



# Medical Indemnity Rules 2020

made under the

*Medical Indemnity Act 2002*

## Compilation No. 1

<b>Compilation date:</b>	1 July 2020
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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 Rules 2020* that shows the text of the law as amended and in force on 1 July 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

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

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

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name

This instrument is the *Medical Indemnity Rules 2020*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2020.	1 July 2020

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

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

### 3 Authority

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

### 4 Definitions

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

- (a) allied health profession;
- (b) claim;
- (c) incident;
- (d) medical practitioner;
- (e) private medical practice.

In this instrument:

*Act* means the *Medical Indemnity Act 2002*.

*AFCA scheme* has the meaning given by section 761A of the *Corporations Act 2001*.

Note: The AFCA scheme is an external dispute resolution scheme that is authorised under Part 7.10A of the *Corporations Act 2001* and that is operated by AFCA (short for the Australian Financial Complaints Authority).

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**Commonwealth, State or Territory agency** means:

- (a) the Commonwealth; or
- (b) a State; or
- (c) a Territory; or
- (d) an authority established under a law of the Commonwealth, a State or a Territory.

**general interest charge rate** has the same meaning as in section 8AAD of the *Taxation Administration Act 1953*.

Note: The general interest charge rate is a daily rate.

**gross indemnity costs** has the meaning given by the *Medical Indemnity Regulations 2020*.

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

**premium period** has the meaning given by the *Medical Indemnity Regulations 2020*.

Note: A premium period may vary from one insurer to another.

## **Part 2—Commonwealth payments**

### **Division 1—IBNR indemnity scheme**

#### **5 Late payment penalty rate for recovery of amount paid to MDO or insurer after IBNR indemnity paid**

- (1) For the purposes of paragraph 27(2)(a) of the Act, this section specifies the rate for calculating late payment penalty relating to an amount that remains wholly or partly unpaid after it becomes due and payable.

Note: This section does not apply if the amount became due and payable before 1 July 2020. Subitem 148(3) of Schedule 4 to the *Medical and Midwife Indemnity Legislation Amendment Act 2019* provides for the rate in that case.

- (2) The rate is the general interest charge rate for the day after the day the amount becomes due and payable.

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**Division 2—High cost claim indemnity scheme**

**6 High cost claim threshold**

For the purposes of paragraph 29(1)(b) of the Act, \$500,000 is specified.



## **Division 3—Exceptional claims indemnity scheme**

### **7 Circumstances for claim relating to overseas incident to be qualifying claim**

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

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## Division 4—Run-off cover indemnity scheme

### 8 Persons against whom eligible run-off claims are made

- (1) For the purposes of paragraph 34ZB(2)(f) of the Act, subsection 34ZB(2) of the Act applies to the persons covered by any of subsections (2), (3) and (4) of this section.

*Certain practitioners providing medical services free*

- (2) This subsection covers a medical practitioner who is providing medical services free of charge in the course of private medical practice and is covered by any of the following paragraphs:
- (a) the practitioner has retired permanently from practice as a medical practitioner, apart from providing medical services free of charge in the course of private medical practice;
  - (b) the practitioner has retired permanently from providing medical services for payment in the course of private medical practice;
  - (c) the practitioner has not engaged in practice as a medical practitioner at any time during the preceding period of 3 years, apart from providing medical services free of charge in the course of private medical practice;
  - (d) the practitioner has not provided medical services for payment in the course of private medical practice at any time during the preceding period of 3 years;
  - (e) the practitioner has, apart from providing medical services free of charge in the course of private medical practice, ceased practice as a medical practitioner:
    - (i) because of maternity (within the meaning of subsection 34ZB(4A) of the Act); or
    - (ii) because of permanent disability (within the meaning of subsection 34ZB(4B) of the Act).

*Practitioners no longer engaged in certain kinds of medical practice*

- (3) This subsection covers a medical practitioner who:
- (a) was engaged in medical practice, other than:
    - (i) private medical practice; and
    - (ii) practice conducted wholly outside Australia and the external Territories; and
  - (b) either:
    - (i) has retired permanently from that medical practice; or
    - (ii) has not engaged in that medical practice at any time during the preceding period of 3 years.

*Former temporary residents who used to practise in Australia*

- (4) This subsection covers a person who:
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- (a) was the holder of a temporary visa (within the meaning of the *Migration Act 1958*) that permitted the holder to work in Australia and that did not prohibit the holder from engaging in medical practice in Australia; and
- (b) engaged in medical practice in Australia; and
- (c) has permanently ceased medical practice in Australia; and
- (d) no longer resides in Australia.

### **9 Late payment penalty rate for recovery of overpaid run-off cover indemnity**

- (1) For the purposes of paragraph 34ZM(2)(a) of the Act, this section specifies the rate for calculating late payment penalty relating to a debt that remains wholly or partly unpaid after it becomes due and payable.

Note: This section does not apply if the debt became due and payable before 1 July 2020. Subitem 150(2) of Schedule 4 to the *Medical and Midwife Indemnity Legislation Amendment Act 2019* provides for the rate in that case.

- (2) The rate is the general interest charge rate for the day after the day the debt becomes due and payable.

### **10 Applicable interest rate for working out total run-off cover credits**

For the purposes of subsection 34ZS(4) of the Act, the rate of interest, for a financial year, is the general interest charge rate for the last day before the start of the financial year multiplied by the number of days in the calendar year in which that day occurs.

## **Division 5—Allied health high cost claim indemnity scheme**

### **11 Eligible insurers**

For the purposes of paragraph 34ZZ(a) of the Act, the following medical indemnity insurers are specified:

- (a) Avant Insurance Limited ACN 003 707 471;
- (b) Berkshire Hathaway Specialty Insurance Company ARBN 600 643 034;
- (c) Guild Insurance Limited ACN 004 538 863;
- (d) MDA National Insurance Pty Ltd ACN 058 271 417;
- (e) Medical Insurance Australia Pty Ltd ACN 092 709 629;
- (f) MIPS Insurance Pty Ltd ACN 089 048 359.

### **12 Allied health high cost claim threshold**

For the purposes of paragraph 34ZZA(1)(b) of the Act, \$500,000 is specified.

## **Division 6—Allied health exceptional claims indemnity scheme**

### **13 Circumstances for claim relating to overseas incident to be qualifying claim**

- (1) For the purposes of paragraph 34ZZK(1)(d) of the Act, subsections (2) and (3) of this section specify different circumstances relating to a claim that relates to:
  - (a) an incident (the *relevant incident*) that occurs or occurred outside Australia and the external Territories at a time (the *relevant time*); or
  - (b) a series of related incidents (the *relevant incidents*) any of which occur or occurred outside Australia and the external Territories at a time (the *relevant time*).
- (2) The circumstances are:
  - (a) the claim is or was made by a person who at the relevant time is or was an Australian citizen or a resident of Australia or an external Territory; and
  - (b) at the relevant time the person is or was:
    - (i) engaged in a sporting activity (as a participant, adjudicator, judge, referee or umpire or in a similar capacity); or
    - (ii) engaged in a cultural activity; or
    - (iii) undertaking official business for a Commonwealth, State or Territory agency; or
    - (iv) travelling with a person to whom any of the other subparagraphs of this paragraph applies; and
  - (c) at the relevant time the practitioner against whom the claim is or was made is or was a permanent resident of Australia or an external Territory accompanying the person in the course of, or in connection with, the practice by the practitioner of an allied health profession.
- (3) Alternatively, the circumstances are:
  - (a) at the relevant time the practitioner against whom the claim is or was made is or was a permanent resident of Australia or an external Territory undertaking aid work outside Australia and the external Territories; and
  - (b) the relevant incident, or any of the relevant incidents, occurs or occurred in the course of, or in connection with, the undertaking of that aid work.

## Part 3—Universal cover obligation

### 14 Circumstances in which medical indemnity insurer may refuse professional indemnity cover

- (1) This section specifies circumstances for the purposes of paragraph 52A(f) of the Act (about the circumstances in which a medical indemnity insurer may refuse to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover).
- (2) The circumstances are that the medical practitioner:
  - (a) has practised without being registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners; or
  - (b) is practising in breach of a limit (however described) on the registration or licensing of the practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

### 15 Notice of refusal to enter into contract of insurance for professional indemnity cover

- (1) For the purposes of section 52B of the Act, this section specifies requirements for notification of a medical practitioner of a medical indemnity insurer's refusal to enter into a contract of insurance with the practitioner to provide professional indemnity cover.
- (2) The notification must include:
  - (a) the reasons for the refusal; and
  - (b) a statement that the medical practitioner may make a complaint about the refusal in accordance with the AFCA scheme.
- (3) If, immediately before the refusal there was not a contract of insurance with the insurer providing professional indemnity cover for the practitioner, the notification must be made within 30 days of the insurer receiving all information reasonably required to decide whether to enter into such a contract.
- (4) If, immediately before the refusal there was a contract (the *existing contract*) of insurance in force with the insurer providing professional indemnity cover for the practitioner, the notification must be made:
  - (a) as soon as practicable after the refusal; and
  - (b) if possible, at least 60 days before the expiry of the existing contract.

### 16 Maximum amount of risk surcharge

- (1) For the purposes of paragraph 52C(3)(b) of the Act, this section specifies a method for working out the amount that must not be exceeded by a risk surcharge a medical indemnity insurer requires a medical practitioner to pay for a

premium period, as part of the amount payable for professional indemnity cover provided by a contract of insurance with the practitioner.

- (2) The amount is twice the practitioner's gross indemnity costs relating to the contract and the premium period.

### **17 Amount of risk surcharge to be identified without GST in offer of insurance**

For the purposes of subsection 52C(4) of the Act, the amount of the risk surcharge identified in an offer to enter into a contract of insurance to provide professional indemnity cover must exclude GST.

### **18 Records of refusals to provide professional indemnity cover**

For the purposes of paragraph 53(1)(a) of the Act, a medical indemnity insurer must keep records of the following matters relating to a refusal by the insurer to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover:

- (a) the date of the refusal;
- (b) the identity of the medical practitioner;
- (c) the reasons for the refusal, indicating both:
  - (i) the provision of section 52A of the Act and, if relevant, the provision of section 14 of this instrument, applying to exempt the insurer from the requirement in that section of the Act not to refuse to enter into the contract; and
  - (ii) the evidence of the existence of the circumstances that cause that provision to apply.

### **19 Records of risk surcharges**

For the purposes of paragraph 53(1)(b) of the Act, a medical indemnity insurer must keep records of the following matters relating to a requirement by the insurer that a medical practitioner pay a risk surcharge:

- (a) the date of the requirement;
- (b) the reasons for the requirement, indicating the evidence of the matters described in paragraph 52C(1)(a) of the Act;
- (c) the gross indemnity costs of the practitioner for the premium period to which the risk surcharge related;
- (d) the amount of the risk surcharge.

### **20 Matters to be reported annually**

- (1) For the purposes of section 53B of the Act, this section specifies matters required by that section to be notified to the Secretary by a medical indemnity insurer that, in a financial year:
    - (a) refuses to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover; or
    - (b) requires a medical practitioner to pay a risk surcharge.
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- (2) For the purposes of paragraph 53B(1)(b) of the Act, this subsection specifies the following:
- (a) the number of refusals that:
    - (i) are made in the financial year by the medical indemnity insurer; and
    - (ii) are the subjects of complaints made in accordance with the AFCA scheme before the notification is made (whether or not the complaints are resolved before the notification is made);
  - (b) the number of occasions in the financial year on which a medical practitioner withdrew an invitation made by the practitioner to the medical indemnity insurer for the insurer to offer to enter into a contract of insurance with the practitioner to provide professional indemnity cover.
- (3) For the purposes of paragraph 53B(2)(b) of the Act, this subsection specifies the number of requirements to pay risk surcharge that:
- (a) are made in the financial year by the medical indemnity insurer; and
  - (b) are the subjects of complaints made in accordance with the AFCA scheme before the notification is made (whether or not the complaints are resolved before the notification is made).



## **Part 4—Payments towards the cost of providing indemnities**

### **21 Late payment penalty rate for run-off cover support payment**

- (1) For the purposes of paragraph 65(2)(a) of the Act, this section specifies the rate for calculating late payment penalty relating to a run-off cover support payment that remains wholly or partly unpaid after it becomes due and payable.
- (2) The rate is the general interest charge rate for the day after the day the payment becomes due and payable.

### **22 Methods of paying run-off cover support payment or related late payment penalty**

For the purposes of subsection 66(4) of the Act, an amount referred to in subsection 66(1) or (3) of the Act must be paid by one of the following methods:

- (a) BPAY;
- (b) direct debit;
- (c) credit card.

## Part 5—Application, transitional and saving provisions

### Division 1—COVID-19 human biosecurity emergency period

#### 23 Eligible run-off claims—COVID-19 human biosecurity emergency period

- (1) For the purposes of paragraph 34ZB(2)(f) of the Act, subsection 34ZB(2) of the Act applies to the persons covered by subsection (2) of this section.
- (2) Subject to subsection (3) of this section, this subsection covers a person if subsection 34ZB(2) of the Act would apply to the person (disregarding this section) were it not for practice as a medical practitioner that the person begins to engage in:
  - (a) on or after the commencement of the *Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020*; and
  - (b) during a COVID-19 human biosecurity emergency period.
- (3) If, 1 month after the end of the COVID-19 human biosecurity emergency period, the person is still engaged in practice as a medical practitioner, subsection (2) of this section ceases to cover the person at the end of that month.
- (4) A **COVID-19 human biosecurity emergency period** is a human biosecurity emergency period (within the meaning of the *Biosecurity Act 2015*) in relation to which the declaration listed human disease (within the meaning of that Act) is human coronavirus with pandemic potential.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key 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 (or will amend) the compiled law. The information includes commencement details for amending laws and details of any 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 (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Medical Indemnity Rules 2020	22 Apr 2020 (F2020L00451)	1 July 2020 (s 2(1) item 1)	
Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) Rules 2020	1 Apr 2020 (F2020L00375)	1 July 2020 (s 2(1) item 3)	—

## Endnotes

Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 2 .....	rep <u>LA s 48D</u>
<b>Part 5</b>	
Part 5 .....	ad F2020L00375
<b>Division 1</b>	
s 23 .....	ad F2020L00375

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