

Medical Indemnity Amendment Regulations 2003 (No. 1) 2003 No. 250

Explanatory Statement

Statutory Rules 2003 No. 250

Medical Indemnity Amendment Regulations 2003 (No. 1)

On 23 October 2002, the Government announced a new framework for medical indemnity. The purpose of the framework was to address rising medical indemnity insurance premiums and ensure a viable and ongoing medical indemnity insurance market. The Incurred But Not Reported Liabilities (IBNR) Scheme (the IBNR Scheme) is one of the elements of the new framework.

Under the IBNR Scheme the Government is funding the incurred but not reported liabilities of those medical defence organisations that have not set aside sufficient money to cover these liabilities. The cost of that funding is to be recouped, over an extended period, through contributions by those persons who on 30 June 2000 were members of a medical defence organisation participating in the scheme.

To ensure affordability of the IBNR indemnity contribution, on 3 October 2003 the Government announced further exemptions for all doctors aged over 65 and doctors who die or become incapacitated before 65.

Subsection 79(1) of the *Medical Indemnity Act 2002* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 52(4) of the Act allows regulations to provide that a person is exempt from an IBNR indemnity contribution in circumstances specified in the regulations.

Paragraph 61(1)(b) of the Act allows regulations to alter the date on which IBNR indemnity contributions become payable (the payment day), which is otherwise 1 November in the relevant contribution year.

The purpose of the Regulations is to give effect to the Government's announcement of 3 October 2003 by providing further exemptions for persons participating in the IBNR scheme under subsection 52(4) of the Act and by altering the payment day to 1 February 2004 for the 2003-04 contribution year. Moving the payment date is necessary in order to allow time for the passage of related amendments to the Act.

Details of the regulations are set out in the [Attachment](#).

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations would be taken to have commenced on 15 August 2003, to ensure that the new exemptions apply from the date of the existing exemptions in the *Medical Indemnity Regulations 2003*. Subsection 48(2) of the *Acts Interpretation Act 1901* provides that regulations made with retrospective effect have no effect if the rights of a person (other than the Commonwealth) would be disadvantaged, or liabilities would be imposed on such a person in respect of anything done or admitted to be done prior to commencement. As the Regulations would not disadvantage any members participating in the scheme they may be validly made with retrospective effect.

Details of the *Medical Indemnity Amendment Regulations 2003 (No. 1)*

Regulation 1 provides that the name of the regulations will be the *Medical Indemnity Amendment Regulations 2003 (No. 1)*.

Regulation 2 provides for the regulations to commence on 15 August 2003.

Regulation 3 provides for these Regulations to amend the *Medical Indemnity Regulations 2003*.

Amendment [1] amends Regulation 8 in the *Medical Indemnity Regulations 2003* to exempt from IBNR indemnity contributions all doctors and health professionals who turn 65 in a contribution year. To be eligible for this exemption the person must provide the Health Insurance Commission (HIC) with a statutory declaration or certified copy of a birth certificate 15 days before the payment date stating when the person turned, or will turn, 65.

Regulation 8A exempts members that would be participating in the IBNR Scheme, but have become disabled. To be eligible for this exemption a person must have a physical, intellectual, psychiatric or sensory impairment during the relevant contribution year. For a person to meet this exemption the person must have an impairment as assessed under the impairment tables in the *Social Security Act 1991* (impairment must equal or exceed 20 points) and satisfy the HIC that they have a continuing inability to work in a medical profession because of the impairment.

Regulation 8B provides an exemption for persons who die on or after the imposition day. To prove this exemption a statutory declaration or copy of the death certificate must be provided to the HIC by the person's legal personal representative.

Regulation 8C moves the payment date for IBNR indemnity contributions to 1 February 2004 for the 2003-04 contribution year.