



THE LAW SOCIETY
OF NEW SOUTH WALES

[REDACTED]
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[REDACTED]
Manager, Authorised Health Practitioner Service
State Insurance Regulatory Authority (SIRA)
Locked Bag 2906
Lisarow NSW 2252

By email: nontreatingpractitioners@sira.nsw.gov.au

Dear [REDACTED],

Thank you for the opportunity to provide comments on SIRA's proposed frameworks for non-treating health practitioners in the NSW Compulsory Third Party ("CTP") insurance scheme and workers compensation system. The Law Society of New South Wales' Injury Compensation Committee has contributed to this submission.

1. Rationale for joint approach

The Law Society understands that the intention behind the development of these frameworks is to set clear standards, expectations and processes to emphasise a uniform approach to non-treating health practitioners providing services to persons injured in a motor accident or at work in NSW.

However, the Law Society queries the policy rationale behind developing a uniform approach to regulating non-treating health practitioners providing very different services in the motor vehicle accidents and workplace injury schemes. These two schemes currently operate independently, and under different legislation. Issues that exist in each discrete scheme have not necessarily been demonstrated to exist uniformly across the schemes.

Accordingly, this submission deals with each scheme separately.

2. Workers Compensation system

Appointments process

The Law Society does not agree that there is a demonstrated need to establish an authorisation framework for practitioners providing relevant services under the workers compensation system. The discussion paper approaches the regulation of non-treating health practitioners from the CTP perspective. The schemes are not homogenous, nor are they structured in the same way.

Additionally, unlike the motor vehicle accidents scheme, within which issues including fraud and claim farming have arisen in the past, to the Law Society's knowledge the workers compensation scheme does not feature these types of issues.

Without any explicit reason or communicated policy shift for applying the proposed regulation to the workers compensation scheme, the Law Society considers the proposal is

unnecessary. The Law Society further submits that as the workers compensation scheme is operating as intended, further regulation would place an undue burden on an already highly complex regulatory framework.

Barring practitioners from providing services

The Law Society does however support SIRA's ability to bar a health practitioner from providing services where evidence of misconduct, breaches of ethical or professional duties or other serious complaints made against a practitioner are substantiated.

The Law Society submits that SIRA should develop and consult on clear guidelines for the process of barring a health practitioner from providing services under the workers compensation scheme, the criteria upon which such a decision may be made, and the mechanisms for reviewing such a decision.

3. Compulsory Third Party insurance scheme

Appointment process

The Law Society acknowledges that historically certain issues arose under the 1999 motor accident compensation scheme, including claim farming, fraud and medical misconduct, which demonstrated the need for a medical appointment process in the current CTP scheme.

The Law Society notes however that it is critical that SIRA strike the appropriate balance between regulating the scheme and ensuring that the best medical professionals continue to be involved in providing relevant services. Based on these objectives, the Law Society does not support the authorisation process SIRA has developed. The Law Society does however support the development of an authorisation framework for non-treating health practitioners which:

- (i) has objective criteria for entry, and an independent appeal process for those non-treating health practitioners who are not successful in the appointment process;
- (ii) requires mandatory medical training for non-treating health practitioners to ensure that CTP scheme issues and developments are known and addressed, for example, developments in respect of minor injury or WPI assessments;
- (iii) requires non-treating health practitioners to be bound by an agreed code of conduct for expected behaviours and standards within the CTP scheme; and
- (iv) requires non-treating health practitioners to re-apply for authorisation at pre-determined intervals.

The Law Society would welcome the opportunity to engage with SIRA on the development of objective appointment criteria and a code of conduct for the authorisation framework. We also stress the importance of continued engagement with the medical profession.

Revocation of appointment

The Law Society supports SIRA's ability to act quickly to revoke appointments where allegations of misconduct, breaches of ethical or professional duties or other complaints made against a practitioner are substantiated.

The Law Society considers that SIRA should develop and consult on clear guidelines around the process for revoking such an appointment, and associated review mechanisms. Such guidelines could be closely aligned to the code of conduct proposed above.



Review mechanism

The Law Society supports an independent review mechanism for unsuccessful applicants, but does not support the implementation of a review officer housed within SIRA due to the perception of bias. Instead, the Law Society submits that an independent review panel should be developed, comprising representatives from SIRA, and the legal and medical professions, to review disputed non-appointments. This panel must be completely independent of the original decision maker and must have played no role in the original decision.

Thank you again for the opportunity to comment on the proposed frameworks. [REDACTED]

Yours sincerely

[REDACTED]
Elizabeth Espinosa
President

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