

CHAIRMAN'S UPDATE – INDUSTRY NEWS

The Medical Indemnity Industry continues to stabilise following government interventions which have provided security to patients and doctors through various support schemes and tort reforms. The prudent management of all aspects of business and capital by medical insurers should also be given credit for the positive outlook for the sector. Doctors as well as government have contributed the capital to make the insurers stronger.

Evidence of this strength can be found in the ACCC's Third Monitoring Report on medical indemnity premiums in Australia. This is the final report following up on the effect of interventions in the industry by governments and can be found at the ACCC website: www.accc.gov.au. Key findings of importance to doctors and government, is that the ACCC found the premiums of all insurers to be justifiable on an actuarial and a commercial basis as well as a state jurisdictional basis. This means that any profits in the sector are characterised as prudent rather than excessive. The average premiums paid by doctors (exclusive of any Premium Subsidies) are reducing slowly. According to this report, claims costs are yet to stabilise following the period of activity surrounding tort reforms in most states, but are trending slightly down at present. The underlying nature of the risk in medical indemnity is long term, and prudent accumulation of capital by the insurers will ensure that money is available for claims as they are finalised even many years after the event. The report reiterates that all insurers are on track to meet or exceed capital targets set by the Australian Prudential Regulatory Authority (APRA).

The MIIAA continues to evolve to find more efficient ways to serve its members and the community. As part of this evolution we have restructured our committees.



Consequently we have combined the existing four committees into two; the Technical and Insurance Committee and the Risk Management and Claims Committee. MIIAA is very grateful to the Committee members who provide the expertise and support to make all the work possible. The industry should and will support a central response to issues where a common policy can be usefully and lawfully adopted.

Dr Andrew Miller
Chairman - MIIAA

MIIAA TECHNICAL AND INSURANCE COMMITTEE

The Board of MIIAA reviewed its Committee structure late in 2005. As a result of that review the Technical Committee and the Insurance Committee have been merged.

The Technical and Insurance Committee has been established to consider, advise and assist the MIIAA Board on legislation, regulatory requirements, standards and other mandatory obligations applying to or affecting the provision of medical indemnity insurance generally.

Each of the four Medical Defence Organisation/Medical Indemnity Insurer (MDO/MII) groups is entitled to appoint two nominees to the Committee and the MIIAA Board has appointed two member CEO's.

The Technical and Insurance Committee will consider within this scope:

- The Medicare Australia/PSS Service Contract
- Medical Indemnity legislation
- The Run-Off Cover Scheme (ROCS)
- The Premium Support Scheme (PSS)
- The Insurance Ombudsman's Services, including terms of reference and liaison
- The Insurance Contracts Act
- APRA Prudential Guidelines
- ACCC regulatory requirements
- Financial services reform
- Relevant laws and regulations affecting corporations
- Liaison with Insurance Statistics Australia (ISA) regarding the national database management and administration.

Over the coming months the Technical and Insurance Committee will be particularly focused on:

- Finalising discussions in relation to ROCS to ensure that insurers are able to confirm eligibility of and release ROCS contracts to eligible members
- Clarifying PSS requirements in relation to doctors who practice overseas and doctors who provide non-

therapeutic services

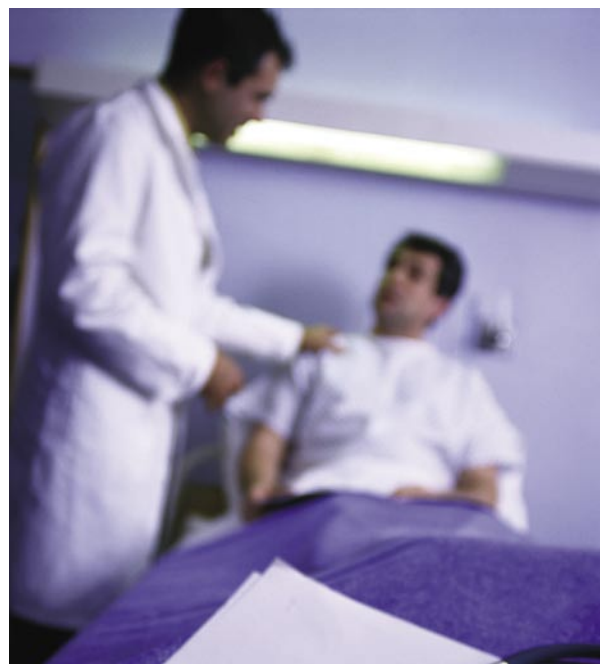
- Providing information and/or position statements to the Abbott Review as required
- Review the Medicare Australia/PSS Contract to ensure consistency with the Medical Indemnity Act and the Medical Indemnity (Prudential Supervision and Product Standards) Act.

The Technical and Insurance Committee will continue to work closely with relevant federal government departments in a co-operative manner to ensure positive outcomes for all stakeholders.

The previous Technical Committee and Insurance Committee have built strong and effective working relationships with the Department of Health and Ageing, Medicare Australia, APRA, the Federal Government Actuary and ISA. The merger of these two Committees into the Technical and Insurance Committee will strengthen these cross functional relationships into the future.

Natalie Simmons

Technical and Insurance Committee Chairman



RISK MANAGEMENT – LEARNING FROM THE PAST

Medical Indemnity Insurers have a long history of participation with their members on risk management. One of the major obligations of Medical Indemnity Insurers is to inform the medical profession of the incident and claim outcomes reported to them, and then to assist the practitioners, through education, to identify the underlying causes and to support them in implementation of risk management reduction strategies.

Medical Indemnity Insurers have undertaken significant actions to assist the profession on risk management.

Activities include:

1. The voluntary creation of a national claims database by MIIAA members, including the extension of the database to provide significant data on risk; to be available from the 2006 report onwards. Two previous reports have been released and are available on the MIIAA website: www.miaa.com.au. The database is being strengthened by back coding being undertaken by MIIAA members at significant effort and cost
2. Collaboration with individual medical colleges on matters such as the creation of clinical guidelines, review of professional standards, studies of high cost claim issues and education of practitioners
3. Collaboration with the AMA, Committee of Presidents of the Medical Colleges (CPMC) and Health Professionals Insurance Australia in the Risk Management Working Party. The MIIAA members have provided significant resources to the Working Party
4. Provision of risk education to approximately 6500 practitioners in the past 12 months. On an aggregated basis this would mean that Medical Indemnity Insurers are one of the larger providers of risk management education services for the medical profession in Australia.

The MIIAA believes that the best risk management outcomes can be achieved via a system wide and coordinated approach.

Risk data

In the past five years there has been a significant and self-initiated increase in the breadth and intensity of risk management activities undertaken by Medical Indemnity Insurers. Not only must doctors be able to practise with peace of mind and without fear that a mistake will cause them financial or reputation ruin, but patients must be fairly and efficiently compensated for medical harm. Medical Indemnity Insurers are a key stakeholder in the clinical care, quality and risk management community.

Whilst a legal obligation exists to report data to APRA and to the Medical Indemnity National Data Collection, to obtain the best information on emerging trends and issues in medical indemnity it was felt that further information should be collected and publicly reported. The first report on the expanded database will be released during 2006, and because of the back coding of data to include all claims open at 1 January 2003 by all MIIAA members, it will have significant statistical significance. There is no precedent in the Australian general insurance market for this level of industry commitment to retrospective coding and to such significant work beyond that which is legally or contractually required.

Risk collaboration

The most significant risk management collaboration in the past five years has been the establishment of the Risk Management Working Party, which is attended by all Medical Indemnity Insurers, the CPMC and the AMA. The working party was formed to develop a national risk management programme which:

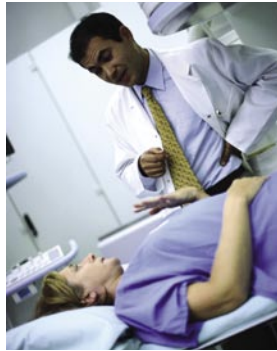
- Selectively extracts and incorporates useful concepts from existing practices and programmes, whilst exploring the use of innovative processes when appropriate;
- Dovetails into existing 'systemic' risk management programmes (hospitals, area health etc); and
- Satisfies other regulatory, collegian, and accrediting body requirements so that duplication of activities is minimized.

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Risk management – learning from the past

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The Risk Management Working Party has resulted in a greater shared understanding of, and commitment to, an integrated approach to risk management. A minimum risk management framework, which can be used by each college, professional body and insurer tailored by them to their individual needs, has been developed under the auspices of the Risk Management Working Party. The implementation of the framework through standards, guidelines and education is primarily the obligation of the colleges and other professional bodies.



that 6500 practitioners have attended MII provided risk education sessions in the last 12 months. Some MIIAA members provide premium discounts to members who can provide evidence of substantial participation in appropriate risk management education and other risk related activities.

Conclusion

The Medical Indemnity Industry is working toward improvements in the information available to guide discussion on risk management issues. There has been significant work undertaken by the insurers, and together with other stakeholders, further advancement of risk management will occur.

Mark Valena
MIIAA Board Member

Risk education

Education is commonly the mechanism for the sharing with practitioners of claim and risk data. It is estimated

MUST INSURERS REPORT TO MEDICAL BOARDS?

Recently there has been some discussion about mandatory reporting of poorly performing or impaired doctors. Medical Indemnity Insurers operate within both state and federal guidelines regarding the extent to which they provide information on poorly performing or impaired doctors. There is little consistency in the legislation across Australia requiring doctors or their insurers to report matters to their local Medical Board.

The majority of states don't require doctors to report if a claim is made against them and only some states require the Medical Board to be advised when a claim is settled. There is no consistent obligation to report impaired doctors. Insurers have no legislated obligation to report claims made or settled to any Medical Board.

In addition, the Federal Privacy legislation, which governs the collection, use and disclosure of personal information held by each insurer, prevents the disclosure or reporting of matters by insurers, unless the requirement falls within the scope of exceptions to the National Privacy Principles. Such principles would allow for the release of information if there was, for example, a serious threat to life, health or safety. It is unlikely that an insurer would be in the best position to assess whether this exception applies, and it is unlikely that a Medical Board

would be in a position to act quickly enough to prevent imminent harm. Most other exceptions to the Privacy Principles would be rarely, if ever, applicable to medical indemnity insurance. Where disclosure is mandatory, an insurer has no choice but to disclose. Serious improper conduct, as defined by the legislation, which refers to a serious breach of standards or conduct associated with a person's duties, powers, authority and responsibility, is exempted. Under most circumstances it would be advisable for an insurer to obtain consent from the doctor and the patient before making any disclosures. If, however, it is deemed to be in the public interest, there is a broader obligation for disclosure by insurers.

It would be advantageous for reporting requirements to be consistent across the nation, but any changes would need to consider the National Privacy Principles and the legitimate interests of the individual patients, doctors and the community. Mandatory reporting can only be an effective mechanism for improved quality of health care if the bodies to which the reports are made are adequately funded and resourced to determine and undertake appropriate action.

Ellen Edmonds-Wilson
MIIAA CEO