



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: InjuryComp:EEap1726873

24 May 2019

Ms Elizabeth Maister
Manager, Stakeholder Engagement
Motor Accidents Insurance Regulation
State Insurance Regulatory Authority
Level 6, 2-24 Rawson Place
Haymarket NSW 2000

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

Dear Ms Maister,

State Insurance Regulatory Authority (SIRA) policy for publication of decisions by the Dispute Resolution Service

Thank you for the opportunity to provide comments on SIRA's proposed policy for publication of decisions by the Dispute Resolution Service (DRS). The Law Society of New South Wales' Injury Compensation Committee has contributed to this submission.

1. Does the policy provide sufficient protection for claimants?

We consider it does.

In the interests of open justice however, we support the publication of parties' names and full case details, unless there is a cogent reason not to publish this information. This approach would be consistent with the approach the Workers Compensation Commission ("WCC") adopts in relation to publication of its decisions.

We consider the publication of full case information ensures transparency and enhances the precedential value of decisions. It also has the potential to reduce disputation by informing parties of outcomes. In some instances, redacting details may lead to a loss of meaning or inaccurate portrayal of case outcomes, which should be avoided.

We understand there may be some ambiguity over whether the DRS is permitted to publish the full names and details of parties / cases under relevant privacy legislation. We therefore recommend SIRA explore whether an approach similar to that taken by the WCC is appropriate in the circumstances. We would support a uniform approach to the policies for publishing decisions in the workers compensation and motor accident schemes if feasible.

2. Does the policy provide a sufficient pathway for claimants to object to the publication of a decision?

We consider it does.

However, we query the inclusion of clause 17 in the proposed policy, which would require a claimant's request for non-publication to be 'supported by *evidence* about why the decision should not be published' (emphasis added). No further information is provided about the type of evidence that would be required to support this request.

The Law Society considers that it is appropriate that claimants simply object to publication of a decision and give reasons about why they consider the decision should not be published. In the alternative, we recommend SIRA provide clear advice about the type of evidence a claimant would need to produce to object to a decision being published.

3. *General comments*

The Law Society notes SIRA's intention to publish decisions on its website. We have previously raised concerns over SIRA's website, including our view that it is very difficult to navigate. We recommend SIRA consider publishing decisions on Austlii to ensure greater ease of access. We note WCC decisions are also published on Austlii, and support a consistent approach to publication of decisions.

Further to the comments outlined above in relation to question one, we strongly encourage SIRA to ensure that any decision it publishes is the decision as written by the original decision maker. This is to ensure the integrity of reported decisions.

We consider that all published decisions should include meaningful and accurate headnote / keywords, to enhance search functionality. We also recommend that SIRA ensure its database is current, and that if a decision is appealed, reviewed, set aside or revisited, it should be annotated or removed from the relevant website promptly.

Thank you again for the opportunity to comment on the proposed policy. Should you have any questions or require further information, please contact Adi Prigan, Policy Lawyer, on (02) 9926 0285 or email adi.prigan@lawsociety.com.au.

Yours sincerely,



Elizabeth Espinosa
President