

**Medical Indemnity Forum**

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## **The Management of Claims & Complaints**

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## **Types of Matters Managed by MIs**

- Medical Indemnity Insurance is a class of professional indemnity (liability) insurance
- MIs therefore primarily cover liability claims arising out of professional (medical) practice
- Significant additional role in providing cover for various types of legal or statutory investigations arising out of medical practice

## **Complaints & Claims covered by the 'average' MII**

- Ongoing influence of MIIs' history as discretionary mutuals for benefit of members
- Historically covered compensation claims plus all medical-practice related investigations where legal representation or assistance was required

## **Complaints & Claims covered by the 'average' MII**

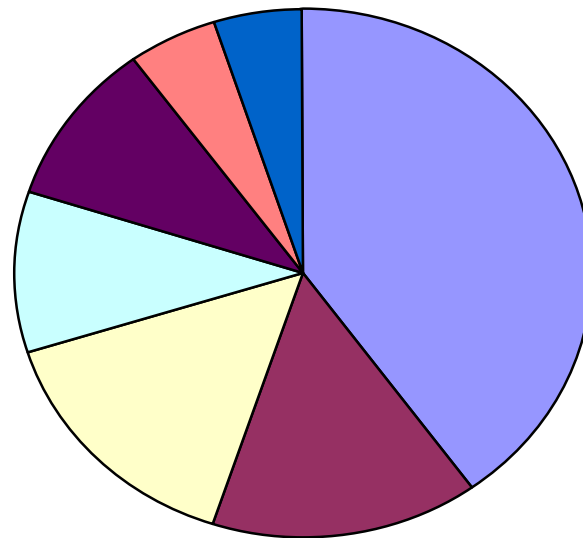
- High degree of similarity in the insurance cover provided by all MIIs
- Minor variations in terms & conditions of cover between MIIs
- Some MIIs offer optional extensions of cover &/or cover additional discrete areas

## **Complaints & Claims covered by the 'average' MII**

- Liability claims arising out of medical practice
- Cover generally also provided in respect of legal assistance and representation re:
  - Coronial investigations
  - Medical registration body investigations
  - Complaints to statutory health bodies
  - Medicare & like investigations (some limitations)

# Complaints & Claims covered by the 'average' MII

**Types of Claims/Complaints by Frequency**



- Litigated claims
- Unlitigated claims
- Medical Board/Council
- Coronial investigations
- Statutory complaints authorities
- Medicare
- Other

## **Complaints & Claims covered by the 'average' MII**

- May also cover such things as:
  - Drugs & Poisons Unit investigations
  - Criminal investigations &/or charges
  - Intervention orders against patients & others
  - Employment &/or credentialling disputes
  - Defamation
  - Tax audits
  - Loss &/or reconstruction of records

## Sources of Claims & Complaints

- Coronial investigations & Inquests
  - Minor variations in jurisdiction from state to state
  - Jurisdiction regarding unexpected & unexplained deaths, or deaths in suspicious circumstances
  - Includes intra & immediately post-op deaths
  - Role to investigate, make findings as to:
    - Cause of death
    - Persons or factors contributing to the death
  - Additional role re referrals to other agencies:
    - Police re possible criminal charges
    - Medical registration bodies

## Sources of Claims & Complaints

- Coronial investigations & Inquests (cont'd)
  - Typical clinical issues which result in a Coronial investigation or Inquest include:
    - Diagnosis errors
    - Deaths following obstetric care
    - Treatment errors (especially drug-related)
    - Deaths associated with surgical procedures
    - Death by suicide or overdose of a psychiatric/disturbed patient
    - Possible euthanasia
    - Homicides believed to have been committed by a patient

## Sources of Claims & Complaints

- Medical registration boards/bodies
  - Role to oversee the registration of medical practitioners
  - State/territory based – some procedural variations
  - Role includes investigating notifications of concerns concerning registered practitioners which might constitute a threat to public health or safety &/or be regarded as ‘unprofessional conduct’

## Sources of Claims & Complaints

- Medical registration boards/bodies (cont'd)
  - Typical clinical issues which result in an investigation by a medical registration body:
    - Patient complaints regarding communication problems/errors
    - Diagnosis errors
    - Errors or concerns about treatment
    - Concerns regarding practitioner impairment
    - Concerns regarding practitioner competence
    - Inappropriate behaviour, including alleged sexual & other assaults, fraudulent activities, prescribing issues, inappropriate relationships with patients & non practice-related issues going to character

## Sources of Claims & Complaints

- Medical registration boards/bodies (cont'd)
  - Types of remedies available:
    - Dismiss complaint/report as unfounded
    - Conduct informal hearing & dismiss complaint/report
    - Conduct informal hearing & find guilty of unprofessional conduct 'not of a serious nature' with possible remedies:
      - » Caution/reprimand
      - » Requirement to undertake training or other program
    - Refer to formal hearing
    - Formal hearing, same remedies as informal hearing plus:
      - » Practice under specified conditions/restrictions
      - » Suspension or deregistration

## Sources of Claims & Complaints

- Statutory Complaints Authorities
  - State/territory based jurisdiction
  - Major role to investigate patient initiated complaints and offer conciliation
  - Power to assist in negotiating compensation but not to order payment
  - Generally a cost and lawyer free jurisdiction
  - In some states (eg NSW) work closely with Medical Board to investigate and manage complaints

## Sources of Claims & Complaints

- Statutory Complaints Authorities (cont'd)
  - May be a source of referrals to Coroners or medical registration bodies if relevant issues identified
  - Do not preclude a patient from pursuing compensation through the legal process
  - May assist in resolving misunderstandings between practitioner & patient/family

## Sources of Claims & Complaints

- Statutory Complaints Authorities (cont'd)
  - Patient can request compensation
  - Typical matters considered include:
    - Complaints regarding unsatisfactory consultations
    - Complaints regarding poor/unexpected outcomes
    - Complaints/misunderstandings arising out of poor communication
    - Complaints regarding practice staff or procedures
    - Complaints regarding privacy/access to medical records

## Sources of Claims & Complaints

- Statutory Complaints Authorities (cont'd)
  - Authority may:
    - Investigate complaint (including seeking explanation from practitioner or seeking expert opinions)
    - Invite parties to conciliation conference
    - Facilitate an apology
    - Facilitate a settlement (but cannot order payment)
    - Assist complainant to understand legal rights
    - Assist complainant to obtain legal advice
    - Refer complainant to other agencies

## Sources of Claims & Complaints

- Compensation Claims
  - Involve a request or demand for compensation by a patient or his/her relatives
  - Will be dealt with in detail by Allan in his presentation
  - May be:
    - Unlitigated (claimant self-represented)
    - Unlitigated (claimant represented by a lawyer)
    - Pre-litigated (jurisdictions which have pre-litigation processes)
    - Litigated

## Sources of Claims & Complaints

- Complaints re business aspects of practice
  - MIIIs may also be asked for advice or assistance regarding a range of other legal or quasi-legal issues arising out of medical practice
  - These may include issues such as:
    - Employment disputes of various types
    - *Trade Practices Act* type issues
    - Disputes with other practitioners
    - Disputes with patients regarding billing, appointments etc
    - Complaints regarding locum or after hours arrangements

## Sources of Claims & Complaints

- Complaints re business aspects of practice
  - MIIIs will generally provide preliminary advice to the extent that the issue relates to clinical practice, even if not covered under the policy
  - Where the issue relates to business aspects of practice, most MIIIs don't provide cover or advice
  - Advice & assistance may be available through other agencies, eg AMA (which provides advice and assistance to members regarding disputes of an industrial relations flavour)

## Handover

- Allan Tattersall, Head of Claims  
MDA National Insurance
- Will talk about:
  - The life cycle of a claim
  - Impact of government support schemes on claims

## The Life Cycle of a Claim

- Nature of member notification varies:
  - an unexpected outcome
  - direct complaint
  - complaint to Medical Board or similar authority
  - coronial investigation
  - solicitor's letter
  - writ

## The Life Cycle of a Claim cont'd

- Determine whether to grant indemnity:
  - MII's no longer grant discretionary cover
  - Need to look at the incident in relation to the policy coverage
  - Main issues:
    - Claims made cover
      - Date incident occurred
      - Date incident notified
      - Date of inception of policy (and retroactive date)

## **The Life Cycle of a Claim cont'd**

- Prepare the Member's statement:
  - Obtain a copy of the medical records
  - Discuss details of incident with Member
  - Prepare statement based on the Member's records and recollection of the incident

## The Life Cycle of a Claim cont'd

- Review the medicine:
  - Medically trained staff
  - Seek opinion from medical experts
    - Look for credible experts
    - 'Hired guns' of little value

## **The Life Cycle of a Claim cont'd**

- Review by Cases / Medical Experts Committee
  - Medical issues presented to the committee
  - Provision of advice on:
    - standard of care (peer / reasonableness test)
    - Causation (did the incident cause or contribute to the outcome)
    - May also comment on contribution from other parties
  - Leads to a determination of Standard of Care

## **The Life Cycle of a Claim cont'd**

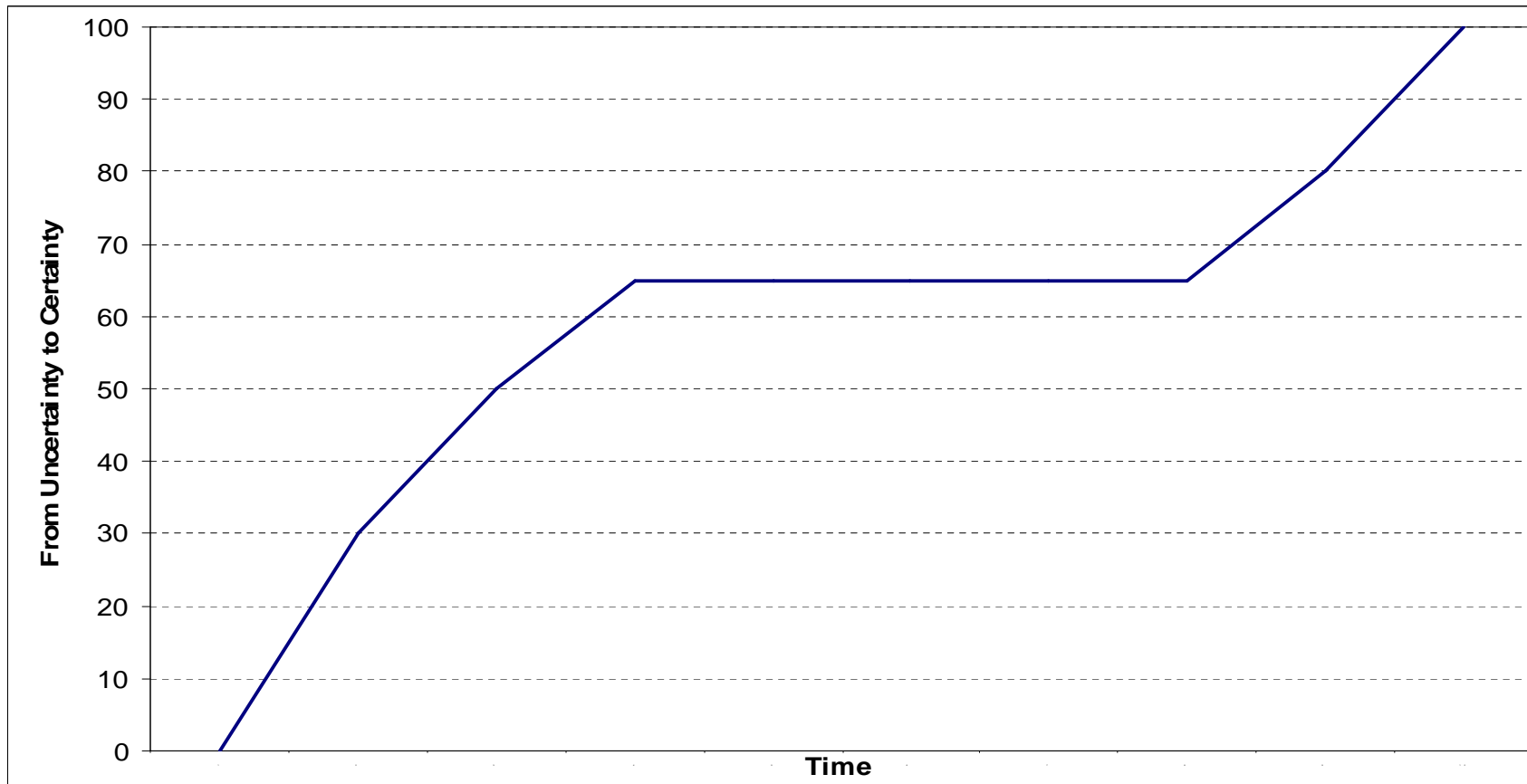
- Defend or Settle Decision
  - Standard of care decision considers the medical aspects of the claim
  - Will the defendant be a good witness
  - Will the experts be good witnesses
  - Are there opportunities to consider a commercial settlement (e.g. where defensibility is borderline)

## The Life Cycle of a Claim cont'd

- Quantum
  - Difficult to assess when a claim is first reported as key information is often not known
  - Initial quantum assessment is often based on a claims manager's experience with similar claims (a global estimate)
  - As more information becomes known, quantum can be determined with greater accuracy
  - At time of settlement, settlement is more scientific

## The Life Cycle of a Claim cont'd

- Quantum Certainty –v- Time



## **The Life Cycle of a Claim cont'd**

- Key Heads of Damage:
  - general damages (non economic loss)
  - past and future out of pocket expenses
  - past and future economic loss
  - past and future cost of care

## The Life Cycle of a Claim cont'd

- Key Drivers of Quantum
  - Age / life expectancy
  - Past and future earnings
  - Cost of future care
  - Medical costs

## **The Life Cycle of a Claim cont'd**

- Appointment of Solicitors
  - May have their own internal legal practice
  - May use a limited number of external firms (helps to develop expertise in a specialised area of law)

## **The Life Cycle of a Claim cont'd**

- Claim Settlement
  - Small proportion go to trial
  - Settlements can generally be achieved via negotiation with or without the involvement of lawyers or legal proceedings

## The Life Cycle of a Claim cont'd

- Summary
  - Obtain the facts
  - Assess the standard of care
  - Defend or settle
  - Determine quantum
  - Progress to closure
    - Settle
    - Withdraw
    - Defend

# Government Claims Support Federal

- High Cost Claims Scheme
  - Amount payable equates to 50% of the cost of claim in excess of the threshold
  - Threshold:
    - \$2,000,000 where the claim or incident is first notified on or after 1 Jan 2003 but before 22 Oct 2003
    - \$500,000 (on or after 22 Oct 2003, before 1 Jan 2004)
    - \$300,000 (on or after 1 Jan 2004)

## Government Claims Support Federal

- Exceptional Claims Indemnity Scheme
  - Amount payable equates to 100% of the cost of claim in excess of the threshold
  - Threshold:
    - \$15,000,000 where incident first notified on or after 1 January 2003 and before 1 July 2003
    - \$20,000,000 where first notified on or after 1 July 2003

# Government Claims Support Federal

- IBNR Indemnity Scheme
  - Claim payable under this scheme where:
    - the MDO had an unfunded IBNR exposure on 30 June 2002:
      - Incident occurred on or before 30 June 2002
      - incident notified after 30 June 2002
      - occurrence based cover with an MDO

Funded (at least in part) by the UMP Support Payment

# Government Claims Support Federal

- Run-off Cover Indemnity Scheme
  - Eligible Member:
    - Age 65 and retired from private medical practice
    - Under 65 but not engaged in any private medical practice for past 3 years
    - Maternity – ceased all practice
    - Permanent disability – ceased all practice
    - Deceased

## **Government Claims Support Federal**

- Run-off Cover Indemnity Scheme cont'd
  - Eligible Claims:
    - The doctor was eligible at time of notification
    - Incident first notified on or after 1 July 2004

Funded via a levy on insured medical practitioners

## **Government Claims Support State**

- VMO Scheme (Indemnity for claims by Public Patients in Public Hospitals)
  - Where incident occurred on or after the MII provided 'claims made' cover, and
  - Reported on or after 1 July 2003
  - State Government provides indemnity

## **Government Claims Support State**

- Indemnity for Private Patients in Rural Areas
- Indemnity for Private Paediatric Care in NSW
- Care provided by Staff Specialists in any Queensland Health facility

## Government Support

- Summary:
  - Federal:
    - High Cost Claims Scheme
    - Exceptional Claims Indemnity Scheme
    - IBNR Indemnity Scheme
    - Run-off Cover Indemnity Scheme
  - State:
    - VMO Scheme
    - Rural schemes
    - Area of need schemes (e.g. paediatrics)

# Lessons to be Learnt

Close

Chair:- Dr Stuart Boland