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The Manager  
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The Treasury

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### **MIGA submission – Disclosure in general insurance: Improving consumer understanding**

MIGA appreciates the opportunity to contribute to The Treasury consultation on Disclosure in general insurance: Improving consumer understanding.

MIGA is a medical defence organisation and medical / professional indemnity insurer advising, assisting and educating medical practitioners, medical students, healthcare organisations and privately practising midwives throughout Australia. With over 33,000 members and a national footprint, MIGA has represented the medical profession for 119 years and the broader healthcare profession for 16 years. It contributes to engagement around insurance regulatory issues, including ongoing development of medical indemnity insurance reforms and other general insurance reform proposals.

#### **MIGA's position – further disclosure obligations for medical indemnity insurance are unnecessary**

As a medical and professional indemnity insurer, MIGA has significant concerns about the proposed recommendations around general insurance disclosure to the extent they will impact the provision of medical indemnity insurance.

The existing degree of medical indemnity regulation and the sophisticated nature of its consumers mean changes to disclosure in this line of insurance are unnecessary, and potentially counter-productive.

Medical indemnity is unique among professional indemnity insurance in being classified as a retail general insurance product.<sup>1</sup> Unlike other lines of general insurance, it is therefore subject to a more stringent range of requirements and regulation, both through legislation and a Federal Government contract.<sup>2</sup> This includes significant disclosure obligations that arise from a range of government schemes, such as the Premium Support Scheme, Run-Off Cover Scheme, High Cost Claims Scheme, Universal Cover / Insurer of Last Resort Scheme and Exceptional Claims Scheme.

There is nothing to suggest those who seek medical indemnity insurance lack sufficient understanding of cover available, that more disclosure is required or that the current framework could be improved. The Treasury's discussion paper and other inquiries and reviews it refers to focus on issues arising in domestic and other personal lines of general insurance.

The Treasury's decision to exclude medical indemnity insurance from proposed general insurance product design and distribution powers, and ASIC intervention powers, is we believe a recognition of the unique nature of this line of insurance. Imposing additional obligations adds additional complexity and potential confusion.

In addition, changes to the current legislative framework for medical indemnity are still to be finalised, particularly around the Premium Support and Universal Cover obligations. Accordingly, we believe it would be premature to consider any changes to disclosure obligations for this line of insurance.

<sup>1</sup> Section 761G, *Corporations Act 2001* (Cth); Regulation 7.1.17A, *Corporations Regulations 2001* (Cth)

<sup>2</sup> Legislation includes the *Medical Indemnity Act 2002* (Cth) and *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (Cth). Contracts include the Premium Support Scheme contracts, entered into between various medical indemnity insurers, including MIGA, and the Commonwealth

However, MIGA does support exploring non-traditional ways of communicating policy information to insureds and consumers.

### **Disclosing last year's premium on renewal**

An obligation to disclose last year's premium on insurance renewal notices could be problematic for medical indemnity insurance.

The underlying insurance risks for a medical practitioner can vary from year to year, significantly affecting their premium.

As a practitioner progresses through internship, residency and specialist training, their risk will vary based on level of supervision, experience and nature of engagement with the hospital or practice within which they work. When a practitioner completes specialist training, they may elect to add or remove areas of practice.

Accordingly the previous year's premium may be of little, if any, significance to a practitioner unless there has been no change in their practice circumstances since the previous insurance renewal.

As a matter of practice, MIGA already discloses last year's premium to its members and policyholders on request. This is an appropriate way to meet a practitioner's desire for further information. A proactive obligation to provide this information could lead to significant misunderstandings amongst practitioners.

### **Explaining premium increases and providing component pricing**

A requirement to explain all aspects of premium increases, and provide component pricing, could cause significant issues for medical indemnity insurance.

Medical indemnity insurers are required to consider a range of factors in setting a premium.<sup>3</sup> Most of these factors, such as nature of risk, claims handling, capital raising and reinsurance expenses, reasonable profit margin and provisioning for future liabilities are factors which can be difficult to explain in an easily understandable manner at the time of offering cover and / or incorporate commercially sensitive information.

In addition, medical indemnity insurance offers are required to be "*reasonable and appropriate*", based on

- (a) Nature of healthcare provided
- (b) Kinds of claims and incidents normally covered, and exclusions provided, in comparable policies.

Given minimum cover requirements, issues around under-insurance do not arise for medical indemnity insurance as they can for other lines of general insurance.<sup>4</sup>

Provision of 'claims made' cover for an area of professional risk is fundamentally different to the provision of domestic and personal lines insurance, often on a 'claims incurred' basis, the latter being the focus of the discussion paper and preceding reviews and inquiries.

There can be a wide range of risks which fall under medical indemnity policies. For example, MIGA provides medical indemnity insurance cover not just for civil damages claims arising out of a practitioner's care and treatment of a patient, but also claims in relation to:

- (a) Expenses for various matters involving professional discipline, coroners, Medicare, training, workplace, reputation, personal safety, communicable diseases and mandatory breach notification
- (b) Statutory liability for certain workplace health and safety, environmental and privacy penalties
- (c) Certain liabilities for partnerships and complaints about others, trainee supervision, public patients, volunteer practice, clinical trials and unintentional intellectual property rights infringement.<sup>5</sup>

Accordingly, it would be very difficult to cogently and meaningfully explain premium pricing for individual components of medical indemnity insurance cover, particularly in a way that did not disclose commercially sensitive information.

Given the existing requirements around calculation of insurance premium, disclosure to practitioners and the breadth of insurance cover offered, MIGA considers it would be inappropriate to impose additional requirements around explaining premium increases and component pricing on medical indemnity insurance.

<sup>3</sup> Section 7A, *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (Cth)

<sup>4</sup> See Part 3, Division 1 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (Cth)

<sup>5</sup> Information about MIGA's medical indemnity insurance cover for medical practitioners is available at [www.miga.com.au/insuring-with-us/medical-practitioners](http://www.miga.com.au/insuring-with-us/medical-practitioners)

### Use of Key Facts Sheets

MIGA does not see benefit in extending the use of Key Facts Sheets to medical indemnity insurance.

When making an offer of insurance cover a medical indemnity insurer is already required to provide a “*clear, concise and effective explanation of*”

- (a) significant characteristics and features
- (b) significant rights, terms and conditions and obligations
- (c) the risks involved in not accepting the offer
- (d) options available if the offer is not accepted.<sup>6</sup>

It is unclear how a Key Facts Sheet for medical indemnity insurance would provide any more useful information to consumers.

In addition, MIGA is unconvinced that an appropriate explanation of medical indemnity insurance, including unique coverage requirements and government schemes, can be effectively and appropriately explained within existing Key Facts Sheet frameworks.

### Modern disclosure approaches

MIGA supports exploring more effective or innovative ways to communicate information on policies to consumers.

These mediums should operate as an opportunity to communicate in different ways, not as a compulsion to do so, given the challenges of communicating information in complex fields such as medical indemnity insurance.

If you have any questions or would like to discuss, please contact Timothy Bowen, 02 8905 3400 / [timothy.bowen@miga.com.au](mailto:timothy.bowen@miga.com.au).

Yours sincerely



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<sup>6</sup> Section 24, *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (Cth)