

## **Explanatory Statement**

**Issued by the Authority of the Minister for Health and Ageing**

### ***Medical Indemnity Act 2002***

### ***Premium Support Amendment Scheme 2006 (No. 1)***

#### **Background**

The *Premium Support Amendment Scheme 2006 (No. 1)* amends the *Premium Support Scheme 2004 (Scheme)* formulated by the Minister for Health and Ageing under subsection 43(1) of the Medical Indemnity Act 2002.

The objective of the Scheme is to help ensure the continued availability of medical services in Australia by providing Australian Government assistance to medical practitioners, via their insurers, with the cost of obtaining appropriate medical indemnity cover.

The Scheme provides for the making of subsidy payments to contracted medical indemnity insurers by the Government on behalf of medical practitioners, where these organisations agree to administer the Scheme on behalf of the Australian Government. Currently, there are five medical indemnity insurers that are contracted to the Government to operate the Scheme.

#### **Objective of the amendments**

Since the commencement of the Scheme on 1 July 2004, the need has arisen for some clarification of purpose and refinement of the processes to ensure that the Scheme delivers on its intended outcomes. The objective of the Premium Support Amendment Scheme 2006 (No. 1) is to provide this clarification and refinement as outlined below. These amendments will ensure that the Scheme operates in accordance with previously agreed positions between the Department of Health and Ageing (Health), Medicare Australia, the Australian Medical Association and medical indemnity insurers.

#### **Consultation**

Medical indemnity insurers, Medicare Australia and representatives of the Australian Medical Association have been extensively consulted during the drafting of the Premium Support Amendment Scheme 2006 (No. 1).

#### **Notes on sections and amendments Items 1-7, 9-12, 20-23, and 25-46**

These items amend the Scheme to reflect the changes made by Schedule 2 of the *Human Services Legislation Amendment Act 2005*, which changed the name of the 'Health Insurance Commission' to 'Medicare Australia'. These items delete references to 'the HIC' and substitute reference to 'the Commonwealth' or 'the Medicare Australia CEO'.

## Item 8

### Section 12A – Medical practice outside Australia

#### ***Issue: Doctors working overseas***

This item inserts a new section 12A into the Scheme relating to medical practice outside Australia. Some medical practitioners who are registered as medical practitioners in Australia also practise overseas. In some circumstances these doctors have a contract of insurance with an Australian medical indemnity insurer which provides medical indemnity cover for that overseas medical practice.

An object of the *Medical Indemnity Act 2002* is to contribute towards the availability of medical services in Australia (see subsection 3(1)).

Amendments to the *Medical Indemnity Act 2002* have allowed assistance to be provided for limited overseas medical practice, such as where the medical practitioner is to provide medical services to Australians on a sporting, cultural or official tour or for aid work. However, the Scheme is not intended to provide assistance to doctors who spend significant periods of time gallivanting overseas.

To put beyond doubt that the amendments to the *Medical Indemnity Act 2002* have not affected the object specified in subsection 3(1), but to align the Scheme with the amendments to that Act, the Scheme requires amendment to clarify when overseas medical practice can be taken into account when calculating eligibility for, and amounts of, subsidy under the Scheme.

## Item 13

Medicare Australia is concerned that in some instances Medicare Australia has not been provided with accurate information on the membership status of doctors, with the result that a number of doctors (the affected members) have not been notified of their liability to pay a UMP support payment (**UMPSP**) for previous premium periods. Under medical indemnity legislation the liability to pay a UMPSP is imposed automatically.

The affected members therefore incurred a liability to pay UMPSP under the legislation, but did not pay the UMPSP within the statutory timeframe because they were not aware of their statutory liability. This has effects for them under the Scheme because payment of subsidy under the Scheme is dependent on payment of UMPSP in the timeframe set by the Scheme. That is, the effect of subsection 11(4) and paragraphs 13 (1)(c) and (d) of the Scheme is that because the affected members have not paid their UMPSP for those premium periods within the specified timeframes, they were therefore not eligible to receive a subsidy under the Scheme.

It is unfair for these doctors to be affected for eligibility under the Scheme when they did not know about their liability.

Health proposes to deal with this by amending the regulations to provide for a new payment day for affected members to pay their UMPSP, that will follow the affected members being notified of their liability for UMPSP by Medicare Australia.

Section 13A will be inserted into the Scheme to take account of this and ensure that affected members are not unfairly disadvantaged.

The new section provides that subsection 11(4) and paragraph 13(1)(c) of the Scheme – which set the timeframes for payment of UMPSP in order to be eligible for subsidy – are taken never to have applied to an affected member on or before the new payment day that is to be prescribed by the regulations. This is intended to ensure that affected members are not ineligible for subsidy under the Scheme for premium periods in which they did not pay UMPSP because they were not aware of their liability to pay UMPSP.

The new section also provides that if, for a premium period, an affected member would have been entitled to a subsidy or a higher amount of subsidy had the member's UMPSP been included in the member's gross indemnity costs, the member is entitled to adjust his or her gross indemnity costs for the premium period and be paid subsidy accordingly.

The new section also provides that after the new payment day is prescribed, subsection 11(4) and paragraphs 13(1)(c) and (d) of the Scheme will apply. This means that if the affected members do not pay their UMPSP within 2 months of the new payment day, then their eligibility for subsidy ceases in the ordinary way.

To the extent that this provision has retrospective effect, the provision is beneficial, as no person (other than the Commonwealth) will be disadvantaged under the provision (in that they are not required to pay any amount of UMPSP that they were not previously required to pay). The provision is also beneficial because some affected members may have a higher overall level of medical indemnity costs as a result of the new provision and it may cause some affected members who were not previously eligible for a subsidy under the PSS to become eligible.

## **Items 14 and 15**

### **Section 15 – Rural calculation**

#### ***Issue: Provision of non-therapeutic cosmetic services by procedural general practitioners***

These items amend section 15 of the PSS to insert a new subsection (2).

If a rural procedural general practitioner (**RPGP**) also undertakes non-therapeutic cosmetic services, while continuing to perform services as a RGP, the practitioner is required to purchase additional cover for these services, usually resulting in a substantial increase in premium for the remainder of the premium period.

The policy position is that the Australian Government should not subsidise (through the Scheme) any additional amount of premium that is charged by insurers solely to cover the

additional risks posed by non-therapeutic cosmetic services. The intention is not to exclude from the Scheme procedural general practitioners who provide predominantly non-therapeutic cosmetic services, but who also provide some therapeutic cosmetic procedures. However, to the extent that part of a procedural general practitioner's premium is paid solely to cover the additional risks posed by non-therapeutic cosmetic services, that part of the premium must not be included in the practitioner's 'premium' for the purposes of the 'rural calculation' in subsection 15(1).

An example of such an increase is where non-procedural general practitioners undertake additional training to become a procedural general practitioner specialising in non-therapeutic cosmetic treatment. The insurer responds to this increased risk profile by increasing the practitioner's premium. That additional amount of premium is excluded from PSS coverage.

For clarity, a note has been added in section 15:

*Note Subsection (2) applies only to rural practitioners who come within the definition of procedural general practitioner, which excludes a practitioner whose procedural general practice involves only non-therapeutic cosmetic procedures. Under subsection (2) above, if a rural procedural general practitioner is required to pay a higher premium because he or she is performing solely non-therapeutic cosmetic procedures, the additional amount of premium is not included in the rural calculation.*

#### **Item 16**

This item repeals section 23 of the PSS. As the timeframes in the provision have not passed, the provision is redundant.

#### **Item 17**

This item amends subsection 24(1), by omitting the words 'Subject to subsection (2), gross' and replacing them with the word 'Gross'. This is a textual amendment to take account of a previous amendment which deleted subsection (2).

#### **Items 18 and 19**

These items are amended to insert a new paragraph (1)(b) and is consequential on the overseas practice provision (see item 13 above).

#### **Item 24**

This item amends section 28 by inserting a new subsection (5). This provision gives flexibility to Medicare Australia to determine when adjustments for subsidy can be made.

#### **Item 46**

This item amends section 52 by deleting the numbering. This is a textual change.

**Item 47**

This item deletes the definition of 'collection body', as this definition is not used in the Scheme.

**Item 48**

As indicated above (items 14 & 15) it is not the policy intent of the Scheme to provide assistance for practitioners solely undertaking non-therapeutic cosmetic procedures. Clarification of the definition of 'procedural general practitioner' is therefore required to exclude other practitioners, such as cosmetic surgeons, from claiming a subsidy for insurance costs associated with the provision of solely non-therapeutic cosmetic services.

The note is no longer necessary and is deleted.

**Item 49**

This item inserts a new definition, 'Australia'. This definition has been inserted to define Australia as including an external Territory.

This item also inserts a new definition, 'non-therapeutic cosmetic procedure':- This definition has been inserted to define the term used in the Scheme, and to clarify what procedures are non-therapeutic cosmetic procedures.