

New SIRA Standard of Practice in response to COVID-19 (Coronavirus)

Consultation draft

May 2020

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Introduction

About the Standards

SIRA's *Standards of practice: expectations for insurer claims administration and conduct* (Standards) were published in December 2018 and apply to all claims from 1 January 2019.

Changes to the Standards were made to support the commencement of reforms to pre-injury average weekly earnings (PIAWE) which applied to workers injured on or after 21 October 2019.

All insurers are expected to comply with these Standards, except for Coal Mines Insurance Pty Ltd and the Workers Compensation (Dust Diseases) Authority (Dust Diseases Care). However, SIRA encourages all insurers operating in the NSW workers compensation system to adopt the overarching claims management principles and any relevant Standard.

Directions to comply with these Standards, including the expectations and benchmarks, may be issued to insurers under Division 4 of Part 7 of the 1987 Act, which will make contravention (breach) of a requirement of the Standards an offence under section 209 of the 1987 Act. Section 194(2) makes compliance with a direction to insurers a condition of an insurer's licence issued under the Act.

SIRA may issue a Direction to insurer(s) to comply with individual Standards and/or all of the Standards.

Purpose and scope

SIRA developed the Standards to support and encourage insurers to have effective claims management practices to help deliver positive experiences and outcomes for workers, employers and the people of NSW.

The Standards contain overarching claims management principles that apply generally across all aspects of claims management and provide direction for the handling and administration of claims under the workers compensation system. These are:

- Principle 1: Fairness and empathy
- Principle 2: Transparency and participation
- Principle 3: Timeliness and efficiency

These principles support the workers compensation system objectives outlined in section 3 of *The Workplace Injury Management and Workers Compensation Act 1998* (1998 Act). Individual Standards apply to particular claims management topics, and are presented in a way to make clear the following elements:

- Principle: the broad principle to be adopted by insurers when dealing with a particular aspect of a claim
- Expectations: SIRA expectations for processes, procedures or methods to be applied in the handling and administration of claims relevant to that Standard topic

- Benchmarks: an indication of what claims activities or actions SIRA may use to measure insurer performance against expectations.

The Standards should be read in conjunction with the requirements of the workers compensation legislation, regulation and guidelines.

New COVID-19 related Standard of practice

SIRA has developed a consultation draft Standard of practice on the management of claims during the COVID-19 pandemic. It aims to set expectations for insurers about the handling of COVID-19 workers compensation claims and claims handling practices more generally throughout the period of the pandemic. Specifically, it is designed to:

- expedite certain claims management decisions to provide certainty for impacted workers
- reduce barriers and ensure workers are fully informed of supports and options available to them
- support workers through their recovery and return to work, and ensure workers receive their correct entitlements.

Additional information to provide context and explain the rationale for the new Standard is provided under 'Context'.

The Standard of practice will apply to insurers during the COVID-19 pandemic period. It is expected to commence from a date in May 2020, following consultation, refinement and approval and be in effect for 12 months unless SIRA amends, revokes or replaces the Standards earlier. Given the unprecedented nature of COVID-19 and the uncertainty about how the pandemic may unfold, SIRA will closely monitor the management of COVID-19 related claims and will consult on the need to further refine this Standard if appropriate.

No other changes are proposed to the Standards of practice at this time.

Have your say

SIRA is seeking your feedback in relation to the new Standard of practice by no later 5pm, Monday, 18 May 2020. Written feedback may be provided via email to: PolicyDesignWHBCR-SIRA@sira.nsw.gov.au.

Alternatively, should you wish to discuss the Standards, please contact Bronwyn Martin, Manager Regulatory Policy, on phone 9284 2209. SIRA will be working quickly to finalise any changes to enable the new Standard, with current planning for the new Standard to come into effect in May 2020.

Standard 32: Managing claims during the COVID-19 pandemic

Insurers are to adopt a flexible and adaptable approach to claims management during the COVID-19 (Coronavirus) pandemic. This will deliver a tailored approach that meets the needs of workers, employers and other system participants.

Managing claims during the COVID-19 pandemic

Principle

Insurers will be flexible and adaptable during the COVID-19 pandemic and ensure that claims are managed with empathy and transparency, making liability decisions and paying entitlements without delay.

Expectations	Benchmarks
<p>S32.1 (Initial contact)</p> <p>Following notification of an injury where the worker has a confirmed diagnosis of COVID-19, the insurer is to proactively contact all parties as soon as possible to discuss:</p> <ul style="list-style-type: none">• the individual circumstances of the worker• the health needs of the worker• any potential barriers to recovery and return to work, and what options are available to the worker• commence injury management planning, where appropriate (the injury is likely to be a significant injury).	<p>Contact with worker and employer initiated within two working days from notification</p> <p>Evidence on the claim file</p>

<p>S32.2 (Provisional acceptance of liability)</p>	<p>Insurers are to provisionally accept liability and commence provisional payments without delay where there is a high risk of exposure to the virus within the workplace. This applies to following specified class:</p> <ul style="list-style-type: none"> • workers diagnosed with COVID-19, and • workers whose employment requires them to come into direct contact (hands-on or closer than 1.5m) with people diagnosed with COVID-19, and / or • workers whose employment requires them to administer diagnostic testing for COVID-19, and / or • workers whose employment requires them to provide treatment and care to people diagnosed with COVID-19. <p>Note: the specified class outlined above will include, but is not limited to doctors, nurses, health care and other workers involved in the diagnostic testing, treatment and care of people diagnosed with COVID-19.</p> <p>If the insurer has strong indication that a reasonable excuse still applies in accordance with the Workers Compensation Guidelines, this is to be clearly documented on the claim file and included in daily reporting to SIRA.</p>	<p>Provisional acceptance of liability within three working days from notification</p> <p>Evidence on the claim file</p> <p>Daily reporting to SIRA</p>
<p>S32.3 (Full liability decision)</p>	<p>Insurers are to expedite decisions on full liability for a claim made by a worker with a confirmed diagnosis of COVID-19 as soon as enough information is available.</p> <p>Proactive steps should be taken to obtain further information if this is required.</p> <p>Note: an insurer is not prevented from accepting liability before the end of the provisional liability period (section 278 of the 1998 Act).</p>	<p>Evidence on the claim file</p> <p>Liability determined within 21 days of a claim being made, or before the end of the provisional period (whichever is the latter)</p>

S32.4 (JobKeeper Scheme)	<p>Insurers are to determine the impact, if any, to weekly payments as a result of the JobKeeper Scheme. The insurer is required to:</p> <ul style="list-style-type: none"> • contact the employer to determine whether they have applied for the JobKeeper payment for the worker (the employer’s eligibility to claim the JobKeeper payment on behalf of their workers is determined by the Australian Tax Office) • maintain contact with the worker and the employer to stay informed about whether a worker commences, is no longer entitled, or ceases to receive the Jobkeeper payment • inform the worker the impact the JobKeeper program will have on their weekly payments; changes in work capacity may affect a worker’s eligibility for the JobKeeper payment, and insurers will need to prepare workers for changes in earnings once the JobKeeper program ceases • provide written notice to the worker about the impact of the JobKeeper payment on their weekly payments. The notification is to include where to obtain more information about the JobKeeper program, changes to the worker’s weekly payment of compensation, the effect of the cessation of the JobKeeper payment on their weekly payments and who to contact for further information (including WIRO). 	<p>Evidence on the claim file</p> <p>Notice provided within 5 working days of first payment including JobKeeper; or as soon as reasonably practicable</p>
S32.5 (Weekly payments)	<p>Insurers are to ensure that workers impacted by the COVID-19 pandemic continue to receive weekly payment entitlements without delay or interruption. The insurer is to inform the worker that certificates of capacity:</p> <ul style="list-style-type: none"> • may be obtained for periods of longer than 28 days where ‘special reasons’ exist, and • may be obtained from their treating physiotherapist or psychologist (applies to second and subsequent certificates only from 17 April 2020). <p>Note: SIRA would consider the COVID-19 pandemic to be a ‘special reason’ for the purposes of <u>section 44B(4)</u> of the 1987 Act.</p>	<p>Evidence on the claim file, and / or information publicly available that an injured worker can easily access</p>

S32.6 (Weekly payments in advance)	<p>The insurer can, if appropriate, use discretion to agree to payment of weekly payment entitlements in advance (up to six weeks), as long as:</p> <ul style="list-style-type: none"> • the worker has a current certificate of capacity for the period in advance, and • the worker’s capacity is not likely to change within that period, and • the worker agrees to receive payment in advance. 	Evidence on the claim file
S32.7 (Treatment)	<p>The insurer is to ensure that the worker is informed of additional options available to them to access treatment during the COVID-19 pandemic. This includes advice to the worker about options for accessing treatment, including use of telehealth or videoconferencing.</p>	Evidence on the claim file
S32.8 (Recovery at work support)	<p>When an insurer becomes aware a worker’s ability to maintain suitable work is affected by the COVID-19 pandemic, the insurer is to proactively contact the worker to:</p> <ul style="list-style-type: none"> • explain what SIRA funded programs may be available to support return to work, and • facilitate engagement with services to encourage recovery and utilisation of relevant programs. 	Evidence on the claim file

S32.9 (Independent consultations, work capacity assessments)	<p>When scheduling an independent assessment (including an injury management consultant service, independent consultant service, or work capacity assessment appointment), the insurer is to:</p> <ul style="list-style-type: none">• consider whether the issue can be resolved through further contact with the nominated treating doctor, treating specialist or allied health practitioner/s, and/ or whether the appointment /service can be postponed until a later date• consider the most suitable option for the appointment /service, including scheduling the appointment/service via video conferencing (where appropriate) or alternatively telephone (only where permissible)• if a face to face examination is required, ensure the provider has appropriate COVID-19 preventative measures in place before the assessment, and• make sure appropriate travel arrangements have been made and agreed with the worker, including informing the worker that reasonable travel costs will be met by the insurer.	Evidence on the claim file or claims procedure process
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<p>32.10 (Independent Medical Examinations and assessments of permanent impairment)</p>	<p>When scheduling an Independent Medical Examination (IME) for a worker, the insurer is to:</p> <ul style="list-style-type: none"> • consider the need for the examination including whether further information can be obtained from the nominated treating doctor or specialist in the first instance, and /or whether the examination can be postponed until a later date • consider the urgency of the matter, ensuring those workers whose entitlements may be impacted, such as matters where an assessment of permanent impairment is required for threshold purposes, are expedited, and • consider the appropriate method of assessment, and whether a video-consultation is appropriate, or whether a face to face examination is required. <p>Where a face to face examination is required, the insurer is to ensure:</p> <ul style="list-style-type: none"> • appropriate COVID-19 preventative measures for the examination have been put in place, and • appropriate travel arrangements have been made and agreed with the worker, including informing the worker that reasonable travel costs will be met by the insurer. <p>In circumstances where an IME has been delayed or postponed due to the COVID-19 pandemic, and a worker's entitlements will be impacted, the insurer is to:</p> <ul style="list-style-type: none"> • contact the worker to explain the delay and the impact to the worker's entitlements • inform the worker about what options they may have and who they can contact for assistance (including WIRO) • Note: in some circumstances, the insurer will need to give notice in accordance with section 78 of the 1998 Act. 	<p>Evidence on the claim file and / or evidence of arrangements with IME providers</p>
<p>Application</p>	<p>This standard applies to all claims during the COVID-19 pandemic from XX May 2020.</p> <p>Note: S32.1, 32.2, and 32.3 apply only to claims made for COVID-19 (i.e. the worker has been diagnosed with COVID-19).</p>	

Context

The current situation in relation to COVID-19 continues to evolve. It has changed the way we live, work and connect with family, friends and colleagues.

Several changes and adaptations have been implemented in the workers compensation system in response to COVID-19. These changes have focused on reducing regulatory barriers in the context of the COVID-19 restrictions and continuity of the workers compensation system operations with workers supported through their recovery and return to work. The changes include:

- amendment to the workers compensation legislation and regulation which enable second and subsequent certificates of capacity to be issued by approved treating physiotherapists and psychologists with effect from 17 April 2020 (see [GN 3.3 Certificate of capacity](#))
- expanded telehealth arrangements to minimise social contact and facilitate continued treatment and care for workers
- modifications to SIRA-funded recovery at work programs to ensure injured workers and employers are supported with recovery at work, as well as development of two new programs (Connect2work and JobCover6) specifically targeted to assist injured people and employers in response to COVID-19 (see [SIRA Funded Programs](#))
- amendments to the [Workers compensation guidelines](#) (Guidelines) with effect from 17 April 2020 to reduce regulatory barriers and provide clarity regarding an insurers approach to work capacity assessment appointments and independent medical examinations.

It is important that insurers adopt a flexible and adaptive approach to managing claims in the current environment. The insurer's approach should consider:

- the individual circumstances and impacts to the worker, the employer, as well as other system participants
- the legislative and regulatory framework, including changes and adaptations that have been implemented
- the broader state and Commonwealth landscape, including amendments to other legislation, public health orders or government programs (such as the JobKeeper program) which may impact the operation of the workers compensation system.

Liability decisions for COVID-19 claims

COVID-19 may be considered under the disease provisions of the *Workers Compensation Act 1987* (1987 Act). For most workers, injury is defined in [section 4](#) of the 1987 Act to include disease injury, which means a disease that is contracted in the course of employment, but only if the employment was the *main* contributing factor to contracting the disease. For exempt categories of workers including police officers, paramedics and firefighters, employment must be the *substantial* contributing factor to the contraction of the disease.

Public concern about supporting workers at higher risk of exposure (including doctors, nurses, and other allied health workers) and who are protecting the community from COVID-19 is well-placed. It is important that such workers know the NSW community supports them and they do not need to take onerous steps to prove that work was the main contributing factor to their disease injury. The commitment within NSW and Australia to support timely COVID-19 case investigation and tracing is expected to improve understanding of how most individuals contracted the disease.

There are a range of types of employment that may present an elevated risk of exposure to COVID-19, and accordingly insurers should take steps to ensure liability is determined promptly (either provisionally or in full) and entitlements processed quickly.

In particular, for workers whose employment requires them to come into direct (hands on or closer than 1.5m) contact with people diagnosed with COVID-19, the risk of exposure to the virus within their workplace may be higher. This would include doctors, nurses and other healthcare workers involved in the testing of people who are at risk of COVID-19, and/or the treatment of people with confirmed diagnosis of COVID-19. This risk is mitigated by PPE and infection control procedures and all workers are protected by work health and safety laws. Nonetheless the intent of this Standard of practice is to recognise that prompt support is appropriate, and that acceptance of provisional liability is an available approach.

Provisional liability is an existing mechanism in the workers compensation legislation which enables timely and early access to weekly and medical expenses. Under provisional liability, workers who require weekly payments and / or access to medical and related treatment can notify the insurer in the usual way to enable commencement of provisional payments. Provisional weekly payments are available for up to 12 weeks, unless a reasonable excuse exists in accordance with the [Workers compensation guidelines](#). Up to \$10,000 of reasonably necessary medical expenses can be paid under provisional liability.

Where the insurer has enough information to determine full liability, they should do so and not wait until the expiry of the relevant statutory timeframe or provisional period. Under the workers compensation legislation, there are timeframes within which full liability needs to be determined by the insurer. This is generally 21 days, or in the event a claim for weekly payments has been accepted provisionally, the insurer is required to determine the claim (by either accepting or disputing liability), before the end of the provisional period.

Weekly payments

For some workers, the processing of weekly payments may be impacted due to additional challenges with obtaining a current certificate of capacity. Some workers may also be affected by a loss of employment and income due to the pandemic. It is important that insurers consider the individual circumstances of each worker. Any modified arrangements should be made in consultation with the worker and employer to ensure weekly payments are not interrupted or delayed. Recent changes mean that from 17 April 2020, workers can now obtain a second or subsequent certificate of capacity from their treating physiotherapist or psychologist. In some circumstances, for

instance, if a worker is facing financial hardship, it may be appropriate for the insurer to expedite processing of weekly payment entitlements in advance.

JobKeeper payment

Some workers may be entitled to the JobKeeper payment, which was introduced by the Federal government to support businesses affected by the significant economic impact caused by COVID-19.

Under workers compensation any JobKeeper payment made to a worker prior to the **worker's injury will be considered earnings for the purposes of determining the worker's average weekly earnings prior to injury.**

Any JobKeeper payment made to a worker who has current work capacity will be considered earnings for the purposes of determining the weekly payment of compensation to which the worker is entitled. If a worker has no current work capacity, they will not be entitled to receive the JobKeeper payment.

Some employers may no longer be able to provide suitable work to their workers due to the impact of the pandemic. If this is the case, the worker may still receive the JobKeeper payment.

Insurers will need to actively communicate with workers and their employers to stay **informed about a worker's eligibility for the JobKeeper payment in the context of their current work capacity.** Weekly payments of compensation will need to be continually **adjusted as a worker's capacity changes while they remain in receipt of the JobKeeper payment.**

The effect of the JobKeeper payment on the workers weekly payment is to be communicated to the worker and the employer in writing. The amount of a worker's current weekly earnings is to include the amount of the JobKeeper payment, which has been determined by the Federal government for all eligible Australian workers. Where a **worker's entitlement to weekly payments of compensation are reduced or discontinued,** the insurer will need to provide the required period of notice outlined in section 80 of the 1998 Act.

Treatment and support

Workers may be able to access treatment or other supports using recently expanded telehealth services. It is important that workers are kept informed about what options may be available to them in the current environment.

Recovery at work support and SIRA-Funded programs

Access and support from workplace rehabilitation services can occur within the limitations of social isolation. These services establish return to work as the focus and return to work goals are translated and tailored to the worker. The programs must have the specific goal of keeping the worker:

- engaged in their recovery through the development of a return to work plan
- connected with their employer, where possible, and their community

- work ready, so when they are able to the worker can recover at or return to work.

Research shows that work promotes recovery and reduces the risk of long-term disability and work loss. SIRA has a range of programs that support recovery at work for workers and/or employers. The SIRA-funded programs do not affect an employer's premium calculation and have recently been updated to recognise the economic and business impacts of COVID-19. Two new programs, Connect2work and JobCover6, are now also available to assist injured people and employers during this time. It is important that insurers actively consider and utilise the programs that are available to ensure workers are supported and recovery planning is ongoing.

Independent medical examinations

When considering whether it is appropriate to refer a worker for an IME, SIRA expects that the referrer assesses each matter on a case-by-case basis. In addition to making any necessary procedural modifications as a result of the pandemic, referrers should prioritise matters to determine their appropriateness for referral, considering:

- the urgency of the matter, including any potential impact of delay on the worker
- the method of assessment most appropriate to resolve the matter, including options such as video examination
- how to avoid or minimise any risks to the safety, health, and wellbeing for the worker where an 'in person' examination is deemed necessary, and
- in light of the above, whether the examination can be postponed until a later date, also noting any potential impact of delay on the worker.

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.

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