

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

**Organisation:** Australians for Mental Health

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Standing Committee on Law & Justice  
Legislative Council  
Parliament House,  
Sydney NSW 2000

Dear Committee,

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

Thank you for the invitation to make a submission to your important inquiry.

We are deeply concerned about the Government's proposed legislation. It will cut the support available to workers experiencing mental ill-health whilst doing little to address the underlying causes of the growing prevalence of psychosocial injury.

**Work Should Not Make You Sick**

We agree that workplace mental health – like mental health across all areas of Australian life – is currently in crisis. We agree that urgent action is required. We agree with the Treasurer when he says that the current worker's compensation system is not fit for purpose for ensuring the mental wellbeing of workers in NSW.

But we disagree that the solution to the crisis is cutting support for workers experiencing mental ill-health, which is what these proposed reforms will do.

It is hard to imagine another policy area where, when confronted by the rapidly rising prevalence of a social problem, Parliament chooses to reduce the supports available for that problem rather than addressing the causes directly. It is analogous to dealing with an increase in crime by reducing the number of offenses in the Crimes Act.

Australians for Mental Health Limited

We welcome the government's proposals to improve compliance with existing psychosocial safety laws. More could be done to ensure workplaces are psychologically safe, including:

- Placing a stronger obligation on employers to proactively monitor for mental distress that arises both from the inherent nature of the work as well as the culture and norms of the workplace;
- Encouraging a collaborative approach to job design that centres mental well-being;
- Proactively addressing relationship breakdowns between employers and employees and encouraging early resolution of interpersonal conflicts;
- Centrally identifying those occupations and workplaces that are experiencing the highest level of psychosocial injury and directly intervening in those to reduce the causal factors.

Better mental health across all workplaces would simultaneously reduce the projected financial demands on the system, improve workplace productivity and reduce needless human misery.

### **Workers Need Support & Solutions**

Reducing access to mental health supports for workers will make a system that is already in crisis far worse. It is already too hard to access care through the public health system. Workers with few other options will simply add to the already overburdened system.

Or worse, some workers will not seek out help at all. We know that early intervention in mental health issues is the best way to reduce the severity of mental ill-health, but the greater the hurdles to accessing support, the less likely this becomes.

Under these proposals, workers would need to win a legal case before being able to even access some of the most basic mental health supports through the compensation system.

It can take months to even get a first appointment with a mental health practitioner, and yet under these proposals a worker could not access paid time away from the workplace while waiting for that most minimal of supports.

The more likely outcome is workers give up and injuries become more severe. Families, communities and even the workplace itself pay the price of untreated mental ill-health.

### **Solutions Are Better than Litigation**

The draft legislation favours legal processes over relationship building, restoration and meaningful solutions to very human experiences.

We believe this is the wrong approach. Legal processes are unable, by their very nature, to re-establish trust and relationships when they have broken down. They are inherently antagonistic at exactly the time when relationships are already extremely strained.

Moreover, by requiring workers to prove their injury the law would be perversely incentivising greater acuity and disincentivise early treatment and return to work.

We agree that finding better ways to get workers back to work is a worthwhile ambition.

But a better way would be for employers and workers to work collaboratively and constructively on addressing the issues that caused the injury – even if the root cause is a relationship breakdown triggered by a “reasonable management action”.

Early assistance from a practitioner skilled in navigating complex emotional issues between people could either help identify and implement an agreed path forward or recognise that the relationship is too broken to be restored. In both cases, next steps would be more fit for purpose and would reduce the amount of time both workers and employers need to wait around for resolution.

Such an approach would be cheaper, quicker and less distressing for all parties involved.

### **Politicians, Accountants & Lawyers v Mental Health Experts**

In attempting to limit the scope for compensation claims, the draft legislation makes the parliament and the legal system the arbiters of the nature of mental illness, and leaves little room for a nuanced understanding of a highly complex field.

For example, Clause 8H defines vicarious trauma. In the current drafting, it would be lawyers and the legal system who would judge if a paramedic who attended a crime scene where a child had died had experienced a vicarious trauma in the workplace, rather than mental health practitioners. This is plainly absurd.

That the Treasurer and the Treasury have carriage of this legislation is instructive. Whilst the financial sustainability of the system is an important issue, it is not the basis on which reform of the workplace mental health system should be designed.

A better approach would be to design an effective system – that is financially stable – based on the health advice of experts, with the input of workers & employers.

## **Punching Down On Vulnerable People**

It is hard not to infer that the underlying assumption in this draft legislation is that the cause of the financial strain on the worker's compensation system is a rise in bogus claims or "rorts".

We are yet to see evidence that this is true.

The framing of the draft legislation would embed mental health stigma into the workers compensation system forever.

People who experience mental ill-health are extremely vulnerable. They already endure extreme stigma and even internal shame. The draft legislation creates hurdles for having their injuries recognised, their stories understood and their employers held accountable. It places the onus on them to prove that they are not lying.

The idea that the rapid growth in mental health claims is attributable to a surge in rorting, is to enlist an obnoxious culture war into what is essentially a cost-cutting measure.

And we've seen it all before. The history of the workers compensation system is littered with reactionary assumptions that people who are injured at work are rorters or workshy.

These views are lazy at best. Is a firefighter who experiences PTSD after long term exposure to major tragedies trying to get out work? Or a nurse? Or any other front line worker?

The construction industry across Australia loses one person to suicide every second day. Construction makes up 9% of the workforce and 21% of the suicide deaths. Does work offer no explanation for these tragedies?

Or is the concern some abstraction of a soft-handed "woke" young person whose experiences of sexual harassment, racism, bullying, or other discrimination – some might say – should be viewed with contempt and judgement rather than curiosity and care?

A better approach would be to understand the root causes of mental ill-health and to design solutions that draw on the expertise of mental health experts, workplace culture experts, as well as employers, workers and their representatives.

An even better approach would be to send a strong message to the people of NSW that the government wants to make work safe. Starting with its own workplaces.

### **A Better Approach: whole system reform**

A process of genuine reform that is designed collaboratively by experts in mental health, employers, workers, unions and insurers could have the goal of reducing workplace psychological injuries as the best way to bring down costs in the compensation system.

A whole of system approach would aim to ensure:

- Jobs are better designed to meet the wellbeing needs of all workers, including those with pre-existing mental health challenges;
- Employers are accountable at a workplace level for maintaining safe systems of work in relation to mental health and wellbeing;
- Relationship issues that arise in the employment context are dealt with quickly, simply and with a focus on rebuilding rather than litigating;
- Adequate interim arrangements are in place to ensure distressed workers are supported to focus on getting better;
- Workers who are in need of long term care are able to access it;
- Diagnoses of psychological injuries are made by clinicians and not lawyers or politicians.

Commitment to a process of this kind could well reduce costs in the compensation system far more than those anticipated by the proposed legislation, and reduce the needless suffering of thousands of Australians and their families.

### **About Australians for Mental Health**

Australians for Mental Health is a national citizen-led social campaign group dedicated to creating an Australia where every person – regardless of their circumstance – has their mental health needs recognised and met, in every aspect of how we live, work and play. Australians for Mental Health was founded by 2010 Australian of the Year Patrick McGorry

Best wishes,

Chris Gambian  
Executive Director