

10.12.21

NSW SIRA
Regulatory complaints handling policy review team

Re: draft NSW SIRA regulatory complaints handling policy

Firstly, thank you for the opportunity to provide comment for NSW SIRA's draft regulatory complaints handling policy (November, 2021).

Osteopathy Australia represents many hundreds of osteopaths participating in the state's worker's compensation and transport accident schemes as approved providers, non-approved providers for exempt workers, and as authorised health practitioners. Being key health professional stakeholders for the schemes, osteopaths may make or be subject to complaints made. As such, the draft regulatory complaints handling policy is of particular importance to us and our members and their scheme participation outcomes. Our points herein clarify our concerns with the draft complaints handling policy.

Lack of complaint handling process beyond scope of 'frontline staff'

We acknowledge the upfront scope of the policy is specific to frontline complaints handling staff; however, it does make mention that at times a complaint may be managed by staff "no less senior" than the first reviewer in what represents a tiered response. There is absolutely no mention of the delegations of these staff, which is particularly problematic where a complainant or respondent exhausts the highest level of delegation overseeing a complaint on the *frontline*. Would a complaint then be relayed to the NSW SIRA bureaucracy, and if so, to which team or teams beyond the frontline? These are critical details needed to assure the public and all stakeholders of transparency and accountability.

In so far as a complaint may be reviewed by "more senior staff", there is a concerning absence of process information or guiding principles applicable to their role in complaint management. Furthermore, there is no insight given into the credulity or appropriateness of these "more senior staff" in complaint management for quality assurance. The emphasis appears to be solely on the operations of frontline staff in high level detail. If it is the case that the same processes, timelines and methods of address or redress apply, and that certain minimum training in complaint handling will apply to all delegations involved, this should be clearly stated in the policy. High stakeholder confidence in equitable complaint management and governance is a desired outcome of the draft policy, and including the detail suggested would further this end.

Complaints about NSW SIRA itself and conflicts of interest mitigation

We note the draft policy provides that on appeal, a complaint is to be reviewed by a person or delegate different to the initial reviewing staff member; this is one mechanism for the mitigation of conflicts of interest, however alone, is not adequate. In situations where a complaint is made about a division or team within NSW SIRA for example (such as the

complaints team itself), it simply would not be appropriate for staff within that division to review that complaint despite being a separate person within the team.

Further, we note there is an absence of any information about how broader conflicts of interest would be mitigated when a complaint is received by the complaints team regarding another NSW SIRA team or division. This detail is of the essence given NSW SIRA acknowledges in the draft that it, its processes or operations may be the focus of a complaint. The general neutrality of NSW SIRA toward external complaints and complainants is generally more assured by the now policy than those directed toward NSW SIRA. We therefore would strongly recommend a consistent rigorous approach to conflicts of interest management be incorporated into the policy.

Addressing the party subject of the complaint and evidence that can be sought

It is evident that NSW SIRA will communicate with all parties involved in a complaint, either by writing, phone or other means. However, it is essential that the types of information and evidence within the scope of NSW SIRA's complaint handling powers to request from the party subject of the complaint are specified. For example, could the agency request records, written reports, third party witness evidence/statements, legal statements, a statutory declaration, or beyond? A broad statement outlining the types of evidence that may be requested of parties in managing a complaint would be a welcome addition to the draft policy.

Point at which other regulatory bodies are informed of a complaint

It is not clear in the draft policy whether NSW SIRA is obligated to, or will, alert other regulatory bodies on initial receipt of a complaint that has not been investigated, or only after a determination in relation to the substance of a complaint. For health practitioners bound by codes of the Australian Health Practitioner Regulation Agency (AHPRA), this is important information that should not be omitted. Complaints to the regulator can lead to fines, practice privilege suspension, or conditions limiting practice and are therefore consequential. Given NSW SIRA notes in the draft policy that complaints can be 'frivolous or vexatious', interagency communication protocols should be included, as should any follow up process NSW SIRA would apply in alerting the regulator of the frivolity or vexatiousness of a complaint.

Overall need for procedural clarity

Overall, the policy reads well. If there are nevertheless any implications to be drawn from this correspondence and the above recommendations, it is that there is greater need for procedural clarity in a range of areas. The policy itself is not a poorly constructed document by any measure. A procedure would complete the policy and leave less room for misinterpretation, uncertainty, and help to achieve the ends of the policy: presumably to assure a high quality complaints handling process.

Building on the previous points, a procedure is indicated for inclusion to outline the minimum steps that each complaint investigator will follow and in what sequence, the considerations to be made at each step, and the minimum evidence and right to reply the investigator will apply to all parties. We acknowledge this detail may be contained in an agency internal document, but in the least, a decision diagram or simple checklist of process steps would assist in clarifying this essential detail for the public.

For further information about the points made in this correspondence, and/or to communicate next steps and amendments to be made to the policy, please contact me via phone: 02 9410 0099 or email: clinicalpolicy@osteopathy.org.au

I trust this correspondence and its recommendations are of assistance

Regards

Peter Lalli

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Osteopathy Australia