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NSW Workers Compensation Law Reforms - What is changing?

New legislation: changes, similarities and possibilities

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What are the legislative sources of these reforms?

Workers Compensation Legislation Amendment Act 2025 **(assented on 24 November 2025); and**

Workers Compensation Legislation Amendment (Reform and Modernisation) Act 2026 **(assented on 11 February 2026)**

Key changes to watch for:

1. Eligibility requirements and amended entitlements for people with psychological injuries.
2. A single permanent impairment assessment for all workers, together with a new process and approvals framework.
3. New and increased penalties for non and under-insurance.
4. Enforceable undertakings.
5. Compromised lump sum death benefits.
6. **Reasonable** and **necessary** test for medical and related treatment.
7. Clarifications on the Independent Review Office (IRO) and the Independent Legal Assistance and Review Service (ILARS), IRO and ILARS functions and approvals.
8. Expanded access to commutations.
9. New framework for the approval of independent allied health consultants.
10. Increased employer excess on claims with weekly payments.
11. Period of incapacity for a worker with COVID-19 will be the period specified on their medical certificate.
12. Indexation moving to **a single annual process** from 1 April 2027.
13. A decision on pre-injury average weekly earnings (PIAWE) will **no longer** be a work capacity decision.
14. Legal representative to certify reasonable prospects of success when party to a dispute in the Commission.

Why are Psych Injuries so different???

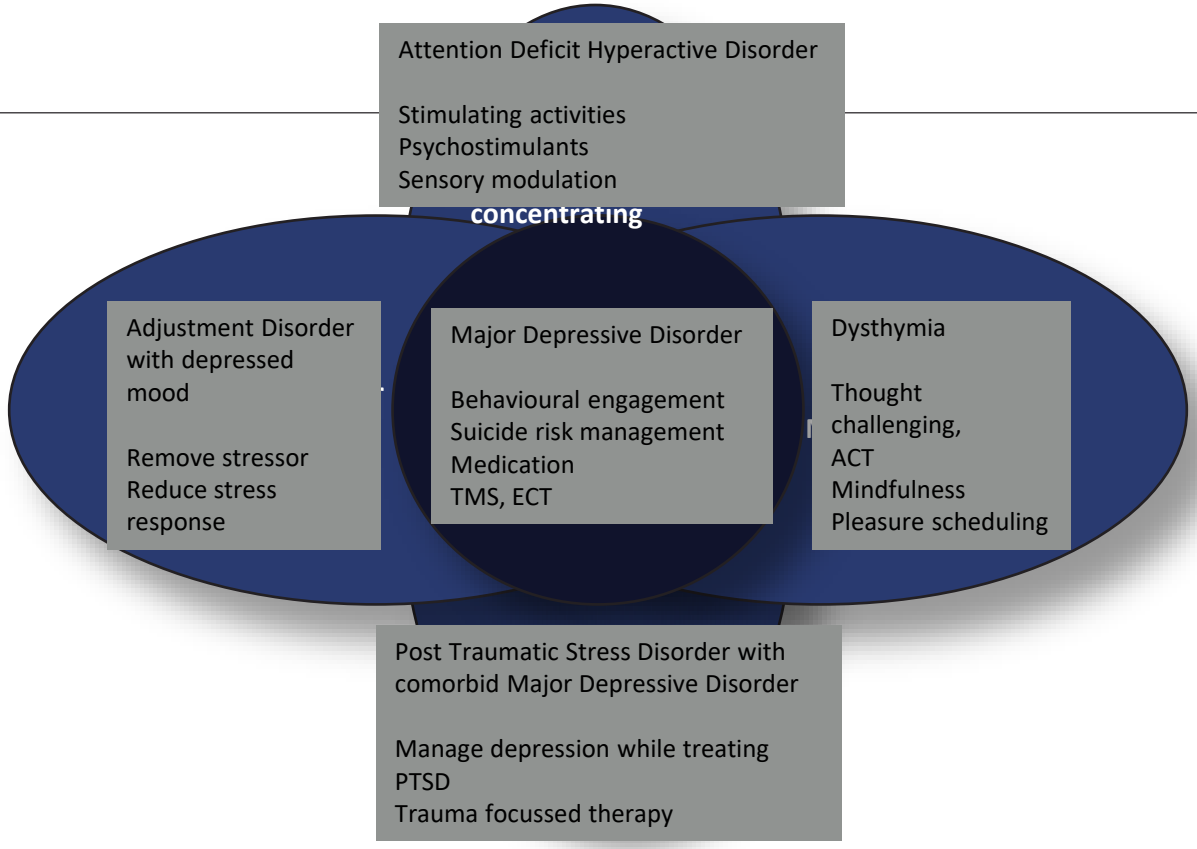
20% of Australians have a mental illness

2007 ABS document Only tracked 20 illnesses

MYTH

NOT INCLUDED

Schizoid Personality Disorder at 4.9%,
Schizotypal Personality Disorder at 4.6%,
Paranoid Personality Disorder at 4.4%,
Antisocial Personality Disorder 3.3%,
Borderline Personality Disorder 5.9%
Histrionic Personality Disorder 1.6%
Narcissistic Personality Disorder 6.2%
Avoidant Personality Disorder 2.4%
Dependant Personality Disorder 0.6%
Obsessive Compulsive Personality Disorder 7.9%
Intellectual Disability 1%
Autism Spectrum Disorders 1%
Attention Deficit Hyperactive Disorder 11%
Specific Learning Disability 15%
Developmental Coordination Disorder 6%
Stereotypic Movement Disorder 4%


Attention Deficit Hyperactive Disorder
Stimulating activities
Psychostimulants
Sensory modulation
concentrating
Adjustment Disorder with depressed mood
Remove stressor
Reduce stress response
Major Depressive Disorder
Behavioural engagement
Suicide risk management
Medication
TMS, ECT
Dysthymia
Thought challenging,
ACT
Mindfulness
Pleasure scheduling
Post Traumatic Stress Disorder with comorbid Major Depressive Disorder
Manage depression while treating PTSD
Trauma focussed therapy

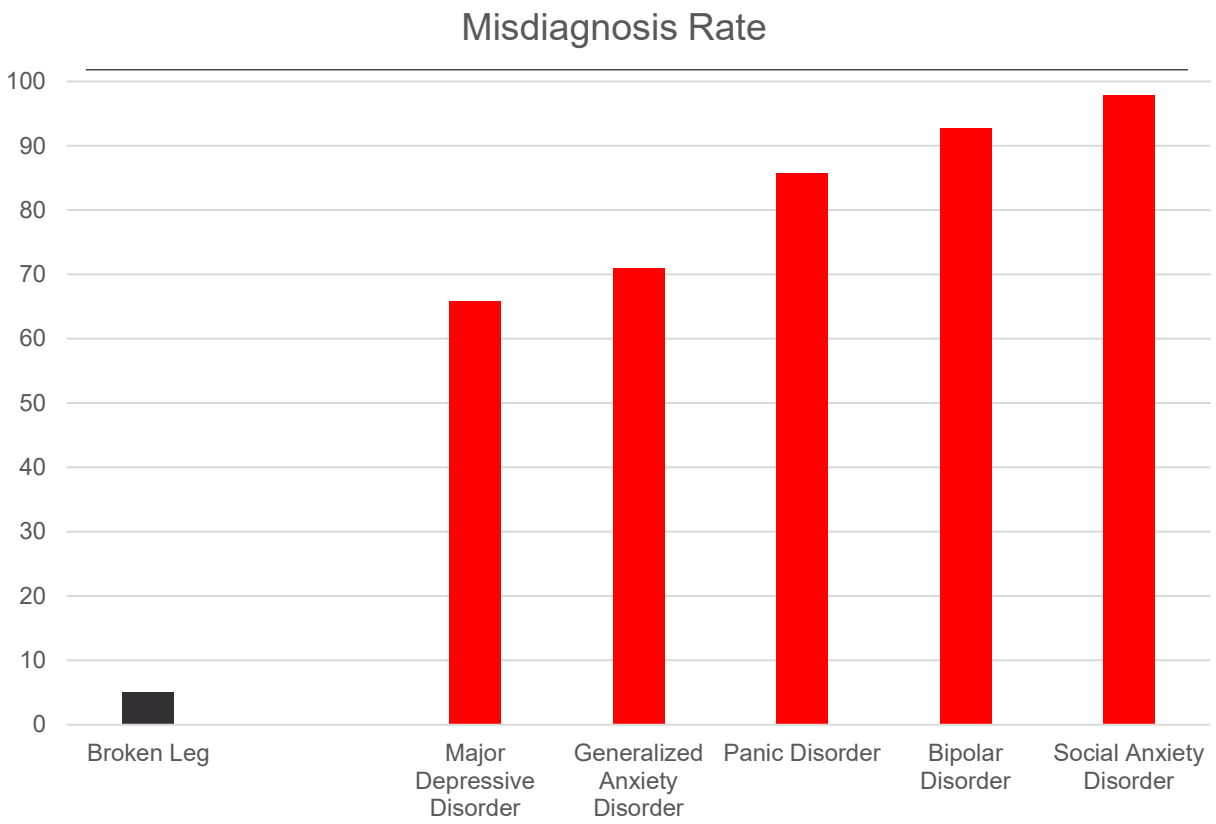
So how often do we get the diagnosis wrong???

1. We know GP diagnostic error rate is >65% as stated in their own documents.

2. This is in the RACGP documents, i.e., a known fact not contested

3. We know that misdiagnosis is more common than accurate diagnosis

4. Research shows:
   - 65.9% for major depressive disorder,
   - 71.0% for generalized anxiety disorder,
   - 85.8% for panic disorder,
   - 92.7% for bipolar disorder,
   - 97.8% for social anxiety disorder


Misdiagnosis Rate
100
90
80
70
60
50
40
30
20
10
0
Broken Leg
Major Depressive Disorder
Generalized Anxiety Disorder
Panic Disorder
Bipolar Disorder
Social Anxiety Disorder

SIGNIFICANT LEGAL CHANGE:

A primary psychological injury is only compensable if it results from one or more **relevant events**, the relevant event has a **real and direct connection** to employment, and employment is the **main contributing factor to the injury**.

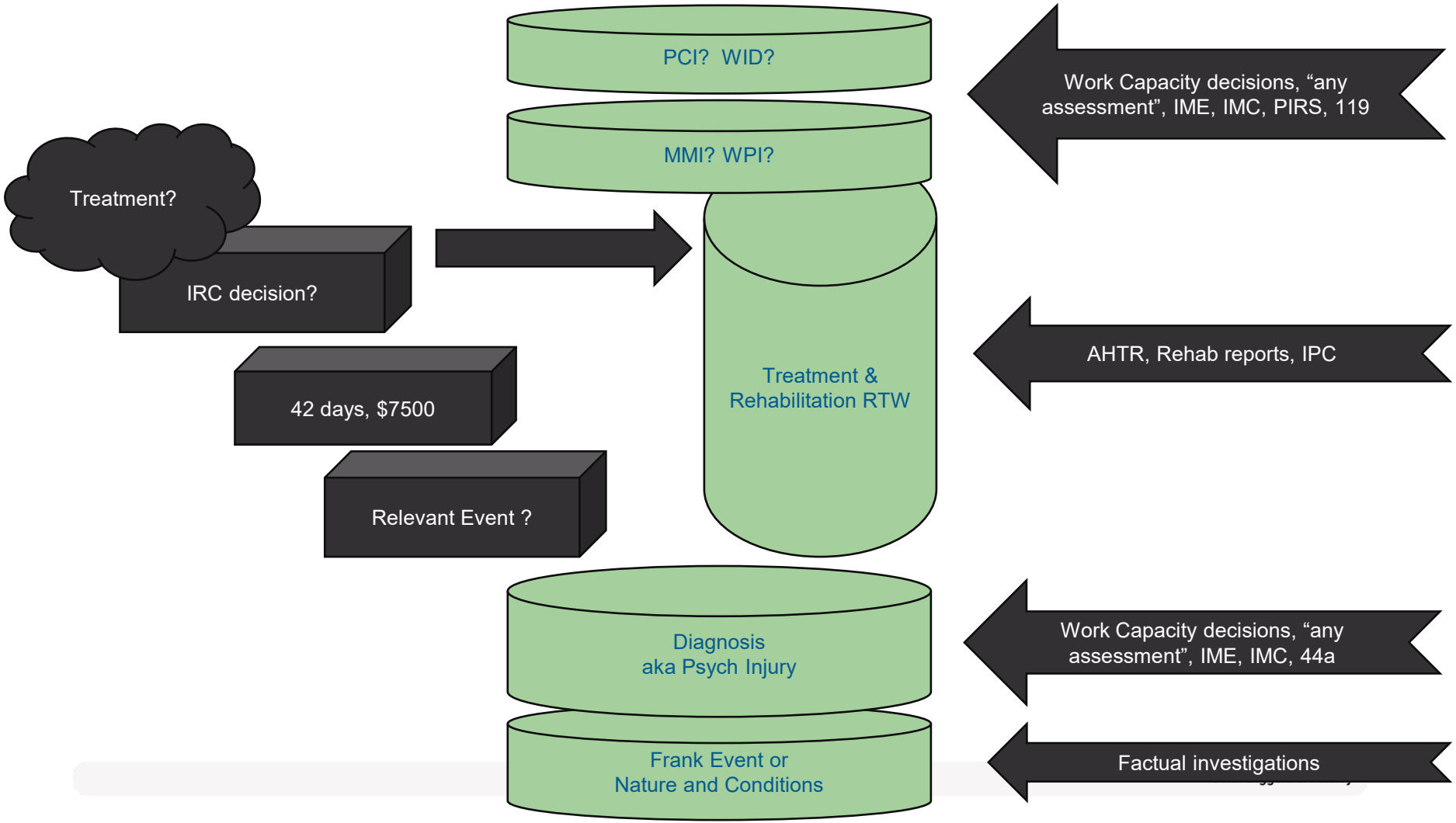
*The new rules for psychological injury **do not** apply to exempt workers, coal miners and volunteers.*

If an insurer disputes whether the alleged conduct meets the definitions, the matter goes to the Industrial Relations Commission (IRC) if an internal review hasn't resolved the matter

There will be (at least) two pathways:

- If relevant event based: bullying, sexual harassment
- 42-day clock to send to IRC
- If not sent, then is deemed accepted
- IRC rests on FWC decisions
- After IRC decisions comes back to WC

- If it is trauma, or not based on a relevant event decision
- Not affected by 42-day clock.
- Similar at start to current system


PCI? WID?
MMI? WPI?
Work Capacity decisions, “any assessment”, IME, IMC, PIRS, 119
Treatment?
IRC decision?
42 days, $7500
Relevant Event ?
Treatment & Rehabilitation RTW
AHTR, Rehab reports, IPC
Diagnosis aka Psych Injury
Work Capacity decisions, “any assessment”, IME, IMC, 44a
Frank Event or Nature and Conditions
Factual investigations

The diagnosis is the MOST reasonably necessary fact

- If there is no diagnosis, there is no injury
- If there is no injury, there is no workers compensation.
- If there is a diagnosis, then the question is what caused it
- If it was work related, then it may be compensable
- If it was not work related, then other systems may help
- Either way getting the diagnosis right benefits all good faith actors

So how unwell is unwell enough to be paid for being unwell???

Impacts on Return to Work:

- Workers with a primary psychological injury and an assessed whole person impairment of:
    - 21 to 24% (from 1 July 2026)
    - 21 to 26% (from 1 July 2027)
    - 21 to 27% (from 1 July 2029) may receive
- an additional 52 weeks of weekly payments (up to 182 weeks total) after 130 weeks
- a further year of reasonable and necessary medical entitlements
- tailored vocational re-education and rehabilitation (training, mentoring, coaching, counselling)

Mandated $7500 medical treatment spend

- $7,500 maximum medical spend is mandated maximum spend in the 42 day window.
- **How much therapy** does $7500 get you?
- PSY301 up to $284.4, PSY302 ($237.6 p/h) = 30 hours.
- That's 5 hours per week. 1 hour a day every weekday!
- Someone needing up to 5 hours per week treatment is not mild.
- This level of spending raises "person under legal incapacity" ???

You cannot be "too unwell to work" at Year 2 without having been potentially "too unwell to litigate" at Year 0.

The MMI Rule: Permanent impairment is assessed at Week 104 (Maximum Medical Improvement).

The Logic: If a worker is **25% impaired** at Week 104 *after* treatment, they were most likely clinically **worse** at Week 0.

The Conclusion: If moderately or significantly impaired at week 104, they were likely a "*person under legal incapacity*" at week 0.

A person with >25% WPI is functionally comparable to someone with an Acquired Brain Injury (ABI).

•To reach >**25% WPI**, a worker cannot be “mild" (Class 2).

•A >25% rating mathematically requires an aggregate PIRS score that includes multiple **Class 3 (Moderate)** or **Class 4 (Marked)** ratings.

•**The "Class 3" Profile:**

•**Concentration:** Cannot follow complex instructions.

•**Cognition:** Can only manage simple tasks (reading a newspaper).

•**Social:** Cannot interact without high-level support.

So what does that mean for consent and commutation?

The following changes took effect from 27 March 2026:

1. The Personal Injury Commission can now appoint a tutor to represent and support a person under legal incapacity when proceedings directly or significantly affect them.

1. This includes children under 18, involuntary or forensic patients, people under guardianship and individuals unable to express or receive instructions due to disability.

The potential legal problems; if you cannot read a newspaper… how can you Consent? Sign a Contract? Or Commutation?

The Contradiction: The expert says; "This person can't follow a complex argument" (to get the 25%).

The Informed Consent Gap: A "Full and Final" settlement (Commutation) is a complex financial contract.

The Lawyer says: "This person understood the complex legal contract" (to get the payout).

The Legal Risk: Any contract signed by a person with documented Class 3 or higher cognitive impairment is potentially **voidable**.

The Duty of Care: Proceeding without a **Litigation Guardian (Tutor)** for a 25% claimant isn't just an accidental oversight.

And the IRC does what now?

The IRC doesn’t deal with the injury...but it doesn’t mean you should ignore it

- The key link is the “relevant event”
- We do not know if they will use 144c, which is really about stop bullying order
- The IRC should only be dealing with the facts and if it is a relevant event.
- It should be considering if an event happened.
- And if an event happened is it a “*relevant event*”.

Consequence of challenging “reasonable management action”

- **The IRC Phase:** Insurer contends “Reasonable Management Action”

- **Hidden diagnosis:** “*This covers the specific ‘attributes and circumstances’ of the situation including the emotional state and psychological health of the worker involved*”. FWC Benchbook

- **Psychological health of the worker:** includes diagnosis.

- **Emotional State of the worker**: includes diagnosis

Therefore, IRC can consider diagnosis.

Do you want them considering that using >65% chance the diagnosis is wrong???

So how do you deal with this?

- Two-pronged approach.
  - Factual investigation – what occurred (if anything).
  - Work Capacity Assessment – what resulted from what occurred(if anything).

- Neither prevent 11A defence.
- Neither prevent 144C defence.
- Neither prevents referring to IRC.
- Neither prevents accepting claim.
- Neither harms recovery.
- Accurate facts, diagnosis and capacity facilitate recovery.

Work Capacity Assessment is iCare standard

Proceeding with a claim based on a >65% error rate, while rejecting a 99% accurate process, is a documented failure of the **Duty of Inquiry.**

It’s possibly even **Wednesbury Unreasonableness:** legal term for a decision so illogical that no reasonable person could have made it. Ignoring a 99% accurate tool for a 35% or less accurate one fits this perfectly

44A remains untouched

44A states “(5) An insurer may in accordance with the Workers Compensation Guidelines require a worker to attend for and participate in any assessment that is reasonably necessary for the purposes of the conduct of a work capacity assessment. Such an assessment can include an examination by a medical practitioner or other health care professional.”

The workers compensation guidelines 2021 state:

“Work capacity assessments are to be conducted throughout the life of the claim whenever new information about the worker’s claim, such as a certificate of capacity, is received. This is a part of the normal claims management process.”

iCare says “Within the first seven days after the Claims Service Provider is notified of your injury (unless a reasonable excuse applies).”

Work Capacity Assessment is iCare standard

Within the first seven days is within the 42 day window

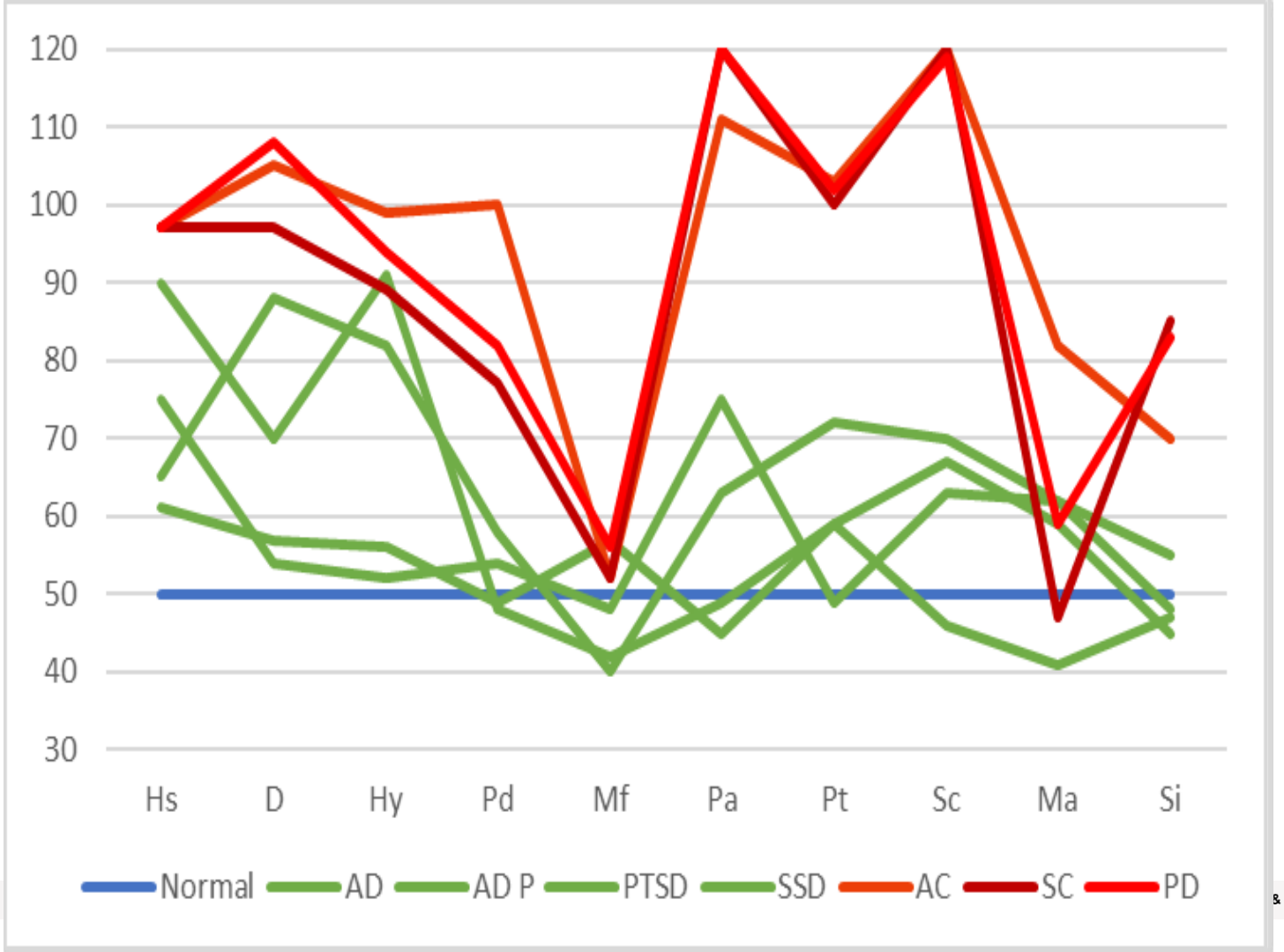
No diagnosis = no psych injury = no claim.

That makes knowing the diagnosis reasonably necessary.

So we do what?

Having an assessment is acceptable

- Having an assessment for diagnosis is acceptable.
- Having an assessment for functional ramifications is acceptable.
- These do not have to be “vocational assessments”.
- The legislation says “*any assessment* that is *reasonably necessary*”.
- The diagnosis is why the person has altered work capacity,
- Therefore, it is reasonably necessary to know the diagnosis.
- The diagnosis underpins the functional and vocational outcomes.
- A psychometric assessment of the diagnosis is reasonably necessary as clinical interview is more likely wrong than right.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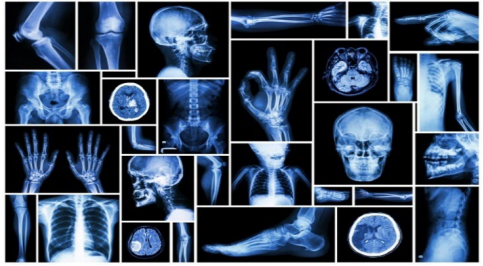

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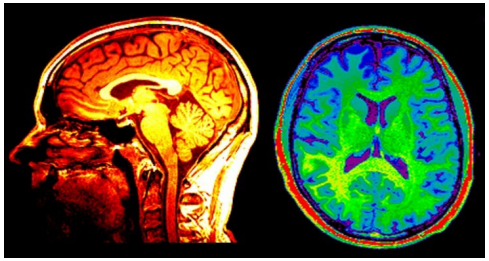

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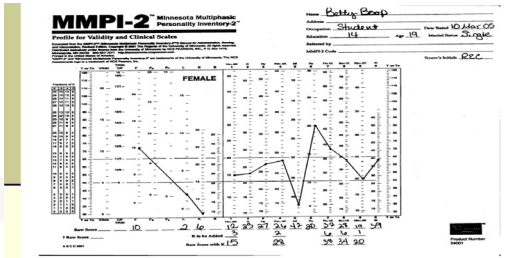

Expert
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Opinion

Key take aways:

IRC can be guided on the "relevant events", the "real and direct connection" to employment, and whether "employment is the main contributing factor to the injury" with the correct guidance on diagnosis (if one exists).

Reasonable management action includes “emotional state” and “psychological health”.

Gather your facts.

Use 44A for getting the right diagnosis and assessing Work Capacity as soon as possible and closest in time to the claimed injury.

Diagnosis by psychometrics >95% accurate.

Accurate facts and diagnosis improve treatment, RTW and assist formal legal Proceedings (where necessary).

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Thank you.

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