



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: InjuryComp:EEap1741104

19 June 2019

Motor Accidents Insurance Regulation
State Insurance Regulatory Authority
Level 13 West, 2-24 Rawson Place
Haymarket NSW 2000

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

Dear Sir/Madam,

Draft: The role of health professionals in informing insurers' earning capacity decisions in the CTP scheme

Thank you for the opportunity to comment on the draft advice, '*The role of health professionals in informing insurers' earning capacity decisions in the CTP scheme*'. The Law Society of New South Wales' Injury Compensation Committee has contributed to this submission.

Legislative basis for this advice

The Law Society understands that this document is intended to provide "information and guidance for insurers and health professionals on the role and requirements for health professionals in supporting insurers to make decisions about" earning capacity decisions.

While we welcome additional guidance for insurers in making earning capacity decisions and for health practitioners in helping to inform those decisions, we consider parts of the document may venture beyond the scope of information and guidance material contemplated by the legislation. For example, the document provides advice about the "required experience" and "required skills" of health practitioners providing advice to insurers. We note however that subsection 3.16(2) of the *Motor Accident Injuries Act 2017* ("the Act") only makes provision for the Motor Accident Guidelines ("the Guidelines") to provide for the procedures to be followed by *insurers* in connection with making relevant earning capacity decisions.

We recommend SIRA ensure that any guidance it provides aligns with the relevant legislation, specifically section 3.16 of, and clauses 7 and 8 of Schedule 1 to, the Act.

Audience and purpose

Notwithstanding our comments above, to provide meaningful guidance on the role of health practitioners in informing insurers' earning capacity decisions, we recommend the guidance document provide clearer and more targeted advice to its audience.

In the first instance, we recommend SIRA consider developing more targeted advice for insurers about procedures for making earning capacity decisions, with reference to the principles set out in Part 4 of the Guidelines and Division 6.2 of the Act. We recommend

We recommend SIRA separately outline the role of health practitioners in the scheme and in providing relevant reports.

Clarity of terms and information

To enhance certainty for insurers and health practitioners about their roles in the scheme, we recommend SIRA consider defining key concepts used in the advice document, for example, the concepts of “reports” and “organisation”. The concept of “interviewing skills to test motivation” has been included as a skill required to assess a person’s skills for seeking and gaining employment. We consider this requirement to be unclear and query whether it can be reliably determined. We consider the reference to “durable sustainable placement experience” is also unclear.

We note the opening paragraph of the document includes a footnote stating that “these decisions are not medical assessment matters as defined by Schedule 2 of the Act or medical matters under clause 18 of the Motor Accident Injuries Regulation 2018” (“the Regulation”). We recommend this statement be reviewed, with reference to subclause 18(c) of the Regulation, which prescribes as a “medical matter”, for the purposes of subsection 7.52(4) of the Act, assessments relating to “the degree of impairment of the earning capacity of an injured person that has resulted from an injury caused by a motor accident”.

We recommend that any advice note that under section 7.52 of the Act, if the health practitioner providing the relevant assessment is not the claimant’s treating health practitioner or an Authorised Health Practitioner, then any material produced is not admissible in any Dispute Resolution Service proceedings.

Health practitioner eligibility

We consider that if the advice is to specify the eligibility requirements of health practitioners in informing insurers’ earning capacity decisions, these requirements should be carefully considered and developed, and clearly explained.

Further, noting the concerns about the role of vocational capacity assessment organisations in work capacity assessment decisions, we recommend SIRA seek to ensure that assessment of work capacity is focused on ensuring meaningful assistance in sustainable return to work. If SIRA provides advice on health practitioner eligibility, we recommend this include a requirement for health practitioners to have practical knowledge of job placement in the real world, and demonstrated success in placing people in sustainable employment in an industry of relevance to the assessment being undertaken.

To that end, we recommend the concept of “relevant professional experience” be defined to ensure it does not include experience solely associated with a vocational capacity assessment organisation.

Thank you again for the opportunity to comment on this draft advice. Should you have any questions or require further information, please contact [REDACTED] or email [REDACTED]

Yours sincerely,

[REDACTED]

Elizabeth Espinosa
President