

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

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Standing Committee on Law and Justice, Parliament House, Macquarie Street, Sydney NSW 2000

To The Director,

Law and Justice Committee – Workers Compensation Legislation Amendment Bill 2025  
review May 2025

**Overview:**

Our family have spent the last 4 years attempting to navigate my husband's work related psychological injury within the NSW workers compensation scheme. This has been extremely challenging, both trying to deal with my husband's condition, and deal with the scheme itself. On review of the proposed changes to the scheme outlined in this Bill, I am extremely concerned for those still in the scheme with a psychological injury, and speaking on behalf of many, the manner in which these proposed changes have been announced by the NSW government, it has struck fear and uncertainty into the lives of many people.

**Background:**

My husband, \_\_\_\_\_ served with the NSW Police Force between 1995-2013 (full time) and with Fire Rescue NSW (part time) between 2006-2021. He was employed with Regional NSW (full time) from 2013 to 2021. In March 2021, he suffered an acute mental health episode stemming from years of untreated PTSD and Major Depressive Disorder due to his high trauma exposure in his work roles, which almost cost him his own life. \_\_\_\_\_ was terminated on medical grounds from Regional NSW on 20 May 2022 and Fire Rescue NSW on 2 June 2022.

In short, EML acting for Fire Rescue NSW went on an 8 month legal battle against him attempting various legal avenues of dispute in accepting \_\_\_\_\_ claim before rejecting his claim outright on the 17 March 2022. After various complaints, this decision was overturned without explanation on the 21 April 2022, later explained to us by iCare NSW as being incorrectly rejected, inconsistent with the expectations of insurers and a decision that was made with disregard to the available evidence. \_\_\_\_\_ was assessed as having a 24% Whole Person Impairment. As a measure, I cannot describe the impact of his condition, and what it has on our relationship, our children and our general existence. He is not the man I married, and not the father he once was for our children.

Our family's treatment within the workers compensation scheme is one that I can only call disgraceful. We have been subjected to surveillance by EML investigators that was not only found by SIRA to have been unjustified and non-compliant with the Standards of Practice, but went to the extent of breaching my personal privacy, a finding made by iCare NSW on investigation. We also suspect this breach to have extended to our children, however we have been unable to see the surveillance reports due to their claims of 'legal privilege' and refusal to disclose its full content.

Misconduct had been rife through the claims process, resulting in various notifications to the IRO, SIRA and the Privacy Commissioner and other government departments.

Sadly, although there were two pages of legislation and Standards of Practice breaches identified by SIRA, no action has been taken against EML with regard to the ongoing misconduct. This comes as no surprise as we learned from the SIRA review report into the TMF (April 2024) outlines that the Claims Service Providers such as EML do not have insurer obligations under the NSW Workers Compensation legislation and cannot be prosecuted among other regulatory oversight issues.

These issues severely eroded trust in the scheme to the point he was refusing treatment provided by insurers at times, and became extremely guarded about our family's privacy and his own protection from misconduct by those within the scheme. Given how detrimental we have found the scheme to be in managing psychological injury, we urgently exited the scheme in December 2024 by way of a Work Injury Damages settlement.

### **Concerns relating to the proposed amendments to the NSW Workers Compensation Legislation:**

First and foremost, there appears to be nothing in the proposed amendments that will provide any firming solutions that would change my husband's experience in the workers compensation scheme, or the detrimental effect it has had on his recovery. Misconduct by insurers, expansive legal bills incurred by insurers attempting to abrogate their responsibilities and the lack of meaningful and capable oversight by regulators of the TMF will still prevail. I would suggest that an appropriate addition to this bill would be to bring TMF within the scheme under the regulatory and prosecution powers of SIRA – as identified as a significant issue within claims management of TMF in McDougall report (2020) and the SIRA report into the TMF (2024).

Treasurer Daniel Mookhey has claimed that looking to other states whole person impairment levels regarding primary psychological injury is a solution in his speech published 18 March 2025, yet he has failed to look at other state and federal measures to presumptively accept claims for psychological injury as many have for our First Responders, among other measures that might better support those psychologically injured. It is obvious he has hand picked items that will create cost savings in the short term, at the expense of people like our family.

Further, in the Treasurers same speech, he identified that psychological injuries take significantly longer to recover from on average, yet this proposed Bill cuts coverage for psychological injuries intentionally shorter and introduces a Whole Person Impairment measure more than double than that of physical injuries for continued cover. This is expanding the discriminatory action proposed by the Treasurer, not dealing with 'Whole Person Impairment' as a general measure of a person, but singling out those with equivalent psychological impairment as being less important it would appear than those with physical impairment measures. Given the barbaric and discriminatory suggestion that psychological claims now only receive 2.5 years of coverage unless above an unfairly high threshold of 31% WPI, it would be logical that those 2.5 years are very precious and need to be managed through trauma informed and psychological claim management expertise. A logical addition to this reform would be the inclusion of the

2023 Law and Justice Committee recommendation that a psychological specific claims division within iCare to ensure claims are managed fairly and in a psychologically informed manner to improve outcomes for injured workers.

As this committee would know, the NSW Government workforce makes up only 8% of the total workforce covered by the scheme, however, makes up 44% of all new psychological claims. While this may be explainable given the unique roles some government workers perform, such as Police, Paramedics, Nurses and Firefighters compared to non-government employees, nothing in these proposals appear to be addressing this very issue caused within government itself and this massively disproportionate rate of psychological claims from just 8% of workers within the overall scheme.

It is noted that unlike in the 2012 amendments, Police officers, firefighters and paramedics will not be exempted from changes made in this bill as is so in Part 19H of the 1987 Act currently. Given the affect this will have on these critical roles in our society, who are shown in Beyond Blue research to suffer dramatically increased risk of mental ill-health as a result of their service, these changes will unfairly target these workers.

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For ease of reference, I will draw comment on sections of the proposed amendments that I believe are in need of further consideration.

#### Schedule 1 // Section 8E Meaning of “relevant event”:

Issue: While it is great progress to have clear definitions and parameters of what ought be considered, this sections critical link in relation to accepting a claim as outlined in Section 8G (primary psychological injuries) does not consider an entire spectrum of events as being relevant for the purposes of this legislation. Many traumatic scenes such as deaths by suicide and other mis-adventures will not meet these provisions.

Example 1: A council worker or private contractor that is cleaning toilets finding the body of a drug overdose victim unknown to them will not fit the criteria outlined in 8E or 8H – there is no close work connection, and the manner of death is not covered in the events outlined. They will be unable to claim, even if this has happened multiple times to the worker.

Example 2: First responders attending the scene of a person who has died by suicide in an overdose, car exhaust gassing or hanging (for example) does not fit the provisions within 8E: including 8E(d) vicariously. Those attending are not ‘subjected to’ per 8E(1)(a)-(b), nor did they ‘Witness an incident that leads to [the death]’ of a kind in 8E(1)(c)(i)-(iii). Further the possible vicarious trauma of attending the scene may not meet the ‘close work connection’ requirements outlined in 8H(2)(a)-(b) and in any case the death is not of a kind recognised in 8H(1)(a)-(c) and there are no others prescribed in regulations per 8H(1)(d).

Example 3: First responders involved in a search for a missing 17 year old boy missing in remote bushland, who is found over a week later having died of dehydration, requiring the body to be examined, and recovered is similar to the above in that it does not fit the type of events outlined in both 8E and 8H: It is not an act of violence, indictable criminal conduct, a motor vehicle accident, natural disaster, fire or other 'accident' (noting there is no definition of accident, however being lost and dying of dehydration would not normally be classed as 'an accident' in any normal description of the incident).

Schedule 1 // Section 19 (Presumptions relating to certain employment):

Given the association with the diseases outlined in Schedule 1 of the Workers Compensation Regulation 2016 that relate to this provision, it appears to be an unusual application of stipulating persons within Clause 25 of Part 19H in the 1987 Act (Police, Paramedics and Firefighters). This seems illogical unless there are proposed changes to Schedule 1 of the regulations to include psychological conditions such as PTSD, in a sense to adopt them as 'presumptive' diagnosis as has been done in the federal workers compensation schemes and some other state and federal schemes within Australia and as has similarly been done in NSW for fire fighter related cancers.

I would suggest that a required addition to this legislation would be presumptive legislation for psychological injury for first responders.

Schedule 1 // Section 38(9) – Cessation of weekly payments after 130 weeks for Psychological Injury <31%

This goes against the research outlined in various papers, and is identified by the Treasurer in his speech accompanying this Bill. When it is shown by medical and compensation evidence that Primary Psychological Injuries take longer to resolve than physical injuries on average, how can the scheme designed to rehabilitate injured workers go to discriminate against those such injured workers as to take measures to intentionally exclude the majority of those injured persons, other than for purely financial reasons.

This is personally concerning. As outlined earlier, my husband was assessed as having a 24% whole person impairment, and around the 130 week mark, he was at one of the most unstable, and unpredictable periods we had to navigate as a family, which in our case would have been late 2023. I find it abhorrent that under this new scheme, it was likely that not only were we navigating one of the most difficult times, we would have compounded this with the expulsion from the very scheme that existed to care for, and rehabilitate him from his workplace injury. I have no doubt, that if we had added the financial strain of being expelled from the workers compensation scheme at this point, it would have been highly likely he may have taken his life, and I do not say this lightly as this period was particularly tenuous and a long way from a point I could say was manageable and appropriate for such a change. It was an extremely delicate time in his recovery, and to think that the scheme would now be excluding people like at the

130 week mark is unfathomable. Government knows this, yet is proposing these changes in this Bill.

Schedule 1 // Section 60 and 60AA – “change to Reasonable ‘and’ Necessary”:

This change only serves in the interests of disputes by insurers, and is not in the interests of injured workers, particularly those enduring primary psychological injury. While this may on face value appear to be a grammatical addition of one word, my concern is that it will induce another raft of ill-informed judgements by insurers. Primarily, my concern rests with the phrase ‘and necessary’. To what is this measured against?: Recovery prospects? Quality of life? Survival? Insurers are not well placed to make decisions on this measure with the interests of injured workers at the centre. How and by whom is this ‘and necessary’ determined? Treating doctors, lawyers, claim administrator?

In our experience dealing with EML acting for Fire Rescue NSW, it is abundantly clear that claims service providers will leverage off this change to provide a reduced level of care as it currently exists. Are their costs savings potentially attached to this change? Maybe. Will this be weaponised against injured workers to reduce insurer liabilities? Likely.

Schedule 1 // Section 65A(3):

Refer to previous comments regarding Section 38(9). The increasing of entitlements to these provisions so far beyond that of physical injury is discriminatory. Again, this would appear to be purely a financial measure, discriminating against those enduring primary psychological injury, to a level that is almost never seen. It also seems to be lacking evidence for the positive impact it will have on recovery and rehabilitation, if anything it seems to intentionally act against the governments own recommendations:

Schedule 1 // Section 151H (Damages – common law):

As previously mentioned, it would appear discriminatory from a quality of life and whole person impairment measure that the legislation could draft:

*151H(2) The threshold for the degree of permanent impairment is—  
(a) at least 15% for a physical injury, and  
(b) at least 31% for a psychological injury.*

For the prospect of common law to be administered at more than double the impairment rating a single individual may experience, regardless of the mechanism of injury, must be seen as discriminatory and unjust. As I have been informed by my husband, he is not aware of any former colleague or any other person in his treatment circles that has been measured above 30% WPI, no matter how many inpatient psychiatric hospital admissions they have needed, no matter how many suicidal episodes they have endured, no matter what terrible quality of life they now live. This

appears to be a financial decision to 'raise the bar' to a point where virtually no persons within the scheme will ever reach, if any, to save money in a scheme that organically fails to manage these such claims with any proper yield of success.

I fear that this will increase the risk of suicide and self harm by people in the scheme. At what cost is the NSW government prepared to save a broken scheme?

### **Summary:**

Sadly, in opposition Treasurer Mookhey spoke with great vigour about the financial viability of the NSW Workers Compensation Scheme in terms of mis-management, poor construct, and actions of those employed and contracted to the scheme. However, his starting point in correcting these issues is to target, in a discriminatory manner, those enduring workplace psychological injury many of which are (disproportionately) from NSW Government agencies. His assertion that there will be cost savings for small business premiums and other efforts to gain support are flawed greatly. I fear these changes will ultimately cost more in human impact.

It would appear, in any application of basic risk management, that we should be targeting prevention and mitigation measures, rather than exclusive legislation at the expense of those suffering serious whole person impairment as a result of workplace injury.

I would remind this committee of the Chairs forward in the 2023 review:

“A key question that emerged throughout the inquiry was whether the current workers compensation scheme itself, is fit for purpose regarding dealing with psychological injuries. The observation was made by a number of witnesses that the current workers compensation scheme was primarily designed to deal with physical as opposed to psychological injuries. Given the impact of psychological injury claims on the cost of operating the scheme, there is an immediate need to develop and implement without delay, much better systems and practices to better manage psychological injury claims. This will include, but is not limited to, ensuring how such claims are managed much better and injured workers enabled to return to work sooner than is currently the case. Critical to this will be the requirement to significantly improve data collection and analysis overall, and specifically with respect to secondary psychological injuries.”

and ask you where in this legislation reform do you see your own concerns being address and your own recommendations being implemented for best outcome for those whom this legislation is intended to serve: the injured worker?

I would also ask how the preventative measures that are outlined in the Explanatory Note – Workers Compensation Legislation Bill 2025 are going to be swiftly and urgently funded and implemented to ensure that there is a timely reduction in psychological workplace injury, given that many of them are simply unactioned recommendations from the Law and Justice Committee 2023 Workers Compensation Review.

While my family's terrible experience in this scheme is thankfully over, I cannot accept that those that will follow us will have an even worse experience as a result of these proposed changes, all due to an inability to manage a scheme that is intended to assist injured workers to heal, recover and return to work.

Thank you for the opportunity to have voice in this process, something that has been denied to so many concerned citizens throughout this reform process.

Yours sincerely

Sarah UBrien