

15 May 2026

Ms Mandy Young
Chief Executive Officer
State Insurance Regulatory Authority
Sydney NSW 2000

Submitted via consultation website: <https://www.haveyoursay.nsw.gov.au/wc-reform>

Dear Ms Young

Public consultation on the NSW Workers Compensation Legislation Amendment Regulation 2026 and related instruments

The Australian Psychological Society (APS) appreciates the opportunity to respond to the public consultation on the draft *Workers Compensation Legislation Amendment Regulation 2026* and related instruments. We understand that the draft regulation, guidelines and related instruments are intended to support the implementation of recent legislative reforms, with the passage of the *Workers Compensation Legislation Amendment Act 2025* and the *Workers Compensation Legislation Amendment (Reform and Modernisation) Act 2026*.

The APS is supportive of the New South Wales (NSW) Workers Compensation Scheme (the Scheme) and its aim to provide quality care to injured workers to facilitate their recovery and return to work participation. We recognise that rising costs and the financial sustainability of workers compensation schemes have been longstanding concerns for many Australian jurisdictions. While recognising these significant financial constraints, we reiterate concerns regarding reforms which will likely prevent injured workers from being able to obtain necessary psychological treatment to facilitate their recovery and return to work¹.

In making this submission, the APS has reviewed the draft regulation and guidelines and consulted with highly qualified members who have expertise in providing psychology services to injured workers within the Scheme.

We welcome the opportunity to re-establish regular meetings with the State Insurance Regulatory Authority (SIRA) to continue dialogue during the implementation of these legislative reforms. Should any further information be required from the APS, please do not hesitate to contact me on (03) 8662 3300 or at z.burgess@psychology.org.au

Yours sincerely,

Dr Zena Burgess FAPS FAICD
Chief Executive Officer

APS response to the NSW Workers Compensation Legislation Amendment 2026 and related instruments

Legislative reforms

The passage of the *Workers Compensation Legislation Amendment Act 2025* and the *Workers Compensation Legislation Amendment (Reform and Modernisation) Act 2026* was intended to address the growth in psychological injury claims and enhance the financial sustainability of the Workers Compensation Scheme. While the APS supports the need for reforms to enable the Scheme to be sustainable, we reiterate concerns raised prior to the passage of legislation that applying more stringent tests for workers with psychological injuries to access treatment will likely have a negative impact on their recovery outcomes and return to work¹. Legislated changes include:

Increased thresholds for weekly benefit entitlements and for work damages for psychological injuries.

- For injuries notified or claims made after 1 July 2026, weekly payments are limited to 130 weeks unless the worker's injury results in a Whole Person Impairment (WPI) of:
 - At least 25% from 1 July 2026
 - More than 26% from 1 July 2027 and
 - At least 28% from 1 July 2029.
- Access to work injury damages will be limited to where the worker's injury results in a WPI of:
 - At least 25% from 1 July 2026
 - More than 26% from 1 July 2027 and
 - At least 28% from 1 July 2029.

The APS is concerned that these threshold increases will result in workers with serious ongoing psychological injuries being further disadvantaged. People who have long-term payments ceased following the implementation of these reforms need to be supported. We therefore commend the provision that a Special Weekly Benefits Entitlement may be available for workers with a WPI of at least 21%, but below the relevant threshold.

The APS also acknowledges that the NSW Government has invested in strategies to improve psychological health in workplaces, for example, funding the provision of proactive wellbeing services in large government agencies². Such supports are in addition to the investment in Mentally Healthy Workplaces Australia (MHWA), a national centre focused on innovation and research to improve return-to-work outcomes and strengthen psychological safety standards³. We recommend that the NSW Government continues to invest in strategies designed to ensure that organisations provide psychologically safe working conditions and to evaluate the impact of these strategies.

Primary Psychological Injury - Relevant Event

Legislative reform has determined that a primary psychological injury will not be considered compensable unless a relevant event or series of relevant events caused the psychological injury. This change means that workers who experience psychological injury arising from work circumstances beyond these relevant event categories, such as general job stress, burnout, anxiety or depression due to a psychologically unhealthy workplace, will not be eligible for compensation within the Scheme.

While the APS recognises that the NSW Government's intention in making this change was to address the rising costs of psychological injuries within the Scheme, we remain concerned about the potential negative implications and unintended consequences on those workers who are impacted.

Job stress and burnout

We acknowledge that job stress in itself can be a reasonably expected emotional reaction to difficult and demanding work situations. As such, job stress can be more prevalent in certain industries, roles or professions. To this end, we agree that normal job stress is not a disorder, illness or psychological injury. However, it is important to note that prolonged or excessive job stress may lead to psychological or physical injury, or burnout⁴. Burnout is a psychological and occupational syndrome related to prolonged stress at work following situations that are emotionally demanding. It is often defined as the experience of exhaustion, cynicism, low professional efficacy within the context of a combination of enduring situational stressors, high expectations and feelings of pressure⁵.

We agree to some extent that there may be some situations where it is not appropriate for stress or burnout claims to be compensable, particularly where the stress is an emotional reaction predominantly arising from events that may be considered usual or typical and reasonably expected to occur in the course of the worker's duties (with the exclusion of emergency services personnel and others who are commonly exposed to trauma situations). However, we remain concerned that these reforms will have a substantial impact on workers who have experienced more severe symptoms of job stress or burnout and are unable to access compensation within the Scheme.

Clause 3A in the *Workers Compensation Legislation Amendment Regulation 2026* has included an additional category of relevant event, 'prescribed death', defined as:

prescribed death, for a worker, means the death of a person who is in the worker's care if:

- (a) the person dies as the result of a traumatic incident, and*
- (b) there is a real and direct connection between the person's death and the worker's employment, and*
- (c) the person was under the immediate and primary care of the worker, at the worker's workplace, when the traumatic incident occurred, and*
- (d) the relationship between the person and the worker was pre-existing, ongoing and close at the time of the person's death, and*
- (e) the relationship was a requirement of the worker's employment⁶.*

The requirement for all five conditions to be met results in an extremely narrow definition which will likely exclude workers who have experienced a work-related traumatic event and suffered a psychological injury as a result. We therefore recommend that the 'prescribed death' definition be made less restrictive to ensure that workers are not unfairly and arbitrarily excluded from accessing compensation and support following the death of a co-worker.

Determination of degree of permanent impairment

A single assessment of permanent impairment (the principal assessment) will determine all workers compensation entitlements, unless the worker and insurer agree that there's been an 'unexpected and material deterioration' in the condition of the worker since the principal assessment. 'Unexpected and material deterioration' occurs only if:

- At the time of the principal assessment, there was no reasonable cause to believe the worker's condition would deteriorate and
- The deterioration results in an increase of at least 10 percentage points in the worker's degree of permanent impairment.

APS members have expressed concern regarding the appropriateness of this requirement, as it assumes that the recovery trajectory from a psychological injury can be largely known or predicted from the outset. An individual's recovery trajectory is not necessarily predictable or linear and can be influenced by many factors. For example, APS members have observed that the impact of exposure to potentially traumatic events can increase over time, particularly when treating injured emergency services workers with complex trauma. In such cases, an early assessment of permanent impairment will not provide a complete and accurate picture of the person's injury.

Further, given the adversarial nature of the workers compensation system, interaction with insurers can often contribute to a person's trauma and deterioration. The APS recommends that SIRA reviews the extent to which this requirement has a detrimental impact on the ability of injured workers to obtain an accurate assessment of their permanent impairment, with a view to modifying this legislative requirement in future as required.

'Reasonable and Necessary' test for provision of treatment and services

The test for the provision of medical and related treatment and services has changed from 'reasonably necessary' to 'reasonable and necessary', which is consistent with the standard used in the NSW Compulsory Third Party (CTP) Scheme⁷.

Clause 8P in the draft regulation outlines the rules for determining whether a treatment or service is reasonable and necessary⁶:

- *a primary purpose of the treatment or service must be to treat the injury that is the subject of the worker's claim*
- *the treatment or service must be:*
 - *clinically justified for the treatment of the injury that is the subject of the worker's claim, and*
 - *cost effective and represent value for money*
- *there are no other accessible treatment or service options that can provide similar benefits to the worker at lower cost*
- *a treatment or service represents value for money if the costs of the treatment or service are reasonable relative to:*
 - *the benefits achieved from the treatment or service, and*
 - *the costs of alternative treatments or services.*

APS members have expressed concern that these changes appear to shift discretion from health providers to insurers, thereby, reducing providers' clinical autonomy to determine the most appropriate, evidence-based treatment for injured workers. The APS questions: (1) who will determine that a treatment represents 'value for money', (2) the extent to which there are no other accessible treatment or service options that can provide similar benefits to workers at a lower cost, and (3) how these rules will be used to influence providers. We recommend that these rules are removed from the regulation and instead that advice is provided in the guidelines regarding what constitutes reasonable and necessary treatment.

Clause 8Q in the draft regulation provides a list of treatments and services which are considered not reasonable or necessary and for which employers are not liable⁶. The APS is concerned about the principle underpinning these exclusions, which appears based on categorical descriptions rather than including a requirement that the most effective, evidence-based treatment options are used, given an injured worker's individual circumstances.

The APS recommends that a more positive and less restrictive approach than proposed in the draft regulation would entail stating in the guidelines that appropriate, evidence-based care is required and providing examples of the types of treatment that can be provided by registered health practitioners, such as psychologists. This will help to ensure that injured workers are not impeded from accessing evidence-based treatment. If treatment category exclusions are required, however, we recommend that they are listed in the guidelines rather than the regulation, as guidelines can be updated more frequently as new evidence becomes available.

The APS has specific concerns regarding the determination that employers are not liable to pay for '*wellness and coaching related treatments or services*' and we seek clarity regarding whether this comprises services

such as return to work (RTW) coaching, vocational and/or career counselling/coaching. Interventions to support injured workers to return to work can involve multiple components, including coaching. For example, an evaluation of a pilot trial of a RTW intervention which included coaching sessions with a psychologist has had promising results for enhancing participant injured workers' return to work outcomes⁸.

Number of sessions that Allied Health professionals can provide pre-approval reduced from 8 to 4 sessions

Table 4.2 (Other reasonable and necessary treatments and services available without pre-approval from the insurer) in the draft guidelines proposes that SIRA-approved psychological practitioners (psychologists and counsellors) will be able to provide up to four consultations pre-approval. This represents a significant reduction from the current limit of eight consultations.

SIRA's *Return to Work Roadmap 2026-2028* places a strong emphasis on providing person-centred, early intervention⁹. Research has found that a lack of access to psychological services can be a barrier to early intervention in workers compensation schemes¹⁰. The proposed reduction in the number of consultations available pre-approval appears inconsistent with the Scheme's early intervention goals and may cause unnecessary delays in access to these services, with a particularly negative impact on vulnerable injured workers. The APS questions whether the perceived benefits will outweigh the cost to injured workers arising from delays in continuing treatment.

Some APS members who have requested approval of Allied Health Treatment Requests (AHTRs) have not been notified when case managers are on leave and have been advised to expect 2-3 weeks delay. Challenges such as these, combined with the proposed changes in the draft regulation and guidelines has prompted some APS members to express their intention to withdraw from providing services within the Scheme. We recommend ongoing engagement and the development of strategies to support health providers during the implementation of legislative changes to help mitigate provider attrition.

Other comments and recommendations

We commend the establishment of the NSW Chief Psychiatrist review into the effectiveness and appropriateness of the Psychiatric Impairment Rating Scale (PIRS). This review will consider the appropriateness of PIRS as a tool to determine the degree of permanent impairment of injured workers, as well as an alternative tool.¹¹ As decisions with significant consequences for injured workers are based on the PIRS, it is imperative that the appropriateness of this measure continues to be evaluated.

Currently, the nominated treating doctor is required to attend case consultations. It can be beneficial for the case manager to meet with the treating psychologist and other key stakeholders to plan integrated care, even when the nominated treating doctor is not available. We recommend that to facilitate multidisciplinary care, the requirement that the nominated treating doctor attends a case consultation be removed.

The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time, knowledge, experience and evidence-based research to the development of this submission.

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