

EXPOSURE DRAFT



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Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2020

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

Dated 2020

David Hurley
Governor-General

By His Excellency's Command

Michael Sukkar [DRAFT ONLY—NOT FOR SIGNATURE]
Assistant Treasurer

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Part 1—Preliminary

1 Name

This instrument is the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2020*.

2 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

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

- (a) arrangement;
- (b) health care;
- (c) health care incident;
- (d) health care professional;
- (e) provide medical indemnity cover.

In this instrument:

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Part 1 Preliminary

Section 5

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

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Arrangements to which the Act does not apply **Part 2**

Section 6

Part 2—Arrangements to which the Act does not apply

6 Kinds of arrangements to which the Act does not apply

The kinds of arrangements covered by the other sections of this Part are prescribed for the purposes of paragraph 8(2)(e) of the Act.

Note: Under subsection 8(2) of the Act, the Act does not apply to an arrangement of a kind prescribed by this Part.

7 Arrangements for medical indemnity cover relating to dental care provided by certain surgeons

Oral surgeons registered as dental practitioners

- (1) This section covers arrangements under which a person provides medical indemnity cover for an oral surgeon solely in relation to dental care:
 - (a) provided by the oral surgeon; and
 - (b) in relation to which the oral surgeon is registered or licensed as a dental practitioner under a law of a State or Territory.

Maxillofacial surgeons registered as dental practitioners

- (2) This section also covers arrangements under which a person provides medical indemnity cover for a maxillofacial surgeon solely in relation to dental care:
 - (a) provided by the maxillofacial surgeon; and
 - (b) in relation to which the maxillofacial surgeon is registered or licensed as a dental practitioner under a law of a State or Territory.

8 Arrangements for medical indemnity cover provided by or through training institutions for incidents occurring during training or health care

Cover for trainers and trainees for incidents during training

- (1) Subsection (3) applies to arrangements that:
 - (a) relate to a training institution that provides training in subjects relevant to the provision of health care; and
 - (b) relate to a person (a **covered person**) who:
 - (i) provides the training on behalf of the institution in any capacity (including as an employee, a contractor to the institution or a volunteer); or
 - (ii) assists in the provision of the training on behalf of the training institution; or
 - (iii) receives that training;

so far as the arrangements are ones under which a person provides medical indemnity cover for a covered person relating to health care incidents occurring in the course of the training.

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Part 2 Arrangements to which the Act does not apply

Section 9

Note: A university is an example of a training institution.

Cover for staff and students for incidents during provision of health care

- (2) Subsection (3) also applies to arrangements that:
- (a) relate to a training institution that provides training in subjects relevant to the provision of health care; and
 - (b) relate to a person (also a **covered person**):
 - (i) who is a member of the staff of the institution in any capacity (including as an employee, a contractor to the institution or a volunteer) or a student of the training institution; and
 - (ii) who, as a member of the staff, or a student, of the institution, provides health care to a member of the public;

so far as the arrangements are ones under which a person provides medical indemnity cover for a covered person relating to health care incidents occurring in the course of the provision of the health care.

Note: A university is an example of a training institution.

Arrangements covered by this section

- (3) This section covers:
- (a) arrangements under which the training institution provides medical indemnity cover for a covered person; and
 - (b) arrangements under which a person provides medical indemnity cover for a covered person through the interposed entity of the training institution.

9 Arrangements for medical indemnity cover for health care professionals who need not be registered

This section covers arrangements under which a person provides medical indemnity cover for a health care professional who provides health care of a kind in relation to which the professional is not required to be licensed or registered by or under any law of any State or Territory.

10 Arrangements for indemnifying health care professionals through government

This section covers arrangements under which a person provides medical indemnity cover for a health care professional through any of the following that are interposed between the person and the professional:

- (a) the Commonwealth;
- (b) a public authority of the Commonwealth;
- (c) a State;
- (d) a public authority of a State;
- (e) a Territory;
- (f) a public authority of a Territory.

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Arrangements to which the Act does not apply **Part 2**

Section 11

11 Arrangements for medical indemnity cover for health care professionals voluntarily providing free health care for voluntary organisations

This section covers arrangements under which a person provides medical indemnity cover for a health care professional so far as the cover relates to incidents occurring in the course of the professional voluntarily providing gratuitous health care for a voluntary organisation (whether or not the cover is provided through the organisation interposed between the person and the professional).

12 Employment-related arrangements giving health care professionals or their employers benefits of indemnities provided by general insurers or Lloyd's underwriters

- (1) This section covers arrangements that:
 - (a) are made as a result of an agreement or understanding between a health care professional and the professional's employer; and
 - (b) involve a person described in subsection (2) (the *beneficiary*) benefiting from an indemnity that:
 - (i) relates to claims that may be made against the health care professional in relation to health care incidents; and
 - (ii) is provided by a general insurer or a Lloyd's underwriter.
- (2) The beneficiary may be:
 - (a) the health care professional; or
 - (b) the health care professional's employer; or
 - (c) if the health care professional's employer is a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001*) of another entity—the other entity.

13 Indemnities under public liability insurance policies for health care provided by health care professionals to certain employees

This section covers arrangements under which:

- (a) a person by whom a health care professional is employed or contracted to provide health care to the person's employees; or
 - (b) the health care professional;
- benefits from an indemnity under a public liability insurance policy in relation to health care provided to the person's employees.

14 Arrangements involving excesses under insurance contracts for medical indemnity cover

This section covers arrangements under which a person who is not insured under a contract of insurance that provides medical indemnity cover for a health care professional bears any excess or deductible that applies under the contract.

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Part 2 Arrangements to which the Act does not apply

Section 15

15 Arrangements for medical indemnity cover for research

This section covers arrangements under which a person provides medical indemnity cover for a health care professional relating to health care incidents relating to research relating to health care.

16 Arrangements that are contracts of reinsurance

This section covers contracts of insurance so far as they are contracts of reinsurance.

Schedule 1—Repeals

Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003

1 The whole of the instrument

Repeal the instrument.