

Medical Indemnity (Prudential Supervision and Product Standards) Amendment Regulations 2004 (No. 3) 2004 No. 150

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 150

Issued by the Minister for Revenue and Assistant Treasurer

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

*Medical Indemnity (Prudential Supervision and Product Standards) Amendment Regulations 2004
(No. 3)*

Subsection 33(1) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (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 Act, which commenced on 1 July 2003, provides that medical indemnity cover is only to be provided by general insurers and only under contracts of insurance. The intention is to ensure that providers of medical indemnity cover are subject to appropriate prudential supervision by the Australian Prudential Regulation Authority (APRA).

As part of the Act, an insurer is required to offer a practitioner effectively free medical indemnity cover for claims made against the practitioner after the practitioner ceases medical practice. This is called run-off cover.

Paragraph 23(1)(b) of the Act provides for the regulations to prescribe an event following which an insurer must make an offer of run-off cover. Subregulation 8(2) of the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003* prescribes the events for the purposes of paragraph 23(1)(b) of the Act as being the practitioner's death, permanent disablement or permanent retirement from practice after the age of 60.

Under the Act a person (the insurer) commits an offence if an event prescribed by the regulations occurs and the insurer does not make an offer to the client that satisfies the requirements specified in the regulations.

The new Regulations amended existing Regulations to support amendments to the Act and ensure that medical indemnity insurers make an appropriate offer to the client.

The *Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004* (the Amendment Act) amends the Act to establish a framework requiring medical indemnity insurers to offer run-off cover to eligible medical practitioners, and allowing regulations to prescribe arrangements for that cover. The Amendment Act has received the Royal Assent and provisions relevant to the proposed Regulations will commence on 1 July 2004.

The Regulations support the amendments to the Act by prescribing the circumstances in which a medical indemnity insurer will offer appropriate cover.

The Regulations put into effect aspects of the Government's run-off cover indemnity scheme to support the amendments to the Act and the *Medical Indemnity Act 2002* through the Amendment Act. The Minister for Health and Ageing prepared a separate set of Regulations to support the *Medical Indemnity Act 2002*.

Regulations 1 and 2 set out respectively the name of the Regulation and the commencement date of the Regulation.

Regulation 3 notes that Schedule 1 amends the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*. Details of the amendments are set out in the Attachment.

The Regulations commenced on 1 July 2004, the date on which the relevant provisions of the Amendment Act commenced.

ATTACHMENT

DETAILS OF THE *MEDICAL INDEMNITY (PRUDENTIAL SUPERVISION AND PRODUCT STANDARDS) AMENDMENT REGULATIONS 2004 (No. 3)*

Schedule 1 - Amendments

Item [1]

This item inserted a subheading of 'Part 1 Preliminary' before Regulation 1.

Item [2]

This item inserted a definition of 'private medical practice' under Regulation 3, outlining the meaning as that given by subsection 34ZB(5) of the *Medical Indemnity Act 2002*.

Item [3]

This item omitted Regulation 3A which defines the circumstance in which a reference to the 'permanent disablement' or 'permanent retirement' of a health care professional is made. Under the new arrangements for Regulation 8 (see Item 6, below), Regulation 3A is no longer required.

Item [4]

This item inserted a subheading of 'Part 2 Prudential requirements for provision of medical indemnity cover' after Regulation 4.

Item [5]

This item inserted a subheading of 'Part 3 Product standards for medical indemnity insurance contracts' after Regulation 7.

Item [6]

This item replaced Regulation 8. The new Regulation 8 prescribes product standards for medical indemnity insurance contracts, which outline that after a prescribed event, an insurer that provides medical indemnity cover is required to make an offer to provide medical indemnity cover in relation to otherwise uncovered prior incidents.

Regulation 8 specifies that:

- The Regulation applies to a health care professional with medical indemnity Subregulation cover under a regulated insurance contract, who is a medical practitioner. 8(1)
- It requires an insurer to offer run-off cover where a medical practitioner has Subregulation ceased medical practice aged less than 65 years; and regardless of whether or not 8(2) they will be available to provide medical services on an occasional and gratuitous basis.
- The offer must satisfy requirements relating to a retired practitioner, the claims Subregulation period, renewal obligations, and the terms, conditions and exclusions that must 8(3) apply to the cover. Renewal commitments require run-off cover to be offered for 3 years, until the practitioner is either no longer eligible for run-off cover or becomes a person described in subsection 34ZB(2) of the *Medical Indemnity Act 2002*.
- The requirements in subregulation 8(3) cease to apply if the retired practitioner Subregulation returns to medical practice, becomes a person described in subsection 34ZB(2) of 8(4)

the *Medical Indemnity Act 2002*, or ceases to be eligible for run-off cover.
This item also inserted a new Regulation 9, which states that the premium payable for the cover must be no more than the cost to the insurer of providing the cover without a profit to the insurer.