

13 September 2020

State Insurance Regulatory Authority
Level 6, McKell Building
Sydney NSW 2000
By email: consultation@sira.nsw.gov.au
cc: SelfSpecialisedInsurers@sira.nsw.gov.au

Dear Sir/Madam

Consultation on Revised Workers Compensation Guidelines for Allied Health Treatment and Hearing Service Provision

Thank you for the opportunity to respond to the State Insurance Regulatory Authority (SIRA) 29 July 2020 Consultation Paper titled: *Workers compensation guidelines for allied health treatment and hearing service provision* (Guidelines).

This response provides feedback Coal Mines Insurance Pty Limited (CMI) on these revised guidelines based on our role as the provider of workers compensation insurance services for the NSW coal industry (CMI Scheme). CMI is a wholly-owned subsidiary of Coal Services Pty Limited, which administers a specialised health and safety scheme for the NSW coal industry.

Consultation feedback

Allied Health Providers (AHP)

1.2 – Exempt Allied Health Providers: Among other things, this section of the Guidelines states that treating AHPs that only provide treatment in the NSW public health system do not require approval from SIRA to deliver treatment services to workers compensation claimants in the NSW public health system.

CMI notes that in the Northern Coal Basin region (Gunnedah, Narrabri, Boggabri, Wee Wah, as well as Muswellbrook) where there are limited private practices for physiotherapy, exercise physiology, chiropractic treatment and remedial massage – we regularly see AHP's working from public health facilities such as local hospitals and providing treatment to injured coal miners. CMI often struggles to obtain up-to-date information and Allied Health Recovery Requests (AHRR) from such providers who operate in the public health space.

This section also states that AHPs exclusively delivering services to "Exempt Categories of Workers" including Police Officers / Paramedics / Firefighters – do not require SIRA approval.

Given these worker category exemptions, and that coal miners could similarly be considered in that category, we would like to enquire as to whether there is a possibility for the same approval exemption to be applied by extension to those AHP's providing treatment services to injured coal miners in receipt of workers compensation benefits.

1.6 and 3.4 – Suspension or revocation of approval of an AHP approval: Apart from the three key reasons given for suspension or revocation of SIRA approval, there is also reference to “Such other reason deemed appropriate” without examples of what these could be. There is a further point noting SIRA approval may be suspended if an AHP is subject to restriction, limitation, termination, revocation or disqualification from practice by an external professional body. This document implies that unless punitive action has been taken by an external governing body of an AHP, SIRA's ability to disqualify/suspend or revoke is entirely discretionary. Is that the case?

If so, CMI considers this could be better fleshed-out and recorded for insurers and providers alike. This would likely reduce confusion about what actions/consequences may take place beyond complaints relating to AHP's. It remains unclear what notice will be provided to insurers regarding AHP's under penalty of suspension/revocation. Clarity around what periods will apply and the period of suspension to be communicated to insurers would be beneficial.

3.2 – Period of approval: Noting this is set at three years from Date of Approval up to a three-year period (or possible extension at SIRA's discretion). The period of approval of a provider appears to be entirely discretionary by SIRA, based on history of compliance. No reference has been made regarding newly approved providers that have not previously worked within the NSW workers compensation system and how long that approval may be set at. CMI understands that reference was made to a two or three-year period, however there appears to be little information on this point. No reference is offered in relation to information for insurers, employers, rehabilitation providers, workers or medical providers to assess experience in workers compensation. It is proposed that SIRA consider a rating system of sorts – denoting years of experience and compliance within a workers compensation scheme.

3.4 – Timing & Notification of suspension or revocation of SIRA approval: This section notes providers will be notified of the decision, periods suspensions that will apply to the AHP, however it is silent on how such events will be communicated to NSW workers compensation scheme insurers. One suggestion would be to ensure that notifications are added to the Data Exchange or some other appropriate insurer communication platform. This communication would be very useful, particularly when a nominated treating doctor (NTD) issues referrals for various allied health treatment modalities, to ensure they refer to compliant/current providers.

3.7 – SIRA will maintain a register of approved providers: CMI agrees that this initiative should continue, but as noted in feedback above, there considers there is merit in advising insurers when the register is updated to add or remove AHP's, or to note those suspended and perhaps the date for the suspension period to finish.

Hearing Service Providers (HSP):

In relation to HSPs, CMI broadly agrees with the provisions proposed in the Guidelines. However, we remain concerned that the commercial agreements in place between some HSPs and law firms means that there may be conflicts that could affect the best interests of workers with industrial deafness injuries – ultimately affecting the treatment recommended.

HSPs are unique among treatment providers as, unlike other medical expenses for work-related injuries, this entitlement is often claimed through a legal provider where a claim could be made directly to the insurer. The provision of hearing aids is rarely disputed by the insurer, and litigation is unnecessary in almost all cases regarding hearing aids. Despite this, the provision of hearing aids continues to have extremely high involvement from law firms.

In addition to the provisions in the Guidelines, we propose that there be increased scrutiny of HSPs and law firms providing services or acting on work-related industrial deafness matters where there is a commercial arrangement of some sort in place between them.

To support that increased scrutiny, CMI proposes the following:

HSPs must disclose:

- whether any lawyers, law firms, or anyone associated with a lawyer or law firm in NSW has a vested financial interest in their company, and
- any commercial arrangements, whether written or unwritten, between the hearing service provider and a lawyer or law firm

Law firms must disclose:

- whether they, or any of their lawyers, or shareholders have an interest in a hearing service provider or any allied health providers that operate in the NSW workers compensation scheme, and
 - any agreements, whether written or unwritten, between the law firm or any of its lawyers with a hearing service provider or allied health provider in the NSW workers compensation scheme.
- The requirement for law firms and HSPs to disclose these interests and agreements is an ongoing obligation and arises immediately upon such an interest or agreement forming.
 - A lawyer that refuses to complete such a declaration, or does not complete a declaration honestly, or fails to fulfil their disclosure obligations, may be referred to the Law Society of New South Wales and the Workers Compensation Independent Review Office (WIRO).
 - A hearing service provider that refuses to complete such a declaration, or does not complete a declaration honestly, or fails to fulfil their ongoing disclosure obligations, will not be approved, or if they are already approved, their approval will be revoked.

The basis for these proposals is that HSPs and law firms that provide services to the same injured worker have a conflict of interest that cannot be overcome merely by disclosing this conflict to their client. Accordingly, they should be precluded from acting in the matter except in rare situations where the worker is remotely located with no other providers available.

As an organisation that has been trusted with the health and safety and support of workers in the NSW coal mining industry for almost 100 years, CMI would like to thank SIRA for providing for inviting us to be part of this consultation process.

CMI would also like to take the opportunity to confirm its ongoing commitment to working with SIRA and other NSW workers compensation insurers on this matter.

Yours sincerely
Lucy Flemming
Managing Director/CEO