



HPARA
Seeking Health Reform

Health Professionals Australia Reform Association

HPARA

Allied Health: Occupational Therapy, Pharmacy, Physiotherapy, Podiatry, Speech Pathology, Psychology

Dental: Dental

Nursing: Nurses

Medical: Doctors

Submission

Medical Indemnity First Principles Review

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11th October 2017

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Medical indemnity insurance is an essential requirement for health professionals, particularly in the private sector. The structure for the delivery of health services in Australia provides one of the best systems in the world. Affordability of medical indemnity insurance is a pivotal need to maintain the strength of the private sector. Hence, government financial support for the provision of medical indemnity insurance should continue. This is important in the present environment in which medical fees rebates have not kept pace with increasing costs in private medical practice. The public sector will not cope should the availability of private practice wane.

Medical indemnity insurance subscriptions need to be maintained at an affordable level to ensure that private providers are not placed in the situation whereby practice in the sector is no longer enjoyable thus leading to abandonment of the sector and/or premature retirement from practice.

The providers of medical indemnity insurance have a responsibility to provide quality legal representation for subscribers. This is not the case currently and is particularly evident in regard to defence of practitioners who are notified to the Australian Health Practitioners Regulatory Agency.

The deficiencies in the management of notifications (complaints) lodged with AHPRA has been well documented in the two Senate inquiries, 2016 and 2017, that exposed the systemic failures in process that exist therein. The legal representation of subscribers to a medical indemnity insurance provider who have been notified to AHPRA has been deficient in many cases. These services have acted virtually as a mail delivery service for AHPRA and not mounted a defence of their subscriber who in many cases has been the victim of dishonest use of the notification as exposed in the Senate inquiries. The follow up in some cases has been for the medical indemnity insurance provider to then send a claim for legal fees and a notice of an increase in subscription fee.

The present Government support for the "tail" needs to be revised since the current structure is open to abuse and encourages indemnity insurers to force registrants down the pathway of premature retirement. This is so the insurer can be protected from liability of their perception that there may be unreported current matters in the tail without any justification for so believing. There must be a mechanism for preventing the insurers from taking such action



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In summary

Affordability

It is essential that medical indemnity insurance remains affordable and does not become a burden for private practitioners. Current practice suggest that it is increasingly so.

Strengths and weaknesses

A strength is the assurance given to consumers and health practitioners that there is provision for funds in the event of any perceived adverse occurrences.

A weakness is the variable adversarial style thresholds controlled solely by lawyers thus denying deserving candidates of indemnity.

The system gives opportunities for fake or sham peer reviews.

There are reports of lawyers advising health practitioners to admit wrongdoing when this had not been the case; for example for expediency of the grossly delayed judicial process.

Suggested Improvements

Introduction of mandatory provision of legal defence of subscribers who are subjected to notification or legal action.

As with the existing mandatory notifications, mandatory indemnity must be implemented in order that justice is rapid and affordable. Neither is at this time and it appears to be a revenue generating exercise for legal representatives.

Deregulation

This would be a retrograde step in view of the current practices of medical indemnity insurance providers whereby the focus is more on their profit than on representing the interest of their subscribers.

Appropriate Commonwealth support

This is essential for a scheme that must be in place to assure the community and the health services providers that a robust system is in place for both to defend their rights.