

Medical Indemnity Forum

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The Management of Claims & Complaints

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Types of Matters Managed by MIIIs

- Medical Indemnity Insurance is a class of professional indemnity (liability) insurance
- MIIIs 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

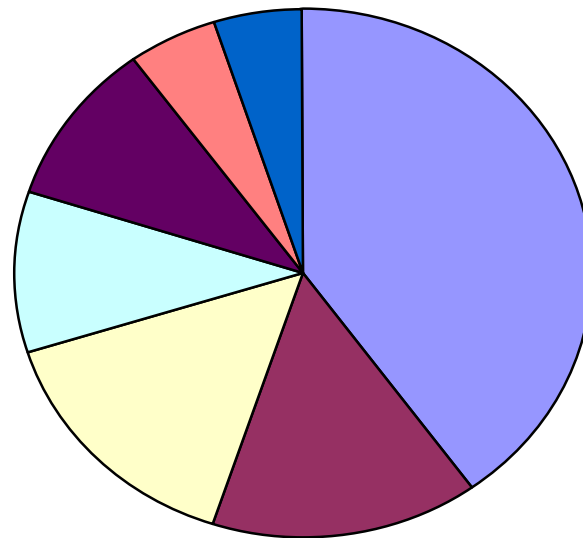
- High degree of similarity in the insurance cover provided by all MIIs
- Minor variations in terms & conditions of cover between MIIs
- Some MIIs offer optional extensions of cover &/or cover additional discrete areas

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

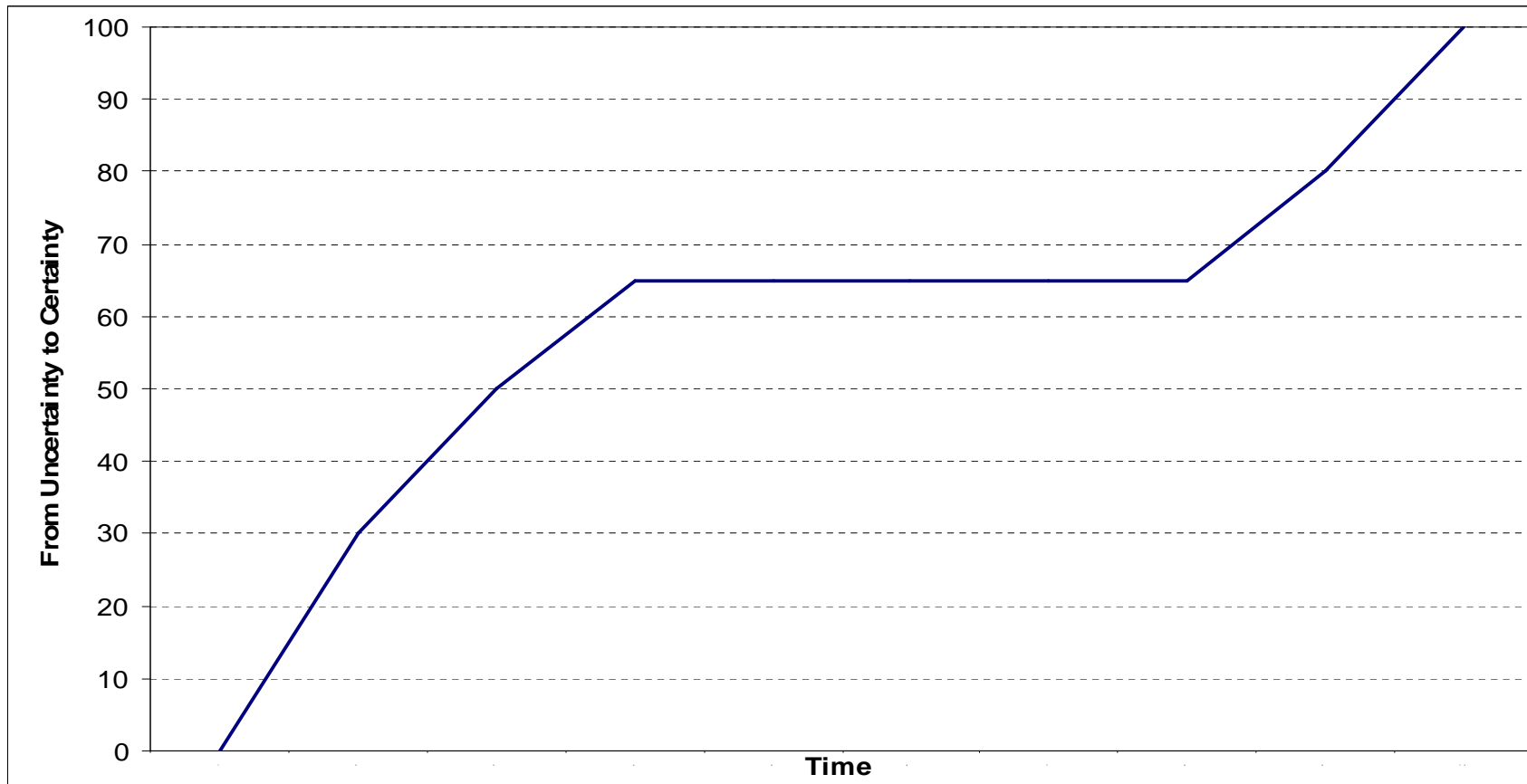
- Defend or Settle Decision
 - Standard of care decision considers the medical aspects of the claim
 - Will the defendant be a good witness
 - Will the experts be good witnesses
 - Are there opportunities to consider a commercial settlement (e.g. where defensibility is borderline)

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