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Medical Indemnity Amendment Regulations 2004 (No. 2)¹

Statutory Rules 2004 No. ²

202

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 24 JUN 2004 2004

PM Jeffery
Governor-General

By His Excellency's Command

TONY ABBOTT
Minister for Health and Ageing

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1 Name of Regulations

These Regulations are the *Medical Indemnity Amendment Regulations 2004 (No. Z)*.

2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 5 December 2003 — regulations 1, 2 and 3 and Schedule 1;
- (b) on 1 July 2004 — Schedule 2.

3 Amendment of *Medical Indemnity Regulations 2003*

Schedules 1 and 2 amend the *Medical Indemnity Regulations 2003*.

Schedule 1 Amendment taken to have commenced on 5 December 2003

(regulation 3)

[1] After regulation 4A

insert

4B Criteria for certifying a claim as a qualifying claim

- (1) For paragraph 34E (1) (c) of the Act, the circumstances in relation to a claim are the circumstances specified in subregulation (2) or (3).
- (2) The circumstances specified by this subregulation are:
 - (a) the claim is or was made by a person who is an Australian citizen or a resident of Australia; and
 - (b) the incident or one or more of the incidents in a series of related incidents to which the claim relates, occurs or occurred outside Australia while the person is or was:
 - (i) engaged in a sporting activity (in the capacity of a participant, adjudicator, judge, referee or umpire or in a similar capacity); or
 - (ii) engaged in a cultural activity; or
 - (iii) undertaking official business for a Commonwealth, State or Territory agency; or
 - (iv) travelling with a person to whom any of the other subparagraphs of this paragraph applies; and
 - (c) the practitioner against whom the claim is made is a permanent resident of Australia who, at the time the incident or one or more of the incidents occurs or occurred, was accompanying the person in the course of, or in connection with, the practice by the practitioner of a medical profession.

- (3) This circumstances specified by this subregulation are:
- (a) the practitioner against whom the claim is made is a permanent resident of Australia who, at the time the incident or one or more of the incidents in a series of related incidents to which the claim relates, occurs or occurred, was undertaking aid work outside Australia; and
 - (b) the incident or one or more of the incidents occurs or occurred in the course of, or in connection with, the undertaking of that aid work.
- (4) In this regulation:
Australia includes each external Territory.

Schedule 2 Amendments commencing on 1 July 2004

(regulation 3)

[1] Part 2, heading

substitute

Part 2 Commonwealth payments

Division 2.1 IBNR indemnity scheme

[2] Before regulation 4A

insert

Division 2.2 High cost claim indemnity scheme

[3] Regulation 4A

renumber as regulation 5

[4] Before regulation 4B

insert

Division 2.3 Exceptional claims indemnity scheme

[5] Regulation 4B

renumber as regulation 8

[6] After regulation 4B

insert

Division 2.4 Run-off cover indemnity scheme**12 Eligible run-off claims**

- (1) For paragraph 34ZB (2) (f) of the Act, the following classes of persons are specified as persons to whom subsection 34ZB (2) of the Act applies:
- (a) the class of persons each of whom is a medical practitioner who has ceased (temporarily or permanently) providing medical services for payment in the course of private medical practice, and is providing medical services free of charge in the course of that practice;
 - (b) the class of persons each of whom meets the following requirements:
 - (i) the person was the holder of a Subclass 422 (Medical Practitioner) visa under the *Migration Regulations 1994* under which the person was permitted to engage in medical practice in Australia;
 - (ii) the person paid one or more premiums to a medical indemnity insurer for medical indemnity cover in relation to that medical practice, in respect of which a run-off cover support payment was payable;
 - (iii) the person has left Australia permanently.
- (2) In this regulation:
- private medical practice* has the meaning given by subsection 34ZB (5) of the Act.

13 Late repayment of overpayment — penalty rate

For paragraph 34ZM (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.

14 Run-off Cover Claims and Administration Protocol — other matters

- (1) For subsection 34ZN (4) of the Act, the Run-off Cover Claims and Administration Protocol may provide for making payments on account of legal, administrative or other costs incurred by MDOs and medical indemnity insurers in respect of an incident, or a series of related incidents, that occurred in the course of, or in connection with, a person's practice as a medical practitioner if the requirements of subregulations (2) and (3) are met.
- (2) The MDO or medical indemnity insurer must have been first notified (the *notification date*) of the incident, or one or more of the series of related incidents, on or after 1 July 2004.
- (3) If a claim were to be made relating to the incident, or one or more of the series of related incidents, on the notification date, the claim would be an eligible run-off claim.

[7] Part 3, heading

substitute

Part 3 Payments towards the cost of providing indemnities

Division 3.1 UMP support payment

[8] Regulation 5, heading

substitute

19 UMP support payment exemption (members of MDASA and MDAV)

- [9] **Regulation 6, heading**
substitute
- 20 **UMP support payment exemption (public sector specialists)**
- [10] **Regulation 6A, heading**
substitute
- 21 **UMP support payment exemption (salaried medical practitioners)**
- [11] **Regulation 7, heading**
substitute
- 22 **UMP support payment exemption (persons with comprehensive retroactive cover provided by an MDO or insurer)**
- [12] **Regulation 7A, heading**
substitute
- 23 **UMP support payment exemption (persons indemnified by a Commonwealth, State or Territory agency in relation to all past incidents)**
- [13] **Subregulation 7A (2), definition of *past incident***
omit
 subregulation 7 (4).
insert
 subregulation 22 (4).

[14] Regulation 8, heading

substitute

24 UMP support payment exemption (persons who are 65 or more)

[15] Regulation 8A, heading

substitute

25 UMP support payment exemption (persons with a disability)

[16] Regulation 8A, note for paragraph (c)

substitute

Note for paragraph (c) **Medical profession** includes a health care related vocation. **Health care related vocation** means a health care related vocation in relation to which there is at least one State or Territory under the law of which a person must be registered in order to practise.

[17] Before regulation 8D

insert

Division 3.2 Administration

[18] Regulation 8D

substitute

26 When UMP support payment must be paid

- (1) For paragraph (b) of item 1 of the table in section 61 of the Act and subject to subregulation (2), the payment day, for UMP support payment for a contribution year that starts on or after 1 July 2003, is 1 September in the next contribution year.

- (2) For paragraph (b) of item 1 of the table in section 61 of the Act, the payment day, for UMP support payment for a contribution year that starts on or after 1 July 2004, is 1 March in that year, for the class of participating members of United Medical Protection Limited that, on 1 November in that year, have medical indemnity cover provided by a contract of insurance with Australasian Medical Insurance Limited.

27 When run-off cover support payment must be paid — AMIL

For paragraph (b) of item 2 of the table in section 61 of the Act, the payment day, for run-off cover support payment that Australasian Medical Insurance Limited is liable to pay for the contribution years beginning on 1 January 2005, 1 January 2006, 1 January 2007 and 1 January 2008, is 31 December in the contribution year to which the payment relates.

[19] Regulation 9, heading

substitute

28 Medical indemnity payment — late payment penalty rate

[20] Regulation 10

renumber as regulation 29

[21] Further amendments — UMP support payment

The following provisions are amended by omitting 'IBNR indemnity contribution' and inserting 'UMP support payment':

- subregulation 5 (2)
- subregulation 6 (1)
- subregulation 6A (1)
- subregulation 7 (1)

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- subregulation 7 (4), note
 - subregulation 7A (1)
 - regulation 8
 - regulation 8A.

Notes

1. These Regulations amend Statutory Rules 2003 No. 208, as amended by 2003 Nos. 250 and 264; 2004 No. 8.
2. Notified in the *Commonwealth of Australia Gazette* on / 2004.

25 June