



# **Medical Indemnity Act 2002**

**No. 132, 2002 as amended**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Medical Indemnity Act 2002* as in force on 1 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 8 July 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to make provision in relation to indemnities in relation to the practice of medical professions and vocations, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Medical Indemnity Act 2002*.

### **2 Commencement**

This Act commences, or is taken to have commenced, on 1 January 2003.

### **3 Objects of this Act and the medical indemnity payment legislation**

- (1) An object of this Act is to contribute towards the availability of medical services in Australia by providing Commonwealth assistance to support access by medical practitioners to arrangements that indemnify them for claims arising in relation to their practice of their medical professions.
- (2) The Commonwealth provides that assistance under this Act by:
  - (a) meeting part of the costs of large settlements or awards paid by organisations that indemnify medical practitioners (but only for claims notified on or after 1 January 2003); and
  - (aa) meeting the amounts by which settlements and awards exceed insurance contract limits, if those contract limits meet the Commonwealth's threshold requirements; and
  - (ab) meeting the amounts payable in relation to certain claims (notified on or after 1 July 2004) against medical practitioners who are no longer in private medical practice; and
  - (b) providing for a subsidy scheme to help certain medical practitioners meet the cost of their indemnity arrangements; and

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- (c) meeting the cost associated with certain IBNR liabilities of organisations that indemnify medical practitioners to the extent to which those organisations had not made adequate provision for those liabilities as at 30 June 2002.

Note: The acronym “IBNR” is used in this Act for “incurred but not reported”.

- (3) The Commonwealth provides further assistance in relation to members and former members of UMP under a Medical Indemnity Agreement referred to in the *Medical Indemnity Agreement (Financial Assistance—Binding Commonwealth Obligations) Act 2002*.
- (4) Another object of this Act (together with the medical indemnity payment legislation) is to allow the Commonwealth:
  - (a) to recover the costs of providing the assistance referred to in paragraph (2)(c) by requiring payments from persons who were members of relevant organisations on 30 June 2000; and
  - (b) to recover the costs of providing the assistance referred to in paragraph (2)(ab) by requiring payments from medical indemnity insurers; and
  - (c) to require a payment from medical indemnity insurers to ensure that the assistance referred to in paragraph (2)(c) does not give a competitive advantage to the organisations that receive that assistance.

## 4 Definitions

### *General*

- (1) In this Act, unless the contrary intention appears:

**Actuary** means the Australian Government Actuary.

**affected medical practitioner** has the meaning given by section 34ZQ.

**Chief Executive Medicare** has the same meaning as in the *Human Services (Medicare) Act 1973*.

***claim:***

- (a) means a claim or demand of any kind (whether or not involving legal proceedings); and
- (b) includes proceedings of any kind including:
  - (i) proceedings before an administrative tribunal or of an administrative nature; and
  - (ii) disciplinary proceedings (including disciplinary proceedings conducted by or on behalf of a professional body); and
  - (iii) an inquiry or investigation;

and ***claim*** against a person includes an inquiry into, or an investigation of, the person's conduct.

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

***contribution year:***

- (a) for a UMP support payment payable by a participating member of a participating MDO—has the same meaning as in the *Medical Indemnity (UMP Support Payment) Act 2002*; and
- (b) for a run-off cover support payment—has the same meaning as in the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*; and
- (c) for a competitive advantage payment—has the same meaning as in the *Medical Indemnity (Competitive Advantage Payment) Act 2005*.

***eligible midwife*** has the same meaning as in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

***eligible run-off claim*** has the meaning given by section 34ZB.

***exceptional claims indemnity*** means an exceptional claims indemnity paid or payable under Division 2A of Part 2.

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

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***Exceptional Claims Protocol*** means the protocol (as amended and in force from time to time) determined by the Minister under section 34X.

***externally-administered body corporate*** means:

- (a) a body corporate that is an externally-administered body corporate within the meaning of the *Corporations Act 2001*; or
- (b) a body corporate to which a provisional liquidator has been appointed.

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

***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.

***health professional*** means a person who practises a health care related vocation.

***high cost claim indemnity*** means a high cost claim indemnity paid or payable under Division 2 of Part 2.

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

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

***high cost claim threshold*** has the meaning given by section 29.

***Human Services Minister*** means the Minister administering the *Human Services (Medicare) Act 1973*.

***IBNR Claims Protocol*** means the protocol (as amended and in force from time to time) determined by the Minister under section 27A.

***IBNR exposure*** has the meaning given by section 8.

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**IBNR indemnity** means an IBNR indemnity paid or payable under Division 1 of Part 2.

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

**imposition day**, for a UMP support payment payable by a participating member of a participating MDO, has the same meaning as in the *Medical Indemnity (UMP Support Payment) Act 2002*.

**incident** includes:

- (a) any act, omission or circumstance; and
- (b) an incident that is claimed to have occurred.

**incident-occurring based cover** has the meaning given by section 7.

**indemnify** has a meaning affected by subsection (2).

**indemnity scheme payment** means:

- (a) an IBNR indemnity; or
- (b) a high cost claim indemnity; or
- (c) an exceptional claims indemnity; or
- (d) a run-off cover indemnity.

**insurance business** has the same meaning as in the *Insurance Act 1973*.

**insurer** means a person who carries on insurance business.

**insurer-to-insurer payment** means a payment that:

- (a) is made by an MDO or insurer to an MDO or an insurer; and
- (b) is not made by the MDO or insurer on behalf of another person.

**invoice** includes:

- (a) any document issued by an MDO to a person (whether or not the person is already a member of the MDO) that contains a quote for the amount of subscription that is or would be payable by that person for membership of the MDO; and

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- (b) any document issued by a medical indemnity insurer to a person (whether or not the medical indemnity insurer already provides medical indemnity cover to the person) that contains a quote for the amount of premium that is or would be payable by that person for provision of such cover.

***late payment penalty:***

- (a) in relation to an amount repayable under section 24—means a penalty payable under section 27; and
- (aa) in relation to a debt owed under section 34T—means a penalty payable under section 34W; and
- (ab) in relation to a debt owed under section 34ZJ—means a penalty payable under section 34ZM; and
- (b) in relation to a medical indemnity payment—means a penalty payable under section 65; and
- (c) in relation to an amount that a medical indemnity insurer or an MDO is required to remit to the Chief Executive Medicare under paragraph 66A(4)(b)—means a penalty payable under section 66B.

***legal practitioner*** means a person who is enrolled as a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of:

- (a) a federal court; or
- (b) a court of a State or Territory.

***MDO*** has the meaning given by section 5.

***medical indemnity cover:*** a contract of insurance provides medical indemnity cover for a person if:

- (a) the person is specified or referred to in the contract, whether by name or otherwise, as a person to whom the insurance cover provided by the contract extends; and
- (b) the insurance cover indemnifies the person (subject to the terms and conditions of the contract) in relation to claims that may be made against the person in relation to incidents that occur or occurred in the course of, or in connection with, the practice by the person of a medical profession.

Note 1: A single contract of insurance may provide medical indemnity cover for more than one person.

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Note 2: This definition does not apply to references to medical indemnity cover in subsections 52(3B) and (3C): see subsection 52(3D).

***medical indemnity insurer*** means:

- (a) a body corporate authorised under section 12 of the *Insurance Act 1973* that; or
- (b) a Lloyd's underwriter within the meaning of that Act who; in carrying on insurance business in Australia, enters into contracts of insurance providing medical indemnity cover for other persons.

***medical indemnity payment*** means:

- (a) a UMP support payment payable under Division 1 of Part 3; or
- (b) a run-off cover support payment payable under Division 2 of Part 3; or
- (c) a competitive advantage payment payable under Division 2A of Part 3.

***medical indemnity payment legislation*** means:

- (a) the *Medical Indemnity (UMP Support Payment) Act 2002*; or
- (b) the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*; or
- (c) the *Medical Indemnity (Competitive Advantage Payment) Act 2005*.

***medical practitioner*** means a person registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

Note: Subsection (6) gives this definition an extended meaning in Division 2B or 4 of Part 2.

***medical profession*** includes a health care related vocation.

***medicare benefit*** means a medicare benefit payable under Part II of the *Health Insurance Act 1973*.

***medicare program*** has the same meaning as in the *Human Services (Medicare) Act 1973*.

***member*** of an MDO has the meaning given by section 6.

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***net IBNR exposure*** has the meaning given by section 8A.

***participating MDO*** has the meaning given by section 11.

***participating member*** of a participating MDO means a person who was a member of the MDO on 30 June 2000 (whether or not the person ceased to be a member of the MDO after that date).

***payment*** made in relation to a claim has (other than in Division 2A of Part 2) the meaning given by subsections (3) and (4).

***provable***: an amount that an MDO or insurer is liable to pay is ***provable*** if:

- (a) it is provable in the winding up of the MDO or insurer if the winding up of the MDO or insurer has commenced; or
- (b) it would be provable in the winding up of the MDO or insurer if the MDO or insurer were to be wound up.

***public hospital*** means a recognised hospital within the meaning of the *Health Insurance Act 1973*.

***public patient*** has the same meaning as in the *Health Insurance Act 1973*.

***qualifying claim certificate*** means a certificate issued by the Chief Executive Medicare under section 34E.

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

***Run-off Cover Claims and Administration Protocol*** means the protocol (as amended and in force from time to time) determined by the Minister under section 34ZN.

***run-off cover credit*** has the meaning given by subsection 34ZS(2).

***run-off cover indemnity*** means a run-off cover indemnity paid or payable under Division 2B of Part 2.

Note: Amounts payable under the Run-off Cover Claims and Administration Protocol are not covered by this definition.

***Secretary*** means the Secretary of the Department.

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***subject to appeal***: a judgment or order is ***subject to appeal*** until:

- (a) any applicable time limits for lodging an appeal (however described) against the judgment or order have expired; and
- (b) if there is such an appeal against the judgment or order—the appeal (and any subsequent appeals) have been finally disposed of.

***total run-off cover credit*** has the meaning given by section 34ZS.

***UMP*** means United Medical Protection Limited.

***unfunded IBNR exposure***: an MDO has an ***unfunded IBNR exposure*** on 30 June 2002 if the MDO had, on that day, insufficient readily available assets to cover both its IBNR exposure and all its other liabilities.

***unfunded IBNR factor*** for a participating MDO means the factor for the MDO worked out under section 22.

*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.

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

### *Indemnifying*

- (2) To avoid doubt, a person may, for the purposes of this Act, **indemnify** someone else by either:
- (a) making a payment; or
  - (b) agreeing to make a payment.

Note: A person may indemnify someone else by making a payment even if the payment was not preceded by an agreement to pay.

### *Payments in relation to claims*

- (3) For the purposes of this Act (other than Division 2A of Part 2):
- (a) a payment is made **in relation to a claim against a person** if and only if the payment is made to:
    - (i) satisfy or settle the claim; or
    - (ii) meet legal and other expenses that are directly attributable to any negotiations, arbitration or proceedings in relation to the claim; and
  - (b) a payment is made **in relation to a claim by a person** if and only if the payment is made to meet legal and other expenses that are directly attributable to any negotiations, arbitration or proceedings in relation to the claim.
- (4) A reference in this Act (other than Division 2A of Part 2) to a payment being made **to satisfy or settle** a claim against a person includes a reference to a payment that:
- (a) is made to reimburse the person for a payment the person has made to satisfy or settle the claim; or
  - (b) is made to the person so that the person can make a payment to satisfy or settle the claim.

### *Changes in body corporate names*

- (5) A reference in this Act to a body corporate by a particular name is a reference to the body corporate that had that name on 30 June 2002.

*Medical practitioners*

- (6) A reference in Division 2B or 4 of Part 2 to a medical practitioner includes a reference to a person who has been a medical practitioner.

**5 Medical defence organisation (MDO)**

- (1) An **MDO** is a body corporate that is an MDO under subsection (2) or (3) or regulations made for the purposes of subsection (4).
- (2) Subject to regulations made for the purposes of subsection (5), a body corporate is an **MDO** if:
- (a) the body corporate is incorporated by or under a law of the Commonwealth, a State or a Territory; and
  - (b) the body corporate was in existence on 30 June 2002; and
  - (c) the body corporate, in the ordinary course of its business as at 30 June 2002, indemnified persons in relation to claims in relation to incidents that occurred in the course of, or in connection with, the practice of a medical profession by the persons; and
  - (d) did so only if the persons were one of the following:
    - (i) members or former members of the body corporate;
    - (ii) the legal personal representatives of members or former members of the body corporate.

This is so even if the indemnity is one that is provided at the body corporate's discretion.

- (3) Subject to regulations made for the purposes of subsection (5), each of the bodies corporate listed in the following table is an **MDO**:

<b>MDOs</b>
Medical Defence Association of South Australia Limited
Medical Defence Association of Victoria Limited
Medical Defence Association of Western Australia (Incorporated)
Medical Indemnity Protection Society Limited
Medical Protection Society of Tasmania Inc.

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### **MDOs**

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Queensland Doctors Mutual Limited

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United Medical Protection Limited

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- (4) The regulations may provide that a body corporate specified in the regulations is an **MDO**.
- (5) The regulations may provide that a body corporate specified in the regulations is not an MDO for the purposes of this Act.

## **6 Member of an MDO**

- (1) A person is a **member** of an MDO:
  - (a) at all times when the person is a member of the MDO according to the MDO's constitution; and
  - (b) no matter how the person's membership is described.
- (2) Without limiting paragraph (1)(a), a person does not cease to be a **member** of an MDO merely because some or all of the person's rights and privileges as a member are suspended, have lapsed or have ceased.
- (3) Without limiting paragraph (1)(b), a person is a **member** of an MDO even if the person is described by the MDO's constitution as:
  - (a) an associate member; or
  - (b) an honorary member; or
  - (c) a non-financial member; or
  - (d) a retired member; or
  - (e) a student member.

## **7 Incident-occurring based cover**

- (1) A person had **incident-occurring based cover** for an incident with an MDO on 30 June 2002 if:
    - (a) an arrangement between the MDO and the person, or between the MDO and someone else, existed on 30 June 2002; and
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- (b) under the arrangement, the MDO:
  - (i) would have been able to indemnify the person in relation to the incident if the person were to make a proper claim after 30 June 2002 in relation to the incident; and
  - (ii) would have been able, in the ordinary course of its business, to indemnify the person in relation to the incident even if the person had ceased to be a member of the MDO when the claim was made.

The person need not have been a member of the MDO on 30 June 2002 to have incident-occurring based cover for the incident.

Note: Subparagraph (b)(ii)—If the only cover the person had with the MDO was claims made cover, it would not be in the ordinary course of the MDO's business to indemnify the person if the claim was made after the person had ceased to be a member of the MDO.

- (2) Subparagraph (1)(b)(i) is satisfied even if the MDO would be able to indemnify the person in relation to the incident only if the person were to make a claim during a limited period after 30 June 2002.
- (2A) For the purposes of subparagraph 34ZB(1)(e)(ii), a person has ***incident-occurring based cover*** if, under an arrangement between an MDO and the person, the MDO:
  - (a) would be able to indemnify the person in relation to an incident if the person were to make a proper claim in relation to the incident; and
  - (b) would be able, in the ordinary course of its business, to indemnify the person in relation to the incident even if the person had ceased to be a member of the MDO when the claim was made.
- (3) To avoid doubt, cover may be ***incident-occurring based cover*** even if it is called:
  - (a) claims incurred cover; or
  - (b) extended reporting benefit cover (ERB cover); or
  - (c) death, disability or retirement cover (DDR cover).

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**8 IBNR exposure of an MDO**

- (1) An MDO's ***IBNR exposure*** at a particular time is the total amount, at that time, of the payments that the MDO is likely to have to make after that time in relation to all claims that relate to incidents that satisfy subsection (2).
- (2) An incident satisfies this subsection if:
  - (a) the incident occurred on or before 30 June 2002; and
  - (b) the incident occurred in the course of, or in connection with, the practice of a medical profession by a person; and
  - (c) on 30 June 2002, the person had incident-occurring based cover with the MDO for the incident; and
  - (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.

**8A Net IBNR exposure of an MDO**

An MDO's ***net IBNR exposure*** at a particular time is the MDO's IBNR exposure at that time, reduced by any amounts of high cost claim indemnities and run-off cover indemnities that are likely to be payable in respect of the incidents that satisfy subsection 8(2) and that relate to the MDO's IBNR exposure at that time.

**9 External Territories**

This Act extends to every external Territory.

## **Part 2—Commonwealth payments**

### **Division 1—IBNR (incurred but not reported) indemnity scheme**

#### **Subdivision A—Introduction**

#### **10 Guide to the IBNR indemnity provisions**

- (1) This Division provides that an IBNR indemnity may be paid to an MDO or insurer that makes, or is liable to make, a payment in relation to a claim against or by a person in relation to an incident that is covered by the IBNR indemnity scheme. The incident will only be covered by the scheme if, amongst other things, the person had incident-occurring based cover with an MDO for the incident on 30 June 2002 and the MDO is a participating MDO.
- (1A) This Division also provides for the determination of an IBNR Claims Protocol that can deal with other matters relating to incidents covered by the IBNR indemnity scheme.
- (2) The following table tells you where to find the provisions dealing with various issues:

<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
1	which MDOs are participating MDOs?	sections 11 to 13
2	which incidents are covered by the scheme?	section 14
3	what conditions must be satisfied for an MDO or insurer to get the IBNR indemnity?	sections 15 to 19
4	what happens if the incidents occurred during the treatment of a public patient in a public hospital?	paragraph 19(a) and section 20

**Part 2** Commonwealth payments

**Division 1** IBNR (incurred but not reported) indemnity scheme

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Where to find the provisions on various issues		
Item	Issue	Provisions
5	how much is the IBNR indemnity?	sections 21 to 23
6	in what circumstances can a payment to an MDO or insurer lead to a repayment of the IBNR indemnity?	sections 24 to 27
6A	the IBNR Claims Protocol, and what it can deal with	sections 27A and 27B
7	how do MDOs and insurers apply for the IBNR indemnity?	section 36
8	when will the IBNR indemnity be paid?	section 37
9	what information has to be provided to the Chief Executive Medicare about IBNR indemnity matters?	section 38
10	what records must MDOs and insurers keep?	sections 39 and 40
11	how are overpayments of the IBNR indemnity, and indemnity repayments, recovered?	sections 41 and 42

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**Subdivision B—Participating MDOs**

**11 Participating MDO**

- (1) An MDO is a *participating MDO* unless:
  - (a) the MDO was not in existence on 30 June 2002; or
  - (b) the Minister determines under section 12 that the MDO is not a participating MDO.
- (2) If the Minister makes a determination that an MDO is not a participating MDO, the MDO is taken never to have been a participating MDO.

**12 Minister may determine that MDO not a participating MDO**

- (1) The Minister may, by legislative instrument, determine that an MDO is not a participating MDO.

- (2) In deciding whether to make a determination under subsection (1) in relation to an MDO, the Minister must have regard to:
  - (a) whether the MDO had an unfunded IBNR exposure on 30 June 2002; and
  - (b) any other matter the Minister considers relevant.For the purposes of paragraph (a), the Minister is to have regard to the consolidated financial position of the MDO and the entities it controls.
- (3) Before making the determination under subsection (1), the Minister must consider a report from the Actuary on whether the MDO had an unfunded IBNR exposure on 30 June 2002.
- (4) The Minister must give a copy of the determination to the MDO within 28 days after the day on which it is made.

### **13 Process for determining whether a determination should be made under section 12**

#### *Report by the Actuary*

- (1) The Actuary must give the Minister a written report in relation to each MDO that was in existence on 30 June 2002 that:
  - (a) states whether the Actuary considers that the MDO had an unfunded IBNR exposure on 30 June 2002; and
  - (b) sets out the reasons for the statement.
- (2) In preparing the report, the Actuary must take into account any information that the Chief Executive Medicare gives the Actuary in relation to the MDO under subsection (6).

#### *Chief Executive Medicare's information gathering powers*

- (3) If the Chief Executive Medicare believes on reasonable grounds that the MDO is capable of giving information that is relevant to determining whether the MDO had an unfunded IBNR exposure on 30 June 2002, the Chief Executive Medicare may request the MDO to give the Chief Executive Medicare the information.

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

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- (4) The request:
- (a) must be made in writing; and
  - (b) must state what information the MDO must give to the Chief Executive Medicare; 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 is made.

- (5) Without limiting subsection (3), the kind of information that may be requested includes information in the form of:
- (a) financial statements; and
  - (b) a report prepared by a suitably qualified actuary on whether the MDO had an unfunded IBNR exposure on 30 June 2002.
- (6) The Chief Executive Medicare must give any information the MDO gives the Chief Executive Medicare to the Actuary for the purposes of preparing the report for the Minister under subsection (1).

**Subdivision C—Incidents covered by the IBNR indemnity scheme**

**14 Incidents covered by the IBNR indemnity scheme**

The IBNR indemnity scheme covers an incident if:

- (a) the incident occurred on or before 30 June 2002; and
- (b) the incident occurred in the course of, or in connection with, the practice of a medical profession by a person; and
- (c) on 30 June 2002, the person had incident-occurring based cover with an MDO for the incident; and
- (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
- (e) the MDO is a participating MDO.

### **Subdivision D—IBNR indemnity**

#### **15 IBNR indemnity may be payable under either section 16 or 17**

- (1) An IBNR indemnity may be payable to an MDO or insurer under either section 16 or 17.
- (2) To avoid doubt, an IBNR indemnity may be payable to an MDO or insurer under section 16 even if the MDO or insurer is an externally-administered body corporate.
- (3) An IBNR indemnity is not payable to an MDO or insurer under section 16 in relation to a payment the MDO or insurer makes to discharge a liability in relation to a claim if an IBNR indemnity is paid to the MDO or insurer under section 17 in relation to the same liability.

#### **16 IBNR indemnity for payment made by MDO or insurer**

##### *Basic payability rule*

- (1) An IBNR indemnity is payable to an MDO or insurer under this section if:
  - (a) the MDO or insurer makes a payment in relation to a claim against or by a person (the *practitioner*); and
  - (b) the claim relates to:
    - (i) an incident that is covered by the IBNR indemnity scheme (see section 14); or
    - (ii) a series of related incidents that includes an incident that is covered by the scheme; and
  - (c) the practitioner had, on 30 June 2002, incident-occurring based cover with an MDO for the incident that is covered by the IBNR indemnity scheme and that MDO is a participating MDO; and

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- (d) if it is an MDO that makes the payment—the MDO makes the payment:
  - (i) consistently with its constitution and the indemnity arrangement between the MDO and the practitioner; and
  - (ii) in the ordinary course of its business; and
- (e) if it is an insurer that makes the payment—the insurer makes the payment:
  - (i) consistently with the terms of the insurance contract between the insurer and the practitioner; and
  - (ii) in the ordinary course of its business; and
- (f) the MDO or insurer applies to the Chief Executive Medicare for the IBNR indemnity in accordance with section 36.

The MDO mentioned in paragraph (c) is referred to as the ***relevant participating MDO***.

- (2) Subsection (1) has effect subject to:
  - (a) subsections (5) and (6) of this section; and
  - (b) subsection 15(3); and
  - (c) sections 19 and 20.

*Basis on which payment made*

- (3) The IBNR indemnity is payable to the MDO or insurer regardless of the basis on which the payment is made by the MDO or insurer.

Note: If the criteria for the indemnity set out in subsection (1) are met, the indemnity may be payable to the MDO or insurer even if the MDO or insurer pays the practitioner on the basis of claims made cover the practitioner has with the MDO or insurer.

*Payer need not be the relevant participating MDO*

- (4) If the payment is made by an MDO, the MDO that makes the payment may be the relevant participating MDO or may be a different MDO.

*Payment by relevant participating MDO*

- (5) If the payment is made by the relevant participating MDO, the IBNR indemnity is payable only if the relevant participating MDO:

- (a) makes the payment; or
  - (b) could have made the payment;
- in relation to the claim in relation to the incident covered by the IBNR indemnity scheme on the basis of incident-occurring based cover the practitioner had with the relevant participating MDO for the incident on 30 June 2002.

*Payment by someone else*

- (6) If the payment is not made by the relevant participating MDO, the IBNR indemnity is payable only if the relevant participating MDO could have made the payment in relation to the claim in relation to the incident covered by the IBNR indemnity scheme:
  - (a) consistently with its constitution and the indemnity arrangement between the MDO and the practitioner; and
  - (b) in the ordinary course of its business; and
  - (c) on the basis of incident-occurring based cover the practitioner had with the participating MDO on 30 June 2002;if the practitioner made a proper claim in relation to the incident.

## **17 IBNR indemnity for MDO or insurer in external administration**

*Basic payability rule*

- (1) An IBNR indemnity is payable under this section to an MDO or insurer that is an externally-administered body corporate if:
  - (a) the MDO or insurer is liable to pay an amount in relation to a claim against or by a person (the *practitioner*); and
  - (b) the claim relates to:
    - (i) an incident that is covered by the IBNR indemnity scheme (see section 14); or
    - (ii) a series of related incidents that includes an incident that is covered by the scheme; and
  - (c) the practitioner had, on 30 June 2002, incident-occurring based cover with an MDO for the incident that is covered by the IBNR indemnity scheme and that MDO is a participating MDO; and

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- (d) the amount that the MDO or insurer is liable to pay is provable; and
- (e) if it is an MDO that is liable to pay the amount—the MDO could pay the amount:
  - (i) consistently with its constitution and the indemnity arrangement between the MDO and the practitioner; and
  - (ii) in the ordinary course of its business; if it were not an externally-administered body corporate; and
- (f) if it is an insurer that is liable to make the payment—the insurer could make the payment:
  - (i) consistently with the terms of the insurance contract between the insurer and the practitioner; and
  - (ii) in the ordinary course of its business; if it were not an externally-administered body corporate; and
- (g) the MDO or insurer applies to the Chief Executive Medicare for the IBNR indemnity in accordance with section 36.

The MDO mentioned in paragraph (c) is referred to as the ***relevant participating MDO***.

- (2) Subsection (1) has effect subject to:
  - (a) subsections (5) and (6) of this section; and
  - (b) sections 19 and 20.

*Basis for liability to pay*

- (3) The IBNR indemnity is payable to the MDO or insurer regardless of the basis on which the amount is payable by the MDO or insurer.

Note: If the criteria for the indemnity set out in subsection (1) are met, the indemnity may be payable to the MDO or insurer even if the MDO or insurer is liable to pay on the basis of claims made cover the practitioner has with the MDO or insurer.

*Person liable to pay need not be relevant participating MDO*

- (4) If an MDO is liable to pay the amount, the MDO that is liable to pay the amount may be the relevant participating MDO or may be a different MDO.

*Relevant participating MDO liable to pay*

- (5) If the amount is one that the relevant participating MDO is liable to pay, the IBNR indemnity is payable only if the relevant participating MDO could have paid the amount in relation to the claim in relation to the incident covered by the IBNR indemnity scheme on the basis of incident-occurring based cover the practitioner had with the relevant participating MDO on 30 June 2002.

*Someone else liable to pay*

- (6) If the amount is not one that the relevant participating MDO is liable to pay, the IBNR indemnity is payable only if the relevant participating MDO could have paid an amount in relation to the claim in relation to the incident covered by the IBNR indemnity scheme:
- (a) consistently with its constitution and the indemnity arrangement between the relevant participating MDO and the practitioner; and
  - (b) in the ordinary course of its business; and
  - (c) on the basis of incident-occurring based cover the practitioner had with the relevant participating MDO on 30 June 2002;
- if the practitioner made a proper claim in relation to the incident.

*Indemnity to be paid on trust*

- (7) An IBNR indemnity paid to an MDO or insurer under this section is paid on trust for the benefit of the person to whom the MDO or insurer is liable to make the payment referred to in paragraph (1)(a).

## **18 Clarification of circumstances in which IBNR indemnity payable**

An IBNR indemnity is payable to an MDO or insurer under section 16 or 17 in relation to a payment the MDO or insurer makes, or is liable to make, in relation to a claim even if:

- (a) the MDO or insurer:
  - (i) has insured itself in relation to the payment; or

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- (ii) has already in fact been paid an amount by an insurer in relation to the payment; or
- (b) the incident to which the claim relates occurred outside Australia; or
- (c) the MDO or insurer made, or became liable to make, the payment before the commencement of this Act.

### **19 Exceptions**

An IBNR indemnity is not payable to an MDO or insurer under section 16 or 17 in relation to a payment the MDO or insurer makes, or is liable to make, in relation to a claim against a person if:

- (a) the incident, or all the incidents, to which the claim relates occurred in the course of the provision of treatment to a public patient in a public hospital; or
- (b) a determination by the Chief Executive Medicare is in force under section 53 in relation to the person; or
- (c) the payment is an insurer-to-insurer payment; or
- (ca) a run-off cover indemnity is payable to the MDO or insurer in relation to the same claim; or
- (d) the payment is a payment prescribed by the regulations for the purposes of this section.

### **20 Payment partly related to treatment of public patient in public hospital**

- (1) This section applies if:
  - (a) an MDO or insurer makes, or is liable to make, a payment in relation to a claim against a person in relation to a series of related incidents; and
  - (b) some, but not all, of the incidents occurred in the course of the provision of treatment to a public patient in a public hospital.
- (2) For the purposes of this Subdivision:
  - (a) the payment is to be disregarded to the extent to which it relates to, or is reasonably attributable to, the incident or

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incidents that occurred in the course of the provision of treatment to a public patient in a public hospital; and

- (b) any amount that is paid or payable to the MDO or insurer in relation to the payment is to be disregarded to the extent to which it relates to, or is reasonably attributable to, the incident or incidents that occurred in the course of the provision of treatment to a public patient in a public hospital.

Note: Paragraph (b)—see subsection 21(2).

### 21 Amount of the IBNR indemnity

- (1) The amount of the IBNR indemnity is the amount worked out using the following formula:

$$\text{Relevant participating MDO's unfunded IBNR factor} \times \text{Adjusted amount of the payment}$$

where:

***adjusted amount of the payment*** has the meaning given by subsection (2).

***relevant participating MDO's unfunded IBNR factor*** is the unfunded IBNR factor (see section 22) for the MDO referred to in paragraph 16(1)(c) or 17(1)(c).

Note: In certain circumstances, an amount may be repayable under section 24.

- (2) The ***adjusted amount of the payment*** is the amount obtained by deducting from the amount the MDO or insurer pays, or is liable to pay, the amount, or the sum of the amounts, that are:
- (a) paid; or
  - (b) payable and liquidated at the time the amount of the IBNR indemnity is worked out;
- to the MDO or insurer in relation to the payment the MDO or insurer makes or is liable to make.
- (3) Without limiting subsection (2), the amounts to be deducted under that subsection include:

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- (a) any high cost claim indemnity that is paid or payable to the MDO or insurer in relation to the payment the MDO or insurer makes or is liable to make; and
  - (b) any amount that is paid or payable to the MDO or insurer because of a right to which the MDO or insurer is subrogated; and
  - (c) the amount of any payment prescribed by the regulations.
- (4) The following amounts are not to be deducted under subsection (2):
  - (a) any amount that is paid or payable to the MDO or insurer by way of an insurer-to-insurer payment;
  - (b) any amount that is paid or payable to the MDO or insurer by way of membership subscription or insurance premium;
  - (c) any amount that is payable under this Division;
  - (d) the amount of any payment prescribed by the regulations.

**22 Minister to determine unfunded IBNR factor for a participating MDO**

- (1) A participating MDO's *unfunded IBNR factor* is:
  - (a) 0 if a determination under paragraph (b) is not in force; or
  - (b) the factor determined, by legislative instrument, by the Minister for the participating MDO.

The factor determined by the Minister is to be between 0 and 1.
- (2) The Minister may not vary or revoke a determination made under paragraph (1)(b).
- (3) In making a determination under paragraph (1)(b), the Minister must have regard to:
  - (a) the extent to which the MDO had, on 30 June 2002, insufficient readily available assets to cover the amount the Minister considers to be its IBNR exposure after satisfying all its other liabilities; and
  - (b) such other matters as the Minister considers relevant.

For the purposes of paragraph (a), the Minister is to have regard to the consolidated financial position of the MDO and the entities it controls.

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- (4) Before making a determination under paragraph (1)(b) in relation to a participating MDO, the Minister must consider a report from the Actuary on the factor that should be specified as the MDO's unfunded IBNR factor.
- (5) The Minister must give a copy of the determination to the participating MDO within 28 days after the day on which it is made.

## **23 Process for determining unfunded IBNR factor under section 22**

### *Report by the Actuary*

- (1) The Actuary must give the Minister a written report in relation to each participating MDO that:
  - (a) states the factor that the Actuary considers should be set as the unfunded IBNR factor for the participating MDO; and
  - (b) sets out the reasons for the statement.
- (2) In preparing the report, the Actuary must take into account any information that the Chief Executive Medicare gives the Actuary in relation to the MDO under subsection (6).

### *Chief Executive Medicare's information gathering powers*

- (3) If the Chief Executive Medicare believes on reasonable grounds that a participating MDO is capable of giving information that is relevant to determining the MDO's unfunded IBNR factor, the Chief Executive Medicare may request the MDO to give the Chief Executive Medicare the information.

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

- (4) The request:
  - (a) must be made in writing; and
  - (b) must state what information the MDO must give to the Chief Executive Medicare; and
  - (c) may require the information to be verified by statutory declaration; and
  - (d) must specify the day on or before which the information must be given; and

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(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 is made.

- (5) Without limiting subsection (3), the kind of information that may be requested includes information in the form of financial statements.
- (6) The Chief Executive Medicare must give any information that the MDO gives the Chief Executive Medicare to the Actuary for the purposes of preparing the report for the Minister under subsection (1).

**Subdivision E—Recovery of amount paid to MDO or insurer after IBNR indemnity paid**

**24 Recovery if certain amounts paid to MDO or insurer after IBNR indemnity paid**

- (1) An MDO or insurer must repay an amount to the Commonwealth if:
  - (a) an IBNR indemnity has been paid to the MDO or insurer in relation to a claim against or by a person in relation to an incident; and
  - (b) an amount is paid to the MDO or insurer in relation to the payment the MDO or insurer made in relation to the incident; and
  - (c) that amount was not taken into account in calculating the amount of the IBNR indemnity paid to the MDO or insurer; and
  - (d) the amount is not an amount referred to in subsection 21(4); and
  - (e) the Chief Executive Medicare gives the MDO or insurer a notice in relation to the amount under section 26.
- (2) The amount to be repaid is the amount obtained by applying the relevant participating MDO's unfunded IBNR factor to the amount referred to in paragraph (1)(b).

- (3) For the purposes of subsection (2), the ***relevant participating MDO*** is the MDO referred to in paragraph 16(1)(c) or 17(1)(c) as that paragraph applies for the purposes of determining whether the IBNR indemnity was payable to the MDO or insurer.
- (4) The amount to be repaid is a debt due to the Commonwealth.
- (5) The amount to be repaid may be recovered:
  - (a) by action by the Chief Executive Medicare against the MDO or insurer in a court of competent jurisdiction; or
  - (b) by deduction from the amount of an indemnity scheme payment payable to the MDO or insurer; or
  - (c) under section 42.The total amount recovered must not exceed the amount to be repaid.

## **25 MDO or insurer to inform Chief Executive Medicare of certain amounts**

- (1) If:
  - (a) an IBNR indemnity is paid to an MDO or insurer in relation to a claim against or by a person in relation to an incident; and
  - (b) an amount to which section 24 applies is paid to the MDO or insurer;the MDO or insurer must notify the Chief Executive Medicare that the amount has been paid to the MDO or insurer.

Note: Failure to notify is an offence (see section 46).
- (2) The notification must:
  - (a) be in writing; and
  - (b) be given to the Chief Executive Medicare within 28 days after the day on which the amount is paid to the MDO or insurer.

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**26 Chief Executive Medicare to notify MDO or insurer of repayable amount**

- (1) If an amount to which section 24 applies is paid to an MDO or insurer, the Chief Executive Medicare may give the MDO or insurer a written notice that specifies:

- (a) the amount that is repayable to the Commonwealth; and
- (b) the day before which the amount must be repaid to the Commonwealth; and
- (c) the effect of section 27.

The day specified under paragraph (b) must be at least 28 days after the day on which the notice is given.

- (2) The amount becomes due and payable on the day specified under paragraph (1)(b).

**27 Penalty imposed if an amount is repaid late**

- (1) If:

- (a) an MDO or insurer must repay an amount to the Commonwealth under section 24; and
- (b) the amount remains wholly or partly unpaid after it becomes due and payable;

the MDO or insurer is liable to pay a late payment penalty under this section.

- (2) The late payment penalty is calculated:

- (a) at the prescribed rate; and
- (b) on the unpaid amount; and
- (c) for the period:
  - (i) starting when the amount becomes due and payable; and
  - (ii) ending when the amount, and the penalty payable under this section in relation to the amount, have been paid in full.

- (3) The Chief Executive Medicare may remit the whole or a part of an amount of late payment penalty if the Chief Executive Medicare considers that there are good reasons for doing so.

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- (4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to remit, or to remit only part of, an amount of late payment penalty.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

## **Subdivision F—The IBNR Claims Protocol**

### **27A Minister may determine a protocol dealing with various matters**

- (1) The Minister may, by legislative instrument, determine a protocol (the *IBNR 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 covered by the IBNR indemnity scheme (see section 14).
- (2) Without limiting subsection (1), the IBNR 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

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incidents notified to MDOs and insurers that could give rise to claims in relation to which an IBNR indemnity could be payable.

- (3) Paragraph (2)(b) does not allow the IBNR Claims Protocol to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.
- (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.
- (4) The IBNR Claims Protocol may also provide for other matters of a kind specified in regulations made for the purposes of this subsection.

**27B The Chief Executive Medicare may request information**

- (1) If the Chief Executive Medicare 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 IBNR Claims Protocol; or
  - (b) the amount that is payable to an MDO or insurer under the IBNR Claims Protocol;

the Chief Executive Medicare may request the person to give the Chief Executive Medicare 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).

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- (3) Without limiting subsection (1), if the information sought by the Chief Executive Medicare is information relating to a matter in relation to which a person is required by section 39 to keep a record, the Chief Executive Medicare may request the person to give the information by giving the Chief Executive Medicare 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 Chief Executive Medicare; 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.

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## Division 2—High cost claim indemnity scheme

### Subdivision A—Introduction

#### 28 Guide to the high cost claim indemnity provisions

- (1) This Division provides that a high cost claim indemnity may be paid to an MDO or insurer that pays, or is liable to pay, more than a particular amount (referred to as the **high cost claim threshold**) in relation to a claim against a person in relation to an incident that occurs in the course of, or in connection with, the practice by the person of a medical profession, other than practice as an eligible midwife.
- (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.
- (2) The following table tells you where to find the provisions dealing with various issues:

Where to find the provisions on various issues		
Item	Issue	Provisions
1	what is the high cost claim threshold?	section 29
2	what conditions must be satisfied for an MDO or insurer to get the high cost claim indemnity?	sections 30 to 32
3	what happens if the incidents occurred during the treatment of a public patient in a public hospital?	paragraph 32(a) and section 33
4	how much is the high cost claim indemnity?	section 34
4A	the High Cost Claims Protocol, and what it can deal with	sections 34AA and 34AB
5	how do MDOs and insurers apply for the high cost claim indemnity?	section 36

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Where to find the provisions on various issues		
Item	Issue	Provisions
6	when will the high cost claim indemnity be paid?	section 37
7	what information has to be provided to the Chief Executive Medicare about high cost indemnity matters?	section 38
8	what records must MDOs and insurers keep?	sections 39 and 40
9	how are overpayments of high cost claim indemnity recovered?	sections 41 and 42

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## 29 High cost claim threshold

- (1) The **high cost claim threshold** is:
  - (a) \$2 million; or
  - (b) such other amount as is prescribed by the regulations.
- (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.

## Subdivision B—High cost claim indemnity

### 30 Circumstances in which high cost claim indemnity payable

#### *Basic payability rule*

- (1) Subject to section 31, a high cost claim indemnity is payable to an MDO or insurer under this section if:
  - (a) a claim is, or was, made against a person (the **practitioner**); and
  - (b) the claim relates to:
    - (i) an incident that occurs or occurred; or
    - (ii) a series of related incidents that occur or occurred;

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in the course of, or in connection with, the practice by the practitioner of a medical profession, other than practice as an eligible midwife; and

- (c) either:
  - (i) the incident occurs or occurred; or
  - (ii) one or more of the incidents in the series occurs or occurred;in Australia or in an external Territory; and
- (d) the MDO or insurer is first notified of the claim against the practitioner, or is first notified of the incident:
  - (i) on or after 1 January 2003; and
  - (ii) on or before the date prescribed by the regulations as the termination date for the high cost claim indemnity scheme; and
- (e) the MDO or insurer has a qualifying payment, or qualifying payments, in relation to the claim (see subsection (2)); and
- (f) the amount of the qualifying payment, or the sum of the amounts of the qualifying payments, exceeds what was the high cost claim threshold at the time the MDO or insurer was first notified of the claim or the incident; and
- (g) any other requirements (however described) that are specified in the regulations have been met.

The claim referred to in paragraph (a) may be one that was made before, or is made after, the commencement of this Act and an incident referred to in paragraph (b) may be one that occurred before, or occurs after, the commencement of this Act.

- (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.

*Qualifying payments*

- (2) The MDO or insurer has a **qualifying payment** in relation to the claim if:
  - (a) the MDO or insurer:
    - (i) pays an amount in relation to the claim; or

- (ii) is liable to pay an amount in relation to a payment or payments that someone makes, or is liable to make, in relation to the claim under a written agreement between the parties to the claim; or
  - (iii) is liable to pay an amount in relation to a payment or payments that someone makes, or is liable to make, in relation to the claim under a judgment or order of a court that is not stayed and is not subject to appeal; or
  - (iv) is an externally-administered body corporate and is liable to pay a provable amount in relation to the claim; and
- (b) the MDO or insurer pays, or is liable to pay, the amount under an insurance contract or other indemnity arrangement between the MDO or insurer and the practitioner; and
- (c) the MDO or insurer:
  - (i) pays, or becomes liable to pay, the amount in the ordinary course of the MDO's or the insurer's business; or
  - (ii) is an externally-administered body corporate and would be able to pay the amount in the ordinary course of the MDO's or the insurer's business if it were not an externally-administered body corporate.
- (3) The date prescribed by the regulations for the purposes of subparagraph (1)(d)(ii) must be at least 12 months after the day on which the regulations in question are entered on the Federal Register of Legislative Instruments.

*Indemnity to be paid on trust if MDO or insurer under external administration*

- (5) If a high cost claim indemnity is paid to an MDO or insurer that is an externally-administered body corporate, the indemnity is, to the extent to which it is attributable to an amount that the MDO or insurer is liable to pay to a person, paid on trust for the benefit of that person.

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### **31 Aggregating amounts paid or payable by an MDO and insurer**

- (1) This section applies if:
- (a) an MDO pays, or is liable to pay, an amount in relation to a claim; and
  - (b) an insurer also pays, or is also liable to pay, an amount in relation to the same claim (the *insurer amount*); and
  - (c) but for this section, a high cost claim indemnity in respect of the insurer amount:
    - (i) would be payable to the insurer under subsection 30(1); or
    - (ii) would be payable to the insurer under that subsection if paragraph 30(1)(f) were omitted; and
  - (d) the insurer elects in writing to have this section apply to the insurer amount.
- (2) For the purposes of this Division (other than this section):
- (a) the MDO is taken:
    - (i) to have paid, or to be liable to pay, the insurer amount in relation to the claim; and
    - (ii) to satisfy paragraphs 30(1)(a) to (e) and (2)(a) to (c) in relation to the insurer amount; and
  - (b) a high cost claim indemnity is not payable to the insurer in respect of the insurer amount.

### **32 Exceptions**

A high cost claim indemnity is not payable to an MDO or insurer under section 30 in relation to a payment the MDO or insurer makes, or is liable to make, in relation to a claim against a person if:

- (a) the incident, or all the incidents, to which the claim relates occurred in the course of the provision of treatment to a public patient in a public hospital; or
- (b) the claim is a prescribed claim; or
- (c) the claim relates to a prescribed incident.

### **33 Payment partly related to treatment of public patient in public hospital**

- (1) This section applies if:
  - (a) an MDO or insurer makes, or is liable to make, a payment in relation to a claim against a person in relation to a series of related incidents; and
  - (b) some, but not all, of the incidents occurred in the course of the provision of treatment to a public patient in a public hospital.
- (2) For the purposes of this Subdivision, the payment is to be disregarded to the extent to which it relates to, or is reasonably attributable to, the incident or incidents that occurred in the course of the provision of treatment to a public patient in a public hospital.

### **34 Amount of high cost claim indemnity**

- (1) The amount of a high cost claim indemnity is:
  - (a) 50%; or
  - (b) such other percentage as is prescribed by the regulations; of the amount by which the amount of the MDO's or insurer's qualifying payment, or the sum of the amounts of the MDO's or insurer's qualifying payments, exceeds the high cost claim threshold.
- (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.

### **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:

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- (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.

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- (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 Chief Executive Medicare may request information**

- (1) If the Chief Executive Medicare 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 Chief Executive Medicare may request the person to give the Chief Executive Medicare 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 Chief Executive Medicare is information relating to a matter in relation to which a person is required by section 39 to keep a record, the Chief Executive Medicare may request the person to give the information by giving the Chief Executive Medicare the record, or a copy of the record.
- (4) The request:
- (a) must be made in writing; and

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- (b) must state what information must be given to the Chief Executive Medicare; 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.

## **Division 2A—Exceptional claims indemnity scheme**

### **Subdivision A—Introduction**

#### **34A Guide to the exceptional claims indemnity provisions**

- (1) This Division provides that an exceptional claims indemnity may be paid in relation to a liability of a person if:
  - (a) the liability relates to a claim against the person in relation to an incident that occurs in the course of, or in connection with, the practice by the person of a medical profession (other than practice as an eligible midwife), being a claim that has been certified as a qualifying claim; and
  - (b) the liability exceeds the amount payable under an insurance contract that has a contract limit satisfying the relevant threshold.
- (2) This Division also provides for the determination of an Exceptional Claims Protocol that can deal with other matters relating to claims that have been certified as qualifying claims.
- (3) The following table tells you where to find the provisions dealing with various issues:

<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
1	certification of claims that qualify for exceptional claims indemnity (including the threshold requirement for the insurance contract)	sections 34E to 34K
2	when is an exceptional claims indemnity payable in respect of a liability?	sections 34L and 34M
3	some liabilities are only partly covered	sections 34N and 34O
4	how much exceptional claims indemnity is payable?	section 34P

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<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
5	how must an exceptional claims indemnity be applied?	section 34Q
6	who is liable to repay an overpayment of exceptional claims indemnity?	section 34R
7	what if a payment is received that would have reduced the amount of an insurance payment?	sections 34S to 34W
8	the Exceptional Claims Protocol, and what it can deal with	sections 34X and 34Y
9	modifications and exclusions by regulations	section 34Z
10	how does a person apply for an exceptional claims indemnity?	section 37A
11	when will an exceptional claims indemnity be paid?	section 37B
12	what information has to be provided to the Chief Executive Medicare about exceptional claims matters?	section 38
13	what records must be kept in relation to exceptional claims matters?	section 39
14	how are overpayments of exceptional claims indemnity recovered?	sections 41 and 42

**34B Definitions**

In this Division:

***practitioner's contract limit***, in relation to a person for whom a contract of insurance provides medical indemnity cover, means the maximum amount payable, in aggregate, by the insurer under the contract in relation to claims against the person.

Note 1: If the contract provides medical indemnity cover for more than one person, there must be a separate contract limit for each of those persons.

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Note 2: For how this definition applies if the contract provides for deductibles, see section 34C.

Note 3: For how this definition interacts with the high cost claim indemnity scheme, see section 34D.

***qualifying liability***, in relation to a claim, has the meaning given by section 34M.

***termination date*** means the date, if any, set by regulations under section 34G.

### 34C Treatment of deductibles

- (1) This section applies if, under a contract of insurance that provides medical indemnity cover for a person (the ***practitioner***), the insurer is entitled to count an amount (the ***deductible amount***):
  - (a) incurred by the insurer in relation to a claim against the practitioner; or
  - (b) paid or payable by the practitioner or another person in relation to a claim against the practitioner;towards the maximum amount payable, in aggregate, under the contract in relation to claims against the practitioner, even though the insurer has not paid, and is not liable to pay, the amount under the contract.
- (2) For the purpose of the definition of ***practitioner's contract limit*** in section 34B, the maximum amount payable, in aggregate, under the contract in relation to claims against the practitioner is as stated in the contract, even though the insurer (because of the deductible amount) may not actually be liable to pay the whole of that maximum amount.
- (3) For the purpose of the references in paragraphs 34L(1)(e) and (f) to an amount that an insurer has paid or is liable to pay under a contract of insurance, the deductible amount is to be counted as if it were an amount that the insurer has paid or is liable to pay under the contract.
- (4) However, for the purpose of the reference in paragraph 34L(1)(e) to an amount that an insurer would have been liable to pay under a contract of insurance, the deductible amount is not to be counted as

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if it were an amount that the insurer would have been liable to pay under the contract.

### 34D Interaction with high cost claim indemnity scheme and run-off cover indemnity scheme

For the purposes of the definition of *practitioner's contract limit* in section 34B, and of paragraphs 34L(1)(e) and (f), an amount that an insurer has paid or is liable to pay, or would have been liable to pay, under a contract of insurance is not to be reduced on account of a high cost claim indemnity, or a run-off cover indemnity, paid or payable, or that would have been payable, to the insurer.

## Subdivision B—Certification of qualifying claims

### 34E When may the Chief Executive Medicare certify a claim as a qualifying claim?

#### *Criteria for certification*

- (1) The Chief Executive Medicare may issue a certificate stating that a claim is a qualifying claim if the Chief Executive Medicare is satisfied that:
  - (a) the claim is a claim that is or was made against a person (the *practitioner*); and
  - (b) the claim relates to:
    - (i) an incident that occurs or occurred; or
    - (ii) a series of related incidents that occur or occurred; in the course of, or in connection with, the practice by the practitioner of a medical profession, other than practice as an eligible midwife; and
  - (c) except in the circumstances specified in regulations made for the purposes of this paragraph, either:
    - (i) the incident occurs or occurred; or
    - (ii) one or more of the incidents in the series occurs or occurred; in Australia or an external Territory; and

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- (d) the incident did not occur, or the incidents did not all occur, in the course of the provision of treatment to a public patient in a public hospital; and
- (e) there is a contract of insurance in relation to which the following requirements are satisfied:
  - (i) the contract provides medical indemnity cover for the practitioner in relation to the claim, or would, but for the practitioner's contract limit, provide such cover for the practitioner in relation to the claim;
  - (ii) the practitioner's contract limit equals or exceeds the relevant threshold (see section 34F);
  - (iii) the insurer is a general insurer, within the meaning of the *Insurance Act 1973*;
  - (iv) the insurer entered into the contract in the ordinary course of the insurer's business; and
- (f) the insurer was first notified of the claim, or of facts that might give rise to the claim, on or after 1 January 2003; and
- (g) if a termination date for the exceptional claims indemnity scheme is set (see section 34G), the incident, or one or more of the incidents, to which the claim relates occurred before the termination date; and
- (h) the claim is not a claim of a class specified in regulations made for the purposes of this paragraph; and
- (i) the contract of insurance is not a contract of a class specified in regulations made for the purposes of this paragraph; and
- (j) a person has applied for the certificate in accordance with section 34H.

Note 1: Paragraph (d)—for what happens if some, but not all, of the incidents in a series occur in the course of the provision of treatment to a public patient in a public hospital, see section 34N.

Note 2: Paragraph (g)—for what happens if some, but not all, of the incidents in a series occur after the termination date, see section 34O.

*Certain eligible run-off claims may relate to treatment of public patients in public hospitals*

(1A) Paragraph (1)(d) does not apply to an eligible run-off claim if:

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- (a) the claim relates to an incident that occurred, or a series of incidents that occurred, before 1 July 2003; and
- (b) at the time the incident, or one or more of the incidents, occurred, there was an arrangement with an MDO under which the MDO would have been able to indemnify the practitioner in relation to the incident or series of incidents if the claim had been made while the arrangement had effect; and
- (c) at the time the claim is made, a contract of insurance with a medical indemnity insurer provides medical indemnity cover for the practitioner; and
- (d) the medical indemnity cover is provided under an arrangement of a kind referred to in paragraph 26B(1)(f) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*; and
- (e) the medical indemnity cover satisfies all of the requirements of subsection 26A(4) of that Act.

*When a certificate is in force*

- (2) The certificate comes into force when it is issued and remains in force until it is revoked.

*Matters to be identified or specified in certificate*

- (3) The certificate must:
  - (a) identify:
    - (i) the practitioner; and
    - (ii) the claim; and
    - (iii) the contract of insurance in relation to which paragraph (1)(e) is satisfied; and
  - (b) specify the relevant threshold.

The certificate may also contain other material.

*AAT review of decision to refuse*

- (4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare to refuse to issue a qualifying claim certificate.

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Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

*Chief Executive Medicare to give applicant copy of certificate*

- (5) If the Chief Executive Medicare decides to issue a qualifying claim certificate, the Chief Executive Medicare must, within 28 days of making his or her decision, give the applicant a copy of the certificate. However, a failure to comply does not affect the validity of the decision.

### **34F What is the relevant threshold?**

*The relevant threshold*

- (1) For the purposes of subparagraph 34E(1)(e)(ii), the **relevant threshold** is:
- (a) if the insurer was first notified of the claim, or of facts that might give rise to the claim, on or after 1 January 2003 and before 1 July 2003—\$15 million; or
  - (b) if the insurer is or was first notified of the claim, or of facts that might give rise to the claim, on or after 1 July 2003—\$20 million, or such other amount as is specified in the regulations as the threshold.

*Threshold specified in regulations only applies to contracts entered into after the regulations take effect*

- (2) A regulation specifying an amount as the threshold (or changing the amount previously so specified) only applies in relation to contracts of insurance entered into after the regulation takes effect.

*When regulations reducing the threshold take effect*

- (3) A regulation reducing the threshold (which could be the threshold originally applicable under subsection (1), or that threshold as already changed by regulations) takes effect on the date specified in the regulations, which must be the date on which the regulations are entered on the Federal Register of Legislative Instruments or a later day.

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*When regulations increasing the threshold take effect*

- (4) A regulation increasing the threshold (which could be the threshold originally applicable under subsection (1), or that threshold as already changed by regulations), takes effect on the date specified in the regulations, which must be at least 3 months after the date on which the regulations are entered on the Federal Register of Legislative Instruments.

### **34G Setting a termination date**

- (1) The regulations may set a termination date for the exceptional claims indemnity scheme.

Note: The scheme does not cover incidents that occur after the termination date (see paragraph 34E(1)(g) and section 34O).

- (2) The termination date cannot be earlier than 1 January 2006, and cannot be before the date on which the regulations are entered on the Federal Register of Legislative Instruments.

### **34H Application for a qualifying claim certificate**

- (1) An application for the issue of a qualifying claim certificate in relation to a claim may be made by the person against whom the claim is or was made, or by a person acting on that person's behalf.
- (2) The application must:
  - (a) be made in writing using a form approved by the Chief Executive Medicare; and
  - (b) be accompanied by the documents and other information required by the form approved by the Chief Executive Medicare.

### **34I Time by which an application must be decided**

- (1) Subject to subsection (2), the Chief Executive Medicare is to decide an application for the issue of a qualifying claim certificate on or before the 21st day after the day on which the application is received by the Chief Executive Medicare.

- (2) If the Chief Executive Medicare requests a person to give information under section 38 in relation to the application, the Chief Executive Medicare does not have to decide the application until the 21st day after the day on which the person gives the information to the Chief Executive Medicare.

**34J Obligation to notify the Chief Executive Medicare if information is incorrect or incomplete**

- (1) If:
- (a) a qualifying claim certificate is in force in relation to a claim; and
  - (b) a person becomes aware that the information provided to the Chief Executive Medicare in connection with the application for the certificate was incorrect or incomplete, or is no longer correct or complete; and
  - (c) the person is:
    - (i) the person who applied for the certificate; or
    - (ii) another person who has applied for a payment of exceptional claims indemnity, or for a payment under the Exceptional Claims Protocol, in relation to the claim;

the person must notify the Chief Executive Medicare of the respect in which the information was incorrect or incomplete, or is no longer correct or complete.

Note: Failure to notify is an offence (see section 46).

- (2) The notification must:
- (a) be made in writing; and
  - (b) be given to the Chief Executive Medicare within 28 days after the person becomes aware as mentioned in subsection (1).

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**34K Revocation and variation of qualifying claim certificates**

*Revocation*

- (1) The Chief Executive Medicare may revoke a qualifying claim certificate if the Chief Executive Medicare is no longer satisfied as mentioned in subsection 34E(1) in relation to the claim.
- (2) To avoid doubt, in considering whether he or she is still satisfied as mentioned in subsection 34E(1) in relation to the claim, the Chief Executive Medicare may have regard to matters that have occurred since the decision to issue the qualifying claim certificate was made, including for example:
  - (a) the making of regulations for the purpose of paragraph 34E(1)(h) or (i); or
  - (b) changes to the terms and conditions of the contract of insurance identified in the certificate.

*Variation*

- (3) If the Chief Executive Medicare is satisfied that a matter is not correctly identified or specified in a qualifying claim certificate, the Chief Executive Medicare may vary the certificate so that it correctly identifies or specifies the matter.

*Effect of revocation*

- (4) If:
  - (a) the Chief Executive Medicare revokes a qualifying claim certificate; and
  - (b) an amount of exceptional claims indemnity has already been paid in relation to the claim;the amount is an amount overpaid to which section 41 applies.

*Effect of variation*

- (5) If:
  - (a) the Chief Executive Medicare varies a qualifying claim certificate; and

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- (b) an amount of exceptional claims indemnity has already been paid in relation to the claim, and that amount exceeds the amount that would have been paid if the amount of indemnity had been determined having regard to the certificate as varied;

the amount of the excess is an amount overpaid to which section 41 applies.

*AAT review of decision to revoke or vary*

- (6) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare to revoke or vary a qualifying claim certificate.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

*Chief Executive Medicare to give applicant copy of varied certificate*

- (7) If the Chief Executive Medicare decides to vary a qualifying claim certificate, the Chief Executive Medicare must, within 28 days of making his or her decision, give the applicant a copy of the varied certificate. However, a failure to comply does not affect the validity of the decision.

### **Subdivision C—Exceptional claims indemnity**

#### **34L When is an exceptional claims indemnity payable?**

*Criteria for payment of indemnity*

- (1) The Chief Executive Medicare may decide that an exceptional claims indemnity is payable in relation to a liability of a person (the **practitioner**) if:
  - (a) a claim for compensation or damages (the **current claim**) is, or was, made against the practitioner by another person; and
  - (b) a qualifying claim certificate is in force in relation to the current claim; and
  - (c) the liability is a qualifying liability of the practitioner in relation to the current claim (see section 34M); and

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- (d) because of the practitioner's contract limit in relation to the contract of insurance identified in the qualifying claim certificate, the contract does not cover, or does not fully cover, the liability; and
- (e) the amount that, if the practitioner's contract limit had been high enough to cover the whole of the liability, the insurer would (subject to the other terms and conditions of the contract) have been liable to pay under the contract of insurance in relation to the liability exceeds the actual amount (if any) that the insurer has paid or is liable to pay under the contract in relation to the liability; and
- (f) the aggregate of:
  - (i) the amount (if any) the insurer has paid, or is liable to pay, in relation to the liability under the contract of insurance; and
  - (ii) the other amounts (if any) that the insurer has already paid, or has already become liable to pay, under the contract in relation to the current claim; and
  - (iii) the amounts (if any) that the insurer has already paid, or has already become liable to pay, under the contract in relation to other claims against the practitioner (being other claims that were first notified to the insurer no later than the time the current claim was notified to the insurer);equals or exceeds the relevant threshold identified in the qualifying claim certificate; and
- (g) a person has applied for the indemnity in accordance with section 37A.

Note 1: For how paragraphs (e) and (f) apply if there are deductibles, see section 34C.

Note 2: For how paragraphs (e) and (f) interact with the high cost claim indemnity scheme, see section 34D.

Note 3: For the purpose of subparagraphs (f)(i) and (ii), payments and liabilities to pay must meet the ordinary course of business requirement set out in subsection (3).

Note 4: For how paragraphs (e) and (f) apply if the insurer is an externally-administered body corporate, see subsection (4).

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Note 5: For how paragraphs (e) and (f) apply if the claim relates to a series of incidents some, but not all, of which occurred in the course of the provision of treatment to a public patient in a public hospital, see section 34N.

Note 6: For how paragraphs (e) and (f) apply if the claim relates to a series of incidents some, but not all, of which occurred after the termination date, see section 34O.

*Who the indemnity is payable to*

- (2) The indemnity is to be paid to the person who applies for it.

Note: For who can apply, see section 37A.

*Ordinary course of business test for insurance payments*

- (3) An amount that an insurer has paid, or is liable to pay, under a contract of insurance does not count for the purpose of subparagraph (1)(f)(i) or (ii) unless it is an amount that the insurer paid, or is liable to pay, in the ordinary course of the insurer's business.

*What if the insurer is an externally-administered body corporate?*

- (4) If an insurer is an externally-administered body corporate:
- (a) a reference in paragraphs (1)(e) and (f) to an amount that the insurer is liable to pay under a contract of insurance is a reference to an amount that the insurer is liable to pay under the contract and that is a provable amount; and
  - (b) a reference in subsection (3) to an amount that an insurer is liable to pay in the ordinary course of the insurer's business is a reference to an amount that the insurer is liable to pay, and would be able to pay in the ordinary course of the insurer's business if it were not an externally-administered body corporate.

*AAT review of decision to refuse, or to pay a particular amount of indemnity*

- (5) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare to refuse an application for exceptional claims indemnity, or a

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decision of the Chief Executive Medicare to pay a particular amount of exceptional claims indemnity.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

### 34M Qualifying liabilities

- (1) A person (the *practitioner*) has a *qualifying liability* in relation to a claim made against the person if:
  - (a) one of the following applies:
    - (i) the liability is under a judgment or order of a court in relation to the claim, being a judgment or order that is not stayed and is not subject to appeal;
    - (ii) the liability is under a settlement of the claim that takes the form of a written agreement between the parties to the claim;
    - (iii) the liability is some other kind of liability of the practitioner (for example, a liability to legal costs) that relates to the claim; and
  - (b) the defence of the claim against the practitioner was conducted appropriately (see subsection (2)) up to the time when:
    - (i) if the liability is under a judgment or order of a court—the date on which the judgment or order became a judgment or order that is not stayed and is not subject to appeal; or
    - (ii) if the liability is under a settlement of the claim—the date on which the settlement agreement was entered into; or
    - (iii) if the liability is some other kind of liability—the date on which the liability was incurred; and
  - (c) if the liability is under a settlement of the claim, or is under a consent order made by a court—a legal practitioner has given a statutory declaration certifying that the amount of the liability is reasonable.
- (2) For the purposes of paragraph (1)(b), the defence of the claim is *conducted appropriately* if, and only if:

- (a) to the extent it is conducted on the practitioner's behalf by an insurer, or by a legal practitioner engaged by the insurer—the defence is conducted to a standard that is consistent with the insurer's usual standard for the conduct of the defence of claims; and
  - (b) to the extent it is conducted by the practitioner, or by a legal practitioner engaged by the practitioner—the defence is conducted prudently.
- (3) In this section:

*defence of the claim* includes any settlement negotiations on behalf of the practitioner.

**34N Treatment of a claim that partly relates to a public patient in a public hospital**

If:

- (a) a claim against a person relates to a series of incidents; and
- (b) some, but not all, of the incidents occurred in the course of the provision of treatment to a public patient in a public hospital;

then, for the purposes of applying paragraph 34L(1)(e) and subparagraphs 34L(1)(f)(i) and (ii) in relation to the claim, an amount that an insurer has paid or is liable to pay, or would have been liable to pay, in relation to the claim, is to be reduced by the extent (if any) to which the amount relates or would relate to, or is or would be reasonably attributable to, the incident or incidents that occurred in the course of the provision of treatment to a public patient in a public hospital.

**34O Treatment of a claim that relates to a series of incidents some of which occurred after the termination date**

If:

- (a) a claim against a person relates to a series of incidents; and
- (b) some, but not all, of the incidents occurred after the termination date;

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then, for the purposes of applying paragraph 34L(1)(e) and subparagraphs 34L(1)(f)(i) and (ii) in relation to the claim, an amount that an insurer has paid or is liable to pay, or would have been liable to pay, in relation to the claim, is to be reduced by the extent (if any) to which the amount relates or would relate to, or is or would be reasonably attributable to, the incident or incidents that occurred after the termination date.

### **34P The amount of exceptional claims indemnity that is payable**

The amount of exceptional claims indemnity that is payable in relation to a particular qualifying liability is the amount of the excess referred to in paragraph 34L(1)(e).

Note: It is only liabilities that exceed the practitioner's contract limit that will be covered by an exceptional claims indemnity (even if the relevant threshold is less than that limit).

### **34Q How exceptional claims indemnity is to be applied**

- (1) This section applies if an exceptional claims indemnity is paid to a person (the **recipient**) in relation to a liability of a person (the **practitioner**).

Note: The recipient will either be the practitioner himself or herself, or a person acting on behalf of the practitioner.

*Chief Executive Medicare to give recipient of payment a notice identifying the liability to be discharged*

- (2) The Chief Executive Medicare must give the recipient a written notice (the **payment notice**) identifying the liability in relation to which the indemnity is paid, and advising the recipient how this section requires the indemnity to be dealt with.

*Recipient's obligation if the amount of the indemnity equals or is less than the liability*

- (3) If the amount of the indemnity equals or is less than the undischarged amount of the liability identified in the payment notice, the recipient must apply the whole of the indemnity towards the discharge of the liability.

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*Recipient's obligation if the amount of the indemnity exceeds the liability*

- (4) If the amount of the indemnity is greater than the undischarged amount of the liability identified in the payment notice, the recipient must:
- (a) apply so much of the indemnity as equals the undischarged amount of the liability towards the discharge of the liability; and
  - (b) if the recipient is not the practitioner—deal with the balance of the indemnity in accordance with the directions of the practitioner.

*Time by which recipient must comply with obligation*

- (5) The recipient must comply with whichever of subsections (3) and (4) applies:
- (a) by the time specified in a written direction (whether contained in the payment notice or otherwise) given to the recipient by the Chief Executive Medicare; or
  - (b) if no such direction is given to the recipient—as soon as practicable after the indemnity is received by the recipient.

To avoid doubt, the Chief Executive Medicare may vary a direction under paragraph (a) to specify a different time.

*Debt to Commonwealth if recipient does not comply with obligation on time*

- (6) If the recipient does not comply with whichever of subsections (3) and (4) applies by the time required by subsection (5), the amount of the indemnity is a debt due to the Commonwealth.
- (7) The debt may be recovered:
- (a) by action by the Chief Executive Medicare against the recipient in a court of competent jurisdiction; or
  - (b) under section 42.
- (8) If the amount of the indemnity is recoverable, or has been recovered, as mentioned in subsection (7), no amount is

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recoverable under section 34T or section 41 in relation to the same payment of exceptional claims indemnity.

### **34R Who is liable to repay an overpayment of exceptional claims indemnity?**

- (1) This section applies if, in relation to an exceptional claims indemnity that has been paid, there is an amount overpaid as described in subsection 34T(2) or 41(2).
- (2) The *liable person*, in relation to the amount overpaid, is:
  - (a) if the indemnity has not yet been dealt with in accordance with whichever of subsections 34Q(3) and (4) applies—the recipient referred to in subsection 34Q(1); or
  - (b) if the indemnity has been dealt with in accordance with whichever of those subsections applies—the practitioner referred to in subsection 34Q(1).

Note: The recipient and the practitioner will be the same person if the indemnity was paid to the practitioner.

- (3) If:
  - (a) the recipient and the practitioner referred to in subsection 34Q(1) are not the same person; and
  - (b) when the overpayment is recovered as a debt, the liable person is the recipient;the fact that the recipient may later deal with the remainder of the indemnity in accordance with subsection 34Q(3) or (4) does not mean that the overpayment should instead have been recovered from the practitioner.

### **Subdivision D—Payments that would have reduced the amount paid out under the contract of insurance**

#### **34S Amounts paid before payment of exceptional claims indemnity**

- (1) If:
  - (a) an amount (the *insurance payment*) has been paid under a contract of insurance that provides medical indemnity cover

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for a person (the *practitioner*) in relation to a liability of the practitioner; and

- (b) another amount (not being an amount referred to in subsection (2)) has been paid to the practitioner, the insurer or another person in relation to the incident or incidents to which the liability relates; and
- (c) the other amount was not taken into account in working out the amount of the insurance payment; and
- (d) if the other amount had been taken into account in working out the amount of the insurance payment, a lesser amount would have been paid under the contract of insurance in relation to the liability;

then, for the purpose of calculating the amount of exceptional claims indemnity (if any) that is payable in relation to a liability of the practitioner, the lesser amount is taken to have been the amount of the insurance payment.

- (2) This section does not apply to any of the following:
  - (a) an amount paid to an insurer by another insurer under a right of contribution;
  - (b) a payment of high cost claim indemnity;
  - (ba) a payment of run-off cover indemnity;
  - (c) an amount of a kind specified in the regulations for the purposes of this paragraph.

**34T Amounts paid after payment of exceptional claims indemnity**

- (1) This section applies if:
  - (a) an amount (the *actual indemnity amount*) of exceptional claims indemnity has been paid in relation to a qualifying liability that relates to a claim made against a person (the *practitioner*); and
  - (b) another amount (not being an amount referred to in subsection (5)) is paid to the practitioner, an insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and

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- (c) the other amount was not taken into account in calculating the actual indemnity amount; and
  - (d) if the other amount had been so taken into account, a lesser amount (the **reduced indemnity amount**, which could be zero) of exceptional claims indemnity would have been paid in relation to the liability.
- (2) The **amount overpaid** is the amount by which the actual indemnity amount exceeds the reduced indemnity amount.
- (3) If the Chief Executive Medicare has given the liable person (see subsection 34R(2)) a notice under subsection 34V(1) in relation to the amount overpaid, the amount is a debt owed to the Commonwealth by the liable person.
  - Note 1: If the indemnity is or was not dealt with in accordance with whichever of subsections 34Q(3) and (4) applies by the time required by subsection 34Q(5), the whole amount of the indemnity is a debt owed by the recipient, and no amount is recoverable under this section (see subsections 34Q(6) to (8)).
  - Note 2: If:
    - (a) the recipient and the practitioner referred to in subsection 34Q(1) are not the same person; and
    - (b) the practitioner becomes the liable person;then (subject to subsection 34R(3)), the recipient ceases to be the liable person, and the amount overpaid must instead be recovered from the practitioner.
- (4) The amount overpaid may be recovered:
  - (a) by action by the Chief Executive Medicare against the liable person in a court of competent jurisdiction; or
  - (b) under section 42.
- (5) This section does not apply to any of the following:
  - (a) an amount paid to an insurer by another insurer under a right of contribution;
  - (b) a payment of high cost claim indemnity;
  - (ba) a payment of run-off cover indemnity;
  - (c) an amount of a kind specified in the regulations for the purposes of this paragraph.

**34U Obligation to notify the Chief Executive Medicare that amount has been paid**

- (1) If:
- (a) an amount of exceptional claims indemnity has been paid in relation to a qualifying liability that relates to a claim made against a person (the *practitioner*); and
  - (b) the person (the *applicant*) who applied for the exceptional claims indemnity becomes aware that another amount has been paid to the practitioner, an insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and
  - (c) because of the payment of the other amount, there is an amount overpaid as described in subsection 34T(2);
- the applicant must notify the Chief Executive Medicare that the other amount has been paid.

Note: Failure to notify is an offence (see section 46).

- (2) The notification must:
- (a) be in writing; and
  - (b) be given to the Chief Executive Medicare within 28 days after the applicant becomes aware that the other amount has been paid.

**34V The Chief Executive Medicare to notify of amount of debt due**

- (1) If:
- (a) an amount of exceptional claims indemnity has been paid in relation to a qualifying liability that relates to a claim made against a person (the *practitioner*); and
  - (b) another amount is paid to the practitioner, an insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and
  - (c) because of the payment of the other amount, there is an amount overpaid as described in subsection 34T(2);
- the Chief Executive Medicare may give the liable person (see subsection 34R(2)) a written notice that specifies:

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- (d) the amount overpaid, and that it is a debt owed to the Commonwealth under subsection 34T(3); and
- (e) the day before which the amount must be paid to the Commonwealth; and
- (f) the effect of section 34W.

The day specified under paragraph (e) must be at least 28 days after the day on which the notice is given.

- (2) The debt becomes due and payable on the day specified under paragraph (1)(e).

**34W Penalty imposed if an amount is repaid late**

- (1) If:
  - (a) a person owes a debt to the Commonwealth under subsection 34T(3); and
  - (b) the debt remains wholly or partly unpaid after it becomes due and payable;the person is liable to pay a late payment penalty under this section.
- (2) The late payment penalty is calculated:
  - (a) at the rate specified in the regulations for the purposes of this paragraph; and
  - (b) on the unpaid amount; and
  - (c) for the period:
    - (i) starting when the amount becomes due and payable; and
    - (ii) ending when the amount, and the penalty payable under this section in relation to the amount, have been paid in full.
- (3) The Chief Executive Medicare may remit the whole or a part of an amount of late payment penalty if the Chief Executive Medicare considers that there are good reasons for doing so.
- (4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to remit, or to remit only part of, an amount of late payment penalty.

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Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

(5) If:

- (a) the recipient and the practitioner referred to in subsection 34Q(1) are not the same person; and
- (b) the practitioner becomes the liable person; and
- (c) the recipient has or had a liability under this section to pay late payment penalty;

the recipient's liability to the late payment penalty is not affected by the fact that the recipient is no longer the person who owes the debt to the Commonwealth under subsection 34T(3), except that the period referred to in paragraph (2)(c) ends when the practitioner becomes the liable person.

### **Subdivision E—The Exceptional Claims Protocol**

#### **34X Minister may determine a protocol dealing with various matters**

- (1) The Minister may, by legislative instrument, determine a protocol (the *Exceptional Claims Protocol*) for making payments to insurers of claim handling fees, and payments on account of legal, administrative or other costs incurred by insurers (whether on their own behalf or otherwise), in respect of claims in relation to which qualifying claim certificates have been issued.
- (2) Without limiting subsection (1), the Exceptional Claims Protocol may:
  - (a) make provision for:
    - (i) the conditions that must be satisfied for an amount to be payable to an insurer; and
    - (ii) the amount that is payable; and
    - (iii) the conditions that must be complied with by an 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

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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 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.
- (3) Paragraph (2)(b) does not allow the Protocol to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.
- (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.
- (4) The Exceptional Claims Protocol may also provide for other matters of a kind specified in regulations made for the purposes of this subsection.

**34Y The Chief Executive Medicare may request information**

- (1) If the Chief Executive Medicare believes that a person is capable of giving information that is relevant to determining:
  - (a) whether an insurer is entitled to a payment under the Exceptional Claims Protocol; or
  - (b) the amount that is payable to an insurer under the Exceptional Claims Protocol;the Chief Executive Medicare may request the person to give the Chief Executive Medicare 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;

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- (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 Chief Executive Medicare is information relating to a matter in relation to which a person is required by section 39 to keep a record, the Chief Executive Medicare may request the person to give the information by giving the Chief Executive Medicare 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 Chief Executive Medicare; 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.

**Subdivision F—Miscellaneous**

**34Z Modifications and exclusions**

- (1) The regulations may provide that this Division applies with specified modifications in relation to:
- (a) a specified class of claims; or
  - (b) a specified class of contracts of insurance; or
  - (c) a specified class of situations in which a liability is, whether wholly or partly, covered by more than one contract of insurance.

Note: For the capacity for regulations to exclude classes of claims and classes of contracts of insurance, see paragraphs 34E(1)(h) and (i).

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- (2) The regulations may provide that this Division does not apply, or applies with specified modifications, in relation to a specified class of liabilities or payments.
- (3) Without limiting subsection (2), the regulations may specify modifications regarding how this Division applies in relation to a liability under an order of a court requiring an amount to be paid pending the outcome of an appeal, including modifications:
  - (a) to count the liability as a qualifying liability (even though subparagraph 34M(1)(a)(i) may not be satisfied in relation to the order); and
  - (b) to deal with what happens if, as a result of the appeal or another appeal, the amount paid later becomes wholly or partly repayable; and
  - (c) to deal with what happens if the amount paid is later applied towards a liability that is confirmed as a result of the appeal or another appeal.
- (4) This section does not allow the regulations to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.

## **Division 2B—Run-off cover indemnity scheme**

### **Subdivision A—Introduction**

#### **34ZA Guide to the run-off cover indemnity provisions**

- (1) This Division provides that a run-off cover indemnity may be paid in relation to a liability of a medical practitioner if the liability relates to an eligible run-off claim.
- (2) This Division also provides for the determination of a Run-off Cover Claims and Administration Protocol that can deal with other matters relating to eligible run-off claims.
- (3) The following table tells you where to find the provisions dealing with various issues:

<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
1	what is an eligible run-off claim?	section 34ZB
2	when is a run-off cover indemnity payable in respect of a liability?	sections 34ZC to 34ZG
3	how much run-off cover indemnity is payable?	section 34ZH
4	what if a payment is received that would have reduced the amount of an insurance payment?	sections 34ZI to 34ZM
5	the Run-off Cover Claims and Administration Protocol, and what it can deal with	sections 34ZN and 34ZO
6	what is the effect of terminating the run-off cover indemnity scheme?	sections 34ZP to 34ZT
7	notifying the Chief Executive Medicare if a person ceases to be covered by the run-off cover indemnity scheme	section 34ZU
8	invoices for medical indemnity cover	section 34ZV

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**Where to find the provisions on various issues**

Item	Issue	Provisions
9	reports on the run-off cover indemnity scheme	section 34ZW
10	modifications and exclusions by regulations	section 34ZX
11	how does a person apply for a run-off cover indemnity?	section 36
12	when will a run-off cover indemnity be paid?	section 37
13	what information has to be provided to the Chief Executive Medicare about run-off cover indemnity matters?	section 38
14	what records must be kept in relation to run-off cover indemnity matters?	section 39
15	how are overpayments of a run-off cover indemnity recovered?	sections 41 and 42

Note: Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* requires medical indemnity insurers to provide “run-off cover” for medical practitioners in certain circumstances covered by the run-off cover indemnity scheme.

**34ZB Eligible run-off claims**

- (1) A claim is an *eligible run-off claim* if:
- (a) it is a claim made against a person who, at the time the claim is made, is a person to whom subsection (2) applies; and
  - (b) it relates to an incident, or a series of related incidents, that occurred in the course of, or in connection with, the person’s practice as a medical practitioner; and
  - (d) if a termination date for the run-off cover indemnity scheme has been set (see subsection (3)), the person:
    - (i) was, immediately before the termination date, a person to whom subsection 34ZB(2) applies; and

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- (ii) continued to be such a person for the whole of the period between the termination date and the time when an MDO or insurer was first notified of the claim, or of facts that might give rise to the claim; and
- (e) the person has medical indemnity cover that indemnifies the person in relation to the claim, being cover that:
  - (i) is required to be provided under Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*; or
  - (ii) is incident-occurring based cover provided by an MDO.

Note: For the meaning of incident-occurring based cover, see subsections 7(2A) and (3).

- (2) This subsection applies to a person who is one or more of the following:
- (a) a person aged 65 years or over who has retired permanently from private medical practice;
  - (b) a person who has not engaged in private medical practice at any time during the preceding period of 3 years;
  - (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));
  - (e) a person who is the legal personal representative of a deceased person who had been a medical practitioner;
  - (f) a person who is included in a class of persons that the regulations specify as persons to whom this subsection applies.

However, a person is not a person to whom this subsection applies if the person is included in a class of persons that the regulations specify as a class of persons to whom this subsection does not apply.

- (3) The regulations may set a termination date for the run-off cover indemnity scheme.

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- (4) The termination date cannot be a date occurring before the end of the period of 12 months after the day on which the regulations in question are entered on the Federal Register of Legislative Instruments.
- (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 Chief Executive Medicare, 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 Chief Executive Medicare, that the person:

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- (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.
- (5) In this section:

***private medical practice*** means practice as a medical practitioner, other than:

- (a) practice consisting of treatment of public patients in a public hospital; or
- (b) practice for which:
  - (i) the Commonwealth, a State or a Territory; or
  - (ii) a local governing body; or
  - (iii) an authority established under a law of the Commonwealth, a State or a Territory; indemnifies medical practitioners from liability relating to compensation claims (within the meaning of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*); or
- (c) practice conducted wholly outside both Australia and the external Territories; or
- (d) practice of a kind specified in the regulations.

**Subdivision B—Run-off cover indemnities**

**34ZC Circumstances in which run-off cover indemnities are payable**

- (1) A run-off cover indemnity is payable to an MDO or a medical indemnity insurer under this section if:
  - (a) an eligible run-off claim is made that relates to an incident, or a series of related incidents, that occurred in the course of, or

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- in connection with, a person's practice as a medical practitioner; and
- (ab) at the time the claim is first notified to the MDO or medical indemnity insurer, the person is a person to whom subsection 34ZB(2) applies; and
  - (b) in the case of an MDO—the MDO makes, or is able to make, a payment in relation to the claim:
    - (i) under an arrangement, with the MDO or someone else, under which the MDO is able to indemnify the person in relation to claims made by or against the person while he or she is a person to whom subsection 34ZB(2) applies; and
    - (ii) in the ordinary course of the MDO's business; and
  - (c) in the case of a medical indemnity insurer—the insurer makes, or is liable to make, a payment in relation to the claim under a contract of insurance under which the insurer is liable to indemnify the person in relation to claims made by or against the person while he or she is a person to whom subsection 34ZB(2) applies; and
  - (d) the MDO or medical indemnity insurer was first notified of the claim, or of facts that might give rise to the claim on or after 1 July 2004; and
  - (e) the MDO or medical indemnity insurer applies to the Chief Executive Medicare for the run-off cover indemnity in accordance with section 36.
- (2) Paragraph (1)(c) does not apply to a payment that a medical indemnity insurer makes or is liable to make unless the payment is or would be made:
- (a) in relation to a claim made in relation to medical indemnity cover that section 26A or 26C of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* requires the insurer to provide for the person; and
  - (b) in the insurer's ordinary course of business.

**34ZD MDOs and medical indemnity insurers that are externally-administered bodies corporate**

- (1) If an MDO is an externally-administered body corporate:
  - (a) the reference in paragraph 34ZC(1)(b) to a payment that the MDO is able to make under an arrangement to indemnify a person is a reference to an amount that:
    - (i) the MDO is liable to make under the arrangement to indemnify the person; and
    - (ii) is a provable amount; and
  - (b) the reference in that paragraph to a payment that the MDO is able to make in the ordinary course of the MDO's business is a reference to an amount that the MDO:
    - (i) is liable to pay; and
    - (ii) would be able to pay in the ordinary course of the MDO's business if it were not an externally-administered body corporate.
- (2) If a medical indemnity insurer is an externally-administered body corporate, the reference in paragraph 34ZC(1)(c) to a payment that the medical indemnity insurer makes or is liable to make under a contract of insurance to indemnify a person is a reference to an amount that:
  - (a) the medical indemnity insurer pays or is liable to pay under the contract to indemnify the person; and
  - (b) is a provable amount.
- (3) If a run-off cover indemnity is paid to an MDO or medical indemnity insurer that is an externally-administered body corporate, the indemnity is, to the extent to which it is attributable to an amount that the MDO or medical indemnity insurer is liable to pay to a person, paid on trust for the benefit of that person.

**34ZE Aggregating amounts paid or payable by an MDO and medical indemnity insurer**

- (1) This section applies if:
  - (a) an MDO pays, or is liable to pay, an amount in relation to a claim; and

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- (b) a medical indemnity insurer also pays, or is also liable to pay, an amount in relation to the same claim (the *insurer amount*); and
  - (c) but for this section, a run-off cover indemnity in respect of the insurer amount would be payable to the insurer under section 34ZC; and
  - (d) the medical indemnity insurer elects in writing to have this section apply to the insurer amount.
- (2) For the purposes of this Division (other than this section):
- (a) the MDO is taken:
    - (i) to have paid, or to be liable to pay, the insurer amount in relation to the claim; and
    - (ii) to satisfy paragraphs 34ZC(1)(a) to (e) in relation to the insurer amount; and
  - (b) a run-off cover indemnity is not payable to the medical indemnity insurer in respect of the insurer amount.

**34ZF Clarification of circumstances in which run-off cover indemnities are payable**

A run-off cover indemnity is payable to an MDO or a medical indemnity insurer under section 34ZC in relation to a payment the MDO makes or is able to make, or the medical indemnity insurer makes or is liable to make, in relation to a claim even if:

- (a) the MDO or medical indemnity insurer:
  - (i) has insured itself in relation to the payment; or
  - (ii) has already in fact been paid an amount by an insurer in relation to the payment; or
- (b) the incident to which the claim relates occurred outside Australia and the external Territories.

**34ZG Exceptions**

A run-off cover indemnity is not payable to an MDO or a medical indemnity insurer under section 34ZC in relation to a payment the MDO makes or is able to make, or the medical indemnity insurer makes or is liable to make, in relation to a claim if:

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- (a) the payment is an insurer-to-insurer payment; or
- (b) the payment is a payment prescribed by the regulations for the purposes of this section.

**34ZH Amount of run-off cover indemnities**

- (1) The amount of a run-off cover indemnity is:
  - (a) if it is payable to an MDO—the amount of the payment referred to in paragraph 34ZC(1)(b); or
  - (b) if it is payable to a medical indemnity insurer—the amount of the payment referred to in paragraph 34ZC(1)(c), but only to the extent that the payment is or would be made:
    - (i) in relation to a claim made in relation to medical indemnity cover that section 26A or 26C of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* requires the insurer to provide for a person; and
    - (ii) in the insurer's ordinary course of business.
- (2) However, if a high cost claim indemnity is payable in respect of that payment, the amount of the run-off cover indemnity is reduced by the amount of the high cost claim indemnity.

**Subdivision C—Payments that would have reduced the amount of run-off cover indemnity**

**34ZI Amounts paid before run-off cover indemnity**

- (1) If:
  - (a) an amount (the *indemnity payment*) has been paid, in relation to a liability of a medical practitioner, under:
    - (i) an arrangement with an MDO for indemnifying the practitioner in relation to claims that may be made against the practitioner in relation to incidents that occur or occurred in the course of, or in connection with, the practice of the practitioner's profession; or
    - (ii) a contract of insurance with a medical indemnity insurer that provides medical indemnity cover for the practitioner; and

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- (b) another amount (not being an amount referred to in subsection (2)) has been paid to the practitioner, MDO, medical indemnity insurer or another person in relation to the incident or incidents to which the liability relates; and
  - (c) the other amount was not taken into account in working out the amount of the indemnity payment; and
  - (d) if the other amount had been taken into account in working out the amount of the indemnity payment, a lesser amount would have been paid under the arrangement with the MDO, or under the contract of insurance, in relation to the liability;
- then, for the purpose of calculating the amount of run-off cover indemnity (if any) that is payable in relation to a liability of the practitioner, the lesser amount is taken to have been the amount of the indemnity payment.
- (2) This section does not apply to any of the following:
- (a) an amount paid to a medical indemnity insurer by another insurer under a right of contribution;
  - (b) a payment of high cost claim indemnity;
  - (c) a payment of exceptional claims indemnity;
  - (d) an amount of a kind specified in the regulations for the purposes of this paragraph.

**34ZJ Amounts paid after payment of run-off cover indemnity**

- (1) This section applies if:
- (a) an amount (the **actual run-off cover amount**) of run-off cover indemnity has been paid in relation to an eligible run-off claim made against a medical practitioner; and
  - (b) another amount (not being an amount referred to in subsection (5)) is paid to the practitioner, an MDO, a medical indemnity insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and
  - (c) the other amount was not taken into account in calculating the actual run-off cover amount; and
  - (d) if the other amount had been so taken into account, a lesser amount (the **reduced run-off cover amount**, which could be

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zero) of run-off cover indemnity would have been paid in relation to the liability.

- (2) The ***amount overpaid*** is the amount by which the actual run-off cover amount exceeds the reduced run-off cover amount.
- (3) If the Chief Executive Medicare has given an MDO or a medical indemnity insurer a notice under subsection 34ZL(1) in relation to the amount overpaid, the amount is a debt owed to the Commonwealth by the MDO or insurer.
- (4) The amount overpaid may be recovered:
  - (a) by action by the Chief Executive Medicare against the MDO or insurer in a court of competent jurisdiction; or
  - (b) under section 42.
- (5) This section does not apply to any of the following:
  - (a) an amount paid to an insurer by another insurer under a right of contribution;
  - (b) a payment of high cost claim indemnity;
  - (c) a payment of exceptional claims indemnity;
  - (d) an amount of a kind specified in the regulations for the purposes of this paragraph.

**34ZK Obligation to notify the Chief Executive Medicare that amount has been paid**

- (1) If:
  - (a) a run-off cover indemnity has been paid to an MDO or medical indemnity insurer in relation to a liability that relates to a claim made against a medical practitioner; and
  - (b) the MDO or medical indemnity insurer becomes aware that another amount has been paid to the practitioner, MDO, medical indemnity insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and
  - (c) because of the payment of the other amount, there is an amount overpaid as described in subsection 34ZJ(2);

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the MDO or medical indemnity insurer must notify the Chief Executive Medicare that the other amount has been paid.

Note: Failure to notify is an offence (see section 46).

- (2) The notification must:
- (a) be in writing; and
  - (b) be given to the Chief Executive Medicare within 28 days after the applicant becomes aware that the other amount has been paid.

**34ZL The Chief Executive Medicare to notify of amount of debt due**

- (1) If:
- (a) a run-off cover indemnity has been paid to an MDO or medical indemnity insurer in relation to a liability that relates to a claim made against a medical practitioner; and
  - (b) another amount is paid to the practitioner, MDO, medical indemnity insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and
  - (c) because of the payment of the other amount, there is an amount overpaid as described in subsection 34ZJ(2);
- the Chief Executive Medicare may give the MDO or medical indemnity insurer a written notice that specifies:
- (d) the amount overpaid, and that it is a debt owed to the Commonwealth under subsection 34ZJ(3); and
  - (e) the day before which the amount must be paid to the Commonwealth; and
  - (f) the effect of section 34ZM.

The day specified under paragraph (e) must be at least 28 days after the day on which the notice is given.

- (2) The debt becomes due and payable on the day specified under paragraph (1)(e).

**34ZM Penalty imposed if an amount is repaid late**

- (1) If:
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- (a) a person owes a debt to the Commonwealth under subsection 34ZJ(3); and
  - (b) the debt remains wholly or partly unpaid after it becomes due and payable;
- the person is liable to pay a late payment penalty under this section.
- (2) The late payment penalty is calculated:
  - (a) at the rate specified in the regulations for the purposes of this paragraph; and
  - (b) on the unpaid amount; and
  - (c) for the period:
    - (i) starting when the amount becomes due and payable; and
    - (ii) ending when the amount, and the penalty payable under this section in relation to the amount, have been paid in full.
- (3) The Chief Executive Medicare may remit the whole or a part of an amount of late payment penalty if the Chief Executive Medicare considers that there are good reasons for doing so.
- (4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to remit, or to remit only part of, an amount of late payment penalty.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

### **Subdivision D—The Run-off Cover Claims and Administration Protocol**

#### **34ZN Minister may determine a protocol dealing with various matters**

- (1) The Minister may, by legislative instrument, determine a protocol (the ***Run-off Cover Claims and Administration Protocol***) for:
  - (a) making payments to MDOs and medical indemnity insurers of claim handling fees in respect of eligible run-off claims; and

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- (b) making payments on account of legal, administrative or other costs incurred by MDOs and medical indemnity insurers (whether on their own behalf or otherwise) in respect of eligible run-off claims; and
  - (c) making payments on account of legal, administrative or other costs incurred 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*.
- (2) Without limiting subsection (1), the Run-off Cover Claims and Administration Protocol may:
  - (a) make provision for:
    - (i) the conditions that must be satisfied for an amount to be payable to an MDO or medical indemnity insurer; and
    - (ii) the amount that is payable; and
    - (iii) the conditions that must be complied with by an MDO or medical indemnity 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.
- (3) Paragraph (2)(b) does not allow the Run-off Cover Claims and Administration Protocol to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.
- (4) The Run-off Cover Claims and Administration Protocol may also provide for other matters of a kind specified in regulations made for the purposes of this subsection.

**34ZO The Chief Executive Medicare may request information**

- (1) If the Chief Executive Medicare believes that a person is capable of giving information that is relevant to determining:
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- (a) whether an MDO or medical indemnity insurer is entitled to a payment under the Run-off Cover Claims and Administration Protocol; or
- (b) the amount that is payable to an MDO or medical indemnity insurer under the Run-off Cover Claims and Administration Protocol;

the Chief Executive Medicare may request the person to give the Chief Executive Medicare 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 Chief Executive Medicare is information relating to a matter in relation to which a person is required by section 39 to keep a record, the Chief Executive Medicare may request the person to give the information by giving the Chief Executive Medicare 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 Chief Executive Medicare; 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

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- (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.

**Subdivision E—Effect of terminating the run-off cover indemnity scheme**

**34ZP Commonwealth’s obligations on termination of the run-off cover indemnity scheme**

- (1) If a termination date for the run-off cover indemnity scheme has been set (see subsection 34ZB(3)), the Commonwealth is liable to pay an amount in accordance with this Subdivision in relation to each affected medical practitioner.
- (2) However, this section does not apply if:
  - (a) the Minister, by legislative instrument, determines that alternative arrangements for providing medical cover for medical practitioners in relation to eligible run-off claims will apply on and from the termination date; and
  - (b) the determination is made on or before the termination date.

**34ZQ Affected medical practitioners**

A medical practitioner is an *affected medical practitioner* if:

- (a) a termination date for the run-off cover indemnity scheme has been set (see subsection 34ZB(3)); and
- (b) prior to the termination date, one or more premiums have been paid for medical indemnity cover, for the medical practitioner, in relation to one or more periods totalling at least 12 months; and
- (c) immediately before the termination date, the medical practitioner was not a person to whom subsection 34ZB(2) applies.

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**34ZR Payments in relation to affected medical practitioners**

- (1) A payment that the Commonwealth is liable to make in relation to an affected medical practitioner:
  - (a) must be paid to a person who:
    - (i) is nominated by the practitioner; and
    - (ii) has, on or after the termination date, provided medical indemnity cover for the practitioner under a contract of insurance; and
  - (b) must be paid as all or part of the premium payable for the provision of that cover; and
  - (c) must be paid within 12 months after the termination date; and
  - (d) must not exceed the practitioner's total run-off cover credit.
- (2) Amounts payable by the Commonwealth under this Subdivision are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

**34ZS Total run-off cover credits**

- (1) This is how to work out an affected practitioner's total run-off cover credit:

*Method statement*

- Step 1. For the first financial year after 30 June 2004 in which a medical indemnity insurer provided medical indemnity cover for the practitioner under a contract of insurance, multiply:
  - (a) the practitioner's run-off cover credit for the financial year; by
  - (b) the interest rate adjustment for the financial year (see subsection (4)).
- Step 2. For each subsequent financial year (if any) until the financial year in which the termination date occurs, multiply:

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- (a) the sum of the practitioner's run-off cover credit for the financial year and the amount worked out, under Step 1 or this Step, for the immediately preceding financial year; by
- (b) the interest rate adjustment for the financial year (see subsection (4)).

Step 3. Add together:

- (a) the practitioner's run-off cover credit for the financial year in which the termination date occurs; and
- (b) the last of the amounts worked out under Step 1 or Step 2.

The result is the practitioner's ***total run-off cover credit***.

- (2) The practitioner's ***run-off cover credit*** for a financial year is the sum of all run-off cover support payments paid or payable to the extent that they are attributable, under subsection (3), to the practitioner in relation to the financial year.
- (3) Run-off cover support payments are ***attributable*** to the practitioner in relation to the financial year to the extent that they relate to premiums paid during the financial year to a medical indemnity insurer for medical indemnity cover provided for the practitioner by one or more contracts of insurance with the insurer.
- (4) The ***interest rate adjustment*** for a financial year is the number worked out as follows:

1 + Applicable interest rate

where:

***applicable interest rate*** is:

- (a) the rate of interest, for the financial year, specified in the regulations for the purposes of this paragraph; or

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- (b) if no rate is so specified—the short-term bond rate for the June quarter immediately preceding the financial year.

**June quarter** means a period of 3 months commencing on 1 April.

**short-term bond rate**, for a June quarter, means:

- (a) if:
  - (i) the Reserve Bank of Australia has published, in respect of one or more days in the last 2 weeks of the quarter, an indicative secondary market mid-rate yield for Australian Government fixed coupon Treasury bonds; and
  - (ii) the maturity date of the bonds is the third anniversary of the 15th day of the quarter or (if there are no bonds with that maturity date) the closer or closest date to that date within 2 years after it;the yield referred to in subparagraph (i) in respect of the day referred to in that subparagraph, or the average of the yields referred to in subparagraph (i) in respect of the days referred to in that subparagraph, as the case requires; or
- (b) in any other case—the rate of interest notified in the *Gazette*, by the Minister administering the *Loan (Income Equalization Deposits) Act 1976*, as the rate of interest in relation to the quarter for the purposes of this definition.

**34ZT Medical indemnity insurers must provide information  
attributing run-off cover payments**

- (1) A medical indemnity insurer must, in relation to each run-off cover payment that the medical indemnity insurer is liable to make to the Chief Executive Medicare, notify the Chief Executive Medicare of:
  - (a) each medical practitioner to whom the payment is attributable; and
  - (b) for each such practitioner, each financial year in relation to which the payment is attributable; and
  - (c) for each such practitioner and financial year, the extent to which the payment is attributable to the practitioner in relation to the financial year.

Note: Failure to notify is an offence (see section 46).

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- (2) The notification must:
- (a) be made in writing; and
  - (b) must be given to the Chief Executive Medicare on or before the payment day under section 61 for the run-off cover payment.

**Subdivision F—Miscellaneous**

**34ZU Chief Executive Medicare must be notified of a person ceasing to be covered by the run-off cover indemnity scheme**

- (1) If:
- (a) a person ceases to be a person to whom subsection 34ZB(2) applies; and
  - (b) immediately before the cessation, an MDO or medical indemnity insurer was providing medical indemnity cover (within the meaning of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*) to the person;
- the MDO or medical indemnity insurer must notify the Chief Executive Medicare of the cessation.

Note: Failure to notify is an offence (see section 46).

- (2) The notification must:
- (a) be in writing; and
  - (b) set out details of the cessation; and
  - (c) be given to the Chief Executive Medicare within a period, starting on the day after the day on which the person becomes aware of the cessation, of:
    - (i) 61 days; or
    - (ii) such greater number of days as the Minister determines by legislative instrument.

**34ZV Invoices for medical indemnity cover**

- (1) If:
- (a) a medical indemnity insurer gives to a person an invoice stating the premium that is or will be payable for medical

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indemnity cover provided by a contract of insurance with the medical indemnity insurer; and

- (b) payment of the premium would increase the medical indemnity insurer's liability to pay run-off cover support payment;

the medical indemnity insurer must ensure that the invoice states:

- (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.

Note: Failure to comply with this section is an offence (see section 47A).

- (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*.

### **34ZW Reports on the run-off cover indemnity scheme**

- (1) The Minister must, in relation to each financial year starting on or after 1 July 2004:
  - (a) cause a report to be prepared of the operation of this Division within 6 months after the end of the financial year; and
  - (b) cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

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- (2) Without limiting the matters that may be included in a report under subsection (1) in relation to a financial year, the report must include:
  - (a) a statement of the number of persons who were, at the end of the financial year, persons to whom subsection 34ZB(2) applies; and
  - (b) a statement of the total of all the amounts of run-off cover indemnity, and amounts payable under the Run-off Cover Claims and Administration Protocol, paid by the Commonwealth during the financial year; and
  - (c) a statement of the total of all the amounts of run-off cover support payments paid to the Commonwealth during the financial year; and
  - (d) estimates by the Actuary of the Commonwealth's liabilities under this Division in future financial years.
- (3) If a termination date for the run-off cover indemnity scheme has been set (see subsection 34ZB(3)), this section does not apply in relation to a financial year starting after the end of the financial year in which the termination date occurs.

**34ZX Modifications and exclusions**

- (1) The regulations may provide that this Division applies with specified modifications in relation to:
  - (a) a specified class of claims; or
  - (b) a specified class of arrangements with MDOs or contracts of insurance; or
  - (c) a specified class of situations in which a liability is, whether wholly or partly, covered by more than one contract of insurance.
- (2) The regulations may provide that this Division does not apply, or applies with specified modifications, in relation to a specified class of liabilities or payments.
- (3) Without limiting subsection (2), the regulations may specify modifications regarding how this Division applies in relation to a

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liability under an order of a court requiring an amount to be paid pending the outcome of an appeal, including modifications:

- (a) to deal with what happens if, as a result of the appeal or another appeal, the amount paid later becomes wholly or partly repayable; and
  - (b) to deal with what happens if the amount paid is later applied towards a liability that is confirmed as a result of the appeal or another appeal.
- (4) This section does not allow the regulations to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.

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**Division 3—Administration of the indemnity schemes**

**Subdivision A—Introduction**

**35 Guide to this Division**

- (1) This Division makes provision for the administration of the IBNR indemnity scheme, the high cost claim indemnity scheme, the exceptional claims indemnity scheme and the run-off cover indemnity scheme.
- (2) The following table tells you where to find the provisions dealing with various issues:

Where to find the provisions on various issues		
Item	Issue	Provisions
1	how do people apply for the indemnities?	sections 36 and 37A
2	when will the indemnities be paid?	sections 37 and 37B
3	what information has to be provided to the Chief Executive Medicare about indemnity matters?	section 38
4	what records must be kept?	sections 39 and 40
5	how are overpayments of the indemnities, and indemnity repayments, recovered?	sections 41 and 42

**Subdivision B—Applications for, and payment of, indemnity scheme payments**

**36 Application for IBNR indemnity, high cost claim indemnity or run-off cover indemnity**

- (1) An application by an MDO or insurer for an IBNR indemnity, a high cost claim indemnity or a run-off cover indemnity must:
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- (a) be made in writing using a form approved by the Chief Executive Medicare; and
  - (b) be accompanied by the documents and other information required by the form approved by the Chief Executive Medicare.
- (2) An application by an MDO or insurer for an IBNR indemnity must be made after the unfunded IBNR factor for the relevant participating MDO has been determined by the Minister under paragraph 22(1)(b).
- (3) In subsection (2):  
  
*relevant participating MDO* means the MDO referred to in paragraph 16(1)(c) or 17(1)(c).

**37 Payment date for IBNR indemnity, high cost claim indemnity or run-off cover indemnity**

- (1) Subject to subsection (2), the Chief Executive Medicare must pay an IBNR indemnity, a high cost claim indemnity or a run-off cover indemnity that is payable to an MDO or insurer before the end of the month that immediately follows the month in which the MDO or insurer applies for the indemnity.
- (2) If:
  - (a) an MDO or insurer applies for an IBNR indemnity, a high cost claim indemnity or a run-off cover indemnity; and
  - (b) the Chief Executive Medicare requests a person to give information under section 38 in relation to the application; and
  - (c) the person does not give the Chief Executive Medicare the information requested before the end of the month that immediately follows the month in which the MDO or insurer applies for the indemnity; and
  - (d) an IBNR indemnity, a high cost claim indemnity or a run-off cover indemnity is payable to the MDO or insurer;the Chief Executive Medicare must pay the IBNR indemnity, the high cost claim indemnity or the run-off cover indemnity to the MDO or insurer before the end of the month that immediately

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follows the month in which the person gives the Chief Executive Medicare the requested information.

- (3) In this section:

*month* means one of the 12 months of the year.

**37A Application for exceptional claims indemnity**

- (1) An application for an exceptional claims indemnity in relation to a qualifying liability that relates to a claim may be made by the person against whom the claim is or was made, or by a person acting on that person's behalf.
- (2) The application must:
  - (a) be made in writing using a form approved by the Chief Executive Medicare; and
  - (b) be accompanied by the documents and other information required by the form approved by the Chief Executive Medicare.
- (3) Subject to subsections (4) and (5), the application cannot be made more than 28 days after:
  - (a) if the liability is under a judgment or order of a court—the date on which the judgment or order became or becomes a judgment or order that is not stayed and is not subject to appeal; or
  - (b) if the liability is under a settlement of the claim—the date on which the settlement agreement was entered into; or
  - (c) if the liability is some other kind of liability—the date on which the liability was incurred.
- (4) If the date that would otherwise be applicable under subsection (3) is before the commencement of Division 2A, the application can be made after that date but cannot be made more than 28 days after the commencement of that Division.
- (5) The Chief Executive Medicare may accept a late application if the Chief Executive Medicare considers that there are good reasons for doing so.

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- (6) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to accept a late application.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

**37B Payment date for exceptional claims indemnity**

*Time by which application must be decided*

- (1) Subject to subsections (2) and (3), the Chief Executive Medicare is to decide an application for an exceptional claims indemnity on or before the end of the 21st day after the day on which the application is received by the Chief Executive Medicare.
- (2) If the Chief Executive Medicare requests a person to give information under section 38 in relation to an application for an exceptional claims indemnity, the Chief Executive Medicare does not have to decide the application until the 21st day after the day on which the person gives the information to the Chief Executive Medicare.
- (3) If the Chief Executive Medicare has received, but not yet decided:
- (a) an application for the issue of a qualifying claim certificate in relation to a claim; and
  - (b) an application for an exceptional claims indemnity in relation to the same claim;
- the Chief Executive Medicare does not have to decide the application for payment of an exceptional claims indemnity until the Chief Executive Medicare has decided the application for the issue of a qualifying claim certificate.

*Time by which payment must be made*

- (4) If the Chief Executive Medicare decides to grant an application for an exceptional claims indemnity, the Chief Executive Medicare must pay the indemnity to the applicant as soon as practicable after making that decision.

**Subdivision C—Information gathering and record keeping**

**38 Chief Executive Medicare may request information**

- (1) If the Chief Executive Medicare believes on reasonable grounds that a person is capable of giving information that is relevant to determining:
- (a) whether an indemnity scheme payment is payable; or
  - (b) the amount of the indemnity scheme payment that is payable; or
  - (c) whether a qualifying claim certificate should be issued, varied or revoked; or
  - (d) the Commonwealth's possible future liability to make indemnity scheme payments, or a particular kind of indemnity scheme payment;

the Chief Executive Medicare may request the person to give the Chief Executive Medicare 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;
  - (ca) a person who practises, or used to practise, a medical profession;
  - (cb) a person who is acting, or has acted, on behalf of a person covered by paragraph (ca);
  - (d) the legal personal representative of a person covered by paragraph (c), (ca) or (cb).
- (3) Without limiting subsection (1), if the information sought by the Chief Executive Medicare is information relating to a matter in relation to which a person is required by section 39 or 40 to keep a record, the Chief Executive Medicare may request the person to give the information by giving the Chief Executive Medicare the record, or a copy of the record.

(3A) Without limiting paragraph (1)(d), the Chief Executive Medicare may request an MDO or insurer to give information under that paragraph on a periodic basis.

(4) The request:

- (a) must be made in writing; and
- (b) must state what information must be given to the Chief Executive Medicare; and
- (c) may require the information to be verified by statutory declaration; and
- (d) must specify the 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 is made.

### **39 Main record keeping obligations**

#### *Records to be kept by person who applies for payment*

- (1) A person who applies for an indemnity scheme payment, or a payment under the IBNR Claims Protocol, the High Cost Claims Protocol, the Exceptional Claims Protocol or the Run-off Cover Claims and Administration Protocol, must keep records relevant to the following matters:
- (a) the payability of the payment;
  - (b) the amount of the payment payable;
  - (c) any amount paid to the person that results in a person being liable to pay an amount under section 24, 34T or 34ZJ;
  - (d) any other matter determined by the Chief Executive Medicare.

Note: Failure to keep the records is an offence (see section 47).

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*Records to be kept by person who applies for a qualifying claim certificate*

- (1A) A person who applies for the issue of a qualifying claim certificate in relation to a claim must keep records that are relevant to the following:
- (a) matters related to whether the criteria specified in subsection 34E(1) are satisfied in relation to the claim;
  - (b) any other matter determined by the Chief Executive Medicare.

Note: Failure to keep the records is an offence (see section 47).

*Records to be retained for certain period*

- (2) The records must be retained for a period of 5 years (or any other period prescribed by the regulations) starting on the later of:
- (a) the day on which the records were created; or
  - (b) whichever of the following days applies:
    - (i) if the record is required to be kept because the person applied for an IBNR indemnity or a high cost claim indemnity—the day on which this Act commenced;
    - (ia) if the record is required to be kept because the person applied for a payment under the IBNR Claims Protocol—the day on which the Protocol took effect;
    - (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;
    - (ii) if the record is required to be kept because the person applied for an exceptional claims indemnity or a qualifying claim certificate—the day on which Division 2A commenced;
    - (iii) if the record is required to be kept because the person applied for a payment under the Exceptional Claims Protocol—the day on which the Protocol took effect;
    - (iv) if the record is required to be kept because the person applied for a run-off cover indemnity—the day on which Division 2B commenced;

- (v) if the record is required to be kept because the person applied for a payment under the Run-off Cover Claims and Administration Protocol—the day on which the Protocol took effect.

Note: Failure to retain the records is an offence (see section 47).

*Determination of additional matters to be gazetted*

- (3) A determination by the Chief Executive Medicare under paragraph (1)(d) or (1A)(b) must:
  - (a) be published in the *Gazette*; and
  - (b) not take effect earlier than 14 days after the day on which it is published in the *Gazette*.

*Retrospective effect not intended*

- (4) Nothing in this section is to be taken to have required a person to do an act or thing before the commencement of this Act.

## **40 Participating MDOs to keep additional records**

*Records to be kept by participating MDO*

- (1) A participating MDO must keep records that are relevant to the following matters:
  - (a) determining who the participating members of the MDO are;
  - (b) determining its IBNR exposure as at 30 June 2002;
  - (c) determining its unfunded IBNR factor;
  - (d) determining its IBNR exposure, or its net IBNR exposure, as at the end of a financial year ending immediately before the start of a contribution year for the MDO;
  - (e) any other matter determined by the Chief Executive Medicare.

Note: Failure to keep the records is an offence (see section 47).

*Records to be retained for certain period*

- (2) The records must be retained for a period of 5 years (or any other period prescribed by the regulations) starting on the later of:

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- (a) the day on which the records were created; or
- (b) the day on which this Act commences.

Note: Failure to retain the records is an offence (see section 47).

### *Determination of additional matters to be gazetted*

- (3) A determination by the Chief Executive Medicare under paragraph (1)(e) must:
  - (a) be published in the *Gazette*; and
  - (b) not take effect earlier than 14 days after the day on which it is published in the *Gazette*.

### *Retrospective effect not intended*

- (4) Nothing in this section is to be taken to have required a person to do an act or thing before the commencement of this Act.

## **Subdivision D—Overpayments of the indemnities**

### **41 Recovery of overpayments**

- (1) This section applies if an amount is paid by way of an indemnity scheme payment and:
  - (a) the amount of indemnity scheme payment is not payable; or
  - (b) the amount paid is greater than the amount of the indemnity scheme payment that was payable.
- (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.
- (3) The amount overpaid is a debt due to the Commonwealth by the liable person. For this purpose the ***liable person*** is:
  - (a) if the indemnity scheme payment was an IBNR indemnity, a high cost claim indemnity or a run-off cover indemnity—the MDO or insurer to which the payment was made; or

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- (b) if the indemnity scheme payment was an exceptional claims indemnity—the person who is the liable person under subsection 34R(2).

Note 1: Paragraph (b)—if the exceptional claims indemnity is or was not dealt with in accordance with whichever of subsections 34Q(3) and (4) applies by the time required by subsection 34Q(5), the whole amount of the indemnity is a debt owed by the recipient, and no amount is recoverable under this section (see subsections 34Q(6) to (8)).

Note 2: Paragraph (b)—if:

- (a) the recipient and the practitioner referred to in subsection 34Q(1) are not the same person; and
- (b) the practitioner becomes the liable person;

then (subject to subsection 34R(3)), the recipient ceases to be the liable person, and the amount overpaid must instead be recovered from the practitioner.

- (4) The amount overpaid may be recovered:
- (a) by action by the Chief Executive Medicare against the liable person in a court of competent jurisdiction; or
  - (b) by deduction from the amount of an IBNR indemnity, a high cost claim indemnity or a run-off cover indemnity payable to the liable person; or
  - (c) under section 42.

The total amount recovered must not exceed the amount overpaid.

### **Subdivision E—Recovery of repayment or overpayment debt**

#### **42 Chief Executive Medicare may collect money from a person who owes money to a person**

*What this section does*

- (1) This section allows the Chief Executive Medicare to collect money from a person who owes money to a person (the ***liable person***) who has a debt to the Commonwealth under subsection 24(4) 34Q(6), 34T(3), 34ZJ(3) or 41(3) (the ***repayment or overpayment debt***).

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*The Chief Executive Medicare may give direction*

- (2) The Chief Executive Medicare may direct a person (the **third party**) who owes, or may later owe, money (the **available money**) to the liable person to pay some or all of the available money to the Chief Executive Medicare in accordance with the direction. The Chief Executive Medicare must give a copy of the direction to the liable person.

*Limit on directions*

- (3) The direction must:
- (a) not require an amount to be paid to the Chief Executive Medicare at a time before it becomes owing by the third party to the liable person; and
  - (b) specify a period of not less than 14 days within which the third party must comply with the direction.
- (3A) If:
- (a) the repayment or overpayment debt relates to an exceptional claims indemnity; and
  - (b) the recipient and the practitioner referred to in subsection 34Q(1) are not the same person; and
  - (c) the practitioner becomes the liable person; and
  - (d) the direction was given to the recipient;
- the direction ceases to have effect when the practitioner becomes the liable person.

*Third party to comply*

- (4) The third party commits an offence if the third party fails to comply with the direction.

Penalty: 20 penalty units.

- (5) The third party does not commit an offence against subsection (4) if the third party complies with the direction so far as the third party is able to do so.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (6) An offence against subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Court orders*

- (7) If a person is convicted of an offence in relation to a failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Commonwealth an amount up to the amount involved in the failure of the third party.

*Indemnity*

- (8) Any payment made by the third party under this section is taken to have been made with the authority of the liable person and of all other persons concerned and the third party is indemnified for the payment.

*Notice*

- (9) If the whole of the repayment or overpayment debt of the liable person is discharged before any payment is made by the third party, the Chief Executive Medicare must immediately give notice to the third party of that fact.
- (10) If a part of the repayment or overpayment debt of the liable person is discharged before any payment is made by the third party, the Chief Executive Medicare must:
- (a) immediately give notice to the third party of that fact; and
  - (b) make an appropriate variation to the direction; and
  - (c) give a copy of the varied direction to the liable person.

*When third party is taken to owe money*

- (11) The third party is taken to owe money to the liable person if:
- (a) money is due or accruing by the third party to the liable person; or
  - (b) the third party holds money for or on account of the liable person; or

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- (c) the third party holds money on account of some other person for payment to the liable person; or
  - (d) the third party has authority from some other person to pay money to the liable person;
- whether or not the payment of the money to the liable person is dependent on a pre-condition that has not been fulfilled.

## **Division 4—Medical indemnity premium subsidy scheme**

### **43 Minister may formulate subsidy scheme**

- (1) The Minister may, by legislative instrument, formulate one or more schemes for one or more of the following:
  - (a) making payments to:
    - (i) medical practitioners; or
    - (ii) medical indemnity providers on behalf of medical practitioners;  
to help those medical practitioners meet the cost of purchasing medical indemnity (whether such costs are incurred by way of MDO membership subscriptions, insurance premiums or otherwise);
  - (aa) making payments to:
    - (i) medical practitioners; or
    - (ii) medical indemnity providers on behalf of medical practitioners;  
to help those medical practitioners meet the cost of paying medical indemnity payments;
  - (b) making payments to medical indemnity providers to help the medical indemnity providers meet the cost of:
    - (i) administering schemes formulated under paragraph (1)(a); or
    - (ii) complying with their obligations under section 66A relating to UMP support payments.
- (2) Without limiting subsection (1), a scheme may make provision for:
  - (a) the conditions that must be satisfied for a subsidy to be payable; and
  - (b) the amount of a subsidy; and
  - (c) the conditions that must be complied with by persons to whom a subsidy is paid; and
  - (d) payments to medical indemnity providers to reduce the costs of medical indemnity for medical practitioners; and

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- (e) the entering into of contracts setting out conditions for such payments to medical indemnity providers.
- (3) Without limiting paragraph (2)(a), a scheme may provide that a subsidy is to be paid only:
  - (a) to medical practitioners working in particular areas of medical practice; or
  - (b) for the purchase of particular kinds of medical indemnity.
- (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*).

**44 Chief Executive Medicare may request information**

- (1) If the Chief Executive Medicare believes on reasonable grounds that a person is capable of giving information that is relevant to determining:
    - (a) whether a subsidy is payable to a person under a scheme formulated under subsection 43(1); or
    - (b) the amount of a subsidy that is payable to a person under a scheme formulated under subsection 43(1);the Chief Executive Medicare may request the person to give the Chief Executive Medicare the information.

Note: Failure to comply with the request is an offence (see section 45).
  - (2) The request:
    - (a) must be made in writing; and
    - (b) must state what information must be given to the Chief Executive Medicare; 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
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- (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 is made.

**44A Chief Executive Medicare may notify medical indemnity insurers or MDOs of UMP support payments**

The Chief Executive Medicare may, for the purpose of enabling a medical indemnity insurer or MDO to work out an amount payable to a medical practitioner under a scheme formulated under subsection 43(1), notify the medical indemnity insurer or MDO of:

- (a) whether the medical practitioner is or has been liable for a UMP support payment, and the amount of any such liability; and
- (b) whether the UMP support payment has been paid.

**44B Chief Executive Medicare may notify run-off cover credits**

The Chief Executive Medicare may notify a medical practitioner of:

- (a) the practitioner's run-off cover credit for a financial year; or
- (b) the amount worked out in relation to the practitioner under Step 2 of the Method Statement in subsection 34ZS(1) for a financial year; or
- (c) if a termination date for the run-off cover indemnity scheme has been set (see subsection 34ZB(3))—the practitioner's total run-off cover credit.

## Division 5—Offences

### 45 Failing to give information

- (1) This section applies if a person is given a request for information under:
  - (a) subsection 13(3); or
  - (b) subsection 23(3); or
  - (baa) subsection 27B(1); or
  - (bab) subsection 34AB(1); or
  - (ba) subsection 34Y(1); or
  - (bb) subsection 34ZO(1); or
  - (c) subsection 38(1); or
  - (d) subsection 44(1).
- (2) The person commits an offence if the person fails to comply with the request.

Penalty: 30 penalty units.
- (3) An individual is excused from complying with the request if the giving of the information might tend to incriminate the individual or expose the individual to a penalty.
- (4) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 46 Failing to notify

- (1) This section applies if section 25, 34J, 34U, 34ZK, 34ZT or 34ZU requires a person to notify the Chief Executive Medicare of a matter within a particular period.
- (2) The person commits an offence if the person fails to notify the Chief Executive Medicare of the matter within that period.

Penalty: 30 penalty units.

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- (3) An offence against subsection (2) is an offence of strict liability. However, strict liability does not apply to the physical element described in paragraph 34J(1)(b), 34U(1)(b) or 34ZK(1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**47 Failing to keep and retain records**

- (1) This section applies if section 39 or 40 requires a person to keep records or to retain records for a particular period.
- (2) The person commits an offence if the person fails to keep the records or fails to retain the records for that period.

Penalty: 30 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**47A Failing to include required information in invoices**

- (1) This section applies if section 34ZV applies to an invoice that a medical indemnity insurer gives to a person.
- (2) A person commits an offence if:
- (a) the person is a medical indemnity insurer; and
  - (b) the person gives such an invoice to another person; and
  - (c) the invoice does not state the matters required by section 34ZV.

Penalty: 30 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) To avoid doubt, subsection 4B(3) of the *Crimes Act 1914* applies to any offence against this section committed by a body corporate, as if an offence against that provision could be committed by a natural person.
- (5) Subsection (4) does not affect the meaning of any other offence against this Act.

## **Division 6—Finance**

### **48 Appropriation**

The Consolidated Revenue Fund is appropriated for the purposes of paying:

- (a) IBNR indemnities; and
- (aa) amounts payable under the IBNR Claims Protocol; and
- (b) high cost claim indemnities; and
- (baa) amounts payable under the High Cost Claims Protocol; and
- (ba) exceptional claims indemnities; and
- (bb) amounts payable under the Exceptional Claims Protocol; and
- (bc) run-off cover indemnities; and
- (bd) amounts payable under the Run-off Cover Claims and Administration Protocol; and
- (c) subsidies payable under a scheme formulated under subsection 43(1).

## **Division 7—Reinsurance contracts**

### **49 Indemnity scheme payments disregarded for purposes of reinsurance contracts**

- (1) If:
  - (a) a contract is a contract of insurance:
    - (i) between 2 insurers; or
    - (ii) between an insurer and an MDO that are not related bodies corporate; and
  - (b) the contract is governed by the laws of a State or Territory; the contract has effect as if the contract provided, and had at all times provided, that:
  - (c) indemnity scheme payments; and
  - (d) MDOs' and insurers' rights to indemnity scheme payments; were to be disregarded for all purposes and, without limiting this, were to have no effect on the amounts payable under the contract by the insurer providing the insurance.
- (2) By force of this subsection, subsection (1) applies to a contract if it is entered into on or after the commencement of this Act.
- (3) By force of this subsection, subsection (1) applies to a contract if it was entered into before the commencement of this Act.

## **Part 3—Payments towards the cost of providing indemnities**

### **Division 1—UMP support payment**

#### **Subdivision A—Introduction**

#### **50 Guide to the UMP support payment provisions**

- (1) Division 1 of Part 2 provides for the payment of IBNR indemnities.
- (2) The *Medical Indemnity (UMP Support Payment) Act 2002* (the ***Payment Act***):
  - (a) imposes payments on a participating member of a participating MDO; and
  - (b) imposes those payments on the imposition days for the contribution years for the MDO; and
  - (c) specifies the amount of those payments (by reference to the participating member's annual subscription for the MDO for the base year).

This Division contains further provisions relating to the UMP support payment.

- (3) The following table tells you where to find the provisions dealing with various issues:

<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
1	which years are contribution years for the participating MDO?	section 5 of the Payment Act
2	which day is the imposition day for a contribution year?	section 5 of the Payment Act
3	who must pay the UMP support payment?	section 51 of this Act
4	who is exempt from the UMP support payment?	sections 52 and 53 of this Act

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<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
5	what is the amount of the UMP support payment?	section 6 of the Payment Act
6	how do you work out a person's annual subscription for the base year?	section 54 of this Act
7	what is the time for paying the UMP support payment?	sections 61 and 62 of this Act
9	when is late payment penalty payable?	sections 65 and 66B of this Act
10	what method should be used to pay the UMP support payment?	sections 66 and 66A of this Act
11	what happens if an amount of UMP support payment is overpaid?	section 67 of this Act
12	how are UMP support payments and late payment penalties recovered?	sections 68 to 70 of this Act
13	what information has to be provided to the Chief Executive Medicare about UMP support payment matters?	sections 71 and 72 of this Act

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## **Subdivision B—Who pays UMP support payment**

### **51 Who is liable to pay the UMP support payment**

A person is liable to pay a UMP support payment for a financial year if:

- (a) the person is a participating member of a participating MDO; and
- (b) the financial year is a contribution year for the MDO; and
- (c) the person was ordinarily resident in Australia or an external Territory on 30 June 2000; and
- (d) the person is not exempt from the payment under section 52.

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**52 Exemptions**

- (1) A person may be exempt from a UMP support payment under subsection (2) or under regulations made for the purposes of subsection (4).
- (2) A person is exempt from a UMP support payment for a contribution year for a participating MDO if:
  - (a) the person dies in or before that contribution year; or
  - (b) the person has not practised a medical profession in Australia for reward at any time after 31 December 2001; or
  - (c) the contribution year is the financial year starting on 1 July 2003 and the person's medical income for both:
    - (i) the financial year starting on 1 July 2001; and
    - (ii) the financial year immediately before the contribution year;was less than \$5,000; or
  - (ca) in a case where the person was a medical practitioner during the income period for the contribution year—the person's gross Medicare billable income for the income period was:
    - (i) if the contribution year started on 1 July 2003 or 1 July 2004—less than \$5,000; or
    - (ii) otherwise—less than or equal to \$50,000; or
  - (cb) in a case where the person was a health professional during, but was not a medical practitioner during, the income period for the contribution year—the person's gross medical income for the income period was:
    - (i) if the contribution year started on 1 July 2003 or 1 July 2004—less than \$5,000; or
    - (ii) otherwise—less than or equal to \$50,000; or
  - (cc) the contribution year started on or after 1 July 2005 and the applicable percentage of the annual subscription for the base year of a participating member of a participating MDO is less than or equal to \$1,000; or
  - (d) the person was not on, or at any time before, 30 June 2000:
    - (i) a medical practitioner; or
    - (ii) a health professional;

and is not a person specified in the regulations made for the purposes of this paragraph; or

- (da) the number of contribution years for the MDO in respect of which:
- (i) the person has been liable to pay a UMP support payment; or
  - (ii) would have been so liable apart from an exemption under this section;

exceeds the total period (expressed as a number of years) for which the person was, prior to 1 July 2000, a member of that MDO; or

- (db) the number of contribution years for the MDO in respect of which the person has been liable to pay a UMP support payment, or would have been so liable apart from an exemption under this section, is more than 4; or

Note: Deferral of a payment day under section 62 will not affect the operation of this paragraph, because the UMP support payment will still relate to the same contribution year despite the deferment.

- (f) the Chief Executive Medicare determines under section 53 that the person has comprehensive insurance cover for all incidents covered by the IBNR indemnity scheme.

- (3) For the purposes of paragraph (2)(c), a person's **medical income** is:

- (a) if the person is a medical practitioner—the sum of the medicare benefits payable in respect of professional services rendered by, or on behalf of, the person; and
- (b) if the person is a health professional—the sum of the amounts payable in respect of health care related services rendered by, or on behalf of, the person.

- (3A) For the purposes of paragraphs (2)(ca) and (cb), **gross medical income**, **gross Medicare billable income** and **income period** have the same meanings as in the *Medical Indemnity (UMP Support Payment) Act 2002*.

- (3AA) For the purposes of paragraph (2)(cc):

- (a) **annual subscription** and **base year** have the same meanings as in section 54 of this Act; and

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(b) ***applicable percentage*** has the same meaning as in section 6 of the *Medical Indemnity (UMP Support Payment) Act 2002*.

(3B) For the purposes of paragraph (2)(da):

(a) if the total period referred to in that paragraph is not a whole number of years, round the number up to the nearest whole number of years; and

(b) if:

(i) a person has been, prior to 1 July 2000, a member of an indemnity provider (other than the MDO referred to in that paragraph) that has, prior to 1 July 2000, provided medical indemnity cover to the person; and

(ii) the MDO referred to in that paragraph has (whether before, on or after 1 July 2000) taken over the indemnity provider;

the total period referred to in that paragraph, and in paragraph (a) of this subsection, is taken to include the total period for which the indemnity provider, prior to 1 July 2000, provided medical indemnity cover to the person.

(3C) The reference in subparagraph (3B)(b)(ii) to an MDO having taken over an indemnity provider is a reference to the MDO having assumed some or all of the financial responsibility for claims:

(a) that are claims in relation to incidents that occurred in the course of, or in connection with, the practice of a medical profession by the person in question; and

(b) with which the indemnity provider would, but for that assumption of responsibility, have been concerned because of the indemnity provider having provided medical indemnity cover to the person.

(3D) In subsections (3B) and (3C), and in this subsection:

***indemnity provider*** means a body that provided medical indemnity cover.

***provided medical indemnity cover*** has the meaning given by the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

- (3E) A reference in paragraph (2)(da) or (db) to a liability to pay a UMP support payment includes a reference to a liability, before the commencement of that paragraph, to pay an IBNR indemnity contribution.
- (4) The regulations may provide that a person is exempt from UMP support payment in the circumstances specified in the regulations.
- (4A) Regulations made for the purposes of subsection (4) may provide that a person is exempt from UMP support payment in circumstances that are similar to those specified in subsection (2).
- (5) Regulations made for the purposes of subsection (4) may provide that a person is exempt from UMP support payment either generally or for a particular contribution year of a participating MDO.

### **53 Comprehensive insurance cover determination**

- (1) The Chief Executive Medicare may determine, in writing, that a person who is a participating member of a participating MDO has comprehensive insurance cover for all incidents covered by the IBNR indemnity scheme.
- (2) The Chief Executive Medicare may make the determination only if satisfied that:
  - (a) on 30 June 2002, the person had:
    - (i) an insurance contract or contracts with an insurer; or
    - (ii) insurance contracts with 2 or more insurers; and
  - (b) the contract or contracts 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
    - (ii) are covered by the IBNR indemnity scheme; and
  - (c) the insurer or each of the insurers:
    - (i) is either authorised to carry on insurance business in Australia under the *Insurance Act 1973* or is approved by the Chief Executive Medicare for the purposes of this subparagraph; and

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- (ii) is not a related body corporate of the participating MDO; and
- (d) the insurer or all the insurers have remained and will continue to remain liable to indemnify the person for claims against and by the person in relation to all those incidents (without any further premium payments by the person at any time after 30 June 2002); and
- (e) the person has given to the Chief Executive Medicare a certificate by the insurer, or (if there is more than one insurer) by each of the insurers, that paragraphs (a), (b), (c) and (d) apply in relation to the person.

**Subdivision C—Determining amount of UMP support payment**

**54 Annual subscription for base year**

*Background*

- (1) Under section 6 of the *Medical Indemnity (UMP Support Payment) Act 2002*, the amount of the UMP support payment imposed on a participating member of a participating MDO depends on the amount of the member's annual subscription for the base year.

*Membership subscription*

- (2) The member's annual subscription for the base year does not include:
  - (a) a fee paid, or a fee to the extent to which it is paid, by the member:
    - (i) to join the MDO initially; or
    - (ii) to re-join the MDO after having ceased to be a member of the MDO; or
  - (b) an amount paid by the member in response to a call made by the MDO; or
  - (c) any other prescribed amount.

*Base year*

- (3) The **base year** for the member is:

- (a) if an amount was payable by the member for membership of the participating MDO for a full year that commenced during the financial year that started on 1 July 2000—that full year; or
- (b) if no amount was payable by the member for membership of the participating MDO for a full year that commenced during that financial year—the most recent preceding full year for which an amount was payable by the member for membership of the MDO; or
- (c) if neither paragraph (a) nor paragraph (b) applies—the most recent period that started before 1 July 2000 and for which an amount was payable by the member for membership of the MDO.

### **Subdivision D—Annual reassessment of participating MDO’s IBNR exposure**

#### **55 Object of this Subdivision**

The object of this Subdivision is to allow the Minister to reassess a participating MDO’s IBNR exposure annually so that:

- (a) the amount of the UMP support payments imposed on its participating members; or
  - (b) the years that are contribution years for the MDO;
- can be adjusted (if necessary) to appropriately reflect the extent of the Commonwealth’s liability for IBNR indemnities in relation to the members and former members of the MDO.

#### **56 Process for annually reassessing IBNR exposure**

##### *Report by the Actuary*

- (1) For each contribution year for a participating MDO, the Actuary must give the Minister a written report that:
  - (a) states the Actuary’s assessment of the MDO’s IBNR exposure as at the end of the financial year that ends immediately before the start of that contribution year; and
  - (b) sets out the reasons for the assessment.

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- (2) In preparing the report, the Actuary must take into account any information that the Chief Executive Medicare gives the Actuary in relation to the MDO under subsection (6).

*Chief Executive Medicare's information gathering powers*

- (3) If the Chief Executive Medicare believes on reasonable grounds that a participating MDO is capable of giving information that is relevant to assessing the MDO's IBNR exposure as at the end of a financial year that ends immediately before the start of a contribution year for the MDO, the Chief Executive Medicare may request the MDO to give the Chief Executive Medicare the information.

Note: Failure to comply with the request is an offence (see section 73).

- (4) Without limiting subsection (3), the kind of information that may be requested includes information in the form of:
- (a) financial statements; and
  - (b) a report prepared by a suitably qualified actuary assessing the MDO's IBNR exposure as at the end of a financial year that ends immediately before the start of a contribution year for the MDO.
- (5) The request:
- (a) must be made in writing; and
  - (b) must state what information the MDO is to give to the Chief Executive Medicare; and
  - (c) may require the information to be verified by statutory declaration; and
  - (d) must specify the 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 is made.

- (6) The Chief Executive Medicare must give any information that the MDO gives the Chief Executive Medicare to the Actuary for the

purposes of preparing the report for the Minister under  
subsection (1).

## **Division 2—Run-off cover support payment**

### **Subdivision A—Introduction**

#### **57 Guide to the run-off cover support payment provisions**

- (1) Division 2B of Part 2 provides for the payment of run-off cover indemnities.
- (2) The *Medical Indemnity (Run-off Cover Support Payment) Act 2004* (the **Payment Act**):
  - (a) imposes payments on medical indemnity insurers for contribution years; and
  - (b) specifies the amount of those payments (by reference to an insurer's premium income for the contribution year).

This Division contains further provisions relating to the payment.

- (3) The following table tells you where to find the provisions dealing with various issues:

<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
1	which years are contribution years?	section 5 of the Payment Act
2	who must pay the run-off cover support payment?	section 58 of this Act
3	who is exempt from the run-off cover support payment?	section 59 of this Act
4	what is the amount of the run-off cover support payment?	section 6 of the Payment Act
5	what is the time for paying the run-off cover support payment?	sections 61 and 62 of this Act
6	when is late payment penalty payable?	section 65 of this Act
7	what method should be used to pay the run-off cover support payment?	section 66 of this Act

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Where to find the provisions on various issues		
Item	Issue	Provisions
8	what happens if an amount of run-off cover support payment is overpaid?	section 67 of this Act
9	how are run-off cover support payments and late payment penalties recovered?	sections 68 to 70 of this Act
10	what information has to be provided to the Chief Executive Medicare about run-off cover support payment matters?	sections 71 and 72 of this Act

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### **Subdivision B—Who pays run-off cover support payment**

#### **58 Who is liable to pay the run-off cover support payment**

A person is liable to pay a run-off cover support payment for a financial year if:

- (a) the person is a medical indemnity insurer; and
- (b) the financial year is a contribution year; and
- (c) the person is not exempt from the payment under section 59.

#### **59 Exemptions**

- (1) The regulations may provide that a person is exempt from run-off cover support payment in the circumstances specified in the regulations.
- (2) Regulations made for the purposes of subsection (1) may provide that a person is exempt from run-off cover support payment either generally or for a particular contribution year.

## **Division 2A—Competitive advantage payment**

### **Subdivision A—Introduction**

#### **59A Guide to the competitive advantage payment provisions**

- (1) The *Medical Indemnity (Competitive Advantage Payment) Act 2005* (the ***Payment Act***):
- (a) imposes payments on medical indemnity insurers for contribution years; and
  - (b) specifies the amount of those payments (by reference to the net IBNR exposure of the insurer's participating MDO for the contribution year).

This Division contains further provisions relating to the payment.

- (2) The following table tells you where to find the provisions dealing with various issues:

<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
1	which years are contribution years?	section 5 of the Payment Act
2	who must pay the competitive advantage payment?	section 59B of this Act
3	who is exempt from the competitive advantage payment?	section 59C of this Act
4	what is the amount of the competitive advantage payment?	section 6 of the Payment Act
5	what is the time for paying the competitive advantage payment?	section 61 of this Act
6	when is late payment penalty payable?	section 65 of this Act
7	what method should be used to pay the competitive advantage payment?	section 66 of this Act

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Where to find the provisions on various issues		
Item	Issue	Provisions
8	what happens if an amount of competitive advantage payment is overpaid?	section 67 of this Act
9	how are competitive advantage payments and late payment penalties recovered?	sections 68 to 70 of this Act
10	what information has to be provided to the Chief Executive Medicare about competitive advantage payment matters?	sections 71 and 72 of this Act

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**Subdivision B—Who pays competitive advantage payment**

**59B Who is liable to pay the competitive advantage payment**

A person is liable to pay a competitive advantage payment for a financial year if:

- (a) the person is a medical indemnity insurer; and
- (b) the financial year is a contribution year; and
- (c) the person is not exempt from the payment under section 59C.

**59C Exemptions**

- (1) The regulations may provide that a person is exempt from competitive advantage payment in the circumstances specified in the regulations.
- (2) Regulations made for the purposes of subsection (1) may provide that a person is exempt from competitive advantage payment either generally or for a particular contribution year.

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**Subdivision C—Annual reassessment of participating MDO’s net IBNR exposure**

**59D Object of this Subdivision**

The object of this Subdivision is to allow annual reassessment and publication of a participating MDO’s net IBNR exposure so that the competitive advantage payment reflects the competitive advantage that the participating MDO and any associated insurer enjoy.

**59E Process for annually reassessing net IBNR exposure**

*Report by the Actuary*

- (1) For each contribution year for a participating MDO, the Actuary must give the Minister a written report that:
  - (a) states the Actuary’s assessment of the MDO’s net IBNR exposure as at the end of the financial year that ends immediately before the start of that contribution year; and
  - (b) sets out the reasons for the assessment.
- (2) In preparing the report, the Actuary must take into account any information that the Chief Executive Medicare gives the Actuary in relation to the MDO under subsection (6).

*Chief Executive Medicare’s information gathering powers*

- (3) If the Chief Executive Medicare believes on reasonable grounds that a participating MDO is capable of giving information that is relevant to assessing the MDO’s net IBNR exposure as at the end of a financial year that ends immediately before the start of a contribution year for the MDO, the Chief Executive Medicare may request the MDO to give the Chief Executive Medicare the information.

Note: Failure to comply with the request is an offence (see section 73).

- (4) Without limiting subsection (3), the kind of information that may be requested includes information in the form of:
  - (a) financial statements; and

- (b) a report prepared by a suitably qualified actuary assessing the MDO's net IBNR exposure as at the end of a financial year that ends immediately before the start of a contribution year for the MDO.
- (5) The request:
  - (a) must be made in writing; and
  - (b) must state what information the MDO is to give to the Chief Executive Medicare; and
  - (c) may require the information to be verified by statutory declaration; and
  - (d) must specify the 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 is made.
- (6) The Chief Executive Medicare must give any information that the MDO gives the Chief Executive Medicare to the Actuary for the purposes of preparing the report for the Minister under subsection (1).

*Publishing net IBNR exposure*

- (7) The Minister must cause to be published in the *Gazette* a notice of the amount of any net IBNR exposure of an MDO stated in a report to the Minister under subsection (1).
- (8) A notice made under subsection (7) is not a legislative instrument.

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**Division 3—Administration of the medical indemnity payments**

**Subdivision A—Introduction**

**60 Guide to this Division**

- (1) This Division makes provision for the administration of the UMP support payments, run-off cover support payments and competitive advantage payments.
- (2) The following table tells you where to find the provisions dealing with various issues:

<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
1	what is the time for paying medical indemnity payments?	sections 61 and 62
3	when is late payment penalty payable?	sections 65 and 66B
4	what method should be used to pay medical indemnity payments?	sections 66 and 66A
5	what happens if medical indemnity payments are overpaid?	section 67
6	how are medical indemnity payments and late payment penalties recovered?	sections 68 to 70
7	what information has to be provided to the Chief Executive Medicare about medical indemnity payment matters?	sections 71 and 72

## **Subdivision B—Payment and collection of medical indemnity payments**

### **61 When medical indemnity payment must be paid**

Subject to section 62, a medical indemnity payment that a person is liable to pay for a contribution year becomes due and payable on the payment day for the payment worked out using the following table:

<b>Payment day for medical indemnity payment</b>		
<b>Item</b>	<b>A medical indemnity payment of this kind...</b>	<b>becomes due and payable on...</b>
1	UMP support payment	(a) 1 November in the contribution year; or (b) such later day as is specified in the regulations as the payment day for the contribution year either generally for all people or for the class of people that includes the person, as the case may be.
2	run-off cover support payment	(a) 30 June in the contribution year; or (b) such other day as is specified in the regulations as the payment day for the contribution year either generally for all people, for the class of people that includes the person or for the person, as the case may be.
3	competitive advantage payment	(a) 30 April in the contribution year; or (b) such other day as is specified in the regulations as the payment day for the contribution year either generally for all people, for the class of people that includes the person or for the person, as the case may be.

### **62 Deferral of payment day for UMP support payment**

- (1) A person who is liable to pay a UMP support payment for a contribution year may apply to the Chief Executive Medicare to defer the payment day for the payment for the person under this

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section. The person may apply even if the last contribution year for the payment has not been declared by regulations under the relevant medical indemnity payment legislation.

- (2) The application must be:
  - (a) in writing; and
  - (b) made before the payment becomes due and payable.
- (3) The Chief Executive Medicare may approve the application (the **current application**) if:
  - (a) the Chief Executive Medicare is satisfied that the person meets the conditions specified in the regulations; and
  - (b) at the time the Chief Executive Medicare approves the current application, either:
    - (i) the Chief Executive Medicare has not approved an application by the person to defer the payment day for a UMP support payment for an earlier contribution year under this section; or
    - (ii) each application by the person to defer the payment day for a UMP support payment for an earlier contribution year under this section that has been approved by the Chief Executive Medicare has subsequently been revoked or is in respect of a medical indemnity payment from which the person is exempt.
- (4) If the Chief Executive Medicare approves the application, the payment that the person is liable to pay becomes due and payable on:
  - (a) 1 November in the financial year immediately following the last contribution year; or
  - (b) such later day as is specified in the regulations either generally for all people or for the class of people that includes the person, as the case may be.
- (5) The Chief Executive Medicare must give the person a written notice that:
  - (a) states whether the application has been approved; and
  - (b) specifies the deferred payment day worked out under subsection (4); and

- (c) states the effect of whichever of subsections (7) and (8) applies.
- (6) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to approve an application under this section.
- Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.
- (7) If, before the deferred payment day worked out under subsection (4), either:
- (a) the person dies; or
  - (b) the person becomes exempt because of turning a particular age;
- the payment becomes due and payable immediately after the person dies or turns that age.

## **65 Late payment penalty**

- (1) If:
- (a) a person is liable to pay a medical indemnity payment; and
  - (b) the payment remains wholly or partly unpaid after it becomes due and payable;
- the person is liable to pay a late payment penalty under this section.
- (2) The late payment penalty is calculated:
- (a) at the prescribed rate; and
  - (b) on the unpaid amount of payment; and
  - (c) for the period:
    - (i) starting when the payment becomes due and payable; and
    - (ii) ending when the payment, and the penalty payable under this section in relation to the payment, have been paid in full.
- Paragraph (c) has effect subject to subsection (3).
- (3) The person is not liable to pay a late payment penalty under subsection (1) for any period after the person's death.
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- (4) The Chief Executive Medicare may remit the whole or a part of an amount of late payment penalty if the Chief Executive Medicare considers that there are good reasons for doing so.
- (5) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to remit, or to remit only part of, an amount of late payment penalty.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

## 66 Method of paying certain amounts

- (1) A medical indemnity payment must be paid:
  - (a) if the payment is all or part of a payment of an amount specified in an invoice, issued under section 66A by a medical indemnity insurer or an MDO, as an amount of UMP support payment that is payable—to the medical indemnity insurer or MDO; or
  - (b) in any other case—to the Chief Executive Medicare.
- (3) A late payment penalty payable under section 65 or 66B must be paid to the Chief Executive Medicare.
- (4) The regulations may specify methods for paying an amount referred to in subsection (1) or (3).
- (5) Paragraph (1)(a) does not apply to an amount recovered under section 68.

### 66A Collection of UMP support payments by medical indemnity insurers and MDOs

*When this section applies to a UMP support payment*

- (1) This section applies to a UMP support payment for a contribution year that is payable by a person if, at a time before the end of the contribution year:
  - (a) either:

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- (i) a medical indemnity insurer gives to the person an invoice stating the premium that is or will be payable for medical indemnity cover provided by a contract of insurance with the medical indemnity insurer; or
- (ii) subparagraph (i) does not apply, but an MDO gives to the person an invoice stating the subscription that is or will be payable for membership of the MDO; and
- (b) before that invoice was given to the person, the Chief Executive Medicare gave to the medical indemnity insurer or MDO a notice under subsection (2); and
- (c) that invoice is the first invoice that the medical indemnity insurer or MDO has given to the person, relating to the premium or subscription, since the Chief Executive Medicare gave the notice.

The medical indemnity insurer or MDO is the **collection body** for the UMP support payment.

*Chief Executive Medicare may give notice of liability to pay UMP support payment*

- (2) The Chief Executive Medicare may give to the collection body a notice that:
  - (a) states that the person is liable to pay a UMP support payment for the contribution year; and
  - (b) states the amount of UMP support payment that the person is liable to pay; and
  - (c) states the basis on which the amount of UMP support payment was worked out; and
  - (d) asks the collection body to include in its notice to the Chief Executive Medicare under paragraph (4)(c) other specified information, being information that:
    - (i) the Chief Executive Medicare believes on reasonable grounds the collection body is capable of giving; and
    - (ii) the Chief Executive Medicare believes on reasonable grounds that he or she requires for the purpose of determining the amount that the collection body must remit to the Chief Executive Medicare under paragraph (4)(b); and

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- (e) states that this section applies to the collection of the payment.
- (3) The Chief Executive Medicare must not give a notice under subsection (2) if:
  - (a) the person has already paid the UMP support payment to the Chief Executive Medicare, or has already been notified by the Chief Executive Medicare of his or her liability to pay the UMP support payment; or
  - (b) the person has notified the Chief Executive Medicare in writing that he or she does not wish this section to apply to the collection of UMP support payments that he or she is liable to pay.

*What the collection body for a UMP support payment must do*

- (4) The collection body for the UMP support payment must:
  - (a) in the next invoice that the collection body gives to the person for payment of a premium for medical indemnity cover or for payment of a membership subscription, include an amount for payment, to the collection body, of the UMP support payment; and
  - (b) within the period referred to in subsection (5), remit to the Chief Executive Medicare any amount that the person pays to the collection body under paragraph 66(1)(a) in discharge of the person's liability to pay the UMP support payment; and
  - (c) within that period, notify the Chief Executive Medicare in writing:
    - (i) who made the payment; and
    - (ii) the amount of the payment; and
    - (iii) if the payment was made after the payment day for the UMP support payment under section 61—the day on which the payment was made; and
  - (d) include in the notice under paragraph (c) any other information that the Chief Executive Medicare has, in his or her notice to the collection body under subsection (2), asked the collection body to include.

Note: Failure to comply with paragraph (a), (c) or (d) is an offence (see section 74A).

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- (5) The period for remitting an amount to the Chief Executive Medicare under paragraph (4)(b), and notifying the Chief Executive Medicare under paragraphs (4)(c) and (d), is the period starting on the day on which the amount is paid to the collection body and ending:
- (a) on that payment day; or
  - (b) 7 days after the day on which the amount is paid;
- whichever is later.

*Effect of payment to collection body*

- (6) A person's liability to the Commonwealth to pay UMP support payment is discharged to the extent that the amount of the payment is paid to the collection body under paragraph 66(1)(a).

*Collection body entitled to interest etc.*

- (7) If an amount is paid to the collection body under paragraph 66(1)(a), the collection body:
- (a) may, prior to remitting the amount to the Chief Executive Medicare under paragraph (4)(b) of this section, deposit the amount in an interest bearing account with an ADI; and
  - (b) is entitled to any interest payable on the amount so deposited.
- (8) In paragraph (7)(a):

**ADI** (authorised deposit-taking institution) means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

- (9) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of subsection (7).

**66B Late payment penalty for medical indemnity insurers and MDOs**

- (1) If:
- (a) a medical indemnity insurer or an MDO (the **collection body**) is liable under paragraph 66A(4)(b) to remit an amount to the Chief Executive Medicare; and

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- (b) all or part of the amount has not been remitted to the Chief Executive Medicare within the period referred to in subsection 66A(5);  
the collection body is liable to pay a late payment penalty under this section.
- (2) The late payment penalty is calculated:
  - (a) at the prescribed rate; and
  - (b) on the unpaid amount of the amount to be remitted; and
  - (c) for the period:
    - (i) starting when the amount becomes due and payable; and
    - (ii) ending when the amount, and the penalty payable under this section in relation to the amount, have been paid in full.
- (3) The Chief Executive Medicare may remit the whole or a part of an amount of late payment penalty if the Chief Executive Medicare considers that there are good reasons for doing so.
- (4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to remit, or to remit only part of, an amount of late payment penalty.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

## Subdivision C—Refunds

### 67 Refund of overpaid amounts

*Refund of overpaid medical indemnity payment and late payment penalty*

- (1) If a person overpays:
  - (a) a medical indemnity payment for a contribution year; or
  - (b) a late payment penalty in relation to a medical indemnity payment for a contribution year; or

(c) a late payment penalty in relation to an amount that a medical indemnity insurer or an MDO is required to remit to the Chief Executive Medicare under paragraph 66A(4)(b); the amount overpaid must be refunded to the person unless the amount has been previously repaid to the person in accordance with an authorisation under section 65 of the *Public Governance, Performance and Accountability Act 2013* (which deals with act of grace payments by the Commonwealth).

*Appropriation*

- (4) The Consolidated Revenue Fund is appropriated for the purpose of providing refunds under this section.

## **Subdivision D—Recovery of payment debt**

### **68 Recovery of payment debt**

- (1) A medical indemnity payment is a debt due to the Commonwealth.
- (2) An amount that a medical indemnity insurer or an MDO is required to remit to the Chief Executive Medicare under paragraph 66A(4)(b) is a debt due to the Commonwealth.
- (3) A late payment penalty payable under section 65 or 66B is a debt due to the Commonwealth.
- (4) The Chief Executive Medicare may recover an amount referred to in subsection (1), (2) or (3) as a debt by action in a court of competent jurisdiction.

### **69 Chief Executive Medicare may collect money from a person who owes money to a person**

*What this section does*

- (1) This section allows the Chief Executive Medicare to collect money from a person who owes money to a person (the *payment debtor*) who has a debt to the Commonwealth under section 68 (a *payment debt*).

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*The Chief Executive Medicare may give direction*

- (2) The Chief Executive Medicare may direct a person (the **third party**) who owes, or may later owe, money (the **available money**) to the payment debtor to pay some or all of the available money to the Chief Executive Medicare in accordance with the direction. The Chief Executive Medicare must give a copy of the direction to the payment debtor.

*Limit on directions*

- (3) The direction must:
- (a) not require an amount to be paid to the Chief Executive Medicare at a time before it becomes owing by the third party to the payment debtor; and
  - (b) specify a period of not less than 14 days within which the third party must comply with the direction.

*Third party to comply*

- (4) The third party commits an offence if the third party fails to comply with the direction.

Penalty: 20 penalty units.

- (5) The third party does not commit an offence against subsection (4) if the third party complies with the direction so far as the third party is able to do so.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (6) An offence against subsection (4) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

*Court orders*

- (7) If a person is convicted of an offence in relation to a failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Chief Executive Medicare an amount up to the amount involved in the failure of the third party.

*Indemnity*

- (8) Any payment made by the third party under this section is taken to have been made with the authority of the payment debtor and of all other persons concerned and the third party is indemnified for the payment.

*Notice*

- (9) If the whole of the payment debt of the payment debtor is discharged before any payment is made by the third party, the Chief Executive Medicare must immediately give notice to the third party of that fact.
- (10) If a part of the payment debt of the payment debtor is discharged before any payment is made by the third party, the Chief Executive Medicare must:
- (a) immediately give notice to the third party of that fact; and
  - (b) make an appropriate variation to the direction; and
  - (c) give a copy of the varied direction to the payment debtor.

*When third party is taken to owe money*

- (11) The third party is taken to owe money to the payment debtor if:
- (a) money is due or accruing by the third party to the payment debtor; or
  - (b) the third party holds money for or on account of the payment debtor; or
  - (c) the third party holds money on account of some other person for payment to the payment debtor; or
  - (d) the third party has authority from some other person to pay money to the payment debtor;
- whether or not the payment of the money to the payment debtor is dependent on a pre-condition that has not been fulfilled.

**70 Evidentiary certificates**

- (1) The Chief Executive Medicare may issue a written certificate:
- (a) stating that a person is liable to pay:

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- (i) a medical indemnity payment; or
  - (iii) a late payment penalty in relation to a medical indemnity payment; or
  - (iv) a late payment penalty in relation to an amount that a medical indemnity insurer or an MDO is required to remit to the Chief Executive Medicare under paragraph 66A(4)(b); and
- (b) setting out particulars of the liability.
- (2) In any civil proceedings under, or arising out of, this Act or the medical indemnity payment legislation, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.
- (4) The Chief Executive Medicare may certify that a document is a copy of a certificate issued under subsection (1).
- (5) This section applies to the certified copy as if it were the original.

## **Subdivision E—Information gathering processes**

### **71 Chief Executive Medicare may request information**

- (1) If the Chief Executive Medicare believes on reasonable grounds that a person is capable of giving information that is relevant to determining:
  - (a) whether a person is liable to pay a medical indemnity payment; or
  - (b) the amount of the medical indemnity payment a person is liable to pay; or
  - (c) whether a person has medical indemnity cover provided by a contract of insurance with a particular medical indemnity insurer; or
  - (d) whether a person is a member of a particular MDO;

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the Chief Executive Medicare may request the person to give the Chief Executive Medicare the information.

Note: Failure to comply with the request is an offence (see section 73).

- (2) Without limiting subsection (1), any of the following persons may be requested to provide information under that subsection:
- (a) an MDO;
  - (b) an insurer;
  - (c) a member, or former member, of an MDO;
  - (d) the legal personal representative of a person mentioned in paragraph (c).
- (3) The request:
- (a) must be made in writing; and
  - (b) must state what information must be given to the Chief Executive Medicare; and
  - (c) may require the information to be verified by statutory declaration; and
  - (d) must specify the 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 is made.

### **72 Chief Executive Medicare must be notified of a change in circumstances etc.**

- (1) A person who:
- (a) is exempt from a medical indemnity payment; and
  - (b) ceases to be exempt from the payment because:
    - (i) the person's circumstances change before the start of, or during, a contribution year; or
    - (ii) the person fails to satisfy a condition on which the exemption from the payment depends;
- must notify the Chief Executive Medicare of that change in circumstances or that failure, as the case may be.

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**Division 3** Administration of the medical indemnity payments

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Note: Failure to notify is an offence (see section 74).

- (2) The notification must:
- (a) be in writing; and
  - (b) set out details of the change in circumstances or failure of which the person is required to notify the Chief Executive Medicare under subsection (1); and
  - (c) be given to the Chief Executive Medicare within 28 days after the day on which the person becomes aware of the change in circumstances or failure, as the case may be.

## Division 4—Offences

### 73 Failing to give information

- (1) This section applies if a person is given a request for information under:
  - (a) subsection 56(3); or
  - (aa) subsection 59E(3); or
  - (b) subsection 71(1).
- (2) The person commits an offence if the person fails to comply with the request.

Penalty: 30 penalty units.
- (3) An individual is excused from complying with the request if the giving of the information might tend to incriminate the individual or expose the individual to a penalty.
- (4) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 74 Failing to notify

- (1) This section applies if section 72 requires a person to notify the Chief Executive Medicare, within a particular period, of a matter.
- (2) The person commits an offence if the person fails to notify the Chief Executive Medicare of that matter within that period.

Penalty: 30 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**74A Failing to comply with requirements for collecting UMP support payments**

- (1) This section applies if a medical indemnity insurer or an MDO is required to comply with paragraph 66A(4)(a), (c) or (d).
- (2) The medical indemnity insurer or MDO commits an offence if the medical indemnity insurer or MDO fails to comply with the requirement.

Penalty: 30 penalty units.

- (3) An individual is excused from complying with the request if the giving of the information might tend to incriminate the individual or expose the individual to a penalty.
- (4) An offence against this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part 4—Miscellaneous**

### **75 General administration of this Act and medical indemnity payment legislation**

The Chief Executive Medicare has the general administration of this Act and the medical indemnity payment legislation.

### **76 Additional functions of the Chief Executive Medicare**

In addition to the functions of the Chief Executive Medicare under the *Human Services (Medicare) Act 1973*, the Chief Executive Medicare has such additional functions as are conferred on the Chief Executive Medicare under this Act and the medical indemnity payment legislation.

### **77 Officers to observe secrecy**

- (1) In this section:

***medical indemnity legislation*** means:

- (a) this Act; or
- (b) the medical indemnity payment legislation.

***officer*** means a person performing duties, or exercising powers or functions, under or in relation to, the medical indemnity legislation.

***person to whom this section applies*** means a person who is or was an officer.

***protected document*** means a document that:

- (a) is obtained or made by a person to whom this section applies in the course of, or because of, the person's functions, powers or duties under or in relation to the medical indemnity legislation; and
- (b) contains information relating to a person's affairs.

***protected information*** means information that:

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- (a) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's functions, powers or duties under or in relation to the medical indemnity legislation; and
  - (b) relates to a person's affairs.
- (2) A person to whom this section applies commits an offence if:
  - (a) the person:
    - (i) makes a copy or other record of any protected information or of all or part of any protected document; or
    - (ii) discloses any protected information to another person; or
    - (iii) produces all or part of a protected document to another person; and
  - (b) in doing so, is not acting in the performance of his or her duties, or in the exercise of his or her powers or functions, under the medical indemnity legislation; and
  - (c) in doing so, is not acting for the purpose of enabling a person to perform functions under:
    - (i) the medical indemnity legislation; or
    - (ii) the *Health Insurance Act 1973*; or
    - (iii) a medicare program; or
    - (iv) the *National Health Act 1953*; or
    - (v) the *Private Health Insurance Act 2007*.

Penalty: Imprisonment for 2 years.

- (3) Despite subsection (2), the Secretary or the Chief Executive Medicare may:
  - (a) if the Minister certifies, in writing, that it is necessary in the public interest that any protected information should be divulged, divulge that information to such person as the Minister directs; or
  - (b) divulge any protected information to a person who, in the opinion of the Minister, is expressly or impliedly authorised by the person to whom the information relates to obtain it.

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (4) Despite subsection (2), the Secretary or the Chief Executive Medicare may divulge any protected information to an authority or person if:
- (a) the authority or person is a prescribed authority or person for the purposes of this subsection; and
  - (b) the information is information of a kind that may, in accordance with the regulations, be provided to the authority or person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (5) If protected information is divulged to an authority or person under subsection (3) or (4):
- (a) the authority or person; and
  - (b) any person or employee under the control of the authority or person;
- is, in respect of that information, subject to the same rights, privileges, obligations and liabilities under subsection (2) as if he or she were a person performing duties under the medical indemnity legislation and had acquired the information in the performance of those duties.
- (5A) Despite subsection (2), an officer may make a record of information with the express or implied authorisation of the person to whom the information relates.
- (6) This section does not prohibit the divulging or communicating to a person of information that relates to the person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

**78 Act not to apply in relation to State insurance within a State**

If, but for this section, a provision of this Act:

- (a) would have a particular application; and

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(b) by virtue of having that application, would be a law with respect to State insurance not extending beyond the limits of the State concerned;  
the provision is not to have that application.

**79 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;and, in particular, prescribing penalties, not exceeding 10 penalty units, for offences against the regulations.
- (2) Without limiting subsection (1), the regulations may make provision for the qualifications of actuaries preparing reports for the purposes of this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes  
Endnote 2—Abbreviation key  
Endnote 3—Legislation history  
Endnote 4—Amendment history  
Endnote 5—Uncommenced amendments  
Endnote 6—Modifications  
Endnote 7—Misdescribed amendments  
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

## Endnotes

### Endnote 1—About the endnotes

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#### **Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

#### **Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

#### **Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

**Endnote 2—Abbreviation key**

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnotes

### Endnote 3—Legislation history

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#### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Medical Indemnity Act 2002	132, 2002	19 Dec 2002	1 Jan 2003	—
Medical Indemnity Amendment Act 2003	121, 2003	5 Dec 2003	ss. 1–3, Schedule 1 (items 3, 5–8, 12, 13, 18, 21–26) and Schedule 2: 5 Dec 2003 Remainder: 1 July 2003 (see s. 2(1))	Sch. 1 (items 24–26) and Sch. 2 (item 33)
Medical Indemnity Amendment Act 2004	17, 2004	23 Mar 2004	24 Mar 2004	Sch. 4 (item 7)
Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004	77, 2004	23 June 2004	Schedule 1 (items 1–35) and Schedule 2 (items 3–15): 1 July 2004 Schedule 4 (items 1–5, 9) and Schedule 6 (items 3–6): Royal Assent Schedule 4 (items 6–8): 24 June 2004 Schedule 6 (item 1): (a) Schedule 6 (item 1A): (a) Schedule 6 (item 2): (a)	Sch. 1 (item 19) and Sch. 2 (item 15)

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Medical Indemnity Legislation Amendment Act 2005	25, 2005	21 Mar 2005	Schedule 1 (items 1–5, 9, 13, 14): <i>(b)</i> Schedule 1 (items 6, 8), Schedule 2 (items 1–10, 14) and Schedule 3 (items 2, 3, 8, 9, 12, 17–21): Royal Assent Schedule 1 (item 7) and Schedule 3 (items 1, 4, 10, 11, 13, 14): <i>(b)</i> Schedule 1 (items 10–12) and Schedule 2 (items 11–13): 22 Mar 2005 Schedule 3 (items 5–7): <i>(b)</i> Schedule 3 (items 15, 16): <i>(b)</i>	Sch. 1 (item 3) and Sch. 3 (item 21)
Human Services Legislation Amendment Act 2005	111, 2005	6 Sept 2005	Schedule 2 (items 399–549): 1 Oct 2005	—
Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005	126, 2005	19 Oct 2005	Schedule 1 (items 3–13) and Schedule 2 (items 1–5): 1 July 2005 Schedule 3: <i>(c)</i>	—
Health Legislation Amendment Act 2005	155, 2005	19 Dec 2005	Schedule 4: 1 Oct 2005	—
Medical Indemnity Legislation Amendment Act 2006	116, 2006	4 Nov 2006	Schedule 1 (item 1): 1 July 2004 Schedule 1 (items 2–10) and Schedule 2 (items 1–14): Royal Assent	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007	32, 2007	30 Mar 2007	Schedule 2 (item 74): 1 Apr 2007 ( <i>see</i> s. 2(1))	—
Health Legislation Amendment (Midwives and Nurse Practitioners) Act 2010	29, 2010	12 Apr 2010	Schedule 2 (items 4–8): 1 July 2010 ( <i>see</i> s. 2(1))	—
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Schedule 4 (items 286–357A): 1 July 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (item 760) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (item 6): ( <i>d</i> )	—

(a) Subsection 2(1) (items 13, 13A and 14) of the *Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004* provide as follows:

- (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
13. Schedule 6, item 1	Immediately after the commencement of the <i>Medical Indemnity Amendment Act 2004</i> .	24 March 2004

## Endnote 3—Legislation history

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
13A. Schedule 6, item 1A	Immediately after the commencement of the <i>Medical Indemnity Act 2002</i> .	1 January 2003
14. Schedule 6, item 2	Immediately after the commencement of Schedule 2 to the <i>Medical Indemnity Amendment Act 2003</i> .	5 December 2003
(b) Subsection 2(1) (items 2, 4, 6, 8, 14, 16, 17, 19, 21 and 22) of the <i>Medical Indemnity Legislation Amendment Act 2005</i> provide as follows:		
(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.		
Provision(s)	Commencement	Date/Details
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
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
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
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
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
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

## Endnotes

### Endnote 3—Legislation history

Provision(s)	Commencement	Date/Details
17. Schedule 3, items 5 to 7	Immediately after the commencement of the <i>Medical Indemnity Act 2002</i> .	1 January 2003
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
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

- (c) Subsection 2(1) (item 3) of the *Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005* provides as follows:
- (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.

Provision(s)	Commencement	Date/Details
3. Schedule 3	Immediately after the commencement of Schedule 2 to the <i>Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004</i> .	1 July 2004

- (d) Subsection 2(1) (item 6) of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* provides as follows:
- (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.

Provision(s)	Commencement	Date/Details
6. Schedules 6 to 12	Immediately after the commencement of section 6 of the <i>Public Governance, Performance and Accountability Act 2013</i> .	1 July 2014

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
Heading to s. 3.....	am. No. 17, 2004
s. 3.....	am. No. 121, 2003; Nos. 17 and 77, 2004; No. 126, 2005
s. 4.....	am. No. 121, 2003; Nos. 17 and 77, 2004; Nos. 25, 111 and 126, 2005; No. 29, 2010; No. 32, 2011
s. 7.....	am. No. 77, 2004
s. 8.....	am. No. 25, 2005
s. 8A.....	ad. No. 126, 2005
<b>Part 2</b>	
<b>Division 1</b>	
<b>Subdivision A</b>	
s. 10.....	am. No. 77, 2004; Nos. 25 and 111, 2005; No. 32, 2011
<b>Subdivision B</b>	
s. 12.....	am. No. 116, 2006
Subhead. to s. 13(3) .....	am. No. 111, 2005; No. 32, 2011
s. 13.....	am. No. 111, 2005; No. 32, 2011
<b>Subdivision C</b>	
s. 14.....	am. No. 25, 2005
<b>Subdivision D</b>	
ss. 16, 17.....	am. No. 111, 2005; No. 32, 2011
s. 19.....	am. No. 77, 2004; No. 111, 2005; No. 32, 2011
s. 22.....	am. No. 116, 2006
Subhead. to s. 23(3) .....	am. No. 111, 2005; No. 32, 2011
s. 23.....	am. No. 111, 2005; No. 32, 2011
<b>Subdivision E</b>	
s. 24.....	am. No. 111, 2005; No. 32, 2011
Heading to s. 25.....	am. No. 111, 2005; No. 32, 2011
s. 25.....	am. No. 111, 2005; No. 32, 2011
Heading to s. 26.....	am. No. 111, 2005; No. 32, 2011
ss. 26, 27.....	am. No. 111, 2005; No. 32, 2011

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Subdivision F</b>	
Subdiv. F of Div. 1 of Part 2.....	ad. No. 77, 2004
s. 27A .....	ad. No. 77, 2004
	am. No. 25, 2005; No. 116, 2006
Heading to s. 27B .....	am. No. 111, 2005; No. 32, 2011
s. 27B .....	ad. No. 77, 2004
	am. No. 111, 2005; No. 32, 2011
<b>Division 2</b>	
<b>Subdivision A</b>	
s. 28 .....	am. Nos. 25 and 111, 2005; No. 29, 2010; No. 32, 2011
s. 29 .....	am. No. 25, 2005
<b>Subdivision B</b>	
s. 30 .....	am. No. 121, 2003; No. 77, 2004; No. 25, 2005; No. 29, 2010
Note to s. 30(2) .....	rep. No. 121, 2003
s. 34 .....	am. No. 25, 2005
<b>Subdivision C</b>	
Subdiv. C of Div. 2 of Part 2 ....	ad. No. 25, 2005
s. 34AA .....	ad. No. 25, 2005
Heading to s. 34AB .....	am. No. 111, 2005; No. 32, 2011
s. 34AB.....	ad. No. 25, 2005
	am. No. 111, 2005; No. 32, 2011
<b>Division 2A</b>	
Div. 2A of Part 2 .....	ad. No. 121, 2003
<b>Subdivision A</b>	
s. 34A .....	ad. No. 121, 2003
	am. No. 111, 2005; No. 29, 2010; No. 32, 2011
ss. 34B, 34C .....	ad. No. 121, 2003
Heading to s. 34D.....	am. No. 77, 2004
s. 34D .....	ad. No. 121, 2003
	am. No. 77, 2004
<b>Subdivision B</b>	
Heading to s. 34E .....	am. No. 111, 2005; No. 32, 2011

## Endnote 4—Amendment history

Provision affected	How affected
Subhead. to s. 34E(5) .....	am. No. 111, 2005; No. 32, 2011
s. 34E.....	ad. No. 121, 2003
	am. No. 77, 2004; Nos. 25 and 111, 2005; No. 29, 2010; No. 32, 2011
s. 34F.....	ad. No. 121, 2003
	am. No. 25, 2005; No. 46, 2011
s. 34G .....	ad. No. 121, 2003
	am. No. 25, 2005
ss. 34H, 34I.....	ad. No. 121, 2003
	am. No. 111, 2005; No. 32, 2011
Heading to s. 34J .....	am. No. 111, 2005; No. 32, 2011
s. 34J.....	ad. No. 121, 2003
	am. No. 111, 2005; No. 32, 2011
Subhead. to s. 34K(7) .....	am. No. 111, 2005; No. 32, 2011
s. 34K .....	ad. No. 121, 2003
	am. No. 111, 2005; No. 32, 2011
<b>Subdivision C</b>	
s. 34L.....	ad. No. 121, 2003
	am. Nos. 25 and 111, 2005; No. 32, 2011
ss. 34M–34P .....	ad. No. 121, 2003
Subhead. to s. 34Q(2) .....	am. No. 111, 2005; No. 32, 2011
s. 34Q .....	ad. No. 121, 2003
	am. No. 111, 2005; No. 32, 2011
s. 34R .....	ad. No. 121, 2003
<b>Subdivision D</b>	
s. 34S.....	ad. No. 121, 2003
	am. No. 77, 2004
s. 34T.....	ad. No. 121, 2003
	am. No. 77, 2004; No. 111, 2005; No. 32, 2011
Heading to s. 34U .....	am. No. 111, 2005; No. 32, 2011
s. 34U .....	ad. No. 121, 2003
	am. No. 111, 2005; No. 32, 2011
Heading to s. 34V .....	am. No. 111, 2005; No. 32, 2011

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s. 34V .....	ad. No. 121, 2003 am. No. 111, 2005; No. 32, 2011
s. 34W .....	ad. No. 121, 2003 am. No. 111, 2005; No. 32, 2011
<b>Subdivision E</b>	
s. 34X .....	ad. No. 121, 2003 am. No. 25, 2005; No. 116, 2006
Heading to s. 34Y .....	am. No. 111, 2005; No. 32, 2011
s. 34Y .....	ad. No. 121, 2003 am. No. 111, 2005; No. 32, 2011
<b>Subdivision F</b>	
s. 34Z.....	ad. No. 121, 2003
<b>Division 2B</b>	
Div. 2B of Part 2.....	ad. No. 77, 2004
<b>Subdivision A</b>	
s. 34ZA.....	ad. No. 77, 2004 am. No. 111, 2005; No. 32, 2011
s. 34ZB.....	ad. No. 77, 2004 am. Nos. 25 and 111, 2005; No. 116, 2006; No. 32, 2011
<b>Subdivision B</b>	
s. 34ZC .....	ad. No. 77, 2004 am. No. 111, 2005; No. 116, 2006; No. 32, 2011
ss. 34ZD, 34ZE.....	ad. No. 77, 2004 am. No. 116, 2006
ss. 34ZF, 34ZG.....	ad. No. 77, 2004
s. 34ZH.....	ad. No. 77, 2004 am. No. 116, 2006
<b>Subdivision C</b>	
s. 34ZI .....	ad. No. 77, 2004
s. 34ZJ .....	ad. No. 77, 2004 am. No. 111, 2005; No. 32, 2011
Heading to s. 34ZK.....	am. No. 111, 2005; No. 32, 2011

## Endnote 4—Amendment history

Provision affected	How affected
s. 34ZK.....	ad. No. 77, 2004
	am. No. 111, 2005; No. 32, 2011
Heading to s. 34ZL.....	am. No. 111, 2005; No. 32, 2011
ss. 34ZL, 34ZM.....	ad. No. 77, 2004
	am. No. 111, 2005; No. 32, 2011
<b>Subdivision D</b>	
s. 34ZN.....	ad. No. 77, 2004
	am. No. 116, 2006
Heading to s. 34ZO.....	am. No. 111, 2005; No. 32, 2011
s. 34ZO.....	ad. No. 77, 2004
	am. No. 111, 2005; No. 32, 2011
<b>Subdivision E</b>	
s. 34ZP.....	ad. No. 77, 2004
	am. No. 116, 2006
ss. 34ZQ–34ZS.....	ad. No. 77, 2004
s. 34ZT.....	ad. No. 77, 2004
	am. No. 111, 2005; No. 32, 2011
<b>Subdivision F</b>	
Heading to s. 34ZU.....	am. No. 111, 2005; No. 32, 2011
s. 34ZU.....	ad. No. 77, 2004
	am. No. 111, 2005; No. 116, 2006; No. 32, 2011
s. 34ZV.....	ad. No. 77, 2004
	am. No. 25, 2005
ss. 34ZW, 34ZX.....	ad. No. 77, 2004
<b>Division 3</b>	
<b>Subdivision A</b>	
s. 35.....	am. No. 121, 2003; No. 77, 2004; No. 111, 2005; No. 32, 2011
<b>Subdivision B</b>	
Heading to s. 36.....	am. No. 121, 2003; No. 77, 2004
s. 36.....	am. No. 121, 2003; No. 77, 2004; No. 111, 2005; No. 32, 2011
Heading to s. 37.....	am. No. 121, 2003; No. 77, 2004
s. 37.....	am. No. 121, 2003; No. 77, 2004; No. 111, 2005; No. 32, 2011

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
ss. 37A, 37B .....	ad. No. 121, 2003 am. No. 111, 2005; No. 32, 2011
<b>Subdivision C</b>	
Heading to s. 38 .....	am. No. 111, 2005; No. 32, 2011
s. 38 .....	am. No. 121, 2003; No. 111, 2005; No. 32, 2011
Heading to s. 39 .....	rs. No. 121, 2003
s. 39 .....	am. No. 121, 2003; No. 77, 2004; Nos. 25 and 111, 2005; No. 32, 2011
s. 40 .....	am. Nos. 111 and 126, 2005; No. 116, 2006; No. 32, 2011
<b>Subdivision D</b>	
s. 41 .....	am. No. 121, 2003; No. 77, 2004; No. 111, 2005; No. 32, 2011
<b>Subdivision E</b>	
Heading to s. 42 .....	am. No. 111, 2005; No. 32, 2011
Subhead. to s. 42(2) .....	am. No. 111, 2005; No. 32, 2011
s. 42 .....	am. No. 121, 2003; No. 77, 2004; No. 111, 2005; No. 32, 2011
<b>Division 4</b>	
s. 43 .....	am. Nos. 17 and 77, 2004; No. 25, 2005; No. 116, 2006
Heading to s. 44 .....	am. No. 111, 2005; No. 32, 2011
s. 44 .....	am. No. 111, 2005; No. 32, 2011
Heading to s. 44A .....	am. No. 111, 2005; No. 32, 2011
s. 44A .....	ad. No. 17, 2004 am. No. 111, 2005; No. 32, 2011
Heading to s. 44B .....	am. No. 111, 2005; No. 32, 2011
s. 44B .....	ad. No. 77, 2004 am. Nos. 25 and 111, 2005; No. 32, 2011
<b>Division 5</b>	
s. 45 .....	am. No. 121, 2003; No. 77, 2004; No. 25, 2005
s. 46 .....	am. No. 121, 2003; No. 77, 2004; No. 111, 2005; No. 32, 2011
s. 47A .....	ad. No. 77, 2004
<b>Division 6</b>	
s. 48 .....	am. No. 121, 2003; Nos. 17 and 77, 2004; No. 25, 2005
<b>Part 3</b>	
Heading to Part 3 .....	rs. No. 17, 2004

## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 1</b>	
Heading to Div. 1 of Part 3 .....	rs. No. 17, 2004
<b>Subdivision A</b>	
Heading to s. 50 .....	am. No. 17, 2004
s. 50 .....	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
<b>Subdivision B</b>	
Heading to Subdiv. B of .....	rs. No. 17, 2004
Div. 1 of Part 3	
Heading to s. 51 .....	am. No. 17, 2004
s. 51 .....	am. No. 17, 2004
s. 52 .....	am. No. 121, 2003; No. 17, 2004; Nos. 111 and 126, 2005; No. 32, 2011
s. 53 .....	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
<b>Subdivision C</b>	
Heading to Subdiv. C of .....	rs. No. 17, 2004
Div. 1 of Part 3	
s. 54 .....	am. No. 17, 2004
<b>Subdivision D</b>	
s. 55 .....	am. No. 17, 2004
Subhead. to s. 56(3) .....	am. No. 111, 2005; No. 32, 2011
s. 56 .....	am. No. 111, 2005; No. 32, 2011
<b>Division 2</b>	
Div. 2 of Part 3 .....	rs. No. 77, 2004
<b>Subdivision A</b>	
s. 57 .....	rs. No. 77, 2004
	am. No. 111, 2005; No. 32, 2011
<b>Subdivision B</b>	
s. 58 .....	rs. No. 77, 2004
	am. No. 126, 2005
s. 59 .....	am. No. 121, 2003
	rs. No. 77, 2004
<b>Division 2A</b>	
Div. 2A of Part 3 .....	ad. No. 126, 2005

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Subdivision A</b>	
s. 59A .....	ad. No. 126, 2005 am. No. 155, 2005; No. 32, 2011
<b>Subdivision B</b>	
ss. 59B, 59C .....	ad. No. 126, 2005
<b>Subdivision C</b>	
s. 59D .....	ad. No. 126, 2005
Subhead. to s. 59E(3) .....	am. No. 155, 2005; No. 32, 2011
s. 59E.....	ad. No. 126, 2005 am. No. 155, 2005; No. 32, 2011
<b>Division 3</b>	
Heading to Div. 3 of Part 3 .....	rs. No. 17, 2004
<b>Subdivision A</b>	
s. 60 .....	am. Nos. 17 and 77, 2004; Nos. 111 and 126, 2005; No. 32, 2011
<b>Subdivision B</b>	
Heading to Subdiv. B of .....	rs. No. 17, 2004
Div. 3 of Part 3	
Heading to s. 61 .....	am. No. 17, 2004
s. 61 .....	am. No. 121, 2003; Nos. 17 and 77, 2004; No. 126, 2005
Heading to s. 62 .....	am. Nos. 17 and 77, 2004
s. 62 .....	am. No. 121, 2003; Nos. 17 and 77, 2004; No. 111, 2005; No. 32, 2011
ss. 63, 64.....	am. No. 121, 2003 rep. No. 17, 2004
ss. 65, 66.....	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
Subhead. to s. 66A(2) .....	am. No. 111, 2005; No. 32, 2011
s. 66A .....	ad. No. 17, 2004 am. No. 77, 2004; No. 111, 2005; No. 32, 2011
s. 66B .....	ad. No. 17, 2004 am. No. 111, 2005; No. 32, 2011
<b>Subdivision C</b>	
Subhead. to s. 67(1) .....	am. No. 17, 2004

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## Endnote 4—Amendment history

Provision affected	How affected
s. 67 .....	am. No. 121, 2003; No. 17, 2004; No. 111, 2005; No. 32, 2011; No. 62, 2014
<b>Subdivision D</b>	
Heading to Subdiv. D of.....	rs. No. 17, 2004
Div. 3 of Part 3	
Heading to s. 68 .....	am. No. 17, 2004
s. 68 .....	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
Heading to s. 69 .....	am. No. 111, 2005; No. 32, 2011
Subhead. to s. 69(2) .....	am. No. 111, 2005; No. 32, 2011
ss. 69, 70.....	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
<b>Subdivision E</b>	
Heading to s. 71 .....	am. No. 111, 2005; No. 32, 2011
s. 71 .....	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
Heading to s. 72 .....	am. No. 111, 2005; No. 32, 2011
s. 72 .....	rs. No. 121, 2003
	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
<b>Division 4</b>	
s. 73 .....	am. No. 126, 2005
s. 74 .....	am. No. 121, 2003; No. 111, 2005; No. 32, 2011
s. 74A .....	ad. No. 17, 2004
<b>Part 4</b>	
Heading to s. 75 .....	am. No. 17, 2004
s. 75 .....	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
Heading to s. 76 .....	am. No. 111, 2005; No. 32, 2011
s. 76 .....	am. No. 17, 2004; No. 111, 2005; No. 32, 2011
s. 77 .....	am. No. 17, 2004; No. 111, 2005; No. 32, 2007; No. 32, 2011

## **Endnotes**

Endnote 5—Uncommenced amendments [none]

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**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**