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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As read a third time

**Medical Indemnity (Prudential
Supervision and Product Standards) Bill
2003**

No. , 2003

**A Bill for an Act to make provision in relation to
medical indemnity cover for health care
professionals, and for related purposes**

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1 THIS Bill originated in the House of
2 Representatives; and, having this day passed,
3 is now ready for presentation to the Senate
4 for its concurrence.

5 I.C. HARRIS
6 *Clerk of the House of Representatives*

7 House of Representatives
8 24 March 2003
9

10 **A Bill for an Act to make provision in relation to**
11 **medical indemnity cover for health care**
12 **professionals, and for related purposes**

13 The Parliament of Australia enacts:

14 **Part 1—Introductory**

15 **Division 1—Preliminary**

16 **1 Short title**

17 This Act may be cited as the *Medical Indemnity (Prudential*
18 *Supervision and Product Standards) Act 2003*.

Section 2

1 **2 Commencement**

2 This Act commences, or is taken to have commenced, on 1 July
3 2003.

4 **3 Objects**

5 The objects of this Act are:

- 6 (a) to ensure that health care professionals have access to
7 medical indemnity cover that is provided by properly
8 regulated insurers; and
9 (b) to specify minimum standards for medical indemnity cover
10 that is provided to health care professionals.

1

2 **Division 2—Interpretation**

3 **4 Definitions**

4 *General*

5 (1) In this Act:

6 *APRA* means the Australian Prudential Regulation Authority.

7 *arrangement* includes a contract of insurance.

8 *ASIC* means the Australian Securities and Investments
9 Commission.

10 *breach the minimum cover rules* has the meaning given by
11 subsection (8).

12 *claim*:

13 (a) means a claim or demand of any kind (whether or not
14 involving legal proceedings); and

15 (b) includes proceedings of any kind including:

16 (i) proceedings before an administrative tribunal or of an
17 administrative nature; and

18 (ii) disciplinary proceedings (including disciplinary
19 proceedings conducted by or on behalf of a professional
20 body); and

21 (iii) an inquiry or investigation;

22 and *claim* against a person includes an inquiry into, or an
23 investigation of, the person's conduct.

24 *claims-made based cover* has the meaning given by subsections
25 6(2) and (3).

26 *claims period*, in relation to a regulated insurance contract, has the
27 meaning given by subsection 21(3).

28 *client*, in relation to a regulated insurance contract, has the
29 meaning given by subsection 21(2).

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- 1 ***come into effect***, in relation to an arrangement, has the meaning
2 given by subsection (4).
- 3 ***compensation claim*** means a claim for compensation or damages
4 that is made against a health care professional in relation to a
5 health care incident.
- 6 ***complying offer*** has the meaning given by section 24.
- 7 ***compulsory new contract offer***, in relation to a new regulated
8 insurance contract, means an offer under section 22.
- 9 ***compulsory offer period***, in relation to an offer made under
10 section 23, means the period referred to in paragraph 24(2)(b) in
11 relation to the offer.
- 12 ***constitutional corporation*** means a corporation to which
13 paragraph 51(xx) of the Constitution applies.
- 14 ***enter into***, in relation to certain arrangements, has a meaning
15 affected by section 7.
- 16 ***entity*** means:
17 (a) a body corporate; or
18 (b) a partnership; or
19 (c) any other unincorporated association or body of persons; or
20 (d) a trust.
- 21 ***general insurer*** has the same meaning as in the *Insurance Act*
22 1973.
- 23 ***health care*** means any care, treatment, advice, service or goods
24 provided in respect of the physical or mental health of a person.
- 25 ***health care incident***, in relation to a health care professional,
26 means an incident that occurs in the course of, or in connection
27 with, the provision of health care by the health care professional.
- 28 ***health care professional***:

1 (a) means an individual who provides health care (whether for
2 reward or not and whether as an employee, as part of a
3 business or on some other basis); and

4 (b) includes:

5 (i) a medical practitioner; and

6 (ii) a registered health professional.

7 **incident** includes:

8 (a) any act, omission or circumstance; and

9 (b) an incident that is claimed to have occurred.

10 **incident-occurring based cover** has the meaning given by
11 subsection 6(4).

12 **indemnify** has a meaning affected by subsection (2).

13 **medical practitioner** means an individual registered or licensed as
14 a medical practitioner under a State or Territory law that provides
15 for the registration or licensing of medical practitioners.

16 **minimum cover amount** has the meaning given by section 16.

17 **new regulated insurance contract** means a regulated insurance
18 contract to which section 22 applies.

19 **otherwise uncovered prior incidents** for a health care professional
20 has the meaning given by subsection 21(4).

21 **payable**, in relation to a compensation claim, has the meaning
22 given by subsection (7).

23 **provide a financial service** has the meaning given by section 766A
24 of the *Corporations Act 2001*.

25 **provide medical indemnity cover** has the meaning given by
26 section 5.

27 **prudential standard** means a standard determined by APRA under
28 section 32 of the *Insurance Act 1973*.

29 **registered health professional**: an individual is a **registered health**
30 **professional** if:

Section 4

- 1 (a) the individual practises a health care related vocation; and
2 (b) the individual must be registered under a State or Territory
3 law to practise that vocation.

4 **regulated insurance contract** has the meaning given by subsection
5 21(1).

6 **relevant constitutional connection** has the meaning given by
7 subsection (6).

8 **renew** has the meaning given by subsection (5).

9 **without medical indemnity cover** has the meaning given by
10 subsection (3).

11 *Indemnify*

- 12 (2) To avoid doubt, a person may, for the purposes of this Act,
13 **indemnify** someone else by either:
14 (a) making a payment; or
15 (b) agreeing to make a payment.

16 Note: A person may indemnify someone else by making a payment even if
17 the payment was not preceded by an agreement to pay.

18 *Without medical indemnity cover for a health care incident*

- 19 (3) For the purposes of this Act, a health care professional is **without**
20 **medical indemnity cover** for a health care incident if:
21 (a) the health care incident occurs during a particular period; and
22 (b) there is no arrangement under which the health care
23 professional will, or may, be indemnified for compensation
24 claims made against the health care professional in relation to
25 health care incidents occurring during that period.

26 *When arrangement comes into effect*

- 27 (4) For the purposes of this Act, an arrangement under which a person
28 provides medical indemnity cover for a health care professional
29 **comes into effect** on the first day on which, under the arrangement,
30 a claim against the person providing the cover may be made.

1 *Renewal of arrangement*

2 (5) For the purposes of this Act, an arrangement is **renewed** if:

- 3 (a) the arrangement is renewed; or
4 (b) the period of the arrangement is extended;

5 whether this happens:

- 6 (c) because of action taken, or not taken, by a party or parties to
7 the arrangement; or
8 (d) automatically; or
9 (e) by force of law.

10 Note: For example, if renewable insurance cover is provided under a
11 contract of insurance (the **original contract**), a further contract of
12 insurance may exist between the parties to the original contract by
13 force of subsection 58(3) of the *Insurance Contracts Act 1984*.

14 *Relevant constitutional connection*

15 (6) For the purposes of this Act, an arrangement has a **relevant**
16 **constitutional connection** if:

- 17 (a) the arrangement provides for insurance with respect to which
18 the Commonwealth Parliament has power to make laws
19 under paragraph 51(xiv) of the Constitution; or
20 (b) the arrangement is entered into in the course of trade and
21 commerce:
22 (i) with other countries; or
23 (ii) among the States; or
24 (iii) between a State and a Territory; or
25 (c) the arrangement is entered into in, or is governed by the laws
26 of, a Territory.

27 *Amount payable in relation to compensation claim*

28 (7) For the purposes of this Act, the amount that is **payable** in relation
29 to a compensation claim includes an amount that would be paid to
30 meet legal and other expenses that are directly attributable to any
31 negotiations, arbitration or proceedings in relation to the
32 compensation claim.

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1 *Breaching the minimum cover rules*

2 (8) For the purposes of this Act, a regulated insurance contract
3 ***breaches the minimum cover rules*** if subsection 17(2), 18(3) or
4 19(3) applies to the regulated insurance contract.

5 *Claim against health care professional during particular period*

6 (9) A reference in this Act, in relation to:

- 7 (a) a contract of insurance under which the insurer provides
8 medical indemnity cover for a health care professional; or
9 (b) an offer by an insurer to provide medical indemnity cover for
10 a health care professional;

11 to a compensation claim against the health care professional being
12 made, or having to be made, during a particular period is a
13 reference to any one or more of the following happening, or having
14 to happen, during that period:

- 15 (c) the compensation claim being made against the health care
16 professional;
17 (d) the compensation claim being notified to the insurer;
18 (e) the health care incident to which the compensation claim
19 relates being notified to the insurer;
20 (f) a claim being made against the insurer in relation to the
21 compensation claim;
22 (g) an event prescribed by the regulations.

23 *References to health care professional*

24 (10) A reference in this Act to a health care professional includes a
25 reference to an individual who has been a health care professional
26 at any time.

27 *References to medical practitioner*

28 (11) A reference in this Act to a medical practitioner includes a
29 reference to an individual who has been a medical practitioner at
30 any time.

1 *References to registered health professional*

- 2 (12) A reference in this Act to a registered health professional includes
3 a reference to an individual who has been a registered health
4 professional at any time.

5 **5 Providing medical indemnity cover**

- 6 (1) A person *provides medical indemnity cover* for a health care
7 professional if, under an arrangement, the person must or may
8 indemnify the health care professional in relation to claims that
9 may be made against the health care professional in relation to
10 health care incidents.

- 11 (2) The arrangement:

12 (a) may be one under which the indemnity is provided at the
13 person's discretion; and

14 (b) may be, but need not be, an arrangement between the person
15 and the health care professional; and

16 (c) may be:

17 (i) one under which the health care professional is
18 indemnified directly; or

19 (ii) one under which the health care professional is
20 indemnified indirectly through an entity or entities
21 interposed between the person and the health care
22 professional.

23 **6 Claims-made based cover and incident-occurring based cover**

- 24 (1) This section tells you what is meant by *claims-made based cover*
25 and *incident-occurring based cover* when those terms are used in
26 this Act. There are some kinds of medical indemnity cover that fall
27 outside both those terms.

- 28 (2) For the purposes of this Act, the cover provided for by a contract of
29 insurance is *claims-made based cover* if:

30 (a) under the contract, the insurer provides medical indemnity
31 cover for a health care professional in relation to a

Section 6

- 1 compensation claim against the health care professional in
2 relation to a health care incident only if:
- 3 (i) the incident occurs during a period specified in the
4 contract (the *incidents period*); and
 - 5 (ii) the compensation claim is made against the health care
6 professional during a period specified in the contract
7 (the *claims period*); and
- 8 (b) the incidents period is not a period that has ended before the
9 claims period begins; and
- 10 (c) the claims period is fixed.

11 Note 1: Subparagraph (a)(ii)—subsection 4(9) operates on the reference in this
12 subparagraph to the claim being made during a period.

13 Note 2: Pure ERB cover (which has a defined incidents period that ends
14 before the claims period begins) does not qualify because of
15 paragraph (b). DDR cover (which does not have a fixed claims period)
16 does not qualify because of paragraph (c).

- 17 (3) To avoid doubt, the claims period for the contract is taken to be
18 fixed even if the claims period is capable of being extended:
- 19 (a) by agreement between the parties to the contract; or
 - 20 (b) by renewal of the contract.
- 21 (4) For the purposes of this Act, the cover provided for by a contract of
22 insurance is *incident-occurring based cover* if:
- 23 (a) under the contract, the insurer provides medical indemnity
24 cover for a health care professional in relation to a
25 compensation claim in relation to a health care incident only
26 if the incident occurs during a period specified in the
27 contract; and
 - 28 (b) under the contract, the insurer provides that medical
29 indemnity cover:
 - 30 (i) regardless of when the compensation claim is made
31 against the health care professional; and
 - 32 (ii) whether or not the health care professional has died,
33 become permanently disabled or retired.

34 Note: ERB cover (which has a fixed claims period) does not qualify because
35 of subparagraph (b)(i) and DDR cover does not qualify because of
36 subparagraph (b)(ii).

1 **7 When certain DDR arrangements are taken to be entered into**

2 (1) For the purposes of this Act, if:

3 (a) under an arrangement, a person (the *cover provider*) will or
4 may provide medical indemnity cover of a particular kind for
5 a health care professional; and

6 (b) the cover provider will or may provide that cover only if:

7 (i) a particular period has expired; and

8 (ii) the health care professional dies, becomes permanently
9 disabled or retires; and

10 (c) the arrangement is not a contract of insurance;

11 the cover provider is taken to *enter into* the arrangement, to the
12 extent to which it relates to that cover, at the earliest time at which:

13 (d) there are no conditions that need to be satisfied for the cover
14 to be provided for the health care professional; or

15 (e) the only conditions that need to be satisfied for the cover to
16 be provided for the health care professional are conditions
17 that relate to:

18 (i) payments being made to the cover provider for the
19 cover; or

20 (ii) the making of a claim against the cover provider under
21 the arrangement.

22 (2) Without limiting subparagraph (1)(b)(i), the period referred to in
23 that subparagraph may be specified as a minimum period during
24 which the health care professional is a member of a particular
25 body.

Section 8

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2 **Division 3—Application of Act**

3 **8 Application of Act**

- 4 (1) This Act does not apply to State insurance (whether or not
5 extending beyond the limits of the State concerned).
- 6 (2) This Act does not apply to:
- 7 (a) an arrangement under which medical indemnity cover is
8 provided by:
- 9 (i) the Commonwealth, a public authority of the
10 Commonwealth or an instrumentality or agency of the
11 Crown in right of the Commonwealth; or
- 12 (ii) a State, a public authority of a State or an
13 instrumentality or agency of the Crown in right of a
14 State; or
- 15 (iii) a Territory, a public authority of a Territory or an
16 instrumentality or agency of the Crown in right of a
17 Territory; or
- 18 (b) an arrangement under which medical indemnity cover is
19 provided by a person to a health care professional who is an
20 employee of the person; or
- 21 (c) an arrangement under which medical indemnity cover is
22 provided by an employer in relation to health care provided
23 to the employer's employees:
- 24 (i) by an employee of the employer; or
25 (ii) under a contract between the employer and the person
26 providing the care; or
- 27 (d) an arrangement under which medical indemnity cover is
28 provided by a body corporate prescribed by the regulations;
29 or
- 30 (e) an arrangement of a kind prescribed by the regulations.

31 **9 Act extends to external Territories**

32 This Act extends to every external Territory.

1

2 **Part 2—Prudential requirements for provision of**
3 **medical indemnity cover**

4 **Division 1—Provision of medical indemnity cover**

5 **10 Medical indemnity cover to be provided only by general insurers**
6 **and only under contracts of insurance**

7 (1) This subsection applies to a person if, on or after 1 July 2003:

8 (a) the person:

9 (i) offers to enter into; or

10 (ii) invites an offer to enter into;

11 an arrangement under which the person would provide
12 medical indemnity cover for a health care professional; or

13 (b) the person enters into an arrangement under which the person
14 provides medical indemnity cover for a health care
15 professional; or

16 (c) an arrangement under which the person provides medical
17 indemnity cover for a health care professional comes into
18 effect; or

19 (d) the person offers to renew an arrangement under which a
20 person provides medical indemnity cover for a health care
21 professional; or

22 (e) an arrangement under which the person provides medical
23 indemnity cover for a health care professional is renewed.

24 The **relevant medical indemnity cover** is the cover referred to in
25 paragraph (a), (b), (c), (d), or (e).

26 (2) A person (the **cover provider**) commits an offence if:

27 (a) subsection (1) applies to the cover provider; and

28 (b) either:

29 (i) the cover provider is a constitutional corporation; or

30 (ii) the cover provider is not a constitutional corporation but
31 the arrangement has, or would have, a relevant
32 constitutional connection; and

Section 11

- 1 (c) either:
2 (i) the cover provider is not a general insurer; or
3 (ii) the relevant medical indemnity cover is not, or would
4 not be, effected by means of a contract of insurance.

5 Penalty: Imprisonment for 12 months.

6 (3) To avoid doubt:

- 7 (a) paragraph (1)(a) applies to offers or invitations that are
8 received in Australia or the external Territories:
9 (i) regardless of where any resulting arrangement is entered
10 into; and
11 (ii) whether or not any resulting arrangement is governed by
12 the laws of a State or Territory; and
13 (b) paragraph (1)(d) applies to offers that are received in
14 Australia or the external Territories:
15 (i) regardless of where any resulting renewal takes place;
16 and
17 (ii) whether or not the arrangement is governed by the laws
18 of a State or Territory.

19 **11 Intermediary's responsibilities**

- 20 (1) A person (the *intermediary*) commits an offence if:
21 (a) the intermediary provides a financial service on or after
22 1 July 2003; and
23 (b) in the course of providing that service, the intermediary:
24 (i) arranges, or offers to arrange, for someone to enter into
25 or renew; or
26 (ii) recommends that someone enter into or renew;
27 an arrangement under which a person (the *cover provider*)
28 provides, or would provide, medical indemnity cover for a
29 health care professional; and
30 (c) either:
31 (i) the cover provider is a constitutional corporation; or
32 (ii) the arrangement has, or would have, a relevant
33 constitutional connection; and

- 1 (d) either:
2 (i) the cover provider is not a general insurer; or
3 (ii) the arrangement is not, or would not be, effected by
4 means of a contract of insurance.
- 5 Penalty: Imprisonment for 12 months.
- 6 (2) It does not matter whether the intermediary provides the financial
7 service in the intermediary's own right or as a representative of
8 another person.
- 9 (3) To avoid doubt, the intermediary commits the offence whether or
10 not the cover provider commits, or would commit, an offence
11 against subsection 10(2).

Section 12

1

2 **Division 2—Transitional arrangements**

3 **12 Effect of determination under subsection 13(3)**

4 *Section applies to body corporate while determination under*
5 *subsection 13(3) is in force*

- 6 (1) This section applies to a body corporate while a determination
7 under subsection 13(3) is in force in relation to the body corporate.

8 *Authorisation to carry on insurance business in Australia*

- 9 (2) APRA must not refuse an application by the body corporate under
10 section 12 of the *Insurance Act 1973* on the basis that the body
11 corporate does not, or would not, meet the requirements of a
12 prudential standard to the extent to which the standard imposes a
13 minimum capital requirement.

14 Note: This subsection is not relevant for a body corporate if at the time the
15 body corporate applied for a determination under section 13 the body
16 corporate was already a general insurer.

17 *Grounds for revoking authorisation*

- 18 (3) Paragraph 15(1)(e) of the *Insurance Act 1973* does not apply to the
19 body corporate.

20 *Application of prudential standard imposing minimum capital*
21 *requirement*

- 22 (4) Any prudential standard, to the extent to which the standard
23 imposes a minimum capital requirement, does not apply to the
24 body corporate.

25 **13 APRA determination that minimum capital requirements do not**
26 **apply**

27 *Application for determination*

- 28 (1) A body corporate that:
-

- 1 (a) is an MDO within the meaning of the *Medical Indemnity Act*
2 *2002*; or
3 (b) is prescribed by the regulations for the purposes of this
4 paragraph; or
5 (c) is related (within the meaning of the *Corporations Act 2001*)
6 to a body corporate to which paragraph (a) or (b) applies;
7 may apply to APRA for a determination under subsection (3) that
8 the minimum capital requirements do not apply to the body
9 corporate during the period (the *transition period*) that starts on
10 1 July 2003 and ends on 30 June 2008.

- 11 (2) The application must be in the form prescribed by the regulations.

12 *Determination that minimum capital requirements do not apply*

- 13 (3) APRA must determine that the minimum capital requirements do
14 not apply to the body corporate during the transition period if:
15 (a) when it applies, the body corporate:
16 (i) is not a general insurer; or
17 (ii) is a general insurer and is prescribed by the regulations
18 for the purposes of this subparagraph; and
19 (b) when it applies, the body corporate does not, or would not,
20 satisfy the prudential standards, to the extent to which they
21 impose minimum capital requirements; and
22 (c) the body corporate lodges a funding plan with the
23 application; and
24 (d) the funding plan:
25 (i) is in the form prescribed by the regulations; and
26 (ii) is certified by an independent auditor and by an
27 independent actuary; and
28 (iii) complies with the guidelines issued by APRA under
29 subsection (9).

30 Note: Paragraph (c)—If a funding plan lodged with an application does not
31 comply with the requirements set out in paragraph (d), the body
32 corporate will need to make another application under this section and
33 lodge another funding plan with that application.

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1 (3A) APRA must make the determination within 30 days after receiving
2 the application.

3 (3B) The determination must be in writing and APRA must give the
4 body corporate a copy of the determination within 7 days after
5 making the determination.

6 *When determination ceases to have effect*

7 (4) The determination ceases to have effect:
8 (a) on 30 June 2008; or
9 (b) if APRA revokes the determination before 30 June 2008—on
10 the day specified in the revocation as the day on which the
11 revocation takes effect.

12 *Revocation of determination*

13 (5) APRA may revoke the determination if and only if:
14 (a) the body corporate:
15 (i) fails to meet a commitment given, or a target set, in the
16 funding plan; or
17 (ii) otherwise fails to comply with the funding plan;
18 and the failure is substantial; or
19 (b) the body corporate no longer carries on a business of
20 providing medical indemnity cover for health care
21 professionals; or
22 (c) the body corporate requests APRA, in writing, to revoke the
23 determination.

24 (6) The revocation must:
25 (a) be in writing; and
26 (b) specify the day on which the revocation takes effect.
27 The day specified under paragraph (b) must be at least 28 days
28 after the day on which the revocation is made.

29 (7) APRA must give a copy of the revocation to the body corporate
30 within 7 days after the day on which the revocation is made.

1 *No determinations to be made after 1 July 2005*

- 2 (8) No determinations under subsection (3) are to be made on or after
3 1 July 2005.

4 *APRA guidelines*

- 5 (9) APRA may issue guidelines on:
6 (a) the matters to be included in a funding plan lodged for the
7 purposes of this section (including the nature of the
8 commitments to be given, and the targets to be set, in the
9 plan); and
10 (b) the matters as to which an independent auditor or
11 independent actuary is to certify; and
12 (c) the qualifications an auditor or actuary must have to give
13 certificates for the purposes of this section; and
14 (d) the necessary degree of independence from a body corporate
15 that an auditor or actuary must have to give a certificate in
16 relation to the body corporate's funding plan.
- 17 (10) Without limiting paragraph (9)(a), the guidelines may provide that
18 the funding plan must include a specified commitment by the body
19 corporate to report to APRA in relation to its compliance with the
20 funding plan.
- 21 (11) A guideline issued under subsection (9) is a disallowable
22 instrument for the purposes of section 46A of the *Acts*
23 *Interpretation Act 1901*.

24 **14 Administrative review**

25 An application may be made to the Administrative Appeals
26 Tribunal for review of:

- 27 (a) a decision by APRA not to make a determination under
28 subsection 13(3); or
29 (b) a decision by APRA under subsection 13(5) to revoke a
30 determination made under subsection 13(3).

31 Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires
32 notification of a decision that is reviewable.

Section 15

1 **15 Application of section 115A of the *Insurance Act 1973***

2 Section 115A of the *Insurance Act 1973* applies as if a reference to
3 this Part in the definition of *relevant legislation* in subsection (5)
4 of that section included a reference to a funding plan lodged with
5 an application made under section 13 of this Act.

1
2 **Part 3—Product standards for medical indemnity**
3 **insurance contracts**

4 **Division 1—Minimum cover**

5 **16 Minimum cover amount**

6 The *minimum cover amount* for the purposes of this Division is:

- 7 (a) \$5 million; or
8 (b) such other amount as is prescribed by the regulations.

9 **17 Minimum cover for single claim**

10 *Circumstances in which section applies*

- 11 (1) This subsection applies to a person if:
12 (a) under a contract of insurance (the *relevant contract*), the
13 person provides medical indemnity cover for a health care
14 professional; and
15 (b) the health care professional is:
16 (i) a medical practitioner; or
17 (ii) a registered health professional prescribed by the
18 regulations.

19 *Offence*

- 20 (2) A person (the *insurer*) commits an offence if:
21 (a) subsection (1) applies to the insurer; and
22 (b) the relevant contract is entered into, comes into effect or is
23 renewed at a particular time on or after 1 July 2003; and
24 (c) the maximum amount payable by the insurer under the
25 relevant contract in relation to a single compensation claim
26 made against the health care professional would, but for
27 subsection (4), be less than the minimum cover amount
28 applicable at that time.

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Penalty: Imprisonment for 12 months.

- (3) Subsection (2) does not apply if it would be reasonable to assume, at the time the relevant contract is entered into, comes into effect or is renewed, that every health care incident to which the compensation claim would relate would be one occurring outside Australia and the external Territories.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Maximum amount payable for single claim

- (4) If:
- (a) subsection (1) applies to a person (the *insurer*); and
 - (b) the relevant contract is entered into, comes into effect or is renewed at a particular time on or after 1 July 2003; and
 - (c) a compensation claim is made against the health care professional; and
 - (d) an amount is payable by the insurer under the relevant contract in relation to the compensation claim; and
 - (e) the maximum amount payable by the insurer under the relevant contract in relation to the compensation claim would, but for this subsection, be less than the minimum cover amount applicable at that time;
- the maximum amount payable by the insurer under the relevant contract in relation to the compensation claim is the minimum cover amount applicable at that time (instead of the maximum amount provided for in the relevant contract).
- (5) Subsection (4) does not apply if every health care incident to which the compensation claim relates is one occurring outside Australia and the external Territories.
- (6) To avoid doubt, subsection (4) applies whether or not the insurer is convicted of an offence against subsection (2).

1 **18 Minimum annual cover—incident-occurring based cover**

2 *Circumstances in which section applies*

- 3 (1) This subsection applies to a person if:
- 4 (a) under a contract of insurance (the **relevant contract**), the
 - 5 person provides medical indemnity cover for a health care
 - 6 professional; and
 - 7 (b) the health care professional is:
 - 8 (i) a medical practitioner; or
 - 9 (ii) a registered health professional prescribed by the
 - 10 regulations; and
 - 11 (c) the relevant contract provides for incident-occurring based
 - 12 cover.

13 Note: For **incident-occurring based cover**, see subsection 6(4). For the

14 purposes of this section, ERB and DDR cover are not

15 incident-occurring based cover.

- 16 (2) For the purposes of this section:
- 17 (a) the **qualifying incident period** is the period during which a
 - 18 health care incident must occur for the person to provide
 - 19 medical indemnity cover under the relevant contract in
 - 20 relation to the incident; and
 - 21 (b) there is only one **relevant period** and it is the qualifying
 - 22 incident period if the qualifying incident period is a year or
 - 23 shorter than a year; and
 - 24 (c) the year starting at the beginning of the qualifying incident
 - 25 period, and each succeeding year or part of a year in the
 - 26 qualifying incident period, is a **relevant period** if the
 - 27 qualifying incident period is longer than a year.

28 *Offence*

- 29 (3) A person (the **insurer**) commits an offence if:
- 30 (a) subsection (1) applies to the insurer; and
 - 31 (b) the relevant contract is entered into, comes into effect or is
 - 32 renewed at a particular time on or after 1 July 2003; and

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1 (c) the maximum amount payable, in aggregate, by the insurer
2 under the relevant contract in relation to all the compensation
3 claims that are made against the health care professional in
4 relation to health care incidents that occur during a particular
5 relevant period would, but for subsection (5), be less than the
6 minimum cover amount applicable at that time.

7 Penalty: Imprisonment for 12 months.

8 (4) Subsection (3) does not apply if it would be reasonable to assume,
9 at the time the relevant contract is entered into, comes into effect or
10 is renewed, that every health care incident to which the
11 compensation claims would relate would be one occurring outside
12 Australia and the external Territories.

13 Note: A defendant bears an evidential burden in relation to the matter in this
14 subsection (see subsection 13.3(3) of the *Criminal Code*).

15 *Maximum amount payable for multiple claims*

16 (5) If:

- 17 (a) subsection (1) applies to a person (the *insurer*); and
18 (b) the relevant contract is entered into, comes into effect or is
19 renewed at a particular time on or after 1 July 2003; and
20 (c) amounts are payable by the insurer under the relevant
21 contract in relation to 2 or more compensation claims (the
22 *multiple claims*) that are made against the health care
23 professional in relation to health care incidents that occur in a
24 particular relevant period; and
25 (d) the maximum amount payable by the insurer under the
26 relevant contract in relation to the multiple claims would, but
27 for this subsection, be less than the minimum cover amount
28 applicable at that time;

29 the maximum amount payable, in aggregate, by the insurer under
30 the relevant contract in relation to the multiple claims is the
31 minimum cover amount applicable at that time (instead of the
32 maximum amount provided for in the relevant contract).

1 (6) Subsection (5) does not apply if every health care incident to which
2 the multiple claims relate is one occurring outside Australia and the
3 external Territories.

4 (7) To avoid doubt, subsection (5) applies whether or not the insurer is
5 convicted of an offence against subsection (3).

6 **19 Minimum annual cover—other cover**

7 *Circumstances in which section applies*

- 8 (1) This subsection applies to a person if:
- 9 (a) under a contract of insurance (the **relevant contract**), the
10 person provides medical indemnity cover for a health care
11 professional; and
 - 12 (b) the health care professional is:
 - 13 (i) a medical practitioner; or
 - 14 (ii) a registered health professional prescribed by the
15 regulations; and
 - 16 (c) the contract does not provide for incident-occurring based
17 cover.

18 Note: For **incident-occurring based cover**, see subsection 6(4). For the
19 purposes of this section, ERB and DDR cover are not
20 incident-occurring based cover.

- 21 (2) For the purposes of this section:
- 22 (a) the **qualifying claims period** is the period specified in the
23 relevant contract as the period during which a compensation
24 claim against the health care professional has to be made for
25 medical indemnity cover to be provided in relation to the
26 compensation claim; and
 - 27 (b) there is only one **relevant period** and it is the qualifying
28 claims period if the qualifying claims period is a year or
29 shorter than a year; and
 - 30 (c) the year starting at the beginning of the qualifying claims
31 period, and each succeeding year or part of a year in the
32 qualifying claims period, is a **relevant period** if the
33 qualifying claims period is longer than a year.

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1 Note: Paragraph (a)—subsection 4(9) operates on the reference in this
2 paragraph to the claim having to be made during a period.

3 *Offence*

- 4 (3) A person (the *insurer*) commits an offence if:
- 5 (a) subsection (1) applies to the insurer; and
 - 6 (b) the relevant contract is entered into, comes into effect or is
7 renewed at a particular time on or after 1 July 2003; and
 - 8 (c) the maximum amount payable, in aggregate, by the insurer
9 under the relevant contract in relation to all the compensation
10 claims that are made against the health care professional
11 during a particular relevant period would, but for
12 subsection (5), be less than the minimum cover amount
13 applicable at that time.

14 Note: Paragraph (c)—subsection 4(9) operates on the reference in this
15 paragraph to the claim having to be made during a period.

16 Penalty: Imprisonment for 12 months.

- 17 (4) Subsection (3) does not apply if it would be reasonable to assume,
18 at the time the relevant contract is entered into, comes into effect or
19 is renewed, that every health care incident to which the
20 compensation claims would relate would be one occurring outside
21 Australia and the external Territories.

22 Note: A defendant bears an evidential burden in relation to the matter in this
23 subsection (see subsection 13.3(3) of the *Criminal Code*).

24 *Maximum amount payable for multiple claims*

- 25 (5) If:
- 26 (a) subsection (1) applies to a person (the *insurer*); and
 - 27 (b) the relevant contract is entered into, comes into effect or is
28 renewed at a particular time on or after 1 July 2003; and
 - 29 (c) amounts are payable by the insurer under the relevant
30 contract in relation to 2 or more compensation claims (the
31 *multiple claims*) that are made against the health care
32 professional during a particular relevant period; and
 - 33 (d) the maximum amount payable by the insurer under the
34 relevant contract in relation to the multiple claims would, but
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1 for this subsection, be less than the minimum cover amount
2 applicable at that time;

3 the maximum amount payable, in aggregate, by the insurer under
4 the relevant contract in relation to the multiple claims is the
5 minimum cover amount applicable at that time (instead of the
6 maximum amount provided for in the relevant contract).

7 Note: Paragraph (c)—subsection 4(9) operates on the reference in this
8 paragraph to the claim having to be made during a period.

9 (6) Subsection (5) does not apply if every health care incident to which
10 the multiple claims relate is one occurring outside Australia and the
11 external Territories.

12 (7) To avoid doubt, subsection (5) applies whether or not the insurer is
13 convicted of an offence against subsection (3).

14 **20 Amount payable by insurer**

15 To avoid doubt, in working out for the purposes of this Division
16 the maximum amount payable by an insurer under a contract of
17 insurance, disregard the following:

- 18 (a) any right the insurer may have to a high cost claim indemnity
19 under the *Medical Indemnity Act 2002*;
- 20 (b) any right the insurer may have to contribution from another
21 insurer;
- 22 (c) any right to which the insurer is subrogated under the
23 contract of insurance.

Part 3 Product standards for medical indemnity insurance contracts

Division 2 Offers to provide retroactive and run-off cover for otherwise uncovered prior incidents

Section 21

Division 2—Offers to provide retroactive and run-off cover for otherwise uncovered prior incidents

Subdivision A—Regulated insurance contracts

21 Regulated insurance contracts

Regulated insurance contract

- (1) For the purposes of this Division, a contract is a ***regulated insurance contract*** if:
- (a) the contract is a contract of insurance under which the insurer provides medical indemnity cover for a health care professional in relation to compensation claims; and
 - (b) the health care professional is:
 - (i) a medical practitioner; or
 - (ii) a registered health professional prescribed by the regulations; and
 - (c) the cover provided for by the contract is claims-made based cover; and
 - (d) the contract is entered into, comes into effect or is renewed on or after 1 July 2003.

Note: Paragraph (c)—for ***claims-made based cover***, see subsections 6(2) and (3). For the purposes of this section, ERB and DDR cover are not claims-made based cover.

Client

- (2) For the purposes of this Division, the ***client*** for the regulated insurance contract is the other party to the regulated insurance contract (who may be the health care professional or someone else).

Claims period

- (3) For the purposes of this Division, the ***claims period*** for the regulated insurance contract is the period specified in the contract as the period during which a compensation claim against the health

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1 care professional has to be made for medical indemnity cover to be
2 provided in relation to the compensation claim.

3 Note: Subsection 4(9) operates on the reference to the claim having to be
4 made during a period.

5 *Health care professional's otherwise uncovered prior incidents*

6 (4) For the purposes of this Division, the health care professional's
7 *otherwise uncovered prior incidents* for the regulated insurance
8 contract are:

9 (a) for an offer to be made under section 22—the health care
10 incidents:

11 (i) that occurred before the start of the claims period for the
12 regulated insurance contract; and

13 (ii) for which the health care professional would otherwise
14 be without medical indemnity cover; and

15 (b) for an offer to be made under section 23—the health care
16 incidents:

17 (i) that have occurred, or will occur, before the contract
18 that arises from the offer would take effect; and

19 (ii) for which the health care professional would otherwise
20 be without medical indemnity cover.

21 **Subdivision B—Insurer's responsibilities**

22 **22 Additional offer of retroactive cover when regulated insurance**
23 **contract entered into, comes into effect or is renewed**

24 *Offence—compulsory offer*

25 (1) A person (the *insurer*) commits an offence if:

26 (a) a regulated insurance contract is entered into, comes into
27 effect or is renewed; and

28 (b) the insurer provides medical indemnity cover for a health
29 care professional under the regulated insurance contract; and

30 (c) the insurer does not make an offer (the *compulsory offer*) to
31 the client that satisfies all of the following subparagraphs:

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Division 2 Offers to provide retroactive and run-off cover for otherwise uncovered prior incidents

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- 1 (i) the offer is an offer to provide medical indemnity cover
2 for the health care professional in relation to all
3 compensation claims that are made against the health
4 care professional, during a period that includes the
5 whole of the claims period for the regulated insurance
6 contract, in relation to the health care professional's
7 otherwise uncovered prior incidents;
- 8 (ii) the offer is made at the same time as the insurer makes
9 the offer or the invitation that leads to the regulated
10 insurance contract or the renewal;
- 11 (iii) the offer is a complying offer.

12 Note 1: For *complying offer*, see section 24.

13 Note 2: Subparagraph (c)(i)—subsection 4(9) operates on the reference in this
14 subparagraph to the claims being made during a period.

15 **Penalty:** Imprisonment for 12 months.

- 16 (1A) In determining whether an offer made by an insurer to provide
17 medical indemnity cover for a health care professional satisfies
18 subparagraph (1)(c)(i), disregard:
- 19 (a) an otherwise uncovered prior incident of the health care
20 professional; or
- 21 (b) a compensation claim in relation to an incident of that kind;
22 if it is reasonable and appropriate for the insurer to exclude the
23 incident or claim from the cover being offered, having regard to:
- 24 (c) the nature of the health care provided by the health care
25 professional during the period during which the otherwise
26 uncovered prior incident occurred; and
- 27 (d) the kinds of exclusions that are usually provided for in
28 contracts of insurance that provide similar cover to the cover
29 being offered; and
- 30 (e) any other relevant consideration.

31 *Offence—entering into regulated insurance contract etc. before*
32 *response to compulsory offer received*

- 33 (2) A person (the *insurer*) commits an offence if:

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- 1 (a) a regulated insurance contract is entered into, comes into
2 effect or is renewed; and
3 (b) the insurer provides medical indemnity cover for a health
4 care professional under the regulated insurance contract; and
5 (c) the regulated insurance contract is entered into, comes into
6 effect or is renewed before the client has given the insurer a
7 written response to the compulsory offer.

8 Penalty: Imprisonment for 12 months.

9 *Offence—record keeping*

10 (3) A person (the *insurer*) commits an offence if:

- 11 (a) a regulated insurance contract is entered into, comes into
12 effect or is renewed; and
13 (b) the insurer provides medical indemnity cover for a health
14 care professional under the regulated insurance contract; and
15 (c) the insurer does not keep a copy of the following:
16 (i) the compulsory offer;
17 (ii) the client's written response to the compulsory offer;
18 (iii) any other offer that the insurer makes to the client,
19 while the compulsory offer is open for acceptance by
20 the client, to provide medical indemnity cover for the
21 health care professional in relation to an otherwise
22 uncovered prior incident of the health care professional;
23 (iv) any invitations that the insurer makes to the client, while
24 the compulsory offer is open for acceptance by the
25 client, to make an offer to enter into a contract of
26 insurance under which the insurer would provide
27 medical indemnity cover for the health care professional
28 in relation to an otherwise uncovered prior incident of
29 the health care professional;

30 for the period of 5 years starting on the day on which the
31 compulsory offer is made.

32 Penalty: Imprisonment for 6 months.

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Defences for offences against subsections (1), (2) and (3)

(4) Subsections (1), (2) and (3) do not apply if:

- (a) the regulated insurance contract provides medical indemnity cover for the health care professional in relation to all the compensation claims referred to in paragraph (1)(c); or
- (b) the health care professional has no otherwise uncovered prior incidents; or
- (c) every health care incident covered by the regulated insurance contract is, or would be, one occurring outside Australia and the external Territories.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(4A) In determining whether a regulated insurance contract provides the cover referred to in paragraph (4)(a) for a health care professional, disregard:

- (a) an otherwise uncovered prior incident of the health care professional; or
- (b) a compensation claim in relation to an incident of that kind; if it is reasonable and appropriate for the insurer to exclude the incident or claim from the cover provided by the contract, having regard to:
- (c) the nature of the health care provided by the health care professional during the period during which the otherwise uncovered prior incident occurred; and
- (d) the kinds of exclusions that are usually provided for in contracts of insurance that provide similar cover to the cover being offered; and
- (e) any other relevant consideration.

(5) Subsection (1) does not apply if:

- (a) the insurer makes an offer for the purposes of subsection (1); and
- (b) the only reason why the offer does not satisfy subparagraph (1)(c)(i) is that the offer does not extend to some of the health care professional's otherwise uncovered prior incidents; and

Section 23

1 (c) the insurer has reasonable grounds for believing that the offer
2 does extend to all the health care professional's otherwise
3 uncovered prior incidents.

4 Note: A defendant bears an evidential burden in relation to the matter in this
5 subsection (see subsection 13.3(3) of the *Criminal Code*).

6 *Compulsory offer has no effect in certain circumstances*

7 (6) A compulsory offer made by an insurer for the purposes of
8 subsection (1) ceases to have effect if the winding up of the insurer
9 starts before the offer is accepted.

10 Note: An insurer must not carry on insurance business after the winding up
11 of the insurer has started: see section 116 of the *Insurance Act 1973*.

12 *Effect of subsection (1)*

13 (7) Subsection (1) has effect subject to section 116 of the *Insurance*
14 *Act 1973*.

15 Note: This means that an insurer does not have to make a compulsory offer
16 for the purposes of subsection (1) once the winding up of the insurer
17 has started.

18 **23 Additional offer of run-off cover when particular events happen**
19 **during claims period for regulated insurance contract**

20 *Offence—compulsory offer*

- 21 (1) A person (the *insurer*) commits an offence if:
- 22 (a) the insurer provides medical indemnity cover for a health
23 care professional under a regulated insurance contract; and
 - 24 (b) an event prescribed by the regulations for the purposes of this
25 paragraph occurs during the claims period for the regulated
26 insurance contract; and
 - 27 (c) the insurer does not make an offer (the *compulsory offer*) to
28 the client that satisfies all of the following subparagraphs:
 - 29 (i) the offer is an offer to provide medical indemnity cover
30 for the health care professional in relation to
31 compensation claims that are made against the health
32 care professional in relation to the health care

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Division 2 Offers to provide retroactive and run-off cover for otherwise uncovered prior incidents

Section 23

- 1 professional's otherwise uncovered prior incidents and
2 the offer satisfies the requirements specified in the
3 regulations for the purposes of this subparagraph;
4 (ii) the offer is made within 28 days after the insurer
5 becomes aware of that event;
6 (iii) the offer is a complying offer.

7 Note: For *complying offer*, see section 24.

8 Penalty: Imprisonment for 12 months.

- 9 (2) Without limiting subparagraph (1)(c)(i), the regulations made for
10 the purposes of that subparagraph may specify requirements in
11 relation to:
12 (a) the compensation claims to be covered by the contract being
13 offered; and
14 (b) the limits on the amounts payable by the insurer under the
15 contract being offered (whether in relation to an individual
16 compensation claim or in relation to compensation claims
17 made during a particular period).

18 Without limiting paragraph (a), the regulations may specify the
19 compensation claims by reference to the period during which the
20 compensation claims can be made.

21 *Offence—entering into new contract before response to*
22 *compulsory offer received*

- 23 (2A) For the purposes of making an offer to provide the cover referred
24 to in subparagraph (1)(c)(i) for a health care professional, disregard
25 the regulated insurance contract referred to in paragraph (1)(a) in
26 determining the health care professional's otherwise uncovered
27 prior incidents.
- 28 (2B) In determining whether an offer made by an insurer to provide
29 medical indemnity cover for a health care professional satisfies
30 subparagraph (1)(c)(i), disregard:
31 (a) an otherwise uncovered prior incident of the health care
32 professional; or
33 (b) a compensation claim in relation to an incident of that kind;

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1 if it is reasonable and appropriate for the insurer to exclude the
2 incident or claim from the cover being offered, having regard to:

- 3 (c) the nature of the health care provided by the health care
4 professional during the period during which the otherwise
5 uncovered prior incident occurred; and
6 (d) the kinds of exclusions that are usually provided for in
7 contracts of insurance that provide similar cover to the cover
8 being offered; and
9 (e) any other relevant consideration.

10 (3) A person (the *insurer*) commits an offence if:

- 11 (a) the person provides medical indemnity cover for a health care
12 professional under a regulated insurance contract; and
13 (b) paragraph (1)(b) applies to the regulated insurance contract;
14 and
15 (c) after the insurer makes the compulsory offer, the insurer
16 subsequently enters into a contract of insurance with the
17 client to provide medical indemnity cover for the health care
18 professional in relation to an otherwise uncovered prior
19 incident of the health care professional; and
20 (d) the contract referred to in paragraph (c) is not entered into in
21 response to the compulsory offer; and
22 (e) the contract referred to in paragraph (c) is entered into before
23 the client has given the insurer a written response to the
24 compulsory offer.

25 Penalty: Imprisonment for 12 months.

26 *Offence—record keeping*

27 (4) A person (the *insurer*) commits an offence if:

- 28 (a) the insurer provides medical indemnity cover for a health
29 care professional under a regulated insurance contract; and
30 (b) paragraph (1)(b) applies to the regulated insurance contract;
31 and
32 (c) the insurer does not keep the following:
33 (i) a copy of the compulsory offer;

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Section 23

- 1 (ii) either a copy of the client's written response to the
2 compulsory offer or a written record (made within 14
3 days after the end of the compulsory offer period) of the
4 client's response, or failure to respond, to the
5 compulsory offer;
- 6 (iii) a copy of any other offer that the insurer makes to the
7 client, while the compulsory offer is open for
8 acceptance by the client, to provide medical indemnity
9 cover for the health care professional in relation to an
10 otherwise uncovered prior incident of the health care
11 professional;
- 12 (iv) a copy of any invitations that the insurer makes to the
13 client, while the compulsory offer is open for
14 acceptance by the client, to make an offer to enter into a
15 contract of insurance under which the insurer would
16 provide medical indemnity cover for the health care
17 professional in relation to an otherwise uncovered prior
18 incident of the health care professional;
19 for the period of 5 years starting on the day on which the
20 compulsory offer is made.

21 Penalty: Imprisonment for 6 months.

22 *No offences if regulations not in force*

23 (4A) The insurer commits an offence against subsection (1), (3) or (4)
24 only if regulations are in force for the purposes of
25 subparagraph (1)(c)(i) both:

- 26 (a) when the event referred to in paragraph (1)(b) occurs; and
27 (b) when the period of 28 days referred to in
28 subparagraph (1)(c)(ii) ends.

29 If this is so, the requirements that the compulsory offer must satisfy
30 are those specified in the regulations as in force when the event
31 referred to in paragraph (1)(b) occurs.

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Defences for offences against subsections (1), (3) and (4)

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2 (5) Subsections (1), (3) and (4) do not apply if every health care
3 incident covered by the regulated insurance contract is, or would
4 be, one occurring outside Australia and the external Territories.

5 Note: A defendant bears an evidential burden in relation to the matter in this
6 subsection (see subsection 13.3(3) of the *Criminal Code*).

- 7 (6) Subsection (1) does not apply if:

8 (a) the insurer makes an offer for the purposes of subsection (1);
9 and

10 (b) the only reason why the offer does not satisfy
11 subparagraph (1)(c)(i) is that the offer does not extend to
12 some of the health care professional's otherwise uncovered
13 prior incidents; and

14 (c) the insurer has reasonable grounds for believing that the offer
15 does extend to all the health care professional's otherwise
16 uncovered prior incidents.

17 Note: A defendant bears an evidential burden in relation to the matter in this
18 subsection (see subsection 13.3(3) of the *Criminal Code*).

19 *Compulsory offer has no effect in certain circumstances*

- 20 (7) A compulsory offer made by an insurer for the purposes of
21 subsection (1) ceases to have effect if the winding up of the insurer
22 starts before the offer is accepted.

23 Note: An insurer must not carry on insurance business after the winding up
24 of the insurer has started: see section 116 of the *Insurance Act 1973*.

25 *Effect of subsection (1)*

- 26 (8) Subsection (1) has effect subject to section 116 of the *Insurance*
27 *Act 1973*.

28 Note: This means that an insurer does not have to make a compulsory offer
29 for the purposes of subsection (1) once the winding up of the insurer
30 has started.

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24 Complying offer

Complying offer test—general

- (1) For the purposes of section 22 or 23, a person (the *insurer*) who provides medical indemnity cover under a regulated insurance contract makes a *complying offer* to the client to provide medical indemnity cover for a health care professional if and only if:
- (a) the offer is to provide medical indemnity cover for the health care professional under a contract of insurance; and
 - (b) the offer complies with subsection (2).

The offer must be made to the health care professional’s legal personal representative if the health care professional has died.

- (2) The offer complies with this subsection if and only if:
- (a) the offer is made in writing; and
 - (b) the offer remains open for acceptance by the client for a period of at least 28 days after the day on which the offer is made; and
 - (c) the procedures for dealing with claims under the contract being offered are substantially the same as those provided for in:
 - (i) the proposed regulated contract (if the offer is made for the purposes of section 22); or
 - (ii) the current regulated contract (if the offer is made for the purposes of section 23); and
 - (d) the claims and incidents covered, and the exclusions from the claims and incidents covered, by the contract being offered are reasonable and appropriate having regard to:
 - (i) the nature of the health care provided by the health care professional during the period or periods during which the incidents covered by the contract occurred; and
 - (ii) the kinds of claims and incidents that are usually covered by contracts of insurance that provide similar cover to the cover being offered; and
 - (iii) the kinds of exclusions that are usually provided for in contracts of insurance that provide similar cover to the cover being offered; and

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- 1 (iv) any other relevant consideration; and
2 (e) the offer specifies the premium payable by the client for the
3 cover being offered; and
4 (f) the premium payable by the client for the cover being offered
5 is reasonable (see subsection (3)); and
6 (g) the other terms and conditions of the contract being offered
7 comply with the requirements (if any) prescribed by the
8 regulations for the purposes of this paragraph; and
9 (h) the offer includes a clear, concise and effective explanation
10 of:
11 (i) the significant characteristics and features of the cover
12 being offered; and
13 (ii) the significant rights, terms and conditions and
14 obligations attaching to the cover being offered; and
15 (iii) the risks involved for the health care professional in not
16 accepting the offer; and
17 (iv) the options that will be available to the health care
18 professional if the health care professional does not
19 accept the offer; and
20 (v) any other matters prescribed by the regulations.

21 *Matters to be taken into account in determining whether premium*
22 *is reasonable*

- 23 (3) In deciding whether the premium payable by the client for the
24 cover being offered is reasonable, regard is to be had to:
25 (a) the nature of the risks being assumed by the insurer; and
26 (b) the claims handling expenses, and other administrative
27 expenses, the insurer has incurred and can reasonably be
28 expected to incur in relation to the cover being offered; and
29 (c) the expenses the insurer can reasonably be expected to incur
30 in obtaining appropriate reinsurance; and
31 (d) the expenses the insurer can reasonably be expected to incur
32 in capital raising and prudential compliance that are
33 reasonably attributable to the cover being offered; and
34 (e) the amount that represents a reasonable profit margin for the
35 insurer; and

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Section 25

- 1 (f) the amount of any relevant taxes or statutory charges payable
2 by the insurer; and
3 (g) the information provided, or not provided, to the insurer by
4 the client in relation to matters relevant to assessing the risk
5 being assumed by the insurer; and
6 (h) the guidelines (if any) issued by APRA for the purposes of
7 this paragraph.

8 *Definitions*

- 9 (5) In this section:

10 *current regulated contract* means the regulated insurance contract
11 referred to in paragraph 23(1)(a).

12 *proposed regulated contract* means the regulated insurance
13 contract referred to in paragraph 22(1)(a).

14 **25 APRA guidelines**

- 15 (1) APRA may issue guidelines for determining for the purposes of
16 section 24 whether a premium payable by an insured under a
17 contract of insurance for particular cover is reasonable.
18 (2) A guideline issued under subsection (1) is a disallowable
19 instrument for the purposes of section 46A of the *Acts*
20 *Interpretation Act 1901*.

21 **26 Federal Court may order insurer to make offer**

- 22 (1) If an insurer contravenes subsection 22(1) or 23(1) by failing to
23 make an offer, the Federal Court of Australia may, on application
24 by the client or ASIC, grant an injunction ordering the insurer to
25 make an offer.
26 (2) The Court may specify in its order:
27 (a) the terms in which the offer is to be made; and
28 (b) the time by which the offer must be made; and
29 (c) the period for which the offer must be open for acceptance by
30 the health care professional; and
-

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Section 26

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(d) the time from which the contract that results from the offer is to have effect if the offer is accepted.

Section 27

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2 **Division 3—Intermediary's responsibilities**

3 **27 Intermediary's responsibilities**

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(1) A person (the *intermediary*) commits an offence if:

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(a) the intermediary provides a financial service on or after
1 July 2003; and

6

7

(b) in the course of providing that service, the intermediary:

8

(i) arranges, or offers to arrange, for someone to enter into
or renew a regulated insurance contract; or

9

10

(ii) recommends that someone enter into or renew a
regulated insurance contract; and

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12

(c) either:

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(i) the regulated insurance contract breaches, or would
breach, the minimum cover rules; or

14

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(ii) the regulated insurance contract is a new regulated
insurance contract and the insurer does not make a
compulsory new contract offer in relation to the
regulated insurance contract.

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Penalty: Imprisonment for 12 months.

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(2) It does not matter whether the intermediary provides the financial
service in the intermediary's own right or as a representative of
another person.

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(3) Subparagraph (1)(b)(ii) does not apply to a recommendation by the
intermediary if the intermediary has reasonable grounds to believe
that a compulsory new contract offer will be made in relation to the
new regulated insurance contract before that contract is entered
into or is renewed.

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Note: A defendant bears an evidential burden in relation to the matter in this
subsection (see subsection 13.3(3) of the *Criminal Code*).

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(4) To avoid doubt, the intermediary commits the offence whether or
not the insurer commits, or would commit, an offence against
subsection 17(2), 18(3), 19(3) or 22(1).

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Part 4—Administration

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28 APRA to have general administration of Part 2

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(1) Subject to subsection (2), APRA has the general administration of Part 2.

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7

(2) The Minister may give APRA directions about the performance or exercise of its functions or powers under Part 2.

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29 APRA Act secrecy provisions apply

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Section 56 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received under this Act.

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30 ASIC to have general administration of Part 3

14

(1) Subject to subsection (2), ASIC has the general administration of Part 3.

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16

(2) The Minister may give ASIC directions about the performance or exercise of its functions or powers under Part 3.

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Section 31

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Part 5—Miscellaneous

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31 Anti-avoidance measures

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(1) If:

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(a) before 1 July 2003, a person entered into an arrangement under which the person provides medical indemnity cover for a health care professional; and

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(b) the sole or dominant purpose, or a substantial purpose, of the person in entering into the arrangement at that time was to avoid having a provision or provisions of this Act apply to the arrangement;

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the arrangement is to be treated, for the purposes of this Act, as if it had been entered into on or after 1 July 2003.

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(2) If:

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(a) an arrangement under which a person provides medical indemnity cover for a health care professional comes into effect before 1 July 2003; and

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(b) the sole or dominant purpose, or a substantial purpose, of the person in having the arrangement come into effect at that time was to avoid having a provision or provisions of this Act apply to the arrangement;

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22

the arrangement is to be treated, for the purposes of this Act, as if it had come into effect on or after 1 July 2003.

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(3) If:

26

(a) an arrangement under which a person provides medical indemnity cover for a health care professional was renewed before 1 July 2003; and

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(b) the sole or dominant purpose, or a substantial purpose, of the person in having the arrangement renewed at that time was to avoid having a provision or provisions of this Act apply to the arrangement;

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the arrangement is to be treated, for the purposes of this Act, as if it had been renewed on or after 1 July 2003.

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1 **32 Act not to affect State and Territory laws**

2 This Act is not intended to exclude or limit the concurrent
3 operation of any law of a State or Territory.

4 **33 Regulations**

- 5 (1) The Governor-General may make regulations prescribing matters:
6 (a) required or permitted by this Act to be prescribed; or
7 (b) necessary or convenient to be prescribed for carrying out or
8 giving effect to this Act.
- 9 (2) The regulations may prescribe penalties not exceeding a fine of 10
10 penalty units for offences against the regulations.

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