

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 112

Issued by the Authority of the Minister for Health and Ageing

Medical Indemnity Act 2002

Medical Indemnity Amendment Regulations 2005 (No. 1)

Subsection 79(1) of the *Medical Indemnity Act 2002* (the Act) provides in part 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 provides the mechanism through which key aspects of the Australian Government's medical indemnity measures are delivered. The original medical indemnity framework was announced on 23 October 2002. A range of additional measures to address the affordability of medical indemnity costs for certain current and former medical practitioners was announced by the Government on 17 December 2003, following the report of the Medical Indemnity Policy Review Panel. As part of these measures the Government announced that it would establish a run-off cover indemnity scheme that would cover the cost of claims against certain eligible persons (principally those who have retired permanently from private practice). Under the scheme, the Commonwealth reimburses medical defence organisations (MDOs) and medical indemnity insurers (insurers) for eligible run-off cover claims and pre-claim costs in respect of eligible persons no longer in private practice. This cover is at no cost to the eligible persons. The cost of the claims is recouped from the insurers through the *Run-off Cover Support Payment Act 2004*.

The purpose of the Regulations is to further adjust the arrangements by amending the *Medical Indemnity Regulations 2003* (the Principal Regulations) to:

- allow eligibility for the run-off cover scheme for public-sector doctors who purchase medical indemnity cover privately;
- make the provisions for those persons eligible for the run-off cover scheme because of maternity or permanent disability consistent with recent changes to the Act and allow such persons to retain their capacity to provide free medical services;
- remove the requirement that temporary resident doctors eligible for the run-off cover scheme as class 422 visa holders must have paid a premium which included a run-off cover scheme support payment; and
- allow immediate eligibility for temporary resident doctors engaged under the new visa class 457 if the same requirements as for those engaged under class 422 are met.

Further background to the changes is at [Attachment A](#).

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

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

Schedule 1 to the Regulations is taken to have commenced on 1 July 2004, which is the date on which the run-off cover indemnity scheme commenced. Schedule 2 to the Regulations is taken to have commenced on 21 March 2005, which ensures that the arrangements commence on the same day as changes to eligibility provisions for persons eligible because of maternity or permanent disability introduced in the *Medical Indemnity Legislation Amendment Bill 2005*.

The retrospective effect of the amendments is not contrary to subsection 12(2) of the *Legislative Instruments Act 2003* as the changes are beneficial in nature, and do not affect the rights of any person so as to disadvantage that person. Nor do they impose liabilities on any person in respect of anything done, or omitted to be done, before the date of notification.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

In developing these Regulations consultations in the forms of ongoing forums and solicitations for advice have occurred with the Health Insurance Commission, the Department of Immigration and Multicultural and Indigenous Affairs, the Australian Government Solicitor, the Australian Medical Association and medical indemnity insurers.

**BACKGROUND TO THE MEDICAL INDEMNITY AMENDMENT
REGULATIONS 2005 (No. 1)**

The provisions which set out the arrangements for the run-off cover indemnity scheme can be found in:

- Part 2, Division 2B of the Act (these provisions include the payment arrangements for the run-off cover indemnity scheme); and
- Part 3, Division 2A of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (these provisions include the arrangements under which medical indemnity insurers offer indemnity cover to doctors eligible under the run-off cover indemnity scheme).

The run-off cover indemnity scheme was established under Part 2 Division 2B of the Act. Under the scheme insurers or MDOs can seek to recover the cost of an eligible run-off claim from the Commonwealth under section 34ZC of the Act. Section 34ZB of the Act sets out the criteria for an eligible run-off claim. This includes identifying the types of persons to whom an eligible claim can apply (subsection 34ZB(2)). Paragraph 34ZB(2)(f) also provides for persons to be included in the class of persons to whom subsection 34ZB(2) applies by way of regulation. The current Regulation 12 provides for two additional classes of persons to be eligible in this way:

- doctors providing medical services for free in the course of private practice, who would otherwise meet the requirements of subsection 34ZB(2); and
- overseas trained doctors who meet a range of criteria, including paying a premium for their medical indemnity cover in respect of which a run-off cover support payment was payable.

However, the current wording of Regulation 12 does not:

- allow doctors who engage in practice other than private practice (public sector doctors) but who purchase medical indemnity cover privately for their practice to benefit from the run-off cover indemnity scheme. It has always been the intention for doctors in this situation to have access to the run-off cover indemnity scheme in retirement for incidents covered by this privately purchased indemnity cover, including if they continue to provide medical services free of charge, for example writing prescriptions or referrals;
- reflect changes to be made by the *Medical Indemnity Legislation Amendment Bill 2005* to eligibility provisions for doctors who have left medical practice due to maternity or permanent disability under paragraphs 34ZB(2)(c) and (d). Eligibility for the run-off cover indemnity scheme under paragraphs 34ZB(2)(c) and (d) currently requires the cessation of all medical practice rather than only private medical practice. It is the intention that doctors who leave practice under these provisions, but who provide medical services free of charge, can still be eligible under the run-off cover indemnity scheme for their past practice;

- allow doctors who are overseas-trained medical persons who worked in Australia under visa class 422 but whose premium for medical indemnity cover was not subject to a run-off cover support payment to benefit from the run-off cover indemnity scheme as soon as they leave Australia. This mainly affects doctors who ceased practice before the start of the run-off cover indemnity scheme. The medical profession has identified that employers of these doctors feel compelled as a prudent business measure to continue to buy medical indemnity cover in relation to these doctors once they have left their employ. It is now the intention to allow these doctors to access the run-off cover indemnity scheme in the same way as class 422 visa holders who have paid a premium in respect of which a run-off cover support payment was payable; and
- allow temporary resident doctors who hold specific visa classes other than a class 422 visa to access the run-off cover indemnity scheme as soon as they leave Australia. The Department of Immigration and Multicultural and Indigenous Affairs has advised that it has made a class 457 visa available to temporary resident doctors from 2 April 2005. It is the intention that holders of class 457 visas have access to the run-off cover indemnity scheme in the same way as visa class 422 holders.

The amendments to Regulation 12 allow the Government's policy intentions to be met by:

- ensuring that doctors who engage in practice other than private practice can become eligible for the run-off cover indemnity scheme for incidents in relation to their practice that are covered by privately purchased indemnity cover, including if they continue to provide medical services free of charge;
- requiring the cessation of all medical practice, without affecting the ability of an eligible doctor to provide medical services free of charge, for doctors eligible for the run-off cover indemnity scheme because of maternity or permanent disability within the meaning of paragraphs 34ZB(2)(c) and (d);
- removing the requirement that doctors eligible for the run-off cover scheme under provisions for class 422 visa holders pay a premium subject to a run-off cover support payment; and
- making class 457 visa holders who are allowed to provide medical services under that visa class eligible for the run-off cover indemnity scheme in the same way as the provisions for class 422 visa holders.

**DETAILS OF THE MEDICAL INDEMNITY AMENDMENT
REGULATIONS 2005 (No. 1)****Regulation 1 – Name of Regulations**

This regulation provides for the Regulations to be referred to as the *Medical Indemnity Amendment Regulations 2005 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for Schedule 1 to be taken to have commenced on 1 July 2004, which is the date on which the run-off cover indemnity scheme commenced; and Schedule 2 to be taken to have commenced on 21 March 2005, which ensures that the arrangements commence on the same day as changes to eligibility provisions for persons eligible because of maternity or permanent disability in the *Medical Indemnity Legislation Amendment Bill 2005*.

Regulation 3 – Amendment of *Medical Indemnity Regulations 2003*

This regulation provides for Schedules 1 and 2 to amend the *Medical Indemnity Regulations 2003* (the Principal Regulations).

Schedule 1 - Amendments taken to have commenced on 1 July 2004**Item [1]**

This item substitutes a revised expression and additional criteria for the existing subparagraph 12(1)(a)(i). These amendments still enable the Government's original policy aim to be met but provide additional criteria to allow access to the run-off cover indemnity scheme for doctors who provide medical services other than private medical services but who purchase private cover for that practice and continue to provide medical services free of charge, for example writing prescriptions or referrals, after ceasing practice as a medical practitioner. The purpose of the amending provisions is that claims arising from treatment by doctors working outside of private medical practice after they have become eligible for the run-off cover indemnity scheme as set out at Item [2] below can be covered by the run-off cover indemnity scheme even if they continue to provide medical services free of charge.

Item [2]

This item substitutes a revised expression and additional criteria for the existing subparagraph 12(1)(b) and introduce additional subparagraphs 12(1)(c) and (d). These amendments allow access to the run-off cover indemnity scheme for doctors practising under visa classes 422 and 457 and doctors working outside of private medical practice.

Regulation 12 – 422 and 457 class visa holders

Paragraph 12(1)(b) removes the requirement for a doctor under a 422 visa class to have paid a premium that is subject to a run-off cover support payment. This allow doctors under 65 who left Australia before the start of the run-off cover scheme on 1 July 2004, and therefore could not have paid a premium subject to a run-off cover support payment, and who would otherwise meet the existing paragraph 12(1)(b), to become eligible for the run-off cover scheme without having to wait the mandatory three years as set out in paragraph 34ZB(2)(b) of the Act.

The paragraph 12(1)(b) also allows 457 visa class holders to be treated in the same way as 422 visa holders for the purposes of the run-off cover indemnity scheme. The Department of Immigration and Multicultural and Indigenous Affairs has advised the Department of Health and Ageing that visa subclass 457 has been available to temporary resident doctors from 2 April 2005 and the issuing of 422 visa classes has been discontinued. Because the 457 visa class can encompass a broader range of professions than the 422 visa class, the additional requirements of the visa permitting medical practice and the doctor engaging in medical practice are introduced so that eligibility under the visa class is restricted to medical practitioners.

Overseas trained doctors wishing to qualify under the run-off cover indemnity scheme would need to meet all the criteria applicable to their visa class set out in the existing and new subparagraphs of subregulation 12(1).

Regulation 12 – Doctors not engaged in private medical practice

Some doctors working outside the private sector continue to purchase some medical indemnity cover from medical indemnity insurers even though state and territory governments usually provide indemnity for their clinical practice for public patients in public hospitals. The type of cover these doctors generally purchase is for medico-legal cover, for example for coronial inquests, and is not offered by state and territory governments. From time to time public sector doctors will also purchase indemnity cover privately for their public sector clinical practice.

It is the intention for doctors in this situation to have access to the run-off cover indemnity scheme in retirement for incidents covered by this privately purchased indemnity cover. To achieve this, amendments have been made to subsection 26(A)(9) of the *Medical Indemnity (Prudential Supervisions and Product Standards) Act 2003*. To complete the arrangements, paragraphs 12(1)(c) and (d) include doctors who engaged in medical practice other than private medical practice as an eligible class of person for the purposes of the run-off cover indemnity scheme.

Schedule 2 - Amendments taken to have commenced on 21 March 2005

Item [1]

This item substitutes sub-subparagraphs 12(1)(a)(i)(E) and (F) to reflect changes made by the *Medical Indemnity Legislation Amendment Bill 2005* to eligibility provisions for doctors who have left medical practice due to maternity or permanent disability under paragraphs 34ZB(2)(c) and (d) of the Act. Eligibility for the run-off cover indemnity scheme under paragraphs 34ZB(2)(c) and (d) now requires the cessation of all medical practice, rather than only private medical practice. The substituted sub-subparagraphs require the cessation of all medical practice except for the provision of free medical services.