

Post Implementation Review of the Authorised Health Practitioner (AHP) Framework

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Executive Summary

Authorised Health Practitioners (AHPs) provide evidence acting as an expert witness in relation to motor accident injuries in court and dispute resolution proceedings.

The State Insurance Regulatory Authority (SIRA) is undertaking a post-implementation review of the Authorised Health Practitioner Framework (AHP Framework) in the NSW CTP Scheme.

The review will consider whether the framework is operating effectively and as intended. In scope will be a consideration of the appropriateness and effectiveness of the framework, associated administrative processes, the customer experience of injured persons, in addition to training or support requirements for practitioners (refer to Appendix B for the full terms of reference for this review).

Feedback is being sought from key stakeholders and scheme participants on how the framework is operating. This discussion paper has been prepared to support the consultation process and has been structured to include:

- **Introduction** including information relevant to the review and its' scope, the legislative framework, and interaction with the three-year Statutory Review of the Motor Accidents Injuries Act 2017
- **The current framework** and key features such as becoming an AHP, referrals, eligibility requirements, and terms of appointment
- **Appropriateness of the framework and customer experience** with a focus on how the framework can better deliver on its key objectives and improve the injured persons customer experience, and encourage the early and just resolution of disputes
- **Effectiveness of the framework** including consideration of joint medico-legal assessments, whether changes are required to eligibility requirements or terms of appointment, and how SIRA may measure overall effectiveness of the framework
- **Administrative processes** including discussion around the application and review process, enhancing the quality of applications and ensuring SIRAs published list is easy to use
- **Training, education and support requirements** to ensure that AHPs have the appropriate training and experience, and consistently delivering high quality reports.

A series of discussion questions have been integrated throughout the discussion paper to help elicit feedback that will help inform options for potential future improvements or refinements. For ease of reference, these discussion questions are also provided at Appendix A.

Consultation will be open from 15 July to 6 August 2021. SIRA welcomes your feedback to help us to deliver a better customer experience for the injured person and encourage the early resolution of motor accident claims and the quick, cost-effective and just resolution of disputes in the CTP scheme.

Introduction

The State Insurance Regulatory Authority (SIRA) is the government organisation responsible for regulating and administering workers compensation (WC), motor accidents compulsory third party (CTP) insurance and home building compensation insurance in New South Wales (NSW).

The Motor Accident Injuries Act 2017 (2017 Act) introduced a new scheme for accidents on or after 1 December 2017¹.

Authorised Health Practitioners (AHPs) provide evidence acting as an expert witness in relation to motor accident injuries in court and dispute resolution proceedings. AHPs were introduced to the 2017 CTP scheme to encourage joint medicolegal examinations with the aim to minimise disputation and reduce claim resolution times.

SIRA undertook consultation on a proposed framework for the appointment and regulation of AHPs working in the NSW CTP scheme in March 2019. This was undertaken concurrently with a review of the Injury Management Consultant Framework (IMC) in the NSW WC scheme.

SIRA sought to align the frameworks where possible and set clear standards, expectations and processes to emphasise a uniform approach to non-treating health practitioners providing services to people injured in a motor accident or at work in NSW.

Post Implementation Review of the AHP Framework

SIRA is undertaking a post-implementation review (review) of the Authorised Health Practitioner Framework (AHP Framework) in the NSW CTP Scheme.

The review will consider whether the framework is operating effectively and as intended. Specifically, the review will aim to understand how the framework has been implemented and review its effectiveness, with recommendations for refinement or improvements.

Feedback is being sought from key stakeholders and scheme participants, including but not limited to medico-legal practitioners and providers, insurers, and legal providers.

This discussion paper has been designed to support the consultation process for the review, offering stakeholders and scheme participants the opportunity to provide feedback on how the framework has been operating, and to inform options for potential future improvements or refinements.

The review will consider information and feedback received through multiple channels, including:

- responses to this discussion paper
- meetings with stakeholders and scheme participants
- correspondence received or available to SIRA relevant to AHP framework, including but not limited to submissions as part of a consultation process or parliamentary inquiry, email exchanges or other written correspondence
- available data reporting and analysis.

You can provide feedback by:

- submitting a response to this discussion paper
- emailing us at: healthpolicyandsupervision@sira.nsw.gov.au

The consultation period opens on 15 July and ends at 5pm on 6 August 2021.

For more information visit www.sira.nsw.gov.au

¹ The *Motor Accidents Compensation Act 1999* (NSW) applies for accidents prior to 1 December 2017.

Scope

The scope of the review will include consideration of:

1. The appropriateness of the AHP Framework and whether it aligns to the objects outlined in section 1.3 of the 2017 Act.
2. The effectiveness of the AHP Framework, including:
 - a. whether the framework operates to encourage joint medicolegal examinations to minimise disputation and reduce claim resolution times
 - b. whether the eligibility criteria and terms of appointment are fit for purpose and achieve intended policy outcomes.
3. Associated administrative processes including ease and efficiency of the application and review process.
4. The customer experience of injured persons.
5. Any training, education and support requirements for experts who provide health evidence in support of disputes.

Matters relating to costs will not be considered as part of this review.

Legislative Framework

In undertaking the review, regard will be given to the relevant provisions in the 2017 Act, which places restrictions on the giving of evidence in respect of medical matters by health practitioners, as well as the *Motor Accident Injuries Regulation 2017* (regulation).

Consideration will also be given to Part 8 of the Motor Accident Guidelines (guidelines) which provides for the appointment of health practitioners for the purposes of authorisation under Division 7.7, section 7.52 of the Act.

Interaction with the Statutory Review of the Motor Accidents Injuries Act 2017

The Motor Accident Injuries Act 2017 (2017 Act) stipulates that a statutory review is to be undertaken three years after the commencement of the Act². This review is currently underway. Clayton Utz and Deloitte have been commissioned to conduct the statutory review, assess whether the policy objectives under section 1.3 of the 2017 Act remain valid, and whether the terms of the Act, the regulation and the guidelines remain appropriate for securing those objectives.

Injured people, organisations and members of the public have the opportunity to contribute to the statutory review. A discussion paper inviting public submissions on key questions relevant to the objects of the 2017 Act and the 2017 CTP scheme has been published.

Further information about the [statutory review](#) and the [discussion paper](#).

Stakeholder feedback together with SIRA findings or recommendations arising as a result of this post-implementation review will be provided to Clayton Utz and Deloitte for consideration as part of the broader statutory review.

² Section 11.13 of the *Motor Accident Injuries Act 2017*

The current framework

Background

The 2017 Act places restrictions on the giving of evidence in respect of medical matters by health practitioners. Practitioners who are authorised to give evidence in court and other dispute resolution proceedings are known as 'authorised health practitioners' (AHPs).

Health practitioners may be authorised in one of three ways, by:

- being the treating practitioner of the injured person
- agreement between the parties, where the injured person is legally represented
- appointment by the Authority, either to its list of AHPs or for the purposes and duration of a specific claim.

The key objective in authorising health practitioners is to support the injured person's customer experience and encourage the early resolution of motor accident claims and the quick, cost-effective and just resolution of disputes.

Becoming an AHP

If the practitioner is not the treating practitioner of the injured person or agreed to by the parties (by way of joint medicolegal assessment), the practitioner must be authorised by the Authority.

The requirements for becoming an AHP are set out in Part 8 of the guidelines.

Health practitioners who are appointed as an AHP by the Authority have a duty to act in an ethical, professional, and considerate manner when examining injured persons.

An AHP must meet and continue to meet the eligibility requirements (see part 1.3.5) and comply with the terms of appointment (see part 1.3.6).

Referrals

Referrals to AHPs on SIRA's list may be made by the injured person, the insurer, or their respective legal representatives (where applicable).

Practitioners must accept all referrals, whether they are requested on behalf of an injured person or insurer, unless the referral is inappropriate or unable to be completed within the required terms.

SIRA does not arrange medicolegal assessments on behalf of the parties.

Key principles

The following principles underpinned the design of the AHP list:

- SIRA's application and appointment processes are transparent
- AHPs are empowered to deliver quality evidence based on current evidence-based clinical practice to enable fair disputes
- the list is simple for injured people, insurers, and legal professionals to use, and
- SIRA has a commitment to continuous improvement.

Eligibility requirements

To support the above objectives, practitioners seeking to be appointed as an AHP must meet the following eligibility requirements:

- has at least five years of full-time equivalent relevant clinical experience, including an understanding of the treatment and/or management of motor accident related injuries
- holds General or Specialist registration with AHPRA (Australian Health Practitioner Regulation Agency) with no notations as a result of a disciplinary process

- is not subject to supervisory requirements or has registration provisions that may adversely impact their role
- has high-level communication skills such that they would be able to comply with the NSW Medical Board Policy relating to medicolegal consultations and examinations, and
- satisfies SIRA that there is no other information relating to complaints, compliance breaches, current disciplinary or criminal proceedings, or previous criminal charges or convictions that would impact their ability to undertake the role or affect the integrity of the scheme.

Terms of appointment

Terms of appointment must be met and maintained throughout the appointment period for authorised health practitioners. They relate to:

- behaviours (acting ethically, professionally, considerately, and without bias)
- complying with relevant laws, policies, and codes, including those relating to privacy
- complying with administrative requirements (ensuring the Authority has up to date details for publication, having resources and infrastructure to perform the role, maintaining appropriate records)
- engaging in SIRA's frameworks for performance, compliance, data, training, and complaints-handling
- avoiding prohibited activities (such as providing treatment advice/services, accepting referrals where there is a conflict of interest, seeking inducements and gifts, publicly expressing opinions that may undermine their role, or acting outside their area of expertise).

SIRA may revoke authorisation

The Authority may revoke the authorisation of a practitioner at any time, including in instances where the practitioner has not complied with the above terms.

Discussion question 1

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

Appropriateness of the AHP Framework and customer experience

The key objective in authorising health practitioners is to support the injured person's customer experience and encourage the early resolution of motor accident claims and the quick, cost-effective and just resolution of disputes.

This is done through:

- improving the quality of medicolegal reports
- minimising disputation
- reducing the time taken to resolve a claim, and
- building medicolegal capability by ensuring that AHPs have the appropriate skills, experience, qualifications, and a commitment to providing high quality medical evidence through their terms of appointment.

SIRA recently commissioned the Social Research Centre to measure customer experience, health and social outcomes across the workers compensation and CTP schemes³.

This study showed that good customer experience is an important foundation to people achieving optimal health and social outcomes, and that opportunity exists to improve perceived justice for injured people in the CTP scheme (particularly for people who were not at fault, in the scheme for more than 130 days, had a higher risk of poor recovery, or legally represented).

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?

Effectiveness of the AHP Framework

Under the current AHP framework, where a legally represented injured person and an insurer agree to a joint medical assessment, that health practitioner is authorised, and the practitioner does not need to be on SIRA's published list. However, stakeholder feedback to date suggests that the joint medico-legal assessment process is not effective in delivering on its objectives in:

- enabling claims to be managed more expeditiously
- reducing disputation
- providing a better experience for customers, or
- removing the need to attend multiple assessments.

Some concerns have been raised in relation to difficulties with identifying and agreeing to the AHP to undertake a joint medicolegal assessment, and that the AHP may not always be available to complete the assessment.

It has also been observed that the current framework does not contain provisions which would prevent the parties from seeking independent expert opinion. Some stakeholders have queried the rationale for not compelling insurers to engage in joint medico-legal examinations, as was required by the Claims Handling Guidelines under the *Motor Accidents Compensation Act 1999*.

However, the experience under the 1999 scheme mandating joint medico-legal examinations also resulted in a poor customer experience and unfavourable outcomes for injured people including:

- significant delays in resolution of a claim as the parties must agree on the examiner, the questions to ask, and the material provided to the examiner,
- increase in disputes, where parties are unable to reach an agreement each having a preferred expert, resulting in polarised opinions,
- more adversarial culture as the focus shifted from recovery of the injured person to 'winning' a dispute.

Discussion question 3

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

In December 2019, SIRA published *Part 8: Authorised Health Practitioners* in the guidelines which sets out eligibility requirements and terms of appointment for AHPs, against which

³ SIRA Measurement of Customer Experience and outcomes, November 2020. Available at: https://www.sira.nsw.gov.au/_data/assets/pdf_file/0008/968030/SIRA-regulatory-measurement-of-customer-experience-and-outcomes-study.pdf

SIRA can assess a practitioner's suitability for appointment and ongoing suitability to remain authorised. The eligibility requirements and terms of appointment are underpinned by agreed industry standards for medico-legal consultations and examinations.

Discussion question 4

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

SIRA has attempted to balance the need for high quality standards of applications with the need for injured people to have appropriate access to medicolegal services. While SIRA have precluded some practitioners from authorisation, guidance has also been provided to those where the application did not demonstrate understanding of the AHP role or the CTP scheme. It has however been suggested that there is currently no objective measurement of the benefits the AHP framework delivers to the CTP scheme.

Discussion question 5

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

Administrative processes

Part 8 of the guidelines outlines the process for a health practitioner seeking appointment by the Authority to its list as well as cessation of appointment.

As noted above at 2.7, the Authority may revoke the authorisation of a practitioner at any time. If a practitioner disagrees with the Authority's decision to revoke, they may request a review of that decision.

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?

SIRA has identified issues with the quality of some applications, with more than a third (34 per cent) of applications requiring more than one attempt due to issues identified with the quality of application. Ultimately, a small number of applicants (less than 10 per cent) have not been appointed as an AHP for reasons including:

- the applicant does not meet relevant criteria - registration, clinical experience, supervision, communication skills
- issues with ability or willingness to abide by terms of appointment
- history of complaints, compliance, breaches, or criminal record
- issues identified with providing false, misleading, or plagiarised information as part of an application
- issues with ability or willingness to participate in SIRA's frameworks for performance, compliance, or complaints handling.

Discussion question 7

How can the quality of applications be improved?

The guidelines provide that the Authority will publish on its website the names of all AHPs, their contact details, practice locations, and other information relevant to their role as an authorised health practitioner. Further, health practitioners appointed to the Authority's list

must continue to meet the eligibility requirements and comply with the terms of appointment to remain authorised.

SIRAs published list of AHPs contains both active and inactive practitioners. From March 2021, practitioners have also had their dates of authorisation listed for additional clarity.

Some feedback has been received that it is not always easy to ascertain whether a particular specialist is a current AHP.

The list can be accessed here: <https://www.sira.nsw.gov.au/for-service-providers/A-Z-of-service-providers/authorised-health-practitioners>.

Discussion question 8

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

Training, education & support requirements

It has been suggested that a quality assurance programme be introduced to ensure that all AHPs have the appropriate training, experience, and maintain appropriate standards of assessment and reporting. Feedback has also been received that SIRA is not able to effectively regulate the quality standard of reports.

When considering the quality of reports, regard must be given to a number of factors, including privacy for injured persons, ownership of reports, whether reports are subject to privilege, and the purpose and use of the report.

Changes to the guidelines in December 2019 were carefully considered and informed by stakeholder consultation. This included eligibility requirements (including training and experience), and terms of appointment.

AHPs are required to adhere to standards outlined in the Expert Witness Codes of Conduct and the NSW Medical Board Policy for medicolegal services. SIRA relies on information provided by the courts and other dispute resolution services, and by the health practitioner regulatory bodies, to be informed of issues with the quality of reports.

Discussion question 9

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

Discussion question 10

Do you have any other comments in relation to the AHP framework that you would like considered as part of this review?

Appendix A - Consultation questions

Discussion question 1

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

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?

Discussion question 3

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

Discussion question 4

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

Discussion question 5

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

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?

Discussion question 7

How can the quality of applications be improved?

Discussion question 8

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

Discussion question 9

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

Discussion question 10

Do you have any other comments in relation to the AHP framework that you would like considered as part of this review?

Appendix B - Terms of Reference

SIRA will undertake a post-implementation review (review) of the Authorised Health Practitioner Framework (AHP Framework) in the NSW Compulsory Third-Party Scheme from July 2021.

Feedback will be sought from key stakeholders and scheme participants, including but not limited to medico-legal practitioners and providers, insurers, and legal providers.

The review will aim to understand how the framework has been implemented and review its effectiveness, with recommendations for refinement or improvements.

Scope

The scope of the review will include consideration of:

1. The appropriateness of the AHP Framework and whether it aligns to the objects outlined in section 1.3 of the Motor Accidents Injuries Act 2017 (MAI Act).
2. The effectiveness of the AHP Framework, including:
 - a. whether the framework operates to encourage joint medicolegal examinations to minimise disputation and reduce claim resolution times
 - b. whether the eligibility criteria and terms of appointment are fit for purpose and achieve intended policy outcomes.
3. Associated administrative processes including ease and efficiency of the application and review process.
4. The customer experience of injured persons.
5. Any training, education and support requirements for experts who provide health evidence in support of disputes.

Out of Scope: Matters relating to costs will not be considered as part of this review.

Legislative Framework

In undertaking the review, regard will be given to the relevant provisions in the Motor Accident Injuries Act 2017 (the MAI Act), which places restrictions on the giving of evidence in respect of medical matters by health practitioners, as well as the Motor Accident Injuries Regulation 2017.

Consideration will also be given to Part 8 of the Motor Accident Guidelines which provides for the appointment of health practitioners for the purposes of authorisation under Division 7.7, section 7.52 of the Act.

Background

Authorised Health Practitioners (AHPs) provide medicolegal evidence in relation to motor accident injuries in court and dispute resolution proceedings.

AHPs were introduced to the 2017 CTP scheme to encourage joint medicolegal examinations with the aim to minimise disputation and reduce claim resolution times.

SIRA undertook consultation on a proposed framework for the appointment and regulation of Authorised Health Practitioners (AHPs) working in the NSW CTP scheme in March 2019.

This was undertaken concurrently with a review of the Injury Management Consultant Framework (IMC) in the NSW workers compensation scheme. SIRA sought to align the frameworks where possible and set clear standards, expectations and processes to emphasise a uniform approach to non-treating health practitioners providing services to people injured in a motor accident or at work in NSW.

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident compulsory third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Website www.sira.nsw.gov.au

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