

## WIRO WIRE TO APPROVED LAWYERS | COVID-19 OPERATIONAL CHANGES

### Essential information COVID-19

This Workers Compensation Independent Review Office (WIRO) WIRE is intended for WIRO Approved Lawyers (Solicitors and Barristers) and sets out important information about the operation of the workers compensation scheme including WIRO operations during COVID-19.

This WIRE will cover:

1. New Fees Orders
2. New Workers Compensation Commission (Commission) procedures (e-bulletin 101)
3. New Independent Legal Assistance and Review Scheme (ILARS) grant amounts in conjunction with e-bulletin 101
4. WIRO payment of legal costs
5. Changes to the workers compensation guidelines, April 2020.
6. COVID-19 workers compensation claims data

### 1. New Fees Orders

On 14 April 2020, the State Insurance Regulatory Authority (SIRA) re-issued all Fees Orders with provision for telehealth services or video consultation/conferencing.

The **Workplace Injury Management and Workers Compensation (Medical Examinations and Reports Fees) Order 2020 No.2** includes the following changes:

#### **Part 3 Definitions**

##### ***Medical Examination and Report***

- i) Means an examination and report completed by an Independent Medical Examiner where additional information is required by a party to a current or potential dispute in relation to a claim for workers compensation or work injury damages.

Video examinations are permissible in limited and special circumstances when requested to provide an opinion in relation to a dispute or potential dispute in respect of a claim made by the worker when approved in advance by the party requesting the service. A pandemic, such as the outbreak of COVID-19 (Coronavirus) is considered a special circumstance.

Video examination services are to be coded and paid in accordance with the examination items in this Order. The fee payable remains the same.

No additional payment fee (e.g. facility fees) can be charged in relation to the examination;

**Unreasonably late attendance** means that the worker or interpreter arrives for the scheduled appointment unreasonably late (or for video examination, joins the appointment unreasonably late) to the degree that a full examination is prevented from being conducted.

**Schedules 1 and 2** include fees for examinations conducted by video consultation.

The **Workers Compensation (Hearing Aid Fees) Order 2020 No.2** has been changed to reduce the demand on health services and the need for workers to travel to hearing clinics.

Telehealth can now be used for the fitting and replacement of hearing aids where technology allows and the clinician deems it appropriate.

For replacement hearing aids, the need for certification from a general practitioner has been temporarily removed.

Where a worker's hearing has not changed significantly, the hearing service provider can use the previous assessment to eliminate the need for a face-to-face hearing assessment.

The suite of new Fees Orders can be found on SIRA's website [here](#).

## **2. New Workers Compensation Commission procedures (e-bulletin 101)**

The Commission suspended in-person medical examinations by Approved Medical Specialists (AMS) on 24 March 2020. The Commission has now implemented new procedures in relation to medical assessments as set out in **e-bulletin 101**, summarised below:

### **Medical disputes involving psychiatric and psychological disorders**

- Where an in-person assessment is unable to be conducted, the worker will be referred to an AMS for assessment by video.
- Approved lawyers must ensure their client is able to participate by video including that they have access to, and the ability to operate, necessary equipment to enable the assessment to take place.
- If, on review of the file, the AMS is of the opinion that the medical dispute is not suitable for assessment by video, the AMS will remit the matter to the Registrar for the matter to be held in the Commission's **medical assessment pending list**
- If a party objects, the matter will be referred to a teleconference (TC) before an Arbitrator where the outcome may be one of the following:
  - > the matter is resolved by negotiation between the parties facilitated by the Arbitrator
  - > the Arbitrator resolves the opposition to video assessment and refers the matter to an amount an AMS for assessment by video
  - > the matter is remitted to the Registrar to be placed in the medical assessment pending list.

The matter may be restored from the medical assessment pending list at any time on application, by consent, of any party for either AMS assessment or Arbitrator TC.

## **Medical Disputes Involving Other Body Systems**

These matters will be listed initially for TC before an Arbitrator who may:

- attempt to bring the parties to an acceptable resolution of the medical dispute, or
- determine the medical dispute where appropriate, or
- attempt to narrow the evidence and issues between the parties and refer the dispute to an AMS for assessment by video, or
- remit the matter to the Registrar to be held in the medical assessment pending list.

A matter may be restored from the medical assessment pending list at any time on application, by consent, of any party for either AMS assessment or Arbitrator TC.

## **Medical disputes requiring urgent in-person medical assessments**

These matters will be fast tracked to an Arbitrator TC where the Arbitrator may:

- attempt to bring the parties to an acceptable resolution of the medical dispute, or
- determine the medical dispute where appropriate, or attempt to narrow the evidence and issues between the parties and refer the dispute to an AMS for assessment by either video or in-in-person assessment, or
- remit the matter to the Registrar to be held in the medical assessment pending list.

If the Arbitrator determines that an in-person assessment is required and the matter is urgent, the assessment will only be conducted if it can take place near the worker's place of residence. Certain procedures will take place the day before the AMS conducts the physical examination at which the worker has to be present for evaluation.

The Commission has encouraged attendance at an in-person assessment by private vehicle or by hire car or other similar transport. If travel is by hire car or similar the Commission will ensure the vehicle is properly cleaned before use and the cost of the transport will be met. Where at all possible, the worker should attend an in-person appointment alone.

Interpreters will be required to attend the examination by telephone.

## **Medical assessments assessed on the papers**

It is expected that the majority of medical disputes lodged with the Commission will require examination by an AMS, either in person or by video.

In exceptionally rare cases, an AMS may make an assessment based solely on the medical and other evidence provided by the parties, for example, where a worker has died.

## **3. Guidance on ILARS grant amounts in conjunction with e-bulletin 101**

In support of the Commission's e-bulletin101 procedural changes, and in exercise of WIRO'S overarching discretion as to the amount of professional fees to be paid, the following guidance is issued.

This guidance maps to the procedures set out in by e-bulletin 101, and to the dispute pathways identified by the Commission in its forms, guidance material and website:

- **Claims for section 66 lump sum compensation where degree of permanent impairment is in dispute**

Where under pre-COVID19 arrangements the matter would have been referred by the Registrar to the medical disputes pathway (to an Arbitrator for determination and/or to an AMS) and the matter resolves at TC, Professional Fees will be **\$4,500**, the same amount as applies where a matter is resolved by a Medical Assessment Certificate.

- **Claims for section 66 lump sum compensation where liability in dispute**

Where under pre-COVID19 arrangements the matter would have proceeded down the Legal Disputes pathway (Arbitration pathway) and the matter resolves at TC, professional fees will be **\$6,000**, the same amount as applies where a matter is resolved in the Commission from initial registration up to and including the first TC.

- **Counsel's fees**

Counsel's fees will be covered to appear at TC under the procedures set out in e-bulletin 101. The fees allowed for Counsel's appearance at a TC are **\$1,000**.

#### **4. Payment of legal costs**

WIRO is taking a number of steps to support Approved Lawyers during the COVID-19 pandemic.

##### **Prioritising invoice payment**

WIRO is prioritising the review and approval of tax invoices, and has reduced payment terms from 30 days to payment as soon as possible after invoices are approved (usually within 7 days)

##### **Early payment of legal costs**

WIRO is also providing additional assistance by way of early or interim payment of legal costs where an Approved Lawyer or law firm is experiencing financial hardship as a consequence of COVID-19.

Approved Lawyers or law firms seeking payment of interim invoices due to financial hardship should first contact the Director ILARS, Roshana May at [roshana.may@wiro.nsw.gov.au](mailto:roshana.may@wiro.nsw.gov.au) or by telephone on (02) 8281 6239.

All requests for financial assistance by way of the interim invoicing will be considered and a response provided within seven days. Approved Lawyers dissatisfied with the response may seek a review of the decision.

#### **5. Changes to the Workers Compensation Guidelines, April 2020.**

Approved Lawyers should be aware that SIRA has been adapting and responding to the impact of COVID-19 and has made minor changes to the Workers compensation guidelines.

The following relevant changes have recently been made:

##### **Part 4: Compensation for medical, hospital, and rehabilitation expenses**

There is no longer a requirement to obtain pre-approval for telehealth.

*Table 4.1 Reasonably necessary treatments and services available without pre-approval from the insurer now includes:*

*“Nominated Treating Doctor*

*Consultation or case conferencing for the injury, apart from home visits*

*Medical Specialists*

*If referred by the nominated treating doctor, any consultation and treatment during consultations for the injury. Referrals for diagnostic tests must meet the Medicare Benefits Schedule criteria.”*

#### **Part 7: Independent medical examinations and reports**

Part 7.4 clarifies that in limited or special circumstances, examination by video consultation may be appropriate and that a pandemic such as COVID-19 in Australia is considered a special circumstance for the purposes of Part 7

Part 7.7 *Unreasonable Request* now includes a requirement that the insurer must consider whether the requirement to attend an IME is reasonable in the circumstances, and that this includes consideration of amendments to existing laws and public health orders made in response to COVID-19. For example, the fact that relevant laws or public health orders impact the worker’s ability to leave their place of residence and travel to an appointment must be considered.

The table of changes is summarised on the SIRA website [here](#).

#### **6. COVID-19 workers compensation claims data**

Statistics on workers compensation claims related to COVID-19 received by SIRA from insurers is being published in real time [here](#).

Simon Cohen

**Workers Compensation Independent Review Officer**

27 April 2020