

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Medical Indemnity Act 2002

Medical Indemnity Amendment (Services Australia) Regulations 2020

Authority

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

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose and operation

The purpose of the *Medical Indemnity Amendment (Services Australia) Regulations 2020* (the Regulations) is to amend an incorrect reference to Services Australia within the *Medical Indemnity Regulations 2020* due to commence on 1 July 2020. This change will enable authorised employees within Services Australia to review relevant decisions made by another employee.

At the time of making the *Medical Indemnity Regulations 2020*, Services Australia (formerly the Department of Human Services) was a Department within the Commonwealth of Australia. However, following a recent Machinery of Government change, Services Australia is now an Executive Agency within the Social Services portfolio. The Regulations will correct this issue.

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument.

These Regulations are being made in advance of this commencement date. This is possible in accordance with section 4 of the *Acts Interpretation Act 1901*, which allows for the exercise of powers between enactment and commencement of an Act including, for example, the power to make Regulations.

Details of the Regulations are set out in [Attachment A](#).

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

The Regulations commence on 1 July 2020.

Regulation Impact Statement

The change in the Regulation is machinery in nature and does not have any regulatory impact.

Consultation

This amendment is in response to implementation issues raised by Services Australia. Additional consultation was not undertaken on the proposed Regulations as the amendment is machinery in nature.

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 Legislation Act 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 B.

Details of the proposed *Medical Indemnity Amendment (Services Australia) Regulations 2020*

Section 1 – Name

This section provides that the name of the Regulations is the *Medical Indemnity Amendment (Services Australia) Regulations 2020* (Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on 1 July 2020.

Section 3 – Authority

This section would provide that the Regulations be made under the *Medical Indemnity Act 2002* (the Act).

Section 4 – Schedules

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

Schedule 1—Amendments

Item 1 of Schedule 1 to the Regulations amends subsection 55(1) of the *Medical Indemnity Regulations 2020* to remove reference to “an APS employee (the authorised reviewing officer) in the Department administered by the Minister administering the Human Services (Medicare) Act 1973”. This has been substituted with ““a Departmental employee within the meaning of the *Human Services (Medicare) Act 1973* (the *authorised reviewing officer*)”.

Section 55 of the *Medical Indemnity Regulations 2020* enables the Chief Executive Medicare to authorise an Australian Public Service (APS) employee to review relevant decisions made by another APS employee in regards to the Premium Support Scheme.

The amendment will ensure that Section 55 includes employees in Services Australia, while ensuring that no further amendment to the *Medical Indemnity Regulations 2020* is needed should any future machinery of government changes occur.

Item 1 of Schedule 1 to the Regulations incorporates by reference the definition of ‘Departmental employee’ in the *Human Services (Medicare) Act 1973*. Section 14 of the *Legislation Act 2003* permits the incorporation by reference of material from an Act as in force from time to time.

Statement of Compatibility with Human Rights

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

Medical Indemnity Amendment (Services Australia) Regulations 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Medical Indemnity Amendment (Services Australia) Regulations 2020* (the Regulations) is to amend an incorrect reference to Services Australia within the *Medical Indemnity Regulations 2020* due to commence on 1 July 2020. This change will enable authorised employees within Services Australia to review relevant decisions made by another employee.

At the time of making the *Medical Indemnity Regulations 2020*, Services Australia (formerly the Department of Human Services) was a Department within the Commonwealth of Australia. However, following a recent Machinery of Government change, Services Australia is now an Executive Agency within the Social Services portfolio. The Regulations will correct this issue.

Human rights implications

The instrument does not engage any of the human rights and freedoms recognised in the seven core international human rights treaties which Australia has ratified. However, the overarching purpose of the medical indemnity legislation is to enable payments to be made to insurers to subsidise the cost of medical indemnity insurance for medical practitioners such that persons who make legitimate claims against medical practitioners are able to be compensated for any loss they have suffered. This supports Article 12(2)(d) of the International Covenant on Economic, Social and Cultural Rights such that it creates “conditions which would assure to all medical service and medical attention in the event of sickness”.

Conclusion

This Legislative Instrument is compatible with human rights, and in particular, supports the right to health.

The Hon Greg Hunt MP, Minister for Health