



New South Wales

# Health Care Liability Regulation 2001

under the

Health Care Liability Act 2001

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Health Care Liability Act 2001*.

CRAIG KNOWLES, M.P.,

Minister for Health

## Explanatory note

Under the *Health Care Liability Act 2001*, the term **health care provider** includes medical practitioners who are covered by approved professional indemnity insurance. Under section 19 of that Act, medical practitioners are, unless exempt under the regulations, required to be covered by approved professional indemnity insurance.

The objects of this Regulation are as follows:

- (a) to exempt certain classes of medical practitioners from the requirement to be covered by approved professional indemnity insurance (such as registered medical practitioners who do not actually practise medicine, whose practice in New South Wales is insignificant, or those who continue to be covered by insurers who do not provide approved professional indemnity insurance),
- (b) to extend the definition of **health care provider** under the Act so that it covers certain classes of medical practitioners who are exempt from the requirement to be covered by approved professional indemnity insurance.

A temporary 5-month exemption is also provided so as to phase-in the approved insurance requirement in respect of those practitioners who are not currently covered by professional indemnity insurance.

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Explanatory note

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This Regulation comprises or relates to matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made under the *Health Care Liability Act 2001*, including sections 4 (1), 19 (4) (b) and 34 (the general power to make regulations).

Health Care Liability Regulation 2001

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## Health Care Liability Regulation 2001

### 1 Name of Regulation

This Regulation is the *Health Care Liability Regulation 2001*.

### 2 Commencement

This Regulation commences on 1 January 2002.

### 3 Definitions

In this Regulation:

***approved insurance requirement*** means, in relation to a medical practitioner, the requirement under section 19 of the Act for the medical practitioner to be covered by approved professional indemnity insurance.

***the Act*** means the *Health Care Liability Act 2001*.

### 4 Definition of “health care provider”—additional classes of medical practitioners

For the purposes of the definition of ***health care provider*** in section 4 (1) of the Act, the following classes of medical practitioners are prescribed:

- (a) medical practitioners who are visiting medical officers (within the meaning of the *Health Services Act 1997*) and who are exempt, as provided by clause 5 (1) (d), from the approved insurance requirement,
- (b) medical practitioners who are exempt, as provided by clause 7, from the approved insurance requirement.

### 5 Exemption from approved insurance requirement

- (1) In accordance with section 19 (4) (b) of the Act, the following medical practitioners are exempt from the approved insurance requirement:
  - (a) a person whose registration as a medical practitioner is, in accordance with section 9 of the *Medical Practice Act 1992*, subject to the condition that the person does not practise medicine,

- (b) a medical practitioner who practises medicine primarily outside New South Wales and who is covered by professional indemnity insurance of any kind,
  - (c) a medical practitioner whose medical practice is limited to the rendering of medical assistance on a voluntary basis in emergency situations,
  - (d) a medical practitioner who practises medicine in the course of being:
    - (i) employed by another person, or
    - (ii) engaged by another person under some contractual arrangement.
- (2) The exemption under subclause (1) (d) applies only in relation to a medical practitioner:
- (a) to the extent that the medical practitioner is practising medicine as an employee of, or contractor to, the other person, and
  - (b) to the extent that the medical practitioner is indemnified, under an insurance policy issued to the other person, for civil liability arising out of the provision of, or failure to provide, health care by the medical practitioner, and
  - (c) if the other person is not the medical practitioner's practice company.
- (3) For the purposes of subclause (2) (b):
- insurance policy issued to the other person* includes arrangements established or entered into by the State to cover civil liability arising out of the provision of, or failure to provide, health care by a public health organisation or its employees, agents or contractors.

## 6 Exemption in relation to existing insurance arrangements

In accordance with section 19 (4) (b) of the Act, a medical practitioner is exempt from the approved insurance requirement if:

- (a) the medical practitioner, while practising as such, was covered by professional indemnity insurance of any kind immediately before 1 January 2002, and
- (b) the insurer who provides that insurance was providing the insurance to the medical practitioner for a continuous period of at least 4 weeks leading up to 1 January 2002, and

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- (c) the insurer does not provide, or ceases to provide, approved professional indemnity insurance during the period between 1 January 2002 and 1 July 2002 and continues not to provide approved professional indemnity insurance after 1 July 2002, and
- (d) the medical practitioner, while practising as such, continues (without any break in the cover) to be covered by professional indemnity insurance provided by that same insurer.

### **7 Exemption for limited period after cessation of insurer's business**

If a medical practitioner ceases to be covered by approved professional indemnity insurance as a consequence of the cessation of business of the insurer who provided the insurance, the medical practitioner is, in accordance with section 19 (4) (b) of the Act, exempt from the approved insurance requirement but only for a period of no more than 3 months immediately following the date on which the medical practitioner ceased to be so covered.

### **8 Interim exemption (until 31 May 2002) for medical practitioners without insurance cover**

If, immediately before 1 January 2002, a medical practitioner was not covered by professional indemnity insurance of any kind, the medical practitioner is, in accordance with section 19 (4) (b) of the Act, exempt from the approved insurance requirement but only until 31 May 2002.

BY AUTHORITY

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