

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

**Organisation:** Sutherland Shire Council

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Insurer Supervision  
State Insurance Regulatory Authority (SIRA)  
By email: [selfspecialisedinsurers@sira.nsw.gov.au](mailto:selfspecialisedinsurers@sira.nsw.gov.au)

Dear Insurer Supervision team

**Submission | Exposure Draft Workers Compensation Legislation Amendment Bill 2025 [NSW] Schedule 1 Amendment of Workers Compensation Act 1987 No 70**

I refer to the SIRA Email dated 12 May 2025 regarding Proposed Workers Compensation Reforms and to SIRA's invitation for feedback on its Exposure Draft Amendment to the Workers Compensation Act 1987 (the Act).

Please accept this submission on the Exposure Draft on behalf of Sutherland Shire Council as a self-insurer (the Insurer). In making this submission, we note the short timeframe for review of the Exposure Draft and therefore provide feedback primarily on the major points of proposed reform.

At the outset, we acknowledge that injuries sustained in the course and as a result of employment may be physical or psychological, or a combination of both. We are deeply committed to the provision of a safe workplace and injury prevention, and as a self-insurer, to the effective management of employee injuries sustained at work.

Council, as the Insurer, supports measured reform of the workers compensation system in New South Wales, which balances the obligations of employers to provide a safe environment for their workers with a clear, efficient and fair system to support workers in the unfortunate event of a workplace injury; and to compensation for loss caused as a result. It is our view that the proposed amendments achieve this aim while reducing a significant financial burden.

Like many schemes of all categories across Australia and particularly in NSW, as a self-insurer, in recent years, we have experienced increased workers compensation claims liability. Between 2016/17 and 2024/25, we have incurred a 65% increase in total actuarial estimated claims liability and a 55% increase in actuarial risk premium (using 2025 wage values) for the same period. This compares to a 19% reduction in the number of workers compensation claims over the same period and a 27% Australian CPI average also over the same period.<sup>1</sup>

These increases illustrate that Council as a self-Insurer has sustained significant workers compensation claims inflation that we primarily attribute to systemic issues in the NSW workers compensation framework (that applies equally to both self-insurers and commercial insurers) not our workplace. We therefore broadly support the proposed amendments to the Workers Compensation Act where we see that they will reduce this financial burden in a balanced way.

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<sup>1</sup> Source: <https://www.rba.gov.au/calculator/annualDecimal.htm>

## **General comment on proposed reforms**

While psychological injury may be established as a legitimate injury resulting from the workplace, and where so established, should be compensated, the current system allows for a claim for compensation to commence before investigation has taken place, and in some cases, without clear cause.

Psychological injuries often reflect a complex range of issues and causal factors, and involve the actions or alleged actions of more than one individual. Investigating complex industrial relations issues should be a transparent process that is not impaired by the commencement of a workers compensation claim. Nor should the determination of industrial issues be impacted by timeframes related to claim commencement.

Equally, we support the right for workers to receive medical treatment and assistance where it is needed in a timely manner, regardless of whether the injury is physical or psychological, and whether or not there are investigative measures in place to determine cause.

The Insurer and the Council remain committed to the elimination of sexual harassment, racial harassment and bullying in our workplaces. We are supportive of a system that provides mechanisms to determine when such instances have occurred and allows for fair and just compensation for those who have suffered loss as a result of such conduct.

We acknowledge that the current NSW workers compensation legislative framework can at times be a cumbersome and unclear mechanism by which to best support our people who have experienced psychological harm in the workplace, subjecting them to a dual set of investigative industrial relations and workers compensation procedures.

We support rigorous review of this system and are broadly supportive of the proposed reforms. We support constructive reform which acknowledges the vital role of the Industrial Relations Commission and other relevant bodies in determining whether an event is relevant prior to making a claim.

## **Summarised response on proposed reforms**

Our response in summary is that:

- There are several proposed amendments to the Workers Compensation Act that we particularly call out our support and agreement - namely;
  - a. Amended definitions related to psychological injury
  - b. Proposed addition of “relevant event”
  - c. Amended Section 11A requirements
  - d. Changes to Section 66 entitlements for compensation for permanent impairment
- We do not agree that the following proposed amendments should be introduced as currently drafted:
  - a. Providing compensation for workers who have contracted COVID-19.
  - b. The use of the term ‘work pressure disorder’

Our response to the Exposure Draft outlined below addresses our position. Additionally, we provide a Table, attached at **Appendix A**, that outlines our position in relation to all proposed amendments.

## **Proposed amendments with which the Insurer does agree**

### ***1. The Insurer supports proposed changes to the definitions related to psychological injury, and proposes further definition***

New definitions outlined in points 2 and 3 of the Exposure Draft include an updated definition from a 'psychological injury' to a 'psychological disorder'. The Insurer supports this change.

Further, the Insurer supports a more detailed definition that includes the term 'medically diagnosed psychological disorder'. This enhanced definition will ensure that medical providers can issue Workers Compensation Medical Certificates for symptomatic presentations that constitute a compensable injury. The term 'medically diagnosed' would assist Insurers to make full liability decisions in a timely manner, promoting early intervention and supporting early change to recovery goals where required, without unnecessary further engagement with the workers' treatment team.

### ***2. The Insurer supports the proposed inclusion of the definition of a 'relevant event' and timeframes for making a claim.***

The proposed definition of a 'relevant event' (proposed Section 8E) is a suitable adjustment to provide the required certainty for Insurers and Workers related to when a claim can be made. Enhancing the requirement to support the claim through an established event will ensure that the employee is not subjected to unnecessary factual investigations or dispute processes as part of their claim process.

The Insurer sees this as a positive improvement for workers, protecting their right to raise allegations with due diligence investigation undertaken, prior to the process of establishing a claim for compensation. The improved direction on timeframes to make such a claim as outlined in Section 280AAB is welcomed to assist both insurers and workers on how and when their claim should be considered within the context of their recovery.

### ***3. The Insurer supports proposed amendments to Section 11A requirements***

The Insurer considers that the proposed amendments to the Section 11A requirements are a positive addition to the Act, providing greater clarity for the Employer to effectively and reasonably manage employee performance and behaviours in the workplace. That said, we acknowledge the importance of establishing legitimate instances of work pressure from vexatious or unsubstantiated allegations and also generally agree with the addition of this concept to the Act.

### ***4. Changes to Section 66 Entitlement to compensation for permanent impairment***

While the proposed changes to whole person impairment and compensation amounts outlined in the proposed Section 66 are an increased cost to insurers, the Insurer supports these changes, acknowledging that cost of living and medical support increases since the 2019 amendments to the Act have not supported injured workers at a similar rate to CPI. While some categories are significantly higher, particularly the percentages of permanent impairment compensation greater than 50%; overall, the Insurer supports that a general percentage increase on these commutations is required for the support of workers with established loss, as a result of their injury.



## **Proposed amendments with which the Insurer does not wholly agree**

### **5. COVID-19 Provisions**

We do not consider the proposed amendments to the COVID-19 Provisions to be sufficient.

The proposed Section 19 relates to provisions for workers experiencing instances of disease contracted in the workplace. The current Act made additional provisions for prescribed employment categories to seek compensation specifically in relation to instances of COVID-19.

It is the Insurers view that the proposed Section 19(1)(b) is sufficient and that the existing Section 19B (9) related to prescribed employment classes related to COVID-19 should be wholly removed. In addition, the Insurer proposes that the further list of prescribed employment categories outlined in Section 5D of the *Workers Compensation Regulations NSW 2016* should also be wholly removed.

Referring to NSW Health's week ending 3 May 2025 Respiratory Surveillance Epidemiology summary: *COVID-19 and influenza activity remain at low levels. RSV remains at a high level of activity. Notification rates are likely to be impacted by school holidays in NSW.*

COVID-19 no longer poses the workplace threat it once did. NSW Health Public Orders have ceased for all instances of COVID-19. The disease is no longer treated as a pandemic. The ability to track or trace potential exposure in these types of workplaces is highly impracticable, if not impossible.

Calling out COVID-19 for special provision for prescribed employment within the Workers Compensation Act signals to the workforce that there is a compensable injury to the disease of COVID-19 that is in some way different to the definition of disease outlined in proposed section 19(1)(b) – Point 6 of the Exposure Paper.

The Insurer proposes that:

- section 19B (9) be wholly removed from the Act,
- section 5D of the Workers Compensation Regulations 2016 NSW be wholly removed from the Regulations, and
- COVID-19 simply be treated in the same way as 'disease' so defined by the Act and as outlined in the proposed Section 19(1)(b).

### **6. Work Pressure Disorder Definition**

The Insurer supports the overall intent of the provisions proposed in Point 96 of the Exposure Draft related to a work pressure disorder and payment of a special work pressure payment. In the view of the Insurer, this payment is designed to provide medical assistance for an employee during an investigative phase of the raising of a grievance or allegation. The Insurer notes that this period has a limitation of 8 weeks, and while the investigation period may take longer than 8 weeks, the employer is not required to make payments for medical assistance past this point.

The Insurer supports the intent of this section of the proposed amendments subject to one significant issue related to the term 'work pressure disorder'.

The term 'work pressure disorder' is not a medical term. While it is understood the term is being used to delineate a difference between the initial symptoms experienced, and a possible diagnosis by a medical professional, in our view the term is ambiguous.

The Insurer proposes that the term be reconsidered to align with the SafeWork NSW Code of Practice for Managing Psychological Hazards. This document uses the term 'psychological harm' to describe the potential outcome of exposure to psychological hazards. To provide

clarity, consistency and to remove doubt regarding the term 'work pressure disorder', the Insurer suggests the alternative term 'potential psychological harm' throughout proposed section 148B amendments.

Alternatively, to remove confusion, the definition of a 'work pressure disorder' outlined in Section 148B(8) could be amended to read as follows (emphasis mine);

~~work pressure disorder~~ **potential psychological harm** means a **medically diagnosed** mental or psychiatric disorder ~~caused~~ **alleged to be significantly caused** by or arising from the pressures placed on a worker in the course of the worker's employment but only if the employment was the main contributing factor to the worker experiencing the disorder.

OR

~~work pressure disorder~~ means a **medically diagnosed** mental or psychiatric disorder ~~caused~~ **alleged to be caused** by or arising from the pressures placed on a worker in the course of the worker's employment but only if the employment was the main contributing factor to the worker experiencing the disorder.

### **Summary**

In general, the proposed amendments are balanced and support the efficient and effective management of workplace injury and illness and will significantly contribute to the ongoing financial viability of the NSW Workers Compensation system.

Thank you for the opportunity to make this submission. Please contact me or Anton Usher, Senior Manager Corporate Governance, should you wish to discuss any aspect of this submission.

Yours sincerely

Clare Phelan  
Chief Executive Officer

On behalf of Sutherland Shire Council, Self-Insurer



## Appendix A: Summary of Council's position on all proposed changes

Exposure Paper Point	Proposed amendment	Sutherland Shire Council Insurer position
1. Part 1, Division 1	Insert section	Agree with this change
2. Section 3 Definitions	Updated and additional definitions	Agree with this change
3. Part 1, Division 2 Interpretation provisions – psychological injuries	Definition of a psychological injury in Section 8A Meaning of "psychological injury".	Partially agree with these changes <b>and</b> propose addition of "diagnosed according to standardised criteria" to the term 'psychological or mental disorder' in order to align with the definition of a mental illness provided by NSW Health.  We propose that Section 8A be amended to read: "In this Act, psychological injury means an injury that is a mental or psychiatric disorder, <b>diagnosed according to standardised criteria</b> , that causes significant behavioural, cognitive or psychological dysfunction.
4. Section 11A	No compensation for psychological injury caused by reasonable actions of the employer.	Agree with this change
5. Section 11A (6)	Omit the subsection	Agree with this change
6. Section 19 Presumptions relating to certain employment	Omit section and insert; regarding certain employment, substantial or main contributing factor to the disease.	Agree with this change
7. Section 19B Presumptions relating to certain employment in relation to COVID-19	Omit section and insert; period of incapacity as a result of COVID-19	Agree with this change, noting our earlier comments regarding the removal of section 19B (9) prescribed employment
8. Section 25 Death of worker leaving dependents	Increased commutation.	Agree with this change
9. Section 25 (1)(b)Death of worker leaving dependents	Increased weekly payment to dependent.	Agree with this change
10. Part 3, Division 1A Compensation payment on death – death benefit disputes	Insert Interpretation	Agree with this change
11. Section 34 Maximum Weekly Compensation Amount	Increased maximum	Agree with this change
12. Section 38 heading	Clarified heading	Agree with this change

Exposure Paper Point	Proposed amendment	Sutherland Shire Council Insurer position
13. Section 38(3) (b), 40(1)(d) and 41(5)(b)	Increased weekly minimum payment	Agree with this change
14. Section 38(9)	Section does not apply to a worker who has a primary psychological injury unless the injury results in a degree of permanent impairment of at least 31%	Agree with this change
15. Section 38A Special Provision for workers with highest needs	Increased payment	Agree with this change
[16] through to [21]	Various	Agree with these changes
[22] Section 59A Limit on payment of compensation	Addition of a limit for payments of a primary psychological injury to one year.	Agree with this change
[23] through to [43]	Various	Agree with these changes
[44] Section 68B Deductions for previous injuries and pre-existing conditions—operation of sections 15, 16, 17 and 22	Content appears to be moved to proposed section 153D	Agree with this change
[45] Section 73 Reimbursement for costs of medical certificate and examination	Remove ability for claimant to seek reimbursement for medical certificate and examination when seeking a permanent impairment medical certificate.	Agree with this change
[46] Section 79 Definitions	Omit definitions related to Indexation of certain amount	Agree with this change.
[47] to [74] Related to Section 82 and its parts - Indexation	Adjusting the review period, formula for the calculation of indexation and other items related to indexation	Agree with this change, noting that the intent is for the majority of claims to be subject to a single annual indexation, rather than a twice annual indexation.
[75] Section 87E Compensation that may be commuted	Where relevant compensation is commuted to a lump sum, liability for work injury damages for the same injury is extinguished.	Agree with this change, noting that this is a significant departure from previous entitlement to commuted lump sum and work injury damages entitlements.
[76] to [79] Various	Amendments to improve clarity	Agree with these changes, noting that amendments will remove ambiguity.
[80] Section 87EA(4)	Remove the ability for the Authority to delegate functions under this section to the Insurer	Agree with this change.
[82] Section 87F Commutation by agreement	Addition of possible amendment to the Regulations requiring that the insure bear the expense of the worker to obtain independent financial advice prior to entering a commutation agreement.	Agree with this change, noting that while this amendment would incur increased cost for the insurer, the provision of independent financial advice is a sound support for an injured worker which can and should be borne by the insurer.
[83] to [95] Various		Agree with these changes.



Exposure Paper Point	Proposed amendment	Sutherland Shire Council Insurer position
[96] Part 4A Special Entitlement to expenses for medical or related treatment	Provisions for Work Pressure and a special work pressure payment.	<p>Agree with this change, <b>and</b> propose an updated definition of 'work pressure disorder' in order to align with the terminology used in the SafeWork NSW Code of Practice for Managing Psychological Hazards. The Insurer proposes either of the updated definitions outlined in Section 148B(8) could be amended to read as follows (emphasis mine);</p> <p><del>work pressure disorder</del> <b>potential psychological harm</b> means a <b>medically diagnosed</b> mental or psychiatric disorder <del>caused</del> <b>alleged to be caused</b> by or arising from the pressures placed on a worker in the course of the worker's employment but only if the employment was the main contributing factor to the worker experiencing the disorder.</p> <p>OR</p> <p><i>work pressure disorder means a <b>medically diagnosed</b> mental or psychiatric disorder <del>caused</del> <b>alleged to be caused</b> by or arising from the pressures placed on a worker in the course of the worker's employment but only if the employment was the main contributing factor to the worker experiencing the disorder.</i></p>
[97] Section 151H	No damages unless permanent impairment at certain threshold	Agree with these changes, noting the higher degree of permanent impairment required to establish work injury damages for psychological injury and that no damages are payable in relation to a secondary psychological injury.
[98] Part 6 Determination of degree of permanent impairment	Addition of a new section related to the determination of whole person impairment.	<p>Agree with this change; with the exception of Section 153B Assessment of permanent impairment; clause (7). The Insurer questions whether this amendment opens the ability for assessment to be made outside Australian jurisdiction. <b>Is this an intended consequence of the change?</b></p> <p>Further, the Insurer notes that this section limits permanent impairment assessment to one examination and finding per injury or per multiple injuries arising from the same incident to be determined by a lead assessor.</p>
[99] to [103] Various	Regarding employer and insurer requirements for repayments and information related to underinsurance	Agree with these changes.
[104] Part 7, Division 4A Enforceable undertakings	Amendments and additions to the enforceable undertakings process.	Agree with these changes
[105] to [118] Various	Administrative and minor dollar value changes	Agree with these changes