

Medical Indemnity Amendment Regulations 2004 (No. 1) 2004 No. 8

EXPLANATORY STATEMENT

STATUTORY RULES 2004 NO. 8

Medical Indemnity Amendment Regulations 2004 (No. 1)

The Australian Government intervened in the medical indemnity market following the application by United Medical Protection Limited (UMP) to be placed under provisional liquidation in April 2002. On 30 April 2002, the Government provided a guarantee to allow members of UMP to continue practising whilst longer-term solutions were developed. UMP came out of provisional liquidation on 14 November 2003.

On 17 December 2003, the Government announced a range of additional measures to address the affordability of medical indemnity costs for doctors. This has followed on from the Report of the Medical Indemnity Policy Review Panel. As part of this announcement the government announced changes to the High Cost Claims Scheme (HCCS) and the Incurred But Not Reported Liabilities (IBNR) Indemnity Scheme.

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.

The purpose of these Regulations is to lower the HCCS threshold to \$300,000 and to make changes to the IBNR Indemnity Scheme, to give effect to the Government's announced intentions.

High Cost Claims Scheme

The HCCS formed part of the original medical indemnity framework announced on 23 October 2002 by the Prime Minister and is legislated under the Act. Under this scheme the Australian Government funds 50 per cent of a medical indemnity payout over a threshold value. Originally the threshold value was set to \$2 million for claims notified on or after 1 January 2003.

Subsection 29(1) of the Act provides that the high cost claims threshold is \$2 million or such other amount as is prescribed by the regulations.

On 10 October 2003 the lowering of the HCCS threshold to \$500,000 was announced. The *Medical Indemnity Amendment Regulations 2003 (No. 2)*, which commenced on 22 October 2003, gave effect to this change. As a result, the new threshold applies to claims notified on or after 22 October 2003.

On 17 December 2003, the Government announced that it would lower the HCCS threshold to \$300,000.

These Regulations lower the threshold to \$300,000, so that the Government would fund 50 per cent of a medical indemnity payout over \$300,000 up to a doctor's level of insurance, for claims notified on or after 1 January 2004.

The Regulation lowering the HCCS threshold commenced on 1 January 2004, to ensure that the new threshold applies from this date. 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 do not disadvantage any person participating in the scheme they may be validly made with retrospective effect.

IBNR scheme

Under the original IBNR Scheme the Australian Government assumed the IBNR liabilities of UMP estimated to be \$483 million in net present value terms at 30 June 2003. The Government will now fund three quarters of this amount and the remaining quarter will be recouped from doctors by affordable contributions under UMP support arrangements. The Health Insurance Commission (HIC) administers this scheme.

Item 1(b) in the table in s 61 of the Act provides that the payment day for IBNR indemnity contributions is 1 November in the contribution year, or such later day as is specified in the regulations.

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. Subsection 52(4A) of the *Medical Indemnity Act 2002* provides that exemptions specified in regulations can be similar to exemptions specified in subsection 52(2) of the Act.

These Regulations:

- allow doctors a longer period to provide evidence proving that they meet exemptions for paying IBNR indemnity contributions, under the new arrangements;
- amend the exemptions for persons with comprehensive retroactive insurance prescribed in the *Medical Indemnity Regulations 2003* to ensure that Medical Defence Organisations (MDO), Medical Indemnity Insurers and State and Territory Governments can provide the required documentation to prove that a person meets this exemption;
- remove the exemption for people who die on or after the payment day in a contribution year, as this has now been added to the exemptions provided for in subsection 52(2) of the Act; and
- move the payment date for the proposed contribution year to 1 September 2004.

The formal provisions and changes to the HCCS threshold are taken to have commenced on 1 January 2004. The remainder of the Regulations commence on gazettal.

ATTACHMENT

Details of the *Medical Indemnity Amendment Regulations 2004 (No. 1)*

Regulation 1 provides that the name of the Regulations is the *Medical Indemnity Amendment Regulations 2004 (No. 1)*.

Regulation 2 provides for Regulations 1 to 3, and Schedule 1, to commence on 1 January 2004. This would allow the threshold of the High Cost Claims scheme to be lowered to \$300,000 from 1 January 2004. Regulation 2 also provides for Schedule 2 to commence on the date of gazettal.

Regulation 3 provides for Schedules 1 and 2 to amend the *Medical Indemnity Regulations 2003*.

Schedule 1

Lowering the High Cost Claims Scheme Threshold to \$300,000

Item [1] amends Regulation 4A of the *Medical Indemnity Regulations 2003* to lower the High Cost Claims Scheme threshold from \$500,000 to \$300,000. The Government will cover 50 per cent of a medical indemnity payout over \$300,000 up to the limit of the practitioner's cover, for claims notified on or after 1 January 2004.

Schedule 2

Timeframe for exemption applications

The *Medical Indemnity Regulations 2003* specify a number of situations in which doctors are to be exempt from paying IBNR indemnity contributions.

Item [1] amends paragraph 6(1)(d) of the *Medical Indemnity Regulations 2003* to allow doctors more time to provide evidence that they meet this exemption for public sector specialists engaged in private practice in the medical profession. Statements will have to be provided to HIC by the payment date, rather than before 15 October in the contribution year.

Item [2] amends paragraph 6A(1)(d) of the *Medical Indemnity Regulations 2003* to allow doctors more time to provide evidence that they meet this exemption. This exemption is for salaried medical practitioners employed by a Commonwealth, State or Territory agency, whose medical income was less than \$5,000 for both: the financial year beginning on 1 July 2001; and the financial year immediately before the contribution year. Statements will have to be provided to HIC by the payment date, rather than at least 15 days before the payment day.

Item [4] amends subregulation 8(b) of the *Medical Indemnity Regulations 2003* to allow doctors more time to provide evidence that they meet this exemption for persons who are 65 or more. Statements will have to be provided to HIC by the payment date, rather than at least 15 days before the payment day.

Comprehensive retroactive cover IBNR exemption

Item [3] substitutes existing Regulation 7 with new Regulations 7 and 7A to exempt doctors with comprehensive retroactive cover from paying IBNR indemnity contributions. This

exemption is separated into two proposed Regulations for: those persons whose indemnity cover is provided by an MDO or medical indemnity insurer; and those persons whose cover is provided by a Commonwealth, State or Territory agency.

Regulation 7 - Comprehensive retroactive cover provided by an MDO or an Insurer

Subregulation 7(1) provides that a person is exempt from an IBNR indemnity contribution if subregulation (2) or (3) applies to the person.

Subregulation (2) applies to a person if:

- Before 1 July 2003 the person had made arrangements with an MDO to indemnify them against all 'past incidents' (past incidents is defined below). This arrangement must have been entered into without any further premium payments (other than payments agreed at the time of the indemnity agreement was made); and
- On 1 July 2004 the person had an insurance contract with one or more insurers (a "current medical indemnity provider") to indemnify them against all 'past incidents'. This arrangement must have been entered into without any further premium payments (other than payments agreed at the time of the indemnity agreement was made); and
- Before the payment day for the contribution year starting on 1 July 2003, the person provides statements to the HIC to prove that they meet this exemption, including:
 - a statement from their former medical indemnity provider that it no longer indemnifies the person (subparagraph (2)(c)(i)); and
 - a statement from their MDO that before 1 July 2003 the person had an arrangement with the MDO to cover all 'past incidents' (subparagraph (2)(c)(ii)); and
 - a statement from their current medical indemnity provider that before 1 July 2003 the person had made arrangements to have an indemnity arrangement that will cover and continue to cover all 'past incidents', without further premium payments (subparagraph (2)(c)(iii)).

Subregulation (3) applies to a person if:

- Before 1 July 2003 the person had an insurance contract with one or more insurers (a "current medical indemnity provider") to indemnify them against all 'past incidents'. This arrangement must have been entered into without any further premium payments (other than payments agreed at the time of the indemnity agreement was made); and
- Before the payment day for the contribution year starting on 1 July 2003, the person provides statements to the HIC to prove that they meet this exemption, including:
 - a statement from their former medical indemnity provider that it no longer indemnifies the person (subparagraph (3)(b)(i)); and
 - a statement from their current medical indemnity provider that before 1 July 2003 the person had made arrangements to have an indemnity arrangement that will cover and continue to cover all 'past incidents', without further premium payments (subparagraph (3)(b)(ii)).

Subregulation (4) specifies that a past incident referred to in this Regulation means an incident that:

- related to the practice of a medical profession;
- is covered by the IBNR indemnity scheme; and
- was covered by the former medical indemnity provider.

Regulation 7A - Comprehensive retroactive cover provided by a Commonwealth, State or Territory agency

Subregulation 7A(1) provides for a person to be exempt from an IBNR indemnity contribution if:

- On 30 June 2003 the person was and will continue to be indemnified by a Commonwealth, State or Territory agency for all 'past incidents'; and
- Before the payment day for the contribution year the person provides HIC with:
- a statement from their former medical indemnity provider that it no longer indemnifies the person; and
- a statement for the Commonwealth, State or Territory agency to the effect that on 30 June 2003 the agency covered and will continue to cover all 'past incidents'.

Subsection 7A(2) provides for a past incident to have the meaning given by subregulation 7(4).

Omission of Regulation 8B - persons who die on or after imposition day exemption

Item [5] omits Regulation 8B of the *Medical Indemnity Regulations 2003*. It is necessary to omit this Regulation as subparagraph 52(2) of the *Medical Indemnity Act 2002* has been amended to include this exemption.

IBNR Payment Date

Item [6] amends Regulation 8D of the *Medical Indemnity Regulations 2003* to change the payment date for an IBNR indemnity contribution for the 2003 contribution year from 1 June 2004 to 1 September 2004. The payment date is the date on which an IBNR indemnity contribution is payable. It is necessary to change this in order to allow sufficient time to implement the new UMP support arrangements.