



# Workers Compensation Guide

Legislative changes and difficult claims

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21 August 2025

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# Proposed Legislative Changes



*Workers Compensation Legislation Amendment Bill 2025* was introduced into the Legislative Assembly on 27 May 2025 by the Labor Party.

The bill was then passed to the Legislative Council on 4 June 2025.

## **Long title:**

“An Act to amend workers compensation legislation and related legislation to implement changes to liability and entitlements for psychological injuries; and to make miscellaneous amendments to improve the effective operation of the workers compensation scheme.”



# Psychological Injuries



## **Definitions:**

Psychological injury – an injury that is a mental or psychiatric disorder that causes behavioural, cognitive or psychological dysfunction

Primary psychological injury – a psychological injury that is not a secondary psychological injury

Secondary psychological injury – a psychological injury to the extent the psychological injury arises as a consequence of, or secondary to, a physical injury



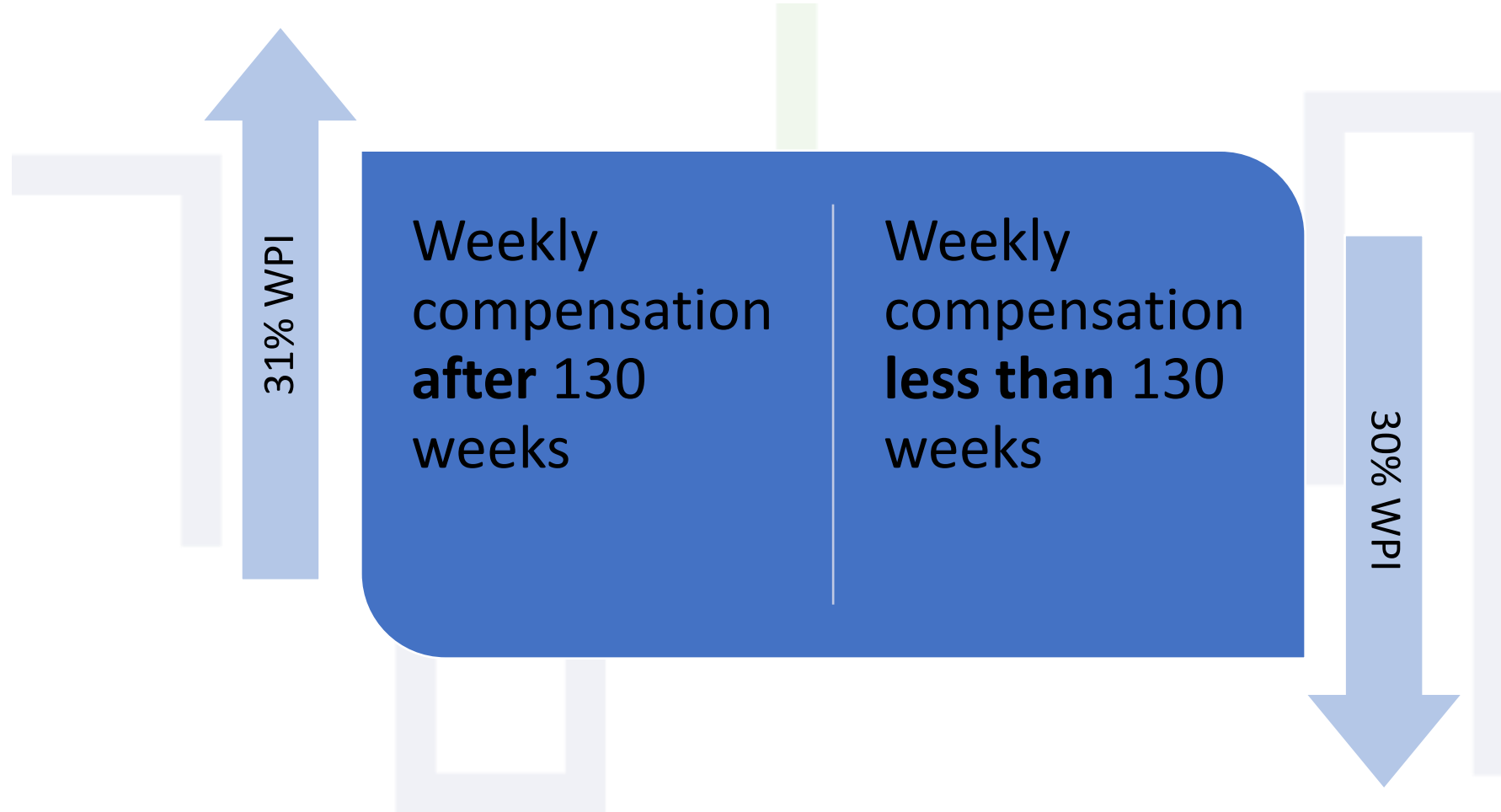
# Psychological Injuries



**Highest median time off work – approximately 37 weeks**

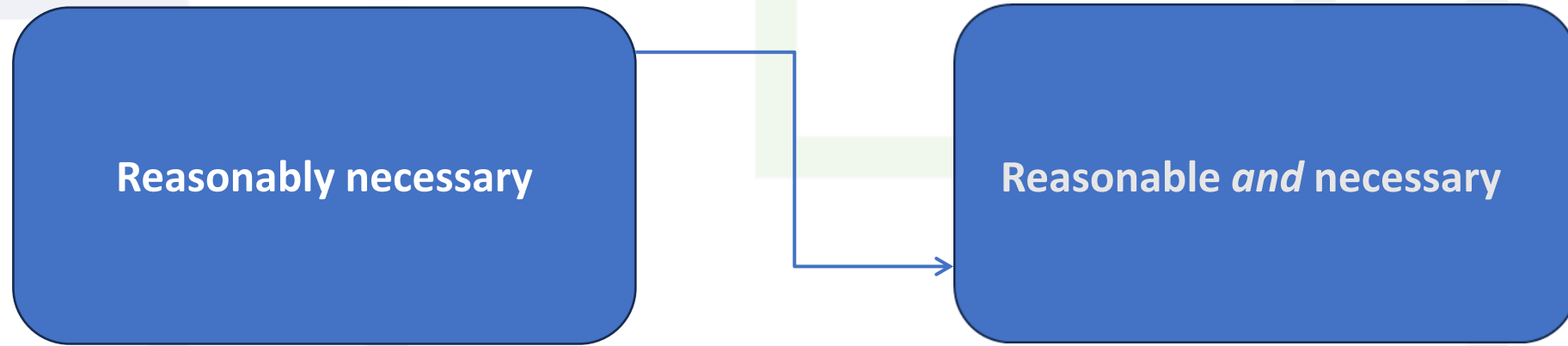


# Psychological Injuries





# Medical Treatment





# Primary Psychological Injury

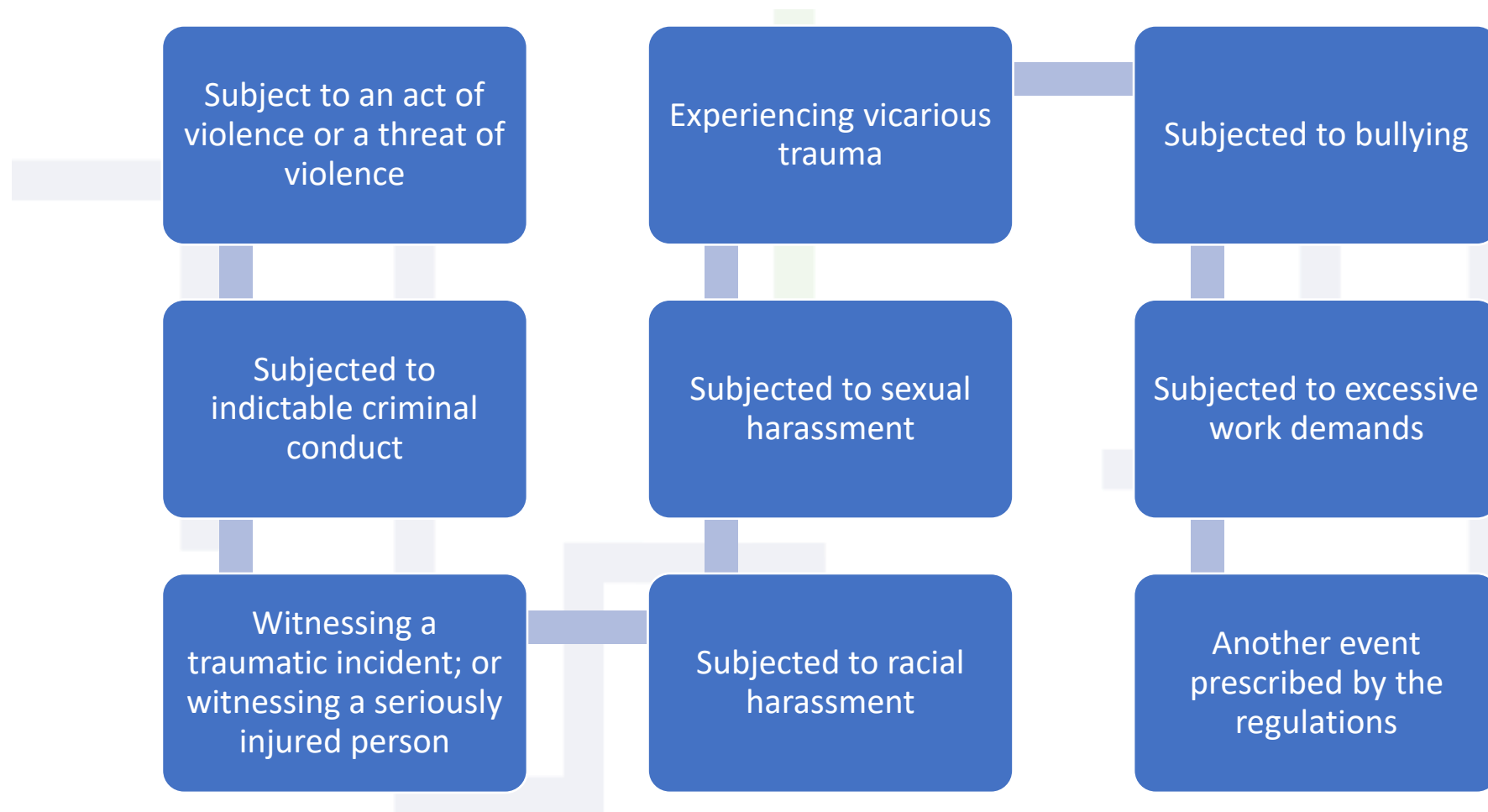


Compensation is payable to a worker with a primary psychological injury when:

- a) A **relevant event** or series of relevant events **caused** the primary psychological injury, and
- b) There is a **real and direct connection** between the relevant event or series of relevant events and the workers employment, and
- c) Employment is the **main contributing factor** to the primary psychological injury



# Primary Psychological Injury







# Excessive Work Demands

Excessive work demands are characterised as work demands that are:

- a) Beyond the requirements expected of the worker's role,
- b) Repeated and persistent, and
- c) Not reasonable in all the circumstances.



# Expedited Claims



**Insurers have 42 days to determine liability for psychological claims caused by bullying, excessive work demands, or harassment**



# Entitlements During Determination



## Weekly payment

No capacity – 75%  
PIAWE

Has capacity – 75%  
PIAWE less current  
weekly earnings

## Medical treatment

Workers  
Compensation  
Guidelines

When not specified -  
\$7,500

## Entitlements cease

Where liability is  
disputed – 14 days  
after decision

56 days after the  
claim is made

Where a claim is accepted – back payment is available



# New Process



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The Industrial Relations Commission (IRC) have jurisdiction to determine whether conduct of bullying, excessive work demands, or harassment, is ***relevant conduct*** as is required for a primary psychological claim.

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This is not a mandatory step in the workers compensation claims process. It may be enlivened by workers who seek a review of an insurer's decision. (What is not clear is the jurisdiction of PIC to determine this matter, given its overarching jurisdiction pursuant to s.105 of the WIM legislation.)

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The IRC must use an objective test and consider the worker's perception.





# Industrial Relations Commission Decision



Where the IRC determines the conduct was not relevant conduct, no further compensation is payable

Where the IRC determines the conduct was relevant conduct, the matter may proceed to the Personal Injury Commission



# Medical Assessments



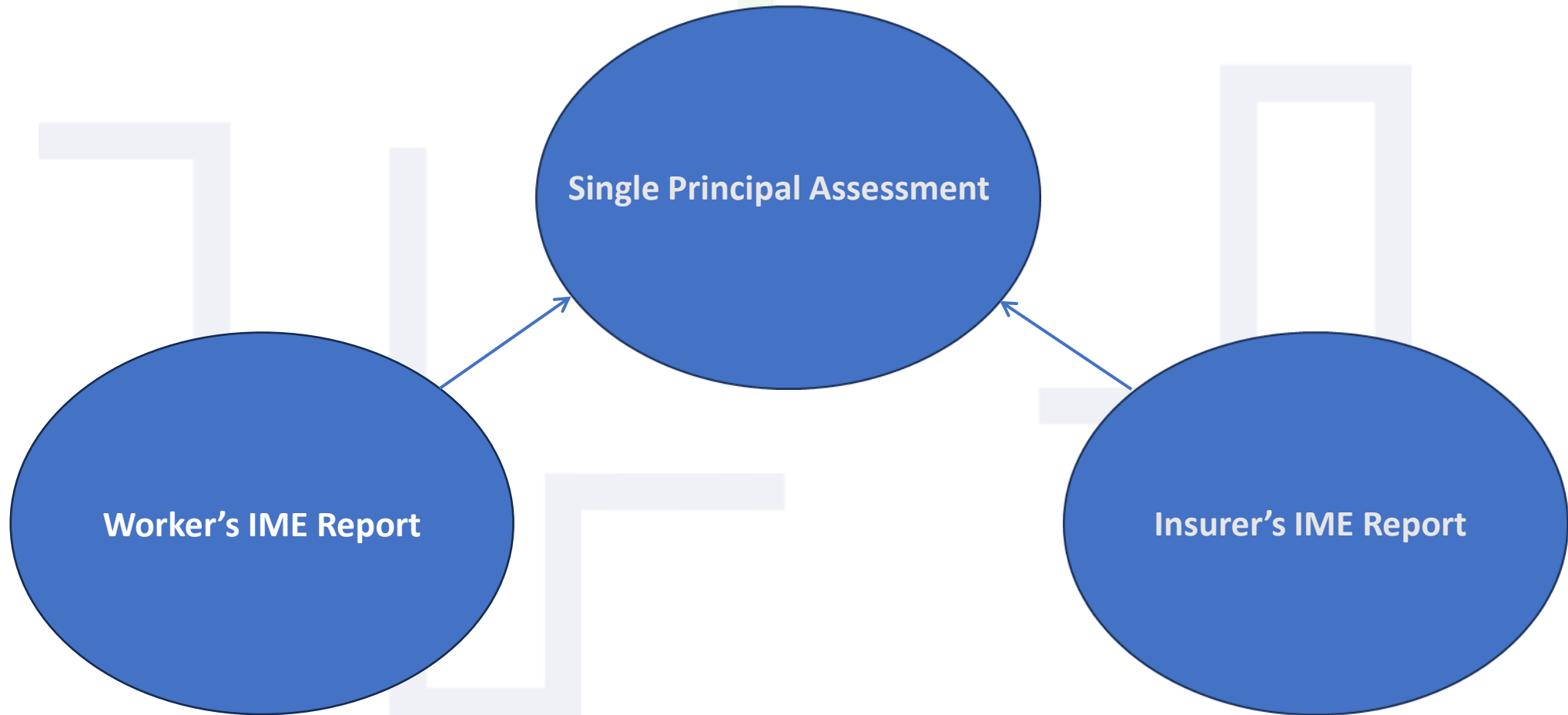
A worker will attend a SIRA accredited specialist for an Independent Medical Examination – IME. This report forms the basis of their claim.



An insurer will also obtain an IME report, that will provide the basis of their position.

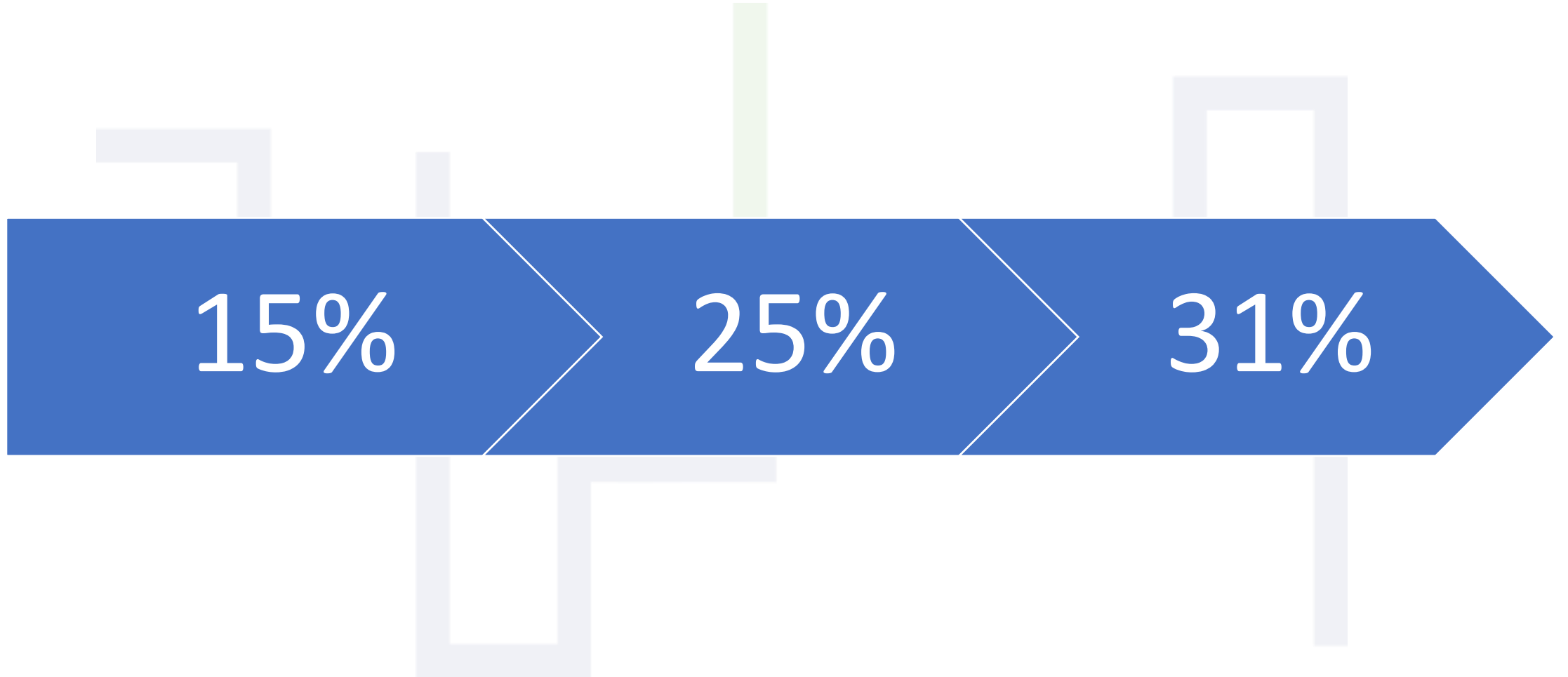


# Medical Assessments





# Whole Person Impairment







# Purpose



Parliament have determined that workers recover better at work. The reduction in eligibility for a range of workers compensation, including weekly payments and lump sum compensation, promotes the efficient return to the workplace. It is only where workers with significantly high whole person impairment findings will be eligible for compensation after 130 weeks of weekly payments.



# Work Injury Damages



Workers with psychological injuries will need to be assessed as having at least 31% WPI to pursue a work injury damages claim.





# Employer's Defence



Section 11A of the *Workers Compensation Act 1987* (NSW) currently provides:

- 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 benefit to workers.



# Employer's Defence



Proposed changes to section 11A:

- 1) No compensation is payable under this Act in relation to a psychological injury if the psychological injury was **predominantly caused** by –
  - a) **Reasonable management action** taken or proposed to be taken by an employer in relation to a worker, or
  - b) A **worker's expectation** of reasonable management action being taken in relation to the worker, or
  - c) A **worker's perception** of reasonable management action taken or being taken in relation to the worker.



# Employer's Defence

**Predominantly caused**



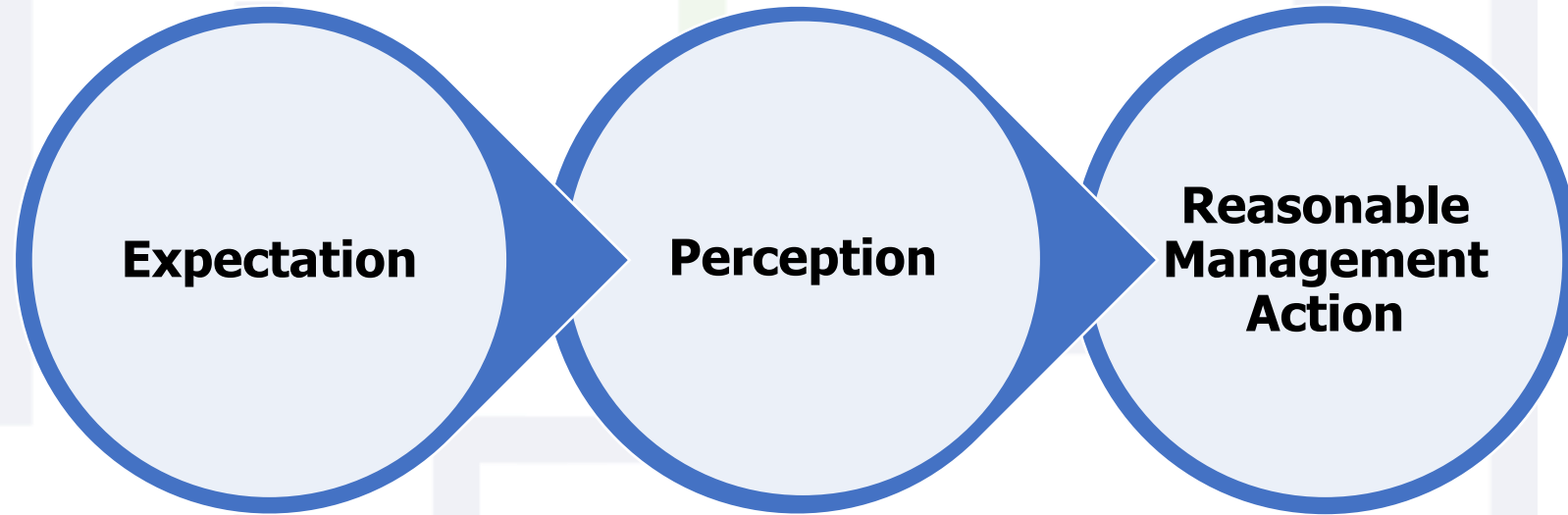
**Principal or main cause**

# Reasonable Management Action





# Employer's Defence





# Penalties

- The proposed amendments seek to increase existing penalties for employers.
- The amendments will also add a new provision, making it an offence for large employers to fail to give insurers relevant information.





# Managing Difficult Claimants

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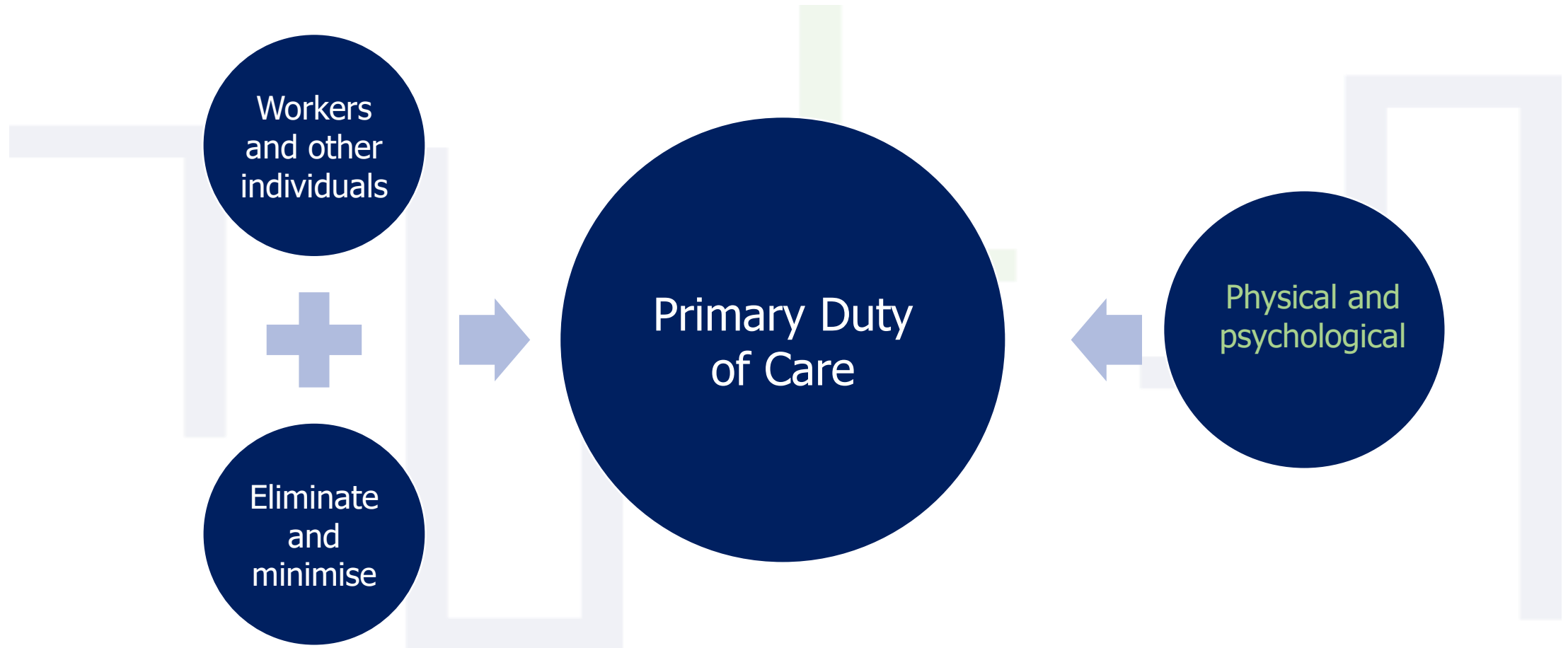
# Types of risk



# Accountability in a landscape of conflicting legislation



# WH&S - The duty to protect – what is it and who must be protected?



# Sex Discrimination Legislation - Respect at Work Legislation 2022



# What to do - If the worker is at work or at home?

is there a different approach to managing workers with psychological conditions that are work-related v. incurred in their personal life?

what steps can an employer take to keep a worker with a psychological condition off work?

what steps can an employer take to require a worker with a psychological condition to attend work?

what steps do employers need to take to terminate a worker with a psychological condition who has been off work for an extended period of time?

what options are available to resolve an injury/claim outside the *Workers Compensation Act*?

how do we direct/manage employees in this minefield of risk?

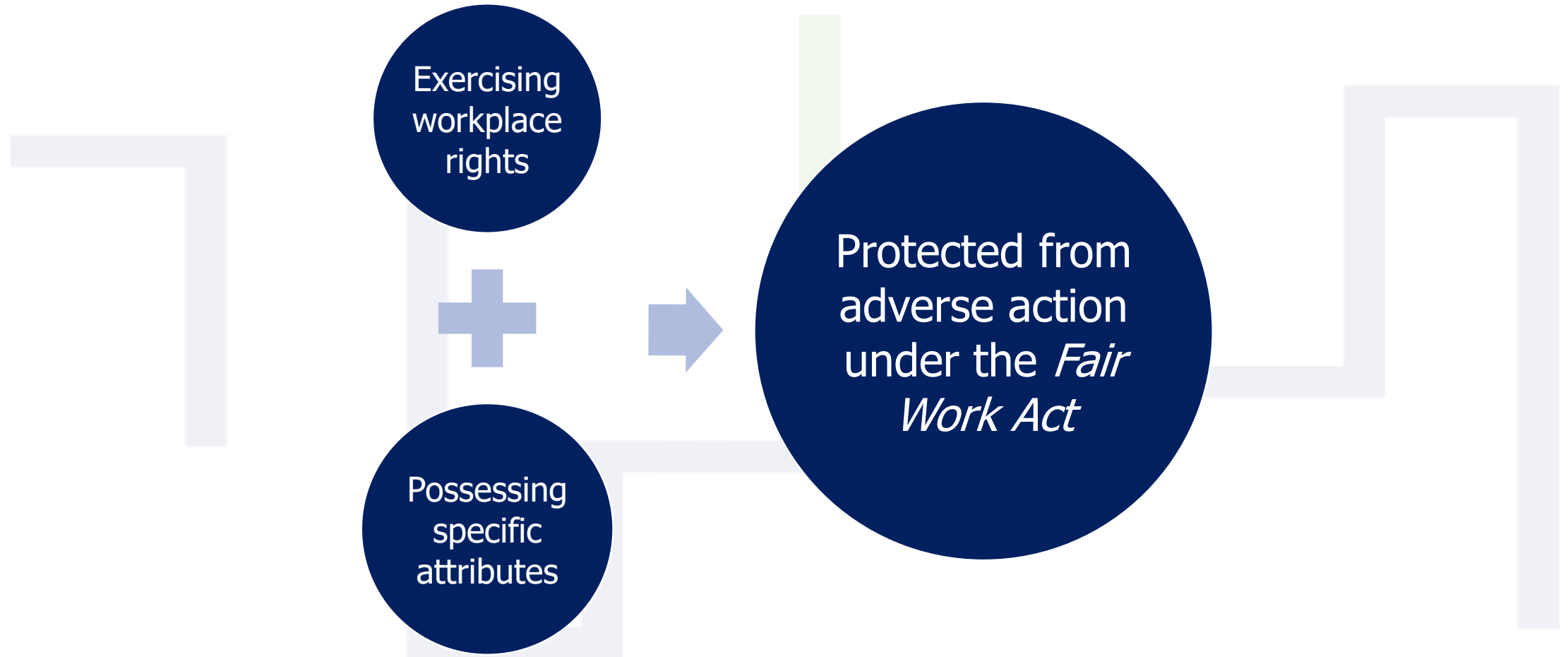
# Disability Discrimination

All positions have inherent requirements

Where an employee doesn't have the capacity or capability to fulfil those requirements, an employer may exclude them from the workplace

This is subject to the employer providing reasonable adjustments - qualified by unjustifiable hardship

# General protections against adverse action





# Adverse action and the onus of proof



# What is the obligation to allow an injured worker back into the workplace?

You are allowed to discriminate where the worker:

- Would be unable to carry out the inherent requirements of the particular employment or
- Where, in order to carry out those requirements, it will require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on NSW pathology.

## Reasonable adjustments

[there is a] *legitimate expectation that employers will deal with such exigencies and make allowances for the employee concerned, particularly if the condition affecting their work is likely to be a temporary one.*

”

# Communicating with ill and injured workers



## Communicating with ill and injured workers

Be aware that every time you deal with an ill or injured worker you create an opportunity

↳ bullying them

↳ treating them adversely because they are exercising a workplace right

## Communicating with ill and injured workers

Be aware that if you ignore injured workers at home, you create an opportunity for an

← bullying them  
(exclusion)

~ failing to mitigate a  
breach of WH&S Act



+ Thank you for attending!



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