

Medical Indemnity Amendment Regulations 2003 (No. 2) 2003 No. 264

Explanatory Statement

Statutory Rules 2003 No. 264

Medical Indemnity Amendment Regulations 2003 (No. 2)

On 23 October 2002, the Government announced a new framework for medical indemnity. The purpose of the framework was to address rising medical indemnity insurance premiums and ensure a viable and ongoing medical indemnity insurance market. The Incurred But Not Reported Liabilities (IBNR) Scheme (the IBNR Scheme) is one of the elements of the new framework. The *Medical Indemnity Regulations 2003* (the Principal Regulations) prescribe certain matters to implement the IBNR Scheme.

Under the IBNR Scheme the Government is funding the incurred but not reported liabilities of those medical defence organisations that have not set aside sufficient money to cover these liabilities. The cost of that funding is to be recouped, over an extended period, through contributions by those persons who on 30 June 2000 were members of a medical defence organisation participating in the scheme.

To acknowledge the concerns of doctors about IBNR indemnity contributions, on 10 October 2003 the Government undertook to withdraw the current IBNR levy notices and refund existing payments pending the outcome of a policy review. The Government will also exempt all doctors employed by public hospitals or whose private income is returned to those hospitals.

The Government also undertook to extend the High Cost Claims Scheme to cover fifty per cent of all claims between \$500,000 and \$20 million, which is the current limit of contract of insurance. Claims over that limit of contract amount become subject to the Exceptional Claims Scheme, which is the subject of a Bill to amend the Act, to be presented to the Parliament in the current session.

Subsection 79(1) of the *Medical Indemnity Act 2002* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 52(4) of the Act allows regulations to provide that a person is exempt from an IBNR indemnity contribution in circumstances specified in the regulations.

Paragraph 61(1)(b) of the Act allows regulations to alter the date on which IBNR indemnity contributions become payable (the payment day), which is otherwise 1 November in the relevant contribution year.

Paragraph 29(1)(b) of the Act allows regulations to prescribe an amount other than \$2 million as the High Cost Claim threshold.

The purpose of the Regulations is to give effect to the Government's announcement of 10 October 2003 by providing further exemptions for persons participating in the IBNR scheme under subsection 52(4) of the Act and by altering the payment day to 1 June 2004 for the 2003-04 contribution year. Moving the payment day is necessary to allow sufficient time for the implementation of the policy review, expected to report in December 2003. The Regulations extend the High Cost Claims scheme to apply to 50 per cent of claims between \$500,000 and \$20 million.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

Regulations 1 to 3 and Schedule 1, which introduce measures to exempt salaried medical practitioners, are taken to have commenced on 15 August 2003, to ensure that the new exemptions apply from the same date as the existing exemptions under the *Medical Indemnity Regulations 2003*. This will not disadvantage any members participating in the scheme, but may disadvantage the Commonwealth. Subsection 48(2) of the *Acts Interpretation Act 1901* provides that regulations made with retrospective effect have no effect if the rights of a person (other than the Commonwealth) would be disadvantaged, or liabilities would be imposed on such a person in respect of anything done or omitted to be done prior to commencement. As the Regulations would not disadvantage persons other than the Commonwealth they may be validly made with retrospective effect.

Schedule 2 commenced on gazettal.

Details of the *Medical Indemnity Amendment Regulations 2003 (No. 2)*

Regulation 1 provides that the name of the regulations will be the *Medical Indemnity Amendment Regulations 2003 (No. 2)*.

Regulation 2 provides for the Regulations 1 to 3, and Schedule 1 (IBNR indemnity contribution exemption (salaried medical practitioners)) to be taken to have commenced on 15 August 2003. It also provides for the commencement of Schedule 2 on gazettal.

Regulation 3 provides that these Regulations amend the *Medical Indemnity Regulations 2003*.

Schedule 1, Regulation 6A exempts members who would be participating in the IBNR Scheme, but who work in public hospitals as salaried medical practitioners.

To be eligible for this exemption a person:

- must be employed by a Commonwealth, State or Territory agency as a salaried medical practitioner on 1 May 2002 and during the relevant contribution year;
- must have a medical income for non-employment related services of less than \$5,000 and be indemnified by a Commonwealth, State or Territory agency in relation to claims for compensation or damages;
- must provide a notice from the Commonwealth, State or Territory agency confirming their employment and indemnity; and
- must provide a statement that their medical income for non-employment related services for both 2001-02 and the financial year before the contribution year was less than \$5,000 respectively.

Schedule 2 provides for the following amendments:

Item 1: amends Regulation 4A in the *Medical Indemnity Regulations 2003* to prescribe the amount of \$500,000 as the high cost claim threshold.

Item 2: omits existing Regulation 8C, which prescribes 1 February 2004 as the payment day for IBNR indemnity contributions for the 2003-04 contribution year.

Item 3: inserts a new Regulation 8D which prescribes the payment day for IBNR indemnity contributions to be 1 June 2004 for the 2003-04 contribution year.