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Medical Indemnity (Prudential Supervision and
Product Standards) (Consequential Amendments)
Bill 2002

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Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002

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Contents

Purpose	1
Background	1
Main Provisions	1
Australian Prudential Regulation Authority Act 1998	1
Financial Sector (Collection of Data) Act 2001	2
Applying for ‘authorisation’ under the Insurance Act 1973.	2
Information gathering powers	2
Insurance Contracts Act 1984	3
Concluding Comments	3
Endnotes	4

Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002

Date Introduced: 12 December 2002

House: House of Representatives

Portfolio: The Treasury

Commencement: 1 July 2003

Purpose

To make consequential amendments to give effect to the proposals in the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002.

Background

This Bill forms part of the Government's package of reforms, announced by the Prime Minister in October 2002, to address the problems being experienced by providers of medical indemnity insurance in Australia. This Bill should be considered in conjunction with the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002. Further information regarding the medical indemnity crisis and Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002 can be found in the Medical Indemnity (Prudential Supervision and Product Standards) Bills Digest.¹

Main Provisions

Australian Prudential Regulation Authority Act 1998

Item 1 of Schedule 1 of the Bill amends the *Australian Prudential Regulation Authority Act 1998* so that the secrecy provisions in that Act apply to the Medical Indemnity (Prudential Supervision and Products Standards) Bill once enacted.

Warning:

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Financial Sector (Collection of Data) Act 2001

Items 2 and 3 of the Bill amend the *Financial Sector (Collection of Data) Act 2001* so that the Act applies to an entity that has provided medical indemnity cover prior to 1 July 2003 other than by way of a contract of insurance.

Applying for 'authorisation' under the Insurance Act 1973.

The Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002 states that providers of medical indemnity cover to health care professionals must be 'authorised' under the *Insurance Act 1973*.²

Item 4 of the Bill inserts a new subsection 12(3A) into the *Insurance Act 1973* to provide that the Australian Prudential Regulation Authority (APRA) must refuse an application by a medical defence organisation (MDO) for 'authorisation' to carry on an insurance business³ if the circumstances, as set out in the Bill, exist. The Bill states that if at the time that the MDO applies for authorisation, it is liable or may become liable to pay for medical indemnity claims made by insureds under arrangements that are not insurance contracts (ie discretionary cover arrangements), APRA must refuse the authorisation.

In effect, some MDOs may be required to restructure their business arrangements (such as create a new company) to ensure that the entity that applies for the authorisation is free of liabilities for outstanding discretionary cover claims. In some situations however, MDOs will already own insurance companies that only issue contracts of insurance, and therefore little restructuring will be required.⁴

Information gathering powers

Under the *Insurance Act 1973*, APRA and its officers have general powers to require that insurers make available to APRA information, books, accounts or documents for the purposes of the Act. APRA has power to inspect, take extracts from and make copies of the books, accounts or other documents.⁵

The *Insurance Act 1973* also gives officers authorised by APRA power to enter an insurers premises so that the regulator may search for, inspect, take extracts from and make copies of the books of the body corporate. Authorised officers may only do this once they have obtained the consent of the occupier of the premises or they have obtained a warrant from a Justice of the Peace authorising them to do this.⁶

Items 5 – 11 amend the *Insurance Act 1973* to vest APRA with the same information gathering powers for the purposes of ensuring that there is compliance with Part 2 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2002*.⁷

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Insurance Contracts Act 1984

The *Insurance Contracts Act 1984* sets out rules that relate to the flow of information between insurers and insureds and which govern the relationship between the insurer and the insured.

Part IA of the *Insurance Contract Act 1984* vests the Australian Securities and Investment Commission (ASIC) with powers to administer the Act. For example, ASIC has power to monitor complaints in relation to insurance matters, collect statistics relating to the nature and volume of the insurer's business and require that insurers provide it with documents that relate to the insurance cover that is provided.

Items 12 – 17 of the Bill amend the *Insurance Contracts Act 1984* so that the powers to administer the Act may also be used by ASIC in its administration of Part 3 of the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002 as enacted.

The provisions in the *Insurance Contracts Act 1984* that relate to information flows and the conduct of insurers and insureds currently do not apply to the provision of medical indemnity protection to health care professionals on a discretionary basis.⁸

The *Insurance Contracts Act 1984* will apply to all forms of medical indemnity cover once the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002 is enacted and commences operation. Medical indemnity cover provided to health care professionals under the new regime will need to be provided on a contractual basis and hence will fall within the scope of the Act.

Concluding Comments

This Bill contains a small number of consequential amendments to Commonwealth insurance legislation, namely the *Australian Prudential Regulation Authority Act 1998*, *Financial Sector (Collection of Data) Act 2001*, *Insurance Act 1973* and the *Insurance Contracts Act 1984*.

The consequential amendments to these Acts are for the purpose of giving effect to the Government's policy regarding the prudential supervision of providers of medical indemnity cover. The amendments contained within this Bill do not raise any new broad policy issues relating to prudential regulation of MDOs in Australia.

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Endnotes

- 1 Susan Dudley, 'Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002, *Bills Digest No 121, 2002–2003*, Department of the Parliamentary Library: [<http://www.aph.gov.au/library/pubs/bd/2002-03/03bd121.htm>] (13 March 2002).
- 2 For further discussion, see *ibid.*
- 3 Unless given an exemption under section 7 of the *Insurance Act 1973*, an entity may only carry on an insurance business in Australia if authorised to do so by APRA.
- 4 For example, Australian Medical Insurance Limited (AMIL) is a subsidiary of United Medical Protection Limited (UMP). AMIL currently provides professional indemnity insurance policies directly to doctors in conjunction with UMP's provision of discretionary assistance for matters outside the scope of the AMIL policy.
- 5 *Insurance Act 1973*, section 115.
- 6 *ibid.*, section 115A.
- 7 Part 2 of the Act specifies that providers of medical indemnity cover for health care professionals must be general insurers and they must supply the cover by way of a contract of insurance. Further discussion on this can be found in, *Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002, Bills Digest No 121, 2002–2003*: [<http://www.aph.gov.au/library/pubs/bd/2002-03/03bd121.htm>].
- 8 Section 8 of the *Insurance Contracts Act 1984* states that the Act applies to contracts of insurance and proposed contracts of insurance the proper law of which is or would be the law of a State or the law of a Territory in which this Act applies or to which this Act extends.

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