

APPENDIX 4.3: GOVERNMENT RESPONSES TO FINANCIAL FAILURES

	<i>Part 23 Superannuation Industry (Supervision) Act 1993</i>	HIH Group of Companies (HIH) Support Scheme	United Medical Protection /Australasian Medical Insurance Limited (UMP/AMIL)¹
Date	Legislation enacted 1993. Not used until 2001.	March 2001 (date of HIH collapse).	May 2002.
Cause/Event	As a result of fraudulent conduct or theft by anyone involved in fund.	Collapse of HIH.	UMP/AMIL placed in provisional liquidation.
Impact	Funds previously not recoverable.	Policyholders with claims outstanding required to meet the cost of manifestation of risk.	60 per cent of doctors indemnified by UMP/AMIL. Major threat to private health system as doctors potentially left uninsured against negligence.
Response type	Formal and targeted. Only instigated when required (industry favours this approach).	Ad hoc and targeted. Only applies to HIH policyholders. Not envisaged to extend to other general insurance collapses if required.	Two ad hoc responses. One targeted at UMP/AMIL only and one at all Medical Defence Organisations (MDOs) with unfunded incurred but not reported (IBNR) liabilities.
Criteria for response	Consumer protection.	Policyholder protection. Hardship.	Industry protection, consumer protection and indirectly, protection of public health system.

¹ The key elements of the Government's financial response to the failure of UMP/AMIL was a guarantee for a limited period in order that UMP/AMIL could continue to meet payments under the cover provided to its members and legislation allowing the Commonwealth to assume unfunded incurred but not reported (IBNR) liabilities of UMP/AMIL and other MDOs. In addition, prudential requirements were strengthened. The remaining package of measures such as premium subsidies, high claims cost recovery scheme and exceptional claims cost scheme, were in response to wider issues occurring in the medical indemnity insurance market at the time.

Government responses to financial failures (continued)

	<i>Part 23 Superannuation Industry (Supervision) Act 1993</i>	HIH Group of Companies (HIH) Support Scheme	United Medical Protection /Australasian Medical Insurance Limited (UMP/AMIL)
Coverage	Regulated super funds and approved deposit funds.	Policyholders subject to income test based on the family taxable income (as defined for Family Tax Benefit purposes). ² Small business (based on small business definition, less than 50 employees) and not for profit organisations (no hardship criteria).	Two key forms of financial support: (i) Guarantee for UMP/AMIL for a limited period in order that UMP/AMIL could continue to meet payments under the cover provided to its members. Guarantee ended when UMP/AMIL exited provisional liquidation in November 2003. (ii) Legislation allows the Commonwealth to assume unfunded IBNR liabilities of any MDO. So far only assumed those of UMP.
Eligibility	Must result in substantial diminution in funds and difficulty in administering payments to beneficiaries. Public interest test.	Policyholders with outstanding claims and IBNR claims as at 11 June 2001. Australian residents only. Small business. Not for profit organisations.	(i) UMP/AMIL (and member doctors). (ii) All MDOs with unfunded IBNRs as at 30 June 2002.
Exclusions	Self-managed funds and exempt public sector funds (some States covered by nominal defendant arrangements).	Policyholders with income in excess of hardship level. State-mandated insurance. Small business that is a related entity of a larger organisation.	No specific exclusions. Some medical practitioners are exempt from reimbursing the Commonwealth for its assumption of their IBNR liabilities.

² Where the family taxable income is less than \$77,234 (increased by \$3139 for each additional child), a policyholder qualifies regardless of the size of the claim. Where family taxable income is more than \$77,234 (increased by \$3139 for each additional child), a policyholder qualifies for assistance if the claim is more than 10 per cent of family taxable income.

Government responses to financial failures (continued)

	Part 23 <i>Superannuation Industry (Supervision) Act 1993</i>	HIH Group of Companies (HIH) Support Scheme	United Medical Protection /Australasian Medical Insurance Limited (UMP/AMIL)
Administration	Legislative basis. Ministerial approval required, Treasury makes recommendation to Minister. Payments made by Commonwealth from consolidated revenue in the form of a grant to the fund.	Semi-legislative basis (only appropriation). Company established to administer payments and assess eligibility. Claims management outsourced to various insurance companies.	(i) Deed of Indemnity. (ii) Legislative basis for IBNR levy/UMP support payment. UMP support payment replaces IBNR levy. Limited to 6 years. Amount paid depends on length of membership of UMP, past premiums and gross medical income
Payment	Government policy has to date been to cap at 90 per cent cap of actual loss.	100 per cent of claims for salary continuance, disability or income protection claims, personal injury claims, loss of primary residence and not-for-profit organisations. 90 per cent for all other claims.	(i) Guarantee ensured ongoing financial viability of UMP/AMIL. No payments required. (ii) Commonwealth meets cost of unfunded IBNR liabilities as they arise.
Funding	Post-funded by private levy on all eligible funds. Collected in following year and based on asset levels in the year of the event. Minimum and maximum ³ levy set in regulations. Any recovered funds following successful prosecution to be held in Super Protection Reserve and used to offset future claims. ⁴	Tax funded.	(i) Guarantee was underwritten by budget with full <i>ex post</i> recovery through a levy if necessary (distinct from IBNR levy). (ii) IBNR scheme/UMP support recoverable through pre-funded levy on medical practitioners not specifically exempt. Duration and rate of levy is dependent on size of MDOs unfunded liabilities. Duration of support payments is limited to 6 years.

³ Maximum for 2001-2002 at \$33,000 and minimum at \$100.

⁴ To date no funds have been successfully recovered.

Government responses to financial failures (continued)

	Part 23 <i>Superannuation Industry (Supervision) Act 1993</i>	HIH Group of Companies (HIH) Support Scheme	United Medical Protection /Australasian Medical Insurance Limited (UMP/AMIL)
Cost recovery	Levy funded as a percentage of fund assets.	Budget funded.	Budget and levy funded.
Tax implications	Payments are income tax exempt. ⁵	Payments are defined as 'grants'.	IBNR levy is tax deductible.
Duration of response	Ongoing.	Scheme ceasing to accept applications from 27 February 2004. ⁶ Outstanding claims may take some time to settle, in particular liability classes.	Guarantee ceased once UMP/AMIL exited provisional liquidation. UMP support scheme ongoing. The Commonwealth has fully assumed certain unfunded IBNR liabilities.

⁵ Payment is taxable for GST purposes.

⁶ There will be a facility for policyholders to make a late application where a relevant fact relating to the policyholders right to claim under an insurance policy issued by a company in the HIH Group was not known to the policyholder until after the cut-off date of 27 February 2004.