

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 315

Subject –

Medical Indemnity (Run-off Cover Support Payment) Act 2004

Medical Indemnity (UMP Support Payment) Act 2002

Medical Indemnity (Competitive Advantage Payment) Act 2005

Medical Indemnity (Run-off Cover Support Payment) Amendment Regulations 2005 (No. 1)

Medical Indemnity (UMP Support Payment) Amendment Regulations 2005 (No. 1)

Medical Indemnity (Competitive Advantage Payment) Regulations 2005

Section 8 of the *Medical Indemnity (Run-off Cover Support Payment) Act 2004* (the Run-off Cover Support Payment Act), section 7 of the *Medical Indemnity (UMP Support Payment) Act 2002* (the UMP Support Payment Act) and section 7 of the *Medical Indemnity (Competitive Advantage Payment) Act 2005* (the Competitive Advantage Payment Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the Run-off Cover Support Payment Act, the UMP Support Payment Act and the Competitive Advantage Payment Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Run-off Cover Support Payment Act the UMP Support Payment Act and the Competitive Advantage Payment Act, respectively.

The Regulations refine aspects of the established run-off cover indemnity scheme and to implement elements of the new medical indemnity measure on competitive neutrality:

- amend the *Medical Indemnity (Run-off Cover Support Payment) Regulations 2004* (the Run-off Cover Regulations) to refine aspects of the regulations for the run-off cover indemnity scheme;
- amend the *Medical Indemnity (UMP Support Payment) Regulations 2004* (the UMP Support Payment Regulations) to reflect the Government's new UMP Support Payment arrangements; and
- prescribe the applicable percentage for the competitive advantage payment under subsection 6(1) of the *Medical Indemnity (Competitive Advantage Payment) Act 2005*.

Proposed Medical Indemnity (Run-off Cover Support Payment) Amendment Regulations 2005 (No. 1)

The Australian Government has implemented a range of measures to make medical indemnity costs for doctors more affordable and to make the medical indemnity industry more viable in the longer term. These measures are implemented principally through the *Medical Indemnity Act 2002* (the Act) and supported with several taxing Acts and their attendant regulations.

A significant medical indemnity measure is the Run-off Cover Scheme. Division 2B of Part 2 of the Act establishes a run-off cover indemnity scheme that covers the cost of claims against certain eligible persons (principally those who have retired permanently from private

medical practice). Under the scheme, the Commonwealth will reimburse medical defence organisations (MDOs) and medical indemnity insurers (insurers) for eligible run-off cover claims and administrative costs associated with providing indemnity cover under the Run-off Cover Scheme 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 which imposes the run-off cover support payment. The Run-off Cover Support Payment Act sets out the criteria for determining the tax on insurers. The Run-off Cover Regulations refine aspects of those criteria.

The purpose of the Regulations is to give effect to further refinements to the run-off cover support payment by:

- amending the Run-off Cover Regulations to repeal subregulation 7(2), as this formula now appears under subsection 7(2A) of the Run-off Cover Support Payment Act; and
- making a new regulation under paragraph 7(2)(c) of the Run-off Cover Support Payment Act to clarify how a medical indemnity insurer is to calculate its premium income for a period.

Proposed Medical Indemnity (UMP Support Payment) Amendment Regulations 2005 (No. 1) and Proposed Medical Indemnity (Competitive Advantage Payment) Regulations 2005

The Australian Government continues to refine its medical indemnity measures. On 13 May 2005 the Government announced competitive neutrality measures for the Australian medical indemnity insurance market. These measures were based on recommendations of the Review of Competitive Neutrality in the Medical Indemnity Insurance Market. The measures involved a competitive advantage payment to be made by insurers providing medical indemnity to members of medical defence organisations participating in the incurred but not reported (IBNR) indemnity scheme. The effect of the payment would neutralize any competitive advantage a particular insurer had, relative to other insurers, as a result of Government financial assistance under the IBNR Scheme. The IBNR Scheme reimburses medical indemnity providers for the cost of claims arising from unfunded IBNR liabilities.

As a companion measure, the Government also announced amendments to the UMP support payment to reduce the extent and duration of payments required by members under this scheme.

The purpose of the proposed Regulations is to give effect to aspects of the Government's competitive advantage payment measures by:

- making new regulations under the Competitive Advantage Payment Act prescribing the applicable percentage for the amount of the competitive advantage as 4.55% for the contribution year starting 1 July 2005; and
- amending the UMP Support Payment Regulations to declare the last year of the UMP support payments.

The *Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005* amends the Act to provide for the administration of the competitive advantage payment. It also amended the UMP Support Payment Act to reduce the UMP support payments doctors are required to pay.

Details of the proposed Regulations are set out in Attachment A.

Further background to the proposed changes is at Attachment B.

Neither the Act, the Run-off Cover Support Payment Act, the UMP Support Payment Act, nor the Competitive Advantage Payment Act specify any conditions that need to be met before the power to make the proposed Regulations may be exercised.

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

The *Medical Indemnity (Run-off Cover Support Payment) Amendment Regulations 2005 (No. 1)* is taken to have commenced on 1 July 2004. The retrospective effect would not be contrary to subsection 12(2) of the *Legislative Instruments Act 2003*. Advice from the Australian Government Solicitor to this effect is provided at Attachment C.

The *Medical Indemnity (UMP Support Payment) Amendment Regulations 2005 (No. 1)* and the proposed *Medical Indemnity (Competitive Advantage Payment) Regulations 2005* commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority:

Section 8 of the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*

Section 7 of the *Medical Indemnity (UMP Support Payment) Act 2002*

Section 7 of the *Medical Indemnity (Competitive Advantage Payment) Act 2005*

ATTACHMENT A

Details of the proposed *Medical Indemnity (Run-Off Cover Support Payment) Amendment Regulations 2005 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations would be the *Medical Indemnity (Run-off Cover Support Payment) Amendment Regulations 2005 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that the Regulations would commence on 1 July 2004, which is the date on which the run-off cover indemnity scheme commenced.

Regulation 3 – Amendment of *Medical Indemnity (Run-off Cover Support Payment) Regulations 2004*

This regulation provides that the *Medical Indemnity (Run-off Cover Support Payment) Regulations 2004* (the Principal Regulations) would be amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1]

The current regulation, 7(2) of the *Medical Indemnity (Run-off Cover Support Payment) Regulations 2004* would be omitted as it has now been provided for under subsection 7(2A) of the *Medical Indemnity (Run-off Cover Support Payment) Act 2004* (Run-off Cover Support Payment Act). The primary legislation now provides the elements which can be deducted from the income generated by insurers from doctors' premiums to produce the net income to which the Run-off Cover support payment is applied.

A new regulation made under paragraph 7(2)(c) of the Run-off Cover Support Payment Act would be substituted to further clarify the amount by which premium income relating to medical indemnity cover is reduced. This new regulation would make clear to insurers that they need to exclude the net refund on premiums from their assessment of their premium income for the purposes of section 7(1) of the Run-off Cover Support Payment Act for a contribution year.

The amount by which the premium income is reduced is the amount of refund payable by the medical indemnity insurer to a medical practitioner in respect of an overpayment relating to medical indemnity cover (whether or not the overpayment was made during the period for which the insurer's premium income is being calculated).

Currently the Run-off Cover support payment is paid as a percentage of premium income from a specific contribution year. Doctors provide an estimate of his or her medical income to their insurer when taking out or renewing their medical indemnity cover. However, if the doctor's estimated income is significantly different to their actual income the premium will be retrospectively adjusted by the insurer. Given this practice of retrospectively adjusting premiums, there is a need to develop a corresponding mechanism to accommodate these

changes to the amount which constitutes an insurer's premium income for the purposes of the ROCS support payment.

Details of the proposed *Medical Indemnity (UMP Support Payment) Amendment Regulations 2005 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations would be the *Medical Indemnity (UMP Support Payment) Amendment Regulations 2005 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that the Regulations would commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of *Medical Indemnity (UMP Support Payment) Regulations 2004*

This regulation provides that the *Medical Indemnity (UMP Support Payment) Regulations 2004* would be amended as set out in Schedule 1.

Schedule 1 – Amendment

Item [1]

This item would omit the current date of 1 July 2008 and insert the new date of 1 July 2006. Under the new UMP support payment arrangements members and former members of United Medical Protection (UMP) will only need to make payments for a further two contribution years. The number of contribution years for the payment will be reduced from six to four years.

This item would also have the effect of declaring the last year of the UMP support payments for the purposes of deferrals of UMP support payments. Deferrals of the UMP support payments are provided for under sections 61 and 62 of the *Medical Indemnity Act 2002*.

Details of the proposed *Medical Indemnity (Competitive Advantage Payment) Regulations 2005*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations would be the *Medical Indemnity (Competitive Advantage Payment) Regulations 2005*.

Regulation 2 - Commencement

This regulation provides that the Regulations would commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 - Definition

This regulation provides the ‘Act’ to mean the *Medical Indemnity (Competitive Advantage Payment) Act 2005*.

Regulation 4 – Applicable Percentage

This regulation provides the applicable percentage to be 4.55%. The definition of applicable percentage is set out in section 6(1) of the *Medical Indemnity (Competitive Advantage Payment) Act 2005*. The competitive advantage payment is imposed on medical indemnity insurers associated with medical defence organisations which participate in the incurred but not reported (IBNR) indemnity scheme. This payment is imposed by section 4 of the *Medical Indemnity (Competitive Advantage Payment) Act 2005*.

Section 6(1) of the *Medical Indemnity (Competitive Advantage Payment) Act 2005* also sets out the formula for calculating the competitive advantage payment equal to:

Applicable percentage × Net IBNR exposure × Unfunded IBNR factor

The Australian Government Actuary has advised that the rate should be set at 4.55% for the payment due on 30 April 2006.

ATTACHMENT B**Background to the proposed *Medical Indemnity (Run-off Cover Support Payment) 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 *Medical Indemnity Act 2002* (the Act); 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).

Under the Run-off Cover scheme (ROCS) insurers or medical defence organisations 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. The Australian Government's outlays under the ROCS are to be offset by the ROCS support payment. The ROCS support payment is a tax imposed on medical indemnity insurers by section 4 of the *Medical Indemnity (Run-off Cover Support Payment) Act 2004* (the ROCS Support Payment Act). The amount of tax payable per period is the applicable percentage of the insurer's premium income (section 6 of the ROCS Support Payment Act).

It is proposed to amend the *Medical Indemnity (Run-off Cover Support Payment) Regulations 2004* to repeal regulation 7(2) as this formula is now expressed under subsection 7(2A) of the Run-off Cover Support Payment Act.

The proposed new regulation to be made under paragraph 7(2)(c) of the ROCS Support Payment Act will clarify how a medical indemnity insurer is to calculate its premium income for a period. The new regulation will effectively ensure that refunds payable by a medical indemnity insurer to a medical practitioner with respect to his or her premiums for medical indemnity cover can reduce the amount of the insurer's premium income as determined under paragraph 7(2)(c) of the ROCS Support Payment Act for a period.

Background to the proposed *Medical Indemnity (UMP Support Payment) Amendment Regulations 2005 (No. 1)*

The provisions which set out the arrangements for the UMP support payment scheme can be found in Part 3, Division 3 of the Act.

The *Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005* also amended the *Medical Indemnity (UMP Support Payment) Act 2002* to reduce the UMP support payments required of doctors both in terms of the number of years and in the amount they are required to pay. These changes commence 1 July 2005 and do not apply retrospectively.

Contributing doctors will have their annual UMP support payments reduced by \$1,000 for the third and fourth years of the scheme, after which the scheme will come to an end.

The new UMP support arrangements will mean that the number of contribution years for the medical defence organisation in respect of which the person has been liable to pay a UMP

support payment will be reduced from six to four years. The final two contribution years will now be starting on 1 July 2005 and 1 July 2006.

In order to implement these new arrangements it is proposed to amend Regulation 5 of the *Medical Indemnity (UMP Support Payment) Regulations 2004* to declare that the financial year starting 1 July 2006 is the last contribution year for United Medical Protection Limited.

The proposed amendments to Regulation 5 will also activate the payment of deferred UMP support payments. Under the UMP arrangements a person who was liable to pay a UMP support payment could defer a payment (subsection 62(1) of the Act applies). The payment would be due and payable in the financial year following the last year that all UMP members had to make this payment (subsection 62(4) applies). Following the proposed amendment these deferred payments will now be due in the 2007-08 financial year, that is the year after the final year for the UMP support payments.

The arrangements for Government's funding of IBNR claims under the IBNR Scheme will not be affected.

Background to the proposed *Medical Indemnity (Competitive Advantage Payment) Regulations 2005*

The provisions which set out the arrangements for the competitive advantage payment scheme can be found in Part 3, Division 3 of the Act.

The *Medical Indemnity (Competitive Advantage Payment) Act 2005* (the Competitive Advantage Payment Act) and the *Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005* received Royal Assent on 19 October 2005. This legislation introduced a competitive advantage payment to neutralise the competitive advantage that might otherwise accrue to the medical indemnity insurer associated with medical defence organisations participating in the IBNR scheme.

Under section 4 of the Competitive Advantage Payment Act, the competitive advantage payment is imposed as a tax on the medical indemnity insurer. Under section 61 of the Competitive Advantage Payment Act, the competitive advantage payment that a person is liable to pay becomes due and payable on 30 April in the contribution year or such other day as specified in the regulations. The amount of the liability is calculated in accordance with section 6 of that Act and provides for the applicable percentage of the outstanding net IBNR exposure of the medical indemnity insurer's medical defence organisation at 30 June in the previous financial year to be set by regulation.

The proposed Regulation 4 of the *Medical Indemnity (Competitive Advantage Payment) Regulations 2005*, as provided for under section 6(1) of the Competitive Advantage Payment Act, specifies the applicable percentage to be 4.55%. The Government has consulted with the Australian Government Actuary and the Australian Prudential Regulation Authority in relation to the amount of the applicable percentage.