

# Conflicts Between the Workers Compensation Amendment Bill 2025 and NSW WHS Laws and Codes of Practice

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## Overview

This document compares the NSW Workers Compensation Legislation Amendment Bill 2025 (Exposure Draft) with current WHS obligations under the:

- **Work Health and Safety Act 2011 (NSW)**
- **WHS Regulation 2017 (NSW)**
- **SafeWork NSW Code of Practice: Managing Psychosocial Hazards at Work (2021)**

It identifies conflicts, contradictions, or legal misalignments, particularly where employer responsibilities under WHS law may be undermined or contradicted by new compensation exclusions, thresholds, or procedural delays in the Draft.

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## 1. Duty of Care and Psychological Injury Recognition

- **WHS Act s19** requires PCBU's to ensure health and safety, including psychological health, "so far as is reasonably practicable."
  - **SafeWork Code** recognises cumulative psychosocial hazards (e.g. high job demands, role conflict, poor support) as risks requiring proactive control.
  - The **Exposure Draft**, by contrast, limits compensability to injuries from specific "relevant events" (e.g. violence, harassment *after tribunal findings*) and excludes "work pressure disorders."
  - **Conflict:** A psychological injury from cumulative workplace stress must be prevented under WHS law but may not be compensable under the Draft unless it stems from a listed event. This sets up a legal gap: a worker may be harmed by something the employer is legally required to prevent but is not financially liable for under compensation law.
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## 2. Preventive vs Reactive Legal Frameworks

- **WHS law is proactive:** Employers must identify and control risks before harm occurs (e.g. clause 55C, WHS Regulation).
- **Workers compensation law (under the Draft) is reactive and restrictive:** Compensation eligibility applies only after injury is clinically diagnosed and traced to a specific event.
- **Conflict:** WHS law expects employers to mitigate even minor psychosocial hazards; the Draft may encourage employers to ignore risks unless a claimable event occurs.

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### 3. Reporting Requirements vs Compensation Gatekeeping

- Under WHS law, serious psychological injuries (e.g. hospitalisation due to mental health crisis) are **notifiable incidents** (WHS Act s38).
- The Draft delays compensation access for bullying/harassment injuries until a **tribunal or court confirms misconduct occurred**.
- **Conflict:** WHS promotes immediate response and incident control, but the Draft creates procedural delays that may discourage early intervention or worker disclosure.

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### 4. Work Pressure Disorders and Short-Term Employer Liability

- The Draft defines "**work pressure disorders**" as psychological injuries caused by workload or general job stress – not compensable beyond 8 weeks of employer-funded treatment.
- WHS Code identifies these as real hazards requiring risk control.
- **Conflict:** An employer legally obligated to prevent harm from work pressure (under WHS) is simultaneously protected from compensating that harm under the Draft, beyond a token payment. This undermines WHS risk control incentives.

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### 5. Higher Thresholds for Psychological Injuries

- The Draft raises the impairment threshold for psychological injuries to **31% WPI** for access to lump sums or extended benefits.
- Physical injuries retain the **15% WPI** threshold.
- WHS law treats physical and mental health equally.
- **Conflict:** The higher bar for psychological injuries may discourage employers from addressing them with equal seriousness, in contradiction of WHS duties.

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### 6. Disallowance of Dual Injury Recognition

- Clause 8I of the Draft allows compensation only for **the greater of physical or psychological injury**, not both, even if both arise from the same event.
- WHS law requires all harm to be addressed.
- **Conflict:** Ignoring one component of dual harm for compensation may reduce employer vigilance or workplace rehabilitation efforts in that area.

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### 7. Employer Legal Uncertainty and Practical Conflict

- Employers may comply with the Draft's compensation framework while **violating WHS law** (e.g. dismissing a psychological injury due to no "relevant event").
  - SafeWork NSW may prosecute for failure to manage psychosocial risks regardless of compensation eligibility.
  - **Conflict:** Employers face dual but inconsistent compliance regimes, increasing legal exposure and confusion.
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## Conclusion

The Exposure Draft's restrictions on psychological injury compensation conflict with NSW's existing WHS laws and Code of Practice, which promote comprehensive prevention and equal treatment of physical and psychological harm. These inconsistencies may result in:

- Employers being caught between conflicting obligations
- Reduced support and recognition for genuine mental health injuries
- Undermining the effectiveness of WHS enforcement and injury prevention efforts

A harmonised approach is needed to ensure that workers receive support for all work-related injuries, and that employer obligations remain clear, consistent, and aligned across both compensation and safety frameworks.