

Run-Off Cover Scheme (ROCS)

Important Information

Effective from 1 March 2011



General Terms and Conditions of the Run-Off Cover Scheme (ROCS)

This document describes the terms and conditions of the Run-Off Cover Scheme (ROCS) as at the date of publication; however the details of the scheme are legislated (refer to Section 6) and this document does not vary the terms and conditions of the Scheme. The Australian Government may change these terms and conditions at any time.

MDA National Insurance does not accept any liability for any errors or inaccuracies contained herein or your interpretation of this document.

Further information and frequently asked questions regarding the ROCS can be found on the Department of Health & Ageing's medical indemnity webpage www.health.gov.au.

This document is issued on 1 March 2011.

1. Introduction

This document has been prepared to assist doctors to understand the key features of the medical indemnity cover provided under ROCS.

When doctors leave the medical workforce (including retirees, and those on maternity leave), they may face significant ongoing costs for "Run-Off Cover" for incidents which occurred during their careers but had not yet been notified to insurers.

Run-Off Cover can be provided in one of two ways:

- The Australian Government's Run-Off Cover Scheme (ROCS)
- Run-Off Cover issued by MDA National Insurance under the Professional Indemnity Insurance (PII) Policy

ROCS

ROCS is a Scheme established by the Australian Government under which certain eligible doctors who no longer earn any income from private medical practice are provided with free Run-Off Cover by their last Medical Indemnity Insurer based on their last contract of insurance. The coverage is free while a doctor remains eligible, however ROCS is funded by doctors while practising, through a levy on Medical Indemnity Insurers' premiums.

Run-Off Cover

If you do not fulfil the eligibility criteria for the Australian Government's Scheme, Run-Off Cover for the provision of healthcare services provided prior to the cessation of practice is available through the Run-Off category under the Professional Indemnity Insurance Policy. The premiums for the Run-Off category vary as they are based on a system of rating factors including your previous risk profile, your specialty or field of practice, gross annual billings, the state(s) in which you practised, length of membership and your claims profile. Doctors who have been a Member of MDA National and/or been insured by MDA National Insurance continuously for 10 years or more may be eligible for a capped Run-Off premium.

The PII Policy is an annual policy and does not guarantee or secure any cover beyond the period of insurance. We will offer to renew your Run-Off Cover each year, however if: you decide not to renew your policy; you become eligible for ROCS; or you otherwise cease to become eligible for Run-Off Cover; our obligation to offer you Run-Off Cover ceases.

While Run-Off Cover is not compulsory, if you do not have Run-Off Cover you may have to pay claims and fund all associated defence/legal costs personally. Medical negligence claims can often be made years after the medical services were provided so it is important that medical practitioners have adequate protection on cessation of practice.

For further information, please refer to our Risk Category Guide for Medical Practitioners and Professional Indemnity Insurance Policy Product Disclosure Statement and Policy Wording available from our website www.mdanational.com.au or by contacting us.

2. Eligibility

Doctors (or their estate) become eligible for cover under ROCS when the doctor:

- is 65 years of age or more and has retired permanently from all remunerated private medical practice;
- is 65 years of age or more and has retired permanently from all remunerated medical practice;
- has not engaged in any remunerated private medical practice at any time during the preceding three years;
- has not engaged in any remunerated medical practice (including public sector) at any time during the preceding three years;

**Please refer to Section 7 of this document for definitions.*

- has ceased all remunerated medical practice (temporarily or permanently) because of maternity leave;
- has ceased all remunerated medical practice because of a permanent disability;
- is deceased (provided that a claim can still be made against the doctor's estate); or
- is a former temporary resident doctor holding Visa sub-class 422 or 457 who has left Australia permanently.

Eligibility depends on your circumstances. You may be asked to provide proof of eligibility at the time of completing a ROCS Questionnaire or at any time either by us or by Medicare Australia. This may be in the form of a Statutory Declaration, Medical Certificate or by other means.

Insurers may issue notices to doctors in a mistaken belief that they are eligible, simply receiving this notice does not prove that you are eligible. You should keep copies of any documentation that demonstrates your eligibility. If you are not eligible when a claim is first notified, you will not be covered by ROCS.

3. Factors Affecting Eligibility

Medical Services Provided at No Cost

If you provide medical services and are not receiving a payment or gratuity, you will still be eligible for ROCS, and ROCS will cover you for incidents arising from your past private practice.

However, the free services themselves will not be covered by ROCS, and you may need to consider taking out indemnity for these services to ensure that you meet the requirements of the National Registration Standards.

Practice in the Public Sector

Generally, ROCS eligible doctors who take up public sector employment remain eligible for ROCS (providing they are not also engaging in any private medical practice for payment, such as treating private patients or claiming against Medicare).

The exception is if you became eligible for ROCS because of maternity or permanent disability. In this case, if you engage in any paid medical practice at all in the public or private sector, you will cease to be eligible for ROCS. In any case, you should note that the public sector work itself will not be covered by ROCS. You should consider taking out indemnity for investigations and inquiries arising from this work.

**Please refer to Section 7 of this document for definitions.*

Changed Circumstances

If/when your circumstances change and you no longer meet any of the ROCS eligibility criteria you will not be covered for any claims first notified from the date that you cease to be eligible. You should advise us immediately if this occurs. If you wish to maintain medical indemnity cover when you cease to be eligible for ROCS you should contact us to make alternative arrangements. To ensure that this happens smoothly, you should make these arrangements before you cease to be eligible for ROCS. For example, a doctor on maternity leave should make new indemnity cover arrangements before she goes back to work. However, any valid claims that were notified while you were eligible will continue to be met by ROCS even if you subsequently become ineligible.

Uncovered Periods

ROCS is designed to mirror only the insurance that doctors purchased for themselves, so it may not cover all prior practice. If your last contract of insurance did not cover all of your previous medical practice you can purchase additional Run-Off Cover. Once this additional Run-Off Cover expires, it will automatically roll into ROCS.

If you are aware of gaps in your cover prior to becoming eligible for ROCS you can purchase additional retroactive cover for any periods where you did not hold adequate cover. These periods will automatically be covered by ROCS indemnity when you become eligible.

If you decide to remain uncovered for any gaps in your cover, you need to be aware that if you do not have access to ROCS indemnity or Run-Off Cover, you may have to pay claims and fund all associated defence/legal costs personally.

Temporary Resident Doctors

To be eligible for ROCS, an overseas trained doctor must: have worked in private medical practice in Australia on a subclass 422 (Medical Practitioner) or 457 (Business (long stay)) visa; have permanently ceased medical practice in Australia; and no longer reside in Australia. Temporary resident doctors are not eligible for ROCS until they either cease to reside in Australia (or otherwise become eligible, for example, by going on Maternity leave).

Temporary resident doctors that work in private medical practice in Australia on other visa classes are eligible for ROCS on the usual conditions but they will not be eligible immediately on leaving Australia like those with a visa subclass 422 or 457.

If you hold a 422 or 457 visa and leave Australia temporarily (intending to return), you will remain eligible for ROCS on your return provided you do not work in private practice. If you return to private medical practice, your past practice in Australia will not be covered by ROCS. You will need to discuss your circumstances when organising medical indemnity insurance for your return to practice in Australia.

**Please refer to Section 7 of this document for definitions.*

4. Medical Indemnity Cover Under ROCS

Under the ROCS arrangements, the last insurer who provided medical indemnity cover to an eligible doctor is obliged to provide ROCS cover to that doctor. This ROCS cover must:

- apply to incidents that occurred when the doctor was a registered medical practitioner;
- cover the same nature and range of incidents as the last medical indemnity cover provided to the doctor;
- have the same terms and conditions as the doctor's last medical indemnity cover;
- be provided at no cost to the doctor; and
- provide at least \$20 million cover (or \$15 million for incidents reported between 1 January 2003 and 30 June 2003).

5. Claims Under ROCS

Notification

You should contact us as soon as you become aware that a claim may be made against you. Under ROCS we will handle and manage all eligible ROCS claims.

Claims Covered Under ROCS

ROCS indemnities may, subject to the applicable terms and conditions, be paid for:

- valid medical indemnity claims relating to compensation/damages made against a doctor (eg by patients);
- costs associated with reported incidents which may or may not become claims (eg investigation of circumstances surrounding an incident); or
- certain claims arising from medical practice such as legal representation at coronial enquiries.

However, ROCS does not mirror non-medical indemnity cover that you may have purchased, for example income protection or personal injury cover.

Medical indemnity claims will be paid under ROCS when:

- the incident occurred in the course of, or in connection with, a doctor's medical practice;
- the incident that gave rise to the claim would have been covered under the doctor's last medical indemnity cover (under either an insurance contract or a Medical Defence Organisation's (MDO) discretionary arrangements); and
- the claim (or incident) is first notified to the insurer (or MDO) on/or after 1 July 2004 (when ROCS came into effect), and while the doctor is eligible for ROCS.

**Please refer to Section 7 of this document for definitions.*

Claim Limits

Valid claims will only be funded under ROCS up to the limit of your last contract of insurance. However, if the limit of your last contract equals or exceeds the threshold of the Exceptional Claims Scheme (ECS) (currently \$20 million), the amount of a valid ROCS claim which is above this threshold will be funded by the Australian Government through the ECS in accordance with the rules of that scheme.

Rights to Cover Under ROCS

You can take steps to enforce your rights by taking action against a Medical Indemnity Insurer in the same way as with your last insurance contract.

6. Legislation and Regulations that Constitute the Terms and Conditions of ROCS

This document is designed to provide information about ROCS in a manner that is useful to doctors. In order to be user friendly it provides a simplified outline, and is not an exhaustive statement of the workings of ROCS. The full details of how ROCS works are contained in two Commonwealth Acts, their associated regulations and a ministerial determination:

- the *Medical Indemnity Act 2002* (see particularly Division 2B of Part 2);
- the *Medical Indemnity (Prudential Supervision & Product Standards) Act 2003* (see particularly Division 2A of Part 3);
- *Medical Indemnity Regulations 2003*; and
- *Medical Indemnity (Prudential Supervision and Product Standards – Terms and Conditions for Run-Off Cover) Determination 2004*.

These instruments can be freely downloaded from the internet. Links are available under the heading "Legislation" on the Department of Health & Ageing's medical indemnity webpage www.health.gov.au. These can also be sourced directly from www.comlaw.gov.au.

**Please refer to Section 7 of this document for definitions.*

7. Definitions

Gratuitous Services

Healthcare services provided for which no income is received and there is no expectation of reward or compensation including Good Samaritan Acts and situations where emergency medical treatment is required, repeat prescription and referral writing.

Maternity Leave

A person is taken to have ceased practice as a medical practitioner because of maternity if and only if the person has ceased all medical practice (temporarily or permanently) because she is:

- pregnant; or
- has given birth; or
- caring for one or more children to whom she has given birth; or
- recovering from a pregnancy (including a miscarriage or stillbirth)

and another person who is a medical practitioner has certified that the person is pregnant, has given birth or recovering from a pregnancy as the case may be.

Permanent Disability

A person is taken to have ceased practice as a medical practitioner because of permanent disability if and only if the person has permanently ceased all medical practice because:

- the person has incurred an injury or suffers from an illness that is permanent, or is likely to be permanent; and
- as a result of the injury or illness, the person can no longer practice in the area of medicine in which he or she had (at the time of injury or illness) chosen to practice and been qualified to practice.

Private Medical Practice

For the purpose of ROCS, Private Medical Practice is defined in legislation to mean practice as a medical practitioner, other than:

- practice consisting of the treatment of public patients in a public hospital; or
- practice for which a commonwealth, state or territory agency or authority, or a local governing body indemnifies you from liability relating to specified compensation claims; or
- practice conducted wholly outside both Australia and external territories.



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