



Medical Indemnity (Run-off Cover Claims and Administration) Protocol 2006 (No. 2)

as amended

made under subsection 34ZN of the

Medical Indemnity Act 2002

Compilation start date: 6 February 2013

Includes amendments up to: *Medical Indemnity (Run-off Cover Claims and Administration) Amendment Protocol 2013*

Prepared by the Department of Health and Ageing, Canberra

About this compilation

The compiled instrument

This is a compilation of the *Medical Indemnity (Run-off Cover Claims and Administration) Protocol 2006 (No. 2)* as amended and in force on 6 February 2013. It includes any amendment affecting the compiled instrument to that date.

This compilation was prepared on 30 July 2013.

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

Uncommenced provisions and amendments

If a provision of the compiled instrument is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled instrument is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provision ceasing to have effect

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

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Part 1 Preliminary

1 Name of Protocol

This Protocol is the *Medical Indemnity (Run-off Cover Claims and Administration) Protocol 2006 (No. 2)*.

2 Commencement

- (1) This Protocol commences on the day after it is registered.
- (2) This Protocol may apply to costs incurred by a medical indemnity provider prior to the date the Protocol commences.

3 Definitions

- (1) In this Protocol:

Act means the *Medical Indemnity Act 2002*.

Avant means Avant Insurance Limited, ACN 003 707 471, previously Australasian Medical Insurance Limited.

eligible run-off claim has the same meaning as is set out in section 34ZB of the Act.

medical indemnity provider means:

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

PiiCA means Professional Indemnity Insurance Company Australia Pty Limited, ACN 007 383 137.

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

- (2) A reference to **costs incurred** or a medical indemnity provider having **incurred costs** refers to costs that the medical indemnity provider has paid or has a legal liability to pay.
- (3) A reference to **legal, administrative or other costs** does not include legal costs, administrative costs or other costs incurred by a medical indemnity provider in complying with a request by the Chief Executive Medicare under sections 34ZO, 38 or 71 of the Act.

Note: The words and expressions used in this Protocol have the meaning given in the Act. For example:

claim

contribution year

high cost claim indemnity

MDO

medical indemnity cover

medical indemnity insurer

Chief Executive Medicare

run-off cover indemnity

Part 2 Payment of claim handling fees in respect of eligible run-off claims (under paragraph 34ZN(1)(a) of the Act)

4 Claim handling fees

Where a medical indemnity provider is managing an eligible run-off claim, it may apply to the Chief Executive Medicare for a claim handling fee in respect of that claim.

5 When a claim handling fee is payable

- (1) A claim handling fee is payable to a medical indemnity provider in respect of an eligible run-off claim if:
 - (a) the medical indemnity provider has handled or is handling an eligible run-off claim; and
 - (b) a run-off cover indemnity is payable by the Chief Executive Medicare in respect of that eligible run-off claim; and
 - (c) the medical indemnity provider has not already been paid a claim handling fee by the Chief Executive Medicare in respect of that run-off cover indemnity; and
 - (d) the medical indemnity provider applies to the Chief Executive Medicare for payment of the claim handling fee in accordance with section 8 of this Protocol.
- (2) More than one claim handling fee may be payable, under this section, to a medical indemnity provider in respect of an eligible run-off claim.

6 Amount of claim handling fee payable

- (1) A claim handling fee that is payable under section 5 of this Protocol is calculated in accordance with this section.
- (2) Where the costs incurred by the medical indemnity provider are run-off cover indemnity costs, including legal, administrative or other costs directly attributable to the eligible run-off claim, the amount of the Claim Handling Fee Payable (**CHFP**) payable is calculated using the following formula:

$$\text{CHFP} = \frac{5}{100} \times \text{RoCI}$$

Where:

RoCI is the amount of a Run-off Cover Indemnity that is payable by the Chief Executive Medicare in response to an application for payment from a medical indemnity provider. (The run-off cover indemnity may include any legal, administrative or other payments made by the medical indemnity provider that are directly attributable to any negotiations, arbitration or proceedings in relation to the eligible run-off claim and that are payable by the Chief Executive Medicare).

Note: Subsection 4(3) of the Act sets out the scope of a payment made 'in relation to a claim against a person' and also a payment 'made in relation to a claim by a person'.

- (3) Where the costs incurred by the medical indemnity provider in relation to the claim are both run-off cover indemnity costs and high cost claim

indemnity costs the amount of the Claim Handling Fee Payable (**CHFP**) payable is calculated using the following formula:

$$\text{CHFP} = \frac{5}{100} \times (\text{RoCI} + \text{HCCI})$$

Where:

RoCI is the amount of a Run-off Cover Indemnity that is payable by the Chief Executive Medicare in response to an application for payment from a medical indemnity provider. (The run-off cover indemnity may include any legal, administrative or other payments made by the medical indemnity provider that are directly attributable to any negotiations, arbitration or proceedings in relation to the eligible run-off claim and that are payable by the Chief Executive Medicare).

Note: Subsection 4(3) of the Act sets out the scope of a payment made 'in relation to a claim against a person' and also a payment 'made in relation to a claim by a person'.

HCCI is the amount of High Cost Claim Indemnity by which the run-off cover indemnity has been reduced in accordance with section 34ZH of the Act.

Part 3 Payment of ongoing administration costs (under paragraph 34ZN(1)(c) of the Act)

7 When a payment in respect of ongoing administration costs is payable

- (1) From the end of the first contribution year commencing on or after 1 July 2006, a payment under this Protocol is payable to a medical indemnity insurer where the insurer:
 - (a) has provided information to the Chief Executive Medicare attributing run-off cover payments in accordance with section 34ZT of the Act in respect of the immediate past contribution year; and
 - (b) has certified, in writing to the Chief Executive Medicare, that it has provided the information listed in paragraph 26D(2)(b) of the Prudential Supervision and Product Standards Act to the Chief Executive Medicare in respect of practitioners for whom the medical indemnity cover was provided in the immediate past contribution year; and
 - (c) has certified, in writing to the Chief Executive Medicare, that it has complied with its obligations under Division 2A of Part 3 of the Prudential Supervision and Product Standards Act (other than section 26D) in respect of the immediate past contribution year; and
 - (d) has incurred legal, administrative or other costs (whether on its own behalf or otherwise); and
 - (e) incurred those costs in respect of administering a system or part of a system for the provision of medical indemnity cover for the sole purpose of complying with Division 2A of Part 3 of the Prudential Supervision and Product Standards Act; and

- (f) those costs are costs which have been incurred in the ordinary course of business; and
 - (g) the medical indemnity insurer has not already received the payment from the Chief Executive Medicare that was payable in respect of those costs; and
 - (h) the medical indemnity insurer has applied to the Chief Executive Medicare after the end of the contribution year and in accordance with section 8 of this Protocol for payment in respect of those costs.
- (2) The amount of the ongoing administration costs payable to a medical indemnity insurer in respect of the first contribution year commencing on or after 1 July 2006 is calculated using the following formula:

$$APP \times ATNP = \text{the ongoing administration cost}$$

APP means the Amount Per Practitioner which, for the first contribution year commencing on or after 1 July 2006, is \$16.00.

ATNP means the Annual Total Number of Practitioners for whom the insurer provided medical indemnity cover in respect of which a run-off cover support payment was payable in that contribution year. If the ATNP for a medical indemnity insurer is less than 1,000 then, for the purposes of the calculation under this subsection, the ATNP is taken to be 1,000.

Note 1: The amounts calculated using the formula do not include GST.

Note 2: Part 5 (Transitional and Savings) of this Protocol sets out the transitional arrangements in respect of ongoing administration costs payable to a medical indemnity insurer with a contribution year which started on 1 January 2006.

- (3) The amount of the ongoing administration costs payable to a medical indemnity insurer in respect of each contribution year commencing on or after 1 July 2007 is calculated using the following formula:

$$APP \times ATNP = \text{the ongoing administration cost}$$

APP means the Amount Per Practitioner calculated using the following formula:

$$APP = \text{Previous year's APP} \times 1.025$$

ATNP means the Annual Total Number of Practitioners for whom the insurer provided medical indemnity cover in respect of which a run-off cover support payment was payable in that contribution year. If the ATNP for a medical indemnity insurer is less than 1,000 then, for the purposes of the calculation under this subsection, the ATNP is taken to be 1,000.

Previous year's APP means the Amount Per Practitioner which was used in the calculation of the ongoing administration cost payable to the medical indemnity insurer in respect of the immediately preceding contribution year. The Amount Per Practitioner in respect of the contribution year immediately preceding the contribution year commencing on or after 1 July 2007 is \$16.00.

Note 1: Subsection 7(2) deals with the Amount Per Practitioner used in the calculation of the ongoing administration cost payable to the medical indemnity insurer in respect of the contribution year commencing on or after 1 July 2006..

Part 4 General

8 Application for payment

An application by a medical indemnity provider for a payment under this Protocol 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.

9 Payment date

- (1) Subject to subsection (2), the Chief Executive Medicare must pay a payment under this Protocol before the end of the month immediately following the month in which the medical indemnity provider applied to the Chief Executive Medicare for the payment.
- (2) If a medical indemnity provider applies for a payment under this Protocol; and
 - (a) the medical indemnity provider has not complied with the requirements of the application form; or
 - (b) the Chief Executive Medicare has requested further information under section 34ZO of the Act in relation to the application and the medical indemnity provider has not given the Chief Executive Medicare the information that was requested under section 34ZO of the Act in relation to the application for payment;

the payment date for the payment must be before the end of the month immediately following the month in which the medical indemnity provider complies with the requirements of the application form or provides the information requested by the Chief Executive Medicare under section 34ZO of the Act, as the case may be.

10 Recovery of overpayments

- (1) This section applies if an amount is paid by way of a payment under this Protocol to a medical indemnity provider and:
 - (a) the amount of the payment under this Protocol is not payable; or
 - (b) the amount paid is greater than the amount of the payment under this Protocol 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 medical indemnity provider.
- (4) The amount overpaid may be recovered:
 - (a) by action by the Chief Executive Medicare against the medical indemnity provider in a court of competent jurisdiction; or
 - (b) by deduction from any future amount payable to the medical indemnity provider under this Protocol.

Part 5 Payments to Particular Insurers

11 Payment to Avant for the Period from 1 January 2007 to 30 June 2009

- (1) Notwithstanding any other provision of this Protocol, and subject to subsection (3), the Chief Executive Medicare must pay Avant the amount of \$1,066,742.97 within 30 days of receipt of an application in writing for payment under this Part.

Note: The amount set out in this subsection 11(1) does not include GST.

- (2) A payment made to Avant under this Part is payment on account of legal, administrative or other costs incurred by Avant and PiiCA in respect of complying with Division 2A of Part 3 of the Prudential Supervision and Product Standards Act for the period from 1 January 2007 to 30 June 2009.
- (3) Neither Avant nor PiiCA is entitled to any further payment under this Protocol on account of legal, administrative or other costs incurred in respect of complying with Division 2A of Part 3 of the Prudential Supervision and Product Standards Act for the period from 1 January 2007 to 30 June 2009.

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Medical Indemnity (Run-off Cover Claims and Administration) Protocol 2006 (No. 2)*.

Title	FRLI registration date	Commencement date	Application, saving and transitional provisions
<i>Medical Indemnity (Run-off Cover Claims and Administration) Protocol 2006 (No. 2)</i>	4 December 2006	5 December 2006	s. 2, 11, 12
<i>Medical Indemnity (Run-off Cover Claims and Administration) Amendment Protocol 2013</i>	5 February 2013	6 February 2013	s. 4

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Medical Indemnity (Run-off Cover Claims and Administration) Protocol 2006 (No. 2)*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted exp. = expired
or ceased to have effect

Provision affected	How affected
s. 3.....	am. F2013L00154
Note to s. 3(3).....	am. F2013L00154
s. 4.....	am. F2013L00154
s. 5.....	am. F2013L00154
s. 6.....	am. F2013L00154
s. 7.....	am. F2013L00154
s. 8.....	am. F2013L00154
s. 9.....	am. F2013L00154
s. 10.....	am. F2013L00154
s. 11.....	rs. F2013L00154
s. 12.....	rep. F2013L00154

Endnote 3—Uncommenced amendments [none]

There are no uncommenced amendments.

Endnote 4—Misdescribed amendments [none]

There are no misdescribed amendments.