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Submitted via email: CTPpolicy@sira.nsw.gov.au

Dear Emily,

APS Response to the Review of the SIRA proposed draft Motor Accident Guidelines version 9

The Australian Psychological Society (APS) welcomes the opportunity to provide feedback to the State Insurance Regulatory Authority (SIRA) proposed draft Motor Accident Guidelines version 9.

In making this submission, the APS has reviewed the proposed changes to the Motor Accident Guidelines version 9, and consulted with NSW-based members who have established expertise in medico-legal settings and are authorised health practitioners under the auspices of SIRA.

We note that the current review is specific to providing feedback to the proposed changes to Parts 1, 3, 4, 5, 8 and 9 of the Motor Accident Guidelines. As such, we have only provided comments on the specific clauses to which we can contribute specialist knowledge from the perspective of the profession of psychology.

Please do not hesitate to contact the APS if any further information is required. I may be reached on (03) 8662 3300 or at z.burgess@psychology.org.au.

Yours sincerely,

Dr Zena Burgess FAPS FAICD
Chief Executive Officer

APS Response - Review of the SIRA proposed draft Motor Accident Guidelines version 9

Clause (version 9)	Proposed change	Rationale	Feedback
Part 1			
1.27-1.30	Amendment	New clauses clarify that approval must be given by the Authority prior to the use of proposed risk rating factors.	<p>These new clauses are included within a section titled "Bonus malus limits, rating structure and risk rating factors". The specific new clauses are as follows:</p> <p><i>"1.27 Each risk rating factor proposed by an insurer must be objective and evidence-based."</i></p> <p><i>"1.28 Insurers can apply to use objective risk rating factors except race, policy duration, ITC entitlement and postcode."</i></p> <p><i>"1.29 At least 12 weeks prior to a filing, insurers must apply separately to the Authority for approval to use any proposed new objective risk rating factor."</i></p> <p>The APS notes that Australia's federal anti-discrimination legislation provides a broader list of attributes on the basis of which it is prohibited to discriminate than what is listed in clause 1.28. Specifically, the federal legislation prohibits discrimination on the basis of "age, disability, race, sex, intersex status, gender identity and sexual orientation". We believe that SIRA should consider these additional exceptions to more closely align clause 1.28 with the protected attributes listed in the federal anti-discrimination legislation.</p>
Part 3			
3.15, 3.20	Amendment	New requirement that insurers must report on culture requirements to the Authority, reflecting Recommendation 3 of the CTP Statutory Review.	<p>Old 3.15 clause was: "A detailed plan of the steps to be taken to embed, monitor and (where appropriate) effect changes to the insurer's institutional culture as it relates to each of the matters outlined in the above clause. This must include a strategy of communicating performance in these areas to the Authority."</p> <p>New 3.15 clause is: "A detailed plan of the steps to be taken to embed, monitor and (where appropriate) effect changes to the insurer's institutional culture as it relates to each of the matters outlined in the above clause. This must include a strategy to</p>

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			<p><i>report performance in these areas when requested by the Authority."</i></p> <p>Old 3.20 clause was: <i>"An explanation of the organisational structures to monitor the effectiveness of, and ensure accountability for, the arrangements, mechanisms, processes and performance metrics enumerated in clauses 3.16 to 3.18 (above)."</i></p> <p>New 3.20 clause is: <i>"An explanation of the organisational structures to monitor the effectiveness of, and ensure accountability for, the arrangements, mechanisms, processes and performance metrics enumerated in clauses 3.16 to 3.18 (above). This must include a strategy to report performance in these areas when requested by the Authority."</i></p> <p>The APS commends SIRA for this amendment and for recognising the importance of institutional culture in promoting appropriate behaviour and discouraging inappropriate behaviour. We believe that while these changes are relatively minor, they appropriately strengthen the emphasis on culture requirements via reporting when requested.</p>
3.22	Amendment	Clarifies that insurers should keep a record and provide a report to the Authority of all complaints received, including a complaints trend analysis of the risks and issues.	<p>Old clause 3.22: <i>"A complaint is an expression of dissatisfaction made to the insurer or its agent related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly requested. Insurers must keep a record of all complaints they or any of their agents receive in a complaints register and provide a summary report to the Authority every six months. This report is due within 30 business days of the end of the 30 June and 31 December reporting periods. It should be formatted as set out by the Authority and include a complaints trend analysis of the risks and issues."</i></p> <p>New clause 3.22: <i>"A complaint is an expression of dissatisfaction made to the insurer or its agent related to its products or services, or the complaints-handling process itself, where a formal response or resolution is explicitly or implicitly requested."</i></p> <p>The APS understands that this amendment involves the removal of the following requirement from the previous version of the Motor Accident Guidelines: <i>"Insurers must keep a record of all complaints they or any of their agents receive in a complaints register and provide a summary report to the Authority every six months. This report is due within 30 business</i></p>

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			<p><i>days of the end of the 30 June and 31 December reporting periods. It should be formatted as set out by the Authority and include a complaints trend analysis of the risks and issues."</i></p> <p>The APS considers the wording in the previous version of the Motor Accident Guideline to be an appropriate requirement as it systematically embedded a mechanism by which institutional cultural problems could be identified where complaints increased for a particular insurer over time. The old mechanisms also appear to have been an additional protection for potentially vulnerable injured persons and whistle-blowers. As such, we disagree with the proposed changes to clause 3.22 and recommend that the reporting requirements from the previous version of the Motor Accident Guideline be retained.</p>
3.40-3.41 (version 8.2)	Deletion	Self-assessment requirements will be published separately to the Guidelines.	<p>The specific clauses that have been deleted are as follows:</p> <p><i>"3.40 Where an insurer identifies one or more instances of non-compliance, the insurer's self-assessment report must: (a) set out the nature of non-compliance and if and how it has affected claimants and their entitlements under the Act (b) advise if the same non-compliance has occurred before (c) explain the action the insurer has taken to investigate the extent of the non-compliance (d) explain the action the insurer has or is taking to remedy the noncompliance (e) explain the insurer's monitoring/auditing strategy to avoid any ongoing or similar future non-compliance (f) set out the timeframes to resolve the non-compliance."</i></p> <p><i>"3.41 The insurer must confirm in writing to the Authority when the non-compliance has been resolved."</i></p> <p>The APS notes this deletion. We also recommend that from a best practice and transparency perspective, SIRA publish the self-assessment requirements at the same time as these proposed guidelines.</p>
Part 4			
4.44	Amendment	New requirement that the insurer must commence weekly payments of statutory benefits within 10 working days after its decision to accept liability.	<p>The specific new clause wording is: <i>"After an insurer accepts liability for statutory benefits, weekly payments may be payable to a claimant. The insurer must commence weekly payments of</i></p>

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			<p><i>statutory benefits as soon as possible and in any event within 10 business days after its decision to accept liability. "</i></p> <p>The old guidelines have a clause worded almost identically as follows: <i>"After an insurer accepts liability for statutory benefits, weekly payments may be payable to a claimant. The insurer must commence weekly payments of statutory benefits as soon as possible and in any event within 10 working days after its decision to accept liability."</i></p> <p>It is not clear what the new requirement is in relation to clause 4.44. That is, the only change in the new clause seems to be the use of the word "business days" instead of "working days". However, the explanation for the amendment refers to "working days". The APS recommends that SIRA provide a clearer rationale for any potential changes to clause 4.44.</p>
4.82, 4.83, 4.87, 4.106	Amendment	New provisions related to the management of claims involving a psychological injury to ensure that these claims are managed in a way that addresses the unique challenges of psychological injuries.	<p>The specific new clauses are as follows:</p> <p><i>"4.82 Best practice claims management begins with understanding the complexities of psychological injury while ensuring an injured person feels empowered and supported throughout the claims process."</i></p> <p><i>"4.83 Following initial notification of a psychological injury, the insurer must ensure the claim is allocated to a case manager who has the skills relevant to managing the psychological injury."</i></p> <p><i>"4.87 The insurer must screen for and identify claims where an injured person is at an elevated risk of developing an accident-related psychological injury and, if such a risk is identified, promptly facilitate appropriate support. (a) Where this risk is only identified after a recovery plan has been implemented, the insurer must update the recovery plan at the earliest possible opportunity."</i></p> <p><i>"4.106 Wherever possible, the insurer must use rehabilitation providers with expertise in managing psychological injury if return to work or other activities is likely to be delayed."</i></p> <p>The APS believes that the proposed changes to clauses 4.82, 4.83, 4.87, 4.106 appear to be a step in the right direction. However, we are concerned with the lack of specificity regarding the skill requirements for managing psychological injuries, as referred to within these clauses.</p>

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			<p>Specifically, we believe that the following clauses have the potential to undermine registration requirements for psychologists: (1) 4.83 <i>“skills relevant to managing the psychological injury”</i>, and clause 4.106 <i>“Wherever possible, the insurer must use rehabilitation providers with expertise in managing psychological injury”</i></p> <p>The APS is concerned that the proposed wording may encourage insurers to employ case managers without appropriate qualifications or AHPRA registration requirements (i.e., undergraduate psychology degrees as a minimum requirement). While the APS does not specifically oppose the proposed changes to these clauses, we recommend amendments be made to explicitly encourage insurers and rehabilitation providers to engage psychologists who are required to be registered with AHPRA.</p> <p>Psychological injuries require appropriate assessment, especially when a client possibly meets the criteria for a diagnosis of a mental illness, presents with complex symptoms and/or is at risk of self-harm. SIRA needs to encourage and support psychological intervention and treatment by an AHPRA registered psychologist who can accurately assess and triage clients, and identify when this level of support is required.</p>
4.84, 4.85, 4.89, 4.91, 4.93, 4.95, 4.96	Amendment	Minor amendments to reflect that recovery plans may consider options for recovery that are additional to treatment, including vocational support, and to include a greater focus on return to activity where that is relevant. Amendments also highlight the need to engage the claimant in the development process.	The APS notes these changes and commends SIRA for its ongoing emphasis on engaging claimants in a consultative two-way process. We also note the importance of self-efficacy in improving outcomes for claimants following a major setback and the valuable role that consultation has in supporting self-efficacy.
Part 8			
8.4-8.5	Amendment	Requirements to apply to all health practitioners authorised to give evidence, not just those who are on SIRA's list. Clause around	The APS notes this change. This amendment is consistent with the APS submission to SIRA's Post implementation review of the Authorised Health Practitioner (AHP) framework.

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		<p>ethical behaviour strengthened to include procedural fairness.</p>	<p>The APS also believes that there is an inherent redundancy of SIRA maintaining a separate list of psychologists who are authorised to give evidence. We suggest that there is only the need for one regulator to oversee the registration standards for psychologists, a role which AHPRA already fulfils. Currently, SIRA maintain a separate list of those authorised to give evidence as psychologists, which appears to create additional bureaucracy and may dissuade some highly qualified psychologists from serving the community in this important way.</p>
8.4(f)	New clause	<p>Stakeholder feedback indicated a need for training to improve the quality of report writing. New requirement that health practitioners authorised to give evidence must complete at least two hours of continuing professional development (CPD) related to medico-legal practice in each professional year. The two-hour requirement will be subject to consultation by medical colleges and health profession bodies.</p> <p>Practitioners must also complete permanent impairment evaluation training if they are conducting permanent impairment evaluations.</p>	<p>The APS notes this new clause.</p> <p>As noted in our submission to SIRA's Post implementation review of the Authorised Health Practitioner (AHP) framework, the APS understands that SIRA requires quality assurance measures to ensure that all AHPs have the appropriate training, experience, and competencies to maintain appropriate standards of assessment and reporting. However, the ongoing continuing professional development (CPD) requirements for psychologists overseen by AHPRA are largely sufficient for this purpose. Therefore, consistent with our feedback to the amendment of clauses 8.4-8.5, as registered psychologists already need to complete significant CPD requirements each year, the APS disagrees with the inclusion of new clause 8.4(f) on the basis that it is likely to result in unnecessary and additional bureaucracy beyond that already required by AHPRA.</p>
8.16	Amendment	<p>Amendments to eligibility requirements following stakeholder feedback.</p>	<p>Consistent with previous feedback provided by the APS regarding these eligibility requirements, we believe there remains too great an emphasis on the concept of "clinical experience" with insufficient definition as to what this term means within the Motor Accident Guidelines.</p> <p>For example, when providing opinion about an individual's cognitive capacity and future employability, a psychologist would be applying their considerable and appropriate expertise. However, the need for this expertise to have been derived in a 'clinical' setting may not always be appropriate.</p>

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8.34	New clause	The Authority now has the power to authorise practitioners in extenuating circumstances.	The APS notes this change. However, similar to the feedback to clause 8.4-8.5, there is potential for inherent complexity in maintaining a duplicate registration system, such that it would be more efficient for SIRA to refer to the existing registration process overseen by AHPRA.