EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Medical Indemnity Act 2002

Medical Indemnity Rules 2020

Authority

Section 80 of the *Medical Indemnity Act 2002* (the Act) (as amended by the *Medical and Midwife Indemnity Legislation Amendment Act 2019*) provides that the Minister may, by legislative instrument, make rules prescribing matters, which are required or permitted by the Act to be prescribed, by the rules, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Purpose and Operation

The Act provides the mechanism for the delivery of the Australian Government's medical indemnity measures. The original medical indemnity framework was announced on 23 October 2002. The purpose of this framework is to address the stability, accessibility and affordability of medical indemnity insurance premiums and ensure a viable and ongoing medical indemnity insurance market. The *Medical Indemnity Rules 2020* (the Rules) is one of the elements of this framework.

A range of additional measures intended to maintain and improve the medical indemnity schemes and support the long-term stability and affordability of medical indemnity premiums for private sector doctors and health care professionals, was announced by the Government in the 2018-19 *Mid-Year Economic and Fiscal Outlook* (MYEFO). As part of these measures, the Government announced that it would reduce and simplify the legislative instruments underpinning the medical indemnity schemes through consolidation and repeal of redundant legislation.

The Act establishes a number of schemes that provide Government support for medical indemnity for eligible privately practising medical practitioners and allied health professionals.

The Rules is a new instrument made under the Act, which consolidate matters previously contained in the *Medical Indemnity Regulations 2003* (2003 Regulations). Specifically, the Rules draw on regulations 4, 5, 8, 12, 13, 28 and 29 of the 2003 Regulations. The Rules also set out new rules regarding the universal cover obligation and the allied health high cost claims and exceptional claims schemes. These new rules have been made consequential to changes to the Act made by the *Medical and Midwife Indemnity Legislation Amendment Act 2019* (commencing 1 July 2020).

The Rules set out provisions regarding the following matters:

- incurred but not reported (IBNR) indemnity scheme;
- high cost claims scheme;
- exceptional claims scheme;

- run-off cover indemnity scheme;
- allied health high cost claims scheme;
- allied health exceptional claims scheme;
- universal cover; and
- administration of medical indemnity payments.

Authority for these new Rules are set out in the *Medical and Midwife Indemnity Legislation Amendment Act 2019*, which commences on 1 July 2020. These Rules are being made in advance of this commencement date. This is possible in accordance with section 4 of the *Acts Interpretation Act 1901*, which allows for the exercise of powers between enactment and commencement of an Act including, for example, the power to make Rules.

Details of the Rules are set out at Attachment A.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

The Rules commence on 1 July 2020.

Regulation Impact Statement

The Office of Best Practice Regulation has certified that the First Principles Review and Thematic Review of the Medical and Midwife Indemnity Schemes are equivalent to a Regulatory Impact Statement.

Consultation

The Australian Government has worked collaboratively with the Australian Medical Association, relevant peak bodies, medical indemnity insurers and relevant government agencies.

The Government has consulted extensively during the development of the medical and midwife indemnity reforms, including through the First Principles Review and Thematic Review[1], the development of the *Medical and Midwife Legislation Amendment Act 2019* and targeted stakeholder consultation on limited exposure drafts of the legislative instruments. The final Rules incorporate stakeholder submissions received through the limited exposure draft consultation process in November 2019.

Statement of Compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the Legislation Act applies to cause a statement of compatibility to be prepared in

[1] Department of Health, *Thematic Review of Commonwealth Medical and Midwife Indemnity Legislation*, February 2018 https://www1.health.gov.au/internet/main/publishing.nsf/Content/F923F31B70D61C37CA25815C00142243/$File/Thematic%20Review%20of%20Commonwealth%20Medical%20and%20Midwife%20Indemnity%20Legislation.pdf

respect of that legislative instrument. The Statement of Compatibility has been prepared to meet that requirement. The Statement of Compatibility is included at Attachment B.

Attachment A

Details of the *Medical Indemnity Rules 2020*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the Rules is the *Medical Indemnity Rules 2020* (the Rules).

Section 2 – Commencement

This section provides that the Rules commence on 1 July 2020.

Section 3 – Authority

This section provides that the instrument (the Rules) is made under *Medical Indemnity Act 2002* (the Act).

Section 4 – Definitions

This section provides that in the Rules, ***Act*** means the *Medical Indemnity Act 2002*. This section also defines other expressions used in the Rules, including: ***AFCA scheme, Commonwealth***; ***State or Territory agency***; ***general interest charge rate***; ***gross indemnity costs***; ***GST***; and ***premium period***.

The definition of ***general interest charge rate*** is consistent with the use of this term in other Commonwealth legislation (that is, the *Taxation Administration Act 1953*).

The incorporation of the ***general interest charge rate*** by reference to section 8AAD of the *Taxation Administration Act 1953* is incorporated as varying from quarter to quarter. This variation in the rate is inherent in the definition being incorporated from that Act. The *Legislation Act 2003* permits the incorporation by reference of material from an Act as in force from time to time. The ***general interest charge rate*** is used for the purposes of sections 5, 9, 10 and 21 to enable the calculation of late payment penalty rates and the applicable interest rate for working out total run-off cover credits under the run-off cover indemnity scheme (ROCS).

The incorporation of ***premium period*** by reference to the *Medical Indemnity Regulations 2020* is incorporated as in force from time to time. Drawing on this definition ensures the consistency of interpretation of a ***premium period*** across the instruments that support the Commonwealth medical and midwife indemnity schemes.

This section also notes that a number of expressions used in the Rules are defined in the Act, including the expressions: ‘allied health profession’; ‘claim; incident’; ‘medical practitioner’; and ‘private medical practice’.

Part 2 – Commonwealth payments

Sections 5 and 9 – Late payment penalty rate for recovery of overpaid IBNR indemnity and run-off cover indemnity (respectively)

Section 5 (IBNR indemnity) and section 9 (ROCS indemnity) of the Rules set a late payment penalty rate on amounts owing by insurers in respect of an over payment of Commonwealth IBNR and run-off cover indemnities.

These late payment penalty rates were previously set by regulations 4 and 13 of the 2003 Regulations at a fixed rate of 0.03227397% per day.

For the purposes of paragraphs 27(2)(a) and 34ZM(2)(a) of the Act, subsections 5(1) and 9(1) of the Rules (respectively), specify the rate for calculating late payment penalty relating to a debt that remains wholly or partly unpaid after it becomes due and payable.

Under the Rules, the rate for calculating the late payment penalty is by reference to the ***general interest charge rate***, defined to have the same meaning as in section 8AAD of the *Taxation Administration Act 1953*. This approach provides for the applicable rate to be updated by reference to the relevant quarterly rate (for example, the general interest charge rate for the January – March 2020 quarter is 0.02161202%). The general interest charge rate is readily available on the ATO website.

These sections do not apply if the amount became due and payable before 1 July 2020. In those cases, subitem 148(3) and subitem 150(2) of Schedule 4 to the *Medical and Midwife Indemnity Legislation Amendment Act 2019* provides for the rate for calculating late payment penalty for the recovery of overpaid IBNR and run-off cover indemnity (respectively).

Subsections 5(2) and 9(2) of the Rules specify that the rate is the ***general interest charge rate*** for the day after the day the amount becomes due and payable. Fixing what is a variable rate as at a day (i.e. the day after the amount becomes due and payable) ensures that only one rate applies for the whole of the period in which the overpaid rate is due and owing. This also ensures that the rate at which late penalty payment will accrue is known to the insurer to whom the indemnity was paid.

Sections 6 and 12 – High cost claim threshold and allied health high cost claim threshold (respectively)

Subsection 29(1) of the Act provides that the high cost claim threshold (with respect to medical practitioners) is $2 million or such other amount as specified in the rules. Subsection 34ZZA(1) of the Act provides that the allied health high cost claim threshold is $2 million or such other amount as specified in the rules.

Section 6 (high cost claim indemnity scheme) and section 11 (allied health high cost claim indemnity scheme) of the Rules, respectively, specify a threshold of $500,000 for the purposes of paragraphs 29(1)(b) and 34ZZA(1)(b) of the Act.

This is consistent with the previous threshold in regulation 5 of the 2003 Regulations.

Sections 7 and 13 – Circumstances for claim relating to overseas incident to be qualifying claim

Section 34E of the Act sets out the criteria for when the Chief Executive Medicare may certify that a claim is a qualifying claim under the exceptional claims indemnity scheme. Section 34ZZK of the Act sets out the criteria for when the Chief Executive Medicare may certify that a claim is a qualifying claim under the allied health exceptional claims indemnity scheme.

Section 7 (exceptional claims indemnity scheme) and section 11 (allied health exceptional claims indemnity scheme) of the Rules, respectively, specify the circumstances in which a claim (relating to an incident or a series of related incidents) relating to overseas incidents may be a qualifying claim for the purposes of paragraphs 34E(1)(c) and 34ZZK(1)(d) of the Act.

These circumstances substantially remake the circumstances set out in regulation 8 of the 2003 Regulations, to include, for example, circumstances in which:

- the claim is made by a person who, at the time of the incident, was an Australian citizen, and
- at that time, the person was undertaking official business for a Commonwealth agency, and
- at that time, the medical practitioner against who the claim is made was a permanent resident of Australia who was accompanying the person in connection with the practitioner's practice of their medical profession.

Subparagraphs 7(2)(b)(i) and 12(2)(b)(i) of the Rules deals with circumstances whereby the person is or was engaged in a sporting activity (as a participant, adjudicator, judge, referee or umpire or in a similar capacity). Eligibility extends to persons engaged in a sporting activity regardless of their role, and includes persons volunteering.

Section 8 – Persons against whom eligible run-off claims are made

For the purposes of paragraph 34ZB(2)(f) of the Act, section 8 of the Rules specifies classes of persons to whom a claim must be made against in order to be an eligible run-off cover claim.

These circumstances substantially remake the circumstances set out in regulation 12 of the 2003 Regulations with changes to simplify the drafting and remove the references to the person being aged 65 or over (consistent with the policy change to the Act by the *Medical and Midwife Indemnity Legislation Amendment Act 2019* to enable access to the ROCS on permanent retirement regardless of retirement age).

Section 10 – Applicable interest rate for working out total run-off cover credits

Section 10 sets the interest rate to be applied in respect of a financial year for the purpose of calculating total run-off cover credits to be paid to affected medical practitioners, should a termination date for the ROCS be set in the future.

This provision is included subsequent to amendments to section 34ZS of the Act that remove redundant references to the short-term bond rate and instead provide that the "applicable interest rate is the rate of interest, for the financial year, specified in the Rules for the purposes of this subsection".

The applicable rate of interest in section 10 of the Rules is specified by reference to the ***general interest charge rate*** defined in section 5 of the instrument to have the same meaning as in section 8AAD of the *Taxation Administration Act 1953*. For the purpose of the calculation in section 34ZS of the Act, the applicable rate is fixed for a financial year. The rate for the financial year is fixed by reference to the general interest charge rate for the last day before the start of the financial year multiplied by the number of days in the calendar year in which that day occurs.

The general interest charge rate can readily be found on the ATO website for financial years back to the financial year starting on 1 July 2005 (the first financial year that could possibly be relevant for working out an affected practitioner's total run-off cover credit in accordance with section 34ZS of the Act).

Section 11 – Eligible insurers

Section 34ZZ of the Act sets out the eligibility criteria for medical indemnity insurers and medical defence organisations (MDOs) to access the allied health high cost claim and exceptional claims schemes. An MDO or insurer is an eligible MDO or eligible insurer if:

- it is specified in the rules
- it provides medical indemnity cover for medical practitioners, and
- it provides medical indemnity cover for persons who practice an allied health profession.

Section 11 of the Rules specifies the following medical indemnity insurers for the purposes of paragraph 34ZZ(a) of the Act:

- Avant Insurance Limited ACN 003 707 471
- Berkshire Hathaway Specialty Insurance Company ARBN 600 643 034
- Guild Insurance Limited ACN 004 538 863
- MDA National Insurance Pty Ltd ACN 058 271 417
- Medical Insurance Australia Pty Ltd ACN 092 709 629
- MIPS Insurance Pty Ltd ACN 089 048 359.

Part 3 – Universal cover obligations

Part 3 of the Rules contains matters relating to universal cover obligations. Under previous arrangements, only medical indemnity insurers that had entered into a Premium Support Scheme (PSS) contract with the Commonwealth were required to meet the universal cover obligation. As part of the reforms, PSS contracts ceased on 30 June 2020 and, from 1 July 2020, the universal cover obligations are now set out in the Act. Changes to the Act (made by the *Medical and Midwife Indemnity Legislation*

Amendment Act 2019) establish the universal cover obligation in the primary legislation and enable further detail to be set out in the Rules.

Section 14 – Circumstances in which medical indemnity insurer may refuse professional indemnity cover

Section 52A of the Act sets out the circumstances in which a medical indemnity insurer must not refuse to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover. Paragraph 52A(f) provides for additional circumstances to be included in the Rules.

For the purposes of paragraph 52A(f) of the Act, subsection 14(2) of the Rules specifies the following two additional circumstances in which a medical indemnity insurer may refuse to enter into a contract of insurance:

- the medial practitioner has practised without being registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners; or
- the medical practitioner is practising in breach of a limit (however described) on the registration or licensing of the practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

Section 15 – Notice of refusal to enter into contract of insurance for professional indemnity cover

Section 52B of the Act sets out notification requirements when a medical indemnity insurer refuses to provide professional indemnity cover. This requires medical indemnity insurers to notify medical practitioners, in accordance with any requirements in the Rules, if they refuse to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover. Subsection 52B(2) of the Act states that the Rules may specify the information to be included in a notice and the time for giving the notice. Section 15 of the Rules is made for the purposes of section 52B of the Act.

Subsection 15(2) specifies that the notice must include reasons for refusal and a statement that the medical practitioner may make a complaint about the refusal in accordance with the AFCA scheme (which is defined in section 4 of the Rules to have the meaning given by section 761A of the *Corporations Act 2001*).

Subsections 15(3) and (4) set out the timeframe in which medical indemnity insurers must provide a notice of refusal to provide professional indemnity cover. This accounts for two different scenarios. Specifically:

- if there is no existing contract of insurance with the medical practitioner, the insurer must notify the practitioner of the refusal within 30 days of the insurer receiving all information reasonably required to decide whether to enter into a contract to provide professional indemnity cover; or
- if there is an existing contract of insurance between the insurer and the medical practitioner, and the insurer is refusing to renew the insurance, the notice must be given:

- as soon as practicable after the refusal; and
- if possible, at least 60 days before the expiry of the existing contract.

Section 16 – Maximum amount of risk surcharge

This section provides the method for calculating the maximum amount of risk surcharge that a medical indemnity insurer may require a medical practitioner to pay for a premium period, as part of the amount that the practitioner pays for professional indemnity cover with the insurer. The premium period is defined under section 6 of the *Medical Indemnity Regulations 2020* (2020 Regulations) to mean a period that is the whole or part of a premium year.

Subsection 16(2) of the Rules provides, for the purposes of paragraph 52C(3)(b) of the Act, that the maximum amount of risk surcharge is twice the practitioner's ***gross indemnity costs*** (within the meaning in section 6 of the 2020 Regulations) relating to the contract and the premium period.
This would mean that the insurer could charge a maximum of:

> *Gross indemnity cost (e.g. $10,000) + risk surcharge of 200% of gross indemnity cost (e.g. $20,000) = $30,000 total including risk surcharge*

Gross Indemnity Cost means, for a premium period, costs charged to a medical practitioner including:

- the premium for the contract, excluding any risk surcharge;
- the membership fee (if any); and
- costs payable by the practitioner for retroactive cover or run-off cover.

Gross Indemnity Cost does not include statutory payments for example, GST, medical indemnity payments (i.e. the ROCS levy paid in accordance with the Act (as per subsection 34(2) of the 2020 Regulations).

Section 17 – Amount of risk surcharge to be identified without GST in offer of insurance

This section provides, for the purposes of subsection 52C(4) of the Act, that the amount of the risk surcharge identified in an offer to enter into a contract of insurance to provide professional indemnity cover must exclude GST. This is consistent with the previous requirements in the PSS contract.

Sections 18 and 19 – Records of refusals to provide professional indemnity cover and Records of risk surcharges (respectively)

Sections 18 and 19 of the Rules set out the records that insurers must keep in relation to a refusal to provide professional indemnity cover and the application of a risk surcharge.

Section 18 provides, for the purposes of paragraph 53(1)(a) of the Act, that for a refusal to provide professional indemnity cover, medical indemnity insurers must keep records in relation to the following:

- the date of the refusal;
- the identity of the medical practitioner;
- the reason for the refusal, indicating both:
    - the relevant provision in section 52A of the Act or in section 14 of the Rules, that the insurer relied on to exempt the insurer from the requirement not to refuse to enter into the contract; and
    - the evidence of the existence of the circumstances that meant that provision applied.

Section 19 provides, for the purposes of paragraph 53(1)(b) of the Act, that for the application of risk surcharge, medical indemnity insurers must keep records in relation to the following:

- the date of the requirement;
- the reason for the requirement, indicating the evidence of the matters described in paragraph 52C(1)(a) of the Act (i.e. that because the medical practitioner engages, or has engaged, in conduct that deviates from good medical practice, the practitioner's private medical practice is likely to pose a higher risk to patients than similar practices (where subsection 52C(2) of Act describes a ***comparison practitioner***));
- the total amount of the practitioner's gross indemnity costs to which the risk surcharge related; and
- the amount of the risk surcharge.

Section 20 – Matters to be reported annually

This section specifies matters required by section 53B of the Act to be notified annually (within 2 months after the end of the financial year) to the Secretary of the Department of Health (the Secretary) by a medical indemnity insurer. In addition to the matters set out in section 53B of the Act, section 20 of the Rules specifies additional matters that must in reported by an insurer that, in a financial year:

- refuses to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover; or
- requires a medical practitioner to pay a risk surcharge.

For the purposes of paragraph 53B(1)(b) of the Act, subsection 20(2) requires a medical indemnity insurer that refuses to enter into a contract of insurance with a medical practitioner to notify the Secretary of the following:

- number of refusals that:
    - are made in the financial year by the medical indemnity insurer; and

  - are the subjects of complaints made in accordance with the AFCA scheme before the notification is made (whether or not the complaints are resolved before the notification is made);
- the number of occasions in the financial year on which a medical practitioner withdrew an invitation made by the practitioner to the medical indemnity insurer for the insurer to offer to enter into a contract of insurance with the practitioner to provide professional indemnity cover.

For the purposes of paragraph 53B(2)(b) of the Act, subsection 20(3) provides that a medical indemnity insurer that requires a medical practitioner to pay a risk surcharge must notify the Secretary of the number of requirements to pay risk surcharge that:

- are made in the financial year by the medical indemnity insurer; and
- are the subjects of complaints made in accordance with the AFCA scheme before the notification is made (whether or not the complaints are resolved before the notification is made).

This section facilitates the Department's ability to monitor refusals to provide cover and the application of risk surcharges that are the subject of complaints made to AFCA, to ensure that the universal cover obligation does not result in any increased pricing, or in an expanded class of practitioners that are subject to higher premiums.

Part 4 – Payment towards the cost of providing indemnities

Section 21 – Late payment penalty rate for run-off cover support payment

Section 21 of the Rules sets the late payment penalty rate if a run-off cover support payment is wholly or partly unpaid after it is due.

This rate was previously set by regulation 13 of the 2003 Regulations and specified to be a set rate of 0.03227397% per day.

Consistent with the approach across all provisions that set a late payment penalty rate, the late payment penalty rate for the run-off cover support payment is also specified by reference to the ***general interest charge rate***, defined in section 5 of the instrument to have the same meaning as in section 8AAD of the *Taxation Administration Act 1953*. This approach provides for the applicable rate to be updated by reference to the relevant quarterly rate (e.g. the general interest charge rate for the January – March 2020 quarter is 0.02161202%). The general interest charge rate is readily available on the ATO website.

Section 22 – Methods of paying run-off cover support payment or related late payment penalty

Section 22 of the Rules specifies the methods for paying the run-off cover support payment or any related late penalty payments. Largely consistent with regulation 29 of the 2003 Regulations, these methods include BPAY, direct debit, or credit card.

Attachment B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Medical Indemnity Rules 2020

The *Medical Indemnity Rules 2020* (the Rules) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 80 of the *Medical Indemnity Act 2002* (the Act) (as amended by the *Medical and Midwife Indemnity Legislation Amendment Act 2019*) provides that the Minister may, by legislative instrument, make rules prescribing matters, which are required or permitted by the Act to be prescribed, by the rules, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides the mechanism for the delivery of the Australian Government's medical indemnity measures. The original medical indemnity framework was announced on 23 October 2002. The purpose of this framework is to address the stability, accessibility and affordability of medical indemnity insurance premiums and ensure a viable and ongoing medical indemnity insurance market. The *Medical Indemnity Rules 2020* (the Rules) is one of the elements of this framework.

A range of additional measures intended to maintain and improve the medical indemnity schemes and support the long-term stability and affordability of medical indemnity premiums for private sector doctors and health care professionals, was announced by the Government in the 2018-19 *Mid-Year Economic and Fiscal Outlook* (MYEFO). As part of these measures, the Government announced that it would reduce and simplify the legislative instruments underpinning the medical indemnity schemes through consolidation and repeal of redundant legislation.

The Act establishes a number of schemes that provide Government support for medical indemnity for eligible privately practising medical practitioners and allied health professionals.

The Rules is a new instrument made under the Act, which consolidate matters previously contained in the *Medical Indemnity Regulations 2003* (2003 Regulations). Specifically, the Rules draw on regulations 4, 5, 8, 12, 13, 28 and 29 of the 2003 Regulations. The Rules also set out new rules regarding the universal cover obligation and the allied health high cost claims and exceptional claims schemes. These new rules have been made consequential to changes to the Act made by the *Medical and Midwife Indemnity Legislation Amendment Act 2019* (commencing 1 July 2020).

The Rules set out provisions regarding the following matters:

- incurred but not reported (IBNR) indemnity scheme;
- high cost claims scheme;
- exceptional claims scheme;
- run-off cover indemnity scheme;
- allied health high cost claims scheme;
- allied health exceptional claims scheme;
- universal cover; and
- administration of medical indemnity payments.

Authority for these new Rules are set out in the *Medical and Midwife Indemnity Legislation Amendment Act 2019*, which commences on 1 July 2020. These Rules are being made in advance of this commencement date. This is possible in accordance with section 4 of the *Acts Interpretation Act 1901*, which allows for the exercise of powers between enactment and commencement of an Act including, for example, the power to make Rules.

Human rights implications

Right to health

Article 12(1) of *the International Covenant on Economic, Social and Cultural Rights* (ICESCR) promotes the right of all individuals to enjoy the highest attainable standard of physical and mental health. This includes the creation of conditions which would assure to all service and medical attention in the event of sickness (Article 12(2)(d)). While the ICESCR contains no definition of health, the United Nations Committee on Economic Social and Cultural Rights provides further guidance, stating that the right to health is not to be understood as a right to be healthy.

Accordingly, the right also contains entitlements, which include the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Rules support the enabling *Medical Indemnity Act 2002*, and its primary focus is to further strengthen a system of protection and access to services for Australians by ensuring that medical and allied health practitioners, including midwives, have access to affordable medical indemnity insurance and that the medical indemnity market remains stable. These practitioners are required to maintain professional indemnity insurance in order to practice in Australia. Affordable and stable medical indemnity insurance enhances patient access to health care services.

Right to privacy

This instrument engages the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Article 17 prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. This instrument requires medical indemnity insurers to provide personal information of medical practitioners. The interference of a medical practitioner’s right to privacy in this circumstance is, however, for the benefit of the medical practitioner in that it facilitates

the provision of an indemnity for valid claims once the medical practitioner ceases private medical practice.

The right to privacy is not absolute and there may be circumstances in which the guarantees in Article 17 can be outweighed by other considerations, such as the protection of the right to health. In these circumstances, it is permissible to limit the right to privacy as the provision of the personal information of medical practitioners is designed to indemnify medical practitioners in a manner which does not disadvantage the medical practitioner, and which empowers patients to access compensation.

Conclusion

The Rules is compatible with human rights, and in particular, supports the right to health.

The Hon Greg Hunt MP, Minister for Health