

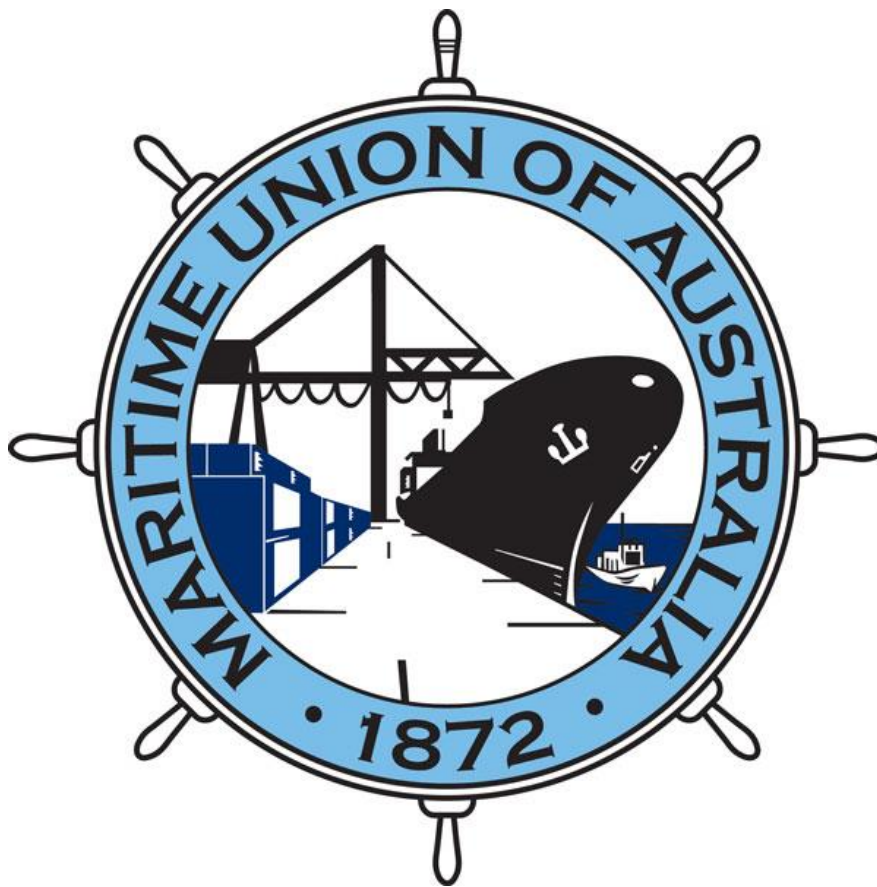
**INQUIRY INTO PROPOSED CHANGES TO LIABILITY AND
ENTITLEMENTS FOR PSYCHOLOGICAL INJURY IN NEW
SOUTH WALES**

Organisation: Maritime Union of Australia

Date Received: 15 May 2025

MUA Submission:

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



15 May 2025

NSW Legislative Council: Standing Committee on Law and Justice

Submitted by email: law@parliament.nsw.gov.au

**Paddy Crumlin, National Secretary,
Maritime Union of Australia
A Division of the Construction, Forestry and Maritime Employees Union
365 Sussex St, Level 2, Sydney, NSW, 2000**

**Paul Keating, Secretary, Sydney Branch
Maritime Union of Australia
A Division of the Construction, Forestry and Maritime Employees Union
365 Sussex St, Level 1, Sydney, NSW, 2000**

**Glen Williams, Secretary, Newcastle Branch
Maritime Union of Australia
A Division of the Construction, Forestry and Maritime Employees Union
406-408 King Street, Newcastle West, NSW 2302**

**Scott Carter, Secretary, Southern NSW Branch
Maritime Union of Australia
A Division of the Construction, Forestry and Maritime Employees Union
64 Darcy Road, Port Kembla, NSW 2505**

For inquiries contact:

Website: www.mua.org.au

About us

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry and Maritime Employees Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

The MUA represents approximately 13,000 workers in the shipping, offshore oil and gas, stevedoring, port services, and commercial diving sectors of the Australian maritime industry. In NSW ports, MUA members work for the Port Authority of NSW and other ports authorities, on tug boats, pilot boats, ferries, tourism vessels, construction vessels, and coastal trading vessels. MUA members also work in bulk and general and container stevedoring terminals in all NSW ports.

Introduction

The MUA welcomes the opportunity to make a submission to this inquiry. We are concerned with the timing of the Bill and the limited timeframe to lodge submissions over a complex issue that affects every single worker in NSW, including our members. The MUA supports the submission, including the recommendations from Unions NSW. Our submission will highlight matters of particular concern for our members.

For the MUA, our delegates and HSR's invest significant time and organising effort to put systems and processes in place to prevent, reduce and mitigate risks and hazards in the workplace including psychosocial hazards. We also know it's impossible to eliminate all risks and that injuries - physical and/or psychological can and do occur at work. When that happens, every worker must be able to access medical treatment and fair compensation. Preventing workplace hazards and a fair compensation scheme for when injuries occur are not mutually exclusive. The proposed legislation is discriminatory as it singles out one type of injury, in this instance psychological and deprives these workers assistance and access to prompt treatment and effective management of injuries compared to those that incur physical injuries.

The MUA would welcome reforms that genuinely prevent and improve the worker's compensation system and processes for maritime workers experiencing psychological injuries. However, the proposed changes will not prevent psychological injuries (and arguably only serve to exacerbate them) and any financial gains is made at the expense of workers who will effectively be cut off from support through the compensation scheme. This is contrary to the objectives of the scheme.

MUA concerns with the Exposure Draft

The Exposure Draft of the *Workers Compensation Legislation Amendment Bill 2025* (the Bill) in its current form raises significant issues for our members. We first urge the Committee to recommend that the NSW Government delays its implementation and conduct an independent review of the NSW workers compensation system. Matters of particular concern for MUA members include:

1. Increase to whole person impairment assessment threshold to 31%.

This impossibly high bar is unfair and fails to recognise and understand the nature of psychological injuries. It punishes workers that the scheme is designed to protect. In a Memorandum provided by Barrister Craig Tanner regarding the proposed legislative changes prior to the Exposure Draft being released he states:

The manifest objective of the proposed changes in the face of that reality, and the mounting payments to which victims are entitled under the current scheme is to extinguish or limit entitlements to the prejudice of those who suffer injury, in order to reduce the liability of employers and the extent of the fund required to discharge obligations and pay compensation pursuant to the legislation.

Mr Tanner goes on to say:

I cannot recall a single instance in which a workers was assessed to have a 30% WPI for a psychological injury, Having spoken to colleagues, few recall cases exceeding 30% WPI.

...

An assessment of 30% WPI would require an assessment of an aggregate of 22, and a Class Median of 3, with assessment of total or severe impairment in a minimum of three of the PIRS categories. A worker impaired to that degree would in all likelihood be either housebound or in institutional care.

There have been less than 5 cases where our members have been assessed of having over 31% WPI over the last 25 years. Most fall between 22-25%. The MUA argues that reforms should address the shortcomings of the psychiatric impairment rating scale (PIRS) rather than placing higher hurdles for workers with a psychological injury.

Further, the comparison with jurisdictions in South Australia and Queensland does not compare like with like as each state use a different methodology and differs from the PIRS.

The inevitable consequence of depriving workers access to remedies mean employers will not have to be accountable or liable. There will be no incentive to implement measures to address the risk of psychological injury.

2. Limiting what is considered a psychological injury

It is not appropriate for the NSW Government to set parameters around what is considered a psychological injury and medical knowledge and best practice treatment methods are constantly evolving. Defining, diagnosing and treatment

should be determined by independent medical professionals. The proposed list is too narrow and will exclude workers with genuine compensation claims.

3. Reasonable management action

The MUA is deeply concerned that reasonable management action is automatically cause for exclusion despite their being other predominant hazards. The desire to provide certainty in the Bill eliminates the current rights of those who have suffered from psychological injuries that have been determined for decades by our judicial system. Mr Tanner noted that there are reasons why employers rarely manage to satisfy section 11A such as a lack of evidence and findings of unreasonableness of their actions.

This amendment simply makes it easier for employers to defend claims where their actions has caused a psychological injury. The NSW Government should not be watering down this provision for the benefit of employers who cannot prove their case.

4. Need to obtain a finding of sexual harassment, bullying or racial harassment

This proposed change fails to recognise the nature of psychological injuries and seek to override the legal precedents that have developed over many years. To be eligible for workers compensation and a finding of harassment are different matters. Precedents have been set with regards to workers compensation that whether the experience of a worker has given rise to the psychological condition is what matters in determining a psychological injury not whether there is an objective finding of harassment.

The NSW Government will effectively be overturning well established precedents to make it harder for workers to seek a remedy under the workers compensation jurisdiction. We note that women will be disproportionately affected by these changes. The MUA recommends this requirement be removed.

5. Proposing a bullying and harassment jurisdiction

A bullying and harassment jurisdiction cannot address a majority of psychological injuries. A preventative WHS jurisdiction and a compensatory jurisdiction are complementary models that can be explored, but the proposal is too narrow to be effective as it does not prevent other types of psychological injuries. It also seeks to prevent workers from proceeding with claims for compensation.

The MUA can see a role for the NSW Industrial Relations Commission to be provided powers to resolve WHS disputes over workers safety and protection to prevent hazards and risks. It does not need to determine a hazard or risk to have occurred before a worker can claim compensation. This will only place further obstacles and trauma for our members rather than deal with some of the real issues with the scheme that is not addressed in this Bill. For MUA members there are significant issues with administration and claim management that should be addressed. The hostility and conduct of insurers being a key example.

Conclusion

The MUA believes this Bill has the wrong focus, targeting workers access to compensation once an injury has occurred. It does not prevent an injury from occurring, it removes accountability from employers and the financial objectives are only met because the NSW Government have now made it impossible for workers to meet the threshold for psychological injury claims.

The Bill transfers the costs and risks to workers. We are not opposed to reforms but the Bill as it stands does not even meet its own stated objectives. If the financial burden of the scheme is of concern, there are other options as recommended by Unions NSW to resolve this rather than punishing NSW workers. The MUA cannot and will not support changes that effectively sees those who suffer from physical injuries as more worthy of compensation than those who suffer psychological ones.