



Supplementary Guidelines

for the Grant of Indemnities
and Legal Assistance to
Medical Practitioners in the
Tasmanian State Service

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1. Purpose of these Supplementary Guidelines

These guidelines are supplementary to the *Policy and Guidelines for the Grant of Indemnities and Legal Assistance to Public Officers of the State of Tasmania* (the Policy) as approved by Cabinet on 16 December 2013. The guidelines are issued under Clause 1.3 of the Policy which provides that the Minister for Health has responsibility to issue supplementary guidelines for medical practitioners.

Due to the sometimes complex nature of employment arrangements relating to medical practitioners, *Supplementary Guidelines* are issued and maintained by the Minister for Health to provide guidance to medical practitioners about how the Policy operates in relation to them. While all provisions within the Policy apply to all Public Officers (including Eligible Medical Practitioners) these *Supplementary Guidelines* contain additional and specific detail relating solely to Eligible Medical Practitioners, as defined.

The *Supplementary Guidelines* are intended to explain in some detail how the Policy will apply in circumstances that are directly relevant to medical practitioners, and by doing so, to clarify for medical practitioners how the Policy applies in the kinds of circumstances that they typically encounter. If there is any inconsistency between these *Supplementary Guidelines* and the Policy, this is unintentional and the Policy always prevails.

Of necessity, the information contained in these *Supplementary Guidelines* cannot be definitive or exhaustive, as the circumstances and facts of each case may differ.

Michelle O'Byrne

Minister for Health

13 February 2014

2. Meaning of Terms

'DHHS' means the Department of Health and Human Services.

'Eligible Medical Practitioner' or 'EMP' means a registered medical practitioner who is employed by the Crown as a medical practitioner, but only in relation to any activity being undertaken for which he or she is not entitled to bill and retain in full any fee charged for the activity, whether or not any billing takes place.

'Private Practice Plan Agreement' or 'PPPA' means a documented agreement between the employer and a medical practitioner authorising the medical practitioner to use hospital facilities in order to provide medical services to private patients, and for which services, fees are charged by or on behalf of the medical practitioner.

'Tasmanian Health Organisation' or 'THO' has the same meaning as under the *Tasmanian Health Organisations Act 2011*. THOs are the service providers and direct managers of public hospital services and they are directly accountable to the State Government and Parliament for hospital and health service performance. The THOs have been established under the THO Act as 'statutory authorities'.

'Registered Medical Practitioner' means a medical practitioner registered with the Medical Board of Australia.

3. Application of Policy to Medical Practitioners

Set out below are specific provisions relating to Eligible Medical Practitioners, based on the wording in the Policy.

Notification of Legal Proceedings by Eligible Medical Practitioner

An Eligible Medical Practitioner must provide notice in accordance with clause 3.2 of the Policy to the 'Relevant Responsible Officer' as soon as reasonably practicable after the Eligible Medical Practitioner becomes aware that he or she is or is likely to be the subject of legal proceedings, inquiry or investigation.

The 'Relevant Responsible Officer' is the Head of Agency of the agency in which the Eligible Medical Practitioner was employed at the relevant time (e.g. the Secretary for those employed by the Department of Health and Human Services and the Chief Executive Officer (CEO) for those employed by a Tasmanian Health Organisation).

Composition of the Indemnity Panel

For Eligible Medical Practitioners, the Indemnity Panel is to comprise:

- a) the Secretary, Department of Justice (Chair)
- b) the Solicitor-General
- c) the Relevant Responsible Officer (Head of Agency of the employing State Service Agency).

The Relevant Responsible Officer will provide information to the Panel as to whether the registered medical practitioner was undertaking work at the direction of the Crown, and whether the registered medical practitioner was entitled to bill and retain the full fee for the work being done at the material time to which the notification relates.

4. Some Frequently Asked Questions

1. How do I know if I am eligible to receive legal assistance or an indemnity?

The Policy defines which medical practitioners are eligible to receive an indemnity or legal assistance and in what circumstances.

The Policy and these Guidelines define 'Eligible Medical Practitioner' as a registered medical practitioner who is employed by the Crown as a medical practitioner, but only in relation to any activity being undertaken for which he or she is not entitled to bill and retain in full any fee charged for the activity, whether or not any billing takes place.

This definition includes medical practitioners providing public health services on a locum (short-term) basis if they are Crown employees, but only in relation to an activity being undertaken for which he or she is not entitled to bill and retain in full any fee charged for the activity, whether or not any billing takes place.

Medical practitioners who are Crown employees are not eligible to receive an indemnity or legal assistance in respect of any activity in relation to which they are *entitled* to bill and retain in full the fee for that activity. It is the *entitlement* to bill and retain the fee in full that is the determining factor, not whether the medical practitioner in fact billed and retained the fee in full.

The Medical Board of Australia's Professional Indemnity Insurance Registration Standard requires that medical practitioners hold their own indemnity insurance if they engage in activity for which they are not eligible for Crown indemnity.

The location at which an activity is carried out is not a determining factor; but rather, whether the activity is carried out as a Crown employee at the direction of the Crown, whether the medical practitioner is entitled to bill and retain the fee in full, and whether the medical practitioner acted in good faith in fulfilling his or her duties.

The question of whether a medical practitioner was, in any particular case, entitled to bill and retain a fee in full is answered by looking at the relevant material facts, e.g.:

- whether the patient was a public or private patient at the time of the relevant event
- documents which show or regulate whether and in what circumstances the medical practitioner is entitled to bill and retain any fee in full, such as the employment contract or PPPA.

2. Are there examples of when I am an Eligible Medical Practitioner?

Some examples are set out below to illustrate the application of the Policy in a range of circumstances.

A medical practitioner employed by the Crown *will meet the definition* of an Eligible Medical Practitioner under the Policy when treating:

- a public patient in a public hospital
- a patient who is entitled to and has elected to be treated privately in a public hospital (referred to as 'private in public') but where the medical practitioner is *not* entitled to bill and retain the fee in full
- a MAIB, Department of Veterans' Affairs (DVA) or Workcover patient where the medical practitioner is *not* entitled to bill and retain the fee in full
- a public patient who has been organised by a THO, for whatever reason, to be treated within a private facility (referred to as 'public in private') and the medical practitioner is *not* entitled to bill and retain the fee in full.

A medical practitioner *will not be* an Eligible Medical Practitioner under the Policy if he or she is not a Crown employee, or is a Crown employee when treating:

- any patient in relation to whom the medical practitioner is entitled to bill and retain the fee in full, regardless of who organises the billing and of whether the entity paying the account is a private insurer, the MAIB, DVA, Workcover or the patient is self-insured. It is the entitlement to bill and retain the full fee that is the defining feature and not whether a bill was in fact issued.

3. What sort of information should I provide when providing a notification?

You will need to provide, in a timely manner, a document which sets out the key facts of the circumstances leading to the notification.

This includes:

- a brief description of your employment circumstances at the time of the relevant event
- the key facts relating to the event, preferably provided as a timeline in date order
- the identity of the patient.

In the first instance, this information will need to be verified by your employing agency - DHHS or a THO. The agency will also assess and should be able to provide advice regarding the nature of your billing entitlement (if any) in relation to the activity which forms the basis of the notification.

You should also be aware that – except to enable the Indemnity Panel to decide whether you were fulfilling your duties 'in good faith' at the relevant time – it is no part of the function of the Indemnity Panel to form any view about the circumstances of any matter which gives rise to a notification. In particular, it is not the function of the Indemnity Panel to make any determination about whether or not you may have been negligent. The sole function of the Indemnity Panel is to determine whether, at the relevant time, you were an Eligible Medical Practitioner and were acting in good faith in the course of your employment.

The minimum requirements for notification are set out in clause 3.2 of the Policy.

4. What should I do once my documentation is ready?

The notification must be made by the medical practitioner. The process involves providing it to the CEO or Secretary of your employing organisation who will forward it to the Chair of the Indemnity Panel.

5. Treatment in private settings by registrars

Some registrars undertake work in private settings with specialists. If registrars who are Crown employees are undertaking work at the direction of the Crown, and are not entitled to bill and retain the full fee for any such work, they will ordinarily be entitled to an indemnity and legal assistance. The THO CEO will provide advice to the Indemnity Panel about whether these conditions have been met. THOs should seek their own advice on specific arrangements they may have with registrars.

6. What is the role of Crown Law?

Crown Law is the provider of legal advice and assistance to the Crown (Government). By logical extension, this provider of advice and assistance is usually the most appropriate for servants of the Crown in the form of public officers including Eligible Medical Practitioners.

In some particular circumstances or cases where Crown Law may be unable to provide assistance, it may be appropriate for alternative arrangements, e.g. legal assistance to be provided by a private legal practitioner. This arrangement and the payment of legal costs will be determined by the Panel on advice from the Solicitor-General.

An Eligible Medical Practitioner may elect to retain a private legal practitioner at his or her own cost. However if the EMP is also seeking or has been granted an indemnity, this may only be done with the written approval of the Indemnity Panel.

7. Can I seek assistance for matters arising from work done outside my contracted hours?

The determining factors for eligibility are whether the work was being done at the direction of the Crown, whether you were entitled to bill and retain the full fee for the relevant service, and whether you were acting in good faith.

8. How do I make a notification?

DHHS employees should contact the Secretary.

THO employees should contact the CEO of the relevant THO.

9. Will there be provision for clinical input into the Panel's deliberations?

The role of the Indemnity Panel is to determine the eligibility of a notifying medical practitioner to receive legal assistance and/or to be indemnified. That determination will be made solely by reference to the matters referred to in the Policy, which are explained above. It is not the function of the Indemnity Panel to conduct a clinical or peer review of the actions of the medical practitioner.

10. Will the Panel consider the interests of the patient?

The interests of the patient, whilst important, are not a matter for consideration by the Indemnity Panel. These are properly matters for a tribunal, court or regulator to take into account.

11. Conduct of matters

Strategic decisions regarding the conduct of a matter will be made by the Crown following consultation with the medical practitioner(s) involved.

12. What if I retire or move interstate?

Eligibility depends upon whether the medical practitioner was at time of the occurrence of the events which give rise to the notification an Eligible Medical Practitioner and was acting in good faith. If those requirements are satisfied then the current employment status and place of residence of the medical practitioner are irrelevant.



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