



Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005

No. 126, 2005

**An Act to amend the *Medical Indemnity Act 2002*
and the *Medical Indemnity (UMP Support Payment)*
Act 2002, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 126, 2005

**An Act to amend the *Medical Indemnity Act 2002*
and the *Medical Indemnity (UMP Support Payment)*
Act 2002, and for related purposes**

[Assented to 19 October 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Medical Indemnity Legislation
Amendment (Competitive Neutrality) Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	19 October 2005
2. Schedules 1 and 2	1 July 2005.	1 July 2005
3. Schedule 3	Immediately after the commencement of Schedule 2 to the <i>Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004</i> .	1 July 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Competitive advantage payment

Health Insurance Act 1973

1 Subsection 130(25) (after paragraph (a) of the definition of *medical indemnity legislation*)

Insert:

- (aa) the *Medical Indemnity (Competitive Advantage Payment) Act 2005*; and

Health Insurance Commission Act 1973

2 After paragraph 42(2)(a)

Insert:

- (aa) the *Medical Indemnity (Competitive Advantage Payment) Act 2005*;

Medical Indemnity Act 2002

3 At the end of subsection 3(4)

Add:

- ; and (c) to require a payment from medical indemnity insurers to ensure that the assistance referred to in paragraph (2)(c) does not give a competitive advantage to the organisations that receive that assistance.

4 Subsection 4(1) (at the end of the definition of *contribution year*)

Add:

- ; and (c) for a competitive advantage payment—has the same meaning as in the *Medical Indemnity (Competitive Advantage Payment) Act 2005*.

5 Subsection 4(1) (at the end of the definition of *medical indemnity payment*)

Add:

; or (c) a competitive advantage payment payable under Division 2A of Part 3.

6 Subsection 4(1) (at the end of the definition of *medical indemnity payment legislation*)

Add:

; or (c) the *Medical Indemnity (Competitive Advantage Payment) Act 2005*.

7 Subsection 4(1)

Insert:

net IBNR exposure has the meaning given by section 8A.

8 After section 8

Insert:

8A Net IBNR exposure of an MDO

An MDO's *net IBNR exposure* at a particular time is the MDO's IBNR exposure at that time, reduced by any amounts of high cost claim indemnities and run-off cover indemnities that are likely to be payable in respect of the incidents that satisfy subsection 8(2) and that relate to the MDO's IBNR exposure at that time.

9 Paragraph 40(1)(d)

After "IBNR exposure", insert " , or its net IBNR exposure, ".

10 After Division 2 of Part 3

Insert:

Division 2A—Competitive advantage payment

Subdivision A—Introduction

59A Guide to the competitive advantage payment provisions

(1) The *Medical Indemnity (Competitive Advantage Payment) Act 2005* (the **Payment Act**):

- (a) imposes payments on medical indemnity insurers for contribution years; and
- (b) specifies the amount of those payments (by reference to the net IBNR exposure of the insurer's participating MDO for the contribution year).

This Division contains further provisions relating to the payment.

- (2) The following table tells you where to find the provisions dealing with various issues:

Where to find the provisions on various issues		
Item	Issue	Provisions
1	which years are contribution years?	section 5 of the Payment Act
2	who must pay the competitive advantage payment?	section 59B of this Act
3	who is exempt from the competitive advantage payment?	section 59C of this Act
4	what is the amount of the competitive advantage payment?	section 6 of the Payment Act
5	what is the time for paying the competitive advantage payment?	section 61 of this Act
6	when is late payment penalty payable?	section 65 of this Act
7	what method should be used to pay the competitive advantage payment?	section 66 of this Act
8	what happens if an amount of competitive advantage payment is overpaid?	section 67 of this Act
9	how are competitive advantage payments and late payment penalties recovered?	sections 68 to 70 of this Act
10	what information has to be provided to the HIC about competitive advantage payment matters?	sections 71 and 72 of this Act

Subdivision B—Who pays competitive advantage payment

59B Who is liable to pay the competitive advantage payment

A person is liable to pay a competitive advantage payment for a financial year if:

- (a) the person is a medical indemnity insurer; and
- (b) the financial year is a contribution year; and
- (c) the person is not exempt from the payment under section 59C.

59C Exemptions

- (1) The regulations may provide that a person is exempt from competitive advantage payment in the circumstances specified in the regulations.
- (2) Regulations made for the purposes of subsection (1) may provide that a person is exempt from competitive advantage payment either generally or for a particular contribution year.

Subdivision C—Annual reassessment of participating MDO's net IBNR exposure

59D Object of this Subdivision

The object of this Subdivision is to allow annual reassessment and publication of a participating MDO's net IBNR exposure so that the competitive advantage payment reflects the competitive advantage that the participating MDO and any associated insurer enjoy.

59E Process for annually reassessing net IBNR exposure

Report by the Actuary

- (1) For each contribution year for a participating MDO, the Actuary must give the Minister a written report that:
 - (a) states the Actuary's assessment of the MDO's net IBNR exposure as at the end of the financial year that ends immediately before the start of that contribution year; and

-
- (b) sets out the reasons for the assessment.
- (2) In preparing the report, the Actuary must take into account any information that the HIC gives the Actuary in relation to the MDO under subsection (6).

HIC's information gathering powers

- (3) If the HIC believes on reasonable grounds that a participating MDO is capable of giving information that is relevant to assessing the MDO's net IBNR exposure as at the end of a financial year that ends immediately before the start of a contribution year for the MDO, the HIC may request the MDO to give the HIC the information.

Note: Failure to comply with the request is an offence (see section 73).

- (4) Without limiting subsection (3), the kind of information that may be requested includes information in the form of:
- (a) financial statements; and
 - (b) a report prepared by a suitably qualified actuary assessing the MDO's net IBNR exposure as at the end of a financial year that ends immediately before the start of a contribution year for the MDO.
- (5) The request:
- (a) must be made in writing; and
 - (b) must state what information the MDO is to give to the HIC; and
 - (c) may require the information to be verified by statutory declaration; and
 - (d) must specify the day on or before which the information must be given; and
 - (e) must contain a statement to the effect that a failure to comply with the request is an offence.

The day specified under paragraph (d) must be at least 28 days after the day on which the request is made.

- (6) The HIC must give any information that the MDO gives the HIC to the Actuary for the purposes of preparing the report for the Minister under subsection (1).

Publishing net IBNR exposure

- (7) The Minister must cause to be published in the *Gazette* a notice of the amount of any net IBNR exposure of an MDO stated in a report to the Minister under subsection (1).
- (8) A notice made under subsection (7) is not a legislative instrument.

11 Subsection 60(1)

Omit “and run-off cover support payments”, substitute “, run-off cover support payments and competitive advantage payments”.

12 Section 61 (at the end of the table)

Add:

- | | | |
|---|-------------------------------|--|
| 3 | competitive advantage payment | (a) 30 April in the contribution year; or
(b) such other day as is specified in the regulations as the payment day for the contribution year either generally for all people, for the class of people that includes the person or for the person, as the case may be. |
|---|-------------------------------|--|

13 After paragraph 73(1)(a)

Insert:

- (aa) subsection 59E(3); or

National Health Act 1953

14 Subsection 135A(24) (after paragraph (a) of the definition of medical indemnity legislation)

Insert:

- (aa) the *Medical Indemnity (Competitive Advantage Payment) Act 2005*; and

Schedule 2—UMP support payment

Medical Indemnity Act 2002

1 Paragraph 52(2)(ca)

Omit “income period was less than \$5,000; or”, substitute:

income period was:

- (i) if the contribution year started on 1 July 2003 or 1 July 2004—less than \$5,000; or
- (ii) otherwise—less than or equal to \$50,000; or

2 Paragraph 52(2)(cb)

Omit “income period was less than \$5,000; or”, substitute:

income period was:

- (i) if the contribution year started on 1 July 2003 or 1 July 2004—less than \$5,000; or
- (ii) otherwise—less than or equal to \$50,000; or

3 After paragraph 52(2)(cb)

Insert:

- (cc) the contribution year started on or after 1 July 2005 and the applicable percentage of the annual subscription for the base year of a participating member of a participating MDO is less than or equal to \$1,000; or

4 Paragraph 52(2)(db)

Omit “6”, substitute “4”.

5 After subsection 52(3A)

Insert:

(3AA) For the purposes of paragraph (2)(cc):

- (a) **annual subscription** and **base year** have the same meanings as in section 54 of this Act; and
- (b) **applicable percentage** has the same meaning as in section 6 of the *Medical Indemnity (UMP Support Payment) Act 2002*.

Medical Indemnity (UMP Support Payment) Act 2002

6 Paragraph 6(1)(a)

Omit “\$5,000”, substitute “\$4,000”.

7 Paragraph 6(1)(b)

Repeal the paragraph, substitute:

- (b) the amount by which the applicable percentage of the member’s annual subscription for the base year exceeds \$1,000; and

8 Paragraph 6(1)(c)

Omit “the member’s gross Medicare billable income for the income period for that contribution year”, substitute “the amount by which the member’s gross Medicare billable income for the income period for that contribution year exceeds \$50,000”.

9 Paragraph 6(1)(d)

Omit “the member’s gross medical income for the income period for that contribution year”, substitute “the amount by which the member’s gross medical income for the income period for that contribution year exceeds \$50,000”.

Schedule 3—Technical correction

Medical Indemnity Act 2002

1 Paragraph 58(c)

Omit “contribution”, substitute “payment”.

Note: This amendment fixes an incorrect term.

*[Minister’s second reading speech made in—
House of Representatives on 16 June 2005
Senate on 10 August 2005]*

(89/05)
