BUSINESS NSW

15 May 2026

State Insurance Regulatory Authority (SIRA)
Level 14-15, 231 Elizabeth Street
Sydney NSW 2000
workerscompensationreform@sira.nsw.gov.au

Dear SIRA,

RE: Consultation on the NSW Workers Compensation Reform Regulations and Guidelines

As NSW's peak business organisation, Business NSW has almost 50,000 member businesses across NSW. We work with businesses spanning all industry sectors including small, medium, and large enterprises. Operating throughout a network in metropolitan and regional NSW, Business NSW represents the needs of business at a local, state, and federal level.

We welcome the progress the NSW Government has made in relation to these reforms together with the opportunity to provide feedback on the draft regulations and guidelines. We look forward to working with government in the future.

INTRODUCTION

Under the Westminster system, the parliament is responsible for making the laws and the executive is responsible for implementing the laws. However, legislative power "*should be delegated where there is agreement that a task must be performed and it cannot be effectively performed by the legislature without the assistance of a delegate or without an expenditure of time so great as to lead to the neglect of equally important business*"

The delegation (of legislative power) "*can be considered both legitimate and desirable, subject to certain safeguards*" with one of those reasons being that the legislation "*is too technical or detailed to be suitable for parliamentary consideration".* Where "*it is necessary in legislation to set out technical details or deal with matters of a scientific nature. Parliaments have neither the time nor the expertise to consider such matters. The parliament needs to resolve whether legislation on the question is wanted, but, having so determined, the detail is best included in the delegated legislation.*" [1]

Given the contents of the *Workers Compensation Legislation Amendment Act 2025 No 72* (Act No 72 of 2025) and the *Workers Compensation Legislation Amendment (Reform and Modernisation) Act 2026 No 1* (Act No 1 of 2026), the manner in which they were debated and the passage of time taken before they could be enacted, with commencement dates largely left to the speed at which regulations could be prepared and proclaimed, this is clearly such a case.

Business NSW's submission focuses on the provisions relating to claims for primary psychological injuries and contains only one recommendation.

Recommendation
Following meaningful stakeholder consultation (including stakeholders with the relevant technical expertise required by the legislation), re-draft the regulations and guidelines to ensure the final result successfully implements the legal requirements contained in Act No 72 of 2025 and Act No 1 of 2026.

[1] "*Delegated Legislation in Australia and New Zealand*" Emeritus Professor DC Pearce © Butterworths Pty Limited 1977 at page 5 [10].

CLAIMS FOR PRIMARY PSYCHOLOGICAL INJURIES

The policy objectives

The policy objectives of this legislation, insofar as they relate to claims for psychological injuries, were made clear in both the Treasurer's speech (dated 18 March 2025) and the second reading speeches, especially that made in relation to the *Workers Compensation Amendment Bill 2025*[2].

Those objectives are simple. They are, first of all, that only particular types of psychological injuries should be compensable, and secondly, that they will only be compensable if caused in a particular way, possessing the relevant nexus to the workplace.

Numerous definitions and tests are included in the legislation to ensure this happens.

Those definitions and tests import extremely technical medical and legal concepts and require extensive industry-specific knowledge.

No party alone is expected to be the font of all knowledge. For this mechanism to work, it requires both the employer and injured worker to be able to provide the relevant information upon which such decisions are to be based and then the requisite knowledge and skill on the part of the insurer to decide whether or not the conditions have been met and, ultimately, whether the claim is compensable. If not, there are review mechanisms and, if necessary, the ability to go to the Industrial Relations Commission, to provide the necessary safeguards to ensure that only those cases that should be compensated are.

The effectiveness of the draft regulations

Unfortunately, the draft regulations fail to implement these laws effectively. Details of what we perceived to be the shortcomings in the draft regulations (and therefore, the guidelines), are set out below. We have arranged them in a way that follows the general claims process.

AN INJURY OCCURS

Clause 3A – a prescribed death being a relevant event

It is not apparent what role a prescribed death is supposed to play in order for it to be relevant event. Is the worker supposed to 'experience' it or 'witness' it?

EVIDENCE IN SUPPORT OF THE CLAIM NEEDS TO BE GATHERED AND PROVIDED

The evidence required under clauses 42E and 42F

The current version of the draft regulations require evidence to be provided by the worker.

However, the evidence required may not be enough of a foundation upon which to base the decisions required under the legislation.

The worker is required to provide this evidence in support of their claim

The information required to be provided to an insurer to enable it to make a decision under the legislation is extremely technical in nature. It requires a solid understanding of medical and legal concepts as well as an understanding of industry-specific roles.

[2] Ms SOPHIE COTSIS (Canterbury—Minister for Industrial Relations, and Minister for Work Health and Safety) (14:32), Legislative Assembly Hansard, 27 May 2025, pages 13 to 17.

In order to qualify as a claimant, the injury suffered by the worker must be a mental or psychiatric disorder that causes behavioural, cognitive or psychological dysfunction. Relying on such a worker to provide this type of information is a mechanism that will most likely fail.

Given that subsection 280AC(3) provides that "*If the insurer does not make a decision to accept the claim or dispute liability within the time required by subsection (1), the insurer is deemed to have made a decision to have accepted the claim.*" This may have the unintended consequences of the insurer, by the 42nd day, either accepting a significant number of claims due to the effluxion of time or declining claims that will then clog up the review and/or court system.

Clause 42G - making a relevant conduct claim

The terms of Clause 42G are ambiguous. Is a 'completed claim' one where all the spaces in the proposed form contain some information, regardless of the utility of that information or does it refer to a claim which contains all the information required under the legislation so the insurer can make each of the decisions required (under the legislation) in order to be in position to make the ultimate determination of whether or not to accept or decline the claim?

PROCESSING THE CLAIM

Clause 42I – matters and circumstances insurer must take into account

As mentioned before, the information required to be provided to an insurer to enable it to make a decision under the legislation is extremely technical in nature. It requires a solid understanding of medical and legal concepts as well as an understanding of industry-specific roles.

This is not reflected in the 'types of matters and circumstances' currently listed in clause 42I.

MANAGING THE CLAIM

Clause 52 - excess recoverable from employer

There was no consultation concerning the design of this excess. It purports to replace mechanism that encouraged early reporting of injuries, ultimately adding to the sustainability of the scheme through savings associated with early treatment.

Given the current economic climate, it is possible that this clause will drive perverse behaviours resulting in unintended consequences.

Clause 8P - Rules for determining whether treatments and services are reasonable and necessary

Clause 8P fails to recognise that one of the purposes of treatments and services made available to injured workers include rehabilitation services that will facilitate an appropriate recovery at or return to work. It also fails to recognise that such treatment and services are not there just to provide benefits, but to provide successful outcomes.

A clause is needed to reconcile an employer's injury management obligations with section 231A of the 1998 Act

Taken in isolation, the effect of section 321A seems to prevent an employer from properly executing its injury management obligations. Yet, the penalty imposed on an employer in relation to not providing suitable work has been doubled.

The draft regulations do not attempt to reconcile these two competing issues.

They need to explain to the employer how they can acquire and utilise the knowledge gained from such treatment or examinations in order to be in a position to offer suitable duties.

CONCLUSION

The combination of the above, if left uncorrected, will most likely end up with a result that clearly doesn't support the underlying policy objectives of the legislation. However, this can be avoided through a considered redraft (preferably involving extensive stakeholder consultation) of those draft regulations.

Recommendation

Following meaningful stakeholder consultation (including stakeholders with the relevant technical expertise required by the legislation), re-draft the regulations and guidelines to ensure the final result successfully implements the legal requirements contained in Act No 72 of 2025 and Act No 1 of 2026.

If you should have any queries about this submission, please don't hesitate to contact Elizabeth Greenwood, Senior Policy Manager, Workers' Compensation, WHS and Regulation by email on elizabeth.greenwood@businessnsw.com.

Yours Sincerely,

Liz Greenwood

Senior Policy Manager
Workers Compensation, WHS and Regulation
Business NSW