



**MIIAA Annual Forum 2012**  
**Looking to the Future for Medical Indemnity**

# **Ongoing Impact of the Global Economy on the Australian Insurance Landscape**

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## **Short term GFC Effects**

- Claim numbers of high cost cases have reduced during GFC – since 2007/08
- One possible cause identified by some lawyers is that funding to run high cost cases has become scarce – funding sources not prepared to risk not being repaid if no win/no fee cases were unsuccessful
- A consequence is that as the economy picks up post-GFC, numbers may pick again, and be even higher than previously - due to catching up a backlog



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## Longer term outlook

- Economic outlook and impacts
- Increasing access to patient files
- Internet – remote treatment/internet based diagnosis “telehealth” care
- Overseas travel for treatment
- Genetic testing
- Biosimulations
- Increasing obesity – surgical risks
- Ageing population, debates around euthanasia



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## NIIS and NDIS

- **National Injury Insurance Scheme (NIIS):** Removes long term care and related heads of damage from existing accident compensation schemes and administers them in an holistic no-fault framework.  
[Only covers new disabilities](#)
- **National Disability Insurance Scheme (NDIS):** Covers significant disabilities. [Covers new and existing disabilities](#). Full rollout to start January 2015
- “Medical Injuries” to fall under NIIS - to start October 2013
- Cerebral palsy to fall under NDIS – to start January 2015

## Medical injury questions

- What counts as a catastrophic medical injury?
- How should these injuries be funded under the NIIS?
- What happens to the residual claim?
- What is the effect on doctors' premiums?
- How many people are affected?
- Who pays while claims are being assessed?



"It's simple. My nurse blindfolds me, I spin around a few times, and then I try to reattach your tail."

## National Injury Insurance Scheme

- Proposed 2013 commencement in each state for MVA and catastrophic "medical accident" occurring after commencement date
- No fault - unexpected and unusual outcome from medical treatment
- No cover if treatment appropriate and no obvious cause for condition apart from underlying health condition (would be covered under NDIS)
- Brain damage, paraplegia, quadriplegia, blindness, severe burns
- Cerebral palsy covered under NDIS due to difficulty in determining causation

## Causation and the NIIS

- How to assess claims to ensure early intervention?
- Accept early and review ongoing eligibility later?  
There have been issues with LTCS and insurers in relation to delays in transferring claims
- Causation in birth cases invariably complicated, may be “too hard” for families without accessing legal advice
- Introduction of NDIS would ease pressure



## What remains with MIIs?

- All incidents occurring before NIIS commences (until NDIS in place)
- Dependent on legislative changes in each state and territory
- Right for defendant to refer claimant for assessment of eligibility for NIIS?
- Plaintiffs preference? If fail at common law – can participate in NDIS?
- Effect on gross claims reserves will be considerable – eventually
- Number of notifications will likely remain steady - but will affect development
- To what extent would medical and other costs remain with the MIIs?

## Other issues

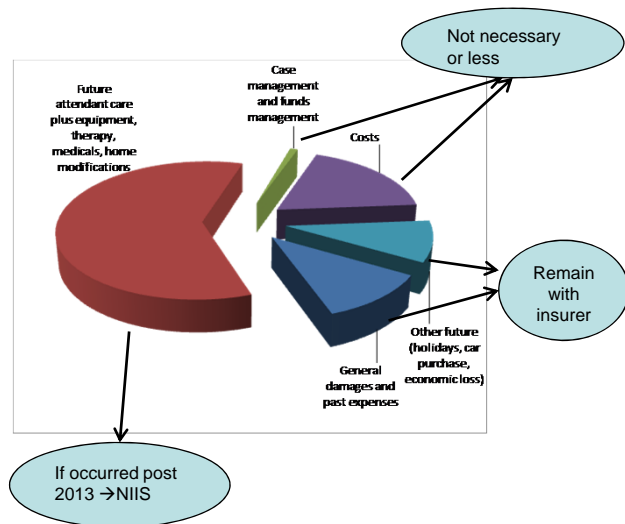
- Can those already successful at common law action participate in NDIS – co-contribution?
- Wrongful birth cases - vexed question as not the disabled child who is compensated currently
- Effect on residual claim - fight harder over smaller sum...or accept more readily?
- Reduced need for (often conflicting) medical evidence concerning future life expectancy
- Removal of compromise on care costs likely to outweigh savings from legal and other expenses

## Case Study\*



\* Thanks to Jonathan Cohen, Linda Satchwell and Adrian Gould, who presented this and other cases to the Institute of Actuaries of Australia Convention in 2011

- Teenager - cardiac arrest following a viral illness, suffered severe brain damage
- 8 months between incident and notification by doctor, claim finalised 7 years after incident
- Contested on liability and causation at original trial and appeal
- Verdict for plaintiff
- “Medical accident”?
- Damages agreed at \$8m, with costs totalled \$9.8m



## Outlook

- Coalition policy is that NDIS depends on budget being in surplus
- WA and Qld schemes may already provide better care than NDIS
- Funding – NDIS levy or consolidated revenue?
- NIIS legislatively enacted at a state level
- Access to common law for lifetime care must be removed
- Possibility of different entitlements between states and consequent jurisdictional uncertainty for MIIs that operate across multiple states.



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### Outlook

- Claims that have been reported but not settled when NDIS starts
- MIIs may be liable for additional care above the minimum level provided by NDIS for cerebral palsy
- NDIS covers “severe or catastrophic” injuries - unclear which cerebral palsy claim will meet the definition
- Existing schemes (ECS, ROCS, HCCS, PSS) unlikely to change



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### Predictions

- State issues suggests NIIS appears unlikely to meet October 2013 start date
- NDIS start date (existence?) is heavily dependant on election result and economy
- Labor victory may revive NDIS
- Coalition victory likely to delay both schemes
- **MIIs should probably not allow for any impact in next year's premiums.**