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David Grant
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State Insurance Regulatory Authority (SIRA)
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Sydney NSW 2000

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

Dear David,

APS Response to the Consultation on the draft State Insurance and Care Governance Amendment Regulation 2022

The Australian Psychological Society (APS) welcomes the opportunity to provide feedback to the State Insurance Regulatory Authority (SIRA) on the draft State Insurance and Care Governance Amendment Regulation 2022. The APS and SIRA have a long history of working together to achieve the best health outcomes for people in NSW who have experienced a motor accident or work-related injury. The APS is supportive of the SIRA Compensation Scheme and supports its aim to deliver expert and quality care to injured people.

The APS notes that the State Insurance and Care Governance Act 2015 No 19 (the Act) was recently amended to provide SIRA with new powers, including the power to introduce new regulations, which are the focus of the current consultation. The APS understands that the intention of the draft regulations is to provide SIRA with increased oversight of service providers working under the scheme, including psychology providers, in response to, and to deter, a small minority of service providers that are not providing care in compliance with legislation or professional standards. We note that SIRA currently has limited powers to respond to such service providers and hence the current regulations empower SIRA to take action when appropriate.

In making this submission, the APS has reviewed the draft regulations as well as the Act. We have also consulted with NSW-based members who have established expertise in providing psychological services within the SIRA scheme. A key concern for APS members is that the draft amendments appear to create a parallel process between SIRA and AHPRA's regulation of psychologists. The APS has subsequently engaged in discussions with SIRA regarding this matter. It is our understanding that SIRA has consulted with AHPRA regarding regulatory responsibility of service providers under the Scheme, with AHPRA considering this SIRA's purview. Following said discussions with SIRA, the APS understands this position.

The feedback provided in the table below is specific to the impact of the draft amendments and the Act from the perspective of the profession of psychology. Should any further information be required from the APS, please do not hesitate to contact me on (03) 8662 3300 or at z.burgess@psychology.org.au.

Yours sincerely,

Dr Zena Burgess FAPS FAICD
Chief Executive Officer

APS Response - Consultation on the draft State Insurance and Care Governance Amendment Regulation 2022

Section	Part	APS Feedback
4A Relevant services— the Act, s 26A	<p>(1) For the Act, section 26A, definition of relevant service, the following services are prescribed—</p> <p>.....</p> <p>(s) psychology services</p>	<p>The APS supports the inclusion of psychological services in the list of relevant services.</p>
4B Relevant service providers— the Act, s 26A	<p>(1) For the Act, section 26A, definition of relevant service provider, each of the following is not a relevant service provider—</p> <ul style="list-style-type: none"> (a) a public hospital, (b) a local health district, (c) a specialty network governed health corporation, (d) the Ambulance Service of NSW, (e) the Health Administration Corporation established under the <i>Health Administration Act 1982</i>, (g) the division of the Ministry of Health known as Health Protection NSW. <p>(2) Words and expressions used in this section have the same meaning as in the <i>Health Services Act 1997</i>.</p>	<p>The APS understands that the providers listed under 4B are covered by other legislation. As such, the APS supports the exclusion of these providers in the draft regulations.</p> <p>However, we note that these regulations may create some confusion whereby psychologists working in a private hospital are subjected to different regulations than psychologists working in a public hospital.</p>
4C Directions— the Act, s 26D(4)	<p>(1) A direction to a relevant service provider under the Act, section 26D must—</p> <ul style="list-style-type: none"> (a) be given to the relevant service provider— <ul style="list-style-type: none"> i. personally, or ii. by electronic transmission to an address or location specified by the 	<p>The APS supports the inclusion of these amendments.</p>

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	<p>relevant service provider for receiving directions under the section, and</p> <p>(b) include reasons for the direction, and</p> <p>(c) in relation to a direction given under the Act, section 26D(1)(a) or (b), state that the relevant service provider is entitled to—</p> <ol style="list-style-type: none"> an internal review of the direction, or an administrative review of the direction under the Act, section 26F. 	
4C Directions—the Act, s 26D(4)	<p>(2) A direction may be given to a relevant service provider in the following circumstances—</p> <ol style="list-style-type: none"> the relevant service provider has not complied with a provision of the workers compensation and motor accidents legislation, the relevant service provider has not complied with guidelines issued under either— <ol style="list-style-type: none"> the Act, section 26E, or the workers compensation and motor accidents legislation, the relevant service provider has contravened an ethical or professional standard, SIRA reasonably believes the health, conduct or performance of a relevant service provider poses a risk to injured people, SIRA reasonably believes a direction is required. 	<p>The APS agrees that it is important for psychology providers to be held accountable for adhering to legislation and to provide services to injured people in accordance with best practice frameworks, ethical and professional standards. We support mechanisms that enable regulatory action against providers that are non-compliant with this practice.</p> <p>However, some APS members have raised concerns with the nature of directions in which SIRA may issue to psychology service providers. These concerns are largely in relation to the interaction of section 4C Directions—the Act, s 26D(4) in the draft amendments and sections 26C and 26D of the Act.</p> <p>Specifically, section 26C Direction to provide data to SIRA in the Act states that “(1) SIRA may give a written direction to a relevant service provider requiring the provider to provide SIRA with specified data within a specified period concerning relevant services the provider provides”. ‘Data’ is defined in the Act as “facts, statistics, instructions, concepts or other information in a form capable of being communicated, analysed or processed,</p>

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		<p><i>whether by an individual or by a computer or other automated means.”</i></p> <p>APS members working in the scheme are likely to be compliant with such directions provided the data requested is relevant to claim related information (i.e., records of attendance and client reports) and does not breach existing confidentiality requirements and legislation by which psychologists are bound. For example, the APS does not agree with members providing data such as client notes without a subpoena. We believe this type of data requires a higher level of protection than other claim related client information or data.</p> <p>We also consider it important for any data and clinical materials provided by psychologists to only be viewed and analysed by those with the specific expertise (i.e., another psychologist) capable of accurately interpreting the data. We also believe that clinical decisions or directions regarding psychologists should only be made by those with a suitable level of professional qualifications and expertise.</p> <p>Further, some APS members have raised concerns regarding the potential scope of the draft regulations, in terms of how they interact with <i>Section 26D Directions concerning relevant services by relevant service providers</i> of the Act. For example, 26D (1)(b) in the Act states that “(1) SIRA may give 1 or more of the following written directions to a relevant service provider—a direction requiring the provider to provide specified relevant services for the purposes of the workers compensation and motor accidents legislation in a specified way.”</p> <p>The wording of this requirement in the Act appears relatively ambiguous, which leaves the intended scope and definition open to interpretation. The APS would be concerned, for example, with SIRA providing a direction to a psychologist about how they must provide treatment</p>

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		<p>to clients in the context of specifying the type of intervention used, treatment length and/or frequency.</p> <p>The APS considers that psychologists must be able to make decisions regarding treatment options for clients and that decisions about health outcomes should remain the responsibility of health providers. Some APS members remained concerned that the Act and draft amendments may allow for complaints to be made against a psychologist who may have a holistic approach to treating someone, which is in the best interest of that client returning to work.</p> <p>It is therefore important to ensure legislation and regulations enable treating health professionals to deliver services that are reasonable and necessary. Where there may be concerns about the treatment being provided, any directions or decisions must be made in the context of relevant clinical judgement with an avenue for review by another appropriately qualified health professional. There are concerns that the changes to the Act and draft amendments may allow those who may have no clinical training to make decisions about psychological treatment.</p>
4C Directions— the Act, s 26D(4)	<p>(3) A direction given to a relevant service provider—</p> <p>(a) takes effect on the day on which the direction is given or a later day specified in the direction, and</p> <p>(b) remains in force until the day, if any, specified in the direction unless sooner revoked by SIRA.</p>	<p>We note that this requirement “<i>takes effect on the day on which the direction is given</i>”. However, there is no requirement for the service provider or SIRA to confirm that a direction has been received.</p> <p>There may be some scenarios whereby the direction does not arrive or is not received within the timeframe in which the direction is in effect, resulting in some inconsistencies between “<i>the day on which the direction is given</i>” and when the service provider can practically action the direction.</p> <p>It may be beneficial to establish a process whereby there is some form of</p>

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		confirmation provided that the direction has been received.
4C Directions—the Act, s 26D(4)	(4) SIRA may vary a direction given to a relevant service provider by written notice given to the relevant service provider	The APS supports the inclusion of these amendments. However, as per our comments regarding section 4C Directions—the Act, s 26D(4), it would be beneficial to establish a process whereby there is some form of confirmation that the variation to the direction has been received.
4D Internal review of directions—the Act, s 26D(4)(f)	<p>(1) For the Act, section 26D(4)(f), a relevant service provider may apply to SIRA for an internal review of a direction given under the Act, section 26D(1)(a) or (b) within—</p> <p>(a) 28 days after the direction is given, or</p> <p>(b) a longer period specified by SIRA.</p> <p>(2) An application for an internal review of a direction must be –</p> <p>(a) written, and</p> <p>(b) made in the form and way determined by SIRA.</p> <p>(3) SIRA is not required to conduct a review if a review of the direction has already been conducted under this section.</p> <p>(4) In carrying out an internal review, SIRA may, by written notice to the applicant, request additional information from the applicant.</p> <p>(5) The applicant must provide the additional information to SIRA within the period specified in the notice.</p> <p>(6) In determining an application for an internal review, SIRA may—</p> <p>(a) Confirm the direction, or</p> <p>(b) Vary the direction, or</p> <p>(c) Revoke the direction</p>	<p>The APS supports the inclusion of these amendments.</p> <p>However, we believe that there may be benefit from additional processes or guidelines that clarify what happens regarding the original direction when/if a service provider applies for an internal review. For example, we assume that the original direction will remain in effect pending the outcome of the internal review. Providing this is the case, we note that this may be burdensome on some smaller private practice service providers, i.e., where a direction might have the effect of the psychologist needing to close the practice, which may be detrimental to clients receiving ongoing therapy services if all future appointments are cancelled for a period of time. The APS is unclear about how SIRA would manage the client's ongoing welfare, and how the situation is communicated to the client.</p> <p>Further, the APS notes that SIRA has 28 days to finalise the review. In the context of where a service provider may have had to cancel all of their current and future client bookings because of an initial direction from SIRA, an inappropriately issued direction would likely have a significant impact on the service provider – particularly if the direction is subsequently overturned.</p>

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	<p>(7) SIRA must give written notice to the applicant of the determination of the application for an internal review—</p> <p>(a) within 28 days after the application is received, or</p> <p>(b) if, within 28 days after the application is received, SIRA gives written notice to the applicant that additional time is required to consider the application—within the period specified in the notice.</p> <p>(8) A determination by SIRA takes effect when written notice of the determination is given to the applicant.</p> <p>(9) To avoid doubt, a direction the subject of an internal review remains in force until SIRA determines the internal review.</p>	
<p>4E Register of directed service providers—the Act, s 26G(2)</p>	<p>(1) The register must be—</p> <p>(a) in the form determined by SIRA, and</p> <p>(b) made freely available to the public on SIRA’s website.</p> <p>(2) The register must include the following information in relation to each relevant service provider given a direction under the Act, section 26D, unless SIRA considers it appropriate not to include the information—</p> <p>(a) the relevant service provider’s name,</p> <p>(b) the relevant service provider’s ABN or Australian Health Practitioner Regulation Agency registration number,</p> <p>(c) if applicable, the SIRA provider number for the relevant service provider,</p>	<p>The APS supports the inclusion of these amendments.</p> <p>We note the requirement for SIRA to publish a service providers AHPRA registration number and we agree that this is important. Further, we believe that it is equally important to publish the service provider’s specialty (i.e., psychologist, including area of practice endorsements).</p> <p>It may also be beneficial to list whether there are any other AHPRA imposed conditions, notations, or registration requirements on any given service provider, as this information may also prove useful in the interest of protecting the public from providers who may have had adverse findings against them recently but remain registered with SIRA.</p>

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	<p>(d) the relevant services provided by the relevant service provider,</p> <p>(e) information relating to the direction given to the relevant service provider, including—</p> <ul style="list-style-type: none"> i. the direction given, and ii. the date the direction came into effect. <p>(3) SIRA may amend or remove information from the register—</p> <ul style="list-style-type: none"> (a) if SIRA considers the information to be erroneous or misleading, or (b) for any other reason SIRA considers appropriate. <p>(4) If a direction is varied or revoked following an internal review of the direction, SIRA must update the register within 7 days of the variation or revocation.</p>	
<p>4F Authorised officers— the Act, s 29B(6)</p>	<p>For the Act, section 29B(6), definition of <i>authorised officer</i>, persons designated by SIRA as authorised officers for the purposes of the section are prescribed.</p>	<p>The APS supports the inclusion of these amendments.</p>