

# **EXPLANATORY STATEMENT**

Approved by the Minister for Health and Minister for Sport

*Medical Indemnity Act 2002*

*Medical Indemnity Regulations 2003*

***Medical Indemnity Amendment (High Cost Claim Threshold) Regulations 2017***

## **Authority**

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 the carrying out or giving effect to the Act.

The Act establishes a number of schemes to provide assistance to support access by health care providers to medical indemnity arrangements, one of which is the High Cost Claim (HCC) Scheme.

Subsection 29(1) of the Act provides that the high cost claim threshold (HCC threshold) is \$2 million or such other amount as prescribed by regulation. Section 29(2) of the Act provides that any regulations that increase the HCC threshold amount at the time the regulations are entered on the Federal Register of Legislation may not take effect earlier than 12 months after the day the regulations are registered. This enables insurers to alter their reinsurance arrangements before the increase takes effect.

The *Medical Indemnity Regulations 2003* (the principal regulations) prescribe the HCC threshold for the HCC Scheme.

## **Purpose and operation of the regulations**

The *Medical Indemnity Amendment (High Cost Claim Threshold) Regulations 2017* (the regulations) amend regulation 5 of the principal regulations to increase the HCC threshold from \$300,000 to \$500,000. The increased HCC threshold applies in respect of claims first notified to insurers on or after 1 July 2018 (see subsection 30(1)(f) of the Act).

A description of the Regulations is set out in the notes at **Attachment A**.

The Regulations is a legislative instrument for the purposes of the *Legislation Act 2003* (LA).

The Regulations commence on 1 July 2018.

## **Consultation**

The Department of Health (the Department) did not undertake any public consultation in relation to the regulations, given it implements a decision announced on 19 December 2016 in the 2016-17 Mid-Year Economic and Fiscal Outlook (MYEFO).

## **Regulatory impact assessment**

The regulations have no impact on rural and regional areas. A regulatory impact analysis has been undertaken in accord with requirements by the Office of Best Practice Regulation in November 2016, for the 2016-17 MYEFO.

The Regulatory Impact Statement for the Regulations is included at **Attachment B**.

## **Statement of Compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. The Statement of Compatibility has been prepared to meet that requirement. The Statement of Compatibility is included at **Attachment C**.

**Notes to the *Medical Indemnity Amendment (High Cost Claim Threshold) Regulations 2017***

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Medical Indemnity Amendment (High Cost Claim Threshold) Regulations 2017*.

Section 2 - Commencement

This section provides for the Regulations to commence on 1 July 2018.

Section 3 - Authority

This section provides that the Regulations are made under the *Medical Indemnity Act 2002*.

Section 4 - Schedule(s)

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Schedule 1 - Amendments

**Item [1] – Regulation 5**

Existing regulation 5 sets out that the prescribed high cost claim threshold amount for subsection 29(1)(b) of the *Medical Indemnity Act 2002* is \$300,000. This item amends regulation 5 of the *Medical Indemnity Regulations 2003* to substitute a new high cost claim threshold of \$500,000.

One of the requirements that must be met in order for the Commonwealth to pay a high cost claim indemnity to an insurer or medical defence organisation is that the amounts the insurer or medical defence organisation has paid, or is required to pay, in respect of the claim exceeds the high cost claim threshold at the time the claim was first notified to it.

The increased high cost claim threshold applies in respect of claims first notified to insurers on or after 1 July 2018 (see subsection 30(1)(f) of the Act).

## Short Form Regulation Impact Statement (RIS)

November 2016

### 1 Name of proposal: Reduce Medical Indemnity Support

### 2 Office of Best Practice Regulation (OBPR) ID number: 21100

### 3 What will this proposal do?

This proposal provides an initial reduction in Government investment in medical indemnity insurance support by increasing the threshold for subsidy of claims paid under the High Cost Claims Scheme (HCCS). This provides savings in the short-term and a reduction in ongoing liabilities into the future.

In line with Australian National Audit Office (ANAO) recommendations, contained in their report published 19 October 2016, *“The Management, Administration and Monitoring of the Indemnity Insurance Fund”*, funding is sought to conduct a first principles review of all schemes funded under the Indemnity Insurance Fund (IIF). This review will inform options for future reform of the IIF schemes.

### 4 What are the regulatory impacts associated with this proposal? Explain.

The proposal is likely to result in some savings in regulatory costs to medical indemnity insurers.

The increase to the HCCS threshold from \$300,000 to \$500,000 will reduce the number of claims eligible for subsidy through this scheme and hence, the number of applications under this scheme to be prepared and submitted by medical indemnity insurers.

### 5 What are the regulatory costs associated with this proposal? Explain and quantify.

Currently four medical indemnity insurers and one professional indemnity insurer claim under the HCCS.

To submit an indemnity claim for Commonwealth subsidy insurers must complete one or more applications for payment. Claims may have more than one payment associated with them and payments may be staggered over a number of years. Each application for a subsidy payment needs to be accompanied by supporting evidence justifying the claim and invoices substantiating the claim. There is also a high “come-back” rate where additional evidence or documentation is sought by Department of Human Services (DHS) before processing the payment.

By increasing the threshold at which claims are eligible for subsidy under this scheme there will be a reduction in regulatory burden as claims falling between the current threshold and proposed threshold will no longer qualify for subsidy, thus eliminating the application process for those claims. Based on data provided by DHS this is estimated to be approximately 75 claims per annum.

### Regulatory Burden Estimate (RBE) Table

Average Annual Regulatory Costs (from business as usual, \$m)				
Change in Costs	Business	Community Organisations	Individuals	Total change in cost
<b>Total by Sector</b>	-\$59,000	\$0	\$0	-\$59,000

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### *Medical Indemnity Amendment (High Cost Claim Threshold) Regulations 2017*

The *Medical Indemnity Amendment (High Cost Claim Threshold) Regulations 2017* (the Regulations) is compatible with the human right and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Regulations**

Under the High Cost Claim Scheme, the Australian Government subsidises 50% of the cost of medical indemnity insurance claims between \$300,000 (the high cost claim threshold) and up to the limit of the health practitioner's cover (generally \$20 million) to medical indemnity insurers and medical defence organisations for claims notified to insurers on or after 1 January 2004.

The Regulations increase the high cost claim threshold amount from \$300,000 to \$500,000 for claims notified to medical indemnity insurers or medical defence organisations on or after 1 July 2018.

#### **Human rights implications**

The Regulations was assessed whether it is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Regulations and the nature of the applicable rights and freedoms, the view was formed that the Regulations does not engage any of those rights or freedoms.

The High Cost Claim Scheme provides Government subsidies to medical indemnity insurers and medical defence organisations. The amendment made to the Regulations does not affect patients' capacity to access medical services.

#### **Conclusion**

The Regulations are compatible with human rights as they do not raise any human rights issues.

**Greg Hunt**  
**Minister for Health and Minister for Sport**