

The Manager
Private Health Services Regulation Unit
Health Regulation and Reform
Department of Health
GPO Box 4541
Melbourne VIC 3001

21 May 2013

By email: privatehospitals@health.vic.gov.au

Dear Sir/Madam

REVIEW OF LEGISLATION REGULATING PRIVATE HOSPITALS AND DAY PROCEDURE CENTRES

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to comment on the legislative review of the framework to regulate private hospitals and day procedure centres.

The Insurance Council has consulted its members who provide indemnity cover for healthcare practitioners and establishments that provide healthcare. Members raised several concerns regarding the potential for increased claims costs and therefore premium costs, depending on the powers to be provided to the regulator.

We note that following public consultation on the framework, a Business Impact Assessment will be prepared and forwarded to the Victorian Competition and Efficiency Commission for review. In such an assessment, it may therefore be relevant to note:

- ***Supervision of health practitioners with adverse findings.*** An individual doctor (such as a visiting medical officer) may be investigated by the Australian Health Practitioner Regulation Agency (AHPRA). However currently, unless the individual tells the hospital, it is unlikely to know of the investigation. Under the framework proposal, it will be necessary for AHPRA to tell the relevant hospital when an investigation has commenced.

The Insurance Council is concerned about risk management issues such as what action may be expected of the hospital on receipt of this information or what action subsequent courts may decide should have been taken. For example, could it be expected that the hospital should take proactive action by instigating its own inquiries, or whether waiting on the outcome of the AHPRA investigation will be sufficient.

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. December 2012 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$38.7 billion per annum and has total assets of \$115.8 billion. The industry employs approx 60,000 people and on average pays out about \$102 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

It is possible that any change in this area will increase medical indemnity exposure under a medical malpractice policy. Initially, this may have no impact on the insurer's costs, but over time, if exposure is increased and that is reflected in a deteriorating claims experience, it may mean premium increases. Overall, as with any change in regulation, there is the potential for increased claims costs depending on what powers the regulator is given.

If new reporting procedures are put in place, and a hospital fails to report, it needs to be clarified whether the regulator will have the power to investigate that hospital, and require it to comply. These investigative costs could fall clearly under any medical malpractice policy held by the institution. This would represent an increase in liability over and above what insurers currently undertake under the existing legal arrangements.

- ***The introduction of a positive duty on a health care practitioner to report colleagues to the regulator.*** This duty will not apply to normal medical or surgical procedures or hospital processes carried out in accordance with approved protocols, but would include any behaviour that has the potential to or is known to put patients at risk.

This could include drug taking, alcohol abuse and potentially sexual misconduct. Importantly, a breach of the obligation to report is intended to be categorised as a criminal offence, and will carry criminal penalties. If introduced, hospitals and staff may seek indemnity cover with respect to this duty and potential claims or prosecutions that might arise from the new laws.

The Insurance Council is concerned that indemnity policies, as drafted, may not provide any meaningful cover as they respond to civil liability not criminal liability and such cover may not be readily available commercially.

If you wish to discuss further any of the issues raised in this submission, please contact the Insurance Council's General Manager, Regulatory Policy, Mr John Anning on tel: (02) 9253 5121 or email: janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
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