

Table of key changes

Workers compensation guidelines, October 2019

Introduction

Under section 23 of the *State Insurance and Care Governance Act 2015*, a principal objective of the State Insurance Regulatory Authority (SIRA) in exercising its functions is to provide for the effective supervision of claims handling and disputes arising under NSW workers compensation legislation.

In 2018, SIRA undertook a comprehensive review of the claims handling framework for workers compensation in NSW. From this review, SIRA revised the Guidelines and developed Standards of practice (Standards) which outline claims administration and conduct expectations for insurers.

SIRA committed to reviewing the 2018 Guidelines to incorporate material to support the expected commencement of reforms to the calculation of pre-injury average weekly earnings (PIAWE), as well as some other feedback received since the Guidelines' commencement.

Pre-Injury Average Weekly Earnings (PIAWE)

Schedule 3 to the *Workers Compensation Legislation Amendment Act 2018* (the 2018 Amendment Act), provides guideline-making powers for certain PIAWE related matters, including:

- the matters to be taken into account for determining the earnings an apprentice, trainee or young person would have been entitled to, had the injury not occurred,
- the matters to be taken into account to whether a non-monetary benefit has been provided to a worker and whether the worker is entitled to the use of that benefit, and
- the matters to be taken into account for determining the amount that is reasonably payable for a non-monetary benefit where fringe benefits tax does not apply.

The amendments to the Guidelines include a new 'Part 10', prepared to support the commencement of reforms to PIAWE.

The table below summarises the key changes.

Part	Key changes	Comments
Key changes		
About these guidelines	<p>Updated to reflect that these Guidelines replace the 2018 Guidelines.</p> <p>The 2018 Guidelines included the transition period B1.4 <i>Reviews of work capacity decisions of the 2016 Guidelines for claiming workers compensation benefits</i>. This has now been removed.</p> <p>The scope now includes new <i>Part 10: Pre-injury average weekly earnings</i>.</p>	<p>The amendments reflect the replacement of the December 2018 <i>Workers compensation guidelines</i> by the 2019 <i>Workers compensation guidelines</i>.</p> <p>The transition period related to the previous review of work capacity decisions has ended.</p> <p>The Guidelines support commencement of the PIAWE reforms from 21 October 2019.</p>
Part 3: Making a claim	Sub-heading added: <i>3.1 Minimum requirements for a claim</i> and subsequent numbering corrected.	A sub-heading was omitted in the 2018 version.
Part 4: Compensation for medical, hospital, and rehabilitation expenses	Corrected reference to Table 4.1 (previously referred to Table 3.1.1)	Incorrect reference in the 2018 version.
Part 6: Injury management consultants	<p>Facilitation and mediation included in the description of the role of IMCs.</p> <p>Clarification that an IMC may either conduct a file review or participate in an appointment with a worker.</p> <p>Clarification that the requirement for the IMC to contact the worker is optional.</p> <p>Corrected numbering from 6.5.</p> <p>Timeframe(s) for provision of report included.</p> <p>Clarification under 6.6 that the report must be provided to the insurer, NTD and worker within 10 working days; supply to other parties involved in the IMC depends on their involvement.</p>	<p>Text regarding the facilitation and mediation role of IMCs has been included to emphasise their role in assisting all parties and more clearly differentiate their role from IMEs.</p> <p>IMCs provided feedback that the respective requirements for file reviews and in person or telephone appointments with workers were unclear.</p> <p>Including a timeframe provides increased certainty to all parties.</p> <p>Amendments clarify those parties that the IMC report must be supplied to, and those parties who may or may not be involved.</p>

Part	Key changes	Comments
Part 7: Independent medical examinations and reports	<p>Minor amendment to clarify that a worker who is receiving weekly payments or <i>who has given notice of an injury</i> can be required to attend an IME.</p> <p>Numbering corrected at 7.3 (previously 7.2.2).</p> <p>Considerations regarding the location of the IME have been placed under heading <i>7.4 Special requirements</i> (previously under Conflict of Interest).</p> <p>Notification required <i>10 days before the examination take place</i>, with additional notice to be considered for rural / regional workers. Written advice to the worker now requires advice when it is the IMEs routine practice to record the examination on audio or video; and that the worker must either consent to or decline this before the examination.</p> <p>Corrected to issued 'under section 78 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i>'</p>	<p>Minor amendments made to correct formatting and provide additional clarity. It was considered that it was unclear that notification to the worker was required before the appointment, and that notification is required before the 'Examination takes place' is clearer.</p> <p>There was concern that the current wording implies that consent must be sought before the insurer makes the appointment. The insurer may not know which IME is available and whether they record examinations before they make the appointment.</p>
Part 10: Pre-injury average weekly earnings (new)	<p>Provisions inserted are:</p> <p>10.1 Pre-injury average weekly earnings of apprentices, trainees and young people</p> <p>10.2 Determining whether a benefit has been provided and whether the worker is entitled to use of the benefit</p> <p>10.3 Monetary value of non-monetary benefits</p> <p>10.3.1 Residential accommodation not subject to fringe benefits tax</p>	<p>The Guidelines support commencement of the PIAWE reforms from 21 October 2019.</p>