EML Insights Exchange: NSW Legislative Reform

Your questions from 23 July 2026 answered

Claim eligibility and legislative tests

1. **Who will determine what a reasonable person is? And will that change depending on an employee's profession?**

   The legislation introduces an objective "reasonable person" test for relevant conduct claims: bullying, excessive work demands, racial harassment and sexual harassment. The decision maker, in the first instance, is the insurer who will apply the principles of the "reasonable person test" to the information gathered, including all information about the worker's role, profession, experience etc. A worker's perception is relevant, but only to the extent that it is considered reasonable when weighed against the facts and circumstances. The worker can make an application for review of a decision and can thereafter take a dispute to the Industrial Relations Commission (IRC) where the application of the reasonable person test will be examined.

2. **If a claim is made for bullying or harassment for prior months to the new Act, will it fall under the old or new legislation if date of injury for example is 12/01/26 but lodged 23/07/26?**

   In most cases, the applicable legislative framework is determined by the date the injury is notified to the employer. Where a psychological injury was notified to the employer before 1 July 2026, the claim will generally be assessed under the pre-reform legislative framework, even if the claim is lodged with the insurer after the reforms commenced. However, transitional provisions may apply in certain circumstances, and each claim will be assessed on its individual facts and in accordance with those provisions.

3. **If a frank incident occurs for a primary physical and there is consequential psych injury. The physical resolves and an examiner says it's now primary psych, would the test apply if the cause changes?**

   If the psychological condition arose as a consequence or secondary to an accepted physical injury, then it's not a primary psychological injury and the amendments do not apply. The subsequent resolution of the physical injury does not mean the claim becomes a primary psychological injury. The key consideration is the cause of the psychological condition, supported by the available medical evidence.

4. **Excessive work demands - is there a risk of a claim being made and successful if regular overtime is being worked, even if being paid for the overtime and in line with the fatigue policy?**

   Yes, there is still a potential risk. Under the new legislation, excessive work demands are assessed against a number of factors, including whether the demands were beyond the requirements of the worker's role, repeated or persistent, and not reasonable in all the circumstances. Payment for overtime and compliance with a fatigue management policy are relevant considerations, but they are not determinative.

   When assessing excessive work demands, consideration may also be given to factors such as staffing levels, workload allocation, industry norms, supervision, the worker's level of responsibility, employment arrangements, and whether the worker's remuneration already reflects an expectation of working additional hours.

   Accordingly, regular paid overtime may not constitute excessive work demands where it is reasonable and consistent with the role. However, if workload expectations are unreasonable, sustained over time, or not adequately supported despite overtime payments, a claim may still be pursued and assessed on its individual circumstances.

5. **Is there a particular reason there is a difference in definitions under s8, to those definitions under other legislation?**

   The definitions used in the workers compensation legislation have been drafted for the specific purpose of determining eligibility for compensation and do not necessarily align with definitions used in other legal frameworks such as the Fair Work Act, Industrial Relations Act, Work Health and Safety legislation or anti-discrimination laws.

   The reforms introduce specific statutory definitions for bullying, excessive work demands, sexual harassment and racial harassment to provide greater certainty and consistency when determining whether a primary psychological injury is compensable under the NSW Workers Compensation Scheme.

   As a result, conduct may meet the definition under one legislative regime but not another. Each jurisdiction has different objectives, legal tests and remedies, meaning the same factual circumstances may be assessed differently depending on the forum.

6. **How does the new legislation change employer obligations around notifying an injury for a psychological injury. i.e. is the obligation now to report only injuries that are "relevant events"?**

   No. Employers should continue to notify potential psychological injury claims to their insurer as soon as they become aware of them. Determining whether an injury arose from a "relevant event" is part of the insurer's claim assessment process, not a prerequisite for notification by the employer.

Investigations, evidence and liability decisions

7. **Do we have a confirmed specialised panel for psychological factual investigations to allow for the new 42-day timeframes? What providers are they?**

   Yes, icare has put arrangements in place to support these changes, including a specialised subset of providers within the investigation panel that can undertake expedited factual investigations. These providers have been selected to support the timely collection of information needed to meet the new legislative timeframes. The following providers are included:

   - AB Investigations
   - Advanced Investigations
   - Allied Universal Compliance and Investigations
   - Brian F Davis and Associates
   - Brooksight Investigation
   - Farrell's Investigative Services
   - Huxley Hill and Associates
   - Insight Intelligence Group
   - Investigative Services Group
   - Lee Kelly Commercial Investigations
   - LKA Group
   - M and A Investigations
   - NCA Consulting
   - NHN Investigations
   - PINKERTON
   - Quantumcorp
   - SureFact Group
   - The PROCARE Group
   - Virtual Intelligence
   - Worksite Investigations

8. **What practical changes should employers make to their investigation, evidence gathering and claim management processes to support insurers in making liability decisions within the new 42-day timeframe?**

   Employers should focus on early evidence gathering, maintaining detailed records of workplace interactions and management decisions, preserving emails and communication records, obtaining witness statements promptly, and ensuring policies, training records and investigation materials are readily available. Early notification to the insurer remains critical.

9. **Previously for a s11a defence we needed an IME (medical opinion on causation), would this still be required? Historically getting an IME appointment within 12 weeks was challenging, let alone 42 days.**

   Not necessarily. Treating doctor evidence can be sufficient to establish causation. The reforms place greater emphasis on contemporaneous evidence of workplace events, including investigation records, witness statements, communications and management documentation. An IME may still be required in some matters, to address the question of causation and main contributing factor, however strong factual evidence may assist in establishing that the conduct in question was not a relevant event and additionally, consider whether reasonable management action was a significant cause of injury.

10. **Is there a cheat sheet that we can be provided that we can give our human resources to ask when doing their investigations to make sure they are asking all the correct questions in case it goes to IRC?**

    Yes. EML has developed a psychological injury claims factual evidence checklist to support employers in gathering and preserving relevant information when a psychological injury claim is notified. The checklist is designed to assist with timely investigations, evidence collection and insurer decision-making under the new legislative framework and will be made available to employers.

11. **Has there been a case yet whereby an investigator has been delayed and started middle of the 42 days review engaged? How will that impact as an employer?**

    At this stage, we have not experienced any delays relating to investigators commencing factual investigations. Where a factual investigation is identified as necessary, the PES will promptly refer the matter to ensure sufficient time is available for enquiries to be completed within the legislative decision-making timeframe.

From an employer perspective, the key support you can provide is responding to information requests as early as possible and providing any relevant documentation promptly. Early engagement from all parties helps minimise the risk of delays and supports timely decision-making.

12. Given during the dispute process there are points where new information can be brought forward, should employers just provide the bare minimum to dispute the claim i.e. keep cards close.

No. Employers should provide complete, accurate and timely information as early as possible. The reforms place significant weight on contemporaneous workplace evidence, records of management actions, communications, investigation materials and supporting documentation. Early provision of evidence assists insurers to assess liability efficiently and may avoid unnecessary disputes and unnecessary interim payments.

13. With the 42-day timeframe, how will delayed claim reporting and delays in obtaining NTD clinical notes be managed where they may impact an insurer's ability to make an informed liability decision?

The reforms reinforce the importance of early reporting and evidence gathering. Employers can assist by providing factual evidence, workplace records, investigation materials and witness information as soon as possible. Where critical information is delayed, insurers will assess the claim based on the evidence available while continuing investigations where appropriate.

Trauma and relevant conduct claims

14. How would a reasonable person test be applied, in the context of exposure to trauma or externalising behaviours for healthcare, aged care and youth care workers? How should we defend those claims?

The objective test, or the reasonable person test, only applies to relevant conduct claims for bullying, sexual harassment, racial harassment and excessive work demands. It does not apply to trauma claims.

If there is an allegation of, say, bullying, in a health care setting, the facts would be tested against the definition of bullying and the reasonable person test applied to consider whether a reasonable person would consider the conduct that constitutes the act or omission, would have anticipated that the other person would be offended,

insulted, humiliated, intimidated or otherwise consider the act or omission to amount to being subjected to bullying, excessive work demands, racial harassment or sexual harassment.

15. It was mentioned that EML have received claims that fall under the definition of trauma and relevant conduct. In this case, which initial claim process do you follow i.e. provisional liability (PL) or interim payment?

Claims are not automatically treated as one type or the other simply because multiple allegations are raised. The insurer will review the facts, identify the alleged relevant event(s), and determine the appropriate claim pathway. Where both traumatic event and relevant conduct allegations are present, investigations may need to consider both before a liability determination is made.

16. With multi factor claims where s8 and s11a apply to different factors, will the IRC only deal with the s8 components?

The IRC's role is to determine whether the conduct alleged by the worker constitutes relevant conduct under the legislation. The application of s11A reasonable management action may be considered by the IRC. "Injury", incapacity, and other compensation entitlement disputes may persist after a relevant conduct finding, and those other issues are within the Personal Injury Commission (PIC) jurisdiction. For example, there may be a finding of relevant conduct, however there may be a dispute that there is no incapacity that would attract a payment of weekly compensation. The dispute about weeklies would be within the PIC jurisdiction.

17. How will trauma claims be assessed where the relevant event is not clearly defined?

The insurer will assess the available evidence to identify whether a qualifying traumatic event or series of traumatic events occurred. Where the relevant event cannot be clearly identified or supported by evidence, it may be difficult to satisfy the legislative requirements for a compensable primary psychological injury claim.

18. What avenues are available to question reported “traumatic events”, particularly in relation to workers interacting with the public?

Employers and insurers can investigate and verify alleged traumatic events through incident reports, witness statements, CCTV, employer records and other evidence.

For workers interacting with the public, the assessment will focus on whether the incident meets the legislative definition of a traumatic event, rather than whether the interaction was simply difficult or unpleasant.

19. Focus is on psych hazards, what's the process for physical injury claims. Any major changes?

No major changes. The reforms are primarily directed at psychological injury claims. Physical injury claims continue to be managed under the existing workers compensation framework, with established claim management, injury management, and return to work processes largely remaining unchanged.

Industrial Relations Commission (IRC), disputes and settlements

20. Are IRC conciliations required to be lawyer-led, or can employees and employers self-represent (akin to Fair Work Commission processes)?

Parties may generally self-represent, although legal representation may be appropriate depending on the complexity of the matter. We expect that all insurers will be legally represented in the IRC Workplace Conduct Division.

21. Will IRC conciliations open the door to global settlements that include resignation under release terms (akin to SA legislation)?

The parties are encouraged to explore settlement opportunities. Settlements often include a resignation. The legislation does not specifically create a new resignation settlement mechanism. Any settlement discussions would depend on the circumstances and the parties involved.

22. There was mention of potential settlements coming out of the IRC process. Will this be a claims cost or a cost to the employer?

If a settlement is by way of payment of compensation or damages under the Workers Compensation Act, then those payments will be made by the insurer under the policy. If some other settlement is reached by an employer agreeing to pay some amount outside the Workers Compensation Act, then that would be a decision and settlement between the worker and employer.

23. Why have psychosocial claims moved from PIC to IRC?

Parliament decided the IRC was best placed for a special Workplace Conduct Division. Psychological injury disputes involving "relevant conduct" events of bullying, excessive work demands, sexual harassment and racial harassment now follow an IRC pathway because the key issue is whether the alleged workplace conduct meets the legislative definition of "relevant conduct". The IRC determines those workplace conduct issues, while the PIC retains jurisdiction for compensation entitlements.

24. What would the claims process look like for an employee that may be called as a witness in an IRC matter? Which 'bucket' would it fall into if lodged? Is it an employer's obligation to manage these?

We understand this question refers to a witness to an IRC proceeding who may themselves make a claim because of injury arising from their involvement in the proceedings. Any claim would be assessed on its own merits and under the applicable legislation. That is, there must be a relevant event that caused the injury - put simply, trauma or relevant conduct. The employer should continue to provide support and follow normal non- compensable injury management obligations.

25. Are you concerned that there will be a rise in other claims? E.g. staff member can't put in a w/c claim so will put a general protections claim instead.

Employers should be aware that the same workplace circumstances may give rise to obligations and claims across multiple jurisdictions, including workers compensation, Fair Work, WHS and discrimination frameworks. The presentation highlighted the importance of managing these risks holistically, as different legal avenues may be available depending on the circumstances.

Claim administration, timeframes and entitlements

26. It was mentioned that the claim would close in 3 days if a claim form was not submitted. How can insurers support employers before the form is submitted as a worker can take any amount of time.

To clarify, the claim will close in **7 days** if a claim form is not received. Insurers can provide guidance on information gathering, reporting obligations and evidence preservation, but formal claim management processes generally commence once a claim is received.

27. For relevant conduct claims, does day 1 start from the date the claim form and Certificate of Capacity (COC) is provided, or does it start from the time the injury is reported to employer?

For relevant conduct claims, the statutory timeframes commence once the insurer has received the information required to assess the claim, including a completed claim form and medical certificate with a diagnosis. Early notification by employers remains critical, as prompt reporting and evidence collection provide insurers with the best opportunity to investigate and make determinations within the legislative timeframes.

28. Once a claim has been accepted is the claimant entitled to backpay up to 95% Pre-Injury Average Weekly Earnings (PIAWE) from date of injury, date of notification to employer or the date a completed claim form was submitted.

Not necessarily from the date the claim is accepted. Where liability is accepted, any backpay is generally assessed based on the period of certified incapacity and entitlement under the legislation. The applicable period may be influenced by factors such as the date of injury, date of incapacity, date of notification and claim documentation requirements. Each claim will be assessed on its individual circumstances.

29. What are the biggest unintended consequences of the reforms that employers should be preparing for now?

1. Urgency surrounding early investigations.
2. Greater documentation requirements.
3. Tighter response timeframes.
4. Increased scrutiny of workplace practices.
5. Potential for disputes outside the workers compensation system.
6. Increased responsibility for employers to manage injured workers outside the compensation scheme, thus taking on many of the responsibilities usually managed by the insurer.

Excess and policy costs

30. Excess costs: if a worker only has a singular day's wage loss, or wage loss on the day of injury, does the full 2 week excess apply to these workers - or is there a pro-rata rate applied?

The two-week employer excess period still applies; however, the amount payable is not automatically equivalent to two full weeks of compensation. Where a worker has only a single day of wage loss, or limited earnings loss during the excess period, the employer is only responsible for the weekly benefits that would otherwise be payable for that actual loss of earnings.

For example, if a worker only loses one day's wages and then returns to their pre-injury hours with no further earnings loss, the excess amount would be limited to the calculated weekly benefit entitlement for that lost time. There is no requirement for the employer to pay a full two weeks of benefits where no entitlement exists.

31. In terms of excess is this payable prior to liability actually being accepted? Is the full excess applied if time loss is only 4 hours?

An excess is only applicable where weekly benefits become payable on a claim. If liability is disputed and no weekly benefits are payable, no excess will be charged.

Where weekly benefit compensation is payable and the worker's only time loss is a short period, say four hours, the employer excess is limited to the value of the weekly benefit entitlement associated with that lost time. The excess is not automatically charged as a full two-week amount simply because an excess period exists; it is based on the weekly benefit compensation that is payable during the excess period.

Working with treating practitioners and medical providers

32. Are you aware whether GP's and treating specialists have been educated in the new legislative changes and what that means to injured employees?

SIRA has released guidance and resources to support health practitioners, and EML has commenced engagement with difference provider groups and associations to support understanding of changes. Awareness will vary across providers, so employers and insurers may still need to assist by providing information regarding legislative requirements and return to work obligations.

33. Have medicolegal providers (IMC/IPC/IME) been briefed on these changes? Do we expect any significant impacts in this area?

Medico-legal providers are becoming familiar with the reforms, and reports will likely place greater emphasis on diagnosis, causation, relevant events and legislative definitions of psychological injury.

34. What is being done about more education to GPs with these claims. Most GPs are not even signing forms yet alone working with the employer. They just keep signing unfit to work.

SIRA and industry stakeholders continue to provide education and guidance. Early communication between employers, workers, treating practitioners and insurers remains important in supporting recovery and return to work outcomes. Where patterns with General Practitioners are identified, EML will engage to support greater understanding of their requirements in the NSW Workers Compensation Scheme.

Employer support, workplace management and return to work

35. As HR managing particularly reasonable, aggressive and upset individuals involved allegations of bullying against each other, what tips can you give to me?

1. Remain impartial.
2. Focus on facts rather than opinions.
3. Document discussions.
4. Maintain respectful communication.
5. Seek support from HR, legal or EAP where needed.

36. What are some examples of additional support an employer can offer or plan for when other employees are called on to participate in factual statements?

1. Explain the process clearly.
2. Offer EAP support.
3. Minimise disruption to normal duties.
4. Check in regularly
5. Ensure confidentiality is maintained.

37. If a claim had been disputed, but the worker remains unwell and unable to work. How can employers support this worker and assist with recovery?

Even where liability is disputed, employers can continue to support a worker's recovery by maintaining respectful communication, providing access to wellbeing support services, considering suitable work options where appropriate, and encouraging ongoing engagement with treatment and recovery activities. The focus should remain on supporting the worker while the claim is being determined.

38. If I feel there is work that my workplace needs to do to make it safer, what should my first step be to start this?

Raise the concern through your organisation's established channels, such as your manager, HR team, HSR, WHS committee or hazard reporting process. Early reporting allows psychosocial risks to be assessed, and appropriate actions taken to improve workplace safety.