

**Submission
No 39**

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

Organisation: Australian Industry Group (Ai Group)

Date Received: 15 May 2025

Inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales

Standing Committee on Law and Justice

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Introduction

1. The Australian Industry Group (**Ai Group**) welcomes the opportunity to make a submission to the New South Wales Government's inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales (**Inquiry**).
2. Ai Group is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for 150 years. We are also a State Peak Council and operate an incorporated legal practice, Ai Group Workplace Lawyers. Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than 1 million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the broader economy through national and international supply chains. We make this submission to the Inquiry on behalf of our members.
3. We have ongoing contact with employers of all sizes, through the provision of membership, consulting and training services, with a strong focus on workplace relations, work health and safety and workers' compensation. This enables us to understand the key issues that employers are facing when managing these important issues which often overlap and interact.
4. An important part of our role is to develop constructive relationships with governments and regulators across the country to provide a voice for employers when legislative and policy issues are being considered.
5. Ai Group is a member of Safe Work Australia and its related Strategic Issues Group – Workers' Compensation. More specifically, in the New South Wales context, Ai Group is a member of the State Insurance Regulatory Authority (**SIRA**) Tripartite Reference Group, iCare Nominal Insurer Advisory Group and the SafeWork NSW Interim Tripartite Reference Group. Our workplace relations lawyers and safety and workers compensation consultants represent employers in dispute resolution processes and support and assist them in managing injured workers and in related matters.
6. Ai Group supports a fair and equitable workers' compensation scheme that works in the interests of workers and employers and promotes return to work outcomes. We acknowledge the significant negative impacts of psychological injuries that occur in the workplace and in society more broadly, which is an issue our members take very seriously.
7. We appreciate the opportunity to contribute to this Inquiry and welcome the prospect for changes that will address the unsustainable increase in claims associated with psychological injuries and the resulting projected increase in NSW workers' compensation premiums for many of our members. We support the NSW Government's objective of achieving this by focusing on the prevention of, timely treatment and successful return to work of workers who sustain work related psychological injuries.
8. We set out our submission below.
9. Given the short period of consultation permitted we have had limited ability to consult with employers. We have consequently restricted our comments to what we consider to be the key areas of concern for our members given our depth of experience associated with assisting employers to manage

psychological injury and claims, as well as the operation of the workplace relations and workers compensation system more broadly.

10. We look forward to further engaging with the NSW Government about these important reforms to the NSW Workers' Compensation scheme and their ultimate implementation through our continued involvement with iCare, SIRA and SafeWork NSW.

The proposed new bullying and harassment jurisdiction in the NSW Industrial Relations Commission

11. We recognise the dramatic increase in psychological injury claims and the unsustainable pressure this puts on the workers compensation scheme in New South Wales and on premiums.
12. We agree that sensible steps need to be taken.
13. The Workers Compensation Legislation Amendment Bill 2025 (**Bill**) that is the subject of this Inquiry is part of a package of broader workplace interventions proposed by the NSW Government to address this issue.
14. In particular, and as stated by the Explanatory Note – Workers Compensation Legislation Amendment Bill, the NSW Government intends introducing a second Bill (the "**IR Amendment Bill**"), that will create a bullying and sexual harassment jurisdiction within the New South Wales Industrial Relations Commission (**Commission**).
15. The IR Amendment Bill has not been made available to us as part of this Inquiry. It is therefore difficult for us to review and assess the practicality and potential for any unintended consequences of proposed changes when the detail on the totality of proposed reforms has not been provided.
16. It is also unclear as to the extent and manner to which the proposed jurisdiction in the Commission may apply to private sector employers. This has caused significant confusion and uncertainty in industry. To the extent that the reforms apply to private sector employers, there are significant issues as to its interaction with the federal stop bullying and sexual harassment jurisdiction under the *Fair Work Act 2009* (Cth) (**FW Act**) which will need to be grappled with. For completeness, we note that there are potentially confusing differences in the meaning of terminology used in the proposed Bill and the federal jurisdiction. We draw the Committee's attention to particular defined terms, including the meaning of "sexual harassment" and "bullying".
17. It is prudent to take a cautious approach and consult meaningfully with industry in relation to the IR Amendment Bill, when it is made available, to ensure that the new jurisdiction does not unduly burden employers or create unintended adverse effects. We cannot properly address this aspect of the reforms because we have not been provided with a copy of the IR Amendment Bill that will give effect to it.
18. However, at a high level, we emphasise that it is important that by creating a bullying and sexual harassment jurisdiction in the Commission, the NSW Government does not inadvertently create a need for private sector employers to devote significant time and resources to contest an employee's application so as to ensure unmeritorious claims are not accepted. This risk must be carefully considered and addressed in the IR Amendment Bill.

19. For example, we would expect that the IR Amendment Bill would:
 - a. carefully regulate the Commission's exercise of its discretion as to the assessment of what might or might not be an unmeritorious claim;
 - b. permit the Commission, of its own motion, to reject claims which are clearly without basis and articulate non-exhaustive examples of when it might do so.
20. We observe that the FW Act stop bullying and stop sexual harassment jurisdiction in the Fair Work Commission (**FWC**) serves a different purpose to what appears to be proposed for the Commission under the IR Amendment Bill.
21. The primary purpose of the federal jurisdiction is to **stop** bullying or sexual harassment. The jurisdiction does not provide remedies for past bullying or sexual harassment. Most relevantly, the federal jurisdiction does not empower the FWC to award compensation. This carving out of access to compensation represents a carefully struck balance between creating a measure for dealing with bullying and sexual harassment, while at the same time limiting the burden placed on employers by reducing any incentive for unmeritorious claims to be advanced. The efficient and practical manner in which the jurisdiction has been managed by the FWC has also been commendable. These two factors have contributed to the success of the jurisdiction.
22. We believe that the NSW Government should be mindful of the balance and approach achieved in the federal jurisdiction when crafting the IR Amendment Bill. It should ensure that the proposed reforms do not undermine this balance.
23. We support sensible measures to address the rise in psychological injury claims, but guardrails must be implemented to ensure the Commission's new jurisdiction does not unduly burden employers.

The exposure draft of the Workers Compensation Legislation Amendment Bill 2025

24. Given the short period of consultation afforded we have not provided feedback on every aspect, but we set out specific areas of concern and identify improvements we believe could be made to the Bill.
25. We would be pleased to provide further input to the development of the Bill through further consultation.
26. In advancing these comments, we nonetheless emphasise that we are broadly supportive of the intent of the reforms.

Work pressure

27. We refer to proposed section 148B, which outlines a new entitlement for a worker to claim the cost of reasonable and necessary medical or related treatment resulting from a work pressure disorder for up to 8 weeks from an employer.
28. Given no explanation of the purpose of the provision is provided in the explanatory note, we assume the intent is to prevent workers' compensation claims arising from work pressure disorders by encouraging workers to seek medical or related treatment at an earlier stage and subsequently engaging with their employer to remedy the workplace pressure giving rise to the disorder.

29. However, we note the Bill does not detail how this would operate in practice. Instead, the Bill refers to information, such as in section 148B(4) where the maximum amount and employer is liable to pay for determination by “the Authority” and section 148B(7)(c) where “requirements about the evidence of a work pressure disorder that must be provided in connection with an application for a special work pressure payment” may be provided in “Workers Compensation Guidelines”. This does not provide employers with any clarity on what may be expected.
30. We are also concerned about the potential additional cost to employers arising from this section as the proposed section 148B(6) specifically states “an application for payment of a special work pressure payment is not a claim for compensation.” Specifically, it appears there is no safeguard included in the Bill for employers that make a special work pressure payment to a worker, make reasonable attempts to remedy any workplace pressures leading to the workplace pressure disorder and returning the worker to work, then being subjected to a workers’ compensation claim from the worker. We consider it would be entirely appropriate in this instance for an employer to have an ability to dispute any subsequent claim lodged by the affected worker.
31. We do not support, as the Bill suggests by omission, that a worker should be able to make an application for a special work pressure payment resulting from pressures placed on the worker because of reasonable management action or legitimate expectations connected with their employment. The broad definition provided in 148B(8) implies a worker would be able to make such a claim by stating:

“work pressure disorder means a mental or psychiatric disorder 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.”

Employers ought to be able to undertake reasonable management action and are entitled to expect employees to competently perform their jobs without the added risk of being subject to a claim for such a payment. If the provision is to be maintained an exclusion should be incorporated to reflect this.

32. We hold concerns that medical professionals may assess/determine someone has a mental or psychiatric disorder caused by work pressures without adequate consideration or context.
33. Due to the lack of sufficient detail and safeguards for employers, Ai Group does not support the inclusion of a special work pressure payment as outlined in the Bill.
34. If the NSW Government is inclined to include such a provision, it is vital that further consultation with industry is conducted over a reasonable timeframe before any final determination is made.

Employer attendance at medical treatment or medical examination

35. We refer to proposed section 231A.
36. We do not support the inclusion of this section. To the extent that it is retained, it should be amended as follows.

231A Employers not entitled to attend medical treatment or medical examination

Neither an employer nor the employer’s representative is entitled to attend either of the following unless the worker requests or otherwise consents to the attendance –

- (a) *medical treatment of the worker,*
- (b) *a medical examination of the worker.*

About Australian Industry Group

Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than 1 million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the broader economy through national and international supply chains.

Our purpose is to create a better Australia by empowering industry success. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international), we have the resources and expertise to meet the changing needs of our membership. We provide the practical information, advice and assistance you need to run your business. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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