

Workers Compensation Guidelines Review Team,
State Insurance Regulatory Authority

3 December 2024

Submitted online

To Whom It May Concern,

REVIEW OF WORKERS COMPENSATION GUIDELINES

I am writing to you as **NSW Branch Committee President of the Australian Lawyers Alliance (ALA)**.
The ALA is a national association of lawyers, academics and other professionals dedicated to
protecting and promoting justice, freedom and the rights of the individual.

Please find **enclosed** the ALA's response as part of the ongoing review of the draft Workers
Compensation Guidelines.

Thank you for your attention on these important matters. Please direct correspondence to Elenore
Levi, Policy and Advocacy Manager, Australian Lawyers Alliance, at elenore@lawyersalliance.com.au.

Yours sincerely,



Genevieve Henderson
President, NSW Branch Committee
Australian Lawyers Alliance

Australian Lawyers Alliance (ALA) Response to Draft Workers Compensation Guidelines ('Guidelines') Review



Part	Type of proposed change	Comment	ALA Submission
All	Amendment	<ul style="list-style-type: none"> General minor and non-substantive changes to: <ul style="list-style-type: none"> Clarify wording, Guidelines requirements and legislative arrangements. Remove repetition. Increase simplicity Insert links or update outdated links. 	<ul style="list-style-type: none"> The Guidelines could also be enhanced overall by perhaps including a summary of the pertinent timeframes/deadlines at the beginning. It is currently not particularly straightforward to locate them/not user friendly.
About these Guidelines	Amendment	<p>Updated and streamlined wording around the establishment of the Personal Injury Commission.</p> <p>Updated the Guidelines commencement date.</p>	<ul style="list-style-type: none"> Agreed
Part 1.1	Removal	<ul style="list-style-type: none"> Removed requirement to inform the notifier of an incomplete notification of injury, in line with the guideline-making power in section 266 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i>. 	<ul style="list-style-type: none"> The ALA does not understand why this is being removed. Generally, a worker is not going to go to the Guidelines to understand what he or she has to do to provide notification. Where notification does not meet the Table 1.1 required information, what is the consequence for the worker? How is the worker otherwise informed of the 'required information' and how to remedy any shortfall in information provided? This is not addressed in the Part 2 Provisional Liability section where insurers can delay provisional weekly payments for insufficient medical information. There appears to be a gap here which if filled would facilitate claims processing and handling regardless of the notification deficiency. The ALA suggests that the paragraph "A reasonable excuse may apply to provisional weekly payments but not to provisional medical payments" be highlighted and given prominence and be repeated under 2.2.

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Part	Type of proposed change	Comment	ALA Submission
Part 3.1	Amendment and addition	<ul style="list-style-type: none"> Updated formatting of minimum requirements for making a claim to be in a table format. Clarified that witness information is only required if the incident was witnessed, known to the notifier, and the witness was available to provide a statement. Added a requirement for insurers to notify a worker if they receive an incomplete claim. 	<ul style="list-style-type: none"> The preamble to 3.1 under the heading should make a distinction between the initial claim for compensation arising after an injury and subsequent claims for varying forms of compensation benefit. It should also advise that the easiest/simplest way to provide all the required information for an initial claim is to complete a SIRA claim form. <i>This requires SIRA to provide a claim form that is agreed to provide all necessary information (and no more), and to clearly indicate on the form what is required and what is optional.</i> Perhaps add: if a worker is legally represented, the insurer must include the legal representative in any and all correspondence about an incomplete claim.
Part 3.2	Amendment	<ul style="list-style-type: none"> Minor update to wording to clarify that a claim form is not required for making a claim unless either of the two scenarios apply. 	<ul style="list-style-type: none"> Should also clarify that employers may lodge claims on a worker's behalf The lack of distinction and confusion around what is a 'claim' has led to SIRA stating in the Guidelines that a claim form is not necessary. Whilst not necessary it may be best way to provide both initial notification and claim initial benefits. This is very confusing. Workers generally only understand they are claiming compensation. This requires them to understand the distinction between provisional liability and reasonable excuse notices. It is preferable to suggest that a claim form is preferable as soon as a worker has sustained an injury. This then alleviates issues that can arise with employers not passing information onto an employer.

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Part	Type of proposed change	Comment	ALA Submission
Part 3.3	Amendment	<ul style="list-style-type: none"> Minor update to wording to clarify that the insurer may require the worker to supply a signed authority. 	<ul style="list-style-type: none"> Should also clarify that section 6 of the Worker's injury claim form serves as an authority – authorising the release of information and records. By signing section 6, the worker is authorising this.
Parts 4.1, 4.3	Amendment	<ul style="list-style-type: none"> The Allied Health Treatment Request was launched in June 2024 and replaces the Allied Health Recovery Request. Updated relevant references to the form and clarified the purpose of the form. 	<ul style="list-style-type: none"> Noted.
Table 4.2	Amendment	<ul style="list-style-type: none"> Clarified that up to \$110 for reasonable incidental expenses 'over the entirety of a worker's claim for a single injury' is available without pre-approval from the insurer. 	<ul style="list-style-type: none"> Perhaps should include examples/definition of "reasonable incidental expenses".
Part 4.4	Amendment	<ul style="list-style-type: none"> Minor update to wording to clarify that the insurer is to establish a care plan within 21 days of receiving a claim for domestic care. 	<ul style="list-style-type: none"> Perhaps clarify that the care plan must be established by a qualified person (OT or similar) relevant to the needs of the worker, who assesses the worker's needs at the insurer's expense. 4.4 and 4.5: It should be made clear that the worker is not required to engage someone at their own expense to develop a care plan, or for that matter report or design home modifications, vehicle modifications and the like. Domestic assistance is not limited to home based paid or gratuitous care and this should be made clear.
Parts 5.3, 7.4, 7.7	Removal	<ul style="list-style-type: none"> Removed call-out boxes to consider relevant laws or public health orders made in response to COVID-19 (Coronavirus) when requiring workers to attend appointments. Public health orders in relation to COVID- 19 have not been in place since 30 November 2022. 	<ul style="list-style-type: none"> Noted.

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Part	Type of proposed change	Comment	ALA Submission
Part 5.3	Addition	<ul style="list-style-type: none"> Clarified that in limited or special circumstances, work capacity assessment by video consultation may be appropriate and effective and is to be considered on a case-by-case basis, in line with requirements for independent medical examinations in Part 7.4. 	<ul style="list-style-type: none"> <i>Should</i> include another dot point advising the worker of the timeframes for notification (i.e. 10 days) and consequences for insurer if time is compacted, and what is required to change appointment arrangements or secure travel arrangements and/or payment for travel. This is because the Guidelines only speaks to the consequences of a failure to attend by a worker and not failure of an insurer to provide proper notification and an opportunity to arrange appointments in consultation with the worker/claimant. Perhaps it should include a note that it may not be possible to properly assess work capacity arising from some physical injuries.
Part 11	New Part	<ul style="list-style-type: none"> New Part to specify the form of the information required to be made available under section 231 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> and clause 39 of the Workers Compensation Regulation 2016, to align with the 'If you get injured at work' poster on the SIRA website. 	<ul style="list-style-type: none"> Noted.
Part 7.1	ALA suggested change	<ul style="list-style-type: none"> Adopt Old Guidelines on Independent Medical Examinations and Reports 	<ul style="list-style-type: none"> Section 119 provides: Medical examination of workers at direction of employer <p>(1) A worker who has given notice of an injury must, if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.</p> <p>(2) A worker receiving weekly payments of compensation under this Act must, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner, provided and paid by the employer.</p>

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			<ul style="list-style-type: none"> The expression 'IME' is therefore inappropriate in these circumstances as it is not independent. It arose in the original Guidelines on Independent Medical Examinations and Reports 2012 and gained relevance because of the Guideline. SIRA should revert to the 2012 WorkCover Guidelines on Independent Medical Examinations and reports as guidance material on medical examinations at the request of the employer. https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/independent-medical-examinations-reports-guidelines-3740.pdf
Part 8.2	ALA suggested change	<ul style="list-style-type: none"> 7th dot point on what the Complying Agreement must contain. SIRA should simply refer to the prescribed form and enliven it if it has been removed from the Forms. 	<ul style="list-style-type: none"> Workers should not have the option to waive legal advice in a Complying Agreement given the grave consequences of doing so including potentially waiving significant rights and benefits. The prescribed form should be promoted. It is not even mentioned.
Part 9	ALA suggested change	<ul style="list-style-type: none"> Discuss the full effect of s87EA rather than limiting it to catastrophically injured workers. 	<ul style="list-style-type: none"> It is highly unlikely catastrophically injured persons will seek commutation. There is no discussion of the commutation process for non-catastrophically injured workers.
Part 10	ALA suggested change	<ul style="list-style-type: none"> Include a discussion of Clause 8C 	<ul style="list-style-type: none"> Given recent consultation on the regulation and PIAWE a discussion of the general broad application of Clause 8C could be included to encourage its application rather than limit it.