



Insurance Council
of Australia

9 August 2021

Dr Petrina Casey
Executive Director
Motor Accidents Insurance Regulation
State Insurance Regulatory Authority
Locked Bag 2906
Lisarow
NSW 2252

By email: healthpolicyandsupervision@sira.nsw.gov.au

Dear Petrina,

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

We refer to SIRA's Post Implementation review of the AHP Framework and its recently released discussion paper.

The Insurance Council of Australia (the Insurance Council), on behalf of the five licensed CTP insurers (Insurers), welcomes the opportunity to provide a submission to this review and feedback on whether the AHP framework is operating effectively and as intended, as well as options for potential improvements.

As you are aware, the Insurance Council in its submission to the 2020 NSW Law & Justice Committee review of the NSW CTP Scheme (the Scheme), outlined that the joint medico-legal assessment process was not operating as intended and not achieving its objectives. Insurers remain of this view.

We also refer to the recently released Statutory Review of the Motor Accident Injuries Act discussion paper which identifies Scheme stakeholders' concerns with the current AHP Framework and question 80 of this discussion paper which asks whether the AHP Framework should be abolished?¹

The Insurance Council and Insurers support the concepts and objectives behind the AHP Framework and the use of joint medico-legal examinations, as it is essential to support positive customer experience and early resolution of claims wherever possible within the Scheme. However, due to multiple factors, we are firmly of the view that modification or refinement of the AHP Panel list will not result in the greater uptake and effective use of joint medico-legal examinations to improve claims resolution times for customers of the Scheme.

Therefore, the Insurance Council propose that SIRA discontinue the AHP Framework and instead examine, in consultation with Insurers and other key scheme stakeholders, alternative approaches and options to encourage joint medico-legal examinations, improve the quality of these examinations and reduce disputation and claim resolution times across the Scheme.

¹ Statutory Review of the Motor Accidents Injuries Act 2017: Discussion Paper; Clayton Utz; 5 July 2021, pages 38 and 40, at https://www.sira.nsw.gov.au/_data/assets/pdf_file/0007/994471/Statutory-review-of-the-Motor-Accident-Injuries-Act-2017-discussion-paper.pdf

Why the AHP list and joint medico-legal process has not worked

There are multiple factors in play, beyond the control of SIRA and other Scheme stakeholders, that have caused the AHP Framework to be ineffective in executing joint medico-legal examinations. These include:

- Quality of medico-legal reports and assessments

Insurers believe that consistent, high-quality assessments from AHPs are fundamental to the effective operation of the AHP Framework. It is only when all stakeholders, be they injured people, legal practitioners or Insurers have trust and confidence in the AHP Panel list to provide fair, accurate and high-quality assessments that there will be an opportunity to progress joint medico-legal examinations. However, the current framework has not been able to support this.

We are advised a significant factor that has undermined the AHP Framework has been the quality of assessments from some members of the AHP panel. Insurers believe the quality of medico-legal reports has not substantially improved since the implementation of the AHP Framework.

For example, Insurers report they continue to see widely divergent views and outcomes in whole person impairment assessments and continued instances of AHP's failing to appropriately apply assessment guidelines.

- Lack of support for joint medico-legal examinations

It is insurers experience that, despite their best efforts to support and engage the joint medico-legal process, many lawyers representing claimants within the scheme are unwilling to participate.

In situations where lawyers do agree with Insurers to undertake a joint medico-legal assessment, it is common for negotiations to stall when both parties fail to agree on a specific AHP. We believe this is in part due to the lack of trust and confidence in the AHP list as described above.

In instances where a joint medico-legal examination is arranged, Insurers advise it is not uncommon for lawyers to proceed to arrange their own separate medico-legal assessment, undermining the original purpose of reducing the number of examinations claimants need to attend, and reducing claims disputation and resolution times.

The apparent lack of support or buy in from sections of the legal profession for the joint medico-legal framework is understandable, as it involves a considerable cultural shift away from the more adversarial approach that had been in place for many years.

Nonetheless, without genuine support across all stakeholders, other measures or modifications to the AHP framework, such as mandating joint medico-legal examinations, will be ineffective.

- Limitations with the current AHP Panel List

We understand there is a shortage of relevant medical specialties within the AHP panel, and some medical specialties, such as geriatricians, are not represented on the panel, and are therefore not available.

Further, high demand specialities such as psychiatry, have lengthy timeframes to secure an examination.

The cumulative impact of these pressures weakens the effectiveness of the AHP Framework to realise its intended objectives.

Insurers acknowledge that there is a process whereby a practitioner can be appointed temporarily to the AHP list but there is significant administrative burden with this process.

- Lack of measurable benefit to CTP Scheme

While insurers support the principles and objective of the AHP Framework, there is presently no way of measuring these and/or the benefits it is bringing to the Scheme.

Early advisory medico-legal services, such as injury management consultations, which assist to facilitate access to value-based care and maximise claimants' return to full functioning, are absent from the AHP Framework.

Further, it is Insurers' experience that the AHP framework and joint medico-legal process has, to date, unfortunately provided little, if any additional benefit to the Scheme and has not achieved its objectives, with other options needing to be examined.

Proposed next steps:

Insurers propose that, as opposed to trying to rectify and fix the problems with AHP Framework, that SIRA work with key stakeholders to examine and explore alternative approaches by which the objectives of increasing the quality and consistency of medico-legal examinations and reducing disputation and claim resolution times can be achieved. This could include examination of options used across other schemes.

Insurers are firmly of the belief that multi-stakeholder dialogue will be the foundation for a cooperative, issue-oriented mindset from which solutions can emerge.

We trust this feedback is useful.

Insurers welcome the opportunity to work with SIRA further on this matter.

Please contact [REDACTED]
[REDACTED] if you have any questions or would like further information.

Yours sincerely



Andrew Hall
Executive Director and CEO