



# **Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment Act 2024**

**No. 126, 2024**

***An Act to amend the *Midwife Professional  
Indemnity (Commonwealth Contribution) Scheme  
Act 2010*, and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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***An Act to amend the *Midwife Professional  
Indemnity (Commonwealth Contribution) Scheme  
Act 2010*, and for related purposes***

*[Assented to 10 December 2024]*

The Parliament of Australia enacts:

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*No. 126, 2024*

*Midwife Professional Indemnity (Commonwealth Contribution)  
Scheme Amendment Act 2024*

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## 1 Short title

This Act is the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment Act 2024*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The later of: (a) 1 July 2025; and (b) the day after this Act receives the Royal Assent.	1 July 2025

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*

#### 1 Paragraph 3(2)(a)

After “midwives”, insert “(other than in the circumstances set out in paragraph (aa))”.

#### 2 After paragraph 3(2)(a)

Insert:

- (aa) meeting the full cost of settlements or awards paid by eligible insurers that indemnify eligible midwives (or in certain circumstances eligible entities) in relation to intrapartum care outside of a hospital; and

#### 3 Subsection 5(1)

Insert:

*Aboriginal or Torres Strait Islander child* means a child who is:

- (a) an Aboriginal person; or
- (b) a Torres Strait Islander.

*Aboriginal or Torres Strait Islander person* means:

- (a) an Aboriginal person; or
- (b) a Torres Strait Islander.

*Aboriginal person* has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

*Birthing on Country model* means a model designed to provide continuous, culturally safe care to:

- (a) an Aboriginal or Torres Strait Islander person who is pregnant; or
- (b) a person who is pregnant with an Aboriginal or Torres Strait Islander child.

***Birthing on Country out-of-hospital incident*** means an out-of-hospital incident that occurs in relation to intrapartum care provided under a Birthing on Country model.

***eligible entity***, for a midwife, means a person:

- (a) specified in the Rules; and
- (b) that employs or engages the midwife to provide intrapartum care under a Birthing on Country model; and
- (c) to which any circumstances prescribed by the rules do not apply.

***hospital*** has the same meaning as in the *Private Health Insurance Act 2007*.

***intrapartum care*** means care provided:

- (a) at any time during the period from the onset of labour to delivery of the placenta; and
- (b) in the course of a person's practice as an eligible midwife; and
- (c) in accordance with any other requirements prescribed by the Rules.

***out-of-hospital incident*** means an incident that occurs or occurred in the course of an eligible midwife providing intrapartum care outside of a hospital.

Note: For example, an incident that occurs in the course of an eligible midwife attending a homebirth.

***Torres Strait Islander*** has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

#### **4 At the end of section 7**

Add:

- (4) To avoid doubt, the Rules may set a different Level 1 termination date, Level 2 termination date or run-off cover termination date for claims in relation to out-of-hospital incidents.

#### **5 Subsection 9(1)**

Omit "more than a particular", substitute "an".

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**6 At the end of subsection 9(1)**

Add:

; and (c) for a claim that relates to an incident that is not an out-of-hospital incident—exceed the Level 1 claim threshold.

Note: The Level 1 claim threshold does not apply to a Level 1 Commonwealth contribution in relation to a claim for an out-of-hospital incident: see subsection 10(1A).

**7 Subsection 9(2)**

After “a midwife”, insert “or, in certain circumstances, the liability of the eligible entity for the midwife,”.

**8 Subparagraph 9(2)(a)(i)**

Omit “person’s”, substitute “midwife’s”.

**9 Paragraph 9(2)(b)**

Omit “in relation to a particular claim against the midwife”, substitute “for a particular claim in relation to the midwife”.

**10 Subsection 10(1) (heading)**

After “*threshold*”, insert “*for claims that are not out-of-hospital claims*”.

**11 Subsection 10(1)**

After “*threshold*”, insert “for a claim that relates to an incident that is not an out-of-hospital incident”.

**12 After subsection 10(1)**

Insert:

*No Level 1 claim threshold for out-of-hospital claims*

(1A) There is no Level 1 claim threshold for a claim that relates to an out-of-hospital incident.

**13 Paragraph 11(3)(a)**

Repeal the paragraph, substitute:

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- (a) for a claim that relates to an incident that is not a Birthing on Country out-of-hospital incident—the claim is or was made against a person (the *midwife*); or
- (aa) for a claim that relates to a Birthing on Country out-of-hospital incident—the claim is or was made against:
  - (i) a person (also the *midwife*); or
  - (ii) the eligible entity for a person (also the *midwife*); and

Note 1: A claim may be made against a midwife and the eligible entity that employed or engaged the midwife in relation to the same incident.

Note 2: A claim may be made against a midwife in relation to an incident that occurs or occurred in the course of the midwife attending a homebirth under a Birthing on Country model.

#### **14 Paragraph 11(3)(e)**

Before “the claim”, insert “if the claim relates to an incident that is not an out-of-hospital incident—”.

#### **15 Paragraph 11(3)(h)**

After “certificate”, insert “for a claim that relates to an incident that is not an out-of-hospital incident”.

#### **16 After paragraph 11(3)(h)**

Insert:

- (ha) if the application is for a Level 1 qualifying certificate for a claim that relates to an out-of-hospital incident, the incident occurs or occurred:
  - (i) on or after 1 July 2025; and
  - (ii) on or before the Level 1 termination date for claims in relation to out-of-hospital incidents (if any); and

#### **17 Paragraph 11(3)(i)**

After “certificate”, insert “for a claim that relates to an incident that is not an out-of-hospital incident,”.

#### **18 After paragraph 11(3)(i)**

Insert:

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- (ia) if the application is for a Level 2 qualifying certificate for a claim that relates to an out-of-hospital incident, the incident occurs or occurred:
  - (i) on or after 1 July 2025; and
  - (ii) on or before the Level 2 termination date for claims in relation to out-of-hospital incidents (if any); and

**19 Paragraph 11(3)(j)**

Repeal the paragraph, substitute:

- (j) the claim is not in substance an aggregation of:
  - (i) two or more separate claims against the midwife; or
  - (ii) for a claim made against the eligible entity—two or more separate claims against the entity in relation to the midwife; and

**20 Subparagraph 11(6)(a)(iii)**

After “certificate is a”, insert “Level 1 qualifying claim certificate in relation to an out-of-hospital incident or a”.

**21 At the end of paragraph 11(6)(a)**

Add:

- (iv) if the claim is made against the eligible entity—the entity; and

**22 Paragraph 11(6)(b)**

Repeal the paragraph, substitute:

- (b) if the certificate is a Level 1 qualifying claim certificate for a claim that relates to an incident that is not an out-of-hospital incident—specify the Level 1 claim threshold; and
- (c) if the certificate is a Level 2 qualifying claim certificate—specify the Level 2 claim threshold.

**23 At the end of subsection 11(6)**

Add:

Note: The Level 1 claim threshold does not apply to a Level 1 Commonwealth contribution in relation to a claim for an out-of-hospital incident: see subsection 10(1A).

## 24 After paragraph 12(3)(b)

Insert:

- (ba) if the application relates to an out-of-hospital incident—specify that fact; and
- (bb) specify whether the application relates to a claim that is or was made against:
  - (i) if the claim relates to an incident that is not a Birthing on Country out-of-hospital incident—the midwife concerned; or
  - (ii) if the claim relates to a Birthing on Country out-of-hospital incident—the eligible entity concerned for the midwife concerned, or the midwife concerned; and

## 25 Paragraph 12(3)(c)

After “the midwife concerned”, insert “or, in the case of an application in relation to a claim against the eligible entity, the entity concerned”.

## 26 Subparagraph 14(1)(c)(ii)

Omit “Level 1 or”, substitute “a”.

## 27 Paragraph 16(1)(a)

Repeal the paragraph, substitute:

- (a) a claim (the *current claim*) is, or was, made against:
  - (i) for a claim that relates to an incident that is not a Birthing on Country out-of-hospital incident—a person (the *midwife*); or
  - (ii) for a claim that relates to a Birthing on Country out-of-hospital incident—a person (also the *midwife*), or the eligible entity for a person (also the *midwife*); and

## 28 Paragraph 16(1)(c)

After “the midwife”, insert “(in the case of a claim made against the midwife) or the eligible entity (in the case of a claim made against the entity)”.

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**29 Paragraph 16(1)(e)**

Before “the amount”, insert “if the current claim relates to an incident that is not an out-of-hospital incident—”.

**30 After paragraph 16(1)(e)**

Insert:

Note: The Level 1 claim threshold does not apply to a Level 1 Commonwealth contribution in relation to a claim for an out-of-hospital incident: see subsection 10(1A).

**31 Paragraph 16(3)(b)**

After “the midwife”, insert “or, in the case of a claim against the eligible entity, the entity”.

**32 Paragraph 16(3)(d)**

After “the midwife”, insert “or, in the case of a claim against the eligible entity, the entity,”.

**33 Section 17 (after the heading)**

Insert:

*Claims for incidents that are not out-of-hospital incidents*

**34 Section 17**

Before “The”, insert “(1)”.

**35 Section 17**

After “a claim”, insert “for an incident that is not an out-of-hospital incident”.

**36 At the end of section 17**

Add:

*Claims for out-of-hospital incidents*

- (2) The amount of a Level 1 Commonwealth contribution in relation to a claim for an out-of-hospital incident is 100% of the eligible insurer’s qualifying payment, or the sum of the eligible insurer’s

qualifying payments, for the claim, if the amount does not exceed the Level 2 claim threshold.

**37 Paragraph 18(1)(a)**

Repeal the paragraph, substitute:

- (a) a claim (the *current claim*) is, or was, made against the following person by another person:
  - (i) for a claim that relates to an incident that is not a Birthing on Country out-of-hospital incident—the midwife;
  - (ii) for a claim that relates to a Birthing on Country out-of-hospital incident—the eligible entity for the midwife, or the midwife; and

**38 Paragraph 18(1)(d)**

After “the midwife”, insert “(in the case of a claim made against the midwife) or the eligible entity (in the case of a claim made against the entity)”.

**39 Subsection 19(1)**

After “(the *midwife*)”, insert “or, in the case of a claim against the eligible entity for a midwife in relation to a Birthing on Country out-of-hospital incident, the entity”.

**40 Subsection 19(1)**

Omit “made against the midwife”.

**41 Subparagraph 19(1)(a)(iii)**

Omit “of the midwife”.

**42 Paragraph 19(1)(b)**

Omit “against the midwife”.

**43 Paragraph 19(1)(d)**

After “midwife”, insert “or entity”.

**44 Paragraph 19(2)(a)**

Omit “midwife’s”, substitute “midwife or entity’s”.

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**45 Paragraph 19(2)(b)**

After “by the midwife” (wherever occurring), insert “or entity”.

**46 Subsection 19(3) (definition of *defence of the claim*)**

After “midwife”, insert “or eligible entity”.

**47 Paragraph 24(1)(b)**

Repeal the paragraph, substitute:

- (b) another amount (not being an amount referred to in subsection (2)) has been paid in relation to the incident to which the liability relates:
  - (i) if the incident is not a Birthing on Country out-of-hospital incident—to a person covered by subsection (3); or
  - (ii) if the incident is a Birthing on Country out-of-hospital incident—to a person covered by subsection (4); and

**48 At the end of section 24**

Add:

*Recipients of amounts—incidents that are not Birthing on Country out-of-hospital incidents*

- (3) A person is covered by this subsection if the person is:
  - (a) the midwife; or
  - (b) the eligible insurer; or
  - (c) another person.

*Recipients of amounts—Birthing on Country out-of-hospital incidents*

- (4) A person is covered by this subsection if the person is:
  - (a) the midwife; or
  - (b) the eligible insurer; or
  - (c) the eligible entity for a midwife; or
  - (d) another person.

**49 Paragraph 25(1)(a)**

After “(the *midwife*)”, insert “or an eligible entity”.

**50 Paragraph 25(1)(b)**

Repeal the paragraph, substitute:

- (b) another amount (not being an amount referred to in subsection (5)) has been paid in relation to the incident to which the claim relates:
  - (i) if the incident is not a Birthing on Country out-of-hospital incident—to a person covered by subsection 24(3); or
  - (ii) if the incident is a Birthing on Country out-of-hospital incident—to a person covered by subsection 24(4); and

**51 Paragraph 26(1)(a)**

After “(the *midwife*)”, insert “or an eligible entity”.

**52 Paragraph 26(1)(b)**

Repeal the paragraph, substitute:

- (b) the person (the *applicant*) who applied for the Level 2 Commonwealth contribution becomes aware that another amount has been paid in relation to the incident to which the claim relates:
  - (i) if the incident is not a Birthing on Country out-of-hospital incident—to a person covered by subsection 24(3); or
  - (ii) if the incident is a Birthing on Country out-of-hospital incident—to a person covered by subsection 24(4); and

**53 Paragraphs 27(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) an amount of Level 2 Commonwealth contribution has been paid in relation to a qualifying liability that relates to a claim made against:
  - (i) for a claim that relates to an incident that is not a Birthing on Country out-of-hospital incident—a person (the *midwife*); or



- (ii) for a claim that relates to a Birthing on Country out-of-hospital incident—a person (also the *midwife*) or the eligible entity for a person (also the *midwife*); and
- (b) another amount is paid in relation to the incident to which the claim relates:
  - (i) if the incident is not a Birthing on Country out-of-hospital incident—to a person covered by subsection 24(3); or
  - (ii) if the incident is a Birthing on Country out-of-hospital incident—to a person covered by subsection 24(4); and

**54 At the end of subsection 31(1)**

Add:

Note: A claim is not an eligible run-off claim if it is a claim made against an eligible entity in relation to a person to whom subsection (2) applies.

**55 Paragraph 31(1)(b)**

Before “it”, insert “for an incident that is not an out-of-hospital incident—”.

**56 After paragraph 31(1)(b)**

Insert:

- (ba) for an incident that is an out-of-hospital incident—it relates to an incident that occurred:
  - (i) on or after 1 July 2025; and
  - (ii) on or before the run-off cover termination date (if any); and

**57 Paragraph 32(1)(e)**

Before “either”, insert “for an incident that is not an out-of-hospital incident—”.

**58 After paragraph 32(1)(e)**

Insert:

- (ea) for an incident that is an out-of-hospital incident—either the incident occurs or occurred:
  - (i) on or after 1 July 2025; and

- (ii) on or before the run-off cover termination date (if any);  
and

**59 Subsection 51(1)**

After “a midwife”, insert “or eligible entity for a midwife”.

**60 Subparagraph 51(1)(a)(ii)**

Before “the”, insert “for a claim against a midwife—”.

**61 Paragraph 51(1)(b)**

Before “the Chief”, insert “for a claim against a midwife—”.

**62 After paragraph 51(1)(b)**

Insert:

- (ba) for a claim against an eligible entity—the Chief Executive Medicare is satisfied that there is a person, other than the entity, against whom a claim has been or is reasonably likely to be made, in relation to the incident to which the claim relates; and

**63 At the end of subsection 51(1)**

Add:

- Note: For claims relating to a Birthing on Country out-of-hospital incident, a person referred to in paragraph (b) may include the eligible entity for the midwife, and a person referred to in paragraph (ba) may include the midwife concerned.

**64 Paragraph 51(2)(a)**

After “midwife”, insert “or eligible entity”.

**65 Subsection 52(1)**

After “against an eligible midwife”, insert “or eligible entity for an eligible midwife”.

**66 Paragraph 52(1)(b)**

After “midwife”, insert “or eligible entity”.

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**67 Paragraph 52(1)(d)**

After “midwife”, insert “or entity”.

**68 Paragraph 52(2)(a)**

Omit “midwife’s”, substitute “midwife or entity’s”.

**69 Paragraph 52(2)(b)**

After “midwife” (wherever occurring), insert “or entity”.

**70 Subsection 52(3) (at the end of the definition of *defence of the claim*)**

Add “or entity”.

**71 Subsection 53(1)**

Repeal the subsection, substitute:

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

Note: For claims relating to a Birthing on Country out-of-hospital incident, a person referred to in paragraph (a) may include the eligible entity for the midwife, and a person referred to in paragraph (b) may include the midwife concerned.

**72 Subparagraph 53(2)(b)(i)**

After “the midwife”, insert “or entity”.

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*[Minister's second reading speech made in—  
House of Representatives on 20 November 2024  
Senate on 28 November 2024]*

*(145/24)*

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Scheme Amendment Act 2024*