

SafeWork NSW submission to State Insurance Regulatory Authority

*Claims administration manual and
Guidelines review: Discussion paper*

May 2018

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1. Background

SafeWork NSW understands that the State Insurance Regulatory Authority (SIRA) in March 2018 released a discussion paper regarding the creation of a claims administration manual (CAM).

SafeWork NSW understands that SIRA plans to create a claims administration manual; being an online tool to assist insurers and other stakeholders to navigate the legislative landscape with the aim to produce a centralised, easy to navigate and understandable tool that provides them with an enforceable guidance framework to promote the desired standards of claims administration.

SafeWork NSW also understands that the implementation of the CAM will be supported by a process to simplify and consolidate the current suite of workers compensation guidelines.

SafeWork NSW is able to provide input to the discussion paper as the work health and safety regulator, and also as SafeWork NSW Inspectors perform some functions under the Workers Compensation Act 1987 and Workplace Injury Management and Workers Compensation Act 1998.

In particular SafeWork NSW in this submission provides input regarding:

- Claims management: initial (Initial notification of an injury)
- Claims management: initial (Reasonable excuse for not commencing weekly payments)
- Claims management: initial (Fatality claims)
- Claims management: ongoing (Management of psychological claims)
- Work capacity: suitable employment
- Return to Work (recovery at work / stakeholder obligations)
- Non treating practitioners
- Dispute process
- Application of reasonable excuse for weekly benefits
- Injury management plans in disputed claims
- Complaints management

SafeWork NSW accepts that this submission will be made publicly available and has no objections.

2. Introduction

SafeWork NSW welcomes the opportunity to make a submission to the State Insurance Regulatory Authority – Claims administration manual and Guidelines review – discussion paper (March 2018).

SafeWork NSW is the WHS regulator for NSW (except in relation to mining workplaces). It works with the community to reduce work-related fatalities, serious injuries and illnesses.

SafeWork NSW is established under the Work Health and Safety Act 2011 (WHS Act), which is part of a nationally harmonised scheme. SafeWork NSW's regulatory functions are set out in section 152 of the WHS Act and include:

- advising and making recommendations to the Minister and reporting on the operations of the effectiveness of WHS legislation
- monitoring and enforcing compliance with WHS legislation
- collecting, analysing and publishing WHS statistics
- providing advice and information on WHS to duty holders and their representatives, and promoting and supporting education and training on WHS matters
- sharing relevant information including with corresponding regulators
- conducting and defending proceedings under WHS legislation before a court or tribunal.

Additionally, SafeWork NSW Inspectors have authorities under the Workplace Injury Management and Workers Compensation Act 1998 (WIMWCA 1998), as well as under the Workers Compensation Act 1987 (WCA 1987) and advise and guide employers in relation to their obligations under parts of these acts. SafeWork NSW also has Return to Work Inspectors across NSW who have specialist expertise in injury management and return to work.

SafeWork NSW's 'Work Health and Safety Roadmap for NSW 2022' outlines that we aim to achieve:

- a 20% decline in worker fatalities due to injury
- a 30% decline in the incidence rate of claims* (serious injuries and illnesses)
- a 30% decline in the incidence rate of claims* (serious musculoskeletal injuries and illnesses)

while working in partnership with SIRA to improve return to work practices.

SafeWork NSW understands that while the CAM will be designed with claims managers in mind, we also understand and support the intended aim of achieving the best possible recovery and return to work outcomes.

*Resulting in one or more weeks off work

3. Response to discussion paper

Question 1 (General): Do you have any comments regarding the introduction of the CAM and the review of the guidelines?

About the introduction of the CAM

SafeWork NSW supports the introduction of the CAM to provide clear, up to date and accessible information.

About the review of the guidelines

SafeWork NSW supports the simplification and consolidation of the current suite of workers compensation guidelines.

As outlined on page 4, SafeWork NSW Inspectors have authority under the Workers Compensation Act 1987 and Workplace Injury Management and Workers Compensation Act 1998.

Given any changes to the guidelines may impact Inspector functions, SafeWork NSW requests an opportunity to consult with SIRA on any changes to the specific individual relevant guidelines (specifically 'Guidelines for claiming workers compensation' and 'Guidelines for workplace return to work programs').

The current version of the **Guidelines for workplace return to work programs** (May 2017) indicates on page 5 that SafeWork NSW has Inspectors who can advise and guide employers; however, the current version of the **Guidelines for claiming workers compensation** (nor any other guides or factsheets) make no mention of SafeWork Inspectors functions to advise and guide employers in their obligations.

In aiming to deliver transparent, up-to-date and accessible information and guidance material SafeWork NSW suggests consideration by SIRA that in any review of these guidelines that the role and functions of SafeWork NSW Inspectors is included.

Questions 2,3 and 4 (Content): Do you have any feedback on the proposed content? / Are there topics that are not covered that you would like to see included in the CAM? / Do you have any feedback or information that you would like SIRA to consider regarding these topics?

- Claims management: initial (Initial notification of an injury)

Under Section 35 of the Work Health Safety Act 2011, an incident notifiable to SafeWork NSW means; the death of a person, or a serious injury or illness of a person, or a dangerous incident.

SafeWork NSW suggests that within the CAM and in reviewing the **Guidelines for claiming workers compensation**, SIRA includes information to notify stakeholders around employer / PCBU responsibilities to advise SafeWork NSW of notifiable incidents.

- Claims management: initial (Reasonable excuse for not commencing weekly payments)

SafeWork NSW suggests that under reasonable excuse SIRA considers providing information to stakeholders around how employer obligations under Chapter 3, WIMWCA 1998 applies when the insurer notifies that the claim is reasonably excused. Further comment is provided on page 7.

- Claims management: initial (Fatality claims)

Refer to above relating to notifiable incidents to SafeWork NSW under the WHS Act 2011.

- Claims management: ongoing (Management of psychological claims)

SafeWork NSW suggests consideration of the following in relation to information provided in the CAM regarding the management of psychological claims:

1. What to do if a psych claim is disputed. It may be the case that the claimant may still need treatment and support in returning to work, there could still be risk factors that need addressing in the workplace even if it is not a compensable claim.
2. It may be worth reminding all parties how important perception of supervisor support and organisation justice are in a successful return to work and how to achieve this.
3. How to maintain contact with an injured worker.
4. Some guidance around language and capacity for psychological injuries to assist doctors and workplaces with identifying restrictions and suitable employment.
5. Some content around the other flags, social, biological, claim process etc, that are often categories as not part of the injury or claim but still have a strong influence over recovery.

- Work capacity: suitable employment

SafeWork NSW suggests consideration that this definition applies to provision of suitable work under Section 49 of WIMWCA 1998. SafeWork NSW Inspectors provide advice and where necessary enforcement actions of employer obligations under Section 49.

SafeWork NSW suggests consideration by SIRA that in the CAM and review of the guidelines that the role and functions of SafeWork NSW Inspectors regarding suitable employment is included.

- Return to Work (recovery at work / stakeholder obligations)

As stated previously SafeWork NSW has Inspectors who can advise and guide employers in regards to Chapter 3, WIMWCA (workplace injury management).

SafeWork NSW suggests consideration by SIRA that in the CAM and review of the guidelines that the role and functions of SafeWork NSW Inspectors is included.

- Non treating practitioners

SafeWork NSW understands iCare have piloted a Medical Support Panel of specialists, who appear to have some weighting or influence in medical decisions on claims.

SafeWork NSW asks if these other 'non-treating practitioners' be limited in their abilities to make decisions on claims, for example, can they make decisions on treatment approval? What is their role and how does this differ from the role of an IMC?

SafeWork NSW suggests that SIRA makes consideration in the content of the CAM (under the medical management chapter) if this chapter could include who can make medical / treatment decisions on claims and clarify the role of icare's Medical Support Panel.

- Dispute process

SafeWork NSW Inspectors provide advice and where necessary enforcement of employer obligations under Section 49 (WIMWCA 1998), 'employer must provide suitable work'.

SafeWork NSW suggests consideration by SIRA that in the CAM and review of the guidelines that the role and functions of SafeWork NSW Inspectors in disputes regarding non provision of suitable employment be included.

Furthermore SafeWork NSW suggests inclusion in the CAM the information (or part thereof) contained within SIRA Position Statement 1 (dated 12 October 2017) regarding Inspector involvement where a matter is before the Workers Compensation Commission.

Questions 5 and 6 (Focus areas): What would you like SIRA to consider in these areas? / Are there any other claims management matters you believe would benefit from clarification from SIRA?

- Application of reasonable excuse for weekly benefits

SafeWork NSW suggests SIRA makes consideration in the CAM regarding Chapter 3 obligations (WIMWCA 1998) for employers (particularly around provision of suitable work).

SafeWork NSW suggests the CAM reiterate how provision of suitable employment to workers applies when the insurer notifies reasonable excuse. SafeWork NSW suggests that in keeping with the principles of recovery @ work that employer obligations regarding provision of suitable work (and other Chapter 3 obligations) apply even if the claim is reasonably excused (depending on the reason for the insurer's reasonable excuse).

- Injury management plans in disputed claims

SafeWork NSW suggests SIRA makes consideration in the CAM and review of the guidelines that Chapter 3 obligations (WIMWCA 1998) for employers (particularly around provision of suitable work) apply even if the claim is in dispute (as per Section 41A WIMWCA 1998).

- Complaints management

SafeWork NSW suggests SIRA explores and considers a complaints management process regarding employer improvement notices (EIN's) issued by Inspectors under section 59B of WIMWCA 1998.

SafeWork NSW suggests inclusion in the CAM the information (or part thereof) contained within SIRA Position statement 2 (dated 12 October 2017) regarding removal of review for Employer Improvement Notice.

There is currently no merits review process in place for employer improvement notices issued. Currently any complaints about EIN's should be addressed to the Chief Executive of SIRA.

4. Conclusion

SafeWork NSW supports the introduction of the CAM to provide clear, up to date and accessible information. SafeWork NSW also supports the simplification and consolidation of the current suite of workers compensation guidelines.

SafeWork NSW would be pleased to assist SIRA with any further information it may require in regards to the introduction of the CAM and the review of the workers compensation guidelines.