

Australian Health Practitioner Regulation Agency
GPO Box 9958
MELBOURNE VIC 3001
[REDACTED]

30 June 2014

Dear Sir/Madam

MULTIPROFESSION CORE REGISTRATION STANDARDS

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to respond to the consultation papers on the review of registration standards for health practitioners regulated by the Australian Health Practitioner Regulation Agency (AHPRA). The Insurance Council's members provide professional indemnity insurance (PII) to health practitioners, and have a keen interest in ensuring that the products they offer would enable practitioners to meet their PII obligations established by the National Boards.

Our comments in this submission are limited to the proposals in the consultation papers that relate to PII arrangements. Our submission responds to the first (Chiropractic, Medical, Osteopathy, Pharmacy, Physiotherapy, Medical Radiation Practice and Psychology) and second (Dental, Nursing and Midwifery, Optometry and Podiatry) group of consultation papers.

Minimum level of cover

The Insurance Council notes that not all of the National Boards specify a minimum quantum of cover in their registration standards and that some also require access to reinstatements of cover. It is imperative that the level of cover in PII arrangements for health practitioners is appropriate and adequate for the healthcare activities being undertaken. As health practitioners may not have all of the tools and resources to make an assessment of what amount of cover is necessary, we submit that the registration standards for all of the National Boards should clearly specify a minimum cover amount, which should be in respect of the sum of all claims made in the insurance period against a health practitioner. This will help to ensure that an appropriate level of cover is taken out.

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. September 2013 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$40.4 billion per annum and has total assets of \$112.6 billion. The industry employs approximately 60,000 people and on average pays out about \$92.5 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).

We note that the below National Boards do not propose to specify a minimum quantum of PII cover:

- Dental
- Medical²
- Nursing and Midwifery
- Physiotherapy

Retroactive cover

The Insurance Council notes that it is critical that health practitioners take out PII arrangements that have sufficient retroactive cover, particularly in light of the claims-made nature of this insurance. Retroactive cover ensures that health practitioners are insured against claims arising from activities undertaken prior to the date of the commencement of their current insurance but which they are currently unaware. As such, we are supportive of the move by most of the National Boards towards a mandatory retroactive cover requirement.

However, we note that several of the National Boards have incorporated language within their standards specifying that retroactive cover should be “unlimited”³. The Insurance Council submits that a requirement for all PII arrangements to include unlimited retroactive cover is unnecessary and would diminish the ability for health practitioners to appropriately tailor their insurance arrangements to best suit their individual circumstances and needs.

Unlimited retroactive cover is not a benefit that is required by any health practitioner as there is always a start date for an individual’s healthcare practice. In addition, many healthcare practitioners do not require retroactive cover for all periods of their professional practice. For example, those who had previously taken out incident occurring-based indemnity arrangements, and/or practised under employer indemnified arrangements such as public hospital employment, would already be covered for claims that might yet arise from their activities during that period.

We suggest an amendment to the wording of proposed retroactive cover requirements for health practitioners to take out “appropriate” retroactive cover. By appropriate retroactive cover, we mean cover for otherwise uncovered claims that might be reported from their prior healthcare practice. That would ensure that suitable retroactive cover is incorporated into PII arrangements.

In relation to the Medical Board’s PII registration standard, we note that there is no equivalent requirement for medical practitioners to take out retroactive cover. While the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 Cth* (the

² Although the Medical Board of Australia does not mandate a minimum quantum of cover for PII arrangements in its registration standard, the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* prescribes a minimum cover amount of \$5 million for medical indemnity insurance arrangements captured by the Act.

³ Including the Nursing and Midwifery, Physiotherapy, Pharmacy, Medical Radiation, Osteopathy, Podiatry and Optometry National Boards.

Medical Indemnity Act) requires any offer by an insurer to include appropriate retroactive cover to medical practitioners, practitioners are not obliged to take up such offers.

Given the absence of mandatory retroactive cover in the Medical Board's registration standard, there is a real risk that some medical practitioners currently do not have appropriate retroactive insurance cover incorporated into their PII arrangements. We submit that the Medical Board should specify in its registration standard applying to health practitioners, including medical practitioners, that PII arrangements include appropriate retroactive cover for otherwise uncovered matters arising from prior practice. This will also ensure that the Medical Board's standard is consistent with that of the other health professions.

Run-off cover

The Insurance Council acknowledges the importance of appropriate run-off cover for health practitioners. However, clarity is required in relation to how the run-off requirement in the Medical Board's standard interacts with the Medical Indemnity Act. The Medical Indemnity Act requires insurers to offer run-off cover to eligible medical practitioners when an event (e.g. death, permanent disablement or retirement) is triggered.

By its very nature, claims-made insurance does not provide cover for matters reported after the policy lapses. As such, medical indemnity insurers do not incorporate run-off cover into their annual policies but make the appropriate offer of annual claims-made run-off cover at the occurrence of a prescribed event, usually at cessation of practise. This is not consistent with the requirement in the registration standard which states "...The insurance cover must include run-off cover".

While arranging appropriate run-off cover should be a registration requirement, we suggest that the wording of the Medical Board's requirement is amended so that it falls under the more general requirement of health practitioners to hold appropriate insurance cover at all times while practising and on cessation of practice⁴.

If you have any questions or comments in relation to our submission please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate. [REDACTED]

Yours sincerely



Robert Whelan
Executive Director & CEO

⁴ The Dental Board's registration standard requires run-off cover for retirement or death.