



Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004

No. 77, 2004

**An Act to amend the *Medical Indemnity Act 2002*
and the *Medical Indemnity (Prudential Supervision
and Product Standards) Act 2003*, to repeal the
*Medical Indemnity (Enhanced UMP Indemnity)
Contribution Act 2002*, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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[Assented to 23 June 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	23 June 2004
2. Schedule 1, items 1 to 24	1 July 2004.	1 July 2004
3. Schedule 1, items 25 to 27	The later of: (a) the day after the day on which this Act receives the Royal Assent; and (b) 1 July 2004.	1 July 2004 (paragraph (b) applies)
4. Schedule 1, items 28 to 30	1 July 2004.	1 July 2004
5. Schedule 1, items 31 to 34	The later of: (a) the day after the day on which this Act receives the Royal Assent; and (b) 1 July 2004.	1 July 2004 (paragraph (b) applies)
6. Schedule 1, items 35 and 36	1 July 2004.	1 July 2004
7. Schedule 2	1 July 2004.	1 July 2004

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
8. Schedule 3	The later of: (a) the day after the day on which this Act receives the Royal Assent; and (b) 1 July 2004.	1 July 2004 (paragraph (b) applies)
9. Schedule 4, items 1 to 5	The day on which this Act receives the Royal Assent.	23 June 2004
10. Schedule 4, items 6 to 8	The day after this Act receives the Royal Assent.	24 June 2004
11. Schedule 4, item 9	The day on which this Act receives the Royal Assent.	23 June 2004
12. Schedule 5	The day on which this Act receives the Royal Assent.	23 June 2004
13. Schedule 6, item 1	Immediately after the commencement of the <i>Medical Indemnity Amendment Act 2004</i> .	24 March 2004
13A. Schedule 6, item 1A	Immediately after the commencement of the <i>Medical Indemnity Act 2002</i> .	1 January 2003
14. Schedule 6, item 2	Immediately after the commencement of Schedule 2 to the <i>Medical Indemnity Amendment Act 2003</i> .	5 December 2003
15. Schedule 6, items 3 to 6	The day on which this Act receives the Royal Assent.	23 June 2004
16. Schedule 6, items 7 to 9	Immediately after the commencement of the <i>Medical Indemnity (Prudential Supervision and Product Standards) Act 2003</i> .	1 July 2003
17. Schedule 6, items 10 to 13	The day on which this Act receives the Royal Assent.	23 June 2004
18. Schedule 6, item 14	Immediately after the commencement of paragraph 4(1)(aa) of the <i>Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003</i> .	1 July 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Run-off cover indemnity scheme

Medical Indemnity Act 2002

1 After paragraph 3(2)(aa)

Insert:

- (ab) meeting the amounts payable in relation to certain claims (notified on or after 1 July 2004) against medical practitioners who are no longer in private medical practice; and

2 Subsection 4(1)

Insert:

affected medical practitioner has the meaning given by section 34ZQ.

3 Subsection 4(1)

Insert:

eligible run-off claim has the meaning given by section 34ZB.

4 Subsection 4(1) (at the end of the definition of *indemnity scheme payment*)

Add:

; or (d) a run-off cover indemnity.

5 Subsection 4(1) (after paragraph (aa) of the definition of *late payment penalty*)

Insert:

- (ab) in relation to a debt owed under section 34ZJ—means a penalty payable under section 34ZM; and

6 Subsection 4(1) (at the end of the definition of *medical practitioner*)

Add:

Note: Subsection (6) gives this definition an extended meaning in Division 2B or 4 of Part 2.

7 Subsection 4(1)

Insert:

Run-off Cover Claims and Administration Protocol means the protocol (as amended and in force from time to time) determined by the Minister under section 34ZN.

8 Subsection 4(1)

Insert:

run-off cover credit has the meaning given by subsection 34ZS(2).

9 Subsection 4(1)

Insert:

run-off cover indemnity means a run-off cover indemnity paid or payable under Division 2B of Part 2.

Note: Amounts payable under the Run-off Cover Claims and Administration Protocol are not covered by this definition.

10 Subsection 4(1)

Insert:

total run-off cover credit has the meaning given by section 34ZS.

11 At the end of section 4

Add:

Medical practitioners

- (6) A reference in Division 2B or 4 of Part 2 to a medical practitioner includes a reference to a person who has been a medical practitioner.

12 After subsection 7(2)

Insert:

- (2A) For the purposes of subparagraph 34ZB(1)(e)(ii), a person has *incident-occurring based cover* if, under an arrangement between an MDO and the person, the MDO:

- (a) would be able to indemnify the person in relation to an incident if the person were to make a proper claim in relation to the incident; and
- (b) would be able, in the ordinary course of its business, to indemnify the person in relation to the incident even if the person had ceased to be a member of the MDO when the claim was made.

13 After paragraph 19(c)

Insert:

- (ca) a run-off cover indemnity is payable to the MDO or insurer in relation to the same claim; or

14 Section 34D

After “high cost claim indemnity”, insert “, or a run-off cover indemnity,”.

Note: The heading to section 34D is altered by inserting “**and run-off cover indemnity scheme**” after “**indemnity scheme**”.

15 After subsection 34E(1)

Insert:

Certain eligible run-off claims may relate to treatment of public patients in public hospitals

- (1A) Paragraph (1)(d) does not apply to an eligible run-off claim if:
 - (a) the claim relates to an incident that occurred, or a series of incidents that occurred, before 1 July 2003; and
 - (b) at the time the incident, or one or more of the incidents, occurred, there was an arrangement with an MDO under which the MDO would have been able to indemnify the practitioner in relation to the incident or series of incidents if the claim had been made while the arrangement had effect; and
 - (c) at the time the claim is made, a contract of insurance with a medical indemnity insurer provides medical indemnity cover for the practitioner; and
 - (d) the medical indemnity cover is provided under an arrangement of a kind referred to in paragraph 26B(1)(f) of

Schedule 1 Run-off cover indemnity scheme

the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*; and

- (e) the medical indemnity cover satisfies all of the requirements of subsection 26A(4) of that Act.

16 After paragraph 34S(2)(b)

Insert:

- (ba) a payment of run-off cover indemnity;

17 After paragraph 34T(5)(b)

Insert:

- (ba) a payment of run-off cover indemnity;

18 After Division 2A of Part 2

Insert:

Division 2B—Run-off cover indemnity scheme

Subdivision A—Introduction

34ZA Guide to the run-off cover indemnity provisions

- (1) This Division provides that a run-off cover indemnity may be paid in relation to a liability of a medical practitioner if the liability relates to an eligible run-off claim.
- (2) This Division also provides for the determination of a Run-off Cover Claims and Administration Protocol that can deal with other matters relating to eligible run-off claims.
- (3) The following table tells you where to find the provisions dealing with various issues:

Where to find the provisions on various issues		
Item	Issue	Provisions
1	what is an eligible run-off claim?	section 34ZB
2	when is a run-off cover indemnity payable in respect of a liability?	sections 34ZC to 34ZG
3	how much run-off cover indemnity is payable?	section 34ZH

Where to find the provisions on various issues		
Item	Issue	Provisions
4	what if a payment is received that would have reduced the amount of an insurance payment?	sections 34ZI to 34ZM
5	the Run-off Cover Claims and Administration Protocol, and what it can deal with	sections 34ZN and 34ZO
6	what is the effect of terminating the run-off cover indemnity scheme?	sections 34ZP to 34ZT
7	notifying the HIC if a person ceases to be covered by the run-off cover indemnity scheme	section 34ZU
8	invoices for medical indemnity cover	section 34ZV
9	reports on the run-off cover indemnity scheme	section 34ZW
10	modifications and exclusions by regulations	section 34ZX
11	how does a person apply for a run-off cover indemnity?	section 36
12	when will a run-off cover indemnity be paid?	section 37
13	what information has to be provided to the HIC about run-off cover indemnity matters?	section 38
14	what records must be kept in relation to run-off cover indemnity matters?	section 39
15	how are overpayments of a run-off cover indemnity recovered?	sections 41 and 42

Note: Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* requires medical indemnity insurers to provide “run-off cover” for medical practitioners in certain circumstances covered by the run-off cover indemnity scheme.

34ZB Eligible run-off claims

- (1) A claim is an *eligible run-off claim* if:
- (a) it is a claim made against a person who, at the time the claim is made, is a person to whom subsection (2) applies; and

- (b) it relates to an incident, or a series of related incidents, that occurred in the course of, or in connection with, the person's practice as a medical practitioner; and
- (c) at the time of the incident, or one or more of the incidents:
 - (i) a contract of insurance provided the person with medical indemnity cover; or
 - (ii) an arrangement with an MDO provided medical indemnity cover (within the meaning of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*) for the person;and the cover would have indemnified the person in relation to the claim if the claim had been made at that time; and
- (d) if a termination date for the run-off cover indemnity scheme has been set (see subsection (3)), the person:
 - (i) was, immediately before the termination date, a person to whom subsection 34ZB(2) applies; and
 - (ii) continued to be such a person for the whole of the period between the termination date and the time when an MDO or insurer was first notified of the claim, or of facts that might give rise to the claim; and
- (e) the person has medical indemnity cover that indemnifies the person in relation to the claim, being cover that:
 - (i) is required to be provided under Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*; or
 - (ii) is incident-occurring based cover provided by an MDO.

Note: For the meaning of incident-occurring based cover, see subsections 7(2A) and (3).

- (2) This subsection applies to a person who is one or more of the following:
 - (a) a person aged 65 years or over who has retired permanently from private medical practice;
 - (b) a person who has not engaged in private medical practice at any time during the preceding period of 3 years;
 - (c) a person who has ceased (temporarily or permanently) private medical practice because of maternity;
 - (d) a person who has ceased private medical practice because of a permanent disability;

- (e) a person who is the legal personal representative of a deceased person who had been a medical practitioner;
- (f) a person who is included in a class of persons that the regulations specify as persons to whom this subsection applies.

However, a person is not a person to whom this subsection applies if the person is included in a class of persons that the regulations specify as a class of persons to whom this subsection does not apply.

- (3) The regulations may set a termination date for the run-off cover indemnity scheme.
- (4) The termination date cannot be a date occurring before the end of the period of 12 months after the day on which the regulations are notified in the *Gazette*.
- (5) In this section:

private medical practice means practice as a medical practitioner, other than:

- (a) practice consisting of treatment of public patients in a public hospital; and
- (b) practice for which:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) a local governing body; or
 - (iii) an authority established under a law of the Commonwealth, a State or a Territory;indemnifies medical practitioners from liability relating to compensation claims (within the meaning of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*); and
- (c) practice conducted wholly outside both Australia and the external Territories; and
- (d) practice of a kind specified in the regulations.

Subdivision B—Run-off cover indemnities

34ZC Circumstances in which run-off cover indemnities are payable

A run-off cover indemnity is payable to an MDO or a medical indemnity insurer under this section if:

- (a) an eligible run-off claim is made that relates to an incident, or a series of related incidents, that occurred in the course of, or in connection with, a person's practice as a medical practitioner; and
- (b) in the case of an MDO—the MDO makes, or is able to make, a payment in relation to the claim:
 - (i) under an arrangement, with the MDO or someone else, under which the MDO is able to indemnify the person in relation to claims made by or against the person while he or she is a person to whom subsection 34ZB(2) applies; and
 - (ii) in the ordinary course of the MDO's business; and
- (c) in the case of a medical indemnity insurer—the insurer makes, or is liable to make, a payment in relation to the claim under a contract of insurance under which the insurer is liable to indemnify the person in relation to claims made by or against the person while he or she is a person to whom subsection 34ZB(2) applies; and
- (d) the MDO or medical indemnity insurer was first notified of the claim, or of facts that might give rise to the claim on or after 1 July 2004; and
- (e) the MDO or medical indemnity insurer applies to the HIC for the run-off cover indemnity in accordance with section 36.

34ZD MDOs and medical indemnity insurers that are externally-administered bodies corporate

- (1) If an MDO is an externally-administered body corporate:
 - (a) the reference in paragraph 34ZC(b) to a payment that the MDO is able to make under an arrangement to indemnify a person is a reference to an amount that:
 - (i) the MDO is liable to make under the arrangement to indemnify the person; and
 - (ii) is a provable amount; and

- (b) the reference in that paragraph to a payment that the MDO is able to make in the ordinary course of the MDO's business is a reference to an amount that the MDO:
 - (i) is liable to pay; and
 - (ii) would be able to pay in the ordinary course of the MDO's business if it were not an externally-administered body corporate.
- (2) If a medical indemnity insurer is an externally-administered body corporate, the reference in paragraph 34ZC(c) to a payment that the medical indemnity insurer makes or is liable to make under a contract of insurance to indemnify a person is a reference to an amount that:
 - (a) the medical indemnity insurer pays or is liable to pay under the contract to indemnify the person; and
 - (b) is a provable amount.
- (3) If a run-off cover indemnity is paid to an MDO or medical indemnity insurer that is an externally-administered body corporate, the indemnity is, to the extent to which it is attributable to an amount that the MDO or medical indemnity insurer is liable to pay to a person, paid on trust for the benefit of that person.

34ZE Aggregating amounts paid or payable by an MDO and medical indemnity insurer

- (1) This section applies if:
 - (a) an MDO pays, or is liable to pay, an amount in relation to a claim; and
 - (b) a medical indemnity insurer also pays, or is also liable to pay, an amount in relation to the same claim (the *insurer amount*); and
 - (c) but for this section, a run-off cover indemnity in respect of the insurer amount would be payable to the insurer under section 34ZC; and
 - (d) the medical indemnity insurer elects in writing to have this section apply to the insurer amount.
- (2) For the purposes of this Division (other than this section):
 - (a) the MDO is taken:

- (i) to have paid, or to be liable to pay, the insurer amount in relation to the claim; and
 - (ii) to satisfy paragraphs 34ZC(a) to (e) in relation to the insurer amount; and
- (b) a run-off cover indemnity is not payable to the medical indemnity insurer in respect of the insurer amount.

34ZF Clarification of circumstances in which run-off cover indemnities are payable

A run-off cover indemnity is payable to an MDO or a medical indemnity insurer under section 34ZC in relation to a payment the MDO makes or is able to make, or the medical indemnity insurer makes or is liable to make, in relation to a claim even if:

- (a) the MDO or medical indemnity insurer:
 - (i) has insured itself in relation to the payment; or
 - (ii) has already in fact been paid an amount by an insurer in relation to the payment; or
- (b) the incident to which the claim relates occurred outside Australia and the external Territories.

34ZG Exceptions

A run-off cover indemnity is not payable to an MDO or a medical indemnity insurer under section 34ZC in relation to a payment the MDO makes or is able to make, or the medical indemnity insurer makes or is liable to make, in relation to a claim if:

- (a) the payment is an insurer-to-insurer payment; or
- (b) the payment is a payment prescribed by the regulations for the purposes of this section.

34ZH Amount of run-off cover indemnities

- (1) The amount of a run-off cover indemnity is the amount of the payment referred to in paragraph 34ZC(b) or (c) (as the case requires).
- (2) However, if a high cost claim indemnity is payable in respect of that payment, the amount of the run-off cover indemnity is reduced by the amount of the high cost claim indemnity.

Subdivision C—Payments that would have reduced the amount of run-off cover indemnity

34ZI Amounts paid before run-off cover indemnity

(1) If:

- (a) an amount (the *indemnity payment*) has been paid, in relation to a liability of a medical practitioner, under:
 - (i) an arrangement with an MDO for indemnifying the practitioner in relation to claims that may be made against the practitioner in relation to incidents that occur or occurred in the course of, or in connection with, the practice of the practitioner's profession; or
 - (ii) a contract of insurance with a medical indemnity insurer that provides medical indemnity cover for the practitioner; and
- (b) another amount (not being an amount referred to in subsection (2)) has been paid to the practitioner, MDO, medical indemnity insurer or another person in relation to the incident or incidents to which the liability relates; and
- (c) the other amount was not taken into account in working out the amount of the indemnity payment; and
- (d) if the other amount had been taken into account in working out the amount of the indemnity payment, a lesser amount would have been paid under the arrangement with the MDO, or under the contract of insurance, in relation to the liability;

then, for the purpose of calculating the amount of run-off cover indemnity (if any) that is payable in relation to a liability of the practitioner, the lesser amount is taken to have been the amount of the indemnity payment.

(2) This section does not apply to any of the following:

- (a) an amount paid to a medical indemnity insurer by another insurer under a right of contribution;
- (b) a payment of high cost claim indemnity;
- (c) a payment of exceptional claims indemnity;
- (d) an amount of a kind specified in the regulations for the purposes of this paragraph.

34ZJ Amounts paid after payment of run-off cover indemnity

- (1) This section applies if:
 - (a) an amount (the *actual run-off cover amount*) of run-off cover indemnity has been paid in relation to an eligible run-off claim made against a medical practitioner; and
 - (b) another amount (not being an amount referred to in subsection (5)) is paid to the practitioner, an MDO, a medical indemnity insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and
 - (c) the other amount was not taken into account in calculating the actual run-off cover amount; and
 - (d) if the other amount had been so taken into account, a lesser amount (the *reduced run-off cover amount*, which could be zero) of run-off cover indemnity would have been paid in relation to the liability.
- (2) The *amount overpaid* is the amount by which the actual run-off cover amount exceeds the reduced run-off cover amount.
- (3) If the HIC has given an MDO or a medical indemnity insurer a notice under subsection 34ZL(1) in relation to the amount overpaid, the amount is a debt owed to the Commonwealth by the MDO or insurer.
- (4) The amount overpaid may be recovered:
 - (a) by action by the HIC against the MDO or insurer in a court of competent jurisdiction; or
 - (b) under section 42.
- (5) This section does not apply to any of the following:
 - (a) an amount paid to an insurer by another insurer under a right of contribution;
 - (b) a payment of high cost claim indemnity;
 - (c) a payment of exceptional claims indemnity;
 - (d) an amount of a kind specified in the regulations for the purposes of this paragraph.

34ZK Obligation to notify the HIC that amount has been paid

- (1) If:
- (a) a run-off cover indemnity has been paid to an MDO or medical indemnity insurer in relation to a liability that relates to a claim made against a medical practitioner; and
 - (b) the MDO or medical indemnity insurer becomes aware that another amount has been paid to the practitioner, MDO, medical indemnity insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and
 - (c) because of the payment of the other amount, there is an amount overpaid as described in subsection 34ZJ(2);
- the MDO or medical indemnity insurer must notify the HIC that the other amount has been paid.

Note: Failure to notify is an offence (see section 46).

- (2) The notification must:
- (a) be in writing; and
 - (b) be given to the HIC within 28 days after the applicant becomes aware that the other amount has been paid.

34ZL The HIC to notify of amount of debt due

- (1) If:
- (a) a run-off cover indemnity has been paid to an MDO or medical indemnity insurer in relation to a liability that relates to a claim made against a medical practitioner; and
 - (b) another amount is paid to the practitioner, MDO, medical indemnity insurer or another person in relation to the incident or incidents to which the claim relates, or in relation to one or more other incidents; and
 - (c) because of the payment of the other amount, there is an amount overpaid as described in subsection 34ZJ(2);
- the HIC may give the MDO or medical indemnity insurer a written notice that specifies:
- (d) the amount overpaid, and that it is a debt owed to the Commonwealth under subsection 34ZJ(3); and
 - (e) the day before which the amount must be paid to the Commonwealth; and

(f) the effect of section 34ZM.

The day specified under paragraph (e) must be at least 28 days after the day on which the notice is given.

- (2) The debt becomes due and payable on the day specified under paragraph (1)(e).

34ZM Penalty imposed if an amount is repaid late

- (1) If:

- (a) a person owes a debt to the Commonwealth under subsection 34ZJ(3); and
- (b) the debt remains wholly or partly unpaid after it becomes due and payable;

the person is liable to pay a late payment penalty under this section.

- (2) The late payment penalty is calculated:

- (a) at the rate specified in the regulations for the purposes of this paragraph; and
- (b) on the unpaid amount; and
- (c) for the period:
 - (i) starting when the amount becomes due and payable; and
 - (ii) ending when the amount, and the penalty payable under this section in relation to the amount, have been paid in full.

- (3) The HIC may remit the whole or a part of an amount of late payment penalty if the HIC considers that there are good reasons for doing so.

- (4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the HIC not to remit, or to remit only part of, an amount of late payment penalty.

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

Subdivision D—The Run-off Cover Claims and Administration Protocol

34ZN Minister may determine a protocol dealing with various matters

- (1) The Minister may, by writing, determine a protocol (the *Run-off Cover Claims and Administration Protocol*) for:
 - (a) making payments to MDOs and medical indemnity insurers of claim handling fees in respect of eligible run-off claims; and
 - (b) making payments on account of legal, administrative or other costs incurred by MDOs and medical indemnity insurers (whether on their own behalf or otherwise) in respect of eligible run-off claims; and
 - (c) making payments on account of legal, administrative or other costs incurred by medical indemnity insurers (whether on their own behalf or otherwise) in respect of complying with Division 2A of Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.
 - (2) Without limiting subsection (1), the Run-off Cover Claims and Administration Protocol may:
 - (a) make provision for:
 - (i) the conditions that must be satisfied for an amount to be payable to an MDO or medical indemnity insurer; and
 - (ii) the amount that is payable; and
 - (iii) the conditions that must be complied with by an MDO or medical indemnity insurer to which an amount is paid; and
 - (iv) other matters related to the making of payments, and the recovery of overpayments; and
 - (b) provide that this Division applies with specified modifications in relation to a liability that relates to costs in relation to which an amount has been paid under the Protocol.
 - (3) Paragraph (2)(b) does not allow the Run-off Cover Claims and Administration Protocol to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.
-

- (4) The Run-off Cover Claims and Administration Protocol may also provide for other matters of a kind specified in regulations made for the purposes of this subsection.
- (5) The instrument determining the Run-off Cover Claims and Administration Protocol, and any instruments amending or revoking the Protocol, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

34ZO The HIC may request information

- (1) If the HIC believes that a person is capable of giving information that is relevant to determining:
 - (a) whether an MDO or medical indemnity insurer is entitled to a payment under the Run-off Cover Claims and Administration Protocol; or
 - (b) the amount that is payable to an MDO or medical indemnity insurer under the Run-off Cover Claims and Administration Protocol;

the HIC may request the person to give the HIC the information.

Note: Failure to comply with the request is an offence (see section 45).

- (2) Without limiting subsection (1), any of the following persons may be requested to give information under that subsection:
 - (a) an MDO;
 - (b) an insurer;
 - (c) a member or former member of an MDO;
 - (d) a person who practises, or used to practise, a medical profession;
 - (e) a person who is acting, or has acted, on behalf of a person covered by paragraph (d);
 - (f) a legal personal representative of a person covered by paragraph (c), (d) or (e).
- (3) Without limiting subsection (1), if the information sought by the HIC is information relating to a matter in relation to which a person is required by section 39 to keep a record, the HIC may request the person to give the information by giving the HIC the record, or a copy of the record.
- (4) The request:

- (a) must be made in writing; and
- (b) must state what information must be given to the HIC; and
- (c) may require the information to be verified by statutory declaration; and
- (d) must specify a day on or before which the information must be given; and
- (e) must contain a statement to the effect that a failure to comply with the request is an offence.

The day specified under paragraph (d) must be at least 28 days after the day on which the request was made.

Subdivision E—Effect of terminating the run-off cover indemnity scheme

34ZP Commonwealth’s obligations on termination of the run-off cover indemnity scheme

- (1) If a termination date for the run-off cover indemnity scheme has been set (see subsection 34ZB(3)), the Commonwealth is liable to pay an amount in accordance with this Subdivision in relation to each affected medical practitioner.
- (2) However, this section does not apply if:
 - (a) the Minister determines in writing that alternative arrangements for providing medical cover for medical practitioners in relation to eligible run-off claims will apply on and from the termination date; and
 - (b) the determination is made on or before the termination date.
- (3) A determination under paragraph (2)(a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

34ZQ Affected medical practitioners

A medical practitioner is an *affected medical practitioner* if:

- (a) a termination date for the run-off cover indemnity scheme has been set (see subsection 34ZB(3)); and
- (b) prior to the termination date, one or more premiums have been paid for medical indemnity cover, for the medical

practitioner, in relation to one or more periods totalling at least 12 months; and

- (c) immediately before the termination date, the medical practitioner was not a person to whom subsection 34ZB(2) applies.

34ZR Payments in relation to affected medical practitioners

- (1) A payment that the Commonwealth is liable to make in relation to an affected medical practitioner:
- (a) must be paid to a person who:
 - (i) is nominated by the practitioner; and
 - (ii) has, on or after the termination date, provided medical indemnity cover for the practitioner under a contract of insurance; and
 - (b) must be paid as all or part of the premium payable for the provision of that cover; and
 - (c) must be paid within 12 months after the termination date; and
 - (d) must not exceed the practitioner's total run-off cover credit.
- (2) Amounts payable by the Commonwealth under this Subdivision are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

34ZS Total run-off cover credits

- (1) This is how to work out an affected practitioner's total run-off cover credit:

Method statement

Step 1. For the first financial year after 30 June 2004 in which a medical indemnity insurer provided medical indemnity cover for the practitioner under a contract of insurance, multiply:

- (a) the practitioner's run-off cover credit for the financial year; by
- (b) the interest rate adjustment for the financial year (see subsection (4)).

- Step 2.* For each subsequent financial year (if any) until the financial year in which the termination date occurs, multiply:
- (a) the sum of the practitioner's run-off cover credit for the financial year and the amount worked out, under Step 1 or this Step, for the immediately preceding financial year; by
 - (b) the interest rate adjustment for the financial year (see subsection (4)).

Step 3. Add together:

- (a) the practitioner's run-off cover credit for the financial year in which the termination date occurs; and
- (b) the last of the amounts worked out under Step 1 or Step 2.

The result is the practitioner's ***total run-off cover credit***.

- (2) The practitioner's ***run-off cover credit*** for a financial year is the sum of all run-off cover support payments paid or payable to the extent that they are attributable, under subsection (3), to the practitioner in relation to the financial year.
- (3) Run-off cover support payments are ***attributable*** to the practitioner in relation to the financial year to the extent that they relate to premiums paid during the financial year to a medical indemnity insurer for medical indemnity cover provided for the practitioner by one or more contracts of insurance with the insurer.
- (4) The ***interest rate adjustment*** for a financial year is the number worked out as follows:

1 + Applicable interest rate

where:

applicable interest rate is:

- (a) the rate of interest, for the financial year, specified in the regulations for the purposes of this paragraph; or
- (b) if no rate is so specified—the short-term bond rate for the June quarter immediately preceding the financial year.

June quarter means a period of 3 months commencing on 1 April.

short-term bond rate, for a June quarter, means:

- (a) if:
 - (i) the Reserve Bank of Australia has published, in respect of one or more days in the last 2 weeks of the quarter, an indicative secondary market mid-rate yield for Australian Government fixed coupon Treasury bonds; and
 - (ii) the maturity date of the bonds is the third anniversary of the 15th day of the quarter or (if there are no bonds with that maturity date) the closer or closest date to that date within 2 years after it;the yield referred to in subparagraph (i) in respect of the day referred to in that subparagraph, or the average of the yields referred to in subparagraph (i) in respect of the days referred to in that subparagraph, as the case requires; or
- (b) in any other case—the rate of interest notified in the *Gazette*, by the Minister administering the *Loan (Income Equalization Deposits) Act 1976*, as the rate of interest in relation to the quarter for the purposes of this definition.

34ZT Medical indemnity insurers must provide information attributing run-off cover payments

- (1) A medical indemnity insurer must, in relation to each run-off cover payment that the medical indemnity insurer is liable to make to the HIC, notify the HIC of:
 - (a) each medical practitioner to whom the payment is attributable; and
 - (b) for each such practitioner, each financial year in relation to which the payment is attributable; and
 - (c) for each such practitioner and financial year, the extent to which the payment is attributable to the practitioner in relation to the financial year.

Note: Failure to notify is an offence (see section 46).

- (2) The notification must:
 - (a) be made in writing; and
 - (b) must be given to the HIC on or before the payment day under section 61 for the run-off cover payment.

Subdivision F—Miscellaneous

34ZU HIC must be notified of a person ceasing to be covered by the run-off cover indemnity scheme

- (1) If:
 - (a) a person ceases to be a person to whom subsection 34ZB(2) applies; and
 - (b) immediately before the cessation, an MDO or medical indemnity insurer was providing medical indemnity cover (within the meaning of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*) to the person; the MDO or medical indemnity insurer must notify the HIC of the cessation.

Note: Failure to notify is an offence (see section 46).

- (2) The notification must:
 - (a) be in writing; and
 - (b) set out details of the cessation; and
 - (c) be given to the HIC within 28 days after the day on which the person becomes aware of the cessation.

34ZV Invoices for medical indemnity cover

- If:
 - (a) a medical indemnity insurer gives to a person an invoice stating the premium that is or will be payable for medical indemnity cover provided by a contract of insurance with the medical indemnity insurer; and
 - (b) payment of the premium would increase the medical indemnity insurer's liability to pay run-off cover support payment;the medical indemnity insurer must ensure that the invoice states:
 - (c) the total premium payable for the medical indemnity cover; and

- (d) the proportion of that premium that represents the amount of run-off cover support payment that would be payable by the medical indemnity insurer in relation to that premium; and
- (e) the amount of the premium constituted by that proportion.

Note: Failure to comply with this section is an offence (see section 47A).

34ZW Reports on the run-off cover indemnity scheme

- (1) The Minister must, in relation to each financial year starting on or after 1 July 2004:
 - (a) cause a report to be prepared of the operation of this Division within 6 months after the end of the financial year; and
 - (b) cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
- (2) Without limiting the matters that may be included in a report under subsection (1) in relation to a financial year, the report must include:
 - (a) a statement of the number of persons who were, at the end of the financial year, persons to whom subsection 34ZB(2) applies; and
 - (b) a statement of the total of all the amounts of run-off cover indemnity, and amounts payable under the Run-off Cover Claims and Administration Protocol, paid by the Commonwealth during the financial year; and
 - (c) a statement of the total of all the amounts of run-off cover support payments paid to the Commonwealth during the financial year; and
 - (d) estimates by the Actuary of the Commonwealth's liabilities under this Division in future financial years.
- (3) If a termination date for the run-off cover indemnity scheme has been set (see subsection 34ZB(3)), this section does not apply in relation to a financial year starting after the end of the financial year in which the termination date occurs.

34ZX Modifications and exclusions

- (1) The regulations may provide that this Division applies with specified modifications in relation to:
-

- (a) a specified class of claims; or
 - (b) a specified class of arrangements with MDOs or contracts of insurance; or
 - (c) a specified class of situations in which a liability is, whether wholly or partly, covered by more than one contract of insurance.
- (2) The regulations may provide that this Division does not apply, or applies with specified modifications, in relation to a specified class of liabilities or payments.
- (3) Without limiting subsection (2), the regulations may specify modifications regarding how this Division applies in relation to a liability under an order of a court requiring an amount to be paid pending the outcome of an appeal, including modifications:
- (a) to deal with what happens if, as a result of the appeal or another appeal, the amount paid later becomes wholly or partly repayable; and
 - (b) to deal with what happens if the amount paid is later applied towards a liability that is confirmed as a result of the appeal or another appeal.
- (4) This section does not allow the regulations to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.

19 Application of sections 34ZB, 34ZO and 34ZU

If item 18 of this Schedule commences before this Act receives the Royal Assent:

- (a) subparagraph 34ZB(1)(e)(i) of the *Medical Indemnity Act 2002* as amended by this Act applies as if Schedule 3 to this Act had commenced at the same time as item 18 of this Schedule; and
- (b) the HIC must not make a request, under section 34ZO of that Act as so amended, before this Act receives the Royal Assent; and
- (c) paragraph 34ZU(2)(c) of that Act as so amended applies as if a person is not in any event required to give notice, under section 34ZU of that Act as so amended, earlier than 28 days after this Act receives the Royal Assent.

20 Subsection 35(1)

Omit “and the exceptional claims indemnity scheme”, substitute “, the exceptional claims indemnity scheme and the run-off cover indemnity scheme”.

21 Subsection 36(1)

Omit “or a high cost claim indemnity”, substitute “, a high cost claim indemnity or a run-off cover indemnity”.

Note: The heading to section 36 is altered by omitting “**or high cost claim indemnity**” and substituting “, **high cost claim indemnity or run-off cover indemnity**”.

22 Subsection 37(1)

Omit “or a high cost claim indemnity”, substitute “, a high cost claim indemnity or a run-off cover indemnity”.

Note: The heading to section 37 is altered by omitting “**or high cost claim indemnity**” and substituting “, **high cost claim indemnity or run-off cover indemnity**”.

23 Paragraphs 37(2)(a) and (d)

Omit “or a high cost claim indemnity”, substitute “, a high cost claim indemnity or a run-off cover indemnity”.

24 Subsection 37(2)

Omit “or the high cost claim indemnity”, substitute “, the high cost claim indemnity or the run-off cover indemnity”.

25 Subsection 39(1)

After “the Exceptional Claims Protocol”, insert “or the Run-off Cover Claims and Administration Protocol”.

26 Paragraph 39(1)(c)

Omit “or 34T”, substitute “, 34T or 34ZJ”.

27 At the end of paragraph 39(2)(b)

Add:

- ; (iv) if the record is required to be kept because the person applied for a run-off cover indemnity—the day on which Division 2B commenced;
- (v) if the record is required to be kept because the person applied for a payment under the Run-off Cover Claims

and Administration Protocol—the day on which the Protocol took effect.

28 Paragraphs 41(3)(a) and (4)(b)

Omit “or a high cost claim indemnity”, substitute “, a high cost claim indemnity or a run-off cover indemnity”.

29 Subsection 42(1)

After “34T(3)”, insert “, 34ZJ(3)”.

30 After section 44A

Insert:

44B HIC may notify run-off cover credits

The HIC may notify an affected medical practitioner of:

- (a) the practitioner’s run-off cover credit for a financial year; or
- (b) the amount worked out in relation to the practitioner under Step 2 of the Method Statement in subsection 34ZS(1) for a financial year; or
- (c) the practitioner’s total run-off cover credit.

31 After paragraph 45(1)(ba)

Insert:

- (bb) subsection 34ZO(1); or

32 Subsection 46(1)

Omit “or 34U”, substitute “, 34U, 34ZK, 34ZT or 34ZU”.

33 Subsection 46(3)

Omit “or 34U(1)(b)”, substitute “, 34U(1)(b) or 34ZK(1)(b)”.

34 At the end of Division 5 of Part 2

Add:

47A Failing to include required information in invoices

- (1) This section applies if section 34ZV applies to an invoice that a medical indemnity insurer gives to a person.

- (2) A person commits an offence if:
- (a) the person is a medical indemnity insurer; and
 - (b) the person gives such an invoice to another person; and
 - (c) the invoice does not state the matters required by section 34ZV.

Penalty: 30 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) To avoid doubt, subsection 4B(3) of the *Crimes Act 1914* applies to any offence against this section committed by a body corporate, as if an offence against that provision could be committed by a natural person.
- (5) Subsection (4) does not affect the meaning of any other offence against this Act.

35 After paragraph 48(bb)

Insert:

- (bc) run-off cover indemnities; and
- (bd) amounts payable under the Run-off Cover Claims and Administration Protocol; and

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

36 After paragraph 20(a)

Insert:

- (aa) any right the insurer may have to a run-off cover indemnity under the *Medical Indemnity Act 2002*;

Schedule 2—Run-off cover support payments

Health Insurance Act 1973

1 Subsection 130(25) (paragraph (b) of the definition of *medical indemnity legislation*)

Repeal the paragraph, substitute:

- (b) the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*; and

Health Insurance Commission Act 1973

2 Paragraph 42(2)(b)

Repeal the paragraph, substitute:

- (b) the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*;

Medical Indemnity Act 2002

3 Paragraph 3(4)(b)

Repeal the paragraph, substitute:

- (b) to recover the costs of providing the assistance referred to in paragraph (2)(ab) by requiring payments from medical indemnity insurers.

4 Subsection 4(1) (paragraph (b) of the definition of *contribution year*)

Repeal the paragraph, substitute:

- (b) for a run-off cover support payment—has the same meaning as in the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

5 Subsection 4(1) (definition of *imposition day*)

Repeal the definition, substitute:

imposition day, for a UMP support payment payable by a participating member of a participating MDO, has the same

meaning as in the *Medical Indemnity (UMP Support Payment) Act 2002*.

6 Subsection 4(1) (paragraph (b) of the definition of *medical indemnity payment*)

Omit “an enhanced UMP indemnity contribution”, substitute “a run-off cover support payment”.

7 Subsection 4(1) (paragraph (b) of the definition of *medical indemnity payment legislation*)

Repeal the paragraph, substitute:

(b) the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

8 Division 2 of Part 3

Repeal the Division, substitute:

Division 2—Run-off cover support payment

Subdivision A—Introduction

57 Guide to the run-off cover support payment provisions

- (1) Division 2B of Part 2 provides for the payment of run-off cover indemnities.
- (2) The *Medical Indemnity (Run-off Cover Support Payment) Act 2004* (the *Payment Act*):
 - (a) imposes payments on medical indemnity insurers for contribution years; and
 - (b) specifies the amount of those payments (by reference to an insurer’s premium income for the contribution year).This Division contains further provisions relating to the payment.
- (3) The following table tells you where to find the provisions dealing with various issues:

Where to find the provisions on various issues		
Item	Issue	Provisions
1	which years are contribution years?	section 5 of the Payment Act
2	who must pay the run-off cover support payment?	section 58 of this Act
3	who is exempt from the run-off cover support payment?	section 59 of this Act
4	what is the amount of the run-off cover support payment?	section 6 of the Payment Act
5	what is the time for paying the run-off cover support payment?	sections 61 and 62 of this Act
6	when is late payment penalty payable?	section 65 of this Act
7	what method should be used to pay the run-off cover support payment?	section 66 of this Act
8	what happens if an amount of run-off cover support payment is overpaid?	section 67 of this Act
9	how are run-off cover support payments and late payment penalties recovered?	sections 68 to 70 of this Act
10	what information has to be provided to the HIC about run-off cover support payment matters?	sections 71 and 72 of this Act

Subdivision B—Who pays run-off cover support payment

58 Who is liable to pay the run-off cover support payment

A person is liable to pay a run-off cover support payment for a financial year if:

- (a) the person is a medical indemnity insurer; and
- (b) the financial year is a contribution year; and
- (c) the person is not exempt from the contribution under section 59.

59 Exemptions

- (1) The regulations may provide that a person is exempt from run-off cover support payment in the circumstances specified in the regulations.
- (2) Regulations made for the purposes of subsection (1) may provide that a person is exempt from run-off cover support payment either generally or for a particular contribution year.

9 Subsection 60(1)

Omit “enhanced UMP indemnity contributions”, substitute “run-off cover support payments”.

10 Section 61 (table item 2)

Repeal the item, substitute:

- | | | |
|---|-------------------------------|---|
| 2 | run-off cover support payment | (a) 30 June in the contribution year; or
(b) such other day as is specified in the regulations as the payment day for the contribution year either generally for all people, for the class of people that includes the person or for the person, as the case may be. |
|---|-------------------------------|---|

11 Subsection 62(1)

Omit “medical indemnity payment”, substitute “UMP support payment”.

Note: The heading to section 62 is altered by omitting “**medical indemnity payment**” and substituting “**UMP support payment**”.

12 Subparagraphs 62(3)(b)(i) and (ii)

Omit “that kind of medical indemnity payment”, substitute “a UMP support payment”.

13 Subsection 62(4)

Repeal the subsection, substitute:

- (4) If the HIC approves the application, the payment that the person is liable to pay becomes due and payable on:
 - (a) 1 November in the financial year immediately following the last contribution year; or

- (b) such later day as is specified in the regulations either generally for all people or for the class of people that includes the person, as the case may be.

14 Subsections 62(7) and (8)

Repeal the subsections, substitute:

- (7) If, before the deferred payment day worked out under subsection (4), either:
 - (a) the person dies; or
 - (b) the person becomes exempt because of turning a particular age;the payment becomes due and payable immediately after the person dies or turns that age.

15 Saving provision

The repeal and substitution of subsection 62(7) of the *Medical Indemnity Act 2002* by this Act does not affect when a UMP support payment, to which that subsection applied before that repeal and substitution, becomes due and payable.

National Health Act 1953

16 Subsection 135A(24) (paragraph (b) of the definition of *medical indemnity legislation*)

Repeal the paragraph, substitute:

- (b) the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*; and

Schedule 3—Provision of run-off cover and other medical indemnity cover

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

1 Subsection 4(1)

Insert:

MDO has the same meaning as in the *Medical Indemnity Act 2002*.

2 Subsection 4(1)

Insert:

medical indemnity insurer has the same meaning as in the *Medical Indemnity Act 2002*.

3 After section 7

Insert:

7A Reasonableness of premiums

In deciding whether the premium payable by an insured under a contract of insurance for particular cover is reasonable, regard is to be had to:

- (a) the nature of the risks being assumed by the insurer; and
- (b) the claims handling expenses, and other administrative expenses, the insurer has incurred and can reasonably be expected to incur; and
- (c) the expenses the insurer can reasonably be expected to incur in obtaining appropriate reinsurance; and
- (d) the expenses the insurer can reasonably be expected to incur in capital raising and prudential compliance; and
- (e) the amount that represents a reasonable profit margin for the insurer; and
- (f) the amount of any relevant taxes or statutory charges payable by the insurer; and

- (g) the information provided, or not provided, to the insurer by the client in relation to matters relevant to assessing the risk being assumed by the insurer; and
- (h) the amount that represents provisioning for future liabilities for medical indemnity cover that may be required to be offered under section 23 for a premium that does not reflect the cost of providing that medical indemnity cover; and
- (i) the receipt, or probable receipt, of Commonwealth assistance in relation to provision of the medical indemnity cover; and
- (j) such other matters as are specified in regulations made for the purposes of this paragraph.

4 After subsection 22(1A)

Insert:

- (1B) Strict liability applies to subparagraph (1)(c)(iii) to the extent that it relates to whether the premium referred to in paragraph 24(2)(f) is reasonable.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

5 Paragraph 24(2)(f)

Repeal the paragraph, substitute:

- (f) if the offer is made for the purposes of section 22—the premium payable by the client for the cover being offered is reasonable (see section 7A); and
- (fa) if the offer is made for the purposes of section 23—the premium payable by the client for the cover does not exceed the amount specified in, or worked out in accordance with, the regulations; and

6 Subsection 24(3)

Repeal the subsection, substitute:

Premiums for run-off cover

- (3) Regulations made for the purposes of paragraph (2)(fa) may specify different amounts, or different ways of working out amounts, in relation to different classes of practitioners or different classes of insurance contracts.

- (4) An amount specified in regulations made for the purposes of paragraph (2)(fa) may be a nil amount.

7 Section 25

Repeal the section.

8 Subsection 26(1)

Omit “or ASIC”, substitute “, ASIC or the Minister administering the *Medical Indemnity Act 2002*”.

9 After Division 2 of Part 3

Insert:

Division 2A—Provision of run-off cover to certain medical practitioners

26A Provision of run-off cover to certain medical practitioners

Offence—compulsory provision of medical indemnity cover

- (1) A person (the *insurer*) commits an offence if:
- (a) the insurer is a medical indemnity insurer; and
 - (b) the insurer, or another medical indemnity insurer, has provided medical indemnity cover for a medical practitioner (the *practitioner*) who is an eligible practitioner; and
 - (c) the insurer:
 - (i) is the last medical indemnity insurer to have provided medical indemnity cover for the practitioner in relation to incidents occurring during a medical practice period of the practitioner; or
 - (ii) has taken over that last medical indemnity insurer; and
 - (d) the insurer does not provide medical indemnity cover for the practitioner that satisfies all of the requirements of subsection (4); and
 - (e) in a case where a termination date has been set for the purposes of subsection 34ZB(3) of the *Medical Indemnity Act 2002*—the insurer’s failure to provide that medical indemnity cover occurs before that date.

Penalty: Imprisonment for 12 months.

- (2) The medical indemnity cover referred to in paragraph (1)(b):
 - (a) may be medical indemnity cover provided to the practitioner or to someone else; and
 - (b) need not be medical indemnity cover provided while the practitioner was an eligible practitioner.

When a medical indemnity insurer is taken over

- (3) The reference in paragraph (1)(c) to a medical indemnity insurer having taken over another medical indemnity insurer is a reference to it having assumed some or all of the financial responsibility for claims:
 - (a) that are claims in relation to incidents that occurred in the course of, or in connection with, the practitioner's practice as a medical practitioner; and
 - (b) with which the other medical indemnity insurer would, but for that assumption of responsibility, have been concerned because of the other medical indemnity insurer having provided medical indemnity cover to the person.

Requirements for medical indemnity cover

- (4) Medical indemnity cover meets the requirements of this subsection if:
 - (a) it covers incidents that occurred while the practitioner:
 - (i) had medical indemnity cover provided by the insurer or any other medical indemnity insurer, or (subject to subsection (6)) by an MDO; and
 - (ii) was registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners; and
 - (b) the nature and range of incidents it covers is at least the same as the nature and range of incidents covered by the last medical indemnity cover provided for the practitioner; and
 - (c) the contract of insurance under which the medical indemnity cover is provided satisfies subparagraph 34E(1)(e)(ii) of the *Medical Indemnity Act 2002*; and

Note: Subparagraph 34E(1)(e)(ii) of the *Medical Indemnity Act 2002* requires that the practitioner's contract limit (see section 34B of that Act) equals or exceeds the relevant threshold under section 34F of that Act.

- (d) it is provided on such terms and conditions (if any) determined in writing by the Minister administering the *Medical Indemnity Act 2002*; and
 - (e) it provides cover until the practitioner ceases to be an eligible practitioner; and
 - (f) no premium or other consideration is payable for the medical indemnity cover by the person to whom it is provided.
- (5) A determination under paragraph (4)(d) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) Subparagraph (4)(a)(i) applies to medical indemnity cover provided by an MDO only if that cover would have been claims-made cover within the meaning of subsections 6(2) and (3) of this Act if it had been provided for by a contract of insurance.

Practitioner etc. need not apply for medical indemnity cover

- (7) The obligation under subsection (1) to provide medical indemnity cover applies whether or not the practitioner, or any other person, has applied to the insurer for the medical indemnity cover.

Effect of subsection (1)

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

Note: This means that an insurer does not have to provide medical indemnity cover under subsection (1) once the winding up of the insurer has started.

Definitions

- (9) In this section:

eligible practitioner means a person to whom subsection 34ZB(2) of the *Medical Indemnity Act 2002* applies.

medical practice period, of an eligible practitioner, means:

- (a) in any case—the period during which the practitioner was not an eligible practitioner; and
- (b) if:

- (i) the practitioner was engaged in private medical practice at the time the practitioner was an eligible practitioner; and
 - (ii) all of the medical services provided in the course of that medical practice were services provided free of charge; and
 - (iii) the practitioner is no longer engaged in that medical practice;
- the period during which the practitioner was engaged in that medical practice.

Note: This definition, and the obligation under subsection (1) to provide medical indemnity cover, can apply more than once in relation to the same eligible practitioner.

private medical practice has the same meaning as in section 34ZB of the *Medical Indemnity Act 2002*.

26B Medical practitioners provided with medical indemnity cover by MDOs, but not adequate run-off cover

Offence—MDOs must arrange run-off cover

- (1) A person (the *organisation*) commits an offence if:
 - (a) the organisation is an MDO; and
 - (b) the organisation, or another MDO, has provided medical indemnity cover for a medical practitioner (the *practitioner*) who is an eligible practitioner; and
 - (c) the organisation is not providing medical indemnity cover for the practitioner that complies with subsection 26A(4), or that would comply with that subsection if it were provided by a medical indemnity insurer under a contract of insurance; and
 - (d) there is no medical indemnity insurer that is obliged under subsection 26A(1) to provide medical indemnity cover for the practitioner; and
 - (e) the organisation:
 - (i) is the last MDO to have provided relevant medical indemnity cover for the practitioner in relation to incidents occurring during a medical practice period of the practitioner; or
 - (ii) has taken over that last MDO; and

- (f) the organisation does not have an arrangement with a medical indemnity insurer under which the medical indemnity insurer is obliged to provide medical indemnity cover for the practitioner that satisfies all of the requirements of subsection 26A(4); and
- (g) in a case where a termination date has been set for the purposes of subsection 34ZB(3) of the *Medical Indemnity Act 2002*—the MDO’s failure to have such an arrangement occurs before that date.

Penalty: Imprisonment for 12 months.

- (2) The medical indemnity cover referred to in paragraph (1)(b):
 - (a) may be medical indemnity cover provided to the practitioner or to someone else; and
 - (b) need not be medical indemnity cover provided while the practitioner was an eligible practitioner.

When an MDO is taken over

- (3) The reference in paragraph (1)(e) to an MDO having taken over another MDO is a reference to it having assumed some or all of the financial responsibility for claims:
 - (a) that are claims in relation to incidents that occurred in the course of, or in connection with, the practitioner’s practice as a medical practitioner; and
 - (b) with which the other MDO would, but for that assumption of responsibility, have been concerned because of the other MDO having provided medical indemnity cover to the person.

Definitions

- (4) In this section:

eligible practitioner means a person to whom subsection 34ZB(2) of the *Medical Indemnity Act 2002* applies.

medical practice period, of an eligible practitioner, has the same meaning as in section 26A of this Act.

26C Provision of run-off in accordance with arrangements with MDOs

Offence—compulsory provision of medical indemnity cover

- (1) A person (the *insurer*) commits an offence if:
- (a) the insurer is a medical indemnity insurer; and
 - (b) the insurer is obliged, under an arrangement of the kind referred to in paragraph 26B(1)(f), to provide medical indemnity cover for a medical practitioner; and
 - (c) the insurer does not provide medical indemnity cover for the practitioner that satisfies all of the requirements of subsection 26A(4); and
 - (d) in a case where a termination date has been set for the purposes of subsection 34ZB(3) of the *Medical Indemnity Act 2002*—the insurer’s failure to provide that medical indemnity cover occurs before that date.

Penalty: Imprisonment for 12 months.

- (2) The medical indemnity cover referred to in subsection (1):
- (a) may be medical indemnity cover provided to the practitioner or to someone else; and
 - (b) need not be medical indemnity cover provided while the practitioner was an eligible practitioner.

Practitioner etc. need not apply for medical indemnity cover

- (3) The obligation under subsection (1) to provide medical indemnity cover applies whether or not the practitioner, or any other person, has applied to the insurer for the medical indemnity cover.

Effect of subsection (1)

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

Note: This means that an insurer does not have to provide medical indemnity cover under subsection (1) once the winding up of the insurer has started.

26D Notification and record-keeping

Offences—giving notice

- (1) A person (the *insurer*) commits an offence if:
- (a) the insurer provides medical indemnity cover under subsection 26A(1) or 26C(1); and
 - (b) the insurer does not give to the person to whom the cover is provided a written notice stating:
 - (i) the nature and range of incidents it covers; and
 - (ii) the terms and conditions on which it is provided.

Penalty: Imprisonment for 6 months.

- (2) A person (the *insurer*) commits an offence if:
- (a) the insurer provides medical indemnity cover under subsection 26A(1) or 26C(1); and
 - (b) the insurer does not give to the Health Insurance Commission a written notice stating:
 - (i) the name of the practitioner for whom the medical indemnity cover is provided; and
 - (ii) the date from which the medical indemnity cover took effect; and
 - (iii) such other matters as are determined in writing by the Minister administering the *Medical Indemnity Act 2002*.

Penalty: Imprisonment for 6 months.

- (3) A determination under subparagraph (2)(b)(iii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Offence—record-keeping

- (4) A person (the *insurer*) commits an offence if:
- (a) the insurer provides medical indemnity cover under subsection 26A(1) or 26C(1); and
 - (b) the insurer gives written notice as required by subsection (1) of this section to the person to whom the cover is provided; and

- (c) the insurer does not keep a copy of the notice for the period starting when the notice is given and ending 5 years after the insurer ceases to provide the cover.

Note: Paragraph 26A(4)(d) sets out the period for which the insurer must provide the cover.

Penalty: Imprisonment for 6 months.

26E Run-off cover taken to be provided under contract of insurance

- (1) If the insurer provides medical indemnity cover under section 26A or 26C, there is taken, for all purposes (other than the purposes specified in the regulations), to be a contract of insurance between:
 - (a) the insurer; and
 - (b) the person to whom the medical indemnity cover is provided; under which the medical indemnity cover is provided.
- (2) This section applies:
 - (a) despite the insurer not receiving any premium or other consideration for providing the medical indemnity cover; and
 - (b) whether or not the medical indemnity cover was provided by means of the person to whom it was provided accepting an offer from the insurer to provide it.

26F Federal Court may order insurer to provide run-off cover or MDO to enter into arrangement

- (1) If the Federal Court of Australia is satisfied that an insurer has engaged in, or is proposing to engage in, conduct that constitutes a contravention of subsection 26A(1) or 26C(1), the Court may grant an injunction requiring the insurer to provide medical indemnity cover in accordance with that subsection.
- (2) If the Federal Court of Australia is satisfied that an MDO has engaged in, or is proposing to engage in, conduct that constitutes a contravention of subsection 26B(1), the Court may grant an injunction requiring the MDO to enter into an arrangement of a kind referred to in paragraph 26B(1)(f).
- (3) An order under this section may be made only after an application by:
 - (a) the practitioner; or

- (b) ASIC; or
- (c) the Minister administering the *Medical Indemnity Act 2002*.

26G Pecuniary penalties for offences against this Division

- (1) To avoid doubt, subsection 4B(3) of the *Crimes Act 1914* applies to any offence against a provision of this Division committed by a body corporate, as if an offence against that provision could be committed by a natural person.
- (2) This section does not affect the meaning of any other offence against this Act.

Schedule 4—IBNR Claims Protocol

Medical Indemnity Act 2002

1 Subsection 4(1)

Insert:

IBNR Claims Protocol means the protocol (as amended and in force from time to time) determined by the Minister under section 27A.

2 Subsection 4(1) (at the end of the definition of *IBNR indemnity*)

Add:

Note: Amounts payable under the IBNR Claims Protocol are not covered by this definition.

3 After subsection 10(1)

Insert:

(1A) This Division also provides for the determination of an IBNR Claims Protocol that can deal with other matters relating to claims in relation to incidents covered by the IBNR indemnity scheme.

4 Subsection 10(2) (after table item 6)

Insert:

6A the IBNR Claims Protocol, and what sections 27A and 27B it can deal with

5 At the end of Division 1 of Part 2

Add:

Subdivision F—The IBNR Claims Protocol

27A Minister may determine a protocol dealing with various matters

(1) The Minister may, by writing, determine a protocol (the ***IBNR Claims Protocol***) for:

- (a) making payments to MDOs and insurers of claim handling fees; and
 - (b) making payments on account of legal, administrative or other costs incurred by MDOs and insurers (whether on their own behalf or otherwise);
- in respect of claims relating to incidents covered by the IBNR indemnity scheme (see section 14).
- (2) Without limiting subsection (1), the IBNR Claims Protocol may:
 - (a) make provision for:
 - (i) the conditions that must be satisfied for an amount to be payable to an MDO or insurer; and
 - (ii) the amount that is payable; and
 - (iii) the conditions that must be complied with by an MDO or insurer to which an amount is paid; and
 - (iv) other matters related to the making of payments, and the recovery of overpayments; and
 - (b) provide that this Division applies with specified modifications in relation to a liability that relates to costs in relation to which an amount has been paid under the Protocol.
 - (3) Paragraph (2)(b) does not allow the IBNR Claims Protocol to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.
 - (4) The IBNR Claims Protocol may also provide for other matters of a kind specified in regulations made for the purposes of this subsection.
 - (5) The instrument determining the IBNR Claims Protocol, and any instruments amending or revoking the Protocol, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

27B The HIC may request information

- (1) If the HIC believes that a person is capable of giving information that is relevant to determining:
 - (a) whether an MDO or insurer is entitled to a payment under the IBNR Claims Protocol; or
-

(b) the amount that is payable to an MDO or insurer under the IBNR Claims Protocol;

the HIC may request the person to give the HIC the information.

Note: Failure to comply with the request is an offence (see section 45).

(2) Without limiting subsection (1), any of the following persons may be requested to give information under that subsection:

- (a) an MDO;
- (b) an insurer;
- (c) a member or former member of an MDO;
- (d) a person who practises, or used to practise, a medical profession;
- (e) a person who is acting, or has acted, on behalf of a person covered by paragraph (d);
- (f) a legal personal representative of a person covered by paragraph (c), (d) or (e).

(3) Without limiting subsection (1), if the information sought by the HIC is information relating to a matter in relation to which a person is required by section 39 to keep a record, the HIC may request the person to give the information by giving the HIC the record, or a copy of the record.

(4) The request:

- (a) must be made in writing; and
- (b) must state what information must be given to the HIC; and
- (c) may require the information to be verified by statutory declaration; and
- (d) must specify a day on or before which the information must be given; and
- (e) must contain a statement to the effect that a failure to comply with the request is an offence.

The day specified under paragraph (d) must be at least 28 days after the day on which the request was made.

6 Subsection 39(1)

After “payment under”, insert “the IBNR Claims Protocol,”.

7 After subparagraph 39(2)(b)(i)

Insert:

- (ia) if the record is required to be kept because the person applied for a payment under the IBNR Claims Protocol—the day on which the Protocol took effect;

8 After paragraph 45(1)(b)

Insert:

- (baa) subsection 27B(1); or

9 After paragraph 48(a)

Insert:

- (aa) amounts payable under the IBNR Claims Protocol; and

Schedule 5—Repeal of the enhanced UMP indemnity contribution

Medical Indemnity (Enhanced UMP Indemnity) Contribution Act 2002

1 The whole of the Act

Repeal the Act.

Schedule 6—Other matters

Medical Indemnity Act 2002

1 Subsection 4(1) (definition of *medical indemnity insurer*)

Repeal the definition, substitute:

medical indemnity insurer means:

- (a) a body corporate authorised under section 12 of the *Insurance Act 1973* that; or
- (b) a Lloyd’s underwriter within the meaning of that Act who; in carrying on insurance business in Australia, enters into contracts of insurance providing medical indemnity cover for other persons.

1A Paragraph 30(1)(d)

After “practitioner”, insert “, or becomes aware of the incident”.

2 Paragraph 34E(1)(c)

Before “either”, insert “except in the circumstances specified in regulations made for the purposes of this paragraph,”.

3 Subsection 43(1)

Omit “both”, substitute “more”.

4 After paragraph 43(1)(a)

Insert:

- (aa) making payments to:
 - (i) medical practitioners; or
 - (ii) medical indemnity insurers and MDOs on behalf of medical practitioners;to help those medical practitioners meet the cost of paying medical indemnity payments;

5 Paragraphs 66A(5)(a) and (b)

Repeal the paragraphs, substitute:

- (a) on that payment day; or
 - (b) 7 days after the day on which the amount is paid;
-

whichever is later.

6 Paragraph 66A(7)(a)

Omit “invest the amount on deposit”, substitute “deposit the amount in an interest bearing account”.

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

7 Subsection 4(1)

Insert:

Lloyd’s underwriter has the same meaning as in the *Insurance Act 1973*.

8 Subparagraph 10(2)(c)(i)

Omit “not a general insurer”, substitute “neither a general insurer nor a Lloyd’s underwriter”.

9 Subparagraph 11(1)(d)(i)

Omit “not a general insurer”, substitute “neither a general insurer nor a Lloyd’s underwriter”.

10 Subsection 26(1)

Omit “an insurer contravenes”, substitute “the Federal Court of Australia is satisfied that an insurer has engaged in, or is proposing to engage in, conduct that constitutes a contravention of”.

11 Subsection 26(1)

Omit “the Federal Court of Australia”, substitute “the Court”.

12 Subsection 26(1)

Omit “ordering”, substitute “requiring”.

13 Subsection 26(2)

After “order”, insert “granting the injunction”.

Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003

14 Paragraph 4(1)(aa)

Repeal the paragraph.

*[Minister's second reading speech made in—
House of Representatives on 13 May 2004
Senate on 15 June 2004]*

(73/04)
