

Mr David Grant
State Insurance Regulatory Authority
231 Elizabeth Street
Sydney, NSW. 2000

20 October 2022

Dear Mr Grant,

RE: State Insurance and Care Governance Amendment Regulation 2022

Thank you for the invitation to provide feedback on the draft Insurance and Care Governance Amendment Regulation 2022.

As you are aware, Exercise & Sports Science Australia (ESSA) is the accrediting body for Exercise Physiologists and applies the minimum regulatory processes as set by the National Alliance of Self Regulating Health Professions (NASRHP) to ensure adherence to quality standards. On an ongoing basis, Accredited Exercise Physiologists (AEPs) are expected to comply with a regulatory system where they are held accountable for their professional conduct, including an auditing and complaints process, ensuring quality assurance and standards are maintained.

To engage with the workers compensation scheme in NSW, AEPs must undertake additional training and apply to become a provider. The status of accreditation with ESSA is also monitored by the NSW State Insurance Regulatory Authority (SIRA). In relation to the CTP scheme, ESSA accredited professionals advise that insurers generally apply the same Exercise Physiology fees order, although we acknowledge that these are not gazetted for this scheme nor are AEPs required to register as providers.

Firstly, the amendment to the State Insurance and Care Governance 2015 to establish new powers to enable SIRA to provide directions to service providers was a surprise to ESSA. Over the last 2 years, SIRA has increasingly engaged in consultation on many issues, and we would like to express our disappointment that this proposed change in the legislation which affects our accredited professionals were not addressed at one of these regular meetings. Having said that, we now understand that the current consultation relates to the regulations associated with this change.

During the recent information session, ESSA notes that SIRA expressed that the intention of the regulation is to address extreme outlier behaviour, however, this intention is not written in the explanatory notes of the Draft Amendment Regulation. The explanatory note outlines a very prescriptive approach to the regulation of services delivered by providers and does not detail when this might be enacted. There are broad criteria in the regulation, (4C Directions-the Act, x 26D(4)(s)), but there is no information on thresholds, leaving interpretation open to subjective decision making.

ESSA understands that more detail may be provided in the guidelines to support the implementation of the regulations. The current regulations, however are not written to reflect consideration for the best clinical outcomes for injured people. Through this regulation, decisions about treatment may be removed from clinicians, leading to increased disputes by injured people and higher costs for the scheme.



In essence, clinicians with treatment expertise may be instructed to cease providing relevant and critical services for injured people. SIRA currently has no provision for Independent Exercise Physiology Consultants to undertake case reviews. Constant complaints are received on the lack of knowledge and respect of Independent Consultants towards the exercise physiology profession. It is also out of scope for another profession to be making decisions about clinical care of a professional that is not their own. This legislation and regulation increase the reach of the regulator to intervene, and ESSA is deeply concerned that the regulation will lead to poorer outcomes for injured people.

There are already several mechanisms in place to address the quality of provider services and it is unknown how the introduction of these regulations will lead to better outcomes for injured people. At this stage, ESSA has not received any formal complaints from SIRA in relation to outlier behaviour of its members. These could be addressed through the complaints and ethics procedures at ESSA. This path has worked effectively in the past when dealing with individuals found to have breached the provider rules with Department of Veteran Affairs and Private Health Insurers. ESSA's disciplinary processes overseen by an independent committee has led to remedial actions, and suspension of accreditation. SIRA needs to work more closely with self-regulating health professions to address outlier behaviour, working collaboratively for a better solution.

Finally, at the information session, participants were advised that disputes could be escalated to the administrative tribunal. The regulation does not explain this safeguard and only discusses the provision for providers to apply to SIRA for an internal review. This brings into question the independence of this approach.

In summary, ESSA's view is that:

- More detail is required on thresholds for enacting the regulation and it is hoped that the guidelines will provide clarity.
- The legislation and regulation are considered unnecessary, especially when mechanisms are in place in self-regulating health professions, Allied Health Practitioner Regulatory Authority (AHPRA) and possibly the Health Care Complaints Commission to deal with complaints of outlier behaviour.
- There continues to be the need for case review to be conducted by peers and not by individuals from outside of the Exercise Physiology profession. Engagement of Independent Consultants must be expanded to include exercise physiologists.
- The implementation of the regulation will potentially increase cost to the scheme and reduce health outcomes for injured people.
- Avenues for review of directions should be independent of the regulator.

ESSA would welcome the opportunity to continue to engage on this issue, working with SIRA to deliver value-based health outcomes for injured people receiving treatment and rehabilitation services. Please contact ESSA Policy & Advocacy Advisor, Judy Powell, on [REDACTED] or policy@essa.org.au for further information.

Yours sincerely,

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Anita Hobson Powell
Chief Executive Officer
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