



**Matters taken on Notice from
the Parliamentary Inquiry into
proposed changes to liability
and entitlements for
psychological injury in New
South Wales**

Submitted by
Slater and Gordon Lawyers

21 May 2025

Hon Greg Donnelly MLC
Chair, Legislative Council Standing
Committee on Law and Justice
Parliament House Macquarie Street SYDNEY
NSW 2000

Dear Chair,

Re: Matters taken on Notice from the Inquiry into proposed changes to liability and entitlements for psychological injury in New South Wales

Slater and Gordon thanks the Committee for the opportunity to contribute to this critical inquiry and confirms its concurrence with the oral and written submissions made by the New South Wales Bar Association, particularly in relation to the impacts of the proposed reforms on workers suffering psychological injury.

We wish to specifically reaffirm the following key concerns raised:

1. The 31% Whole Person Impairment (WPI) threshold for psychological injuries is unreasonably high and would result in nearly all affected workers being excluded from accessing lump sum compensation, extended income support, and common law damages.
2. The requirement for a “relevant event” in order to trigger compensation under proposed sections 8E and 8G would exclude a wide range of legitimate injuries arising from the inherent pressures of work, including vicarious trauma, customer aggression, and cumulative exposure to distressing content – especially affecting workers in healthcare, education, and human services.
3. Mandating findings by the Industrial Relations Commission (IRC) or other tribunals prior to claim notification undermines the principle of early treatment and will delay access to medical care and support. This creates unnecessary procedural hurdles, particularly for vulnerable or unrepresented workers.
4. The new definition of psychological injury, as proposed in the Bill, imposes a more restrictive and medically unjustified threshold than currently exists for physical injury. It is legally problematic and likely to increase litigation without improving claim quality or system efficiency.

Section 11A – Burden of Proof and Limited Success as a Defence

Slater and Gordon also supports the Bar Association’s comments regarding section 11A of the *Workers Compensation Act 1987 (NSW)* and its sufficiency as currently drafted. Under s11A, compensation is not payable in respect of psychological injuries that are “wholly or predominantly caused” by “reasonable management action” taken or proposed to be taken by or on behalf of the employer. However, the burden of proof under this provision rests entirely on the employer or insurer. They must establish not only that the injury was predominantly caused by management action, but also that the action was reasonable in all the circumstances. This is a high evidentiary threshold, and for that reason:

- The defence is rarely successful in practice, particularly where there is evidence of multiple causative factors or where the employer’s conduct was flawed, disproportionate, or poorly executed.
- Determinations often turn on factual disputes and credibility assessments, making early resolution more difficult and protracted.

- The courts and tribunals have applied the defence narrowly, in line with the principle that workers compensation legislation should be construed beneficially in favour of injured workers.

Medical Experts in NSW

Concerns regarding malingering by Claimants are occasionally raised, but Slater and Gordon joins the Bar Association in confirming that medical practitioners appointed for the purposes of assessment in NSW particularly those authorised under the State Insurance Regulatory Authority (SIRA) and in medico-legal contexts operate under strict ethical and professional obligations.

- Practitioners utilise recognised diagnostic tools such as DSM-5 criteria, structured clinical interviews, and psychological testing to assess authenticity and symptom consistency.
- Indicators of malingering such as exaggerated presentation, inconsistent history, or non-compliance with treatment are professionally scrutinised and documented. Where such concerns arise, they are addressed through independent peer review, dispute resolution pathways, and cross-examination in contested matters.
- Allegations of malingering by Claimants are rarely substantiated and must not be used as a pretext to limit legitimate access to compensation. The current system includes adequate safeguards to identify and address dishonest claims without imposing disproportionate barriers on genuinely injured workers.

Slater and Gordon urges the Committee and the NSW Government to proceed with caution in implementing reforms that risk excluding psychologically injured workers from compensation.

A balanced approach is both achievable and essential. Reforms must not come at the cost of equity, fairness, and the foundational principle that the scheme exists to support recovery.

Measures that deny recognition, restrict access to treatment, or undermine protections in the name of efficiency risk doing lasting harm to the very people the scheme is meant to serve.

We remain available to assist the Inquiry further and thank the Committee for its ongoing commitment to consultation.

Yours sincerely,

Ramina Dimitri

Head of Work and Road Claims – NSW, ACT & WA
Slater and Gordon Lawyers