The Royal Australian & New Zealand College of Psychiatrists

Your Health in Mind

Parliament of NSW, Standing Committee on Law and Justice

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

May 2025

Submission by:

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Acknowledgement of Country

We acknowledge Aboriginal and Torres Strait Islander Peoples as the First Nations and the Traditional Owners and Custodians of the lands and waters now known as Australia. We recognise and value the traditional knowledge held by Aboriginal and Torres Strait Islander Peoples and honour and respect the Elders past and present, who weave their wisdom into all realms of life – spiritual, cultural, social, emotional, and physical.

Acknowledgement of Lived Experience

We recognise those with lived and living experience of a mental health condition, including community members and RANZCP members. We affirm their ongoing contribution to the improvement of mental healthcare for all people.

About the Royal Australian New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrist (RANZCP) is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand providing access to Fellowship of the College to medical practitioners. The RANZCP has approximately 8700 members bi-nationally. The NSW Branch represents over 2100 members, including over 1400 qualified psychiatrists.

The NSW Branch offers a substantial resource of distinguished experts – academics, researchers, clinicians, and leaders dedicated to developing expertise in understanding the risk factors of mental disorders, treating individuals and families, developing models of care and promoting public health measures that will reduce the personal suffering, loss of potential and huge economic costs caused by mental disorders in our community.

Royal Australian and New Zealand College of Psychiatrists submission

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

Introduction

The NSW Branch of the Royal Australian and New Zealand College of Psychiatrists (RANZCP) is pleased to provide this response to the proposed changes to liability and entitlements for psychological injury in New South Wales.

The RANZCP position statement on Public insurance claims: advocating for mental injury claimants acknowledges the important role that workers compensation schemes perform in providing support to people who are injured in the workplace. However, aspects of these schemes impose serious disadvantage on people with mental injuries with the frequent outcome being that their recovery is delayed and their mental injuries compounded.

We understand the need to balance the financial constraints of the system given the rapid increase in psychological claims, their duration and the reducing return to work rates, with the need to adequately provide treatment and compensation for seriously injured workers. We appreciate the goal of prevention as stated in the Amendment Bill.

Some of the draft bill addresses concerns that we have had for some years regarding the system. However, other aspects seem designed to be overly punitive and restrictive, to the extent that it effectively precludes workers with psychological injuries from accessing lump sum payments for psychological injury and accessing the work damages legislation.

It is our recommendation that the consultation period be extended to allow for consultations with independent experts to fully understand the long-term impact that these amendments will have on injured workers.

We further recommend that the Government's assumptions and modelling of the impact of these changes be made public and research by independent experts who have no conflict with the proposed legislative and service changes be commissioned.

This submission was developed in consultation with NSW Member, Professor Nick Glozier, Professor of Psychological Medicine at the University of Sydney.

Comments on the workers compensation legislation amendment bill 2025

Schedule 1 Amendment of Workers Compensation Act 1987 No 70

Proposals seemingly designed to limit the inflow of claimants to the system.

Our comments on the definition of relevant event:

- **8E 1&2**: The definitions of bullying, harassment and other aspects seem straightforward and uncontentious

- **8F & G**: The proposals to limit claims for discrimination, bullying and harassment to those that have been previously determined by a tribunal will limit the number of claims substantially. We can see the potential positive aspects of this, particularly with respect to observed retrospective claims made some time afterwards where people, over time, and possibly in the context of other life

circumstances, begin to view their treatment as harassment or bullying. Furthermore, we see many cases where the evidence and documentation appear to identify the individual worker as the cause of the problem; for example, where there is substantial evidence from colleagues about their behaviour yet the existence of interpersonal differences and conflict over a period of time is sufficient to substantiate a harassment/bullying claim.

There is value in having a worker complaining of sexual harassment, racial harassment or bullying to have their claim tested by an independent tribunal before a worker's compensation claim if finalised. However, if the tribunal must rule on the alleged adverse behaviour before the worker's compensation claim can be lodged, then this will inevitably lead to unacceptable delays and backlogs, adversely affecting the injured worker. A substantial investment into the capacity of such tribunals will be necessary to rapidly and efficiently decide such claims.

The oppositional nature of such cases is psychologically damaging, and an unintended consequence of this process may be increased impairment of the individual as impediments to seeking care are put in place. During the time of waiting for a tribunal ruling, the worker will have reduced incentive to seek treatment to improve their condition.

- **8G:** Definition of relevant event. 1(a) and 1(b) seem uncontentious

- We see the provisions under 1(c) as positive:

  Currently the legal causation of an injury that is accepted for compensation and attributable to the employer/insurer seems to us to be overly inclusive, when it is clear that the workplace events were merely contemporaneous with a whole range of other psychosocial life stressors (which, when assessed, seem to be the primary driver of a worker's psychiatric condition).

  As such, the determination that the relevant event is the main contributing factor seems a positive step to ensuring that the system is compensating people for the effects of relevant events at work, rather than it being a default system to which people with numerous other life problems can turn to for financial compensation.

- **8H (1)**: Vicarious trauma: We do not disagree with the definition of vicarious trauma.

- **8H (2):** The definition of 'close work connection' will doubtless be legally tested, but we observe that this may have the effect of denying vicarious trauma claims to a range of workers involved in very difficult and traumatic work (such as child sexual abuse, child protection and domestic violence). This is because the definition of a substantial connection may require more than what many of us see as a very real connection through work, where often a close bond may be formed (as in the examples listed above).

The requirement that the worker has a 'close work connection' may have the effect of denying reasonable claims from a range of workers who work in challenging and traumatic environments, for example, child protection or domestic violence.

- **Section 11 (a):** The definition of reasonable management action does not dramatically shift the current approach to assessing whether or not a managerial or employer action is reasonable

Division 1A: Compensation payable on death - death benefit disputes

- **Weekly Compensation Provisions:** The provisions for compensation treat payment durations for psychiatric and psychological injuries differently which is discriminatory.

- **Treatment Provisions**

Section 60: While the shift to "reasonable AND necessary" may limit some claims, it does not seem untoward. However, this will likely increase the number and cost of independent medical examiners (IMEs) for treatment disputes.

Part 4A Special entitlement to expenses for medical or related treatment

- **148B Work pressure**

***148B (1) "Work pressure disorder** means a mental or psychiatric disorder 'caused by or arising from the pressures placed on a worker in the course of the worker's employment but only if the employment was the main contributing factor to the worker experiencing the disorder."*

This may legally define a medical condition that does not exist within any diagnostic classification system. As such, we have no idea what a work pressure disorder is or how it will be clinically defined. It might be better expressed as 'a disorder arising out of or caused by work pressure', thus allowing us to stay within accepted diagnostic systems.

We also note that a claim for a work pressure disorder does not constitute a claim for compensation, but has been separated into a distinct pathway, and does not appear to have been planned or had provisions. Confusingly, 148B (7).7 indicates that it is the workers' compensation guidelines that will make such provisions, yet explicitly, work pressure disorder and a claim for work pressure disorder is not a claim for workers' compensation.

As clinicians, we sympathise with the attempt to limit compensation to those who view that their work as demanding more of them than they can cope with. It is almost impossible to measure this objectively and does not necessarily reflect the workplace itself but rather a mismatch between the individual's capacity and the workplace.

However, this means that there would likely need to be a lower threshold for the definition of bullying and harassment to not exclude people who have very significant work demands, for example, working excessive hours, covering other people's work, taking on two roles, etc. All of this

would not necessarily constitute discrimination, harassment, and bullying, but would be considered quite reasonable events causing a workplace injury. If these causes were to be excluded, it would undermine the purpose of the legislation from our perspective as compensating people for the deleterious effects of their employer's actions.

We also often see people who appear to have relied on the Workers' Compensation system in not exercising their own agency and moving away from roles that clearly are wrong for them, or overly demanding. As such, the proposal to limit treatment initially to only eight weeks and to have the employer rather than the insurer liable for the first claim for work pressure damages seems appropriate. The restriction to one period of eight weeks' treatment for such work pressure claims will impact the use of psychology and other counselling services. This may have a positive effect in terms of the use of such services, as we often see people attending such services for many years, but it will have the effect of cost shifting to other services in different parts of the system, for example, health insurers or Medicare.

- **Section 151H**

151H (2) Threshold for the degree of permanent impairment

The new setting of the threshold for payments for psychiatric injuries at 31% has been widely commented on in the media. We concur with the thrust of many of these arguments: 31% is excessively restrictive and discriminatory. The medical assessors who have contributed to this submission would rarely have made a determination of greater than 31%.

This threshold will effectively preclude almost everyone with a psychiatric injury from ever being able to obtain compensation for a permanent impairment and subsequently preclude work damages claims by people with psychiatric and psychological injuries

This threshold cannot be supported and needs to be reviewed, so that there the capacity of the compensation system to fulfil its functions in compensating people for the serious deleterious effects of a workplace injury.

153 B Assessment of Permanent Impairment

Principal assessment certificate

153B (2): "*Impairments that result from more than one injury arising out of the same incident are to be assessed together to assess the degree of permanent impairment of the injured worker."*

153H (4): "*If the principal assessment relates to 2 or more body systems, body structures or disorders, the assessment must be conducted by 2 or more permanent impairment assessors"*

153I*: One assessment only of degree of permanent impairment*

"Subject to section 153M, only one principal assessment may be made of an injured worker in relation to:

(a) the same injury, or

(b) more than one injury arising from the same incident."

We note these provisions are incompatible with 151H (3) (a)

Comments

These provisions seem poorly thought out or at least poorly described, as it would seem to indicate that a worker would have to submit themselves to a conjoint assessment from a number of different specialists, were there to be separate injuries, e.g. a physical injury and post-traumatic stress disorder arising from that injury. Whilst we understand the attempts to limit the number of such assessments, the process of each of these is radically different, would create a very long assessment and also be excessively costly if each clinician were required to be there for far longer than previously to accommodate the other conjoint assessor.

- **153 Deductions**

153C: *There must be no deduction under section 153C for a proportion of the permanent impairment that is due to the worker's employment in previous relevant employment.*

Comments

We note that this and potentially other sections of the new draft legislation will probably reduce the likelihood of employment of people with prior psychiatric conditions and injuries. This particular provision will make it unlikely that anyone who has been injured, for example, within the armed forces or other first response services would ever be employed again in any other similar employment as the subsequent employer would be liable for all of the subsequent claim even if they had been significantly impaired and or injured in a previous employment.

Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

The same comments apply here to the use of tribunals as to the amendments to the earlier Schedule 1

Schedule 3 Amendment of Personal Injury Commission Act 2020 No 18

The appointment of a tutor is supported.

Contact

If you have any questions or if you would like to discuss any of the details in this submission, please contact Richard Hensley, the RANZCP NSW Branch Policy and Advocacy Advisor. Email: Richard.Hensley@ranzcp.org or by phone on (02) 9352-3609.