



Medical Indemnity Regulations 2020

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 16 April 2020

David Hurley
Governor-General

By His Excellency's Command

Greg Hunt
Minister for Health

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Part 1—Preliminary

1 Name

This instrument is the *Medical Indemnity Regulations 2020*.

2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2020.	1 July 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Medical Indemnity Act 2002*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Simplified outline of this instrument

Various amounts are payable by the Chief Executive Medicare to MDOs and medical indemnity insurers (together called medical indemnity providers) if they apply for them and meet certain conditions.

Claim handling fees are payable to MDOs for claims for which IBNR indemnities are payable to the MDOs. Those fees are generally 5% of the indemnities.

Claim handling fees are payable to medical indemnity providers for eligible run-off claims for which run-off cover indemnity is paid. Those fees are generally 5% of the indemnities.

Section 6

Amounts are payable to medical indemnity insurers that incur costs complying with the requirement in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* to provide run-off cover to certain medical practitioners. Those amounts depend on the number of practitioners covered.

To help certain medical practitioners meet the costs of purchasing medical indemnity, the premium support scheme in Part 6 provides that amounts are payable to medical indemnity insurers with contracts of insurance providing professional indemnity cover for the practitioners. Those amounts are worked out in different ways, depending on the practitioners' circumstances.

Amounts are payable to medical indemnity insurers to help them meet the costs of administering the premium support scheme. Those amounts depend on the number of practitioners covered.

6 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Chief Executive Medicare;
- (b) claim;
- (c) MDO;
- (d) medical indemnity insurer;
- (e) medical practitioner.

In this instrument:

Act means the *Medical Indemnity Act 2002*.

advance subsidy means subsidy payable under subsection 26(2).

authorised reviewing officer has the meaning given by section 55.

complying application means an application to the Chief Executive Medicare that:

- (a) is made in a form approved by the Chief Executive Medicare; and
- (b) is accompanied by the documents and other information (if any) required by the form.

eligible medical practitioner has the meaning given by section 27.

gross indemnity costs has the meaning given by section 34.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

medical indemnity provider means:

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

membership fee, in relation to a medical indemnity insurer and a medical practitioner, means a fee an MDO associated with the insurer charges the practitioner for services to the practitioner as a member of the MDO.

old scheme means the *Premium Support Scheme 2004*:

- (a) as in force immediately before 1 July 2020; or
- (b) as it continues to apply because of section 69.

Note: The *Premium Support Scheme 2004* ceased to be in force at the start of 1 July 2020 because of the repeal and substitution of subsection 43(1) of the Act then by the *Medical and Midwife Indemnity Legislation Amendment Act 2019*. However, section 69 of this instrument provides for that scheme to continue to apply in relation to certain contracts of insurance made before 1 July 2020, so far as they relate to periods starting before 1 July 2020.

original decision has the meaning given by section 55.

practising in a rural area has the meaning given by section 32.

premium period means a period that is the whole or a part of a premium year.

premium year means:

- (a) for purposes relating to Avant Insurance Limited ACN 003 707 471 and a medical practitioner—a financial year, or a calendar year, for which Avant Insurance Limited collects the premium for a contract of insurance providing professional indemnity cover for the practitioner for all or part of the year; or
- (b) for purposes relating to any other medical indemnity insurer and a medical practitioner—a financial year for which the insurer collects the premium for a contract of insurance providing professional indemnity cover for the practitioner for all or part of the year.

private practice income has the meaning given by section 35.

procedural general practitioner has the meaning given by section 31.

retroactive cover for a medical practitioner for whom a contract of insurance provides medical indemnity cover means claims-made cover for the practitioner for claims that may be made relating to incidents occurring before the contract provided medical indemnity cover for the practitioner.

run-off cover for a medical practitioner for whom a contract of insurance (except one made to comply with section 26A of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*) provides medical indemnity cover means that cover indemnifying the practitioner against claims that:

- (a) may be made against the practitioner for compensation after the insurer ceases to provide claims-made cover for the practitioner; and
- (b) relate to incidents occurring before the taking effect of the first contract for cover indemnifying the practitioner against claims described in paragraph (a).

subsidised excess has the meaning given by section 33.

subsidy means a payment under Part 6 to a medical indemnity insurer on behalf of a medical practitioner.

substantial insurance costs has the meaning given by section 33.

Section 7

Part 2—Claim handling fees for claims for which IBNR indemnity payable

7 Simplified outline of this Part

A claim handling fee is payable to an MDO to which an IBNR indemnity is payable for a payment made by the MDO relating to a claim. The MDO needs to apply for payment of the fee and comply with any requests from the Chief Executive Medicare for information about it.

The fee is generally 5% of the IBNR indemnity.

8 Authority for this Part

This Part is for the purposes of paragraphs 27A(1)(a) and (2)(a) of the Act.

9 When claim handling fee is payable for claim for which IBNR indemnity payable

A claim handling fee, of the amount worked out under section 10, is payable to an MDO if:

- (a) an IBNR indemnity is payable or has been paid to the MDO in relation to a payment (the *underlying payment*) made, or liable to be made, in relation to a claim against or by a person (whether the underlying payment was made, or the liability to make it arose, before on or after 1 July 2020); and
- (b) the MDO has made a complying application for payment of the fee; and
- (c) the MDO complies with any request under section 27B of the Act relating to the fee.

Note 1: The underlying payment may be for legal and other expenses directly attributable to negotiations, arbitration or proceedings relating to the claim: see subsection 4(3) of the Act.

Note 2: Separate claim handling fees are payable for different underlying payments relating to the same claim, but only one claim handling fee is payable for each underlying payment.

Note 3: Part 5 deals with payment of claim handling fees.

10 Amount of claim handling fee

General rule

- (1) The amount of the claim handling fee is 5% of the IBNR indemnity.

Rule if high cost claim indemnity payable

- (2) However, if the underlying payment is a qualifying payment (or one of 2 or more qualifying payments), described in paragraphs 30(1)(e) and (f) of the Act (about high cost claim indemnity), of the MDO, the amount of the claim handling fee is 5% of the sum of:

- (a) the IBNR indemnity; and
- (b) the amount by which the IBNR indemnity was less than it would have been had a high cost claim indemnity not been payable because of the qualifying payment.

Part 3—Claim handling fees for eligible run-off claims

11 Simplified outline of this Part

A claim handling fee is payable to a medical indemnity provider to which a run-off cover indemnity is payable for a payment made by the provider relating to an eligible run-off claim. The provider needs to apply for payment of the fee and comply with any requests from the Chief Executive Medicare for information about it.

The fee is generally 5% of the run-off cover indemnity.

12 Authority for this Part

This Part is for the purposes of paragraphs 34ZN(1)(a) and (2)(a) of the Act.

13 When claim handling fee is payable for eligible run-off claim

A claim handling fee, of the amount worked out under section 14, is payable to a medical indemnity provider in respect of an eligible run-off claim if:

- (a) a run-off cover indemnity is payable or has been paid to the provider in relation to a payment (the *underlying payment*) made, or liable to be made, by the provider in relation to the claim (whether the underlying payment was made, or the liability to make it arose, before on or after 1 July 2020); and
- (b) the provider has made a complying application for payment of the fee; and
- (c) the provider complies with any request under section 34ZO of the Act relating to the fee.

Note 1: The underlying payment may be for legal and other expenses directly attributable to negotiations, arbitration or proceedings relating to the claim: see subsection 4(3) of the Act.

Note 2: Separate claim handling fees are payable for different underlying payments relating to the same claim, but only one claim handling fee is payable for each underlying payment.

Note 3: Part 5 deals with payment of claim handling fees.

14 Amount of claim handling fee for eligible run-off claim

General rule

- (1) The amount of the claim handling fee is 5% of the run-off cover indemnity.

Rule if high cost claim indemnity payable

- (2) However, if the underlying payment is a qualifying payment (or one of 2 or more qualifying payments), described in paragraphs 30(1)(e) and (f) of the Act (about high cost claim indemnity), of the medical indemnity provider, the amount of the claim handling fee is 5% of the sum of:

- (a) the run-off cover indemnity; and
- (b) the amount by which the run-off cover indemnity was reduced by a high cost claim indemnity payable in respect of the qualifying payment.

Part 4—Compulsory run-off cover administration payments

15 Simplified outline of this Part

An amount is payable annually to a medical indemnity insurer that incurs costs in complying with the requirement in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* to provide run-off cover to certain medical practitioners. The insurer needs to apply for payment of the amount and comply with any requests from the Chief Executive Medicare for information about it.

The amount payable depends on the number of practitioners covered in the year.

Also, amounts are payable on a one-off basis to certain insurers that incurred costs in complying with that requirement before 1 July 2020.

16 Authority for this Part

This Part is for the purposes of paragraphs 34ZN(1)(c) and (2)(a) of the Act.

17 When compulsory run-off cover administration payment is payable

A payment, of the amount worked out under section 18, is payable to a medical indemnity insurer for a contribution year starting on or after 1 July 2020 if:

- (a) the insurer has incurred legal, administrative or other costs (whether on its own behalf or otherwise) in respect of complying with Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (about provision of run-off cover to certain medical practitioners); and
- (b) the costs were incurred in the ordinary course of the insurer's business (and not in complying with a request under section 34ZO or 38 of the Act); and
- (c) the insurer has not contravened section 34ZT of the Act in relation to each run-off cover support payment for the immediately preceding contribution year; and
- (d) the insurer has made a complying application for the payment; and
- (e) the insurer complies with any request under section 34ZO of the Act relating to the payment.

18 Amount of compulsory run-off cover administration payment

- (1) The amount of the payment for a contribution year is worked out by multiplying the amount for the year in the table in subsection (2) by:
 - (a) the number of medical practitioners for whom the medical indemnity insurer provided medical indemnity cover by contracts of insurance for which premiums were paid to the insurer during the period by reference to which the amount of the run-off cover support payment for the contribution year payable by the insurer is worked out; or

(b) if that number is less than 1,000—1,000.

(2) The following table sets out amounts for contribution years.

Amounts affecting compulsory run-off cover administration payments		
Item	Contribution year starting on 1 July	Amount (\$)
1	2020	22.61
2	2021	23.17
3	2022	23.75
4	2023	24.35
5	2024	24.95
6	2025	25.58
7	2026	26.22
8	2027	26.87
9	2028	27.55
10	2029	28.23

19 One-off payments to particular insurers for past costs

(1) Amounts are payable as described in the following table on account of legal, administrative or other costs incurred before 1 July 2020 by medical indemnity insurers (whether on their own behalf or otherwise) in respect of complying with Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

One-off payments for costs incurred before 1 July 2020		
Item	Medical indemnity insurer to be paid	Amount of payment (\$)
1	Guild Insurance Limited ACN 004 538 863	80,940
2	Berkshire Hathaway Specialty Insurance Company ARBN 600 643 034	41,470

(2) The Chief Executive Medicare must pay an amount payable under this section to a medical indemnity insurer within 30 days of the insurer making a written application for the payment.

Section 20

Part 5—Payment of claim handling fees and some compulsory run-off cover administration payments

20 Simplified outline of this Part

The Chief Executive Medicare is to pay an amount payable under Part 2, 3 or 4 (except a one-off payment under Part 4) in the calendar month after the one in which the payment was applied for.

However, if the Chief Executive Medicare requests further information, the payment is to be made in the calendar month after the one in which the information is received.

21 Authority for this Part

This Part is for the purposes of paragraphs 27A(1)(a) and (2)(a) and 34ZN(1)(a) and (c) and (2)(a) of the Act.

22 Time of payment

- (1) The Chief Executive Medicare must pay an amount that is payable under Part 2, 3 or 4 (except section 19) before the end of the calendar month after the calendar month in which the complying application for the payment is made.
- (2) However, if the Chief Executive Medicare makes a request under section 27B or 34ZO of the Act relating to the amount, the amount is payable before the end of the calendar month after the calendar month in which the request is complied with.

Note: Sections 27B and 34ZO of the Act let the Chief Executive Medicare request information relevant to determining whether (and how much of) the amount is payable.

Part 6—Premium support scheme

Division 1—Introduction

23 Simplified outline of this Part

To help certain medical practitioners meet the costs of purchasing medical indemnity, amounts are payable for each premium year to medical indemnity insurers with contracts of insurance providing professional indemnity cover for the practitioners.

For an amount to be payable, the practitioner concerned must:

- (a) be a procedural general practitioner practising in a rural area; or
- (b) have gross indemnity costs (for the cover) more than 7.5% of the practitioner's private practice income; or
- (c) if the premium year is the year after 1 July 2020—be a practitioner who would have been a member with a MISS entitlement under the old scheme if that scheme had not ceased to be in force.

The amount payable generally depends on the practitioner's circumstances and private practice income for the year concerned.

The insurer may apply for the payment either:

- (a) before, or within 14 months after, the start of the year, on the basis that it is reasonable to expect that the payment will be payable; or
- (b) within 13 months after the end of the year, on the basis of the practitioner's actual circumstances for the year.

The amount payable on the basis of the practitioner's actual circumstances for the year is reduced by any amount paid on the basis that it was reasonable to expect that an amount would be payable.

The insurer must comply with certain conditions. They include:

- (a) asking all medical practitioners it insures whether they want such payments made to the insurer if the practitioners meet the conditions for the payments to be made; and
- (b) repaying amounts in certain circumstances.

Practitioners and insurers may apply for review of decisions about whether an amount is payable and how much is payable.

24 Authority for this Part

This Part is for the purposes of paragraphs 43(1)(a) and (2)(a) to (e) of the Act.

Part 6 Premium support scheme

Division 1 Introduction

Section 25

25 Object of this Part

The main object of this Part is to provide for payments to medical indemnity insurers on behalf of eligible medical practitioners to help those practitioners meet the cost of purchasing medical indemnity.

Division 2—Eligibility for payment

26 General conditions

Basic rule

- (1) An amount is payable to a medical indemnity insurer on behalf of a medical practitioner for a premium year if:
- (a) there is a contract of insurance between the insurer and the practitioner that provides professional indemnity cover for the practitioner in relation to a premium period in the year; and
 - (b) the practitioner is an eligible medical practitioner for a premium period in the year because of the contract; and
 - (c) the practitioner:
 - (i) has agreed to the payment of the amount to the insurer on behalf of the practitioner; and
 - (ii) has given the insurer the information (relevant to determining whether the amount is payable and how much the amount is) requested by the insurer in the form, and within the time, requested by the insurer; and
 - (iii) if the Chief Executive Medicare has, under section 44 of the Act, made a request of the practitioner for information relevant to determining whether the amount is payable or how much the amount is—has complied with the request; and
 - (iv) has paid the insurer the difference between the premium for the contract and the amount; and
 - (d) the insurer complies with the requirements in Division 6 (Conditions to be complied with by insurers) so far as they can be complied with before the amount is paid (whether or not the requirements relate only to the practitioner); and
 - (e) the insurer makes a complying application in accordance with Subdivision B of Division 4 for a subsidy to be paid to the insurer on behalf of the practitioner for the year.

Note: The amount payable under this subsection may be reduced (possibly to nil) if an amount is payable under subsection (2) and paid to the insurer on behalf of the practitioner: see section 45.

Advance payment based on reasonable expectation

- (2) Also, an amount is payable to a medical indemnity insurer on behalf of a medical practitioner for a premium year if:
- (a) the conditions in paragraphs (1)(a), (c) and (d) are met; and
 - (b) it is reasonable to expect that an amount would be payable under subsection (1) to the insurer on behalf of the practitioner for the year because of the contract:
 - (i) assuming the condition in paragraph (1)(e) were met; and
 - (ii) disregarding section 45 (about the amount of subsidy being reduced by advance subsidy); and

Section 26

(c) the insurer makes a complying application in accordance with Subdivision A of Division 4 for advance subsidy to be paid to the insurer on behalf of the practitioner for the year.

Note 1: A practitioner's private practice income may affect whether the practitioner is an eligible medical practitioner (because the practitioner has substantial insurance costs) and how much subsidy is payable on behalf of the practitioner (whether the practitioner has substantial insurance costs or not).

Note 2: An amount payable to a medical indemnity insurer on behalf of a medical practitioner for a premium year under subsection (1) of this section is reduced by any amount paid to the insurer on behalf of the practitioner for the premium year under subsection (2) of this section: see section 45.

Division 3—When is a medical practitioner an eligible medical practitioner for a premium period?

Subdivision A—General

27 Who is an *eligible medical practitioner* for a premium period?

- (1) A medical practitioner is an *eligible medical practitioner* for a premium period if:
 - (a) there is a contract of insurance between the practitioner and a medical indemnity insurer providing professional indemnity cover for the practitioner in relation to the period; and
 - (b) one of the following applies:
 - (i) for the whole period the practitioner is a procedural general practitioner practising in a rural area (see Subdivision B);
 - (ii) the practitioner has substantial insurance costs for the period (see Subdivision C);
 - (iii) the period ends before 1 July 2021 and the practitioner would have been a member with a MISS entitlement for the period under the old scheme if it had not ceased to be in force.
- (2) This section is subject to sections 28, 29 and 30 (which provide for medical practitioners not to be eligible medical practitioners for certain periods in certain circumstances).

28 Practitioner with no or low private practice income for premium period is not eligible medical practitioner

Nil private practice income

- (1) A medical practitioner is not an eligible medical practitioner for a premium period if the practitioner's private practice income for the period is nil.
- (2) Subsection (1) does not apply if:
 - (a) the practitioner's only practice in the premium period is the provision of health services in the course of engagement by an organisation whose primary function is to provide health services to the public at no charge; and
 - (b) the contract of insurance between the practitioner and a medical indemnity insurer providing professional indemnity cover for the practitioner provides retroactive cover, run-off cover or both only in relation to incidents in the course of private medical practice (before the premium period) from which the practitioner derived income.

Low private practice income

- (3) A medical practitioner is not an eligible medical practitioner for a premium period if:

Part 6 Premium support scheme

Division 3 When is a medical practitioner an eligible medical practitioner for a premium period?

Section 29

- (a) in the period the practitioner's practice is partly private medical practice but mainly treatment of public patients in one or more public hospitals; and
- (b) the practitioner's private practice income for the premium year containing the period is less than \$1,000; and
- (c) the practitioner is not indemnified in relation to the practitioner's private medical practice in the period under an agreement, with an organisation that operates one or more of the public hospitals, that allows the practitioner to carry on the private medical practice in the period.

29 Practitioner practising wholly outside Australia and external Territories is not eligible medical practitioner

- (1) A medical practitioner is not an eligible medical practitioner for a premium year (or any period in it) if the practitioner has practised outside Australia and the external Territories for at least 6 months of that year (counting as practice any leave taken in the ordinary course of practice).
- (2) For the purposes of subsection (1), practice in circumstances specified in rules made for the purposes of paragraph 34E(1)(c) of the Act is taken to be practice in Australia.

Note: Paragraph 34E(1)(c) of the Act has the effect that incidents that are connected with medical practice and occur outside Australia are treated like incidents occurring in Australia (for the purpose of certifying claims relating to the incidents as qualifying claims for the purposes of the exceptional claims indemnity scheme).

30 Practitioner who has not paid insurer for subsidy that insurer must repay is not eligible medical practitioner

- (1) This section applies if:
 - (a) a medical indemnity insurer with which a medical practitioner has or had a contract of insurance for professional indemnity cover has been paid a subsidy under this Part or the old scheme on behalf of the practitioner; and
 - (b) some or all of the subsidy is repaid or repayable by the insurer under this Part or the old scheme; and
 - (c) the insurer has requested the practitioner to pay the insurer an amount equal to the amount repaid or repayable by the insurer.
- (2) The medical practitioner is not an eligible medical practitioner at any time between receiving the request and paying the amount to the insurer.

Note: This prevents the medical practitioner from being an eligible medical practitioner for the purposes of working out whether a subsidy is payable after the request to any insurer (not just the one that made the request) on behalf of the practitioner.

Subdivision B—Procedural general practitioners practising in rural areas

31 Who is a procedural general practitioner?

- (1) A general practitioner (within the meaning of the *Health Insurance Act 1973*) is a **procedural general practitioner** for a period if:

-
- (a) the practitioner paid, or is liable to pay, a premium for a contract of insurance that provides professional indemnity cover for the practitioner in relation to the period; and
 - (b) the practitioner's practice in the period includes any of the following activities that are covered by subsection (2):
 - (i) administration of anaesthetic;
 - (ii) a surgical procedure for which hospital facilities are, or would normally be, required;
 - (iii) an obstetric procedure;
 - (iv) accident and emergency medicine;
 - (v) an invasive medical procedure except the administration of Implanon.

Note: A general practitioner is not a procedural general practitioner if the practitioner's practice in the period includes any of those activities but none of them is covered by subsection (2) (for example, because they relate to procedures that are cosmetic and not therapeutic).

- (2) This subsection covers the following:
 - (a) the non-referred provision of a medical service described in the general medical services table under the *Health Insurance Act 1973*;
 - (b) the provision of a health service specified in a determination under subsection 3C(1) of that Act.

32 When is a procedural general practitioner *practising in a rural area*?

A procedural general practitioner is *practising in a rural area* for a premium period (the *relevant period*) if either:

- (a) most of the services provided by the practitioner in the relevant period for which medicare benefit is payable under the *Health Insurance Act 1973* are provided in the following areas (as defined in the general medical services table under that Act):
 - (i) Modified Monash 3 area;
 - (ii) Modified Monash 4 area;
 - (iii) Modified Monash 5 area;
 - (iv) Modified Monash 6 area;
 - (v) Modified Monash 7 area; or
- (b) both:
 - (i) the practitioner was eligible under the old scheme for subsidy for a premium period (as defined in the old scheme) that included 30 June 2020 because the practitioner was practising in a rural area (as defined in the old scheme); and
 - (ii) the practitioner continued to practise as a procedural general practitioner in the same area from 30 June 2020 until the end of the relevant period.

Section 33

Subdivision C—Medical practitioners with substantial insurance costs

33 When does a medical practitioner have *substantial insurance costs*?

- (1) A medical practitioner for whom a contract of insurance provides professional indemnity cover in relation to a premium period has *substantial indemnity costs* for the period if the practitioner's gross indemnity costs for the period exceed 7.5% of the practitioner's private practice income (if any) for the period.
- (2) The excess is the *subsidised excess*.

34 What are *gross indemnity costs*?

- (1) The *gross indemnity costs* of a medical practitioner for whom a contract of insurance provides professional indemnity cover relating to a premium period are so much of the total of the following for which the practitioner is charged or liable, excluding any amounts described in subsection (2), as is reasonably attributable to the period:
 - (a) the premium for the contract, excluding any risk surcharge;
 - (b) the membership fee (if any);
 - (c) costs payable by the practitioner for retroactive cover or run-off cover.
- (2) The following amounts are excluded from gross indemnity costs:
 - (a) GST relating to the contract;
 - (b) stamp duty on the contract;
 - (c) a capital contribution required of the practitioner under rules (however described) of an MDO;
 - (d) payment of an excess or deductible;
 - (e) costs for earlier premium periods;
 - (f) charges imposed by the insurer for late payment of any of the amounts described in subsection (1);
 - (g) late payment penalty.
- (3) To avoid doubt, a premium for a contract of insurance that primarily covers employees of:
 - (a) the practitioner; or
 - (b) an entity, other than the practitioner, that runs the practitioner's medical practice;is not included in gross indemnity costs of the practitioner.

Note: Examples of entities include companies and partnerships.

35 What is *private practice income*?

The *private practice income* of a medical practitioner for a premium period is the total of the gross income received in the period by the practitioner from the practitioner's private medical practice for which either:

- (a) a contract of insurance provides professional indemnity cover for the practitioner; or
- (b) the practitioner is personally liable.

- Note: It does not matter who paid the practitioner the income the practitioner received. Therefore the following payments are examples of amounts included in private practice income:
- (a) medicare benefits assigned to the practitioner;
 - (b) payments by individual patients;
 - (c) payments under legislation administered by the Minister administering the *Veterans' Entitlements Act 1986*;
 - (d) payments under schemes for workers compensation;
 - (e) payments by insurers for injuries.

Section 36

Division 4—Applications for subsidies

Subdivision A—Application for advance subsidy

36 Application for advance subsidy may be made before, or within 14 months after, start of premium year

- (1) This section applies if:
 - (a) a medical indemnity insurer has a contract of insurance with a medical practitioner that provides professional indemnity cover for the practitioner for a premium period in a premium year; and
 - (b) the insurer is satisfied that, if the insurer makes a complying application under this section for a subsidy to be paid to the insurer on behalf of the practitioner for the year, an amount of subsidy will be payable under subsection 26(2) to the insurer on behalf of the practitioner for the year.

Note: Subsection 26(2) is about advance payment of subsidy based on a reasonable expectation.

- (2) The insurer may make a complying application before, or within 14 months after, the start of the premium year for the subsidy to be paid to the insurer on behalf of the practitioner.
- (3) However, the insurer may not make an application under this section if the insurer has already made an application under section 37 for subsidy to be paid to the insurer on behalf of the practitioner for the year.

Subdivision B—Final application for subsidy

37 Final application to be made within 13 months after end of premium year

- (1) This section applies if a medical indemnity insurer has a contract of insurance with a medical practitioner that provides professional indemnity cover for the practitioner in relation to a premium period in a premium year and either:
 - (a) the insurer is satisfied that, if the insurer makes a complying application under this section for a subsidy to be paid to the insurer on behalf of the practitioner for the year, an amount of subsidy will be payable to the insurer under subsection 26(1) on behalf of the practitioner for the year; or
 - (b) the insurer has been paid an amount of advance subsidy on behalf of the practitioner for the premium year.

Note: Subsection 26(1) contains the basic rules about the circumstances in which subsidy is payable.

- (2) The insurer:
 - (a) may make a complying application within 13 months after the end of the premium year for the subsidy to be paid to the insurer on behalf of the practitioner; and
 - (b) must do so if the insurer has been paid advance subsidy on behalf of the practitioner for the premium year, unless:
 - (i) the insurer made a complying application under section 53 for adjustment of the advance subsidy; and

- (ii) the Chief Executive Medicare determined under section 39 that the advance subsidy was not payable; and
- (iii) the insurer has not made a later application under section 36 to be paid subsidy on behalf of the practitioner for the premium year.

Note: If the insurer does not comply with paragraph (b), the insurer must repay the advance subsidy to the Commonwealth: see section 51. If the insurer is not required by paragraph (b) to make an application under this section because subparagraphs (b)(i), (ii) and (iii) apply, the insurer must repay the advance subsidy that was paid: see section 49.

Subdivision C—Determining applications for subsidy and applications for adjustment of advance subsidy

38 Chief Executive Medicare to determine applications for subsidy

As soon as practicable after receiving a complying application made under this Division for a medical indemnity insurer to be paid subsidy on behalf of a medical practitioner for a premium year, the Chief Executive Medicare must:

- (a) determine whether any subsidy is payable; and
- (b) if it is determined that subsidy is payable—determine the amount payable.

Note: A determination under this section is reviewable: see Division 7.

39 Chief Executive Medicare to determine applications for adjustment of advance subsidy

- (1) As soon as practicable after receiving a complying application made under section 53 for adjustment of advance subsidy paid to a medical indemnity insurer on behalf of a medical practitioner for a premium year, the Chief Executive Medicare must, on the basis of the information in that application:
 - (a) determine whether any advance subsidy is payable; and
 - (b) if it is determined that advance subsidy is payable—determine the amount payable.
- (2) However, the Chief Executive Medicare must not make a determination under subsection (1) after the insurer makes an application under section 37 for subsidy to be paid to the insurer on behalf of the practitioner for the premium year.

Division 5—Amount of subsidy

Subdivision A—Procedural general practitioners practising in rural areas

40 Amount of subsidy for procedural general practitioner practising in rural area

- (1) The amount of a subsidy payable to a medical indemnity insurer on behalf of a medical practitioner (the *subsidised practitioner*) who is an eligible medical practitioner for a premium period because the practitioner is a procedural general practitioner practising in a rural area in a State or Territory throughout the period is 75% of the difference between:
 - (a) the amount of the premium, excluding any risk surcharge, attributable to the period for the contract of insurance providing professional indemnity cover for the subsidised practitioner; and
 - (b) the lowest amount of premium, excluding any risk surcharge, attributable to the period for a contract of insurance with the insurer providing professional indemnity cover for a general practitioner who:
 - (i) is not a procedural general practitioner for the period; and
 - (ii) is practising in the State or Territory; and
 - (iii) has private practice income for the period in the same range (as determined by the insurer) as the subsidised practitioner.

Adjustment for non-therapeutic cosmetic procedures

- (2) If the subsidised practitioner performs procedures covered by subsection (3) and the subsidised practitioner's premium attributable to the period is greater than it would be if the practitioner did not perform those procedures, the practitioner's premium attributable to the period is taken for the purposes of paragraph (1)(a) to be what it would be if the practitioner did not perform those procedures.
- (3) This subsection covers a procedure that:
 - (a) is cosmetic in nature; and
 - (b) is not a medical service described in the general medical services table under the *Health Insurance Act 1973*; and
 - (c) is not a health service specified in a determination under subsection 3C(1) of that Act.

Subdivision B—Practitioners with substantial insurance costs

41 Amount of subsidy for practitioner with substantial insurance costs

The amount of a subsidy payable to a medical indemnity insurer on behalf of a medical practitioner who is an eligible medical practitioner for a premium period because the practitioner has substantial insurance costs for the period is 60% of the subsidised excess of the practitioner for the period.

Subdivision C—Practitioners with MISS entitlement under old scheme

42 Amount of subsidy for practitioner with MISS entitlement under old scheme

The amount of a subsidy payable to a medical indemnity insurer on behalf of a medical practitioner who is an eligible medical practitioner for a premium period ending before 1 July 2021 because the practitioner would have been a member with a MISS entitlement for the period under the old scheme if it had not ceased to be in force is the amount the subsidy would have been under the old scheme if it had not ceased to be in force.

Subdivision D—Eligible medical practitioners with multiple or varying eligibility

43 If medical practitioner eligible on different grounds for same period

- (1) This section applies if:
 - (a) a medical practitioner is an eligible medical practitioner for a premium period because the practitioner meets 2 or more of the conditions in the subparagraphs of paragraph 27(1)(b) for the period; and
 - (b) a subsidy is payable to a medical indemnity insurer on behalf of the practitioner for the period.
- (2) The amount of the subsidy for the period is the greatest of the amounts of subsidy worked out under whichever of sections 40, 41 and 42 apply in relation to the practitioner for the period.

Note: The subsidy is not the sum of the amounts worked out under whichever of those sections apply.

44 If medical practitioner eligible on different grounds for different periods

- (1) This section applies if
 - (a) subsidy is payable to a medical indemnity insurer on behalf of a medical practitioner for a premium year; and
 - (b) for different premium periods in the year, the practitioner is an eligible medical practitioner because of one or more contracts of insurance with the insurer and because the practitioner meets the conditions in different subparagraphs of paragraph 27(1)(b).
- (2) The amount of subsidy payable to the insurer for the premium year is the sum of the amounts of subsidy for the premium periods.

Subdivision E—Reconciling advance subsidy and subsidy

45 Amount of subsidy reduced by advance subsidy

- (1) This section applies if:
 - (a) it has been determined under section 38 or 39 that an amount of advance subsidy is payable to a medical indemnity insurer on behalf of a medical practitioner for a premium year; and

Section 45

(b) an amount (the *final amount*) of subsidy is payable to the insurer on behalf of the practitioner for the year under subsection 26(1).

Note: That subsection sets out the basic rules for subsidy to be payable.

- (2) The final amount depends on the amount of advance subsidy most recently determined under section 38 or 39 (the *advance amount*).
- (3) If, apart from this section, the final amount would be greater than the advance amount, the final amount is the difference between:
- (a) the final amount apart from this section; and
 - (b) the advance amount.
- (4) If, apart from this section, the final amount would be equal to or less than the advance amount, the final amount is nil.

Note: If, apart from this section, the final amount would be less than the advance amount, the insurer must repay the Commonwealth the difference between the amounts: see section 50.

Division 6—Conditions to be complied with by insurers

Subdivision A—Simplified outline

46 Simplified outline of this Division

This Division sets:

- (a) some requirements that are conditions to be met by a medical indemnity insurer for a subsidy to be payable to the insurer on behalf of a medical practitioner; and
- (b) some requirements that are conditions to be met by the insurer after it has been paid the subsidy.

The requirements relate to the following matters:

- (a) asking medical practitioners about participating in the subsidy scheme before offering any of them a contract of insurance to provide medical indemnity cover for them for a premium period;
- (b) invoicing medical practitioners on whose behalf subsidy is paid so they can identify the subsidy;
- (c) repaying overpayments of subsidy;
- (d) keeping records relating to subsidies;
- (e) reporting to the Chief Executive Medicare on changes of circumstances of medical practitioners in respect of whom applications for payment of subsidy have been made.

Subdivision B—Asking medical practitioners about participating in scheme

47 Asking medical practitioners about participating in scheme

A medical indemnity insurer must write to each medical practitioner for whom it is proposed that a contract of insurance with the insurer provide professional indemnity cover in relation to a premium period:

- (a) asking the practitioner whether, if the practitioner is an eligible medical practitioner for the premium period, the practitioner is willing for a subsidy to be paid to the insurer to help the practitioner meet the cost of purchasing medical indemnity; and
- (b) stating that, for the subsidy to be paid:
 - (i) the practitioner will need to give information to the insurer about the practitioner's private practice income for the period (among other things); and
 - (ii) the insurer will need to give the Chief Executive Medicare information about the practitioner's private practice income for the period (among other things); and
- (c) stating that if an overpayment of the subsidy is made to the insurer, the practitioner will need to pay the insurer an amount equal to the amount the insurer must repay.

Section 48

Subdivision C—Invoicing

48 Contents of invoices given to eligible medical practitioners

A medical indemnity insurer must ensure that each invoice it gives to an eligible medical practitioner relating to a contract of insurance between the insurer and the practitioner that provides professional indemnity cover for the practitioner for a premium period includes the following:

- (a) the amount of the membership fee for the practitioner or, if there is no such fee, a statement to that effect;
- (b) the amount of subsidy payable to the insurer on behalf of the practitioner relating to the premium period or, if no such subsidy is payable, a statement to that effect;
- (c) a statement that the amount of subsidy is subject to adjustment depending on the practitioner's income and changes in the practitioner's circumstances;
- (d) the amount of the premium;
- (e) the amount of stamp duty on the contract;
- (f) the amount of GST relating to the contract;
- (g) a statement that GST is not payable in relation to a subsidy.

Note: Section 34ZV of the Act requires invoices for premiums increasing the insurer's liability for run-off cover support payment to include certain extra matters relating to that payment.

Subdivision D—Repaying overpayments of subsidy

49 Overpayments generally

- (1) This section applies if a payment by way of subsidy (whether advance subsidy or not) is made to a medical indemnity insurer on behalf of a medical practitioner for a premium year and one of the following applies:
 - (a) subsidy is not payable to the insurer on behalf of the practitioner for the premium year;
 - (b) the amount paid is greater than the amount of subsidy that was payable;
 - (c) the payment is made by way of advance subsidy and a determination is later made under section 39 that the advance subsidy is not payable;
 - (d) the payment is made by way of advance subsidy and a determination is later made under section 39 that a lesser amount of advance subsidy is payable.
- (2) The *amount overpaid* is:
 - (a) the whole of the amount paid if paragraph (1)(a) or (c) applies; or
 - (b) the difference between the amount that was paid and the amount that was payable, or was most recently determined under section 38 or 39 to be payable, if paragraph (1)(b) or (d) applies.
- (3) The insurer must repay to the Commonwealth the amount overpaid.

Note: Section 66 provides for recovery of the amount overpaid.

50 Repaying advance subsidy exceeding final amount

- (1) This section applies if:
 - (a) advance subsidy is paid to a medical indemnity insurer on behalf of a medical practitioner for a premium year; and
 - (b) an amount (the **final amount**) of subsidy would be payable to the insurer on behalf of the practitioner for the year under subsection 26(1) apart from section 45; and
 - (c) the advance subsidy exceeds the final amount.

Note: Subsection 26(1) sets out the basic rules for subsidy to be payable. Section 45 reduces the amount of subsidy payable by advance subsidy paid.

- (2) The insurer must repay the excess to the Commonwealth.

Note: Section 66 provides for recovery of the excess.

51 Repaying advance subsidy for premium year if no later application made for premium year

- (1) This section applies if:
 - (a) advance subsidy is paid to a medical indemnity insurer on behalf of a medical practitioner for a premium year; and
 - (b) the insurer does not make an application under section 37 relating to the practitioner.

Note: That section requires a complying application to be made by the insurer within 13 months after the end of the premium year.

- (2) The insurer must repay the amount of the advance subsidy to the Commonwealth.

Note: Section 66 provides for recovery of the amount.

Subdivision E—Keeping records

52 Records relevant to subsidy to be kept for 5 years

A medical indemnity insurer must keep records of information relevant to working out the amounts of subsidy payable or paid to it on behalf of medical practitioners for 5 years after the records were created.

Subdivision F—Reporting on changes in medical practitioners' circumstances

53 Reporting between making application for advance subsidy and making final application for subsidy

- (1) This section applies if:
 - (a) under section 36, a medical indemnity insurer makes a complying application for advance subsidy to be paid to the insurer on behalf of a medical practitioner for a premium year; and
 - (b) the insurer is later aware that information in the application was not correct or is no longer correct.

Part 6 Premium support scheme

Division 6 Conditions to be complied with by insurers

Section 54

- (2) The insurer must, as soon as reasonably practicable, give the Chief Executive Medicare correct information about all the matters dealt with in the application.
- (3) If the advance subsidy was paid to the insurer before the insurer complies with subsection (2), the insurer must comply with that subsection by giving the information in a complying application for an adjustment of the advance subsidy.
- (4) Subsections (2) and (3) do not apply after the insurer makes an application under section 37 for subsidy to be paid to the insurer on behalf of the practitioner for the premium year.

54 Reporting after making final application for subsidy

- (1) This section applies if:
 - (a) under section 37, a medical indemnity insurer makes a complying application for subsidy to be paid to the insurer on behalf of a medical practitioner for a premium year; and
 - (b) the insurer is later aware that information in the application was not correct or is no longer correct.
- (2) The insurer must, as soon as reasonably practicable, give the Chief Executive Medicare correct information about all the matters dealt with in the application.

Division 7—Review of decisions relevant to subsidies

55 Authorised reviewing officers

- (1) The Chief Executive Medicare may authorise an APS employee (the *authorised reviewing officer*) in the Department administered by the Minister administering the *Human Services (Medicare) Act 1973* to review, on application by a person described in section 56, a determination (the *original decision*) described in that section.
- (2) The authorised reviewing officer must have a higher classification than the maker of the original decision.

56 Applications by medical practitioners and medical indemnity insurers for review of decisions

A medical practitioner or a medical indemnity insurer may apply to an authorised reviewing officer for the officer to review a determination that was made under section 38 relating to an application made under section 37 for subsidy to be paid to the insurer on behalf of the practitioner for a premium year.

Note: Section 37 is about making applications within 13 months after the end of the premium year, whether or not advance subsidy has been paid. Section 38 requires a determination whether subsidy is payable and, if so, the amount of the subsidy.

57 Review of original decision by authorised reviewing officer

- (1) An authorised reviewing officer reviewing an original decision must:
 - (a) affirm the decision; or
 - (b) set aside the decision and make another decision in substitution for it.
- (2) The authorised reviewing officer must give the applicant for the review written notice of the outcome of the review and written reasons for the decision made by the officer on review.

58 Review by Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of decisions made on review under section 57 by authorised reviewing officers of original decisions.

Part 7—Payments for administering premium support scheme

59 Simplified outline of this Part

An amount is payable for each financial year to a medical indemnity insurer for incurring costs relating to administration of the premium support scheme in Part 6, if the insurer applies for the payment and complies with requests from the Chief Executive Medicare for information.

The amount payable depends on the number of medical practitioners whom the insurer was satisfied in the previous financial year would attract subsidy payable to the insurer.

Also, amounts are payable on a one-off basis to insurers involved in the old scheme for incurring costs relating to administration of the premium support scheme in Part 6.

60 Authority for this Part

This Part is for the purposes of paragraphs 43(1)(b) and (2)(a) to (e) of the Act.

61 When premium support scheme administration payment is payable

A payment, of the amount worked out under section 62, is payable to a medical indemnity insurer for a financial year starting on or after 1 July 2020 if:

- (a) the insurer has made a complying application for the payment; and
- (b) the insurer complies with any request under section 44 of the Act relating to the payment.

62 Amount of premium support scheme administration payment

- (1) The amount of the payment for a financial year is worked out by multiplying the amount for the year in the table in subsection (2) by:
 - (a) the number of medical practitioners in relation to each of whom the medical indemnity insurer was reasonably satisfied, before the end of the immediately preceding financial year (the *earlier financial year*), an amount of subsidy or advance subsidy was payable (or would be payable if application were made) to the insurer for a premium year falling wholly or partly within the earlier financial year; and
 - (b) if that number is less than 1,000—1,000.
- (2) The following table sets out amounts for financial years.

Amounts affecting premium support scheme administration payments		
Item	Financial year starting on 1 July	Amount (\$)
1	2020	5.00

Amounts affecting premium support scheme administration payments		
Item	Financial year starting on 1 July	Amount (\$)
2	2021	5.09
3	2022	5.17
4	2023	5.26
5	2024	5.35
6	2025	5.44
7	2026	5.53
8	2027	5.63
9	2028	5.72
10	2029	5.82

63 One-off payments to certain insurers

- (1) An amount of \$250,000 is payable to each of the following medical indemnity insurers (in addition to any other amount payable to the insurer under this Part):
 - (a) Avant Insurance Limited ACN 003 707 471;
 - (b) MDA National Insurance Pty Ltd ACN 058 271 417;
 - (c) Medical Insurance Australia Pty Ltd ACN 092 709 629;
 - (d) MIPS Insurance Pty Ltd ACN 089 048 359.
- (2) The Chief Executive Medicare must pay an amount payable under this section to a medical indemnity insurer within 30 days of the insurer making a written application for the payment.

Part 8—Recovery of overpayments and amounts required to be repaid

64 Simplified outline of this Part

If a medical indemnity provider is paid more than it is entitled to under this instrument, the overpayment may be recovered by court action or deduction from other amounts payable to the provider under this instrument.

65 Authority for this Part

This Part is for the purposes of paragraphs 27A(2)(a), 34ZN(2)(a) and 43(2)(e) of the Act.

66 Recovery of overpayments and amounts required to be repaid

- (1) This section applies if an amount is paid to a medical indemnity provider by way of a payment under Part 2, 3, 4, 6 or 7 or section 69 and one of the following applies:
 - (a) no amount is payable to the provider under that Part or section;
 - (b) the amount paid is greater than the amount that was payable to the provider under that Part or section;
 - (c) the provider is required by section 49, 50 or 51 to repay some or all of the amount.
- (2) The **amount overpaid** is:
 - (a) the whole of the amount paid if paragraph (1)(a) applies; or
 - (b) the difference between the amount that was paid and the amount that was payable if paragraph (1)(b) applies;
 - (c) so much of the amount as is required to be repaid if paragraph (1)(c) applies.
- (3) The amount overpaid is a debt due to the Commonwealth by the medical indemnity provider.
- (4) The amount overpaid may be recovered:
 - (a) by action by the Chief Executive Medicare against the medical indemnity provider in a court of competent jurisdiction; or
 - (b) by deduction from another amount payable to the medical indemnity provider under this instrument.

The total amount recovered must not exceed the amount overpaid.

Part 9—Application, saving and transitional provisions

Division 1—Provisions for this instrument as originally made

67 Application of Part 6

Contracts of insurance made on or after 1 July 2020

- (1) Part 6 applies in relation to contracts of insurance made on or after 1 July 2020 for the provision of professional indemnity cover for medical practitioners in relation to premium periods starting on or after that day.

Contracts of insurance made before 1 July 2020 for premium periods starting on or after 1 July 2020

- (2) Part 6 (except section 47) also applies in relation to contracts of insurance that were made before 1 July 2020 by medical indemnity insurers that were parties to PSS contracts (within the meaning of the old scheme), so far as those contracts of insurance are for the provision of professional indemnity cover for medical practitioners in relation to premium periods:
 - (a) starting on or after 1 July 2020; and
 - (b) forming the whole or part of premium years starting on or after 1 July 2020.

Note: For premium periods that started before 1 July 2020, section 69 continues to apply the old scheme in relation to contracts of insurance made before 1 July 2020 by insurers that were party to PSS contracts within the meaning of the old scheme.

- (3) A medical indemnity insurer that was not a party to a PSS contract within the meaning of the old scheme may choose, by written notice given to the Chief Executive Medicare, that Part 6 apply in relation to a specified contract of insurance that:
 - (a) was made by the insurer and a specified medical practitioner before 1 July 2020; and
 - (b) is (at least partly) for the provision of professional indemnity cover for the medical practitioner in relation to one or more premium periods starting on or after 1 July 2020;

so far as that contract is for the provision of professional indemnity cover for the medical practitioner in relation to those premium periods.

Note: Contracts and medical practitioners may be specified by reference to classes: see subsection 33(3AB) of the *Acts Interpretation Act 1901* (as it applies because of paragraph 46(1)(a) of that Act).

- (4) The choice cannot be revoked or changed.
- (5) If the medical indemnity insurer has chosen that Part 6 apply in relation to the contract, that Part, except sections 47 and 48, applies in relation to the contract so far as it is for the provision of professional indemnity cover for the medical practitioner in relation to one or more premium periods starting on or after 1 July 2020.

Section 68

68 Transitional—agreement to payment of subsidy to insurer

The reference in subparagraph 26(1)(c)(i) to agreement to payment of subsidy to the insurer includes a reference to consent to the insurer receiving payments under the old scheme.

69 Saving—old scheme

- (1) The old scheme (as in force immediately before 1 July 2020) continues to apply in relation to premium periods (within the meaning of the old scheme) that started before 1 July 2020.
- (2) The old scheme continues to apply as if PSS contracts (within the meaning of the old scheme) that were in force immediately before 1 July 2020 continued in force so far as they related to the old scheme.
- (3) However, subsections (1) and (2) do not continue to apply:
 - (a) Part 8 of the old scheme; or
 - (b) a provision of the old scheme so far as the provision relates to that Part; or
 - (c) PSS contracts so far as they relate to that Part.

70 Transitional—premium support scheme administration payment for financial years starting on 1 July 2020 and 1 July 2021

Payment for financial year starting on 1 July 2020

- (1) For the purposes of working out the amount of a payment under Part 7 for the financial year starting on 1 July 2020, paragraph 62(1)(a) has effect as if the reference in that paragraph to subsidy or advance subsidy having been payable, or potentially being payable if application were made, to the insurer for a premium year were a reference to subsidy under the old scheme having been payable to the insurer for a premium period (within the meaning of the old scheme).

Payment for financial year starting on 1 July 2021

- (2) For the purposes of working out the amount of a payment under Part 7 for the financial year starting on 1 July 2021, paragraph 62(1)(a) has effect as if the reference in that paragraph to subsidy or advance subsidy having been payable, or potentially being payable if application were made, to the insurer for a premium year included a reference to subsidy under the old scheme having been payable under section 69 to the insurer for a premium period (within the meaning of the old scheme).

Schedule 1—Repeals

Medical Indemnity Regulations 2003

1 The whole of the instrument

Repeal the instrument.