

Psychological injury claims

What employers need to know about how psychological claims are defined and managed post 1 July 2026

As one of the longest serving providers of workers compensation services in Australia, we're here to help.

In this booklet we have provided an overview of the major changes stemming from the Workers Compensation Legislation Amendment Bill 2025 and how we'll be supporting the consistent, timely and quality application of the most significant reforms to the NSW workers compensation system in over a decade.

New eligibility tests for psychological claims



No compensation is payable for a primary psychological injury unless caused by a **relevant event**.



Introduction of a **reasonable person test** applicable to relevant conduct claims; meaning the behaviour must be something a reasonable person would consider offensive, intimidating or unreasonable in similar circumstances.

(Section 8L)



Strengthened **reasonable management action** defence (action taken in a reasonable way and reasonable in all circumstances).

(Section 8F)

Relevant events are grouped into two categories



Traumatic events

- Being subjected to an act or threat of violence, or indictable criminal conduct.
- Witnessing a traumatic incident, or a dead (or seriously injured) person at the scene of a traumatic incident.
- Experiencing vicarious trauma.

(Section 8J)



Relevant conduct

Claims where the 'relevant event' is described as being subjected to:

- sexual harassment, or
- racial harassment, or
- bullying, or
- excessive work demands.

Clear definitions of these types of events are now provided in the legislation.

(Section 280AB)

Psychological Eligibility Specialists

EML's best practice approach to managing the practical application of the reforms

EML has assembled **three teams** of highly experienced workers compensation professionals to focus on making liability decisions for relevant conduct claims.

Our **Psychological Eligibility Specialists** will work alongside you and your dedicated **EML Case Manager** to gather information and determine liability under new expedited processes for relevant conduct claims.

Your EML Case Manager



Supports you and your workers throughout the claims process.



Ongoing claim management when a claim is accepted.



Manages return to work, treatment and ongoing payments.

Psychological Eligibility Specialist



Manages liability determination for relevant conduct claims.



Communicates with you and your workers to provide guidance on the liability process.



Gathers evidence and manages investigations.

Employer claim notification checklist

Employers should be prepared to provide evidence that is **directly relevant** to what the worker is claiming **as soon as the claim is notified**.

The **Psychological Eligibility Specialist** will likely make a referral to a factual investigator to gather any additional information.

It is important that you make all requested witnesses available to participate and respond to any requests as soon as possible.



Description of conduct or event.



Timeline of events.



Witness statements.



Documentation (eg emails, meeting minutes, formal letters, HR and performance records).



Any additional evidence of actions taken.



Supporting policies, procedures and employment documentation.

The new relevant conduct process

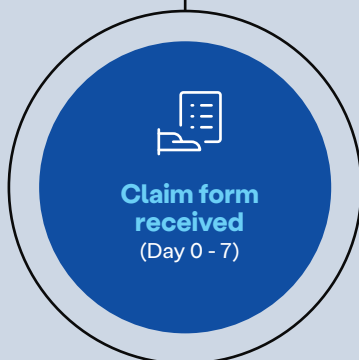
Step 1



Notification received

- Employer notifies psychological injury to the insurer, the icare lodgement portal will reflect psychological eligibility.
- The legislation applies based on notification of injury to the employer, the Psychological Eligibility Specialist will assess whether pre or post 1 July reforms apply
- EML has three days to determine whether the notification complies with requirements to be a claim and to contact the worker regarding any missing information. A completed claim form and medical certificate is required at a minimum.
- If the claim requirements are not met within three days, the claim is closed. However, it can be reopened at any point if the information required to bring a claim is furnished.
- Your **Psychological Eligibility Specialist** reviews the notification and guides the Case Manager regarding next steps.

Step 2



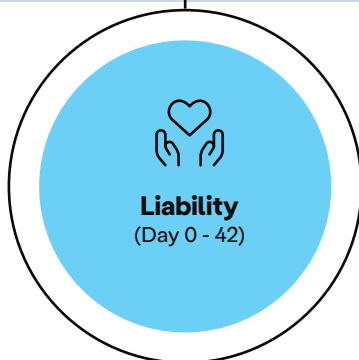
Claim requirements met (Day 0 - 7)

Once EML has confirmed that the notification meets requirements:

- Within seven days interim payments must commence (75% PIAWE minus earnings, up to \$7,500 in medical expenses).
- EML has up to 42 days to make a liability decision.
- Reasonable excuse and provisional liability are not available for relevant conduct claims.

Your Psychological Eligibility Specialist will complete all early liability actions, including initial contacts to gather information and may make an early referral to conflict resolution services (Pathways) to support return to work.

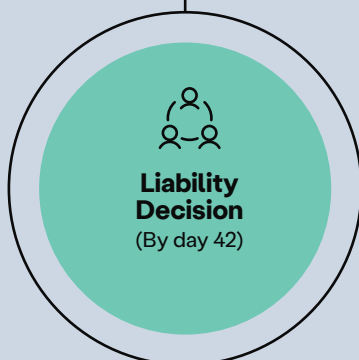
Step 3



Liability investigation (Day 0 - 42)

- Your **Psychological Eligibility Specialist** leads information gathering and liability decision.
- As the employer, you will need to provide early evidence.
- Your **Psychological Eligibility Specialist** manages liability and investigation updates.
- Your **Case Manager** manages treatment, return to work and payments.

Step 4



Liability decision (by Day 42)

- If the claim is disputed, the worker is provided with 14 days notice before interim payments will cease. The worker can request an Internal Review of the decision, and can also seek review of the decision by the Industrial Relations Commission.
- If the claim is accepted, your **Psychological Eligibility Specialist** will make back payments for the interim period to 95% of PIAWE (workers will only be entitled from date claim made, not date of injury) and transfer the claim for ongoing case management to your **Case Manager**.

What can NSW employers do to prepare?

Employers should focus on early intervention and prevention of psychosocial risks whilst proactively managing workplace conflict and industrial relations issues.

- Strengthen injury prevention and early intervention strategies in your workplace.
- Consider the information that you will provide your workers when they lodge a claim for psychological injury to help them understand the process.
- Review Work Health & Safety (WHS) psychosocial standards and practices.
- Review HR and IR processes, policies, documentation, training and leadership implementation of these.

Online resources



icare lodgement portal



SIRA claim form



EML NSW legislative reforms resources



EML NSW reforms query form

How EML can help

Over the last ten years through our **Mutual Benefits Program**, we have invested over \$144M into services designed to help employers to address workplace health and safety challenges and help their workers recover and get their lives back after injury.

Our customers benefit from a range of value-added programs and tools to support their workplace goals including:

- 80 facilitated training events
- 45 online courses
- access to a range of workplace resources
- innovative research, pilots and marketing leading programs.

Visit our **NSW legislative reforms page** to access our employer readiness checklist, relevant services, tools and support designed to you confidently prepare for change.



EML NSW Limited ABN 52 003 201 885 (part of the EML Group) is an authorised scheme agent of icare (Insurance and Care NSW) and the Workers Compensation Nominal Insurer. This document is not intended as marketing material and is sent to you in accordance with icare's obligation to provide you with relevant information about your policy and available resources for preventing workplace injuries and improving recovery outcomes. This information is provided for general purposes only and EML accepts no liability for any loss arising from its use. Eligibility criteria and service availability may apply. Outcomes and return to work experiences will vary depending on individual circumstances. For more information, contact us on 133 365 or visit eml.com.au