

Medical Indemnity (Prudential Supervision and Product Standards) Amendment Regulations 2004 (No. 2) 2004 No. 87

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 87

Issued by the Minister for Revenue and Assistant Treasurer

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

Medical Indemnity (Prudential Supervision and Product Standards) Amendment Regulations 2004 (No. 2)

Subsection 33(1) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides that medical indemnity cover is only to be provided by general insurers and only under contracts of insurance. The intention is to ensure that providers of medical indemnity cover are subject to appropriate prudential supervision by the Australian Prudential Regulation Authority (APRA).

Paragraph 8(2)(e) of the Act provides that the Act does not apply to an arrangement of a kind prescribed by the regulations. Regulation 4 of the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003* prescribes arrangements for the purposes of the Act.

Under the Act, a Lloyd's underwriter is unable to provide medical indemnity cover in Australia as it is not a 'general insurer'. A person commits an offence if they provide medical indemnity insurance and are not a general insurer, under section 10 of the Act. 'General insurer' has the same meaning as in the *Insurance Act 1973*, which defines the term as a body corporate authorised by APRA under section 12 of that Act, to carry on insurance business. A Lloyd's underwriter is authorised under section 93 of the *Insurance Act 1973* to undertake insurance business in Australia, but is not a general insurer as defined. Since it is not authorised under section 12 of the *Insurance Act 1973*, a Lloyd's underwriter cannot provide medical indemnity insurance under the Act.

The new Regulation exempts arrangements for medical indemnity insurance made by Lloyd's underwriters from the application of the Act with effect from 1 July 2003, the date on which the Act commenced. The exemption will remain in place until such time as the Act is amended to allow a Lloyd's underwriter to provide medical indemnity cover.

While an amendment to the Act would allow Lloyd's insurers to provide medical indemnity cover, any contracts written or renewed by a Lloyd's underwriter between 1 July 2003 and the commencement of the Act would be in breach of the Act. An amendment to bring Lloyd's under the Act will be included in legislation currently being drafted. Accordingly, the retrospective regulation exempts Lloyd's from the application of the Act, until such time as the Act is amended. A retrospective regulation ensures the legality of contracts written by Lloyd's since 1 July 2003, as well as providing capacity for Lloyd's to write and renew contracts that are legally binding, thereby providing certainty to Australian health care professionals. The exemption would only apply to an arrangement that provides medical indemnity cover to a health care professional that would meet the requirements of the Act if a Lloyd's underwriter was a general insurer.

Regulations 1 and 2 set out respectively the name of the Regulation and the commencement date of the Regulation.

Regulation 3 notes that Schedule 1 amends the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*. Schedule 1 describes the arrangement to be exempt as one that provides medical indemnity cover to a health care professional that would meet the requirements of the Act if a Lloyd's underwriter was a general insurer.

The Regulations are taken to have commenced on 1 July 2003.