

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

**Organisation:** Australian Rehabilitation Providers Association  
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Parliament NSW  
Legislative Council  
The Standing Committee on Law and Justice  
[Law@parliament.nsw.gov.au](mailto:Law@parliament.nsw.gov.au)

**Inquiry into proposed changes to liability and entitlements for psychological injury in NSW**

ARPA is a key stakeholder in the workers compensation scheme in NSW and is a partner with the NSW government in improving scheme outcomes. The terms of reference for this enquiry and the timeframes for submission are brief, therefore we will limit our response to key points for the purposes of brevity. We would welcome the opportunity to expand our response further should the committee require further information.

ARPA supports the NSW Government objectives to enhance scheme outcomes and ensure scheme viability.

Psychological injury claims including secondary psychological injury claims have increased substantially, not only in NSW workers compensation, but across all jurisdictions. Psychological injury claims represent proportionately higher claims costs within the NSW workers compensation scheme and threaten scheme viability, without reform.

**Scheme design must leverage Early Intervention and RTW for improved scheme outcomes**

Returning workers to full suitable employment remains the most effective way to contain claims costs and meet the ethical and integrity responsibilities of the workers compensation scheme. There is no substitute for targeted investment in early effective intervention and workplace rehabilitation to improve RTW and recovery outcomes. Please see in Appendix 1 a copy of ARPA's report on Early Intervention and RTW.

There remains untapped potential within the scheme design to harness greater RTW outcomes for improved scheme outcomes. We see an opportunity for draft legislation to enable development of regulations and guidelines to ensure greater operational effectiveness.

ARPA NSW support the need for clarification on what constitutes reasonable actions of an employer and on the direct connection to employment for primary psychological injury claims. However, ARPA have significant reservations relating to the process which requires a worker to prosecute a successful claim through a tribunal, commission or court, to be entitled to claim for compensation.

The introduction of the 1987 Act saw a departure from a fault-based scheme and subsequent reforms have sought to remove areas of conflict and instead focus on recovery and RTW, based on the significant evidence base supporting this approach.

In the proposed approach, where the first step in a process is forcing an employer and a worker into a legislated conflict, there is little hope in future mitigation through RTW. The people of NSW have benefited from and have come to expect a modern scheme that has reduced this burden on workers and employers. This element of the reform appears to be a retrograde step for the Legislative Council. ARPA recommends an alternative process be considered within an established guideline to determine if a claim meets a threshold for entitlement for compensation.

It is well documented that RTW outcomes are negatively impacted by any delay between the injury and intervention and the significant impact on claims cost and scheme. The process requiring a claim to be substantiated by a tribunal, commission or court will add substantially to the time taken before intervention is provided. This will have a material effect on the entire portfolio of accepted claims with a subsequent deterioration in liabilities and may ameliorate any benefit in the corresponding reduction in claims that may be achieved by the proposed reforms.

ARPA recommends that any wholesale delay in intervention caused by the introduction of a commission, tribunal or court process, be mitigated by targeted and intensive early intervention. Consideration should also be given to pre-liability assistance and intervention.

### **Risks to workers must be understood and mitigated**

ARPA's most significant concerns arising from the proposed amendments relate to the delay to early, effective and intensive intervention, as these delays are likely to have serious repercussions for injured or ill workers who are required to participate in an adversarial process before being able to seek and receive appropriate care.

We must ensure that the welfare of NSW citizens and workers is front of mind, and that the compounding risk including risk for self-harm is mitigated.

ARPA supports reforms which when given effect will limit entitlement to benefits for psychological injury claims, on the basis that there is appropriate provision of early intervention. Consideration should be given to increasing the intensity of support at the earliest possible time in the life of the claim to deliver the best value for the scheme and best support to workers and workers when it is most needed, and most effective.

This approach is supported through research, with examples as follows:

- Source: Collie, A., et al. (2018). "Health service use and cost associated with Australian workers' compensation claims for psychological injury." *BMJ Open*.
- Source: Victorian Ombudsman, "WorkSafe 2: Follow-up Investigation into the Management of Complex Workers Compensation Claims," 2019.
- Source: Victorian Ombudsman, "WorkSafe 2: Follow-up Investigation into the Management of Complex Workers Compensation Claims," 2019.
- Source: MacEachen, E., et al. (2007). "The 'toxic dose' of system problems: Why some injured workers don't return to work as expected." *Journal of Occupational Rehabilitation*.

### **Addressing Health Risks for At-Risk Workers Beyond 130 Weeks: Recommendations for Targeted Interventions**

Further, it may be evident that some workers with a WPI below 31% may present with risk factors in respect of their health beyond 130 weeks. A mechanism whereby an insurer may provide for specific and targeted medical or allied health intervention for identified at-risk workers should be considered by the Legislative Council. ARPA reiterates our concern for the welfare of workers and the compounding risk including risk for self-harm at 130 weeks where additional supports may be required.

### **Unintended consequences: Secondary Psychological Injury**

Primary psychological injury claims are defined separately to secondary psychological injury claims. Secondary psychological injury claims represent a significant cohort within the total liabilities of the scheme and do not appear to have been addressed adequately in the exposure draft. The omission of reference to secondary psychological injury claims appears to have an unintended consequence of not applying the same level of consideration that is applied to primary psychological injury claims. For example, secondary psychological injury claims will not have benefits limited to 130 weeks. This appears to be replicated in other areas of the exposure draft.

This may have the unintended consequence of shielding secondary psychological injuries from these reforms. ARPA recommends that both primary and secondary psychological injuries be addressed consistently where it is appropriate within the reforms. This may apply to [12]; [14]; [16]; [18]; and [22].

**Summary of key considerations**

In summary, ARPA NSW recommends consideration to the following to ensure this legislative reform has the intended effect:

- Early intervention and RTW strategies are crucial for improving scheme outcomes and containing claims costs, with a focus on targeted investment in well designed, time limited, effective early intervention during decision-making periods.
- If not addressed, there is potential for decreased RTW rates through delayed access to intervention, thereby increasing scheme liabilities.
- Consideration of risk to workers at 130 weeks who do not meet the 31% WPI who still require supports. Specific and targeted medical or allied health intervention for identified at-risk workers should be considered by the Legislative Council
- Consistent treatment of primary and secondary psychological injury claims should be considered within these reforms to ensure fair support and mitigate risks to workers, and unintended negative scheme consequences.

ARPA welcome ongoing consultation regarding the upcoming amendments.

Kind regards,

**Noni Byron**  
ARPA NSW President

**Nathan Clarke**  
ARPA National CEO