

24 October 2022

Draft State Insurance and Care Governance Amendment Regulation 2022 – icare submission

Executive summary

1. Insurance and Care NSW (**icare**) thanks the State Insurance Regulatory Authority (**SIRA**) for the opportunity to provide a submission to the draft State Insurance and Care Governance Amendment Regulation 2022 (**draft Regulation**) which make provisions in relation to directions SIRA may give to relevant service providers in the workers compensation and Compulsory Third Party (**CTP**) schemes.
2. icare acknowledges the important role SIRA will play in regulating relevant service providers to promote the safety, transparency, affordability and sustainability of the workers compensation and CTP schemes for the benefit of injured workers and people with long-term injuries caused by a motor accident (**CTP Care**). icare welcomes the opportunity to assist SIRA by actively monitoring and reporting on any non-compliance by service providers in the workers compensation scheme or CTP Care.
3. In icare's view, any benefits conveyed by the draft Regulation should be balanced against the burden of additional administration on providers to operate within the workers compensation and CTP schemes. Reducing duplication of regulation and oversight where possible, will ensure the Regulatory framework does not exacerbate the existing complexities of these schemes and lead to further increase in costs for the relevant service providers.
4. As per the [Terms of Reference](#) of the consultation, icare provides feedback on the specific provisions of the draft Regulation at **Appendix A**, and broader recommendations on the regulatory framework and guidelines below.
5. In particular, icare recommends SIRA to consider:
 - a. a potential overlap between SIRA's regulatory powers and other Healthcare regulatory agencies;
 - b. ensuring a stepped approach to operationalise the regulatory framework, including the guidelines; and
 - c. the impact of the draft Regulation on the new conditions for insurer licencing.
6. As per Appendix A, icare recommends that certain provisions in the draft Regulation be reviewed and amended to provide further clarity to all scheme participants on how the draft Regulation will operate in practice and who it will apply.
7. Finally, icare also recommend that SIRA reviews and refines the current procedure for updating the register of directed service providers (**the Register**) to ensure that any restrictions placed on service providers can be easily operationalised. For example, certain directions (such as excluding a particular service) may have a significant impact on insurer systems and operations. It is crucial that these types

of changes are properly communicated as early as possible so that their impact can be understood and implemented.

8. icare sets out its recommendations in more detail below.

General feedback on the regulatory framework

9. In implementing the regulatory framework, icare recommends SIRA to consider the following matters.

Potential overlap between SIRA's regulatory powers and other Healthcare regulatory agencies

10. While icare welcomes SIRA's new regulatory powers in respect of service providers to promote compliance and improvement, icare notes that the relevant services listed under the proposed section 4A of the draft Regulation include services already regulated by other agencies. This includes the Australian Health Practitioner Regulation Agency, Health Care Complaints Commission, Health Professional Councils Authority and NSW Fair Trading.
11. icare suggests that SIRA clarifies whether this is the intent of the draft Regulation. icare would also welcome any guidance regarding processes that should be followed for referring matters to SIRA under this Regulation, and to other regulators, when issues relate to non-compliance under both legislative frameworks.

Ensuring a stepped approach to operationalise the regulatory framework

12. icare recommends that SIRA carefully consider the operationalisation of its regulatory framework in a meaningful way that:
 - a. creates the least complex approach to the schemes overall and reduces duplication of regulation and oversight;
 - b. minimises disruption of services to injured people when a provider is prohibited or restricted from operating in the workers compensation or CTP schemes;
 - c. includes reasonable timeframes for insurers to feasibly implement any changes given that the guidelines have not been finalised;
 - d. provides safeguards for a measured, reasonable, and proportionate responses to provider non-compliance; and
 - e. supports insurers in notifying SIRA of any observed instances of non-compliance by a service provider.

Impact of the draft Regulation on the new licensing conditions for insurers

13. icare seeks further clarity on how the existing Workers Compensation Guidelines will interact and align with the intent of the regulatory framework. The amendments under s182A of the *Workers Compensation Act 1987* and section 9.7 of the *Motor Accidents Act 2017* made it a license condition for insurers to not engage with an excluded service provider to provide an excluded service; approve the provision of an excluded service by an excluded service provider or pay the excluded service provider for the provision of the excluded service.

14. The Workers Compensation Guidelines currently provide a list of reasonably necessary services not requiring pre-approval from insurers. Therefore, directed service providers may continue to provide such services to injured workers without seeking the insurer's explicit approval. This creates an increased risk of an insurer breaching their license conditions by unknowingly engaging an excluded service provider.

Guidelines – matters for consideration

15. icare welcomes the opportunity to provide detailed feedback on the guidelines in November/December 2022 once a draft is available. As our preliminary feedback, we recommend the following matters to be considered for inclusion:
 - a. parameters SIRA will use to determine whether services are appropriate, meet the reasonably necessary test and are in line with value-based healthcare principles. icare would also welcome further guidance from SIRA on “relevant services” for known treatments that can meet reasonably necessary threshold but offer low/no value (for example, in relation to certain spinal surgeries, treatments for low-back pain, medicinal cannabis, Platelet Rich Plasma injections, etc).
 - b. the process for communicating any non-compliance to SIRA;
 - c. expectations placed by SIRA on service providers, including selection, accreditation, and training requirements;
 - d. examples of the scenarios and circumstances under which SIRA will exercise their regulatory powers such as directions and penalties;
 - e. details about the monitoring activities by SIRA, remediation plans and circumstances when directions may be revoked;
 - f. instances where non-compliance by service providers is an issue that should be dealt with by other regulatory agency;
 - g. process and method for ensuring that identifying information about service providers is readily available so that action and communication can occur in a timely and reliable manner;
 - h. clarity about how the guidelines will interact with the existing guidelines for pre-approved services;
 - i. process for communicating with insurers and injured individuals who received relevant services to inform of direction timeframes and details;
 - j. process and method for managing directions, including:
 - i) how service providers are to supply SIRA with claim related data and information once directed; and
 - ii) mechanisms for insurers to respond to directions issued by SIRA and publish in the Register in a timely way while minimising disruption to injured people.
 - k. process, timeframes, expectations, and interim status for providers undergoing an internal review of a SIRA direction.

Procedure for updating the Register

16. The successful implementation of the regulatory framework will rely on timely communication and easy identification of providers by insurers so that directions can be actioned. The requirement to rely on

SIRA's Register in identifying restricted providers risks adding an unnecessary burden on injured people and claims staff when reviewing and approving requests for treatment. There are significant constraints in the ability of insurers / individual case managers to access and view information on the Register in a 'real time', noting the Register would only be available via the SIRA website.

17. To ensure that no direction is missed, icare recommends that in addition to updating the Register, SIRA establish a process where icare can be notified of any new directions at the time they are issued to the service provider.
18. We also recommend that SIRA considers publishing information about non-compliance trends and their impact, to raise awareness and enable continuous improvement and capability uplift by the relevant service providers.

Next steps

19. icare welcomes the opportunity to discuss this submission further and to work collaboratively with SIRA to advance the recommendations and issues we have raised.
20. Please do not hesitate to contact James Camilleri, Head of Regulatory Affairs, to discuss further.

Yours sincerely

Richard Harding
Chief Executive & Managing Director

Attachment: Appendix A – response to draft State Insurance and Care Governance Amendment Regulation 2022