

## **FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME**

**Organisation:** The Royal Australian and New Zealand College of Psychiatrists  
**Date received:** 29 September 2016

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29 September 2016

The Hon. Shayne Mallard  
Committee Chair  
Standing Committee on Law and Justice  
Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

By email: [lawandjustice@parliament.nsw.gov.au](mailto:lawandjustice@parliament.nsw.gov.au)

Dear Mr Mallard

**Re: First review of the workers' compensation scheme**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to provide feedback into the current review of the workers' compensation scheme. The RANZCP is a membership organisation responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP currently has more than 5500 members, including more than 4000 fully qualified psychiatrists and around 1400 members who are training to qualify as psychiatrists. The NSW Branch currently has over 1500 members.

RANZCP members perform several roles under the workers' compensation scheme: assessing claims of work-related psychiatric injury, making diagnoses and developing appropriate treatment and rehabilitation plans. The RANZCP also performs a broader advocacy role on behalf of people who are experiencing mental illness and their families and carers.

We commend the government for adopting the key recommendation from the 2014 review by the Standing Committee on Law and Justice (SCLJ). Separating the roles of insurer and regulator is an appropriate response to the conflict of interest between the insurer's role (maintaining the financial viability of the scheme) and the regulator's role (ensuring that claims are fairly assessed on their merits). The structural change is beneficial to people claiming compensation under the scheme and pursuing merits review when their claims are disputed.

However, the RANZCP is concerned that the aims of the new regulator, the State Insurance and Regulatory Authority (SIRA), do not properly reflect its separate role from the insurer. The Act establishing SIRA places a much higher priority on the financial viability of the scheme than on ensuring that claimants receive compensation and a fair assessment of their claims.



Section 492 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) contains essentially the same hierarchy of objectives. A recent investigation by the Victorian Ombudsman (2016) into the management of complex workers' compensation claims demonstrates the dangers inherent in this approach. 'Systemic problems' were identified that demonstrated 'an undue focus on profits at the expense of the rights and well-being of individuals.' The consequences for management of complex claims (involving prolonged incapacity) are especially serious, and a particular concern for the RANZCP, as the claimants often suffer serious mental health problems.

The Victorian Ombudsman identified a pattern where insurers unjustifiably dispute and delay legitimate claims, often by ignoring, misrepresenting or cherry-picking medical testimony. Case studies testify to the tragic effect on vulnerable claimants who are forced to endure prolonged stress, conflict and uncertainty at a time when they most need support. The RANZCP seeks to prevent injured workers enduring such hardships which can delay rehabilitation, aggravate psychiatric conditions, and place an undue burden on families and carers.

While acknowledging the differences in Victoria's WorkCover scheme, which has not separated the regulator from the insurer, the RANZCP believes the Ombudsmen's findings are relevant to NSW. To prevent such systemic problems from affecting NSW workers, it is vital that the Act establishing the new regulator places a higher priority on the needs of injured workers and the need to properly assess claims.

SIRA's principal objectives in exercising its functions are set out in section 23 of the *State Insurance and Care Governance Act 2015* (NSW). The primary objective is as follows:

- a) to promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation and motor accidents legislation and the other Acts under which SIRA exercises functions.

The objectives of ensuring access to treatment and proper supervision of claims, however, are placed much lower in the hierarchy:

- d) to ensure that persons injured in the workplace or in motor accidents have access to treatment that will assist with their recovery
- e) to provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation.

The RANZCP is concerned that this legislative scheme will be interpreted by SIRA and courts to place a higher priority on the financial viability of the insurer, and a correspondingly lower emphasis on treatment and the proper supervision of claims and disputes. This hierarchy of objectives reverses the hierarchy found in the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) section 3, which places a higher priority on the needs of injured employees. Those objectives include the following:



- b) to provide:
  - prompt treatment of injuries
  - effective and proactive management of injuries
  - necessary medical and vocational rehabilitation following injuries
  - in order to assist injured workers and to promote their return to work as soon as possible
- c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses
- d) to be fair, affordable, and financially viable.

To avoid the possibility that this change will be interpreted to the detriment of claimants, we recommend that the Government consider altering the hierarchy of objectives accordingly. An amendment achieving this result would ensure that the regulator is separate not only in name but also in its manner of operation. This change would not only fulfil the SCLJ recommendation, it would help to ensure public confidence in the new scheme, and ensure injured NSW workers receive the care and compensation they are entitled to.

If you would like to discuss any aspect of our submission further, please contact Rosie Forster, Senior Department Manager, Practice, Policy and Partnerships, on  
or

Yours sincerely

Professor Malcolm Hopwood  
**President**

Ref: 04710

#### **References**

*State Insurance and Care Governance Act 2015* (NSW).

Victorian Ombudsman (2016) *Investigation into the management of complex workers compensation claims and Worksafe oversight*. Melbourne, Victoria: Victorian Government printer.

*Workplace Injury Management and Workers Compensation Act 1998* (NSW).

*Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)