

# **NSW SIRA Consultation**

**Submission by OSTEOPATHY AUSTRALIA to:**

**NSW SIRA on:**

**Workers compensation guidelines for allied health treatment and hearing service provision**

**September 2020**

## CONTACT

For questions about this submission, please contact [REDACTED] (Senior Policy Officer – Clinical Excellence) at:

Osteopathy Australia

Ph: [REDACTED]

Email: [REDACTED]

## SUMMARY

Osteopathy Australia thanks NSW SIRA for the opportunity to lodge a submission addressing core issues raised by the consultation paper *Workers compensation guidelines for allied health treatment and hearing service provision*.

We note there are no overarching terms of reference for the consultation; resultantly we make recommendations specifically relevant to members of Osteopathy Australia and the osteopathic profession in NSW more broadly.

Our overall recommendations are that NSW SIRA should:

- 1) Better align the document title with its contents and their intention, being an operational protocol on conditions of registration approval for providers
- 2) Consider how it could support applications for cross border movement made by registration exempt providers, clients in border regions and exempt categories of workers during COVID-19. Such consideration is needed to fulfil the guidelines' intention to allow bordering clients and their providers the opportunity to participate in the NSW worker's compensation scheme
- 3) Establish further clarity in its revised conditions of provider approval, specifically approval conditions outlined in this submission
- 4) Better clarify grounds on which it can revoke or suspend existing provider approvals within the draft guidelines
- 5) Take initiative to communicate first with providers for whom it holds concerns regarding reapproval prospects and outline appeal options. The current draft guidelines require double handling of reapproval application forms with an option for appeal post this double handling
- 6) Allow a consistent timeframe of 21 days within which providers can lodge any approval appeals; this would be irrespective of whether their initial approval is denied, existing approval revoked or suspended.



## OSTEOPATHY AND OSTEOPATHY AUSTRALIA

Osteopaths in Australia are government regulated allied health professionals having inbound and outbound referral relationships with other health professionals.

Osteopaths complete a dual Bachelor or Bachelor/Masters qualification covering functional anatomy, biomechanics, human movement, the musculoskeletal and neurological systems as well as clinical intervention approaches. Significant commonalities exist between the health science units undertaken by osteopaths and those undertaken by peers of other allied health professions, including physiotherapy.

As a defining characteristic, the osteopathic profession emphasises the neuromusculoskeletal system as integral to a client's function and uses biopsychosocial and client-centred approaches in managing functional limitations from workplace injuries. The *Capabilities for Osteopathic Practice*<sup>i</sup> outline the required capabilities for professional skill, knowledge, and attributes; osteopaths are required to possess many professional skills common across allied health and health professions.

Clients—including injured workers—present to osteopaths with a range of neuromusculoskeletal functional impairments and needs.

Osteopaths conduct comprehensive functional examinations. Evidence informed reasoning is fundamental to case management and clinical intervention. Osteopaths prescribe skilled clinical exercise, including general and specific exercise programming aimed at enhancing functional capabilities.<sup>ii</sup> Many clients consult an osteopath for advice on physical activity, positioning, posture, and movement.

Self-management is key objective in the clinical services provided by osteopaths, consistent with the nationally endorsed *Clinical Framework for the Delivery of Health Services* to which both Osteopathy Australia and NSW SIRA are key signatories under our previous entity name, the Australian Osteopathic Association.

Osteopathy Australia is the peak body representing the interests of osteopaths, osteopathy as a profession, and consumer's rights to access osteopathic services. We promote standards of professional behaviour over and above the requirements of AHPRA registration. A vast majority of registered osteopaths are members of Osteopathy Australia.

Our core work is liaising with state and federal government, and all other statutory agencies, professional bodies, and private industry regarding professional, educational, legislative, and regulatory issues. As such, we have close working relationships with the Osteopathy Board of Australia (the national registration board), the Australian Health Provider Regulation Agency (AHPRA), the Australasian Osteopathic Accreditation Council (the university accreditor and assessor of overseas osteopaths), compensable injury schemes in each jurisdiction, and other



professional health bodies through our collaborative work with Allied Health Professions Australia (AHPA).

In this capacity, we welcome the opportunity to provide feedback to NSW SIRA's inquiry *Workers compensation guidelines for allied health treatment and hearing service provision* (September, 2020).

## **ISSUE 1: DOCUMENT TITLE**

We note that the *Workers compensation guidelines for allied health treatment and hearing service provision* (September, 2020) has a specific intent in outlining conditions for NSW SIRA provider approval, in addition to conditions for suspending or revoking this approval. The document will replace the *Guidelines for the approval of treating allied health practitioners 2016 No 2 (the former guidelines)*.

While we appreciate the aim of the draft document is to better clarify approval conditions, its title might be better aligned to content intentions. The present draft title could generate confusion among providers and lead to other important guidelines for the scheme being overlooked; the title reference to 'guidelines for treatment services' could imply that it is either a clinical guideline or a document replacing the *NSW Worker's Compensation Guide for Allied Health Professionals*. This latter guide helps treating practitioners understand their roles and responsibilities in delivering health services. Understanding this guideline is essential to a provider remaining approved once approved and is of high importance.<sup>iii</sup>

Osteopaths and other providers have a variety of responsibilities stemming from a patchwork of national, state, and local level regulations or frameworks. Thus, the title of any document with consequences for provider approval needs to be clear to be noticed and adhered to.

To best aid an orderly change management process of phasing in the revised approval guideline, we suggest it be titled '*Guidelines for the approval of treating allied health practitioners 2020*'. Further, clear communications should be issued to providers heralding that the revised guideline replaces the existing guideline.

Osteopathy Australia would support NSW SIRA in communicating the change in addition to SIRA's own efforts.

## **ISSUE 2: APPROVAL EXEMPTIONS FOR CROSS BORDER PRACTITIONERS AND THOSE MANAGING EXEMPTED WORKER CATEGORIES**

We strongly support NSW SIRA's decision to continue approval exemptions for cross border osteopaths servicing injured NSW workers and providers servicing exempt worker categories (police, paramedics, or firefighters). This decision optimises provider supply, matches supply to demand, and facilitates client choice.



However, we also note that due to COVID-19, there may be some constraints over injured workers accessing osteopaths in interstate regions bordering NSW. We are interested in discussing how NSW SIRA processes could support cross border movement application exemptions during the pandemic to best meet the intent of the draft approval guidelines.

### **ISSUE 3: DRAFT CONDITIONS OF PROVIDER APPROVAL**

The draft conditions of approval require that:

- a) Providers maintain professional indemnity appropriate to scope of practice and level of risk*
- b) Providers complete any training prescribed by NSW SIRA within the timeframe it requires and at the provider's own cost*
- c) Providers do not have, or enter arrangements, that may influence or be perceived to influence their ability to provide treatments to a worker that will best meet their needs*
- d) Providers have no pending criminal charges, any civil proceedings lodged against them, or any pending or upheld complaint with an insurer, government, or statutory agency.<sup>iv</sup>*

#### **Condition a discussion**

A profession's general scope of practice is defined through a complex interplay involving educators (tertiary institutions) insurers, regulators, professional associations, and beyond.

Several questions needing resolution emerge for us from the complexity of defining insurance adequacy for scope of practice:

- How would NSW SIRA delineate the concept for osteopathy, for instance, in consultation with which bodies, using which resources or sources and in what intervals would its perceived scope be reviewed?
- While NSW SIRA acknowledges that osteopathy is a neuromusculoskeletal discipline, what needs, issues, conditions or functional presentations does it deem to be within the osteopathic scope of practice, and how would its notion contrast to other physical professions, for instance musculoskeletal physiotherapy?



- How would NSW SIRA resolve disagreements and implement resolution mechanisms that can manage any gaps between its own perceived notion of the osteopathic scope of practice and those of osteopathy educators, national regulators, and us as the peak body?

These are several areas requiring further consultation in appropriately implementing the revised provider approval guideline.

Further, we believe further discussion is needed between NSW SIRA and osteopathy industry stakeholders for determining levels of risk within the osteopathic scope of practice. NSW SIRA must note the difference between perceived and actual risk as defined by iatrogenic responses and serious adverse reactions in practice.

Retrospective studies into risk do not provide a full picture, being based on memory recall, and there are ethical issues preventing participant recruitment for prospective studies of adverse responses. In practice as based in insurance claims data from Guild Insurance--- our endorsed and preferred insurance provider--- there are few claims for injury in osteopathic practice year-on-year. This should be accounted for in any concepts of insurance coverage appropriateness for provider approval.

### **Condition b discussion**

The terms 'any training' and 'at their own cost' raise concerns for us and our members.

The draft guideline could benefit from a table overview of the types of training NSW SIRA could recommend for practitioners and general purposes. This would aid transparency and decision making for practitioners determining whether they would wish to participate within the scheme prior to making an application for approval or reapproval. We see this transparent information to be crucial in informing clear provider consent.

Additionally, like patients, practitioners in NSW have varied income levels, belonging to diverse socio- economic statuses. Therefore, we strongly advocate that NSW SIRA exercise flexibility in the training options it proposes for practitioners. Several cost-scaled training or course options should be made available to practitioners wherever training is recommended under clear grounds.

Osteopathy Australia develops and offers interactive evidence-informed modules to provider members and non- members for competitive prices. These modules are generally relevant to appropriate practice in compensable injury management practice, pain management, record keeping, confidentiality and other areas of probity in practice.<sup>v</sup> They are written in terms understandable to osteopaths and other physical treatment modalities.



We are interested in discussing how NSW SIRA might leverage our resources for pathways to cost-effective professional development.

### ***Condition c discussion***

While we understand conflict of interest principles and the importance of mitigation in assuring appropriate and necessary care for injured workers, we wish to question the scope of NSW SIRA's provider approval standard for condition c. Many providers of physical treatment modalities from osteopathy to physical therapy, source or offer treatment incidentals, including tape, exercise putties, TheraBand and beyond for use in clinical management.

Current NSW SIRA rules allow practitioners to purchase and provide these incidentals at a cost with prior insurer approval.<sup>vi</sup> Resultantly, we question whether an osteopath or other provider's preference for a brand or variety of incidentals could be taken into account in the future approval process?

If it will be a consideration, assuring provider supply within the worker's compensation scheme may be problematic. Any such a limitation to approval must be clearly communicated prior and not be left to internal discretion or 'perception of influence or inducement' within NSW SIRA.

If preference for a specific brand or type of treatment incidental will be a factor, a consistent and clearly communicated rule for all health providers selling any product in practice should be promulgated in granting all eligible health professionals the right to weigh up whether they wish to apply for approval.

### ***Condition d discussion***

We have concerns for the frivolity of how condition d could be applied in denying, withdrawing, or suspending a provider approval request or approval proper.

As a peak body that works closely with regulators and members, we are acutely aware of the vast difference between an accusation, or potential claim, versus a proven occurrence and justified claim. AHPRA itself acknowledges this difference in the various ways National Boards can adjudicate a registrant complaint, for example, National Boards can determine a pending complaint has 'no grounds'.<sup>vii</sup>

While we do not question the appropriateness of denying approval for charges upheld by a court or tribunal – particularly where a civil charge has some relationship to capacity or competency to practice – NSW SIRA must be cognisant of the many factors independent of provider conduct that can lead to a pending charge, complaint or claim; some are commenced for vexatious or frivolous reasons for which a provider bears no fault. In these cases, practitioners face unwarranted threats to their financial viability and reputation.

Our concern is the draft approval requirement allows NSW SIRA to decide provider fault or role independently of bodies responsible for formally determining liability or fault, prior to official determinations by said bodies.



Resultantly, we ask what form of restitution or compensation NSW SIRA would facilitate for providers for whom it prematurely denies or withdraws approval without grounds, leading to reputational or financial damage?

## **ISSUE 4: DRAFT APPROVAL SUSPENSION AND REVOCATION CLAUSES**

As NSW SIRA intends to apply the same conditions for revoking and suspending existing provider approvals as for initial provider approvals, our concerns under Issue 3 continue to apply.

Additionally, in the final guideline, we request further definition of the terms 'suspension of [practitioners] for such other reason as deemed appropriate'<sup>viii</sup> and consultation on what expectations, requirements or limitations might apply to approved providers. Not only would this optimise guideline transparency, it would assist us in providing relevant updates and professional development to members supporting their ongoing SIRA approval.

## **ISSUE 5: PERIOD OF APPROVAL**

We note the draft guidelines intend to give NSW SIRA discretion to approve provider registration for a period of no more than three years (with an option for SIRA to extend), after which a provider needs to lodge a subsequent request for approval. This could see some practitioners approved for months, some for a year and others for years, depending on conduct and/or compliance with codes and guidelines within the previous period of approval.<sup>ix</sup> Irrespective of the period of approval, the onus appears to be on all providers to complete and lodge ongoing approval forms.

Where NSW SIRA intends to limit approval and/or cease approval in a future cycle, we advocate that it should clearly be the first communicator of grounds so that providers can progress to an appeals process without delay. This would create efficiencies for providers and NSW SIRA, removing the need for duplicated handling of approval paperwork and related appeal processes.

## **ISSUE 6: PROVIDER APPEAL TIMEFRAMES**

The draft guidelines allow for providers denied approval for initial registration to appeal within 14 days and for those with revoked or suspended approval to appeal within 28 days of the decision.<sup>x</sup> This is despite that NSW SIRA could apply many of the same grounds whether denying, revoking, or suspending approval.

Therefore, the response and evidence collection impost could be the same for providers no matter where within the approval continuum they fall. We therefore recommend that the appeal timeframe be made consistent, or 28 days from the date notice provision in all cases.



## REFERENCES

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- <sup>i</sup> Osteopathy Board of Australia (2019), Capabilities for osteopathic practice [online] <https://www.osteopathyboard.gov.au/Codes-Guidelines/Capabilities-for-osteopathic-practice.aspx>
- <sup>ii</sup> Adams et al (2018), A workforce survey of Australian osteopathy: analysis of a nationally-representative sample of osteopaths from the Osteopathy Research and Innovation Network (ORION) project, [BMC Health Services Research](#) December 2018, 18:352
- <sup>iii</sup> NSW SIRA (2020) Consultation draft worker's compensation guidelines for allied health treatment and hearing service provision, p. 5
- <sup>iv</sup> *Ibid*, p.6
- <sup>v</sup> Osteopathy Australia 'CPD modules' [online] <https://www.osteopathy.org.au/cpd/elearning>
- <sup>vi</sup> NSW SIRA 'Incidental expenses' [online] <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/health-professionals-for-workers-compensation/workers-compensation-guide-for-allied-health-practitioners/equipment-provision/incidental-expenses>
- <sup>vii</sup> AHPRA, 'Possible outcomes' [online] <https://www.ahpra.gov.au/Notifications/Find-out-about-the-complaints-process/Possible-outcomes.aspx>
- <sup>viii</sup> NSW SIRA (2020) Consultation draft worker's compensation guidelines for allied health treatment and hearing service provision, p. 6
- <sup>ix</sup> NSW SIRA (2020) Consultation draft worker's compensation guidelines for allied health treatment and hearing service provision, p. 10
- <sup>x</sup> NSW SIRA (2020) Consultation draft worker's compensation guidelines for allied health treatment and hearing service provision, pp. 11-12