24 October 2022

David Grant
Director Health Policy, Prevention and Supervision
State Insurance Regulatory Authority

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

Dear Mr Grant

Independent Review Office (IRO) Response to the State Insurance Regulatory Authority (SIRA) consultation: Draft State Insurance and Care Governance Amendment Regulation 2022

Thank you for your email of Monday 26 September 2022 seeking comments on the Draft State Insurance and Care Governance (SICG) Amendment Regulation 2022 (draft Regulation).

Thank you also for the briefing provided to us on Tuesday 11 October 2022 about the reforms.

Legislative background to SIRA's expanded function

When introducing the Motor Accidents and Workers Compensation Legislation Amendment Bill 2021 (the law that inserted Part 3, Division 3 into the SIGC Act), the Hon Victor Dominello MP, Minister for Customer Service, and Minister for Digital, relevantly stated:

> *I now turn to schedule 3, which concerns amendments to the State Insurance and Care Governance Act 2015 relating to service providers. One of the cornerstones of the State Insurance Regulatory Authority as the regulator is to promote the safety, transparency, affordability and sustainability of the workers compensation and CTP schemes. Currently, SIRA can refer concerns about providers' professional practice to their professional bodies or the Health Care Complaints Commission but it is unable to prevent service providers from delivering treatment and other services in a manner inconsistent with the workers compensation or CTP legislation and its objectives.*
>
> *The findings of SIRA's healthcare review found that between 2016 and 2019 healthcare expenditure in the workers compensation scheme rose by 47 per cent, up to its current level of over $1 billion a year. There was evidence of overservicing and overcharging by some providers. The review also found that limited availability of healthcare data is impacting SIRA's ability to monitor the scheme and health provider behaviours. It is clear that legislative amendments are required to provide appropriate regulatory tools for SIRA*

> *to ensure that treatments and other services provided to injured workers and road users are appropriate, timely and cost effective, and contribute directly to improving outcomes.*
>
> *To this end, schedule 3 introduces new provisions to division 3 of the State Insurance Care and Governance Act 2015 to provide SIRA the power to issue directions to service providers who are not providing services in accordance with the regulations. The direction powers will include requiring a "relevant provider" to take a specified action or to deliver "relevant services" in a particular way to comply with the scheme's specific requirements. The bill allows the regulations to specify the "relevant services" and the "relevant service providers" against which directions may be issued, as well as the manner and form of those directions. It is important to mention that following the passage of the bill, extensive consultation will be undertaken on the development of these supporting regulations.*[1]

The Minister's Second Reading Speech points, in our submission, to the primary intention of the new Part, that is the regulation of treatments and services of health care providers in the context of the workers compensation and motor accident injury schemes.

From our perspective there is a need for SIRA to have increased powers in this area. For example, where health practitioners refuse to comply with SIRA Fee Orders, there has, to date been no mechanism for SIRA to regulate compliance.

We have considered the draft Regulation against this background, and provide the following comments:

Schedule 1, Clause 1: subsection 4A (zb)

The proposed new section 4A of the draft Regulation lists a broad range of health and related services as a 'relevant service' for the purposes of section 26A of the SICG Act.

Subsection 4A (zb) provides for a broad range of 'administrative services' to be defined as a relevant service. This includes:

> *(i) facilitating discussions between an injured person and doctors, insurers, employers and other service providers to manage the rehabilitation of the injured person,*
>
> *(ii) referrals, including receiving referrals from or making referrals to, or on behalf of, a health practitioner,*
>
> *(iii) administrative functions associated with producing medical evidence relating to a person's injury, functioning or impairment,*
>
> *(iv) access to medical documents, including medical certificates or radiology or medical imaging,*
>
> *(v) centralisation or coordination of referrals or appointments and other administrative functions*

The scope of this subparagraph is extremely broad. For example, lawyers would likely fall within this category as they make referrals to health practitioners to seek medical evidence related to a person's injury. Their offices also undertake administrative processes associated with producing

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[1] New South Wales, *Parliamentary Debates*, Legislative Assembly, 9 June 2021, the Hon Victor Dominello, Minister for Customer Service, and Minister for Digital <Legislative Assembly Hansard - 09 June 2021 (nsw.gov.au)>.

medical evidence. Our view is that it would not be appropriate for these services to be within the scope of the Regulation.

In addition, the meaning and intention of many of the subparagraphs are not clear, and the catch-all phrase ‘other administrative functions’ in the final category of the definition of administrative services suggests an extremely broad remit.

The scope of this aspect of the draft Regulation, on its face, is far beyond that suggested by the Minister’s Second Reading Speech.

Our recommendation is that this part of the definition needs to be substantially amended to make clear and limit its operation, or that it be removed.

Schedule 1, Clause 1: paragraph 4C(1)(c)

The proposed new paragraph 4C(1)(c) of the draft Regulation provides that directions issued to relevant service providers must:

> *In relation to a direction given under the Act, section 26D(1)(a) or (b), state that the relevant service provider is entitled to -*
>
> *(i) an internal review of the direction, or*
> (ii) *an administrative review of the direction under the Act, section 26F.*’

IRO is concerned:

- First, that there is no right of administrative review of a direction given under paragraphs 26D(1)(a) and (b) of the SIGC Act provided for in section 26F, which relevantly provides:

  A relevant service provider given a direction under section 26D(1)(c) or (d) may apply to the Civil and Administrative Tribunal for an administrative review under the Administrative Decisions Review Act 1997 of the direction.

- Second, that the provision does not address whether recipients of directions issued under paragraphs 26D(1)(c) or (d) of the SICG Act are to be provided notice of the right to seek a review under section 26F.

We recommend the draft Regulation be amended to address these issues.

Schedule 1, Clause 1: subsection 4C (2)

The circumstances in which a direction may be made are provided for in the proposed subsection 4C (2) of the draft Regulation. They include circumstances such as non-compliance with relevant personal injury laws and guidelines, or where the services pose a risk to injured people. These matters seem generally consistent with the intent of the amendments to provide for the new power as evidenced in Minister Dominello’s Second Reading Speech.

However, others appear to go substantially beyond the stated intentions, including that directions may be made:

- where the relevant service provider has contravened an ethical or professional standard
- where SIRA reasonably believes a direction is required.

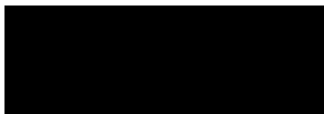
These appear to be extremely broad circumstances that may have no clear nexus to workers compensation or motor accident legislation.

In addition, the regulation of ethical and professional standards is already overseen by specialist regulators with expert capabilities. There is a risk of role duplication with all the subsequent issues that may result – such as confusion for persons making complaints, multiple agencies dealing with the same conduct or agencies referring complainants to another body, such that no agency takes responsibility. It is not clear why SIRA would have a role in policing these standards.

A broad catch-all additional direction-making power for any circumstance where SIRA reasonably believes a direction is required provides no clear direction on the types of conduct to be regulated. Given the broad scope of potential directions (to require providers to provide or not provide services, or to take specific actions), the publicity given to directions and that non-compliance can result in fines, such a broad circumstance may not be warranted.

We trust these comments are of assistance. If SIRA requires further information please do not hesitate to contact Neha Chopra, Policy Officer at .

Yours sincerely



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