

2 July 2020

Ms Melissa Salisbury
Acting Committee Secretary
Health, Communities, Disability Services and
Domestic and Family Violence Prevention Committee
Queensland Parliament

Via email – health@parliament.qld.gov.au

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Dear Ms Salisbury

MIGA submission – Queensland Government's health response to COVID-19

As a medical defence organisation and medical / professional indemnity insurer, MIGA appreciates the opportunity to make a submission to the Committee's Inquiry into the Queensland Government's health response to COVID-19, focusing on medico-legal, regulatory and insurance issues.

MIGA's position

Queensland's response to the COVID-19 pandemic owes much to the dedication, commitment and professionalism of its frontline healthcare workers. Their efforts have been enhanced by the support of the Queensland Government and a range of professional groups. Queensland Health is to be commended for facilitating increased use of telehealth and efforts to communicate key developments to clinicians.

It is important that the significant challenges health professionals face in dealing with the COVID-19 pandemic are acknowledged sufficiently in any later scrutiny of their clinical decisions, particularly in regulatory contexts.

Certain initiatives, particularly elective surgery / procedure restrictions, treatment of public patients in private hospitals and digital image medication prescribing, raised significant practical challenges for the medical profession. Although MIGA was supportive of these initiatives, their implementation would have benefited from earlier engagement with medico-legal / regulatory stakeholders such as MIGA. A framework should be developed for this to occur around future initiatives.

MIGA's COVID-19 role

MIGA has had a significant role in supporting and assisting its 36,000 plus members and clients across Australia respond to the COVID-19 pandemic. Its membership and client base consists of medical practitioners, healthcare organisations, medical students and eligible privately practising midwives providing care in a wide range of situations across Queensland and the rest of the country.

MIGA has represented the medical profession for more than 120 years and the broader healthcare profession for over 17 years. It advises, assists, educates and advocates for its members and clients in a wide range of medico-legal and health regulatory matters.

During COVID-19, MIGA advised and assisted its members and clients on numerous medico-legal, health regulatory and insurance issues, both through its evolving online Q&A (www.miga.com.au/coronavirus) and direct communications. Frequently encountered issues include telehealth, elective surgery, permissible healthcare treatments, scope of practice, public patients in private hospitals, prescribing, personal protective equipment, privacy / confidentiality, certification and patients posing risks to others.

MIGA also worked with a range of governments, regulators, professional bodies and other medical defence organisations (**MDOs**) / professional indemnity insurers (**PIIs**) on COVID-19 issues for the health profession across medico-legal, regulatory and insurance perspectives.

Communication about developments, changes and new initiatives

MIGA welcomed Queensland Health's efforts to keep Queensland clinicians up to date with various developments and changes during the COVID-19 pandemic.

Regular frontline COVID-19 advice updates for clinicians were particularly useful.¹

MIGA would like to see these efforts continue into the future once the COVID-19 pandemic ends as other developments and changes occur across the Queensland health system.

Telehealth

The COVID-19 pandemic has shown the suitability and workability of telehealth on a 'whole of population' basis across both community and hospital settings.

This model should continue after the pandemic ends, for use in circumstances where the professional opinion is that they are clinically appropriate and where patients are comfortable with it.

Further work will be needed to ensure this supports appropriate models of care. This is particularly to ensure

- Healthcare can be provided at the same standard as through a face-to-face consultation
- Continuity of care for patients, including prompt ability to see a patient's doctor or their colleague when an issue requiring face-to-face assessment is identified during a telehealth consultation.

Restricted surgery and procedures

MIGA supports the decision taken by the Queensland Government, reflecting the National Cabinet position and based on expert clinical advice, to limit surgery and other procedures during the initial phases of the COVID-19 pandemic.

Queensland's elective surgery limitations, like those in most other states and territories, reflected National Elective Surgery Urgency Categorisation. Importantly this emphasises the role of clinical judgment in making decisions on surgical categorisation. A range of peak professional bodies also provided important, helpful guidance around elective surgery restrictions. Inevitably such guidance could not cover all clinical situations.

In complex, evolving and high pressure situations like the COVID-19 pandemic, there is inevitable scope for differing views around issues such as what surgery / procedures could or could not occur. Across the country, there was considerable doubt in the minds of doctors about what was permitted and what was not.

MIGA believes that doctors and healthcare organisations, acting in good faith and trying to follow Government decisions and professional guidance, should not be prosecuted or face regulatory / professional disciplinary or other adverse legal action for decisions around performing surgery / procedures when restrictions were in place.

Digital image based medication prescribing

MIGA welcomes moves across the country towards electronic-based medication prescribing, reducing the need for paper prescriptions.

These initiatives offer significant benefits for the healthcare professions and the Queensland community.

In Queensland, digital image prescribing was introduced from mid-May.² It will be followed by electronic prescribing models over the coming months.³

Unfortunately there were implementation issues around digital image prescribing.

The model was announced nationally and guidance issued by the Commonwealth Government for its use in late March. However there was then a delay in changes being made to Queensland's medication prescribing legislation to legalise this new framework.

This delay between announcement and consequent legislative changes, without clarity on the Queensland position, posed difficulties and uncertainties for doctors in this interim period. This exposed them to medico-

¹ See www.health.qld.gov.au/clinical-practice/guidelines-procedures/novel-coronavirus-qld-clinicians

² Involving a digital image of an original prescription being sent to a pharmacy for a patient via email

³ Initially involving a token based model (using QR codes), followed by an Active Script List Model

legal risk. MIGA appreciates the retrospective legalisation of digital image prescriptions, reflective of these uncertainties and resolving concerns it had about potential adverse regulatory or disciplinary action.

MIGA acknowledges the challenges involved in implementing such a framework across the country, given it involved laws at both Commonwealth and state / territory levels. In hindsight it would have been helpful to provide one of the following

- An interim arrangement, perhaps by public health order
- Announcement of when it would be legal in Queensland, or
- Advice not to use digital image prescribing pending Queensland legalisation.

The option of digital image prescribing should remain once the COVID-19 pandemic ends, including under the new *Medicines and Poisons Act 2019* (Qld) regime yet to come into operation. It may take some time before 'true' electronic prescribing is used widely, and some patients and their doctors may prefer to continue with digital image prescribing.

The final regulations under the new regime should be consistent with the current process. They should not impose unnecessary requirements not already in use, such as telephone confirmations of pharmacist receipt and sending paper prescriptions after electronic communication for all prescriptions.⁴

Liability for the treatment of public patients in the private sector

MIGA supports the general principles behind the National Partnership Agreement (**NPA**), involving Australian Governments supporting private hospitals during the COVID-19 pandemic to provide additional capacity for the public health system.

Its concerns around the NPA relate to the complex medico-legal and insurance issues it raises for doctors and private hospitals.

The development and implementation of the NPA would have benefited from earlier MDO / PII engagement to provide clarity for all parties in relation to the liability and insurance implications.

Unfortunately the NPA was not clear as to where liability sat for the treatment of public patients in the private sector. The Commonwealth's view however was that responsibility for this should stay with the State Governments. In practice, this is not how it was implemented. Unfortunately many states took the view that liability should transfer to the private sector and this became challenging for all parties to manage.

Important issues remain to be resolved around medico-legal responsibility when a crisis such as this occurs, who should accept the risk if there is a transfer of care from the public to the private sector and the longer-term insurability of global events such as pandemics.

COVID-19 challenges - clinical decision-making and responding to complaints

Frontline healthcare workers have faced a myriad of challenges and pressures during the COVID-19 pandemic.

MIGA is conscious that complaints have been and will continue to be made about healthcare during the pandemic.

It is imperative that approaches to these complaints, whether by the Office of the Health Ombudsman (**OHO**), Queensland Health entities or otherwise, reflect the realities for frontline healthcare workers of dealing with the pandemic.

For example, a doctor attempting to provide the best care they could in difficult circumstances, under significant personal and / or professional pressure, should not be judged by unfair standards of being able to provide a best practice response in ideal circumstances.

At a national level, MIGA welcomed the recognition by Ahpra and the National Boards of the challenges posed by the pandemic to the healthcare profession, indication that *"If there is a complaint about you during this*

⁴ These were proposed requirements under the draft Medicines and Poisons (Medicines) Regulation 2019 (Qld) – see MIGA's submission on these issues to an earlier Parliamentary inquiry - www.parliament.qld.gov.au/documents/committees/SDNRAIDC/2019/MAPB2019/submissions/018.pdf

time, the Medical Board of Australia will take into account the extraordinary circumstances in which you are working and the heavy demands being made of you".⁵

MIGA would like to see the OHO and relevant Queensland Health entities commit to a similar approach.

The legislative constraints on timeframes to provide a response to a complaint made to the OHO pose a further issue for busy health professionals during this time.

Under ss 47 and 53 of the *Health Ombudsman Act 2013* (Qld), the timeframe allowed can be no more than 14 days. This has restricted the OHO from granting extensions of time to respond to complaints in appropriate circumstances. MIGA has expressed concern about this issue previously.⁶

MIGA welcomed the OHO's recognition of the challenges of COVID-19 for the profession and invitation to contact it if a health professional had difficulty in meeting a timeframe.⁷ This alone cannot give the OHO the necessary discretion, which the NSW Health Care Complaints Commission and National Boards / Ahpra already have given their less proscriptive legislative regimes.

Significant numbers of complaints to the OHO have been referred directly to the National Boards / Ahpra before a response is required. Although this avoids the issue for those matters, there are a range of complaints which have and will be handled by an OHO lacking this necessary flexibility.

Appropriate legislative reform to address this lack of flexibility should be considered.

Greater scope for early medico-legal / health regulatory engagement

MIGA believes the response of the Queensland healthcare system to the COVID-19 pandemic illustrates the need for and value of early medico-legal / health input by the indemnity insurance sector into healthcare initiatives and reforms that raise medico-legal, regulatory and insurance issues.

In hindsight, MIGA believes it could have made an important contribution to issues arising from elective surgery / procedure restrictions, the insurance arrangements for public patients being treated in the private sector and the move towards digital image prescribing.

It welcomes the formation and work of the Queensland Health's Reform Planning Group to learn from changes to healthcare arising from the COVID-19 pandemic. It is important to ensure that this work includes all interested professional stakeholders, including MDOs / PIs such as MIGA.

MIGA would welcome the opportunity to work with officials from Queensland Health and other relevant Queensland Government departments to identify a framework for when involvement by MIGA and comparable organisations around new initiatives and reviews is necessary and appropriate. This would include further work on a range of pandemic-driven initiatives, including telehealth, electronic prescribing, liability for treatment of public patients in the private sector and various workforce changes.

If you have any questions or would like to discuss, please contact Timothy Bowen, [REDACTED] /

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Yours sincerely



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⁵ COVID-19 update from the Medical Board of Australia: 31 March 2020

⁶ See

www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2019/Health%20Transparency%20Bill%202019/submissions/002.pdf and www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2016/PerformanceQHO/submissions/033.pdf

⁷ See www.oho.qld.gov.au/the-office-of-the-health-ombudsman-will-remain-open-during-the-covid-19-pandemic/