Workers Insurance Association

WIA Policy Brief

Proposed Workers' Compensation Amendments

July 2025

Overview

The NSW government has proposed amendments to the Workers Compensation Legislation Amendment Bill (2025) as it seeks to modernise the scheme, productively engage with the growing financial impact on the state's budget, and improve outcomes for workers returning to work and life following an injury.

The Workers Insurance Association of NSW (WIA) welcomes the introduction of the amendments to the Bill, which represents a meaningful shift in the architecture of the state's compensation scheme. These proposed reforms signal a recalibration of priorities in NSW's approach to injury management towards:

- Fairer long-term support for genuinely injured workers.
- Improved return to work outcomes.
- A more financially sustainable scheme over the long-term and clearer delineations of liability.

The proposed amendments align NSW with industry best practice in other states and territories across Australia.

WIA considers these changes essential to preserve the scheme's fairness, integrity, and long-term sustainability. These changes will also deliver the best outcomes for individuals through a genuine return to health and purpose alongside active participation in work and life.

The Case for Reform

The NSW's workers' compensation legislation is a response to changing workforce patterns, emerging mental health risks, and evolving expectations from workers and employers alike. The existing system was built on a framework that does not fully reflect the reality of today's work environments, particularly with respect to the increasing prevalence and complexity of psychological injury.

WIA supports a workers' compensation scheme that empowers injured workers to recover and appropriately return to work either in the same role or in another capacity. The evidence is clear; the longer an injured worker stays out of work, the higher their risk of developing long-term mental health injuries and entrenchment within the system.

The life outcomes for those on claim over the long-term are often reduced by virtue of being on the scheme. It is an unfortunate reality that the current scheme can inadvertently incentivise injured workers staying on the scheme rather than prioritising recovery and steps to encourage return to work.

Mental Health Claims in the Workplace

Mental health claims are growing. However, our members consistently observe that in many cases these claims rarely stem from work alone. Instead, they typically reflect a convergence of personal, financial, and health-related stressors alongside workplace dynamics. This overlap can often make it difficult to pinpoint work as the dominant cause.

WIA wants people with pre-existing conditions, including mental health conditions, to have the same opportunities for work and life that we all enjoy. However, the current scheme fails to provide an even playing field, resulting from the blurred lines of responsibility and risk. Given this, it is essential that the scheme sets fair boundaries around when an employer should be held liable.

By clearly defining what qualifies as a 'relevant event', the Bill sets more precise boundaries around employer liability. It reinforces that the scheme should apply to harm that a reasonable person would view as genuinely work-related, without extending responsibility to issues outside an employer's control. Regarding Section 11A, WIA supports the proposed clarifications but cautions that replacing 'significant cause' with 'predominantly caused by' risks diluting the intent of the reforms and weakening their overall effect.

Avoiding Harm from Prolonged Claims

One of the most significant insights from our members' experience is that prolonged time on claim can do more harm than good, something corroborated by independent research. Although workers' compensation exists to provide support during recovery, it can unintentionally contribute to long-term dependence, reduced motivation, and cause psychological harm. As Dr Julian Parmegiani, a psychiatrist with extensive experience in the scheme, stated during the recent parliamentary inquiry:

"Once you embark on a system which requires you to lodge a claim and then go through the assessment process... you have a person who has gone from having a dispute and a range of perfectly normal symptoms and responses, to having a conflict stretched over months and years... By the end of it, you have created a mentally crippled person."

- (Standing Committee on Law & Justice, 16 May 2025)

Such observations reflect what many already know: the longer someone remains disengaged from work and active life, the more difficult it becomes to return. The long-term implications for this are not only reduced outcomes for the individual but also mean a less sustainable workers' compensation system.

The Bill proposes changes that would reinforce a return-to-health model, rather than a stay-on-benefits model. Chief among these is increasing the Whole Person Impairment (WPI) threshold required to access permanent impairment lump sum compensation. This measure will ensure that these payments are more tightly targeted at those who face permanent and serious loss of earning capacity, aligning the system with its foundational purpose.

By creating a sharper distinction between temporary incapacity and genuine permanent impairment, the reforms will enable most injured workers to focus on what matters: treatment, recovery, re-skilling (if necessary), and re-entry into the workforce. The proposed refocusing of the scheme from compensation, particularly lump sum payments, toward building capacity and supporting recovery has the potential to significantly enhance outcomes for injured workers while strengthening the long-term effectiveness and sustainability of the system.

Improving Return to Work Outcomes

Returning to meaningful work remains one of the strongest predictors of improved health and wellbeing following injury, particularly in cases of psychological injury. The evidence consistently shows that where safe and appropriate duties are available, early re-engagement with work is associated with better clinical and social outcomes.

> *"The long path [on benefits] will strip you of your mental health…"*
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> - Dr. Julian Parmegiani (SCOLJ, 16 May 2025, p. 78).

However, under current arrangements, too many workers are labelled as having no capacity for work, even when partial capacity exists. Our members note that fewer than 10% of workers with psychological injury are certified as having any work capacity at initial assessment. For many, the ongoing pressure to prove they are unwell, especially in psychological injury cases, can intensify symptoms and hinder recovery, creating a cycle that reinforces rather than resolves the injury. This is often not due to actual total incapacity but rather reflects how the system is structured: with binary assessments focused on return to pre-injury duties rather than functional ability more broadly.

WIA has recommended to SIRA that the Certificate of Capacity (CoC) be reformed to reflect functional ability across a spectrum—not simply an all-or-nothing assessment of work readiness. A modernised certificate would allow treating practitioners to specify what a worker can do, enabling employers to offer suitable duties accordingly. The proposed Bill reinforces this approach by increasing penalties for employers who fail to offer such duties when capacity is identified.

A recovery-oriented system is one that supports capacity and recovery efforts, not incapacity. A shift in language, culture, and practice toward identifying and supporting what workers can do is critical to driving better return to work outcomes.

Subjectivity in WPI Assessments

A key challenge in managing psychological injury claims lies in the inherent subjectivity and variability of assessments when compared with physical injury. WIA members frequently report significant inconsistencies in WPI assessments conducted under the Psychiatric Impairment Rating Scale (PIRS). Different assessors can reach substantially different conclusions, even when evaluating the same individual within short timeframes.

This variability is due to several factors: the nature of psychological symptoms, the fluctuating course of mental health conditions, and the influence of context (such as legal disputes or personal stressors). Unlike physical injuries, psychological impairments are less visible and deeply intertwined with social and emotional factors.

In practice, this means that WPI ratings can be skewed by timing, assessor approach, or the presence of litigation. Such inconsistency not only undermines confidence in assessment outcomes—it also creates perceptions of unfairness and increases the likelihood of disputation.

Our members have seen people improve, often outside the scheme, when supported with the right mindset and environment. Yet the current system, driven by lump sum incentives, pressures individuals to prove lasting harm before recovery is even underway, often worsening their condition in the process.

The following quote articulates the issue at the centre of many psychological injury claims as Dr Julian Parmegiani indicated during the Standing Committee on Law and Justice hearing:

The Hon. DAMIEN TUDEHOPE: *Are we really saying that there is a problem in terms of the way that psychological injuries are assessed?*

JULIAN PARMEGIANI: *No, I don't think there is a problem there. I think the problem is with the system, and I am happy to expand. The problem is that there is an event, as defined, in the workplace. There is a psychological reaction to that event, which may be a perfectly normal psychological response to, perhaps, bullying or disciplining, and it upsets people. Once you embark on a system which requires you to lodge a claim and then go through the assessment process—and this is an assessment process which stretches over months if not years, if you include disputes and appeals—you have a person who has gone from having a dispute and a range of perfectly normal symptoms and responses, to having a conflict which is then stretched over months and years. There is sleeplessness, loss of identity and basically loss of dignity because you are now a workers compensation case. By the end of that trajectory, which has taken a long time, the injury becomes real and people have lost sleep over it. People have committed themselves. If you go to a no-win, no-fee firm, you sign your rights away and you can't withdraw from it. If you withdraw, you are liable for all costs associated with the case. Basically, you lose your house. You are committed. You've signed a contract which makes it mandatory for you to be in this state of paralysis for 18 months, two years or sometimes even longer. Then you get all the anxiety arising from disputes between assessors and your lack of capacity to generate any money to feed your children or pay the mortgage. By the end of it, you have created a mentally crippled person.*

WIA supports efforts to improve the consistency of psychological injury assessments, including clearer guidance on the use of PIRS and greater standardisation in medical and legal reporting. The system must ensure that WPI assessments genuinely reflect enduring impairment, not temporary distress or procedural pressure.

Early Permanent Impairment Labels

One of the most concerning patterns observed by WIA members is the increasing push to obtain early permanent impairment assessments for psychological injuries. Workers are incentivised by the system's structure to seek lump sum entitlements before recovery has been attempted or completed.

This process can reinforce a harmful identity of permanent disability. When workers are told, early in the process, that they are permanently impaired, it can signal that recovery is not possible, undermining clinical efforts to help the individual return to work and life.

WIA supports reforms that appropriately realign scheme incentives towards recovery rather than compensation. In particular, linking permanent impairment assessments more closely to a sustained absence of work capacity will help reduce the risk of premature labelling and better support genuine rehabilitation efforts.

Transitional Arrangements

While transitional provisions are necessary to protect claimants already engaged with the system, the proposed 12-month window for accessing lump sum compensation under the previous WPI threshold creates a strong incentive for claims activity centred on lump sum payouts.

This unintended consequence is something WIA members are already observing with a marked increase in impairment assessments and Work Injury Damages (WID) pre-filing statements driven not by clinical necessity but by deadline pressure. This accelerated activity:

- Increases pressure on clinical assessors
- Creates backlogs for more recent claimants
- Risks undermining the reform's intent by locking in impairment ratings before recovery

To safeguard the reform's objectives, WIA recommends a shorter and more tightly managed transition period. A concise window, paired with clear guidance and timely communication, would help prevent system distortion and allow the changes to be implemented smoothly.

Concluding Remarks

WIA supports a recovery-orientated scheme that fundamentally empowers injured workers. The Workers Compensation Legislation Amendment Bill (2025) represents a pivotal moment for the NSW workers' compensation system. It delivers much-needed reform to address structural issues, manage growing complexity in mental health claims, and reorient the scheme toward recovery and capability.

WIA supports the Bill and urges stakeholders to engage with the reforms in a spirit of collaboration and shared purpose. The proposed changes will not only improve outcomes for injured workers but will also ensure the continued fairness, viability, and integrity of the system as a whole.

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