

Exclusionary provisions for psychological injuries 2017-2018

Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
<p>New South Wales</p> <p>'No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.' — s11A(1), <i>Workers Compensation Act 1987</i>.</p> <ol style="list-style-type: none"> (1) No compensation is payable under this Division in respect of permanent impairment that results from a secondary psychological injury. (2) In assessing the degree of permanent impairment that results from a physical injury or primary psychological injury, no regard is to be had to any impairment or symptoms resulting from a secondary psychological injury. (3) No compensation is payable under this Division in respect of permanent impairment that results from a primary psychological injury unless the degree of permanent impairment resulting from the primary psychological injury is at least 15%. <p>Note: If more than one psychological injury arises out of the same incident, s322 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> requires the injuries to be assessed together as one injury to determine the degree of permanent impairment.</p> <ol style="list-style-type: none"> (4) If a worker receives a primary psychological injury and a physical injury, arising out of the same incident, the worker is only entitled to receive compensation under this Division in respect of impairment resulting from one of those injuries, and for that purpose the following provisions apply: <ol style="list-style-type: none"> a) the degree of permanent impairment that results from the primary psychological injury is to be assessed separately from the degree of permanent impairment that results from the physical injury (despite s65(2)) b) the worker is entitled to receive compensation under this division for impairment resulting from whichever injury results in the greater amount of compensation being payable to the worker under this Division (and is not entitled to receive compensation under this Division for impairment resulting from the other injury), and c) the question of which injury results in the greater amount of compensation is, in default of agreement, to be determined by the Commission. <p>Note: If there is more than one physical injury those injuries will still be assessed together as one injury under s322 of the 1998 Act but separately from any psychological injury. Similarly, if there is more than one psychological injury, those psychological injuries will be assessed together as one injury, but separately from any physical injury — s65A, 1987 Act.</p>	<p>15% WPI for a primary psychological injury</p>	<p>Chapter 11 NSW Workers compensation guidelines for the evaluation of permanent impairment — fourth edition using the Psychiatric Impairment Rating Scale (PIRS)</p>
<p>Victoria</p> <p>There is no entitlement to compensation in respect of an injury to a worker if the injury is a mental injury caused wholly or predominately by any one or more of the following:</p> <ol style="list-style-type: none"> a) management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker's employer, or b) a decision of the worker's employer, on reasonable grounds, to take, or not to take any management action, or c) any expectation by the worker that any management action would, or would not, be taken or a decision made to take, or not to take, any management action, or d) an application under s81B of the <i>Local Government Act 1989</i>, or proceedings as a result of that application, in relation to the conduct of a worker who is a Councillor within the meaning of Clause 15 Schedule 1 — s40(1), <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> 	<p>30% WPI — not arising secondary to physical injury</p>	<p>The Guide to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC).</p>

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<p>In s40(7), management action, in relation to a worker, includes, but is not limited to, any one or more of the following:</p> <ol style="list-style-type: none"> a) appraisal of the worker's performance b) counselling of the worker c) suspension or stand-down of the worker's employment d) disciplinary action taken in respect of the worker's employment e) transfer of the worker's employment f) demotion, redeployment or retrenchment of the worker g) dismissal of the worker h) promotion of the worker i) reclassification of the worker's employment position j) provision of leave of absence to the worker k) provision to the worker of a benefit connected with the worker's employment l) training a worker in respect of the worker's employment m) investigation by the worker's employer of any alleged misconduct: <ol style="list-style-type: none"> (i) of the worker; or (ii) of any other person relating to the employer's workforce in which the worker was involved or to which the worker was a witness; or n) communication in connection with an action mentioned in any of the above paragraphs — s40(7). 		
<p>Queensland</p> <p>For a psychiatric or psychological disorder, employment must be the major significant contributing factor — s32(1), <i>Workers' Compensation and Rehabilitation Act 2003</i></p> <p>An injury does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances:</p> <ol style="list-style-type: none"> a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment b) the worker's expectation or perception of reasonable management action being taken against the worker, and c) action by the Regulator or an insurer in connection with the worker's application for compensation. <p>Reasonable management actions include action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker, a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment — s32(5).</p>	None	The Guidelines for Evaluation of Permanent Impairment are used to assess the degree of permanent impairment
<p>Western Australia</p> <p>Treatment of stress for compensation purposes.</p> <ul style="list-style-type: none"> • Compensation is not payable for diseases caused by stress if the stress wholly or predominately arises from the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment, or the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to employment or a worker's expectation of a matter or decision unless it is considered to be unreasonable or harsh on the part of the employer — s5(4), <i>Workers' Compensation and Injury Management Act 1981</i> <p>Treatment of secondary conditions in assessment of impairment.</p> <ul style="list-style-type: none"> • Secondary conditions are not included for the purposes of assessing impairment for common law, specialised retraining programs or payments of additional medical expenses. <p>'Secondary condition' means a condition, whether psychological, psychiatric, or sexual, that, although it may result from the injury or injuries concerned, arises as a secondary, or less direct, consequence of that injury or those injuries.</p>		For impairment assessment only: WorkCover WA Guidelines 4th ed. Psychiatric Impairment Rating Scale (PIRS)

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<p>South Australia</p> <p>In the case of psychiatric injury, it must arise out of or in the course of employment and the employment must be the significant contributing cause of the injury.</p> <p>The injury must not arise wholly or predominantly from any action of decision designated under section 7(4), which includes:</p> <ul style="list-style-type: none"> (i) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about the cessation of a worker's employment; (ii) on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with a worker's employment; (iii) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment; (iv) reasonable action taken in a reasonable manner under the Act affecting the worker — s7, <i>Return to Work Act 2014</i> 	<p>30% WPI to be regarded as seriously injured for the purposes of the <i>Return to Work Act 2014</i></p>	<p>Chapter 14 of the Return to Work Scheme Impairment Assessment Guidelines</p>
<p>Tasmania</p> <p>Compensation is not payable in respect of a disease which is an illness of the mind or a disorder of the mind and which arises substantially from:</p> <ul style="list-style-type: none"> (i) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about the cessation of a worker's employment (ii) a decision of an employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with a worker's employment (iii) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment (iv) the failure of an employer to take action of a type referred to above in relation to a worker in connection with the worker's employment if there are reasonable grounds for not taking that action, or (v) reasonable action taken by an employer under this Act in a reasonable manner affecting a worker — s25(1A), <i>Workers Rehabilitation and Compensation Act 1988</i> 		
<p>Northern Territory</p> <p>A mental injury is not an injury if due to management action taken on reasonable grounds and in a reasonable manner — s3A(2), <i>Return to Work Act</i>. See s3(1) for definition of 'management action'.</p>	<p>None</p>	<p>N/A</p>
<p>Australian Capital Territory</p> <p>A Mental Injury (including stress) does not include a mental injury (including stress) that is completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker — s4(2), <i>Workers Compensation Act 1951</i>.</p>	<p>0% WPI</p>	<p>—</p>
<p>C'wealth Comcare</p> <p>Compensation is not payable in respect of an injury (being a disease) if the injury is:</p> <ul style="list-style-type: none"> a) due to reasonable administrative action taken in a reasonable manner in respect of the employee's employment s5A(1) — a non-exclusive list of what might be taken to be 'reasonable administrative action' is included at s5A(2) b) intentionally self-inflicted — s14(2) c) a disease, or an aggravation of a disease, which the employee had made a wilful and false representation that he or she did not suffer, or had not previously suffered, for purposes connected with his or her employment or proposed employment by the Commonwealth or a licensed corporation — s7(7), <i>Safety, Rehabilitation and Compensation Act 1988</i>. 	<p>10% WPI</p>	<p>Comcare Guide Edition 2.1, Chapter 5</p>
<p>C'wealth Seacare</p> <p>Compensation is not payable in respect of an injury (being a disease) if the injury is:</p>	<p>10% WPI</p>	<p>Seacare Authority Guide 2.1, Chapter 5</p>

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<ul style="list-style-type: none"> a) due to reasonable disciplinary action or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment — s3 b) intentionally self-inflicted — s26(2) c) a disease, or an aggravation of a disease, which the employee made a wilful and false representation that he or she did not suffer, or had not previously suffered from that disease, for the purposes connected with his or her employment — s10(7), <i>Seafarers Rehabilitation and Compensation Act 1992</i>. 		
<p>C'wealth DVA</p> <p><i>Military Rehabilitation and Compensation Act 2004</i> (MRCA) — Psychological injuries are not treated any differently than other injuries or diseases</p> <p><i>Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988</i> (DRCA) — Compensation is not payable in respect of an injury (being a disease) if the injury is:</p> <ul style="list-style-type: none"> a) due to reasonable administrative action taken in a reasonable manner in respect of the employee's employment s5A(1) — a non-exclusive list of what might be taken to be 'reasonable administrative action' is included at s5A(2) b) intentionally self-inflicted — s14(2) c) a disease, or an aggravation of a disease, which the employee had made a wilful and false representation that he or she did not suffer, or had not previously suffered, for purposes connected with his or her employment or proposed employment by the Commonwealth or a licensed corporation — s7(7). 	<p>MRCA Initial compensation — 10 impairment points (IP)</p> <p>DRCA 10% WPI</p>	<p>MRCA Additional compensation — 5 IPs As per Chapter 4 'Emotional and Behavioural', GARP V (M)</p> <p>DRCA Comcare Guide Edition 2.1, Part 2, Chapter 5</p>
<p>New Zealand</p> <p>Cover does not exist for mental injuries if the mental injury is not caused by physical injuries — s26(1)(c), the result of a sudden traumatic event — s21B, or as a consequence of certain criminal acts — s21, <i>Accident Compensation Act 2001</i></p>		