

# Australia: NSW Labor government moves to slash workers' compensation

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The New South Wales (NSW) Labor government is seeking to introduce new legislation by July aimed at slashing costs to businesses and the state of workers' compensation payments for injuries sustained at work. The proposed changes could eliminate virtually all payouts for workplace psychological damage, under conditions of a dramatic rise in such claims, partly due to mounting workplace stress, overwork and plummeting real wages.

The legislation will intensify the decline in living standards and working conditions that is behind the growing number of mental health injury claims, especially in the health sector, where the COVID-19 pandemic has exacerbated the already intolerable workloads of staff. This, in turn, increased burnout, leading to health workers leaving the industry in droves, worsening already chronic understaffing. NSW has the lowest number of full-time health employees per capita of any state or territory.

According to the Australian Institute of Health and Welfare (AIHW), the demand for health services is outpacing the growth of the workforce. By 2030, Australia is expected to have a shortage of 123,000 nurses. Rural and remote areas are particularly affected, with up to 50 percent fewer healthcare professionals per capita than in urban centres. The aged care sector alone needs 17,000 more workers annually to maintain current levels of care. The Committee for Economic Development of Australia (CEDA) even predicted that the skills shortage in aged care will hit 400,000 by 2040.

The NSW government, in passing this legislation, will address none of these conditions that lead to an increase in compensation claims, but will deny workers the right to compensation, thereby denying them the right to treatment and the time required to recover.

Injured workers will be presented with an impossible choice: Try to return to work despite being mentally unfit, placing themselves and others at further risk; or attempt to eke out an existence on pitiful poverty-level welfare payments.

The Labor government is attacking the fundamental premise of workers' compensation legislation—that employers are responsible for providing a safe work environment and are financially liable for workplace injuries, illness and death that result from the failure to do so. While the immediate proposed changes specifically target psychological damage, workers should harbour no illusions that the same cost-slashing measures will not be extended to physical injuries in the near future.

The state Labor government has made no secret of the cost-cutting motivation behind the proposed legislation. Echoing complaints from business lobbyists, NSW Treasurer Daniel Mookhey in March lamented that workers' compensation insurance premiums had risen 8 percent per annum over the past three years and were expected to

increase by a further 36 percent by 2027–28. Despite this, Mookhey claimed, the main insurance scheme in the state, icare, had only 85 percent of the funds needed to pay for injured workers' claims.

Mookhey bluntly told a parliamentary inquiry into the proposed changes, "I will not be authorising any further injections" of funding into icare. The insurer's financial woes follow its history of scandals and corruption, including the underpayment of 53,000 injured workers a total of some \$80 million between 2012 and 2019.

The NSW Labor government intends to address icare's financial troubles by slashing payouts.

The new legislation will sharply narrow the definition of psychological injuries eligible for compensation, and require that they be the result of a "relevant event." This would specifically exclude psychological harm caused by excessive workload and pressure, which were responsible for more than a quarter of serious mental injury claims in 2021–22, according to Safe Work Australia.

The government plans to establish a new "bullying and sexual harassment jurisdiction" in the Industrial Relations Commission (IRC)—the state's pro-business industrial court—before which workers will have to plead their case before making a compensation claim. Along with "anti-fraud" measures modelled on recent changes to the National Disability Insurance Scheme, this starts from the position that employees' claims are false, that employers are not responsible for damage to their health and wellbeing and that it is up to the injured worker to prove otherwise, through a process that is likely to cause further mental distress.

The legislation would raise the permanent impairment threshold for workers to access lump sum payments or work injury damages for a psychological injury from 15 percent to 31 percent impaired.

According to the existing guidelines, a worker with "Class 3" impairment (11 to 30 percent impaired): "Cannot work at all in same position. Can perform less than 20 hours per week in a different position, which requires less skill or is qualitatively different (eg less stressful)."

Moreover, an individual in this category: "Can't live independently without regular support. Needs prompting to shower daily and wear clean clothes. Does not prepare own meals, frequently misses meals."

Workers' compensation lawyer Scott Dougall told the *Sydney Morning Herald* (SMH), "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."

Psychiatrist Dr Julian Parmegiana, principal author of the Psychiatric Impairment Rating Scale told the SMH: "If you're going to take that step and say 'we're increasing it to 30 per cent impairment,' you might as well euthanise the entire scheme and just

say: 'We're not paying out any claims for any psychological injury,' because that is the effect."

Australian Association of Psychologists Vice President Katrina Norris told a parliamentary inquiry, "An impairment of 15 percent requires an individual to be unable to function independently in almost all domains of life."

The NSW Labor government is not alone in moving to deny compensation to workers who have sustained this profound level of psychological injury in the workplace. Similar restrictions are in place in South Australia and Queensland, as well as Victoria, where the state Labor government imposed its "WorkCover Scheme Modernisation Act" in March last year.

The trade unions in Victoria postured at times as critics of the changes, but ultimately ensured they were implemented without challenge from workers, who were prevented from taking industrial action against the move.

The Victorian Trades Hall Council (VTHC) participated in the government inquiry to draft the legislation, agreeing with big-business complaints that the scheme was costing too much. Only after the bill was introduced into parliament and essentially a finished question did the VTHC take any oppositional action at all, which amounted to sending letters to Labor MPs, pleading for them to vote against their own party's legislation. Once the laws were passed, the VTHC denounced them as representing "the worst of Victorian politics," and then never said another word.

Unions NSW is publicly opposing the legislation and has called a series of protests over the next week. These are not strikes, but "own-time" rallies, explicitly designed to create minimal disruption to business or the government. They are intended as nothing more than an opportunity for workers to let off steam, and to divert opposition to the attack on workers' rights into plaintive appeals to the very government carrying it out.

The union bureaucrats have no disagreement with the underlying premise of the proposed changes—that costs have to be slashed from the workers compensation scheme. The "five-point plan" they submitted to a government inquiry to prepare the legislation was intended to provide "other options to improve the financial sustainability of the scheme."

The peak body's own survey of workers highlights "role overload" as overwhelmingly the most serious hazard to psychosocial safety in the workplace. Asked what should be done to improve workers' mental health, 67 percent of those surveyed identified "employing additional staff," and 58 percent "improving pay and conditions."

But the "five-point-plan" demands neither, instead calling for the greater empowerment and involvement of the IRC, financial incentives "to reward safety-conscious employers," and for measures to address supposed "waste and inefficiency within the scheme."

In other words, far from leading workers in a fight for the improved wages, staffing and conditions needed to reverse the rise in workplace psychological injuries, the union bureaucrats are proposing an alternate means of dealing with their financial consequences.

The reality is that the union bureaucracies, along with the state Labor government, are responsible for the dire wages and working conditions identified by workers as the primary cause of the rise in psychological injuries at work.

Healthcare accounted for more than 14,000 claims nationally from 2017–18 to 2021–22, more than a quarter of the total, while around 7,500 claims were in education. These sectors have been subjected to decades of government funding cuts and are characterised by chronic

understaffing, plummeting real wages and usurious workloads as a result, a situation that has been drastically worsened since the onset of the COVID-19 pandemic.

The assault on these sectors could not have been carried out without the collaboration of the trade union bureaucracies.

In NSW, repeated mass strikes in 2022 by health workers and educators, over wages, conditions and safety, were diverted into a campaign to elect a Labor government, which was presented to workers by the bureaucrats as a panacea, but which has in fact only deepened the attack on the public sector. Last year, strikes by nurses and midwives were shut down by the NSW Nurses and Midwives' Association, which is now upholding a nine-month industrial action ban from the IRC.

This underscores the urgent need for workers to take matters into their own hands. Labor's attack on workers compensation must be fought, but this is impossible within the framework of the union apparatus.

Rank-and-file committees, led by workers themselves, must be built in hospitals, schools and all other workplaces, throughout NSW and around the country, as the means through which workers can take up a unified struggle, independent of the trade unions, for the defence of their rights.

Labor's attempt to eviscerate workers compensation is a stark illustration of the incompatibility of the capitalist system, in which not only wages and working conditions, but even workers' health and lives are subordinated to the profit interests of the financial and corporate elite. This is starkly expressed in Mookhey's claim that the resources for workers compensation come at the "expense of schools, hospitals or kids in need of out-of-home care."

This poses the need for workers to fight for a political alternative, socialism, in which the vast resources currently controlled by a tiny minority are placed under democratic workers' control, so that they can be used to satisfy the needs of the working class, not further enrich the wealthy few.



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