

# Exclusionary Provisions for Psychological Injuries in the Commonwealth, States, Territories and New Zealand

## WorkSafe Australia 2012

<p><b>New South Wales</b></p>	<p>1987 Act, s11A(1)          * 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* -          S65A          *(1) no compensation is payable...(either as a permanent impairment (compensation pain and suffering compensation) in respect of permanent impairment that results from a second area psychological injury. Note: this does not prevent a second area psychological injury from being compensated under section 67 as pain and suffering resulting from permanent impairment (but only if that permanent impairment results from a physical injury or primary 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... (Either as permanent impairment compensation for pain and suffering compensation) 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%. Note: if more than one psychological injury arises out of the same accident section 322 of the 1998 Act requires the injuries to be assessed together as one injury to determine the degree of permanent impairment.          (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 ... In respect of impairment resulting from one of those injuries, and for that purpose the following provisions apply:              i. 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              ii. the worker is entitled to receive compensation ... for impairment resulting from whichever injury results in the greater amount of compensation being payable the worker ...(and is not entitled to receive compensation</p>	<p>15% WPI for a primary psychological injury</p>	<p>Ch 11 WorkCover Guides to the Evaluation of Permanent Impairment, using the Psychiatric Impairment Rating Scale (PIRS).</p>
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	<p>... for impairment resulting from the other injury).</p> <p>iii. In the greater amount of compensation is, in default of agreement to be determined by the Commission.</p> <p>Note: if there is more than one physical injury those injuries will still be assessed together as one injury under section 322 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.*</p>		
<p><b>Victoria</b></p>	<p>There is no entitlement to compensation in respect of an injury to a worker the injury is a mental injury caused wholly or predominantly by any one or more of the following:</p> <p>(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 section 81B of the initial's Local Government Act 1989, or proceedings as a result of that application, in relation to the conduct of a worker who is a Councillor within the meaning of section 14AA – s82(2A).</p> <p>In s82 management action, in relation to a worker, includes, but is not limited to, any one or more of the following – (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 workers employment position; (j) provision of leave of absence to the worker; (k) provision to the work 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; (n) investigation by the worker's employer of any alleged misconduct – (i) of the worker, or (ii) of any other person relating to the employers workforce in which the worker was involved or to which the worker was a witness; (n) communication in connection with an action mentioned in any of the above paragraphs – s82(10).</p>	<p>30% WPI – not arising secondary to physical injury</p>	<p>The Guide to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC)</p>

<p><b>Queensland</b></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> <ul style="list-style-type: none"> <li>(a) reasonable management action</li> <li>(b) the worker's expectation of perception of reasonable management action being taken against the worker</li> <li>(c) action by the authority or an insurer in connection with the worker's application compensation.</li> <li>(d) Reasonable management functions include action taken to transfer, demotion, discipline, redeployment, retrenched 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(A)</li> </ul>	<p>None.</p>	<p>AMA Guide (4<sup>th</sup> Edition)</p>
<p><b>Western Australia</b></p>	<p>Treatment of stress for compensation purposes  compensation is not payable for diseases caused by stress if the stress wholly or predominantly arises from the worker's dismissal, transfer or redeployment, or the worker is 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).  Treatment of secondary conditions in assessment of impairment  Secondary conditions are not included for the purposes of assessing impairment for common law, specialised training programs all payments of additional medical expenses.  "Second day 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>		<p>WorkCover WA Guides 3<sup>rd</sup> Ed Psychiatric Impairment Rating Scale (PIRS)</p>
<p><b>South Australia</b></p>	<p>S30A - Psychiatric disabilities  a disability consisting of an illness or disorder of the mind is compensable if and only if – (a) the employment was a substantial cause of the disability: and (b) the disability did not arise wholly or predominantly from – (i) reasonable action taken in a reasonable manner by the employer to transfer, demotion, discipline, counsel, retrench or dismissed the worker; or (ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with a worker's employment; or (iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the workers employment; or (iv) reasonable action taken in a reasonable manner under this Act in a reasonable manner affecting worker.  In addition, a permanent impairment benefit does not arise under s43 in relation to a psychiatric impairment.</p>	<p>N/A</p>	<p>N/A</p>

<b>Tasmania</b>	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 (i) reasonable action taken in a reasonable manner by an employer to transfer, demotion, 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 workers employment;(iv) the failure of an employer to take action of a type referred to above in relation to a worker in connection with a worker's employment if there are reasonable grounds for not taking the action; or (v) reasonable action taken by an employer under this Act in a reasonable manner affecting worker – s25(1A).		
<b>Northern Territory</b>	Compensation is not payable if the injury is⊕a) due to reasonable disciplinary action (b) due to failure to obtain promotion, transfer or benefit, or caused as a result of reasonable administrative action taken in connection with the worker's employment- s3(1).	None	N/A
<b>Australian Capital Territory</b>	And mental injury (including stress) does not include 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).	0% WPI	
<b>C'wealth Comcare</b>	Compensation is not payable in respect of an injury (being a disease) if the injury is: (a) due to reasonable administrative action taken in a reasonable manner in respect of the employees employment s5A(1) - a non-exclusive list of what might be taken to be 'reasonable administrative action' is included at s5(A2). (b) Intentionally self inflicted – s14(2). (c) A disease, if the employee, for the purposes can connected with his/her employment has made a wilful and false representation that he/she did not suffer, or had not previously suffered, from that disease – s7(7).	10% WPI	American Medical Association Guidelines to the Evaluation of Permanent Impairment (2nd Edition) Ch mental conditions

<b>C'wealth Seacare</b>	Compensation is not payable in respect of an injury (being a disease), if the injury is a result of reasonable disciplinary action taken against the employee, or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment – s3.	10% WPI	American Medical Association Guidelines to the Evaluation of Permanent Impairment (2nd Edition) Ch mental condition
<b>C'wealth DVA</b>	Psychological injuries are not treated any differently than other injuries or diseases.	Initial compensation - ten impairment points (IP)	Additional compensation- 5 IPs. As per Chapter 4 “Emotional and Behavioural” GARP V(M)
<b>New Zealand</b>	Cover does not exist for mental injuries in the mental injury is not caused by physical injuries – s26(1)(c), the result of a sudden dramatic event – s21(B), or as a consequence of certain criminal acts – s21.		