Medical and Midwife Indemnity Legislation Amendment Act 2019

No. 105, 2019

An Act to amend the law in relation to medical and midwife indemnity, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

Contents

1 Short title 1
2 Commencement 2
3 Schedules 2

Schedule 1—Competitive advantage payment and UMP support payment 3

Part 1—Repeals 3

Medical Indemnity (Competitive Advantage Payment) Act 2005 3

Medical Indemnity (UMP Support Payment) Act 2002 3

Part 2—Amendments 4

Health Insurance Act 1973 4

Human Services (Medicare) Act 1973 4

Income Tax Assessment Act 1997 4

Medical Indemnity Act 2002 4

National Health Act 1953 12

Schedule 2—Indemnity scheme payments 13

Part 1—Aggregation of claims for high cost claim indemnity schemes 13

Medical Indemnity Act 2002 13

Part 2—Medical professions 16

Medical Indemnity Act 2002 16

Part 3—Run-off cover on retirement 18

Age Discrimination Act 2004 18

Medical Indemnity Act 2002 18

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010 19

Part 4—Health service incidents 20

Medical Indemnity Act 2002 20

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010 20

Schedule 3—Administration 22

Authorised Version C2019A00105

Medical Indemnity Act 2002 22

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010 27

Schedule 4—Instruments 32

Part 1—Amendments 32

Medical Indemnity Act 2002 32

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 50

Medical Indemnity (Run-off Cover Support Payment) Act 2004 50

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010 50

Part 2—Application and transitional 52

Schedule 5—Universal cover 56

Medical Indemnity Act 2002 56

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 64

Schedule 6—Allied health professionals 65

Medical Indemnity Act 2002 65

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 106

Authorised Version C2019A00105

Medical and Midwife Indemnity Legislation Amendment Act 2019

No. 105, 2019

An Act to amend the law in relation to medical and midwife indemnity, and for related purposes

[*Assented to 28 November 2019*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Medical and Midwife Indemnity Legislation Amendment Act 2019*.

Authorised Version C2019A00105

2 Commencement

(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**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 November 2019
2. Schedules 1 to 5	1 July 2020.	1 July 2020
3. Schedule 6	Immediately after the commencement of the provisions covered by table item 2.	1 July 2020

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

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

3 Schedules

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

Authorised Version C2019A00105

Schedule 1—Competitive advantage payment and UMP support payment

Part 1—Repeals

Medical Indemnity (Competitive Advantage Payment) Act 2005

1 The whole of the Act

Repeal the Act.

Medical Indemnity (UMP Support Payment) Act 2002

2 The whole of the Act

Repeal the Act.

Authorised Version C2019A00105

Part 2—Amendments

Health Insurance Act 1973

3 Subsection 130(25) (paragraphs (b) and (d) of the definition of *indemnity legislation*)

Repeal the paragraphs.

Human Services (Medicare) Act 1973

4 Paragraphs 42(2)(aa) and (c)

Repeal the paragraphs.

Income Tax Assessment Act 1997

5 Section 12-5 (table item headed "United Medical Protection Limited support payments")

Repeal the item.

6 Section 25-105

Repeal the section.

7 Subsection 995-1(1) (definition of *United Medical Protection Limited support payment*)

Repeal the definition.

Medical Indemnity Act 2002

8 Before subsection 3(1)

Insert:

Availability of medical services

9 Subsection 3(4)

Repeal the subsection, substitute:

Authorised Version C2019A00105

(4) Another object of this Act (together with the medical indemnity payment legislation) is to allow the Commonwealth to recover the costs of providing the assistance referred to in paragraph (2)(ab) by requiring payments from medical indemnity insurers.

10 Subsection 4(1) (definition of *contribution year*)

Repeal the definition, substitute:

contribution year has the same meaning as in the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

11 Subsection 4(1) (definition of *imposition day*)

Repeal the definition.

12 Subsection 4(1) (paragraphs (b) and (c) of the definition of *late payment penalty*)

Repeal the paragraphs, substitute:

(b) in relation to a run-off cover support payment—means a penalty payable under section 65.

13 Subsection 4(1) (note 1 to the definition of *medical indemnity cover*)

Omit “Note 1”, substitute “Note”.

14 Subsection 4(1) (note 2 to the definition of *medical indemnity cover*)

Repeal the note.

15 Subsection 4(1) (definition of *medical indemnity payment*)

Repeal the definition.

16 Subsection 4(1) (definition of *medical indemnity payment legislation*)

Repeal the definition, substitute:

medical indemnity payment legislation means the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

Authorised Version C2019A00105

17 Subsection 4(1)

Repeal the following definitions:

(a) definition of ***medicare benefit***;

(b) definition of ***net IBNR exposure***.

18 Subsection 4(1)

Insert:

run-off cover support payment means a payment payable under Division 2 of Part 3.

19 Subsection 10(2) (table item 9, column headed "Provisions")

Omit "section 38", substitute "sections 27C and 38".

20 Paragraph 19(b)

Repeal the paragraph.

21 At the end of Division 1 of Part 2

Add:

Subdivision G—IBNR exposure

27C Process for annually reassessing IBNR exposure

Report by the Actuary

(1) For each financial year, the Actuary must give the Minister a written report that:

(a) states the Actuary's assessment of the participating MDO's IBNR exposure as at the end of the financial 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 participating MDO under subsection (6).

Authorised Version C2019A00105

Chief Executive Medicare's information gathering powers

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

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

(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 participating MDO's IBNR exposure as at the end of a financial year.

(5) The request:

(a) must be made in writing; and

(b) must state what information the participating 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 participating MDO gives the Chief Executive Medicare to the Actuary for the purposes of preparing the report for the Minister under subsection (1).

22 Section 34ZT (heading)

After "**run-off cover**", insert "**support**".

23 Subsection 34ZT(1)

After "run-off cover", insert "support".

Authorised Version C2019A00105

24 Paragraph 34ZT(2)(b)

Repeal the paragraph, substitute:

(b) be given to the Chief Executive Medicare on or before the day on which the run-off cover support payment becomes due and payable under section 61.

25 Subsection 34ZV(2) (definition of *run-off cover support payment*)

Repeal the definition.

26 Section 44A

Repeal the section.

27 Paragraphs 45(1)(a) to (baa)

Repeal the paragraphs, substitute:

(a) subsection 27B(1); or

(b) subsection 27C(3); or

28 Division 1 of Part 3

Repeal the Division.

29 Subsection 57(3) (table item 5, column headed "Provisions")

Omit "sections 61 and 62", substitute "section 61".

30 Division 2A of Part 3

Repeal the Division.

31 Division 3 of Part 3 (heading)

Omit "**medical indemnity payments**", substitute "**run-off cover support payments**".

32 Subsection 60(1)

Omit "UMP support payments, run-off cover support payments and competitive advantage payments", substitute "run-off cover support payments".

Authorised Version C2019A00105

33 Subsection 60(2) (table)

Repeal the table, substitute:

Where to find the provisions on various issues		
Item	**Issue**	**Provisions**
1	what is the time for paying run-off cover support payments?	section 61
2	when is late payment penalty payable?	section 65
3	what method should be used to pay run-off cover support payments?	section 66
4	what happens if run-off cover support payments are overpaid?	section 67
5	how are run-off cover support payments and late payment penalties recovered?	sections 68 to 70
6	what information has to be provided to the Chief Executive Medicare about run-off cover support payment matters?	sections 71 and 72

34 Subdivision B of Division 3 of Part 3 (heading)

Omit "**medical indemnity payments**", substitute "**run-off cover support payments**".

35 Sections 61 and 62

Repeal the sections, substitute:

61 When run-off cover support payment must be paid

A run-off cover support payment that a person is liable to pay for a contribution year becomes due and payable on:

(a) 30 June in the contribution year; or

(b) such other day as is specified in the rules 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.

Authorised Version C2019A00105

36 Paragraph 65(1)(a)

Omit "medical indemnity payment", substitute "run-off cover support payment".

37 Subsection 66(1)

Repeal the subsection, substitute:

(1) A run-off cover support payment must be paid to the Chief Executive Medicare.

38 Subsection 66(3)

Omit "or 66B".

39 Subsection 66(5)

Repeal the subsection.

40 Sections 66A and 66B

Repeal the sections.

41 Subsection 67(1) (heading)

Omit "*medical indemnity payment*", substitute "*run-off cover support payment*".

42 Paragraph 67(1)(a)

Omit "medical indemnity payment", substitute "run-off cover support payment".

43 Paragraphs 67(1)(b) and (c)

Repeal the paragraphs, substitute:

(b) a late payment penalty in relation to a run-off cover support payment for a contribution year;

44 Subsection 68(1)

Omit "medical indemnity payment", substitute "run-off cover support payment".

45 Subsection 68(2)

Repeal the subsection.

Authorised Version C2019A00105

46 Subsection 68(3)

Omit "or 66B".

47 Subsection 68(4)

Omit "(1), (2) or (3)", substitute "(1) or (3)".

48 Paragraph 70(1)(a)

Repeal the paragraph, substitute:

(a) stating that a person is liable to pay:

(i) a run-off cover support payment; or

(ii) a late payment penalty in relation to a run-off cover support payment; and

49 Paragraphs 71(1)(a) and (b) and 72(1)(a)

Omit "medical indemnity payment", substitute "run-off cover support payment".

50 Subsection 73(1)

Repeal the subsection, substitute:

(1) This section applies if a person is given a request for information under subsection 71(1).

51 Section 74A

Repeal the section.

52 Subsection 77(1) (at the end of the definition of *medical indemnity legislation*)

Add:

; or (c) the repealed *Medical Indemnity (Competitive Advantage Payment) Act 2005*; or

(d) the repealed *Medical Indemnity (UMP Support Payment) Act 2002*.

Authorised Version C2019A00105

National Health Act 1953

53 Subsection 135A(24) (paragraphs (b) and (d) of the definition of *indemnity legislation*)

Repeal the paragraphs.

54 Application

(1) The amendments of the *Health Insurance Act 1973* made by this Part apply in relation to any recording, divulging or communication of information after the commencement of this item.

(2) The amendments of the *Income Tax Assessment Act 1997* made by this Part apply in relation to income years starting on or after 1 July 2020.

(3) Section 27C of the *Medical Indemnity Act 2002*, as inserted by this Part, and the repeal of section 56 of that Act by this Part, apply in relation to financial years starting on or after 1 July 2019.

(4) Despite the amendments of sections 45 and 73 of the *Medical Indemnity Act 2002* made by this Part, those sections continue to apply in relation to any request for information given before the commencement of this item, as if those amendments had not been made.

(5) The amendments of the *National Health Act 1953* made by this Part apply in relation to any divulging or communication of information after the commencement of this item.

Authorised Version C2019A00105

Schedule 2—Indemnity scheme payments

Part 1—Aggregation of claims for high cost claim indemnity schemes

Medical Indemnity Act 2002

1 Subsection 4(1)

Insert:

eligible related claims: see section 8A.

2 Section 8A

Repeal the section, substitute:

8A Eligible related claims

(1) A claim or claims are ***eligible related claims*** in relation to a claim for which an application for a high cost claim indemnity or allied health high cost claim indemnity is made if:

(a) all the claims are made against the same person; and

(b) all the claims are made in relation to the same incident or series of related incidents; and

(c) either:

(i) all the claims are part of the same class action or representative proceeding; or

(ii) the incident, or series of related incidents, occurred in connection with a pregnancy or the birth of a child or children; and

(d) the application is the only application for a high cost claim indemnity or allied health high cost claim indemnity that has been made in relation to any of the claims; and

(e) none of the claims are eligible related claims in relation to another claim for which an application for a high cost claim indemnity or allied health high cost claim indemnity has been made.

Authorised Version C2019A00105

(2) For the purposes of paragraphs (1)(d) and (e), disregard an application if it is withdrawn before payment is made in relation to the application.

3 Paragraphs 30(1)(d) to (f)

Repeal the paragraphs, substitute:

(d) the MDO or insurer is first notified of:
  (i) the incident; or
  (ii) the claim; or
  (iii) an eligible related claim;
  between 1 January 2003 and the date specified in the rules as the termination date for the high cost claim indemnity scheme; and

(e) the MDO or insurer has a qualifying payment in relation to the claim, or qualifying payments in relation to:
  (i) the claim; or
  (ii) the claim and one or more eligible related claims; 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 earliest of the following times:
  (i) when the MDO or insurer was first notified of the incident;
  (ii) when the MDO or insurer was first notified of the claim;
  (iii) when the MDO or insurer was first notified of an eligible related claim; and

4 Subsection 30(2)

Omit “in relation to the claim if”, substitute “in relation to a claim if”.

5 Paragraph 31(1)(a)

After “a claim”, insert “that relates to an incident or a series of incidents”.

6 Paragraph 31(1)(b)

Omit “an amount in relation to the same claim (the ***insurer amount***)”, substitute “an amount (the ***insurer amount***) in relation to the same claim or in relation to an eligible related claim”.

Authorised Version C2019A00105

7 Subparagraph 31(2)(a)(i)

After “claim”, insert “or eligible related claim”.

8 Subparagraph 31(2)(a)(ii)

Omit “30(1)(a) to (e)”, substitute “30(1)(e)”.

9 At the end of paragraph 31(2)(a)

Add:

(iii) to have been notified of the incident, claim or eligible related claim when the insurer was first notified of the incident, claim or eligible related claim; and

10 Application

The amendments made by this Part apply in relation to any application for an indemnity scheme payment made on or after the commencement of this item (whether in relation to a claim made before or after that commencement).

Authorised Version C2019A00105

Part 2—Medical professions

Medical Indemnity Act 2002

11 Paragraph 4(1A)(a)

Omit "or other health professional".

12 Subsection 28(1)

Omit "practice by the person of a medical profession, other than practice as an eligible midwife", substitute "person's practice as a medical practitioner".

13 Paragraph 30(1)(b)

Omit "practice by the practitioner of a medical profession, other than practice as an eligible midwife", substitute "practitioner's practice as a medical practitioner".

14 Paragraph 34A(1)(a)

Omit "practice by the person of a medical profession (other than practice as an eligible midwife)", substitute "person's practice as a medical practitioner".

15 Paragraph 34E(1)(b)

Omit "practice by the practitioner of a medical profession, other than practice as an eligible midwife", substitute "practitioner's practice as a medical practitioner".

16 Application

Despite the amendments of sections 28, 30, 34A and 34E of the *Medical Indemnity Act 2002* made by this Part, those sections continue to apply, as if the amendments had not been made, in relation to any claim, whether made before or after the commencement of this item, that relates to:

(a) an incident that occurred before that commencement; or

(b) a series of related incidents, at least one of which occurred before that commencement;

Authorised Version C2019A00105

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

Authorised Version C2019A00105

Part 3—Run-off cover on retirement

Age Discrimination Act 2004

17 Schedule 2 (table items 6 and 7)

Repeal the items.

Medical Indemnity Act 2002

18 Subparagraph 34ZB(1)(d)(i)

Omit "subsection 34ZB(2)", substitute "subsection (2)".

19 Paragraph 34ZB(2)(a)

Omit "aged 65 years or over".

20 Application and transitional

(1) The amendments of the *Age Discrimination Act 2004* made by this Part apply in relation to anything done after the commencement of this item.

(2) The amendments of subsection 34ZB(2) of the *Medical Indemnity Act 2002* made by this Part apply in relation to:

(a) any claim made after the commencement of this item against a person who has retired permanently from private medical practice; and

(b) any requirement under Division 2A of Part 3 of the PSPS Act to provide medical indemnity cover after the commencement of this item for a person who has retired permanently from private medical practice;

whether the person retired before or after the commencement of this item.

(3) If:

(a) before the commencement of this item, a person has retired permanently from private medical practice (within the meaning of subsection 34ZB(5) of the *Medical Indemnity Act 2002* as in force immediately before that commencement); and

(b) before that commencement, the person accepted:

Authorised Version C2019A00105

(i) an offer to provide medical indemnity cover made because an event mentioned in paragraph 23(1)(b) of the PSPS Act occurred; or

(ii) an offer to renew cover mentioned in subparagraph (i); and

(c) the cover mentioned in paragraph (b) has not ceased before that commencement; and

(d) at that commencement, the person is aged less than 65 years;

the requirement in paragraph 26A(4)(f) of the PSPS Act does not apply, in relation to medical indemnity cover provided to the person for the purposes of subsection 26A(1) of the PSPS Act, until the cover mentioned in paragraph (b) of this subitem ceases.

Note: Regulations made for the purposes of section 24 of the PSPS Act deal with the premium payable for run-off cover provided under section 23 of the PSPS Act. While such run-off cover is in place, a medical indemnity insurer will not contravene the requirement in paragraph 26A(4)(f) of the PSPS Act not to charge a premium or other consideration.

(4) In this item:

medical indemnity cover has the meaning given in the PSPS Act.

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

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

21 Paragraph 31(2)(a)

Omit “aged 65 years or over”.

22 Application

The amendments of subsection 31(2) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* made by this Part apply in relation to any claim made after the commencement of this item against a person who has retired permanently from private practice as an eligible midwife, whether the person retired before or after the commencement of this item.

Authorised Version C2019A00105

Part 4—Health service incidents

Medical Indemnity Act 2002

23 Subsection 4(1)

Insert:

> ***health service*** means any service, care, treatment, advice or goods provided in respect of the physical or mental health of a person.

24 Subsection 4(1) (definition of *incident*)

Repeal the definition, substitute:

> ***incident*** means any incident (including any act, omission or circumstance) that occurs, or that is claimed to have occurred, in the course of, or in connection with, the provision of a health service.

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

25 Subsection 5(1)

Insert:

> ***health service*** means any service, care, treatment, advice or goods provided in respect of the physical or mental health of a person.

26 Subsection 5(1) (definition of *incident*)

Repeal the definition, substitute:

> ***incident*** means any incident (including any act, omission or circumstance) that occurs, or that is claimed to have occurred, in the course of, or in connection with, the provision of a health service.

Authorised Version C2019A00105

27 Application

The amendments of the *Medical Indemnity Act 2002* and the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* made by this Part apply in relation to any incident that occurs, or is claimed to have occurred, after the commencement of this item.

Authorised Version C2019A00105

Schedule 3—Administration

Medical Indemnity Act 2002

1 Subsection 4(1)

Insert:

administrative action has the meaning given by subsection 76A(4).

2 Subsection 4(1) (definition of *Human Services Minister*)

Repeal the definition.

3 Subsection 34I(1)

Omit "subsection (2)", substitute "subsections (2) and (3)".

4 At the end of section 34I

Add:

(3) The Chief Executive Medicare may treat an application as having been withdrawn if:

(a) the Chief Executive Medicare requests the person who applied for the certificate to give information under section 38 in relation to the application; and

(b) the person does not give the information to the Chief Executive Medicare by the end of the day specified in the request.

(4) The Chief Executive Medicare must notify the person who applied for the certificate if the Chief Executive Medicare treats the application as having been withdrawn.

5 Subsection 34ZW(1)

Repeal the subsection, substitute:

(1) After the end of each financial year, the Actuary must give the Secretary a report on the operation of this Division.

6 Subsection 34ZW(2)

Omit "in relation to a financial year".

Authorised Version C2019A00105

7 After subsection 34ZW(2)

Insert:

(2A) The Secretary must publish the report on the Department's website within 30 days after receiving the report.

8 Subsection 37(1)

Omit "subsection (2)", substitute "subsections (2) and (2A)".

9 Before subsection 37(2)

Insert:

Payment will not be made until requested information is given

10 Subsection 37(2)

Omit "If", substitute "Subject to subsection (2A), if".

11 After subsection 37(2)

Insert:

Application may be treated as withdrawn if requested information is not given

(2A) The Chief Executive Medicare may treat an application as having been withdrawn if:

(a) the Chief Executive Medicare requests the MDO or insurer who made the application to give information under section 38 in relation to the application; and

(b) the MDO or insurer does not give the information to the Chief Executive Medicare by the end of the day specified in the request.

(2B) The Chief Executive Medicare must notify the MDO or insurer if the Chief Executive Medicare treats the application as having been withdrawn.

Definitions

12 Subsection 38(1) (note)

Omit "Note", substitute "Note 1".

Authorised Version C2019A00105

13 At the end of subsection 38(1)

Add:

Note 2: Failure to comply may affect certain indemnity scheme payments: see sections 34I, 34ZZO and 37.

14 At the end of Part 2

Add:

Division 8—Monitoring

50 Insurers may be required to provide information

The rules may require a medical indemnity insurer to provide to the Secretary information about any of the following:

(a) premium costs for medical indemnity cover provided by contracts of insurance with the insurer;

(b) the income of medical practitioners, or persons who practise an allied health profession, for whom contracts of insurance with the insurer provide medical indemnity cover;

(c) the profitability of the insurer;

(d) the insurer's reinsurance arrangements and costs.

15 After section 76

Insert:

76A Chief Executive Medicare may use computer programs to take administrative action

(1) The Chief Executive Medicare may arrange for the use, under the Chief Executive Medicare's control, of computer programs for any purposes for which the Chief Executive Medicare may or must take administrative action under this Act or a legislative instrument made under this Act.

(2) Administrative action taken by the operation of a computer program under such an arrangement is, for the purposes of this Act, taken to be administrative action taken by the Chief Executive Medicare.

Authorised Version C2019A00105

(3) The Chief Executive Medicare may substitute a decision for a decision the Chief Executive Medicare is taken to have made under subsection (2) if the Chief Executive Medicare is satisfied that the decision made by the operation of the computer program is incorrect.

(4) In this Act:

administrative action means any of the following:

(a) making a decision;

(b) exercising any power or complying with any obligation;

(c) doing anything else that relates to making a decision or exercising a power or complying with an obligation.

76B Delegation by Secretary

(1) The Secretary may, in writing, delegate all or any of the functions or powers of the Secretary under this Act or a legislative instrument made under this Act to any of the following persons:

(a) the Chief Executive Medicare;

(b) an SES employee, or an acting SES employee, in the Department or the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary.

16 Before subsection 77(1)

Insert:

Definitions

17 Before subsection 77(2)

Insert:

Authorised Version C2019A00105

Offence

18 After subsection 77(2)

Insert:

Circumstances in which protected information and protected documents may be copied, recorded or divulged

(2A) Despite subsection (2), any of the following persons may make a copy or record of, or divulge to any other of the following persons, protected information or a protected document, for the purposes of monitoring, assessing or reviewing the operation of the medical indemnity legislation:

(a) the Secretary;

(b) the Chief Executive Medicare;

(c) the Actuary;

(d) the Australian Prudential Regulation Authority;

(e) the Australian Securities and Investments Commission.

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

(2B) Despite subsection (2), any of the following persons may make a copy or record of, or divulge to any other of the following persons, protected information or a protected document, for the purposes of conducting, or assisting a person to conduct, the evaluation mentioned in section 78A:

(a) a person mentioned in subsection (2A) of this section;

(b) a person conducting the evaluation;

(c) a person assisting a person to conduct the evaluation.

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

19 Subsection 77(5)

Omit “subsection (3)”, substitute “subsection (2A), (2B), (3)”.

20 After section 78

Insert:

Authorised Version C2019A00105

78A Evaluation of medical indemnity market

(1) The Minister must cause to be conducted an actuarial evaluation of:

(a) the stability of the medical indemnity insurance industry; and

(b) the affordability of medical indemnity insurance.

(2) The Minister must cause to be prepared a report of an evaluation under subsection (1).

(3) The Minister must cause a copy of the report to be tabled in each House of the Parliament by 28 February 2021.

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

21 Subsection 5(1)

Insert:

administrative action has the meaning given by subsection 87A(4).

Secretary means the Secretary of the Department.

22 Subsection 48(1)

Repeal the subsection, substitute:

(1) After the end of each financial year, the Actuary must give the Secretary a report on the operation of this Part.

23 Subsection 48(2)

Omit “in relation to a financial year”.

24 After subsection 48(2)

Insert:

(2A) The Secretary must publish the report on the Department’s website within 30 days after receiving the report.

25 At the end of Part 4 of Chapter 2

Add:

Authorised Version C2019A00105

Division 9—Monitoring

71A Insurers may be required to provide information

The Rules may require an eligible insurer to provide to the Secretary information about any of the following:

(a) premium costs for midwife professional indemnity cover provided by contracts of insurance with the insurer;

(b) the income of eligible midwives for whom contracts of insurance with the insurer provide midwife professional indemnity cover;

(c) the profitability of the insurer;

(d) the insurer's reinsurance arrangements and costs.

26 After section 87

Insert:

87A Chief Executive Medicare may use computer programs to take administrative action

(1) The Chief Executive Medicare may arrange for the use, under the Chief Executive Medicare's control, of computer programs for any purposes for which the Chief Executive Medicare may or must take administrative action under this Act or a legislative instrument made under this Act.

(2) Administrative action taken by the operation of a computer program under such an arrangement is, for the purposes of this Act, taken to be administrative action taken by the Chief Executive Medicare.

(3) The Chief Executive Medicare may substitute a decision for a decision the Chief Executive Medicare is taken to have made under subsection (2) if the Chief Executive Medicare is satisfied that the decision made by the operation of the computer program is incorrect.

(4) In this Act:

administrative action means any of the following:

(a) making a decision;

Authorised Version C2019A00105

(b) exercising any power or complying with any obligation;

(c) doing anything else that relates to making a decision or exercising a power or complying with an obligation.

87B Delegation by Secretary

(1) The Secretary may, in writing, delegate all or any of the functions or powers of the Secretary under this Act or a legislative instrument made under this Act to any of the following persons:

(a) the Chief Executive Medicare;

(b) an SES employee, or an acting SES employee, in the Department or the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary.

27 Before subsection 88(1)

Insert:

Definitions

28 Before subsection 88(2)

Insert:

Offence

29 After subsection 88(2)

Insert:

Circumstances in which protected information and protected documents may be copied, recorded or divulged

(2A) Despite subsection (2), any of the following persons may make a copy or record of, or divulge to any other of the following persons, protected information or a protected document, for the purposes of monitoring, assessing or reviewing the operation of the midwife professional indemnity legislation:

Authorised Version C2019A00105

(a) the Secretary;
(b) the Chief Executive Medicare;
(c) the Actuary;
(d) the Australian Prudential Regulation Authority;
(e) the Australian Securities and Investments Commission.

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

(2B) Despite subsection (2), any of the following persons may make a copy or record of, or divulge to any other of the following persons, protected information or a protected document, for the purposes of conducting, or assisting a person to conduct, the evaluation mentioned in section 78A of the *Medical Indemnity Act 2002*:
(a) a person mentioned in subsection (2A) of this section;
(b) a person conducting the evaluation;
(c) a person assisting a person to conduct the evaluation.

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

30 Subsection 88(4)

Omit "subsection (3)", substitute "subsection (2A), (2B) or (3)".

31 Application

Withdrawal of applications

(1) The amendments of sections 34I and 37 of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to any request under section 38 of that Act made after the commencement of this item, whether the application for the issue of the qualifying claim certificate or the application for the indemnity scheme payment is made before or after that commencement.

Reports on the run-off cover indemnity schemes

(2) The amendments of section 34ZW of the *Medical Indemnity Act 2002* and section 48 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* made by this Schedule apply in relation to financial years commencing on or after 1 July 2019.

Authorised Version C2019A00105

Disclosure of protected information or protected document

(3) The amendments of section 77 of the *Medical Indemnity Act 2002* and section 88 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* made by this Schedule apply in relation to any making of a copy or record, or divulging, of protected information or a protected document after the commencement of this item, whether the information or document was obtained or made before or after that commencement.

Authorised Version C2019A00105

Schedule 4—Instruments

Part 1—Amendments

Medical Indemnity Act 2002

1 Subsection 4(1) (note to the definition of *exceptional claims indemnity*)

Omit "the Exceptional Claims Protocol", substitute "regulations made for the purposes of section 34X (exceptional claims payments)".

2 Subsection 4(1) (definition of *Exceptional Claims Protocol*)

Repeal the definition.

3 Subsection 4(1) (note to the definition of *high cost claim indemnity*)

Omit "the High Cost Claims Protocol", substitute "regulations made for the purposes of section 34AA (high cost claims payments)".

4 Subsection 4(1)

Repeal the following definitions:

(a) definition of ***High Cost Claims Protocol***;

(b) definition of ***IBNR Claims Protocol***.

5 Subsection 4(1) (note to the definition of *IBNR indemnity*)

Omit "the IBNR Claims Protocol", substitute "regulations made for the purposes of section 27A (IBNR claims payments)".

6 Subsection 4(1) (definition of *participating MDO*)

Repeal the definition, substitute:

participating MDO means UMP.

7 Subsection 4(1) (definition of *participating member*)

Repeal the definition.

8 Subsection 4(1)

Insert:

Authorised Version C2019A00105

rules means the rules made under section 80.

9 Subsection 4(1) (definition of *Run-off Cover Claims and Administration Protocol*)

Repeal the definition.

10 Subsection 4(1) (note to the definition of *run-off cover indemnity*)

Omit "the Run-off Cover Claims and Administration Protocol", substitute "regulations made for the purposes of section 34ZN (run-off claims payments)".

11 Subsection 4(1)

Repeal the following definitions:

(a) definition of ***unfunded IBNR exposure***;

(b) definition of ***unfunded IBNR factor***.

12 Section 5

Omit "regulations" (wherever occurring), substitute "rules".

13 Subsection 10(1)

Omit "an MDO for the incident on 30 June 2002 and the MDO is a participating MDO", substitute "the participating MDO for the incident on 30 June 2002".

14 Subsection 10(1A)

Omit "determination of an IBNR Claims Protocol that can", substitute "regulations and rules to".

15 Subsection 10(2) (table item 1)

Repeal the item, substitute:

1	which MDO is the participating MDO?	definition of ***participating MDO*** in subsection 4(1)

16 Subsection 10(2) (table item 5, column headed "Provisions")

Omit "sections 21 to 23", substitute "section 21".

Authorised Version C2019A00105

17 Subsection 10(2) (table item 6A)

Repeal the item, substitute:

6A	what regulations can deal with	section 27A

18 Subdivision B of Division 1 of Part 2

Repeal the Subdivision.

19 Paragraph 14(e)

Omit "a participating MDO", substitute "the participating MDO".

20 Paragraph 16(1)(c)

Omit "an MDO for the incident that is covered by the IBNR indemnity scheme and that MDO is a participating MDO", substitute "the participating MDO for the incident that is covered by the IBNR indemnity scheme".

21 Subsection 16(1)

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

22 Subsection 16(4) (heading)

Omit "*relevant*".

23 Subsection 16(4)

Omit "relevant participating MDO or", substitute "participating MDO or".

24 Subsection 16(5) (heading)

Omit "*relevant*".

25 Subsections 16(5) and (6)

Omit "the relevant participating MDO" (wherever occurring), substitute "the participating MDO".

Authorised Version C2019A00105

26 Paragraph 17(1)(c)

Omit "an MDO for the incident that is covered by the IBNR indemnity scheme and that MDO is a participating MDO", substitute "the participating MDO for the incident that is covered by the IBNR indemnity scheme".

27 Subsection 17(1)

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

28 Subsection 17(4) (heading)

Omit "*relevant*".

29 Subsection 17(4)

Omit "relevant participating MDO or", substitute "participating MDO or".

30 Subsection 17(5) (heading)

Omit "*Relevant participating MDO*", substitute "*Participating MDO*".

31 Subsections 17(5) and (6)

Omit "the relevant participating MDO" (wherever occurring), substitute "the participating MDO".

32 Paragraph 19(d)

Omit "prescribed by the regulations", substitute "specified in the rules".

33 Subsection 21(1)

Repeal the subsection, substitute:

(1) The amount of the IBNR indemnity is the adjusted amount of the payment determined in accordance with subsection (2).

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

34 Subsection 21(2)

Omit "***adjusted amount of the payment***", substitute "adjusted amount of the payment".

Authorised Version C2019A00105

35 Paragraphs 21(3)(c) and (4)(d)

Omit "prescribed by the regulations", substitute "specified in the rules".

36 Sections 22 and 23

Repeal the sections.

37 Subsection 24(2)

Omit "the amount obtained by applying the relevant participating MDO's unfunded IBNR factor to".

38 Subsection 24(3)

Repeal the subsection.

39 Paragraph 27(2)(a)

Omit "prescribed rate", substitute "rate specified in the rules".

40 Subdivision F of Division 1 of Part 2 (heading)

Repeal the heading, substitute:

Subdivision F—Regulations may provide for payments

41 Section 27A (heading)

Repeal the heading, substitute:

27A Regulations may provide for payments in relation to IBNR claims

42 Subsection 27A(1)

Repeal the subsection, substitute:

(1) The regulations may provide in relation to:

(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).

Authorised Version C2019A00105

43 Subsection 27A(2)

Omit “IBNR Claims Protocol”, substitute “regulations”.

44 Paragraph 27A(2)(b)

Omit “the Protocol”, substitute “regulations made for the purposes of this section”.

45 Subsection 27A(3)

Omit “IBNR Claims Protocol”, substitute “regulations”.

46 Subsection 27A(4)

Repeal the subsection.

47 Paragraphs 27B(1)(a) and (b)

Omit “the IBNR Claims Protocol”, substitute “regulations made for the purposes of section 27A”.

48 Subsection 28(1A)

Omit “determination of a High Cost Claims Protocol that can”, substitute “regulations and rules to”.

49 Subsection 28(2) (table item 4A)

Repeal the item, substitute:

4A	what regulations can deal with	section 34AA

50 Subsection 28(2) (table item 8, column headed “Provisions”)

Omit “sections 39 and 40”, substitute “section 39”.

51 Paragraph 29(1)(b)

Omit “prescribed by the regulations”, substitute “specified in the rules”.

52 Subsection 29(2)

Repeal the subsection, substitute:

(2) Rules that specify an amount for the purposes of paragraph (1)(b) that increases the high cost claim threshold at the time the rules are registered on the Federal Register of Legislation must not

Authorised Version C2019A00105

commence earlier than 12 months after the day on which the rules are so registered.

53 Paragraph 30(1)(g)

Omit “regulations”, substitute “rules”.

54 Subsection 30(1A)

Repeal the subsection, substitute:

(1A) Rules 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 rules in question commence.

55 Subsection 30(3)

Repeal the subsection, substitute:

(3) The date specified in the rules for the purposes of paragraph (1)(d) must be at least 12 months after the day on which the rules in question are registered on the Federal Register of Legislation.

56 Paragraph 32(b)

Omit “a prescribed claim”, substitute “specified in the rules”.

57 Paragraph 32(c)

Omit “a prescribed incident”, substitute “an incident specified in the rules”.

58 Paragraph 34(1)(b)

Omit “prescribed by the regulations”, substitute “specified in the rules”.

59 Subsection 34(2)

Repeal the subsection, substitute:

(2) Rules that specify for the purposes of paragraph (1)(b) a percentage that is less than the percentage in force at the time the rules are registered on the Federal Register of Legislation must not commence earlier than 12 months after the day on which the rules are so registered.

Authorised Version C2019A00105

60 Subdivision C of Division 2 of Part 2 (heading)

Repeal the heading, substitute:

Subdivision C—Regulations may provide for payments

61 Section 34AA (heading)

Repeal the heading, substitute:

34AA Regulations may provide for payments in relation to high cost claims

62 Subsection 34AA(1)

Repeal the subsection, substitute:

(1) The regulations may provide in relation to:

(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).

63 Subsection 34AA(2)

Omit “High Cost Claims Protocol”, substitute “regulations”.

64 Paragraph 34AA(2)(b)

Omit “the Protocol”, substitute “regulations made for the purposes of this section”.

65 Subsection 34AA(3)

Omit “High Cost Claims Protocol”, substitute “regulations”.

66 Subsection 34AA(5)

Repeal the subsection.

67 Paragraphs 34AB(1)(a) and (b)

Omit “the High Cost Claims Protocol”, substitute “regulations made for the purposes of section 34AA”.

Authorised Version C2019A00105

68 Subsection 34A(2)

Omit "determination of an Exceptional Claims Protocol that can", substitute "regulations and rules to".

69 Subsection 34A(3) (table item 8)

Repeal the item, substitute:

8	what regulations can deal with	section 34X

70 Paragraph 34E(1)(c)

Omit "regulations", substitute "rules".

71 Paragraphs 34E(1)(h) and (i)

Omit "of a class specified in regulations", substitute "specified in rules".

72 Paragraph 34F(1)(b)

Omit "regulations", substitute "rules".

73 Subsections 34F(2) to (4)

Repeal the subsections, substitute:

Threshold specified in rules only applies to contracts entered into after the rules commence

(2) A rule 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 rule commences.

When rules reducing the threshold commence

(3) A rule reducing the threshold (which could be the threshold originally applicable under subsection (1), or that threshold as already changed by rules) commences on the date specified in the rules, which must be the date on which the rules are registered on the Federal Register of Legislation or a later day.

When rules increasing the threshold commence

(4) A rule increasing the threshold (which could be the threshold originally applicable under subsection (1), or that threshold as already changed by rules), commences on the date specified in the

Authorised Version C2019A00105

rules, which must be at least 3 months after the date on which the rules are registered on the Federal Register of Legislation.

74 Subsection 34G(1)

Omit “regulations”, substitute “rules”.

75 Subsection 34G(2)

Omit “earlier than 1 January 2006, and cannot be before the date on which the regulations are entered”, substitute “before the date on which the rules are registered”.

76 Subparagraph 34J(1)(c)(ii)

Omit “the Exceptional Claims Protocol”, substitute “regulations made for the purposes of section 34X (exceptional claims payments)”.

77 Paragraph 34K(2)(a)

Omit “regulations”, substitute “rules”.

78 Paragraphs 34S(2)(c), 34T(5)(c) and 34W(2)(a)

Omit “regulations”, substitute “rules”.

79 Subdivision E of Division 2A of Part 2 (heading)

Repeal the heading, substitute:

Subdivision E—Regulations may provide for payments

80 Section 34X (heading)

Repeal the heading, substitute:

34X Regulations may provide for payments in relation to exceptional claims

81 Subsection 34X(1)

Repeal the subsection, substitute:

(1) The regulations may provide in relation to making payments to insurers of claim handling fees, and payments on account of legal, administrative or other costs incurred by insurers (whether on their

Authorised Version C2019A00105

own behalf or otherwise), in respect of claims in relation to which qualifying claim certificates have been issued.

82 Subsection 34X(2)

Omit “Exceptional Claims Protocol”, substitute “regulations”.

83 Paragraph 34X(2)(b)

Omit “the Protocol”, substitute “regulations made for the purposes of this section”.

84 Subsection 34X(3)

Omit “Protocol”, substitute “regulations”.

85 Subsection 34X(4)

Repeal the subsection.

86 Paragraphs 34Y(1)(a) and (b)

Omit “the Exceptional Claims Protocol”, substitute “regulations made for the purposes of section 34X”.

87 Subsection 34Z(1) (note)

Omit “regulations to exclude classes of claims and classes of”, substitute “rules to exclude claims and”.

88 Subsection 34ZA(2)

Omit “determination of a Run-off Cover Claims and Administration Protocol that can”, substitute “regulations and rules to”.

89 Subsection 34ZA(3) (table item 5)

Repeal the item, substitute:

5	what regulations can deal with	section 34ZN

90 Paragraph 34ZB(2)(f)

Omit “regulations”, substitute “rules”.

91 Subsection 34ZB(2)

Omit “if the person is included in a class of persons that the regulations”, substitute “if the person is included in a class of persons that the rules”.

Authorised Version C2019A00105

92 Subsection 34ZB(3)

Omit “regulations”, substitute “rules”.

93 Subsection 34ZB(4)

Omit “regulations in question are entered”, substitute “rules in question are registered”.

94 Paragraph 34ZB(4A)(d)

Omit “regulations”, substitute “rules”.

95 Paragraph 34ZG(b)

Omit “prescribed by the regulations”, substitute “specified in the rules”.

96 Paragraphs 34ZI(2)(d), 34ZJ(5)(d) and 34ZM(2)(a)

Omit “regulations”, substitute “rules”.

97 Subdivision D of Division 2B of Part 2 (heading)

Repeal the heading, substitute:

Subdivision D—Regulations may provide for payments

98 Section 34ZN (heading)

Repeal the heading, substitute:

34ZN Regulations may provide for payments in relation to run-off claims

99 Subsection 34ZN(1)

Repeal the subsection, substitute:

(1) The regulations may provide in relation to:
  (a) making payments to MDOs and medical indemnity insurers of claim handling fees in respect of eligible run-off claims; and
  (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

Authorised Version C2019A00105

(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*.

100 Subsection 34ZN(2)

Omit "Run-off Cover Claims and Administration Protocol", substitute "regulations".

101 Paragraph 34ZN(2)(b)

Omit "the Protocol", substitute "regulations made for the purposes of this section".

102 Subsection 34ZN(3)

Omit "Run-off Cover Claims and Administration Protocol", substitute "regulations".

103 Subsection 34ZN(4)

Repeal the subsection.

104 Paragraphs 34ZO(1)(a) and (b)

Omit "the Run-off Cover Claims and Administration Protocol", substitute "regulations made for the purposes of section 34ZN".

105 Paragraph 34ZP(2)(a)

Omit "the Minister, by legislative instrument, determines", substitute "the rules provide".

106 Paragraph 34ZP(2)(b)

Omit "determination is made", substitute "rules made for the purposes of paragraph (a) commence".

107 Subsection 34ZS(4) (definition of *applicable interest rate*)

Repeal the definition, substitute:

> ***applicable interest rate*** is the rate of interest, for the financial year, specified in the rules for the purposes of this subsection.

Authorised Version C2019A00105

108 Subsection 34ZS(4) (definition of *June quarter*)

Repeal the definition.

109 Subsection 34ZS(4) (definition of *short-term bond rate*)

Repeal the definition.

110 Subparagraph 34ZU(2)(c)(ii)

Omit "as the Minister determines by legislative instrument", substitute "specified in the rules".

111 Paragraph 34ZW(2)(b)

Omit "the Run-off Cover Claims and Administration Protocol", substitute "regulations made for the purposes of section 34ZN (run-off claims payments)".

112 Subsection 36(1)

Omit "(1)".

113 Subsections 36(2) and (3)

Repeal the subsections.

114 Subsection 39(1)

Omit "the IBNR Claims Protocol, the High Cost Claims Protocol, the Exceptional Claims Protocol or the Run-off Cover Claims and Administration Protocol", substitute "regulations made for the purposes of section 27A (IBNR claims payments), 34AA (high cost claims payments), 34X (exceptional claims payments), 34ZN (run-off claims payments), 34ZZG (allied health high cost claims payments) or 34ZZZD (allied health exceptional claims payments)".

115 Paragraphs 39(1)(d) and (1A)(b)

Omit "determined by the Chief Executive Medicare", substitute "specified in the rules".

116 Subsections 39(2) to (4)

Repeal the subsections, substitute:

Authorised Version C2019A00105

Records to be retained for certain period

(2) The records must be retained for a period of 5 years (or any other period specified in the rules) starting on the day on which the records were created.

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

Rules regarding additional matters

(3) Rules made for the purposes of paragraph (1)(d) or (1A)(b) must not commence earlier than 14 days after the day on which the rules are registered on the Federal Register of Legislation.

117 Section 40 (heading)

Omit "**Participating MDOs**", substitute "**Certain insurers and MDOs**".

118 Subsection 40(1) (heading)

Omit "*by participating MDO*".

119 Subsection 40(1)

Omit "A participating MDO", substitute "An insurer or MDO that applies for an IBNR indemnity".

120 Paragraphs 40(1)(a) to (d)

Repeal the paragraphs, substitute:

(d) determining its IBNR exposure as at the end of a financial year;

121 Paragraph 40(1)(e)

Omit "determined by the Chief Executive Medicare", substitute "specified in the rules".

122 Subsections 40(2) to (4)

Repeal the subsections, substitute:

Authorised Version C2019A00105

Records to be retained for certain period

(2) The records must be retained for a period of 5 years (or any other period specified in the rules) starting on the day on which the records were created.

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

Rules regarding additional matters

(3) Rules made for the purposes of paragraph (1)(e) must not commence earlier than 14 days after the day on which the rules are registered on the Federal Register of Legislation.

123 Section 43 (heading)

Repeal the heading, substitute:

43 Regulations may provide for subsidy scheme

124 Subsection 43(1)

Repeal the subsection, substitute:

(1) The regulations may provide for one or more schemes for one or more of the following:

(a) making payments to:

(i) medical practitioners; or

(ii) medical indemnity insurers 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 insurers on behalf of medical practitioners;

to help those medical practitioners meet the cost of paying run-off cover support payments;

(b) making payments to medical indemnity insurers to help the medical indemnity insurers meet the cost of administering schemes provided for under paragraph (a).

Authorised Version C2019A00105

125 Paragraph 43(2)(d)

Omit “medical indemnity providers”, substitute “medical indemnity insurers”.

126 Paragraph 43(2)(e)

Repeal the paragraph, substitute:

(e) any amount payable to the Commonwealth to be recovered as a debt.

127 Subsection 43(5)

Repeal the subsection.

128 Paragraphs 44(1)(a) and (b)

Omit “formulated”, substitute “provided for”.

129 Paragraphs 48(aa), (baa) and (bb)

Repeal the paragraphs.

130 Paragraph 48(bd)

Repeal the paragraph, substitute:

(bd) allied health high cost claim indemnities; and

(be) allied health exceptional claims indemnities; and

(bf) amounts payable under regulations made for the purposes of section 27A (IBNR claims payments), 34AA (high cost claims payments), 34X (exceptional claims payments), 34ZN (run-off claims payments), 34ZZG (allied health high cost claims payments) or 34ZZZD (allied health exceptional claims payments); and

131 Paragraph 48(c)

Omit “formulated”, substitute “provided for”.

132 Subsection 59(1)

Omit “regulations” (wherever occurring), substitute “rules”.

133 Subsection 59(2)

Omit “Regulations”, substitute “Rules”.

Authorised Version C2019A00105

134 Paragraph 65(2)(a)

Omit “prescribed rate”, substitute “rate specified in the rules”.

135 Subsection 66(4)

Omit “regulations”, substitute “rules”.

136 Paragraph 77(4)(a)

Omit “a prescribed authority or person”, substitute “specified in rules made”.

137 Paragraph 77(4)(b)

Omit “regulations”, substitute “rules”.

138 At the end of Part 4

Add:

80 Rules

(1) The Minister may, by legislative instrument, make rules prescribing matters:
  (a) required or permitted by this Act to be prescribed by the rules; or
  (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) To avoid doubt, the rules may not do the following:
  (a) create an offence or civil penalty;
  (b) provide powers of:
    (i) arrest or detention; or
    (ii) entry, search or seizure;
  (c) impose a tax;
  (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  (e) directly amend the text of this Act.

(3) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

Authorised Version C2019A00105

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

139 Division 1 of Part 2 (heading)

Repeal the heading.

140 Division 2 of Part 2

Repeal the Division.

141 Paragraph 26A(4)(d)

Repeal the paragraph, substitute:

(d) it is provided on the terms and conditions on which the last medical indemnity cover provided for the practitioner was provided, to the extent they are relevant to the provision of medical indemnity cover; and

142 Subsection 26D(4) (note)

Omit "26A(4)(d)", substitute "26A(4)(e)".

Medical Indemnity (Run-off Cover Support Payment) Act 2004

143 Subparagraph 7(1)(a)(i)

Omit "formulated".

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

144 Subsection 5(1)

Insert:

Rules means the rules made under section 90.

145 Subsection 44(4) (definition of *applicable interest rate*)

Repeal the definition, substitute:

applicable interest rate is the rate of interest, for the financial year, specified in the Rules for the purposes of this subsection.

Authorised Version C2019A00105

146 Subsection 44(4) (definition of *June quarter*)

Repeal the definition.

147 Subsection 44(4) (definition of *short-term bond rate*)

Repeal the definition.

Authorised Version C2019A00105

Part 2—Application and transitional

148 IBNR indemnity scheme

(1) The amendments of:

(a) the definition of ***participating MDO*** in subsection 4(1) of the *Medical Indemnity Act 2002*; and

(b) Division 1 of Part 2 (other than sections 24 and 27 and Subdivision F) of that Act;

made by this Schedule apply in relation to any IBNR indemnity for which an application is made after the commencement of this item.

(2) The amendments of section 24 of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to any amount required to be repaid under subsection 24(1) of that Act after the commencement of this item, whether the IBNR indemnity, or amount mentioned in paragraph 24(1)(b) of that Act, is paid to the MDO or insurer before or after that commencement.

(3) Despite the amendments of section 27 of the *Medical Indemnity Act 2002* made by this Schedule:

(a) that section; and

(b) any regulations made for the purposes of that section;

as in force immediately before the commencement of this item, continue to apply in relation to any amount that becomes due and payable under section 24 of that Act before that commencement.

(4) Despite the amendments of Subdivision F of Division 1 of Part 2 of the *Medical Indemnity Act 2002* made by this Schedule, section 27B of that Act continues to apply in relation to any payment, or amount payable, under the IBNR Claims Protocol (within the meaning of that Act as in force immediately before the commencement of this item), as if those amendments had not been made.

149 Exceptional claims indemnity scheme

(1) The amendments of sections 34E and 34F of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to any qualifying claim certificate if the application for the issue of the certificate is made after the commencement of this item.

Authorised Version C2019A00105

(2) The amendments of sections 34J and 34K of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to any qualifying claim certificate, whether issued before or after the commencement of this item.

150 Run-off cover indemnity scheme

(1) The amendments of subsection 34ZB(2) of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to:

(a) any claim made after the commencement of this item; and

(b) any requirement under Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* to provide medical indemnity cover (within the meaning of that Act) after commencement of this item.

(2) Despite the amendments of section 34ZM of the *Medical Indemnity Act 2002* made by this Schedule:

(a) that section; and

(b) any regulations made for the purposes of that section;

as in force immediately before the commencement of this item, continue to apply in relation to any amount that becomes due and payable under section 34ZJ of that Act before that commencement.

(3) Despite the amendments of Subdivision D of Division 2B of Part 2 of the *Medical Indemnity Act 2002* made by this Schedule, section 34ZO of that Act continues to apply in relation to any payment, or amount payable, under the Run-off Cover Claims and Administration Protocol (within the meaning of that Act as in force immediately before the commencement of this item), as if those amendments had not been made.

(4) The amendments of section 34ZS of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to any financial year commencing before, on or after the commencement of this item.

(5) The amendments of section 34ZW of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to financial years commencing on or after 1 July 2020.

Authorised Version C2019A00105

151 Administration of the indemnity schemes

(1) Despite the amendments of sections 39 and 40 of the *Medical Indemnity Act 2002* made by this Schedule, those sections and any instrument made under or for the purposes of those sections, as in force immediately before the end of the day before this item commences, continue to apply in relation to any record required by those sections and instruments, as in force at that time, to be retained for a period starting before that time.

(2) Despite the amendments of section 48 of the *Medical Indemnity Act 2002* made by this Schedule, that section continues to apply, as if those amendments had not been made, in relation to any amount payable before or after the commencement of this item under the IBNR Claims Protocol (within the meaning of that Act as in force immediately before that commencement), the Run-off Cover Claims and Administration Protocol (within the meaning of that Act as in force immediately before that commencement) or a scheme formulated under subsection 43(1) of that Act (as in force immediately before that commencement).

(3) Despite the amendments of section 65 of the *Medical Indemnity Act 2002* made by this Schedule:

(a) that section; and

(b) any regulations made for the purposes of that section;

as in force immediately before the commencement of this item, continue to apply in relation to any medical indemnity payment (within the meaning of that Act as in force immediately before that commencement) that becomes due and payable before that commencement.

(4) Despite the amendments of section 66 of the *Medical Indemnity Act 2002* made by this Act:

(a) that section; and

(b) any regulations made for the purposes of that section;

as in force immediately before the commencement of this item, continue to apply in relation to any medical indemnity payment (within the meaning of that Act as in force immediately before that commencement) or late payment penalty (within the meaning of that Act as in force immediately before that commencement) that becomes due and payable before that commencement.

Authorised Version C2019A00105

152 Midwife professional indemnity

The amendments of section 44 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* made by this Schedule apply in relation to any financial year commencing before, on or after the commencement of this item.

153 Rules

(1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:

(a) the amendments or repeals made by this Act; or

(b) the repeal (whether by this Act or otherwise) of any instrument made under an Act amended or repealed by this Act.

(2) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

(3) Rules may provide that, during or in relation to the first 12 months after the commencement of this item, this Act or any other Act or instrument has effect with any modifications prescribed by the rules.

(4) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to rules made for the purposes of this item.

(5) This Act does not limit the rules that may be made for the purposes of subitem (1).

Authorised Version C2019A00105

Schedule 5—Universal cover

Medical Indemnity Act 2002

1 After subsection 3(3)

Insert:

(3A) This Act also supports access by medical practitioners to arrangements that indemnify them for claims arising in relation to their practice of their medical professions by limiting when medical indemnity insurers can refuse to provide medical indemnity cover.

2 Subsection 4(1)

Insert:

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

Health Practitioner Regulation National Law means the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld).

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 rules.

Authorised Version C2019A00105

professional indemnity cover: a contract of insurance with a medical practitioner provides ***professional indemnity cover*** if it provides medical indemnity cover for the practitioner in relation to the practitioner's private medical practice.

risk surcharge has the meaning given by subsection 52C(1).

3 Subsection 34ZB(5)

Repeal the subsection.

4 After Part 2

Insert:

Part 2A—Universal cover obligation

Division 1—Introduction

51 Guide to the universal cover obligation provisions

(1) This Part prevents medical indemnity insurers from refusing to provide medical indemnity cover for medical practitioners in relation to private medical practice, except in certain circumstances.

(2) This Part also specifies when a medical indemnity insurer may require a medical practitioner to pay a risk surcharge.

(3) Medical indemnity insurers must keep records and provide information in relation to these requirements.

51A Winding up of medical indemnity insurer

This Part has effect subject to section 116 of the *Insurance Act 1973*.

Note: Under that section, a general insurer must not carry on insurance business after it starts to be wound up. A general insurer will not contravene this Part by refusing to enter into an insurance contract if the winding up of the insurer has started.

Authorised Version C2019A00105

Division 2—Requirements in relation to providing professional indemnity cover

52 Division applies for the purposes of the AFCA scheme

A medical indemnity insurer is not required to comply with this Division other than for the purposes of the AFCA scheme (within the meaning of the *Corporations Act 2001*).

Note: A medical practitioner can make a complaint to AFCA about certain issues relating to medical indemnity insurance.

52A Universal cover obligation

A medical indemnity insurer must not refuse to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover unless:

(a) in relation to a contract of insurance between the practitioner and the insurer to provide professional indemnity cover, the practitioner:

(i) failed to comply with the duty of the utmost good faith (within the meaning of the *Insurance Contracts Act 1984*); or

(ii) failed to comply with the duty of disclosure (within the meaning of that Act); or

(iii) made a misrepresentation to the insurer during the negotiations for the contract but before it was entered into; or

(iv) failed to comply with a provision of the contract, including a provision with respect to payment of the premium; or

(v) made a fraudulent claim under the contract; or

(b) the practitioner places the public at risk of substantial harm in the practitioner's private medical practice because the practitioner has an impairment (within the meaning of the Health Practitioner Regulation National Law); or

(c) the practitioner's private medical practice poses an unreasonable risk of substantial harm to the public or patients; or

(d) the practitioner poses an unreasonable risk of harm to members of the insurer's staff because of persistent

Authorised Version C2019A00105

threatening or abusive behaviour towards members of the insurer's staff; or

(e) the practitioner has persistently failed to comply with reasonable risk management requirements of the insurer; or

(f) the circumstances specified in the rules apply.

52B Medical indemnity insurer to notify of refusal

(1) If a medical indemnity insurer refuses to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover, the insurer must notify the practitioner in writing in accordance with any requirements specified in the rules.

(2) Without limiting subsection (1), the rules may specify:

(a) the information that must be included in the notification; and

(b) a time within which the insurer must notify.

52C Risk surcharge requirements

(1) Subject to subsections (3) and (4), a medical indemnity insurer may require a medical practitioner (the ***practitioner***) to pay, as part of the amount payable for professional indemnity cover provided by a contract of insurance with the practitioner, an amount (the ***risk surcharge***):

(a) to reflect that, because the practitioner engages, or has engaged, in conduct that deviates from good medical practice, the practitioner's private medical practice is likely to pose a higher risk to patients than similar practices (see subsection (2)); or

(b) in circumstances specified in the rules.

(2) The private medical practice of another medical practitioner (the ***comparison practitioner***) is a similar practice if the insurer reasonably considers that the practitioner and the comparison practitioner have similar practice profiles for the purposes of calculating premiums for professional indemnity cover, except that the comparison practitioner does not engage, and has not engaged, in conduct that deviates from good medical practice.

(3) The risk surcharge must not exceed the amount:

(a) specified in the rules; or

Authorised Version C2019A00105

(b) worked out in accordance with a method specified in the rules.

(4) The offer to enter into the contract of insurance to provide the professional indemnity cover must:

(a) identify the amount of the risk surcharge; and

(b) state the reason for requiring payment of the risk surcharge;

in accordance with any requirements specified in the rules.

52D Medical indemnity insurer may be required to offer interim cover until complaint is finalised

(1) A medical indemnity insurer must offer to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover if:

(a) a contract of insurance between the insurer and the practitioner provides professional indemnity cover (the ***initial cover***); and

(b) the insurer refuses to enter into a contract of insurance with the practitioner to provide professional indemnity cover (the ***subsequent cover***) starting after the initial cover ceases; and

(c) the practitioner makes a complaint to AFCA in relation to the refusal; and

(d) the initial cover, or professional indemnity cover provided as a result of an offer made for the purposes of this section, ceases before the complaint finalisation date.

(2) The offer must comply with any requirements specified in the rules.

(3) However, the insurer is not required to offer to enter into a contract of insurance that provides professional indemnity cover after the complaint finalisation date.

(4) In this section:

complaint finalisation date means the earlier of:

(a) the day the subsequent cover starts; and

(b) the day 60 days after the complaint is finalised.

finalised: a complaint is finalised when:

Authorised Version C2019A00105

(a) the complaint is resolved by agreement between the insurer and the practitioner; or
(b) the complaint is withdrawn; or
(c) AFCA closes the complaint because:
  (i) it has excluded the complaint, or decided not to continue to consider the complaint, and the timeframe in which the practitioner may object to the decision has expired; or
  (ii) it has made a preliminary assessment in relation to the complaint and the timeframe for requesting a determination of the complaint has expired; or
  (iii) it has determined the complaint; or
(d) the complaint otherwise ceases to be dealt with by AFCA.

Division 3—Records, reporting and information

53 Records

(1) The rules may require a medical indemnity insurer to keep records relating to the following:
  (a) a refusal by the insurer to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover;
  (b) a requirement by the insurer that a medical practitioner pay a risk surcharge.

Note: Failure to keep the records is an offence (see section 53A).

(2) Records required by the rules must be retained for a period of 5 years (or any other period specified in the rules) starting on the day on which the records were created.

Note: Failure to retain the records is an offence (see section 53A).

53A Failing to keep and retain records

(1) This section applies if section 53 or rules made for the purposes of that section require 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.

Authorised Version C2019A00105

Penalty: 30 penalty units.

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

53B Medical indemnity insurer must report annually

(1) If, in a financial year, a medical indemnity insurer refuses to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover, the insurer must notify the Secretary within 2 months after the end of the financial year of:

(a) the number of times in the financial year the insurer refused to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover; and

(b) any other matter that relates to the insurer's obligations under Division 2 and that is specified in the rules.

Note: Failure to notify is an offence (see section 53C).

(2) If, in a financial year, a medical indemnity insurer requires a medical practitioner to pay a risk surcharge, the insurer must notify the Secretary within 2 months after the end of the financial year of:

(a) the number of times in the financial year the insurer required a medical practitioner to pay a risk surcharge; and

(b) any other matter that relates to the insurer's obligations under Division 2 and that is specified in the rules.

Note: Failure to notify is an offence (see section 53C).

(3) The Secretary may, by notifiable instrument, approve a form for the purposes of notification under subsection (1) or (2).

(4) If the Secretary does so, the notification must be in the approved form.

(5) Within 3 months after the end of the financial year, the Secretary must publish on the Department's website any information notified under paragraph (1)(a) or (2)(a) in relation to the financial year.

53C Failing to report

(1) This section applies if section 53B requires a person to notify the Secretary of a matter within a particular period.

(2) The person commits an offence if:

Authorised Version C2019A00105

(a) if the Secretary has approved a form for the purposes of the notification—the person fails to notify the Secretary of the matter in the approved form within that period; or

(b) otherwise—the person fails to notify the Secretary of the matter within that period.

Penalty: 30 penalty units.

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

53D Secretary may request information

(1) The Secretary may request a medical indemnity insurer to give the Secretary the following information, in the form requested by the Secretary:

(a) the number of times in a period the insurer refused to enter into a contract of insurance with a medical practitioner to provide professional indemnity cover;

(b) the number of times in a period the insurer required a medical practitioner to pay a risk surcharge;

(c) any other information that relates to the insurer's obligations under Division 2 and that is specified in the rules.

Note: Failure to comply with the request is an offence (see section 53E).

(2) The request:

(a) must be made in writing; and

(b) may require the information to be verified by statutory declaration; and

(c) must specify the day on or before which the information must be given; and

(d) must contain a statement to the effect that a failure to comply with the request is an offence.

The day specified under paragraph (c) must be at least 28 days after the day on which the request is made.

53E Failing to give information

(1) This section applies if a person is given a request for information under section 53D.

Authorised Version C2019A00105

(2) The person commits an offence if the person fails to comply with the request.

Penalty: 30 penalty units.

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

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

5 Subsection 26A(9) (definition of *private medical practice*)

Omit "section 34ZB of".

6 Application

(1) Sections 52A, 52B and 52D of the *Medical Indemnity Act 2002*, as inserted by this Schedule, apply in relation to any refusal to enter into a contract of insurance that occurs after the commencement of this item:

(a) whether or not a request to enter into a contract is made; and

(b) if a request to enter into a contract is made—whether it is made before or after the commencement of this item.

(2) Section 52C of the *Medical Indemnity Act 2002*, as inserted by this Schedule, applies in relation to any professional indemnity cover provided or to be provided by a contract of insurance entered into after the commencement of this item.

(3) Section 53B of the *Medical Indemnity Act 2002*, as inserted by this Schedule, applies in relation to financial years starting on or after 1 July 2020.

(4) Section 53D of the *Medical Indemnity Act 2002*, as inserted by this Schedule, applies in relation to any period starting on or after 1 July 2020.

Authorised Version C2019A00105

Schedule 6—Allied health professionals

Medical Indemnity Act 2002

1 At the end of section 3

Add:

Availability of other health services

(5) Another object of this Act is to contribute towards the availability of certain health services in Australia by providing Commonwealth assistance to support access by persons who practise allied health professions to arrangements that indemnify them for claims arising in relation to their practices.

(6) 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 persons who practise allied health professions; and

(b) meeting the amounts by which settlements and awards exceed insurance contract limits, if those contract limits meet the Commonwealth's threshold requirements.

2 Subsection 4(1)

Insert:

allied health exceptional claims indemnity means an allied health exceptional claims indemnity paid or payable under Division 2D of Part 2.

Note: Amounts payable under regulations made for the purposes of section 34ZZZD (allied health exceptional claims payments) are not covered by this definition.

allied health high cost claim indemnity means an allied health high cost claim indemnity paid or payable under Division 2C of Part 2.

Note: Amounts payable under regulations made for the purposes of section 34ZZG (allied health high cost claims payments) are not covered by this definition.

Authorised Version C2019A00105

allied health high cost claim threshold has the meaning given by section 34ZZA.

allied health profession means a profession that is:

(a) a health profession within the meaning of the Health Practitioner Regulation National Law, other than the medical profession; or

(b) specified in the rules.

allied health termination date means the date, if any, set by rules under section 34ZZM.

conducted appropriately: a defence of a claim against a person is ***conducted appropriately*** if, and only if:

(a) to the extent it is conducted on the person's behalf by an insurer, or by a legal practitioner engaged by an 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 person, or by a legal practitioner engaged by the person—the defence is conducted prudently.

defence, of a claim against a person, includes any settlement negotiations on behalf of the person.

eligible insurer has the meaning given in section 34ZZ.

eligible MDO has the meaning given in section 34ZZ.

exceptional claims termination date means the date, if any, set by rules under section 34G.

3 Subsection 4(1) (definition of *health professional*)

Repeal the definition.

4 Subsection 4(1) (at the end of the definition of *indemnity scheme payment*)

Add:

; or (e) an allied health high cost claim indemnity; or

(f) an allied health exceptional claims indemnity.

Authorised Version C2019A00105

5 Subsection 4(1) (after paragraph (ab) of the definition of *late payment penalty*)

Insert:

(ac) in relation to a debt owed under section 34ZZZ—means a penalty payable under section 34ZZZC; and

6 Subsection 4(1) (definition of *payment*)

Omit "Division 2A", substitute "Divisions 2A and 2D".

7 Subsection 4(1)

Insert:

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.

Note 2: For how this definition applies if the contract provides for deductibles, see section 8B.

Note 3: For how this definition interacts with the high cost claim indemnity scheme and the allied health high cost claim indemnity scheme, see sections 34D and 34ZZJ.

qualifying allied health claim certificate means a certificate issued by the Chief Executive Medicare under section 34ZZK.

qualifying allied health liability, in relation to a claim, has the meaning given by section 34ZZS.

qualifying allied health payment: see subsection 34ZZB(4).

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

qualifying payment: see subsection 30(2).

relevant allied health threshold: see subsection 34ZZL(1).

relevant threshold: see subsection 34F(1).

Authorised Version C2019A00105

8 Subsections 4(3) and (4)

Omit "Division 2A", substitute "Divisions 2A and 2D".

9 Before section 9

Insert:

8B Treatment of deductibles for the exceptional claims indemnity scheme and the allied health exceptional claims indemnity scheme

(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 subsection 4(1), 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) and 34ZZR(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 references in paragraphs 34L(1)(e) and 34ZZR(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 if it were an amount that the insurer would have been liable to pay under the contract.

Authorised Version C2019A00105

10 Sections 34B and 34C

Repeal the sections.

11 Section 34D

Omit "section 34B", substitute "subsection 4(1)".

12 Paragraph 34E(1)(g)

After "before the", insert "exceptional claims".

13 Subsection 34E(1) (note 2)

After "after the", insert "exceptional claims".

14 Subsection 34F(1)

Omit "For the purposes of subparagraph 34E(1)(e)(ii), the", substitute "The".

15 Section 34G (heading)

Omit "**a termination date**", substitute "**the exceptional claims termination date**".

16 Subsection 34G(1) (note)

After "after the", insert "exceptional claims".

17 Subsection 34L(1) (notes 1 to 6)

Repeal the notes, substitute:

Note 1: For how paragraphs (e) and (f) apply:

(a) if there are deductibles—see section 8B; or

(b) if a high cost claim indemnity or a run-off cover indemnity is paid or payable—see section 34D; or

(c) if the insurer is a Chapter 5 body corporate—see subsection (4); or

(d) 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; or

(e) if the claim relates to a series of incidents some, but not all, of which occurred after the exceptional claims termination date—see section 34O.

Note 2: 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).

Authorised Version C2019A00105

18 Subsection 34M(1)

Omit "(1)".

19 Paragraph 34M(1)(b)

Omit "(see subsection (2))".

20 At the end of subsection 34M(1)

Add:

Note: For paragraph (b), see the definitions of ***defence*** and ***conducted appropriately*** in subsection 4(1).

21 Subsections 34M(2) and (3)

Repeal the subsections.

22 Section 34O (heading)

After "**which occurred after the**", insert "**exceptional claims**".

23 Paragraph 34O(b)

After "incidents occurred after the", insert "exceptional claims".

24 Section 34O

After "that occurred after the", insert "exceptional claims".

25 Paragraph 34Z(3)(a)

Omit "34M(1)(a)(i)", substitute "34M(a)(i)".

26 After Division 2B of Part 2

Insert:

Division 2C—Allied health high cost claim indemnity scheme

Subdivision A—Introduction

34ZY Guide to the allied health high cost claim indemnity provisions

(1) This Division provides that an allied health high cost claim indemnity may be paid to an eligible MDO or eligible insurer that

Authorised Version C2019A00105

pays, or is liable to pay, more than a particular amount (referred to as the ***allied health 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 an allied health profession.

(2) This Division also provides for the regulations and rules to deal with other matters relating to incidents covered by the allied health high cost claim indemnity scheme.

(3) 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	which MDOs and insurers are eligible?	section 34ZZ
2	what is the allied health high cost claim threshold?	section 34ZZA
3	what conditions must be satisfied for an MDO or insurer to get the allied health high cost claim indemnity?	sections 34ZZB to 34ZZD
4	what happens if the incidents occurred during treatment of a public patient in a public hospital?	paragraph 34ZZD(a) and section 34ZZE
5	how much is the allied health high cost claim indemnity?	section 34ZZF
6	what regulations can deal with	section 34ZZG
7	how do MDOs and insurers apply for the allied health high cost claim indemnity?	section 36
8	when will the allied health high cost claim indemnity be paid?	section 37
9	what information has to be provided to the Chief Executive Medicare about allied health high cost indemnity matters?	section 38
10	what records must MDOs and insurers keep?	section 39
11	how are overpayments of allied	sections 41 and 42

Authorised Version C2019A00105

Where to find the provisions on various issues		
Item	**Issue**	**Provisions**
	health high cost claim indemnity recovered?	

34ZZ Eligible MDOs and eligible insurers

An MDO is an ***eligible MDO***, or a medical indemnity insurer is an ***eligible insurer***, if:

(a) it is specified in the rules; and

(b) it is party to contracts of insurance that provide medical indemnity cover for medical practitioners; and

(c) it is party to contracts of insurance that provide medical indemnity cover for persons who practise an allied health profession.

34ZZA Allied health high cost claim threshold

(1) The ***allied health high cost claim threshold*** is:

(a) $2 million; or

(b) such other amount as is specified in the rules.

(2) Rules that specify an amount for the purposes of paragraph (1)(b) that increases the allied health high cost claim threshold at the time the rules are registered on the Federal Register of Legislation must not commence earlier than 12 months after the day on which the rules are so registered.

Subdivision B—Allied health high cost claim indemnity

34ZZB Circumstances in which allied health high cost claim indemnity payable

Basic payability rule

(1) Subject to section 34ZZC, an allied health high cost claim indemnity is payable to an eligible MDO or eligible insurer under this section if:

(a) a claim is, or was, made against a person (the ***practitioner***); and

Authorised Version C2019A00105

(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 an allied health profession; and
(c) if the allied health profession is midwifery:
  (i) the incident occurs or occurred; or
  (ii) all of the incidents in the series occur or occurred;
  in the course of, or in connection with, practice of a kind in relation to which eligible midwives are ordinarily, or could reasonably be expected in the ordinary course of business to be, engaged as employees (and therefore indemnified from liability by their employer); and
(d) 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
(e) either:
  (i) the incident occurs or occurred; or
  (ii) all of the incidents in the series occur or occurred;
  on or after 1 July 2020; and
(f) the MDO or insurer is first notified of:
  (i) the incident; or
  (ii) the claim; or
  (iii) an eligible related claim;
  on or before the date specified in the rules as the termination date for the allied health high cost claim indemnity scheme; and
(g) the MDO or insurer has a qualifying allied health payment in relation to the claim, or qualifying allied health payments in relation to:
  (i) the claim; or
  (ii) the claim and one or more eligible related claims; and
(h) the amount of the qualifying allied health payment, or the sum of the amounts of the qualifying allied health payments, exceeds what was the allied health high cost claim threshold at the earliest of the following times:

Authorised Version C2019A00105

(i) when the MDO or insurer was first notified of the incident;

(ii) when the MDO or insurer was first notified of the claim;

(iii) when the MDO or insurer was first notified of an eligible related claim; and

(i) a high cost claim indemnity is not payable in relation to the claim; and

(j) any other requirements (however described) that are specified in the rules have been met.

(2) Any rules made for the purposes of subsection 11(3A) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* apply for the purposes of determining whether practice is of a kind mentioned in paragraph (1)(c).

(3) Rules made for the purposes of paragraph (1)(j) do not apply in relation to an incident if the claim relating to the incident was made before the rules in question commence.

Qualifying allied health payments

(4) The MDO or insurer has a ***qualifying allied health payment*** in relation to a 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 a Chapter 5 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:

Authorised Version C2019A00105

(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 a Chapter 5 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 a Chapter 5 body corporate.

(5) The date specified in the rules for the purposes of paragraph (1)(f) must be at least 12 months after the day on which the rules in question are registered on the Federal Register of Legislation.

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

(6) If an allied health high cost claim indemnity is paid to an MDO or insurer that is a Chapter 5 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.

34ZZC Aggregating amounts paid or payable by an MDO and insurer

(1) This section applies if:

(a) an eligible MDO pays, or is liable to pay, an amount in relation to a claim that relates to an incident or a series of incidents; and

(b) an eligible insurer also pays, or is also liable to pay, an amount (the ***insurer amount***) in relation to the same claim or in relation to an eligible related claim; and

(c) but for this section, an allied health high cost claim indemnity in respect of the insurer amount:

(i) would be payable to the insurer under subsection 34ZZB(1); or

(ii) would be payable to the insurer under that subsection if paragraph 34ZZB(1)(h) 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):

Authorised Version C2019A00105

(a) the MDO is taken:
  (i) to have paid, or to be liable to pay, the insurer amount in relation to the claim or eligible related claim; and
  (ii) to satisfy paragraphs 34ZZB(1)(g) and (4)(a) to (c) in relation to the insurer amount; and
  (iii) to have been notified of the incident, claim or eligible related claim when the insurer was first notified of the incident, claim or eligible related claim; and
(b) an allied health high cost claim indemnity is not payable to the insurer in respect of the insurer amount.

34ZZD Exceptions

An allied health high cost claim indemnity is not payable to an MDO or insurer under section 34ZZB 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 specified in the rules; or
(c) the claim relates to an incident specified in the rules.

34ZZE 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.

Authorised Version C2019A00105

34ZZF Amount of allied health high cost claim indemnity

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

(2) Rules that specify for the purposes of paragraph (1)(b) a percentage that is less than the percentage in force at the time the rules are registered on the Federal Register of Legislation must not commence earlier than 12 months after the day on which the rules are so registered.

Subdivision C—Regulations may provide for payments

34ZZG Regulations may provide for payments in relation to allied health high cost claims

(1) The regulations may provide in relation to:
  (a) making payments to eligible MDOs and eligible insurers of claim handling fees; and
  (b) making payments on account of legal, administrative or other costs incurred by eligible MDOs and eligible insurers (whether on their own behalf or otherwise);
in respect of claims relating to incidents in relation to which an allied health high cost claim indemnity is payable (see section 34ZZB).

(2) Without limiting subsection (1), the regulations may:
  (a) make provision for:
    (i) the conditions that must be satisfied for an amount to be payable to an eligible MDO or eligible insurer; and
    (ii) the amount that is payable; and
    (iii) the conditions that must be complied with by an eligible MDO or eligible insurer to which an amount is paid; and
    (iv) other matters related to the making of payments, and the recovery of overpayments; and

Authorised Version C2019A00105

(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 regulations made for the purposes of this section; and

(c) make provision for making payments on account of legal, administrative or other costs incurred by eligible MDOs and eligible insurers (whether on their own behalf or otherwise), in respect of incidents notified to eligible MDOs and eligible insurers that could give rise to claims in relation to which an allied health high cost claim indemnity could be payable.

(3) Paragraph (2)(b) does not allow the regulations 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.

34ZZH 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 regulations made for the purposes of section 34ZZG; or

(b) the amount that is payable to an MDO or insurer under regulations made for the purposes of section 34ZZG;

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 eligible MDO;

(b) an eligible insurer;

(c) a member or former member of an eligible MDO;

(d) a person who practises, or used to practise, an allied health profession;

(e) a person who is acting, or has acted, on behalf of a person covered by paragraph (d);

Authorised Version C2019A00105

(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.

Division 2D—Allied health exceptional claims indemnity scheme

Subdivision A—Introduction

34ZZI Guide to the allied health exceptional claims indemnity provisions

(1) This Division provides that an allied health 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 an allied health profession, being a claim that has been certified as a qualifying allied health claim; and

Authorised Version C2019A00105

(b) the liability exceeds the amount payable under an insurance contract with an eligible insurer that has a contract limit satisfying the relevant allied health threshold.

(2) This Division also provides for the regulations and rules to deal with other matters relating to claims that have been certified as qualifying allied health claims.

(3) 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	which insurers are eligible insurers?	section 34ZZ
2	certification of claims that qualify for allied health exceptional claims indemnity (including the threshold requirement for the insurance contract)	sections 34ZZK to 34ZZQ
3	when is an allied health exceptional claims indemnity payable in respect of a liability?	sections 34ZZR and 34ZZS
4	some liabilities are only partly covered	sections 34ZZT and 34ZZU
5	how much allied health exceptional claims indemnity is payable?	section 34ZZV
6	how must an allied health exceptional claims indemnity be applied?	section 34ZZW
7	who is liable to repay an overpayment of allied health exceptional claims indemnity?	section 34ZZX
8	what if a payment is received that would have reduced the amount of an insurance payment?	sections 34ZZY to 34ZZZC
9	what regulations can deal with	section 34ZZZD
10	modifications and exclusions by regulations	section 34ZZZF
11	how does a person apply for an allied health exceptional claims indemnity?	section 37A
12	when will an allied health exceptional	section 37B

Authorised Version C2019A00105

Where to find the provisions on various issues		
Item	**Issue**	**Provisions**
	claims indemnity be paid?	
13	what information has to be provided to the Chief Executive Medicare about allied health exceptional claims matters?	section 38
14	what records must be kept in relation to allied health exceptional claims matters?	section 39
15	how are overpayments of allied health exceptional claims indemnity recovered?	sections 41 and 42

34ZZJ Interaction with allied health high cost claim indemnity scheme

For the purposes of the definition of ***practitioner's contract limit*** in subsection 4(1), and of paragraphs 34ZZR(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 an allied health high cost claim indemnity paid or payable, or that would have been payable, to the insurer.

Subdivision B—Certification of qualifying allied health claims

34ZZK When may the Chief Executive Medicare certify a claim as a qualifying allied health claim?

Criteria for certification

(1) The Chief Executive Medicare may issue a certificate stating that a claim is a qualifying allied health 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;

Authorised Version C2019A00105

in the course of, or in connection with, the practice by the practitioner of an allied health profession; and

(c) if the allied health profession is midwifery:

(i) the incident occurs or occurred; or

(ii) all of the incidents in the series occur or occurred;

in the course of, or in connection with, practice of a kind in relation to which eligible midwives are ordinarily, or could reasonably be expected in the ordinary course of business to be, engaged as employees (and therefore indemnified from liability by their employer); and

(d) except in the circumstances specified in rules 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

(e) either:

(i) the incident occurs or occurred; or

(ii) all of the incidents in the series occur or occurred;

on or after 1 July 2020; and

(f) 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

(g) 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 allied health threshold (see section 34ZZL);

(iii) the insurer is an eligible insurer;

(iv) the insurer entered into the contract in the ordinary course of the insurer's business; and

(h) if a termination date for the allied health exceptional claims indemnity scheme is set (see section 34ZZM), the incident, or one or more of the incidents, to which the claim relates occurred before the allied health termination date; and

Authorised Version C2019A00105

(i) the claim is not a claim specified in rules made for the purposes of this paragraph; and

(j) the contract of insurance is not a contract specified in rules made for the purposes of this paragraph; and

(k) a person has applied for the certificate in accordance with section 34ZZN; and

(l) the Chief Executive Medicare could not issue a qualifying claim certificate in relation to the claim if an application for the certificate were made in accordance with section 34H.

Note 1: Paragraph (f)—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 34ZZT.

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

(2) Any rules made for the purposes of subsection 11(3A) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* apply for the purposes of determining whether practice is of a kind mentioned in paragraph (1)(c).

When a certificate is in force

(3) 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

(4) The certificate must:

(a) identify:

(i) the practitioner; and

(ii) the claim; and

(iii) the contract of insurance in relation to which paragraph (1)(g) is satisfied; and

(b) specify the relevant allied health threshold.

The certificate may also contain other material.

AAT review of decision to refuse

(5) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Chief Executive Medicare to refuse to issue a qualifying allied health claim certificate.

Authorised Version C2019A00105

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

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

34ZZL What is the relevant allied health threshold?

The relevant allied health threshold

(1) The ***relevant allied health threshold*** is $20 million, or such other amount as is specified in the rules as the threshold.

Threshold specified in rules only applies to contracts entered into after the rules commence

(2) A rule 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 rule commences.

When rules reducing the threshold commence

(3) A rule reducing the threshold (which could be the threshold originally applicable under subsection (1), or that threshold as already changed by rules) commences on the date specified in the rules, which must be the date on which the rules are registered on the Federal Register of Legislation or a later day.

When rules increasing the threshold commence

(4) A rule increasing the threshold (which could be the threshold originally applicable under subsection (1), or that threshold as already changed by rules), commences on the date specified in the rules, which must be at least 3 months after the date on which the rules are registered on the Federal Register of Legislation.

Authorised Version C2019A00105

34ZZM Setting the allied health termination date

(1) The rules may set a termination date for the allied health exceptional claims indemnity scheme.

Note: The scheme does not cover incidents that occur after the allied health termination date (see paragraph 34ZZK(1)(h) and section 34ZZU).

(2) The termination date cannot be before the date on which the rules are registered on the Federal Register of Legislation.

34ZZN Application for a qualifying allied health claim certificate

(1) An application for the issue of a qualifying allied health 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.

34ZZO Time by which an application must be decided

(1) Subject to subsections (2) and (3), the Chief Executive Medicare is to decide an application for the issue of a qualifying allied health 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.

(3) The Chief Executive Medicare may treat an application as having been withdrawn if:

(a) the Chief Executive Medicare requests the person who applied for the certificate to give information under section 38 in relation to the application; and

Authorised Version C2019A00105

(b) the person does not give the information to the Chief Executive Medicare by the end of the day specified in the request.

(4) The Chief Executive Medicare must notify the person who applied for the certificate if the Chief Executive Medicare treats the application as having been withdrawn.

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

(1) If:

(a) a qualifying allied health 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 allied health exceptional claims indemnity, or for a payment under regulations made for the purposes of section 34ZZZD (allied health exceptional claims payments), 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).

Authorised Version C2019A00105

34ZZQ Revocation and variation of qualifying allied health claim certificates

Revocation

(1) The Chief Executive Medicare may revoke a qualifying allied health claim certificate if the Chief Executive Medicare is no longer satisfied as mentioned in subsection 34ZZK(1) in relation to the claim.

(2) To avoid doubt, in considering whether the Chief Executive Medicare is still satisfied as mentioned in subsection 34ZZK(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 allied health claim certificate was made, including for example:

(a) the making of rules for the purpose of paragraph 34ZZK(1)(i) or (j); 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 allied health 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 allied health claim certificate; and

(b) an amount of allied health 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 allied health claim certificate; and

Authorised Version C2019A00105

(b) an amount of allied health 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) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Chief Executive Medicare to revoke or vary a qualifying allied health 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 allied health claim certificate, the Chief Executive Medicare must, within 28 days of making the 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—Allied health exceptional claims indemnity

34ZZR When is an allied health exceptional claims indemnity payable?

Criteria for payment of indemnity

(1) The Chief Executive Medicare may decide that an allied health 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 allied health claim certificate is in force in relation to the current claim; and

Authorised Version C2019A00105

(c) the liability is a qualifying allied health liability of the practitioner in relation to the current claim (see section 34ZZS); and

(d) because of the practitioner's contract limit in relation to the contract of insurance identified in the qualifying allied health 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 any other claim against the practitioner that relates to an incident, or series of related incidents, covered by subsection (2) (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 allied health threshold identified in the qualifying allied health 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:

(a) if there are deductibles—see section 8B; or

(b) if an allied health high cost claim indemnity is paid or payable—see section 34ZZJ; or

(c) if the insurer is a Chapter 5 body corporate—see subsection (6); or

(d) 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 34ZZT; or

Authorised Version C2019A00105

(e) if the claim relates to a series of incidents some, but not all, of which occurred after the allied health termination date—see section 34ZZU.

Note 2: 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 (5).

(2) For the purposes of subparagraph (1)(f)(iii), an incident or series of related incidents is covered by this subsection if the incident occurs or occurred, or the series of related incidents all occur or occur:

(a) on or after 1 July 2020; and

(b) in the course of, or in connection with:

(i) practice by the practitioner of an allied health profession other than midwifery; or

(ii) practice by the practitioner of midwifery, if the practice is of a kind in relation to which eligible midwives are ordinarily, or could reasonably be expected in the ordinary course of business to be, engaged as employees (and therefore indemnified from liability by their employer).

(3) Any rules made for the purposes of subsection 11(3A) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* apply for the purposes of determining whether practice is of a kind mentioned in subparagraph (2)(b)(ii).

Who the indemnity is payable to

(4) 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

(5) 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 a Chapter 5 body corporate?

(6) If an insurer is a Chapter 5 body corporate:

Authorised Version C2019A00105

(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 (5) 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 a Chapter 5 body corporate.

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

(7) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Chief Executive Medicare:

(a) a decision to refuse an application for allied health exceptional claims indemnity;

(b) a decision to pay a particular amount of allied health exceptional claims indemnity.

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

34ZZS Qualifying allied health liabilities

A person (the ***practitioner***) has a ***qualifying allied health 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 up to the time when:

Authorised Version C2019A00105

(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.

Note: For paragraph (b), see the definitions of ***defence*** and ***conducted appropriately*** in subsection 4(1).

34ZZT 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 34ZZR(1)(e) and subparagraphs 34ZZR(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.

34ZZU Treatment of a claim that relates to a series of incidents some of which occurred after the allied health termination date

If:

(a) a claim against a person relates to a series of incidents; and

Authorised Version C2019A00105

(b) some, but not all, of the incidents occurred after the allied health termination date;

then, for the purposes of applying paragraph 34ZZR(1)(e) and subparagraphs 34ZZR(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 allied health termination date.

34ZZV The amount of allied health exceptional claims indemnity that is payable

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

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

34ZZW How allied health exceptional claims indemnity is to be applied

(1) This section applies if an allied health 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, 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

Authorised Version C2019A00105

notice, the recipient must apply the whole of the indemnity towards the discharge of the liability.

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

Authorised Version C2019A00105

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

34ZZX Who is liable to repay an overpayment of allied health exceptional claims indemnity?

(1) This section applies if, in relation to an allied health exceptional claims indemnity that has been paid, there is an amount overpaid as described in subsection 34ZZZ(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 34ZZW(3) and (4) applies—the recipient referred to in subsection 34ZZW(1); or
  (b) if the indemnity has been dealt with in accordance with whichever of those subsections applies—the practitioner referred to in subsection 34ZZW(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 34ZZW(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 34ZZW(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

34ZZY Amounts paid before payment of allied health exceptional claims indemnity

(1) If:
  (a) an amount (the ***insurance payment***) has been paid under a contract of insurance that provides medical indemnity cover for a person (the ***practitioner***) in relation to a liability of the practitioner; and

Authorised Version C2019A00105

(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 allied health 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 allied health high cost claim indemnity;

(c) an amount of a kind specified in the rules for the purposes of this paragraph.

34ZZZ Amounts paid after payment of allied health exceptional claims indemnity

(1) This section applies if:

(a) an amount (the ***actual indemnity amount***) of allied health exceptional claims indemnity has been paid in relation to a qualifying allied health 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

(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

Authorised Version C2019A00105

zero) of allied health 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 34ZZX(2)) a notice under subsection 34ZZZB(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 34ZZW(3) and (4) applies by the time required by subsection 34ZZW(5), the whole amount of the indemnity is a debt owed by the recipient, and no amount is recoverable under this section (see subsections 34ZZW(6) to (8)).

Note 2: If:

(a) the recipient and the practitioner referred to in subsection 34ZZW(1) are not the same person; and

(b) the practitioner becomes the liable person;

then (subject to subsection 34ZZX(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 allied health high cost claim indemnity;

(c) an amount of a kind specified in the rules for the purposes of this paragraph.

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

(1) If:

(a) an amount of allied health exceptional claims indemnity has been paid in relation to a qualifying allied health liability that

Authorised Version C2019A00105

relates to a claim made against a person (the ***practitioner***); and

(b) the person (the ***applicant***) who applied for the allied health 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 34ZZZ(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.

34ZZZB The Chief Executive Medicare to notify of amount of debt due

(1) If:

(a) an amount of allied health exceptional claims indemnity has been paid in relation to a qualifying allied health 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 34ZZZ(2);

the Chief Executive Medicare may give the liable person (see subsection 34ZZX(2)) a written notice that specifies:

(d) the amount overpaid, and that it is a debt owed to the Commonwealth under subsection 34ZZZ(3); and

(e) the day before which the amount must be paid to the Commonwealth; and

Authorised Version C2019A00105

(f) the effect of section 34ZZZC.

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).

34ZZZC Penalty imposed if an amount is repaid late

(1) If:

(a) a person owes a debt to the Commonwealth under subsection 34ZZZ(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 rules 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) Applications may be made to the Administrative Appeals Tribunal for review of decisions 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.

(5) If:

(a) the recipient and the practitioner referred to in subsection 34ZZW(1) are not the same person; and

(b) the practitioner becomes the liable person; and

Authorised Version C2019A00105

(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 34ZZZ(3), except that the period referred to in paragraph (2)(c) of this section ends when the practitioner becomes the liable person.

Subdivision E—Regulations may provide for payments

34ZZZD Regulations may provide for payments in relation to allied health exceptional claims

(1) The regulations may provide in relation to making payments to eligible insurers of claim handling fees, and payments on account of legal, administrative or other costs incurred by eligible insurers (whether on their own behalf or otherwise), in respect of claims in relation to which qualifying allied health claim certificates have been issued.

(2) Without limiting subsection (1), the regulations may:

(a) make provision for:

(i) the conditions that must be satisfied for an amount to be payable to an eligible insurer; and

(ii) the amount that is payable; and

(iii) the conditions that must be complied with by an eligible 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 regulations made for the purposes of this section; and

(c) make provision for making payments on account of legal, administrative or other costs incurred by eligible insurers (whether on their own behalf or otherwise), in respect of incidents notified to eligible insurers that could give rise to claims in relation to which an allied health exceptional claims indemnity could be payable.

Authorised Version C2019A00105

(3) Paragraph (2)(b) does not allow the regulations 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.

34ZZZE 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 regulations made for the purposes of section 34ZZZD; or
   (b) the amount that is payable to an insurer under regulations made for the purposes of section 34ZZZD;

   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 eligible insurer;
   (c) a member or former member of an MDO;
   (d) a person who practises, or used to practise, an allied health 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

Authorised Version C2019A00105

(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

34ZZZF 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 rules to exclude claims and contracts of insurance, see paragraphs 34ZZK(1)(i) and (j).

(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 allied health liability (even though subparagraph 34ZZS(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

Authorised Version C2019A00105

(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.

27 Subsection 35(1)

Omit "and the run-off cover indemnity scheme", substitute ", the run-off cover indemnity scheme, the allied health high cost claim indemnity scheme and the allied health exceptional claims indemnity scheme".

28 Section 36 (heading)

Omit "**or run-off cover indemnity**", substitute "**, run-off cover indemnity or allied health high cost claim indemnity**".

29 Section 36

Omit "or a run-off cover indemnity", substitute ", a run-off cover indemnity or an allied health high cost claim indemnity".

30 Section 37 (heading)

Omit "**or run-off cover indemnity**", substitute "**, run-off cover indemnity or allied health high cost claim indemnity**".

31 Subsection 37(1)

Omit "or a run-off cover indemnity", substitute ", a run-off cover indemnity or an allied health high cost claim indemnity".

32 Paragraphs 37(2)(a) and (d)

Omit "or a run-off cover indemnity", substitute ", a run-off cover indemnity or an allied health high cost claim indemnity".

33 Subsection 37(2)

Omit "or the run-off cover indemnity", substitute ", the run-off cover indemnity or the allied health high cost claim indemnity".

34 Section 37A (at the end of the heading)

Add "**or allied health exceptional claims indemnity**".

Authorised Version C2019A00105

35 After subsection 37A(1)

Insert:

(1A) An application for an allied health exceptional claims indemnity in relation to a qualifying allied health 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.

36 Subsection 37A(2)

Omit "The application", substitute "An application under subsection (1) or (1A)".

37 Subsection 37A(3)

Omit "subsections (4) and (5)", substitute "subsection (5)".

38 Subsection 37A(4)

Repeal the subsection.

39 Section 37B (at the end of the heading)

Add "**or allied health exceptional claims indemnity**".

40 Subsections 37B(1) and (2)

After "exceptional claims indemnity", insert "or an allied health exceptional claims indemnity".

41 Subsection 37B(3)

Repeal the subsection, substitute:

(3) If the Chief Executive Medicare has received, but not yet decided:

(a) an application (the ***certificate application***) for the issue of a qualifying claim certificate or a qualifying allied health claim certificate in relation to a claim; and

(b) an application (the ***indemnity application***) for an exceptional claims indemnity or allied health exceptional claims indemnity in relation to the same claim;

the Chief Executive Medicare does not have to decide the indemnity application until the Chief Executive Medicare has decided the certificate application.

Authorised Version C2019A00105

42 Subsection 37B(4)

After "exceptional claims indemnity", insert "or an allied health exceptional claims indemnity".

43 Paragraph 38(1)(c)

After "qualifying claim certificate", insert "or qualifying allied health claim certificate".

44 Paragraph 39(1)(c)

Omit "or 34ZJ", substitute ", 34ZJ or 34ZZZ".

45 Subsection 39(1A) (at the end of the heading)

Add "*or qualifying allied health claim certificate*".

46 Subsection 39(1A)

After "qualifying claim certificate", insert "or a qualifying allied health claim certificate".

47 Paragraph 39(1A)(a)

After "subsection 34E(1)", insert "or 34ZZK(1)".

48 Paragraph 41(3)(a)

Omit "or a run-off cover indemnity", substitute ", a run-off cover indemnity or an allied health high cost claim indemnity".

49 After paragraph 41(3)(b) (before note 1)

Insert:

; or (c) if the indemnity scheme payment was an allied health exceptional claims indemnity—the person who is the liable person under subsection 34ZZX(2).

50 Subsection 41(3) (notes 1 and 2)

Repeal the notes, substitute:

Note 1: For paragraphs (b) and (c), if the exceptional claims indemnity or allied health exceptional claims indemnity is not dealt with as required by section 34Q or 34ZZW, 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) and 34ZZW(6) to (8)).

Note 2: For paragraphs (b) and (c), if:

Authorised Version C2019A00105

(a) the recipient and the practitioner are not the same person; and
(b) the practitioner becomes the liable person;

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

51 Paragraph 41(4)(b)

Omit "or a run-off cover indemnity", substitute ", a run-off cover indemnity or an allied health high cost claim indemnity".

52 Subsection 42(1)

Omit "24(4) 34Q(6), 34T(3), 34ZJ(3)", substitute "24(4), 34Q(6), 34T(3), 34ZJ(3), 34ZZW(6), 34ZZZ(3)".

53 Paragraph 42(3A)(a)

After "exceptional claims indemnity", insert "or an allied health exceptional claims indemnity".

54 Paragraph 42(3A)(b)

After "subsection 34Q(1)", insert "or 34ZZW(1)".

55 After paragraph 45(1)(bb)

Insert:

(bc) subsection 34ZZH(1); or
(bd) subsection 34ZZZE(1); or

56 Subsection 46(1)

Omit "or 34ZU", substitute ", 34ZU, 34ZZP or 34ZZZA".

57 Subsection 46(3)

Omit "or 34ZK(1)(b)", substitute ", 34ZK(1)(b), 34ZZP(1)(b) or 34ZZZA(1)(b)".

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

58 After paragraph 20(aa)

Insert:

Authorised Version C2019A00105

(ab) any right the insurer may have to an allied health high cost claim indemnity under the *Medical Indemnity Act 2002*;

59 Application and transitional

Exceptional claims indemnity scheme

(1) The amendments of Part 1 and Division 2A of Part 2 of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to any claim made after the commencement of this item.

Administration of the indemnity schemes

(2) The amendments of section 41 of the *Medical Indemnity Act 2002* made by this Schedule apply in relation to any amount paid by way of an indemnity scheme payment, whether paid before or after the commencement of this item.

(3) The amendments of section 42 of the *Medical Indemnity Act 2002* made by this Schedule do not affect a direction by the Chief Executive Medicare under that section before the commencement of this item.

Product standards for medical indemnity insurance contracts

(4) The amendments of section 20 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* made by this Schedule apply in relation to any contract of insurance, whether the contract is entered into, comes into effect or is renewed before, on or after the commencement of this item.

Authorised Version C2019A00105

[*Minister's second reading speech made in—*
House of Representatives on 18 September 2019
Senate on 17 October 2019]

(174/19)

Authorised Version C2019A00105