

Proposed injury management consultant approval and regulatory framework

**State Insurance
Regulatory
Authority**

February 2019

Contents

Part 1. Approval and regulatory framework.....	3
1. Purpose	3
2. Information for prospective injury management consultants.....	3
Referral to an injury management consultant	3
Functions of an injury management consultant.....	4
Fees and payments	6
3. Application for approval or reapproval as an injury management consultant.....	7
Approval process.....	7
Period of approval	7
Reapproval process	7
Review process.....	8
Revocation of approval	8
4. Performance monitoring and quality assurance	8
5. Complaints about an injury management consultant	9
Breach of an ethical or professional nature.....	9
Breaches of conditions of approval.....	9
6. Privacy	9
Part 2: Conditions of approval.....	11
1. Professional eligibility conditions.....	11
2. Compliance eligibility conditions	11
3. Complaint history eligibility conditions.....	11
4. Process conditions	12
5. Legislative conditions.....	12
6. Professional conduct conditions	12
7. Communication and reporting conditions	13
8. Administrative conditions.....	13
9. Reapproval conditions	13

Part 1. Approval and regulatory framework

Information for medical practitioners seeking initial approval or reapproval

1. Purpose

The Injury management consultant approval and regulatory framework (Framework) contains important information for medical practitioners about the approval and regulatory framework that applies to an injury management consultant in the NSW Workers Compensation System.

Part 1 of the Framework sets out extracts from the *Workers Compensation Guidelines*, which prescribe the functions of an injury management consultant under s 45A(4) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act). Part 1 also sets out information about the regulatory framework, processes and policies that apply to an injury management consultant.

Part 2 of the Framework sets out the conditions which SIRA has imposed upon an injury management consultant approval under s 45A(2) of the 1998 Act. SIRA may revoke an approval, or reject an application for approval or re-approval if an injury management consultant does not adhere to all of these conditions.

2. Information for prospective injury management consultants

Referral to an injury management consultant

The insurer makes the referral to an injury management consultant.

Where a nominated treating doctor, employer, worker or other member of the worker's support team identifies the need for an injury management consultant, they may contact the insurer to organise the referral on their behalf.

The insurer may refer to an injury management consultant when a worker is identified at risk of delayed recovery or there is a specific return to work or injury management issue. Attempts to resolve the issues must have been made.

Where a referrer identifies the need for an injury management consultation but does not believe it is necessary for the injury management consultant to assess the worker, a file review may take place. The referral must still meet the criteria for referral listed above (i.e. that the worker is identified at risk of delayed recovery or there is a specific return to work or injury management issue). The injury management consultant must still verbally discuss the case with the nominated treating doctor.

Where an injury management consultant is requested by the insurer to comment on issues outside the functions of an injury management consultant as set out in the *Workers Compensation Guidelines*, the injury management consultant should notify the referrer that they are unable to complete all aspects of the referral.

Complaints about inappropriate referrals to an injury management consultant may be made to SIRA at contact@sira.nsw.gov.au.

Functions of an injury management consultant

Below is an extract from Part 6 of the *Workers Compensation Guidelines* which sets out the functions of approved IMCs:

Part 6: Injury management consultants

Section 45A(4) of the 1998 Act allows the Guidelines to provide for the functions of approved injury management consultants (IMCs).

An IMC is a registered medical practitioner experienced in occupational injury and workplace-based rehabilitation.

An IMC helps the nominated treating doctor, worker, insurer, employer and other service providers to progress a worker's recovery at/return to work and optimise health and work outcomes. An IMC assesses the situation, examines the worker (if necessary) and discusses possible solutions with all parties (particularly the nominated treating doctor). IMCs are not responsible for directing treatment of a worker, though they may comment on treatment in respect to recovery at/return to work.

An IMCs functions do not include:

- an opinion on causation or liability
- undertaking a functional capacity evaluation or work capacity assessment for the insurer.

6.1 IMC functions relating to the nominated treating doctor

The IMC must verbally discuss the worker's fitness for employment with the nominated treating doctor. The IMC may also discuss the following with the worker's nominated treating doctor:

- diagnosis and treatment (if the IMC agrees this is required) to overcome barriers to recovery at/return to work
- suitability of potential work options
- how the NSW workers compensation system operates
- the importance of timely, safe and durable recovery at/return to work
- obtaining agreement on fitness for work, prognosis for recovery and timeframes for the recover at work plan.

6.2 IMC functions relating to the worker

The IMC is to discuss recover at/return to work with the worker, including:

- their recovery from the injury
- their expectations regarding recovery at/return to work
- the importance of timely, safe and durable return to work, and the potential impact resulting from long-term absence from work on the worker's health
- relevant aspects of the workers compensation system
- ways to overcome problems at work which may be delaying the worker's recovery/return to work
- options for their return to work (including a possible teleconference with the nominated treating doctor).

The IMC may examine the worker to aid their evaluation of the worker's ability to undertake specific tasks or functions that may inform decisions about fitness for work.

Where a worker has a union-representative involved in their return to work, the IMC will include that representative in discussions with the worker, at the worker's request.

6.3 IMC functions relating to the employer

The IMC may communicate with the employer to confirm the suitability and availability of identified work. Where appropriate, they may also review the workplace to help facilitate appropriate return to work solutions.

6.4 IMC functions relating to other service providers

The IMC may liaise with other service providers to discuss aspects of the worker's recovery at/return to work.

6.5 IMC functions relating to the Workers Compensation Commission

A worker or employer can request the Workers Compensation Commission (the Commission) to resolve a dispute about a failure to comply with obligations imposed by Chapter 3 of the 1998 Act, such as return to work obligations of insurers, employers and workers.

If there is an application to resolve a dispute, the Commission may request an injury management consultant to conduct a workplace assessment.

The Commission appoints an IMC to assist the Commission to deal with the dispute. For further information please refer to the Commission website at wcc.nsw.gov.au.

6.6 The IMC report

The IMC is required to complete a report following consultation.

A copy of the report must be forwarded to all parties involved in the injury management consultation including the:

- nominated treating doctor
- insurer
- employer (where involved), and
- the worker (unless release of the report would pose a serious threat to the life or health of the worker or any other person).

As a minimum, the report is to include:

- worker details (name, date of birth, claim number)
- referrer and reason for referral
- documents reviewed
- date of consultation/review, including who attended the consultation (for example, interpreter, support person) and whether the consultation was face-to-face or a file review
- consultation with the nominated treating doctor, including:
 - discussion regarding return to work/fitness for work
 - any other discussions to progress the workers recovery at/return to work and optimise health outcomes
- consultation with the employer, including the availability of suitable work and any other relevant issues
- consultation with any other parties (for example, workplace rehabilitation provider or treatment providers)

- the outcome of discussions
- consultation with and examination of the worker (where required)
- an action plan:
 - summarising the action taken and the agreed outcomes with the nominated treating doctor, including timeframes and milestones to reach the outcome
 - if agreement is not reached, suggest alternative actions to the referrer (for example, referral for an independent medical examination or referral to an approved workplace rehabilitation provider).

Fees and payments

The maximum fees to be charged and paid are those set out in the Workplace Injury Management and Workers Compensation (injury management consultants fees) Order in force at the time of the consultation with the worker, file review and discussions with stakeholders.

3. Application for approval or reapproval as an injury management consultant

Approval process

The approval process for an injury management consultant is as follows:

- A person submits an 'Injury management consultant application for approval' including a signed agreement to conditions of approval as an injury management consultant
- SIRA reviews the application to ensure the applicant meets all eligibility conditions
- SIRA will, at its discretion seek clarification or further information as necessary to confirm applicant meets eligibility conditions. This may involve SIRA collecting information from another person or body, including third parties
- SIRA may conduct referee checks with referees provided by the applicant to verify stated experience and professional skills
- SIRA considers all information and approves or rejects the application at its complete discretion
- The applicant is advised of the outcome of the application in writing (including electronically)
- Applicants who are not successful are advised of the conditions of approval that were not met and the appeal process
- Successful applicants will be provided with an instrument of approval including the conditions of approval as an injury management consultant.

Period of approval

SIRA will set a period of approval, which will commence on a date specified by SIRA, and have a nominal expiry date of three years from this date (with the option for SIRA to extend). This period of approval will apply to all injury management consultants.

Should an injury management consultant successfully apply for approval during the three-year period, the expiry date of their approval will align with the nominal expiry date of the set period of approval.

SIRA may revoke the approval of an injury management consultant prior to the nominal expiry date of an approval for any breach of the conditions of the approval or for such other reason deemed appropriate.

Reapproval process

The reapproval process for an injury management consultant is as follows:

- SIRA sends an email to the nominated address of the injury management consultant informing them of the impending expiry of their period of approval
- Applicants submit an 'Injury management consultant application for reapproval' including a signed agreement to the conditions of approval as an injury management consultant
- SIRA reviews the application to ensure the applicant meets all eligibility conditions and has adhered to all conditions of approval during their period of approval as an injury management consultant

- SIRA may seek clarification or collect further information as necessary to confirm applicant meets eligibility conditions. This may involve SIRA collecting information from another person or body including third parties.
- SIRA considers all information and approves or rejects the application for reapproval at its complete discretion
- The applicant is advised of the outcome of the application in writing (including electronically)
- Applicants who are not successful are advised of the conditions of approval that were not met and the review process
- Successful applicants are provided with an instrument of approval including the conditions of approval as an injury management consultant.

Review process

A person who is not approved as an injury management consultant or not reapproved as an injury management consultant can seek a review of the decision by submitting a written request to SIRA at claims.design@sira.nsw.gov.au. The request for review should be made within 21 calendar days of the date the medical practitioner receives notification by SIRA of the original decision, and is to include additional information in support of the application with specific reference to the condition(s) of approval that had not been met.

The review will be conducted by an independent officer who was not involved in the original decision. The applicant will be advised of the outcome and reasons for the review decision in writing (including electronically).

Revocation of approval

Injury management consultants who have been provided with notice of SIRA's intention to revoke their approval will have the opportunity to have this decision reviewed internally by SIRA. The request for review should be made within 21 calendar days of the date the medical practitioner receives the notification by SIRA, addressing SIRA's reason(s) for revocation and demonstrate, to SIRA's satisfaction, that the reason(s) for revocation no longer exist.

An injury management consultant may also apply to the NSW Civil and Administrative Decisions Tribunal for an administrative review of SIRA's decision to revoke the consultant's approval.

4. Performance monitoring and quality assurance

SIRA may monitor the performance and compliance of injury management consultants in relation to the conditions of approval.

SIRA may monitor performance by collecting information from another person or body, including third parties, to determine whether the applicant meets the eligibility conditions and has adhered to all conditions of approval. This may involve SIRA analysing information including, but not limited to data, billing practices and service provision at any time.

At SIRA's discretion, feedback on monitoring results may be made available to the injury management consultant on a confidential basis.

5. Complaints about an injury management consultant

Complaints about injury management consultants will generally be managed in the first instance by the insurer. If a complainant is dissatisfied with the insurer's response, the complaint may be provided to:

- SIRA customer experience on 13 10 50
- Health Care Complaints Commission (HCCC) on 1800 043 159
- Australian Health Practitioners Regulation Agency (AHPRA) on 1300 419 495.

SIRA may suspend approval and advise insurers not to make further referrals to an injury management consultant while a complaint is being investigated.

If an injury management consultant involved in a complaint requires information about the complaints process, they may contact SIRA.

Breach of an ethical or professional nature

If a complaint directed to SIRA is an alleged breach of an ethical or professional nature, or if SIRA is otherwise notified of a breach of an ethical or professional nature by an injury management consultant, SIRA may refer the matter to the NSW HCCC, with the consent of the complaining party.

Breaches of conditions of approval

If a complaint is made to SIRA about a breach of the conditions of approval, or SIRA is otherwise notified of an alleged breach of conditions of approval, the action that SIRA takes will depend on multiple factors, including the injury management consultant responsiveness and the gravity of the breach.

Action may include, but is not limited to, remedial action, not reapproving an injury management consultant, or revocation of approval.

Before SIRA takes action in relation to a complaint, SIRA will inform the injury management consultant of the complaint and provide an opportunity for the injury management consultant to respond.

SIRA may revoke an injury management consultant's approval during their period of approval on the following grounds:

- no longer meets all eligibility conditions for approval as an injury management consultant
- any breach of the conditions of approval as an injury management consultant
- such other reason deemed appropriate.

SIRA will provide written notice (including electronically) to the injury management consultant with an explanation as to the reason for the revocation within a reasonable timeframe.

6. Privacy

By submitting an application, you indicate that you consent to SIRA collecting information from other persons or bodies, including third parties, to determine whether you meet the eligibility conditions and (where relevant) whether you have adhered to all conditions of approval. Further details are set out in the 'Injury management consultant application for approval'.

Applicants will have their name, contact details and practice location(s) listed on the SIRA website.

SIRA is committed to protecting your personal information in accordance with the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

SIRA will only collect, use and disclose your information as set out in the Privacy statement at the end of the 'Injury management consultant application for approval'.

For further information on SIRA's privacy practices, please also refer to the following:

- SIRA privacy statement
- SIRA privacy management plan.

Part 2: Conditions of approval

SIRA. Under s 45A(2) SIRA imposes the following conditions on an approval as an injury management consultant. An applicant that fails to adhere to all of these conditions may have their approval revoked, or their application for approval or reapproval rejected by SIRA.

1. Professional eligibility conditions

It is a condition of approval that an applicant must:

- be a medical practitioner registered with the Australian Health Practitioner Regulation Agency (AHPRA), with no conditions, undertakings, reprimands, limitations or restrictions on their registration
- be a Fellow of the Australasian Faculty of Occupational and Environmental Medicine (AFOEM) or have at least five years full-time equivalent relevant clinical experience, including the treatment/management of work related injuries
- have an extensive working knowledge of the NSW workers compensation system
- have demonstrated high level communication and negotiation skills in a challenging injury management/return to work environment.

2. Compliance eligibility conditions

It is a condition of approval that an applicant must:

- not have breached legislation, guidelines or fee schedules in the NSW workers compensation system
- not have breached legislation, guidelines or fee schedules in an insurance compensation system in any Australian jurisdiction.

3. Complaint history eligibility conditions

It is a condition of approval that an applicant must satisfy SIRA that SIRA should grant approval of the applicant to be an injury management consultant, taking into account whether the applicant has:

- been subject to a complaint made to insurance, compensation or health authorities, government agencies or statutory bodies regarding the applicant's conduct:
 - in any role in any insurance compensation system in an Australian jurisdiction
 - in the provision of health services
- been subject to a complaint relating to a breach of confidentiality, privacy and health information laws, including but not limited to the *Health Records and Information Privacy Act 2002* (NSW), the *Privacy and Personal Information Protection Act 1998* (NSW), and the *Privacy Act 1998* (Cth).

4. Process conditions

It is a condition of approval that the applicant must comply with the approval process and must:

- submit an application to become an approved injury management consultant via email to the Director, Claimant Outcomes at claims.design@sira.nsw.gov.au.
- provide a completed and signed 'Injury management consultant application for approval' with required supporting documents including:
 - signed agreement to conditions of approval as an injury management consultant
 - current registration as a medical practitioner with AHPRA
 - evidence of fellowship with AFOEM or resume
 - contact details of referees
- provide additional information requested by SIRA, to assist SIRA to determine whether the applicant meets the conditions of approval.

5. Legislative conditions

It is a condition of approval that the applicant must:

- undertake the functions of the injury management consultant in accordance with the *Workers Compensation Guidelines*
- comply with all legislation, guidelines and fee schedules in the NSW workers compensation system.

6. Professional conduct conditions

It is a condition of approval that the applicant must:

- continue to meet all eligibility conditions for approval as an injury management consultant
- comply with all applicable professional standards and codes of conduct including but not limited to the Medical Board of Australia's *Good Medical Practice: A Code of Conduct for Doctors in Australia*
- act without bias and in a way that does not give rise to an apprehension of bias in the performance of your responsibilities
- maintain your independence of the insurer at all times and agree not to provide treatment services to workers referred for an injury management consultation
- not accept any inducements outside of fee schedules for services provided
- declare any real, perceived or potential conflict of interest to the referrer at time of referral or, if a conflict or potential conflict arises after the referral, as soon as it arises
- act in an ethical, professional and considerate manner when examining workers and when communicating with any other parties in relation to the worker about their recovery
- preserve the privacy and modesty of the worker when undertaking consultations

- comply with all relevant confidentiality, privacy and health information laws across Australian jurisdictions, including but not limited to the *Health Records and Information Privacy Act 2002* (NSW), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1998* (Cth).

7. Communication and reporting conditions

It is a condition of approval the applicant must:

- if unable to contact the nominated treating doctor after three attempts, inform the insurer/referrer and document the attempted contacts in the injury management consult report
- ensure reports are in accordance with the *Workers Compensation Guidelines*
- ensure that reports are completed to a reasonable standard of care and diligence
- provide reports to the referrer within 10 working days of the appointment/review, or within a different time frame if agreed between the parties

8. Administrative conditions

It is a condition of approval that the applicant must:

- provide and maintain an email address to be used for all written communication from SIRA
- agree to have their name, contact details and practice location(s) listed on the SIRA website
- provide accurate contact details to SIRA and notify them in writing (including electronically) within 14 calendar days of any change to name or contact details (as these appear in the SIRA public register)
- possess or have access to sufficient resources and infrastructure to undertake all administrative activities necessary to undertake the role
- participate in SIRA's performance framework for injury management consultants in relation to the conditions of approval, including providing information as requested throughout the approval period
- respond to complaints with full and accurate details and, when indicated, comply with the remedial action to be taken
- complete any training to the standard required by SIRA, within the prescribed timeframe and at the injury management consultants own expense.

9. Reapproval conditions

It is a condition of approval that the applicant seeking reapproval must:

- be subject to a current approval under s 45A of the 1998 Act
- continue to meet all eligibility conditions for approval as an injury management consultant
- continue to meet and adhere to all conditions of approval as an injury management consultant
- have completed at least five injury management consultations per 12-month period of approval

- submit an 'Injury management consultant application for reapproval' including:
 - a signed agreement to conditions of approval as an injury management consultant
 - current registration as a medical practitioner with AHPRA
 - evidence of undertaking five injury management consultations per 12-month period of approval.

Disclaimer

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.

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

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.

State Insurance Regulatory Authority, Level 6, McKell Building, 2-24 Rawson Place, Sydney NSW 2000

General phone enquiries 13 10 50

Website www.sira.nsw.gov.au