



Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003

Statutory Rules 2003 No. 109 as amended

made under the

*Medical Indemnity (Prudential Supervision and Product
Standards) Act 2003*

This compilation was prepared on 28 August 2006
taking into account amendments up to SLI 2006 No. 232

The text of any of those amendments not in force
on that date is appended in the Notes section

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Part 1 Preliminary

1 Name of Regulations [see Note 1]

These Regulations are the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*.

2 Commencement [see Note 1]

These Regulations commence on the commencement of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

3 Definitions

In these Regulations:

Act means the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

private medical practice has the meaning given by subsection 34ZB (5) of the *Medical Indemnity Act 2002*.

4 Application of Act — prescribed arrangements

- (1) For paragraph 8 (2) (e) of the Act, the following arrangements are prescribed:
 - (a) an arrangement under which a person provides medical indemnity cover to an oral surgeon solely in relation to dental care:
 - (i) provided by the oral surgeon; and
 - (ii) in relation to which the oral surgeon is registered or licensed as a dental practitioner under a law of a State or Territory;
 - (b) an arrangement under which a person provides medical indemnity cover to a maxillo-facial surgeon solely in relation to dental care:
 - (i) provided by the maxillo-facial surgeon; and

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- (ii) in relation to which the maxillo-facial surgeon is registered or licensed as a dental practitioner under a law of a State or Territory;
- (c) an arrangement under which:
 - (i) medical indemnity cover is provided, by a training institution that provides training in subjects relevant to the provision of health care, to a person who:
 - (A) provides the training on behalf of the training institution in any capacity (including as an employee, a contractor to the training institution or a volunteer); or
 - (B) assists in the provision of the training on behalf of the training institution; or
 - (C) is receiving that training;to the extent only that the arrangement provides medical indemnity cover in relation to incidents that occur in the course of the training; or
 - (ii) a person mentioned in subparagraph (i) is indemnified indirectly, through the training institution as an entity interposed between the provider of the medical indemnity cover and the person, in relation to claims that may be made against the person in relation to health care incidents, to the extent only that the arrangement provides medical indemnity cover in relation to incidents that occur in the course of the training;
- (d) an arrangement under which:
 - (i) medical indemnity cover is provided, by a training institution that provides training in subjects relevant to the provision of health care, to a person who:
 - (A) is a member of the staff of the training institution in any capacity (including as an employee, a contractor to the training institution or a volunteer) or a student of the training institution; and

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- (B) provides health care to the public as a member of the staff, or as a student, of the training institution;
to the extent only that the arrangement provides medical indemnity cover in relation to incidents that occur in the course of the provision of the health care; or
 - (ii) a person mentioned in subparagraph (i) is indemnified indirectly, through the training institution as an entity interposed between the provider of the medical indemnity cover and the person, in relation to claims that may be made against the person in relation to health care incidents, to the extent only that the arrangement provides medical indemnity cover in relation to incidents that occur in the course of the provision of the health care;
- (e) an arrangement under which a person provides medical indemnity cover to a health care professional, if:
 - (i) the health care professional provides a particular kind of health care; and
 - (ii) health care professionals providing that kind of health care are not required to be licensed or registered, in relation to the provision of the health care, by or under any law of any State or Territory;
- (f) an arrangement under which a health care professional is indemnified indirectly, through:
 - (i) the Commonwealth; or
 - (ii) a public authority of the Commonwealth; or
 - (iii) an instrumentality or agency of the Crown in right of the Commonwealth; or
 - (iv) a State; or
 - (v) a public authority of a State; or
 - (vi) an instrumentality or agency of the Crown in right of a State; or
 - (vii) a Territory; or
 - (viii) a public authority of a Territory; or

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- (ix) an instrumentality or agency of the Crown in right of a Territory;
as an entity interposed between the provider of the medical indemnity cover and the health care professional, in relation to claims that may be made against the health care professional in relation to health care incidents;
- (g) an arrangement under which a person provides medical indemnity cover to:
 - (i) a voluntary organisation; or
 - (ii) a health care professional;to the extent only that the arrangement provides medical indemnity cover to the health care professional in relation to incidents that occur in the course of the provision of gratuitous health care by the health care professional for the voluntary organisation on a voluntary basis;
- (h) an arrangement:
 - (i) made as the result of an agreement or understanding between:
 - (A) a health care professional; and
 - (B) the health care professional's employer; and
 - (ii) in accordance with which:
 - (A) either or both of the health care professional and the employer become the beneficiaries of an indemnity in relation to claims that may be made in relation to health care incidents; and
 - (B) the indemnity is provided by a general insurer or a Lloyd's underwriter (within the meaning of the *Insurance Act 1973*);
- (i) an arrangement:
 - (i) made as the result of an agreement or understanding between:
 - (A) a health care professional; and
 - (B) an entity that is both the health care professional's employer and a wholly-owned subsidiary of another entity; and

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- (ii) in accordance with which:
 - (A) 1 or more of the health care professional, the employer and the owning entity become the beneficiaries of an indemnity in relation to claims that may be made in relation to health care incidents; and
 - (B) the indemnity is provided by a general insurer or a Lloyd's underwriter (within the meaning of the *Insurance Act 1973*);
- (j) an arrangement under which:
 - (i) a health care professional who performs services as a contractor to:
 - (A) the MIA Group Limited; or
 - (B) a wholly-owned subsidiary of the MIA Group Limited; or
 - (C) if the MIA Group Limited merges with the DCA Group Limited — the merged entity;is indemnified in relation to claims that may be made against the health care professional in relation to health care incidents; and
 - (ii) the indemnity is insured with a general insurer or a Lloyd's underwriter (within the meaning of the *Insurance Act 1973*);
- (k) an arrangement in accordance with which either or both of:
 - (i) a health care professional; and
 - (ii) the health care professional's employer;are the beneficiaries of an indemnity under a public liability policy in relation to health care provided to the employer's employees;
- (l) an arrangement under which either or both of:
 - (i) a health care professional; and
 - (ii) a person to whom the health care professional is contracted to provide medical services;are the beneficiaries of an indemnity under a public liability policy in relation to health care provided to

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employees of the person to whom the health care professional is contracted to provide medical services;

- (m) an arrangement under which a person who is not an insurer under a contract of insurance that provides medical indemnity cover to a health care professional bears any excess or deductible that applies under the insurance policy;
- (n) an arrangement under which a person provides medical indemnity cover for the conduct of health care-related research.

Example of a training institution for paragraphs (c) and (d)

A university.

Note It is intended that prescription, for paragraph 8 (2) (e) of the Act, of the arrangements mentioned in paragraphs (d), (g), (h), (i) and (j) will be temporary.

- (2) For paragraph 8 (2) (e) of the Act, a contract of insurance is a prescribed arrangement to the extent to which it is a contract of reinsurance.

Note The Act does not apply to a prescribed arrangement.

Part 2 Prudential requirements for provision of medical indemnity cover

5 **APRA determination that minimum capital requirements do not apply — application form**

For subsection 13 (2) of the Act, the form of an application to APRA is set out in Schedule 1.

Note The application is for a determination by APRA that the minimum capital requirements determined by APRA do not apply to the applicant.

6 **APRA determination that minimum capital requirements do not apply — prescribed bodies corporate**

For subparagraph 13 (3) (a) (ii) of the Act, the following bodies corporate are prescribed:

- (a) Australasian Medical Insurance Limited;
- (b) Health Professionals Insurance Australia Pty Ltd;
- (c) Medical Indemnity Company of WA Pty Ltd;
- (d) Medical Indemnity Australia Pty Ltd;
- (e) Professional Indemnity Insurance Company Australia Pty Limited.

7 **APRA determination that minimum capital requirements do not apply — funding plan**

For subparagraph 13 (3) (d) (i) of the Act, the form of a funding plan is set out in Schedule 2.

Note A funding plan is required as part of an application under subsection 13 (1) of the Act for a determination by APRA that the minimum capital requirements determined by APRA do not apply to the applicant.

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Part 3 Product standards for medical indemnity insurance contracts

8 Additional offer of run-off cover when particular events happen during claims period for regulated insurance contract

- (1) This regulation applies in relation to a health care professional, mentioned in paragraph 23 (1) (a) of the Act, who is a medical practitioner (a **retired practitioner**).
- (2) For paragraph 23 (1) (b) of the Act:
 - (a) the prescribed event in relation to the retired practitioner is that he or she has permanently ceased private medical practice aged less than 65 years; and
 - (b) the prescribed event is taken to have occurred whether or not the retired practitioner proposes to be available to provide medical services on an occasional and gratuitous basis after ceasing private medical practice.

Note After a prescribed event, the insurer that provides medical indemnity cover must make an offer to provide medical indemnity cover in relation to otherwise uncovered prior incidents: see Division 2 of Part 3 of the Act.

- (3) For subparagraph 23 (1) (c) (i) of the Act, and subject to subregulation (4), an offer made in relation to the retired practitioner must satisfy the following requirements:
 - (a) the offer must be made to a retired practitioner who states to the insurer that he or she intends to cease private medical practice as a health care professional for more than 12 months;
 - (b) the offer must be to provide medical indemnity cover in relation to claims that are made during a period that includes the whole of the period (the **first period**):
 - (i) starting when the prescribed event occurs; and
 - (ii) ending at the end of the claims period for the medical indemnity cover that was applicable immediately before the prescribed event;

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unless medical indemnity cover is in place, at the occurrence of the prescribed event, and continues to operate in relation to claims that are made during the first period;

- (c) the offer must be to provide medical indemnity cover that:
 - (i) includes an obligation for the insurer to offer to renew the cover annually after:
 - (A) if medical indemnity cover is in place, at the occurrence of the prescribed event, and continues to operate in relation to claims that are made during the first period — the end of the claims period for that cover; or
 - (B) in any other case — the end of the first period; and
 - (ii) specifies that the total period during which the cover may be renewed, in accordance with the offers mentioned in subparagraph (i), is 3 years, starting:
 - (A) if medical indemnity cover is in place, at the occurrence of the prescribed event, and continues to operate in relation to claims that are made during the first period — at the end of the claims period for that cover; or
 - (B) in any other case — at the end of the first period; and
 - (iii) specifies that the obligation to renew the cover, and the total period during which the cover may be renewed, in accordance with the offers mentioned in subparagraph (i), will be affected if the retired practitioner:
 - (A) resumes private medical practice as a health care professional; or
 - (B) becomes a person to whom subsection 34ZB (2) of the *Medical Indemnity Act 2002* applies; or
 - (C) ceases to be eligible for run-off cover; and
 - (iv) specifies that the cover is to be first offered, and renewed in accordance with the offers mentioned in subparagraph (i), as follows:

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- (A) if the original cover was subject to any special or non-standard terms, conditions or exclusions, by way of endorsement or otherwise, the offer may provide that those special or non-standard terms, conditions and exclusions will apply;
- (B) for any matter to which sub-subparagraph (A) does not apply, the insurer must offer the same terms and conditions (other than terms and conditions about the price of the cover or period during which the cover may be renewed) as the standard medical indemnity cover offered by the insurer at the time of each offer of renewal to practicing health care professionals in the same category or class for the purposes of the insurer's underwriting criteria as the retired practitioner to whom the offer is to be made; and
- (v) specifies that if the retired practitioner, or the retired practitioner's representative, declines to accept an offer to renew made by the insurer in accordance with subparagraph (i), the insurer is authorised to decline to make further offers to renew the cover.

Note 1 The obligations in this regulation are not intended to restrict an insurer's opportunities to offer to provide medical indemnity cover in circumstances not set out in the regulation, or on terms and conditions that are more generous than required by the regulation.

Note 2 An offer to which this regulation applies must also be a complying offer as required by section 24 of the Act, as well as complying with the *Insurance Contracts Act 1984*.

- (4) The obligations in subregulation (3) cease to apply in relation to a retired practitioner if the retired practitioner:
 - (a) resumes private medical practice as a health care professional; or
 - (b) becomes a person to whom subsection 34ZB (2) of the *Medical Indemnity Act 2002* applies; or
 - (c) ceases to be eligible for run-off cover.

Regulation 9**9 Complying offer**

For paragraph 24 (2) (fa) of the Act, the amount is the cost to the insurer of providing the cover without returning a profit to any person for the provision of the cover.

Note The effect of paragraph 24 (2) (fa) of the Act is that, if an offer is made for section 23 of the Act, the premium payable by the client for the cover must not exceed the amount specified in regulations.

Schedule 1 Application form

(regulation 5)

*Medical Indemnity (Prudential Supervision and Product Standards)
Regulations 2003*

Application to APRA for determination that minimum capital requirements do not apply

[Name of applicant]

Part 1 Application

I, *[name of principal executive officer]*, principal executive officer of *[name of applicant]*, for and on behalf of *[name of applicant]*, apply to APRA under subsection 13 (1) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* for a determination that the minimum capital requirements determined by APRA do not apply to *[name of applicant]*.

[name of applicant] is *[choose one of the following]*:

- an MDO within the meaning of the *Medical Indemnity Act 2002*
- a body corporate that is related (within the meaning of the *Corporations Act 2001*) to an MDO within the meaning of the *Medical Indemnity Act 2002*
- a body corporate that is prescribed by the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*
- a body corporate that is related (within the meaning of the *Corporations Act 2001*) to a body corporate prescribed by the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*

For subsection 13 (3) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*, I declare that *[name of applicant]*:

(a) *[choose one of the following]*:

- is not a general insurer
- is a general insurer that is prescribed by the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*

(b) at the time of application, does not, or would not, satisfy the prudential standards determined by APRA under section 32 of the *Insurance Act 1973* to the extent to which those standards impose minimum capital requirements on the applicant.

This application includes a funding plan that:

- (a) is in the form prescribed by the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*; and
- (b) has been certified by an independent auditor and an independent actuary; and
- (c) complies with any guidelines issued by APRA under subsection 13 (9) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

Dated *[date]*

Signature of principal executive officer

Part 2 Applicant's details

Applicant's ARBN

Applicant's ACN (if applicable)

Address of applicant's registered office

Contact details for principal executive officer

Part 3 *Confirmation that application has been approved by board of directors*

We declare that this application has been approved by the board of directors of *[name of applicant]*.

Dated *[date]*

Either:

Signatures and names of principal executive officer and 1 director of the applicant

or

Signatures and names of 2 directors of the applicant

Note

The ***principal executive officer*** of a body corporate is the principal executive officer of the body corporate for the time being, by whatever name called, and whether or not he or she is a director of the body corporate.

Schedule 2 Form of funding plan

(regulation 7)

*Medical Indemnity (Prudential Supervision and Product Standards)
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**Funding Plan given by applicant for APRA determination that
minimum capital requirements do not apply**

[Name of applicant]

Part 1 Applicant's details

Applicant's ARBN

Applicant's ACN (if applicable)

Address of applicant's registered office

Contact details for principal executive officer

Part 2 Details complying with guidelines

*[Insert all material required by guidelines issued by APRA under
subsection 13 (9) of the Medical Indemnity (Prudential Supervision and
Product Standards) Act 2003]*

Part 3 Certification of funding plan

[Insert all material, relating to certification of the funding plan by the independent auditor, required by guidelines issued by APRA under subsection 13 (9) of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003]

Dated *[date]*

Signature of independent auditor

Qualifications of independent auditor

Address of independent auditor

Note

The qualifications of the independent auditor must be consistent with any relevant guidelines issued by APRA under subsection 13 (9) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

[Insert all material, relating to certification of the funding plan by the independent actuary, required by guidelines issued by APRA under subsection 13 (9) of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003]

Dated *[date]*

Signature of independent actuary

Qualifications of independent actuary

Address of actuary

Note

The qualifications of the independent actuary must be consistent with any relevant guidelines issued by APRA under subsection 13 (9) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

**Part 4 Confirmation that funding plan has been approved
by board of directors**

We declare that:

- (a) this funding plan has been approved by the board of directors of *[name of applicant]*; and
- (b) the funding plan has been certified by an independent auditor and an independent actuary, in accordance with guidelines issued by APRA under subsection 13 (9) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*; and
- (c) evidence of those certifications is included in the funding plan.

Dated *[date]*

Either:

Signatures and names of principal executive officer and 1 director of the applicant

or

Signatures and names of 2 directors of the applicant

Note

The ***principal executive officer*** of a body corporate is the principal executive officer of the body corporate for the time being, by whatever name called, and whether or not he or she is a director of the body corporate.

Table of Instruments

Notes to the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*

Note 1

The *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003* (in force under the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*) as shown in this compilation comprise Statutory Rules 2003 No. 109 amended as dicated in the Tables below.

The *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003* was amended by the *Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004* (No. 77, 2004). The amendment has been incorporated in this compilation.

Under the implementation of the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all legislative instruments to be registered to the Federal Register of Legislative Instruments. Any legislative instrument made on or after 1 January 2005 is not enforceable unless it is registered. From 1 January 2005 the Statutory Rules series ceased to exist and is replaced with Select Legislative Instruments (SLI). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and Number	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
2003 No. 109	4 June 2003	1 July 2003 (see r. 2)	
2003 No. 129	19 June 2003	1 July 2003	—
2004 No. 81	30 Apr 2004	30 Apr 2004	—
2004 No. 87	14 May 2004	1 July 2003	—
2004 No. 150	25 June 2004	1 July 2004	—
2004 No. 205	25 June 2004	25 June 2004	—
2005 No. 12	14 Feb 2005 (see F2005L00168)	15 Feb 2005	—

Table of Instruments

Year and Number	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
2006 No. 232	28 Aug 2006 (see F2006L02770)	1 July 2006	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
Heading to Part 1	ad. 2004 No. 150
Heading to r. 3	rs. 2004 No. 205
R. 3	am. 2004 No. 150
R. 3A	ad. 2003 No. 129
	rep. 2004 No. 150
R. 4	am. 2004 Nos. 81, 87 and 205; Act No. 77, 2004; 2005 No. 12; 2006 No. 232
Part 2	
Heading to Part 2	ad. 2004 No. 150
Part 3	
Heading to Part 3	ad. 2004 No. 150
R. 8	ad. 2003 No. 129
	rs. 2004 No. 150
	am. 2005 No. 12
R. 9	ad. 2004 No. 150