

## 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 3) 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 (the temporary exemption).

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 align with the cessation date for the temporary exemption to the Australian Health Practitioner Regulation Agency (Ahpra) pandemic sub-register.

The Ahpra pandemic sub-register was established in April 2020 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, so the closure date for the sub-register has been extended on three occasions. The sub-register is now due to expire at midnight on 21 September 2023.

On 21 October 2022 the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) (No 2) Rules 2022* (2022 Amending Instrument No 2) extended the temporary Run-off Cover Scheme exemption from 21 October 2022 to 31 December 2022.

The *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) (No 3) Rules 2022* (2022 Amending Instrument No 3) will extend the temporary exemption to midnight on 21 September 2023 (noting that day has the ordinary meaning as provided by section 36(1) of the *Acts Interpretation Act 1901*). This change will ensure that private sector retired medical practitioners and eligible midwives can continue to assist with the COVID-19 Pandemic Response until 21 September 2023, without losing their professional indemnity entitlements under the Run-off Cover Scheme.

## **Consultation**

The policy of ensuring that retired medical practitioners and eligible midwives returning to the workforce do not lose their Run-off Cover Scheme entitlements has been the subject of consultation with medical indemnity insurers.

## **Commencement**

The *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) (No 3) Rules 2022* (2022 Amending Instrument No 3) is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* and commences on 1 January 2023.

Details of the 2022 Amending Instrument No 3 are set out in **Attachment A**.

The 2022 Amending Instrument No 3 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 3) 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 3) Rules 2022* (2022 Amending Instrument No 3).

**Section 2 – Commencement**

Section 2 provides that the 2022 Amending Instrument No 3 commences on 1 January 2023.

**Section 3 – Authority**

Section 3 provides that the 2022 Amending Instrument No 3 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 “31 December 2022” and substitutes “21 September 2023”.

**Item 2 – Subsection 23(3)**

This item omits the words “31 December 2022” and substitutes “21 September 2023”.

***Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020***

**Item 3 – Subsection 11(2)**

This item omits the words “31 December 2022” and substitutes “21 September 2023”.

**Item 4 – Subsections 11(3)**

This item omits the words “31 December 2022” and substitutes “21 September 2023”.

## 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 3) 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 3) Rules 2022* (the 2022 Amending Instrument No 3) 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 21 September 2023.

The effect of the 2022 Amending Instrument No 3 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 until 21 September 2023 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 3 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 3 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 3 is to facilitate the participation of retired privately practising 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**