State Insurance Regulatory Authority
Post Implementation Review of the Authorised Health Practitioner (AHP) Framework

Submission by
Occupational Therapy Australia
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Occupational Therapy AUSTRALIA

Introduction

Occupational Therapy Australia (OTA) is the professional association and peak representative body for occupational therapists in Australia. As at June 2021, there are approximately 7,000 registered occupational therapists in New South Wales (NSW), employed in a variety of roles across government, nongovernment, private and community sectors.

Occupational therapists are client-centred health professionals, who use a holistic approach when working with individuals, groups and communities to enhance overall health and wellbeing and engagement in everyday activities of life which may include activity modification and environmental adaptation.

Occupational therapists undertaking medico-legal practice are responsible for accurately representing the functional needs of people who are incapacitated following injury or illness as a result of an event that has led to litigation. Recommendations made by occupational therapists and contained within their reports are consistent with best evidence and a focus on the resumption of the individual's participation in their pre-incident lifestyle, or as close to that lifestyle as possible, without consideration for enhancement or degradation of their quality of life. Occupational therapists have a commitment to the court to act in an impartial, expert and professional manner at all times without influence from external parties, including referring agents, plaintiffs or other practitioners.

OTA welcomes the opportunity to make a submission to the State Insurance Regulatory Authority (SIRA) regarding the post implementation review of the Authorised Health Practitioner (AHP) Framework. Consultation questions are considered in this response.

Consultation questions

Discussion question 1

Do you have any comments in relation to the scope or process of the review?

OTA is satisfied with the scope and process of the review and is pleased to be able to participate.

Discussion question 2

How can the AHP framework better deliver on its key objectives to improve the injured person's customer experience, and encourage the early and just resolution of disputes?

There are a number of strategies for consideration that would better deliver the AHP framework, improving the experience for the injured person whilst encouraging the early and just resolution of disputes. These include:

- **Provide policy direction** by clarifying what is and is not accepted based on case law. For example, this could include definitions about attendant care; the provision of emotional support while in hospital; the provision of care of animals; and clear description of the key components of gardening.

- Allow for the issue of **motivation** to be determined. For example, psychologist assessment required to identify the person's motivation prior to a functional assessment.

- **Medical assessments** determining the injuries that relate to the subject accident need to be confirmed *before* an occupational therapy assessment.

- Encourage the use of **assessment tools that identify sense of injustice** so there is clear understanding of the impact this is likely to have on the assessment. It should be noted that high scores on such tools can predict a person's failure to comply with pain management.

- Ensure occupational therapists are **provided with sufficient information** about the individual's pre- accident / incident / injury / medical and lifestyle status.

- **Encourage a focus on solutions** to restrictions rather than financial compensation associated with care.

- **Awareness of the timeframe for occupational therapy assessment**. The medicolegal assessment process includes:
    - reading provided documentation, which usually takes between 2 to 4 hours depending on the number of documents, often 500 - 2000 pages are provided which also includes treating therapist reports that require detailed review;
    - examining / assessing the claimant, which usually takes 1.5 to 3 hours at a home visit; and

- preparing a report, usually 25 to 50 pages long depending on the number of treatment issues being assessed, the complexity of the injuries and the time frames required which takes between 10 – 20 hours to write.

- **Occupational therapy AHP assessments should not occur in the first 12 months** unless they are being asked to address a specific issue. Ideally the person should be classed as medically stabilised prior to the assessment occurring.

- Occupational therapy authorised health practitioners **should be provided with treating therapists reports** to assist in understanding the early intervention provided. This allows the assessment to record whether the person took the advice of the treating therapist.

- Where possible the **whole person impairment (WPI) threshold should be used for guidance**, with therapists noting that a high WPI does not necessarily relate to high level of functional restrictions.

- Development and use of a **guideline regarding frequency of domestic services.** For example, Lifetime Care and Support Scheme (LTCS) has developed guidelines regarding the frequency of lawn mowing and cleaning of windows.

Discussion question 3

How do we incentivise the take up of joint medico-legal assessments in the CTP scheme?

The uptake of joint medicolegal assessments in the CTP scheme could be incentivised by encouraging a 50-50 cost sharing between both parties with each party receiving the report on payment of account. OTA members report that this is a positive experience when this occurs. Members note that this tends to depend on the law firm(s) involved and is more likely to occur with severe injury claims rather than mild injuries where the law firms tend not to be in agreement.

Enhancement of the authorised health practitioner page on the website with further detail could assist in joint assessments if law firms had an increased understanding of the practitioner's area of expertise and experience.

Regular feedback to therapists regarding the outcome of their decisions including how many were accepted, how many were challenged and how many were reviewed would further enhance this process and may assist in incentivising joint assessments.

Discussion question 4

What, if any, changes are required to either the eligibility requirements or terms of appointment?

The AHP list would be enhanced if there was an open process for occupational therapists to apply to be approved as this would enable new employees / occupational therapists to be added and not precluded from this work. Clarity of when or if there is a regular call for occupational therapists to apply to join the AHP list is needed.

The requirement that AHP must participate in clinical treatment for a minimum of 8 hours per week for a 3-year period prior to application plus undertake medicolegal assessments potentially prevents some experienced occupational therapists from applying. These requirements are not realistic for occupational therapists who are working part-time to meet both the clinical and medicolegal aspect and will also impact on the career progression of some experienced therapists in this space. Members report that this is also a deterrent to them reapplying to continue to be on the AHP list.

A process for occupational therapists to identify their clinical area of experience and provide relevant documentation as part of the AHP application for inclusion as part of the AHP listing on the website would be most beneficial. For example this would avoid an AHP being asked to provide determinations regarding psychiatric issues when they have never worked in psychiatry and do not have the experience to provide such information.

It should also be noted that an occupational therapist with 10 or more years of clinical experience is not necessarily an expert as this is dependent on a number of factors including their career pathway, roles undertaken and if they have pursued areas of specialty within their clinical practice. An expert therapist is one who organises their knowledge, demonstrating a deep understanding of the condition and the process in which the claimant can be assisted to resolve, reduce or be supported to complete essential tasks as well as understanding of the particular legislation within which the report is required.

Discussion question 5

How should SIRA measure the overall effectiveness of the AHP framework?

The effectiveness of the AHP framework could be measured utilising a number of factors including:

- Less disputes;
- Reduced or maintained costs for assessment;

- Reduced delays in reporting;
- Reduced frequency of reports being challenged;
- Clear evidence of procedural fairness and client centred approach being followed and included into the quality of the decision being made; and
- Evidence that each individual therapist is maintaining their skills and demonstrating a commitment to grow and develop in their decision-making abilities.

Discussion question 6

Do you have any comment with regard to the ease, efficiency and transparency of the application and review process outlined in Part 8 of the guidelines?

OTA members report that timely and consistent notification of AHP applicants would enhance the process. There has been inconsistency and delays with outcome notifications to therapists and employers and a lack of clarity regarding non-approval.

Discussion question 7

How can the quality of applications be improved?

The quality of applications by occupational therapists applying to become an AHP could be improved if the application was more appropriately focused on the profession of occupational therapy or allied health more broadly. Current application processes are focused on medical practitioners.

Remuneration in line with the expertise of AHP and no capping of hours for an occupational therapy assessment would likely encourage further applications from experienced occupational therapists to be included on the approved list. Restricting an occupational therapy assessment to a total of 4 – 6 hours is unrealistic unless there is only one or two very specific questions to be addressed, this therefore acts as a deterrent to some occupational therapists wishing to engage in this work. Remuneration is also a key factor and should be consistent with other schemes such as the NDIS tribunal. Payment at the same level as a treating therapist does not take into consideration the additional skill required to provide a report for the courts/tribunals. Additional remuneration above that of clinical treatment rates would further encourage more occupational therapists to apply to be on the AHP list.

OTA would be pleased to participate in any discussions and / or review of the inclusion criteria for occupational therapists as Authorised Health Practitioners.

Discussion question 8

Can SIRA's published list be improved to ensure it is simple for injured people, insurers, and legal professionals to use?

SIRA's published list of AHPs could be enhanced by a search function that allowed search by location of assessment in addition to search by alphabet and search by category. It is often hard to find the required information on the website with the current search functions. Direct links from the current spread sheet to individual practitioner details, experience, workplace and more detailed location information would further enhance the user experience.

The current listing of active and inactive on the AHP listing is confusing; improved clarity would occur if inactive AHPs were removed.

Discussion question 9

How can SIRA ensure that AHPs have the appropriate training and experience, and consistently delivering high quality reports?

In addition to responses provided above, in particular to question 4, SIRA can have confidence that all occupational therapists must be registered with the Australian Health Practitioners Regulation Agency (AHPRA). As part of this registration requirement, occupational therapists must complete a minimum of 20 hours of continuing professional development training per year.

Occupational therapists working as an AHP should participate in training and development in medicolegal report writing and assessment and engage in professional support activities that meet their needs which will vary depending on their experience but may include mentoring, supervision, peer support and participation in the OTA Medicolegal Special Interest Group.

Ideally, AHP occupational therapists should be a member of Occupational Therapy Australia and the OTA Medicolegal Special Interest Group.

Conclusion

OTA thanks the State Insurance Regulatory Authority for the opportunity to provide a submission as part of the post implementation review of the Authorised Health Practitioner (AHP) framework. OTA would welcome the opportunity to meet to further discuss the points raised in this submission.

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