

# Proposed changes to liability and entitlements for psychological injury in New South Wales

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### Contents

Background .....	3
The overall financial sustainability of the NSW workers' compensation system .....	3
Creating safer workplaces leads to better financial sustainability .....	4
Other considerations .....	4
The provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 as provided by correspondence to the Committee.....	5
Typical psychological hazards encountered by FSU members.....	5
High Job demands.....	5
Harassment.....	7
Poor organisational change management .....	7
Lack of role clarity.....	8
The elimination and control of psychosocial hazards will reduce injuries .....	9
Summary.....	9

## Background

The Finance Sector Union (FSU) is a registered industrial organisation under the *Fair Work (Registered Organisations) Act 2009*. The FSU represents members in the banking, finance and insurance industries (finance sector) in Australia. The finance sector in NSW consists of approximately 242,700 workers (approximately 5% of the workforce) with women making up approximately 50% of the total number of workers within the sector<sup>1</sup>.

The FSU represents workers in metropolitan, regional, and remote parts of NSW and while we have members who are covered by the federal jurisdiction (those who work in CBA, NAB and ANZ fall under ComCare) there are over 4000 FSU members who work in NSW who are covered by the NSW Workers Compensation system.

This submission will cover the terms of reference:

- (a) the overall financial sustainability of the NSW workers' compensation system; and
- (b) The provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 as provided by correspondence to the Committee.

## The overall financial sustainability of the NSW workers' compensation system

The FSU supports reforms to the NSW workers' compensation system.

The current system is broken and is failing workers and employers through poor claims management, needless bureaucracy and falling return to work rates.

The finance industry is a highly profitable industry, with many employers raking in billions of dollars in profits each year. It is unconscionable for the NSW Labor Government to implement the proposed changes that will redirect the cost of psychological injuries away from the employers that fail to prevent injuries, onto the workers who experience them.

These workers are injured as a result of the failure of their employers to put into practice safe systems of work that will prevent psychological injuries.

The NSW government's proposed changes will send the wrong signal to employers in the finance industry, who knowingly put workers' psychological health and safety at risk while chasing larger profits, that their actions are acceptable. The proposed changes aren't *reform*; they are a cost cutting exercise and they start with those least able to fend for themselves.

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<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia-detailed/mar-2025> [accessed 12.05.2025]

## Creating safer workplaces leads to better financial sustainability

Fewer injuries leads to better financial sustainability of the system. Prior to the 2011 changes to the NSW WHS Act, unions had the ability to prosecute breaches of WHS laws.

Case study 1 is an example of the effectiveness of union prosecutions.

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### *Case study 1 – Union prosecutions result in safer workplaces.*

*In 1998 there were 180-armed bank robberies in NSW. In 85% of these robberies bank staff sustained injuries. In each of these cases the FSU conducted “post robbery” inspections and identified action that should be taken to protect the work health and safety of our members. The big banks refused to take the recommended action to protect their workers.*

*Between 2001 and 2005 the FSU undertook five prosecutions in accordance with NSW OHS laws. The FSU prosecuted the ANZ twice, CBA twice and Westpac once. In each case the bank pleaded guilty having been formally notified by the FSU of the potential harm they were placing workers in on a series of occasions.*

*By 2007 the number of armed bank robberies had reduced to just 34.*

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The NSW government could reduce the cost of the workers compensation scheme with NO cost to the budget by simply reintroducing the standing for unions to prosecute breaches of WHS laws.

***Recommendation 1: To help prevent and deter injuries and improve the financial sustainability of the NSW workers’ compensation system, the NSW Government should reinstate the standing for unions to prosecute breaches of WHS laws, including arbitrated WHS dispute outcomes, before the NSW IRC, and regrant unions access to an equal share of any penalties awarded.***

## Other considerations

There is a mental health crisis in Australia<sup>2</sup> and a shortage of psychologists and psychiatrists available to treat mental health conditions. This crisis is having an impact on the ability of workers suffering psychosocial injuries being able to **quickly** access the help they need to return to work as soon as possible. We know that if workers can return to work within eight weeks, the outcomes are better. It can take as long as 16 weeks for workers to begin treatment due to the shortage of skilled practitioners. There is nothing an injured worker can do to change this reality.

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<sup>2</sup> <https://www.smh.com.au/national/mental-health-crisis-driving-huge-demand-for-skilled-practitioners-20240920-p5kc37.html> [accessed 14 May 2025]

It is unacceptable that the government’s solution is simply to deal with the “demand side” of this equation by introducing an exhaustive list of psychosocial “hazards” that may lead to a compensable psychological injury. The alternative is to change the demand side of the equation by enforcing an obligation for employers to provide safe workplaces that are free from the hazards that cause psychological injuries. The SafeWork Australia “Model Code of Practice: Managing psychosocial hazards at work”<sup>3</sup> sets out pathways for employers to use the WHS framework to eliminate and control psychosocial hazards at work. An increase in enforcement as well as empowering unions to prosecute employers for failing to provide safe workplaces is a much more effective solution to the demand problem facing the system. This solution will also put the onus on the employers who are failing to provide safe workplaces instead of on the workers who are injured as a result.

## **The provisions of the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 as provided by correspondence to the Committee**

The Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025 (**the Bill**) includes at S8E a definition and exhaustive list of hazards that the Government has deemed compensable. This list conflicts with the *Work Health and Safety Act 2011 NSW* that does not define or limit hazards. To be compliant with work health and safety legislation a Person Conducting a Business or Undertaking (PCBU) must monitor and manage risks associated with hazards through hazard elimination and minimisation.

The list of hazards contained in the Bill is an exhaustive list and does not include many of the psychosocial hazards common in the finance industry. The FSU reiterates that it is unconscionable that the NSW Government proposes to limit compensable hazards – this will give a green light to employers to prioritise profit over worker safety. A snapshot of some of the psychosocial hazards regularly identified in the finance industry is provided below. These hazards are not included on the exhaustive list at S8E yet are preventable and cause serious injury to finance workers.

### **Typical psychological hazards encountered by FSU members**

The following are examples of some of the psychosocial hazards encountered in the finance industry that under the proposed changes would no longer be compensable. It should be noted that this list is not exhaustive. The FSU regularly surveys our members to understand the impact on both physical and mental health of psychosocial hazards. All of the quotes in this submission come from FSU members responding to surveys and/or questions on the impact of psychosocial hazards.

#### **High Job demands**

High job demands in the finance industry manifest in jobs that require high levels of mental effort to complete. This does not simply mean being “busy” at work, rather, injuries occur when finance workers

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<sup>3</sup> <https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-psychosocial-hazards-work> [accessed 14.05.2025]

work long hours without enough breaks, and when they have too much work to complete in their regular work hours.

Finance workers regularly average an additional 12 weeks (456 hours) each of unpaid overtime each year. Employers in the finance sector in both insurance and banking have regularly been identified as being guilty of underpaying employees with large employers such as Westpac<sup>4</sup> and IAG<sup>5</sup> being liable for repayments in the millions of dollars. Employers in the finance industry regularly demand workers do more with less and this often results in psychological injuries.

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*“I almost self-harmed one night driving home. I drove my car off the road deliberately to try and have a serious enough accident to stop the insanity, but not so much to die. When I was sitting on the side of the road, I was shaking from what I almost did to myself.”*

*“My workload led to unbearable levels of stress and anxiety, which ultimately and directly lead to chronic mental health issues.”*

*“The benefit of moving to a new organisation has meant that I now know how badly the workload was affecting me. I even attended emergency at hospital, which was found to be anxiety and stress.”*

*“I have been diagnosed with severe depression, and this has been caused by the constant stress and pressures of management wanting more from us no matter what.”*

*“The corporation put a cohort of staff under impossible workload expectations, eroding away their work-life balance to the point that thousands of staff have experienced elevated levels of stress, leading to mental health issues, physical health issues, and family life issues due to the impossible demands. I was constantly shocked at the toxic culture and the deceitful way that Senior Leaders deflected any culpability for pushing staff to mental breakdown.”*

*“Mental and physical health has deteriorated significantly. I am on long term medication to treat depression. This is a direct result of the working environment.”*

*I was already working 10-hour days. And when I couldn't fit in extra demands or reacted badly under stress, I was put in performance management.”*

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<sup>4</sup> <https://www.news.com.au/finance/business/banking/westpac-faces-investigation-for-underpaying-staff/news-story/4c2c782196c05090728cc54d10cd854c> [accessed 14.05.2025]

<sup>5</sup> <https://www.fairwork.gov.au/newsroom/media-releases/2024-media-releases/april-2024/20240405-iag-ltd-eu-media-release> [accessed 14.05.2025]

It is unreasonable to give these employers a “green light” to continue with these practices, and to leave workers to fend for themselves when they suffer injuries.

## Harassment

In the finance industry workers are often subject to harassment that does not fit the definition of “bullying and harassment”. Finance workers are often subject to harassment from customers (internal and external), and this is exacerbated when there are either long wait times for service in retail banking or long wait times in contact centres. The abuse also occurs when finance workers reject their claims or loan applications.

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*“I frequently receive abuse from internal customers. I receive this mostly because when I say no to their loan, I have impacted their yearly performance and bonuses so the abuse could be something as simple as you don’t know what you’re doing to swearing and name-calling.”*

*“Regularly we are exposed to a plethora of harassment and deeply traumatic experiences servicing customers. This can range from swearing and name calling due to wait times and errors, all the way to customers talking about taking their own lives due to financial distress. These interactions have significant impacts on us workers mental health and must be taken seriously.”*

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FSU members working in the insurance industry experienced higher than normal levels of harassment recently in the wake of several natural disasters occurring within close proximity to each other, and because there were inadequate staffing levels. This harassment experienced came from different customers and all were heavily impacted by the disasters – some customers were calling to lodge claims when they had lost everything. These were traumatised customers who took out their frustration on the FSU member answering their calls. The FSU has had members suffer from psychosocial injuries as a result of the compounding effect of abusive treatment across hours, days or weeks.

**This is a preventable psychosocial hazard.** Under the proposed changes, workers injured by these hazards will no longer be eligible for workers compensation. This provides employers with no reason to provide additional resources nor to implement preventive measures to protect the psychological health of their workforce.

## Poor organisational change management

The finance industry is constantly going through restructures and changes, and these are often poorly managed. Poor change management becomes a psychosocial hazard when it happens frequently.

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*“[I’m] constantly having to pivot in to new responsibilities and new ways of working due to teams downsizing, as well as trying to manage increasing customer demands is physically and mentally exhausting. But you turn up every day and put on a brave face so that hopefully no one notices you are struggling, just to make sure you aren’t seen as incapable of doing your job.”*

*“in just over 12 months my team has been through 2 restructures combining and splitting teams and managers. This has led to a lack of trust and understanding between the team and our manager who is yet to understand the intricacies of our work. The poor change management and choices led to my mental breakdown”*

*“[I’ve] Recently [been] reappointed (without consultation) to a new team and lead. No structure or planning ... I either have nothing to do or they throw something at me and give me 2 days to do it. I am mentally exhausted and constantly anxious.”*

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The triggers for these hazards in the finance industry include a lack of genuine consultation – in the finance industry changes are generally communicated **after** decisions are made. This eliminates the capacity for an employee to provide input, even where this input might lead to better outcomes. In the finance industry these changes often relate to work being sent to offshore providers and psychosocial hazards arise when workers are required to train a cohort of offshore workers who will then be taking their jobs. The FSU has worked with some employers on the design of their organisational change for offshoring jobs, and subsequently the risk of psychological injuries for impacted workers is better managed.

If the government were to progress with the proposed changes, there will be no incentive for employers to refine and improve their change management processes.

### **Lack of role clarity**

Lack of role clarity means workers are not clear on their job, their responsibilities, or their employer’s expectations. The hazards associated with lack of role clarity that are common in the finance industry include conflicting and/or changing expectations and work standards, not having the information they need to do the job and having unclear work priorities.

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*“I was reappointed into a new business. I started Monday. After knowing for 4 weeks, my new leader reached out 2 days before I started and the messaging from them is, **“I’m busy, don’t contact me.”** I’m on day 4 in the role and have taken sick leave because I have no idea what my job is, have no job description, no performance metrics. I was on track to make my bonus and that will now be impossible without any role clarity or leader engagement”.*

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It is not unusual for jobs to change over time. Often finance workers’ roles become more complex as new products or processes are introduced. These additional expectations rarely trigger a review of an individual’s job description; workers are simply expected to do more in the same amount of time without being provided with additional resources or remuneration. This hazard could be mitigated through consultation and regular monitoring.

Should the proposed changes go through, employers will simply continue to increase the expectations of their workforce.

## The elimination and control of psychosocial hazards will reduce injuries

The psychosocial hazards listed above are not exhaustive and are just a snapshot of some common hazards in the finance industry that lead to psychosocial injuries. These hazards are well understood and there is a wealth of tools available for PCBUs to assist them to identify, eliminate and/or control psychosocial hazards in the workplace. It is an obligation under existing WHS legislation for PCBUs to identify these hazards and eliminate them.

The proposed changes **do not** address the lack of attention paid to psychosocial hazards by PCBUs or their lack of compliance with WHS legislation to eliminate them. SafeWork Australia provides a wealth of information<sup>6</sup> on their website to assist PCBUs in managing psychosocial risk. The system needs reframing to concentrate additional attention on the drivers of psychosocial injury and to put pressure on PCBUs to take greater responsibility for eliminating these risks.

**Recommendation 2: The NSW Government should review the funding of SafeWork NSW against its targets and outcomes within the Psychological Health and Safety Strategy 2024-2026<sup>7</sup> and increase funding where necessary to ensure it has the capacity to meet its goals and its obligation to enforce WHS compliance.**

**Recommendation 3: To increase the capacity of SafeWork NSW to prevent injuries, an agreed number of inspectors should specialise and have appropriate training and qualifications in industry-specific psychosocial hazards.**

## Summary

This submission has focused on only two matters - the role of unions in prevention and the typical psychosocial hazards that are common in the finance industry that lead to workers' sustaining compensable psychological injuries.

However, the FSU has a range of additional concerns about the proposed changes. These concerns are addressed in the submission to this inquiry from UnionsNSW of which the FSU is an affiliate. The FSU supports the UnionsNSW submission and recommendations in its entirety and this submission should be read in conjunction with that of UnionsNSW.

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<sup>6</sup> <https://www.safeworkaustralia.gov.au/safety-topic/managing-health-and-safety/mental-health/managing-risks/identifying-assessing-controlling-and-reviewing> [accessed 14.05.2025]

<sup>7</sup> chrome-

extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.safework.nsw.gov.au/\_\_data/assets/pdf\_file/0009/1289646/safework-nsw-psychological-health-and-safety-strategy-2024-2026.pdf pg 14 [accessed 14.05.2025]