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‘Extreme and harsh’: NSW Labor on collision course with unions over workers’ comp changes



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Unions are gearing up for yet another fight with the Minns government over a proposed overhaul of workers’ compensation laws, with legal experts warning the government is contemplating reforms to severely restrict employees who suffer psychological injuries on the job from claiming benefits.

With the number of psychological injury claims doubling in the past six years, and return-to-work rates plummeting, NSW Treasurer Daniel Mookhey has flagged plans for a radical overhaul of worker’s compensation for injuries such as post-traumatic stress disorder.



Unions NSW secretary Mark Morey has levelled a series of criticisms at the Minns government over proposed changes to workers compensation laws. DOMINIC LORRIMER

The government has warned that employers face premium increases of 36 per cent over three years from 2027, and says the current system is “failing injured workers, failing businesses and failing the state”.

While the reforms are yet to be finalised, Labor is contemplating establishing a bullying and harassment jurisdiction in the Industrial Relations Commission (IRC) to handle workplace complaints before compensation claims are lodged. It has also flagged doubling the psychological impairment threshold needed for workers to claim lump-sum payments from 15 to 30 per cent.
Mookhey says giving the IRC more powers would give workers “the right to call out a psychological hazard before an injury takes place” and put “prevention ahead of compensation”, while lifting the impairment threshold would bring NSW into line with other states such as South Australia.

But after weeks of behind-closed-doors negotiations, Unions NSW boss Mark Morey said some of the changes Labor was contemplating were “unacceptable” and would harm injured workers.

“Cutting away people’s rights is not preventing the problem,” Morey, who also sits on the board of state insurer icare, said.

The changes have been welcomed by industry groups such as Business NSW, and some unions such as the NSW Police Association have said they believe they will be exempt from the changes.

But the breadth of the reforms being contemplated by the government has prompted alarm among other unions, some Labor MPs and legal experts, who say the reforms will make it

extremely difficult for workers to access compensation for psychological injuries suffered on the job.

Scott Dougall, a partner at law firm Carroll & O'Dea who specialises in workers' compensation, said changes to the impairment threshold in particular were "extreme and harsh" and warned that they would lead to "seriously injured workers [being] left without longer-term support".

"If all of these proposals were adopted, the overwhelming majority of people with psychological injuries arising within the workplace would not be entitled to make a claim," he said.

"I can understand the rationale behind seeking to minimise the volume of smaller claims; however, I do not understand the drive to penalise those with a more serious injury."

While South Australia has a 30 per cent threshold for "serious injury", experts such as Craig Tanner, a barrister who worked as an arbitrator in the Workers Compensation Commission from its inception in 2002 and has specialised in personal injury claims for more than a decade, said the two states use different methodologies to calculate impairment.
State insurer icare has warned its bottom line is being "adversely impacted" because psychological claims more regularly reach a 15 per cent impairment threshold, but Tanner said in his more than two decades in the industry he could not recall a case in which impairment reached 30 per cent.

"A worker impaired to that degree would in all likelihood be either housebound or in institutional care," he said.

While the government says giving the IRC jurisdiction over psychological claims would help prevent unsafe workplaces, Morey said forcing a worker to litigate against their bosses to access benefits will act as a deterrent to lodging claims, and has the potential to exacerbate mental health problems.

"It is totally inappropriate," Morey said. "Making people who have suffered any level of harassment, sexual or otherwise, have to litigate that, I think anyone would tell you that is not a trauma-informed response."

Tanner also dismissed the argument that the IRC could help prevent workplace psychological injuries, and said in his view the proposal was "obviously intended to serve as a procedural barrier which will prevent workers from making claims".

The government will likely be sensitive to accusations it is seeking to curb worker entitlements, particularly after mounting a long-running campaign against wasteful spending at icare and poor practices by insurers while in opposition.

A spokesman for the treasurer said the government was "committed to modernising a system that is failing injured workers, failing businesses and failing the state".

But Greens MP Abigail Boyd said the changes "are all about their own budget bottom line".

"When the unintended consequences of this package of cuts to the workers' compensation system are this strikingly foreseeable, you have to think they're more an intentional feature than a bug. This is a government that simply doesn't want to support their own injured workers," she said.

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