

Medical Indemnity Insurer representative on Insurance Ombudsman Service Medical Indemnity Panel

Information for candidates

Background to establishment of the Medical Indemnity Panel

With effect 1 July 2005, the Federal Government introduced legislation which requires that all medical indemnity insurance covering medical practitioners in Australia must be provided by an insurance contract from a licensed and regulated insurer. A consequence of this is that all medical indemnity insurers must subscribe to an ASIC approved independent external dispute resolution process to resolve disputes with doctors who are insured with them.

The Department of Health and Ageing has entered into a contract with medical indemnity insurers (the PSS Contract) which deals with how policy disputes between insurers and policy holders will be handled and which outlines the obligations of insurers in relation to such disputes.

The PSS Contract requires all medical indemnity insurers to be members of the Insurance Ombudsman Service (IOS). The IOS is an independent industry body established to review consumer disputes in relation to insurance.

To facilitate the consideration of certain disputes by a tripartite Review Panel, the IOS has in place a comprehensive framework for the composition of the Panel and what their roles and responsibilities are.

Resolution by the Panels

The IOS is governed by comprehensive terms of reference (TOR) which outline the process for resolution of disputes and the initial referral of such disputes for consideration by the Panel. The Panel is constructed under a tripartite arrangement.

The fundamental reason for a tripartite Panel system is to facilitate a balanced decision-making process having regard to the obligatory criteria:

- what is fair and reasonable in the circumstances;
- good insurance practice;
- the terms of the policy and
- established legal principle,

while meeting the needs of industry and its consumers.

Panels for the purposes of medical indemnity disputes

Given our requirement for a tripartite Panel arrangement, the Panel for medical indemnity matters must comprise:

- An Independent Panel Chair, appointed by the IOS Board
- A "Consumer" (doctor) Panel representative, hereinafter referred to as a "Medical" representative
- An "Insurer" Panel representative, selected by the medical indemnity insurers.

All must have the breadth of expertise to consider medical indemnity matters.

The requirements of the IOS

The fundamental requirement is that all Panel members comply with Section 16 of the IOS TOR, amended to reflect the need for medical and not legal expertise. The “Insurer: representative must consider the requirements of clause 16.15 of the ToR. Insurance expertise relevant to medical indemnity is an important requirement.

The requirement for Panel members to have experience in insurance and consumer issues brings balance to the Panel structure and important to the decision-making process. Without this balance, there could be a perception of a lack of balance or concerns over procedural fairness in the decision making function if there were two representatives of the one grouping.

To satisfy the requirements of ASIC PS139, the IOS Board and stakeholders, if the “Insurer” representative is also a doctor, he/she must also have the requisite insurance expertise in order to provide the necessary knowledge to the Panel.

Appointment of Panel members

The IOS now needs to formally appoint the Panel members for medical indemnity matters which fall within the requirements of the HIC Contract. Once appointed, the Panel will be fixed for a 12 month period as it has been agreed that the Panel structure will be reviewed at the end of a 12 month trial period, i.e. 12 months from the date the new Panel is established.

The IOS has only been involved in medical indemnity disputes for the past nearly 3 years and our experience to date is that during this period there have been 9 disputes. It is therefore envisaged that the Panel will only be required to hear less than 6 matters in a year, although this could be subject to variation.

The role and function of the Panel will encompass consideration of a wide range of matters, including insurance law and issues of competency, knowledge and/or experience of doctors to perform certain clinical activities, which may involve making a determination regarding livelihood.

Applying for the “Insurer” representative role

The MIIs will consider the applications and will recommend a short list of 3 applicants for final consideration and appointment by the IOS to the Insurer role on the Panel.

Once the IOS has considered all applicants, it will liaise direct with the recommended applicants to finalize the appointments

One person will be appointed to the “Insurer” role and if there are suitable applicants and alternate may be appointed

The IOS will advise the MIIAA of the applicants selected following due process.

Potential conflicts of interest

To minimise any potential for conflict of interest in the resolution of medical indemnity disputes, the following will not be acceptable for representation on the Panel:

- Any person who is currently a director or employee of a Medical Defence Organisation (MDO) or a Medical Indemnity Insurer (MII)
- Any person who holds a position on a board committee of an MDO or MII, including a committee which considers estimating or medico-legal issues in relation to claims or indemnity matters
- Any person who is currently or who has in the last four years been engaged as a paid consultant to an MDO or MII (note – medical practitioners who have or do provide medico-legal reports on a fee for service basis will not be excluded, unless they do so as an employee of or paid consultant to an MDO or MII)
- Any person who in the last four years has been a director or employee of an MDO or MII.

Remuneration

The remuneration paid for the position will be equivalent to the daily rate paid to the Professional Services Review Committee members, as set by the Remuneration Tribunal. The rate as at 13 March is \$979 per day. Half day rates for short disputes will be paid.

Applications for “Insurer” representative

Applicants should send their application which must:

- Include a resume
- Address each of the selection criteria included in clause 16.15 in the Insurance Ombudsman Service Terms of Reference
- Indicate the names and contact details of two referees
- Include a written assurance that the nominee is not aware of any matters which could give rise to a conflict of interest between their responsibilities under the appointment and their personal, business or financial interests (including taxation affairs), or which could otherwise cause embarrassment to them or the IOS.

Applications should be addressed to:

Ellen Edmonds-Wilson
Chief Executive Officer
MIIAA
Level 24, 91 King William Street
Adelaide SA 5000
Or emailed to ellen@miaa.com.au

No later than 5pm AEDST on Wednesday 26 March 2008.