

21st July 2025

The Hon. Abigail Boyd MLC
Committee Chair
NSW Legislative Council: Public Accountability and Works Committee

Re: Inquiry into the Workers Compensation Legislation Amendment Bill (2025)

Executive Summary

Response to urgency

- WIA welcomes the Bill as a timely and essential response to long-standing systemic issues in the NSW workers compensation scheme.
- The current scheme has failed to keep pace with the rise in complex psychological claims and the blurred lines between work-related harm and broader life factors.
- Without reform, the system risks reinforcing illness rather than what is best for the individual in returning to work and there is an urgent need to modernise the legislation to reflect medical realities and promote return to life and work.

Effects of staying on scheme

- Prolonged time on claim can have a damaging impact on mental health and recovery prospects with Psychiatrist Dr Parmegiani saying “By the end of it, you have created a mentally crippled person.”
- Staying on the scheme reinforces dependency with the current model inadvertently promoting a cycle of proving incapacity rather than enabling recovery.
- Psychiatrists have highlighted how drawn-out claims processes can create permanent harm by trapping people in the claims system.

Incentives to staying on scheme

- The current system incentivises remaining on claim through lump sum eligibility, rather than supporting recovery.
- Workers often feel obligated and are incentivised to meet compensation thresholds, undermining genuine return-to-work efforts.
- The transitional period for lump sum claims of 12 months may lead to a surge in opportunistic claims, overwhelming system resources and distorting reform intent.

Whole person impairment (WPI) threshold

- Raising the WPI threshold will better distinguish between temporary injuries and permanent impairments.
- Current access to lump sum compensation is often premature, with an increased threshold aligning lump sum entitlements with an enduring loss of earning capacity.
- WPI assessments for psychological injury are often inconsistent and subjective; raising the bar ensures consistency and fairness.

Dear Chair,

The Workers Insurance Association of NSW (WIA) welcomes the opportunity to contribute to the Committee's consideration of the Workers Compensation Legislation Amendment Bill 2025.

WIA represents licensed workers compensation insurers operating in NSW. Our members collectively support hundreds of thousands of workers and their employers across the state and are deeply experienced in delivering early intervention, sustainable return to work outcomes, and expert claims management.

Workers compensation must strike the right balance: delivering support to those who need it while maintaining fairness and clarity for employers, who fund the scheme. The current legislation has not kept pace with the realities of modern work, especially the rise in psychological injury claims, and the current threshold for access to permanent impairment claims that can shift the focus from recovery to lump sum compensation, often delaying or derailing a person's path back to health. This Bill goes a long way toward modernising the scheme and restoring that balance.

WIA supports the Bill. It provides clearer boundaries for when employers should be liable, better aligns scheme incentives with recovery and return to work and helps limit access to lump sum compensation to those who are seriously and permanently impaired. We believe these changes are necessary not only to sustain the scheme's fairness, viability, and purpose, but also to ensure the best possible outcome for individuals which is not a lump sum payout, but a return to health, purpose, and participation in work and life.

Mental Health Claims and Work Connection

Mental health claims are increasing. While many are clearly linked to work, our members observe that most involve multiple contributing factors. Family issues, financial stress, and pre-existing conditions often intersect with workplace challenges. This complexity makes it difficult to isolate work as the primary cause.

Given this, it is essential that the scheme sets clear and fair boundaries around when an employer should be held liable. This Bill, by clarifying what constitutes a 'relevant event', helps establish those boundaries. It ensures the scheme is focused on employer responsibility for harm that a reasonable person would consider genuinely work-related, providing clarity without holding employers liable for matters beyond their control. Concerning 11A, WIA supports the clarifying provisions and cautions that changing 'significant cause' to 'predominantly caused by' will undermine intent and reduce the impact of those changes.



Avoiding Harm from Prolonged Claims

Prolonged time on claim can do more harm than good. While the intention is to provide support during recovery, the unintended consequence can be long-term dependency and a reduced chance of rejoining the workforce. As Dr Julian Parmegiani put it, "the long path [on benefits] will strip you of your mental health" (SCOLJ, 16 May 2025, p. 78). A better system is one that supports people early, provides the necessary medical and vocational help, but encourages a clear pathway back to work wherever that is possible.

We believe this requires a sharper distinction between temporary incapacity and permanent, life-altering injury. Raising the WPI threshold would better target lump sum payments to those who truly face permanent loss of earning capacity. Critically, this would ensure the linkage between the threshold as an indicator of permanent impairment and lump sum payments are properly aligned with future capacity to work to retirement. For most claimants, the focus should shift to what recovery looks like: access to weekly benefits during recovery, retraining, rehabilitation, and meaningful pathways back to employment. That shift in orientation, from compensation (especially lump sum) to capability, can fundamentally improve outcomes for injured workers and the health of the scheme overall.

Strengthening Return to Work Outcomes

Returning to work is a critical part of recovery, especially in the context of psychological injury. The evidence is clear: meaningful work and social connection are strong contributors to improved mental health. While we acknowledge that returning to the same employer may not always be appropriate where the workplace environment caused the injury, the broader goal of re-engaging with work as soon as possible after injury remains vital.

Injured workers should receive support during a temporary period of incapacity, but the structure of the current system can inadvertently entrench illness. Many feel the need to continually demonstrate incapacity which particularly for psychological injuries can have a compounding negative effect. Fewer than 10% of claimants with psychological injury are certified as having any work capacity at initial assessment. In our experience, this is not because they lack any work function, but because the environment around them has not yet supported recovery.

To address this, WIA has recommended to SIRA that the Certificate of Capacity be modernised to reflect functional ability, not just fitness for pre-injury work. Doctors are well placed to assess function, and the law already requires employers to offer suitable duties if capacity exists and the proposed bill increases penalties for non-compliance. By focusing the system on what a person can do, rather than what they cannot, we believe we can shift the mindset from incapacity to capability. That change would materially improve recovery outcomes and restore a stronger sense of purpose for many injured workers.



Subjectivity in WPI Assessments

Psychological injury claims are inherently more complex and subjective than physical ones, often leading to inconsistent assessments and varied outcomes. This creates perceptions of unfairness, particularly when liability is placed on the employer despite the presence of multiple contributing factors. We believe that clearer guidance on applying the Psychiatric Impairment Rating Scale (PIRS), alongside more standardised assessment practices, would support greater consistency and fairness.

There is a high degree of variability in Whole Person Impairment (WPI) assessments for psychological injury, even when conducted for the same individual on different days by different specialists. This inconsistency is not only indicative of the inherent complexity of psychological conditions, but also reflective of the fluctuating nature of mental health. Unlike many physical injuries, psychological symptoms are dynamic and can be influenced by a range of environmental, personal, and clinical factors that change over time.

It's often impossible to draw a clean line between work-related harm and broader life circumstances—especially with psychological injury. Declaring someone permanently impaired too early sends a message that recovery is out of reach. In our members' experience, many do go on to recover, often outside the scheme. Labelling someone as permanently unwell risks reinforcing illness instead of treating it.

Recovery from psychological injury relies heavily on mindset, support, and the belief that improvement is possible. The way the system currently operates enables advertising that promotes access to lump sum payments, placing pressure on individuals to prove they are permanently impaired—often before recovery has even been properly attempted. Unfortunately, the process of trying to meet that threshold can itself make people more unwell, entrenching the very impairments the scheme is meant to help them overcome.

Despite its length, the following quote powerfully articulates the issue at the heart of psychological injury claims better than any summary could. Dr Julian Parmegiani, a psychiatrist with extensive experience in the scheme, made the following contribution 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 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.

Rather than encouraging recovery, this process of seeking lump sum compensation often locks people into an identity of illness. The system must focus on supporting recovery and return to life and work - not reinforcing a belief that improvement is out of reach.

Transitional Period for Lump Sum Compensation

While transitional provisions are necessary to ensure fairness for those already engaged with the system, they must be carefully managed to avoid unintended consequences. The current window proposed in the Bill and the amendments agreed by the Upper House will allow access to lump sum compensation under the previous impairment threshold for 12 months after the commencement of the new provisions and in our opinion creates a strong incentive for accelerated lump sum claim activity.

Our members are already observing a marked increase in Work Injury Damages pre-filing statements and impairment assessments, driven not by clinical need but by the looming deadline. This unintended consequence risks distorting the intent of the scheme amendments, overwhelming assessment resources especially for more recent claims, and undermining the broader reform objectives. To preserve the integrity of the changes and ensure the scheme remains focused on recovery, the transitional period should be kept as short as practically possible. A more limited window would support orderly implementation and reinforce the shift toward capability and return to work.



**Workers
Insurance
Association**

Concluding Remarks

The proposed legislative changes represent a considered and pragmatic step toward restoring balance and fairness in the system.

WIA supports the Bill and encourages its passage with a view to strengthening return to work outcomes, improving the assessment of genuinely permanent psychological claims, and maintaining long-term confidence in the scheme.

We thank the Committee for its work and remain available to assist further.

Kind regards,

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