

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

**Organisation:** Australian Workers' Union NSW Branch

**Date Received:** 15 May 2025

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May 2025

# **NSW Parliament Inquiry: Proposed changes to liability and entitlements for psychological injury in New South Wales**

Submission of the Australian Workers' Union NSW Branch



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Written and prepared by the Australian Workers' Union NSW Branch

First published May 2025

Prepared for the NSW Parliament's Inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales

# RECOMMENDATIONS

## **Remove the vicarious trauma test**

Remove the vicarious trauma test to support frontline workers and first responders who are at high risk of psychosocial injuries.

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## **Revise the definition of vicarious trauma**

Revise the definition of vicarious trauma to ensure frontline workers and first responders are supported in NSW's workers compensation scheme.

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## **Delay proposed changes**

Delay proposed changes to allow for further consultation with key stakeholders, particularly trade unions.

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## **Adopt recommendations by Unions NSW**

Adopt recommendations and adequately address concerns outlined in the Unions NSW submission to remove legal and financial barriers to injured workers seeking fair compensation and support.

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# **PART ONE:** INTRODUCTION

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The Minns Labor Government recently released its proposed reforms to the NSW workers compensation system, including an exposure draft of the *Workers Compensation Legislation Amendment Bill 2025*.

Following careful consideration of the exposure draft, it is the express view of the Australian Workers Union that these changes are not in the interests of workers in NSW. In fact, it is our view that these changes will make it harder for seriously injured workers to access long-term critical care, particularly in response to psychosocial injuries.

**To be clear, the Australian Workers' Union NSW Branch does not support the proposed changes to workers' compensation by the Minns Labor Government.**

**We do not support** the proposed increase to the permanent impairment threshold which would make it harder for injured workers seeking fair compensation and support.

**We do not support** the significant legal and financial loopholes created by this proposed amendment, effectively stripping the rights of all workers to claim fair compensation in the event of a work-related injury.

**We do not support** the continued and sustained attack against the rights and conditions of our first responders through the introduction of an arbitrary and poorly defined vicarious trauma test.

This submission builds on and supports the submission by Unions NSW, the peak body for unions in NSW, responding to the

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Minns Labor Government's proposed changes to workers compensation.

**As such, the Australian Workers' Union makes the following recommendations:**

- Remove the vicarious trauma test to support frontline workers and first responders who are at high risk of psychosocial injuries,
- Revise the definition of vicarious trauma to ensure frontline workers and first responders are supported in NSW's workers compensation scheme,
- Delay proposed changes to allow for further consultation with key stakeholders, particularly trade unions,
- Adopt recommendations and adequately address concerns outlined in the Unions NSW submission to remove legal and financial barriers to injured workers seeking fair compensation and support.

## **PART TWO:** VICARIOUS TRAUMA



They'll have to  
actually see the  
**accident**  
**occur.**

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The proposed changes outlined in the exposure draft of the *Workers Compensation Legislation Amendment Bill 2025* introduces several problematic changes to workers impacted by vicarious trauma as a result of their work and their ability to claim compensation. The Australian Workers' Union is particularly concerned about these changes, as well as the potential to exclude first responders.

The following is an excerpt from the exposure draft on vicarious trauma:

*8H - Vicarious trauma*

- 1. A worker experiences vicarious trauma if the worker becomes aware of any of the following acts or incidents that resulted in the injury to, or death of, a person (the victim) with whom the worker has a close work connection—*
  - a. an act of violence,*
  - b. indictable criminal conduct,*
  - c. a motor accident, a natural disaster, a fire or another accident,*
  - d. an act or incident prescribed by the regulations.*
- 2. The worker has a close work connection with the victim only if—*
  - a. there is a real and substantial connection between the worker and the victim, and*
  - b. the connection arose because of the worker's employment.[1]*

## **Definition of Vicarious Trauma**

The exposure draft's section on vicarious trauma poses several major issues, including the creation of a new legal barrier that an injured worker will need to prove before they can receive compensation or support, a lack of clarity and a potential conflict around the definition of vicarious trauma.

The previously accepted legal definition of vicarious trauma in the context of liability for psychological injury in the workplace derives from *Kozarov v State of Victoria* [2022] HCA 12. Notably, the ruling

[1] NSW Government, 2025. Workers Compensation Legislation Amendment Bill 2025 Exposure Draft, Sydney: NSW Government. P.6.

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found that the employer had duty of care over its employee in minimising risks where the workplace carried an inherently high risk of psychological injury.[2] The proposed definition of vicarious trauma differs from that recognised in *Kozarov v Victoria [2022] HCA 12*, creating a lack of clarity and potential conflict on how the proposed definition would operate.[3]

Furthermore, it is unclear, under current wording, what constitutes a close work connection and, thus, how this test would be properly satisfied. Unions NSW suggests that the poorly defined 'close work connection' test will cause a high level of disruption as many workers would not be compensated for serious trauma and PTSD. Without legal precedent for this test and proposed definition, it could be near impossible to claim for vicarious trauma.

### **Exclusion of First Responders and Frontline Workers**

These proposed changes will significantly reduce the rights of high-risk first responders and frontline workers to claim fair compensation for psychological injuries sustained from work. This is particularly disappointing given the Minns Labor Government's previous commitments to protect these key workers.

### **These proposed changes are a betrayal of frontline workers and first responders by the NSW Government.**

The introduction of a new test for vicarious trauma, requiring the worker to prove 'a close work connection', limits the ability for many workers suffering from serious trauma and PTSD from claiming workers compensation. Workers negatively impacted could include several frontline workers and first responders, particularly firefighters and road maintenance workers employed under NSW Transport who clean up debris following crashes and incidents – many of whom are covered by the Australian Workers' Union NSW Branch.

Seemingly, road workers who attend motor accident schemes and suffer PTSD [or other psychological injuries] are excluded. In fact, it

[2] *Kozarov v State of Victoria* (2022) HCA 12.

[3] *Ibid*.

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appears under current wording, they have to actually see the accident occur to be eligible to workers compensation.

For over a decade, the Australian Workers' Union NSW Branch has been running a successful campaign to improve mental health support for first responders. The campaign sought for reclassification and recognition of non-traditional first responders and the much-needed improvement of mental health support for NSW first responders.

This advocacy centred around feedback provided by AWU members and forest responders working in Forestry Corporation (FCNSW), NSW National Parks and Wildlife (NPWS) and Transport for NSW (TfNSW). These workers are often required to complete the work of first responders in emergency situations; fighting the forest fires that ripped through NSW's South Coast in 2020 or cleaning up following major road incidents and disasters as was the case following the Hunter Valley Bus Crash in 2023.

This campaign builds on various commitments made by the Minns Labor Government and NSW Labor, including a resolution at the 2022 NSW Labor Conference which provides for the expansion of workers recognised as first responders.

In 2023, Premier Chris Minns also committed to supporting the mental health and wellbeing of frontline emergency responders, triggering a review of support services available.

These commitments culminated in the 2025 launch of a new mental health and wellbeing strategy to better support first responders in NSW. This includes taking steps to implement Psychological First Aid training for employees and, notably, recognises relevant workers employed at FCNSW, NPWS and TfNSW as first responders. It is therefore particularly disappointing that the Minns Labor Government would attack first responders and frontline workers with this proposal, months after a successful and constructive campaign to recognise such workers.

The current wording of section 8H, particularly in introducing a test for 'close work connection', casts doubt on whether frontline

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workers and first responders will be able to claim fair compensation having suffered the adverse impacts of vicarious trauma.

## CASE STUDY

In 2020, a professional firefighter and AWU member from Forest Corp NSW heard the call, risking their life to battle the devastating blazes that ripped through NSW.

For four months, they worked 14-hour days – often weeks at a time – saving houses, businesses and entire towns. It was physically and mentally exhausting.

On New Years Eve that year, the wildfire reached home. They lost their family home of 25 years. On New Years Day, they were left with nothing.

Though they escaped the blaze, the effects of that day can still be felt.

This worker shared their story under the condition of anonymity. But they are one of many frontline workers and first responders in high-risk jobs who would lose out on workers compensation payments – or the right to claim compensation itself – as a result of the Minns Government's proposed changes.

# **PART THREE:** INCREASE TO PERMANENT IMPAIRMENT THRESHOLDS

This is an impossibly high  
threshold.

**Everyone will be  
cut off benefits  
after 2.5 years.**



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The proposed amendments to workers compensation by the Minns Labor Government also include a concerning increase to whole of person impairment and permanent impairment thresholds. In the case of psychological injuries, this threshold doubles from 15% to 30%. This increase to the permanent impairment thresholds form a key pillar in the Minns Labor Government's attempt to restrict access to workers compensation.

## **Impacts of Increased Thresholds**

Whole Person Impairment or WPI is a measurement often used to assess the severity of permanent impairment following an injury. As noted by Unions NSW, workers under the current operating scheme can access income support and medical treatment without any WPI threshold but must meet a 15% WPI threshold to access lump sum payment or work injury damages.

In response to these proposed changes, Unions NSW consulted clinical psychiatrists who asserted that the 30% WPI would be “extremely difficult to achieve”.<sup>[4]</sup> In fact, it was noted that even in severe cases where workers are unable to work and require long-term psychiatric care, a 20% threshold may not be met. A 30% WPI threshold would be arbitrarily difficult and near impossible to meet by injured workers seeking support and fair compensation. This is corroborated by Unions NSW's submission which notes that “nearly all psychologically injured workers” would be excluded from compensation under this proposal.

In addition to excluding almost all psychologically injured workers, many frontline workers and first responders will be denied compensation after 130 weeks. This is in addition to the introduction of more severe limitation of weekly payments – slashing the maximum timeframe from 5 years to 2.5 years.<sup>[5]</sup>

## **Comparison with Interstate Models**

Under this proposal, NSW will have the highest permanent

[4] Unions NSW, 2025. Unions NSW Briefing - NSW Labor Government proposed changes to workers compensation, Sydney: Unions NSW.

[5] Ibid.

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impairment threshold of any workers compensation scheme in Australia.

Queensland and the ACT currently operate similar workers compensation schemes which do not require WPI thresholds for damages, while Victoria operates on the basis of a narrative test which considers but does not require WPI.

The Minns Labor Government has in the past drawn comparisons with South Australia which does implement a threshold of 30% WPI. However, Unions NSW notes that the Minns Labor Government's proposal is incomparable with South Australia's WPI threshold of 30% as South Australia has adopted a different and far more generous guideline for calculating WPI. It has been noted that a 30% WPI under South Australia's guidelines would "align with 15% under the NSW Guidelines".[6]

[6] Ibid.

**PART FOUR:**  
FURTHER  
CONSULTATION AND  
DELAY OF PROPOSED  
CHANGES

The Government is now cutting benefits from workers to fund this out-of-control bureaucracy.

**None of these savings go to workers.**

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**Finally, it is abundantly clear that the conduct of the Minns Labor Government in rushing through this flawed proposal aims to sideline genuine consultation and consensus building with key stakeholders, particularly trade unions**

The short timeframe allowed for this submission to be drafted is an example of this. With submissions open for the inquiry into proposed changes to liability and entitlement for psychological injury in NSW open on 9 May 2025 and closing by 15 May 2025, the Minns Labor Government has allowed less than one week to receive submissions.

It does not allow for a sufficient review and assessment of the exposure draft, compilation of qualitative evidence and case studies, or proper consultation of key stakeholders.

Importantly, it does not allow for the in-depth analysis of this proposal's hypocrisy in contradicting their own commitments, reviews, frameworks or strategies. This includes the findings of the Independent Review into iCare and the State Insurance and Care Governance Act 2015 by Hon. Robert McDougall QC which found that the WPI is a poor test for entitlement to compensation and should be subject to review.[7]

This proposal is also made worse when the proposed restriction of frontline workers' and first responders' ability to claim workers compensation comes following and possible in response to the NSW Government's own finding in 2025 that cases by such workers rose by 28% between 2007 and 2020.[8]

The Australian Workers' Union **thus strongly recommends a delay of these proposed changes** to allow for a proper evidence review, assessment of the proposals impacts on frontline workers and first responders, and proper consultation with key stakeholders.

[7] QC, R. M., 2021. icare and State Insurance and Care Governance Act 2015 Independent Review, s.l.: NSW Government.

[8] Anon., 2025. NSW Mental Health and Wellbeing Strategy for First Responders 2025-2029, s.l.: NSW Premiers Department

**CONCLUSION:**  
THE ROAD AHEAD

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This submission outlines some of the key concerns by the Australian Workers' Union NSW Branch in response to the Minns Labor Government's proposed changes to workers compensation. It is also our view that this proposal is deeply flawed and concerns around how it will negatively impact workers in NSW extend beyond the issues covered by this submission.

**As it is currently written, Australian Workers' Union does not support the proposed changes to workers' compensation by the Minns Labor Government.**

For further information, please contact the Australian Workers Union campaigner and Policy Officer Kai He

## REFERENCES



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