

Health Care Liability Act 2001

Insurance Approval Order

Pursuant to section 20 of the Health Care Liability Act 2001, I, Morris Iemma MP, Minister for Health, do make the following order with effect on and from 1 July 2003:

1. Preliminary

Definitions

In this Order:

“Act” means the Health Care Liability Act 2001;

“authorised insurer” means a person that has an authority to carry on insurance business under the Commonwealth Insurance Act 1973 and includes a Lloyd’s underwriter;

“Director-General” means the Director-General of the NSW Department of Health established under the Health Administration Act 1982;

“health care” is as defined in the Act;

“health care claim” means a claim for damages or other compensation, whether by verbal or written demand or the commencement of legal proceedings, against a medical practitioner (or his or her practice company) in respect of an injury (including wrongful birth) or death caused wholly or partly by the fault or alleged fault of the practitioner in providing or failing to provide health care;

“incident” is an act or omission;

“insurance approval order” is as defined in the Act;

“insurance business” has the same meaning as that term under the Insurance Act 1973 (Commonwealth);

“insurance regulation order” is as defined in the Act;

“insurer” means an authorised insurer;

“medical practitioner” includes a medical practitioner’s practice company;

“non-exempt medical practitioner” means a medical practitioner who is not exempt under the Act or regulations from the requirement to be covered by

approved professional indemnity insurance in respect of all their medical practice;

“notified insurer” means an insurer that has notified the Director-General of the Department of Health in accordance with the requirements of an insurance approval order;

“practice company” is as defined in the Act;

“prescribed minimum level” means \$10 million per claim and in the aggregate;

“professional indemnity insurance” is as defined in the Act;

2. Approved professional indemnity insurance

- (1) Professional indemnity insurance is approved for the purposes of the Act if:
 - (a) it is provided by a notified insurer to a medical practitioner under an individual contract or discretionary arrangement with the medical practitioner; and
 - (b) it falls within one of the categories specified at sub-clause (2).
- (2) The following categories are specified for the purposes of sub-clause (1) (b):

Claims made insurance

- (a) professional indemnity insurance, which complies with clause 3, provided by an authorised insurer on a “claims made” basis to at least the prescribed minimum level, under an insurance contract with the relevant medical practitioner, for health care claims, or incidents that may give rise to health care claims (in respect of any occurrence on or after such date as may be specified in the contract), notified to the insurer during the term of the relevant insurance contract. However the insurance is not required to cover health care claims or incidents that may give rise to health care claims:
 - (i) if the practitioner was aware of the claim prior to entering into an insurance contract with the insurer, or was, or should reasonably have been, aware that the relevant incident may give rise to a health care claim and failed to notify the insurer of the incident prior to entering into the insurance contract; or
 - (ii) if the claim, or incident that may give rise to a claim, has been notified in writing under a prior professional indemnity insurance contract or professional indemnity

discretionary arrangement, or the practitioner is otherwise entitled to make a claim for, or apply for, indemnity under a prior employment arrangement or other prior contractual or discretionary arrangement; or

- (iii) that relate to events or conduct specifically excluded by the insurance contract;

Occurrence based insurance

- (b) professional indemnity insurance, which complies with clause 3, provided by an authorised insurer, on an occurrence basis, to at least the prescribed minimum level under an insurance contract with the relevant medical practitioner for health care claims arising from incidents occurring during the period of the insurance contract, other than claims relating to events or conduct specifically excluded by the insurance contract;
- (3) Professional indemnity insurance is approved for the purposes of the Act if it is of a kind and extent specified from time to time in an insurance approval order, which provides cover on an occurrence basis, notwithstanding that the insurer subsequently ceases to provide approved professional indemnity insurance.
 - (4) Professional indemnity insurance is approved for the purposes of the Act if:
 - (a) it provides cover, on an occurrence basis, under a contract or arrangement entered into prior to the commencement of Part 3 of the Act; and
 - (b) upon the commencement of Part 3 of the Act, the relevant insurer provides approved professional indemnity insurance of a kind and extent specified from time to time under an insurance approval order.
 - (5) Professional indemnity insurance is approved for the purposes of the Act if it is run-off cover provided consequent upon the termination or expiry of approved professional indemnity insurance of a kind and extent specified from time to time under an insurance approval order.
 - (6) Nothing in this clause is to be taken to affect the requirement that an insurer comply with any insurance regulation order in effect.

3. Other requirements

- (1) The terms and conditions of the professional indemnity insurance must not exclude from its coverage professional practice on the basis that it is conducted in a public hospital or a licensed private hospital.

- (2) The terms and conditions of the professional indemnity insurance must not exclude from its coverage professional practice on the basis that it involves patients who do not have private health insurance.
- (3) The terms and conditions of the professional indemnity insurance must not exclude from its coverage professional practice on the basis of whether patients are, or will be, liable to pay for medical services provided in the course of practice.
- (4) However these requirements do not prevent the terms and conditions of the professional indemnity insurance from excluding from its coverage professional practice whilst exempt from the requirement to be covered by approved professional indemnity insurance in accordance with the Act or regulations.
- (5) The terms and conditions of approved professional indemnity insurance must not impose a deductible of more than \$50,000 in respect of any health care claim indemnified under the insurance.

4. Notification by insurer

An insurer must satisfy the following notification requirements to be, or continue to be, a notified insurer for the purposes of this Order:

- (a) the insurer notifies the Director-General in writing by the dates specified in this clause as follows:
 - (i) that the insurer will be providing professional indemnity insurance directly to medical practitioners practising in NSW under individual contracts or discretionary arrangements with those medical practitioners during the period specified in the notification; and
 - (ii) the category or categories of professional indemnity insurance under clause 2 (2) which the insurer will be providing; and
 - (iii) that the insurer understands it is required to comply with any insurance regulation order in effect while providing such professional indemnity insurance.

Initial notification

- (b) such notification is initially made by no later than 28 days prior to the date that an insurer proposes to commence offering approved professional indemnity insurance to medical practitioners practising in NSW, unless another date has been approved by the Director-General in any particular case;

Annual notification

- (c) Following the initial notification, such notification is made by either 1 July in each year or 1 January in each year in respect of the ensuing 12 month period. The insurer is to elect one of these two annual notification dates at the time of initial notification.

Signed at Sydney this 9 day of June 2003.

Morris Iemma MP
Minister for Health