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14 August 2019

Ms Jacqueline Rush
Senior Policy Adviser
Australian Securities & Investments Commission

Via email – IDRSubmissions@asic.gov.au

Dear Ms Rush

MIGA submission – ASIC internal dispute resolution: Update to RG 165

MIGA appreciates the opportunity to contribute to ASIC's consultation on the draft updated Regulatory Guide 165, *Internal dispute resolution*.

A copy of its Submission is enclosed.

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 34,000 members and a national footprint, MIGA has represented the medical profession for close to 120 years and the broader healthcare profession for 16 years.

MIGA would welcome the opportunity of discussing its concerns with ASIC.

You can contact Timothy Bowen, telephone 1800 839 280 or email [redacted], if you have any questions about MIGA's Submission.

Yours sincerely

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MIGA Submission

Australian Securities and Investments Commission

Internal Dispute Resolution
Update to Regulatory Guide 165

August 2019

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14 August 2019

MIGA Submission – ASIC Internal Dispute Resolution

Executive Summary – MIGA's position

1. As a medical defence organisation and medical / professional indemnity insurer MIGA endorses the need for and value of appropriate internal dispute resolution (**IDR**) processes.

2. An appropriate IDR process is tailored to the nature of the products, services and sector it deals with. It must be fair, sensible and practical, with the right balance of consumer protection and both business and sector realities.

3. A range of proposed updates to RG 165 are inappropriate for medical indemnity insurance where they
   - Fail to recognise the unique nature of medical indemnity insurance and the nature of the products and services it provides to the medical profession
   - Respond to problems unrelated to medical indemnity insurance
   - Impose obligations which are ill-suited to medical indemnity insurance.

4. MIGA's position is
   - Medical indemnity insurance should be excluded from the proposed updated RG 165
   - The current RG 165 should remain in place for medical indemnity insurance pending
     - Implementation of upcoming medical indemnity insurance legislative reforms
     - Detailed consideration whether any changes to the existing RG 165 for medical indemnity insurance are warranted
   - If changes are warranted to RG 165 for medical indemnity insurance, a bespoke regulatory guide for IDR in medical indemnity insurance should be developed from the existing RG 165 in consultation with industry stakeholders, including MIGA.

5. MIGA's position is based on
   - The unique nature of medical indemnity insurance as compared with other lines of retail general insurance – this has already been recognised by the intended exclusion of medical indemnity insurance from product design and distribution obligations applying to other lines of retail general insurance
   - Proposed RG 165 updates arising out of concerns emerging in first party retail insurance contexts, not professional indemnity and third party insurance, the latter of which reflects medical indemnity insurance products
   - A range of practical problems which the proposed RG 165 updates offer for medical indemnity insurance business.

MIGA's interest

6. 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.

7. With over 34,000 members and a national footprint, MIGA has represented the medical profession for almost 120 years and the broader healthcare profession for 16 years.

8. It contributes to industry engagement on insurance regulatory issues, including ongoing development of medical indemnity insurance reforms and other general insurance reform proposals, most recently Treasury's consultation on disclosure in general insurance and proposals for the removal of the claims handling exemption.

Unique nature of medical indemnity insurance

MIGA position at a glance

A range of proposed RG 165 updates are unwarranted, unsuitable and inappropriate for medical indemnity insurance, given its significant differences to other lines of retail general insurance and where it is much closer in nature, degree of regulation and market type to other, non-retail general insurance products which are not covered by RG 165.

The different features of medical indemnity insurance

9. Medical indemnity is unique amongst insurance markets, particularly when compared with other lines of retail general insurance.

10. Medical indemnity is unusual among professional indemnity insurance in being regulated as a retail general insurance product.[1]

11. Unique features of medical indemnity insurance as compared with other lines of retail general insurance include

- **Regulation**
  - High degree of regulation through Federal Government schemes, both via legislation applying to all insurers and contracts between the Federal Government and some, but not all, insurers[2]
  - Insurer of last resort obligations, which are evolving into universal national coverage obligations as part of a range of intended regulatory changes to the Federal Government legislation currently being finalised
  - Insurance provided by state and territory government schemes to medical practitioners treating public patients in public hospitals not being subject to the same regulatory requirements as comparable insurance cover provided by MIGA (and other like insurers) to practitioners in both the public and private sectors
- **Market**
  - A relatively small body of insureds - over 112,000 registered medical practitioners in Australia who are currently practising
  - Mandatory professional indemnity insurance requirements under the *Health Practitioner Regulation (National Law)*, in place for many years, creating a sophisticated market of insureds
  - Significant engagement by professional groups, such as the Australian Medical Association, with medical indemnity insurance issues
- **Product**
  - Mandatory minimum product standards which regulate the offers to be provided by insurers and result in significant consistency in the scope of products offered by medical indemnity insurers
  - Very different underwriting and pricing considerations to those of other retail general insurance lines, given the wide range of professional specialties and practice contexts involved.

Unique nature of regulation

12. Unlike other lines of retail general insurance, medical indemnity insurance is subject to additional requirements and regulation, both through legislation and Federal Government contracts. These include the Premium Support Scheme, Run-Off Cover Scheme, High Cost Claims Scheme, Universal Cover / Insurer of Last Resort Scheme and Exceptional Claims Scheme.

13. Changes to the current legislative framework for medical indemnity set out in the draft *Medical and Midwife Indemnity Legislation Amendment Bill 2019* (Cth) are still to be finalised, particularly around the Premium Support, High Cost and Exceptional Claims Schemes, and Universal Cover obligations.

14. The degree of regulation for medical indemnity insurance has parallels with compulsory third party or workers' compensation insurance. Notably those lines of insurance do not face retail general insurance obligations.

[1] Section 761G, *Corporations Act 2001* (Cth); Regulation 7.1.17A, *Corporations Regulations 2001* (Cth)

[2] 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

15. In addition, medical practitioners working in the public healthcare system can obtain cover from state or territory schemes, which do not face retail insurance obligations that apply to medical indemnity insurers such as MIGA.

Different nature of the market

16. The makeup of the medical indemnity insurance market is very different to that of other lines of retail general insurance.

17. Medical indemnity insurance involves a small number of insurers (five in total) offering a similar insurance product to a sophisticated market with a limited number of insureds who are required as part of their registration to have professional indemnity insurance cover. It also has active professional interest groups, highly engaged with medical indemnity insurance and who have been closely involved with ongoing reform initiatives.

18. This is very different to other retail general insurance products, usually offered by a larger pool of insurers across the Australian population, which does not involve compulsory cover and which vary considerably in the coverage they offer.

Differences in product and services offered

19. The nature of insurance cover offered by medical indemnity insurance is comparable to other lines of professional indemnity insurance, which do not face retail general insurance obligations.

20. The compulsory nature of this insurance and the minimum product standards mean there are significant consistencies in cover offered by the small number of insurers in the market.

21. The variation in specialties and practice scope of medical practitioners mean there can be considerable differences in underwriting and pricing considerations between specialties and scopes of practice.

22. In addition, medical defence organisations such as MIGA provide a broader offering than medical and professional indemnity insurance.

23. MIGA provides medical and professional indemnity insurance through Medical Insurance Australia Pty Ltd, which is a wholly owned subsidiary of the doctor owned mutual not-for-profit MDASA Ltd. MIGA comprises of these two organisations, which provides a range of membership services and benefits to doctors, such as medico-legal advice, risk management and education.

24. The issues it deals with for its insureds are not just the conduct of matters requiring insurance cover, but rather a range of matters around doctors in practice.

Regulatory, market and product differences warrant different IDR processes

25. The very different nature of medical indemnity insurance as compared with other lines of retail general insurance means careful sector-specific consideration is required before imposing broader retail general insurance obligations on medical indemnity insurance.

26. What is proposed under the updated RG 165 involves significant risks of
    - Responding to issues which do not arise in medical indemnity insurance
    - Creating conflicting obligations under different regulatory regimes
    - Imposing regimes which do not fit well with the products and services offered.

27. MIGA believes the necessary sector-specific consideration has not occurred. What is proposed through RG 165 responds to issues which do not arise in medical indemnity insurance. It poses risks of creating conflicting obligations and imposing new obligations which do not fit well with the products and services it and other medical indemnity insurers offer. This is exacerbated where reforms to medical indemnity insurance regulation, particularly around the Premium Support and Universal Cover obligations schemes, remain to be finalised.

28. Treasury's decision to exclude medical indemnity insurance from proposed general insurance product design and distribution powers, and ASIC intervention powers, is a recognition of the unique nature of this line of insurance. It suggests consideration ought to be given to excluding medical indemnity insurers from the updated RG 165 on the same grounds. In this context imposing additional obligations adds additional complexity and potential confusion.

Recent internal dispute resolution concerns do not relate to medical indemnity insurance

MIGA position at a glance
The arguments for RG 165 updates arise out of issues in the provision of first party insurance, not medical indemnity insurance. A case for change to RG 165 application to medical indemnity insurance has not been made.

29. Medical indemnity insurance which MIGA provides predominantly covers third party risks.

30. MIGA provides cover for liabilities to third parties and expenses involved in other third party based processes, such as disciplinary / regulatory matters, investigations and employment / workplace / professional college or association disputes.

31. The evidence ASIC relies on to support proposed RG 165 updates does not indicate any issues with medical indemnity insurance. In particular
    - ASIC report 603 only explored general insurance involving home and contents, vehicle, travel and consumer credit insurance
    - Neither the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**the Royal Commission**) nor the Ramsay Panel Review raised issues with medical indemnity insurance.

32. The concerns identified by the Royal Commission arose in first party insurance contexts, involving personal lines or life insurance. These concerns focused on how an insurer interacts with its insured in deciding to provide insurance payments to them for various defined events. They did not raise concerns with medical indemnity insurance, or professional indemnity insurance and third party liability cover more broadly.

33. By contrast the focus in medical and professional indemnity insurance is on assisting insureds respond to third party liabilities and processes.

34. Attempting to deal with issues arising in a first party insurance context do not easily fit into a third party insurance context.

35. Accordingly, proposed RG 165 updates should be limited to the contexts they are designed to address, which is not medical indemnity insurance.

36. This is further reinforced by medical indemnity insurance being much closer in many aspects to other lines of insurance not covered by retail general insurance obligations, such as
    - Comparable scope of insurance offered by state and territory regimes to medical practitioners treating public patients in public hospitals
    - The same nature of insurance as compared with other lines of professional indemnity insurance
    - Comparable degrees of regulation in compulsory third party and workers' compensation insurance.

37. If these lines of insurance, with many of the features of medical indemnity insurance, do not require updated RG 165 obligations and broader retail general insurance obligations, there is no reason why they are required for medical indemnity insurance.

Proposals B2, B4 and B5 - Expanding scope of IDR complaints and data collection

MIGA position at a glance

MIGA opposes expanding the scope of medical indemnity complaints which fall under IDR processes and are both recordable and reportable to ASIC, created by the proposed removal of the exemption for complaints resolved within five business days. The five day exclusion is an important and appropriate exemption for medical indemnity insurance, and should remain in place. Additional data collection obligations should not apply.

Issues with removing the five day complaint resolution exception and expanding data collection

38. MIGA opposes RG 165 changes involving significant expansion to the scope of what constitutes a complaint warranting an IDR process, requiring significant levels of data collection and ASIC reporting.

39. This would significantly increase complaint volumes, resourcing and administrative burdens, potentially exponentially. They would also pose a range of inappropriate practical uncertainties and impediments.

40. MIGA acknowledges the changes in the definition of a 'complaint' itself are relatively limited (proposals B1 and 2), namely by expanding it to include
    - Dissatisfaction made to or about an organisation, including on their own social media platforms (where identifiable and contactable) instead of only to an organisation via more traditional channels
    - Dissatisfaction about its staff, in addition to its products, services and complaints handling
    - Where a response or resolution is legally required, in addition to being explicitly or impliedly expected
    - Confirmation that it covers verbal dissatisfaction, matters considered to be without merit and where goodwill payments are made without admission of error.

41. It is not these changes which are the focus of MIGA's concerns. Instead the key concerns for medical indemnity insurance lie with
    - Expanding the scope of what is a recordable complaint which falls under IDR processes (proposal B4)
    - Wide range of data required to be collected (proposal B5).

42. The unique and broad nature of both medical indemnity insurance and MIGA's breadth of product and service offering cause it significant concern about these proposals.

43. For medical indemnity insurance, the current RG 165 provisions excluding from IDR processes complaints or disputes resolved to a customer's complete satisfaction by the end of the fifth business day after the complaint or dispute was received remain appropriate.

44. Removing this exemption for medical indemnity insurance would not assist with what ASIC seeks, namely by allowing a better understanding of consumers' needs and the key drivers of complaints, to identify emerging issues or to optimise consumer experience by informing product and service delivery improvements.

45. Moreover, there is no evidence of any lack of understanding these issues as they currently stand for medical indemnity insurance. The very limited number of complaints to the Australian Financial Complaints Authority and the predecessor Financial Ombudsman Service relating to medical indemnity insurance reinforces this.

46. The broad nature of the data proposed to be required for recording and reporting is a significant change from a regime involving no specific data recording requirements. It goes well beyond the current requirement of

> *You should establish a recording system for managing complaints or disputes, while protecting personal information and ensuring complainant or disputant confidentiality.*
>
> *The system should specify the steps for identifying, gathering, maintaining, storing and disposing of records.*
>
> *You should record your complaints or disputes handling and take the utmost care in maintaining and preserving such items as electronic files and magnetic recording media. Complaints or disputes handling data is a useful means of tracking compliance issues or risks. We may require you to produce complaints or disputes data in certain circumstances. You should, therefore, keep this data in an accessible form* (RG 165, Appendix 1, Section 8.1).

47. To require such a fundamental change requires a compelling case. That has not been offered for medical indemnity insurance. As set out below, the proposal raises a range of other concerns, uncertainties and risks of adverse, unintended effects.

The scope of a complaint - raising issues vs dissatisfaction / connection with financial product

48. The broadening of the scope of complaints falling under IDR processes raises significant issues around what is 'dissatisfaction' constituting a complaint.

49. The clarification that staff grievances or work-related problems, simple requests for information and comments made when a response is not required (i.e. surveys or bringing matters to an organisation's attention) are not meant to be caught by IDR processes is helpful, but insufficient.

50. There is a broader range of potential issues which could be raised by insureds or prospective insureds in a medical indemnity context which may or may not meet the definition of a complaint.

51. For example, it is unclear whether the following would be considered 'complaints' relating to products and services in medical indemnity insurance
    - Querying initial and renewal terms for insurance cover, particularly around premium – at what point is this an engagement with an insured or potential insured, and at what point is it dissatisfaction constituting a complaint?
    - Expressing frustration at the nature of insurance coverage limitations or third party processes – at what point is this not directed at MIGA, given it is outside its control, and at what point does it become dissatisfaction constituting a complaint?
    - Wanting MIGA to do more in relation to the products and services it offers – at what point is this engagement with MIGA, and at what point does it become dissatisfaction?

52. In addition, MIGA is concerned about the extent to which an expanded scope of IDR complaints and data collection will capture complaints around its non-insurance products and services. This includes risk management, education, industry advocacy or other professional engagement.

53. Whilst s 912A of the *Corporations Act 2001* (Cth) limits retail insurance complaints falling under IDR processes to those made by retail clients in connection with the provision of financial services, there would be a range of views about whether non-insurance products and services may be connected in some way with providing insurance products or services.

54. For example, is a complaint about MIGA risk education required to be undertaken as a condition of insurance, or recommended during a professional disciplinary process covered by medical indemnity insurance, something in connection with its financial services? If it is, this is an unnecessarily broad range of potential complaints or dissatisfaction which MIGA would be required to deal with under IDR processes. Such processes are inappropriate for dealing with issues relating to the content of education.

55. Accordingly the breadth of product and service offered by MIGA exacerbate uncertainties around 'complaint' definition in the medical indemnity insurance context, making retention of the five day exclusion of complaints resolved from IDR processes an imperative.

Issues arising from nature of cover

56. Much of MIGA's work involves providing cover for third party liability claims, covering expenses associated with regulatory, disciplinary and investigative processes and providing medico-legal and risk management advice relating to the products and services it offers.

57. This means a broader definition of complainant requiring an IDR processes means a wide range of things well beyond MIGA's control are caught by IDR processes, which are an entirely unsuitable forum for resolving such issues.

58. If 'dissatisfaction' arises, it is more often amidst a stressful legal process MIGA is assisting its insured with, or going to the nature of medical indemnity insurance regulated under the Federal Government schemes.

59. For example, an insured may express dissatisfaction about
    - Actions of a court, tribunal, regulator or investigatory body, or other parties involved in those processes

- Matters involving the operation of the Federal Government scheme, such as the Premium Support Scheme or Insurer of Last Resort obligations
- Things that MIGA does not cover, such as a civil claims covered under state and territory insurance regimes where MIGA only provides cover around various other proceedings and investigations, where the insured seeks MIGA's intervention in a civil claim it has no role in.

60. The five day exclusion assists in explaining to insureds MIGA's role and both what it can and cannot do. Abolishing it means all these matters will often need to be treated as complaints requiring IDR processes, which is unwarranted and inappropriate.

Providing both retail and non-retail products to same insureds

61. MIGA provides both medical indemnity insurance and professional indemnity insurance to medical practitioners and the healthcare sector.

62. A medical practitioner may hold both a medical indemnity insurance product and a healthcare professional indemnity insurance product. The former would fall under RG 165 as a retail product, the latter would not.

63. This creates significant issues for MIGA's staff in determining whether a complaint relates to a retail product, and thereby falls under RG 165 and its IDR requirements, or if it does not.

64. The problem becomes even more acute given MIGA's medical indemnity insurance policy for medical practitioners provides both retail and non-retail general insurance cover.[3]

65. For example
    - Coverage related to third party liability claims against a medical practitioner, or other disciplinary and administrative proceedings involving them, is retail general insurance cover and regulated by RG 165
    - A range of other insurances under MIGA's Medical Indemnity Insurance Policy, including employment / industrial disputes, loss of documents, protection of reputation, professional relations expenses and mandatory breach notification, arguably fall outside the scope of retail general insurance cover, and would not be regulated by RG 165.

66. Inevitably this creates significant challenges for MIGA staff determining what is a complaint falling under RG 165 and what is not.

67. Even more importantly retail cover can interact with non-retail cover, such as
    - Disciplinary proceedings and an employment dispute arising out of the same circumstances
    - An administrative process via the Office of the Australian Information Commissioner involving an insured arising out of the same circumstances as assisting the same insured with mandatory data breach notification.

68. In those situations, it could prove very difficult to work out what is a complaint relating to the retail insurance component, what is a complaint relating to the non-retail insurance component and consequently whether to apply RG 165 to any or all of the complaint.

69. Again MIGA believes that retention of the five day exclusion for complaints resolved assists significantly in navigating these uncertainties, and should be retained.

Impeding quick resolution of matters

70. MIGA is concerned that the proposed changes to RG 165, particularly around data collection, will aggravate insureds, where they contemplate collecting a range of additional data at the time of initial complaint.

71. These changes pose significant risks of making more of the issue than the insured intended.

72. They also distract from pursuing complaint resolution and turns the focus to data collection.

73. Staff dealing with dissatisfaction must be empowered to try and resolve the issue then and there where possible. This is impeded by updated RG 165 data collection requirements.

[3] The latest version of MIGA's policy wording for medical practitioners which offers both retail and non-retail general insurance is available at www.miga.com.au/MIGA/media/MIGA/Policy%20Documents/2019-doctor-policy-wording.pdf

74. Although some data may already be held for an existing insured, this is not the case with a prospective insured.

75. Seeking further demographic data when a complaint is made, rather than focusing on the issue at hand, poses significant risks of causing further frustration for insureds and prospective insureds, particularly if reluctant to provide the necessary data.

Complexity of underwriting considerations

76. Medical indemnity insurance involves a very different range of underwriting and pricing considerations as compared with other lines of general retail insurance.

77. There are significant differences around underwriting and pricing amongst medical practitioners depending on specialty and scope of practice.

78. The Federal Government contracts and proposed new legislation impose specific requirements under the Insurer of Last Resort provisions.

79. As set out above, there are already issues around when something is considered a 'query' or 'engagement' around pricing or underwriting considerations on the one hand, and when it is considered a complaint on the other.

80. Removing the five day exclusion for complaints resolved could significantly increase the number of matters requiring an IDR processes around underwriting or pricing considerations. They are things which may merely relate to negotiation of an offer of cover itself, scope of cover or price in an individual context, without raising any broader systemic issues.

Issues arising from how business is conducted

81. Medical indemnity insurance does not operate on mass market online / telephone model for seeking cover and providing services.

82. Instead it engages closely with the market it insures at each of profession, specialty, group and individual levels. This includes professional events, seminars and conferences.

83. The updated RG 165 would place very significant obligations on a range of non-office based staff, including across business development, education and industry advocacy, to both take and deal with complaints within these contexts. Outside an office environment, this is a significant challenge. It is made even more difficult by the extent of the new data collection obligations, which would be almost impossible to meet outside collection in an office environment.

84. For example, an insured could express dissatisfaction with MIGA's products or services during an education presentation. This would be an entirely inappropriate context to 'take' a complaint. It would require a much wider range of people to be adept at handling complaints. This would not be limited to the insurer's staff, but also include medical practitioners, outside lawyers and educators involved in professional engagement with MIGA. It is unduly burdensome to expect those hearing that complaint to take sufficient information to pass it on to suitable members of the insurer's staff for action. This is not the more controlled environment of a direct complaint to the company's office, or via its own social media channels.

85. In addition the updated RG 165 would also cause significant issues for in-house solicitors providing advice and assistance. To impose requirements around ascertaining complaints and collecting data during this process may cause conflict with their professional obligations, and place them in difficult positions.

86. For example, an in-house solicitor may need to give an insured advice about their rights and obligations, and recommend a course of action, which they are aware the insured will not like, but consider it to be in their best interests. Imposing a broader definition of complaint warranting IDR process potentially puts that solicitor in a difficult position, and expects them to undertake tasks well beyond their context of providing legal advice.

Issues arising from scope of required data collection

87. Requiring the collection, recording and reporting of 26 different items for any complaint is a significant burden.

88. This becomes an unfair and inappropriate burden when it is applied to retail clients who are not already existing insureds, i.e. a prospective insured.

89. As set out above, MIGA is already concerned that the elimination of the five day exclusion for complaints resolved shifts the balance from resolving a complaint to collecting data for an IDR process.

90. This concern is made more acute given the level of data now required to be collected, particularly if the complaint comes from someone not already insured, i.e. seeking cover for the first time.

91. In addition, those complaining might question the need to provide certain data, and the request itself may cause dissatisfaction if they feel it is not required.

92. Where there has been no identified issues around medical indemnity insurance since RG 165 was revised last year, ASIC's observations then remain relevant to this line of insurance, namely

> *We recognise that applying this definition may result in increased administrative burdens and compliance costs in relation to capturing and maintaining records of minor expressions of dissatisfaction. Therefore, where a complaint or dispute (except for a complaint or dispute relating to hardship, a declined insurance claim, or the value of an insurance claim) is resolved to the customer's complete satisfaction by the end of the fifth business day after the complaint or dispute was received, you will not be required to apply the full IDR process—that is, to capture and record the complaint or dispute*… (RG 165.80).

Issues with difficult complainants

93. MIGA is concerned that there is no mechanism for appropriate, bespoke management of complaints which are not appropriately within an IDR scheme, such as those which are frivolous, vexatious or not made in good faith.

94. Mere reference to managing complaints by complainants who display unreasonable or challenging behaviour in an equitable manner, requiring financial firms to develop a policy for dealing with this, is inadequate (RG 165.183).

95. The nature of the cover it provides means it can deal with medical practitioners who suffer from an 'impairment', namely a health condition posing a detrimental effect to their practice putting public safety at risk. This involves a regulatory, potentially disciplinary, response which MIGA's medical indemnity insurance can respond to. By their nature these matters can involve challenges in dealing with the insured in question, both given their condition and the potential regulatory implications of it, such as restrictions on or suspension from practicing medicine.

96. MIGA is also concerned by the application of updated RG 165 to complainants who may pose a risk to its staff. Universal cover provisions being developed under reforms to the Federal Government schemes provide an exclusion from the obligation to provide insurance cover where a current or prospective insured poses an unreasonable risk of harm to the insurer's staff. This recognises the challenges that have been faced in medical indemnity around unreasonable insureds and their complaints. This has not been recognised in the proposed updated RG 165.

97. The updated RG 165 does not provide an appropriate mechanism for dealing with these concerning complaints.

Other issues with other updated RG 165 proposals

MIGA position at a glance
In relation to other updated RG 165 proposals MIGA - Opposes publication of IDR data relating to medical indemnity insurance at a firm level - Considers IDR response content requirements to be too onerous - Believes there needs to be greater scope to extend IDR timeframes for complex matters - Sees a need for a more realistic transition period for any updates to RG 165.

Proposal B7 - Publishing firm level data

98. MIGA opposes the publishing of IDR data at firm level.

99. At the moment, data is not required to be reported to ASIC or AFCA.

100. Requiring reporting of itself is a significant change, let alone publishing at a firm level.

101. There are significant risks of putting a medical indemnity insurer at a competitive disadvantage if firm level data is published by ASIC, given
    - The comparatively small pool of insureds as compared with other lines of retail general insurance
    - Limited number of insurers (five only)
    - Issues where not all insurers are bound by the same obligations under the Federal Government scheme
    - Nature of Federal Government scheme obligations
    - Lack of triaging mechanisms for complaints which lack merit or are not in good faith.

Proposals B8 and 10 - IDR response content

102. In its experience, MIGA can see lengthy complaints raising issues which are difficult to discern and / or which are entirely irrelevant to any issues which could be raised against it.

103. There should not be any requirement to 'identify and address' all issues raised in a complaint, rather only the relevant or material ones. It accepts it is appropriate to explain why an issue/s is immaterial or irrelevant.

104. It is also inappropriate to impose a requirement that an insurer provide enough detail for the particular complainant to understand the decision and be 'fully informed', whatever this be. This should be subject to a test of reasonableness.

105. For the content of IDR responses, MIGA believes the following changes are required at a minimum in the context of medical indemnity insurance
    - They identify and address all 'relevant' issues raised in the complaint, not 'all issues'
    - Where irrelevant issues are raised, explaining why they are irrelevant
    - Providing enough detail for a 'reasonable person' to understand the basis for the decision and to consider whether to escalate the matter to AFCA or another forum – instead of the requirement being for the individual complainant to understand the decision and be fully informed in making decisions.

106. Noting ASIC's intention to issue a legislative instrument to make IDR response requirements enforceable, any impact on medical indemnity insurance needs to be subject to targeted consultation with industry stakeholders, including MIGA.

Proposal B11 - Response timeframes

107. MIGA believes that the requirement for exceptional circumstances to displace the 30 day maximum timeframe for an IDR response is unnecessarily narrow for medical indemnity insurance.

108. For example, a significant proportion of the complaints MIGA deals with relate to complex coverage issues. A proper response can require more time, particularly if further investigation and / or external legal advice is required to consider thoroughly the issues raised by a complainant, which may not have emerged before.

109. It accepts such matters should still be resolved as soon as reasonably practicable.

Proposal B15 - Transition periods

110. If any changes to RG 165 for medical indemnity insurance are to be made, MIGA believes the transition period relating to recording all complaints and collecting complaints data, being by 30 June 2020, is too short.

111. It is only expected that final guidance will be published in December 2019. Inevitable time is lost over the Christmas / New Year break. Most of MIGA's renewals occur mid-year.

112. Significant time will be spent and resources deployed to dealing with medical indemnity insurance reforms scheduled to commence next year.

113. This timeframe places unfair burdens on medical indemnity insurance.

114. Any appropriate transition period is consistent with that for reporting IDR data to ASIC, namely commencement on 30 June 2021.