

# Claims administration manual and Guidelines review

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Submissions summary

**State Insurance  
Regulatory Authority**

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# Introduction

The State Insurance Regulatory Authority (SIRA) is committed to stewarding a fairer, sustainable and more customer-focused workers compensation system in NSW. To achieve this, we are continuing to implement reforms and build stronger regulatory systems.

SIRA's strategic plan outlines our overall strategic direction, with revision of the workers compensation claims handling framework identified as a key focus area for 2018. The Claims Administration Manual (CAM), setting out principles based regulatory standards, is a component of a broader Claims Management Platform that will make available online information, resources and better practice guidance.

Quality claims management underpins the success of the workers compensation system. Our regulatory approach is outcomes focused, risk based, and evidence based. We want to ensure our regulatory approach supports insurers to achieve the best possible recovery and return to work outcomes for workers in the system.

Importantly, SIRA does not intend to prescribe an operational claims model or inhibit insurer initiatives which may enhance performance or experience. Insurers are required to have their own systems and processes in place to effectively and efficiently manage workers compensation claims.

SIRA would like to thank all the stakeholders who have engaged in forums, meetings or taken the time to write to us with their feedback.

# Public consultation

On 29 March 2018, SIRA called for stakeholder comment in response to its discussion paper titled *Claims administration manual and Guidelines review*. Stakeholders were asked to provide comment by 25 May 2018.

## Stakeholder engagement

Following release of the discussion paper, SIRA also engaged with a range of stakeholders directly through forums and meetings to enable participants the opportunity for discussion and feedback. While varying views were expressed, there was a high level of stakeholder engagement and interest in the development of the CAM and review of the Guidelines evident throughout the discussions.

## Submissions received

We received 34 written submissions from 31 different stakeholders during the public consultation period. A range of stakeholder groups were represented, including employers and employer representative bodies, government bodies, insurers, unions, legal representatives, medical and allied health professionals as well as several individuals.

Out of the submissions received, 18 were provided on a non-confidential basis, with 16 either confidential-in-part or confidential-in-full. Those submissions which are non-confidential, or confidential only in part, have been made available on our website.

This paper provides a high-level summary of key themes outlined in submissions and/or expressed during direct engagement with stakeholders.

# Key themes

## Support for the CAM

Many of the submissions received either support or support in-principle, SIRA developing a CAM and concurrently reviewing the workers compensation Guidelines.

Submissions called for clarity and guidance with respect to a broad range of claims handling processes, with several submissions supporting the proposed topics outlined in the discussion paper. Some common areas included initial action after notification, determining liability, return to work case conferences, injury management plans, reasonably necessary treatment, permanent impairment, the use of investigations and surveillance, independent medical examinations and general insurer conduct.

Several submissions focused on the important role played by employers, and that engagement and consultation with employers is critical in the claims process and this should be reflected in the CAM.

Several submissions commented on the importance of the language to be used, with suggestions including use of the plain English foundation and ensuring that the content is easily read by all system participants, particularly injured workers.

Some stakeholders called for support be provided by SIRA in the form of supplementary guidance material, such as forms, template material, timelines or flowcharts, rather than prescribing compulsory standards which insurers must adhere to.

A number of areas were identified where clarity is required, which although out of scope for the CAM and Guidelines review, are important areas which SIRA will consider further. This includes, for example, claims estimation, data management and changes to the claims technical manual, and the role of the nominated treating doctor and providers more generally.

## Regulatory approach

Stakeholders were keen to understand SIRA's regulatory approach for the CAM and intended level of prescription.

Some submissions highlighted the importance of monitoring and compliance, and observed the importance for SIRA to establish a detailed compliance and enforcement policy

Some queries were raised in relation to the current audit manual, and how this will align to the CAM and what criteria will be assessed.

## Digital solution

Some discussion was focused on the proposed digital solution, including whether this would be accessible to all stakeholders or whether some access would be restricted, whether the content would be written in plain language for all users or specifically for insurers, and whether the CAM could also be accessed on mobile devices.

## Implementation

There was a suggestion that part of the implementation process should also ensure regulator approved training to case managers and others who may influence decisions and regular audits.

## Continued consultation

Many stakeholders sought to understand the process for continued consultation, particularly around proposed amendments to Guidelines and areas where the CAM seeks to impose an enforceable requirement on an insurer. It was suggested that SIRA needs to provide clarity around what the key issues are and how the CAM will solve them. Stakeholders also expressed a desire to understand the proposed 'look and feel' of the digital solution.

A recommendation was made to establish a working group to assist the development of the CAM and Guidelines and that the working group continue after implementation to assist with further updates and reviews.

## Stakeholder concerns

Some stakeholders raised concerns about the development of the CAM, mainly in relation to the intention, the scope, and the timing.

While the intention to simplify and consolidate current Guidelines was generally welcomed, it was noted that Guidelines themselves are not able to simplify complications arising due to complexities with the legislation, nor can the CAM be used to fix deficiencies in the existing legislation.

Some opposition was raised, with queries regarding the legal enforceability of Guidelines and Manuals generally. One submission queried SIRA's intention for the CAM and whether the Regulator was developing an operational document. Some concerns were raised that if SIRA were to develop an 'overly' prescriptive CAM then this would cause confusion and impact upon an insurer's ability to innovate.

However, several submissions highlighted concerns about the changes to the system and reduction in previous scheme agent arrangements over a short period of time. This has been perceived by some stakeholders as imposing an unrealistic work load and impacting quality case management. Some specific concerns regarding claims practices and insurer conduct were raised, including liability decisions being made without consideration of the evidence provided by the employer. This is seen by some to have the potential to adversely impact premiums, employer's trust in the system and the culture of the workplace.

It was identified that the Government has announced a review and proposed reforms to dispute resolution, which will in part impact revisions to the Guidelines.

Similarly, the timing for the implementation of the CAM was raised with suggestion that SIRA postpone commencement until after the current legislative Council Standing Committee on Law and Justice review of the workers compensation scheme.

Any questions or enquiries in relation to this submissions summary should be emailed to [policydesign@sira.nsw.gov.au](mailto:policydesign@sira.nsw.gov.au).

# Design, approach and next steps

The information provided through this public consultation will be used to further inform the overall development and design of the CAM as part of the overarching claims handling framework.

SIRA are continuing to progress the design and development of the CAM, informed through careful consideration and analysis of all stakeholder feedback received throughout the recent consultation.

## Regulatory approach

SIRA's principles based approach will reflect the objectives and outcomes of the workers compensation system as set out in the workers compensation legislation and aligned to our broader regulatory approach, being:

- outcomes based: focused on achieving system outcomes,
- risk based: allocating resources and using regulatory powers based on risk, and
- evidence based: basing our decisions on evidence.

## CAM an element of a Claims Management Platform: design and approach

It is now envisaged that the CAM will form part of a broader Claims Management Platform that will make available online information, resources and better practice guidance, comprising of interrelated elements.

Element	Purpose (synthesis)
Workers Compensation Guidelines	Codification of certain matters as prescribed by the workers compensation legislation.
CAM Standards of Practice	Mandatory Insurer standards of practice to standardise operational activity across all insurers to ensure scheme wide equity and fairness in the administrative processing elements of claims management.
CAM Practice Notes	Guidance and support to communicate to Insurers what SIRA would consider as acceptable practice.
Education and Assist Platform	Innovative on-line education and assist platform designed to assist all stakeholders to navigate the legislative landscape, creating a centralised and connected framework.
Better Practice Repository	To promote better practice in case management and treatment practices with links to external sites and / or research.

The CAM will be developed for use by insurers, however designed to be transparent and accessible to all. It will comprise of both principles based standards of practice and guidance material to support insurers and other participants in the system.

It is intended that the CAM standards of practice will be mandatory, and will set expectations for insurer claims management processes and conduct without being unduly prescriptive. Where appropriate and in line with the objectives of the workers compensation legislation, this will include key timelines, processes and procedures to be adopted by insurers with respect to key milestones and/or aspect of a worker's compensation claim.

## Compliance and enforcement

The CAM will form part of SIRA's regulatory framework and is intended to apply to all insurers. SIRA's compliance and enforcement strategy for the CAM will be consistent with the powers provided for under the workers compensation legislation.

Existing provisions within the workers compensation legislation enable SIRA to give direction to insurers with respect to claims administration and handling. This includes direct provisions within the legislation that require insurers to manage claims in a particular way, such as section 192A of the *Workers Compensation Act 1987 (1987 Act)*.

SIRA may direct insurers under section 194 of the 1987 Act to follow specific policies, procedure, strategies, processes and methods in the administration and handling of workers compensation claims. This may include for example, a direction issued under s194(1) to adopt any CAM published under s192A(1) generally for the administration of claims.

Alternatively, SIRA also has powers to impose licensed conditions on the management of claims for those insurers that have license conditions imposed upon them.

## Continued consultation

SIRA will continue to consult and engage with stakeholders throughout the design, development and implementation phases.

Current planning is to provide draft CAM Standards of Practice for consultation from September 2018, followed by draft Guidelines.

Further consultation will then be planned for the other interrelated elements of the Claims Management Platform.

Current planning is for commencement of the CAM and Guidelines in late 2018, followed by a period to enable insurers to consider operational impact and amend processes where required with no compliance activity until mid-2019.

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