Repsonse Paper to the Implementation Review of the Authorised Health Practitioner (AHP) Framework

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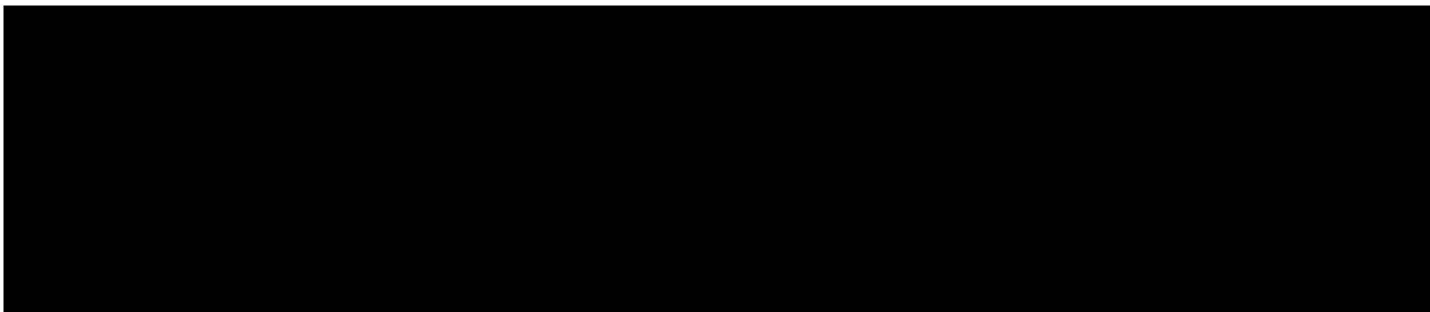

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BACKGROUND

1. The *Motor Accident Injuries Act 2017* (the Act) introduced a new scheme for claimants to make claims in relation to motor vehicle accidents on or after 1 December 2017.

2. The Post Implementation Review of the Authorised Health Practitioner (AHP) Framework Paper, dated July 2021, provides that AHPs were introduced to the 2017 CTP scheme to encourage joint medico-legal examinations with the aim to minimise disputation and reduce the claim resolution times.

3. In our submission, the AHP framework is not operating effectively and as intended to encourage parties to agree upon joint medico-legal examinations and reduce disputes and the timeframe for the resolution of claims.

4. Rather, the AHP framework in its current form is overly bureaucratic and adds multiple unnecessary administrative steps to the process of arranging medical assessments, which increases the time and cost to resolve disputes, without corresponding benefits to the claimant, the insurer, health practitioners or the efficiency of the scheme as a whole.

5. For example, there are limited numbers of medico-legal doctors on the AHP list from some specialities and in some areas, creating challenges for parties attempting to arrange medico-legal assessments, particularly in more regional locations or when certain fields of medical speciality are required.

6. In addition, given that Personal Injury Commission ('PIC') medical assessors are not required to be on the AHP list, the AHP framework does nothing to encourage claimants or insurers to have confidence in the system.

7. While there is clearly a place for joint medico-legal examinations within the CTP scheme, the AHP Framework does not necessarily encourage parties to obtain joint medico-legal evidence. Furthermore, in some instances, it is not possible or preferable.

8. In our submission, the current system of AHPs should be abolished on the basis that it is fundamentally incompatible with the quick, cost effective and just resolution of disputes, with no apparent benefit to the parties.

9. In our respectful submission, the State Insurance Regulatory Authority ('SIRA') is not the appropriate body to regulate the quality of standard of medico-legal doctors and reports. It would be more suitable for a dedicated body, such as the Australian Health Practitioner Regulation Agency (AHPRA), to oversee professional standard compliance and authorisation.

10. We submit that compliance with the current Procedural Direction PIC4 – Expert Witness Evidence (Code) by medico-legal doctors, would adequately ensure the quality of medico-legal reports, without all the additional administrative processes imposed by the AHP framework.

11. We propose that the legislation be amended to require insurers to offer joint medico-legal examinations at an early stage (six months after the motor vehicle accident), and if the parties cannot agree upon a joint examination they should be permitted to obtain unilateral medico-legal evidence from any suitably qualified doctor (without a requirement that they be an AHP), which would encourage the early resolution of matters and reduce the number of disputes.

12. Alternatively, the AHP Framework should be amended to:

    (a) reduce the administrative burden on medico-legal experts applying to become an AHP so as to widen the availability of AHPs to ensure a greater number of doctors from all specialities and locations are on the list;

    (b) provide a discretion for medico-legal reports from an unauthorised health practitioner to be allowed into evidence when the report is not permitted due to administrative reasons related to the complicated AHP framework rather than the evidence being invalid.

THE CURRENT FRAMEWORK

Discussion question 1 - Do you have any comments in relation to the scope of or process of the review?

13. Not applicable to our response.

APPROPRIATENESS OF THE AHP FRAMEWORK AND CUSTOMER EXPERIENCE

Discussion question 2 – How can the AHP framework better deliver on its key objectives to improve injured person's customer experience, and encourage the early and just resolution of disputes?

14. In our respectful submission, the AHP framework should be abandoned. The system is overly bureaucratic which adds delay and costs to the resolution of disputes. We submit that an amendment to the legislation requiring the insurer to offer joint medical examinations, and permitting the parties to obtain unilateral evidence when joint examinations are not agreed upon (by any appropriately qualified specialist without the requirement that they be an AHP), would arm the parties with evidence which would enable them to better determine disputes which would in turn improve a claimant's experience and promote early and just resolutions of disputes.

15. Section 7.52 of the Act provides restrictions on health practitioners who may give evidence in court and other dispute resolution processes. In essence, only a treating health practitioner, or an AHP, may give evidence, unless the parties agree to a joint medical examination or seek the permission of SIRA.

16. It is submitted that the AHP framework and the restriction on health practitioners who may give evidence, provides no meaningful or practical benefit to a claimant to offset the detriment experienced by the parties in having a qualified expert report rendered inadmissible in medical dispute proceedings, should a health practitioner not be authorised at the time they provide an opinion.

17. The increased administrative burden placed upon the parties by this restriction is exacerbated by the existence of Clause 8.4 of the *Motor Accident Guidelines* which states that, for written evidence, 'a health practitioner must be authorised at the time they examine the claimant and write the report'.

Furthermore, there is no discretion in the current Act or *Motor Accident Guidelines* for the PIC to allow a report into evidence.

18. In the current system, an AHP can conduct a valid examination of the claimant while authorised, only to have their report (published based on the findings of that examination) rendered inadmissible if it was published at a later date (whether it be a period of days or weeks) when the expert was not formally authorised by SIRA.

19. By way of example, there have been instances where the above scenario has arisen in medical disputes before the PIC. Due to the operation of Clause 8.4 of the *Motor Accident Guidelines*, the PIC refused to include a report from a health practitioner who was authorised when a claimant was examined, but was not authorised when the report was published.

20. Notably, the health practitioner had, at the time the report was written, completed an application to re-apply as an authorised health practitioner. Unfortunately, the application had not been processed at the time his report was prepared.

21. After the PIC refused to include the report as a result of the effect of Clause 8.4 of the *Motor Accident Guidelines*, the party was required to ask the expert, who was now re-listed as an authorised health practitioner, to re-date the report to a time when he was authorised.

22. In practical terms, while the expert's opinion was unchanged, all parties nevertheless experienced increased costs and delays in having the expert report re-dated for the purposes of complying with Clause 8.4 of the *Motor Accident Guidelines*, even though the expert remained medically qualified as an expert in their field to provide medical opinion. As such, the delay to the parties was caused entirely by the administrative burden imposed by the AHP framework and the CTP scheme, which is contrary to the quick, cost-effective and just resolution of the dispute.

23. It is submitted that it is unclear how the AHP framework improves the experience of a claimant, and encourages the early and just resolution of disputes, when the process of arranging medico-legal examinations is complicated by the administrative burden of the AHP list, which is constantly changing and does not always have experts available in the required speciality or location.

24. For example, the current AHP list includes only one radiologist. In circumstances where one party qualifies the only expert in a certain specialty to provide a report, there would be no other AHP available for the other party to qualify. Other examples of limitations of the AHP list includes that there are no geriatricians, and only two gastroenterologists.

25. While the parties are able to apply in writing to SIRA to seek for a health practitioner to be authorised for the purposes of a discrete assessment, pursuant to clause 8.32 and 8.33 of the *Motor Accident Guidelines*, it is submitted that this process again adds unnecessary administrative hurdles, additional delay, and increased costs, in circumstances where, under the previous system, the parties were able to qualify expert evidence as long as the health practitioner was qualified under the AMA Guidelines and their expertise were appropriate to assess the claimant's injuries

Discussion question 3 – How do we incentivise the take up of joint medico-legal assessments in the CTP scheme

26. In our respectful submission, it is not the role of SIRA to *'incentivise the take up of joint medico-legal assessments in the CTP Scheme'*. We submit that there should be an amendment to the legislation requiring an insurer to propose joint medico-legal examinations six months after a motor vehicle parties to participate in joint medico-legal assessments, where appropriate, and promote the timely, cost effective and early resolution of disputes.

27. We propose that in circumstances where a joint medico-legal examination is offered, and should the parties not be able to agree to a joint medico-legal examination, then the parties should be granted the ability to obtain separate evidence at this early stage in the claim's life.

28. If insurers were obliged to offer joint medical examinations, then the parties would be armed with appropriate evidence sooner to consider and determine a claimant's entitlement to damages for non-economic loss, and/or whether a claimant in fact has sustained 'minor' injuries, and other medical disputes.

29. In our submission, this approach would encourage joint medico-legal assessments and reduce the number of disputes, and achieve more than the implementation by SIRA of another overly complicated health practitioner administrative system.

30. Furthermore, while joint medico-legal assessment may be beneficial in many cases (reducing the number of examinations the claimant is required to undergo and the issues in dispute), we note that joint medico-legal assessments are not always appropriate or preferable, depending on the nature of the claim, alleged injuries, and issues in dispute (in particular where there is an allegation of false and misleading statements or fraud).

Discussion question 4 – What, if any changes are required to either the eligibility requirements or terms of appointment?

31. In our submission, any medical doctor registered with APHRA and willing to comply with the Procedural Direction PIC4 – Expert Witness Evidence should be eligible for appointment, without the additional administrative processes required by the current AHP framework.

Discussion question 5 – How should SIRA measure the overall effectiveness of the AHP framework?

32. Not applicable to our response.

ADMINISTRATIVE PROCESSES

Discussion question 6 - Do you have any comment with regard to the ease, efficiency and transparency of the application and review process outlined in Part 8 of the guidelines?

33. The *Motor Accident Guidelines* outline lengthy requirements about the appointment of an AHP to the list (clauses 8.11 to 8.18), eligibility requirements for a health practitioner (clauses 8.19 to 8.20), restrictions on the appointment of a health practitioner to the list (clauses 8.21 to 8.24), terms of appointment for a health practitioner (clauses 8.25 to 8.27), and cessation of a health practitioner's appointment (clauses 8.28 to 8.31).

34. Part 8 of the *Motor Accident Guidelines* sets out an extensive process of appointment, eligibility, terms of appointment, and restrictions on AHPs, which are redundant and provide no obvious benefit to the parties.

35. In our experience, many health experts who were previously undertaking medico-legal assessments in CTP matters are choosing not to register with SIRA as AHPs, on account of the additional administrative burden.

36. The result is that many specialities now have minimal health practitioners on the approved list, or no health practitioners in certain locations where a claimant may reside – particularly in regional NSW.

37. We have received feedback from medico-legal doctors that that the application process outlined in Part 8 of the *Motor Accident Guidelines* is anything but easy and efficient. Indeed, some experienced doctors have been completely deterred from applying for appointment.

Discussion question 7 - How can the quality of the application be improved?

38. Our primary submission is that the AHP system should be abandoned such that there would be no requirement for an application process.

39. We note that the eligibility criteria at Clause 8.19 of the *Motor Accident Guidelines* includes, amongst other things, that the practitioner 'holds current General or Specialist registration with the Australian Health Practitioner Regulation Agency (AHPRA) with no conditions, undertakings, reprimands, limitations or restrictions on registration as a result of a disciplinary process'.

40. It is noted that qualified health practitioners are already subject to an extensive registration process (either in a general or specialist capacity) and, indeed, the reference to AHPRA requirements appears to render a separate registration process for the CTP scheme redundant and overly bureaucratic.

41. Further, Clause 8.25 of the *Motor Accident Guidelines* sets out a list of requirements that an authorised health practitioner must comply with including, amongst other things, to 'act without bias', 'comply with relevant law', 'act in an ethical, professional and considerate manner when examining the injured person' and to 'have access to all necessary resources and infrastructure to do all administrative activities necessary for the role'.

42. It is submitted that the requirements set out in clause 8.25 are already practically encompassed by the strict registration, continued learning and behavioural/assessment obligations placed on registered

health practitioners (in NSW and Australia more broadly), together with the obligation to comply with an expert witness code of conduct.

43. In any event, it is respectfully submitted that SIRA is not the most suitable body to improve the quality of the application and properly ensure health practitioner compliance with professional medical standards. It is more appropriate for a dedicated body, such as AHPRA, to oversee professional standard compliance and authorisation – and for deference to be given to their oversight.

44. In our submission, the AHP system is essentially entirely bureaucratic and administrative with little to no positive impact on the quality of medico-legal doctors examining claimants and providing reports.

45. If the AHP system remains, we submit that it is not the role of SIRA to oversee the quality of the applications. Rather, any practitioner who holds registration with AHPRA could have their application approved, which would significantly reduce the administrative process.

46. Following from this, we note that medico-legal doctors should continue to be obligated to comply with the current Procedural Direction PIC4 – Expert Witness Evidence by medico-legal doctors, to adequately ensure the quality of medico-legal reports.

Discussion question 8 - Can SIRA's published list be improved to ensure it is simple for injured people, insurer's, and legal professionals to use?

47. We note that the AHP list is available on the SIRA website with the medical experts' names, authorisation dates, specialties, and practice locations.

48. The difficulty for the parties is that it is not practical to constantly check the AHP list to confirm that a medico-legal expert remains current at the time of the medico-legal examination and provision of the report, as required by the *Motor Accident Guidelines.*

49. Furthermore, the AHP list has a significant number of limitations in terms of the availability of AHPs in certain specialties and locations, making it difficult for claimants, insurers, and legal professionals to navigate and use.

TRAINING EDUCATION & SUPPORT REQUIREMENTS

Discussion question 9 - How can SIRA ensure that AHPs have the appropriate training and experience, and are consistently delivering high quality reports?

50. As submitted above, it is not the role of SIRA to ensure that AHPs have appropriate training and experience, and that AHP's are consistently delivering high quality reports.

51. In our submission, the parties should be permitted to obtain medico-legal reports from any appropriately qualified specialist who is registered with AHPRA and agrees to comply with the applicable expert code of conduct.

52. By reason of their experience with motor accident claims, the parties will elect to qualify medico-legal doctors who have expertise in the necessary fields and have a reputation for providing high quality reports.

53. We note that it is a matter for the decision maker, not SIRA, to determine the weight the medical evidence should be given.

54. We believe that the oversight of medical expert training and experience should be deferred to AHPRA, who already oversee health practitioner compliance and professional medical standards.

Discussion question 10 - Do you have any other comments in relation to the AHP framework that you would like considered as part of this review?

55. In our submission, the AHP system should be abolished and should not be replaced by another burdensome administrative procedure, which is likely to be equally complicated, but still not increase the availability of experienced medical-legal doctors and the standard of reports.

56. Abolition of the current AHP framework would be the most prudent step towards facilitating the quick, cost-effective and just resolution of disputes in the CTP scheme. The current system is overly administrative with no corresponding obvious benefits to the parties.

57. We propose a system whereby the insurer is required to offer joint medical legal examinations at an early stage, and if a joint examination is declined by the claimant, the parties are permitted to arrange a unilateral medico-legal assessment with any suitably qualified health practitioner, without being restricted by the AHP list. This would enable to the parties to arrange medico-legal assessments with a wide selection of experts and in suitable locations, and would encourage the quick, cost-effective and just resolution of disputes in the CTP scheme.