EXPLANATORY STATEMENT

Issued by Authority of the Minister for Health and Ageing

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010

The *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* and the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010* give effect to the Government's new professional indemnity scheme for eligible midwives. The package was announced during the 2009 Budget by the Australian Government.

The Acts provide Commonwealth support for professional indemnity insurance for midwives who have been unable to access insurance since 2002 and open the way forward for improving access to maternity services.

The Commonwealth has contracted with an insurer to provide affordable insurance to eligible midwives and to develop and maintain a database that the wider insurance market will be able to use in developing longer-term insurance products.

The insurance will be available so that eligible midwives can be insured from 1 July 2010, in line with proposed new arrangements of the National Accreditation and Registration Scheme.

The *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010* (the Rules) support the establishment of a Government-supported professional indemnity insurance scheme for midwives by:

- establishing the eligible insurer; and
- setting out the interest rate payable if the eligible insurer does not pay back an amount overpaid to the insurer.
- defining the requirements of an eligible midwife

A separate Rule to set out the requirements of the definition of eligible midwife will be made when the requirements are set by Health Ministers.

The rules commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the Rules are set out in the Attachment.

Consultation

The government has consulted with the insurer (after a national open tender process), the Nursing and Midwifery Board of Australia, the Department of the Treasury and the Australian Government Actuary.

ATTACHMENT

DETAILS OF THE *MIDWIFE PROFESSIONAL INDEMNITY (COMMONWEALTH CONTRIBUTION) SCHEME RULES 2010*

Part 1 Preliminary

1. Name of Rules

Rule 1 provides that the title of the Rules is the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010* (the Rules).This Rule sets out the name of the Rules.

2. Commencement

Rule 2 provides that the Rules commence on the day after they are registered.

3. Definitions

Rule 3 defines specific terms used in the Rules.

Part 2 Definitions, requirements and specified rates

4. Meaning of the term eligible insurer

Section 5 of the Act provides that the definition of eligible insurer means an insurer which is included in a class of insurers. Following a competitive national selection procurement process, the Government intends to provide Commonwealth-supported professional indemnity insurance to one insurer for a limited period of 3 years with a possible extension for 2 more years under the terms of the contract between the Commonwealth and the insurer.

Rule 4 provides that the class of insurers comprises Medical Insurance Australia Pty Ltd.

5. Meaning of the term eligible midwife

Rule 5 sets out the other requirements which must be met by a person for that person to satisfy the definition of eligible midwife in section 5 of the Act. The requirements that are specified in rule 5 are intended to parallel the requirements of the Nursing and Midwifery Board of Australia.

6. Late payment of overpayment - penalty rate

Rule 6 specifies the rate of a late payment penalty to be imposed under section 28 of the Act. The debt to which the late payment rate applies arises under section 25 of the Act.

Section 25 deals with circumstances when another payment is made in relation to a claim where Level 2 Commonwealth contribution has already been made, and that other payment is not taken into account when calculating the Level 2 Commonwealth contribution.

The late payment penalty rate is the rate set in the rule to be the general interest charge that has been set by the Australian Taxation Office for the January to March quarter 2010. The Australian Taxation Office calculates the general interest charge in accordance with section 8AAD of the *Taxation Administration Act 1953*.

The use of the general interest charge as the basis for a late payment penalty is consistent with similar Commonwealth legislation such as the *Medical Indemnity Act 2002*.

7. Late payment of overpayment - penalty rate

Rule 7 specifies the rate of a late payment penalty to be imposed under section 40 of the Act. The debt to which the late payment rate applies arises under section 37 of the Act. Section 37 deals with amounts paid after payment of a run-off cover contribution, that (if taken into account) would have reduced the amount of run-off cover contribution that would have been payable. If the payment of those amounts means that run-off cover contribution has been overpaid, and the Medicare CEO notifies the eligible insurer of this, the insurer will owe the overpaid amount as a debt to the Commonwealth.

As with rule 6, the late payment penalty is the general interest charge that has been set by the Australian Taxation Office for the January to March quarter 2010.

8. Late payment of run-off cover support payment - penalty rate

Rule 8 specifies the rate of a late payment penalty imposed under section 76 of the Act. The debt to which the late payment rate applies arises under section 75 of the Act.

As with rules 6 and 7, the late payment penalty is the general interest charge that has been set by the Australian Taxation Office for the January to March quarter 2010.