



# Medical Indemnity

## Run Off-Cover Scheme (ROCS) - Frequently Asked Questions

This page answers questions on the operation of ROCS from the viewpoint of doctors.

### What is the Run-Off Cover Scheme?

The Run-Off Cover Scheme (ROCS) is a scheme designed to provide secure insurance for doctors who have left private practice.

### Why is there a need for ROCS?

The Government's original package of medical indemnity legislation in 2002 addressed the affordability of medical indemnity for doctors and the industry's long-term viability, in a period of upheaval.

However, those who had left the medical workforce - including retirees, and those on maternity leave - often faced significant ongoing costs for "run-off cover" for incidents which had occurred during their careers but had not yet been notified to insurers.

ROCS ensures that eligible doctors get medical indemnity cover that is secure and free and based on their last cover.

### What is my "last cover"?

"Last cover" refers to the cover you had prior to a period in ROCS. It will usually correspond to a medical indemnity contract of insurance which was in place immediately prior to leaving private practice. In some cases however it may include:

- Two or more policies from different MIs;
- A combination of a contract of insurance plus discretionary claims-incurred cover from an MDO;
- Previous ROCS cover plus additional run-off cover taken out to cover gaps in your last contract

### How does the ROCS work?

Medical indemnity insurers are required to grant indemnity to doctors who are eligible for ROCS, based on their last contract of insurance.

Insurers issue notices of indemnity to eligible doctors and manage any claims that emerge under those contracts.

The Government will pay the costs of valid claims (including costs of managing claims)

made against doctors who are eligible for ROCS.

The ongoing cost of ROCS will be met over time by a ROCS support payment paid by insurers.

### When did the ROCS come into operation?

ROCS covers claims where the claim was first notified on or after 1 July 2004 (when the scheme came into operation).

### What does ROCS cover?

ROCS covers medical indemnity claims by or against "eligible doctors" for incidents that occurred in the course of their medical practice.

The ROCS cover that MIs are obliged to give to eligible doctors is provided on the same terms and conditions, and for the same range of incidents, as the last cover that the doctor had, prior to becoming eligible for ROCS.

## Coverage – doctors

### Who is eligible for ROCS?

ROCS covers doctors who cease remunerated private practice, and the legal representatives of deceased former medical practitioners.

### If I leave the private medical workforce, will I be immediately eligible for ROCS?

In most cases, ROCS eligibility is immediate. You will be covered immediately if you are a private medical practitioner and leave the workforce:

- after age 65;
- because of permanent disability;
- on maternity leave;
- when leaving the country after working as a doctor under visa subclasses 422 (medical practitioner) or 457 (business (long stay)); or
- upon death.

(When a private medical practitioner dies, ROCS will also cover claims against the doctor from that time).

If you leave the private medical workforce for reasons other than the above become, you will become eligible for ROCS after three years.

### If I leave the medical workforce for other reasons than those which grant immediate ROCS eligibility, will I have to "run bare" for three years?

No, if you are not immediately eligible for ROCS you will be able to purchase run-off cover from your medical indemnity insurers for these three years. (You should be aware that this run-off cover will therefore be your "last contract of insurance", and will form the basis of your ROCS cover once you become eligible).

### What if I am retired (and not yet eligible for ROCS) and have not bought run-off cover from my last insurer?

If you have left full-time private practice and are waiting to become eligible for ROCS (ie you are under 65, have not ceased practice because of maternity or permanent disability, nor met the eligibility requirements for temporary resident doctors) then you should purchase run-off cover.

If you do not purchase run-off cover, and are not yet in ROCS, you will be uninsured. This means you will personally bear all the costs yourself of any legal action against you, relating to your previous medical practice.

After you have been out of private practice for three years' (or meet other eligibility criteria eg you retire permanently after turning 65) you will be eligible for ROCS.

### Will I be eligible for ROCS if I was already in one of the eligibility groups of doctors before 1 July 2004?

Yes, provided you continue to satisfy the conditions of eligibility (in particular, provided you do not resume private medical practice).

### If I have never had medical indemnity cover, will I be covered by ROCS?

No. Doctors who deliberately choose to practice without insurance will not be covered under ROCS.

### Am I still eligible for ROCS if I provide services at no cost?

Yes, as long as you do not receive a payment or gratuity, ROCS will cover you for past incidents. However the free services will not be covered by ROCS, and you should obtain your own appropriate cover for these services.

**If I am eligible for ROCS and then I move from the private sector to the public sector, will I be able to access the ROCS for my private work?**

Yes. Except in the cases of maternity and permanent disability, to be eligible for ROCS you need only cease private medical practice.

So if you leave private practice and move to the public sector, you will be covered by ROCS for that private practice, but not for the public sector work (which would be indemnified by the public sector employer).

**Claims-made and claims-incurred cover**

**What if I am retired and have never had claims-made cover insurance?**

If you are an eligible doctor who has never had a claims-made insurance policy but who had claims-incurred cover with an MDO, you will be covered by ROCS for events occurring from 1 July 2004. However, you will not receive a formal notification of your ROCS entitlement.

**Will I be eligible for ROCS if I have "claims incurred" cover with an MDO?**

Yes. On 1 July 2004 there will be many retired doctors who are eligible for the ROCS whose entire medical career was covered by a medical defence organisation (MDO) under claims incurred arrangements. Doctors who have only ever had claims incurred insurance will not receive a formal notification of their eligibility for ROCS.

Under ROCS, any claims that may be made against these doctors are handled by their MDO as usual, but the MDOs are reimbursed by the Government for the cost of these claims.

**Will I be eligible for ROCS if I have had both claims-made and claims-incurred cover?**

Yes. For doctors who are eligible for ROCS, MII's provide ROCS cover that reflects their claims-made arrangements and manage any claims that arise under that cover. Separately, MDOs will continue to manage (in the ordinary course of business) any claims that arise from a doctor's claims incurred cover. In both cases the costs of valid claims are funded under the ROCS.

**Am I eligible for ROCS if I had discretionary "claims made" cover with an MDO?**

Yes, ROCS covers claims relating to incidents that occurred when you had "claims-made" cover with an MDO, if you are an eligible practitioner.

**Maternity leave and disability**

**Does ROCS cover me while I am on maternity leave?**

Yes. You will be eligible for ROCS because of maternity if you have ceased all private and public practice as a medical practitioner because of pregnancy (including a miscarriage or a stillbirth), to recover from a pregnancy, or childbirth (including subsequent care for one or more of your children), provided another medical practitioner has certified to the birth or pregnancy on the appropriate form.

ROCS covers you for your past private practice as long as you are on maternity leave. There is no limit on the amount of leave that you can take. Once you resume medical practice your eligibility for ROCS will cease.

**What cover do I need to purchase when I return to work after maternity leave?**

ROCS does not cover you for claims notified after you return from maternity leave (unless you are an "eligible practitioner" for some other reason).

If you return to work in private medical practice, you are no longer covered by ROCS.

Once you return to work after maternity leave you should purchase retroactive cover, as ROCS does not respond to claims notified after you return to work.

If a claim is made while you are on maternity leave, you will continue to be covered under ROCS for that claim even if you later return to work.

**I have a permanent disability. Am I eligible for ROCS?**

You will be eligible for ROCS if as a result of an injury or illness that is permanent, or is likely to be permanent, you can no longer practise in the area of medicine in which you had chosen and been qualified to practise.

**If I am eligible for ROCS because of maternity or permanent disability, am I able to practice medicine in public hospitals?**

No. To be eligible for ROCS because of maternity or permanent disability you must stop all paid medical practice, including public practice. You will be able to provide services at no cost (see "Are doctors still eligible for ROCS if they provide services at no cost?"), but you should purchase separate cover for these services as they will not be covered by ROCS.

**Temporary resident doctors**

**If I am a temporary resident doctor, am I eligible for ROCS?**

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.

**If I am a temporary resident doctor holding a 422 or 457 visa and I leave Australia temporarily (intending to return), am I eligible for ROCS?**

Yes, provided on your return you do not work in private practice. If you return to private medical practice, your past practice in Australia will not be covered in ROCS. You will need to discuss your circumstances with your MII to be sure.

**Are doctors working under other visa classes eligible for ROCS after leaving Australia permanently?**

Yes, other temporary resident doctors are eligible on the usual conditions but they will not be eligible immediately on leaving Australia, unlike those with a visa subclass 422 or 457.

These doctors may choose to make their own run-off cover arrangements with an MII in the interim.

**If I am a temporary resident doctor and stay in Australia on holidays after they cease private medical practice eligible for ROCS?**

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).

**If I am an eligible temporary resident doctor, do I need to have a ROCS contract before I leave Australia?**

MIIs will issue ROCS notices to those eligible doctors of whom they are aware. You should contact your MII before you leave Australia to advise them of your departure, leave a forwarding address and arrange your cover under ROCS.

If you meet the eligibility criteria you are still eligible for ROCS even if you do not receive a ROCS notice.

## Leaving ROCS

### What happens if I cease to be eligible for ROCS?

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 immediately advise the insurer who issued your ROCS notice.

If you wish to maintain cover when you cease to be eligible for ROCS you should purchase separate medical indemnity insurance (including retroactive cover). 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 purchase cover before going 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.

### What insurance arrangements should I consider when re-entering the workforce after an absence?

Doctors who re-enter the private medical workforce (eg resume private medical practice after maternity leave) will cease to be eligible for ROCS for current and previous incidents, so you should take out separate medical indemnity cover (including retroactive cover).

### What if I who return to work part-time, only a day or two a week?

Doctors who return to paid work as medical professionals will be ineligible for ROCS regardless of how few hours they work, so they should therefore take out their own medical indemnity cover.

### Am I still eligible for ROCS if I perform services other than medical treatment in retirement?

Doctors in private medical practice who perform services other than medical treatment (eg providing advice on a consultancy basis or acting as an expert witness) may still be excluded from ROCS. You should contact your insurer in these cases.

### Am I still eligible for ROCS if I return to work in the public sector, for example in public hospitals?

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

This is because ROCS is designed to cover doctors who have left private practice, for incidents which occurred during that practice. It would not be reasonable to expect public-sector employers to cover doctors' previous private practice.

However doctors working in the public sector will require coverage for incidents occurring in the course of this work - ordinarily this will be provided by the employer, and therefore will be outside the scope of ROCS.

## Coverage - incidents

### Which incidents are now covered in ROCS?

ROCS covers any incident occurring in the course of the doctor's medical practice which is first reported to the MII while the doctor is eligible for ROCS, provided it is covered under a ROCS contract of insurance (based on the doctor's last contract of insurance).

### If an incident is notified while I am eligible for ROCS, will ROCS pay for all the costs of the claim?

Yes, if the incident was covered by your last contract of insurance.

### If an incident is notified while I am not eligible for ROCS, will ROCS pay for any of the costs of the claim?

No.

### Can insurers offer me ROCS cover which is different from that offered under my last contract of insurance?

No. Insurers may offer you additional cover for free or at a cost, but this will not be ROCS cover and the Australian government will not reimburse the cost of claims.

### If I find that my last contract of insurance did not cover all of my previous medical practice, can I privately purchase additional run-off cover?

Yes, but this will not be ROCS cover and the Australian government will not reimburse the cost of claims.

### If I am eligible for ROCS and take out additional run-off cover, will this subsequently be covered by ROCS?

Yes, after the expiry of the additional cover.

### Are incidents which were not covered at the time of their occurrence covered in ROCS?

Yes. The legislation has been amended (from November 2006) so that incidents which were not covered at the time of their occurrence (eg. because the doctor had no medical

indemnity insurance or incomplete cover) will now be included in ROCS, provided such incidents were covered under the doctor's last contract of insurance. This affects all ROCS claims first notified since 1 July 2004.

This change improves certainty for doctors and insurers about which incidents are covered in ROCS. This was necessary as insurers' records would not have enabled them to identify gaps in coverage with precision. In addition, some of the gaps in insurance cover were brief and inadvertent, and whether coverage was maintained depended on business practices, which varied among insurers.

### Why does ROCS cover only those incidents that were covered by the doctor's last contract of insurance?

As the ongoing cost of ROCS is funded from a levy on medical indemnity insurance premiums, it is reasonable that it should only cover doctors who have had medical indemnity insurance. In the same vein, those who had taken out more comprehensive insurance (at greater cost) should continue to receive the benefit of that cover in retirement.

It is therefore in the doctor's interest to be certain that his or her insurance offers adequate cover, including cover for all otherwise-uncovered prior events.

## Notification

### Whom will I need to notify if I believe that I am eligible for ROCS?

Contact your current MII or the last MII (or MDO) that covered you. If you were insured with an MII, you will receive a notice of your cover under ROCS. In the event you have a claim, notify your insurer or your MDO.

### If I am eligible for ROCS will my MII send me notification of this?

Yes. MIIs are obliged to notify eligible doctors of the nature and range of incidents covered under the ROCS and any other terms and conditions. The changes to legislation in November 2006 have simplified the running of ROCS, so MIIs are in a better position to notify eligible doctors.

While there may be some eligible doctors whom MIIs are not aware of, their entitlement to the ROCS is not dependent on possession of the notice. Entitlement will occur immediately a doctor becomes eligible, even if you have not received a notice from your MII.

## Claims

### What should I do if a claim is made against me or I have a claim?

As soon as you become aware that a claim may be made against (or by you) you should contact your insurer. Under ROCS this insurer will handle and manage all eligible run-off claims.

You should cooperate with your insurer in managing all claims made under ROCS, in accordance with the relevant terms and conditions in your last contract of insurance.

### What happens if a claim is made against me that is over the limit in my last contract of insurance?

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.

### Does ROCS only cover compensation claims?

No. 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 made by a doctor arising from medical practice such as legal representation at coronial enquiries.

However ROCS does not mirror cover other than medical indemnity cover that a doctor may have purchased. For example, it does not cover income protection or personal injury claims.

## Reporting

### What are the Minister's ROCS reporting requirements?

The Minister for Health and Ageing must report to Parliament annually, including:

- a statement of the number of doctors eligible for ROCS at the end of the year;
- a statement of the total amount of ROCS claims
- a statement of the total amount of ROCS administration fees paid during the financial year;
- a statement of the total ROCS support payment paid to the Commonwealth by insurers; and

- estimates by the Actuary of the Commonwealth's ROCS liabilities in future financial years.

The legislation does not require the Minister to provide any personal information to Parliament about individual doctors.

## Payment

### Can insurers charge doctors for ROCS cover?

No. However insurers can sell doctors additional run-off if cover if the cover under their last contract was inadequate.

### How do I find out how much of my premium is going to fund the ROCS?

The ROCS is funded through a charge on insurers' premium income called the ROCS support payment. Insurers are required to show the amount of the ROCS Support Payment on your premium invoice. The current charge is 5% of the premium.

### Can I find out the total amount contributed to the ROCS on my behalf?

Yes. Medicare Australia [www.medicareaustralia.gov.au/](http://www.medicareaustralia.gov.au/) has the power to advise a doctor of their run-off cover credit on an annualised basis if you request it. The contribution made each year on behalf of individual doctors by MII's will be recorded by Medicare Australia as notional run-off cover credits. Interest, at the short-term bond rate, will be added to these amounts annually.

### If I am already eligible for ROCS, will I still be covered if ROCS is terminated?

If you are already eligible for ROCS and the scheme is terminated, you will continue to be covered for valid claims under the scheme.

However, if you are not eligible on the termination date, you will not be eligible for future cover under the ROCS.

In the event ROCS were terminated, doctors who have contributed to the ROCS Support Payment will be able to get their contribution back (if the Government does not establish another scheme to provide run-off cover to doctors).

### If I am not eligible, will I be compensated if ROCS is terminated?

Under the legislation, if ROCS were terminated, doctors who are not eligible for ROCS on the termination date but in respect of whom an MII had made a ROCS support payment for at least 12 months worth of premium would receive a contribution towards their future run-off cover costs, which would not exceed the value of the total ROCS support payment plus interest.

### Who will handle any claims that may arise against me after I have entered ROCS?

If you become aware of a claim after you have become eligible for the ROCS, you will need to notify your MII or MDO which will handle your claim.

### What is the current ROCS support payment rate?

The ROCS support payment is set by regulation at a percentage of an MII's total gross medical indemnity premium income for a 12 month period – currently 5% of premium income.

### Will invoices for medical indemnity premiums show the ROCS component?

Yes. MIIs will be obliged to include the ROCS component on premiums to ensure that doctors are clear about how the premiums they pay contribute ultimately to the run-off cover support payment (paid by MIIs). Before taking action based on the information provided on this page, you need to consider your own situation and the relevant laws. You should seek advice that takes account of your particular set of circumstances.

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