

Post-implementation review: *Guidelines for claiming workers compensation*

Consultation summary and response

**State Insurance
Regulatory Authority**

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Introduction

SIRA initiated public submissions as part of a post-implementation review of the *Guidelines for claiming workers compensation* (Guidelines) between 27 September and 13 October 2017. Stakeholders were invited to provide feedback through an online survey, email submission or face to face meeting.

SIRA received seven written submissions from insurers, legal professionals, allied health professionals and employer representatives.

SIRA also received 56 survey responses from a range of stakeholders including:

- insurers and insurer associations
- employers and employer representatives
- union and worker representatives
- medical and allied health practitioners
- legal practitioners
- workplace rehabilitation provider
- medico-legal service provider
- others.

A number of face to face meetings were also conducted.

Key themes

1. Style and format

The *Guidelines for claiming workers compensation* replaced four separate guidelines, namely the:

- *Guidelines for claiming compensation benefits (2013)*
- *WorkCover guidelines for work capacity (2013)*
- *Guidelines for work capacity decision internal reviews by insurers and merit reviews by the Authority (2013)*
- *WorkCover guidelines for the provision of domestic assistance (2004)*

The Guidelines published in 2016 represented a change in how they have been written in the past. Submissions described the Guidelines as being well structured and easier to read. The consolidation of previous multiple guidelines was commended, with a number of submissions indicating that the Guidelines contained all the relevant information and were easy to read and understand.

Ninety-five per cent of respondents agreed that the Guidelines used plain English and over eighty-four per cent of respondents agreed that the Guidelines were easy to read and locate relevant sections. The majority of respondents found the Guidelines followed a logical order. The use of hyperlinks to allow users to quickly access relevant sections of the legislation was also well-received by stakeholders.

It was raised however, that the Guidelines remained vague and open to misinterpretation. Some submissions suggested that the Guidelines would benefit from additional explanations and further detail.

The lack of paragraph numbers in the Guidelines made it difficult for some users to reference specific sections.

SIRA's response:

SIRA will continue to adopt the language, style and formatting recommendations of the Plain English Foundation.

SIRA will consider numbering paragraphs in future revisions of the Guidelines.

2. Claims processes

The majority of respondents agreed that the Guidelines explained how the claims process works (sixty-eight per cent) and what to do with an initial notification (sixty-five per cent). Some respondents reported confusion regarding the 'initial notification of injury' and 'notification of incident'. It was raised that the distinction between incident and injury was not clearly made out.

SIRA's response:

SIRA will provide further clarification, in future revisions of the Guidelines, to distinguish between 'initial notification of injury' and 'notification of incident.'

3. Weekly payments

Sixty-eight per cent of respondents agreed that the Guidelines provided useful information to help assess a worker's entitlements and calculate their weekly payments. Some submissions noted the table of benefits was easy to follow. However, some raised the complexity of weekly payment provisions and pre-injury average weekly earnings (PIAWE).

SIRA's response:

SIRA has undertaken extensive consultation regarding the calculation of PIAWE. SIRA also engaged an independent expert to lead further stakeholder consultation which concluded with a PIAWE forum in December 2016. A copy of the full report is available on the [SIRA website](#). The Government has noted this is an important issue.

4. Work capacity

The Guidelines replaced the previous *WorkCover guidelines for work capacity* with a more principles-based approach. Sixty-nine per cent of respondents agreed that the Guidelines clearly state what an insurer must do when making a work capacity decision and how this should be communicated to the worker. Sixty-eight per cent agreed that the review process for a work capacity decision is clearly outlined.

Several submissions indicated that work capacity is a complicated area that involves significant legal content. Submissions highlighted that the process is both resource-and-time consuming. A number of concerns were raised including that procedures were not consistently followed.

Issues in relation to stay provisions for work capacity decision reviews were raised in some submissions. There were differing views around the application of the stay provision. These views included clarification regarding the timeframes for implementing a binding decision, legal assistance provisions, decision making, provision of notice and guidance on procedural fairness.

SIRA's response:

Further guidance and clarification on work capacity processes and procedural fairness will be provided in the claims administration manual and revised Guidelines.

The government has commenced a review of workers compensation dispute resolution arrangements, which will include the review process.

5. Treatment

Respondents said the Guidelines promoted sound decision making by introducing a less prescriptive approach to determining what is 'reasonably necessary' treatment. The Guidelines provide an expanded list of pre-approved medical treatments that are available to workers at the start of a claim, without having to obtain insurer approval. Sixty-nine per cent of respondents agreed the Guidelines clearly outline the types of treatment that can be accessed by workers. However, some feedback indicated that the provisions were overly complex and various exemptions caused confusion.

SIRA's response:

SIRA will review the pre-approved treatment provisions in line with the feedback received.

6. Domestic assistance

Sixty-two per cent of respondents agreed that the Guidelines clearly explain domestic assistance entitlements. However, a number of respondents indicated that the process for claiming and determining claims for domestic assistance remains unclear.

SIRA's response:

SIRA propose to provide further guidance on domestic assistance in the claims administration manual.

7. Return to work

More than seventy-three per cent of respondents agreed that the Guidelines explained the assistance available to help a worker return to work, but some stakeholders would like more clarification regarding specific issues. One suggestion was that SIRA provide information and guidance to insurers about what happens when a worker leaves their employment.

SIRA's response:

SIRA propose to provide further guidance in the claims administration manual on return to work assistance for workers in different circumstances.

8. Property damage

Seventy-two per cent of respondents agreed that the Guidelines are clear on what property damage is covered by workers compensation. Suggestions were made to provide more detail regarding this topic.

SIRA's response:

SIRA will review the need to provide further guidance about property damage claims in the claims administration manual.

9. Permanent impairment

Seventy-eight per cent of respondents agreed that the Guidelines explain how to claim for lump sum compensation.

One area of discussion was negotiation of the degree of permanent impairment between parties. It was suggested that the Guidelines should clearly state whether parties are able to negotiate the degree of permanent impairment.

SIRA's response:

While the legislation does not expressly prohibit parties from reaching agreement as to the degree of permanent impairment, SIRA will consider the need for clarification in the claims administration manual.

10. Death of a worker

Eighty-six per cent of respondents agreed that the Guidelines explained entitlements following the death of a worker. One submission noted concern regarding apportionment of death benefit between dependants.

SIRA's response:

The Workers Compensation Commission has jurisdiction to determine apportionment between dependents.

11. Commutations

Seventy-seven per cent of respondents agreed that the Guidelines clearly explain how to apply for a commutation. However, some submissions described the process as being complex. One submission suggested legislative amendments to the preconditions to commutation.

SIRA's response:

Legislative amendments, including changes to the preconditions for commutations, are beyond the scope of this review.

12. Work injury damages

Seventy-three per cent of respondents agreed that the Guidelines clearly explain eligibility and how to claim work injury damages. Some respondents commented that they find the process confusing and that the requirement to issue a dispute notice can result in delays to the process.

SIRA's response:

SIRA will ensure that eligibility and how to claim work injury damages are clearly explained in future Guidelines and the claims administration manual.

13. Disputes

Sixty-five per cent of respondents agreed that the Guidelines outline how a worker can ask for a review of a decision. A number of submissions expressed the view that the dispute process itself needed more detail. A common theme was that dispute notices are too complex and beyond the skillset of most case managers. There was a general call for the simplification of dispute notices.

Sixty-nine per cent of respondents agreed that the Guidelines are clear about how a worker may be represented for workers compensation matters. Some stakeholders found this topic to be confusing as the Guidelines often referred users back to the legislation.

SIRA's response:

SIRA will review the guidance around the dispute process in future revisions of the Guidelines.

The government has commenced a review of workers compensation dispute resolution arrangements.

14. Exempt workers

Sixty-nine per cent of respondents agreed that the Guidelines clearly outline the benefits available to exempt workers. Feedback indicated that there was some confusion in relation to the chapter on exempt categories of workers, indicating that the chapter was not differentiated well enough in the Guidelines.

SIRA's response:

SIRA will review what further clarification and/or simplification can be provided to differentiate between exempt workers and others in the scheme.

15. Consultation

Consultation appeared to be an area that requires improvement; the majority of stakeholders (fifty-seven per cent) noted there was insufficient stakeholder consultation during the Guidelines review. Survey responses indicated that the majority of stakeholders would prefer written submissions, workshops and group discussions as the vehicle for consultation in future.

SIRA's response:

SIRA will consider the feedback received, and how to initiate consultation appropriate to each project that will allow stakeholders to provide meaningful feedback.

16. Communication

Another area mentioned was communication with stakeholders following the release of the Guidelines. It was noted that there was adequate communication during the release; however inconsistencies and questions raised were not resolved quickly. The majority of stakeholders indicated their preferences for future communication through the SIRA Workers Compensation Bulletin, email, information sessions and webinars.

SIRA's response:

SIRA will review the communication strategy in the delivery of projects to include a mechanism for addressing post-implementation concerns in a timely manner.

Other themes

Although outside the primary scope of the consultation, a number of other themes were identified. This included suggestions around PIAWE, reasonable excuse for medical expenses and the location of the Guidelines on the SIRA website.

1. PIAWE

A number of submissions expressed the view that the concept of PIAWE is difficult to understand and apply. It was suggested that the PIAWE process should be simplified. Suggestions in relation to legislative amendments for PIAWE were beyond the scope of the post-implementation review. As noted earlier, SIRA has undertaken extensive consultation regarding PIAWE, and engaged an independent expert to lead further stakeholder consultation which concluded with a PIAWE forum in December 2016. The government has noted this is an important issue.

2. Reasonable excuse

Submissions also revealed some stakeholder confusion regarding the application of reasonable excuse and when it can be used. SIRA notes that the legislation provides that medical treatment cannot be reasonably excused. This allows workers to access appropriate medical treatment quickly and facilitates better return to work outcomes.

3. Location of Guidelines on SIRA webpage

Stakeholders noted difficulty in locating the Guidelines on the SIRA website as no obvious link existed. Only the search function could reliably locate the Guidelines on the SIRA website. SIRA will continue to review and update its website and will incorporate this feedback.

Where to from here?

SIRA is embarking on a significant program of work to create and implement a claims administration manual. This will occur concurrently with a review and revision of the current suite of workers compensation Guidelines.

It is envisaged that the manual will deliver a centralised source of easy-to-understand claims handling information. It will aim to simplify and clarify the claims management experience for workers and employers, and specify expected claims management practices for insurers.

The manual will cover a broad range of topics, designed to help insurers make decisions in accordance with the legislation and Guidelines. It will set the benchmark for high quality, outcome-focused claims management.

The development of the manual will occur alongside a review of the current suite of workers compensation guidelines. Following the review, the Guidelines will be reissued focussing on specific issues as directed by the legislation.

All legislatively mandated information will remain in the Guidelines with general claims handling information being moved to the manual. This will promote simplicity and an integrated approach to claims handling.

Consultation for the manual and Guidelines review will commence in early 2018.

Acknowledgements

SIRA would like to thank all stakeholders for taking the time to make submissions and provide feedback. All feedback will be considered as part of the claims administration manual and Guidelines review.

Any questions or enquiries in relation to this submission summary, or the proposed manual and Guidelines review, should be emailed to policydesign@sira.nsw.gov.au.

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This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

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