

# Review of the workers compensation guidelines



## Table of changes

### Introduction

The State Insurance Regulatory Authority (SIRA) has undertaken a review of its Workers Compensation Guidelines to ensure they are current, valid and effective.

The review has been undertaken concurrently with the development of SIRA's Claims Administration Manual (CAM). The CAM will comprise of both principles-based standards of practice (Standards) and guidance material in the form of practice notes to provide additional guidance and support to insurers.

The CAM will form one part of a broader digital platform (platform) that will make available online comprehensive workers compensation information, resources and better practice guidance for insurers and other system stakeholders.

The draft *Workers Compensation Guidelines* (new Guidelines) seek to streamline and consolidate existing Guidelines, and are intended to replace the:

1. [Guidelines for Claiming Workers Compensation](#) dated 1 August 2016
2. [Guidelines on Injury Management Consultants](#) dated 27 September 2012
3. [Guidelines on Independent Medical Examinations and Reports](#) dated 13 March 2012.

Some information currently in these Guidelines has been removed and incorporated into the CAM either as Standards or practice notes, or as part of general information to be included in the digital platform to help stakeholders understand the claims journey.

The table below provides a summary of key proposed changes, the reason for the change, and any relevant additional information for each of the Guidelines above.

The proposed changes have considered feedback and information provided through multiple sources of review, including SIRA's post implementation of the *Guidelines for claiming workers compensation* and consultation with stakeholders.

The NSW Government announced important reforms to the NSW workers compensation dispute resolution system. The new Guidelines reflect the changes required to support commencement of the *Workers Compensation Legislation Amendment Bill 2018*. It is anticipated that further changes will be required in 2019 following a further period of consultation.

## Current Guideline: Guidelines for claiming workers compensation, effective 1 August 2016

| 2016 Guidelines   | New Guidelines  | Reason for change -<br>Additional information  |
|---|---|--|
| <p><b>About these Guidelines</b></p> <p>The introduction provides that these Guidelines outline SIRA’s expectation of best practice claims processes. Where the Guidelines reflect SIRA’s expectations but there is no specified obligation the term ‘should’ has been adopted.</p>   | <p><b>About these Guidelines</b></p> <p>The introduction reflects that the amended Guidelines outline what employers, workers, and insurers must do in relation to claims under workers compensation legislation. Guidelines will only refer to requirements where there is a corresponding legislative provision for the Authority to make Guidelines.</p> | <p>The Guidelines have been refined to requirements where there is a corresponding legislative provision providing the Authority with Guideline-making power.</p> <p>The CAM Standards of practice will outline SIRA’s expectations and mandatory requirements for claims handling and administration.</p>   |
| <p><b>Part A: How the claims process works</b></p>  |   |  |
| <p><b>A1 Initial notification of injury</b></p>   |   |  |
| <p>The 2016 Guidelines make provision for:</p> <ul style="list-style-type: none"> <li>• notifying the employer and insurer</li> <li>• how to notify an insurer of a work-related injury</li> <li>• confirming the employer’s policy</li> <li>• acting on the initial notification</li> </ul>  | <p>The new Guidelines address initial notification of an injury in accordance with the Guideline making power under section 266 of the 1998 Act.</p>  | <p>Some information has been removed from the 2016 Guidelines and will be included in SIRA’s new digital platform to help all stakeholders better understand the claims journey. This will include:</p> <ul style="list-style-type: none"> <li>• notifying the employer and insurer</li> <li>• how to notify an insurer of a work-related injury</li> <li>• confirming the employer’s policy</li> <li>• acting on the initial notification.</li> </ul> |
| <p><b>A2 Provisional payments</b></p> <p>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• starting provisional payments</li> <li>• how to start provisional weekly payments</li> <li>• delaying provisional weekly payments</li> <li>• how to communicate a reasonable excuse for delaying payments</li> </ul> | <p><b>Provisional liability</b></p> <p>The new Guidelines address the reasonable excuse to delay the commencement of provisional weekly payments accordance with the Guideline making power of section 267 of the 1998 Act.</p> <p>The following substantive changes have been proposed:</p>  | <p>The reasonable excuse ‘there is no requirement for weekly payments’ has been removed following consideration of insurer feedback.</p> <p>The 2016 Guidelines require insurers to make a decision to delay provisional liability for weekly payments within seven days of being notified of an injury, even when the worker has not sought compensation for or had a loss of earnings because of the injury.</p>                                     |

| 2016 Guidelines  | New Guidelines  | Reason for change - Additional information   |
|--|---|--|
| <ul style="list-style-type: none"> <li>stopping provisional payments</li> </ul>  | <ul style="list-style-type: none"> <li>reasonable excuse to not commence weekly payments because there is no requirement for weekly payments is removed</li> <li>increase to the maximum amount for provisional medical expenses from \$7,500 to \$10,000.</li> </ul> | <p>The change will mean insurers are only required to respond formally where a worker or a representative of the worker notifies the insurer that the worker has suffered a loss (weekly payments or medical expenses) arising out of the injury.</p> <p>Where a worker has a workplace injury they are to be informed of their rights to make a claim for compensation should that be necessary. There are mechanisms in place that impose a requirement on employers to inform workers of their rights in the event of a workplace injury such as section 231 of the 1998 Act (which requires employers to notify workers of the requirements of the workers compensation legislation with respect to the notification of injuries and the making of claims), and section 232 of the 1998 Act (which gives worker the right to know who the employer's workers compensation insurer is).</p> <p>Information that represents SIRA's expectations for provisional payments has been outlined in the CAM. Additional guidance information will be available in the digital platform.</p> <p>The maximum amount for medical expenses was originally intended to align with the amount for interim payment directions (IPD) at the Commission. The IPD amount is indexed and currently sits at \$9,178.00 (as at 1 April 2018).</p> |
| <p><b>A3 Claims for compensation</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>requirement for a claim form</li> <li>information required to support a claim</li> <li>responding to a claim</li> </ul> | <p><b>Making a claim</b><br/>The new Guidelines address the requirements of a claim, the claim form and signed authority in accordance with section 260 of the 1998 Act. of the 1998 Act.</p>   | <p>Relevant guidance information will be made available in SIRAs digital platform.</p>   |

| 2016 Guidelines  | New Guidelines   | Reason for change - Additional information  |
|--|--|---|
| <b>Part B: What compensation may cover</b>   |  |   |
| <p><b>B1.1 Weekly Payments</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• understanding eligibility</li> <li>• how to demonstrate capacity</li> <li>• determining liability</li> <li>• calculating pre-injury average weekly earnings</li> <li>• calculating weekly payments</li> <li>• how to start weekly payments</li> <li>• weekly payments ready reckoner</li> </ul> | <p>The new Guidelines do not address weekly payments.</p>  | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to weekly benefits.</p> <p>Information that represents SIRA’s expectations for weekly payments has been outlined in the CAM.</p> <p>Relevant guidance information will be made available in SIRAs digital platform.</p> |
| <p><b>B1.2 Work Capacity Assessments</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• understanding work capacity assessments</li> <li>• assessing work capacity</li> <li>• assessing suitable employment</li> <li>• timing the assessments</li> <li>• attending assessment appointments</li> <li>• suspending benefits due to refusal or non-participation</li> </ul>      | <p>The new Guidelines address the timing, conduct of work capacity assessments, and the requirement to attend assessments, in accordance with section 44A of the 1987 Act.</p> <p>The following substantive changes have been made:</p> <ul style="list-style-type: none"> <li>• insurers are required to undertake a work capacity assessment after 10 weeks if weekly benefits are expected to continue past 12 weeks, as a minimum.</li> <li>• insurers should conduct a work capacity assessment where the insurer becomes aware of claims management flags or indicators that suggest a review of work capacity is required, including receipt of a certificate of capacity which indicates a downgrade in capacity.</li> </ul> | <p>Section 44A of the 1987 Act makes provision for the Guidelines to address timing, conduct of work capacity assessments, and the requirement to attend assessments decision.</p> <p>Relevant guidance information will be made available in SIRAs digital platform.</p>   |
| <p><b>B1.3 Work Capacity Decisions</b><br/>The 2016 Guidelines address:</p>  | <p>The new Guidelines do not address work capacity decisions.</p>  | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to work capacity decisions.</p>   |

| 2016 Guidelines   | New Guidelines  | Reason for change - Additional information   |
|---|---|--|
| <ul style="list-style-type: none"> <li>• understanding work capacity decisions</li> <li>• how to advise the worker of the work capacity decision</li> </ul>   |   | <p>Relevant guidance information will be made available in SIRAs digital platform.</p>   |
| <p><b>B1.4 Reviews of work capacity decisions</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• understanding the available review options</li> <li>• the stay of a work capacity decision</li> <li>• applying for an internal review</li> <li>• how to acknowledge and respond to a request for internal review</li> <li>• how to complete and internal review</li> <li>• how to notify the worker of the internal review decisions</li> <li>• applying for a merit review</li> <li>• applying for a procedural review.</li> </ul> | <p>The new Guidelines do not address reviews of work capacity decisions.</p>  | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to the review of work capacity decisions.</p> <p>Relevant guidance information will be made available in SIRAs digital platform.</p>   |
| <p><b>B2 Medical expenses</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• understanding eligibility</li> <li>• compensation period</li> <li>• determining what is reasonably necessary</li> <li>• assessing treatment without pre-approval</li> <li>• how to claim treatment and services</li> <li>• determining liability</li> <li>• determining rates for treatment and services</li> </ul>   | <p><b>Compensation for medical, hospital and rehabilitation expenses</b><br/>The new Guidelines address requirements in accordance with section 60 of the 1987 Act.</p> <p>Changes to the exemptions for pre-approval of certain treatment include:</p> <ul style="list-style-type: none"> <li>• change of structure to the table to make the timeframes clearer</li> <li>• merging psychological and physical allied health practitioner exemptions to remove repetition</li> <li>• minor change to the note in the hearing aids exemption to take into account that for most hearing loss claims a permanent impairment assessment is not conducted.</li> </ul> | <p>Section 60 of the 1987 Act makes provision for the Guidelines to cover:</p> <ul style="list-style-type: none"> <li>• establishing rules to be applied in determining whether it is reasonably necessary for a treatment or service to be given or provided,</li> <li>• limiting the kinds of treatment and service (and related travel expenses) that an employer is liable to pay the cost of under this section,</li> <li>• limiting the amount for which an employer is liable to pay under this section for any particular treatment or service,</li> <li>• establishing standard treatment plans for the treatment of particular injuries or classes of injury,</li> <li>• specifying the qualifications or experience that a person requires to be appropriately qualified for the purposes of this section to</li> </ul> |

| 2016 Guidelines   | New Guidelines   | Reason for change - Additional information  |
|---|--|---|
|   | <ul style="list-style-type: none"> <li>increased reasonable incidental expenses from \$100 to \$110.</li> </ul>  | <p>give or provide a treatment or service to an injured worker (including by providing that a person is not appropriately qualified unless approved or accredited by the Authority).</p> <p>Information that represents SIRA's expectations for medical expenses has been outlined in the CAM.</p> <p>Relevant guidance information will be made available in SIRAs digital platform.</p> |
| <p><b>B3 Domestic Assistance</b></p> <p>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>understanding eligibility</li> <li>determining liability</li> <li>how to design a domestic assistance care plan</li> <li>gratuitous domestic assistance</li> <li>reimbursing gratuitous domestic assistance</li> <li>verifying and approving gratuitous domestic assistance.</li> </ul> | <p>The new Guidelines address the establishment of domestic care plans in accordance with the Guideline making power under section 60AA(1) of the 1987 Act.</p> <p>The new Guidelines specify how the performance of gratuitous domestic assistance is to be verified and approved in accordance with section 60AA(5) of the 1987 Act.</p> | <p>Section 60AA makes provision for the Guidelines to cover the establishment of domestic care plans and how the performance of gratuitous domestic assistance is to be verified.</p> <p>Relevant guidance information will be made available in SIRAs digital platform.</p>  |
| <p><b>B4.1 Return to work assistance (new employment assistance)</b></p> <p>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>new employment assistance the worker can receive</li> <li>understanding eligibility</li> <li>how to make a claim for a new employment assistance</li> <li>determining liability</li> <li>further vocational assistance.</li> </ul>                  | <p>The new Guidelines do not address return to work assistance (new employment).</p>   | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to the return to work assistance.</p> <p>Relevant guidance information will be made available in SIRAs digital platform.</p>  |
| <p><b>B4.2 Return to work assistance (education or training assistance)</b></p> <p>The 2016 Guidelines address:</p>   | <p>The new Guidelines do not address return to work assistance (education or training assistance).</p>   | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to the return to work assistance.</p>   |

| 2016 Guidelines  | New Guidelines   | Reason for change - Additional information  |
|--|--|---|
| <ul style="list-style-type: none"> <li>• education or training assistance the worker can receive</li> <li>• understanding eligibility</li> <li>• the injury management plan</li> <li>• how to make a claim for education or training assistance</li> <li>• determining liability</li> <li>• further vocational assistance.</li> </ul>  |  | <p>Relevant guidance information will be made available in SIRAs digital platform.</p>  |
| <p><b>B5 Property Damage</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• understanding liability</li> <li>• how to claim for property damage</li> <li>• determining liability</li> <li>• deciding what compensation is payable.</li> </ul>   | <p>The new Guidelines do not address the payment of compensation for property damage.</p>  | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to property damage.<br/>Relevant guidance information will be made available in SIRAs digital platform.</p>   |
| <p><b>B6 lump sum compensation for permanent impairment</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• understanding liability</li> <li>• how to claim lump sum compensation for an injury received on/after 01/01/2002</li> <li>• how to claim lump sum compensation for an injury received before 01/01/2002</li> <li>• determining liability</li> <li>• lump sum amount payable</li> <li>• how to make a settlement offer</li> <li>• issuing a complying agreement.</li> </ul> | <p><b>Lump sum compensation</b><br/>The new Guidelines address the matters to be included in relevant particulars to enable the insurer to make a proper assessment of the worker's entitlement.<br/>The new Guidelines also provide for the recording of complying agreements in accordance with the Guideline making power under section 66A(4) of the 1987 Act.</p> | <p>Section 282(1) allows for the Guidelines to specify any additional matters to be included in the relevant particulars to enable the insurer to make a proper assessment of the worker's entitlement. Section 66A(4) of the 1987 Act makes provision for the Guidelines to cover how complying agreements and the payments made under them are to be recorded by insurers.<br/>Information that represents SIRA's expectations for lump sum compensation for permanent impairment has been outlined in the CAM. Relevant guidance information will be made available in SIRAs digital platform.</p> |

| 2016 Guidelines  | New Guidelines   | Reason for change - Additional information  |
|--|--|---|
| <p><b>B7 Payments in the event of death</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• legal representation</li> <li>• determining liability</li> <li>• assessing dependency</li> <li>• determining dependency for lump sum and weekly payments</li> <li>• apportioning payments</li> <li>• paying lump sum and weekly benefits</li> <li>• paying other expenses</li> </ul>   | <p>The new Guidelines do not address the payment of compensation and the handling of claims by insurers following the death of a worker.</p>   | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to payments in the event of death. Information that represents SIRA's expectations for payments in the event of death has been outlined in the CAM.</p> |
| <p><b>B8 Commutation of compensation</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• starting the process</li> <li>• meeting the preconditions</li> <li>• agreeing to a commutation</li> <li>• applying for a commutation of compensation</li> <li>• certifying and registering an agreement</li> <li>• making a payment.</li> </ul>   | <p><b>Commutation of compensation</b><br/>The new Guidelines specify the definition of a catastrophic injury as required by section 87EEA of the 1987 Act.<br/>The new Guidelines do not cover other aspect of commutations.</p> | <p>The new Guidelines specify the definition of a catastrophic injury as required by section 87EEA of the 1987 Act. Relevant guidance information will be made available in SIRAs digital platform.</p>   |
| <p><b>B9 Work Injury Damages</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• understanding eligibility</li> <li>• how to claim work injury damages</li> <li>• determining liability</li> <li>• making an offer of settlement</li> <li>• how to make a settlement offer</li> <li>• issuing a pre-filing statement</li> <li>• responding to a pre-filing statement</li> <li>• starting mediation</li> <li>• starting court proceedings.</li> </ul> | <p>The new Guidelines do not address the making and handling of claims for work injury damages.</p>  | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to work injury damages. Relevant guidance information will be made available in SIRAs digital platform.</p>   |

| 2016 Guidelines  | New Guidelines  | Reason for change - Additional information   |
|--|---|--|
| <p><b>B10 Disputes and failure to determine a claim</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• disputing liability</li> <li>• reason to dispute liability</li> <li>• notifying the worker</li> <li>• the notice of dispute</li> <li>• understanding dispute timeframes</li> <li>• reviewing a review of the insurer’s decision</li> <li>• failing to determine a claim</li> <li>• changes to compensation that are not a liability dispute</li> </ul> | <p>The new Guidelines do not address disputes and failures to determine claims.</p>   | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to disputes.</p> <p>Information that represents SIRA’s expectations for insurer participation in disputes and mediations is outlined in the CAM. Relevant guidance information will be made available in SIRAs digital platform.</p> |
| <p><b>B11 Worker representation</b><br/>The 2016 Guidelines address:</p> <ul style="list-style-type: none"> <li>• Legal representation</li> <li>• Union representation</li> </ul>  | <p>The new Guidelines do not address worker representation.</p>   | <p>There is no legislative requirement for the Guidelines to codify any matters in relation to worker representation.</p> <p>Relevant guidance information will be made available in SIRAs digital platform.</p>   |
| <p><b>Part C – Exempt workers</b></p>  |   |  |
| <p>The Guidelines currently make specific provisions with respect to exempt workers.</p>   | <p>The new Guidelines do not make specific provisions with respect to exempt workers. Instead, where relevant and within the Guideline making powers exempt workers are dealt with as part of the relevant legislative powers. Any sections that do not apply to exempt workers are clearly marked.</p> | <p>Stakeholder feedback indicated that separating entitlements in the 2016 Guidelines was confusing for some.</p>  |

## Current Guideline: WorkCover Guidelines on Injury Management Consultants, effective 27 September 2012

| 2012 Guidelines   | New Guidelines  | Reason for change  |
|---|---|--|
| <p>The 2012 Guidelines address:</p> <ul style="list-style-type: none"> <li>• Definition of an injury management consultant</li> <li>• The role of the injury management consultant</li> <li>• Referrals to an injury management consultant</li> <li>• Injury management consultant reports</li> <li>• Injury management consultants and the Workers Compensation Commission</li> <li>• Selection criteria</li> <li>• Approval process</li> <li>• Term of approval</li> <li>• Re-approval</li> <li>• Appeal Process for Non-Selection or Non Re-approval</li> <li>• Complaints about an injury management consultant</li> <li>• Revocation of approval</li> <li>• Fees and payments</li> </ul> | <p>The new Guidelines address the functions of an injury management consultant in accordance with the Guideline making power under section 45A of the 1998 Act. This includes:</p> <ul style="list-style-type: none"> <li>• IMC functions relating to the nominated treating doctor</li> <li>• IMC functions relating to the worker</li> <li>• IMC functions relating to the employer</li> <li>• IMC functions relating to the other service providers</li> <li>• The IMC report.</li> </ul> <p>The following substantive changes have been made:</p> <ul style="list-style-type: none"> <li>• SIRA proposes to expand the functions on an IMC to enable comment on treatment and diagnostic procedures, if a barrier to work.</li> </ul> | <p>Section 45A of the 1998 Act makes provision for the Guidelines to address the functions of an injury management consultant.</p> <p>Information that represents SIRA's expectations for referral to an injury management consultant has been outlined in the CAM.</p> <p>Additional relevant guidance information will be made available in SIRAs digital platform.</p> <p>Feedback from stakeholders has indicated that not allowing injury management consultants to comment on treatment as part of a return to work issue limits their efficacy. Expanding the injury management consultants function to include commenting on treatment reflects the holistic nature of return to work.</p> |

Current Guideline: WorkCover Guidelines on Independent Medical Examinations and Reports, effective 23 March 2012

| 2012 Guidelines  | New Guidelines   | Reason for change  |
|--|--|--|
| <p>The 2012 Guidelines address:</p> <ul style="list-style-type: none"> <li>• Definition of Independent Medical Examination</li> <li>• Mandatory Obligations for Employers/Insurers</li> <li>• Obligations for all Independent Medical Examinations</li> <li>• Referral for Independent Medical Examination</li> <li>• Conduct of an Independent Medical Examination</li> <li>• Reporting an Independent Medical Examination</li> <li>• Corrections and Updating of Reports</li> <li>• Complaints about Independent Medical Examinations</li> <li>• Complaints about Workers</li> <li>• Fees and Payments.</li> </ul> | <p>The new Guidelines address the requirements for a worker to attend a medical examination in accordance with the Guideline making power under section 119(4) of the 1998 Act. This includes:</p> <ul style="list-style-type: none"> <li>• reason for referral</li> <li>• qualifications</li> <li>• Permanent Impairment assessors</li> <li>• location</li> <li>• special requirements</li> <li>• notice to the worker</li> <li>• subsequent assessments</li> <li>• unreasonable requests.</li> </ul> | <p>Section 119(4) of the 1998 Act makes provision for the Guidelines to cover the requirements for a worker to attend a medical examination. Relevant guidance information will be made available in SIRAs digital platform.</p> |

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers. However, to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website [legislation.nsw.gov.au](http://legislation.nsw.gov.au). This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation. This material may be displayed, printed and reproduced without amendment for personal, in-house or non-commercial use.

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