

Early evaluation of medical negligence claims

In an earlier edition of *Plaintiff*, the Australian Plaintiff Lawyers Association and United Medical Protection (UMP) reminded practitioners of the availability of an Early Evaluation Scheme (EES) developed by UMP. This scheme was replicated under Part 4 (2) of the *Health Care Liability Act 2001 Insurance Regulation Order* (the *HCLA Insurance Regulation Order*), effective from 1 April 2002, which requires all insurers and MDOs providing medical indemnity cover in New South Wales to have in place a process for the early evaluation of claims.

The scheme envisages the early provision of comprehensive information by solicitors representing plaintiffs, in order to enable insurers and MDOs to identify and respond appropriately to meritorious claims.

Lawyers wishing to submit a claim for early evaluation by UMP should commence by sending a preliminary letter to the medical practitioner against whom the claim is made, with a copy to Mr Andrew Took of United Medical Protection, DX 11583, Sydney Downtown.



Andrew Took is National Claims Manager at United Medical Protection
PHONE 02 9260 9101
EMAIL atook@unitedmp.com.au

Mr Took will send a formal acknowledgment letter within approximately 14 days.²

When a claim is ready to proceed, the claimant's lawyer should send a letter, clearly identified as an early evaluation scheme letter, to Mr Took providing in brief terms information on the following matters as set out in Part 4.

(2) (2) (b) of the *HCLA Insurance Regulation Order*:

- Factual circumstances giving rise to the claim;
- Details of alleged negligence;
- Submission of causation;
- Particulars of damage (expenses, economic loss, general damages, etc);
- A schedule of quantum.

It will not be necessary for the claimant to incur the cost of an independent expert's report before writing to UMP. Obviously, medical reports regarding disability and letters supporting economic loss claims should be provided.

UMP, within a period of six weeks³, will investigate the matter and send a response in accordance with Part 4 (2)(2)(e) of the *HCLA Insurance Regulation Order* indicating either:

- That UMP is willing to attempt resolution of the matter, and initialling a negotiating process;
- That UMP is not willing to attempt resolution, and the reasons why;

- That UMP is willing to consider the matter subject to the provision of further information and setting out further information or materials required.

Persons having any enquires regarding operation of the scheme should contact Eva Scheerlinck, National Policy Manager at APLA, on 02 9698 1700 or Mr Andrew Took at UMP on 02 9260 9000.

Endnotes:

¹ A. Took 'Medical Negligence Claims - Early Evaluation Schemes' (2001) 47 *Plaintiff* 38. For a discussion of the NSW early evaluation scheme and other pre commencement processes such as the '90 day rule' in the South Australian Supreme Court Rules and the procedural requirements under the *Queensland Personal Injuries Proceedings Act 2002* see: Report of the AHMAC Legal Process Reform Group *Responding to the Medical Indemnity Crisis: An Integrated Reform Package* <http://www.health.act.gov.au/publications/medicalindemnity/report.doc> paras 5.19-5.31.

² If the medical practitioner is not a member of UMP the solicitor will be notified accordingly.

³ Under the *HCLA Insurance Regulation Order* a defendant has 60 days in which to respond.