THE LAW SOCIETY
OF NEW SOUTH WALES

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Janice Nadew
Principal Advisor, Executive Director Office
Motor Accident Insurance Regulation
State Insurance Regulatory Authority
Level 14-15, 231 Elizabeth St
Sydney NSW 2000

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

Dear Ms Nadew

Draft Guidelines for the Provision of Relevant Services (Health and Related Services) in workers compensation and CTP

Thank you for the opportunity to review the Draft Guidelines for the Provision of Relevant Services (Health and Related Services) in Workers Compensation and CTP (**Draft Guidelines**). The Law Society's Injury Compensation Committee has contributed to this submission.

At the outset, the Law Society notes that most health practitioners in the schemes are providing high quality care and complying with workers compensation and CTP legislation. We therefore understand that the amendments to the *State Insurance and Care Governance Act 2015* (NSW) and the *State Insurance and Care Governance Regulation 2021* that empower SIRA to issue directions to health and related service providers were introduced to remove outlier practitioners who have shown disregard for the relevant legislation from practising in the scheme.

We consider it important to ensure that the Draft Guidelines are not drawn so broadly so as to obscure this essential purpose. As SIRA is aware, there are significant challenges around attracting health practitioners to work on workers compensation and CTP matters. This is particularly true for the specialties of neurology and psychiatry. The Draft Guidelines should therefore not become so burdensome as to deter competent medical practitioners from engaging with the scheme.

Definitions
'Overservicing' is currently defined as 'a pattern of service provision that varies significantly from the provider's peers (ie practitioners of the same profession), taking into account factors such as the complexity/severity of injuries being treated'. While we support the regulation of behaviour that leads to overbilling or delivering more services than necessary, this definition may arbitrarily penalise some practitioners, for example those who are

frequently offering novel procedures and therefore whose pattern of service differs from their peers.

Registration/accreditation requirements
Clause 21 is set out in the following terms:

> **21. Relevant services cannot be provided by a RSP who has:**
> (a) had their registration or licence under any relevant law, their accreditation or registration by, or membership of, a self-regulating professional organisation, limited or subject to any condition as a result of a disciplinary process or been suspended or disqualified from practice
>
> (b) had a complaint upheld about them or action taken by insurance, compensation or health authorities, government agencies or statutory bodies regarding their conduct
>
> (i) in any role in any insurance or compensation system in any Australian jurisdiction or
> (ii) in the provision of health services.
> (c) been convicted of any criminal offence or have any pending criminal charges, or any civil proceedings lodged against them or their practice.

We are concerned that the breadth of this provision may preclude competent health practitioners from practising in the scheme and may be unnecessarily punitive. In our view, there is no reason to suspend practitioners who are permitted by the medical regulators to practise as health professionals without restriction, except possibly when they have been found criminally or civilly liable in fraud or any related offence against an insurer.

Requirements for the delivery of relevant services
We do not consider it necessary for the Draft Guidelines to stipulate the requirements for the delivery of relevant services (Clause 26). There is a long history of case law which sets out what treatment is "reasonably necessary" (workers compensation) or "reasonable and necessary" (motor accidents) in the context of personal injury claims. It is incumbent upon practitioners, as part of their professional and ethical obligations, to be aware of their responsibilities in this regard as well as being well-informed of those guidelines, relevant to their area of practice, which inform their exercise of clinical judgment.

Clause 28 says that Relevant Service Providers (**RSPs**) 'must fully cooperate with reviews by injury management consultants, or any other independent review of relevant services arranged by insurers, in the form, timeframes and manner required by SIRA from time to time'. In the recent Nominal Insurer Audit Report, it was noted on multiple claims that there was missing documentation and file notes, which meant that injury management consultants were often undertaking their work without the benefit of all the relevant material. It is a matter of concern, especially in the context of iCare, if an RSP's valuable time is taken up by a consultant who is not properly informed of the totality of the case. We suggest clause 28 should be revised to require reasonable cooperation.

Part 6: Requirements for provision of relevant medico-legal services
Clause 34(b) requires the RSP to comply with the *Procedural Direction PIC4 – Expert Witness Evidence* and any subsequent procedural directions issued by the President of the Personal Injury Commission relating to expert witness evidence, and promptly notify SIRA of any compliance breaches. We suggest that a reference also be made to the code of conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005* to cover those workers compensation and CTP matters heard by the courts

Requirements for billing for relevant services
Section 39(c) of Part 9 sets out that in billing for the provision of relevant services, the RSP must not charge a fee for a relevant service unless it is directly payable to the RSP that has provided the treatment or related service or diagnostic procedure to an injured person, i.e. payment for services will not be provided to a third party or a referral service.

This proposal will preclude the use of various medico-legal providers which operate within the industry. We note that many of these providers receive payments directly through IRO or, in CTP, at the conclusion of the claim.

If such providers were precluded by the Guidelines, injured people may be required to pay for their medico-legal reports upfront if their legal representatives are unable to meet the costs of the disbursement on their behalf. This in turn would create significant access to justice issues for injured claimants and may deprive them of access to any medico-legal evidence. Likewise, insurance companies would be required to deal with medical practitioners individually rather than using medico-legal providers, which offer a centralised booking service, which provides significant efficiencies and lowers the administrative costs associated with the scheme.

We recommend that SIRA ensure that medico-legal providers, particularly those used by insurers and law firms, are not captured by s 39(c).

Thank you for the opportunity to provide feedback for this consultation. Please contact Sophie Bathurst, Policy Lawyer, on Sophie.Bathurst@lawsociety.com.au or (02) 9926 0285 in the first instance if you have any queries.

Yours sincerely,

Cassandra Banks
President