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SUBMISSION TO THE NSW UPPER HOUSE STANDING COMMITTEE ON LAW AND JUSTICE

Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales

1. Introduction

- a. The Council of Small Business Organisations of Australia (COSBOA) welcomes the opportunity to make a submission to the Standing Committee on Law and Justice's inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales.
- b. COSBOA is the national peak body representing the interests of small businesses across Australia. Our membership includes industry associations and individual small business owners. We advocate for policies that support a vibrant, diverse and sustainable small business sector, which collectively employs over 4.5 million Australians and contributes approximately 35% to Australia's GDP.
- c. This submission addresses the Terms of Reference for the inquiry, with a particular focus on how the proposed amendments in the Workers Compensation Legislation Amendment Bill 2025 exposure draft will affect small businesses in New South Wales. We have considered the financial sustainability of the workers' compensation system and the specific provisions of the exposure draft that will impact small business operations, costs, and compliance requirements.

2. Executive Summary

- a. COSBOA acknowledges the important role that workers' compensation plays in protecting employees and providing employers with certainty. However, we are concerned that several aspects of the proposed legislation will disproportionately impact small businesses, which typically have less capacity to absorb increased costs and compliance burdens compared to larger enterprises.
- b. Our key concerns include:
 1. **Significant increases in statutory benefit amounts** without corresponding measures to contain premium costs for small businesses
 2. **New requirements regarding psychological injuries** that may present challenges for small businesses with limited HR resources
 3. **Increased complexity in claims management** that will require additional resources and expertise

4. **Financial impact on small businesses** through likely premium increases
 5. **Limited transitional provisions** to help small businesses adapt to the new requirements
- c. Whilst COSBOA supports the objectives of preventing workplace psychological injuries and ensuring appropriate compensation for affected workers, we believe these objectives must be balanced with practical considerations for small business viability. This submission offers recommendations to improve the bill to better support both workers and small business employers.

3. Small Business Context

Small businesses in NSW face unique challenges when navigating the workers' compensation system:

- Unlike large businesses, small enterprises rarely have dedicated HR departments or workplace health and safety specialists
- Small businesses typically operate with tighter cash flows and profit margins, making them more vulnerable to cost increases
- The administrative burden of compliance falls directly on business owners or key staff who are also responsible for day-to-day operations
- Small businesses often have limited capacity to implement formal workplace policies and procedures

These contextual factors should be considered when assessing the impact of the proposed changes.

4. Analysis of Key Provisions and Their Impact on Small Businesses

4.1 Definition and Management of Psychological Injuries

The bill introduces several new provisions relating to psychological injuries, including:

1. Definitions of "psychological injury" (s.8A), "primary psychological injury" (s.8B), and "secondary psychological injury" (s.8C)
2. Definition of "reasonable management action" (s.8D)
3. Specification of "relevant events" that can cause compensable psychological injuries (s.8E)

Impact on small businesses:

Small businesses typically lack formal HR processes, specialised training in mental health issues, and the resources to develop comprehensive psychological risk management systems.

The proposed definitions may create uncertainty for small employers regarding:

1. How to identify and respond to potential psychological injuries

2. What constitutes "reasonable management action" in everyday operations
3. Whether their existing management and feedback processes are compliant

COSBOA accepts that s.8D attempts to define "reasonable management action" and is supportive of excluding those matters from the definition of psychological injury in cases where reasonable management action has occurred.

Moreover, the requirement for workers to obtain findings of sexual harassment, racial harassment, or bullying from a tribunal, commission, or court before claiming compensation for psychological injuries (s.8F) may reduce speculative claims and is welcomed.

However, small businesses may still face significant costs and business disruption defending claims in these forums before workers' compensation matters are determined.

4.2 Significant Increases in Statutory Benefits

The exposure draft proposes substantial increases to benefit amounts, including:

- Death benefits increasing from \$750,000 to \$955,950 (s.25(1)(a))
- Weekly payments for dependants increasing from \$66.60 to \$171.10 (s.25(1)(b))
- Maximum weekly compensation increasing from \$1,838.70 to \$2,569.60 (s.34(1))
- Permanent impairment compensation amounts increasing by approximately 28% (s.66)

Impact on small businesses:

These increases will inevitably lead to higher premiums for employers. For small businesses, which often operate with thin margins, these increased costs could:

- Reduce capacity to hire additional staff
- Put pressure on wage growth for existing employees
- Affect overall business viability in competitive industries

While we understand the need to ensure adequate compensation for injured workers, the scale of these increases without corresponding efficiency measures will create financial challenges for small businesses.

4.3 Changes to Weekly Payment Duration for Psychological Injuries

The bill introduces a 130-week limitation on weekly payments for primary psychological injuries (s.39A), except for workers with a permanent impairment of at least 31%.

Impact on small businesses:

This provision may help contain some long-term claim costs, but the 31% threshold for ongoing entitlements is still significantly higher than the 15% threshold that applies to physical injuries. The disparity in thresholds creates uncertainty for small business employers regarding their potential liability for psychological injury claims.

4.4 New Medical Expenses and Work Pressure Provisions

The bill introduces:

- A change from "reasonably necessary" to "reasonable and necessary" for medical expenses (s.60)
- A new special entitlement to expenses for medical treatment related to work pressure disorders (s.148B)

Impact on small businesses:

The shift to "reasonable and necessary" may slightly tighten the criteria for compensable medical expenses. However, the introduction of the new work pressure provisions creates a parallel system that could increase complexity for small business employers who may struggle to distinguish between compensable work pressure disorders and non-compensable workplace stress.

4.5 Permanent Impairment Assessment Changes

The bill introduces a new Part 6 with detailed provisions for permanent impairment assessments, including:

- Principal assessments conducted by approved assessors
- Permanent impairment agreements between parties
- Mandatory legal advice for workers before assessments

Impact on small businesses:

These changes add further complexity to the workers' compensation system. Small businesses typically rely on their insurers to manage claims, but these provisions will require more active employer engagement in the permanent impairment assessment process. The additional procedural requirements may increase claim durations and administrative costs for insurers, ultimately affecting premiums.

4.6 Changes to Premium Calculations and Excess Payments

The bill removes provisions about the prescribed excess amount being determined by the Workers Compensation Market Practice and Premiums Guidelines (s.160) and replaces them with regulations.

Impact on small businesses:

This change creates uncertainty for small businesses regarding their future excess payment obligations. The shift to regulation-based determination could lead to increased excess amounts without the thorough consultation process that usually accompanies guideline changes. Small businesses need predictability in their financial obligations to plan effectively.

5. Overall Financial Sustainability Concerns

The combination of significantly increased benefits, new entitlements, and complex administrative processes raises serious questions about the overall financial sustainability of the NSW workers' compensation system. Our specific concerns include:

- The exposure draft does not adequately address how the increased statutory benefits will be funded
- There is no clear cost-benefit analysis of the psychological injury provisions
- The impact on premium calculations for small businesses is not addressed
- The bill does not include measures to improve scheme efficiency to offset increased costs

COSBOA is particularly concerned that these changes could lead to substantial premium increases for small businesses, which would impact their viability and capacity to create jobs. The workers' compensation system must balance fair compensation for injured workers with affordable and predictable costs for employers.

6. Recommendations

COSBOA offers the following recommendations to address the concerns identified above:

6.1 Improve Support for Small Businesses Managing Psychological Risks

- a. **Create a Small Business Mental Health Support Program** funded through the workers' compensation system to provide practical tools, templates, and advice to help small businesses prevent psychological injuries and manage claims effectively.
- b. **Develop clear guidelines** specific to small businesses on implementing "reasonable management action" in everyday operations.
- c. **Provide free educational resources and training** to help small business owners and managers identify and respond to psychological health risks.
- d. **Appoint an accountable customer orientated small business representative** at either WorkCover and/or within workers compensation insurers themselves to efficiently "triage" an employee's claim from a small business employer in a timely manner prior determination to limit vexatious and disingenuous claims which are costly and time consuming for small business.

6.2 Address Financial Impact on Small Businesses

- a. **Introduce a Small Business Premium Protection Mechanism** that caps the year-on-year premium increases for businesses with fewer than 50 employees at no more than 5%.
- b. **Phase in benefit increases** over a 3-5 year period rather than implementing them immediately, allowing businesses time to adapt.

6.3 Simplify Compliance for Small Businesses

- a. **Create simplified processes** for small businesses engaging with the workers' compensation system, recognising their limited resources and expertise.
- b. **Establish a Small Business Claims Advice Service** within Workcover NSW to provide free, independent guidance to small businesses managing complex claims.
- c. **Develop template policies and procedures** that small businesses can easily adapt to meet their obligations regarding psychological injuries.

6.4 Improve the Draft Legislation

- a. **Clarify the definition of "reasonable management action"** to better reflect the operational realities of small businesses.
- b. **Ensure consistent thresholds** for ongoing benefits across physical and psychological injuries to improve system simplicity.
- c. **Incorporate specific provisions** addressing the unique challenges faced by small businesses throughout the legislation.

7. Conclusion

- a. While COSBOA supports the Bill's intent to modernise workers compensation and accepts that the intent of "reasonable management action" contained in the exposure draft correctly attempt to curtail spiralling claims costs, it submits that aspects of the current draft risks imposing unsustainable costs and administrative burdens on small businesses.
- b. COSBOA supports the objectives of preventing workplace psychological injuries and ensuring appropriate compensation for affected workers. However, we are concerned that the proposed amendments in their current form will disproportionately impact small businesses through increased costs, compliance burdens, and complexity.
- c. We urge the Committee to consider our recommendations to create a more balanced approach that protects workers while supporting the viability of small businesses in New South Wales. The workers' compensation system must recognise the diverse needs and capacities of different-sized businesses, with special consideration for small enterprises that form the backbone of local economies.

**For and on behalf of the:
Council of Small Business Organisations of Australia**