

Understanding Reforms in the NSW Workers Compensation Scheme

Prepared for Coal Mines Insurance Pty Ltd

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What we will cover today

- Legislation
- When will the changes come into effect?
- Overview of changes
 - Employer Excess
 - Liability – psychological injuries
 - Timeframes
 - Interim entitlements
 - Impairment / work injury damages
 - Weekly benefits and medical expenses
 - Commutation

Note: This session does not cover changes that are specific to ‘coal miners’ under the NSW Workers Compensation Scheme. Please refer to the initial information webinar in May 2026, *“Understanding the NSW Workers’ Compensation Reforms for Coal Mine Workers”*

Legislation

- *Workers Compensation Legislation Amendment Act 2025*
(the 2025 Act)
- *Workers Compensation Legislation Amendment (Reform and Modernisation) Act 2026*
(the 2026 Act)

When do the changes come into effect?

- The amendments will take effect in stages, with the first set of amendments having commenced on **1 July 2026**.
- The change from “reasonably necessary” to “reasonable and necessary” for medical expenses claims will come into effect from **1 October 2026**.
- The amendments **largely do not apply retrospectively**.
- Provided an injury was **notified before the commencement of the amendments**, the threshold for the degree of permanent impairment in these provisions continues to apply as it was prior to that amendment:
 - S 151DA and 151H (work injury damages thresholds)
 - S 314 (what constitutes a threshold dispute)

Employer Excess

- Following the changes, the excess amount will be prescribed in the *Workers Compensation Regulation 2016*. Coal Services is in discussion with SIRA regarding whether this will affect Coal Mines Insurance policyholders
- The changes apply to all claims for weekly benefits made against a policy issued or renewed on or after 4pm on 30 June 2026, regardless of when the amendments commence.
- The prescribed excess amount is the weekly compensation entitlement required to be paid by the insurer for the first week following notification of injury to the insurer in which the worker's entitlement to weekly compensation is more than \$0, and the week immediately following. The weekly compensation entitlement includes any additional amount the insurer is liable to after internal review, or review or order of the Commission.
- Small business employers and employers who notify the injury to the insurer within 5 days will no longer be exempt from paying the excess. Exemptions remain for policies covering domestic or similar workers; exempt employer policies; and recess and journey claims.

- **A primary psychological injury is only compensable if:**
 - The injury caused by a **relevant event** or series of relevant events caused the injury;
 - There is a **real and direct connection** between the event and employment; and
 - Employment is **the main contributing factor**.

[Section 8O]

- **Relevant Event** is defined as:
 - Being subjected to an **act of violence** or a **threat of violence**, or
 - Being subjected to **indictable criminal conduct**, or
 - **Witnessing a traumatic incident** happen or a dead or seriously injured person at the scene of a traumatic incident, or
 - Experiencing **vicarious trauma**, or
 - Being subjected to **sexual harassment**, or
 - Being subjected to **racial harassment**, or
 - Being subjected to **bullying**, or
 - Being subjected to **excessive work demands**, or
 - Another event prescribed by the regulations.

[Section 8G]

Definitions

- **Psychological injury** means an injury that is a mental or psychiatric disorder that causes behavioural, cognitive or psychological dysfunction.
- **Traumatic incident** any of the following incidents if the incident results in, or is likely to result in, the death of, or serious injury to, a person— (i) an act of violence, (ii) indictable criminal conduct, (iii) a natural disaster, fire or explosion, (iv) a motor accident or other accident, or (b) a suicide or attempted suicide, or (c) an incident prescribed by the regulations.
- **Vicarious trauma** means 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.

Relevant Conduct

- **Bullying** means an individual or a group of individuals repeatedly behaving unreasonably towards the worker or a group of workers of which the worker is a member.
- **Excessive work demands** are beyond the requirements expected of the worker's role, and repeated and persistent, and are not reasonable in all the circumstances.
- **Racial harassment** means an act reasonably likely in all the circumstances to offend, insult, humiliate or intimidate the worker and done because of the race, colour or national or ethnic origin of the worker.
- **Sexual harassment** means a person who makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the worker or engages in other unwelcome conduct of a sexual nature in relation to the worker.

[Sections 8A, 8B, 8D, 8E, 8I, 8J & 8K]

Objective test

- In determining whether an act or omission amounted to a worker being subjected to bullying, excessive work demands, racial harassment or sexual harassment that caused a primary psychological injury –
 - An objective test must be used, and
 - The worker's perception of the relevant event is relevant, but only to the extent the worker's perception of the event is **reasonable**, and
 - Consideration must be given to the matters prescribed by the regulations.

[Section 8L]

What are excessive work demands?

- In determining whether work demands made of a worker are excessive work demands, the following will be considered:
 - The **usual patterns of work** in the industry, or part of the industry, in which the worker is employed,
 - Supervision of the worker
 - The nature of the worker's role
 - Whether the worker is entitled to receive **overtime payments** or similar or a level of remuneration that reflects an expectation of working additional hours
 - The **needs of the workplace**
 - Staffing levels
 - Industrial agreements and arrangements
 - Contraventions of the work health and safety legislation

[Section 8M]

Reasonable management action

- No compensation is payable if the **significant cause** of a psychological injury was:
 - Reasonable management action taken or proposed to be taken by an employer, or
 - A worker's expectation of reasonable management action being taken, or
 - A worker's perception of reasonable management action taken or being taken. [section 11A]
- **Reasonable management action** means management action;
 - taken in a reasonable way, and
 - that is reasonable in all the circumstances.
- Expanding of the section 11A(1) categories with a **non-exhaustive definition** to include, but not limited, to appraisal or feedback regarding performance, counselling of the worker, demotion, disciplinary action, dismissal, investigation into alleged misconduct, promotion, provision of leave, provision of benefits, reclassifications, or another action prescribed by the regulations.

[sections 8F and 11A(1)]

Industrial Relations Commission



- **Relevant injury** means a primary psychological injury caused by being subjected to **relevant conduct**.
- **Relevant conduct** defined as bullying, excessive work demands, racial harassment and sexual harassment.
- **Industrial Relations Commission** will now have ***exclusive jurisdiction*** to determine whether conduct is **relevant conduct** and may resolve a dispute by way of conciliation.
 - If not 'relevant conduct', no compensation is payable to the worker. This is binding and not reviewable in the PIC.
 - If conduct was relevant conduct the worker must give the certificate of determination to the insurer, and the insurer must, not later than 7 days after receiving the certificate, issue a decision notice about the claim.
 - If the insurer accepts liability for the claim for the relevant injury, the worker is entitled to compensation from the date the claim was made.
 - If the insurer continues to dispute liability for the claim for the relevant injury, the dispute must be referred for determination by the PIC.

[sections 280AE, 280AH, 280AI & 287]

Interim entitlements

- Once the claim form is complete for a **‘relevant conduct’ claim**, the insurer must start paying (within 7 days) the worker an interim entitlement payment of:
 - if the worker has no current work capacity—75% of the worker’s PIAWE,
 - if the worker has current work capacity—75% of the worker’s PIAWE less the worker’s current weekly earnings, for up to 8 weeks
- During that period, the worker is also entitled to medical or related treatment in relation to the **relevant conduct injury** to a cost of not more than:
 - the amount specified in the *Workers Compensation Guidelines*, or
 - if an amount is not specified in the *Workers Compensation Guidelines*—\$7,500.
- Interim entitlement periods ceases 14 days after disputing liability or 56 days after the claim is made.
- If insurer accepts the claim, the worker is entitled to a **back payment** of weekly benefits and medical expenses. The back payment must be made as soon as practicable, but **no later than 21 days**, after a decision is made to accept the claim, unless the claim is withdrawn.

Timeframes

- **Within 42 days (6 weeks) after a claim for a relevant conduct injury is made** the insurer must decide to accept the claim and commence weekly payments, or dispute liability.
- If the insurer does not make a decision to accept the claim or dispute liability within the time required, the insurer is **deemed** to have made a decision to have accepted the claim.
- A request for a review of the claim, or any aspect of the claim, must be made before the dispute may be referred for determination by the PIC or the IRC.
- Requests for review to be determined within **14 days**.
- If dispute is maintained, worker **may** lodge application with IRC or PIC (subject to the issue for determination – discussed next).

[Sections 280AC & 280AE]

Permanent impairment

- There has been no change to the WPI threshold for receiving permanent impairment compensation for a physical and psychological injury.
- The threshold amount for physical injuries remains at 11% WPI, and 15% WPI for psychological injuries.

[Section 65A]

- The amendments have mandated a review of the PIRS assessment of psychological impairment. The scale will be reviewed as well as other alternative methods of assessing psychological impairment. The outcome of the review will be tabled to Parliament around late-2027 / early 2028.

Permanent impairment

- Part 19S of Schedule 6 of the 1987 Act, provides various guidelines for determining lump sum claims which fall between 1 July 2026 and 30 June 2027 (noting this timeframe is subject to change).
- The intent of the legislation is to introduce a **one Principal Assessment** of impairment, which we anticipate will come into effect in early to mid 2027. This involves the following:
 - Assessments must be conducted by a SIRA approved assessor and agreed by the insurer and the worker (or if unable to be agreed, to be appointed by the Authority);
 - The worker and insurer are required to agree on the body systems/disorder to be assessed and medical reports/investigations to be provided;
 - A permanent impairment assessor will have the power to consult with treatment providers and call for further evidence before issuing their assessment.
- Permanent impairment agreements may be entered into once the parties have agreed on an assessment of whole person impairment.

Work injury damages

- A worker with a primary psychological injury will only be entitled to pursue a work injury damages claim should they exceed a threshold of **at least 25% WPI** from 1 July 2026. An increase from 15%.
- From 1 July 2027, the above threshold will increase to **more than 26% WPI** (e.g. 27%).
- From 1 July 2029, the threshold will increase to **at least 28% WPI**.

[sections 151H & 151DA]

- These amendments apply to injuries notified on or after the commencement date of each new threshold (i.e., previous thresholds apply where an injury was notified before the relevant amendment commenced, even if a work injury damage claim is made after commencement of the amendment).
- There are no changes to the work injury damages thresholds for physical injuries.

Weekly payments

- Workers with primary psychological injuries will be restricted from accessing weekly compensation beyond 130 weeks unless their impairment is **21% or greater**.
- However, where a worker's impairment is between 21% - 24% (from 1 July 2026), 21% - 26% (from 1 July 2027) and 21% - 27% (from 1 July 2029), to access weekly compensation up to 182 weeks they must either:
 - Have no work capacity; or
 - Have current work capacity; and
 - Have returned to work for at least 15 hours per week; and
 - Have current weekly earnings of at least \$225 per week.
- If their impairment exceeds the maximum threshold (e.g. 25%, 27% and 28% WPI or more), they will be able to access weekly compensation beyond 130 weeks without the need to meet these requirements.

[Section 38, 39A & 39B]

Weekly payments

- Section 39 is also amended to overcome the effect of *Hochbaum v RSM Building Services Pty Ltd*; *Whitton v Technical and Further Education Commission t/as TAFE NSW* [2020] NSWCA 113 – no entitlement to back payments of weekly benefits once threshold satisfied:
 - If weekly payments of compensation become payable to a worker after compensation under section 39 ceases to be payable to the worker, **compensation is once again payable to the worker but only from the date of the worker's further assessment** under Part 6, or an assessment under the 1998 Act, Chapter 7, Part 7.

[Section 39]

- This change applies to workers with physical and psychological injuries.
- This amendment will apply to new and existing claims.

Commutation

- No longer a requirement that the Authority (SIRA) be satisfied and certified that the criteria have been met for a commutation to take place. All that is required now will be that the President of the Personal Injury Commission approve the commutation agreement.
- The Regulations may require the provision of independent financial advice to a worker, at the expense of the insurer, before the worker enters into a commutation agreement.
- The 14 days withdrawal period under s87F(4) is replaced by allowing the worker to withdraw at any time before the agreement is approved by the President.
- In reviewing a commutation agreement, the Commission may have regard to the following matters-
 - (a) a dispute about liability to pay compensation under the Workers Compensation Acts,
 - (b) each of the following – (i) the injury, (ii) the worker's age, (iii) the worker's general health, (iv) the worker's occupation at the time the injury occurred, (v) any other relevant matter,
 - (c) the worker's ability to compete in an open labour market,
 - (d) benefits from another source to which the worker may be entitled.

[Sections 87EA, 87F & 87H]

Medical expenses

- Medical expenses limited to a period of one year after weekly payments cease or one year from the date of the claim was first made if no weekly payments paid or payable.
- s59A does not apply to a worker with highest needs for a primary psychological injury
- Medical expenses claimed must now be ***reasonable and necessary*** in contrast to the previous requirement of ***reasonably necessary***, setting a higher bar.
- These changes come into effect from **1 October 2026**.

[Sections 59A(2)(b) and S60]

Any questions?

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