THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ICC:JBsb220725

22 July 2025

The Hon. Abigail Boyd, MLC
Chair, Public Accountability and Works Committee
Legislative Council
Parliament House
SYDNEY NSW 2000

By e-mail: PAWC@parliament.nsw.gov.au

Dear Chair,

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2025

Thank you for the opportunity to make a submission to the Public Accountability and Works Committee (**PAWC**) on the Workers Compensation Legislation Amendment Bill 2025 (**Bill**).[1] The Law Society's Injury Compensation Committee contributed to this submission.

The Bill proposes significant changes to liability provisions and entitlements across the workers compensation scheme, which include, but are not limited to psychological injury claims. We recognise that reform of the NSW workers' compensation legislation is overdue and understand the importance of ensuring the financial sustainability of the scheme. We suggest, however, that the Bill does not address the legislative complexities of the scheme, and fails to promote the objective of providing injured persons with access to treatment, rehabilitation and appropriate compensation.

The Law Society's position remains that the Government should not proceed with the Bill, which was introduced without adequate transparency and meaningful consultation.[2] While the PAWC's inquiry into the Bill is welcome, in our view, this process is not sufficient to holistically address the challenges facing the scheme. We suggest the Government return to the stage of consultation and design with the involvement of legal and other stakeholders, service providers and subject matter experts. This reflects the recommendations of previous inquiries, which emphasised the need for consultation to achieve a 'wholesale revision' of the

[1] The Bill passed the Legislative Assembly with amendments on 3 June 2025. References in this submission refer to the Second Print of the Bill.
[2] The referral by the Government of the exposure draft of the Bill to the Standing Committee on Law and Justice resulted in a highly truncated inquiry process. See remarks by the Chair of the Standing Committee, the Hon. Greg Donnelly MLC, in Standing Committee on Law and Justice, 'Proposed changes to liability and entitlements for psychological injury in New South Wales' (Report, Vol 1), vii (**Standing Committee Report on liability and entitlements for psychological injury in NSW**): https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3101#tab-reportsandgovernmentresponses.

THE LAW SOCIETY OF NEW SOUTH WALES
170 Phillip Street, Sydney NSW 2000
ACN 000 000 699 ABN 98 696 304 966
lawsociety.com.au

T +61 2 9926 0333 F +61 2 9231 5809
E lawsociety@lawsociety.com.au

Law Council
OF AUSTRALIA
CONSTITUENT BODY

scheme, focusing on reducing the complexity of the statutory structure and responding to the needs of injured workers in modern workplaces, including through appropriate claims management processes.[3]

This submission focuses on five key areas of concern to the Law Society, namely:

1. Changes to the Whole Person Impairment (**WPI**) threshold
2. Practical implications of the joint Principal Assessment Process
3. Claims management practices within the Workers Compensation scheme
4. Use of regulations to prescribe classes of workers who can access commutations
5. Changes to funding arrangements under the Independent Legal Assistance and Review Service (**ILARS**)

1. Changes to the Whole Person Impairment (WPI) threshold

The Law Society does not support the changes to the WPI threshold to access ongoing weekly payments, work injury damages and permanent impairment lump sum claims.[4] The Government has communicated the benefit of these reforms in terms of the significant savings expected to be provided to the scheme.[5] However, we suggest that there has not yet been a rigorous discussion of the impact that the changes will have on workers in the scheme who have suffered significant psychological injuries in the workplace.

Evidence provided to this inquiry by the Treasury suggests that very few workers reach a WPI threshold of at least 31 per cent.[6] This reflects the experience of our members, who have worked with clients with ongoing, persistent and severely disabling symptoms associated with various recognized psychological disorders, who have nevertheless been assessed at a WPI well below 31 per cent. We are concerned that the thresholds will prevent persons with severe psychiatric injuries sustained in the workplace from accessing ongoing workers compensation entitlements, which is antithetical to one of the objectives of the scheme.

We suggest that, rather than focusing exclusively on the WPI threshold as the mechanism by which to address the financial sustainability of the scheme, a more nuanced response could be undertaken to evaluate the processes of the Nominal Insurer (**NI**) and the Treasury Managed Fund (**TMF**) to ensure best-practice claims management of psychological injuries. While this is no doubt a more difficult task than what has been

---

[3] See, for example, Legislative Council, Standing Committee on Law and Justice, '2023 Review of the Workers Compensation Scheme' (Report 84, December 2023) xii [Recommendation 18] (**Standing Committee 2023 Review**): https://www.parliament.nsw.gov.au/lcdocs/inquiries/2988/Report%20No%2084%20-%20Law%20and%20Justice%20-%202023%20Review%20of%20the%20workers%20compensation%20scheme%20-%205%20December%202023.pdf,; The Hon Robert McDougall QC, 'icare and *State Insurance and Care Governance Act 2015* Independent Review' (Report, 30 April 2021) 257 [40]: https://www.nsw.gov.au/sites/default/files/2021-04/Independent-Review-Report.pdf.

[4] See proposed changes to ss 38(9), 65A(3) and 151H of the *Workers Compensation Act 1987* (NSW), and s 314 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

[5] The changes in WPI threshold are expected to provide savings to the NI of $607m TMF $330m. See NSW Government, Treasury, Submission of information to the Public Accountability and Works Committee (**Treasury submission**)., Document 2(a) 'Financial Impact by Reform Measures': https://www.nsw.gov.au/sites/default/files/noindex/2025-06/2a-financial-impact-by-reform-measures.pdf.

[6] See Treasury Submission, above n 5, particularly Document 3(b), which sets out psychological injury claims resulting in permanent disability by WPI band and fiscal year, 1 July 2013 to date: https://www.nsw.gov.au/sites/default/files/noindex/2025-06/3b-psychological-injury-claim-resulted-in-permanent-disability-by-wpi-band-and-fiscal-year-1-july-2013-to-date.xlsx.

proposed in terms of reductions to the WPI thresholds, we suggest it would be a fairer and more principled approach.

Further, the Government could assess the early impacts of its Return to Work Strategy 2025–28, which has been described by the Minister for Industrial Relations as 'vital for addressing the declining return to work outcomes', to inform future changes to the scheme.[7] This Strategy, if implemented effectively by NSW public service leaders, may in turn positively impact scheme sustainability and avoid the need for the significant reductions proposed to the WPI threshold.

2. Principal Assessment Process

Our understanding is that the objective of the single permanent impairment assessment process proposed at 153J to 153R of the *Workers Compensation Act 1987* (NSW) (**1987 Act**) is to reduce costs and facilitate a more streamlined process to finally determine a worker's WPI. However, we remain mindful of the potential consequences of preventing workers and employers from choosing to obtain a separate permanent impairment evaluation by a trained assessor of impairment.

We have outlined below some of the issues that may arise from the proposed changes which we consider may increase disputes between the parties, discourage the early settlement of claims and undermine the procedural rights of the worker.

a) Increases in medical disputes in the Personal Injury Commission

We are concerned that the Principal Assessment Process will lead to an increase in medical disputes in the Personal Injury Commission. In cases where the worker or insurer/employer do not agree on a medical assessor, s 153J proposes that they will be assigned an assessor appointed by the State Insurance Regulatory Authority (**SIRA**). Given the inherently adversarial nature of the scheme, it is likely that, in the majority of such appointments, one or both parties may be dissatisfied with the outcome of the single assessment and may subsequently lodge a medical dispute in the Personal Injury Commission (**Commission**). This in turn is likely to increase costs and friction in the scheme and cause delays in finalising claims, particularly given the difficulties in recruiting suitable medical assessors in specialties such as psychiatry.[8]

b) Lack of clarity around the procedural aspects of the Principal Assessment Process

In our view, the Bill does not provide sufficient clarity on how various aspects of the Principal Assessment Process will operate in practice, particularly concerning letters of instruction to the medical assessor and supplementary reports. This lack of clarity may result in additional disputes and increased costs.

---

[7] NSW Government, 'Return to Work Strategy 2025–28' (Strategy, June 2025) 4: https://www.nsw.gov.au/sites/default/files/noindex/2025-06/nsw-government-return-to-work-strategy-2025-28.pdf.
[8] The 2023-2024 Annual Report of the Personal Injury Commission refers to the shortage of medical assessors in the field of psychiatry. See Personal Injury Commission, Annual Review 2024-24, 7: https://www.pi.nsw.gov.au/__data/assets/pdf_file/0006/1338441/Personal-Injury-Commission-Annual-Review-2023-24.pdf.

i) Letters of instruction

Proposed s 153K(3) provides that the following matters must be agreed between the insurer and the worker:

> **Permanent impairment assessment process**
> …
> (3) The following matters relating to the principal assessment must be agreed between the insurer and the worker—
> (a) the body system, body structure or disorder to be assessed,
> (b) all medical and allied health information, including results of clinical investigations, relevant to the assessment of the injury,
> (c) other matters specified in Workers Compensation Guidelines

However, this section is silent on whether both the worker and insurer will be permitted to provide separate letters of instruction to the medical assessor, or whether the parameters of the assessment will need to be agreed. Often, the expert medical opinion is needed at the outset to confirm the nature and extent of the injury as well as the relevance of the medical information. These issues are likely to be the subject of disputes referred to the Commission, which could be avoided where both parties have the benefit of their own assessment.

ii) Supplementary reports

Proposed s 153Q sets out the process in relation to further principal assessments where there has been an unexpected and material deterioration in the worker's condition. However, the Bill does not address the circumstances where the medical assessor makes amendments to the original assessment and provides a supplementary report. This will leave it largely to the discretion of SIRA, in its drafting of the Workers Compensation Guidelines, to determine these aspects of the Principal Assessment Process. In our view, these matters should be addressed within the legislation itself, rather than delegated to SIRA as the scheme regulator, which has a role distinct from the determination of claims. This is particularly important given that the outcomes of such assessments can materially affect a worker's entitlements.

c) Absence of procedural rights for the worker undergoing the Principal Assessment Process

Proposed s 153N sets out the powers of the permanent impairment assessor conducting a principal assessment. Proposed ss 153N(2) is in the following terms:

> **Powers of permanent impairment assessor on assessment**
> …
> (2) If a worker refuses to undergo an examination by the permanent impairment assessor if required to do so, or in any way obstructs the examination, the following are suspended until the examination has taken place—
> (a) the worker's right to recover compensation in relation to the injury,
> (b) the worker's right to weekly payments.

We suggest that this subsection is unduly punitive and may benefit from a mechanism by which a worker can apply for a review of the decision to suspend their rights in relation to compensation and weekly payments. Provision should also be made for persons with legitimate reasons to refuse examination by the appointed impairment assessor. For example, a female worker may be uncomfortable being examined by a male assessor due to religious or other reasons.

3. Claims Management

The Law Society is of the view that claims management practices and their impact on the sustainability of the scheme have not been meaningfully addressed by these reforms, despite these issues having been consistently raised during the Joint Standing Committee on Law and Justice's reviews of the scheme. We note that the issue of claims management practices has also been raised in the course of this Committee's inquiries.[9]

Our members advise that claims are often assessed and managed via an automated system or by multiple assessors. Given the scheme deals with personal injuries and their impact on individuals, we consider assessment and management of claims requires human consideration and judgment by experienced claims managers. Further, we note that a high turnover of claims managers can create problems for both workers and employers, including uncertainty, unnecessary delays, errors and inefficiency. This can negatively impact seriously injured workers who, as a result, may be denied timely treatment which, in turn, may cause aggravation of their injuries.

Concerns around claim management were echoed in the evidence received at hearing by this inquiry from representatives from the National Insurance Brokers Association and AEI Insurance Broking Group, who emphasised the need for 'a renewed focus on early intervention, care coordination and effective case management'.[10]

4. Amendments relating to commutations

The Law Society has a long-standing position of advocating for the liberalisation of commutations for exiting the scheme. Such voluntary arrangements can benefit individual workers, who will be offered a further alternative to leave the scheme other than through a Work Injury Damages settlement.

In the experience of our members working in claims management, claims where a commutation may be appropriate are often resource-intensive and difficult to manage due to the impacts of step downs, thresholds and adverse decisions. Commutations may therefore have a positive impact on the sustainability of the scheme, including through the closure of claims with high administrative costs.[11] Further, we suggest workers in these cases may be willing to settle for a significantly compromised amount in order to maintain their dignity and finalise their rights by exiting the scheme.

---

[9] See, for example, Standing Committee 2023 Review (above n 3) 59-86; and Public Accountability and Workers Committee, Inquiry into the Workers Compensation Amendment Bill 2025, Transcript of hearing Parliament House, Sydney, on Tuesday 17 June 2025, evidence by Rebecca Wilson, Richard Kiplin and Tim Wedlock, pp 86-91: https://www.parliament.nsw.gov.au/lcdocs/transcripts/3535/Transcript%20-%20UNCORRECTED%20-%20PAWC%20-%20Workers%20Comp%20Bill%202025%20-%2017%20June%202025.pdf.

[10] Ibid., 86 (Evidence of Richard Kiplin).

[11] Treasury Submission (above n 5), Document 1(b) Expanding Access to Commutations: https://www.nsw.gov.au/sites/default/files/noindex/2025-06/1b-expanding-access-to-commutations.pdf.

We note, however, that proposed s 87EA(2) of the 1987 Act gives discretion to SIRA to prescribe in regulation what classes of workers are able to access commutations.[12] We suggest that this approach lacks transparency, considering there will be limited parliamentary scrutiny of cohorts that are eligible to commute. In our view, legislation should be introduced allowing all classes of claim to be commuted. To protect the worker and ensure that the voluntary nature of commutation agreements is maintained, the Law Society agrees that the worker should obtain independent financial and legal advice, and the commutation agreement should be reviewed and registered with the Commission.

5. Changes to funding arrangements under the Independent Legal Assistance and Review Service (ILARS)

In our view, the changes to the funding arrangements proposed in the Bill through amendments to the *Personal Injury Commission Act 2020* (NSW) (**PIC Act**) have not been properly ventilated during hearings and parliamentary debates on the Bill. The Law Society considers that the proposed funding changes are not cognisant of the evolving scheme complexity and the value provided by lawyers in supporting and facilitating efficient operation of the scheme, and may ultimately undermine access to justice for injured workers.

a) Changes to the purpose of ILARS and consequent funding arrangements

The changes to Schedule 5, clause 9(2) of the PIC Act change the purpose of the ILARS to read as follows:

> **9. Independent Legal Assistance and Review Service**
> …
> (2) The purpose of ILARS is to provide funding for legal and associated costs for workers under the Workers Compensation Acts seeking advice, representation or assistance regarding decisions of insurers or disputes that, if not addressed through legal representation or assistance, would result in a disadvantage to injured workers in relation to the workers' rights or entitlements to benefits under Workers Compensation Acts.
> .

Schedule 5, cl 9A(1), narrows the discretion of the Independent Review Officer (**IRO**) to provide funding of legal and associated costs as follows:

> **9A. Funding for legal and associated costs**
> (1) The Independent Review Officer must not provide funding for legal and associated costs to a person unless the Independent Review Officer is satisfied—
> (a) having regard to the need to ensure the sustainability of the use of the workers compensation funds for the purposes of the ILARS scheme, the funding would be justified by the likely benefit to—
> (i) the person, or
> (ii) workers under the Workers Compensation Acts, and
> (b) the person has reasonable prospects of success in relation to the matter to which the proposed funding relates, having regard to—
> (i) the investigations that are necessary to establish the entitlements of the person, and
> (ii) the need for an assessment of the correctness of decisions made in relation to the person under the Workers Compensation Acts by insurers, and
> (iii) the resolution of any disputes about the entitlements, and

[12] Ibid. We note that the Government is currently considering whether the following two classes of claims should be prescribed in the regulations:
1. Claims where a worker's WPI has been assessed or agreed at 15% or greater; and
2. Claims that only have medical experiences remaining.

(c) a prudent person who is self-funding, with adequate financial resources, would use the person's own financial resources for the purposes for which the proposed funding is to be applied.

We note that there was no discussion ahead of the introduction of these provisions about the role and performance of the ILARS. In our view, the establishment of the ILARS in 2012 represented a landmark development for personal injury law in NSW, which assists injured workers in gaining independent advice to have their claims investigated and professionally represented. It was never intended as a legal aid scheme but was established on the principle that workers have as equal a right to legal representation as their employers. ILARS achieves this through the Workers Compensation Operational Fund.

b) The benefits of workers obtaining legal advice when navigating the scheme

In almost all cases, workers interacting with the scheme have sustained injuries, some of which are significant. The benefits of legal representation go beyond the monetary value of a claim and encompass the advice and guidance provided by lawyers navigating an adversarial and, at times, stressful process. Many injured workers do not have the capacity to properly navigate the system without assistance, often due to the impact of their injuries. Legal aid is generally not available for personal injury matters, and we consider legal aid providers are ill-equipped to provide such services, given the financial pressures facing them and their lack of experience in this jurisdiction. Accordingly, in our view, ILARS plays an essential role in facilitating access to justice in NSW in an affordable and efficient way. Without having access to legal costs, injured workers are at risk of unfair and adverse outcomes.

It is unclear how the IRO will objectively determine, at the outset of a claim, whether or not legal representation or assistance would result in a disadvantage to injured workers in relation to their rights or entitlements. The Law Society, which has members representing both injured workers and insurers, notes a broad consensus that when a worker is represented, they receive professional assistance in navigating what is a fundamentally complex scheme, which leads to better outcomes for both parties.

Similarly, it remains unclear how, under proposed cl 9A(1)(b), the IRO will determine at the outset of a claim whether a person has reasonable prospects of success in relation to the matter for which the proposed funding is sought. Under this proposal, an Approved Lawyer will be required to undertake these preliminary investigations of workers compensation claims and make a case around "reasonable prospects of success" in essentially a pro bono capacity before they can receive a grant of ILARS funding. The Law Society is concerned that this may undermine the sustainability of this area of practice, likely leading to the loss of experienced lawyers and resulting in broader impacts on access to justice.

Proposed new Schedule 5, cl 9A(1)(c) is similarly unclear. The Law Society is concerned that this may result in ILARS funding being only available to lawyers acting for clients who have been means-tested. It is possible

that this will result in a significant "missing middle" of injured workers, who will not be able to access treatment or entitlements under the scheme.[13]

Thank you for the opportunity to contribute. Should you have any further queries in relation to this submission, please contact Sophie Bathurst, Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

Jennifer Ball
President

[13] "The group of individuals who do not meet eligibility criteria for publicly funded legal services yet lack the resources to afford a private lawyer's assistance for all or part of their legal matter, make up the 'missing middle'." Law Council of Australia, Addressing the legal needs of the missing middle (Position Paper, November 2021), 3: https://lawcouncil.au/publicassets/d8ff81b4-7558-ec11-9444-005056be13b5/2021%2011%2030%20-%20PP%20-%20%20Addressing%20the%20legal%20needs%20of%20the%20missing%20middle.pdf.