**EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

***Medical Indemnity Act 2002***

***Determination under section 34ZN***

***Medical Indemnity (Run-off Cover Claims and Administration) Amendment Protocol 2013***

The *Medical Indemnity (Run-off Cover Claims and Administration) Amendment Protocol 2013* (the Amendment Protocol) is made by the Minister for Health under section 34ZN of the *Medical Indemnity Act 2002* (the Act).

The Run-off Cover Scheme (ROCS) was established on 1 July 2004. Under the scheme, the Chief Executive Medicare reimburses medical indemnity providers for eligible run-off cover claims in respect of people who satisfy the legislative criteria. The criteria include that the person is a medical practitioner who has retired, stopped private medical practice, gone on maternity leave or become disabled. This cover is provided at no cost to medical practitioners who are eligible under ROCS.

The *Medical Indemnity (Run-off Cover Claims and Administration) Protocol 2006 (No. 2)* (the Principal Instrument) allows the Chief Executive Medicare to make payments to medical indemnity insurers to cover the legal, administrative or other costs incurred by them in complying with ROCS requirements during a contribution year.

Until 29 September 2007, Professional Indemnity Insurance Company Australia Pty Limited (PiiCA) operated as a medical indemnity insurer for the purposes of the Act. On 30 September 2007, PiiCA ceased to operate as a medical indemnity insurer and transferred liability for its claims to Avant Insurance Limited (Avant; previously Australasian Medical Insurance Limited).

The Principal Instrument provides for payment on a contribution year basis and does not anticipate situations where medical indemnity insurers cease to operate midway through a contribution year. This, together with system alignment, application and data issues associated with PiiCA ceasing to operate as a medical indemnity insurer, meant that Avant did not receive payment in respect of some legal, administrative and other costs incurred by it and PiiCA during the period from 1 January 2007 to 30 June 2009.

The purpose of the Amendment Protocol is to allow the Chief Executive Medicare to make a payment to Avant to cover the legal, administrative or other costs incurred by Avant and PiiCA in respect of complying with ROCS requirements for the period from 1 January 2007 to 30 June 2009.

The Amendment Protocol provides for a payment to be made to Avant and sets out the process and timing of the payment.

The Amendment Protocol applies to costs incurred by Avant on a day before the Amendment Protocol is registered.

The Amendment Protocol also amends provisions in the Principal Instrument that refer to the Medicare Australia CEO. As part of the integration of Medicare Australia into the Department of Human Services, the position of Medicare Australia CEO was abolished and replaced with the Chief Executive Medicare.

No other medical indemnity insurers are affected by the Amendment Protocol.

**Consultation**

In developing this Protocol, the Department of Health and Ageing has consulted with the Department of Human Services (Medicare) and Avant.

The Amendment Protocol is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Protocol will commence on the day after it is registered.

**ATTACHMENT**

**Details of the *Medical Indemnity (Run-off Cover Claims and Administration) Amendment Protocol 2013***

**Part 1 Preliminary**

Section 1 - Name of Instrument

This section provides that the title of the Amendment Protocol is the *Medical Indemnity (Run-off Cover Claims and Administration) Amendment Protocol 2013.*

Section 2 - Commencement

This section provides that the Amendment Protocol will commence on the day after it is registered.

Section 3 – Amendment

This section provides that the Amendment Protocol amends the *Medical Indemnity (Run-off Cover Claims and Administration) Protocol 2006 (No. 2)*.

Section 4 – Application

This section provides that the Amendment Protocol may apply to costs incurred by a medical indemnity provider before the Amendment Protocol commences. This clarifies that the Amendment Protocol may apply to costs incurred by PiiCA and Avant in the 1 January 2007 to 30 June 2009 period.

**Schedule 1 Amendments**

Item 1

This item amends subsection 3(1) of the Principal Instrument, inserting the following definitions:

***Avant*** means Avant Insurance Limited, ACN 003 707 471, previously Australasian Medical Insurance Limited.

***PiiCA*** means Professional Indemnity Insurance Company Australia Pty Limited, ACN 007 383 137.

Item 2

This item amends provisions in the Principal Instrument that refer to the Medicare Australia CEO, omitting ‘Medicare Australia CEO’ and inserting ‘Chief Executive Medicare’.  As part of the integration of Medicare Australia into the Department of Human Services, the position of Medicare Australia CEO was abolished and replaced with the Chief Executive Medicare.

Item 3

This item substitutes part 5 of the Principal Instrument with provisions allowing the Chief Executive Medicare to make a payment to Avant to cover the legal, administrative or other costs incurred by Avant and PiiCA in respect of complying with Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (i.e. the ROCS requirements) for the period from 1 January 2007 to 30 June 2009.

PiiCA ceased to operate as a medical indemnity insurer on 29 September 2007 and transferred liability for its claims to Avant. Issues associated with this change meant that Avant did not receive payment in respect of some legal, administrative and other costs incurred by it and PiiCA during the period from 1 January 2007 to 30 June 2009.

New part 5 replaces part 5 of the Principal Instrument which currently contains transitional and savings provisions for the 2006 calendar year that have become redundant.

New subsection 11(1) provides that, notwithstanding any other provisions of the Principal Instrument, the Chief Executive Medicare must pay Avant the amount of $1,066,742.97 within 30 days of receipt of an application in writing for payment. An application for payment under new part 5 of the Principal Instrument is not required to be in an approved form.

New subsection 11(2) provides that payment to Avant under new part 5 is payment on account of legal, administrative or other costs incurred by Avant and PiiCA in respect of complying with the ROCS requirements for the period from 1 January 2007 to 30 June 2009.

New subsection 11(3) provides that neither Avant nor PiiCA is entitled to any further ROCS payment for legal, administrative, or other costs incurred for the period from 1 January 2007 to 30 June 2009.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Medical Indemnity (Run-off Cover Claims and Administration) Amendment Protocol* *2013***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

This Legislative Instrument will provide for the Commonwealth to make a payment to Avant Insurance Limited to cover the legal, administrative or other costs incurred by Avant and Professional Indemnity Insurance Company Australia Pty Limited in respect of complying with Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (i.e. the Run-off Cover Scheme requirements)for the period from 1 January 2007 to 30 June 2009.

**Human rights implications**

This Legislative Instrument involves making a payment to a body corporate in respect of legal, administrative and other costs incurred in administering the Run-off Cover Scheme. As such, it does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Tanya Pilbersek MP,**

**Minister for Health**