the circumstances consider the act unreasonable), rather than by reference to the worker's perception of the conduct.<sup>33</sup> The definition also ignores injuries caused by one-off unreasonable acts.
4. The definition of vicarious trauma requires the worker to have a '*close work relationship*' with the person who died or was injured. Close work relationship means a '*real and substantial connection*' which arose because of employment.<sup>34</sup>

Additionally, '*psychological injury*' is defined as a '*mental or psychiatric disorder that caused significant behavioural, cognitive or psychological dysfunction*'. That is, if the consequent behavioural, cognitive, or psychological dysfunction is not significant, the injury is not recognised as a psychological injury and would not be compensable.<sup>35</sup>

For example, would a government solicitor be considered to have a close work relationship with the victim of crime, or whether an emergency services officer would have a close work relationship with a volunteer?

- g. The definition of '*vicarious trauma*' warrants scrutiny. Instead of legislating '*vicarious trauma*', as the expression is ordinarily understood to mean (an injury caused by exposure to another person's trauma), the Government has proposed a unique and narrow form of vicarious trauma conditional upon a '*real and substantial connect*' between the worker and victim. The psychological hazard posed by deceased or injured persons exists irrespective of the relationship between the worker and the victim. This hazard is particularly prevalent in respect of public sector workers who are regularly required, in their service to the State, to interact with dead or seriously injured people or to view documents depicting dead or seriously injured people without having any real or substantial relationship with the person, including: correctional officers, school teachers, judicial associates, administrative and clerical officers, solicitors, tipstaves, sheriff's officers, court officers, regulatory inspectors, crime scene officers, special constables, nurses, RFS officers, and rail workers.
- h. The issue of greater uncertainty and exclusion manifests itself again in the proposed amendments regarding Reasonable Management Action. Section 11A is being amended

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<sup>33</sup> Ibid s 8E.

<sup>34</sup> Ibid s 8H.

<sup>35</sup> Ibid s 8G.

significantly. Currently, no compensation is payable where the psychological injury is ‘*wholly or predominantly*’ caused by a reasonable management action, with reasonable management action being confined to action by the employer with respect to ‘*transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers*’. The replacement of ‘*wholly or predominantly*’ to ‘*significantly*’ would, on the face of the amendment, disentitle a worker to compensation where one of multiple contributing factors to an injury included reasonable management action.<sup>36</sup> The ‘*transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers*’ is being replaced with a general definition of ‘*management action that is taken in a reasonable way and is reasonable in all circumstances*’.<sup>37</sup> Reasonable management action is also defined to include action taken or proposed to be taken, the worker’s expectation of action being taken and the worker’s perception of action.<sup>38</sup>

- i. These proposals from the Government have the propensity to be inhumane and illogical. There are at least five known incidents of suicide associated with the transitional arrangements for the 2012 workers’ compensation reforms, specifically the reduction in the number of weeks workers could receive weekly payments.<sup>39</sup> As the changes were reversed three years later, these were avoidable deaths. This time around, the amendments are *directed* at the psychologically vulnerable.
- j. The claim that WC fails to support individuals with psychological injuries-leaving them ‘*languishing in the system*’,<sup>40</sup> as stated by the Treasurer is based on a false premise. Such assertions not only undermine the real and pressing health needs of these workers but also disregard the dedicated care provided by health practitioners. The suggestion that individuals receiving psychiatric care are malingering or not genuinely unwell is outdated, unfounded, and perpetuates harmful stigma. Rather than fulfilling the intended purpose of WC, these proposed amendments risk denying essential care to vulnerable patients, thereby increasing the likelihood of serious long-term health and social consequences. These may include the worsening of psychological conditions, heightened risk of substance use disorder, and even suicide as evidenced above. Extensive scientific research has demonstrated a strong link between unemployment and poor physical and mental health,<sup>41</sup> with insecure work often eroding family stability, social connections, and personal relationships.<sup>42</sup>

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<sup>36</sup> Ibid s 11A.

<sup>37</sup> Ibid s 8D.

<sup>38</sup> Ibid s 11A(1)(a)-(c).

<sup>39</sup> New South Wales, Parliamentary Debates, Legislative Assembly, 18 March 2025, 62.

<sup>40</sup> Daniel Mookhey, Workers Compensation Ministerial Statement, New South Wales Parliament, 18 March 2025.

<sup>41</sup> Pier Alberto Bertazzi, ‘*Il lavoro come bisogno umano e fattore di salute*’ [Work as a Basic Human Need and Health Promoting Factor] (2010) 101(Suppl 2) La Medicina del Lavoro 28, 28–43.

<sup>42</sup> Select Committee on Job Security, ‘*The Job Insecurity Report*’ Parliament of Australia, February 2022, ch 1, 1.51.

- k. Unions play a significant and well-documented role in improving WHS standards across Australia. Their involvement has led to higher awareness, stronger protections, and more effective enforcement of safety regulations.

There has been an increasing academic interest into the phenomenon where unionised workplaces generally have better health and safety outcomes than their non-unionised counterparts. Although there has been limited research in Australia to date, insights can be gleaned from research conducted abroad.

### **The ‘union safety effect’.**

A substantial body of research from the UK and internationally has demonstrated the positive impact of unions on workplace health and safety. Multiple studies have found that union involvement, particularly through health and safety committees and representatives, leads to significantly lower rates of workplace injuries and improved compliance with safety policies.<sup>43</sup>

For example, a landmark 1995 study in British manufacturing found that employers with trade union health and safety committees experienced only half the injury rate compared to those where safety was managed solely by management or without union input.<sup>44</sup>

Subsequent analyses of the same data consistently concluded that the highest injury rates occurred in workplaces where management addressed health and safety issues without consulting workers or involving unions.<sup>45</sup>

Further evidence shows that unions are particularly effective in high-risk environments. A 1998 study found that unions often form in more hazardous workplaces and then actively reduce injury rates-union presence was associated with a 24% lower injury rate compared to non-unionised workplaces.<sup>46</sup>

The benefits of union involvement extend beyond injury prevention to reducing work-related ill-health. A 2000 study demonstrated that higher trade union membership was positively and significantly associated with lower rates of both injury and illness. The study concluded that union-associated arrangements ‘*lower the odds of injury and illness when compared with arrangements that merely inform employees of OHS [WHS] issues*’.<sup>47</sup>

<sup>43</sup> Trades Union Congress, *How Unions Make a Difference on Health and Safety: The Union Effect-A TUC Guide to the Evidence* (12 February 2016).

<sup>44</sup> Reilly, Paci and Holl, ‘*Unions, Safety Committees and Workplace Injuries*’ (1995) 33 *British Journal of Industrial Relations*.

<sup>45</sup> Beaumont and Harris, ‘*Occupational Health & Safety*’ (1993) 23; Millward et al, *Workplace Industrial Relations in Transition* (1992).

<sup>46</sup> Grazier, ‘*Compensating Wage Differentials for Risk of Death in Great Britain*’ (Swansea University, 2007).

<sup>47</sup> Robinson and Smallman, *The Healthy Workplace?* (Judge Institute of Management Studies, 2000).

A study into a part of the Canadian construction industry found that unionisation was associated with a lower risk of lost-time workers' compensation injury claims, corroborating a similar study from an earlier time.<sup>48</sup>

Australian data supports these findings. The '*Work Shouldn't Hurt survey*,' completed by more than 25,000 workers, found a strong positive correlation between the presence of Health and Safety Representatives (**HSRs**) – a role typically supported by unions – and better health and safety compliance. For instance, 79% of workers with an HSR reported that their workplace complied with safety policies, compared to just 51% in workplaces without an HSR.<sup>49</sup>

In summary, the 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.

- I. Although unions in NSW are able to Investigate suspected breaches of WHS laws, consult with and advise workers on WHS matters, and inspect relevant documents, systems, and equipment, the NSW Government has not legislated for unions to have the same powers as in other jurisdictions. These namely are the recognition of unions as '*eligible persons*' for the purposes of seeking internal and external reviews of SafeWork NSW decisions, including decisions to not take enforcement action; and 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.
- m. We feel that the wide range of issues which are outlined within the Unions NSW submission adequately addresses further concerns that we have in relation to the proposal. We are however more than willing to respond to and provide additional material and commentary should the Inquiry wish.

## Summary

The 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

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<sup>48</sup> Robson LS, Landsman V, Latour-Villamil D, et al, 'Unionisation and Injury Risk in Construction: A Replication Study' (2022) 79 Occupational and Environmental Medicine 169.

<sup>49</sup> Australian Council of Trade Unions, *Work Shouldn't Hurt: The State of Work Health and Safety in Australia 2021* (ACTU D No. 56/2021).

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 which will not outcast injured workers. It is clear from the evidence provided, that many aspects of the WC scheme require meaningful reform.

## **Recommendations**

In addition to the recommendations proposed by Unions NSW, the PSA recommends:

1. The NSW Government should delay considering introduction of its proposed changes to workers compensation until it has a clearer understanding of the impact that its other new strategies and regulations are having on preventing workplace injuries.
2. The NSW Government should conduct a holistic review of the current system and ensure that it is fit for purpose, including:
  - A. review the funding of SafeWork NSW against its targets and outcomes and increase funding where necessary to ensure it has the capacity to meet its goals
  - B. to increase the capacity of SafeWork NSW to prevent injuries and increase the number of its inspectors who are specialised in, and have appropriate training and qualifications to deal with psychosocial hazards
  - C. review the funding and functions of SIRA NSW and increase funding where necessary to ensure it has the capacity to meet its goals as well as its enforcement obligations
  - D. following Recommendation 37 of the SW McDougall Review and conduct a study into the WPI threshold test, as well as explore alternatives to WPI assessments
  - E. implement Recommendations 14 and 15 of the 2023 Review of the Workers Compensation System and Review finding 1 of the SIRA, Pre-injury Average Weekly Earnings post-implementation review report.
3. To improve RTW rates and WC sustainability, the NSW Government should:
  - A. work with unions and SIRA to review and improve SIRA's vocational programs
  - B. empower SIRA's Return to Work Inspectorate to enforce the employer's responsibility to find suitable duties where possible

- C. legislate clear boundaries for employers and insurers attending medical appointments and processes for workplace injuries
  - D. by requiring employers to provide injured workers with suitable alternative duties wherever possible
  - E. amend Part 8 of the *Workers Compensation Act 1987* (NSW)<sup>50</sup> to require the IRC to make a '*reinstatement order*' if it is satisfied that a worker has capacity for work and the work is available or can possibly be made available
  - F. encourage employers to facilitate RTW by legislating to extend the time before an injured workers can be dismissed.
4. The NSW Government should help prevent physical and psychological injuries and improve WC sustainability by:
- A. empowering the NSW IRC to conciliate and arbitrate unresolved WHS disputes referred to it by unions, as already found in other jurisdictions
  - B. amending sections 223 and 229 of the *Work Health Safety Act 2011* to recognise unions as '*eligible persons*' for the purposes of seeking internal and external reviews of SafeWork NSW decisions, including decisions to not take enforcement action
  - C. reinstate standing for unions to prosecute breaches of WHS laws, including arbitrated WHS dispute outcomes, before the NSW IRC, and regrant unions access to a moiety of any penalties awarded.
5. In identifying psychosocial hazards, the SafeWork NSW *Code of Practice: Managing Psychological Hazards at Work* should form the principal guiding material and injuries caused by all hazards should be compensable.
6. The NSW Government should not amend s11A which would risk undermining its successful operation and risk undermining provisional liability for psychological claims under s 247 of the *Workplace Injury Management Act 1998* (NSW).
7. The NSW Government should not deny injured workers reasonably necessary medical treatment through its proposal to change to the test for accessing medical treatment, from '*reasonably necessary*' to '*reasonable and necessary*'.

## References

### A. Articles/Books/Reports

<sup>50</sup> *Workers Compensation Act 1987* (NSW) s 242.



- Beaumont, Phil and Harris, Richard, '*Occupational Health & Safety*' (1993) 23.
- Bertazzi, Pier Alberto, '*Il lavoro come bisogno umano e fattore di salute*' [Work as a Basic Human Need and Health Promoting Factor] (2010) 101(Suppl 2) *La Medicina del Lavoro* 28.
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