



Medical Indemnity Legislation Amendment Bill 2006

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Medical Indemnity Legislation Amendment Bill 2006

Date introduced: 13 September 2006

House: House of Representatives

Portfolio: Health and Ageing

Commencement: Schedule 1 items 1, 20 and 21 are taken to have commenced on 1 July 2004, other parts of the schedule commence on Royal Assent.

Purpose

This Bill makes some amendments to the Run Off Cover Scheme (ROCS). ROCS is one of a suite of measures that was implemented by the Federal Government at the height of the medical indemnity crisis to improve the affordability of medical indemnity insurance. The Bill also makes some minor amendments to other aspects of the medical indemnity regime.

Background

Background to the medical indemnity crisis and the medical indemnity regime generally can be found in the following bills digests:

- Medical Indemnity Bill 2002 *Bills Digest* No. 71 2002-03¹
- Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002 *Bills Digest* No. 121 2002-03²
- Medical Indemnity Amendment Bill 2003 and Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2003 *Bills Digest* No. 64-65 2003-04³
- Medical Indemnity Amendment Bill 2004 and Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2004 *Bills Digest* No. 99-100 2003-04⁴
- Background to ROCS can be found in the Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004 *Bills Digest* No. 157 2003-04⁵

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

Main provisions

Level of cover under ROCS

This Bill changes the eligibility criteria for health care professionals to the ROCS scheme. **Item 1** deletes paragraph 34ZB(1)(c). This removes the requirement currently in the Act for a health care professional to have had medical indemnity cover at the time of the incident to be covered by ROCS. **Items 20 and 21** also make the same amendment to the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*. This amendment was necessary as insurers and medical practitioners have often not kept complete records of their insurance history and hence could not produce evidence to substantiate the requirement that they held medical indemnity cover at the time of the incident.

Persons covered by ROCS

Persons entitled to ROCS are set out in 34ZB(2). They include:

- a person aged 65 years or over who has retired permanently from private medical practice;
- a person who has not engaged in private medical practice at any time during the preceding period of 3 years;
- a person who has ceased (temporarily or permanently) their practice as a medical practitioner because of maternity;
- person who has ceased their practice as a medical practitioner because of permanent disability;
- a person who is the legal personal representative of a deceased person who had been a medical practitioner; and
- a person who is included in a class of persons that the regulations specify as persons to whom this subsection applies.

Item 3 makes it clear that the time for determining whether a person falls within one of these categories is the time the claim is first notified to the MDO or medical indemnity insurer.

Insurers and MDO's entitlements to reimbursements

The Bill makes a series of amendments to clarify that the entitlements to reimbursements under the *Medical Indemnity Act 2002* is linked to the ROCS regime which is set up under the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*. The amendments are contained in **items 2, 4, 5, 6, 7 and 8**.

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Notifications to Medicare

The Bill amends the Medicare notification period that MDOs and medical indemnity insurers have when a health care professional ceases to be covered by ROCS, increasing the period from 28 days to 61 days (**item 9**).

The period that insurers have to notify Medicare that a practitioner is covered by the ROCS regime is also increased from 28 days to 61 days (**items 22 and 23**).

Written acceptance of ROCS by practitioners

Item 18 changes the offence provisions for written acceptance of retroactive cover so that where an offer for insurance does not include retroactive cover, the contract cannot be entered into until the practitioner has given a response in writing regarding retroactive cover. The explanatory memorandum to the bill notes that

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 payments of the invoice).

This will ensure that doctors who take out medical indemnity insurance without a retroactive component do not do so inadvertently.⁶

The Bill contains a series of other minor technical amendments and some minor consequential changes needed as a result of the commencement of the *Legislative Instruments Act 2003*.

Concluding comments

This Bill contains some technical amendments to the medical indemnity regime. In particular, the Bill makes some changes to the operation of the run off cover scheme. The changes are uncontroversial.

Endnotes

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1. Susan Dudley, 'Medical Indemnity Bill 2002', *Bills Digest*, No. 71 2002-03, <http://www.aph.gov.au/library/pubs/bd/2002-03/03bd071.htm>.

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2. Susan Dudley, 'Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002', *Bills Digest*, No. 121 2002-03, <http://www.aph.gov.au/library/pubs/bd/2002-03/03bd121.htm>.
3. Susan Dudley, 'Medical Indemnity Amendment Bill 2003 and Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2003', *Bills Digest*, No. 64-65 2003-04, <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd064.htm>.
4. Susan Dudley, 'Medical Indemnity Amendment Bill 2004 and Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2004', *Bills Digest*, No. 99-100 2003-04, <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd099-100.htm>.
5. Susan Dudley, 'Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004', *Bills Digest*, No. 157 2003-04, <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd157.pdf>.
6. Medical Indemnity Legislation Amendment Bill 2006, *Explanatory Memorandum*, p. 5.

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