Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

No. 30, 2010

Compilation No. 7

Compilation date:	1 July 2021
Includes amendments up to:	Act No. 48, 2021
Registered:	10 August 2021

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2021C00290 registered 10/08/2021

About this compilation

This compilation

This is a compilation of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* that shows the text of the law as amended and in force on 1 July 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 1—Introduction 1

Part 1—Preliminary 1

Division 1—Preliminary 1

1 Short title 1
2 Commencement 1

Division 2—Objects and Guide 2

3 Objects of this Act and the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010* 2
4 Guide to this Act 2

Division 3—Definitions 4

5 Definitions 4

Division 4—Other general matters 11

6 External Territories 11
7 Rules may set termination dates 11

Chapter 2—Midwife Professional Indemnity Commonwealth Contributions 12

Part 1—Guide to this Chapter 12

8 Guide to this Chapter 12

Part 2—Level 1 and Level 2 Commonwealth contributions 13

Division 1—Preliminary 13

9 Guide to the Level 1 and Level 2 Commonwealth contribution provisions 13
10 Level 1 and Level 2 claim thresholds 15

Division 2—Certification 17

11 When may the Chief Executive Medicare certify a claim as a qualifying claim? 17
12 Application for a qualifying claim certificate 20
13 Time by which an application must be decided 21
14 Obligation to notify the Chief Executive Medicare if information is incorrect or incomplete 21
15 Revocation and variation of qualifying claim certificates 22

Authorised Version C2021C00290 registered 10/08/2021

Division 3—Payability 25

Subdivision A—Level 1 payability 25

16 When is a Level 1 Commonwealth contribution payable? 25

17 Amount of Level 1 Commonwealth contribution 27

Subdivision B—Level 2 payability 27

18 When is a Level 2 Commonwealth contribution payable? 27

19 Qualifying liabilities 29

20 Interaction with Level 1 Commonwealth contribution and run-off cover 31

21 Amount of Level 2 Commonwealth contribution 31

22 How Level 2 Commonwealth contribution is to be applied 31

23 Who is liable to repay an overpayment of Level 2 Commonwealth contribution? 33

Subdivision C—Payments that would have reduced the amount paid out under the contract of insurance 34

24 Amounts paid before payment of Level 2 Commonwealth contribution 34

25 Amounts paid after payment of Level 2 Commonwealth contribution 35

26 Obligation to notify the Chief Executive Medicare that amount has been paid 36

27 The Chief Executive Medicare to notify of amount of debt due 37

28 Penalty imposed if an amount is repaid late 37

Part 3—Run-off cover Commonwealth contributions 40

Division 1—Introduction 40

29 Guide to run-off cover Commonwealth contributions 40

31 Eligible run-off claims 41

Division 2—Run-off cover Commonwealth contributions 45

32 Circumstances in which run-off cover Commonwealth contributions are payable 45

33 Clarification of circumstances in which run-off cover Commonwealth contributions are payable 46

34 Exceptions 46

35 Amount of run-off cover Commonwealth contribution 47

Authorised Version C2021C00290 registered 10/08/2021

Division 3—Payments that would have reduced the amount of run-off cover Commonwealth contribution 48
36 Amounts paid before payment of run-off cover Commonwealth contribution 48
37 Amounts paid after payment of run-off cover Commonwealth contribution 49
38 Obligation to notify the Chief Executive Medicare that amount has been paid 50
39 The Chief Executive Medicare to notify of amount of debt due 50
40 Penalty imposed if an amount is repaid late 51
Division 4—Effect of setting a run-off cover termination date 53
41 Commonwealth's obligations if a run-off cover termination date is set 53
42 Affected eligible midwife 53
43 Payments in relation to affected eligible midwife 53
44 Total run-off cover credits 54
45 Eligible insurers must provide information attributing run-off cover support payments 56
Division 5—Miscellaneous 57
46 Chief Executive Medicare must be notified of a person ceasing to be covered by the midwife run-off cover provisions 57
47 Invoices for midwife professional indemnity cover 57
48 Reports on run-off cover Commonwealth provisions 58
49 Modifications and exclusions 59
Part 4—Administration of provisions relating to Commonwealth contributions 61
Division 1—Guide 61
50 Guide to this Part 61
Division 2—Apportionment certificates 63
51 When may the Chief Executive Medicare issue an apportionment certificate in relation to a claim? 63
52 Chief Executive Medicare must not issue an apportionment certificate in certain situations relating to court judgments or orders 64
53 Applications for apportionment certificates 65
54 Time by which an application must be decided 66

Authorised Version C2021C00290 registered 10/08/2021

55 Obligation to notify the Chief Executive Medicare if information is incorrect or incomplete 66
56 Revocation and variation of apportionment certificates 67
57 AAT review of decision to issue, revoke or vary 68

Division 3—Applications for, and payment of, Commonwealth contribution 70

58 Application for Level 1 Commonwealth contribution or a Commonwealth run-off cover contribution 70
59 Payment date for Level 1 Commonwealth contribution or a run-off cover Commonwealth contribution 70
60 Application for Level 2 Commonwealth contribution 71
61 Payment date for Level 2 Commonwealth contribution 72

Division 4—Information gathering and record keeping 74

62 Chief Executive Medicare may request information 74
63 Main record keeping obligations 75

Division 5—Overpayments of the contributions 77

64 Recovery of overpayments 77
65 Chief Executive Medicare may collect money from a person who owes money to a person 78

Division 6—Offences 81

66 Failing to give information 81
67 Failing to notify 81
68 Failing to keep and retain records 81
69 Failing to include required information in invoices 82

Division 7—Finance 83

70 Appropriation 83

Division 8—Reinsurance contracts 84

71 Commonwealth contributions disregarded for purposes of reinsurance contracts 84

Division 9—Monitoring 85

71A Insurers may be required to provide information 85

Chapter 3—Run-off cover support payments 86

Part 1—Introduction 86

72 Guide to this Chapter 86

Authorised Version C2021C00290 registered 10/08/2021

Part 2—Payment of run-off cover support payment 88
73 Who is liable to pay the run-off cover support payment? 88
74 Exemptions 88
75 When run-off cover support payment must be paid 88
76 Late payment penalty 88
77 Method of paying certain amounts 89
78 Refund of overpaid amounts 90
79 Recovery of payment debt 90
80 Chief Executive Medicare may collect money from a person who owes money to a person 91
81 Evidentiary certificates 93

Part 3—Information gathering provisions 94
82 Chief Executive Medicare may request information 94
83 Chief Executive Medicare must be notified of a change in circumstances etc. 95
84 Failing to give information 95
85 Failing to notify 96

Chapter 4—Miscellaneous 97
86 General administration of this Act and *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010* 97
87 Additional functions of the Chief Executive Medicare 97
87A Chief Executive Medicare may use computer programs to take administrative action 97
87B Delegation by Secretary 98
88 Officers to observe secrecy 98
89 Act not to apply in relation to State insurance within a State 101
90 Minister may make Rules 102
91 Regulations 102

Endnotes 104
Endnote 1—About the endnotes 104
Endnote 2—Abbreviation key 106
Endnote 3—Legislation history 107
Endnote 4—Amendment history 109

Authorised Version C2021C00290 registered 10/08/2021

Authorised Version C2021C00290 registered 10/08/2021

An Act to make provision in relation to professional indemnity cover for certain midwives, and for related purposes

Chapter 1—Introduction

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act may be cited as the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

2 Commencement

This Act commences on 1 July 2010.

Authorised Version C2021C00290 registered 10/08/2021

Division 2—Objects and Guide

3 Objects of this Act and the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*

(1) An object of this Act is to contribute towards the availability of professional midwife services in Australia by providing Commonwealth assistance to support access by eligible midwives to arrangements that indemnify them for claims arising in relation to their practice of the profession of midwifery.

(2) The Commonwealth provides that assistance under this Act by:
  (a) meeting part of the costs of large settlements or awards paid by eligible insurers that indemnify eligible midwives; and
  (b) meeting the amounts by which settlements and awards exceed insurance contract limits, if those contract limits meet the Commonwealth's threshold requirements; and
  (c) meeting the amounts payable in relation to certain claims against eligible midwives who are no longer in private practice.

(3) Another object of this Act (together with the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*) is to allow the Commonwealth to recover the costs of providing the assistance referred to in paragraph (2)(c) by requiring payments from eligible insurers.

4 Guide to this Act

(1) Chapter 1 deals with preliminary matters, including definitions.

(2) Chapter 2 deals with:
  (a) Level 1 and Level 2 Commonwealth contributions; and
  (b) run-off cover Commonwealth contributions.

(3) Chapter 3 deals with run-off cover support payments.

Authorised Version C2021C00290 registered 10/08/2021

(4) Chapter 4 deals with miscellaneous matters.

Authorised Version C2021C00290 registered 10/08/2021

Division 3—Definitions

5 Definitions

General

(1) In this Act:

Actuary means the Australian Government Actuary.

administrative action has the meaning given by subsection 87A(4).

affected eligible midwife has the meaning given by section 42.

apportionment certificate means an apportionment certificate issued by the Chief Executive Medicare under subsection 51(1).

Chief Executive Medicare has the same meaning as in the *Human Services (Medicare) Act 1973*.

claim:

(a) means a claim or demand of any kind (whether or not involving legal proceedings); and

(b) includes proceedings of any kind including:

(i) proceedings before an administrative tribunal or of an administrative nature; and

(ii) disciplinary proceedings (including disciplinary proceedings conducted by or on behalf of a professional body); and

(iii) an inquiry or investigation;

and ***claim against a person*** includes an inquiry into, or an investigation of, the person's conduct.

Note: Subsection (2) extends the meaning of claim for the purposes of Chapter 3 (run-off cover).

Commonwealth contribution means:

(a) a Level 1 Commonwealth contribution; or

Authorised Version C2021C00290 registered 10/08/2021

(b) a Level 2 Commonwealth contribution; or
(c) a run-off cover Commonwealth contribution.

contribution year has the same meaning as in the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

eligible insurer means an insurer included in a class of insurers specified in the Rules.

eligible midwife means a person who:
(a) is licensed, registered or authorised to practice midwifery by or under a law of the Commonwealth, a State or a Territory; and
(b) meets such other requirements (if any) as are specified in the Rules for the purposes of this paragraph; and
(c) is not included in a class of persons specified in the Rules for the purposes of this paragraph.

Note: Subsection (6) gives this definition an extended meaning in Part 3 of Chapter 2 (which deals with run-off cover Commonwealth contributions).

eligible run-off claim has the meaning given by section 31.

Federal Register of Legislation means the Federal Register of Legislation established under the *Legislation Act 2003*.

health service means any service, care, treatment, advice or goods provided in respect of the physical or mental health of a person.

incident means any incident (including any act, omission or circumstance) that occurs, or that is claimed to have occurred, in the course of, or in connection with, the provision of a health service.

indemnify has a meaning affected by subsection (3).

insurance business has the same meaning as in the *Insurance Act 1973*.

Authorised Version C2021C00290 registered 10/08/2021

insurer means a person who carries on insurance business.

insurer-to-insurer payment means a payment that:

(a) is made by an insurer to an insurer; and

(b) is not made by the insurer on behalf of another person.

invoice includes any document issued by an eligible insurer to a person (whether or not the eligible insurer already provides midwife professional indemnity cover to the person) that contains a quote for the amount of premium that is or would be payable by that person for provision of such cover.

late payment penalty:

(a) in relation to a debt owed under section 25—means a penalty payable under section 28; and

(b) in relation to a debt owed under section 37—means a penalty payable under section 40.

legal practitioner means a person who is enrolled as a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of:

(a) a federal court; or

(b) a court of a State or Territory.

Level 1 claim threshold has the meaning given by subsection 10(1).

Level 1 Commonwealth contribution means a Level 1 Commonwealth contribution paid or payable under Subdivision A of Division 3 of Part 2 of Chapter 2.

Level 1 qualifying claim certificate means a Level 1 qualifying claim certificate issued by the Chief Executive Medicare under subsection 11(1).

Level 1 termination date means the date specified in Rules made under subsection 7(1).

Level 2 claim threshold has the meaning given by subsection 10(2).

Authorised Version C2021C00290 registered 10/08/2021

Level 2 Commonwealth contribution means a Level 2 Commonwealth contribution paid or payable under Subdivision B of Division 3 of Part 2 of Chapter 2.

Level 2 qualifying claim certificate means a Level 2 qualifying claim certificate issued by the Chief Executive Medicare under subsection 11(2).

Level 2 termination date means the date specified in Rules made under subsection 7(2).

medical practitioner means a person registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

midwife professional indemnity cover: a contract of insurance provides midwife professional indemnity cover for a person if:

(a) the insurance cover provided by the contract is cover (other than midwife professional indemnity run-off cover) that an eligible insurer is required, under an arrangement in force between the eligible insurer and the Commonwealth, to provide; and

(b) the person is specified or referred to in the contract, whether by name or otherwise, as a person to whom the insurance cover extends; and

(c) the insurance cover indemnifies the person (subject to the terms and conditions of the contract) in relation to claims that may be made against the person in relation to incidents that occur or occurred in the course of, or in connection with, the practice by the person of the profession of midwifery.

Note: A single contract of insurance may provide midwife professional indemnity cover for more than one person.

midwife professional indemnity run-off cover means cover in the nature of midwife professional indemnity run-off cover that an eligible insurer is required, under an arrangement in force between the eligible insurer and the Commonwealth, to provide to persons referred to in subsection 31(2).

Authorised Version C2021C00290 registered 10/08/2021

payment made in relation to a claim (other than in Subdivisions B and C of Division 3 of Part 2 of Chapter 2 (which deal with Level 2 Commonwealth contributions)) has the meaning given by subsections (4) and (5).

public patient has the same meaning as in the *Health Insurance Act 1973*.

qualifying claim certificate means a Level 1 or Level 2 qualifying claim certificate.

qualifying liability, in relation to a claim, has the meaning given by section 19.

Rules means the rules made under section 90.

run-off cover Commonwealth contribution means a run-off cover Commonwealth contribution paid or payable under Division 2 of Part 3 of Chapter 2.

run-off cover support payment means a run-off cover support payment payable under Part 2 of Chapter 3.

run-off cover termination date means the date specified in Rules made under subsection 7(3).

Secretary means the Secretary of the Department.

subject to appeal: a judgment or order is subject to appeal until:

(a) any applicable time limits for lodging an appeal (however described) against the judgment or order have expired; and

(b) if there is such an appeal against the judgment or order—the appeal (and any subsequent appeals) have been finally disposed of.

total run-off cover credit has the meaning given by section 44.

Authorised Version C2021C00290 registered 10/08/2021

Notifications by midwives may constitute claims

(2) A reference in Part 3 of Chapter 2 (which deals with run-off cover) to a claim includes a reference to a notification by, or on behalf of, a person of an incident if:

(a) at the time of the incident, the person was an eligible midwife; and

(b) the notification is to an eligible insurer; and

(c) at the time of the notification:

(i) a contract of insurance with the eligible insurer provided the person with midwife professional indemnity cover; and

(ii) the cover would have indemnified the person in relation to any claim relating to the incident if the claim had been made at the time of the notification.

The notification is taken, for the purposes of Part 3, to be a claim against the person.

Indemnifying

(3) To avoid doubt, a person may, for the purposes of this Act, indemnify someone else by either:

(a) making a payment; or

(b) agreeing to make a payment.

Note: A person may indemnify someone else by making a payment even if the payment was not preceded by an agreement to pay.

Payments in relation to claims

(4) For the purposes of this Act (other than Subdivisions B and C of Division 3 of Part 2 of Chapter 2):

(a) a payment is made or is payable in relation to a claim against a person if and only if the payment is made or is payable to:

(i) satisfy or settle the claim; or

Authorised Version C2021C00290 registered 10/08/2021

(ii) meet legal and other expenses that are directly attributable to any negotiations, arbitration or proceedings in relation to the claim; and

(b) a payment is made or is payable in relation to a claim by a person if and only if the payment is made or is payable to meet legal and other expenses that are directly attributable to any negotiations, arbitration or proceedings in relation to the claim.

(5) A reference in this Act (other than Subdivisions B and C of Division 3 of Part 2 of Chapter 2) to a payment being made to satisfy or settle a claim against a person includes a reference to a payment that:

(a) is made to reimburse the person for a payment the person has made to satisfy or settle the claim; or

(b) is made to the person so that the person can make a payment to satisfy or settle the claim.

Eligible midwives

(6) A reference in Part 3 of Chapter 2 to an eligible midwife includes a reference to a person who has been an eligible midwife.

Authorised Version C2021C00290 registered 10/08/2021

Division 4—Other general matters

6 External Territories

This Act extends to every external Territory.

7 Rules may set termination dates

(1) The Rules may set a Level 1 termination date.

(2) The Rules may set a Level 2 termination date.

(3) The Rules may set a run-off cover termination date.

Authorised Version C2021C00290 registered 10/08/2021

Chapter 2—Midwife Professional Indemnity Commonwealth Contributions

Part 1—Guide to this Chapter

8 Guide to this Chapter

(1) This Chapter is about midwife professional indemnity Commonwealth contributions.

(2) Part 2 deals with Level 1 and Level 2 Commonwealth contributions. Section 9 contains a detailed Guide to Part 2 and related provisions of Part 4.

(3) Part 3 deals with run-off cover Commonwealth contributions. Section 29 contains a detailed Guide to Part 3 and related provisions of Part 4.

(4) Part 4 deals with the administration of Level 1 and Level 2 Commonwealth contributions and run-off cover Commonwealth contributions. Section 50 contains a detailed Guide to Part 4.

Authorised Version C2021C00290 registered 10/08/2021

Part 2—Level 1 and Level 2 Commonwealth contributions

Division 1—Preliminary

9 Guide to the Level 1 and Level 2 Commonwealth contribution provisions

(1) This Part provides that a Level 1 Commonwealth contribution may be paid to an eligible insurer that pays, or is liable to pay, more than a particular amount in relation to a claim against a midwife. The claim must:

(a) relate to an incident that occurs in the course of, or in connection with, the practice by the person as an eligible midwife; and

(b) have been certified as a qualifying claim.

(2) This Part provides that a Level 2 Commonwealth contribution may be paid in relation to a liability of a midwife (for example, a liability under a court judgment) if the liability:

(a) is in relation to a claim that:

(i) relates to an incident that occurs in the course of, or in connection with, the person's practice as an eligible midwife; and

(ii) has been certified as a qualifying claim; and

(b) exceeds the amount payable under an insurance contract that limits the eligible insurer's liability under the contract in relation to a particular claim against the midwife, where the limit equals or exceeds the Level 2 claim threshold.

(3) The following table tells you where to find the provisions dealing with various issues:

Authorised Version C2021C00290 registered 10/08/2021

Where to find the provisions on various issues

Item	Issue	Provisions
1	what are the Level 1 and Level 2 claim thresholds?	section 10
2	when may the Chief Executive Medicare certify a claim as a qualifying claim?	section 11
3	when are Level 1 and Level 2 Commonwealth contributions payable?	sections 16 and 18
4	why are apportionment certificates relevant?	paragraph 16(1)(c)
6	how are applications for apportionment certificates made and decided?	sections 51 to 57
7	what is the amount of a Level 1 or Level 2 Commonwealth contribution?	sections 17 and 21
8	how is an application for Level 1 or Level 2 Commonwealth contribution made?	sections 58 and 60
9	when will Level 1 or Level 2 Commonwealth contribution be paid?	sections 59 and 61
10	how must Level 2 Commonwealth contribution be applied?	section 22
11	who is liable to repay an overpayment of Level 2 Commonwealth contribution indemnity?	section 23
12	what if a payment is received that would have reduced the amount of an insurance payment?	sections 24 to 28
13	what information has to be given to the Chief Executive Medicare?	section 62
14	what records must eligible insurers	section 63

Authorised Version C2021C00290 registered 10/08/2021

Where to find the provisions on various issues		
Item	**Issue**	**Provisions**
	keep?	
15	how are overpayments of Level 1 and Level 2 Commonwealth contribution recovered?	section 64

10 Level 1 and Level 2 claim thresholds

Level 1 claim threshold

(1) The ***Level 1 claim threshold*** is:
  (a) $100,000; or
  (b) such other amount as is specified in the Rules for the purposes of this paragraph.

Note: Claims cannot be aggregated to reach the Level 1 claim threshold: see paragraph 11(3)(j).

Level 2 claim threshold

(2) The ***Level 2 claim threshold*** is:
  (a) $2 million; or
  (b) such other amount as is specified in the Rules for the purposes of this paragraph.

Note: Claims cannot be aggregated to reach the Level 2 claim threshold: see paragraph 11(3)(j).

(3) A Rule specifying an amount as the Level 1 claim threshold (or changing the amount previously so specified) only applies in relation to a payment made or payable under a contract of insurance entered into, or renewed, after the Rule commences.

(4) A Rule specifying an amount as the Level 2 claim threshold (or changing the amount previously so specified) only applies in relation to a contract of insurance entered into, or renewed, at the time or after the Rule commences.

Authorised Version C2021C00290 registered 10/08/2021

(5) A Rule changing the Level 1 claim threshold or Level 2 claim threshold (which could be the threshold originally applicable under subsection (1) or (2), or that threshold as already changed by Rules) commences on the date specified in the Rules, which must be the date on which the Rules are entered on the Federal Register of Legislation or a later day.

Authorised Version C2021C00290 registered 10/08/2021

Division 2—Certification

11 When may the Chief Executive Medicare certify a claim as a qualifying claim?

Criteria for certification—Level 1

(1) The Chief Executive Medicare may issue a certificate stating that a claim is a Level 1 qualifying claim if the Chief Executive Medicare is satisfied that:

(a) the claim meets the common requirements set out in subsection (3); and

(b) a person has applied for a Level 1 qualifying claim certificate in relation to the claim in accordance with section 12.

Criteria for certification—Level 2

(2) The Chief Executive Medicare may issue a certificate stating that a claim is a Level 2 qualifying claim if the Chief Executive Medicare is satisfied that:

(a) the claim meets the common requirements set out in subsection (3); and

(b) the claim meets the additional Level 2 requirements set out in subsection (4); and

(c) a person has applied for a Level 2 qualifying claim certificate in relation to the claim in accordance with section 12.

Common requirements for both Level 1 and Level 2 qualifying claim certificates

(3) A claim in relation to which an application for a Level 1 or Level 2 qualifying claim certificate has been made meets the ***common requirements*** set out in this subsection if:

(a) the claim is or was made against a person (the ***midwife***); and

Authorised Version C2021C00290 registered 10/08/2021

(b) the claim relates to an incident that occurs or occurred in the course of, or in connection with, the midwife's practice as an eligible midwife; and

(c) there is a contract of insurance entered into by an eligible insurer that provides midwife professional indemnity cover in relation to the claim; and

(d) except in the circumstances specified in Rules made for the purposes of this paragraph, the incident occurs or occurred in Australia or an external Territory; and

(e) the claim does not relate to an incident that occurs or occurred in the course of, or in connection with, the provision of treatment of a public patient of a hospital; and

(f) the claim does not relate to an incident that occurs or occurred in the course of, or in connection with, practice of a kind for which:

(i) the Commonwealth, a State or a Territory; or

(ii) a local governing body; or

(iii) an authority established under a law of the Commonwealth, a State or a Territory;

indemnifies eligible midwives from liability relating to compensation; and

(h) if the application is for a Level 1 qualifying claim certificate, the incident occurs or occurred:

(i) on or after 1 July 2010; and

(ii) on or before the Level 1 termination date (if any); and

(i) if the application is for a Level 2 qualifying claim certificate the incident occurs or occurred:

(i) on or after 1 July 2010; and

(ii) on or before the Level 2 termination date (if any); and

(j) the claim is not in substance an aggregation of two or more separate claims against the midwife; and

(k) the claim is not a claim included in a class specified in Rules made for the purposes of this paragraph; and

Authorised Version C2021C00290 registered 10/08/2021

(l) the claim does not relate to an incident of a kind specified in Rules made for the purposes of this paragraph; and

(m) the claim does not relate to a type of midwifery practice specified in Rules made for the purposes of this paragraph.

Additional requirements for Level 2 qualifying claim certificates

(4) A claim in relation to which an application for a Level 2 qualifying claim certificate has been made meets the ***additional Level 2 requirements*** set out in this subsection if:

(a) there is a contract of insurance entered into by an eligible insurer in relation to which the following requirements are satisfied:

(i) the contract provides midwife professional indemnity cover for the eligible midwife in relation to the claim, or would, but for the limit of the eligible insurer's liability under the contract in relation to a particular claim against the eligible midwife, provide such cover for the midwife in relation to the claim;

(ii) the limit of the eligible insurer's liability under the contract, in relation to each claim against the midwife, equals or exceeds the Level 2 claim threshold;

(iii) the eligible insurer is a general insurer, within the meaning of the *Insurance Act 1973*;

(iv) the eligible insurer entered into the contract in the ordinary course of the eligible insurer's business; and

(b) the contract of insurance is not a contract included in a class specified in Rules made for the purposes of this paragraph.

When a certificate is in force

(5) The certificate comes into force when it is issued and remains in force until it is revoked.

Matters to be identified or specified in certificate

(6) The certificate must:

Authorised Version C2021C00290 registered 10/08/2021

(a) identify:
(i) the midwife; and
(ii) the claim; and
(iii) if the certificate is a Level 2 qualifying claim certificate—the contract of insurance that provides midwife professional indemnity cover for the midwife; and
(b) specify the Level 1 claim threshold or the Level 2 claim threshold, as the case requires.

The certificate may also contain other material.

AAT review of decision to refuse

(7) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare to refuse to issue a qualifying claim certificate.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

Chief Executive Medicare to give applicant copy of certificate

(8) If the Chief Executive Medicare decides to issue a qualifying claim certificate, the Chief Executive Medicare must, within 28 days of making his or her decision, unless it is not reasonably practicable to do so, give the applicant a copy of the certificate. However, a failure to comply does not affect the validity of the decision.

(9) A qualifying claim certificate is not a legislative instrument.

12 Application for a qualifying claim certificate

(1) An application for the issue of a Level 1 qualifying claim certificate may be made by an eligible insurer.

(2) An application for the issue of a Level 2 qualifying claim certificate may be made by:
(a) an eligible insurer; or

Authorised Version C2021C00290 registered 10/08/2021

(b) the person against whom the claim is or was made or a person acting on that person's behalf.

(3) The application must:

(a) be made in writing using a form approved by the Chief Executive Medicare; and

(b) specify whether it is an application for a Level 1 qualifying claim certificate or a Level 2 qualifying claim certificate; and

(c) specify each person, other than the midwife concerned, against whom a claim has been or is reasonably likely to be made, in relation to the incident to which the claim relates; and

(d) be accompanied by the documents and other information required by the form approved by the Chief Executive Medicare.

13 Time by which an application must be decided

(1) Subject to subsection (2), the Chief Executive Medicare is to decide an application for the issue of a qualifying claim certificate on or before the 21st day after the day on which the application is received by the Chief Executive Medicare.

(2) If the Chief Executive Medicare requests a person to give information under section 62 in relation to the application, the Chief Executive Medicare does not have to decide the application until the 21st day after the day on which the person gives the information to the Chief Executive Medicare.

14 Obligation to notify the Chief Executive Medicare if information is incorrect or incomplete

(1) If:

(a) a qualifying claim certificate is in force in relation to a claim; and

(b) a person becomes aware that the information provided to the Chief Executive Medicare in connection with the application

Authorised Version C2021C00290 registered 10/08/2021

for the certificate was incorrect or incomplete, or is no longer correct or complete; and

(c) the person is:

(i) the person who applied for the certificate; or

(ii) another person who has applied for a payment of Level 1 or Level 2 Commonwealth contribution in relation to the claim;

the person must notify the Chief Executive Medicare of the respect in which the information was incorrect or incomplete, or is no longer correct or complete.

Note: Failure to notify is an offence (see section 67).

(2) The notification must:

(a) be made in writing; and

(b) be given to the Chief Executive Medicare within 28 days after the person becomes aware as mentioned in subsection (1).

15 Revocation and variation of qualifying claim certificates

Revocation

(1) The Chief Executive Medicare may revoke a qualifying claim certificate if the Chief Executive Medicare is no longer satisfied as mentioned in subsection 11(1) or (2) in relation to the claim.

(2) To avoid doubt, in considering whether he or she is still satisfied as mentioned in subsection 11(1) or (2) in relation to the claim, the Chief Executive Medicare may have regard to matters that have occurred since the decision to issue the qualifying claim certificate was made, including for example:

(a) the making of Rules for the purpose of paragraph 11(3)(k),(l) or (m) or (4)(b); or

(b) changes to the terms and conditions of the contract of insurance identified in the certificate.

Authorised Version C2021C00290 registered 10/08/2021

Variation

(3) If the Chief Executive Medicare is satisfied that a matter is not correctly identified or specified in a qualifying claim certificate, the Chief Executive Medicare must vary the certificate so that it correctly identifies or specifies the matter.

Effect of revocation

(4) If:

(a) the Chief Executive Medicare revokes a qualifying claim certificate; and

(b) an amount of Level 1 or Level 2 Commonwealth contribution has already been paid in relation to the claim;

the amount is an amount overpaid to which section 64 applies.

Effect of variation

(5) If:

(a) the Chief Executive Medicare varies a qualifying claim certificate; and

(b) an amount of Level 1 or Level 2 Commonwealth contribution has already been paid in relation to the claim, and that amount exceeds the amount that would have been paid if the amount of Level 1 or Level 2 Commonwealth contribution had been determined having regard to the certificate as varied;

the amount of the excess is an amount overpaid to which section 64 applies.

AAT review of decision to revoke or vary

(6) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare to revoke or vary a qualifying claim certificate.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

Authorised Version C2021C00290 registered 10/08/2021

Chief Executive Medicare to give applicant copy of varied certificate

(7) If the Chief Executive Medicare decides to vary a qualifying claim certificate, the Chief Executive Medicare must, within 28 days of making his or her decision, give the applicant a copy of the varied certificate. However, a failure to comply does not affect the validity of the decision.

Authorised Version C2021C00290 registered 10/08/2021

Division 3—Payability

Subdivision A—Level 1 payability

16 When is a Level 1 Commonwealth contribution payable?

Basic payability rule

(1) A Level 1 Commonwealth contribution is payable to an eligible insurer under this section if:

(a) a claim (the ***current claim***) is, or was, made against a person (the ***midwife***); and

(b) a Level 1 qualifying claim certificate is in force in relation to the current claim; and

(c) in a case where there is a person, other than the midwife, against whom a claim has been, or could reasonably be made in relation to the incident to which the current claim relates—either:

(i) an apportionment certificate in relation to the current claim is in force; or

(ii) the Chief Executive Medicare has not issued an apportionment certificate because of the operation of section 52 (which deals with claims for which there is a final judgment or order of a court); and

(d) the eligible insurer has a qualifying payment in relation to the current claim (see subsection (3)); and

(e) the amount of the qualifying payment exceeds what was the Level 1 claim threshold at the time the eligible insurer was first notified of the current claim or the incident to which the current claim relates; and

(f) a person has applied for the Level 1 Commonwealth contribution in accordance with section 58; and

(g) any other requirements (however described) that are specified in the Rules have been met; and

Authorised Version C2021C00290 registered 10/08/2021

(h) the current claim is not a claim included in a class specified in Rules made for the purposes of this paragraph.

(2) Rules made for the purposes of paragraph (1)(g) or (h) do not apply in relation to an incident if the claim to which the incident relates was made before the Rules in question commence.

Qualifying payments

(3) The eligible insurer has a ***qualifying payment*** in relation to the current claim if:

(a) the eligible insurer:

(i) pays an amount in relation to the current claim; or

(ii) is liable to pay an amount in relation to a payment or payments that someone makes, or is liable to make, in relation to the current claim under a written agreement between the parties to the current claim; or

(iii) is liable to pay an amount in relation to a payment or payments that someone makes, or is liable to make, in relation to the current claim under a judgment or order of a court that is not stayed and is not subject to appeal; and

(b) the eligible insurer pays, or is liable to pay, the amount under an insurance contract between the eligible insurer and the midwife; and

(c) the eligible insurer pays, or becomes liable to pay, the amount in the ordinary course of the eligible insurer's business; and

(d) if an apportionment certificate is in force in relation to the current claim—the amount paid or payable in relation to the current claim is consistent with the proportion of the overall liability specified in the apportionment certificate as the proportion that is to be attributed to the midwife against whom the claim was made.

Authorised Version C2021C00290 registered 10/08/2021

17 Amount of Level 1 Commonwealth contribution

The amount of a Level 1 Commonwealth contribution in relation to a claim is:

(a) 80%; or

(b) such other percentage as is specified in the Rules;

of the amount by which the amount of the eligible insurer's qualifying payment, or the sum of the eligible insurer's qualifying payments (see subsection 16(3)), in relation to the claim, exceeds the Level 1 claim threshold but does not exceed the Level 2 claim threshold.

Subdivision B—Level 2 payability

18 When is a Level 2 Commonwealth contribution payable?

Basic payability rule

(1) The Chief Executive Medicare may decide that a Level 2 Commonwealth contribution (the ***contribution***) is payable in relation to a liability of a person (the ***midwife***) if:

(a) a claim (the ***current claim***) is, or was, made against the midwife by another person; and

(b) a Level 2 qualifying claim certificate is in force in relation to the current claim; and

(c) the liability is a qualifying liability in relation to the claim (see section 19); and

(d) in a case where there is a person, other than the midwife, against whom a claim has been, or could reasonably be made in relation to the incident to which the current claim relates—either:

(i) an apportionment certificate in relation to the current claim is in force; or

(ii) the Chief Executive Medicare has not issued an apportionment certificate because of the operation of

Authorised Version C2021C00290 registered 10/08/2021

section 52 (which deals with claims for which there is a final judgment or order of a court); and

(e) because of the limit of the eligible insurer's liability under the contract of insurance identified in the qualifying claim certificate, the contract does not cover, or does not fully cover, the liability; and

(f) the amount that, if the limit had been high enough to cover the whole of the liability, the eligible insurer would (subject to the other terms and conditions of the contract) have been liable to pay under the contract of insurance in relation to the liability exceeds the actual amount (if any) that the eligible insurer has paid or is liable to pay under the contract in relation to the liability; and

(g) the aggregate of:

(i) the amount (if any) the insurer has paid, or is liable to pay, in relation to the liability under the contract of insurance; and

(ii) the other amounts (if any) that the insurer has already paid, or has already become liable to pay, under the contract in relation to the current claim; and

equals or exceeds the Level 2 claim threshold identified in the qualifying claim certificate; and

(h) a person has applied for the Level 2 Commonwealth contribution in accordance with section 60; and

(i) the claim is not a claim included in a class specified in Rules made for the purposes of this paragraph.

Note 1: For how paragraphs (f) and (g) interact with Level 1 Commonwealth contributions, see section 20.

Note 2: For the purpose of subparagraphs (d)(i) and (ii), payments and liabilities to pay must meet the ordinary course of business requirement set out in subsection (3).

Who the contribution is payable to

(2) The contribution is to be paid to the person who applies for it.

Note: For who can apply, see section 60.

Authorised Version C2021C00290 registered 10/08/2021

Ordinary course of business test for insurance payments

(3) An amount that an eligible insurer has paid, or is liable to pay, under a contract of insurance does not count for the purpose of subparagraph (1)(d)(i) or (ii) unless it is an amount that the eligible insurer paid, or is liable to pay, in the ordinary course of the eligible insurer's business.

AAT review of decision to refuse, or to pay a particular amount of contribution

(4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare to refuse an application for Level 2 Commonwealth contribution, or a decision of the Chief Executive Medicare to pay a particular amount of Level 2 Commonwealth contribution.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

19 Qualifying liabilities

(1) A person (the ***midwife***) has a qualifying liability in relation to a claim made against the midwife if:

(a) one of the following applies:

(i) the liability is under a judgment or order of a court in relation to the claim, being a judgment or order that is not stayed and is not subject to appeal;

(ii) the liability is under a settlement of the claim that takes the form of a written agreement between the parties to the claim;

(iii) the liability is some other kind of liability of the midwife (for example, a liability to legal costs) that relates to the claim; and

(b) the defence of the claim against the midwife was conducted appropriately (see subsection (2)) up to the time when:

(i) if the liability is under a judgment or order of a court—the date on which the judgment or order became a

Authorised Version C2021C00290 registered 10/08/2021

judgment or order that is not stayed and is not subject to appeal; or

(ii) if the liability is under a settlement of the claim—the date on which the settlement agreement was entered into; or

(iii) if the liability is some other kind of liability—the date on which the liability was incurred; and

(c) if the liability is under a settlement of the claim, or is under a consent order made by a court—a legal practitioner has given a statutory declaration certifying that the amount of the liability is reasonable; and

(d) if an apportionment certificate is in force in relation to the current claim—the amount paid or payable in relation to the current claim is consistent with the proportion of the overall liability specified in the apportionment certificate as the proportion that is to be attributed to the midwife against whom the claim was made.

(2) For the purposes of paragraph (1)(b), the defence of the claim is conducted appropriately if, and only if:

(a) to the extent it is conducted on the midwife's behalf by an insurer, or by a legal practitioner engaged by the insurer—the defence is conducted to a standard that is consistent with the insurer's usual standard for the conduct of the defence of claims; and

(b) to the extent it is conducted by the midwife, or by a legal practitioner engaged by the midwife—the defence is conducted prudently.

(3) In this section:

defence of the claim includes any settlement negotiations on behalf of the midwife.

Authorised Version C2021C00290 registered 10/08/2021

20 Interaction with Level 1 Commonwealth contribution and run-off cover

For the following purposes:

(a) determining the limit of the eligible insurer's liability under the contract of insurance;

(b) paragraphs 18(1)(f) and (g);

an amount that an eligible insurer has paid or is liable to pay, or would have been liable to pay, under a contract of insurance is not to be reduced on account of a Level 1 Commonwealth contribution, or a run-off cover Commonwealth contribution, paid or payable, or that would have been payable, to the eligible insurer.

21 Amount of Level 2 Commonwealth contribution

The amount of Level 2 Commonwealth contribution that is payable in relation to a particular qualifying liability is the amount of the excess referred to in paragraph 18(1)(f).

Note: It is only liabilities that exceed the limit that will be covered by a Level 2 Commonwealth contribution (even if the Level 2 claim threshold is less than that limit).

22 How Level 2 Commonwealth contribution is to be applied

(1) This section applies if a Level 2 Commonwealth contribution (the ***contribution***) is paid to a person (the ***recipient***) in relation to a liability of a person (the ***midwife***).

Note: The recipient will either be the midwife himself or herself, or a person acting on behalf of the midwife.

Chief Executive Medicare to give recipient of payment a notice identifying the liability to be discharged

(2) The Chief Executive Medicare must give the recipient a written notice (the ***payment notice***) identifying the liability in relation to which the contribution is paid, and advising the recipient how this section requires the contribution to be dealt with.

Authorised Version C2021C00290 registered 10/08/2021

Recipient's obligation if the amount of the contribution equals or is less than the liability

(3) If the amount of the contribution equals or is less than the undischarged amount of the liability identified in the payment notice, the recipient must apply the whole of the contribution towards the discharge of the liability.

Recipient's obligation if the amount of the contribution exceeds the liability

(4) If the amount of the contribution is greater than the undischarged amount of the liability identified in the payment notice, the recipient must:

(a) apply so much of the contribution as equals the undischarged amount of the liability towards the discharge of the liability; and

(b) if the recipient is not the midwife—deal with the balance of the contribution in accordance with the directions of the midwife.

Time by which recipient must comply with obligation

(5) The recipient must comply with whichever of subsections (3) and (4) applies:

(a) by the time specified in a written direction (whether contained in the payment notice or otherwise) given to the recipient by the Chief Executive Medicare; or

(b) if no such direction is given to the recipient—as soon as practicable after the Commonwealth contribution is received by the recipient.

To avoid doubt, the Chief Executive Medicare may vary a direction under paragraph (a) to specify a different time.

Authorised Version C2021C00290 registered 10/08/2021

Debt to Commonwealth if recipient does not comply with obligation on time

(6) If the recipient does not comply with whichever of subsections (3) and (4) applies by the time required by subsection (5), the amount of the contribution is a debt due to the Commonwealth.

(7) The debt may be recovered:
  (a) by action by the Chief Executive Medicare against the recipient in a court of competent jurisdiction; or
  (b) under section 65.

(8) If the amount of the contribution is recoverable, or has been recovered, as mentioned in subsection (7), no amount is recoverable under section 25 or section 64 in relation to the same payment of contribution.

23 Who is liable to repay an overpayment of Level 2 Commonwealth contribution?

(1) This section applies if, in relation to a Level 2 Commonwealth contribution (the ***contribution***) that has been paid, there is an amount overpaid as described in subsection 25(2) or 64(2).

(2) The ***liable person***, in relation to the amount overpaid, is:
  (a) if the contribution has not yet been dealt with in accordance with whichever of subsections 22(3) and (4) applies—the recipient referred to in subsection 22(1); or
  (b) if the contribution has been dealt with in accordance with whichever of those subsections applies—the midwife referred to in subsection 22(1).

Note: The recipient and the midwife will be the same person if the contribution was paid to the midwife.

(3) If:
  (a) the recipient and the midwife referred to in subsection 22(1) are not the same person; and

Authorised Version C2021C00290 registered 10/08/2021

(b) when the overpayment is recovered as a debt, the liable person is the recipient;

the fact that the recipient may later deal with the remainder of the contribution in accordance with subsection 22(3) or (4) does not mean that the overpayment should instead have been recovered from the midwife.

Subdivision C—Payments that would have reduced the amount paid out under the contract of insurance

24 Amounts paid before payment of Level 2 Commonwealth contribution

(1) If:

(a) an amount (the ***insurance payment***) has been paid under a contract of insurance that provides midwife professional indemnity cover for a person (the ***midwife***) in relation to a liability of the midwife; and

(b) another amount (not being an amount referred to in subsection (2)) has been paid to the midwife, the eligible insurer or another person in relation to the incident to which the liability relates; and

(c) the other amount was not taken into account in working out the amount of the insurance payment; and

(d) if the other amount had been taken into account in working out the amount of the insurance payment, a lesser amount would have been paid under the contract of insurance in relation to the liability;

then, for the purpose of calculating the amount of Level 2 Commonwealth contribution (if any) that is payable in relation to a liability of the midwife, the lesser amount is taken to have been the amount of the insurance payment.

(2) This section does not apply to any of the following:

(a) an amount paid to an eligible insurer by another insurer under a right of contribution;

Authorised Version C2021C00290 registered 10/08/2021

(b) a payment of Level 1 Commonwealth contribution;
(c) a payment of run-off cover Commonwealth contribution;
(d) an amount of a kind specified in the Rules for the purposes of this paragraph.

25 Amounts paid after payment of Level 2 Commonwealth contribution

(1) This section applies if:
(a) an amount (the ***actual contribution amount***) of Level 2 Commonwealth contribution has been paid in relation to a qualifying liability that relates to a claim made against a person (the ***midwife***); and
(b) another amount (not being an amount referred to in subsection (5)) is paid to the midwife, an eligible insurer or another person in relation to the incident to which the claim relates; and
(c) the other amount was not taken into account in calculating the actual contribution amount; and
(d) if the other amount had been so taken into account, a lesser amount (the ***reduced contribution amount***, which could be zero) of Level 2 Commonwealth contribution would have been paid in relation to the liability.

(2) The ***amount overpaid*** is the amount by which the actual contribution amount exceeds the reduced contribution amount.

(3) If the Chief Executive Medicare has given the liable person (see subsection 23(2)) a notice under subsection 27(1) in relation to the amount overpaid, the amount overpaid is a debt owed to the Commonwealth by the liable person.

Note 1: If the contribution is or was not dealt with in accordance with whichever of subsections 22(3) and (4) applies by the time required by subsection 22(5), the whole amount of the contribution is a debt owed by the recipient, and no amount is recoverable under this section (see subsections 22(6) to (8)).

Note 2: If:

Authorised Version C2021C00290 registered 10/08/2021

(a) the recipient and the midwife referred to in subsection 22(1) are not the same person; and
(b) the midwife becomes the liable person;

then (subject to subsection 23(3)), the recipient ceases to be the liable person, and the amount overpaid must instead be recovered from the midwife.

(4) The amount overpaid may be recovered:
(a) by action by the Chief Executive Medicare against the liable person in a court of competent jurisdiction; or
(b) under section 65.

(5) This section does not apply to any of the following:
(a) an amount paid to an eligible insurer by another insurer under a right of contribution;
(b) a payment of Level 1 Commonwealth contribution;
(c) a payment of run-off cover Commonwealth contribution;
(d) an amount of a kind specified in the Rules for the purposes of this paragraph.

26 Obligation to notify the Chief Executive Medicare that amount has been paid

(1) If:
(a) an amount of Level 2 Commonwealth contribution has been paid in relation to a qualifying liability that relates to a claim made against a person (the ***midwife***); and
(b) the person (the ***applicant***) who applied for the Level 2 Commonwealth contribution becomes aware that another amount has been paid to the midwife, an insurer or another person in relation to the incident to which the claim relates; and
(c) because of the payment of the other amount, there is an amount overpaid as described in subsection 25(2);

the applicant must notify the Chief Executive Medicare that the other amount has been paid.

Authorised Version C2021C00290 registered 10/08/2021

Note: Failure to notify is an offence (see section 67).

(2) The notification must:

(a) be in writing; and

(b) be given to the Chief Executive Medicare within 28 days after the applicant becomes aware that the other amount has been paid.

27 The Chief Executive Medicare to notify of amount of debt due

(1) If:

(a) an amount of Level 2 Commonwealth contribution has been paid in relation to a qualifying liability that relates to a claim made against a person (the ***midwife***); and

(b) another amount is paid to the midwife, an insurer or another person in relation to the incident to which the claim relates; and

(c) because of the payment of the other amount, there is an amount overpaid as described in subsection 25(2);

the Chief Executive Medicare may give the liable person (see subsection 23(2)) a written notice that specifies:

(d) the amount overpaid, and that it is a debt owed to the Commonwealth under subsection 25(3); and

(e) the day before which the amount must be paid to the Commonwealth; and

(f) the effect of section 28.

The day specified under paragraph (e) must be at least 28 days after the day on which the notice is given.

(2) The debt becomes due and payable on the day specified under paragraph (1)(e).

28 Penalty imposed if an amount is repaid late

(1) If:

Authorised Version C2021C00290 registered 10/08/2021

(a) a person owes a debt to the Commonwealth under subsection 25(3); and
(b) the debt remains wholly or partly unpaid after it becomes due and payable;

the person is liable to pay a late payment penalty under this section.

(2) The late payment penalty is calculated:
(a) at the rate specified in the Rules for the purposes of this paragraph; and
(b) on the unpaid amount; and
(c) for the period:
(i) starting when the amount becomes due and payable; and
(ii) ending when the amount, and the penalty payable under this section in relation to the amount, have been paid in full.

(3) The Chief Executive Medicare may remit the whole or a part of an amount of late payment penalty if the Chief Executive Medicare considers that there are good reasons for doing so.

(4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to remit, or to remit only part of, an amount of late payment penalty.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

(5) If:
(a) the recipient and the midwife referred to in subsection 22(1) are not the same person; and
(b) the midwife becomes the liable person; and
(c) the recipient has or had a liability under this section to pay late payment penalty;

the recipient's liability to the late payment penalty is not affected by the fact that the recipient is no longer the person who owes the

Authorised Version C2021C00290 registered 10/08/2021

debt to the Commonwealth under subsection 25(3), except that the period referred to in paragraph (2)(c) ends when the midwife becomes the liable person.

Authorised Version C2021C00290 registered 10/08/2021

Part 3—Run-off cover Commonwealth contributions

Division 1—Introduction

29 Guide to run-off cover Commonwealth contributions

(1) This Part provides that a run-off cover Commonwealth contribution may be paid in relation to a liability of an eligible midwife if the liability relates to an eligible run-off claim.

(2) The following table tells you where to find the provisions dealing with various issues:

Where to find the provisions on various issues

Item	Issue	Provisions
1	what is an eligible run-off claim?	section 31
2	when is a run-off cover Commonwealth contribution payable in respect of a liability?	sections 32 to 34
3	why are apportionment certificates relevant?	paragraph 32(1)(c)
4	how are applications for apportionment certificates made and decided?	sections 51 to 57
5	what is the amount of a Commonwealth run-off cover contribution?	section 35
6	what if a payment is received that would have reduced the amount of an insurance payment?	sections 36 to 40
7	what is the effect of setting a run-off cover termination date?	sections 41 to 45

Authorised Version C2021C00290 registered 10/08/2021

Where to find the provisions on various issues		
Item	**Issue**	**Provisions**
8	notifying the Chief Executive Medicare if a person ceases to be covered	section 46
9	invoices for midwife professional indemnity cover	section 47
10	reports on run-off cover Commonwealth contributions	section 48
11	modifications and exclusions by Rules	section 49
12	how does a person apply for a run-off cover Commonwealth contribution?	section 58
13	when will a run-off cover Commonwealth contribution be paid?	section 61
14	what information has to be given to the Chief Executive Medicare?	section 62
15	what records must be kept in relation to run-off cover Commonwealth contribution matters?	section 63
16	how are overpayments of run-off cover Commonwealth contribution recovered?	sections 64 and 65

31 Eligible run-off claims

(1) A claim is an ***eligible run-off claim*** if:

(a) it is a claim made against a person who, at the time the claim is made, is a person to whom subsection (2) applies; and

(b) it relates to an incident that occurred on or after 1 July 2010 and on or before the run-off cover termination date in the course of, or in connection with, the person's practice as an eligible midwife; and

(c) if there is a run-off cover termination date, the person:

Authorised Version C2021C00290 registered 10/08/2021

(i) was, immediately before the run-off cover termination date, a person to whom subsection (2) applies; and

(ii) continued to be such a person for the whole of the period between the run-off cover termination date and the time when an eligible insurer was first notified of the claim, or of facts that might give rise to the claim; and

(d) the person has midwife professional indemnity run-off cover that indemnifies the person in relation to the claim.

(2) This subsection applies to a person who is one or more of the following:

(a) a person who has retired permanently from private practice as an eligible midwife;

(b) a person who has not engaged in private practice as an eligible midwife at any time during the preceding period of 3 years;

(c) a person who has ceased (temporarily or permanently) the person's practice as an eligible midwife because of maternity (see subsection (3));

(d) a person who has ceased the person's practice as an eligible midwife because of permanent disability (see subsection (4));

(e) a person who is the legal personal representative of a deceased person who had been an eligible midwife;

(f) a person who is included in a class of persons that the Rules specify as persons to whom this subsection applies.

However, a person is not a person to whom this subsection applies if the person is included in a class of persons that the Rules specify as a class of persons to whom this subsection does not apply.

(3) A person is taken, for the purposes of paragraph (2)(c), to have ceased the person's practice as an eligible midwife because of maternity if and only if:

(a) the person:

(i) is pregnant; or

(ii) has given birth; or

Authorised Version C2021C00290 registered 10/08/2021

(iii) is recovering from a pregnancy (including a miscarriage or a stillbirth); and

(b) another person who is a medical practitioner has certified, in the form approved by the Chief Executive Medicare, that the person is pregnant, has given birth or is recovering from a pregnancy, as the case requires; and

(c) the person has ceased all practice as an eligible midwife:

(i) because she is pregnant; or

(ii) in order to care for one or more children to whom she has given birth; or

(iii) in order to recover from the pregnancy; and

(d) any other requirements specified in the Rules have been met.

(4) A person is taken, for the purposes of paragraph (2)(d), to have ceased the person's practice as an eligible midwife because of permanent disability if and only if:

(a) the person has incurred an injury, or suffers from an illness, that is permanent, or is likely to be permanent; and

(b) as a result of the injury or illness, the person can no longer practise the profession of midwifery; and

(c) another person who is a medical practitioner has certified, in the form approved by the Chief Executive Medicare, that the person:

(i) has incurred an injury, or suffers from an illness, that is permanent, or is likely to be permanent; and

(ii) can no longer practice the profession of midwifery; and

(d) the person has permanently ceased all practice as an eligible midwife.

(5) In this section:

private practice as an eligible midwife means practice as an eligible midwife other than:

(a) practice consisting of treatment of public patients of a hospital; or

(b) practice for which:

Authorised Version C2021C00290 registered 10/08/2021

(i) the Commonwealth, a State or a Territory; or
(ii) a local governing body; or
(iii) an authority established under a law of the Commonwealth, a State or a Territory;

indemnifies eligible midwives from liability relating to compensation; or

(c) practice conducted outside both Australia and the external Territories; or

(d) practice of a kind specified in the Rules.

Authorised Version C2021C00290 registered 10/08/2021

Division 2—Run-off cover Commonwealth contributions

32 Circumstances in which run-off cover Commonwealth contributions are payable

(1) A run-off cover Commonwealth contribution is payable to an eligible insurer under this section if:

(a) an eligible run-off claim (the ***current claim***) is made that relates to an incident that occurred in the course of, or in connection with, a person's practice as an eligible midwife; and

(b) at the time the claim is first notified to the eligible insurer, the person is a person to whom subsection 31(2) applies; and

(c) in a case where there is a person, other than the eligible midwife, against whom a claim has been, or could reasonably be made in relation to the incident to which the current claim relates—either:

(i) an apportionment certificate in relation to the current claim is in force; or

(ii) the Chief Executive Medicare has not issued an apportionment certificate because of the operation of section 52 (which deals with claims for which there is a final judgment or order of a court); and

(d) the eligible insurer makes, or is liable to make, a payment in relation to the claim under a contract of insurance under which the insurer is liable to indemnify the person in relation to claims made by or against the person while he or she is a person to whom subsection 31(2) applies; and

(e) either the incident occurs or occurred on or after 1 July 2010 and on or before the run-off cover termination date; and

(f) the eligible insurer applies to the Chief Executive Medicare for the run-off cover Commonwealth contribution in accordance with section 58; and

Authorised Version C2021C00290 registered 10/08/2021

(g) if an apportionment certificate is in force in relation to the current claim—the amount paid or payable in relation to the current claim is consistent with the proportion of the overall liability specified in the apportionment certificate as the proportion that is to be attributed to the eligible midwife against whom the claim was made.

(2) Paragraph (1)(d) does not apply to a payment that an eligible insurer makes or is liable to make unless the payment is or would be made:

(a) in relation to a claim made in relation to which the eligible midwife concerned has midwife professional indemnity run-off cover; and

(b) in the eligible insurer's ordinary course of business.

33 Clarification of circumstances in which run-off cover Commonwealth contributions are payable

A run-off cover Commonwealth contribution is payable to an eligible insurer under section 32 in relation to a payment the eligible insurer makes or is liable to make, in relation to a claim even if the eligible insurer:

(a) has insured itself in relation to the payment; or

(b) has already been paid an amount by an insurer in relation to the payment.

34 Exceptions

A run-off cover Commonwealth contribution is not payable to an eligible insurer under section 32 in relation to a payment the eligible insurer makes or is liable to make, in relation to a claim if:

(a) the payment is an insurer-to-insurer payment; or

(b) the payment is a payment specified in the Rules for the purposes of this section.

Authorised Version C2021C00290 registered 10/08/2021

35 Amount of run-off cover Commonwealth contribution

(1) The amount of a run-off cover Commonwealth contribution is the amount of the payment referred to in paragraph 32(1)(d), but only to the extent that the payment is or would be made:

(a) in relation to a claim for which the midwife has midwife professional indemnity run-off cover; and

(b) in the eligible insurer's ordinary course of business.

(2) However, if a Level 1 or Level 2 Commonwealth contribution is payable in respect of that payment, the amount of the run-off cover Commonwealth contribution is reduced by the amount of the Level 1 or Level 2 Commonwealth contribution.

Authorised Version C2021C00290 registered 10/08/2021

Division 3—Payments that would have reduced the amount of run-off cover Commonwealth contribution

36 Amounts paid before payment of run-off cover Commonwealth contribution

(1) If:

(a) an amount (the ***relevant payment***) has been paid, in relation to a liability of an eligible midwife (the ***midwife***), under a contract of insurance with an eligible insurer that provides midwife professional indemnity run-off cover for the midwife; and

(b) another amount (not being an amount referred to in subsection (2)) has been paid to the midwife, eligible insurer or another person in relation to the incident to which the liability relates; and

(c) the other amount was not taken into account in working out the amount of the relevant payment; and

(d) if the other amount had been taken into account in working out the amount of the relevant payment, a lesser amount would have been paid under the contract of insurance, in relation to the liability;

then, for the purpose of calculating the amount of run-off cover Commonwealth contribution (if any) that is payable in relation to a liability of the midwife, the lesser amount is taken to have been the amount of the relevant payment.

(2) This section does not apply to any of the following:

(a) an amount paid to an eligible insurer by another insurer under a right of contribution;

(b) a payment of Level 1 Commonwealth contribution;

(c) a payment of Level 2 Commonwealth contribution;

(d) an amount of a kind specified in the Rules for the purposes of this paragraph.

Authorised Version C2021C00290 registered 10/08/2021

37 Amounts paid after payment of run-off cover Commonwealth contribution

(1) This section applies if:

(a) an amount (the ***actual run-off cover amount***) of run-off cover Commonwealth contribution has been paid in relation to an eligible run-off claim made against an eligible midwife (the ***midwife***); and

(b) another amount (not being an amount referred to in subsection (5)) is paid to the midwife, an eligible insurer or another person in relation to the incident to which the claim relates; and

(c) the other amount was not taken into account in calculating the actual run-off cover amount; and

(d) if the other amount had been so taken into account, a lesser amount (the ***reduced run-off cover amount***, which could be zero) of run-off cover Commonwealth contribution would have been paid in relation to the liability.

(2) The ***amount overpaid*** is the amount by which the actual run-off cover amount exceeds the reduced run-off cover amount.

(3) If the Chief Executive Medicare has given an eligible insurer a notice under subsection 39(1) in relation to the amount overpaid, the amount is a debt owed to the Commonwealth by the eligible insurer.

(4) The amount overpaid may be recovered:

(a) by action by the Chief Executive Medicare against the eligible insurer in a court of competent jurisdiction; or

(b) under section 65.

(5) This section does not apply to any of the following:

(a) an amount paid to an eligible insurer by another insurer under a right of contribution;

(b) a payment of Level 1 Commonwealth contribution;

Authorised Version C2021C00290 registered 10/08/2021

(c) a payment of Level 2 Commonwealth contribution;
(d) an amount of a kind specified in the Rules for the purposes of this paragraph.

38 Obligation to notify the Chief Executive Medicare that amount has been paid

(1) If:
(a) a run-off cover Commonwealth contribution has been paid to an eligible insurer in relation to a liability that relates to a claim made against an eligible midwife (the ***midwife***); and
(b) the eligible insurer becomes aware that another amount has been paid to the midwife, eligible insurer or another person in relation to the incident to which the claim relates; and
(c) because of the payment of the other amount, there is an amount overpaid as described in subsection 37(2);

the eligible insurer must notify the Chief Executive Medicare that the other amount has been paid.

Note: Failure to notify is an offence (see section 67).

(2) The notification must:
(a) be in writing; and
(b) be given to the Chief Executive Medicare within 28 days after the applicant becomes aware that the other amount has been paid.

39 The Chief Executive Medicare to notify of amount of debt due

(1) If:
(a) a run-off cover Commonwealth contribution has been paid to an eligible insurer in relation to a liability that relates to a claim made against an eligible midwife; and
(b) another amount is paid to the midwife, eligible insurer or another person in relation to the incident to which the claim relates; and

Authorised Version C2021C00290 registered 10/08/2021

(c) because of the payment of the other amount, there is an amount overpaid as described in subsection 37(2);

the Chief Executive Medicare may give the eligible insurer a written notice that specifies:

(d) the amount overpaid, and that it is a debt owed to the Commonwealth under subsection 37(3); and

(e) the day before which the amount must be paid to the Commonwealth; and

(f) the effect of section 40.

The day specified under paragraph (e) must be at least 28 days after the day on which the notice is given.

(2) The debt becomes due and payable on the day specified under paragraph (1)(e).

40 Penalty imposed if an amount is repaid late

(1) If:

(a) a person owes a debt to the Commonwealth under subsection 37(3); and

(b) the debt remains wholly or partly unpaid after it becomes due and payable;

the person is liable to pay a late payment penalty under this section.

(2) The late payment penalty is calculated:

(a) at the rate specified in the Rules for the purposes of this paragraph; and

(b) on the unpaid amount; and

(c) for the period:

(i) starting when the amount becomes due and payable; and

(ii) ending when the amount, and the penalty payable under this section in relation to the amount, have been paid in full.

Authorised Version C2021C00290 registered 10/08/2021

(3) The Chief Executive Medicare may remit the whole or a part of an amount of late payment penalty if the Chief Executive Medicare considers that there are good reasons for doing so.

(4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to remit, or to remit only part of, an amount of late payment penalty.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

Authorised Version C2021C00290 registered 10/08/2021

Division 4—Effect of setting a run-off cover termination date

41 Commonwealth's obligations if a run-off cover termination date is set

(1) If a run-off cover termination date has been set (see subsection 7(3)), the Commonwealth is liable to pay an amount in accordance with this Division in relation to each affected eligible midwife.

(2) However, this section does not apply if the Rules made on or before the run-off cover termination date set out alternative arrangements for providing medical cover for eligible midwives in relation to eligible run-off claims that will apply on and from that date.

42 Affected eligible midwife

An eligible midwife is an ***affected eligible midwife*** if:

(a) a run-off cover termination date has been set (see subsection 7(3)); and

(b) before that date, one or more premiums have been paid for midwife professional indemnity cover, for the eligible midwife, in relation to one or more periods totalling at least 12 months; and

(c) immediately before that date, the eligible midwife was not a person to whom subsection 31(2) applies.

43 Payments in relation to affected eligible midwife

(1) A payment that the Commonwealth is liable to make in relation to an affected eligible midwife:

(a) must be paid to a person who:

(i) is nominated by the eligible midwife; and

Authorised Version C2021C00290 registered 10/08/2021

(ii) has, on or after the run-off cover termination date, provided midwife professional indemnity cover for the eligible midwife under a contract of insurance; and

(b) must be paid as all or part of the premium payable for the provision of that cover; and

(c) must be paid within 12 months after that date; and

(d) must not exceed the eligible midwife's total run-off cover credit.

(2) Amounts payable by the Commonwealth under this Division are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

44 Total run-off cover credits

(1) This is how to work out an affected eligible midwife's ***total run-off cover credit***:

Method statement

Step 1. For the first financial year after 30 June 2010 in which an eligible insurer provided midwife professional indemnity cover for the eligible midwife under a contract of insurance, multiply:

(a) the eligible midwife's run-off cover credit for the financial year; by

(b) the interest rate adjustment for the financial year (see subsection (4)).

Step 2. For each subsequent financial year (if any) until the financial year in which the termination date occurs, multiply:

(a) the sum of the eligible midwife's run-off cover credit for the financial year and the amount worked

Authorised Version C2021C00290 registered 10/08/2021

out, under step 1 or this step, for the immediately preceding financial year; by

(b) the interest rate adjustment for the financial year (see subsection (4)).

Step 3. Add together:

(a) the eligible midwife's run-off cover credit for the financial year in which the run-off cover termination date occurs; and

(b) the last of the amounts worked out under step 1 or step 2.

The result is the practitioner's ***total run-off cover credit***.

(2) The eligible midwife's ***run-off cover credit*** for a financial year is the sum of all run-off cover support payments paid or payable to the extent that they are attributable, under subsection (3), to the eligible midwife in relation to the financial year.

(3) Run-off cover support payments are ***attributable*** to the practitioner in relation to the financial year to the extent that they relate to premiums paid during the financial year to an eligible insurer for midwife professional indemnity cover provided for the eligible midwife by one or more contracts of insurance with the eligible insurer.

(4) The ***interest rate adjustment*** for a financial year is the number worked out as follows:

1 + applicable interest rate

where:

applicable interest rate is the rate of interest, for the financial year, specified in the Rules for the purposes of this subsection.

Authorised Version C2021C00290 registered 10/08/2021

45 Eligible insurers must provide information attributing run-off cover support payments

(1) An eligible insurer must, in relation to each run-off cover support payment that the eligible insurer is liable to make to the Chief Executive Medicare, notify the Chief Executive Medicare of:

(a) each eligible midwife to whom the payment is attributable; and

(b) for each such eligible midwife, each financial year in relation to which the payment is attributable; and

(c) for each such eligible midwife and financial year, the extent to which the payment is attributable to the practitioner in relation to the financial year.

Note: Failure to notify is an offence (see section 67).

(2) The notification must:

(a) be made in writing; and

(b) must be given to the Chief Executive Medicare on or before the payment day under section 75 for the run-off cover support payment.

Authorised Version C2021C00290 registered 10/08/2021

Division 5—Miscellaneous

46 Chief Executive Medicare must be notified of a person ceasing to be covered by the midwife run-off cover provisions

(1) If:

(a) a person ceases to be a person to whom subsection 31(2) applies; and

(b) immediately before the cessation, an eligible insurer was providing midwife professional indemnity run-off cover to the person;

the eligible insurer must notify the Chief Executive Medicare of the cessation.

Note: Failure to notify is an offence (see section 67).

(2) The notification must:

(a) be in writing; and

(b) set out details of the cessation; and

(c) be given to the Chief Executive Medicare within a period, starting on the day after the day on which the person becomes aware of the cessation, of:

(i) 61 days; or

(ii) such greater number of days specified in the Rules for the purposes of this subparagraph.

47 Invoices for midwife professional indemnity cover

(1) If:

(a) an eligible insurer gives to a person an invoice stating the premium that is or will be payable for midwife professional indemnity cover provided by a contract of insurance with the eligible insurer; and

(b) payment of the premium would increase the eligible insurer's liability to pay run-off cover support payment;

Authorised Version C2021C00290 registered 10/08/2021

the eligible insurer must ensure that the invoice states:

(c) the amount of the eligible insurer's premium income, for the contribution year in question, that represents the premium that is or will be payable for midwife professional indemnity cover provided by the contract of insurance; and

(d) the applicable percentage relating to that contribution year; and

(e) the amount of the run-off cover support payment imposed on the eligible insurer, for that contribution year, that relates to the premium that is or will be payable for midwife professional indemnity cover provided by the contract of insurance.

Note: Failure to comply with this section is an offence (see section 69).

(2) In this section:

applicable percentage has the same meaning as in subsection 6(2) of the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

premium income has the same meaning as in the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

run-off cover support payment has the same meaning as in the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

48 Reports on run-off cover Commonwealth provisions

(1) After the end of each financial year, the Actuary must give the Secretary a report on the operation of this Part.

(2) Without limiting the matters that may be included in a report under subsection (1), the report must include:

(a) a statement of the number of persons who were, at the end of the financial year, persons to whom subsection 31(2) applies; and

Authorised Version C2021C00290 registered 10/08/2021

(b) a statement of the total of all the amounts of run-off cover Commonwealth contribution paid by the Commonwealth during the financial year; and

(c) a statement of the total of all the amounts of run-off cover support payments paid to the Commonwealth during the financial year; and

(d) estimates by the Actuary of the Commonwealth's liabilities in relation to amounts of run-off Commonwealth contributions in future financial years.

(2A) The Secretary must publish the report on the Department's website within 30 days after receiving the report.

(3) If a run-off cover termination date has been set (see subsection 7(3)), this section does not apply in relation to a financial year starting after the end of the financial year in which the termination date occurs.

49 Modifications and exclusions

(1) The Rules may provide that this Part applies with specified modifications in relation to:

(a) a specified class of claims; or

(b) a specified class of contracts of insurance; or

(c) a specified class of situations in which a liability is, whether wholly or partly, covered by more than one contract of insurance.

(2) The Rules may provide that this Part does not apply, or applies with specified modifications, in relation to a specified class of liabilities or payments.

(3) Without limiting subsection (2), the Rules may specify modifications regarding how this Part applies in relation to a liability under an order of a court requiring an amount to be paid pending the outcome of an appeal, including modifications:

Authorised Version C2021C00290 registered 10/08/2021

(a) to deal with what happens if, as a result of the appeal or another appeal, the amount paid later becomes wholly or partly repayable; and

(b) to deal with what happens if the amount paid is later applied towards a liability that is confirmed as a result of the appeal or another appeal.

(4) This section does not allow the Rules to modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence.

Authorised Version C2021C00290 registered 10/08/2021

Part 4—Administration of provisions relating to Commonwealth contributions

Division 1—Guide

50 Guide to this Part

(1) This Part makes provision for the administration of provisions relating to Level 1 Commonwealth contributions, Level 2 Commonwealth contributions and run-off cover Commonwealth contributions.

(2) The following table tells you where to find the provisions dealing with various issues:

Where to find the provisions on various issues

Item	Issue	Provisions
1	when may the Chief Executive Medicare issue an apportionment certificate?	section 51
2	how do people apply for apportionment certificates?	section 53
3	how do people apply for Level 1 Commonwealth contributions and Commonwealth run-off cover contributions?	section 58
4	when are Level 1 Commonwealth contributions and Commonwealth run-off cover contributions paid?	section 59
5	how do people apply for Level 2 Commonwealth contributions?	section 60
6	when are Level 2 Commonwealth contributions paid?	section 61

Authorised Version C2021C00290 registered 10/08/2021

Where to find the provisions on various issues		
Item	**Issue**	**Provisions**
7	what information has to be given to the Chief Executive Medicare?	section 62
8	what records must eligible insurers keep?	section 63
9	how are overpayments of Commonwealth contribution recovered?	section 64

Authorised Version C2021C00290 registered 10/08/2021

Division 2—Apportionment certificates

51 When may the Chief Executive Medicare issue an apportionment certificate in relation to a claim?

(1) The Chief Executive Medicare may issue a certificate (an ***apportionment certificate***) in relation to a claim against a midwife if:

(a) either:

(i) a qualifying claim certificate has been issued by the Chief Executive Medicare in relation to the claim; or

(ii) the claim is an eligible run-off claim; and

(b) the Chief Executive Medicare is satisfied that there is a person, other than the midwife, against whom a claim has been or is reasonably likely to be made, in relation to the incident to which the claim relates; and

(c) an application for the certificate has been made in accordance with section 53.

(2) The apportionment certificate must specify the proportion of the overall liability in relation to the incident that is to be attributed to:

(a) the midwife; and

(b) the other person or persons against whom the Chief Executive Medicare is satisfied a claim has been, or is reasonably likely to be, made in relation to the incident.

(3) For the purposes of paragraph (2)(b), if there is more than one other person against whom the Chief Executive Medicare is satisfied a claim has been or is reasonably likely to be made, the proportion of the overall liability may be specified for:

(a) each of those persons individually; or

(b) those persons taken as a group.

(4) The proportion of the overall liability specified in the apportionment certificate may be the same as the apportionment

Authorised Version C2021C00290 registered 10/08/2021

proposed in the application if the Chief Executive Medicare is satisfied that the proposed apportionment is reasonable.

(5) The apportionment certificate may be different from the apportionment proposed in the application if the Chief Executive Medicare is satisfied that the alternative apportionment is reasonable.

(6) For the purposes of being satisfied that an apportionment is reasonable, the Chief Executive Medicare may have regard to:
  (a) the information provided with the application; and
  (b) any other information that the Chief Executive Medicare considers appropriate.

(7) However, the Chief Executive Medicare is not required to have regard to any information beyond the information that was included in the application.

(8) An apportionment certificate is not a legislative instrument.

52 Chief Executive Medicare must not issue an apportionment certificate in certain situations relating to court judgments or orders

(1) The Chief Executive Medicare must not issue an apportionment certificate in relation to a claim against an eligible midwife if:
  (a) a judgment or order of a court has been made in relation to the claim; and
  (b) the judgment or order specifies the liability of the eligible midwife in relation to the claim; and
  (c) the judgment or order is not stayed and is not subject to appeal; and
  (d) the defence of the claim against the midwife was conducted appropriately (see subsection (2)) up to the date on which the judgment or order became a judgment or order that is not stayed and is not subject to appeal.

Authorised Version C2021C00290 registered 10/08/2021

(2) For the purposes of paragraph (1)(d), the defence of the claim is conducted appropriately if, and only if:

(a) to the extent it is conducted on the midwife's behalf by an insurer, or by a legal practitioner engaged by the insurer—the defence is conducted to a standard that is consistent with the insurer's usual standard for the conduct of the defence of claims; and

(b) to the extent it is conducted by the midwife, or by a legal practitioner engaged by the midwife—the defence is conducted prudently.

(3) In this section:

defence of the claim includes any settlement negotiations on behalf of the midwife.

53 Applications for apportionment certificates

(1) An eligible insurer in relation to a claim made against a midwife must apply for the issue of an apportionment certificate in relation to the claim if the eligible insurer considers that there is a person other than the midwife against whom a claim has been, or is reasonably likely to be, made in relation to the incident to which the claim relates.

(2) The application must:

(a) be made in writing using a form approved by the Chief Executive Medicare; and

(b) must specify the proportion of the overall liability in relation to the incident to which the claim relates that the applicant proposes be attributed to:

(i) the midwife; and

(ii) the other person or persons against whom a claim has been, or is reasonably likely to be made in relation to the incident to which the claim relates; and

Authorised Version C2021C00290 registered 10/08/2021

(c) be accompanied by the documents and other information required by the form approved by the Chief Executive Medicare.

(3) For the purposes of subparagraph (2)(b)(ii), if there is more than one other person against whom a claim has been or is reasonably likely to be made, the proportion of the overall liability may be specified for:

(a) each of those persons individually; or

(b) those persons taken as a group.

54 Time by which an application must be decided

(1) Subject to subsection (2), the Chief Executive Medicare is to decide an application for the issue of an apportionment certificate on or before the 21st day after the day on which the application is received by the Chief Executive Medicare.

(2) If the Chief Executive Medicare requests a person to give information under section 62 in relation to the application, the Chief Executive Medicare does not have to decide the application until the 21st day after the day on which the person gives the information to the Chief Executive Medicare.

55 Obligation to notify the Chief Executive Medicare if information is incorrect or incomplete

(1) If:

(a) an apportionment certificate is in force in relation to a claim; and

(b) a person becomes aware that the information provided to the Chief Executive Medicare in connection with the application for the certificate was incorrect or incomplete, or is no longer correct or complete; and

(c) the person is:

(i) the person who applied for the certificate; or

Authorised Version C2021C00290 registered 10/08/2021

(ii) another person who has applied for a payment of Commonwealth contribution in relation to the claim;

the person must notify the Chief Executive Medicare of the respect in which the information was incorrect or incomplete, or is no longer correct or complete.

Note: Failure to notify is an offence (see section 67).

(2) The notification must:

(a) be made in writing; and

(b) be given to the Chief Executive Medicare within 28 days after the person becomes aware as mentioned in subsection (1).

56 Revocation and variation of apportionment certificates

Revocation

(1) The Chief Executive Medicare may revoke an apportionment certificate if the Chief Executive Medicare is no longer satisfied as mentioned in subsection 51(4) or (5) in relation to the claim.

(2) The Chief Executive Medicare must revoke an apportionment certificate if, after the apportionment certificate is issued:

(a) a judgment or order of a court is made; and

(b) the judgment or order is of a kind that would have prevented the Chief Executive Medicare issuing an apportionment certificate under section 52, had it been made before the certificate was issued.

Variation

(3) If the Chief Executive Medicare is satisfied that a matter is not correctly identified or specified in an apportionment certificate, the Chief Executive Medicare may vary the certificate so that it correctly identifies or specifies the matter.

Authorised Version C2021C00290 registered 10/08/2021

Effect of revocation

(4) If:

(a) the Chief Executive Medicare revokes an apportionment certificate; and

(b) an amount of Commonwealth contribution has already been paid in relation to the claim;

the amount is an amount overpaid to which section 64 applies.

Effect of variation

(5) If:

(a) the Chief Executive Medicare varies an apportionment certificate; and

(b) an amount of Commonwealth contribution has already been paid in relation to the claim, and that amount exceeds the amount that would have been paid if the amount of Commonwealth contribution had been determined having regard to the certificate as varied;

the amount of the excess is an amount overpaid to which section 64 applies.

Chief Executive Medicare to give applicant copy of varied certificate

(6) If the Chief Executive Medicare decides to vary an apportionment certificate, the Chief Executive Medicare must, within 28 days of making his or her decision, give the applicant a copy of the varied certificate. However, a failure to comply does not affect the validity of the decision.

57 AAT review of decision to issue, revoke or vary

An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare:

(a) not to issue an apportionment certificate; or

Authorised Version C2021C00290 registered 10/08/2021

(b) to specify a particular apportionment in an apportionment certificate; or

(c) to revoke or vary an apportionment certificate.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

Authorised Version C2021C00290 registered 10/08/2021

Division 3—Applications for, and payment of, Commonwealth contribution

58 Application for Level 1 Commonwealth contribution or a Commonwealth run-off cover contribution

An application by an eligible insurer for a Level 1 Commonwealth contribution or a run-off cover Commonwealth contribution must:

(a) be made in writing using a form approved by the Chief Executive Medicare; and

(b) be accompanied by the documents and other information required by the form approved by the Chief Executive Medicare.

59 Payment date for Level 1 Commonwealth contribution or a run-off cover Commonwealth contribution

(1) Subject to subsections (2) and (3), the Chief Executive Medicare must pay a Level 1 Commonwealth contribution or a run-off cover Commonwealth contribution that is payable to an insurer before the end of the month that immediately follows the month in which the eligible insurer applies for the contribution.

(2) If:

(a) an insurer applies for a Level 1 Commonwealth contribution or a run-off cover Commonwealth contribution; and

(b) the Chief Executive Medicare requests a person to give information under section 62 in relation to the application; and

(c) the person does not give the Chief Executive Medicare the information requested before the end of the month that immediately follows the month in which the insurer applies for the contribution; and

(d) a Level 1 Commonwealth contribution or a run-off cover Commonwealth contribution is payable to the insurer;

Authorised Version C2021C00290 registered 10/08/2021

the Chief Executive Medicare must pay the Level 1 Commonwealth contribution or a run-off cover Commonwealth contribution to the insurer before the end of the month that immediately follows the month in which the person gives the Chief Executive Medicare the requested information.

(3) If the Chief Executive Medicare has received, but not yet decided:

(a) an application for the issue of a qualifying claim certificate in relation to a claim; and

(b) an application for a Level 1 Commonwealth contribution in relation to the same claim;

the Chief Executive Medicare does not have to decide the application for payment of a Level 1 Commonwealth contribution until the Chief Executive Medicare has decided the application for the issue of a qualifying claim certificate.

(4) In this section:

month means one of the 12 months of the year.

60 Application for Level 2 Commonwealth contribution

(1) An application for a Level 2 Commonwealth contribution in relation to a qualifying liability that relates to a claim may be made by the person against whom the claim is or was made, or by a person acting on that person's behalf.

(2) The application must:

(a) be made in writing using a form approved by the Chief Executive Medicare; and

(b) be accompanied by the documents and other information required by the form approved by the Chief Executive Medicare.

(3) Subject to subsection (4), the application cannot be made more than 28 days after:

(a) if the liability is under a judgment or order of a court—the date on which the judgment or order became or becomes a

Authorised Version C2021C00290 registered 10/08/2021

judgment or order that is not stayed and is not subject to appeal; or

(b) if the liability is under a settlement of the claim—the date on which the settlement agreement was entered into; or

(c) if the liability is some other kind of liability—the date on which the liability was incurred.

(4) The Chief Executive Medicare may accept a late application if the Chief Executive Medicare considers that there are good reasons for doing so.

(5) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to accept a late application.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

61 Payment date for Level 2 Commonwealth contribution

Time by which application must be decided

(1) Subject to subsections (2) and (3), the Chief Executive Medicare is to decide an application for a Level 2 Commonwealth contribution on or before the end of the 21st day after the day on which the application is received by the Chief Executive Medicare.

(2) If the Chief Executive Medicare requests a person to give information under section 62 in relation to an application for a Level 2 Commonwealth contribution, the Chief Executive Medicare does not have to decide the application until the 21st day after the day on which the person gives the information to the Chief Executive Medicare.

(3) If the Chief Executive Medicare has received, but not yet decided:

(a) an application for the issue of a qualifying claim certificate in relation to a claim; and

(b) an application for a Level 2 Commonwealth contribution in relation to the same claim;

Authorised Version C2021C00290 registered 10/08/2021

the Chief Executive Medicare does not have to decide the application for payment of a Level 2 Commonwealth contribution until the Chief Executive Medicare has decided the application for the issue of a qualifying claim certificate.

Time by which payment must be made

(4) If the Chief Executive Medicare decides to grant an application for a Level 2 Commonwealth contribution, the Chief Executive Medicare must pay the contribution to the applicant as soon as practicable after making that decision.

Authorised Version C2021C00290 registered 10/08/2021

Division 4—Information gathering and record keeping

62 Chief Executive Medicare may request information

(1) If the Chief Executive Medicare believes on reasonable grounds that a person is capable of giving information that is relevant to determining:

(a) whether a Commonwealth contribution is payable; or

(b) the amount of the Commonwealth contribution that is payable; or

(c) whether a qualifying claim certificate or an apportionment certificate should be issued, varied or revoked; or

(d) the Commonwealth's possible future liability to make Commonwealth contributions, or a particular kind of Commonwealth contribution;

the Chief Executive Medicare may request the person to give the Chief Executive Medicare the information.

Note: Failure to comply with the request is an offence (see section 66).

(2) Without limiting subsection (1), any of the following persons may be requested to give information under that subsection:

(a) an insurer;

(b) a person who practises, or used to practise, as an eligible midwife;

(c) a person who is acting, or has acted, on behalf of a person covered by paragraph (b);

(d) the legal personal representative of a person covered by paragraph (b) or (c).

(3) Without limiting subsection (1), if the information sought by the Chief Executive Medicare is information relating to a matter in relation to which a person is required by section 63 to keep a record, the Chief Executive Medicare may request the person to give the information by giving the Chief Executive Medicare the record, or a copy of the record.

Authorised Version C2021C00290 registered 10/08/2021

(4) Without limiting paragraph (1)(d), the Chief Executive Medicare may request an insurer to give information under that paragraph on a periodic basis.

(5) The request:

(a) must be made in writing; and

(b) must state what information must be given to the Chief Executive Medicare; and

(c) may require the information to be verified by statutory declaration; and

(d) must specify the day on or before which the information must be given; and

(e) must contain a statement to the effect that a failure to comply with the request is an offence.

The day specified under paragraph (d) must be at least 28 days after the day on which the request is made.

63 Main record keeping obligations

Records to be kept by person who applies for payment

(1) A person who applies for a Commonwealth contribution must keep records relevant to the following matters:

(a) the payability of the contribution;

(b) the amount of the contribution payable;

(c) any amount paid to the person that results in a person being liable to pay an amount under section 25 or 37;

(d) any other matter determined by the Chief Executive Medicare.

Note: Failure to keep the records is an offence (see section 68).

Authorised Version C2021C00290 registered 10/08/2021

Records to be kept by person who applies for a qualifying claim certificate

(2) A person who applies for the issue of a qualifying claim certificate in relation to a claim must keep records that are relevant to the following:

(a) matters related to whether the criteria specified in subsection 11(1) or (2) are satisfied in relation to the claim;

(b) any other matter determined by the Chief Executive Medicare.

Note: Failure to keep the records is an offence (see section 68).

Records to be retained for certain period

(3) The records must be retained for a period of 5 years (or any other period specified in the Rules) starting on the later of:

(a) the day on which the records were created; or

(b) the day on which this Act commenced.

Note: Failure to retain the records is an offence (see section 68).

Determination of additional matters to be gazetted

(4) A determination by the Chief Executive Medicare under paragraph (1)(d) or (2)(b) is not a legislative instrument. The determination must:

(a) be published in the Gazette; and

(b) not take effect earlier than 14 days after the day on which it is published in the Gazette.

Retrospective effect not intended

(5) Nothing in this section is to be taken to have required a person to do an act or thing before the commencement of this Act.

Authorised Version C2021C00290 registered 10/08/2021

Division 5—Overpayments of the contributions

64 Recovery of overpayments

(1) This section applies if an amount is paid by way of a Commonwealth contribution and:

(a) the amount of Commonwealth contribution is not payable; or

(b) the amount paid is greater than the amount of the Commonwealth contribution that was payable.

(2) The amount overpaid is:

(a) the whole of the amount paid if paragraph (1)(a) applies; or

(b) the difference between the amount that was paid and the amount that was payable if paragraph (1)(b) applies.

(3) The amount overpaid is a debt due to the Commonwealth by the liable person. For this purpose the ***liable person*** is:

(a) if the Commonwealth contribution was a Level 1 Commonwealth contribution or a run-off cover Commonwealth contribution—the insurer to which the payment was made; or

(b) if the Commonwealth contribution was a Level 2 Commonwealth contribution—the person who is the liable person under subsection 23(2).

Note 1: Paragraph (b)—if the Level 2 Commonwealth contribution is or was not dealt with in accordance with whichever of subsections 22(3) and (4) applies by the time required by subsection 22(5), the whole amount of the contribution is a debt owed by the recipient, and no amount is recoverable under this section (see subsections 22(6) to (8)).

Note 2: Paragraph (b)—if:

(a) the recipient and the midwife referred to in subsection 22(1) are not the same person; and

(b) the midwife becomes the liable person;

then (subject to subsection 23(3)), the recipient ceases to be the liable person, and the amount overpaid must instead be recovered from the midwife.

Authorised Version C2021C00290 registered 10/08/2021

(4) The amount overpaid may be recovered:
   (a) by action by the Chief Executive Medicare against the liable person in a court of competent jurisdiction; or
   (b) by deduction from the amount of a Level 1 Commonwealth contribution, a Level 2 Commonwealth contribution or a run-off cover Commonwealth contribution payable to the liable person; or
   (c) under section 65.

The total amount recovered must not exceed the amount overpaid.

65 Chief Executive Medicare may collect money from a person who owes money to a person

What this section does

(1) This section allows the Chief Executive Medicare to collect money from a person who owes money to a person (the ***liable person***) who has a debt to the Commonwealth under subsection 22(6), 25(3), 37(3) or 64(3) (the ***repayment or overpayment debt***).

The Chief Executive Medicare may give direction

(2) The Chief Executive Medicare may direct a person (the ***third party***) who owes, or may later owe, money (the ***available money***) to the liable person to pay some or all of the available money to the Chief Executive Medicare in accordance with the direction. The Chief Executive Medicare must give a copy of the direction to the liable person.

Limit on directions

(3) The direction must:
   (a) not require an amount to be paid to the Chief Executive Medicare at a time before it becomes owing by the third party to the liable person; and
   (b) specify a period of not less than 14 days within which the third party must comply with the direction.

Authorised Version C2021C00290 registered 10/08/2021

(4) If:

(a) the repayment or overpayment debt relates to a Level 2 Commonwealth contribution; and

(b) the recipient and the midwife referred to in subsection 22(1) are not the same person; and

(c) the midwife becomes the liable person; and

(d) the direction was given to the recipient;

the direction ceases to have effect when the midwife becomes the liable person.

Third party to comply

(5) The third party commits an offence if the third party fails to comply with the direction.

Penalty: 20 penalty units.

(6) The third party does not commit an offence against subsection (5) if the third party complies with the direction so far as the third party is able to do so.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(7) An offence against subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Court orders

(8) If a person is convicted of an offence in relation to a failure of the third party to comply with subsection (5), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Commonwealth an amount up to the amount involved in the failure of the third party.

Indemnity

(9) Any payment made by the third party under this section is taken to have been made with the authority of the liable person and of all

Authorised Version C2021C00290 registered 10/08/2021

other persons concerned and the third party is indemnified for the payment.

Notice

(10) If the whole of the repayment or overpayment debt of the liable person is discharged before any payment is made by the third party, the Chief Executive Medicare must immediately give notice to the third party of that fact.

(11) If a part of the repayment or overpayment debt of the liable person is discharged before any payment is made by the third party, the Chief Executive Medicare must:

(a) immediately give notice to the third party of that fact; and

(b) make an appropriate variation to the direction; and

(c) give a copy of the varied direction to the liable person.

When third party is taken to owe money

(12) The third party is taken to owe money to the liable person if:

(a) money is due or accruing by the third party to the liable person; or

(b) the third party holds money for or on account of the liable person; or

(c) the third party holds money on account of some other person for payment to the liable person; or

(d) the third party has authority from some other person to pay money to the liable person;

whether or not the payment of the money to the liable person is dependent on a pre-condition that has not been fulfilled.

Authorised Version C2021C00290 registered 10/08/2021

Division 6—Offences

66 Failing to give information

(1) This section applies if a person is given a request for information under subsection 62(1).

(2) The person commits an offence if the person fails to comply with the request.

Penalty: 30 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

67 Failing to notify

(1) This section applies if section 14, 26, 38, 45, 46 or 55 requires a person to notify the Chief Executive Medicare of a matter within a particular period.

(2) The person commits an offence if the person fails to notify the Chief Executive Medicare of the matter within that period.

Penalty: 30 penalty units.

(3) An offence against subsection (2) is an offence of strict liability. However, strict liability does not apply to the physical element described in paragraph 26(1)(b) or 38(1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

68 Failing to keep and retain records

(1) This section applies if section 63 requires a person to keep records or to retain records for a particular period.

Authorised Version C2021C00290 registered 10/08/2021

(2) The person commits an offence if the person fails to keep the records or fails to retain the records for that period.

Penalty: 30 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code.*

69 Failing to include required information in invoices

(1) This section applies if section 47 applies to an invoice that an eligible insurer gives to a person.

(2) A person commits an offence if:
(a) the person is an eligible insurer; and
(b) the person gives such an invoice to another person; and
(c) the invoice does not state the matters required by section 47.

Penalty: 30 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) To avoid doubt, subsection 4B(3) of the *Crimes Act 1914* applies to any offence against this section committed by a body corporate, as if an offence against that provision could be committed by a natural person.

(5) Subsection (4) does not affect the meaning of any other offence against this Act.

Authorised Version C2021C00290 registered 10/08/2021

Division 7—Finance

70 Appropriation

The Consolidated Revenue Fund is appropriated for the purposes of paying:

(a) Level 1 Commonwealth contributions; and

(b) Level 2 Commonwealth contributions; and

(c) run-off cover Commonwealth contributions.

Authorised Version C2021C00290 registered 10/08/2021

Division 8—Reinsurance contracts

71 Commonwealth contributions disregarded for purposes of reinsurance contracts

(1) If:

(a) a contract is a contract of insurance between 2 insurers; and

(b) the contract is governed by the laws of a State or Territory;

the contract has effect as if the contract provided, and had at all times provided, that:

(c) Commonwealth contributions; and

(d) insurers' rights to Commonwealth contributions;

were to be disregarded for all purposes and, without limiting this, were to have no effect on the amounts payable under the contract by the insurer providing the insurance.

(2) By force of this subsection, subsection (1) applies to a contract if it is entered into on or after the commencement of this Act.

(3) By force of this subsection, subsection (1) applies to a contract if it was entered into before the commencement of this Act.

Authorised Version C2021C00290 registered 10/08/2021

Division 9—Monitoring

71A Insurers may be required to provide information

The Rules may require an eligible insurer to provide to the Secretary information about any of the following:

(a) premium costs for midwife professional indemnity cover provided by contracts of insurance with the insurer;

(b) the income of eligible midwives for whom contracts of insurance with the insurer provide midwife professional indemnity cover;

(c) the profitability of the insurer;

(d) the insurer's reinsurance arrangements and costs.

Authorised Version C2021C00290 registered 10/08/2021

Chapter 3—Run-off cover support payments

Part 1—Introduction

72 Guide to this Chapter

(1) This Chapter provides for the payment of run-off cover support payments and the administration of run-off cover support payments.

(2) The *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010* (the ***Payment Act***):

(a) imposes payments on eligible insurers for contribution years; and

(b) specifies the amount of those payments (by reference to an eligible insurer's premium income for the contribution year).

This Chapter contains further provisions relating to the payment.

(3) The following table tells you where to find the provisions dealing with various issues:

Where to find the provisions on various issues

Item	Issue	Provisions
1	which years are contribution years?	section 5 of the Payment Act
2	who must pay the run-off cover support payment?	section 73 of this Act
3	who is exempt from the run-off cover support payment?	section 74 of this Act
4	what is the amount of the run-off cover support payment?	section 6 of the Payment Act
5	what is the time for paying the run-off cover support payment?	section 75 of this Act
6	when is late payment penalty	section 76 of this Act

Authorised Version C2021C00290 registered 10/08/2021

Where to find the provisions on various issues		
Item	**Issue**	**Provisions**
	payable?	
7	what method should be used to pay the run-off cover support payment?	section 77 of this Act
8	what happens if an amount of run-off cover support payment is overpaid?	section 78 of this Act
9	how are run-off cover support payments and late payment penalties recovered?	sections 79 of this Act
10	what information has to be given to the Chief Executive Medicare about run-off cover support payment matters?	sections 82 and 83 of this Act

Authorised Version C2021C00290 registered 10/08/2021

Part 2—Payment of run-off cover support payment

73 Who is liable to pay the run-off cover support payment?

A person is liable to pay a run-off cover support payment for a financial year if:

(a) the person is an eligible insurer; and

(b) the financial year is a contribution year; and

(c) the person is not exempt from the payment under section 74.

74 Exemptions

(1) The Rules may provide that a person is exempt from run-off cover support payment in the circumstances specified in the Rules.

(2) Rules made for the purposes of subsection (1) may provide that a person is exempt from run-off cover support payment either generally or for a particular contribution year.

75 When run-off cover support payment must be paid

A run-off cover support payment that a person is liable to pay for a contribution year becomes due and payable on:

(a) 30 June in the contribution year; or

(b) such other day as is specified in the Rules as the payment day for the contribution year either generally for all people, for the class of people that includes the person or for the person, as the case may be.

76 Late payment penalty

(1) If:

(a) a person is liable to pay a run-off cover support payment; and

Authorised Version C2021C00290 registered 10/08/2021

(b) the payment remains wholly or partly unpaid after it becomes due and payable;

the person is liable to pay a late payment penalty under this section.

(2) The late payment penalty is calculated:

(a) at the rate specified in the Rules; and

(b) on the unpaid amount of payment; and

(c) for the period:

(i) starting when the payment becomes due and payable; and

(ii) ending when the payment, and the penalty payable under this section in relation to the payment, have been paid in full.

Paragraph (c) has effect subject to subsection (3).

(3) The Chief Executive Medicare may remit the whole or a part of an amount of late payment penalty if the Chief Executive Medicare considers that there are good reasons for doing so.

(4) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare not to remit, or to remit only part of, an amount of late payment penalty.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires notification of a decision that is reviewable.

77 Method of paying certain amounts

(1) A run-off cover support payment must be paid to the Chief Executive Medicare.

(2) A late payment penalty payable under section 76 must be paid to the Chief Executive Medicare.

(3) The Rules may specify methods for paying an amount referred to in subsection (1) or (2).

Authorised Version C2021C00290 registered 10/08/2021

78 Refund of overpaid amounts

Refund of overpaid run-off cover support payment and late payment penalty

(1) If a person overpays:

(a) a run-off cover support payment for a contribution year; or

(b) a late payment penalty in relation to a run-off cover support payment for a contribution year;

the amount overpaid must be refunded to the person unless the amount has been previously repaid to the person in accordance with an authorisation under section 65 of the *Public Governance, Performance and Accountability Act 2013* (which deals with act of grace payments by the Commonwealth).

Appropriation

(2) The Consolidated Revenue Fund is appropriated for the purpose of providing refunds under this section.

79 Recovery of payment debt

(1) A run-off cover support payment is a debt due to the Commonwealth.

(2) A late payment penalty payable under section 76 is a debt due to the Commonwealth.

(3) The Chief Executive Medicare may recover an amount referred to in subsection (1) or (2) as a debt by action in a court of competent jurisdiction.

Authorised Version C2021C00290 registered 10/08/2021

80 Chief Executive Medicare may collect money from a person who owes money to a person

What this section does

(1) This section allows the Chief Executive Medicare to collect money from a person who owes money to a person (the ***payment debtor***) who has a debt to the Commonwealth under section 79 (a ***payment debt***).

The Chief Executive Medicare may give direction

(2) The Chief Executive Medicare may direct a person (the ***third party***) who owes, or may later owe, money (the ***available money***) to the payment debtor to pay some or all of the available money to the Chief Executive Medicare in accordance with the direction. The Chief Executive Medicare must give a copy of the direction to the payment debtor.

Limit on directions

(3) The direction must:
  (a) not require an amount to be paid to the Chief Executive Medicare at a time before it becomes owing by the third party to the payment debtor; and
  (b) specify a period of not less than 14 days within which the third party must comply with the direction.

Third party to comply

(4) The third party commits an offence if the third party fails to comply with the direction.

Penalty: 20 penalty units.

(5) The third party does not commit an offence against subsection (4) if the third party complies with the direction so far as the third party is able to do so.

Authorised Version C2021C00290 registered 10/08/2021

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(6) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Court orders

(7) If a person is convicted of an offence in relation to a failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Chief Executive Medicare an amount up to the amount involved in the failure of the third party.

Indemnity

(8) Any payment made by the third party under this section is taken to have been made with the authority of the payment debtor and of all other persons concerned and the third party is indemnified for the payment.

Notice

(9) If the whole of the payment debt of the payment debtor is discharged before any payment is made by the third party, the Chief Executive Medicare must immediately give notice to the third party of that fact.

(10) If a part of the payment debt of the payment debtor is discharged before any payment is made by the third party, the Chief Executive Medicare must:
(a) immediately give notice to the third party of that fact; and
(b) make an appropriate variation to the direction; and
(c) give a copy of the varied direction to the payment debtor.

When third party is taken to owe money

(11) The third party is taken to owe money to the payment debtor if:

Authorised Version C2021C00290 registered 10/08/2021

(a) money is due or accruing by the third party to the payment debtor; or

(b) the third party holds money for or on account of the payment debtor; or

(c) the third party holds money on account of some other person for payment to the payment debtor; or

(d) the third party has authority from some other person to pay money to the payment debtor;

whether or not the payment of the money to the payment debtor is dependent on a pre-condition that has not been fulfilled.

81 Evidentiary certificates

(1) The Chief Executive Medicare may issue a written certificate:

(a) stating that a person is liable to pay:

(i) a run-off cover support payment; or

(ii) a late payment penalty in relation to a run-off cover support payment; and

(b) setting out particulars of the liability.

(2) In any civil proceedings under, or arising out of, this Act or the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.

(3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.

(4) The Chief Executive Medicare may certify that a document is a copy of a certificate issued under subsection (1).

(5) This section applies to the certified copy as if it were the original.

Authorised Version C2021C00290 registered 10/08/2021

Part 3—Information gathering provisions

82 Chief Executive Medicare may request information

(1) If the Chief Executive Medicare believes on reasonable grounds that a person is capable of giving information that is relevant to determining:

(a) whether a person is liable to pay a run-off cover support payment; or

(b) the amount of the run-off cover support payment a person is liable to pay; or

(c) whether a person has midwife professional indemnity cover provided by a contract of insurance with a particular eligible insurer;

the Chief Executive Medicare may request the person to give the Chief Executive Medicare the information.

Note: Failure to comply with the request is an offence (see section 84).

(2) The request:

(a) must be made in writing; and

(b) must state what information must be given to the Chief Executive Medicare; and

(c) may require the information to be verified by statutory declaration; and

(d) must specify the day on or before which the information must be given; and

(e) must contain a statement to the effect that a failure to comply with the request is an offence.

The day specified under paragraph (d) must be at least 28 days after the day on which the request is made.

Authorised Version C2021C00290 registered 10/08/2021

83 Chief Executive Medicare must be notified of a change in circumstances etc.

(1) A person who:

(a) is exempt from a run-off cover support payment; and

(b) ceases to be exempt from the payment because:

(i) the person's circumstances change before the start of, or during, a contribution year; or

(ii) the person fails to satisfy a condition on which the exemption from the payment depends;

must notify the Chief Executive Medicare of that change in circumstances or that failure, as the case may be.

Note: Failure to notify is an offence (see section 85).

(2) The notification must:

(a) be in writing; and

(b) set out details of the change in circumstances or failure of which the person is required to notify the Chief Executive Medicare under subsection (1); and

(c) be given to the Chief Executive Medicare within 28 days after the day on which the person becomes aware of the change in circumstances or failure, as the case may be.

84 Failing to give information

(1) This section applies if a person is given a request for information under subsection 82(1).

(2) The person commits an offence if the person fails to comply with the request.

Penalty: 30 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00290 registered 10/08/2021

85 Failing to notify

(1) This section applies if section 83 requires a person to notify the Chief Executive Medicare, within a particular period, of a matter.

(2) The person commits an offence if the person fails to notify the Chief Executive Medicare of that matter within that period.

Penalty: 30 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Authorised Version C2021C00290 registered 10/08/2021

Chapter 4—Miscellaneous

86 General administration of this Act and *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*

The Chief Executive Medicare has the general administration of this Act and the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

87 Additional functions of the Chief Executive Medicare

In addition to the functions of the Chief Executive Medicare under the *Human Services (Medicare) Act 1973*, the Chief Executive Medicare has such additional functions as are conferred on the Chief Executive Medicare under this Act and the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

87A Chief Executive Medicare may use computer programs to take administrative action

(1) The Chief Executive Medicare may arrange for the use, under the Chief Executive Medicare's control, of computer programs for any purposes for which the Chief Executive Medicare may or must take administrative action under this Act or a legislative instrument made under this Act.

(2) Administrative action taken by the operation of a computer program under such an arrangement is, for the purposes of this Act, taken to be administrative action taken by the Chief Executive Medicare.

(3) The Chief Executive Medicare may substitute a decision for a decision the Chief Executive Medicare is taken to have made under subsection (2) if the Chief Executive Medicare is satisfied that the

Authorised Version C2021C00290 registered 10/08/2021

decision made by the operation of the computer program is incorrect.

(4) In this Act:

administrative action means any of the following:

(a) making a decision;

(b) exercising any power or complying with any obligation;

(c) doing anything else that relates to making a decision or exercising a power or complying with an obligation.

87B Delegation by Secretary

(1) The Secretary may, in writing, delegate all or any of the functions or powers of the Secretary under this Act or a legislative instrument made under this Act to any of the following persons:

(a) the Chief Executive Medicare;

(b) an SES employee, or an acting SES employee, in the Department or the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary.

88 Officers to observe secrecy

Definitions

(1) In this section:

midwife professional indemnity legislation means:

(a) this Act; or

(b) the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

Authorised Version C2021C00290 registered 10/08/2021

officer means a person performing duties, or exercising powers or functions, under or in relation to, the midwife professional indemnity legislation.

person to whom this section applies means a person who is or was an officer.

protected document means a document that:

(a) is obtained or made by a person to whom this section applies in the course of, or because of, the person's functions, powers or duties under or in relation to the midwife professional indemnity legislation; and

(b) contains information relating to a person's affairs.

protected information means information that:

(a) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's functions, powers or duties under or in relation to the midwife professional indemnity legislation; and

(b) relates to a person's affairs.

Offence

(2) A person to whom this section applies commits an offence if:

(a) the person:

(i) makes a copy or other record of any protected information or of all or part of any protected document; or

(ii) discloses any protected information to another person; or

(iii) produces all or part of a protected document to another person; and

(b) in doing so, is not acting in the performance of his or her duties, or in the exercise of his or her powers or functions, under the midwife professional indemnity legislation; and

(c) in doing so, is not acting for the purpose of enabling a person to perform functions under:

Authorised Version C2021C00290 registered 10/08/2021

(i) the midwife professional indemnity legislation; or
(ii) the *Health Insurance Act 1973*; or
(iii) a medicare program; or
(iv) the *National Health Act 1953*; or
(v) the *Private Health Insurance Act 2007*.

Penalty: Imprisonment for 2 years.

Circumstances in which protected information and protected documents may be copied, recorded or divulged

(2A) Despite subsection (2), any of the following persons may make a copy or record of, or divulge to any other of the following persons, protected information or a protected document, for the purposes of monitoring, assessing or reviewing the operation of the midwife professional indemnity legislation:
(a) the Secretary;
(b) the Chief Executive Medicare;
(c) the Actuary;
(d) the Australian Prudential Regulation Authority;
(e) the Australian Securities and Investments Commission.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(2B) Despite subsection (2), any of the following persons may make a copy or record of, or divulge to any other of the following persons, protected information or a protected document, for the purposes of conducting, or assisting a person to conduct, the evaluation mentioned in section 78A of the *Medical Indemnity Act 2002*:
(a) a person mentioned in subsection (2A) of this section;
(b) a person conducting the evaluation;
(c) a person assisting a person to conduct the evaluation.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Authorised Version C2021C00290 registered 10/08/2021

(3) Despite subsection (2), the Secretary or the Chief Executive Medicare may divulge any protected information to an authority or person if:

(a) the authority or person is an authority or person specified in the Rules for the purposes of this subsection; and

(b) the information is information of a kind that may, in accordance with the regulations, be provided to the authority or person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(4) If protected information is divulged to an authority or person under subsection (2A), (2B) or (3):

(a) the authority or person; and

(b) any person or employee under the control of the authority or person;

is, in respect of that information, subject to the same rights, privileges, obligations and liabilities under subsection (2) as if he or she were a person performing duties under the midwife professional indemnity legislation and had acquired the information in the performance of those duties.

(5) This section does not prohibit the divulging or communicating to a person of information that relates to the person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(5A) Despite subsection (2), an officer may make a record of information with the express or implied authorisation of the person to whom the information relates.

89 Act not to apply in relation to State insurance within a State

If, but for this section, a provision of this Act:

(a) would have a particular application; and

Authorised Version C2021C00290 registered 10/08/2021

(b) by virtue of having that application, would be a law with respect to State insurance not extending beyond the limits of the State concerned;

the provision is not to have that application.

90 Minister may make Rules

(1) The Minister may, by legislative instrument, make Rules providing for matters:

(a) required or permitted by this Act to be provided for in the Rules; or

(b) necessary or convenient to be provided for in order to carry out or give effect to this Act.

(2) The Rules may make provision for or in relation to a matter by conferring a power on the Minister or on the Chief Executive Medicare.

Rules may incorporate material

(3) The Rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(4) Subsection (3) has effect despite subsection 14(2) of the *Legislation Act 2003*.

91 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, prescribing penalties, not exceeding 10 penalty units, for offences against the regulations.

Authorised Version C2021C00290 registered 10/08/2021

(2) Without limiting subsection (1), the regulations may make provision for the qualifications of actuaries preparing reports for the purposes of this Act.

Authorised Version C2021C00290 registered 10/08/2021

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Authorised Version C2021C00290 registered 10/08/2021

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2021C00290 registered 10/08/2021

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2021C00290 registered 10/08/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010	30, 2010	12 Apr 2010	1 July 2010 (s 2)	
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Sch 4 (items 360–418): 1 July 2011 (s 2(1) item 3)	—
as amended by				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (item 24): 1 July 2011 (s 2(1) item 20)	—
Midwife Professional Indemnity Legislation Amendment Act 2011	47, 2011	27 June 2011	Sch 1 (items 1, 2): 27 June 2011 (s 2)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (item 8) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

Authorised Version C2021C00290 registered 10/08/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 372–379): 5 Mar 2016 (s 2(1) item 2)	—
Medical and Midwife Indemnity Legislation Amendment Act 2019	105, 2019	28 Nov 2019	Sch 2 (items 21, 22, 25–27), Sch 3 (items 21–31) and Sch 4 (items 144–153): 1 July 2020 (s 2(1) item 2)	Sch 2 (items 22, 27), Sch 3 (item 31) and Sch 4 (items 148–153)
Medical and Midwife Indemnity Legislation Amendment Act 2021	48, 2021	23 June 2021	Sch 2: 1 July 2021 (s 2(1) item 3)	Sch 2 (item 6)

Authorised Version C2021C00290 registered 10/08/2021

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1	
Division 3	
s 5	am No 32, 2011; No 126, 2015; No 105, 2019; No 48, 2021
Chapter 2	
Part 2	
Division 1	
s 9	am No 32, 2011
s 10	am No 126, 2015
Division 2	
s 11	am No 32, 2011; No 47, 2011; No 126, 2015; No 48, 2021
s 12	am No 32, 2011
s 13	am No 32, 2011
s 14	am No 32, 2011
s 15	am No 32, 2011
Division 3	
Subdivision A	
s 16	am No 32, 2011; No 126, 2015
Subdivision B	
s 18	am No 32, 2011
s 22	am No 32, 2011
Subdivision C	
s 25	am No 32, 2011
s 26	am No 32, 2011
s 27	am No 32, 2011
s 28	am No 32, 2011

Authorised Version C2021C00290 registered 10/08/2021

Endnote 4—Amendment history

Provision affected	How affected
Part 3	
Division 1	
s 29	am No 32, 2011
s 31	am No 32, 2011; No 47, 2011; No 126, 2015; No 105, 2019; No 48, 2021
Division 2	
s 32	am No 32, 2011
Division 3	
s 37	am No 32, 2011
s 38	am No 32, 2011
s 39	am No 32, 2011
s 40	am No 32, 2011
Division 4	
s 44	am No 105, 2019
s 45	am No 32, 2011
Division 5	
s 46	am No 32, 2011
s 48	am No 105, 2019
Part 4	
Division 1	
s 50	am No 32, 2011
Division 2	
s 51	am No 32, 2011
s 52	am No 32, 2011
s 53	am No 32, 2011
s 54	am No 32, 2011
s 55	am No 32, 2011
s 56	am No 32, 2011
s 57	am No 32, 2011
Division 3	
s 58	am No 32, 2011

Authorised Version C2021C00290 registered 10/08/2021

Endnote 4—Amendment history

Provision affected	How affected
s 59	am No 32, 2011
s 60	am No 32, 2011
s 61	am No 32, 2011
Division 4	
s 62	am No 32, 2011
s 63	am No 32, 2011
Division 5	
s 64	am No 32, 2011
s 65	am No 32, 2011
Division 6	
s 67	am No 32, 2011
Division 9	
Division 9	ad No 105, 2019
s 71A	ad No 105, 2019
Chapter 3	
Part 1	
s 72	am No 32, 2011
Part 2	
s 76	am No 32, 2011
s 77	am No 32, 2011
s 78	am No 62, 2014
s 79	am No 32, 2011
s 80	am No 32, 2011
s 81	am No 32, 2011
Part 3	
s 82	am No 32, 2011
s 83	am No 32, 2011
s 85	am No 32, 2011
Chapter 4	
s 86	am No 32, 2011

Authorised Version C2021C00290 registered 10/08/2021

Endnote 4—Amendment history

Provision affected	How affected
s 87	am No 32, 2011
s 87A	ad No 105, 2019
s 87B	ad No 105, 2019
s 88	am No 32, 2011; No 105, 2019
s 90	am No 32, 2011; No 126, 2015

Authorised Version C2021C00290 registered 10/08/2021