

2004-2005-2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MEDICAL INDEMNITY LEGISLATION AMENDMENT BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing, the Honourable Tony Abbott
MP)

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OUTLINE

The Medical Indemnity Legislation Amendment Bill 2006 amends existing medical indemnity legislation: the *Medical Indemnity Act 2002*, and the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

The purpose of the changes is to align the Run-off Cover Scheme (ROCS) with the current industry practice and ensure the smooth ongoing operation of the scheme.

ROCS, which began on 1 July 2004, is designed to provide secure insurance for doctors who have left private practice, at no cost to them. (The scheme is funded through a levy on medical indemnity insurers.) The intention was that medical indemnity insurers would provide cover to doctors who are eligible for ROCS on the same basis as the cover that was provided to them in the workforce and the government would reimburse medical indemnity insurers for the cost of any eligible claims incurred.

The Bill is intended to increase the level of certainty around the provision of run-off cover for doctors who have left the medical workforce, and simplify the administration of the scheme, following concerns raised by medical indemnity insurers and medical practitioners.

The principal change concerns doctors who for various reasons, may have had gaps in their medical indemnity cover during their career. Many of them have subsequently addressed this situation by purchasing retroactive cover for those periods. Under present legislation, they would not be covered under ROCS for incidents that occurred during these uncovered periods – even if these claims were covered under their last contract of insurance.

Also, in discussions with medical indemnity insurers it became clear that they would not always be able to determine whether a doctor had purchased appropriate medical indemnity insurance cover at the time of the incident due to movement of doctors between insurers.

It is proposed to address this by removing the requirement for a doctor to have had medical indemnity cover at the time of the occurrence of an incident for that incident to be covered by ROCS. This amendment will mean that the terms and conditions of cover provided under ROCS will be equivalent to those of the doctor's last pre-retirement contract.

This will make the system simpler to administer for medical indemnity insurers, and eliminate any uncertainty for doctors about their eligibility for ROCS which may arise out of the limitations of historical records of indemnity cover.

The Bill also amends the period for medical indemnity insurers to report if a doctor becomes eligible for ROCS or ceases to be eligible for ROCS to 61 days. Some medical indemnity insurers have indicated that they find the current 28-day time limit is unduly restrictive and it would be administratively convenient to have the ability to batch these data items and send them to Medicare Australia on the same day each month.

The Bill also clarifies that the Government should only pay medical indemnity insurers for claims under ROCS when:

- such a payout would be made in the ordinary course of business of the insurer;
- it corresponds to the type of cover the doctor is entitled to; and
- the doctor was eligible for ROCS when the insurer was notified of the claim.

The Bill also amends the requirement to receive a written response to a compulsory offer of retroactive cover when a regulated insurance contract is entered into, comes into effect or is renewed. The amendment will provide, in effect, that where doctors refuse the retroactive cover, they must do so in writing, but where doctors accept the retroactive cover, there is no requirement for consent to be in writing and they can simply pay the invoice for the policy.

FINANCIAL IMPACT STATEMENT

The Australian Government Actuary advises that there will be no financial impact resulting from this Bill.

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NOTES ON CLAUSES

Clause 1: Short Title

Clause 1 provides that the Act may be cited as the *Medical Indemnity Legislation Amendment Act 2006*.

Clause 2: Commencement

Clause 2 provides that Schedule 1, Items 1, 19 and 20 will commence on 1 July 2004. These items will ensure that the ROCS status of medical professionals and potential claims is clarified from the date of commencement of ROCS. Any possible retrospective effect of this provision will be in the direction of conferring a benefit on medical professionals and medical indemnity insurers. The remaining provisions in the Bill will commence on the day it receives Royal Assent.

Clause 3: Schedules

Clause 3 provides that the substantive provisions of the Bill are included in Schedules 1 and 2.

Schedule 1: Principal amendments

Item 1

Item 1 repeals the requirement in the *Medical Indemnity Act 2002* for a medical practitioner to have had medical indemnity cover at the time of an incident for it to be covered by ROCS. The effect is that eligible medical practitioners will receive cover under ROCS which replicates that provided under their last contract of insurance.

Item 2

Item 2 provides for consequential renumbering of the *Medical Indemnity Act 2002*.

Item 3

Item 3 is intended to clarify that the date which determines whether an incident is covered by ROCS is the date at which the MDO or medical indemnity insurer is first notified of a claim in relation to the incident. (Under the *Medical Indemnity Act 2002* a claim, in relation to ROCS only, may include a notification by a medical professional to a medical indemnity insurer of an incident.)

This Item ensures that claims which were notified while the relevant medical professionals were eligible for ROCS would remain covered by ROCS, and claims which were notified while the relevant medical professionals were not eligible for ROCS would remain outside ROCS.

Items 4 - 7

Items 4 to 7 amend the *Medical Indemnity Act 2002* to strengthen the link between that Act and the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* in relation to the payment of indemnities reimbursing medical indemnity insurers for the cost of ROCS claims.

In addition, Item 4 provides that payments must be made in the insurer's "ordinary course of business". Similar provisions are included in relation to the other medical indemnity schemes.

This approach strengthens the link between the cover provided under ROCS and that provided under the last contract of insurance, which it mirrors. It clarifies that medical indemnity insurers must treat claims against a medical practitioner that fall under ROCS in the same way as claims under the insurance cover they provided to the medical professional before they became eligible for ROCS. Such an approach allows for the payment regime to take account of the particular business practices of individual insurers, rather than attempting to prescribe every possible payment in detail, in advance.

Item 8

Item 8 mirrors the effect of Item 4, linking the *Medical Indemnity Act 2002* to the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* by inserting reference to sections of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* into the *Medical Indemnity Act 2002*, but in relation to the *amount* of the ROCS indemnity payment, which is linked explicitly to the amount which would be payable under the compulsory ROCS cover in the insurer's ordinary course of business.

Item 9

Item 9 extends the period of notification for persons ceasing to be eligible for ROCS from 28 days to 61 days, or such greater number of days as the Minister determines.

This addresses the concern of medical indemnity insurers that it would be more convenient to send the notifications in a batch on a given day of the month.

The Ministerial determination provision is included to cover the possibility that after the scheme is well established, it may be found that less frequent reporting is necessary.

Item 10

Item 10 inserts the correct paragraph number (1)(e) under which the determination by the Medicare Australia CEO is made.

Items 11 - 17

Items 11 to 17 replace abbreviations which are not defined in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* with the terms they represent.

Item 18

Item 18 limits the existing offence provision in Section 22 (2)(c) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*, which presently makes it an offence for an insurer to provide medical indemnity cover (with or without a retroactive component) before the doctor has provided a “written response” to the offer of medical indemnity (which must include a retroactive component). This amendment will mean that the offence of providing a contract of insurance before the doctor has provided a written response only applies if the contract does *not* include a retroactive component.

The effect of this will be that where doctors refuse the retroactive component, they must do so in writing, but where the doctor accepts the retroactive component, there is no requirement for consent to be in writing. (In practice this will often be indicated by payment of the invoice.)

This will ensure that doctors who take out medical indemnity insurance without a retroactive component do not do so inadvertently.

Item 19

Item 19 is a consequential amendment following from Item 18 above, recognising that where medical professionals are not required to provide a written response to medical indemnity insurers, insurers are not required to provide a copy of a written response to Medicare Australia.

Items 20 and 21

Items 20 and 21 mirror the effect of Item 1 in the *Medical Indemnity Act 2002*. It deletes the requirement in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* that a medical practitioner must have had medical indemnity cover at the time of an incident for it to be covered by ROCS, so as to ensure that the Acts remain consistent.

Items 22 and 23

Items 22 and 23 mirror the effect of Item 9 above, extending the notification period for persons entering ROCS in the same way that Item 9 does for persons leaving ROCS.

Schedule 2: Technical amendments arising from the enactment of the *Legislative Instruments Act 2003*.

Items 1 - 14

Items 1 - 14 are consequential amendments to the *Medical Indemnity Act 2002* following the enactment of the *Legislative Instruments Act 2003*.

These amendments are not intended to affect the continuity of any instrument in force immediately prior to the commencement of this schedule.

Items 15 - 20

Items 15 - 20 are consequential amendments to the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* following the enactment of the *Legislative Instruments Act 2003*.

These amendments are not intended to affect the continuity of any instrument in force immediately prior to the commencement of this schedule.