EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 232

Issued by the Authority of 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 2006 (No. 1)

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 (APRA), 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 medical indemnity 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. Exemptions are necessary to exclude arrangements that have unforseen or unintended consequences from being captured by the Act. Regulation 4 of the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003* (the Principal Regulations) currently prescribes arrangements for the purposes of paragraph 8(2)(e).

The new Regulations amend the Principal Regulations to exempt further arrangements from the application of the Act. The exemptions now extend to:

- an arrangement under which either or both of a health care professional and the health care professional's employer are the beneficiaries of an indemnity under a public liability policy in relation to health care provided to the employer's employees;

- an arrangement under which either or both of a health care professional and a person to whom the health care professional is contracted to provide medical services are the beneficiaries of an indemnity under a public liability policy in relation to health care provided to employees of the person to whom the health care professional is contracted to provide medical services;

- an arrangement under which a person, who is not an insurer under a contract of insurance, provides medical indemnity cover to a health care professional by bearing any excess or deductible that applies under the insurance policy; and

- an arrangement under which a person provides medical indemnity cover for the conduct of health care-related research, including cover provided to students at a training institution.

The new Regulations address the following issues by exempting specified arrangements from the application of the Act, allowing health care service providers and health care professionals to access cover that may otherwise have been unavailable or unaffordable. These changes will remain until a review of the coverage of the Act can comprehensively address these arrangements.

Policies that provide public liability cover for health care professionals where the employer is not in the business of providing health care breach the Act unless the insurer is APRA-authorised. While such arrangements may have been made without any awareness that they were breaching the terms of the Act, allowing this to have continued would have been to condone breaches of the Act.

Excesses are common to the insurance arrangements of those employing health care professionals. Before the new Regulations, it was an offence under the Act for a third party, such as an employer, to agree to meet an excess unless the third party was an authorised insurer. This prevented third parties from partially self-insuring through an excess. Since the excess forms part of the cost of insurance, the absence of an excess will raise the cost of insurance. While such arrangements were being made without any awareness that they were breaching the terms of the Act, allowing this to have continued would have been to condone a breach of the Act.

Prior to the new Regulations, as part of its application to the insurance of health care services, the Act applied to the insurance of health care-related research. This reduced the already limited global market for the insurance of health care-related research to APRA-authorised insurers. The continued application of the Act to the insurance of health care-related research could have been detrimental to the conduct of medical research in Australia. It could have eventually affected research, the education of research students and university funding.

Treasury undertook consultation with medical indemnity insurers, professional associations and Government agencies in considering these regulations.

The Regulations were taken to have commenced retrospectively on 1 July 2006.