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Medical Indemnity Regulations 2003

Statutory Rules 2003 No. 1

208

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Medical Indemnity Act 2002*.

Dated 14 AUG 2003 2003

P.M. Jeffery
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Ageing

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Medical Indemnity Regulations 2003*.

2 Commencement

These Regulations commence on gazettal.

3 Definitions

In these Regulations:

Act means the *Medical Indemnity Act 2002*.

Commonwealth State or Territory agency means the Commonwealth, a State or Territory, or a Commonwealth, State or Territory authority.

public sector specialist means a medical practitioner who:

- (a) is employed by a Commonwealth, State or Territory agency as a full-time salaried medical officer in the public sector; and
- (b) is recognised by that agency as being a specialist in a particular specialty in a medical profession.

Part 2 Commonwealth payments

4 Amount recoverable from MDO or insurer after IBNR indemnity paid — late payment penalty rate

For paragraph 27 (2) (a) of the Act, the rate of 0.03227397% per day is prescribed.

Note The rate prescribed by this regulation is the general interest charge rate set by the Australian Taxation Office as at 15 August 2003.

Part 3 Contributions towards the cost of providing indemnities

5 IBNR indemnity contribution exemption (members of MDASA and MDAV)

- (1) This regulation applies to a person who, on 30 June 2000, was a member of:
 - (a) the Medical Defence Association of South Australia Limited; or
 - (b) the Medical Defence Association of Victoria Limited.
- (2) For subsection 52 (4) of the Act, the person is exempt from IBNR indemnity contribution until the date of commencement of:
 - (a) a determination made by the Minister under section 12 of the Act that the MDO of which the person was a member is not a participating MDO; or
 - (b) a determination made by the Minister under section 22 of the Act of an unfunded IBNR factor in relation to the MDO of which the person was a member.

6 IBNR indemnity contribution exemption (public sector specialists)

- (1) For subsection 52 (4) of the Act, a person is exempt from IBNR indemnity contribution for a contribution year if:
 - (a) on 1 May 2002 the person was, and on the imposition day for the contribution year the person is, employed as a public sector specialist; and
 - (b) on 30 June 2000 the person was engaged in private practice in the medical profession in the same specialty in which the person is employed as a public sector specialist; and

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- (c) during the period from 1 May 2002 to the imposition day for the contribution year (inclusive):
- (i) under the employment arrangement with the Commonwealth, State or Territory agency by whom the person is employed, the person did not have a right to engage in private practice in a medical profession, other than in relation to pre-booked patients who were treated by the person before 31 December 2002; and
 - (ii) the person has not received income as a medical practitioner, other than income received in his or her capacity as a public sector specialist or any income received in relation to pre-booked patients who were treated by the person before 31 December 2002; and
- (d) before 15 October in the contribution year, the person gives to the HIC a notice in writing from the Commonwealth, State or Territory agency by whom the person is employed stating that:
- (i) the agency recognises the person as qualified in the specialty in the medical profession in which the person is currently practising as a public sector specialist; and
 - (ii) the person has been a full-time, salaried medical officer in public sector employment from 1 May 2002 to the date of the notice (inclusive); and
 - (iii) under the employment arrangement with the Commonwealth, State or Territory agency by whom the person is employed, the person does not have a right to engage in private practice in a medical profession, other than in relation to pre-booked patients who were treated by the person before 31 December 2002.
- (2) In this regulation:
- pre-booked patient***, in relation to a person, means a patient with whom the person has, before 1 May 2002, made an arrangement to provide professional services after that date.

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7 IBNR indemnity contribution exemption (doctors with comprehensive retroactive cover)

- (1) For subsection 52 (4) of the Act, a person who is a participating member of a participating MDO (the *former medical indemnity provider*) is exempt from IBNR indemnity contribution for a contribution year if, for that year, the person has comprehensive retroactive insurance arrangements in place that cover all incidents covered by the IBNR indemnity scheme.

Note The purpose of this regulation is to exempt from IBNR indemnity contribution for a contribution year medical practitioners and health professionals who, before 1 July 2003, had obtained comprehensive retroactive medical indemnity cover from an MDO, an insurer, or a Commonwealth, State or Territory agency, provided that, in the case of cover provided by an MDO, the arrangement for the cover is in the form of a contract of insurance or is converted to a contract of insurance before 1 July 2004.

- (2) For subregulation (1), a person has comprehensive retroactive insurance arrangements in place for a contribution year if:
- (a) on 30 June 2003 the person had an insurance arrangement or insurance arrangements with one or more medical indemnity providers (the *current medical indemnity provider*); and
 - (b) the arrangement or arrangements indemnified the person in relation to claims against or by the person in relation to all the incidents that:
 - (i) occurred in the course of, or in connection with, the practice of a medical profession by the person and are covered by the IBNR indemnity scheme; and
 - (ii) on 30 June 2000, were covered by the former medical indemnity provider; and
 - (c) either:
 - (i) the person is, and will continue to be, indemnified by the current medical indemnity provider or providers in relation to claims of the kind described in paragraph (b), without any further premium payments by the person in relation to the retroactive component of his or her cover at any time after 30 June 2003 (other than any payment agreed

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- between the person and the provider at the time the indemnity arrangement was made); or
- (ii) the person is indemnified by a Commonwealth, State or Territory agency in relation to claims of the kind described in paragraph (b); and
- (d) for a person to whom subparagraph (c) (i) applies:
 - (i) for the contribution year beginning on 1 July 2003 — each arrangement is in the form of a contract of insurance or is converted to this form before 1 July 2004; and
 - (ii) for a contribution year beginning after 1 July 2003 — each arrangement is in the form of a contract of insurance; and
 - (iii) the person complies with subregulation (3) in the contribution year; and
 - (e) for a person to whom subparagraph (c) (ii) applies — the person complies with subregulation (4) in the contribution year.
- (3) A person complies with this subregulation in a contribution year if, before 15 October in the year, the person gives to the HIC:
- (a) a statement from the person's former medical indemnity provider to the effect that the former medical indemnity provider does not consider itself liable to pay any claims against or by the person in relation to an incident that occurred in the course of, or in connection with, the practice by the person of a medical profession when the person was a member of the former medical indemnity provider; and
 - (b) a statement from each of the person's current medical indemnity providers to the effect that the person had, on 30 June 2003, an arrangement or arrangements with that provider to be indemnified in relation to claims against or by the person in relation to all the incidents that occurred in the course of, or in connection with, the practice of a medical profession by the person, including any incident previously covered by the former medical indemnity provider, without any further premium payments by the person in relation to the retroactive component of his or

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- her cover at any time after 30 June 2003 (other than any payment agreed between the person and the provider at the time the arrangement was made); and
- (c) for the contribution year beginning on 1 July 2003 and a person whose arrangement or arrangements with the current medical indemnity provider or providers are not in the form of an insurance contract — a written undertaking that the arrangement or arrangements will be converted to an insurance contract before 1 July 2004; and
 - (d) for a contribution year beginning after 1 July 2003 — a statement that the person is indemnified under an insurance contract or contracts with the current medical indemnity provider or providers in relation to claims against or by the person in relation to all the incidents that occurred in the course of, or in connection with, the practice of a medical profession by the person, including any incident previously covered by the former medical indemnity provider.
- (4) A person complies with this subregulation in a contribution year if, before 15 October in the year, the person gives to the HIC:
- (a) a statement of the kind described in paragraph (3) (a); and
 - (b) a statement of the kind described in paragraph (3) (b).
- (5) Subregulation (6) applies to a person if:
- (a) the person gives a written undertaking to the HIC under subregulation (3) (c); and
 - (b) despite that undertaking, the person does not convert his or her arrangement or arrangements with the current medical indemnity provider or providers to an insurance contract before 1 July 2004.
- Note* A person who gives a written undertaking to the HIC under paragraph (3) (c) and, despite that undertaking, does not convert his or her arrangement or arrangements with a current medical indemnity provider or providers to an insurance contract before 1 July 2004, will not meet the requirements of subparagraph (2) (d) (i) and will not therefore be exempt from IBNR indemnity contribution for the contribution year beginning on 1 July 2003.
- (6) For the purposes of the Act, a person to whom this subregulation applies is taken to meet the requirements under

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section 61 of the Act to pay the IBNR indemnity contribution that the person is liable to pay for the contribution year beginning on 1 July 2003 if the person pays the contribution within 28 days after the end of the contribution year.

(7) In this regulation:

medical indemnity provider includes the following:

- (a) an insurer;
- (b) an MDO;
- (c) a Commonwealth, State or Territory agency.

8 IBNR indemnity contribution exemption (retired doctors)

- (1) For subsection 52 (4) of the Act, a person is exempt from IBNR indemnity contribution for a contribution year if:
- (a) the person has turned 65 before the beginning of the contribution year or will turn 65 during the contribution year; and
 - (b) for the contribution year beginning on 1 July 2003 — the person's medical income for the period from 1 January 2004 to 30 June 2004 (inclusive) is less than \$5 000; and
 - (c) for a contribution year beginning after 1 July 2003 — the person's medical income for that year is less than \$5 000; and
 - (d) before 15 October in the contribution year, the person gives to the HIC a statutory declaration stating that:
 - (i) the person has turned 65 before the beginning of the contribution year or will turn 65 during that year; and
 - (ii) for the contribution year beginning on 1 July 2003 — the person expects his or her medical income for the period from 1 January 2004 to 30 June 2004 (inclusive) to be less than \$5 000; and
 - (iii) for a contribution year beginning after 1 July 2003 — the person expects his or her medical income for that year to be less than \$5 000.

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- (2) If:
- (a) a person gives a statutory declaration to the HIC under paragraph (1) (d); and
 - (b) despite that declaration, the person's medical income for the period or contribution year to which the declaration relates is not less than \$5 000;

the person must, as soon as practicable after becoming aware of that fact, notify the HIC, in writing.

Note A person to whom paragraphs (2) (a) and (b) apply in a contribution year will not meet the requirements of paragraph (1) (b) or (c), as applicable, for that year and will not therefore be exempt from IBNR indemnity contribution for that year.

- (3) For the purposes of the Act, a person who notifies the HIC under subregulation (2) in relation to the person's medical income for a contribution year, is taken to meet the requirements under section 61 of the Act to pay the IBNR indemnity contribution that the person is liable to pay for that year if the person pays the contribution within 28 days after the person notifies the HIC.
- (4) In this regulation:
medical income has the meaning given by subsection 52 (3) of the Act.

9 Medical indemnity contribution or lump sum — late payment penalty rate

For paragraph 65 (2) (a) of the Act, the rate of 0.03227397% per day is prescribed.

Note The rate prescribed by this regulation is the general interest charge rate set by the Australian Taxation Office as at 15 August 2003.


10 Methods of paying certain amounts

- (1) Subject to subregulation (2), for subsection 66 (4) of the Act, an amount referred to in subsection 66 (1), (2) or (3) of the Act must be paid by one of the following methods:
- (a) BPay;
 - (b) direct debit;

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- (c) cheque;
 - (d) credit card.
- (2) If an amount referred to in subsection 66 (1) of the Act is to be paid by instalments in accordance with a notice issued under subsection 63 (3) of the Act, the amount must be paid as follows:
- (a) if each instalment is to be paid every 3 months or less frequently — by one of the following methods:
 - (i) BPay;
 - (ii) direct debit;
 - (iii) credit card;
 - (b) if each instalment is to be paid more frequently than every 3 months — by direct debit.

Note

1. Notified in the *Commonwealth of Australia Gazette* on  2003.

15 August