Submission No 20

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

Organisation: Unions NSW

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Submission to the NSW Legislative Council Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales

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About Unions NSW

1. Unions NSW is the peak body for trade unions and union members in NSW. We have 47 affiliated trade unions and labour councils who collectively represent over 600,000 union members and essential workers in all industries in NSW.

2. Unions NSW proudly supports the NSW Injured Workers Campaign Network (IWCN). The IWCN is a community campaign led by injured workers, for injured workers, and seeks to drive positive change within the NSW workers compensation system.

3. The IWCN mission statement is: To reform the workers' compensation and rehabilitation system in New South Wales in the interests of injured workers with a view to ensuring dignity, respect, and fairness.

4. In 2023, most NSW State MPs, including members of the Government and NSW Treasurer Daniel Mookhey, signed the IWCN campaign pledge to work toward a workers' compensation and rehabilitation system that:

    a. Returns injured workers to work when it is safe to do so;

    b. Has doctor-led care with timely and appropriate medical treatment;

    c. Protects injured workers from unfair terminations;

    d. Ensures polite, timely & accurate responses to all enquiries and requests;

    e. Provides ongoing medical & financial support for workers unable to return to work by removing s39 & 59A of the *Workers Compensation Act 1987*.

Introduction

5. A sustainable workers compensation scheme is important and in the interests of workers. Proposed reforms require adequate time for consultation to achieve the best public policy outcomes and to avoid unintended consequences.

6. This submission will cover the terms of reference:

    a. the overall financial sustainability of the NSW workers' compensation system; and

    b. The provisions of the Exposure Draft of the *Workers Compensation Legislation Amendment Bill 2025* (**the Bill**) as provided by correspondence to the Committee.

7. To enable a full and effective consideration of the options to reform workers compensation, we ask the committee to recommend the NSW Government delay implementing its proposals and instead legislate an independent review of the NSW workers compensation system.

8. On Tuesday 18 March 2025, the NSW Treasurer Daniel Mookhey delivered a ministerial statement outlining proposals for reforms to the way the NSW workers compensation scheme deals with psychological claims.

9. The Treasurer in his Workers Compensation Ministerial Statement noted three key principles in reviewing psychological injuries at work:

    a. First, give workers the right to call out a psychological hazard before an injury takes place.

    b. Second, let employees and employers know where they stand by defining ‘psychological injury’ and ‘reasonable management action’.

    c. Third, learn from states like South Australia and Queensland especially in setting the whole-person impairment threshold.

    (NSW Government 2025).

10. Unions NSW embraces the stated intention to reduce workplace psychological injuries. However, the content of the Bill is inconsistent with

this approach and instead focuses on limiting workers' access to compensation after an injury has already occurred. Few of the proposed actions reflect a shift towards prioritising prevention and early resolution; instead, their dominant effect is to significantly hinder workers from seeking and obtaining compensation for psychological injuries.

11. That is, 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 inimical to the stated purpose of reducing psychological hazards by improving prevention. In fact, there is nothing in the Bill which directly goes to improving prevention.

12. Unions NSW questions the need to define 'psychological injury' within legislation, when this should be done by medical professionals. The Bill's definition excludes workers with genuine injuries from compensation if the hazard that caused their injury falls outside an extremely narrow list. This is akin to saying a broken arm is only compensable if you fall over a chair, but not a bench, and will prevent life-saving support for a multitude of injuries.

13. Unions NSW supports greater certainty in the scheme around 'reasonable management action', but not at the expense of mental health care and support. The Bill effectively excludes claims on the basis of reasonable management action, even when other hazards are the main or substantial cause.

14. The most callous and unnecessary proposal with the Bill is to increase the whole person impairment threshold to 31% for all benefits. This is an impossibly high bar that essentially removes all income support for the most psychologically damaged workers after 2.5 years. This proposal does not address any of the Government's stated aims, as it applies only to seriously injured workers, and so it will not reduce minor or unmeritorious claims. The current thresholds already eliminate well over 90% of claims after 5 years.

15. The increase in WPI thresholds is a dangerous and unnecessary measure that will cause real, irreversible harm to vulnerable people, as occurred in 2012. **This Bill if legislated will cost worker lives.**

16. The Bill also fails to align the NSW threshold with the thresholds in other states: on the contrary, it would give NSW by far the harshest workers

compensation scheme in the country by setting a threshold much higher than those in other jurisdictions, including South Australia. Such extreme measures have not been necessary in other jurisdictions, which strongly suggests the problems with the NSW scheme lie not in the level of benefits, but in the widely-reported administration and claims management issues that are not addressed in the Bill.

17. These administrative problems must be addressed before such brutal cuts to benefits are even considered. The proposal has not been justified by financial modelling, and in circumstances where the rapidly increasing operating costs of iCare and SIRA now drain $1.33 billion per annum from the premium pool (iCare 2024, SIRA 2024[1]), there are far better targets for savings than the most vulnerable workers in the state who depend on the scheme just to meet their basic needs.

18. If these problems are not addressed and critically injured workers are denied support, this means they fall through the cracks in the system, pushing them onto their families for care and welfare and charity to survive. In this way, the Bill transfers the cost of poor workplace health and safety risk management to the taxpayer and the federal system.

19. An increase of the threshold to 30% WPI was introduced by the O'Farrell Government in 2012 and proved to operate so harshly that it had to be reversed 3 years later: it makes no sense to revive a proven policy failure. In 2019 then Hon Daniel Mookhey MLC levelled the following criticism at the then Government's reforms, which could just as easily be made against the proposals he himself now makes:

> '*Thousands of injured workers have lost, or will lose, access to income and healthcare arbitrarily after five years because of the pig-headed stubbornness of the current NSW Government*
>
> ...
>
> *I've never heard of any Government, of any political persuasion, at any level of the Commonwealth, deliberately favouring welfare over work until now.*
>
> *It says to employers that you're free of your obligation to rehabilitate workers injured under your care and supervision; and says to taxpayers*

that you now must pay a back door subsidy to big business and pick up the tab for caring for the injured workers.

It's a disgrace'

- Daniel Mookhey (NSW LC 2019, p. 52).

20. Like the current NSW Treasurer did in 2019, Unions NSW rejects the approach taken by the Government through its Bill of saving money by denying legitimate claims, particularly reflected in its harmful measures to:

    a. Force workers who suffer bullying, sexual harassment, and racial discrimination in the workplace to go through lengthy and expensive legal loopholes to access treatment and support,

    b. Make it almost impossible for seriously injured workers to receive long-term care and support,

    c. Denying income support to workers with serious psychological injuries caused by work pressure or burnout, effectively preventing them from accessing the care they need to recover.

21. Instead, Unions NSW embraces the Government's stated intention to improve sustainability by reducing workplace psychological injuries. We recommend alternative measures the Government should implement that can achieve these outcomes.

22. Our recommendations address:

    a. **Part A of this submission:** The poor timing of the Bill, which should be a last resort and not a first step;

    b. **Part B of this submission:** Major issues with the content of the Bill, including,

        i. increasing Whole Person Impairment thresholds for psychological injury claims,

        ii. limiting what is considered a psychological injury,

iii. denying claims involving reasonable management action despite other predominant hazards,

iv. limits on assessing and disputing permanent impairment,

v. removal of provisional liability for psychological injuries,

vi. under- and non-insurance of workers, and

vii. denying reasonably necessary medical treatment.

c. **Part C of this submission:** Alternative recommendations to significantly improve the financial sustainability of the scheme, including:

   i. preventative measures to reduce the number of psychological injuries,

   ii. prioritising return-to-work,

   iii. reducing waste and inefficiency within the scheme;

d. **Part D of this submission:** Next steps, including implementing positive sustainability measures and an independent review of the NSW Workers Compensation scheme;

Summary of recommendations

Part A: Bill timing and independent review of the NSW Workers Compensation Scheme

Timing of the Bill

Recommendation 1: The NSW Government should delay introduction of its proposed changes to workers compensation to provide an opportunity to consider a range of options, in consultation with unions and other key stakeholders. Consideration should be informed by a clearer understanding of the impact that new and recommended measures, strategies, and regulations can have on preventing workplace injuries.

Part B: Major issues with the content of the Bill

Increasing Whole Person Impairment thresholds for psychological injury claims

Recommendation 2: Delete Schedule 1 [18] Section 39A. Savings can be achieved via other less harmful measures.

Recommendation 3: Delete Schedule 1 [22] Section 59A entirely. Savings can be achieved via other less harmful measures.

Recommendation 4: Delete Schedule 1 [29] Section 65A entirely. Savings can be achieved via other less harmful measures.

Recommendation 5: Delete Schedule 1 [97] Section 151H entirely. Savings can be achieved via other less harmful measures.

Limiting what is considered a psychological injury

Recommendation 6: Schedule 1 [3] Section 8G(1) should be deleted.

If it is to remain:

- Section 8G(1)(a) should incorporate amendments recommended below to 'relevant event'.
- Section 8G(1)(b) should be amended to, 'the injury must arise out of, or in the course of employment' (s 4 currently).
- Section 8G(1)(c) should be deleted.

Recommendation 7: Schedule 1 [3] Section 8A should omit the words, 'that causes significant behavioural, cognitive or psychological dysfunction'.

Recommendation 8: Schedule 1 [3] Section 8E should be deleted.

Alternatively:

1. Section 8E should be amended to identify all psychological hazards identified in the *NSW Code of Practice: Managing Psychological Hazards at Work* including:

    a. Role overload
    b. Role underload
    c. Exposure to trauma and traumatic events
    d. Role conflict or lack of clarity
    e. Low job control
    f. Conflict or poor workplace relationships between workers & supervisors, managers and co-workers
    g. Poor support from supervisors & managers
    h. Poor co-worker support
    i. Workplace violence
    l. Bullying
    m. Harassment including sexual harassment
    n. Inadequate reward & recognition
    o. Hazardous physical working environments
    p. Remote or isolated work
    q. Poor procedural justice
    r. Poor organisational change culture

    (SafeWork NSW 2021, pp. 7-8)

Recommendation 9: The requirement to obtain a finding of sexual harassment, bullying or racial harassment should be deleted.

Recommendation 10: Bullying should be determined by reference to the subjective perception of the worker, provided: [the perception has a factual foundation] OR [the perception is reasonable and rational in all the circumstances].

Recommendation 11: Schedule 1 [3] Section 8H should be deleted. Alternatively, s 8H should be amended by: in respect of s8H(1), deleting the words 'with whom the worker has a close work connection-'; in respect of s 8H(2), deleting the subsection.

Recommendation 12: Amend Schedule 1 Section 8E(1)(c) to include workers who attend or respond to the aftermath of a traumatic incident, including those who interact with death or serious injury as part of their duties.

Denying claims involving reasonable management action despite other predominant hazards

Recommendation 13: In respect to Schedule 1 [3] section 8D(1),(2) maintain the current s11A of the *Workers Compensation Act 1987* (NSW).

Recommendation 14: In respect to Schedule 1 [3] section 11A, maintain 'wholly or predominantly' or 'predominantly' and delete section 11A (b) and (c).

Limits on assessing and disputing permanent impairment

Recommendation 15: Amend Schedule 1 [98] Section 153G to include a clear and accountable process for the selection and oversight of assessors on the SIRA register, including input from worker representatives and safeguards to ensure independence.

Recommendation 16: Amend Schedule 1 [98] section 153G to legislate clear grounds and procedures for disputing assessments, including a right for workers to present independent medical evidence and guidance for the Commission in appointing a new assessor.

Recommendation 17: The requirements in Schedule 1 [98] section 153N should be removed. Workers should be able to seek a reassessment of permanent impairment without needing insurer consent, and thresholds for deterioration should reflect medical reality.

Removal of provisional liability for psychological injuries

Recommendation 18: Delete schedule 2 [5] section 280 - Provisional acceptance of liability.

Under- and non-insurance of workers

Recommendation 19: Expand the scope of businesses covered under Schedule 1 [103] Section 173AA (1) to all businesses.

Recommendation 20: Amend the test for an offence under Schedule 1 [103] Section 173AA from recklessness to negligence.

Recommendation 21: Amend Schedule 1 [103] Section 173AA to include a financial penalty for non-compliance that represents three times the financial benefit obtained by employers.

Recommendation 22: Amend the Bill to empower and task iCare with enforcing insurance requirements amongst employers.

Denying reasonably necessary medical treatment

Recommendation 23: Omit Schedule 1 [26] Section 60 Compensation for cost of medical or hospital treatment and rehabilitation & 60AA Compensation for domestic assistance.

Part C: Alternative proposals to improve scheme sustainability

Adopting the best practices from other states to prevent injuries before they happen

Recommendation 24: The NSW Government should empower the NSW Industrial Relations Commission to resolve general WHS disputes over safety and worker protection referred by unions, as already occurs in Queensland and South Australia.

This provides an opportunity to remove workplace trauma hazards before they turn into serious injuries and claims.

Recommendation 25: To prevent workplace injuries, the NSW Government should follow the lead of Queensland and Victoria and make Work Health and Safety Codes of Practice enforceable.

Making it easier for injured workers to return to work

Recommendation 26: Include return-to-work provisions for injured workers as a matter for which unions may lodge a dispute with the NSW Industrial Relations Commission for resolution. This should apply to workers in the public sector, local government and private sector and will assist workers to return to the workplace when they are fit to do so.

Recommendation 27: Reintroduce a loading based on claims performance to restore meaningful incentives for employers to prevent injury and support timely return to work and to reward safety-conscious employers.

Recommendation 28: The NSW Government should legislate to prevent termination of an injured worker unless the injury management plan states the return-to-work goal is a different job with a different employer.

Cleaning up waste and inefficiency within the scheme

Recommendation 29: The lack of accountability amongst insurers is leading to unnecessary waste, inefficiencies, and poor return-to-work outcomes. To improve scheme sustainability, the NSW Government should extend SIRA's regulatory capacity across all insurers in the scheme.

Recommendation 30: Improve SIRA's capacity to enforce compliance of employer insurance obligations and increase the financial penalty for non-compliance to at least three-times the financial benefit obtained by employers.

Recommendation 31: The NSW Government should publish the recommendations of the 2024 Independent Inquiry into SIRA's regulatory operations and consult with stakeholders on their implementation.

Recommendation 32: To promote long-term financial stability and equitable treatment of injured workers, the NSW Government should abolish self-insurer and specialised insurer arrangements in NSW.

Part D: Next steps and independent review of the NSW workers compensation scheme

Recommendation 33: The NSW Government should legislate an independent review of the NSW Workers Compensation scheme with terms of reference to investigate the design of a system that deals with psychological injuries which:

a. is economically sustainable;

b. addresses administration of the system in an efficient manner;

c. deals with psychological injuries in a way that:

    i. maximises prevention;

    ii. maximises injured workers' return-to-work; and

    iii. promotes a process that does not aggravate the underlying injury;

d. considers the most appropriate means of providing long term support to people with a psychological injury; and

e. reviews existing measures and considers further preventative measures.

Part A: Timing of the Bill

23. Unions NSW is concerned that the Government's Bill is rushed. It contains reactive and harmful provisions which **should be considered a last resort and not a first step to improving scheme sustainability.**

24. As a first step and alternative to the Bill, this submission explores numerous practical and common-sense measures the NSW Government can implement to improve scheme sustainability through **three priority areas:**

    a. **Preventing injuries,**

    b. **Helping workers return to work when it is safe to do so, and**

    c. **Reducing waste and inefficiency within the scheme.**

25. Explored in **Part C** of this submission, alternative recommended measures can significantly reduce costs to the scheme while improving mental health, in complete contrast to the impact of the Bill.

Recommendation 1: The NSW Government should delay introduction of its proposed changes to workers compensation to provide an opportunity to consider a range of options, in consultation with unions and other key stakeholders. Consideration should be informed by a clearer understanding of the impact that new and recommended measures, strategies, and regulations can have on preventing workplace injuries.

Part B: Major issues with the content of the Bill

26. The timing of the Bill and short notice of this inquiry has made it impossible to conduct a comprehensive review of all the problems with the Bill.

27. Unions NSW raises the following major issues with the Bill and makes recommendations to address them. We note the numerous problems with the Bill are not limited to those listed below.

28. It is therefore our primary position that the Bill should be delayed in order to consider a range of options through an independent review of the scheme, discussed further in **Part D** of this submission.

Increasing Whole Person Impairment thresholds for psychological injury claims

29. The proposal to increase WPI threshold to 31% for weekly payments, treatment expenses, permanent impairment compensation, and work injury damages will eliminate all income support for almost all psychologically injured workers after 2.5 years.

30. The proposals are callous and draconian and will give NSW the harshest workers compensation scheme in the country.

31. A threshold of 31% WPI is for all intents and purposes impossible to achieve.

32. In correspondence provided to Unions NSW, clinical psychiatrist Dr. Anthony Dinnen asserts that a 30% WPI threshold is extremely difficult to achieve for workers with work-related psychological injuries. According to Dr Dinnen, even severe cases – marked by chronic incapacitation, inability to work, disrupted family life, and long-term psychiatric care, typically do not exceed 20–25% WPI using the Psychiatric Impairment Rating Scale (PIRS).

33. The following is a description of a hypothetical worker with a 22% WPI:

    'An injured worker with a 22% impairment is likely to struggle to live independently without support. They probably cannot prepare their own meals and may need prompting to shower and a community nurse or family

member may be required to regularly visit them to ensure minimum levels of hygiene and nutrition.

They will be withdrawn from sports, hobbies, and other social and recreational activities they enjoyed before their injury. In many instances their capacity to travel beyond their local area or shops will be restricted. Their personal relationships are likely to be severely strained with both a loss of friendships and separation from their partner or spouse likely.

Their ability to read and comprehend more than a newspaper article is restricted and they will find it difficult to follow instructions and may even struggle to concentrate sufficiently to follow a conversation. They will be restricted in their ability to work and will be unlikely to work more than 20 hours per week. If they can work, it will be in a less demanding and less stressful role.'

- Scott Dougal, accredited specialist in personal injury law

34. Under the Government's Bill, this injured worker would be cut off from critical long-term care and support, despite having suffered their injury due to their employment in NSW.

35. The current 15% and 21% thresholds already eradicate more than 90% of claims after 5 years. The increase to 30% WPI will eradicate all but a handful of claims.

36. The Bill reflects a failed policy that was tried by the O'Farrell Government in 2012 and reversed in 2015 because it operated so harshly, with impacted workers back-paid. The current proposal would operate even more harshly, as the *Workers Compensation Legislation Amendment Act 2012* (NSW) only applied after 5 years and did not apply to work injury damages.

37. At Budget Estimates on 11 April 2025, the CEO of SIRA, Ms Mandy Young, told the Committee there were five reported 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 (NSW Parliament 2025, p. 62). As the changes were reversed 3 years later, these were avoidable deaths. This time around, the amendments would **only** impact the psychologically vulnerable.

38. The claim by the NSW Government that the Bill will align the NSW threshold with other states is incorrect. Only South Australia has a 30% WPI threshold, but this is based on more generous guidelines. A 30% WPI under the South Australian guidelines is equivalent to 15% WPI under the NSW guidelines

(where in both cases a worker scores moderate impairment in all categories) (SIRA 2023, pp. 54-59, RTWSA 2015, p. 102). Increasing the threshold to 31% will achieve the opposite of alignment.

39. A comparison between the thresholds set by the Bill and those of other states regarding weekly payments and medical benefits is made below, laying bare the inaccuracy in the Government's claim of alignment.

	Weekly payment after 2.5 years (130 weeks) for psychological injury	WPI requirement for weekly payments after 2.5 years	WPI requirement for medical costs after 3.5 years
NSW now	80% of pre-injury earnings	No requirement until 5 years, then 20%	No requirement until 5 years, then 11% up to 7 years, then 20% up to 10 years, then >21% unlimited.
NSW proposed	80% of pre-injury earnings	30%	30%
Vic	80% of pre-injury earnings	21%	21%
QLD	75% of normal weekly earnings or 70% Queensland full-time adult ordinary time earnings	15%, otherwise single pension rate payment, up to 5 years	No requirement
WA	100% of pre-injury earnings	No requirement	No requirement until $75,817, then 15% up to $250,000
SA	80% of pre-injury earnings	30% (better than proposal due to more generous guidelines).	30% (better than proposal due to more generous guidelines).
TAS	80-85% of pre-injury earnings	No requirement until 9 years, then 15%	No requirement until 10 years, then 15%
NT	75-90% of pre-injury earnings	No requirement until 5 years, then 15%	No requirement until 6 years, then 15%

ACT	65% of pre-injury earnings or national minimum wage	No requirement	No requirement

Legend:
Purple = proposal
Red = worse than proposal
Yellow = aligned with proposal
Green = better than proposal

40. Increasing the threshold disproportionately impacts frontline workers, who are predominantly women, and cannot avoid the traumatic and impairing things they experience for the benefit of the community.

41. Increasing the WPI threshold does not achieve the Government's aim of reducing minor and unmeritorious claims as it only affects seriously injured workers who are unable to work or function normally in society. An extreme measure such as this should not even be considered until all other avenues have been exhausted.

42. Contrary to the NSW Labor Government's proposal, the 2021 *McDougall Review* found that WPI is a poor test for entitlement to compensation and recommended reviewing its use entirely. This review should come before the NSW Labor Government's proposal to increase the WPI threshold. The report concluded:

    'an assessment of WPI does not always yield an appropriate indicator of either capacity for work or the need for and expense of medical treatment.

    The use of the concept of WPI as the test for entitlement to weekly and medical benefits does not reflect the policy objective of ensuring that the most injured workers should receive appropriate support. That policy would be better served by a test that assessed the severity of an injury by reference to the treatment and support necessary to manage its consequences, as well as its impact on the worker's capacity for work.'

    (McDougal 2021, p. 266).

43. More savings will be achieved by addressing mismanagement of claims and iCare admin costs, explored in **Part C** of this submission, without reducing benefits to seriously injured workers.

Schedule 1 [18] Section 39A – Weekly payments

44. Clause [18]-s39A increases the whole person impairment (WPI) threshold for weekly payments to 31% to access payments after 2.5 years. Currently, there is no threshold for first 5 years then 21% for payments after 5 years.

45. The issue with this clause is that because 31% is an impossibly high threshold, virtually no one will be able to access income support after 2.5 years. Workers with 15%+ WPI almost always cannot work and will be left without income support.

Recommendation 2: Delete Schedule 1 [18] Section 39A. Savings can be achieved via other less harmful measures.

Schedule 1 [22] Section 59A – Medical treatments

46. Section 59A increases the WPI threshold for the medical treatment and limit period. For primary psychological injuries, no treatment costs are payable more than 1 year after weekly payments cease (therefore maximum of 3.5 years), unless 31% WPI or more. Currently, treatment is payable for 2 years after last weekly payment if <11% WPI; 5 years after weekly payments if 11% to 20%; treatment payable for life if >20% WPI.

47. The issue with this clause is that because 31% is an impossibly high threshold, virtually no one will be able to access treatment and care after 3.5 years.

Recommendation 3: Delete Schedule 1 [22] Section 59A entirely. Savings can be achieved via other less harmful measures.

Schedule 1 [29] Section 65A – Lump sum compensation for permanent impairment

48. Section 65A increases the threshold for permanent impairment compensation from 15% to 31%.

49. Because 31% is an impossibly high threshold, virtually no one will be able to access permanent impairment compensation.

Recommendation 4: Delete Schedule 1 [29] Section 65A entirely. Savings can be achieved via other less harmful measures.

Schedule 1 [97] Section 151H – Work injury damages

50. Section 151H increases the WPI threshold for work injury damages from 15% to 31%.

51. Contrary to the NSW Government's claims, its Bill does not align NSW with other states regarding whole person impairment (WPI) thresholds for damages:

    a. South Australia's 30% threshold is based on different, more generous guidelines. Their 30% WPI is the same as our 15% WPI (SIRA 2023, pp. 54-59, RTWSA 2015, p. 102).

    b. Queensland has no threshold at all.

    c. ACT has no threshold at all.

    d. Victoria has a narrative test threshold which does not depend on WPI but rather how the injury has impacted the worker's life, especially work capacity.

52. Because 31% WPI is an impossibly high threshold, virtually no one will be able to access damages.

53. Damages in NSW only compensate a worker for loss of earnings and can only be claimed when the employer was negligent – that is, the worker must not merely prove the employer acted *unreasonably*; the worker must prove the employer acted *negligently* – a far higher bar. This already protects the scheme against unmeritorious claims.

54. Workers with a WPI of 15%+ almost always cannot work and will be left without any income support even where injured due to employer negligence.

55. There is no financial justification for increasing the WPI for damages. Work injury damages are not a costs driver in the scheme. The total amount paid in WID benefits in 2024 was $900m (SIRA 2025), mostly for physical injuries. The cost saving will be modest in a scheme where operating costs (i.e. administration costs, not benefits) of iCare and SIRA being funded out of the premium pool are now running at over $1.3 billion per annum and increasing by more than $100m per annum (iCare 2024, SIRA 2024[1]). Work

injury damages claims enable workers to exit the scheme without being compensated for future medical treatment, saving the scheme significant ongoing treatment and administration costs.

56. The availability of negligence claims serves as a deterrence that improves employer conduct, reducing future claims. Removal of the deterrence will only increase injuries.

57. Work Injury Damages (WID's) represent only 15% of the cost of the NSW scheme (SIRA 2025). They represent more than 30% of the Victorian scheme (WorkSafe Victoria 2024 p. 24) where damages are also more generous. There is no evidence that WID claims impact the financial viability of the scheme.

Recommendation 5: Delete Schedule 1 [97] Section 151H entirely. Savings can be achieved via other less harmful measures.

Limiting what is considered a psychological injury

58. The Bill effectively limits what counts as a compensable injury to only those caused by a small list of hazards. This is akin to saying a broken arm is only compensable if you fall over a chair, but not a bench.

Schedule 1 [3] Section 8G(1) – Setting the limits

59. Section 8G(1) of the Bill sets new limits on the type of psychological injury claims that can be made and compensated under the scheme. Section 8G means that no compensation is payable for a primary psychological injury to a worker unless:

    a. A 'relevant event or a series of relevant events' caused the injury;

    b. There is a real and substantial connection between the 'relevant event' and the employment; AND

    c. Employment is the main contributing factor to the injury.

60. Section 8G(1) has various issues, including:

a. It disentitles workers to compensation if the psychological injury was not caused by a relevant event. The issues with the meaning of 'relevant event' are identified below.

b. It imports language from the journey claim section, the necessity for which is unclear.

c. It serves to create an additional hurdle to receive compensation which otherwise does not exist in respect of other kinds of injury.

d. As a matter of drafting, s 8G(1)(c) is otiose, if not inconsistent with s 8G(1)(a).

Recommendation 6: Schedule 1 [3] Section 8G(1) should be deleted.

If it is to remain:

1. Section 8G(1)(a) should incorporate amendments recommended below to 'relevant event'.

2. Section 8G(1)(b) should be amended to, 'the injury must arise out of, or in the course of employment' (s 4 currently).

3. Section 8G(1)(c) should be deleted.

Schedule 1 [3] Section 8A – Significant effect

61. Section 8A of Bill limits the meaning of 'psychological injury' to an injury that is a 'mental or psychiatric disorder' that causes **significant** behavioural, cognitive or psychological dysfunction.

62. This amounts to a narrowing of the definition of psychological injury as it will exclude persons who suffer behavioural, cognitive or psychological dysfunction which is not 'significant'. Additionally, the need for consequent dysfunction to be 'significant' infects the legislation with further legal technicality, ambiguity and areas for dispute.

Recommendation 7: Schedule 1 [3] Section 8A should omit the words, 'that causes significant behavioural, cognitive or psychological dysfunction'.

Schedule 1 [3] Section 8E(1) – Relevant event and legal barriers for bullying and sexual harassment victims

63. Section 8E(1) defines 'relevant event'. 'Relevant event' is a term used in s 8G, Primary Psychological Injuries.

64. The issue is that compensation for primary psychological claims is being confined to certain injuries, being injuries caused by 'relevant events'. Those relevant events do not include common psychological hazards, like: work overload, role conflict or lack of clarity, poor support, poor workplace culture or relationships.

65. Schedule 1 [96] Part 4A 'Special entitlement to expenses for medical or related treatment' does not alleviate these concerns. This section limits compensation for work pressure injuries to medical treatment only, and only for 8 weeks. This prevents meaningful rehabilitation, especially given wait-times for psychological or psychiatric care are far beyond 8 weeks.

66. By limiting compensable injuries to those caused by 'relevant events', the Bill undermines the process of doctor-led care and progress to recognise workplace psychosocial hazards. If implemented, Unions NSW is concerned about how SafeWork NSW will regulate non-compensable hazards, leading to compliance gaps.

67. While the 'relevant events' include bullying and racial harassment, the definitions are limited. Bullying imports the ordinary meaning of the expression, requiring the conduct to be repeated and objectively unreasonable and racial harassment must be determined objectively.

68. Significantly, in order for bullying, sexual harassment and racial harassment to constitute a 'relevant event' it is necessary that the conduct be found to be such by a tribunal, commission or court. How such a finding is to be obtained is entirely unclear. The following questions arise:

    a. Can a worker commence proceedings in their own right under s 8E?

b. Can an industrial organisation commence proceedings on the workers' behalf?

c. Are additional resources being allocated to courts, tribunals and commissions to deal with the increased case load?

d. Will the rules of evidence apply?

e. What is the standard of proof?

f. If a court, commission or tribunal makes such a finding incidental to other proceedings, will that finding be sufficient for the purpose of s 8E?

g. Will a worker be entitled to recover legal costs? If not, how can a worker succeed against a well-resourced employer?

h. How will a worker with a disability, limited literacy, or poor English skills be in a position to represent themselves at a contested hearing against a well-resourced employer?

69. While the NSW Government presents this measure as helping to resolve a safety hazard, in practice it will just serve as a barrier to bullying and sexual harassment victims and survivors accessing workers compensation. Workers would be forced to remain at work experiencing continued abuse, while becoming further traumatised through an adversarial legal process which ruins their relationship with their employer and therefore any prospect of their return-to-work. The Government's proposals will result in less scrutiny of workplace bullying, sexual harassment and racial harassment.

70. This section will cause further psychological harm to injured workers. Forcing workers who have been bullied, physically assaulted, racially vilified or sexually assaulted or harassed, to go before a commission, court, or tribunal, to prove that their injury fits the meaning of 'relevant event,' before they can be financially compensated and medically treated for their injury, will inevitably result in further injury.

71. Unions NSW supports having the ability to dispute bullying and harassment in the NSW IRC, but not as a gateway to accessing workers compensation.

Schedule 1 [3] Section 8E(2) – Definition of bullying and racial harassment

72. Section 8E(2) defines 'bullying' as 'repeated' unreasonable acts. This requires establishing a course of conduct which is objectively unreasonable. This

compounds the legal technicality of a finding under s 8E, as it is not sufficient for the worker to prove that they perceived the conduct as bullying.

73. The definition of racial harassment conflates objective and subjective tests, being an act that is 'reasonably likely' to offend, insult, humiliate or intimidate and done because of the race, colour, national/ethnic origin.

Recommendation 8: Schedule 1 [3] Section 8E should be deleted.

Alternatively:

1. Section 8E should be amended to identify all psychological hazards identified in the *NSW Code of Practice: Managing Psychological Hazards at Work* including:

    a. Role overload
    b. Role underload
    c. Exposure to trauma and traumatic events
    d. Role conflict or lack of clarity
    e. Low job control
    f. Conflict or poor workplace relationships between workers & supervisors, managers and co-workers
    g. Poor support from supervisors & managers
    h. Poor co-worker support
    i. Workplace violence
    l. Bullying
    m. Harassment including sexual harassment
    n. Inadequate reward & recognition
    o. Hazardous physical working environments
    p. Remote or isolated work
    q. Poor procedural justice
    r. Poor organisational change culture

(SafeWork NSW 2021, pp. 7-8)

Recommendation 9: The requirement to obtain a finding of sexual harassment, bullying or racial harassment should be deleted.

Recommendation 10: Bullying should be determined by reference to the subjective perception of the worker, provided: [the perception has a factual foundation] OR [the perception is reasonable and rational in all the circumstances].

Schedule 1 [3] Section 8H – Vicarious Trauma

74. Vicarious trauma is a 'relevant event' for the purpose of s 8G.

75. The section is problematic because the definition does not capture workers who suffer an injury through vicarious trauma in the ordinary sense of the expression, being an injury caused by exposure to another person's trauma. Instead, vicarious trauma is confined to incidents involving a person who is a 'close work connection' with the worker.

76. The definition of 'various trauma' warrants close 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 connection' 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. These workers include correctional officers, 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.

77. The requirement for a 'close work connection' in section 8H excludes those who are traumatised by **responding to or processing the aftermath of serious incidents**, without a direct relationship to the victim. This narrow scope fails to reflect the reality of psychological injury risk for many frontline and support workers.

Recommendation 11: Schedule 1 [3] Section 8H should be deleted. Alternatively, s 8H should be amended by: in respect of s8H(1), deleting the words 'with whom the worker has a close work connection-'; in respect of s 8H(2), deleting the subsection.

Aftermath Claims

78. Section 8E(1)(c) defines a relevant event to include 'witnessing an incident that leads to death or serious injury.' However, this provision excludes workers who attend the aftermath of such incidents, such as first responders, public servants, transport workers and others who are regularly required to respond to or process traumatic scenes after the fact, without having personally witnessed the incident. This is a significant oversight, as after-the-fact exposure is far more commonly the cause of PTSD than witnessing the incident itself.

79. The Bill fails to recognise these 'aftermath claims' and offers no alternative pathway for compensation unless a close work connection under s 8H can be established, which will often not apply in these circumstances.

Recommendation 12: Amend Schedule 1 Section 8E(1)(c) to include workers who attend or respond to the aftermath of a traumatic incident, including those who interact with death or serious injury as part of their duties.

Analysis of the Bill regarding defining psychological injuries

80. The above amendments will limit the ability of psychologically injured workers to access compensation, principally by excluding liability unless the primary psychological injury was caused by a 'relevant event'. The relevant events do not capture a variety of common psychological hazards, for example work overload or poor workplace culture.

81. The requirement on workers to obtain a 'finding' from a court, commission or tribunal of bullying, sexual harassment or racial harassment is problematic for numerous reasons, including:

a. The inevitable cooling effect it will have on the willingness of workers to bring claims – inimical to the stated purpose of reforms, being prevention.

b. The ambiguity as to how those proceedings will work, including whether s 8E contemplates a standalone cause of action or whether such a finding can only occur incidentally to other proceedings.

c. If s 8E contemplates a standalone cause of action, the capacity of the IRC (or other bodies) to hear and determine those applications and the capacity of industrial organisations to represent members in those applications.

d. As a finding is a precondition to bringing a claim, the delay in receiving compensation.

82. Significantly, provisional liability is undermined because of the requirement to take a matter to a court, tribunal or commission before a claim can be made. Provisional liability exists to provide immediate treatment and a better return-to-work outcome.

83. Reference to tribunal, commission or court is found throughout the Bill. This is unclear language. Without clarity this will lead to disputation as to what court, commission or tribunal is the correct avenue for the notification of an injury caused by sexual harassment, racial harassment, or bullying.

84. The concept of 'racial harassment', introduced in this section by the Bill, contradicts other legislation such as the *Anti-Discrimination Act* 1977 (NSW), where the term racial discrimination is used. This will lead to high disputation as the Personal Injury Commission (PIC) determines which authorities relating to race discrimination will apply.

85. Section 8E(2) also provides a new definition of sexual harassment which is not in line with the *Sex Discrimination Act 1984* (Cth) and could cause high levels of disputation as the definition is disputed in a court, commission or tribunal.

86. The Bill undermines the process of doctor-led care and progress to recognise workplace psychosocial hazards. If implemented, we are concerned about how SafeWork NSW will regulate non-compensable hazards, leading to compliance gaps.

Denying claims involving reasonable management action despite other predominant hazards

87. The Bill restricts psychological injury claims which occur in the context of an extended definition of reasonable management action, even when the injury is predominantly caused by another hazard.

Schedule 1 [3] Section 8D(1),(2) – Extending the definition of reasonable management action

88. Section 8D(1),(2) redefines 'reasonable management action'.

89. It significantly extends the current definition, which under s11A (1) of the *Workers Compensation Act 1987* (NSW) is:

    '... reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.'

90. Section 8D(1),(2) makes it easier for an employer to defend an argument of reasonable management action by doubling the number of categories from the current phrase.

91. Section 8D(1)(a) introduces a new concept, 'reasonable way', in relation to reasonable management action. This is untested and will result in high levels of disputation for the courts, tribunals or commissions to build case law to clarify this new term.

Schedule 1 [3] Section 11A – Relevance of reasonable management action to claim

92. Section 11A replaces the current 11A(1) and (3) of the *Workers Compensation Act 1987* (NSW) and redefines when compensation can be paid. Specifically, s 11A replaces:

    '...if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer'.

93. Section 11A – amending 11A of the *Workers Compensation Act 1987* (NSW) – adds a worker's expectation or perception of reasonable management action

as additional grounds for excluding compensation for psychological injury. The removal of the worker's perception as a barrier to an employer's defence of reasonable management action undermines long-standing case law in both work health and safety and workers compensation, much of which predates the *Work Health and Safety Act* 2011 (NSW).

94. Additionally, s 11A replaces 'wholly or predominantly caused by' with 'a significant cause', which weakens the provision for workers and potentially reduces the range of possible claims. This is likely to prevent the injured worker's access to compensation when management action is taken in the context of a worker being exposed to another type of hazard.

Analysis of Schedule 1 [3] Sections 8D & 11A

95. Regardless of sections 8D and 11A, the definition of 'relevant event' under section 8E(1) may substantially or even wholly exclude claims occurring in the context of reasonable management action, except for events that may be prescribed by regulation under 8E (h).

96. Sections 8D & 11A are likely to reduce the capacity for a worker to demonstrate a bullying claim because they:

    a. Expand the definition of reasonable management action,

    b. Remove consideration of a worker's perception of the action, and

    c. Lower the required impact of reasonable management action to 'significant' for an injury to be non-compensable.

97. The interaction between this section and the bullying and harassment jurisdiction in the NSW Industrial Relations Commission is unclear. Where the IRC accepts a claim of bullying, it is unclear whether 11A will still be used as a defence regarding compensation. This means that even if a worker succeeds through the lengthy process of extracting a finding, they may still have their claim denied.

Analysis of reasonable management action in *State Transit Authority of New South Wales v Fritzi Chemler [2007] NSWCA 249* and *Attorney General's Department v K [2010] NSWWCCPD 76*

98. We understand that the NSW Government's justification to amend the definition of reasonable management action stems from the precedent set by two cases. They are:

    a. *State Transit Authority of New South Wales v Fritzi Chemler [2007] NSWCA 249* (***Chemler***) and

    b. *Attorney General's Department v K [2010] NSWWCCPD 76* (***AG v K***).

99. In *Chemler,* the worker perceived racial discrimination in his co-workers making slurs/jokes about Jewish people. The Court of Appeal held that the employer did not have a defence that the jokes were not intended as discrimination directed at the worker – it was the worker's perception that was relevant.

100. In *AG v K,* a solicitor claimed for an injury caused by excessive workload and harassment at work, and the employer's defence was that her condition was due to her 'misperception of events'. Similarly, the Commission found that this was not a defence.

101. The decisions do not stand for the proposition that perception is all that matters – there still needs to be a factual foundation for the perception – that is, the injury needs to be based on real, not imaginary, events. However, the cases do stand for the proposition that the worker's perception does not have to be rational, reasonable, or proportionate in order to give rise to a compensable claim.

102. While it is unlikely that this is a source of a significant number of claims, the Bill goes too far in trying to address this. It would be a very simple amendment to apply an objective test in such cases – that is, to provide that a worker's perception of events needs to be reasonable and rational in all the circumstances. Instead, the Bill does away with the right to make any claim for compensation for psychological injury except in limited defined circumstances.

103. Additionally, the cases do not point to any justification of the Government's proposed changes regarding the changing of wording from 'wholly or predominantly' to 'significant'.

104. In any event, it is difficult to envisage what need there is for the reasonable management action defence if the worker first needs to prove bullying, harassment, threat of violence, criminal conduct, or a traumatic accident (a relevant event under Section 8E(1) in order to claim in the first place. It is therefore hard to justify giving an employer a defence of reasonable management action to a racial or sexual harassment claim or a claim arising from a threat of violence, etcetera. This speaks strongly to reinstating the phrase 'wholly or predominantly' in s 11A.

Recommendation 13: In respect to Schedule 1 [3] section 8D(1),(2) maintain the current s11A of the *Workers Compensation Act 1987* (NSW).

Recommendation 14: In respect to Schedule 1 [3] section 11A, maintain 'wholly or predominantly' or 'predominantly' and delete section 11A (b) and (c).

Limits on assessing and disputing permanent impairment

105. The Bill introduces new limitations on how permanent impairment is assessed and disputed, making it harder for injured workers to access fair compensation and medical care.

Schedule 1 [98] Section 153G – Restricting Assessors

106. Section 153G limits who can assess permanent impairment to assessors on the SIRA-approved list.

107. There is no transparent process for how assessors are selected or removed from this list, raising concerns about potential bias and the lack of independence in assessments.

Recommendation 15: Amend Schedule 1 [98] Section 153G to include a clear and accountable process for the selection and oversight of assessors on the SIRA register, including input from worker representatives and safeguards to ensure independence.

Schedule 1 [98] Section 153G – Costs of permanent impairment assessment

108. While section 153G(2) permits either party to reject an assessment and refer the matter to the Personal Injury Commission, the Bill does not specify:

    d. On what grounds an assessment can be rejected,

    e. Whether a worker can present their own medical evidence,

    f. What process the Commission must follow after referral.

109. These gaps undermine the adversarial and independent nature of workers compensation disputes and could deny workers procedural fairness before the Commission.

Recommendation 16: Amend Schedule 1 [98] section 153G to legislate clear grounds and procedures for disputing assessments, including a right for workers to present independent medical evidence and guidance for the Commission in appointing a new assessor.

Schedule 1 [98] Section 153N – Claims for Deterioration

110. Section 153N creates an almost impossible threshold for workers to make a further claim based on deterioration of their condition. A claim is only allowed if:

    g. The insurer agrees the deterioration was unexpected and material (an unlikely scenario),

    h. The deterioration is at least 20% WPI (a level rarely met),

    i. The deterioration was not reasonably foreseeable (most injuries have some expected deterioration).

111. These conditions are unrealistic and would exclude nearly all genuine cases of long-term deterioration from further entitlements.

Recommendation 17: The requirements in Schedule 1 [98] section 153N should be removed. Workers should be able to seek a reassessment of permanent impairment without needing insurer consent, and thresholds for deterioration should reflect medical reality.

Removal of provisional liability for psychological injuries

Schedule 2 [5] Section 280 - Provisional acceptance of liability

112. The removal of section 280(3) will strip workers with psychological injuries of provisional liability protections, delaying access to early medical treatment and support. While workers can still lodge claims, the lack of early funding for diagnosis and treatment may act as a significant barrier to accessing care and progressing a claim.

Recommendation 18: Delete schedule 2 [5] section 280 - Provisional acceptance of liability.

Under- and non-insurance of workers

Schedule 1 [103] Section 173AA

113. Sections 173AA (1) and (2) create an offence for large employers to fail to give insurers information relevant to underinsurance.

114. Underinsurance currently costs the scheme hundreds of millions of dollars (iCare 2023). Underinsurance represents an important lever the NSW Government can use to improve financial sustainability **and** help ensure injured workers receive care and support. This is explored further in **Part C** of this submission.

115. However, the Bill fails to adequately address the issue of under- and non-insurance of employers.

116. Section 173AA(1) creates an offence when a large employer 'recklessly' fails to provide information which will allow their premiums to be accurately calculated, including but not limited to wages. The problem with 173AA(1) is that the offence is confined to 'large employers', a term undefined in the Bill. The choice to confine the proposed offence to large employers will significantly limit the scope of the clause's practical application. Large employers are more likely to be correctly insured compared with smaller and medium-sized ones.

Recommendation 19: Expand the scope of businesses covered under Schedule 1 [103] Section 173AA (1) to all businesses.

117. The decision to make the offence one of recklessness will severely limit the practical application of the clause. Notwithstanding 173AA (2), which seeks to clarify that the threshold for recklessness will be able to be met with proof of knowledge or intention, it remains true that recklessness is a significantly higher bar to reach than negligence. Requiring actual proof of knowledge or intention will exclude a range of circumstances where businesses are underinsured.

118. Changing the offence from one of recklessness to negligence would make the proposed offence significantly more effective in disincentivising underinsurance, by ensuring that employers must take all reasonable steps to ensure they are appropriately insured.

Recommendation 20: Amend the test for an offence under Schedule 1 [103] Section 173AA from recklessness to negligence.

119. Currently, the penalties for underinsurance are so low as to not deter businesses from participating in this illegal activity. The penalty for this offence must be significant enough to act as real deterrent.

Recommendation 21: Amend Schedule 1 [103] Section 173AA to include a financial penalty for non-compliance that represents three times the financial benefit obtained by employers.

120. Furthermore, the enforcement actions of SIRA do not reflect the extent of underinsurance in the system. The NSW Government should expand the capacity for regulatory oversight, as also explored in **Part C** of this submission.

Recommendation 22: Amend the Bill to empower and task iCare with enforcing insurance requirements amongst employers.

Denying reasonably necessary medical treatment

Schedule 1 [26] Section 60 Compensation for cost of medical or hospital treatment and rehabilitation & 60AA Compensation for domestic assistance

121. Sections 60 and 60AA will limit the treatment and assistance injured workers can receive. Omitting reasonably necessary and replacing with reasonable and necessary creates a higher bar and a different test for medical expenses. The 'reasonably necessary' threshold has been settled law since *Rose v Health Care Commission* (NSW) 1986. The Bill will make accessing some treatments and support more difficult.

122. According to the 2021 *McDougal Review*, the proposal to change the test, from 'reasonably necessary' to 'reasonable and necessary', for access to a medical treatment, was opposed by the Australian Medical Association (AMA). The AMA warned this change would cause delays in the provision of care to injured workers (McDougal 2021, p. 274).

123. Under the current test of 'reasonably necessary', if a doctor certifies that an injured worker needs treatment, their opinion is generally respected. However, if the test were changed to 'reasonable and necessary', insurers may be able to oppose treatments against medical advice based on additional considerations such as cost or perceived effectiveness. This could increase costly disputation and make it harder for workers to challenge

insurers' decisions, especially if courts adopt a deferential approach to what insurers deem 'reasonable'. This risk is illustrated by cases such as *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; (2010) 240 CLR 611 at 648–650 and *A v Corruption and Crime Commissioner* [2013] WASCA 288 at [123], which highlight the broad discretion afforded to decision-makers under a 'reasonable' standard in administrative law.

124. Ultimately, this section could unjustly deny injured workers reasonably necessary medical treatment.

Recommendation 23: Omit Schedule 1 [26] Section 60 Compensation for cost of medical or hospital treatment and rehabilitation & 60AA Compensation for domestic assistance.

Part C: Alternative proposals to improve scheme sustainability

125. There are better options to improve the financial sustainability of the scheme.

126. The following recommendations are Unions NSW's alternative to the NSW Government's position. Our plan focuses on **our three priority areas** of preventing injuries and trauma, returning injured workers back to work quicker, and reducing waste and inefficiencies within the current scheme.

127. If these problems are not addressed and critically injured workers are denied support, this means they fall through the cracks in the system, pushing them onto their families for care and welfare and charity to survive.

Adopting the best practices from other states to prevent injuries before they happen

128. NSW's current WHS framework is reactive and relies on regulator intervention after an injury occurs. Furthermore, some employers choose not to follow WHS Codes of Practice in their workplaces which contain best-practice hazard reduction measures developed by experts.

Empower the NSW IRC to resolve safety hazards raised by workers

129. Unions can only prosecute Category 1 WHS breaches, which are the most serious type of offense risking death or serious injury/illness. By this stage it's often too late, especially for trauma and psychological injuries which develop over time. We need to remove workplace safety hazards before they cause injuries that leave injured workers dependent on a failing workers compensation system.

Recommendation 24: The NSW Government should empower the NSW Industrial Relations Commission to resolve general WHS disputes over safety and worker protection referred by unions, as already occurs in Queensland and South Australia.

This provides an opportunity to remove workplace trauma hazards before they turn into serious injuries and claims.

Entrenching Codes of Practice in NSW WHS law

130. In NSW, Codes of Practice provide information for employers on how to maintain safe workplaces and practices required under the *Work Health and Safety Act 2011* (NSW). Codes of Practice contain expert material and the best methods for hazard detection and the elimination and/or minimisation of those hazards.

131. However, because Codes of Practice are not mandatory, some employers choose not to follow them and cut corners to save time and money at the expense of workers' safety.

Recommendation 25: To prevent workplace injuries, the NSW Government should follow the lead of Queensland and Victoria and make Work Health and Safety Codes of Practice enforceable.

Making it easier for injured workers to return to work

132. Return to work rates have continued to fall over recent years which places pressure on the financial sustainability of workers compensation. Unions NSW has received feedback from workers regarding the multiple barriers they face to a successful return-to-work.

Empowering the NSW Industrial Relations Commission to resolve return-to-work disputes

133. Returning to work after an injury is in the interest of employers and workers. The barriers to a successful return-to-work process are often just as complex

and difficult for an employer as they can be for an employee. In some cases employers may wish to avoid having to accommodate the needs of an injured worker returning to the workplace. There needs to be more support to assist employers manage injured workers returning to work.

134. Situations where an employee would be able to return to work, but is prevented from doing so, often lead to a dispute with their employer. This often remains unresolved when there is no avenue for the worker to have their case resolved.

Recommendation 26: Include return-to-work provisions for injured workers as a matter for which unions may lodge a dispute with the NSW Industrial Relations Commission for resolution. This should apply to workers in the public sector, local government and private sector and will assist workers to return to the workplace when they are fit to do so.

Incentivising employers to prioritise safety and return to work

135. Currently, employers have little incentive to provide suitable duties to enable injured workers to return-to-work. The current premium model is industry-based and does not reward good employers who facilitate return-to-work for injured employees. Nor does it address the issue of employers who unnecessary keep employees on workers compensation.

136. Such practices lead to reduced return-to-work outcomes and diminished employer engagement in injury management. The NSW Government's reliance on rehabilitation providers to bridge this gap has proven costly and ineffective, adding hundreds of millions of dollars to the scheme without improving outcomes.

Restructuring premiums to promote return to work

137. The NSW workers compensation scheme should return to a premium model which takes into account an employer's individual claims history. Prior to the 2012 reforms to the scheme, employers with a higher incidence of injuries faced higher premiums, creating a financial incentive to improve workplace safety, provide suitable duties, and facilitate early return-to-work. This system contributed to significantly better return-to-work rates, as employers were

commercially incentivised to minimise lost time and offer meaningful alternative duties.

Recommendation 27: Reintroduce a loading based on claims performance to restore meaningful incentives for employers to prevent injury and support timely return to work and to reward safety-conscious employers.

Preventing employers from sacking injured workers

138. Currently, employees can be terminated if, after 6-months, they still have not received 'suitable duties' from their employer which enable them to return-to-work. This means some employers simply 'wait out the clock' rather than making a genuine effort to provide suitable duties.

Recommendation 28: The NSW Government should legislate to prevent termination of an injured worker unless the injury management plan states the return-to-work goal is a different job with a different employer.

Cleaning up waste and inefficiency within the scheme

Expanding the powers of SIRA to reduce insurer waste and inefficiency

139. Insurers are not being held accountable for declining return-to-work rates and increasing costs to the scheme.

140. The NSW Auditor General has criticised iCare for not focusing on making improvements in these areas (NSW AG 2024, pp. 4-5). In recent years iCare has directed its resources to outsourcing claims management and developing a new IT system, both of which have contributed to declining return-to-work rates (NSW AG 2024, pp. 4-5).

141. Between 2018-19 and 2022-23, the fees iCare paid to outsourced claims service providers increased by around 40% (NSW AG 2024, p. 5). Between

2020-21 and 2022-23, iCare's spending on labour-hire increased to more than $100 million per year (NSW AG 2024, p. 6).

142. The lack of effective regulation has allowed inefficiencies and non-compliant practices amongst insurers to persist. In 2024, there was only one civil penalty issued of $11,000 to an insurer for breaching its regulatory obligations (SIRA 2024[2]).

Recommendation 29: The lack of accountability amongst insurers is leading to unnecessary waste, inefficiencies, and poor return-to-work outcomes. To improve scheme sustainability, the NSW Government should extend SIRA's regulatory capacity across all insurers in the scheme.

Stop bad employers increasing everyone's premiums by under- or non-insuring workers

143. When employers under-insure (e.g. insure for significantly less workers than they employ), the costs of their claims are absorbed by the scheme, effectively redistributing the risk and financial costs to compliant employers and the broader system. As of December 2023, uninsured employers were expected to cost the system around $191 million in unpaid workers' compensation claims (iCare 2023).

144. However, this illegal behaviour is not adequately policed. When employers are caught, the fines are so low they are not a disincentive to future bad behaviour and are seen by some employers as 'the cost of doing business'.

145. The Bill does not adequately address this issue, as explored in **Part B** of this submission.

Recommendation 30: Improve SIRA's capacity to enforce compliance of employer insurance obligations and increase the financial penalty for non-compliance to at least three-times the financial benefit obtained by employers.

Improving SIRA's complaints handling process

146. In 2024, an independent inquiry examined SIRA's handling of long-standing, unresolved complaints against insurers. The findings of the inquiry are yet to be made public.

Recommendation 31: The NSW Government should publish the recommendations of the 2024 Independent Inquiry into SIRA's regulatory operations and consult with stakeholders on their implementation.

Diversify the insurance pool to make iCare sustainable long-term

147. Unions NSW has for many years expressed its concern about the negative financial impact of extending specialised insurance licences and the increasing number of self-insurers. Private insurers target better performing policyholders, making the nominal insurer the 'insurer of last resort' and negatively impacting its financial sustainability.

148. Consolidating all employers into the nominal insurer's pool would diversify risk, enhance scheme sustainability, and ensure consistent claim management standards. This reform would protect both workers and the broader workers' compensation system from the adverse impacts of risk segmentation and insurer cherry-picking.

Recommendation 32: To promote long-term financial stability and equitable treatment of injured workers, the NSW Government should abolish self-insurer and specialised insurer arrangements in NSW.

Part D: Next steps and independent review of the NSW Workers Compensation scheme

150. Instead of its harmful Bill, the NSW Government should focus on improving the sustainability of the scheme by addressing the following **three priority areas:**

    a. **Preventing injuries,**

    b. **Helping workers return to work when it is safe to do so, and**

    c. **Reducing waste and inefficiency within workers compensation insurers.**

151. After years of campaigning by Unions NSW, some measures consistent with these priorities are now in the process of being implemented. However, these measures still must be given the time they need to generate the foreseen improvements to the financial condition of the scheme. This includes:

    a. The employment of 50-60 new SafeWork NSW inspectors to support WHS compliance (Safework NSW 2024, p. 14);

    b. SafeWork NSW targets to increase compliance visits by 25% yearly and deliver mental health training to 21,000 employees by 2026 (Safework NSW 2024, p. 14);

    c. The 'Whole of Government Return to Work Strategy' which has just begun implementation.

152. These new measures will help take pressure off the scheme, but must be given time to do so.

153. In **Part C** of this submission, Unions NSW recommended further measures which are likely to have significant positive impacts on the financial sustainability of the scheme.

154. Such measures, new and recommended, should be implemented and reviewed as a first step. This should occur before legislating the content of the Bill, which should be considered a harmful last resort in that it will reduce

the access of seriously injured workers to life-saving mental health support and care.

155. Following this current inquiry Unions NSW supports:

a. Legislating preventative measures with funding and set times for implementation agreed through a consultation process with the NSW Government;

b. Legislating agreed reforms arrived at through a consultation process with the NSW Government;

c. Legislating an independent review for proposed measures or reforms that are not agreed.

Recommendation 33: The NSW Government should legislate an independent review of the NSW Workers Compensation scheme with terms of reference to investigate the design of a system that deals with psychological injuries which:

a. is economically sustainable;

b. addresses administration of the system in an efficient manner;

c. deals with psychological injuries in a way that:

i. maximises prevention;

ii. maximises injured workers' return-to-work; and

iii. promotes a process that does not aggravate the underlying injury;

d. considers the most appropriate means of providing long term support to people with a psychological injury; and

e. reviews existing measures and considers further preventative measures.

156. The independent review would have an agreed timeframe in which to produce a final report. However, where specific opportunities for reform were

identified prior to the final report, the independent review could bring forward recommendations for immediate action.

Conclusion

157. Recent increases in workers compensation mental health claims are extremely concerning. The first step the NSW Government should take is to focus on preventing injuries before they occur. There are common-sense measures available, such as a general WHS jurisdiction and entrenched Codes of Practice. These operate in other jurisdictions and the NSW Government should adopt them before considering its current proposals,

158. Falling return-to-work rates are another concerning outcome of a poorly structured workers compensation scheme. We can help workers get back to work by enabling the NSW Industrial Relations Commission to resolve return-to-work disputes. We can also increase return-to-work rates through individualised premiums and by making it harder to sack injured workers, both of which would incentivise employers to facilitate return-to-work. Employers should not be able to block a worker returning to work after recovering from a workplace injury, shifting the costs to the NSW workers compensation scheme. Conversely, the system should reward safe employers with good return-to-work practices.

159. The NSW Government can save millions of dollars by reforming insurance industry practices, especially regarding return-to-work practices. SIRA should be empowered to make insurers accountable to their responsibility to improve return-to-work rates and reduce their costs to the scheme. This must include removing private insurers which drive up premiums within the nominal insurer.

160. In contrast to these aims, the Bill does nothing to directly help prevent workplace injuries, does nothing to help workers return-to-work when safe to do so, and does nothing to reduce the waste and inefficiency of insurers. If implemented, the Bill will be extremely harmful to mental health in NSW and will very likely cause the death of workers. We ask the Committee to recommend against introducing the Bill to parliament.

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