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Ms Li-Ling Chew
Senior Manager
Behavioural Research and Policy Unit
Australian Securities and Investments Commission

Via email – IDR.data@asic.gov.au

Dear Ms Chew

MIGA submission – Internal dispute resolution data reporting

As a medical indemnity insurer, MIGA appreciates the opportunity to provide feedback on ASIC's internal dispute resolution (**IDR**) reporting requirements.

This follows MIGA's submission to ASIC's consultation paper 311 *Internal dispute resolution: Update to RG 165*.

MIGA's position

MIGA continues to hold significant concerns about the extent of IDR data collection and reporting for medical indemnity insurance (**MII**).

MIGA welcomes ASIC's decision to exempt complaints resolved within five days from requiring an IDR process. There should be a similar exemption for recording and reporting MII complaints resolved within five days, based on the unique nature of MII amongst retail insurance covered by the new RG 271.

Simpler and bespoke MII recording and reporting mechanisms are required. Further engagement is needed with MII providers on necessary and appropriate IDR data collection and reporting requirements. Requirements applying across retail insurance lines are unsuitable and inappropriate for MII.

MII should not be included in piloting of new IDR data collection and reporting.

Excluding MII complaints resolved within 5 days from recording / reporting

As indicated in its earlier submission, MIGA remains concerned about the scope of what is a recordable complaint and the wide range of data to be collected in the context of MII.

There should be an exemption for MII data collection and reporting for complaints resolved within five days.

The unique nature of MII amongst retail products provides a strong basis for such an exemption, given

- MII is the only professional indemnity insurance classified as a retail product
    - This is now an anachronistic classification. It was made in the early 2000s when MII was first made condition of professional registration for the medical profession. Previously doctors could choose non-mandatory medical defence organisation membership offering discretionary benefits
    - MII is now a highly regulated (via Commonwealth Government legislation) product and market, with a small number of insurers and sophisticated consumer doctors, supported by significant profession engagement around MII issues (such as by the Australian Medical Association).
- Complaints about insurance are more likely to arise in a first party insurance context, which is the focus of non-MII retail insurance. By contrast, MII cover is essentially for third party processes (compensation claims, regulatory / disciplinary matters and inquiries). These do not lead to similar scope for complaints

- Healthcare professional indemnity insurance more broadly does not fall under new RG 271
- Other lines of highly regulated insurance (such as compulsory third party or workers' compensation insurance) does not fall under RG 271
- Recognising the uniqueness of MII, appropriate exemptions have already been provided for it from the unfair contract terms regime, hawking and duty of disclosure reforms, and product design and distribution obligations
- Issues of reduced transparency and incentives to close complaints early do not apply for MII. There are already significant legislative obligations on MII providers to report or otherwise provide information to the Commonwealth Government on a wide range of issues under the Commonwealth MII scheme[1]
- For MII, the UK situation is not comparable, where medical indemnity is provided by mutual organisations and the UK Government to doctors

MIGA is particularly concerned the removal of the exclusion for recording complaints resolved within five days will lead to unnecessary and burdensome reporting of complaints that are essentially frustrations with the realities of MII regulation (i.e. what can and cannot be offered or done under MII regulation) and / or third party processes (i.e. dissatisfaction with courts, tribunals and professional regulators and their requirements / expectations).

There is no benefit to the medical profession, ASIC and the broader community in recording and reporting what is effectively an 'education' process about regulatory and legal realities.

A simpler, bespoke regime for medical indemnity insurance

Key issues raised by individual IDR data collection and reporting proposals for MII include

- **Removing three issue cap for MII complaints (item 19)**
  - Given the broad range of issues MII providers cover for and the inherent complexities involved, it is inappropriate to limit complaints to a maximum three issues
  - No cap should be imposed for MII.
- **Additional MII complaint issues** - the following additional issues should be available
  - Government regulation
  - Initial or renewal coverage terms
  - Scope of service provided
  - Third party processes
  - Third party actions / service provider appointment (reflecting the involvement of external lawyers and experts in various third party processes)
  - Unreasonable / challenging consumer behaviour.
- **Vulnerable insureds - this data element should be removed for MII**
  - The relevance of consumer vulnerability in an MII context is unclear
  - There is nothing to suggest it would be a useful or relevant data element in an MII context
  - MII matters involving regulatory processes arising out of a doctor's health are extremely sensitive
  - MIGA is concerned that reporting elements around vulnerability would likely capture those elements, to the detriment and distress of the insured doctor.

[1] See for example s 53B of the *Medical Indemnity Act 2002* (Cth) and r 20 of the *Medical Indemnity Rules 2020* (Cth), requiring reporting of refusal of cover, withdrawing requests for cover and requirements to pay risk surcharges under the MII Universal Cover Scheme, including complaints made to the Australian Financial Complaints Authority (**AFCA**) about these matters

- **Aboriginal and Torres Strait Islander peoples (item 6) – data collection should not be expected for MII**
  - MIGA has reservations about any expectation to inquire about this information from doctors holding or seeking MII
  - It has no concerns about recording and reporting this data where an insured doctor wishes for it to be known and considers it relevant in a complaint context
  - MIGA believes it is inappropriate to expect proactive inquiries about Aboriginal or Torres Strait Islander heritage. Many doctors would question the relevance of this. Such inquiry of itself may cause offence.
- **Outcome in whose favour / Other outcomes (items 21 and 23) – further options required**
  - The item fails to include outcomes which are in favour of neither the complainant or entity, or are in favour of both
  - There may be circumstances where, despite lack of legal entitlement, an insurer chooses to make an ex gratia payment to an insured, e.g. where they are facing difficult personal circumstances
  - Additional codes of 'Commercial compromise' and 'Ex gratia payment' should be included.
- **Recording monetary outcomes in dollar amounts (item 22) - remove for MII**
  - This is an inappropriate requirement for MII matters
  - Depending on the nature of the matter involved, disclosure of actual monetary outcome rather than a range could lead to effective disclosure of
    - Premiums charged, causing significant commercial disadvantage in a small market
    - Third party claim settlements, which could be used in other compensation claims.
- **Publishing individual MII provider data – further work required**
  - MII is a small market with insurers offering highly regulated cover on similar terms
  - In such a context, risks of misperception and commercial disadvantage through from comparatively small volumes of data cannot be overstated.
- **Frequency of MII reporting**
  - Three monthly reporting of MII IDR data is unwarranted
  - Instead, six monthly or yearly reporting is appropriate.

Next steps

MIGA would welcome the opportunity to discuss its concerns in more detail with ASIC officials.

If you have any questions or would like to discuss, please contact Timothy Bowen, [redacted]

Yours sincerely

Timothy Bowen
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Mandy Anderson
CEO & Managing Director