

# Proposed authorised health practitioner appointment and regulatory framework

**State Insurance  
Regulatory  
Authority**

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# 1. Purpose

SIRA is developing and reviewing frameworks for non-treating health practitioners working within the CTP scheme and workers compensation system. Wherever possible, these frameworks will align 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.

The Authorised Health Practitioner Appointment and Regulatory Framework sets out a **proposed** framework for consultation. It is acknowledged that any such framework may require revising the Motor Accident Guidelines (the Guidelines) and the Motor Accident Injuries Regulation 2017 (the Regulation). Any such revision would necessarily require consultation with participants in the NSW CTP Scheme.

It should also be acknowledged that initial consultation has already been undertaken with participants in the NSW CTP Scheme, and feedback has been incorporated into this proposed framework.

Section 1 outlines the purpose of the consultation. Section 2 includes important information about the appointment and regulatory framework that applies to authorised health practitioners who are authorised under s 7.52 of the *Motor Accident Injuries Act 2017* (the Act) and by the Guidelines to give evidence in court and other dispute resolution proceedings in the CTP Scheme. Feedback on these sections is not being specifically sought.

Feedback is, however, being sought on proposed provisions in relation to the appointment of authorised health practitioners. These are outlined from section 3 onwards. The following sets out a proposal for consultation and we encourage you to provide feedback on how an appointment and regulatory framework including relevant guideline provisions may operate. In addition, SIRA seeks where possible, to align the appointment of non-treating health practitioners working in the CTP Scheme and workers compensation system.

When considering the framework, it may be helpful to consider the following questions about the appointment of authorised health practitioners:

1. To which medical matters should the authorisation requirements in s 7.52 of the Act relate? For example, should it be for all medical matters referred to in the Regulation, be limited to a specific medical matter (e.g. permanent impairment), or a combination of matters? Why?
2. Should there be specific criteria in respect of the giving of evidence in different medical matters?
3. Are there any particular criteria for appointments to ensure high quality medicolegal evidence?
4. Should something similar to the Expert Witness Code of Conduct be incorporated in the Motor Accident Guidelines in respect of any expert witness engaged to provide evidence in the Dispute Resolution Service?
5. Are any additional criteria appropriate in respect of the Expert Witness Code of Conduct for inclusion in the Motor Accident Guidelines?

Your answers to the above and any other feedback received in relation to the proposed framework will help inform regulatory design.

## 2. Background information about authorised health practitioners

The Act places restrictions on the giving of evidence in respect of medical matters by health practitioners. Those practitioners who are authorised to give evidence in court and dispute resolution proceedings are known as authorised health practitioners. Authorisation was introduced to reduce the number of competing medicolegal assessments that injured people were required to attend, encourage joint medicolegal examinations, minimise disputation and time taken to resolve claims.

The following information contains the relevant extracts from the Act, the Regulation, and the Guidelines relevant to an authorised health practitioner.

### Restrictions on the giving of evidence

Section 7.52 of the Act outlines the restriction on health practitioners who may give evidence in court and other dispute resolution proceedings:

#### **7.52 Restriction on health practitioners who may give evidence in court and other dispute resolution proceedings**

- (1) In any proceedings before a court for damages or in connection with a merit review under Division 7.4, a medical assessment under Division 7.5 or the assessment of a claim under Division 7.6, evidence given by a health practitioner in relation to a medical matter concerning an injured person is not admissible unless:
  - (a) the practitioner is a treating health practitioner of the injured person, or
  - (b) the practitioner is authorised by the Motor Accident Guidelines to give evidence in the proceedings.
- (2) The Motor Accident Guidelines may make provision for or with respect to the appointment of relevant practitioners (whether by agreement between the parties, appointment by the Authority or otherwise) for the purposes of subsection (1).
- (3) This section has effect despite anything to the contrary in the rules of court or the *Evidence Act 1995*.
- (4) In this section:

**health practitioner** has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*.

**medical matter** means:

  - (a) the degree of permanent impairment of an injured person that has resulted from an injury caused by a motor accident, or
  - (b) any medical assessment matter of a kind prescribed by the regulations for the purposes of this section

'Medical matters' are defined in s 7.52(4) of the Act and include the medical assessment matters prescribed by clause 18 of the Regulation for the purposes of s 7.52:

**18 Medical matters subject to evidence restriction (section 7.52 (4))**

The degree of permanent impairment of an injured person that has resulted from an injury caused by a motor accident (s 7.52(4)(a)).

For the purposes of paragraph (b) of the definition of *medical matter* in section 7.52 (4) of the Act, the following medical assessment matters are prescribed as medical matters in relation to which evidence given by a health practitioner is not admissible:

- (a) whether any treatment and care provided to an injured person is reasonable and necessary in the circumstances or relates to an injury caused by a motor accident for the purposes of section 3.24 (Entitlement to statutory benefits for treatment and care) of the Act,
- (b) whether for the purposes of section 3.28 (cessation of statutory benefits after 26 weeks to injured adult persons most at fault or to injured persons with minor injuries) of the Act, treatment or care provided to an injured person will improve the recovery of the injured person,
- (c) the degree of impairment of the earning capacity of an injured person that has resulted from an injury caused by a motor accident,
- (d) whether an injury is a minor injury for the purposes of the Act.

Clauses 7.143 – 7.151 of the Guidelines provide for the appointment of authorised health practitioners as follows:

- 7.143 The Authority may appoint any person as a health practitioner authorised under Section 7.52(1)(b) of the Act, to give evidence for the purposes of the Act and these Motor Accident Guidelines, if it is satisfied that they are suitably qualified.
- 7.144 The Authority is to ensure that, as far as reasonably practicable, there are health practitioners appointed in the regional areas of the state.
- 7.145 Nothing prevents a health practitioner from being appointed as a decision maker of DRS, as well as a health practitioner authorised under Section 7.52(1)(b) of the Act.
- 7.146 The terms of appointment of a health practitioner may restrict a health practitioner to being authorised to give evidence in disputes of a specified kind and/or claims of a specified kind and/or claimants of a specified kind.
- 7.147 The terms of appointment of a health practitioner may establish the requirements for appointment of a health practitioner and/or the standards that are required of an appointed health practitioner and/or the duration of the appointment.
- 7.148 The Authority may remove a health practitioner from appointment at any time.
- 7.149 The Authority shall publish on its website ([www.sira.nsw.gov.au](http://www.sira.nsw.gov.au)) a list of appointed health practitioners who are authorised under Section 7.52(1)(b) of the Act to give evidence, and the terms and extent of any such appointment and authorisation.
- 7.150 In any proceedings before a court for damages or in connection with a merit review under Division 7.4 of the Act, a medical assessment under Division 7.5 of the Act, or the assessment of a claim under Division 7.6 of the Act:
  - 7.150.1 the parties are to bear in mind the convenience of the other party, the objects of the Act and their obligations under clauses 7.18 and 7.19 of these Guidelines, and consider whether all health practitioner evidence on which the parties intend to rely can be given by the claimant's treating health practitioners; and
  - 7.150.2 if a party proposes to obtain health practitioner evidence from a person other than the claimant's treating health practitioners, that party is to use its best endeavours to obtain that evidence from a health practitioner on the list of authorised health practitioners published on the Authority's website under clause 7.149 of these Guidelines; and
  - 7.150.3 if, after using its best endeavours to obtain health practitioner evidence from a health practitioner on the Authority's list of authorised health practitioners, a party is unable

to obtain that evidence, that party may apply to the Authority for a practitioner to be appointed by the Authority under section 7.52(2) of the Act, using the method set out in clause 7.151 of these Guidelines.

- 7.151 If a party wishes to apply to the Authority for it to consider appointing a health practitioner in the circumstances described in clause 7.150.3 of these Guidelines:
- 7.151.1 the parties shall, if possible after using their best endeavours, submit to the Authority a health practitioner who, by agreement of the parties, will provide the required evidence, after which the Authority shall appoint the agreed health practitioner unless satisfied that the agreed health practitioner does not possess the qualifications and skills necessary to provide the required evidence; and
- 7.151.2 if, after using their best endeavours, the parties are unable to submit an agreed health practitioner to the Authority, or the Authority is satisfied that the agreed health practitioner does not possess the qualifications and skills necessary to provide the required evidence, the parties may each submit to the Authority material and submissions in support of the appointment of as many health practitioners as possible, to a maximum of three, and the Authority may, at its discretion, appoint one health practitioner from among those submitted, after considering the parties' submissions and material; and
- 7.151.3 the Authority may require the parties to set out what endeavours they undertook to agree on a health practitioner to be appointed; and
- 7.151.4 applications to the Authority are to be made to the Executive Director, Motor Accidents Insurance Regulation, who will determine the application or authorise an appropriately qualified officer of the Authority to determine the application; and
- 7.151.5 any appointments made under this clause are appointments only for the purposes and duration of the relevant proceedings; and
- 7.151.6 the Authority may publish guidance material to assist parties in making applications under this clause.

### 3. Application for appointment or re-appointment as an authorised health practitioner

The following sections outline the proposed application process for authorised health practitioners in line with SIRA's approach to non-treating health practitioners. Feedback is sought on this proposal.

#### Appointment process

Under section 7.52 of the Act and clause 7.143 of the Guidelines, the Authority/SIRA may appoint any person as a health practitioner authorised under section 7.52(1)(b) if satisfied they are suitably qualified. The proposed appointment process for an authorised health practitioner is as follows:

- A person submits an application for appointment (including a signed agreement to the terms of appointment as an authorised health practitioner) that has been completed in accordance with SIRA's requirements.
- SIRA reviews the application to ensure the applicant meets all eligibility terms.
- SIRA will, at its discretion, seek clarification or collect further information as necessary to confirm the applicant meets the eligibility terms. This may involve SIRA collecting information from another person or body including third parties.
- SIRA may verify the stated experience and professional skills.
- SIRA considers all information and approves or rejects the application at its complete discretion.

- The applicant is advised of the outcome of the application in writing (including electronically).
- Applicants who are not successful will be provided with brief reasons as to why they were unsuccessful and the available review process.
- Successful applicants will be provided with an instrument of appointment including the terms of appointment as an authorised health practitioner.

### **Period of appointment**

A health practitioner appointed as authorised under section 7.52 of the Act will be appointed by SIRA for a defined appointment period, which will commence on a date determined by SIRA and cease three years later.

### **Reappointment process**

The proposed process for reappointment is as follows.

- At an appropriate time before the expiration of the health practitioner period of appointment, SIRA may seek expressions of interest from current authorised health practitioners for reappointment.
- An applicant seeking reappointment submits an application for reappointment, including a signed agreement to the terms of appointment as an authorised health practitioner, in accordance with SIRA's requirements.
- SIRA reviews the application to ensure the applicant meets all eligibility terms and has adhered to all terms of appointment during their period of appointment as an authorised health practitioner.
- SIRA will, at its discretion, seek clarification or collect further information as necessary to confirm the applicant meets the eligibility terms. This may involve SIRA collecting information from another person or body including third parties.
- SIRA considers all information and approves or rejects the application for reappointment at its complete discretion.
- The applicant is advised of the outcome of the application in writing (including electronically).
- Applicants who are not successful will be provided with brief reasons as to why they were unsuccessful and the available review process.
- Successful applicants will be provided with an instrument of appointment including the terms of appointment as an authorised health practitioner.

### **Revocation of appointment**

Under clause 7.148 of the Guidelines, SIRA may remove a health practitioner from appointment at any time.

SIRA may revoke the appointment of an authorised health practitioner at any time and before the expiration of the term of appointment including for any breach of the Act, Regulation, Guidelines or terms of appointment.

Authorised Health Practitioners who have been provided with notice of SIRA's intention to revoke their appointment will have the opportunity to request a review of this decision internally to SIRA. The request should be made within 21 calendar days of notification by SIRA, addressing SIRA's reason(s) for revocation.

## Review process

A person who is not appointed as an authorised health practitioner, not reappointed as an authorised health practitioner, or who has had their appointment revoked, can seek a review of the decision by submitting a written request to SIRA at [AHP.Central@sira.nsw.gov.au](mailto:AHP.Central@sira.nsw.gov.au). The request for review should be made within 21 calendar days of the date the health practitioner received the notification from SIRA of the original decision.

The review will be conducted by an independent review officer who was not involved in the original decision. The applicant will be advised of the outcome and reasons for the review decision in writing (including electronically) and any future steps.

## 4. Terms of appointment

Section 7.52 of the Act confirms that the Guidelines may make provision for or with respect to the appointment of relevant practitioners to the authorised health practitioner list.

Clause 7.147 of the Guidelines states that the terms of appointment of a health practitioner may establish the requirements for appointment of a health practitioner and/or the standards that are required of an appointed health practitioner and/or the duration of the appointment.

### Professional eligibility terms

It is a term of appointment that an applicant must:

- be a health practitioner registered with the Australian Health Practitioner Regulation Agency (AHPRA), with no conditions, undertakings, reprimands, limitations or restrictions on their registration
- have at least five years full-time equivalent relevant clinical experience, including the treatment/management of motor accident related injuries
- have demonstrated high level of professional engagement and currency of training and education, such as presenting papers, attending conferences, and ongoing clinical education
- have demonstrated high level communication skills
- agree to participate in SIRA's performance framework for authorised health practitioners, including providing information as requested throughout the appointment period
- hold a current Working with Children Check number, but only if the applicant will be assessing minors.

### Compliance eligibility terms

It is a term of appointment that an applicant must not have breached legislation, guidelines or fee schedules in an insurance compensation system in any Australian compensation jurisdiction.

### Complaint history eligibility terms

It is a term of appointment that an applicant must satisfy SIRA that SIRA should grant appointment of the applicant to be an authorised health practitioner, taking into account whether the applicant has:



- been subject to a complaint made to insurance, compensation or health authorities, government agencies or statutory bodies regarding the applicant's conduct:
  - in any role in any insurance compensation system in an Australian jurisdiction
  - in the provision of health services
- been subject to a complaint relating to a breach of confidentiality, privacy and health information laws, including but not limited to the *Health Records and Information Privacy Act 2002* (NSW), the *Privacy and Personal Information Protection Act 1998* (NSW), and the *Privacy Act 1998* (Cth).

## Process terms

It is a term of appointment that the applicant must comply with the appointment process and must:

- submit an application to become an authorised health practitioner in the manner outlined on the SIRA website or in an advertised expression of interest
- provide a completed and signed application form with required supporting documents including:
  - signed agreement to terms of appointment as an authorised health practitioner
  - current registration as a health practitioner with AHPRA
  - résumé
  - contact details
- provide additional information requested by SIRA, to assist SIRA to determine whether the applicant meets the terms of appointment.

## Legislative terms

It is a term of appointment that the applicant must:

- undertake the role of an authorised health practitioner in accordance with the Motor Accident Guidelines and Expert Witness Code of Conduct.
- comply with all legislation, guidelines and fee schedules in the NSW CTP Scheme.

## Professional conduct terms

It is a term of appointment that the applicant must:

- continue to meet all eligibility terms of appointment as an authorised health practitioner
- comply with all applicable professional standards and codes of conduct including but not limited to the Medical Board of Australia's *Good Medical Practice: A Code of Conduct for Doctors in Australia* and the *NSW Medical Board's Guidelines for Medico-legal Consultations and Examinations*
- act without bias and in a way that does not give rise to an apprehension of bias in the performance of their responsibilities
- maintain their independence of the referrer at all times and agree not to provide treatment services to injured persons referred for an authorised health practitioner examination or assessment
- not accept any inducements outside of fee schedules for services provided

- declare any real, perceived or potential conflict of interest to the referrer at the time of referral or, if a conflict or potential conflict arises after the referral, as soon as it arises
- act in an ethical, professional and considerate manner when examining injured persons and when communicating with any other parties in relation to a matter
- preserve the privacy and modesty of the injured person when undertaking consultations
- comply with all relevant confidentiality, privacy and health information laws across Australian jurisdictions, including but not limited to the *Health Records and Information Privacy Act 2002* (NSW), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1998* (Cth).

## Communication and reporting terms

It is a term of appointment that the applicant must:

- ensure reports are in accordance with the Expert Witness Code of Conduct
- ensure that reports are completed to a reasonable standard of care and diligence
- provide reports to the referrer within the timeframe agreed.

## Administrative terms

It is a term of appointment that the applicant must:

- provide and maintain an email address to be used for all written communication from SIRA
- agree to have their name, contact details and practice location(s) listed on the SIRA website
- provide accurate contact details to SIRA and notify them in writing (including electronically) within 14 calendar days of any change to name or contact details (as these appear in the SIRA public register)
- possess or have access to sufficient resources and infrastructure to undertake all administrative activities necessary to undertake the role
- respond to complaints with full and accurate details and, when indicated, comply with the remedial action to be taken
- complete any training to the standard required by SIRA, within the prescribed timeframe and at the authorised health practitioner's own expense.

## Reappointment terms

It is a term of reappointment that the applicant seeking reappointment must meet the general terms of appointment and address any adverse issues arising during the previous period of appointment.

## 5. Performance monitoring and quality assurance

SIRA acknowledges that the reports prepared by authorised health practitioners for parties may be subject to legal professional privilege. SIRA may review performance and compliance with the terms of appointment, including:

- reviewing published decisions of courts and the Dispute Resolution Service

- data provided to SIRA including data submitted in the costs disclosure database and the Universal Claims Database
- surveys of scheme participants including health practitioners, claimants and people injured in motor accidents, insurers, and lawyers
- complaints received by SIRA
- any professional disciplinary proceedings.

SIRA may provide feedback to individual authorised health practitioners on a confidential basis and may also publish general de-identified feedback or data in respect to authorised health practitioners.

It is a term of appointment that authorised health practitioners agree to participate in a performance management framework. For example, SIRA may request information relating to the number of referrals, the nature of the injuries referred for assessment, timeframes taken for medicolegal reports to be finalised, and the geographical spread of claimants.

## 6. Complaints about an authorised health practitioner

Complaints about Authorised Health Practitioners may be directed to:

- CTP Assist on 1300 656 919
- Health Care Complaints Commission (HCCC) on 1800 043 159
- Australian Health Practitioners Regulation Agency (AHPRA) on 1300 419 495

### Breach of an ethical or professional nature

If a complaint directed to SIRA is an alleged breach of an ethical or professional nature, or if SIRA is otherwise notified of a breach of an ethical or professional nature by an authorised health practitioner, SIRA may refer the matter to the NSW HCCC with the consent of the complaining party.

### Breaches of terms of appointment

If a complaint is made to SIRA about a breach of a term of appointment, or SIRA is otherwise notified of an alleged breach of a term, the action that SIRA takes will depend on multiple factors, including the authorised health practitioner's responsiveness and the gravity of the breach.

Action may include but is not limited to remedial action, not reappointing an authorised health practitioner or revocation of appointment.

Before SIRA takes action in relation to a complaint, SIRA will inform the authorised health practitioner of the complaint and provide an opportunity for the authorised health practitioner to respond.

SIRA may revoke an authorised health practitioner's appointment during their period of appointment on the following grounds:

- no longer meets all eligibility conditions for appointment as an authorised health practitioner
- any breach of the terms of appointment as an authorised health practitioner
- such other reason as SIRA thinks appropriate.

SIRA will provide written notice (including electronically) to the authorised health practitioner with an explanation as to the reason for the revocation within a reasonable timeframe.

To minimise any negative impact on stakeholders, and prior to revoking any appointment, SIRA will consider the circumstances of each revocation, including the reasons for doing so and any referrals that the authorised health practitioner has already accepted. SIRA will set a date that the appointment expires and will clearly communicate this to the authorised health practitioner and publish the information on the SIRA website. Any reports produced by the authorised health practitioner during a period of appointment shall be admissible as medical evidence, even if the authorised health practitioner's appointment has since been revoked.

## 7. Privacy

By submitting an application for appointment or reappointment, a health practitioner consents to SIRA collecting information from other persons or bodies, including third parties, to determine whether they meet the eligibility conditions and (where relevant) whether they have adhered to all terms of appointment.

Applicants also consent to SIRA publishing their appointment on the SIRA website. Details of SIRA's privacy practices are outlined at [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au)

Disclaimer. This publication may contain information that relates to the regulation of workers compensation insurance, motor accident 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](http://legislation.nsw.gov.au)

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