

Medical Indemnity (Prudential Supervision and Product Standards) Amendment Regulations 2004 (No. 4) 2004 No. 205

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 205

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. 4)

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 ensures that providers of medical indemnity cover are subject to appropriate prudential supervision by the Australian Prudential Regulation Authority, by providing that only general insurers can provide medical indemnity cover to health care professionals, and only under contracts of insurance. It also sets product standards for the cover that those insurers are required to offer to medical practitioners.

Paragraph 8(2)(e) of the Act allows the regulations to prescribe an arrangement to which the Act does not apply. Regulation 4 of the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003* prescribes arrangements for the purposes of paragraph 8(2)(e) of the Act.

The new Regulations amend the existing Regulations to exempt certain other arrangements from the Act.

The Act applies to contracts purchased or renewed on or after 1 July 2003. Under the industry's annual contract renewal cycle, many contracts are negotiated prior to the start of a financial year, for renewal on or before 1 July. This renewal process raised a number of issues associated with the coverage and application of the Act. These include that:

- the definition of 'health care professional' in section 4 of the Act is broad;
- the Act applies to capture the 'indirect' indemnity created between an insurer and a health care professional when an entity (such as a public sector health care provider) indemnifies the health care professional and obtains cover for that indemnity from an insurer;
- the Act unintentionally applies to arrangements involving public sector providers of health care and to institutions that train future health care professionals; and
- there are practical compliance issues that arise in regard to the product standards of the Act as they apply to certain medical practitioners, such as volunteers and groups of employed medical practitioners. Moreover, the product standards may be inappropriate in some of these circumstances.

The regulations address these issues by exempting certain arrangements from the application of the Act, allowing health care professionals to obtain cover that would otherwise be unavailable

or unaffordable. Some arrangements are exempted temporarily, until the Act is amended to address the issues.

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

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 the date of their notification in the *Gazette*.

ATTACHMENT

DETAILS OF THE *MEDICAL INDEMNITY (PRUDENTIAL SUPERVISION AND PRODUCT STANDARDS) AMENDMENT REGULATIONS 2004 (No. 4)*

Schedule 1 - Amendments

Item [1]

This item changed the heading of Regulation 3 from 'Definition' to 'Definitions'.

Item [2]

This item remade paragraph 4(1)(c) and inserted new paragraphs (d), (e), (f), (g), (h), (i) and (j) to exempt certain other arrangements from the Act.

The Regulations exempt:

- an arrangement which provides medical indemnity cover to a health care professional of a training institution (including a student, volunteer or staff member, whether a contractor or employee) engaged in training activity associated with a training institution through an insurance contract between the insurer and the institution; Paragraph 4(1)(c)
- [*temporarily*] an arrangement which provides medical indemnity cover to a health care professional of a training institution (including a volunteer, contractor or employee) providing health care services to the public through an insurance contract between the insurer and the institution; Paragraph 4(1)(d)
- an arrangement under which medical indemnity cover is provided to a health care professional whose profession is not required to be licensed or registered in any state or territory; Paragraph 4(1)(e)
- an arrangement under which medical indemnity cover is provided to a health care professional who is the subject of an indemnity described under paragraph 8(2)(a) of the Act, by the Commonwealth, state or territory or a public authority, instrumentality or agency; Paragraph 4(1)(f)
- [*temporarily*] an arrangement under which a person provides medical indemnity cover to a volunteer organisation, in relation only to gratuitous health care; Paragraph 4(1)(g)
- [*temporarily*] an arrangement as a result of an agreement or understanding between a health care professional and their employer which provides an indemnity to the health care professional or their employer in relation to health care incidents through a general insurer or a Lloyd's underwriter; and Paragraph 4(1)(h)
- [*temporarily*] an arrangement as a result of an agreement or understanding between a health care professional and their employer or associated entity which provides an indemnity to the health care professional, employer or owning entity in relation to health care incidents through a general insurer or a Lloyd's underwriter; and Paragraph 4(1)(i)
- [*temporarily*] an arrangement whereby a health care professional contracted to the MIA Group Limited, its wholly-owned subsidiary or by the merged the MIA Group Limited and DCA Group Limited, is indemnified and this indemnity is insured with a general insurer or a Lloyd's underwriter. Paragraph 4(1)(j)

Those exemptions indicated as being in place [*temporarily*] are to continue until the Act is amended to address the issues.