09 August 2019

Jacqueline Rush, Senior Policy Advisor
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: IDRSubmissions@asic.gov.au

Dear Ms Rush

Consultation Paper 311 – Internal dispute resolution: Update to RG 165

Thank you for the opportunity to respond to ASIC's Consultation Paper 311 on proposals to update internal dispute resolution requirements that apply to Australian financial services licensees.

MDA National

The MDA National Group (MDA National) is made up of MDA National Limited (MDANI) and its wholly owned subsidiary MDA National Insurance Pty Limited (MDANI). MDANI is medical indemnity insurer authorised by the Australian Prudential Regulation Authority and holder of Australian Financial Services Licence No. 238073, which issues professional indemnity insurance and medical practice indemnity policies to the members of MDA National Limited and a number of non-member insureds.

MDA National Limited is an Australian company limited by guarantee. As a not-for-profit, member-owned medical defence organisation its objectives are the support and protection of its member medical practitioners and medical students, and the promotion of good medical practice in Australia.

ICA submission

As a member of the Insurance Council of Australia (ICA), MDA National supports the submission made by the ICA as the representative body of the general insurance industry in Australia. Along with the ICA, MDA National recognises the importance of having an effective internal complaints regime.

This submission does not address all the proposals in Consultation Paper 311 but comments on areas which potentially will have material impact on MDA National's ability to respond to complaints from the particular perspective of the provider of medical indemnity products.

General position

In general, MDA National is concerned that the proposals and examples in the revised RG 165 do not always take into account the variance in financial products and in particular, the:

- differences between professional indemnity and other insurance products;
- complexity of, and highly regulated, medical indemnity insurance product;
- sophistication of the purchaser of the medical indemnity product;
- compulsory nature of the purchase;
- insurer of last resort provisions; and
- underlying complexity of issues and length of time needed to manage a medical indemnity claim

which flow into any complaint that may made. The complexity of the product is reflected in the automatic treatment of all medical indemnity matters by AFCA as complex disputes.

Unlike first party insurance, medical indemnity provides cover to the Insured for liability the Insured has to third parties (ie patients) and matters that may arise through the medical regulatory and professional bodies. Consequently, the medical indemnity product has the Insurer and Insured "working together" to assist the Insured address claims or investigations made by a third party (ie patient or regulator). It is often the case, that a complaint's origin is the Insured's frustration and nonacceptance of a regulator or court outcome or the operation of a government scheme relating to premium or coverage which is taken out on the Insurer but which the Insurer is in no position to change.

B1Q1 – social media channels

MDA National recognises that social media channels now form a legitimate avenue of communication. Unfortunately, these channels can be the platform for "less inhibited' and abusive comments. MDA National fully supports ICA's comments in this area and its call for guidance and suggests that the full IDR process should not necessarily be applied in these circumstances.

B2Q2 – definition of complaint

MDA National concurs with the ICA comments re discussions around premium and negotiation of policy terms. As such negotiations are commonplace, it is concerned that this also not be treated as a systemic issue.

MDA National is concerned that the definition of complaint may be interpreted to cover non-financial products or services. The guidelines should clearly indicate that the definition of complaint only applies to a complaint which directly relates to an organisation's licensed financial products and services (as compared to other products or services which may have no relationship with financial products, for example, promotion of good medical practice in Australia or membership issues).

B3Q1 - complainant

The definition of consumer or complainant should clearly exclude "non-consumers" (other than prospectives) of the organisation's financial products or services. If the medical indemnity product is to be covered by RG 165, it should also be very clear that it is restricted to medical indemnity insurance products as provided under

Corporations Act s761G (5)(b)(vii) / Corporations Regulation 7.1.17A and not include any other professional indemnity / wholesale covers.

The complexity of determining if other forms of professional indemnity cover may or may not fall within the definition will cause considerable confusion and burden to be placed on staff (and frontline staff in particular) if the clarifications are not made. Further, medical indemnity providers would not welcome an interpretation that would enable third parties, for example such as patients, to be able to make complaints in the context of their medical practitioner's medical indemnity insurance.

B4Q1 – recording of all complaints received

Subject to any other comments in this submission, MDA National requests that medical indemnity providers reporting obligations be clearly restricted to complaints from the acquirers or prospective acquirers of its retail financial products.

MDA National strongly supports the concerns raised in the ICA submission regarding the additional burden being placed on front line staff to record all complaints and proposed data set collection requirements plus consider if it raises systemic issues. It concurs that the resolution of straightforward complaints and expressions of dissatisfaction may be hampered by the proposed data recording and collection process. Given the background of our Insureds (or prospective insureds) it is also likely that they would see this as an unnecessary imposition on their time and privacy and unrelated to their concerns. MDA National also concurs that systemic issues are better determined by other areas of the business (with input from frontline staff).

Further, staff themselves may become confused and frustrated in determining whether a comment has become an expression of dissatisfaction or complaint or even falls within a category that needs to be reported or not. This in turn may further hamper the expedient resolution of issues at the first point of contact or within a relatively short period of time.

Another example is the unreasonable complainant who may call on an hourly, daily, weekly, annual basis either repeatedly raising the same points or continually bringing up everchanging grievances. These interactions have the potential to be extremely time consuming and the proposals may further prolong the process and cause confusion and difficulties for frontline and claims staff. It is suggested that further guidance be provided ASIC's expectations in these situations.

We note that para 53 of the Consultation Paper and RG 165.88 seem to indicate that complaints will be resolved to the complainant's satisfaction. It is suggested that the guidelines should recognise that not all complainants are satisfied with the outcome or will necessarily provide any form of response.

B5 - prescribed identifiers and data set for all complaints

Aside from concerns being raised by the ICA about applying the proposals to simple complaints, we are concerned that the proposals conversely do not recognise complex complaints and the data collection and reporting requirements will further impose on, and impede, an already complex process.

While much of the information required to be collected may already be held by the insurer this will not be the situation when dealing with prospective insureds. As mentioned earlier, it is likely collecting the required information from prospective complainants may be viewed as an imposition and likely to interfere with any resolution of concerns raised. The collection of personal information, which would otherwise have not been collected, will also need to be managed as part of Privacy Act compliance requirements.

B7 – publication of data at aggregate and firm level

Given the small number of participants in the medical indemnity market we consider there should not be publication of complaints data at firm level.

We query whether consideration has been given to the possibility of a vexatious complainant's numerous complaints potentially skewing the data for a firm ie number of complaints compared to number of complainants. This may particularly become apparent in niche markets with very small numbers of participants.

B8 – minimum content of IDR responses

MDA National generally agrees with the need to identify and address issues in the complaint and clearly provide reasons for decisions. However, it has concerns that the proposal requires **all** issues to be addressed. There are many instances when negative comments are not material or are irrelevant to the crux of the complaint. We also query how it can be determined that the complainant has been 'fully informed'. We submit that responses should be such that a reasonable person would understand the grounds and reasons for a decision.

We also concur with ICA comments regarding vexatious claims. It should be recognised that some complainants are unreasonable and do not act in good faith. Such complainants will seek and take up considerably more staff time compared to other insured's seeking assistance and resolution of their issues. Also, in the medical indemnity sphere there is the added challenge of dealing with Insured's who have a health impairment but do not accept a regulators imposition of restrictions or a suspension on their ability to practice. It is not uncommon for these Insured's to take this out on their medical indemnity insurer. We submit that proposed RG165.183 does not reflect the complexity of such situations and, in practice, is easier said than done.

B11 – reduced maximum IDR timeframes

MDA National recognises the benefit in dealing with complaints promptly and every effort is made to respond within set IDR timeframes. However, the complexity of medical indemnity matters often runs over into the complexity of the complaint. A proper, reasoned response may require seeking external input and working within other regulator or court timeframes. While acknowledging the need to keep an informant reasonably informed of progress, a rigid timeframe can be inappropriate.

B15 - Transition

We concur that 6 months is inadequate for the transition phase. It should also be noted that the medical indemnity industry is about to be subject to other reforms associated with the *Medical and Midwife Indemnity Legislation Amendment Bill 2019* (Cth) which will also require the provision of significant resources and staff time.

MDA National welcomes any further opportunity to discuss issues arising from these comments particularly as it applies to the medical indemnity sector or to provide further information that may assist.

Yours sincerely

Ian Anderson
CEO