

ROYAL AUSTRALASIAN COLLEGE OF SURGEONS



**RESPONSE TO THE FIRST PRINCIPLES REVIEW OF THE
INDEMNITY INSURANCE FUND**

OCTOBER 2017

Introduction

Thank you for the opportunity to provide input to the First Principles Review of the Indemnity Insurance Fund. The Royal Australasian College of Surgeons (RACS) is the leading advocate for surgical education, training and standards of practice in Australia and New Zealand. Our Fellows and staff work closely with other health organisations to promote the best health outcomes for patients and the community.

Executive Summary

RACS welcomes the First Principles Review, and we believe it is reasonable and practical to routinely review all government programs to ensure that they are sustainable, remain relevant and are delivering their intended benefits. The College does not dispute that there are enhancements that could be made to improve the efficiency of the schemes that underpin the Indemnity Insurance Fund (IIF). However, RACS cautions against making widespread changes to what has been predominantly a well-functioning and successful area of public policy.

As detailed in the discussion paper, the Commonwealth Government became involved in medical indemnity insurance following a series of unfortunate events in the early 2000s, which saw the largest medical defence organisation (MDO) placed into provisional liquidation. As a consequence members of that MDO had significant concerns as to whether their Incurred But Not Reported (IBNR) matters would be covered. Other MDOs that remained in the market were unable to absorb the sudden increase in demand, and were also forced to significantly increase the value of their premiums in response to rising claim costs.

At the time many Fellows of RACS were placed in the untenable situation of either having no indemnity insurance cover for their IBNR's or other patient interactions, or being unable to continue operating in private practice due to the escalating cost of premiums. The series of reforms that were implemented to address this situation helped to deliver much needed financial and regulatory stability to the sector.

Prior to the release of the Review, RACS was contacted by Fellows and likeminded organisations regarding the announcement in the December 2016 Mid-Year Economic and Fiscal Outlook to cut \$36 million to indemnity funding. Concerns were expressed that the decision to reduce funding reflected a predetermined notion that the Review would be primarily designed as a savings exercise, without due consideration given to the history or the purpose of the scheme. RACS is pleased that the Terms of Reference of the Review do not appear to reflect this view. Nevertheless, we believe it is important to emphasise the necessity of ensuring that affordability underpins any revised framework.

The increasing costs associated with providing health services in Australia, including surgery, is already a significant challenge for the government and the health sector. In 2014-2015 Australia's health expenditure was \$161.6 billion, with the share of the economy (GDP) represented by health reaching 10% for the first time.ⁱ

In 2013-2014 public hospitals provided approximately 29 elective admissions involving surgery per 1,000 population and private hospitals provided approximately 57 per 1,000.ⁱⁱ At the same time an increasing number of Australians are cancelling or reducing their private health insurance cover, citing value for money as a key factor influencing their decision making.

When considered in conjunction with an ageing Australian population, improving life expectancy and increasing prevalence of chronic disease, a stable medical insurance industry is essential in ensuring we are able to continue meeting the challenges of providing universal public health care.

In relation to the First Principles Review of the Medical Indemnity Insurance Fund RACS Recommends the following:

1. The Premium Support Subsidy remains in place
2. Run-off cover remains for eligible medical practitioners, however RACS welcomes any enhancements to the scheme that will reduce administrative burden and provide greater clarity for practitioners, insurers, and regulators.
3. An affordable high cost claims threshold remains in place, and any increases to the threshold is supported by the appropriate modelling ensuring that the increase will not have the unintended consequence of forcing surgeons out of private practice.
4. The increase in the high cost claims threshold is postponed until the completion of this Review
5. The Exceptional Claims Scheme is retained
6. Regardless of whether it continues to be delivered through the 'Insurer of Last Resort' program or another format, universal cover must be protected and recognised a core principle of medical indemnity insurance policy.

Further explanation is provided below:

High Cost Claim Scheme (HCCS)

The HCCS is an essential component of the current framework, and provides stability to medical insurers and practitioners. The HCCS reimburses medical indemnity insurers 50 percent of the insurance payout for claims over \$300,000 up to the limit of the practitioners cover. RACS appreciates the need to continually monitor the threshold to ensure it remains relevant and sustainable, and as a consequence this may result in increases to the limit over time. However, it is important that policy makers remain aware of the flow on effects that an increase in the threshold will have on individual pricing policies. In order to remain viable, any increase in the threshold will result in increased costs for insurers, which in turn will be passed down to medical professionals and patients. This is particularly the case for higher risk specialties which generally attract higher premiums.

Universal Cover

A surgeon may experience more adverse events/deaths by virtue of their specialty and case mix. It must also be emphasised that a surgeon experiencing an adverse event does not necessarily imply negligence. Many adverse events occur even with the best of care, and all surgeons rely on indemnity insurance regardless of performance.

As a principle it is crucial that affordable insurance is available to all surgeons that have been deemed fit to practice by the Australian Health Practitioner Regulation Agency (AHPRA). Removing this principle potentially creates the unfortunate and highly undesirable situation where a doctor's ability to practice is not determined by their competency as determined by AHPRA, but rather their ability to find appropriate cover.

At present Universal Cover is guaranteed by the Insurer of Last Resort Scheme. RACS is aware that there is some discussion amongst MDOs as to whether this is the fairest method of delivering universal cover. The current model requires a single MDO from each jurisdiction to offer cover as the Insurer of Last Resort, with some insurers required to offer this option across multiple jurisdictions. Conversely, other insurers have no obligation to fulfil these requirements in any jurisdiction, and are able to be much more selective about which medical professionals they offer cover to.

RACS is not in a position to offer a solution as to what the revised framework may look like. Our priority remains in ensuring that affordable and accessible cover remains available to all surgeons registered by AHPRA. However, RACS acknowledges the importance of these discussions, and we believe it is appropriate that the current structure is reviewed based on fairness and accessibility.

Premium Support Scheme (PSS)

For most surgeons medical indemnity insurance is a significant overhead cost, which impacts on the fees they charge to patients in order to recuperate costs. The PSS is another important component of the scheme which brings stability to the system and ensures that these costs are capped at the 7.5% threshold and private practice remains viable.

Exceptional Claims Scheme (ECS)

The ECS is a low cost initiative, and to date no claims have been made above the threshold since the scheme was established. Although the ECS has the potential to generate large claims, the likelihood of this is low and when calculated over time the anticipated frequency of these claims suggests the scheme would still remain relatively low cost even if a claim is made. Despite no claims being made to date, the ECS is an important mechanism in providing assurance to surgeons that their policy cover will protect them in the event of an exceptionally large claim. The certainty and stability that it provides to medical indemnity insurers is also a fundamental driver in setting the price of premiums and ensuring that they remain affordable.

Run of Cover Scheme (ROCS)

RACS supports the continuation of the ROCS, and the guaranteed protection for eligible medical practitioners that have ceased private practice. We believe that the \$24 million spent by the Commonwealth to cover claims since the scheme was established, outweighs the liability that would be created had the scheme not existed.

The College's priority is to ensure that run-off cover remains available and affordable to medical practitioners once they cease practice, and we do not have an established position on how ROCS might be changed. However, we agree that there is potential to provide greater clarity to the complex administrative and legislative arrangements that govern ROCS. Additionally, we note that AVANT have suggested in their response, that the current 5% levy appears to be higher than needed to fund the ROCS and have suggested a reduction to 3%.

Thank you for the opportunity to provide input to this important Review.

References

ⁱ Australian Institute of Health and Welfare, [Health Expenditure Australia](#), October 2016.

ⁱⁱ Australian Institute of Health and Welfare, [Surgery in Australia's Hospitals](#), March 2015.