

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

Organisation: United Services Union

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Submission from

New South Wales Local Government,
Clerical, Administrative, Energy, Airlines &
Utilities Union

To

Standing Committee of Law and Justice
Parliament of New South Wales

Subject:

Inquiry into the Proposed Changes to Liability
and Entitlements for Psychological Injury in
New South Wales

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**To the Director,
Standing Committee on Law and Justice,
Parliament House,
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The United Services Union (USU) welcomes the opportunity to provide our views on the New South Wales Government's proposed amendments to the liability and entitlements framework for psychological injury in New South Wales, as outlined in the Exposure Draft of the *Workers Compensation Legislation Amendment Bill 2025 (NSW)* ("the Exposure Draft").

The USU represents over 30,000 members across New South Wales in the Local Government, Energy, Utilities, and Clerical and Administrative sectors. The majority of our membership are employed within local government.

We are of the view that the proposed changes will have adverse consequences for workers who sustain psychological injuries in the course of their employment. If enacted in its current form, the proposed provisions will impose additional procedural barriers for injured workers, including our members, by complicating the process of making a workers compensation claim for psychological injury and restricting access to timely and appropriate mental health support. These proposals fail to address the causes of psychological trauma in the workplace and will ultimately hinder, rather than support, a worker's recovery and return to work for the reasons set out below.

The USU's submission will focus on the second term of reference issued by the Committee, examining the provisions of the Exposure Draft that are of most concern and to which we strongly oppose. We will discuss the likely impact on our members if these provisions are enacted in their current form and outline general recommendations for reforms that would better serve our members, and more broadly NSW workers who suffer work-related psychological injuries.

1. The Meaning of 'Relevant Event' In Section 8E of the Exposure Draft

The Exposure Draft proposes inserting a new Division 2, Section 8, to provide interpretive provisions relating to psychological injuries under the applicable Workers Compensation Acts. The proposed definition of 'relevant event' in section 8E is highly restrictive and establishes a narrow threshold for injured workers to be entitled to compensation under section 8G. The provision limits 'relevant events' to criminal offences committed against a person, trauma from witnessing death or serious injury (or the threat thereof), or a formal finding by a tribunal, commission or court that the worker was subjected to bullying or harassment of a sexual or racial nature.

The USU holds significant concerns that the narrow scope of this definition will exclude most genuine psychological injuries sustained by workers in the course of employment. Specifically, the definition fails to contemplate injuries arising from overwork, excessive work demands, discriminatory treatment based on protected attributes such as age or disability, retaliatory conduct for exercising workplace rights (such as lodging a grievance or complaint), or unresolved interpersonal conflict.

While section 8E(h) enables the regulations to prescribe additional relevant events, the definition in its current form creates uncertainty for workers. Further, the proposed Part 4A, section 148B, which provides that a worker diagnosed with a 'work pressure disorder' may access expenses for 'reasonable and necessary' medical or related treatment for a period of up to eight weeks, does not remedy the deficiencies in the 'relevant event' definition nor ensure meaningful access to compensation.

The majority of psychological injury claims lodged by our members arise from circumstances that would be excluded by the proposed 'relevant event' definition. Examples of the type of primary psychological injuries that our members experience, but which would be excluded under the current drafting, include:

- Verbal abuse of local council parking officers (and other outdoor workers) in the performance of their duties.
- Psychological trauma experienced by ambulance call centre staff exposed to graphic content or crisis situations.
- Adverse treatment of employees based on union membership; and
- Targeted reprisals against workers who raise complaints or concerns with management in accordance with lawful internal procedures.

These are not uncommon circumstances and reflect the real psychological risks that our members face during their course of employment. Excluding events related to work pressure, burnout, retaliatory conduct and other similar circumstances imposes an unjust burden on injured workers to pursue less certain remedies.

The USU submits that the NSW Government's proposed definition in section 8E presents an unjustifiable restriction on injured workers' being denied compensation for suffering psychological harm in legitimate and foreseeable workplace circumstances. The definition of 'relevant event' must be broadened to include psychosocial risks and work-related stressors that are causative of psychological injury.

2. Primary Psychological Injuries of Bullying, Sexual and Racial Harassment in Section 8F of the Exposure Draft

The NSW Government's proposed amendment under section 8F imposes an unduly onerous burden on workers with primary psychological injuries arising from bullying or sexual or racial harassment by requiring a formal finding of such conduct by a tribunal, commission, or court as a mandatory precondition to lodging a claim under Division 3A and satisfying the definition of 'relevant event' under section 8E for compensation payable under section 8G.

The USU holds significant concerns that the proposed process for injured workers to commence proceedings for bullying or harassment under the jurisdiction of the NSW Industrial Relations

Commission will adversely affect workers in a twofold manner. First, the requirement to initiate formal proceedings will impede timely access to compensation that workers rely upon while they are unable to work due to their recovery. Second, the procedural and evidentiary obligations imposed may re-traumatise the worker by necessitating the reliving of events that gave rise to the psychological injury.

In our view, the proposed provision is inconsistent with common law principles for assessing whether a worker has a compensable psychological injury. The NSWCA decision of *State Transit Authority of New South Wales v Fritz Chemler* [2007] NSWCA 249 established that a worker's 'perception of real events', which are not 'external events', can satisfy the test of psychological injury 'arising out of or in the course of employment'. The construction of section 8F departs from this principle by requiring an IRC finding that has no material bearing on the factual question of whether the worker suffered psychological injury in the course of their employment.

Notwithstanding the significant risk of exacerbating an injured worker's condition by making access to compensation contingent upon the finding of the Industrial Relations Commission, the USU considers that the proposed section 8F fails to acknowledge the practical realities of judicial processes, which will inevitably delay an employee's access to compensation and rehabilitative support. The process contemplated under section 8F will not be immune to the delays and adversarial nature of judicial proceedings. For instance, applications under section 8F will commonly be contested, with proceedings before the IRC likely taking 6 to 12 months. The associated legal costs act as a deterrent for workers and unions with limited resources, a burden that is further compounded by the inequality of resources between employers and workers in proceedings.

Given these factors, the USU submits that section 8F as currently drafted will have serious adverse effects on access to compensation for psychological injury and will not prevent psychological injury but will entrench barriers to remedy. The USU is of the view that section 8F not be enacted in its current form. The NSW Government should adopt the approach recommended by Unions NSW, namely, that matters involving bullying and harassment should be addressed through orders under the general WHS jurisdiction of the NSW IRC, as a matter of prevention, and not serve as a gateway to accessing workers compensation.

3. Increasing the Whole Person Impairment (WPI) Threshold to 30% for Primary Psychological Injuries After 130 Weeks

The proposed amendments to sections 38(9) and 39A of the *Workers Compensation Act 1987* (NSW), which limit access to weekly compensation beyond 130 weeks for workers with primary psychological injuries unless they have a whole person impairment (WPI) of at least 31%, and section 151H(2), which prohibits the award of damages for such injuries below the same threshold, are excessive and risk extinguishing the rights of injured workers.

The USU, consistent with the concerns raised by affiliate unions of Unions NSW, strongly opposes the increase of the WPI threshold from 15% to 31%. This change would preclude most workers with serious psychological injuries from accessing longer-term compensation, restricting them to a maximum of 130 weeks of weekly benefits and just one year of medical coverage.

Most of our members who suffer from debilitating psychological injuries fall below the 31% WPI threshold yet remain incapable of returning to work. A WPI assessment of 30% typically reflects a level of impairment requiring household or institutional care. This raises serious concerns about the feasibility of reaching such a threshold for many injured workers because workers falling below the new threshold will be forced to seek alternative forms of income support, such as superannuation or Centrelink benefits, undermining the government's stated objective of promoting return-to-work outcomes. Those with severe psychological impairment in the 15% to 30% range risk falling through the gaps in the workers compensation system.

The USU is strongly opposed to the proposed increase in the WPI threshold and urges the Committee to reject the amendments to protect the long-term rights and entitlements of psychologically injured workers.

4. Special Entitlement to expenses for Medical or related treatment – Work Pressure

The proposed Part 4A, section 148B introduces a limited entitlement to expenses for reasonable and necessary medical treatment for workers experiencing 'work pressure'.

The USU holds the view that most psychological injuries sustained by our members arise from work-related pressures. Consequently, the proposed framework would significantly restrict access to compensation, limiting support to a maximum of approximately eight weeks, and only where the higher threshold of "reasonable and necessary" treatment is satisfied. This approach fails to provide adequate support for workers with legitimate psychological injuries and does not address the deficiencies under the current drafting of section 8E and 8G. The definition of "relevant event" fails to establish a clear mechanism for compensatory claims arising from work pressure injuries, nor does it provide access to extended benefits in circumstances where a worker cannot return to work while undergoing treatment.

The USU further submits that the proposed entitlement to a "special work pressure payment" is likely to remain constrained by the broader legislative framework, particularly by the Workers Compensation Guidelines. Under the proposed section 148B (7), these Guidelines may prescribe the evidentiary and procedural requirements for lodging a claim. Subsequently, we anticipate that most applications for compensation under the special entitlement will be declined or administratively rejected. To remedy this gap, the USU recommends that "work pressure" be expressly included as a category within the definition of "relevant event" under the proposed section 8G, to ensure that affected workers rightfully receive compensation.

5. The Adoption of the "Reasonable and Necessary" Test

The proposed insertion of the "reasonable and necessary" test to replace the existing "reasonably necessary" standard under the existing sections 60 and 60A covering medical and hospital treatment, rehabilitation, and domestic assistance, as well as in the new section 148B, imposes a significantly more restrictive threshold for access to medical and related treatment.

The USU is concerned that this change will generate an increase in disputes, consistent with the experience under the *Motor Accident Injuries Act 2017 (NSW)*, where similar terminology has led to protracted litigation over the necessity and appropriateness of treatment. It is our understanding that disputes under the 'reasonable and necessary' standard often concern the severity of a worker's symptoms and whether proposed treatments meet the stricter definition of being "necessary," as opposed to simply being reasonable and clinically appropriate. The underlying assumption of the proposed change appears to be that injured workers are pursuing unwarranted medical procedures. In our Union's experience, injured members are reluctant to undergo surgery or intensive medical intervention unless it is essential, and all other alternatives have been exhausted. The USU recommends the current "reasonably necessary" test under section 60 be retained to ensure that injured workers are not disadvantaged by an unnecessarily rigid evidentiary standard.

6. The Amendments to the Permanent Impairment Claim Process

The USU holds certain concerns with the proposed amendments under the new Part 6 relating to the assessment of permanent impairment claims and the requirements for Permanent Impairment Agreements. Our specific concerns relate to the proposed sections 153B(2) and 153I, which effectively limit the assessment of an injured worker's permanent impairment to a single evaluation for the same injury, or multiple injuries arising from the same incident, and section 153P, which provides inadequate safeguards for injured workers entering into written Permanent Impairment Agreements with their employer or insurer.

In relation to our first concern, section 153I proposes to restrict injured workers to a single principal assessment for the same injury, or multiple injuries arising from the same incident. This does not reflect the complex medical and legal realities of workplace injuries, which often involve both specific incidents and cumulative disease-based injuries occurring over time. Based on the commentary we have received from legal counsel who regularly represent our members in workers compensation cases and permanent impairment assessments, these matters frequently span multiple insurers and require nuanced and accurate referrals to medical assessors. The USU believes that the proposed framework does not provide sufficient flexibility to address these complexities.

Although section 153N permits a second principal assessment, it is limited to cases of unexpected and material deterioration accompanied by at least a 20% increase in impairment. This threshold is unjustifiably high, and inconsistent with the impairment thresholds already implemented for access to extended entitlements as a high-needs worker. For example, an injured worker whose impairment increases from 14% to 22% following surgery would ordinarily become eligible for lifetime medical

treatment and extended weekly payments. Under the proposed threshold, this same worker would be denied access to a second assessment and, consequently, to those entitlements. The USU submits that a second assessment should be available on more accessible and reasonable grounds.

In relation to our second concern, section 153P enables an insurer or employer to enter into a written Permanent Impairment Agreement with a worker, provided they are “satisfied” that the worker has obtained legal advice. The USU considers this standard insufficient to protect the rights of injured workers. It represents a significant departure from the current process, which generally involves legal representation throughout the impairment claim. Under the proposed section 153P, workers may be exposed to procedural disadvantage where insurers retain control over key aspects of the referral process, including:

- determining which documents are provided to the assessor;
- defining whether the injury is incident-related or disease-based;
- limiting the scope of the referral and excluding secondary injuries;
- controlling the timing of the assessment; and
- failing to include relevant personal statements from the worker or witnesses regarding functional limitations.

Given that impairment assessments directly determine eligibility for substantial ongoing entitlements, the absence of legal representation in this process significantly increases the risk of under-assessment. The USU believes that section 153P be amended to include express provisions requiring that workers receive independent legal advice prior to entering into any Permanent Impairment Agreement and throughout the assessment referral process.

CONCLUSION

The USU thanks the Committee for the opportunity to provide this submission and urges it to carefully consider our concerns. The proposed amendments undermine the right of NSW workers to adequate compensation and mental health support for psychological injuries sustained during their employment. The USU urges the NSW Government to amend or withdraw these changes to ensure that the health and protection of workers is paramount.