

# Run-Off Cover Scheme (ROCS)

Important Information

Effective from 1 October 2014







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# SECTION 1: 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 and this document does not vary 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 and Ageing's medical indemnity webpage [health.gov.au](http://health.gov.au).

This document is issued on 1 October 2014.

## Introduction

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

When medical practitioners leave the medical workforce (temporarily or permanently and including retirees, and those on Maternity Leave\*), they may face significant ongoing costs for run-off cover for incidents which have occurred during their career but have not yet been notified to their insurer.

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

- the Australian Government's Run-Off Cover Scheme (ROCS) or
- Run-Off Cover under the Professional Indemnity Insurance (PII) Policy issued by MDA National Insurance for medical practitioners who do not meet the eligibility criteria for the ROCS.

## The ROCS

The ROCS is a Scheme established by the Australian Government under which certain eligible medical practitioners who no longer earn any income from Private Medical Practice\* are provided with run-off cover by their last professional indemnity insurer based on their last contract of insurance at no cost to them. The ROCS is funded through a levy on the professional indemnity insurance premium payable by medical practitioners while practising, however the coverage is free once the practitioner becomes and remains eligible for the ROCS.

*\*Please refer to the Definitions section of this document.*

## 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 your 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 band, the state(s) in which you practiced, length of Membership and your claims profile. The premium for the Run-Off cover category is based on the premiums of the 3 years preceding the start of the run off cover.

Medical practitioners 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 Professional Indemnity Insurance 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, our obligation to offer you run-off cover ceases if you:

- decide not to renew your policy, or
- you become eligible for the ROCS, or
- you otherwise cease to be eligible for run-off cover.

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 current Risk Category Guide for Medical Practitioners and Professional Indemnity Insurance Policy Product Disclosure Statement and Policy Wording documents available from the Downloads section of our website [mdanational.com.au](http://mdanational.com.au) or by contacting our Member Services team on 1800 011 255.

## **Professional Indemnity Cover Under the ROCS**

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

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

## **Legislation and Regulations that Constitute the Terms and Conditions of the ROCS**

This document is designed to provide information about the ROCS in a manner that is useful to medical practitioners. In order to be user friendly it provides a simplified outline and is not an exhaustive statement of the workings of the ROCS. The full details of how the ROCS works are contained in the following documents:

- the *Medical Indemnity Act 2002* (see particularly Division 2B of Part 2)
- the *Medical Indemnity (Prudential Supervision and 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 documents can be freely downloaded from the Department of Health and Ageing's website [health.gov.au](http://health.gov.au).



## SECTION 2: Eligibility

Medical practitioners (or their Estate) become eligible for cover under the ROCS when the medical practitioner:

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 (including public sector).

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.

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 medical practitioner's estate).

Is a medical practitioner holding sub classes 422 (medical practitioner) or 457 (business long stay) who has ceased all medical practice in Australia and no longer resides in Australia.

### Factors Affecting Eligibility

#### Medical services provided at no cost

If you provide Gratuitous Medical Services\* for which you do not receive a payment, you will still be eligible for the ROCS, and the Scheme will cover you for incidents arising from your past Private Medical Practice\*.

However, the free services themselves will not be covered by the 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. Please refer to the current Risk Category Guide for Medical Practitioners for further information regarding the cover for the provision of gratuitous services.

\*Please refer to the Definitions section of this document.

### Practice in the public sector

Generally, medical practitioners who take up public sector employment remain eligible for the ROCS for any prior private practice (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 the ROCS because of Maternity Leave\* 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 the ROCS. In any case, you should note that the public sector work itself will not be covered by the ROCS. You should consider taking out indemnity for investigations and inquiries arising from this work.

### Changed circumstances

If 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 prior to undertaking any medical practice that may make you ineligible for the ROCS.

However, any valid claims that were notified while you were eligible will continue to be met by the ROCS even if you subsequently become ineligible.

If you wish to maintain professional indemnity cover when you cease to be eligible for the ROCS you should contact us to make alternative arrangements before you cease to be eligible for the ROCS. For example, a medical practitioner on Maternity Leave\* should make new professional indemnity cover arrangements before she goes back to work.

### Uncovered periods

The ROCS is designed to mirror the insurance that medical practitioners purchased for themselves prior to eligibility for the Scheme, so it may not cover all prior practice. If you are aware of gaps in your cover prior to becoming eligible for the ROCS you can purchase additional retroactive cover for any periods where you did not hold adequate cover. These periods will automatically be covered by the ROCS indemnity from the time you become eligible for the Scheme.

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 the ROCS indemnity or run-off cover for those gaps, you may have to pay claims and fund all associated defence/legal costs personally.

*\*Please refer to the Definitions section of this document.*

### **Temporary resident medical practitioners**

To be eligible for the ROCS, a medical practitioner 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 medical practitioners are not eligible for the ROCS until they have either left Australia or otherwise become eligible for the Scheme, for example, by going on Maternity Leave\*.

Temporary resident medical practitioners who work in Private Medical Practice\* in Australia on other visa classes are eligible for the 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 the ROCS for your past private practice provided you do not work in private practice on your return. If you return to Private Medical Practice\*, your past practice in Australia will not be covered by the ROCS. You will need to discuss your circumstances when organising professional indemnity insurance for your return to practice in Australia.

### **Legal representative of a deceased practitioner**

In the case of a deceased practitioner, under the current law in Australia the executor of the practitioner's estate remains the legal personal representative of the practitioner, even after the estate has been administered unless certain circumstances apply: the representative is discharged by the Court or disqualify themselves due to a conflict of interest or the grant is a limited one.

On this basis, a claim brought against the executor in his or her capacity as a legal personal representative of a deceased practitioner would satisfy paragraph 34ZB(2)(e) of the *Medical Indemnity Act*, regardless of whether the estate has been administered or not. However, other relevant eligible run-off claim requirements and provisions may apply.

*\*Please refer to the Definitions section of this document.*



## **SECTION 3: Claims under the ROCS**

### **Notification**

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

### **Claims Covered Under the ROCS**

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

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

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

Professional indemnity claims will be paid under the ROCS when:

- the incident occurred in the course of, or in connection with, a medical practitioners practice
- the incident that gave rise to the claim would have been covered under the medical practitioner'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 medical practitioner is eligible for ROCS.

### **Claim Limits**

Valid claims will only be funded under the 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 the ROCS

You can take steps to enforce your rights by taking action against a professional indemnity insurer in the same way as with your last insurance contract. If you have any complaints regarding the administration of the ROCS, please avail of our Internal Dispute Resolution process by contacting our Complaints Officer by:

**Phone:** 1800 034 466 (Freecall)  
**Fax:** (08) 9415 1492  
**Email:** [complaintsofficer@mdanational.com.au](mailto:complaintsofficer@mdanational.com.au)  
**Mail:** PO Box 445  
WEST PERTH WA 6872

We will respond to you with a decision within 15 business days. If you are satisfied with our response, the matter will be considered resolved. If you are not satisfied with our response and wish to pursue the matter further you may wish to refer your complaint to the external dispute resolution scheme to which we belong as outlined below.

## External Dispute Resolution

If you are not satisfied with the outcome of our internal dispute resolution process, you can refer the dispute to the Financial Ombudsman Service Limited (FOS). The FOS is an independent and impartial national body established to handle enquiries and complaints and to resolve disputes between consumers and their financial services provider. Their service is free to consumers.

The FOS will only review complaints if they have first gone through our internal complaints and dispute resolution process. Please note that the FOS can consider insurance matters only. The FOS is not able to consider matters relating to Membership of MDA National.

For more information about the FOS and the types of matters they can resolve, visit their website at [fos.org.au](http://fos.org.au) or contact our Complaints Officer. Online dispute forms are available on their website. You can contact the FOS by:

**Phone:** 1300 780 808 (local fee applies)  
**Mail:** GPO Box 3  
Melbourne VIC 3001

## **SECTION 4: 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
- has given birth
- is caring for one or more children to whom she has given birth or
- is recovering from 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 permanently because of disability if and only if:

- 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 practise in the area of medicine in which they had (at the time of the injury or illness) chosen and been qualified to practise

and another person who is a medical practitioner has certified that the person fits the above criteria and has permanently ceased all practice as a medical practitioner.

### **Private Medical Practice**

For the purpose of the 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
- 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 its external territories.



**Freecall: 1800 011 255**

**Member Services Fax: 1300 011 244**

**Claims Fax: 1300 011 235**

**Email: [peaceofmind@mdanational.com.au](mailto:peaceofmind@mdanational.com.au)**

**Web: [mdanational.com.au](http://mdanational.com.au)**

#### **Adelaide**

Unit 7, 161 Ward Street NORTH ADELAIDE SA 5006

Phone: (08) 7129 4500 Fax: (08) 7129 4520

#### **Brisbane**

Level 8, 87 Wickham Terrace SPRING HILL QLD 4000

Phone: (07) 3120 1800 Fax: (07) 3839 7822

#### **Hobart**

GPO Box 828, HOBART TAS 7001

Phone: (03) 6231 6235 Fax: (03) 6234 2344

#### **Melbourne**

Level 3, 100 Dorcas Street SOUTHBANK VIC 3006

Phone: (03) 9915 1700 Fax: (03) 9690 6272

#### **Perth**

Level 3, 88 Colin Street WEST PERTH WA 6005

Phone: (08) 6461 3400 Fax: (08) 9415 1492

#### **Sydney**

Level 5, AMA House,

69 Christie Street ST LEONARDS NSW 2065

Phone: (02) 9023 3300 Fax: (02) 9460 8344