Submission No 143

INQUIRY INTO WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2025

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Submission to the Public Accountability and Works Committee, Parliament of NSW, regarding the Workers Compensation Legislation Amendment Bill 2025 (second print)

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INTRODUCTION AND CHRONOLOGY

The writer welcomes and appreciates the invitation from the Hon Ms Abigail Boyd, Committee Chair, and more generally, the opportunity to contribute my submission to the Public Accountability and Works Committee in undertaking their inquiry entitled 'Workers Compensation Legislation Amendment Bill 2025'.

On 9 May 2025, the state government introduced an exposure draft of the Workers Compensation Legislation Amendment Bill 2025 ('the Amendment Bill') with 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).

On 16 May 2025, a parliamentary hearing was held by the Standing Committee for Law and Justice where a number of experts (including doctors and lawyers) expressed concern regarding the Bill. The NSW treasury, Icare and its scheme agents were unable to provide an array of requested financial information requested by the Committee members.

On 27 May 2025, an amended Bill was introduced to the Legislative Assembly by Ms Sophie Cotsis. This amended Bill was an improvement on the previous Bill in that it reintroduced vicarious trauma and excessive work demands as 'relevant events', and removed the pre-claim obligation to have a determination by an industrial relations tribunal. Otherwise, the Bill largely remained the same.

On 3 June 2025, the Workers Compensation Legislation Amendment Bill 2025 passed the Legislative Assembly with minor amendments, including, but not limited to an extension of time for injured workers currently reliant on the workers compensation scheme to make claims subject to the existing threshold, and the obligation for a review of the changes imposed by the Amendment Bill by a number of stakeholders.

On 4 June 2025, the Amendment Bill (Second print) was introduced to the Legislative Assembly by Mr Daniel Mookhey (treasurer). The Legislative Assembly would not consider the Amendment Bill without significant amendment and recommended a further inquiry.

On 5 June 2025, the Amendment Bill (Second print) was referred to the Public Accountability and Works Committee to conduct an examination of the impact of the Bill on business and economic conditions in New South Wales.

On 17 June 2025, there was a further parliamentary hearing, where again, stakeholders and specialists (medical and legal) gave evidence about the legislation, including the impact and potential repercussions.

These submissions address a number of matters as far as possible with the information that is presently available from the NSW government and the SIRA open data. It is noted that the following documentation remains absent, despite the writer's requests to the Treasurer's office:

1. Data concerning return to work rates broken down by psychological injury claim type (harassment, work pressure, sexual harassment etc).

2. Data concerning claim costs broken down by psychological injury claim type (harassment, work pressure, sexual harassment etc).

3. Data concerning the number of cases invoking 'perception' in line with *Attorney General's Department v K [2010] NSWWCPD 76* (noting there are approximately 200 reported decisions).

4. Any data concerning return to work rates in the TMF since the implementation of the Return-to-Work Strategy.

5. Data concerning 'act of grace' or similar payments (generally made in response to complaints made against ICare, the scheme agents or SIRA, or in response to privacy breaches made by ICare and/or the scheme agents) made within the icare scheme.

6. Records of transactions/withdrawal in and out of the Treasury Managed Fund (TMF) made by the NSW government from 2012 to date for any purpose outside of the payment of claims.

7. A copy of the report of Hon Alan Robertson SC dated 6 December 2024 produced following the 'Independent inquiry into the complaints handling process at SIRA'.

THE PARLIAMENTARY INQUIRIES – MEDICAL OPINIONS

The parliamentary inquiries illuminated a number of issues concerning the proposed Bill and the government's understanding of the legislation they are attempting to pass. The medical case concerning the impairment threshold was dealt with in both parliamentary inquiries and should be clarified in the context of these submissions:

The Standing Committee on Law and Justice invited Dr Anthony Dinnen, Dr Julian Parmegiani and Dr Patrick McGorry to comment on the proposed 31% threshold. The following comments are extracted from the transcript:

1. Dr Anthony Dinnen stated *"…I know, from my patients and my clinical experience over many years, because I've been in practice for many years, that an increase in threshold from 15 to 30 per cent would eliminate virtually every patient I've ever seen, except for maybe one or two, from being eligible for the scheme."*
2. Dr Julian Parmegiani stated *"…if you read the PIRS, to get to 31 per cent, basically you are not working, your relationships have broken down and you are unable to look after yourself. Basically,*

after that time if you cut them off the system, you might as well give them a cardboard box and they can move into the street because they have got no agency left."

3. Dr Patrick McGorry stated *"I think it's lifting the bar too high… what's the alternative pathway for people that are in between that 15 per cent and 30 per cent? There's a whole swathe of people whose longer-term care would be severely compromised, with very few other options for them…"*

The Public Accountability and Works Committee invited Dr Michael Epstein and Dr Doug Andrews to comment on the proposed psychiatric whole person impairment threshold. The following comments are extracted from the transcript:

1. When asked *"Would it be fair to say that would make us the harshest of the States when it comes to the threshold at which people would be cut off?"* Dr Michael Epstein stated *"Yes. About three or four years ago, I looked at all the jurisdictions in Australia and New Zealand to see how they compared physical injury and mental and behavioural disorders. Every jurisdiction discriminated against people with mental and behavioural disorders by having much higher thresholds. South Australia would top the list at 30 per cent, but now New South Wales is going to take the crown."*

2. When asked *"the 31 per cent, then, in New South Wales, using the PIRS, would take it up to a class 4. A class 4 under the GEPIC would be 50 per cent-plus."* Dr Epstein stated *"it's 55%."* He also confirmed that it is incorrect to say that 31% threshold for WPI is the same as in South Australia.

3. Dr Doug Andrews stated *"If someone had impairment of 21 per cent or more, they are likely to be severely unwell. They are likely to have no capacity."*

4. Dr Doug Andrews stated *"I've been doing this for many years. I've done many hundreds of assessments. I can't recall anybody who had more than 21 per cent impairment who was able to work."*

5. When asked why people are getting "higher WPI's all the time", Dr Doug Andrews stated *"I do not see that. That's not my experience as an assessor over the last decade. That's not my experience, as somebody sitting on appeals panels, that things are getting higher all the time."*

Despite this, the comments made by the treasurer show a lack of understanding about the assessment and application of whole person impairment stating the following:

"Can I say, firstly, you're talking about 21 to 30. Under the PIRS scale, that is classified as moderate. Under the PIRS scale that is assumed that people have work capacity. The irony is that under the PIRS scale, at 30 and above is when people are deemed to have no work capacity."

"… your point is that if you're saying that the scale says a person from 20 to 30 has no work capacity, you are not correct. The scale says a person from 20 to 30 under the New South Wales system has got work capacity."

It is of serious concern that the government seem to misunderstand the application of the law they are proposing to pass. The repercussions of the decisions being made by the government seem not to be considered in the context of the scheme due a lack of understanding of the medicine and application of the PIRS scale.

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 "psychological injury"

This section provides a legislative definition of psychological injury, being "an injury that is a mental or psychiatric disorder that causes behavioural, cognitive or psychological dysfunction."

It is submitted that this is unnecessary. The current requirement for psychological injury is a diagnosis under the Diagnostic and Statistical Manual of Mental Disorders (DSM). This was confirmed by Dr Julian Parmegiani who, in response to a question about the then Section 8A (now Section 8D), stated *"Clinically, we use the DSM - the Diagnostic and Statistical Manual of Mental Disorders - which is an American classification system with criteria that we mostly agree with."*

This additional barrier does little aside from creating additional litigation concerning the definitions of "behavioural, cognitive or psychological dysfunction." It is submitted that if the government intends to legislate in respect of a definition, that the definition aligns with the current status of the law, and requires a DSM diagnosis.

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

The proposed s8F 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.

The application of the section is not regularly used. According to the document entitled 'Section 11A(1) Employer defences' by the NSW government (which is undated), the s11A defence was only applied in 13% of psychological injury cases in 2024, despite succeeding 83.7% of times it was used.

The reasons for this were commented on in the parliamentary inquiries. Ms Rebecca Wilson, Vice-President, National Insurance Brokers Association, stated *"my observations are that it's a culture that we support any claim that is actually received by icare or one of its agents. The second part is the CSP performance of having autonomy and accountability and authority to actually apply section 11A."*

These are not legislative issues. These are case management issues, and evidence of the lack of education and training of case managers.

It is submitted that the issues with the s11A defence stem from a limited use by case managers, and because employer actions are often considered unreasonable by the Personal Injury Commission. The reasonableness of an employer's management actions should be considered a matter for the employer to address by management and employment law training, rather than an additional hurdle for an injured worker in accessing compensation. This is not a worker's compensation issue.

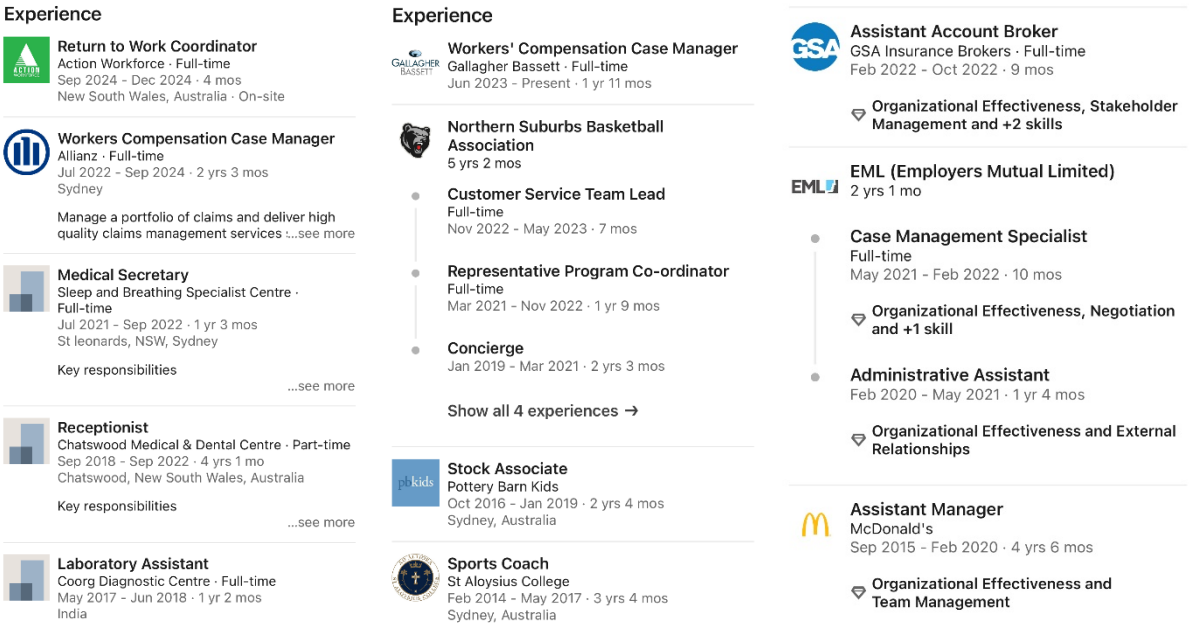
The implication being drawn here is that the application of 'reasonable management actions' is a matter that can be reduced by prevention, which the government contends is the basis for this legislation. If employers are adequately trained in matters of industrial relations and employment law, these types of cases would likely reduce in volume, preventing the case and the injury.

This is also what Business NSW has called for. In the parliamentary inquiry convened by the Standing Committee for Law and Justice, Mr Hunter, of Business NSW said:

"You need prevention programs, which are contemplated in these reforms. You need prevention programs and training, and you need workplace disputes that are solved quickly, and you need a mechanism for that. Because what is happening at the moment is there are workplace disputes by default just being accepted into a workers compensation system..."

In circumstances where claims are filed, case managers should be capable of making decisions concerning such cases, by way of education and training. With such training concerning the law, the appropriate application of s11A will likely be more widespread than it is, allowing more claims concerning interpersonal conflict to be defended by employers.

The issues concerning the qualifications and education of case managers is one dear to the writer's heart, having personally raised this matter in a meeting with Mr Richard Harding, the then CEO of Icare, in about 2021. The writer takes the opportunity to provide just three extracts from LinkedIn, concerning the qualifications of case managers prior to them obtaining their roles as case managers:



Experience

Return to Work Coordinator
Action Workforce · Full-time
Sep 2024 - Dec 2024 · 4 mos
New South Wales, Australia · On-site

Workers Compensation Case Manager
Allianz · Full-time
Jul 2022 - Sep 2024 · 2 yrs 3 mos
Sydney

Manage a portfolio of claims and deliver high quality claims management services :...see more

Medical Secretary
Sleep and Breathing Specialist Centre · Full-time
Jul 2021 - Sep 2022 · 1 yr 3 mos
St leonards, NSW, Sydney

Key responsibilities
...see more

Receptionist
Chatswood Medical & Dental Centre · Part-time
Sep 2018 - Sep 2022 · 4 yrs 1 mo
Chatswood, New South Wales, Australia

Key responsibilities
...see more

Laboratory Assistant
Coorg Diagnostic Centre · Full-time
May 2017 - Jun 2018 · 1 yr 2 mos
India

Experience

Workers' Compensation Case Manager
Gallagher Bassett · Full-time
Jun 2023 - Present · 1 yr 11 mos

Northern Suburbs Basketball Association
5 yrs 2 mos

Customer Service Team Lead
Full-time
Nov 2022 - May 2023 · 7 mos

Representative Program Co-ordinator
Full-time
Mar 2021 - Nov 2022 · 1 yr 9 mos

Concierge
Jan 2019 - Mar 2021 · 2 yrs 3 mos

Show all 4 experiences →

Stock Associate
Pottery Barn Kids
Oct 2016 - Jan 2019 · 2 yrs 4 mos
Sydney, Australia

Sports Coach
St Aloysius College
Feb 2014 - May 2017 · 3 yrs 4 mos
Sydney, Australia

Assistant Account Broker
GSA Insurance Brokers · Full-time
Feb 2022 - Oct 2022 · 9 mos

Organizational Effectiveness, Stakeholder Management and +2 skills

EML (Employers Mutual Limited)
2 yrs 1 mo

Case Management Specialist
Full-time
May 2021 - Feb 2022 · 10 mos

Organizational Effectiveness, Negotiation and +1 skill

Administrative Assistant
Feb 2020 - May 2021 · 1 yr 4 mos

Organizational Effectiveness and External Relationships

Assistant Manager
McDonald's
Sep 2015 - Feb 2020 · 4 yrs 6 mos

Organizational Effectiveness and Team Management

These are the people making decisions about the scheme. The issue is not the law. The writer is happy to provide more extracts on request.

This is not even considering the scheme agent's staggering case manager staff turnover rates, causing a further deficiency in education and training in respect of the law.

Section 8G Meaning of "relevant event"

The proposed s8G of the Amendment Bill are not fit for purpose. The sections attempt to reduce the circumstances of psychological injury to events that the government considered while drafting the Bill.

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.

It is submitted that the Committee should question the decision by the state government to exclude a volume 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 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 8J Meaning of "traumatic incident" and 8K Meaning of "vicarious trauma"

The Amendment Bill describes vicarious trauma as "the psychological impact of repeated exposure, in the course of a worker's duties, to the traumatic experiences of others that result from traumatic incidents." It then describes traumatic incidents as an act of violence, criminal conduct, a natural disaster, fire or explosion, a motor accident or other accident, or a suicide or attempted suicide.

The concerns with respect to these sections are:

1. The limited circumstances in which a person may be exposed to trauma generally – there are various other incidents which may be considered traumatic.

2. The requirement for repeated exposure, despite the possibility that there could be a singular incident that causes a psychological injury in the course of employment.

3. 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. It is also submitted that this will likely disproportionately affect women.

If this section were to be applied, there should be an additional allowance to include a traumatic incidents that are determined to be traumatic incidents by the Personal Injury Commission. This means that outside of these limited circumstances, the definitions of vicarious trauma and traumatic incidents should be determined on a case-by-case basis by the Personal Injury Commission, where necessary.

The requirement for exposure to trauma to be 'repeated' should be removed in whole.

Section 8L Objective test for determining whether act or omission constitutes bullying, excessive work demands or racial or sexual harassment

The proposed s8L applies an objective test for the determination of whether a worker was subjected to bullying, excessive work demands, racial harassment or sexual harassment.

The current state of the law is tied with the *Attorney General's Department v K [2010] NSWWCPD 76*, which allows for primary psychological claims for bullying and harassment to be determined on the basis of the injured workers perception of real events – there is no objective reasonableness requirement.

The proposed section 8L adds a reasonableness requirement to perception, which would likely prohibit a volume of claims concerning interpersonal conflict, minor omissions by the employer, and even reasonable management actions.[1] This is the intention of the Bill, according to the government, and addresses the concerns presented by Mr Daniel Hunter (as a representative of Business NSW) in their comments in the parliamentary inquiry.

Data concerning the volume of these claims produced by Icare show a total of 4,449 primary psychological injury claims for reporting year ending 30 September 2024 in the nominal insurer – of these 4,449 claims, 3,114 related to bullying and harassment or work pressure. In the TMF, there were a total of 2,806 claims in the same period, with 1,838 being related to related to bullying and harassment or work pressure.

Despite requests, data concerning the actual cost of claims for bullying and harassment, sexual harassment and racial harassment is unavailable. In the absence of financial data concerning the costs of these claims, the implementation of this section is likely to answer a number of the alleged financial issues with the scheme, by tightening the entry requirements, and therefore, the reducing associated financial costs.

If the financial state of the scheme is as described by the government (which remains unclear), it is submitted that this type of amendment is preferable to an increase in the whole person impairment threshold test, which would cut off seriously injured workers from accessing entitlements, despite the nature of the injury.

[1] It is noted that this is specifically dealt with in the proposed Section 11A(3).

Section 8O Connection between relevant events, employment and primary psychological injuries

This section includes a further unnecessary test of a 'real and direct' connection with employment. The current legislative test requiring the employment to be a main or substantial contributing factor preclude claims that do not relate to employment.

The inclusion of additional requirements will likely result in the unintended consequence of unnecessary litigation to establish definitions of 'real' and 'direct' in a strict liability scheme, where any injury *"arising out of or in the course of employment"*[2] is intended to be covered by the law.

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 presents a considerable and additional challenge to injured workers attempting to access medical treatment.

This matter was addressed by Ms Roshana May in her comments to the Standing Committee for Law and Justice stating:

"The changes would mean that there has to be a greater level of necessity for treatment. When we talk about the objectives of the system being access to prompt treatment and early return to work, "reasonably necessary" means someone can front up and say, potentially with any injury, "I might need some acupuncture or some medication or some form of treatment." That will allow them either to remain at work—to prevent deterioration of their current condition so they can remain at work—or improve with surgery or anything else. The reasonable and necessary test requires both those limbs to be satisfied, which means there will be more challenges to the offers of treatment. The principles behind "reasonably necessary" will be lost. They were to facilitate, effectively, early return to work."

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.[3] This means that the section does not meet the objective of the Bill.

During the parliamentary inquiry convened by the Standing Committee for Law and Justice, the Treasurer was asked about the risks to the financial viability of the scheme in order of significance – his response was *"In macro terms, it's definitely return to work rates. We have to get people back faster."*

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[2] *Workers Compensation Act 1987* (NSW), s4.

[3] Paragraphs 4.143 – 4.144.

To this point, studies have confirmed that the longer an injured person is away from work, the lower their chances are for returning successfully. 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%.[4]

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 attempt to prevent access to treatment, rather than to support injured workers with treatment, and in turn, increase return to work rates.

Section 82A – 82(B)

The proposed s82A and 82B reduce 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.

The remainder of the information concerning the application of these sections is subject to Guidelines, which have not yet been confirmed.

Section 87F Commutation by agreement

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

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.[5]
2. Medical and relates expenses.[6]

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[4] 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.

[5] The Amendment Bill, s38(9) and s39A.

[6] The Amendment Bill, s59A(2)(b).

3. Lump sum compensation for impairment[7]
4. Work injury damages for economic loss.[8]

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."[9]

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 Impairment by Clinicians' (GEPIC) written by Dr Michael Epstein, Dr George Mendelson and Dr Nigel Strauss. When giving evidence in the parliamentary inquiry for the Public Accountability and Workers Committee, Dr Epstein suggested that a 31% whole person impairment under the PIRS scale would result in an impairment of about 55% under the GEPIC - meaning that we are not learning from South Australia, but are introducing the harshest psychiatric impairment threshold in the country.

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[10] would apply.

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[7] The Amendment Bill, s65A(3).
[8] The Amendment Bill, s151H(2), s314.
[9] Michael McGowan, 'Experts say mental health payouts may become impossible', *The Sydney Morning Herald* (28 April 2025).
[10] *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

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.

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).

Ms Roshana May commented on this proposal during the parliamentary inquiry by the Public Accountability and Works Committee making the following comments:

"If we go back to 2014, when the WorkCover Authority was all things to all people, there was an inquiry of this Committee that said that there were many conflicts of interest in them being the insurer, judge, jury and executioner, as I think it was explained by some person. Opinions have been expressed since then, before then and even post-2015 that the regulator should regulate and have no part in claims management. I think that SIRA removing the ability of workers and insurers to obtain their own medical opinion as to the position of the workers assessment or capacity, or anything, is very dangerous. The process within SIRA would be more costly than it is now. There are impacts to freedom of choice, access to justice and the ability to resolve matters which often happen between a worker and an insurer by a single assessment. I understand the purpose of potentially trying to confine parties to one assessment, but I don't think this is the way to do it."

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

<u>s153I Costs of permanent impairment assessment</u>

The proposed s153I 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 compared to a range of movement assessment of the same injured limb.

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.[11] 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."*[12] 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.

<u>s153J Who must carry out permanent impairment assessment</u>

The proposed s153J 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,[13] along with legislative transparency requirements.[14] It also has some type of appeal right, which a worker may need to access.

<u>s153K Permanent impairment assessment process</u>

With respect to process, the proposed s153K 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

[11] 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].

[12] *Kioa v West* (1985) 159 CLR 550, 563, quoting Mason J in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342, 360.

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

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

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 s153L, 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.

s153L One assessment only of degree of permanent impairment

The proposed s153L 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.

s153Q Further principal assessments

The proposed s153Q 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 10%. 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 10% impairment – it is submitted that a 10% impairment in itself is an 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 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)).

s153S Entering into permanent impairment agreements

The proposed s153S allows the injured worker and the insurer to enter an agreement as to the degree of permanent impairment.

At s153Tthere 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 s153T(b), s153O 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.

s153VPermanent impairment agreement evidence of certain matters

The proposed s153V binds the parties to the impairment agreement, which is particularly concerning given the context of the remainder of the Part.

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

This is a welcome amendment and should result in a reduction in complaints to the Regulator.

Sections 280AH to 280AK - Industrial Relations Commission determination and funding

This is an unnecessary cost to the scheme, which is allegedly under pressure. In particular, considering the proposed inability to claim both workers compensation and industrial relations for the same 'relevant conduct'.[15] It is unclear why the workers compensation fund should be responsible for an Industrial Relations Commission that does not benefit injured workers claiming workers compensation.

The writer submits that the Personal Injury Commission should be the only relevant jurisdiction for the purpose of determining workers compensation disputes.

9A Funding for legal and associated costs

The government has proposed a suite of significant changes to the current workers compensation landscape in their Amendment Bill. Despite this, they are also attempting to reduce access to legal advice about an incredibly complex scheme, which centres around multiple pieces of legislation and over fifty guidelines, regulations, practice notes, standards of practice, assessment scales and other such documents.

The proposed amendments reduce the ability to access legal advice about a claim, which is now permitted under a Stage 1 grant of funding from the Independent Review Office (IRO). Under the proposed sections, there is an obligation for only claims with 'reasonable prospects of success' to be funded. It is submitted that not all legal advice requires reasonable prospects of success - there is no tangible way for an injured worker to know if their claim has reasonable prospects of success without the benefit legal advice – this might include

[15] The proposed s280AJ.

preventing advice concerning matters such as how to lodge a workers compensation claim (for people who are psychological unwell, disabled, dyslexic or live with other underlying conditions, this might prohibit them from making a claim), the investigation of a claim and the complex claims process.

In an area with ever-changing case law and repeated legislative changes, it is submitted that this is fundamentally unfair. It would, in operation, prevent access to justice, not just because of an absence of funding to advice, but because injured workers do not even have the choice to bear their own legal fees under s116 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

In addition to preventing funding for advice and for certain aspects of claims, the government also intends to tie legal fees to the *Workers Compensation Regulation* rate, which reduces the amount of legal fees paid to lawyers. The current rate being paid to lawyers is well below the market average, and well below even the State average.[16]

Further reductions made to this funding is likely to either:

1. Drive lawyers out of the workers compensation field.

2. Reduce the type of claims lawyers can provide advice on.

Both of these resulting in the reduction of access to legal advice even further.

The costs of managing the scheme by insurers has gone up by 260% in the last five years. The cost of legal fees in managing claims funded by ILARS, according to the data provided by the NSW Treasury showed an increase of only 137% over the same five-year period, and an increase in grants of 145%[17] - the efficiency is in the numbers. This is not an area where efficiency or cost-effectiveness needs to be improved.

At this stage and noting the various provisions which specifically aim to prevent access to legal advice, independent medical reports and rights to appeal, the writer would submit that it is conceivable that preventing injured workers from accessing justice is one of the intentions of the Bill. As far as the writer is aware, the government has not indicated this is an intention of the Bill.

The government's financial modelling on this suggests a benefit of $16 million to an already underfunded, cost effective area of the scheme.[18] It is also noted by way of context, that the government spent $16 million on bringing the Ultimate Fighting Championship (UFC) to Sydney, and $600 million to develop and facilitate a Papua New Guinea football team to the National Rugby League (NRL).

Unlabelled Part concerning review of the workers compensation scheme

The proposal for the review of the workers compensation scheme by an expert Panel, and the implementation of a Joint Select Committee are welcome additions to the Bill.

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[16] For example, the Attorney General's rates for legal representation offer $3,154.00 plus GST as a daily maximum for a solicitor. The IRO funding Guidelines allow $3,200.00 plus GST for a matter that may run for 6 – 18 months (or longer).

[17] Independent Review Office, 'Independent Legal Assistance and Review Service (ILARS) Costs 2018-2024', June 2025.

[18] NSW Treasury, 'Financial Impact by Reform Measures', undated.

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 independently 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.[19] This is made allowable by the *Government Sector Finance Act 2018* (NSW), meaning data will never be accessible or transparent without the government allowing this.

Financial Data and Modelling

The parliamentary inquiry conducted by the Public Accountability and Works Committee provided some limited information concerning the modelling of the expected financial state of the scheme. Mr Dai Liu stated:

"That $2.6 billion over the five-year period is based on the December actuarial valuation of the TMF workers comp portfolio. The December '24 valuation looked at the data up to September end, in terms of all of the claims trends—how much the injured worker gets in terms of weekly benefits, medical benefits; how many of them go down the path of work injury damages; how long people stay on-scheme—and then use the actual experience to project that forwards. Where we see trends, there is actuarial judgement required to make a call around whether the trend would continue or whether the trend is noise, for example."

This provides limited clarity as to the actual state of the scheme – these individual valuations have not been provided. There is no individual claims assessment, but a consideration of trends, which may be influenced by any change in the community. In the parliamentary inquiry conducted by the Public Accountability and Works Committee, Mr Garling stated:

"As I understand the actuarial evidence given generally and also today, the estimates are front-end loaded. If there's X injury—it doesn't matter whether it's mental health or physical health—the long-term cost of that is estimated and put into the reserve. Firstly you set the reserve on existing injuries, existing claims, up to that point. Then that reaches a figure, so you keep that figure in. It may or may not be correct, because it's a

[19] These payments are permitted under the *Government Sector Finance Act 2018* (NSW) at s5.7 and may delegate this function to another agency, meaning the cost of these payments may never be disclosed.

mathematical exercise; it's not an exercise based on the actual claim. It's based on looking at the types of claims and a broader mathematical approach. It's very clever—I'm not denying that—but it's not necessarily done on the examination of every claim, carefully. It's done on a mathematical basis. Secondly, having done that, you then have to estimate when the money is going to be paid. If someone is seriously injured, a person of highest needs, and they're 20 or 30, that could be 40 years before the money has to be paid. So it's a much more complex exercise, and I suppose I was being cheeky a little bit, but I don't think you can say that—or looking in a different way, are the actuaries really telling us that we've got it so wrong up to now? As at 30 June 2024 when we did the accounts, we got it so wrong—and we got it wrong the year before and the year before that—that we have to fix it now? Because there's been no hint of any disaster coming…"

Premium Increases

The decision to make legislative changes to workers compensation is purported to be due to increasing premiums, which do not meet the scheme's financial needs. It remains unclear whether the scheme can be solvent with the implementation of policies outside of measures as extreme as impacting the rights of injured workers – for example, by improving matters like managing the costs of running the scheme, like the exorbitant increase in the cost of case management, described as being 260% over the last five years.[20] This might be improved by the implementation of the recommendations made in the 'Operational expenditure review: Insurance and Care NSW (icare)' dated August 2024.

While the government has described increasing premiums over the last few years, there have been either steady rates or historical reductions in premiums as follows:

1. In 2013, WorkCover NSW reported premium reductions of 15% on average[21] and confirmed there was no premium increase for any employer in the scheme.[22]

2. In 2013, the NSW government also introduced a 10% Employer Safety Incentive (ESI) premium discount for small employers, and a Return to Work Incentive for employers who have an injury within the workplace. There was also a 5% premium discount offered for employers paying the premium in full by the due date.[23]

3. In 2014, the government reduced workers compensation premiums by 5%.[24]

4. On 3 June 2014, the government introduced maximum premium caps for all employers in the workers compensation scheme (to include large employers, rather than the cap applied to small and medium employers), resulting in a further reduction in premiums paid into Icare.[25]

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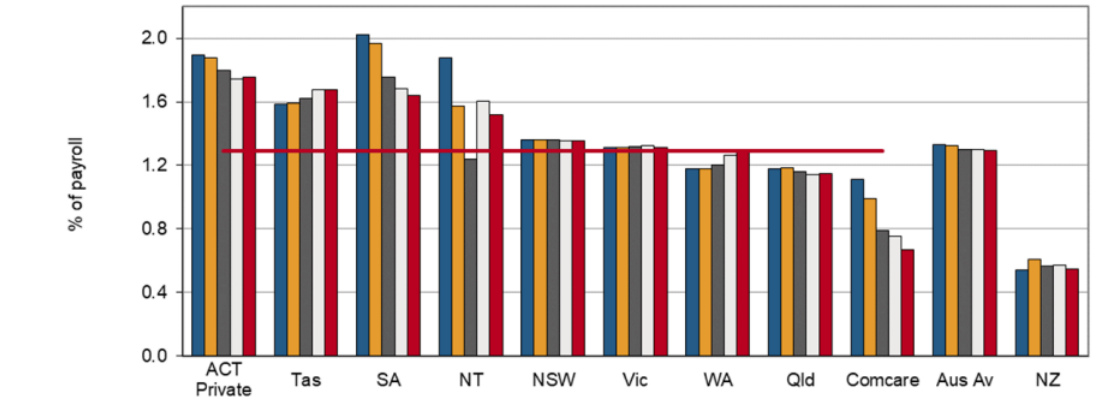
[20] The Chair, 'Inquiry into the Workers Compensation Legislation Amendment Bill 2025' convened by the Public Accountability and Works Committee at Macquarie Room, Parliament House, Sydney, on Tuesday 17 June 2025.
[21] MARSH, 'Client Alert - Impact of Changes to NSW Workers Compensation Scheme', June 2014.
[22] NSW WorkCover Scheme Report 2012 > 13, p3.
[23] *Insurance Premiums Order 2013–2014* (NSW).
[24] *Insurance Premiums Order 2014–2015 Amendment Order 2014* under *the Workers Compensation Act 1987* (NSW).
[25] *Insurance Premiums Order 2014–2015* (NSW).

5. The graph produced by SafeWork Australia in their 'Comparative Performance Monitoring Report 23 Workers Compensation Premiums' report is extracted below and confirms no premium increases between 2015 and 2020.

Indicator 13 – Standardised average premium rates (including insured and self-insured sectors) by jurisdiction



	ACT Private	Tas	SA	NT	NSW	Vic	WA	Qld	Comcare	Aus Av	NZ
2015-16	1.90	1.58	2.02	1.87	1.36	1.31	1.18	1.18	1.11	1.33	0.54
2016-17	1.87	1.59	1.97	1.57	1.36	1.31	1.18	1.19	0.99	1.32	0.61
2017-18	1.80	1.62	1.75	1.24	1.36	1.32	1.20	1.16	0.79	1.30	0.57
2018-19	1.74	1.67	1.68	1.60	1.35	1.32	1.26	1.14	0.75	1.30	0.57
2019-20	1.75	1.67	1.64	1.52	1.35	1.31	1.29	1.15	0.67	1.29	0.54
2019-20 Aus av											

While the cost of claims-related items, like medical costs, weekly benefits and scheme management costs increased with inflation and indexation, workers compensation premiums did not increase with the same proportionality (and at times, consecutively reduced), resulting in the deficit described by the Treasurer - and the need for consecutive premium increases for three (3) consecutive years.

Additionally, the cost of the 8% premium increases is, in the writer's view, relatively minor on a scale where it is compared to the increasing costs of other insurance, wages, electricity and other such business costs. Mr Kim Garling described the premium increases using the following terms:

"I can say this: An 8 per cent increase over $1,500, according to my calculation, is 50¢ a day. I'm not sure it's going to break the bank of any employer. Secondly, I don't know how you can calculate into the future until you see whether these reforms are successful or not. Thirdly, if what you're saying is that the actuaries and the management of icare and SIRA failed to correctly assess premiums for the past three years, then maybe they should tell us."[26]

It is the writer's opinion that the government's previous decision to reduce premiums and remove monies from the Treasury Managed Fund (TMF) for the benefit of other government ventures (during surplus) has led them to this predicament. Injured workers should not be penalised as a result of these financial decisions.

The *Government Sector Finance Act 2018* (NSW) allows for the government to withdraw, delegate, borrow, appropriate or expend monies from the Treasury Managed Fund (TMF) at the direction of the Treasurer. This is seemingly quite commonplace, as described in a statement from Icare in August 2020, the Treasury

[26] Comments made by Mr Kim Garling, 'Inquiry into the Workers Compensation Legislation Amendment Bill 2025' convened by the Public Accountability and Works Committee at Macquarie Room, Parliament House, Sydney, on Tuesday 17 June 2025.

confirmed this *"NSW Treasury decides on advice from icare how much funding should be in the TMF at any time. NSW Treasury withdraws money from the fund if it is in surplus and tops it up as needed. This is based on investment returns and current and anticipated claims by NSW Government agencies arising from asset damage, professional indemnity, public liability, motor vehicle accidents, workers' compensation, and more."*[27]

Noting this, it may also be the case that the government would prefer a surplus in workers compensation, so that the surplus in the TMF could be used for other government ventures. This is supported by the Treasurer's comments:

"I will not be authorising any further injections—not until Parliament decides its collective response to a scheme that most acknowledge is failing and not when that money is coming at the expense of schools, hospitals or kids in need of out-of-home care. That choice is clear for me."[28]

It is the writer's view that taking support away from injured people for the benefit of the government budget is not the appropriate reason to make such decisions, particularly when the mismanagement was (at least in part) caused by the government's decisions concerning premiums and the management of the scheme.

While access to the data concerning withdrawals made by the government and/or Treasurer from the Treasury Management Fund (TMF) from 2012 to date are unable to accessed by the writer, they should be considered by Parliament in assessing the viability of the scheme. The removal of monies from this fund means that where a temporary influx of costs occurs (for any reason, such as the current issues with return to work), there is not enough funds in the TMF to cover the expense without extensive premium increases.

Alternatives to the Workers Compensation Scheme

The writer defers to the comments of Mr Kim Garling concerning an alternative scheme. This involves employer liability claims, rather than the statutory claims management.

In the parliamentary inquiry conducted by the Standing Committee on Law and Justice, he stated:

"The essence of what I was saying there was that there were a large number of comments by various different commentators about the fact that the scheme protects workers. I was trying to make the point that that's not the case. It never has been the case with workers comp; workers comp protects the employer. In the course of protecting the employer, there's a fund established, to which the employer contributes, which pays the compensation to the worker arising out of a workplace injury. So we're not talking about protecting four million workers; we are talking about protecting some employers, and they're saving being sued at common law. Now they only have to contribute to a fund which picks up the liability they previously had. So, it's a huge benefit for the employers; it's not necessarily for the workers."

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[27] Icare statement, which is no longer accessible, quoted in article: https://www.insurancebusinessmag.com/au/news/breaking-news/icare-treasury-managed-fund-healthy-and-here-to-stay-229606.aspx

[28] Comments made by Treasurer at the parliamentary hearing concerning 'Proposed changes to liability and entitlements for psychological injury in New South Wales' convened by the Standing Committee on Law and Justice at Macquarie Room, Parliament House, Sydney, on Friday 16 May 2025.

In the parliamentary inquiry conducted by the Public Accountability and Works Committee, he stated:

"Would the employers prefer to move back to the common law system where they obtain their own insurance rather than participate in the compensation fund? I can guarantee you to 100 per cent that they would not want that. The sustainability of the scheme is relative to what your alternative is. Yes, it may be expensive and premiums might have to go up because they've been underfunded, but would you rather go to a common law system where you obtain your own insurance in current market? It might not be very pleasant to learn what the insurance premiums would be."

"…32 per cent over three years is 8 or 9 per cent a year. I don't think that's significant. Your energy prices are going up. Every other price is going up significantly. I don't see why the insurance premium's not going up. Medical costs have gone up. Treatment costs have gone up. We can't avoid increasing costs. I don't think any employer is going to baulk at an 8 per cent increase, even for the next four years, because it's cheaper than the alternative. Ask them what's the alternative. How much are you going to pay Lloyd's for your policy to cover injured workers? You'll find it'll be a multiple in the zeros."

RETURN-TO-WORK RATES

The State Insurance Regulatory Authority (SIRA) completed a report entitled 'Factors influencing return to work' which outlined the four key challenges with return to work, extracted below.

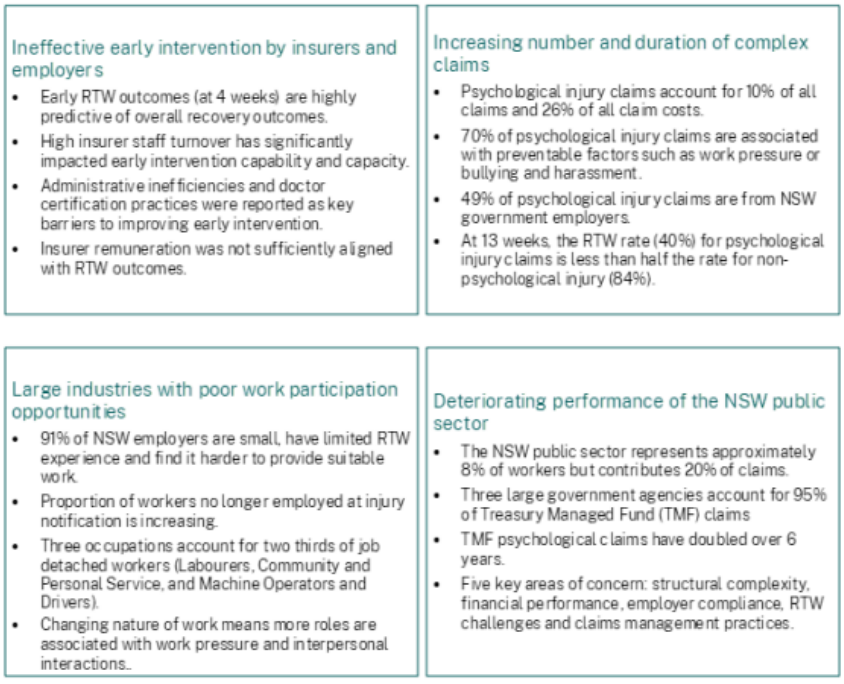

Diagram 2: Four key challenges to improving RTW outcomes

Despite this, 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, aside from the suggestion of an increased penalty and no description or obligations of how SIRA is intending to investigate and enforce such an obligation. In the last financial year, there is indication that SIRA issues 180 penalty notices, totalling

$101,640.00 for all breaches across all employers[29] (and does not break down these totals by breach) – in the writer's opinion, this is not a real repercussion.

It is noted that the report from SIRA describes key action areas including:

1. Review of Guidelines to drive employer compliance with respect to return to work.
2. Strengthen insurer focus on early intervention.
3. Review and expand return to work services and support.
4. Implement the NSW Government RTW Strategy.

The last of these has been implemented recently and has been described by the Minister for Industrial Relations and the Treasurer as being successful. It is a credit to the government for the implementation of this strategy, which would likely benefit injured workers, their employers and the TMF.

In the current law, however, there are simply no real repercussions for employers who do not provide suitable duties or assist with return to work. It is submitted that some measures concerning this issue are legislated, including, for example:

1. An increase in employer excess where suitable duties are not offered.
2. Case managers proactively checking the availability of suitable duties.

The writer does not purport to be an expert in what these repercussions should be, or how they should be managed. The writer has just provided suggestions but would recommend SIRA or Icare review options that require the employer to participate.

Considering the falling return to work rates is described as one of the key focuses of the Bill, this should be the focus of the government, rather than stripping compensation from seriously injured people.

CONCLUSION

The writer is available to answer any questions from the Committee concerning the above matters and the current status of the workers compensation law.

[29] State Insurance Regulatory Authority, 'Public Accountability and Works Committee - Inquiry into the Workers Compensation Legislation Amendment Bill 2025 - Questions taken on Notice (QoN)', 16 July 2025.