

# Claims administration manual and Guidelines review

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Discussion paper

**State Insurance  
Regulatory Authority**

**March 2018**

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# How to make a submission

We invite you to read this discussion paper and provide a response.

You may wish to comment only on areas of interest, or you may like to respond to all issues outlined in this discussion paper. You can also comment on additional claims management matters that are not addressed in this paper. If you would prefer to meet face-to-face with SIRA to provide feedback, please email [policydesign@sira.nsw.gov.au](mailto:policydesign@sira.nsw.gov.au) to arrange a meeting.

The focus questions set out in this paper are intended to prompt and focus discussion. They are not intended to be exhaustive or otherwise restrict commentary on broader or related matters.

Send your submission via the online submission form or in an email to [policydesign@sira.nsw.gov.au](mailto:policydesign@sira.nsw.gov.au). The consultation period will remain open until close of business on Friday 25<sup>th</sup> May 2018.

## Important

All submissions will be made publicly available. If you do not wish for your personal details or any part of your submission to be published, please indicate this clearly in your submission together with your reasons. Automatically generated confidentiality statements in emails are not sufficient.

You should also be aware that, even if you state that you do not wish for certain information to be published, there may be circumstances in which the government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*).

# Executive summary

The State Insurance Regulatory Authority (SIRA) is the NSW Government organisation responsible for regulating home building compensation, motor accidents compulsory third party (CTP) insurance, and workers compensation insurance in NSW.

SIRA is committed to stewarding a fairer, sustainable and more customer-focused workers compensation system. We understand that quality claims management underpins the success of the system and we want to ensure NSW is at the forefront of responsive and innovative claims management. This can only be achieved if the information and guidance that supports claims management is transparent, up-to-date and accessible.

The first step in working towards these aims is the creation of a claims administration manual, the CAM; **a leading-edge online tool to assist insurers navigate the legislative landscape**. It will create a centralised and connected framework, bringing together legislative and administrative resources to provide clear and consistent guidance on the claims process. Designed with claims managers in mind, it will make it easier for all key system participants – workers, insurers and employers – to work together to achieve the best possible recovery and return to work outcomes.

As a modern regulator, SIRA's aim is that the CAM is a supportive regulatory tool that promotes and encourages best practice claims management while also ensuring insurers meet high-quality standards of claims management and conduct. SIRA believes that the clearer we make our expectations, the easier it is for claims managers to make sound claims management decisions and the smoother and fairer the journey is for workers and employers.

The implementation of the CAM will be supported by a process to simplify and consolidate the current suite of workers compensation guidelines to ensure they align with legislative powers and, like the CAM, are clear and accessible.

We are seeking input from stakeholders on the development and operation of the CAM. We want to hear what you believe SIRA can do to help make claims management in NSW first class. We encourage you to have your say and let us know how we can support you in building an efficient and effective workers compensation system.

# NSW workers compensation framework

“We work with insurers to ensure that workers compensation risks are managed and mitigated and that the customer experience and outcomes for injured workers is optimised.”

As part of its role as regulator for the workers compensation system in NSW, SIRA develops and manages various guidelines, as specified by legislation, to ensure the efficient and effective running of the workers compensation system.

Our objectives include best practice recovery at work, compliance with the workers compensation legislation and providing for the effective supervision of claims handling and disputes.

## The current framework

At present the framework for the administration of workers compensation claims in NSW includes:

### Acts

*Workers Compensation Act 1987* (1987 Act)

*Workplace Injury Management and Workers Compensation Act 1998* (1998 Act)

### Regulation

*Workers Compensation Regulation 2016* (the Regulation)

### Guidelines

*Guidelines for claiming workers compensation (2016)*

*Independent medical examinations reports guidelines (2012)*

*Guidelines on Injury Management Consultants (2012)*

*NSW workers compensation guidelines for the evaluation of permanent impairment - Fourth edition (2016)*

*Workers compensation guideline for approval of treating Allied Health Professionals (2016)*

*Guidelines for workplace return to work programs (2017)*

*Licensed insurer business plan guidelines (2017)*

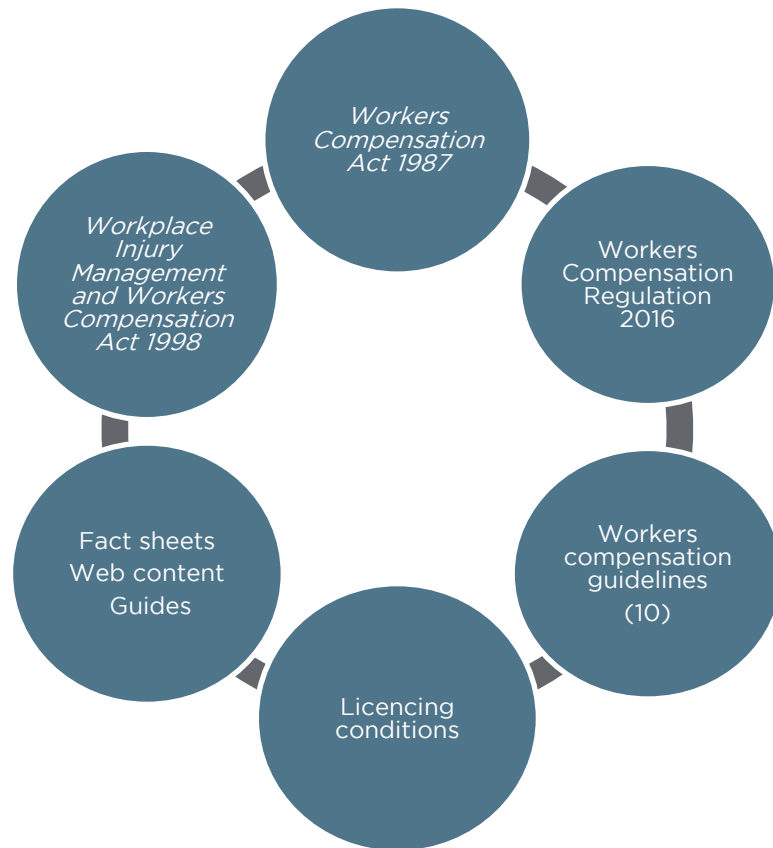
*Workers compensation market practice and premium guidelines (2018)*

*WorkCover interim payment direction guidelines (2009)*

*WorkCover medical assessment guidelines (2006)*

Licensing conditions (where applicable).

**Figure 1:** Current workers compensation framework



The nature of legislation is such that the Acts and Regulation are not always easy to understand. Stakeholders who are unfamiliar with the system may find it difficult to understand entitlements or how the claims management process works. In the past, several documents provided guidance to insurers. However, after the introduction of the *State Insurance and Care Governance Act 2015* the provision of these documents was limited to the Nominal Insurer's scheme agents.

# Overview of the proposed changes

SIRA acknowledge that the workers compensation system is complex. As a first step in making claims management easier, we want to reflect all current requirements for claims handling and management in a centralised, easy to navigate and understandable online tool that will reference the range of sources from which they are derived.



The CAM will be:

**Central** - a single 'source of truth' and the first point of contact for claims managers to locate the information they need.

**Clear** - accessible and transparent, and clearly communicate our expectations for sound claims management practice and insurer behaviour.

**Consistent** - applying to all insurers to ensure that the claims experience for all injured workers across NSW is consistent and fair.

The 1987 Act allows for the provision of guidance and directive information outside that covered by the guidelines through the publishing of a CAM.

Section 192A of the 1987 Act states that the CAM can cover:

- prompt processing of claims and payments
- information about worker entitlements and procedures for the making of claims and resolution of disputes
- the minimisation of the effect of injuries to workers by making prompt arrangements for rehabilitation
- proper investigation of liability for claims
- recovery of proper contributions in connection with claims from other insurers or persons

Section 192A(3) of the 1987 Act provides that the CAM may make provision in connection with all matters relating to the administration of claims, including:

- liaison between insurers and employers concerning rehabilitation assessment of injured workers
- liaison between insurers and employers regarding the provision or arrangement of suitable employment or rehabilitation training for partially incapacitated workers
- liaison between insurers and employers concerning the monitoring of employment-seeking activities or rehabilitation training by partially incapacitated workers
- arrangements for the settlement of claims for damages
- procedures to be followed before a claim is made, such as procedures in connection with early notification of injury and provisional acceptance of liability

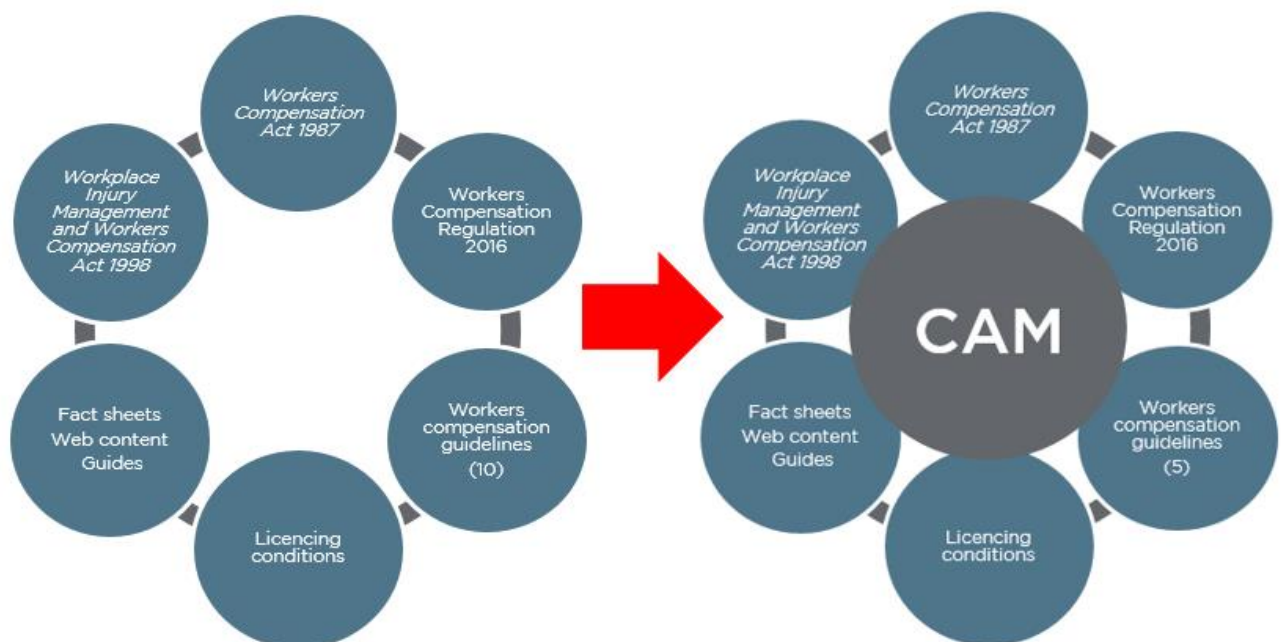
Furthermore section 192A(4) of the 1987 Act provides that SIRA may give an insurer directions as to the procedure to be followed in the administration of any claim or class of claims in order to comply with the claims manual.

Section 194(1) of the 1987 Act provides that SIRA may give directions for or with respect to requiring the adoption and use by them of specified processes, procedures, strategies, policies and other methods in the handling and administration of claims for compensation or work injury damages, either generally or in respect of a specified class or classes of cases.

The CAM will provide SIRA with an enforceable guidance framework to promote the desired standard of claims administration. SIRA intends to:

- prepare and publish a CAM to provide claims administration guidance and information for all insurers, workers, employers and other stakeholders
- review and reissue guidelines where required in accordance with section 376 of the 1998 Act.

**Figure 2:** Proposed workers compensation framework





# The Claims Administration Manual

The CAM will provide guidance on all aspects of claims management from claims notification to claims closure, and consider the handling requirements for various components of a worker's compensation claim. It will connect directly with requirements provided under the workers compensation legislation, regulation and guidelines and will set expectations for insurer claims management conduct.

The CAM will be designed to be a **supportive regulatory tool** that assists and motivates claims managers to make sound and effective claims management decisions. SIRA's claims management expectations will be incorporated so that they are communicated consistently among insurers, are transparent and are readily available to all stakeholders. However, when poor claims management practices do occur, the CAM will support SIRA in enforcing requirements, in line with SIRA's broader regulatory approach.

The CAM will cover a broad range of topics and be designed to help insurers make decisions in line with the legislation and guidelines. It will set the benchmark for high quality, outcome-focused claims management

## Review of the suite of workers compensation guidelines

The design of the CAM will occur alongside a review of the current suite of workers compensation guidelines. Following the review, the guidelines will be reissued focusing on the specific matters as directed by the legislation. All legislatively mandated information will remain in the guidelines with general claims handling information being moved to the CAM. This will promote simplicity and an integrated approach to claims handling.

### General

1. Do you have any comments regarding the introduction of the CAM and the review of the Guidelines?

# What will the CAM cover?

“We regulate the workers compensation system, so workers can focus on their recovery.”

We want the worker’s experience to be at the centre of the claims management process. The content of the CAM will be arranged to create an intuitive pathway for managing claims focusing on the worker’s journey.

**Figure 3:** Proposed CAM format



Each of the sections will encompass a range of topics to provide a comprehensive framework of claims management guidance material. In addition to providing guidance and direction, the CAM may also provide links to information, relevant research and resources that are known to promote claims management behaviour leading to positive outcomes.

A table of proposed topics and content is detailed below. Each topic in the CAM will contain information to help insurers manage their claims in accordance with the legislation, guidelines and SIRA’s expectations.

Claims administration manual	
Chapter	Topics
<b>Claims management: Initial</b>	Eligibility
	Initial notification of an injury
	Making a claim
	Initial contacts
	Investigation
	Provisional weekly payments
	Reasonable excuse for not commencing weekly payments
	Aggravation/recurrence
	Liability
	Fatality claims
	Uninsured workers
	Cross border claims
	Property damage
	Journey claims
	Recess claims
Third party liability	
<b>Claims management: Ongoing</b>	Injury management plan
	Managing psychological claims
	Domestic assistance
	Workers with highest needs
	Overseas workers
	Surveillance
	Fraud
	Stakeholder compliance
	Shared claims
	Recovery

Claims administration manual	
Chapter	Topics
	Workers with non-English speaking background
<b>Claims management: Closure</b>	Pre-injury duties
	s38 entitlement
	s39 five-year limit
	Retirement
	Commutation of compensation
	Death of a worker
	s59A limit on benefits
<b>Weekly payments</b>	Weekly benefits
	Pre-injury average weekly earnings
	Entitlement periods/step downs
	Indexation
	Working directors
	Making payments direct to worker
<b>Work capacity</b>	Work capacity assessment
	Suitable employment
	Work capacity decision
	Procedural fairness
	Fair notice
	Notices
	Internal review process
	Merit review
	Procedural review
	Workers Compensation Independent Review Officer (WIRO)
<b>Medical management</b>	Medical, hospital and rehabilitation expenses
	Nominated treating doctor (NTD)
	Allied health professionals
	Nominated treating specialist (NTS)
	Treatment approval

Claims administration manual	
Chapter	Topics
	Surgery
	Aids and modifications
	Gazetted fees
	Invoices
	Worker reimbursements
<b>Return to work</b>	Health benefits of good work
	Recovery at work
	Stakeholder obligations
	Workplace rehabilitation providers
	Different job/employer
	Return to work assistance
<b>Non-treating practitioners</b>	Independent medical examiners
	Injury management consultants
	Independent consultants
<b>Permanent impairment</b>	Eligibility and entitlements
	Referral for permanent impairment assessment
	Quality assurance
	Settlement - negotiation and agreement
<b>Dispute process</b>	Disputes and failure to determine a claim
	Workers Compensation Independent Review Officer (WIRO)
	Workers Compensation Commission (WCC)
	Approved Medical Specialist (AMS)/medical panel
	Judicial review
	Model litigant policy
<b>Common law/Work Injury Damages</b>	Eligibility and entitlements
	Legal engagement
	Workers Compensation Commission (WCC)
	District Court
	Eligibility

Claims administration manual	
Chapter	Topics
<b>Hearing impairment claims</b>	Assessment
	Process
	Replacement aids
<b>Exempt workers</b>	Explanation of differences
<b>General</b>	Principles
	Rights and obligations
	Privacy and access to information
	Data collection and recordkeeping
	Stakeholder satisfaction
	Complaints management

## Content

2. Do you have any feedback on the proposed content?
3. Are there topics that are not covered that you would like to see included in the CAM?
4. Do you have any feedback or information that you would like SIRA to consider regarding these topics?

## Focus areas

The CAM will be a dynamic tool that will continue to be updated to reflect the changing workers compensation insurance landscape. We acknowledge that there are areas within the NSW workers compensation system that are not clearly defined by the legislation or are open to interpretation. This ambiguity can make decision making difficult and hinder good claims management practice. We want to make these areas clearer by accurately reflecting our policy positions and expectations in the CAM.

In our initial review, we have identified areas that the CAM will provide clarification and direction on; matters that have not been widely communicated or formalised in the past. This list is not exhaustive and we will build on these during the consultation process as more areas are identified.

At present the list includes:

<b>Application of reasonable excuse for weekly benefits</b>	SIRA is aware that the legislative requirement to make a decision on weekly benefits on all notified injuries required some change in insurer processes. The CAM will reiterate how this is to be managed to meet legislative requirements.
<b>Timeframe for developing the initial injury management plan</b>	The legislation requires that an injury management plan must be developed when it appears that an injury is significant. SIRA will provide clarification around the required timeframes.
<b>Injury management plans in disputed claims</b>	There is currently discussion regarding the requirement for an injury management plan to be in place for disputed claims. SIRA will clarify its position on this requirement.
<b>Downgrades in capacity</b>	SIRA will explain its expectation regarding the payment of weekly benefits in the event of a downgrade in capacity.
<b>Use of surveillance</b>	SIRA will provide direction around the acquisition, use and management of surveillance.
<b>Assistance for workers approaching their limit to medical and related benefits</b>	SIRA's expectations for the appropriate management of workers approaching prescribed limits of medical and related entitlements ensuring an appropriate and consistent approach across all insurers.
<b>The use of independent medical examiners</b>	SIRA will detail its requirements for the use of independent medical assessors for increased transparency for workers.
<b>The use of a 'second opinion'</b>	SIRA will clarify its position on obtaining second opinions for surgery and other treatment or medical management options.
<b>The role of injury the injury management consultant</b>	The process will explore the function of an IMC to comment on treatment in relation to recovery at

	work and how insurers can be encouraged to refer earlier to an IMC.
<b>Negotiating permanent impairment</b>	Clarify the position on the negotiation on the degree of permanent impairment between parties based on approved assessments.
<b>Access to information</b>	Clarify that workers can access their health records and reports outside of a dispute through existing privacy and access to information legislation.
<b>Complaints management</b>	SIRA will explore the need for an appropriate and transparent complaints management framework to be in place.
<b>Stakeholder satisfaction/experience data</b>	SIRA is looking at the provision of stakeholder satisfaction/experience data to be phased in across insurer types.
<b>Claims handling principles</b>	SIRA will be detailing its expectations regards to claims handling principles.

#### Focus areas

5. What would you like SIRA to consider in these areas?
6. Are there any other claims management matters you believe would benefit from clarification from SIRA?



## Where to next?

SIRA is seeking collaborative stakeholder engagement in the development of the CAM.

We have listened to the feedback stakeholders have previously given us about the timing and length of consultation and as a result this discussion paper will be open until Friday May 25<sup>th</sup>, 2018. This will give stakeholders the opportunity to fully review and respond to the paper.

During this period, we will continue to work directly with key stakeholders to identify opportunities to refine our approach. We will be meeting with key stakeholders, surveying claims managers, and drawing on the experience and expertise of subject matter experts.

In addition to providing a summary of responses to the paper, we will also provide information on how we have considered and applied the feedback provided.

Any questions or enquiries regarding this discussion paper should be emailed to [policydesign@sira.nsw.gov.au](mailto:policydesign@sira.nsw.gov.au).

## 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](http://legislation.nsw.gov.au)

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State Insurance Regulatory Authority (SIRA)

Workers and Home Building Compensation Regulation, 92-100 Donnison Street, Gosford NSW 2250

Customer Service Centre 13 10 50

Website [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au)

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