



2004B00169



# Medical Indemnity (Prudential Supervision and Product Standards) Amendment Regulations 2004 (No. 3)<sup>1</sup>

Statutory Rules 2004 No. <sup>2</sup>

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

Dated 24 JUN 2004 2004

PM Jeffery  
Governor-General

By His Excellency's Command

HELEN COONAN  
Minister for Revenue and Assistant Treasurer

**1 Name of Regulations**

These Regulations are the *Medical Indemnity (Prudential Supervision and Product Standards) Amendment Regulations 2004* (No. /).

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**2 Commencement**

These Regulations commence on 1 July 2004.

**3 Amendment of *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003***

Schedule 1 amends the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Before regulation 1**

*insert*

**Part 1 Preliminary**

**[2] Regulation 3, after definition of Act**

*insert*

*private medical practice* has the meaning given by subsection 34ZB (5) of the *Medical Indemnity Act 2002*.

**[3] Regulation 3A**

*omit*

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

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**[4] After regulation 4***insert***Part 2 Prudential requirements for provision of medical indemnity cover****[5] After regulation 7***insert***Part 3 Product standards for medical indemnity insurance contracts****[6] Regulation 8***substitute***8 Additional offer of run-off cover when particular events happen during claims period for regulated insurance contract**

- (1) This regulation applies in relation to a health care professional, mentioned in paragraph 23 (1) (a) of the Act, who is a medical practitioner (a *retired practitioner*).
- (2) For paragraph 23 (1) (b) of the Act:
  - (a) the prescribed event in relation to the retired practitioner is that he or she has permanently ceased medical practice aged less than 65 years; and
  - (b) the prescribed event is taken to have occurred whether or not the retired practitioner proposes to be available to provide medical services on an occasional and gratuitous basis after ceasing medical practice.

*Note* After a prescribed event, the insurer that provides medical indemnity cover must make an offer to provide medical indemnity cover in relation to otherwise uncovered prior incidents: see Division 2 of Part 3 of the Act.

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- (3) For subparagraph 23 (1) (c) (i) of the Act, and subject to subregulation (4), an offer made in relation to the retired practitioner must satisfy the following requirements:
- (a) the offer must be made to a retired practitioner who states to the insurer that he or she intends to cease medical practice as a health care professional for more than 12 months;
  - (b) the offer must be to provide medical indemnity cover in relation to claims that are made during a period that includes the whole of the period (the *first period*):
    - (i) starting when the prescribed event occurs; and
    - (ii) ending at the end of the claims period for the medical indemnity cover that was applicable immediately before the prescribed event;unless medical indemnity cover is in place, at the occurrence of the prescribed event, and continues to operate in relation to claims that are made during the first period;
  - (c) the offer must be to provide medical indemnity cover that:
    - (i) includes an obligation for the insurer to offer to renew the cover annually after:
      - (A) if medical indemnity cover is in place, at the occurrence of the prescribed event, and continues to operate in relation to claims that are made during the first period — the end of the claims period for that cover; or
      - (B) in any other case — the end of the first period; and
    - (ii) specifies that the total period during which the cover may be renewed, in accordance with the offers mentioned in subparagraph (i), is 3 years, starting:
      - (A) if medical indemnity cover is in place, at the occurrence of the prescribed event, and continues to operate in relation to claims that are made during the first period — at the end of the claims period for that cover; or
      - (B) in any other case — at the end of the first period; and

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- (iii) specifies that the obligation to renew the cover, and the total period during which the cover may be renewed, in accordance with the offers mentioned in subparagraph (i), will be affected if the retired practitioner:
- (A) resumes medical practice as a health care professional; or
  - (B) becomes a person to whom subsection 34ZB (2) of the *Medical Indemnity Act 2002* applies; or
  - (C) ceases to be eligible for run-off cover; and
- (iv) specifies that the cover is to be first offered, and renewed in accordance with the offers mentioned in subparagraph (i), as follows:
- (A) if the original cover was subject to any special or non-standard terms, conditions or exclusions, by way of endorsement or otherwise, the offer may provide that those special or non-standard terms, conditions and exclusions will apply;
  - (B) for any matter to which sub-subparagraph (A) does not apply, the insurer must offer the same terms and conditions (other than terms and conditions about the price of the cover or period during which the cover may be renewed) as the standard medical indemnity cover offered by the insurer at the time of each offer of renewal to practicing health care professionals in the same category or class for the purposes of the insurer's underwriting criteria as the retired practitioner to whom the offer is to be made; and
- (v) specifies that if the retired practitioner, or the retired practitioner's representative, declines to accept an offer to renew made by the insurer in accordance with subparagraph (i), the insurer is authorised to decline to make further offers to renew the cover.

*Note 1* The obligations in this regulation are not intended to restrict an insurer's opportunities to offer to provide medical indemnity cover in circumstances not set out in the regulation, or on terms and conditions that are more generous than required by the regulation.

*Note 2* An offer to which this regulation applies must also be a complying offer as required by section 24 of the Act, as well as complying with the *Insurance Contracts Act 1984*.

- (4) The obligations in subregulation (3) cease to apply in relation to a retired practitioner if the retired practitioner:
- (a) resumes medical practice as a health care professional; or
  - (b) becomes a person to whom subsection 34ZB (2) of the *Medical Indemnity Act 2002* applies; or
  - (c) ceases to be eligible for run-off cover.

## 9 Complying offer

For paragraph 24 (2) (fa) of the Act, the amount is the cost to the insurer of providing the cover without returning a profit to any person for the provision of the cover.

*Note* The effect of paragraph 24 (2) (fa) of the Act is that, if an offer is made for section 23 of the Act, the premium payable by the client for the cover must not exceed the amount specified in regulations.

## Notes

1. These Regulations amend Statutory Rules 2003 No. 109, as amended by 2003 No. 129; 2004 Nos. 81 and 87.
2. Notified in the *Commonwealth of Australia Gazette* on / 2004.

25 June