Submission No 40

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

Name: Krystal Parisis

Date Received: 15 May 2025

Submission to the Standing Committee on Law and Justice, Legislative Council, Parliament of NSW, regarding the Workers Compensation Legislation Amendment Bill 2025

By Krystal Parisis, Solicitor and Accredited Specialist in Personal Injury Law

---

INTRODUCTION

The writer welcomes and appreciates the invitation from the Hon Mr Greg Donnelly, Committee Chair, and more generally, the opportunity to contribute my submission to the Standing Committee on Law and Justice in undertaking their inquiry entitled 'Inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales.'

On 9 May 2025, the state government introduced an exposure draft of the Workers Compensation Legislation Amendment Bill 2025 ('the Amendment Bill') with 43 pages of amendments to existing legislation, in particular, amendments to the *Workers Compensation Act 1987* (NSW), the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) and the *Personal Injury Commission Act 2020* (NSW).

In their Ministerial Statement on 18 March 2025, the state government described the changes as a method to *"curb the rising number of psychological injuries people are experiencing at work"*. Unfortunately, it is the writer's submission that the Amendment Bill does not take steps to curb the number of psychological injuries being sustained at work, but rather, to curb workers ability to make any claim in respect of those injuries.

It is also noted that the Amendment Bill 2025 outlines various methods to reduce the rights and entitlements of injured workers in the context of both physical and psychological injuries, despite the Ministerial Statement which tends to suggest only changes to psychological injury claims.

It is also noted that, in the writer's opinion, no significant or additional repercussions have been created for employers or insurers within the Amendment Bill, in particular, with respect to return to work obligations.

THE WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2025

These submissions will address the amendments proposed in the Draft exposure Workers Compensation Legislation Amendment Bill 2025 ('the Amendment Bill'). These submissions will address the relevant sections in the order that they appear in the Amendment Bill (as far as that is possible).

Section 8D Meaning of "reasonable management action" and Section 11A No compensation for psychological injury caused by reasonable actions of employer

The proposed s8D of the Amendment Bill is analogous to the current s11A of the *Workers Compensation Act 1987* (NSW). Despite the similarities to the existing legislation, it goes on to specifically add the following reasonable 'management actions', in addition to those contained in the existing s11A:

(a) appraisal of or feedback about the worker's performance

(b) counselling of the worker

(c) suspension or stand-down of the worker's employment

(i) reclassification of the worker's employment position

(l) training a worker in relation to the worker's employment

(m) investigation by the worker's employer of alleged misconduct—

(i) by the worker,

(ii) of another person relating to the employer's workforce in which

the worker was involved or to which the worker was a witness

(n) communication in connection with an action mentioned in paragraph (a)–(m)

It is important to note that a number of these matters have previously been interpreted and determined by the case law from the Personal Injury Commission (and formerly the Workers Compensation Commission). These amendments are not submitted to be inappropriate but are submitted to be redundant given the case law in this area. Unfortunately, the insertion of these additional 'actions' gives the scheme agents the opportunity to exploit the wording by declining legitimate claims on new grounds. This is particularly important where an action that may be considered a 'reasonable action' under this section is not undertaken in a reasonable manner.

The success rate of the existing s11A defence is poor. It is submitted that the reason for this is not a limited definition of 'reasonable management actions', but because employer actions are rarely considered reasonable by the Personal Injury Commission. The reasonableness of an employer's management actions should be considered a matter for the employer to address, rather than an additional hurdle for an injured worker in accessing compensation.

Section 8E Meaning of "relevant event" and Section 8G Primary psychological injuries

The proposed s8E and s8G of the Amendment Bill are not fit for purpose. The sections attempt to reduce the circumstances of psychological injury in the workplace to extend only to injured workers who are subject to violent/criminal events, threats of this nature, motor vehicle accidents or natural disasters.

It is submitted that this is not the only type of incident that can lead to psychological injury. It is noted that the state government has recently acknowledged the ongoing issues with the management of psychosocial hazards at work. In May 2021, the 'Managing Psychosocial Hazards at Work Code of Practice' was issued, closely followed by the *Work Health and Safety Amendment Regulation 2022* which introduced provisions for managing psychosocial risks in the workplace. The Code of Practice identifies the following 'common psychosocial hazards':

1. Role overload.
2. Role underload.

3. Exposure to traumatic events.
4. Role conflict or lack of role clarity.
5. Low job control.
6. Conflict or poor workplace relationships between workers and their supervisors and managers and co-workers.
7. Poor support from supervisors or managers.
8. Poor co-worker support.
9. Workplace violence.
10. Bullying.
11. Harassment including sexual harassment.
12. Inadequate reward recognition.
13. Remote or isolated work.
14. Poor procedural justice.
15. Hazardous physical working environments.
16. Poor organisational change consultation.

Noting the above, it is submitted that we might question the decision by the state government to exclude the majority of the identified 'common psychosocial hazards' from the legislative definition required to make a psychological injury claim. It is submitted that the list of relevant events should not be exhaustive, as it does not cover a number of causes of work-related psychological hazards. The legislative definition provided in s8E and s8G should be amended to either:

1. Not be an exhaustive list of relevant events leading to psychological injury.
2. Include all common psychological hazards described in the Safework Code of Practice.

In particular, and in contrast with Australian and state-based discrimination law, the legislation is silent in respect of any claims for psychological injury resulting from discrimination and/or adverse actions taken against the worker on the basis of gender, age, disability or sexual orientation. While this conduct is considered unlawful in other legislative instruments, it is not considered by the Amendment Bill at all.

Section 8F Primary psychological injuries—sexual harassment, racial harassment and bullying and Division 3A Special provisions for primary psychological injuries caused by sexual or racial harassment or bullying

The proposed s8F and Division 3A involves setting an additional hurdle for workers attempting to access compensation in circumstances where psychological injuries are sustained due to bullying, sexual harassment and racial discrimination. The hurdle described is a requirement for a tribunal, commission or court to find that the conduct which caused injury is bullying, sexual harassment or racial discrimination. This type of finding is required before a claim for workers compensation can be made.

By their nature, these requirements do not align with the legislative and scheme objectives outlined in the *Workplace Injury Management and Workers Compensation Act 1998* (NSW)[1], which are extracted below:

(a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,

(b) to provide--

- *prompt treatment of injuries, and*
- *effective and proactive management of injuries, and*
- *necessary medical and vocational rehabilitation following injuries,*

in order to assist injured workers and to promote their return to work as soon as possible,

(c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,

(d) to be fair, affordable, and financially viable,

(e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,

(f) to deliver the above objectives efficiently and effectively.

The requirement for an injured worker to commence and finalise proceedings in a separate tribunal, commission or court does not allow for these objectives to be met.

The time associated with progressing such proceedings impacts the injured workers ability to access treatment and in turn, safely return to work. It does not allow for the objectives of the scheme to be delivered efficiently and effectively. Studies have confirmed that the longer an injured person is away from work, the lower their chances are for returning successfully. To this point, the *Consensus Statement on the Health Benefits of Work* study found that:

a. If an employee is off work due injury/illness for twenty days (20), the probability of a successful return to work is 70%.

b. If an employee is off work due injury/illness for seventy (70) days, the probability of a successful return to work is 35%.[2]

To provide an example for context for these statistics, the Fair Work Commission reporting confirms that in the financial year ending 30 June 2024, 96% of their matters were resolved within twelve (12) weeks.[3] The length of proceedings may have a devastating effect on return-to-work rates, in effect, shifting the costs of the injured workers disability from the state scheme to the Commonwealth's social security program and the National Disability Insurance Scheme (NDIS).

While the government has indicated that amendments to the scheme are necessary to assist with falling return to work rates in the context of psychological injuries, they have instead introduced steps which

[1] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s3.

[2] The Australian Faculty of Occupational & Environmental Medicine & The Royal Australasian College of Physicians, Australian and New Zealand Consensus Statement on the Health Benefits of Work, Sydney 2011.

[3] Fair Work Commission Annual Report 2023–24, 41.

attempt to prevent the lodgement of claims, rather than to support workers and increase return to work rates.

The legal costs associated with running proceedings with respect to sexual harassment, racial discrimination and bullying in a tribunal, commission or court are also prohibitive. Generally, employment law claims, such as those run in the Fair Work Commission require parties to proceedings to bear their own costs,[4] meaning that even if an injured worker can successfully prove that they were bullied, sexually harassed or discriminated against in the course of their employment, they would still be required to pay their legal costs. Throughout the employment law proceedings, based on the Amendment Bill, an injured worker will have no access to any income support payments from the workers compensation scheme, further increasing their out-of-pocket cost. The writer submits that the cost of proceedings may prohibit an injured worker from accessing any compensation or assistance for legitimate injuries sustained in the course of employment.

The writer also submits that these legal costs are not just prohibitive to injured workers, but may also disproportionally affect small business employers, who will likely be required to respond to an increasing number of such claims (in circumstances where workers compensation is not available to injured workers without such proceedings).

The additional concern is with respect to the human cost of a scheme which forces injured workers into stressful, expensive and lengthy legal proceedings while they are psychologically unwell – that is while failing to provide them with expeditious access to treatment for their injury and income support to allow them to exit the workplace environment that has injured them (and locate a new one). The Standing Committee on Law and Justice' 2023 Review of the Workers Compensation Scheme made findings that a significant factor contributing to falling return-to-work rates was delays in access to treatment.[5]

Section 8H Vicarious trauma

The Amendment Bill describes injuries sustained due to vicarious trauma with an extremely limited scope. That is, vicarious trauma is experienced when an injured worker's 'close work connection' is subject to any incidents involving violence, threats of violence, motor vehicle accidents or natural disasters.

'Close work connection' is then defined as a 'real and substantial connection between the worker and the victim' arising from employment. It is submitted that a 'real and substantial connection' is near impossible to define. It has the prospect of excluding cases where an injured worker sustains an injury due to their employment duties requiring them to undertake tasks such as repeated review of traumatic material (written, oral or visual) or providing assistance to vulnerable people exposed to sexual assault, other assault, other criminal behaviour and trauma.

It is the writers submission that we should consider whether the proposed amendment aligns with the present law – one of the most recent decisions of this nature was heard by the High Court of Australia, who provided a successful judgment in favour of a Plaintiff who sustained psychological injuries following

[4] *Fair Work Act 2009* (Cth), s611.
[5] Paragraphs 4.143 – 4.144.

exposure to vicarious trauma in the line of her employment as a lawyer in Specialist Sexual Offences Unit ("SSOU") for the Victorian Office of Public Prosecutions.[6] It is noted that the Plaintiff in those proceedings would be unlikely to have met the definition of vicarious trauma described in the Amendment Bill.

It is submitted that this definition may preclude cases where psychological injuries are sustained by nurses, medical and health professionals, support workers, case workers, youth workers and teachers (this list is not exhaustive). It is also submitted that this will likely disproportionately affect women.

Section 32AC Settlement of claim where liability disputed

This proposed section has the potential to be exploited by insurance companies/scheme agents. Given the safeguard measures at s32AC(4) being in the hands of the Personal Injury Commission, this amendment is not opposed by the writer.

Section 60 Compensation for cost of medical or hospital treatment and rehabilitation and Section 60AA Compensation for domestic assistance

The proposed amendment to s60 and s60AA sees the legal test for access to medical expenses and domestic assistance become more difficult for the injured worker to access - this proposed amendment also affects workers who are physically injured. It is noted that this proposed amendment brings the legal test into line with the tests contained in the motor accidents scheme,[7] but still presents a considerable and additional challenge to injured workers attempting to access medical treatment.

Section 82A(2)

The proposed s82A(2) reduced the occasions in which an injured workers weekly payments are indexed from biannual to annual. This type of amendment is not fundamentally unfair to injured workers by comparison to the general community, and as such, is not opposed.

Section 87E – 87H(5)

Throughout these sections, the Amendment Bill removed the obligation from the State Insurance Regulatory Authority to register commutation agreements and provides power to the President and the Commission to approve such settlements. This could result in beneficial and protectionary measures for injured workers and as such, is not opposed by the writer.

Section 87F Commutation by agreement

The proposed s87F is beneficial and necessary for injured workers and is not opposed by the writer.

Part 4A Special entitlement to expenses for medical or related treatment

The proposed Part 4A attempts to remove claims for 'work pressure' – that is, claims for a psychiatric disorder caused by pressure placed on an injured worker in the course of their employment. This Part allows

[6] *Kozarov v Victoria* [2022] HCA 12.
[7] *Motor Accident Injuries Act 2017* (NSW), s3.24(2).

for the payment of up to eight (8) weeks of medical or related expenses and does not allow for any income support. It also limits an injured worker's ability to claim such expenses to a singular occasion throughout their employment with an employer.

It is submitted that this is inherently unfair to injured workers who are allocated and unable to manage a significant and/or difficult (and potentially unreasonable) workload. While the workers compensation scheme was intended to be strict liability scheme, 'work pressure claims' by their nature are commonly caused by unmanageable and/or unreasonable requests and/or demands made by employer with respect to an injured worker's workload or work duties.

Preventing an injured worker from accessing income support in the form of weekly payments, and precluding them from being able to make a claim for work injury damages in the context of a 'work pressure claim' arbitrarily prevents a worker from accessing compensation even in circumstances where they might meet all the criteria for a claim, and have that injury caused by the negligence and unsafe systems of work set by the employer. It is submitted that this does not align with the purpose of the scheme.

The Threshold Sections (s38(9), s39(A), 59A(2)(b), s65A(3), 151H, s314)

The above sections intend to increase the threshold for a psychologically injured worker to access:

1. Weekly compensation beyond 130 weeks.[8]
2. Medical and relates expenses.[9]
3. Lump sum compensation for impairment[10]
4. Work injury damages for economic loss.[11]

It is submitted that the proposed 31% threshold is too high based on the existing Psychiatric Impairment Rating Scale (PIRS). The PIRS scale is method of assessment for psychological injuries in NSW implemented by Guideline. Reference is made to the comments of Dr Julian Parmegiani, who was a creator of this scale in 1999 – the scale was created by Dr Parmegiani (among others) at the request of the then government for the management of psychological injuries, meaning that it was specifically created for the purpose of scheme management. With respect to the proposed changes Dr Parmegiani stated:

"If you're going to take that step and say 'we're increasing it to 30 per cent impairment', you might as well euthanise the entire scheme and just say: 'We're not paying out any claims for any psychological injury', because that is the effect… they might as well come clean and say that is what they are going to do."[12]

The Ministerial statement suggests that the purpose of increasing the whole person impairment threshold is to *"learn from states like South Australia…"* The writer submits that the psychiatric impairment assessment scale utilised in South Australia is a different scale. South Australian workers compensation law does not rely on the Psychiatric Impairment Rating Scale, but the 'Guide to the Evaluation of Psychiatric

[8] The Amendment Bill, s38(9) and s39A.
[9] The Amendment Bill, s59A(2)(b).
[10] The Amendment Bill, s65A(3).
[11] The Amendment Bill, s151H(2), s314.
[12] Michael McGowan, 'Experts say mental health payouts may become impossible', *The Sydney Morning Herald* (28 April 2025).

Impairment by Clinicians' (GEPIC) written by Dr Michael Epstein, Dr George Mendelson and Dr Nigel Strauss. This scale does not align and is not compatible with the Psychiatric Impairment Rating Scale – it contains entirely different criteria and measures for the assessment of psychological injuries. This means that a 31% impairment in South Australia is not the same as a 31% impairment in New South Wales. Dr Julian Parmegiani described the change in threshold in the following terms:

"At 15 per cent, a person is not functioning in their day-to-day life. You're not able to enjoy yourself, you're not leaving the house, your marriage has broken down, you're not showering or looking after yourself… at 30 per cent, you've basically got to be in an institution, or at home with carers."[13]

It is submitted that the threshold for psychological injury claims should not be increased. Alternatively, if the threshold is to be increased, the scale utilised for the assessment of impairment should not be the Psychiatric Impairment Rating Scale, but a different (or new) scale that is fit for the purpose of assessing threshold for psychological injury claims in line with the Amendment Bill.

In this regard, the writer refers to recommendations 16 and 17 of the Standing Committee on Law and Justice' 2023 Review of the Workers Compensation Scheme, which recommend uniformity between psychological and physical injury thresholds and review of the use of the PIRS scale.

Part 6 Determination of degree of permanent impairment

Part 6 of the Amendment Bill attempts to create a whole new process for the assessment of impairment for both physical and psychological injuries. It is unclear where the proposed Part 6 would apply and where the existing Part 7[14] would apply.

The Amendment Bill introduces a 'principal assessment', which is described as an assessment of impairment by an assessor included on the SIRA register of permanent impairment assessors.

Much of this proposed Part of the Amendment Bill is vague and unclear. It is submitted that this Part be removed in its entirety for the following reasons:

1. An assessment arranged by the Authority with the absence of medical evidence to support that applications lacks procedural fairness.

2. The unfairness associated with a specific right to 'not enter' into a permanent agreement being provided to an insurer and not an injured worker.

3. Silence in the Amendment Bill as to whether a worker is able to elect 'not to enter' into a permanent impairment agreement.

4. An absence of information concerning the circumstances or grounds upon which the parties can refer the decision 'not to enter' into a principal agreement to the Personal Injury Commission.

[13] Ibid.

[14] *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

5. An absence of right to appeal a principal assessment certificate in the Amendment Bill.

6. Silence in the Amendment Bill as to any grounds for appeal of a principal assessment certificate (if the right to appeal exists).

More specifically, this Part, the Amendment Bill contains the following concerning provisions:

s153F Costs of permanent impairment assessment

The proposed s153F precludes a worker from accessing an independent and preliminary permanent impairment assessment to support their claim for permanent impairment. This is confirmed in the proposal to omit s73, which allows for the reimbursement of costs of medical assessment.

The concern regarding a worker's inability to access an independent assessment prior to making an application for a principal assessment prevents them from making decisions as to whether (and when) to make such an application. It also precludes the worker from obtaining medical and legal opinions as what should be included as a part of the principal assessment - that is to say, whether all assessable injuries that have been considered. For example, whether an assessment for a gait, urological, gastrointestinal conditions stemming from a spinal injury are capable of being assessed separately to the spinal injury, or whether a pain condition, like Complex Regional Pain Syndrome (CRPS) could produce an assessable impairment.

The absence of a preliminary independent assessment prior to a principal assessment, also means that an injured worker cannot be provided with advice as to implications associated with the principal assessment, including the repercussions on their entitlement to lump sum compensation, medical and related expenses, weekly payments and claims for work injury damages. Given the limit on the number of principal assessments and the potential inability to challenge them, this is particularly concerning with respect to whether an injured worker is able to access a fair hearing.

In addition to the difficulties associated with accessing informed advice, there is an absence of procedural fairness in preventing an injured worker from a reasonable opportunity to present their case.[15] In this vein, Gibbs CJ described *"the fundamental rule is that a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power."*[16] It is submitted that by preventing a worker from obtaining medical evidence with respect to their injuries and impairment, they are denied procedural fairness.

This is particularly concerning given the potential inability for an injured worker to disagree, challenge or appeal the principal assessment decision. If there is ability to disagree, challenge or appeal the principal assessment, the worker is limited in what evidence it can present in order to support such an appeal, again prejudicing the injured worker.

[15] Aronson and Groves, 'The Laws of Australia (at 1 March 2014) 2 Administrative Law, '2.5 Judicial Review of Administrative Action: Procedural Fairness' [2.5.630].
[16] *Kioa v West* (1985) 159 CLR 550, 563, quoting Mason J in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342, 360.

s153G Who must carry out permanent impairment assessment

The proposed s153G requires that a 'principal assessment' be conducted by an assessor who is either 'agreed by the insurer or worker' or appointed by the Authority. This varies greatly from the existing scheme, where a referral for permanent impairment is undertaken by the Personal Injury Commission.

It is submitted that if this Part is pressed, that the authority to elect an assessor is reverted to the Personal Injury Commission in the interest of fairness. The Personal Injury Commission, unlike the Authority, has various legal obligations and duties as lawyers,[17] along with legislative transparency requirements.[18] It also has some type of appeal right, which a worker may need to access.

s153H Permanent impairment assessment process

With respect to process, the proposed s153H allows an application for principal assessment to 'be made to the Authority.' It does not indicate who can make this application and may prevent injured workers from electing an appropriate time in which to have their impairment assessed. That is, if an insurer is given the ability to make an application for principal assessment, the application may be made prior to the injured worker undergoing surgery (or other treatment) which may preclude them from accessing a principal assessment that reflects their actual permanent loss and impairment.

With the context of the proposed s153I, which only allows for one assessment of impairment, and the absence of any specific appeal or dispute opportunities contained in the Amendment Bill, this could be incredibly problematic and prejudicial for injured workers.

s153I One assessment only of degree of permanent impairment

The proposed s153I allows for only one assessment of impairment, which aligns with the existing legislation, but remains fundamentally unfair. Workplace injuries, like any other injury or condition may deteriorate or progress with time and through treatment (including surgery) – this section does not allow for any compensation to an injured worker to reflect such a deterioration.

In this regard, the writer refers to recommendation 16 of the Standing Committee on Law and Justice' 2023 Review of the Workers Compensation Scheme.

s153N Further principal assessments

The proposed s153N allows for a further principal assessment only in circumstances where there is a 'an unexpected and material deterioration' in the injured workers condition of more than 20%. In line with the above, this does not allow an injured worker to have their condition re-assessed, despite deterioration, unless this deterioration is so significant that the impairment is likely to increase by an additional 20% impairment – it is submitted that a 20% impairment in itself is an incredibly high threshold, let alone a deterioration of this magnitude, which is an even higher bar. To give context, if an injured workers impairment is assessed at 13% WPI, and deteriorates by a further 8% WPI, they will not have access to a

[17] Generally contained in the *Legal Profession Uniform Law 2014* (NSW).

[18] Personal Injury Commission Act 2020 (NSW), s3.

further principal assessment, preventing them from making a claim for work injury damages and access extended periods of weekly payments and medical and related expenses in line with their impairment.

By extension, this creates similar problems in the context of an injured worker accessing ongoing weekly payments in line their current permanent impairment (in the proposed s39(3) – (5)).

s153P Entering into permanent impairment agreements

The proposed s153P allows the injured worker and the insurer to enter an agreement as to the degree of permanent impairment.

At s153P(4) there is a specific ability for the insurer to elect 'not to enter' into a permanent impairment agreement - there is no specific ability for an injured worker 'not to enter' into an agreement. On review of this section, there is no way to know if an injured worker is able to elect 'not to enter' into an agreement, dispute or appeal a principal assessment.

There is also no reference to relevant grounds for a referral of a dispute to the Commission under s153P(4) or appeal from a principal assessment. The Amendment Bill is silent as to whether there is a mechanism for appeal of the principal assessment if the assessment is incorrect in fact, law or the application of the assessment Guidelines.

It is unclear (and silent) as to whether Part 7 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) will apply to principal assessments in the manner that it applies to Medical Assessment Certificates, with respect to rights and process for appeal.

It is unclear if it is an intended effect of the Amendment Bill to preclude an injured worker from having the ability to appeal a decision (or 'not to enter' into one), but if this is the intention, the application of Part 6 would also lack procedural fairness in this regard.

s153Q Permanent impairment agreement evidence of certain matters

The proposed s153Q binds the parties to the impairment agreement, which is particularly concerning given the context of the remainder of the Part.

Section 45B Independent allied health consultants

The proposed addition of s45B is an additional scheme operational expense. It is submitted that the operations and funds management of the existing scheme requires review. The writer is of the view that it is irresponsible to provide a further legislative ability by scheme agents to incur additional scheme expenses without independent and transparent review, investigation and/or audit of current management and operation of ICare, the scheme agents, the SIRA, and the Nominal Insurer and Treasury Managed funds.

ADDITIONAL COMMENTS REGARDING THE OVERALL FINANCIAL SUSTAINABILITY OF THE NSW WORKERS' COMPENSATION SYSTEM

Over the years, recommendations have been made to review the scheme. It is also the writer's submission to review the operational cost of the scheme (including the effectiveness and efficiency of scheme agents,

case managers, case management methods, third party rehabilitation providers). In addition, it is submitted that the Nominal Insurer and the Treasury Managed Fund be audited and reviewed for the purpose of ensuring appropriate and ethical funds management.

While SIRA provides 'open data' regarding workers compensation claims, much of the data with respect to operational costs, funds management and other matters is not available. For example, the writer is aware of numerous occasions where the Department of Customer Services and/or Insurance and Care NSW and/or the State Insurance Regulatory Authority (SIRA) have made 'act of grace payments' (or similar) to injured workers whose claims have been mishandled by ICare or the relevant scheme agent, whose complaints have been mishandled by SIRA, and whose personal and confidential information has been breached. Despite this, information regarding these payments is not included, as far as the writer is aware, within the SIRA open data or in any report provided by SIRA or ICare with respect to the scheme.

Based on the media release and the Exposure draft of the Workers Compensation Legislation Amendment Bill 2025 it is seemingly the government's position that they would prefer to reduce the rights of injured workers than to:

a. Independently and transparently investigate and audit the performance and efficiency of ICare, SIRA and the scheme agents.

b. Implement a reliable method of data collection with respect to workers compensation claims that is reliable and accessible.

c. Implement a reliable method of data collection with respect to operational and claims management costs that is reliable and transparent.

d. Collaborate with SafeWork NSW to ensure safer workplaces.

e. Adequately, independently and transparently investigate the return-to-work strategies in the public sector.

f. Adequately, independently and transparently investigate psychological injury claims in the Stronger Communities, Education and Health group of the public sector.

g. Audit the Nominal Insurer and Treasury Managed Funds.

h. Adequately consult with stakeholders outside of Business NSW and Unions NSW, and in particular, with injured workers and legal professionals within the field.

These recommendations (and similar recommendations of this nature) have been made in the McDougall Review[19] and in the Standing Committee on Law and Justice' 2023 Review of the Workers Compensation Scheme.[20]

[19] Hon Robert McDougall QC, 'icare and State Insurance and Care Governance Act 2015 Independent Review' (30 April 2021), recommendations 2, 3, 13, 15, 27, 27, 31, 32, 33, 42.
[20] Recommendation 4, 5, 7, 11, 12.