



Medical Indemnity Legislation Amendment Act 2005

No. 25, 2005

**An Act to amend the *Medical Indemnity Act 2002*,
and for other purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to amend the *Medical Indemnity Act 2002*, and for other purposes

[Assented to 21 March 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Medical Indemnity Legislation
Amendment Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 March 2005
2. Schedule 1, items 1 to 5	Immediately after the commencement of items 1 to 24 of Schedule 1 to the <i>Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004</i> .	1 July 2004
3. Schedule 1, item 6	The day on which this Act receives the Royal Assent.	21 March 2005
4. Schedule 1, item 7	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005
5. Schedule 1, item 8	The day on which this Act receives the Royal Assent.	21 March 2005
6. Schedule 1, item 9	Immediately after the commencement of items 1 to 24 of Schedule 1 to the <i>Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004</i> .	1 July 2004
7. Schedule 1, items 10 to 12	The day after this Act receives the Royal Assent.	22 March 2005
8. Schedule 1, items 13 and 14	Immediately after the commencement of items 1 to 24 of Schedule 1 to the <i>Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004</i> .	1 July 2004

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Schedule 1, items 15 and 16	The day after this Act receives the Royal Assent.	22 March 2005
10. Schedule 1, items 17 and 18	The first day of the first financial year to start on or after the day on which this Act receives the Royal Assent.	1 July 2005
11. Schedule 2, items 1 to 10	The day on which this Act receives the Royal Assent.	21 March 2005
12. Schedule 2, items 11 to 13	The day after this Act receives the Royal Assent.	22 March 2005
13. Schedule 2, item 14	The day on which this Act receives the Royal Assent.	21 March 2005
14. Schedule 3, item 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005
15. Schedule 3, items 2 and 3	The day on which this Act receives the Royal Assent.	21 March 2005
16. Schedule 3, item 4	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005
17. Schedule 3, items 5 to 7	Immediately after the commencement of the <i>Medical Indemnity Act 2002</i> .	1 January 2003
18. Schedule 3, items 8 and 9	The day on which this Act receives the Royal Assent.	21 March 2005
19. Schedule 3, items 10 and 11	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005
20. Schedule 3, item 12	The day on which this Act receives the Royal Assent.	21 March 2005
21. Schedule 3, items 13 and 14	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005
22. Schedule 3, items 15 and 16	Immediately after the commencement of Schedule 2 to the <i>Medical Indemnity Amendment Act 2003</i> .	5 December 2003
23. Schedule 3, items 17 to 21	The day on which this Act receives the Royal Assent.	21 March 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Run-off cover indemnity scheme

Medical Indemnity Act 2002

1 Subsection 4(1) (at the end of the definition of *claim*)

Add:

Note: Subsection (1A) extends the meaning of *claim* for the purposes of Division 2B of Part 2 (run-off cover indemnity scheme).

2 After subsection 4(1)

Insert:

Notifications by practitioners may constitute claims

(1A) A reference in Division 2B of Part 2 to a claim includes a reference to a notification by or on behalf of a person of an incident, or a series of related incidents, if:

- (a) at the time of the incident, or one or more of the incidents, the person was a medical practitioner or other health professional; and
- (b) the notification is to a medical indemnity insurer or an MDO; and
- (c) at the time of the notification:
 - (i) a contract of insurance with the insurer provided the person with medical indemnity cover; or
 - (ii) an arrangement with the MDO provided medical indemnity cover (within the meaning of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*) for the person;

and the cover would have indemnified the person in relation to any claim relating to the incident, or series of incidents, if the claim had been made at the time of the notification.

The notification is taken, for the purposes of Division 2B of Part 2, to be a claim against the person.

3 Application in relation to section 34ZK

Subsection 4(1A) of the *Medical Indemnity Act 2002* as amended by this Act does not apply in relation to section 34ZK of that Act until the beginning of the day after this Act receives the Royal Assent.

4 At the end of subparagraph 34ZB(1)(c)(ii)

Add “and”.

5 Paragraph 34ZB(1)(c)

Omit “and the cover would have indemnified the person in relation to the claim if the claim had been made at that time; and”.

6 Paragraphs 34ZB(2)(c) and (d)

Repeal the paragraphs, substitute:

- (c) a person who has ceased (temporarily or permanently) the person’s practice as a medical practitioner because of maternity (see subsection (4A));
- (d) a person who has ceased the person’s practice as a medical practitioner because of permanent disability (see subsection (4B));

7 Subsection 34ZB(4)

Omit “are notified in the *Gazette*”, substitute “in question are entered on the Federal Register of Legislative Instruments”.

8 After subsection 34ZB(4)

Insert:

- (4A) A person is taken, for the purposes of paragraph (2)(c), to have ceased the person’s practice as a medical practitioner because of maternity if and only if:
 - (a) the person:
 - (i) is pregnant; or
 - (ii) has given birth; or
 - (iii) is recovering from a pregnancy (including a miscarriage or a stillbirth); and
 - (b) another person who is a medical practitioner has certified, in the form approved by the HIC, that the person is pregnant, has given birth or is recovering from a pregnancy, as the case requires; and

- (c) the person has ceased all practice as a medical practitioner:
 - (i) because she is pregnant; or
 - (ii) in order to care for one or more children to whom she has given birth; or
 - (iii) in order to recover from the pregnancy; and
 - (d) any other requirements specified in the regulations have been met.
- (4B) A person is taken, for the purposes of paragraph (2)(d), to have ceased the person's practice as a medical practitioner because of permanent disability if and only if:
- (a) the person has incurred an injury, or suffers from an illness, that is permanent, or is likely to be permanent; and
 - (b) as a result of the injury or illness, the person can no longer practise in the area of medicine in which he or she had (at the time of the injury or illness) chosen to practise and been qualified to practise; and
 - (c) another person who is a medical practitioner has certified, in the form approved by the HIC, that the person:
 - (i) has incurred an injury, or suffers from an illness, that is permanent, or is likely to be permanent; and
 - (ii) can no longer practise in that area of medicine; and
 - (d) the person has permanently ceased all practice as a medical practitioner.
- (4C) For the purposes of paragraph (4B)(b), if registration in respect of that area of medicine is required in order to practise in that area of medicine in the place where the person would have practised, the person is not taken to be qualified in that area of medicine unless he or she is so registered.

9 Subsection 34ZB(5) (paragraphs (a), (b) and (c) of the definition of *private medical practice*)

Omit “; and”, substitute “; or”.

10 Section 34ZV

Before “If:”, insert “(1)”.

11 Paragraphs 34ZV(c), (d) and (e)

Repeal the paragraphs, substitute:

- (c) the amount of the medical indemnity insurer's premium income, for the contribution year in question, that represents the premium that is or will be payable for medical indemnity cover provided by the contract of insurance; and
- (d) the applicable percentage relating to that contribution year; and
- (e) the amount of the run-off cover support payment imposed on the medical indemnity insurer, for that contribution year, that relates to the premium that is or will be payable for medical indemnity cover provided by the contract of insurance.

12 At the end of section 34ZV

Add:

- (2) In this section:

applicable percentage has the same meaning as in subsection 6(2) of the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

premium income has the same meaning as in the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

run-off cover support payment has the same meaning as in the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

13 Section 44B

Omit "an affected medical practitioner", substitute "a medical practitioner".

14 Paragraph 44B(c)

Before "the practitioner's", insert "if a termination date for the run-off cover indemnity scheme has been set (see subsection 34ZB(3))—".

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

15 Subsection 26A(9) (at the end of the definition of *medical practice period*)

Add (before the note):

; and (c) if the practitioner:

- (i) was engaged in medical practice (other than private medical practice); and
 - (ii) was provided with medical indemnity cover in relation to incidents occurring during that medical practice; and
 - (iii) is no longer engaged in that medical practice;
- the period during which the practitioner was engaged in that medical practice and in relation to which the practitioner was provided with that medical indemnity cover.

16 Paragraph 26D(2)(b)

After “does not”, insert “, within 28 days after providing the medical indemnity cover,”.

***Medical Indemnity (Run-off Cover Support Payment) Act
2004***

17 At the end of subsection 7(2)

Add:

; and (d) the amount worked out under subsection (2A).

18 After subsection 7(2)

Insert:

(2A) The amount referred to in paragraph (2)(d) is worked out as follows:

$$\text{Net premium} \times \frac{\text{Applicable rate}}{1 + \text{Applicable rate}}$$

where:

applicable rate is the applicable percentage under subsection 6(2) for the insurer, expressed as a decimal fraction.

net premium is the sum of all the premiums referred to in subsection (1) reduced by the amounts referred to in paragraphs (2)(a), (b) and (c) in relation to those premiums.

Schedule 2—Claims protocols

Medical Indemnity Act 2002

1 Subsection 4(1) (at the end of the definition of *high cost claim indemnity*)

Add:

Note: Amounts payable under the High Cost Claims Protocol are not covered by this definition.

2 Subsection 4(1)

Insert:

High Cost Claims Protocol means the protocol (as amended and in force from time to time) determined by the Minister under section 34AA.

3 Subsection 10(1A)

Omit “claims in relation to”.

4 At the end of subsection 27A(2)

Add:

; and (c) make provision for making payments on account of legal, administrative or other costs incurred by MDOs and insurers (whether on their own behalf or otherwise), in respect of incidents notified to MDOs and insurers that could give rise to claims in relation to which an IBNR indemnity could be payable.

5 After subsection 27A(3)

Insert:

(3A) It does not matter for the purposes of paragraph (2)(c) whether claims are subsequently made in relation to the incidents referred to in that paragraph.

6 After subsection 28(1)

Insert:

-
- (1A) This Division also provides for the determination of a High Cost Claims Protocol that can deal with other matters relating to incidents covered by the high cost claim indemnity scheme.

7 Subsection 28(2) (after table item 4)

Insert:

4A	the High Cost Claims Protocol, and what it can deal with	sections 34AA and 34AB
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8 At the end of Division 2 of Part 2

Add:

Subdivision C—The High Cost Claims Protocol

34AA Minister may determine a protocol dealing with various matters

- (1) The Minister may, by legislative instrument, determine a protocol (the *High Cost Claims Protocol*) for:
- (a) making payments to MDOs and insurers of claim handling fees; and
 - (b) making payments on account of legal, administrative or other costs incurred by MDOs and insurers (whether on their own behalf or otherwise);
- in respect of claims relating to incidents in relation to which a high cost claim indemnity is payable (see section 30).
- (2) Without limiting subsection (1), the High Cost Claims Protocol may:
- (a) make provision for:
 - (i) the conditions that must be satisfied for an amount to be payable to an MDO or insurer; and
 - (ii) the amount that is payable; and
 - (iii) the conditions that must be complied with by an MDO or insurer to which an amount is paid; and
 - (iv) other matters related to the making of payments, and the recovery of overpayments; and
 - (b) provide that this Division applies with specified modifications in relation to a liability that relates to costs in

relation to which an amount has been paid under the Protocol; and

- (c) make provision for making payments on account of legal, administrative or other costs incurred by MDOs and insurers (whether on their own behalf or otherwise), in respect of incidents notified to MDOs and insurers that could give rise to claims in relation to which a high cost claim indemnity could be payable.
- (3) Paragraph (2)(b) does not allow the High Cost Claims Protocol to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.
- (4) It does not matter for the purposes of paragraph (2)(c) whether claims are subsequently made in relation to the incidents referred to in that paragraph.
- (5) The High Cost Claims Protocol may also provide for other matters of a kind specified in regulations made for the purposes of this subsection.

34AB The HIC may request information

- (1) If the HIC believes that a person is capable of giving information that is relevant to determining:
 - (a) whether an MDO or insurer is entitled to a payment under the High Cost Claims Protocol; or
 - (b) the amount that is payable to an MDO or insurer under the High Cost Claims Protocol;the HIC may request the person to give the HIC the information.

Note: Failure to comply with the request is an offence (see section 45).

- (2) Without limiting subsection (1), any of the following persons may be requested to give information under that subsection:
 - (a) an MDO;
 - (b) an insurer;
 - (c) a member or former member of an MDO;
 - (d) a person who practises, or used to practise, a medical profession;
 - (e) a person who is acting, or has acted, on behalf of a person covered by paragraph (d);

- (f) a legal personal representative of a person covered by paragraph (c), (d) or (e).
- (3) Without limiting subsection (1), if the information sought by the HIC is information relating to a matter in relation to which a person is required by section 39 to keep a record, the HIC may request the person to give the information by giving the HIC the record, or a copy of the record.
- (4) The request:
 - (a) must be made in writing; and
 - (b) must state what information must be given to the HIC; and
 - (c) may require the information to be verified by statutory declaration; and
 - (d) must specify a day on or before which the information must be given; and
 - (e) must contain a statement to the effect that a failure to comply with the request is an offence.

The day specified under paragraph (d) must be at least 28 days after the day on which the request was made.

9 At the end of subsection 34X(2)

Add:

- ; and (c) make provision for making payments on account of legal, administrative or other costs incurred by insurers (whether on their own behalf or otherwise), in respect of incidents notified to insurers that could give rise to claims in relation to which an exceptional claims indemnity could be payable.

10 After subsection 34X(3)

Insert:

- (3A) It does not matter for the purposes of paragraph (2)(c) whether claims are subsequently made in relation to the incidents referred to in that paragraph.

11 Subsection 39(1)

After “the IBNR Claims Protocol,”, insert “the High Cost Claims Protocol,”.

12 After subparagraph 39(2)(b)(ia)

Insert:

- (ib) if the record is required to be kept because the person applied for a payment under the High Cost Claims Protocol—the day on which the Protocol took effect;

13 After paragraph 45(1)(baa)

Insert:

- (bab) subsection 34AB(1); or

14 After paragraph 48(b)

Insert:

- (baa) amounts payable under the High Cost Claims Protocol; and

Schedule 3—Other amendments

Medical Indemnity Act 2002

1 Subsection 4(1)

Insert:

Federal Register of Legislative Instruments means the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003*.

2 Paragraph 8(2)(d)

Repeal the paragraph, substitute:

(d) the MDO:

- (i) was not notified of the occurrence of the incident; and
- (ii) was not notified of any claim against or by the person in relation to the incident;

before 1 July 2002.

3 Paragraph 14(d)

Repeal the paragraph, substitute:

(d) the MDO:

- (i) was not notified of the occurrence of the incident; and
- (ii) was not notified of any claim against or by the person in relation to the incident;

before 1 July 2002; and

4 Subsection 29(2)

Repeal the subsection, substitute:

- (2) Regulations that specify an amount for the purposes of paragraph (1)(b) that increases the high cost claim threshold at the time the regulations are entered on the Federal Register of Legislative Instruments must not take effect earlier than 12 months after the day on which the regulations are so entered.

5 Paragraph 30(1)(a)

Repeal the paragraph, substitute:

- (a) a claim is, or was, made against a person (the *practitioner*);
and

6 Paragraph 30(1)(d)

Omit “becomes aware” (wherever occurring), substitute “is first notified”.

7 Paragraph 30(1)(f)

Omit “the high cost claim threshold.”, substitute “what was the high cost claim threshold at the time the MDO or insurer was first notified of the claim or the incident; and”.

8 After paragraph 30(1)(f)

Insert:

- (g) any other requirements (however described) that are specified in the regulations have been met.

9 After subsection 30(1)

Insert:

- (1A) Regulations made for the purposes of paragraph (1)(g) do not apply in relation to an incident if the claim relating to the incident was made before the regulations in question take effect.

10 Subsection 30(3)

Omit “are notified in the *Gazette*”, substitute “in question are entered on the Federal Register of Legislative Instruments”.

11 Subsection 34(2)

Repeal the subsection, substitute:

- (2) Regulations that specify for the purposes of paragraph (1)(b) a percentage that is less than the percentage in force at the time the regulations are entered on the Federal Register of Legislative Instruments must not take effect earlier than 12 months after the day on which the regulations are so entered.

12 Paragraph 34E(1)(a)

Repeal the paragraph, substitute:

(a) the claim is a claim that is or was made against a person (the *practitioner*); and

13 Subsections 34F(3) and (4)

Omit “notified in the *Gazette*”, substitute “entered on the Federal Register of Legislative Instruments”.

14 Subsection 34G(2)

Omit “notified in the *Gazette*”, substitute “entered on the Federal Register of Legislative Instruments”.

15 Subparagraphs 34L(1)(f)(ii) and (iii)

Omit “already paid by the insurer”, substitute “that the insurer has already paid, or has already become liable to pay,”.

16 At the end of subparagraph 34L(1)(f)(iii)

Add “(being other claims that were first notified to the insurer no later than the time the current claim was notified to the insurer)”.

17 Subparagraphs 43(1)(a)(ii) and (aa)(ii)

Omit “medical indemnity insurers and MDOs”, substitute “medical indemnity providers”.

18 Paragraph 43(1)(b)

Omit “medical indemnity insurers and MDOs” (wherever occurring), substitute “medical indemnity providers”.

19 Paragraphs 43(2)(d) and (e)

Omit “medical indemnity insurers or MDOs”, substitute “medical indemnity providers”.

20 At the end of section 43

Add:

(5) In this section:

medical indemnity provider means:

- (a) an MDO; or
- (b) a medical indemnity insurer; or

- (c) any other body that provides medical indemnity cover (within the meaning of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*).

21 Application of amendments of section 43

Payments of subsidy under a scheme formulated under section 43 of the *Medical Indemnity Act 2002* as amended by this Act may be made in relation to costs incurred before the commencement of this item if:

- (a) the payments are made to bodies of the kind referred to in paragraph (c) of the definition of *medical indemnity provider* in subsection 43(5) of that Act; and
- (b) the costs were incurred after the commencement of the *Medical Indemnity Act 2002*.

[Minister's second reading speech made in—
House of Representatives on 17 February 2005
Senate on 9 March 2005]

(22/05)
