

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Health

Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010

Midwife Professional Indemnity (Run-off Cover Support Payment) Rules 2020

Authority

Section 8 of the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010* (the Act) provides that the Minister may, by legislative instrument, make rules providing for matters required or permitted by the Act to be provided for in the Rules or necessary or convenient to be provided for in order to carry out or give effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose and Operation

In conjunction with the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*, the Act establishes the Midwife Professional Indemnity Scheme (the Scheme), which provides Commonwealth financial support for professional indemnity insurance for privately practising midwives who are eligible under the Scheme.

The *Midwife Professional Indemnity (Run-off Cover Support Payment) Rules 2020* (Rules) provides a lower percentage rate to be used for the purposes of calculating the amount of the run-off cover support payment that an insurer is required to pay to the Commonwealth, in return for the Commonwealth assuming liability for eligible claims arising after an eligible midwife ceases private practice.

The Rules commence on 1 July 2020.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

Details of the Rules are set out in [Attachment A](#).

Regulation Impact Statement

The Office of Best Practice Regulation has certified that the [First Principles Review](#) and [Thematic Review](#) of the Medical and Midwife Indemnity Schemes are equivalent to a Regulatory Impact Statement.

Consultation

The Australian Government has worked collaboratively with the Australian Medical Association, the Australian College of Midwives, relevant peak bodies, medical indemnity insurers and relevant government agencies.

The Government has consulted extensively during the development of the medical and midwife indemnity reforms, including through the First Principles Review and Thematic Review, the development of the *Medical and Midwife Legislation Amendment Act 2019* and targeted stakeholder consultation on limited exposure drafts of the legislative instruments. The final Rules incorporates submissions received through the limited exposure draft consultation process in November 2019.

Statement of Compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the Legislation Act applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. The Statement of Compatibility has been prepared to meet that requirement. The Statement of Compatibility is included at Attachment B.

Details of the Midwife Professional Indemnity (Run-off Cover Support Payment) Rules 2020

Section 1 – Name

This section provides the title of the Rules is the *Midwife Professional Indemnity (Run-off Cover Support Payment) Rules 2020*.

Section 2 – Commencement

This section provides that the Rules will commence on 1 July 2020.

Section 3 – Authority

This section provides that the Rule is made under section 8 of the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Rules has effect according to its terms.

Section 5 – Definitions

This section provides that the term *Act*, where it appears in the Rules, is defined to mean the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.

Section 6 – Applicable percentage for working out amount of run-off cover support payment

In paragraph 6(2)(a) of the Act, the percentage of the premium income which an eligible insurer is to pay as a tax is stated to be 15%. Paragraph 6(2)(b) allows a lower percentage to be specified in the Rules.

This section specifies the applicable percentage of 10% for working out the amount of run-off cover support payment for the purposes of paragraph 6(2)(b) of the Act. The applicable percentage is specified for a contribution year beginning on or after 1 July 2020.

Schedule 1 – Repeals

Schedule 1 repeals the entirety of the *Midwife Professional Indemnity (Run-off Cover Support Payment) Rules 2010*.

The repeal is a consequence of the recommendations made in the Thematic Review regarding the fit for purpose tests applied to sunseting instruments.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Midwife Professional Indemnity (Run-off Cover Support Payment) Rules 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

In conjunction with the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*, the Act establishes the Midwife Professional Indemnity Scheme (the Scheme), which provides Commonwealth financial support for professional indemnity insurance for privately practising midwives who are eligible under the Scheme.

The *Midwife Professional Indemnity (Run-off Cover Support Payment) Rules 2020* (Rules) provides a lower percentage rate to be used for the purposes of calculating the amount of the run-off cover support payment that an insurer is required to pay to the Commonwealth, in return for the Commonwealth assuming liability for eligible claims arising after an eligible midwife ceases private practice.

Human rights implications

This Legislative Instrument engages the following human rights:

Right to Health

The right to health – the right to the enjoyment of the highest attainable standard of physical and mental health – is contained in Article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR). While the UN Committee on Economic Social and Cultural rights (the Committee) has stated that the right to health is not to be understood as a right to be healthy, it does entail a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The remake of the Rules will expand the care options available to women, by subsidising premiums for privately practising midwives (to improve affordability for patients) and ensure protections for patients in the event that harm was caused and a successful claim was made.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Greg Hunt MP, Minister for Health