

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

Organisation: Occupational Therapy Australia (OTA)

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Inquiry into the Workers Compensation Legislation Amendment Bill 2025 (NSW) Exposure Draft

May 2025

Introduction

About Occupational Therapy Australia

Occupational Therapy Australia (OTA) is the professional association and peak representative body for occupational therapists in Australia. Occupational therapists must be registered under the Australian Health Practitioner Registration Agency (AHPRA), and there are over 30,000 AHPRA-registered occupational therapists nationally, including over 8700 in New South Wales.

Occupational therapists play a critical role in the rehabilitation and return to work of injured workers. They are trained in managing both physical and mental injuries, with particular expertise in functional capacity, work ergonomics, and the biopsychosocial factors influencing a person's ability to work. Their collaborative approach has been shown to improve return-to-work outcomes across a range of injury types and workplace contexts.

OTA welcomes efforts to strengthen early intervention, prevention, and the sustainability of the NSW workers compensation scheme. However, we are concerned that key elements of the Workers Compensation Legislation Amendment Bill 2025 will restrict access to support, delay recovery, and reduce the effectiveness of allied health interventions for psychologically injured workers.

OTA also echoes concerns raised by unions who have warned that the reforms will disproportionately impact women and healthcare workers — groups that already face elevated rates of psychological injury and reflect the demographic profile of the occupational therapy workforce.

OTA also has concerns about the consultation process preceding the release of the Exposure Draft, and the impact this has had on the ability of stakeholders to provide feedback on the proposed legislation.

Summary of Key Concerns

OTA's concerns relate to the proposed:

- Increase in the permanent impairment threshold from 15% to 31%.
- Cap on weekly payments at 130 weeks for psychological injuries.
- Requirement that bullying or harassment be proven via formal tribunal or court findings.
- Expansion of the "reasonable management action" exclusion to include perception or expectation.

These changes represent a significant departure from current legislative settings under the Workers Compensation Act 1987 and risk limiting support for many individuals who rely on occupational therapy services.

Detailed Issues and Recommendations

Increased Impairment Threshold for Psychological Injury

Current law: Sections 65A and 66 of the Workers Compensation Act 1987 require a 15% Whole Person Impairment (WPI) for psychological injury to access lump sum compensation.

Proposed change: Increases this threshold to 31% and ties it to access to extended weekly payments.

Issue: The proposed 31% WPI threshold is unprecedented nationally. The change singles out psychological injuries for more restrictive treatment than physical injuries (11% WPI), despite the often complex and disabling nature of mental health conditions. Many individuals with significant functional impairments and genuine incapacity for work will fail to meet this threshold, effectively excluding them from long-term support and lump sum entitlements.

Recommendation: Retain the current 15% threshold (section 65A) or implement a functionally based eligibility model that reflects the lived impact of psychosocial injury.

130-Week Cap on Weekly Payments for Psychological Injuries

Current law: Under sections 38 and 39, workers with psychological injury may receive weekly payments beyond 130 weeks if they have no work capacity and a $\geq 20\%$ permanent impairment.

Proposed change: Limits access to extended payments to workers with $\geq 31\%$ impairment and applies a hard cap at 130 weeks otherwise.

Implication: This risks ending support while workers are still undergoing treatment or unable to work, contrary to recovery-based practice and the objectives of occupational rehabilitation.

Recommendation: Remove the hard cap or allow exemptions based on clinical need and functional assessment, consistent with existing provisions in sections 38 and 39.

Restrictive Proof Requirements for Bullying and Harassment

Current law: Under sections 4 (definition of injury) and 11A, claims can be substantiated based on medical evidence and the factual circumstances surrounding injury. No tribunal or court finding is required to access compensation for psychological injury.

Proposed change: Requires that “relevant events” such as bullying or harassment be proven via formal legal determinations, significantly raising evidentiary thresholds.

Risks:

- Excludes valid claims that cannot meet procedural hurdles.
- Introduces delay and deters help-seeking among workers experiencing trauma.
- Runs the risk of re-traumatising workers.

Recommendation: Permit contemporaneous clinical and employer evidence (e.g. HR findings, witness statements) as sufficient to establish injury cause, in line with current practice under sections 4 and 11A.

Expansion of “Reasonable Management Action” Exclusion

Current law: Section 11A excludes compensation for psychological injuries “wholly or predominantly caused by reasonable action” by the employer.

Proposed change: Extends this exclusion to cover the worker’s perception or expectation of employer action.

Issue: This introduces subjectivity into what should be a clinical determination and could invalidate legitimate claims simply because the employer’s intentions are deemed reasonable—even if the psychological impact was foreseeable and serious.

Recommendation: Maintain the existing exclusion under section 11A, limited to objectively reasonable conduct, and ensure that workers’ experiences are assessed considering clinical evidence.

Implications for Occupational Therapy

Occupational therapists are key providers of return-to-work and psychosocial rehabilitation services. These changes will:

- Restrict access to OT services post-130 weeks.
- Increase administrative and legal complexity for OTs supporting clients through psychological injury claims.
- Undermine early intervention and prolong absence from work.

Recommendations Summary

OTA recommends that the Committee:

- Retain the 15% threshold for psychological injuries (section 65A).
- Remove or revise the 130-week cap for weekly payments (sections 38–39).
- Allow clinical and factual evidence to establish relevant events, rather than requiring tribunal findings (sections 4 and 11A).
- Limit the “reasonable management action” exclusion to objective actions (section 11A).
- Involve OTs and other clinicians in the co-design of implementation guidelines to support recovery-focused reform.

OTA’s Concerns with the Consultation Process

OTA wishes to formally raise concerns about the consultation process preceding the release of the Exposure Draft. OTA was first made aware of the consultation by iCare on 15 April 2025, with a consultation period that coincided with the Easter public holidays and closed on 2 May 2025. The link to the consultation website ceased functioning by 15 April, preventing access to key materials.

OTA wrote to NSW Treasury on 15 April to request a copy of the consultation paper and seek an extension to provide informed feedback. We received an acknowledgment email on 17 April and OTA followed up on 6 May. A response was received later that day advising that more information would be provided; however, no further communication or

access to the consultation paper was ever made available. As a result, OTA was not afforded a meaningful opportunity to participate in the initial consultation process, despite our interest and expertise in supporting workers with psychological injuries.

We raise this issue to encourage improved transparency, adequate timeframes, and direct communication with key professional stakeholders in future reform processes.

Conclusion

OTA supports the government's goal of enhancing psychological health and workers compensation sustainability. However, NSW's proposed approach is more restrictive than all other Australian jurisdictions and introduces new legal and functional inequities between physical and psychological injuries. Several elements of the proposed legislation risk limiting access, delaying treatment, and worsening return-to-work outcomes for vulnerable workers. The proposed reforms would place undue burdens on workers suffering from psychological injuries, potentially limiting their access to necessary support and compensation.

We urge the Committee to consider a more balanced and evidence-informed approach, grounded in clinical expertise and recovery-oriented practice.

For further information please contact



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