

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Aged Care

Medical Indemnity Act 2002
Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) (No 2) Rules 2022

Authority

Section 80 of the *Medical Indemnity Act 2002* (the MI Act) provides that the Minister may make rules prescribing matters, which are required or permitted by the MI Act to be prescribed by the rules, or which are necessary or convenient to be prescribed for carrying out or giving effect to the MI Act.

Section 90 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* (the MPICCS Act) provides that the Minister may 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 MPICCS 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

The *Medical Indemnity Rules 2020* and the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* (Medical and Midwife Indemnity Rules) were amended on 1 April 2020 by the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) Rules 2020* (2020 Amending Instrument).

The 2020 Amending Instrument inserted a temporary exemption that applies to any medical practitioner or eligible midwife (midwives endorsed by the Nursing and Midwifery Board of Australia to prescribe scheduled medicines), within the meaning of subsection 4(1) of the MI Act and subsection 5(1) of the MPICCS Act, respectively, who is eligible for the Run-off Cover Scheme and who returns to private practice. This temporary exemption allows retired medical practitioners and eligible midwives to return to private practice to provide treatment during the COVID-19 pandemic without losing their eligibility for medical indemnity insurance under the Run-off Cover Scheme.

On 17 May 2022 the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) Rules 2022* (2022 Amending Instrument No 1) extended the temporary Run-off Cover Scheme exemption from 17 May 2022 to 21 October 2022. The 2022 Amending Instrument No 1 was made to ensure the ongoing involvement of formerly retired private sector medical practitioners and eligible midwives in the COVID-19 Pandemic Response by

allowing them to assist with workforce shortages without losing their entitlements under the Run-off Cover Scheme.

The previous cessation date of 21 October 2022 aligned the 2022 Amending Instrument No 1 with the Australian Health Practitioner Regulation Agency (AHPRA) pandemic sub-register, scheduled to end on 21 September 2022. An additional month coverage after the end of the AHPRA sub-register was included to allow time to extend the temporary exemption if the AHPRA sub-register was extended beyond 21 September 2022.

The AHPRA pandemic sub-register was established to allow the health workforce to respond to the changing environment of the COVID-19 pandemic by ensuring there is an adequate number of registered healthcare professionals. The healthcare system has continued to sustain pressure during the COVID-19 pandemic and the sub-register has now been extended. This Rule extends the temporary exemption related to the Run-Off Cover Scheme to 31 December 2022. Further consideration of the need for additional extensions will be considered prior to that date.

This change will ensure that private sector retired medical practitioners and eligible midwives can continue to assist with the COVID-19 Pandemic Response without losing their entitlements under the Run-off Cover Scheme.

Consultation

The policy of ensuring that returning practitioner do not lose their ROCS cover has been the subject of consultation with medical indemnity insurers.

Commencement

The 2022 Amending Instrument No 2 is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* and commences on the day after it is registered on the Federal Register of Legislation.

Details of the 2022 Amending Instrument No 2 are set out in **Attachment A**.

The 2022 Amending Instrument No 2 is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) (No 2) Rules 2022*

Section 1 – Name

Section 1 provides that the name of the instrument is the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-Off Claims) (No 2) Rules 2022* (2022 Amending Instrument No 2).

Section 2 – Commencement

Section 2 provides that the 2022 Amending Instrument No 2 commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the 2022 Amending Instrument No 2 is made under section 80 of the *Medical Indemnity Act 2002* and section 90 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

Section 4 – Schedules

Section 4 provides that the Schedule sets out the specific terms of amendment of each instrument, and any other item in the Schedule has effect according to its terms.

Schedule 1—Amendments

Medical Indemnity Rules 2020

Item 1 – Subsection 23(2)(b)

This item omits the words “21 September 2022” and substitutes “31 December 2022”.

Item 2 – Subsection 23(3)

This item omits the words “21 October 2022” and substitutes “31 December 2022”.

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020

Item 3 – Subsection 11(2)

This item omits the words “21 September 2022” and substitutes “31 December 2022”.

Item 4 – Subsections 11(3)

This item omits the words “21 October 2022” and substitutes “31 December 2022”.

Statement of Compatibility with Human Rights

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

Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) (No 2) Rules 2022

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 Amending Rules

The *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) (No 2) Rules 2022* (the 2022 Amending Instrument No 2) amends the *Medical Indemnity Rules 2020* and the *Midwife Professional Indemnity (Commonwealth Contribution Scheme Rules 2020)* by further extending the temporary Run-off Cover Scheme exemption to 31 December 2022.

The effect of the 2022 Amending Instrument No 2 is to allow the return and ongoing involvement of formerly retired medical practitioners and eligible midwives in private practice to assist with the COVID-19 Pandemic Response without losing their entitlements under the Run-off Cover Scheme.

This Instrument enables the health workforce to effectively respond to the changing environment of the COVID-19 pandemic by ensuring there is an adequate number of registered healthcare professionals. The healthcare system has come under sustained pressure during the COVID-19 pandemic. The 2022 Amending Instrument No 2 will ensure that private sector retired medical practitioners and eligible midwives can continue to assist with the COVID-19 Pandemic Response without losing their entitlements under the Run-off Cover Scheme.

Human rights implications

The 2022 Amending Instrument No 2 engages Article 12 of the International Covenant on Economic Social and Cultural Rights (the ICESCR), specifically the rights 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 ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but instead is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the *'highest attainable standard of health'* takes into account the country's available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

The overarching purpose of the 2022 Amending Instrument No 2 is to facilitate the participation of medical practitioners and eligible midwives in the country's COVID-19 Pandemic Response. This supports Article 12(2)(d) of the International Covenant on Economic, Social and Cultural Rights such that it creates "conditions which would assure to all medical service and medical attention in the event of sickness".

Conclusion

This Legislative Instrument is compatible with human rights as it maintains the rights to health.

The Hon Mark Butler MP
Minister for Health and Aged Care