

## EXPLANATORY STATEMENT

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

### ***Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment (No. 1) Rules 2025***

#### **Authority**

Subsection 90(1) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme 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**

The purpose of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment (No. 1) Rules 2025* (the amending rules) is to amend the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* (the principal rules) to:

1. specify the following entities as *eligible entities* for the purposes of subsection 5(1) of the Act:
  - a. My Midwives Pty Ltd ACN 144 509 777
  - b. Waminda South Coast Women's Health and Wellbeing Aboriginal Corporation ICN 853; and
2. prescribe the requirements set out in the Nursing and Midwifery Board of Australia's (NMBA) Safety and Quality Guidelines (Guidelines) for Privately Practising Midwives for the purposes of the definition of *intrapartum care* in subsection 5(1) of the Act.

These amending rules are a result of changes to the Act made by the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment Act 2024* (the amending Act). The amending Act will, from 1 July 2025, insert the new definitions of *eligible entity* and *intrapartum care* into subsection 5(1) of the Act.

The amending Act allows for rules to be made to specify the requirements for intrapartum care to be eligible for a Commonwealth contribution under the scheme. The policy intent is to cover out-of-hospital intrapartum services where they are provided in compliance with the NMBA Guidelines. This approach supports the delivery of safe and accessible care and reflects consultation feedback that raised concerns about alternative proposals, such as developing a definition of "low-risk homebirth".

The amending rules support this policy objective by prescribing the requirements set out in the NMBA's Guidelines for the purpose of the definition of intrapartum care under the Act.

This means that claims will be covered where the required standards for safe and appropriate care have been met.

The Act provides that out-of-hospital intrapartum incidents will be covered by the Midwife Professional Indemnity Scheme (MPIS) both where the claim is made against an individual midwife and, in the case of Birthing on Country out-of-hospital incidents, also where the claim is made against an eligible entity. The amending rules specify My Midwives Pty Ltd and Waminda South Coast Women's Health and Wellbeing Aboriginal Corporation as eligible entities under the Act. This means that the MPIS provided for by the Act will also cover claims for Birthing on Country out-of-hospital incidents (as defined in section 5 of the Act) where the claim is made against those entities, in respect of the entity and midwives employed or engaged by those named entities. This will support First Nations women and babies to have access to culturally safe and appropriate maternity care.

The process for adding further eligible entities in the future will involve an organisation seeking to be included in the scheme applying to the Department of Health and Aged Care by email to [medical.indemnity@health.gov.au](mailto:medical.indemnity@health.gov.au).

These amendments work together to support the key policy objectives of the Act, which include:

- Providing Commonwealth assistance to support access by eligible midwives to professional indemnity arrangements.
- Meeting the full cost of eligible claims in relation to out-of-hospital intrapartum care services, including investigation and management of these claims and any settlements or awards paid by the eligible insurer.
- Supporting professional indemnity insurance for out-of-hospital intrapartum care services provided by eligible midwives and eligible entities.
- Ensuring clarity about the scope of the MPIS.
- Allowing eligible midwives to practise to their full scope, offering homebirths and intrapartum care outside of hospital within the safety net of professional indemnity insurance.
- Ensuring that the Commonwealth can contribute to the cost of out-of-hospital incident claims regardless of the claim amount.

The amending rules are a crucial step in implementing the expanded MPIS and achieving the Government's policy objectives of supporting midwives, expanding access to safe maternity care, and increasing birthing choices for women.

## **Consultation**

Extensive consultation on this measure has been undertaken with stakeholders across the midwifery sector, including Aboriginal Community Controlled Health Organisations, the Australian College of Midwives, the NMBA and state and territory government nurse and midwifery offices. Consultation has also been undertaken with MIGA, which is responsible for providing MPIS insurance.

## **Commencement**

The amending rules commence on 1 July 2025, which will align with the commencement of the amending Act.

The amending rules rely on section 4 of the *Acts Interpretation Act 1901*, as they are made in contemplation of the commencement of the amendments to subsection 5(1) of the Act made by the amending Act (i.e. the insertion of the definitions of *eligible entity* and *intrapartum care*).

The amending rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the amending rules are set out in **Attachment A**.

The amending rules are 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 *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment (No. 1) Rules 2025***

**Section 1 – Name**

Section 1 provides that the name of the instrument is the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment (No. 1) Rules 2025* (amending rules).

**Section 2 – Commencement**

Section 2 provides that the amending rules commence on 1 July 2025.

**Section 3 – Authority**

Section 3 provides that the amending rules are made under section 90 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

**Section 4 – Schedules**

Section 4 provides that each instrument specified in the Schedule to the amending rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule has effect according to its terms.

**Schedule 1—Amendments**

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

**Item 1 – Section 5**

This item inserts a new definition into section 5 of the principal Rules: ***Nursing and Midwifery Board of Australia’s Safety and Quality Guidelines for Privately Practising Midwives***.

The definition refers to the Safety and Quality Guidelines for Privately Practising Midwives (Guidelines) developed by the Nursing and Midwifery Board of Australia (NMBA), as in force from time to time.

A note is included to indicate that the Guidelines can be viewed on the NMBA website free of charge.

This amendment is necessary to provide a clear and accessible reference to the Guidelines within the Rules. This ensures that midwives and other stakeholders can easily understand and apply the requirements for eligible intrapartum care.

**Item 2 – At the end of Part 1**

This item adds a new section 8 to Part 1 of the principal Rules, specifying the following entities as eligible entities for the purposes of the Act:

- My Midwives Pty Ltd ACN 144 509 777
- Waminda South Coast Women's Health and Wellbeing Aboriginal Corporation ICN 853

The amendment specifies these entities by name, ensuring clarity and certainty about which entities are considered eligible for the purposes of the Act.

This amendment is necessary to implement the expanded coverage of the MPIS to include claims against eligible entities providing Birthing on Country services. By specifying these entities in the Rules, the amendment ensures that these entities can access the benefits of the scheme and provides clarity to midwives and other stakeholders about which entities are eligible.

This item also adds a new section 8A to Part 1 of the principal Rules, prescribing the requirements for intrapartum care to be eligible for a Commonwealth contribution under the Act.

The amendment prescribes the requirements set out in the Guidelines. This amendment is necessary to implement the expanded coverage of the MPIS to include claims arising from out-of-hospital births, including homebirths. By prescribing these requirements in the Rules, the amendment incentivises midwives providing out-of-hospital intrapartum care to meet the required standards for safe and appropriate care. This approach provides a flexible and responsive framework, facilitating an ongoing review process that ensures expectations of midwives remain relevant and readily adapt to evolving industry and medical practices.

Paragraph 90(3)(b) of the Act provides authority for the Rules to incorporate the Guidelines as in force from time to time and subsection 90(4) of the Act makes clear that paragraph 90(3)(b) of the Act has effect despite subsection 14(2) of the *Legislation Act 2003*.

## Statement of Compatibility with Human Rights

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

### ***Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment (No. 1) Rules 2025***

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 purpose of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment (No. 1) Rules 2025* (the amending rules) is to amend the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* (the principal rules) to:

3. specify the following entities as *eligible entities* for the purposes of subsection 5(1) of the Act:
  - a. My Midwives Pty Ltd ACN 144 509 777
  - b. Waminda South Coast Women's Health and Wellbeing Aboriginal Corporation ICN 853; and
4. prescribe the requirements set out in the Nursing and Midwifery Board of Australia's (NMBA) Safety and Quality Guidelines (Guidelines) for Privately Practising Midwives for the purposes of the definition of *intrapartum care* in subsection 5(1) of the Act.

These amending rules are a result of changes to the Act made by the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment Act 2024* (the amending Act). The amending Act will, from 1 July 2025, insert the new definitions of *eligible entity* and *intrapartum care* into subsection 5(1) of the Act.

The amending Act allows for rules to be made to specify the requirements for intrapartum care to be eligible for a Commonwealth contribution under the scheme. The policy intent is to cover out-of-hospital intrapartum services where they are provided in compliance with the NMBA Guidelines. This approach supports the delivery of safe and accessible care and reflects consultation feedback that raised concerns about alternative proposals, such as developing a definition of "low-risk homebirth".

The amending rules support this policy objective by prescribing the requirements set out in the NMBA's Guidelines for the purpose of the definition of intrapartum care under the Act. This means that claims will be covered where the required standards for safe and appropriate care have been met.

The Act provides that out-of-hospital intrapartum incidents will be covered by the Midwife Professional Indemnity Scheme (MPIS) both where the claim is made against an individual midwife and, in the case of Birthing on Country out-of-hospital incidents, also where the claim is made against an eligible entity. The amending rules specify My Midwives Pty Ltd

and Waminda South Coast Women's Health and Wellbeing Aboriginal Corporation as eligible entities under the Act. This means that the MPIS provided for by the Act will also cover claims for Birthing on Country out-of-hospital incidents (as defined in section 5 of the Act) where the claim is made against those entities, in respect of the entity and midwives employed or engaged by those named entities. This will support First Nations women and babies to have access to culturally safe and appropriate maternity care.

These amendments work together to support the key policy objectives of the Act, which include:

- Providing Commonwealth assistance to support access by eligible midwives to professional indemnity arrangements.
- Meeting the full cost of claims in relation to certain out-of-hospital intrapartum care services, including investigation and management of these claims and any settlements or awards paid by the eligible insurer.
- Supporting professional indemnity insurance for out-of-hospital intrapartum care services provided by eligible midwives and eligible entities.
- Ensuring clarity about the scope of the MPIS.
- Allowing eligible midwives to practise to their full scope, offering homebirths and intrapartum care outside of hospital within the safety net of professional indemnity insurance.
- Ensuring that the Commonwealth can contribute to the cost of out-of-hospital incident claims regardless of the claim amount.

The amending rules are a crucial step in implementing the expanded MPIS and achieving the Government's policy objectives of supporting midwives, expanding access to safe maternity care, and increasing birthing choices for women.

### **Human rights implications**

The amending rules engage Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically 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 ICESCR. The UN Committee on Economic, Social and Cultural Rights 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 amending rules support the right contained in Article 12(1) of the ICESCR by expanding access to safe maternity care and increasing birthing choices for women.

### **Conclusion**

The amending rules are compatible with human rights as it promotes the rights to health.

**The Hon Mark Butler MP**  
**Minister for Health and Aged Care**