



New South Wales

Health Care Liability Amendment Regulation 2002

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

The objects of this Regulation are:

- (a) to prescribe certain additional classes of medical practitioners as health care providers for the purposes of the *Health Care Liability Act 2001*, and
- (b) to exempt certain classes of medical practitioners from the requirement under that Act to be covered by approved professional indemnity insurance.

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).

2002 No 265

Clause 1 Health Care Liability Amendment Regulation 2002

Health Care Liability Amendment Regulation 2002

1 Name of Regulation

This Regulation is the *Health Care Liability Amendment Regulation 2002*.

2 Amendment of Health Care Liability Regulation 2001

The *Health Care Liability Regulation 2001* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Clause 3 Definitions

Insert at the end of the clause:

- (2) Notes in the text of this Regulation do not form part of this Regulation.

[2] Clause 4

Omit the clause. Insert instead:

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

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

- (a) a medical practitioner who causes or has caused (wholly or partly) an injury or death that gives rise to, or has given rise to, a health care claim and whose civil liability in respect of the injury or death is, irrespective of whether it occurred before or after 1 January 2002, covered by an indemnity arrangement established or entered into by the State or the Commonwealth to cover civil liability,
- (b) a medical practitioner whose civil liability in respect of an injury or death that gives rise to a health care claim is not covered by approved professional indemnity insurance because the medical practitioner is or was exempt, as provided by clause 7, from the approved insurance requirement.

Note. Section 4 (3) (a) of the Act provides that a reference to a medical practitioner includes, if the medical practitioner conducts his or her practice by means of a practice company, a reference to the medical practitioner’s practice company.

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Schedule 1 Amendments

[3] Clause 5 Exemption from approved insurance requirement

Insert “while practising medicine in New South Wales” after “kind” in clause 5 (1) (b).

[4] Clause 5 (1) (e)–(g)

Insert after clause 5 (1) (d):

- (e) a medical practitioner whose medical practice does not include the provision of health care or medical opinion in respect of the physical or mental health of a person,
- (f) a medical practitioner who, while practising medicine, is covered by an indemnity arrangement established or entered into by the State or the Commonwealth to cover civil liability,
- (g) a medical practitioner who, while practising medicine in accordance with a function conferred or imposed by or under any State or Commonwealth Act or regulation, does not, under that Act or regulation, incur any personal liability.

[5] Clause 5 (1A)

Insert after clause 5 (1):

- (1A) An exemption under subclause (1) (b)–(g) applies to a medical practitioner only to the extent to which the medical practitioner practices medicine in the circumstances described in the exemption concerned.

[6] Clause 5 (2)

Omit “The exemption”.

Insert instead “Without limiting subclause (1A), the exemption”.

[7] Clause 7 Exemption for limited period after cessation of insurer's business

Insert at the end of the clause:

- (2) The reference in subclause (1) to the cessation of business of an insurer includes a reference to the appointment of a liquidator, administrator or controller (within the meaning of the *Corporations Act 2001* of the Commonwealth) in respect of the insurer's business.