

Medical Indemnity Amendment Regulations 2004 (No. 2) 2004 No. 202

EXPLANATORY STATEMENT

STATUTORY RULES 2004 NO. 202

Issued by the Authority of the Minister for Health and Ageing

Medical Indemnity Act 2002

Medical Indemnity (Run-off Cover) Support Payment) Act 2004

Medical Indemnity (UMP Support Payment) Act 2002

Medical Indemnity Amendment Regulations 2004 (No. 2)

Medical Indemnity (Run-off Cover Support Payment) Regulations 2004

Medical Indemnity (IBNR Indemnity) Contribution Amendment Regulations 2004 (No. 1)

Subsection 79(1) of the *Medical Indemnity Act 2002* (the Act) provides in part 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.

Section 8 of the *Medical Indemnity (Run-off Cover Support Payment) Act 2004* (the Run-off Cover Support Payment Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Run-off Cover Support Payment Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Run-off Cover Support Payment Act.

Section 7 of the *Medical Indemnity (UMP Support Payment) Act 2002* provides that the Governor-General may make regulations prescribing matters required or permitted by the UMP Support Payment Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the UMP Support Payment Act.

The purpose of the Regulations is to give effect to a range of additional measures to address the affordability of medical indemnity costs for certain current and former medical practitioners. These measures were announced by the Government on 17 December 2003, following the report of the Medical Indemnity Policy Review Panel. As part of these measures the Government announced that it would establish a Run-off cover indemnity scheme that covers the cost of claims against certain eligible persons (principally those who have retired permanently from private practice). Under the scheme, the Commonwealth reimburses medical defence organisations (MDOs) and medical indemnity insurers (insurers) for eligible run-off cover claims in respect of eligible persons no longer in private practice. This cover is at no cost to the eligible persons. The cost of the claims is recouped from the insurers through the Run-off Cover Support Payment Act.

The Regulations give effect to aspects of the Government's Run-off cover indemnity scheme and Run-off cover support payment enacted by the new Run-off Cover Support Payment Act and amendments to the Act through the *Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004*. This last Act also amends the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*; a separate set of Regulations to support that Act are being put forward by the Minister for Revenue and Assistant Treasurer.

The Regulations also give effect to additional refinements of the Government's medical indemnity measures, by making changes to the existing Exceptional Claims Scheme; reflecting the name change from 'Incurred but not Reported (IBNR) contribution' to 'United Medical Protection (UMP) support payment'; specifying an imposition and payment day for the UMP support payment; specifying a penalty rate for late repayment of moneys overpaid under the Run-off cover

indemnity scheme, and making consequential numbering and descriptive amendments to the exemptions from the UMP support payment.

Details of the Regulations are set out in the Attachment.

Neither the Act nor the Run-off Cover Support Payment Act specify any conditions that need to be met before the power to make the Regulations may be exercised.

The *Medical Indemnity (Run-off Cover Support Payment) Regulations 2004* commence on 1 July 2004, at the same time as the Run-off cover indemnity scheme and the Run-off cover support payment. Schedule 2 of the *Medical Indemnity Amendment Regulations 2004 (No. 2)* also commenced on 1 July 2004.

Regulations 1, 2 and 3 and Schedule 1 to the *Medical Indemnity Amendment Regulations 2004 (No. 2)* are expressed to commence on 5 December 2003 at the same time as the Exceptional Claims Scheme, provided for in the *Medical Indemnity Amendment Act 2003*. These amendments are not contrary to subsection 48(2) of the *Acts Interpretation Act 1901* as the changes are beneficial in nature, and do not affect the rights of any person so as to disadvantage that person. Nor do they impose liabilities on any person in respect of anything done, or omitted to be done, before the date of notification.

The *Medical Indemnity (IBNR Indemnity) Contribution Amendment Regulations 2004 (No. 1)* commence on the date of their notification in the *Gazette*.

ATTACHMENT

DETAILS THE *MEDICAL INDEMNITY AMENDMENT REGULATIONS 2004 (No. 2)*

Regulation 1 provides for the Regulations to be referred to as the *Medical Indemnity Amendment Regulations 2004 (No. 2)*

Regulation 2 provides for regulations 1, 2 and 3 and Schedule 1 to commence on 5 December 2003, and provides for Schedule 2 to commence on 1 July 2004.

Regulation 3 provides for Schedules 1 and 2 to amend the *Medical Indemnity Regulations 2003*.

Schedule 1 - Amendments taken to have commenced on 5 December 2003

Item [1]

This item inserts a new regulation 4B, which sets out criteria for the Health Insurance Commission (HIC) to certify a claim as a qualifying claim for the Exceptional Claims Scheme.

Section 34E of the *Medical Indemnity Act 2002* (the Act) provides that an incident is covered by the Exceptional Claims Scheme if it occurred in Australia. This item removes this requirement for persons who undertake private medical practice while accompanying an Australian sporting or cultural group, or accompanying a person undertaking official business for the Commonwealth Government or the Government of a State or Territory. The person must be a permanent resident of Australia. The individual or group they are accompanying must be an Australian citizen or a resident of Australia. The individual or group may be professional or amateur. For example, a sporting group includes a cricket team, and a cultural group includes a ballet or music group.

The Regulation also removes the requirement that the incident occur in Australia for persons who undertake aid work overseas. There is not a restriction in this case for claimants to be Australian.

This item is taken to have commenced at the same time as the Exceptional Claims Scheme on 5 December 2003. This is a benefit for persons as it expands the scope of possible claims under the Exceptional Claims Scheme. This is not detrimental to any person other than the Commonwealth.

Schedule 2 - Amendments commencing on 1 July 2004

This Schedule inserts division numbers into existing Regulations, provides that persons undertaking gratuitous private medical practice are eligible for the Run-off cover indemnity scheme, provides a late payment penalty rate for late return of overpayments under the Run-off cover indemnity scheme and sets out contribution years for the Run-off cover support payment for the insurer Australasian Medical Insurance Limited (AMIL).

It also changes the headings of existing Regulations from 'Incurred but not Reported (IBNR) Contribution' to 'United Medical Protection (UMP) support payment' and from 'medical indemnity contribution' to 'medical indemnity payment' as relevant. The *Medical Indemnity Amendment Act 2004* and *Medical Indemnity (IBNR Indemnity) Contribution Amendment Act 2004*, which both received Royal Assent on 23 March 2004, changed the name of the 'IBNR Contribution' to 'UMP support payment' and changed the name of the "medical indemnity contribution" to 'medical indemnity payment'. Item 25 of Schedule 1 of the latter Act provided that the change of name is also effective in Regulations and other instruments. For consistency, the following Regulations change each reference in the existing Regulations.

Item [1]

This item inserts a subheading of Division 2.1 IBNR indemnity scheme into existing Part 2. That Part includes existing regulation 4, which prescribes the late payment penalty rate.

Items [2] and [3]

These items insert a subheading of Division 2.2 High cost claim indemnity scheme into existing Part 2. That Part includes existing regulation 4A which prescribes the High cost claim threshold, renumbered as regulation 5.

Item [4]

This item inserts a subheading of Division 2.3 Exceptional claims indemnity scheme into existing Part 2. That Part includes new regulation 4B, inserted by Schedule 1 above.

Item [5]

This item renumbers new regulation 4B (inserted by Schedule 1 above) as regulation 8.

Existing Regulations 5 - 10 are also renamed and/or renumbered (see Items 8 - 15, and 19 - 20 below).

Item [6]

This item inserts a new Division 2.4 Run-off cover indemnity scheme which includes new regulations 12 and 13. Section 34ZB of the *Medical Indemnity Act 2002* establishes the criteria for eligible run-off claims under the ROCS. The regulations broaden the categories for eligible persons and establish the penalty rate for late repayment of overpayment of ROCS payments by the HIC.

Regulation 12 - Eligible run-off claims

The classes of persons that are eligible for the run-off cover indemnity scheme are defined in section 34ZB of the Act, and cover those classes of persons announced by the Government in December 2003. Paragraph 34ZB(2)(f) provides that the regulations may specify additional classes of persons as eligible for the run-off cover indemnity scheme. The Government now proposes to include additional classes of persons.

This regulation includes:

(a) persons who have ceased paid forms of private medical practice but continue to undertake gratuitous practice, for example writing prescriptions or referrals. The regulations ensure that these persons remain eligible for the run-off cover scheme for their prior paid private medical practice, notwithstanding that they continue to provide a limited range of medical services (the legislation enables persons to have their run-off cover contract re-issued when they cease any form of private medical practice, to enable that practice to be covered by the run-off cover scheme); and

(b) overseas-trained medical persons who work in Australia under visa 422 . Under this visa class suitably trained overseas doctors can work in Australia if they are sponsored by an employer and are registered to practice. Claims arising from treatment by these persons after they cease private medical practice in Australia and they leave Australia permanently are covered by the run-off cover scheme.

Regulation 13 - Late repayment of overpayment - penalty rate

This regulation specifies a penalty rate for late repayment of amount of run-off cover indemnity under paragraph 34ZM(2)(a), which is the same as the general interest charge rate set by the Australian Taxation Office as at 15 August 2003.

There are currently no Regulations planned for numbers 15- 18. These numbers are kept aside to allow for the possibility of future Regulations.

Regulation 14 - Run-off Cover Claims and Administration Protocol - other matters

This regulation enables payment under the Run-off Cover Scheme of costs in respect of incidents that are notified and have yet to become a claim but that would be covered by the Run-off Cover Scheme if a claim were to result. These are costs that MDOs and insurers would pay in the ordinary course of business following notification of an incident and would include but not be limited to legal and administrative costs.

Item [7]

This item renames the heading to Part 3 from "Contributions towards the cost of providing indemnities" to "Payments towards the cost of providing indemnities", and creates a new heading of Division 3.1 UMP support payment.

[Item 8]

This item renames part of the heading of regulation 5 from "IBNR indemnity contribution" to "UMP support payment", and renumbers regulation 5 to regulation 19.

[Item 9]

This item renames part of the heading of regulation 6 from "IBNR indemnity contribution" to "UMP support payment", and renumbers regulation 6 to regulation 20.

[Item 10]

This item renames part of the heading of regulation 6A from "IBNR indemnity contribution" to "UMP support payment", and renumbers regulation 6A to regulation 21.

[Item 11]

This item renames part of the heading of regulation 7 from "IBNR indemnity contribution" to "UMP support payment", and renumbers regulation 7 to regulation 22.

Item [12]

This item renames part of the heading of regulation 7A from "IBNR indemnity contribution" to "UMP support payment", and renumbers regulation 7A to regulation 23.

Item [13]

This item removes the reference to subregulation 7(4) in the definition of past incident in subregulation 7A(2) and replaces it with a reference to subregulation 22(4).

Item [14]

This item renames part of the heading of regulation 8 from "IBNR indemnity contribution" to "UMP support payment", and renumbers regulation 8 to regulation 24.

Item [15]

This item renames part of the heading of regulation 8A from "IBNR indemnity contribution" to "UMP support payment", and renumbers regulation 8A to regulation 25.

There are no existing Regulations numbered 8B or 8C so no renaming or renumbering is required.

Item [16]

This item replaces the definition of 'Health care related vocation' in the note for paragraph (c) of regulation 8A with the current definition from the *Medical Indemnity Act 2002* as amended in March 2004.

Item [17]

This item inserts a new subheading Division 3.2 Administration before existing regulation 8D.

Item [18]

This item renames part of the heading of regulation 8D from "IBNR indemnity contribution" to "UMP support payment " and renumbers regulation 8D to regulation 26.

Regulation 26 - When UMP support payment must be paid

This regulation specifies under section 61 of the *Medical Indemnity Act 2002* that the payment day for the UMP support payment for each contribution year beginning on or after 1 July 2003 is 1 September in the following contribution year. This regulation also specifies that the payment day is 1 March for a contribution year that starts on or after 1 July 2004 for those participating members of UMP who have medical indemnity cover provided by AMIL as at 1 November of that year.

The new regulation will preserve the existing requirement that 1 September 2004 be the payment day for the contribution year beginning 1 July 2003.

Regulation 27 - When run-off cover support payment must be paid - AMIL

This regulation specifies a payment day of 31 December for the contribution years beginning on 1 January 2005, 1 January 2006, 1 January 2007 and 1 January 2008 for the insurer Australasian Medical Insurance Limited (AMIL). This reflects that AMIL operates on a calendar year.

Item [19]

This item renames part of the heading of regulation 9 from "Medical indemnity contribution" to "Medical indemnity payment", and renumbers regulation 9 to regulation 28.

Item [20]

This item renumbers regulation 10 to regulation 29.

Item [21]

This item amends the text of the listed regulations and subregulations from "IBNR indemnity contribution" to "UMP support payment".

ATTACHMENT

DETAILS OF THE *MEDICAL INDEMNITY (RUN-OFF COVER SUPPORT PAYMENT) REGULATIONS 2004*

Regulation 1 provides for the Regulations to be referred to as the *Medical Indemnity (Run-off Cover Support Payment) Regulations 2004*.

Regulation 2 provides for the Regulations to commence on 1 July 2004.

Regulation 3 inserts definitions of the **Act** and of the medical indemnity insurer **AMIL**. AMIL is the only medical indemnity insurer defined in this way as it is the only insurer that operates on a calendar year basis. All other medical indemnity insurers do not need to be defined as they fall within the current operation of the **Act** and regulations.

Regulation 4 specifies that the contribution year for AMIL is each calendar year commencing on or after 1 January 2005.

Regulation 5 specifies that for calculating the amount of run-off cover support payment for AMIL, the relevant period is the 12 months ending on 30 November each contribution year and the percentage of premium income is 9.5625% in respect of the first four contribution years.

The insurer AMIL bills policyholders on a calendar year basis whilst other insurers operate on a financial year basis. Therefore AMIL has issued annual premium notices six months before the start of the Run-off cover support payment whilst other MIIs issue their notices at its commencement. AMIL will therefore not pay any run-off cover support payment during the first six months of the operation of the Act from 1 July 2004 to 31 December 2004 due to the timing of their premium notices. This would result in AMIL paying less than other insurers, but their policyholders still being eligible for Run-off cover indemnity scheme during that period.

Given this, for equity reasons, it is necessary for AMIL to pay a slightly higher percentage each year for the first four contribution years. As a result, AMIL will pay the same overall percentage as other insurers for the first four contribution years. Thereafter, AMIL would pay the same percentage as all other insurers, but would continue to pay on a calendar year basis if they continue to operate on a calendar year.

The payment day for AMIL is 31 December in the contribution year, as specified regulation 27 of Schedule 1 (above) of the *Medical Indemnity Amendment Regulations 2004 (No. 2)*.

Regulation 6 specifies the amount of the run-off cover support payment for other medical indemnity insurers as a percentage of premium income. This percentage is 8.5% for the first four contribution years, which has been estimated as the percentage necessary for the Government to recoup the cost of the run-off cover indemnity scheme.

Regulation 7 further clarifies the scope of 'premium income'. This regulation deals with the issue that the ROCS payment by insurers is to be calculated on the basis of the premium charged to the practitioner for medical indemnity rather than be additional to that premium. The formula is designed to prevent any double counting under which an insurer may pay the HIC a greater proportion of the premium than they otherwise would be obliged to pay. In summary, the 'premium income' is to be calculated net of all taxes such as GST, stamp duty and ROCS payments. Once all those taxes are netted off, the ROCS payment payable by the insurer to HIC is then calculated.

ATTACHMENT

DETAILS OF THE *MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION AMENDMENT REGULATIONS 2004 (No. 1)*

Proposed Regulation 1 provides for the Regulations to be referred to as the *Medical Indemnity (IBNR Indemnity) Contribution Amendment Regulations 2004 (No. 1)*.

Proposed Regulation 2 provides for the regulations to commence on the date of their notification in the *Gazette*.

Proposed Regulation 3 provides for Schedule 1 to amend the *Medical Indemnity (IBNR Indemnity) Contribution Regulations 2004*.

Schedule 1 Amendments

item [1] amends regulation 1 by renaming the Regulations the *Medical Indemnity (UMP Support Payment) Regulations 2004*.

item [2] changes the reference to the *Medical Indemnity (IBNR Indemnity) Contribution Act 2002* to the *Medical Indemnity (UMP Support Payment) Act 2002*.

item [3] inserts a new regulation 7 to specify an imposition day of 1 November for the UMP Support Payment under the *Medical Indemnity (UMP Support Payment) Contribution Act 2002* for each contribution year that begins on or after 1 July 2004 for the insurer AMIL. AMIL operates on a calendar year basis, and so would generally invoice their policyholders in November for the next calendar year. The current imposition day of 1 May 2004 for the contribution year beginning 1 July 2003 does not change.