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28 March 2019

The Director
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Motor Accidents Insurance Regulation
State Insurance Regulatory Authority
Locked Bag 2906
LISAROW NSW 2252

Also by email: nontreatingpractitioners@sira.nsw.gov.au



Dear Madam,

Re: SIRA Frameworks for non-treating health practitioners

I refer to your email dated 1 March 2019 and the attached three documents for review. In my capacity as a contact for the NSW Bar Association I now provide my feedback on these documents including responses to the specific questions raised by SIRA (that are *italicised* with my answers in **bold**). I shall address the documents *in seriatim* as provided in your email:

Proposed authorised health practitioner appointment and regulatory framework

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?* In my opinion, the authorisation should be for all medical matters referred to in the Regulation. I understand the purpose of the authorisation is to permit non-treating health practitioners to provide reports on medical matters under the Act. If an authorisation is limited to specific medical matters the costs of the scheme may be impacted as multiple examinations and reports to deal with the issues in dispute may be necessary. This would be contrary to the intent of the Act.
2. *Should there be specific criteria in respect of the giving of evidence in different medical matters? Apart from those matters detailed in the Expert Witness Code of Conduct, which is comprehensive on the issue of expert evidence, no.*
3. *Are there any particular criteria for appointments to ensure high quality medicolegal evidence? Prior experience in the provision of medicolegal*

reports in similar jurisdictions (such as the District Court, CARS or the Workers Compensation Commission) or if no prior experience the submission of sample medicolegal reports based on a hypothetical assessment problem/assessment set by an experienced medicolegal report provider.

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? Yes.* The Expert Witness Code of Conduct is a successful and comprehensive guide to the provision of reports that assist many and varying tribunals of fact and law in NSW in the determination of matters in dispute. The Expert Witness Code of Conduct should be incorporated subject to references to “the court” being amended where necessary.
5. *Are any additional criteria appropriate in respect of the Expert Witness Code of Conduct for inclusion in the Motor Accident Guidelines? No if, as recommended at 4 above, the Expert Witness Code of Conduct is incorporated in the Motor Accident Guidelines.*

I note the following: “Item 4 Terms of appointment” has under “Professional eligibility terms” as a mandatory criterion “hold a current Working with Children Check number, but only if the applicant will be assessing minors.” The application of the latter half of this criterion is unable to be predicted, detracts from the mandatory criterion and creates uncertainty. It is likely that all authorised health practitioners will be required to assess minors at some point due to the nature of the jurisdiction (i.e.: motor accidents). I recommend the criterion be with no reservation or contingency and the words “but only if the applicant will be assessing minors.” be removed.

Proposed injury management consultant approval and regulatory framework

There is apparently a typographical error at “Part 2: Conditions of approval” where it says “SIRA. Under s 45A(2) SIRA imposes...” I recommend this be amended to “Under s 45A(2) of the 1998 Act...” to be consistent with the balance of the document.

Proposed injury management consultant approval and regulatory framework

Summary of changes

The table in “Re-approval process” right hand column refers to “Legislative power to enforce under 45A(2)”. As per above, I recommend this be amended to read “...s 45A(2) of the 1998 Act.”

Yours sincerely



Andrew M Combe

