

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

**Organisation:** Independent Education Union of Australia NSW ACT Branch  
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The Director  
Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
Sydney NSW 2000

**Re: Inquiry into proposed changes to liability and entitlements for psychological injury in  
New South Wales**

The Independent Education Union of Australia (NSW/ACT Branch) (IEU) represents teachers, principals, and support staff employed in non-government education settings across NSW and the ACT. The IEU has a strong history of advocating for members' health, safety, and compensation entitlements.

We write to express deep concern regarding the Exposure Draft of the *Workers Compensation Legislation Amendment Bill 2025* (NSW), which proposes sweeping changes to psychological injury entitlements that, if enacted, will significantly diminish injured workers' access to fair and timely compensation.

**I. KEY ISSUES AND CONCERNS**

The IEU's submissions in this document are confined to identifying the ways in which the proposals put forward would not assist in resolving current issues in the NSW workers compensation scheme and may in fact create further barriers for injured workers. Some particular issues which arise as a result of the Government's proposals are outlined below.

**A. Barriers to Access**

The Exposure Draft introduces a restrictive definition of "primary psychological injury" and conditions compensation on the occurrence of a "relevant event." This includes acts of violence, serious trauma, or tribunal-confirmed harassment or bullying. Concerns include:

- The requirement for formal findings by courts or tribunals before a worker can even notify a claim for psychological injury stemming from bullying, sexual harassment or racial harassment is unworkable.

Almost all IEU members are in the federal jurisdiction and in relation to bullying for example, there are a number of preconditions to the granting of a “stop bullying” order by the Fair Work Commission, the most significant in the current context is that the worker remains at risk of further bullying or harassment (see s 789FF of the *Fair Work Act 2009* (Cth) (**FW Act**)).

Most injured workers are unable to remain at work—a prerequisite to accessing stop-bullying orders under the FW Act—thus precluding them from establishing the “relevant event” required to access compensation under the proposal. This appears to be entirely inconsistent with the beneficial objectives of the legislation, and the no-fault design it puts in place. Beyond this, however, the stop-bullying provisions currently in legislation are currently in complete disrepair. In the 2023–24 financial year, the Fair Work Commission recorded in its Annual Report that 883 Stop Bullying applications were filed. In this period, only 56 decisions recorded, 73% of which resulted in the dismissal of the application and only one order made throughout the entire financial year.

- To the extent that a “relevant event” is based upon the commission of “indictable criminal conduct”, it is very unclear how a tribunal could arrive at the level of satisfaction required for a worker where criminal responsibility is mitigated by a perpetrator’s age or mental illness or impairment. In such cases, particularly for teachers, it is unfortunate that the Exposure Draft is put in terms which will likely make claims impossible where, for example, a child commits a crime which causes a worker a psychological injury in witnessing that event.
- The Draft also fails to clarify how NSW law interacts with federal provisions, leaving psychologically injured workers in limbo with no reasonable pathway to compensation. Until this process has been finalised, workers remain unable to claim compensation, with provisional liability not being able to commence. While a proposed ‘special work pressure payment’ suggests that some payment may be made where (i) reasonable and necessary (rather than reasonably necessary) treatment expenses arise (ii) in the course of the employment, and (iii) where the employment is the main contributing factor, this is fraught with issues. Each of the hurdles to access this modest payment from the employer will likely lead to further disputation, delays and exacerbation of the subject injury.
- Unfortunately, the Government has also not provided any detail as to how the Independent Legal Assistance and Review Service (**ILARS**) will interact with these processes. Particularly in cases where workers have sustained psychological injuries at the hand of their employer and are now being asked to first have to litigate the issue directly with that same entity, it seems clear that workers should have the opportunity to seek free advice and representation through the process. However, should the Government be proposing this, it appears likely that the ILARS will need to be expanded substantially, likely at a significant cost to the public.

#### B. Time-Limited Support: 130-Week Cap on Benefits

Weekly compensation for primary psychological injuries in the proposal put forward in the Exposure Draft is to be capped at 130 weeks. This is so regardless of medical opinion, unless the worker is assessed as suffering a greater than 30% whole person impairment—an exceptionally high threshold that very few psychological injury claims will meet. Using the current Permanent Impairment Rating Scale (**PIRS**), a claimant will need to sustain a severe or total impairment in almost every category in order to obtain compensation beyond 2.5 years. Such impairments are inconsistent with persons who can function sufficiently to navigate the additional barriers which the Exposure Draft puts in place. It should be noted that it is still entirely uncertain whether the PIRS will continue to be used or be replaced, as determining how any new scale will operate in NSW will take additional time, consultation, and resources. Further, many psychological injuries require substantial treatment and will not have reached maximum medical improvement by 130 weeks, which would preclude workers from even having their whole person impairment assessed by the time this period expires.

The effect of the Exposure Draft will be to arbitrarily remove support to many injured workers before recovery, potentially worsening long-term outcomes and increasing reliance on welfare or the public health system, to the detriment of all. In addition, medical and rehabilitation support is similarly proposed to be limited, with access to treatment ending just one year after benefits cease, further exacerbating the recovery barriers outlined above.

#### C. Raised Impairment Thresholds: Unattainable Bar for Many

The permanent impairment threshold to claim work injury damages for psychological injuries has been doubled from 15% to 31%, effectively eliminating most workers from accessing lump-sum compensation.

These thresholds are set far above what is clinically expected in the majority of psychological injury cases, thereby excluding workers who experience lifechanging and debilitating injuries at work, and due to the employer's own recklessness or negligence, but who fall below this arbitrary bar. The secondary result of this proposed change is that it will create a freezing effect on the development of case law regarding employer negligence. This area of law provides important guidance to employers and regulators when determining best practice to prevent future injuries and design safe workplaces.

This discriminatory approach treats mental health as less legitimate than physical injury, despite overwhelming evidence of the clear and lasting impact psychological harm has on workforce participation and wellbeing.

#### D. Exclusions Based on "Reasonable Management Action"

The Exposure Bill expands the exemption for psychological injuries caused by "reasonable management action", including performance reviews, disciplinary procedures, demotions, and terminations—regardless of the impact on the worker's mental health.

Workers are disqualified from compensation simply where an employer follows procedure, even if the worker suffers serious, foreseeable psychological harm. Additionally, by allowing future regulations to prescribe additional items to be considered “reasonable management action”, it is open for future governments to make this even more prescriptive and unfriendly to workers without the oversight which is required by an Act of Parliament.

The expansion to include workers’ expectations and perceptions of management action further broadens this exclusion and unfairly shifts blame onto the injured worker.

## **II. PRACTICAL CONSEQUENCES FOR WORKERS**

It is clear to the IEU that these changes are not technical clarifications; they are deliberate legislative barriers. The proposed Exposure Draft will have the effect of drastically reducing the number of accepted claims for psychological injuries; delaying or denying access to treatment and wage support, prolonging absence from work; and punishing the most vulnerable workers, such as those in education, care, and community sectors, who are already at higher risk of psychological harm from high-stress, emotionally demanding environments.

Through its experience advocating for members, the IEU draws the committee’s attention to the following case study in relation to potential impacts the Exposure Draft will have upon workers. These examples are not isolated, nor do they demonstrate the scope of flaws within the system, given that a number of matters ultimately become subject to complete confidentiality under the shroud of a deed of release; however, they do indicate a number of issues which the proposed Exposure Draft will likely not resolve and may, in fact, worsen.

### **A. Case Study: Person X**

Person X was employed in an Early Childhood Education and Care setting and suffered a serious physical injury with respect to exposure to electrical current. At the time of the injury, the Employer refused to call an ambulance, which ought to have occurred in the circumstances. In failing to call emergency services, and in the midst of the trauma of the physical injury, the Employer was aggressive towards the injured worker and shouted at them to find a shift replacement. As a result, Person X sustained a primary physical injury, as well as a primary and secondary psychological injury.

Person X was required to transport themselves to receive immediate medical attention and was subject to bullying and isolation by the Employer as a result of their needing time off for their physical and psychological injuries.

Person X was referred by the IEU for specialist support in relation to the claim. However, this matter demonstrates how ineffectiveness in dealing with physical injuries can lead to psychological injuries that have as equally, if not more, severe impact on an injured worker’s ability to return to work. The member was ultimately terminated from their employment and remains injured in respect of these events.

Under the proposed Exposure Draft, Person X's primary psychological injury would arbitrarily be treated separately to their secondary injury and primary physical injury. If the primary psychological injury, but not the physical or secondary psychological injury, exceeds 130 weeks in duration, the worker risks having compensation cut off despite ongoing symptoms. In addition, if the employer's conduct is deemed "reasonable management action" or insufficiently documented to meet the "relevant event" criteria, Person X may be denied compensation altogether. Finally, Person X's claim would not even be considered a valid notification unless they could jump through the hurdles of reliving the trauma to obtain and supply the official finding of that conduct, which will also be subject to appeal by the Employer. Until this process has been finalised, Person X would not be entitled to claim compensation for their primary psychological injury under the new scheme, with provisional liability not being able to commence and the proposed 'special work pressure payments' being fraught with issues.

This example illustrates how the reforms could devastate a worker already struggling through trauma.

#### B. Case Study: Person Y

Person Y was also employed in an Early Childhood Education and Care setting had received provisional workers compensation benefits following a primary psychological injury suffered in the workplace because of significant bullying and other work pressures. Person Y had no capacity for the duration of the insurer's investigation and was subsequently locked out of electronic devices that would have supported Person Y in relation to their claim by the Employer.

In addition, while Person Y was away from work and receiving workers compensation benefits, the Employer sent a letter to them making broad assertions that Person Y had behaved inappropriately. The allegations were that Person Y was 'working' when they had no capacity to do so by logging into the payroll portal to enquire why they had not received workers compensation benefits for over 4 weeks. This further exacerbated their psychological sequelae.

There was no successful return to work dialogue and the Employer ultimately terminated Person Y's employment at end of the 6-month duration. This is ultimately a sub-optimal outcome. However, the Government's proposed Exposure Draft would be likely to exacerbate Person Y's injury from the outset, in requiring them to remain at risk of further bullying and harassment in order to obtain and supply the official finding of that conduct, which will, again, also be subject to appeal by the Employer. This would leave Person Y entirely without weekly compensation through this period, adding further to stressors upon them.

Person Y's case exemplifies how the reforms could aggravate a psychological injury and prevent a proper recovery.

### **III. RECOMMENDATIONS**

An effective workers compensation system, which is inherently entwined with work, health, and safety legislation, is an important means of protecting some of the most vulnerable members of the community. To do so effectively, workers compensation must remain accessible and free of unnecessary hurdles. The Exposure Draft seeks to decrease claim liability for employers while failing to address the true means of reducing workplace injuries, which is, the rigorous and effective prosecution of work, health and safety breaches.

The IEU considers that the financial sustainability of the NSW workers compensation system can be improved but that it does not need to occur at the expense of injured workers. To enact reforms which target those who have already suffered injury will undermine public confidence in the effectiveness of the NSW government to protect workers.

The IEU supports the recommendations made by UnionsNSW to the Standing Committee in full.

We urge the Committee to recommend significant revisions to the Bill to ensure the workers compensation system remains a humane and functional safety net.

We remain at the Standing Committee's disposal, should we be able to provide any further information or assistance in respect of the Exposure Draft or our experiences advocating for injured workers as a trade union.

Submissions prepared for the Independent Education Union of Australia (NSW/ACT Branch)

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Authorised by Carol Matthews, Secretary, Independent Education Union of Australia (NSW/ACT Branch)

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