

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

Organisation: Australian Manufacturing Workers' Union NSW ACT
Date Received: 15 May 2025

Concerns and Recommendations on the Exposure Draft Workers Compensation Legislation Amendment Bill 2025

NSW Government Inquiry May 2025



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This submission has been prepared by the Australian Manufacturing Workers' Union

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1. INTRODUCTION

We provide this submission in response to the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 released by the NSW Government on 9 May 2025. We are deeply concerned by the proposed changes which will significantly reduce access to entitlements to compensation for workers injured physically or psychologically in NSW.

Since its inception, the object of the workers compensation legislation has been to support injured workers to return to work, and compensate them for losses suffered from workplace injuries.

The Government has announced the intent of its proposed reforms is to reduce costs to the workers compensation scheme by preventing the occurrence of injuries.

The proposed reforms will certainly reduce costs to the scheme but at the expense of revoking the fundamental rights and entitlements of injured workers by severely limiting their access to benefits and making it much harder for injured workers to get the support they need to recover and return to work, particularly those suffering from psychological injuries. In fact the proposed reforms make the entitlement to compensation for such injuries illusory, save for a handful of injured workers.

2. KEY CONCERNS

A. Restrictions on psychological injury claims

The Draft Bill introduces new definitions of psychological injury restricting and narrowing eligibility for compensation.

Under the existing legislation, a psychological injury needs to have a specific medical diagnosis, that is of a psychological or psychiatric disorder. A worker needs to establish the condition is more than "stress" or "anxiety".

Under the current legislation, injured workers need to establish that employment is a main contributing factor to their injury, which already represents a more onerous test than for most physical injuries.

Section 8G(a) of the proposed Bill, restricts claims for a psychological injury to limited, defined circumstances termed a '*relevant event*'.

A '*relevant event*' is exhaustively defined by section 8E. Subsections (a) to (c) represent a carve out, predominantly for the benefit of first responders, and would have limited application to the majority of workers. Subsection (h) provides a claim for 'nervous shock', again of limited application. Sexual harassment, racial harassment and bullying are all defined events. Importantly, bullying must be repeated conduct and not an isolated event.

The effect of the exhaustive definition is to prevent a great many injured workers from making claims by limiting the subject matter that can form the basis for a claim. Some examples include:

- A worker who is subjected to a once-off event where they are abused by their manager or co-worker, if the abuse did not possess a racial or sexual element or represent criminal conduct.
- A worker who receives feedback or discipline concerning their performance, whether unreasonable or untrue on the part of the employer, whether certainly on a once-off occasion and possibly also over a period of time.
- An employee who is mercilessly overworked.
- An employee who is abused by an employers' customers or consumers, for example, shop staff in a retail setting; teachers in schools; nurses and doctor in hospitals; and restaurant and pub staff.

IMPACT:

Many injured workers will no longer be able to bring a claim because their psychological injury does not occur from a '*relevant event*'.

B. Industrial Relations Commission (IRC)

Those who are injured by means of sexual or racial harassment or bullying are required to obtain a determination by the IRC before they can lodge a claim for compensation.

This represents a significant hurdle for injured workers given:

- They will not have access to the benefit of provisional liability whilst the IRC process takes place. This means injured workers will be expected to litigate in the IRC with no economic support and no access to treatment.
- It is unclear at this time whether the injured workers will have access to legal aid (ILARS) from IRO to fund the cost of the proceedings in the IRC.
- It will add another layer to what is already a complex process.
- Employers will be comparatively well resourced and in a better relative position to defend a case brought by a self-represented injured worker.

IMPACT:

Imposing the IRC process as a precursor to making a claim for compensation will restrict access to justice for injured workers. This represents an unfair and unnecessary hurdle to those who are already vulnerable, having been sexually or racially harassed or bullied.

C. Weekly payments capped at 130 weeks

The current law entitles a worker to a maximum of 260 weeks (5 years) of weekly compensation payments irrespective of whether the injury is a psychological or physical injury.

The Draft Bill proposes to reduce the entitlement to weekly payments by half. All workers with psychiatric injuries who have less than 31% whole person impairment (WPI) will have their entitlement to weekly benefits capped at 2.5 years (130 weeks). This is in contrast to other workers who can access weekly benefits for up to five years if they have up to 20% WPI, or to age 68 with greater than 20% WPI.

An injured worker will be able to access medical treatment for between two and five years after their weekly benefits cease, depending on their WPI.

D. Treatment – Reasonable "and" Necessary

The current test for an injured worker claiming treatment is *reasonably necessary*. The implementation of the "*reasonable and necessary*" test unjustifiably raises the bar, creating a further barrier before treatment is available.

IMPACT:

The introduction of a stricter test for treatment could leave many workers without the treatment they need to recover and return to work.

E. Higher thresholds for lump sum compensation and work injury damages

The permanent impairment threshold for psychological claims is increased from 15% WPI to 31% WPI.

The threshold for work injury damages claims is also increased from 15% (for both physical and psychological injuries) to 31% for primary psychological injuries.

The law as it currently stands since 2002 allows workers with either physical or psychiatric injuries to bring a claim for negligence against the employer if they satisfy the threshold of 15% WPI.

The government is proposing, for psychiatric injuries only, to lift the threshold that establishes an entitlement to lump sum for "pain and suffering" as well as bringing a negligence claim from 15% to 31%. We understand the proposed 31% threshold draws its inspiration from the South Australian legislation.

The key difference between the position of the Draft Bill and legislation in South Australia is, an injured worker with an impairment below 35% WPI, can apply to have their liability for weekly payments commuted to a capital payment, which is actuarially equivalent to the weekly payments.

Colloquially, from our members and the legal community, we understand that raising the threshold to 31% will prevent 99% of injured workers from receiving a permanent impairment lump sum and pursuing a damages claim.

The assessment of WPI for psychological injuries requires the use of the psychological injury rating scale (PIRS).

A worker would need to have a level of impairment under the relevant PIRS categories at the following levels to attract a WPI rating above 30%:

Self-Care and Personal Hygiene

Class 4 Severe Impairment: Needs supervised residential care. If unsupervised, may accidentally or purposely hurt self.

Class 5 Totally Impaired: Needs assistants with basic functions such as feeding and toileting.

Social and Recreational Activities

Class 4 Severe Impairment: Never leaves place of residence. Tolerates the company of a family member or close friend but will go to a different room or garden when others come to visit family or flatmate.

Class 5 Totally Impaired: Cannot tolerate living with anybody, extremely uncomfortable when visited by close family member.

Travel

Class 4 Severe Impairment: Finds it extremely uncomfortable to leave own residence even with trusted person.

Class 5 Totally Impaired: Cannot be left unsupervised, even at home. May require two or more persons to supervise when travelling.

Social Functioning

Class 4 Severe Impairment: Unable to perform or sustain long term relationships. Pre-existing relationships ended eg. loss partner, close friends. Unable to care for dependents, eg. own children, elderly parents.

Class 5 Totally Impaired: Unable to function within society. Living away from populated areas, actively avoid social contact.

Concentration, Persistence and Pace

Class 4 Severe Impairment: Can only read a few lines before losing concentration. Difficulties following simple instructions. Conversation deficits obvious even during brief conversations. Unable to live alone or needs regular assistance with relatives and community services.

Class 5 Totally Impaired: Needs constant supervision and assistance within an institutional setting.

Adaption/Employment

Class 4 Severe Impairment: Cannot work more than one or two days at a time, less than 20 hours per fortnight, pace is reduced, attendance is erratic

Class 5 Totally Impaired: Cannot work at all.

For a worker to be assessed with greater than 30% WPI, they would be required to have at least four of the five categories being rated at least 'severe'.

The Union relies on advice from an expert and SIRA accredited impairment assessor, which is consistent with what we have been told by our members and the legal community.

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12 May 2025

Australian Manufacturing Workers Union
Level 4, 133 Parramatta Road
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To the Australian Manufacturing Workers Union,

Re: Workers Compensation Legislation Amendment Bill 2025

I write to you with respect to the proposed Workers Compensation Legislation Amendment Bill 2025. As a medical specialist with qualifications as a general adult psychiatrist, addiction psychiatrist and addiction medicine specialist, who has been actively involved in treating injured workers in NSW and independently assessing injured workers in NSW, I have been closely following the proposed changes that emerged earlier this year.

As a treating specialist, I am particularly concerned about the changes and their impacts on injured workers in NSW. It is my understanding that injured workers will be required to have their case first determined by the Industrial Relations Commission. This would result in a significant delay in their access to essential mental health treatment, presuming the Industrial Relations Commission was to find in their favour. From my extensive clinical experience having treated several hundreds of injured workers in NSW over a number of years, it is the first 12 months where intensive mental health treatment is most important as this often leads to an improvement in the injured worker's psychiatric/psychological injury and facilitates an earlier return to work. Where there is a significant delay in mental health treatment, it is more often than not that the injured worker's psychiatric/psychological injury becomes refractory and/or resistant to treatment and the prognosis for a recovery and return to work in any capacity is significantly diminished. It is also in such circumstances that the risk of the injured worker to themselves, particularly in the form of self-harm and suicide, is significantly heightened as their access to appropriately qualified mental health specialists is restricted. The primary care health system and public mental health systems in NSW are already exhausted with their resources. Furthermore, as I am sure you are aware, the mental health system in NSW has recently been traumatised by the mass exodus of psychiatrists, which will further hinder the access of injured workers to appropriately qualified mental health specialists in circumstances where the injured worker is awaiting a determination of their case by the Industrial Relations Commission. I am also concerned that a significant proportion of psychiatrically/psychologically injured workers who are not appropriately treated would not be capable of pursuing a case through the Industrial Relations Commission given their unstable mental state, cognitive impairment and financial limitations impacting on their ability to obtain professional legal advice.

As an independent medical examiner, it ought to be noted that the increase of the threshold for determining a psychiatric/psychological injury from 15% to 31% is significant. As a SIRA-listed independent medical examiner who has conducted several hundreds of whole person impairment assessments on injured workers in NSW over a number of years, I have only come across approximately three cases where a whole person impairment for a primary psychiatric/psychological injury has exceeded 30%. In all these cases, the injured worker had deteriorated to the extent where they required institutionalised care and were incapable of managing any aspects of their life independently. To put this into perspective, this degree of injury is effectively the same as an injured worker who has sustained a physical injury who has lost function of all four limbs and is fully dependent on external assistance for managing all aspects of their life.

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Consultant Psychiatrist | Addiction Psychiatrist | Addiction Medicine Specialist

I trust that my perspective on this matter will be heard.

Yours sincerely,

Dr Abdal W. Khan

Case example of a significant psychological injury determined under 31% WPI.

Case Study

An AMWU member worker was employed with his employer for over 23 years with no performance issues or interpersonal concerns.

In 2007, was subjected to bullying, harassment and isolation tactics by his co-workers when he applied for an apprenticeship at a mature age. He was criticised and treated unfairly by

management as his concerns were not dealt with by management. He was repeatedly denied applications for promotion. Eventually, in 2010, an application was made to the Fair Work Commission and received a positive outcome, however he continued to be targeted and unsupported by management.

In 2016, he was a victim of verbal sexual harassment by a colleague. Derogatory comments were written about him on noticeboards and his locker.

In 2017 as a result of the ongoing abuse. Between 2017 and 2020, he suffered multiple breakdowns and suicidal thoughts requiring hospital admission.

A workers compensation claim was initiated in 2019. The worker remained totally incapacitated. He received weekly payments and ongoing psychological treatment.

On 3 December 2020, the worker was assessed by an independent psychiatrist. He was diagnosed with Major Depressive Disorder. He reported the following symptoms:

- Feeling of entrapment and hopelessness
- He has difficulty with recognition and unable to recognize familiar people at times
- Struggles to be around family and friends
- Spaced out and emotionally disconnected
- Sleep issues with initial and middle insomnia
- Depressed mood with explosive anger
- Selected social interaction only with daughter
- Poor memory, forgetful and lapses
- Anticipatory anxiety and agitation
- Social withdrawal and poor frustration tolerance
- Hopelessness and worthlessness
- Issues of trust
- Anhedonia with loss of self esteem

- Feeling of betrayal and resentment
- Themes of nihilism and struggling with existence
- ADL's-able to shower with assistance and can make basic meals but struggles to cook, relies on take away and has no energy
- Driving- very restricted and shorter distances needing frequent breaks due to limited concentration and getting lost
- Social- no participation and stopped sports, lost friendships, cannot enjoy
- Household and domestic chores- very limited domestic duties

The worker was assessed with a whole person impairment of 22% WPI and deemed to have no capacity for work.

The insurer arranged their own independent assessment who agreed with diagnosis but was determined not to have reached maximum medical improvement. The matter was referred to the Personal Injury Commission where the worker was assessed by independent assessor of the Commission.

Outcome:

The Medical Assessor of the Commission agreed that the worker had no capacity for work and assessed the injured worker at 15% WPI. The worker continues to suffer the lasting effects of his impairment and has remained incapacitated for work.

IMPACT:

The proposed change to the threshold in NSW will effectively wipe out the vast majority of claims for lump sum compensation for impairment and negligence claims involving psychological injury. Most workers with mental health conditions will fall short of this threshold denying them appropriate compensation for serious and lasting injuries. The increase of the threshold also prevents them from accessing damages.

F. Principal Assessment

The evaluation of a worker's degree of whole permanent impairment resulting from a workplace injury determines how much permanent impairment a worker has suffered and the assessment is used to calculate the worker's entitlement to lump sum compensation, weekly payments, treatment expenses and access to common law damages.

The assessment must be performed by a SIRA approved permanent impairment assessor. It is proposed that the assessor must be either agreed upon by the worker and insurer or appointed by the Commission if there is no agreement.

The current process allows the worker to be assessed by an independent psychiatrist of their choice. Once the claim is made, the insurer will conduct its own assessment. If there is no agreement on the degree of permanent impairment, the matter is then referred to the Personal Injury Commission who then appoints an Independent Medical Assessor who provides the final and binding assessment on all parties. This ensures the efficacy of the assessment process.

The Bill proposes to reduce the assessment process to once per injury or incident unless the original assessment was incomplete, or there was an unexpected and mature deterioration in the worker's condition (by at least a deterioration of 20% WPI).

IMPACT:

Once issued, the assessment result becomes binding unless successfully disputed and their entitlements are limited based on the principal assessment.

3. RECOMMENDATIONS

We make the following recommendations:

1. The 15% WPI threshold for psychological injuries be maintained to allow access to damages.
2. Allow provisional acceptance of psychological injury claims without a finding from the IRC as a precursor to compensation.
3. Maintain the 260 weeks of weekly compensation entitlements aligning it with the physical injury provisions.
4. Maintain the reconsideration provisions to allow more than one (1) assessment for injured workers.

4. CONCLUSION

The Draft Bill abolishes the rights of the overwhelming majority of workers who have suffered psychological injuries.

The introduction of the restrictive definitions, increased thresholds and mandatory legal hurdles disproportionately impact vulnerable workers and creates obstacles to an already complex scheme.

On behalf of its members, the AMWU strongly urges the government to reconsider their proposal and instead work with unions, workers, and health experts to provide a system that upholds the dignity and rights of injured workers in NSW. The changes in their present form should be abandoned.