



Medical and Midwife Indemnity Legislation Amendment Act 2021

No. 48, 2021

**An Act to amend the law relating to medical and
midwife indemnity, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 48, 2021

An Act to amend the law relating to medical and midwife indemnity, and for related purposes

[Assented to 23 June 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Medical and Midwife Indemnity Legislation
Amendment Act 2021*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	23 June 2021
2. Schedule 1	1 July 2020.	1 July 2020
3. Schedule 2	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments commencing 1 July 2020

Medical Indemnity Act 2002

1 Subsection 4(1)

Insert:

midwife insurer means an insurer that is an eligible insurer within the meaning of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

midwife professional indemnity cover has the same meaning as in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

2 Paragraph 34ZZB(1)(c)

Repeal the paragraph, substitute:

- (c) if the allied health profession is midwifery—the practitioner is not:
- (i) an eligible midwife for whom a contract of insurance with a midwife insurer provides midwife professional indemnity cover in relation to the claim; or
 - (ii) an eligible midwife who has a contract of insurance that names the eligible midwife as the only person to whom the insurance cover provided by the contract extends, and that indemnifies the eligible midwife (subject to the terms and conditions of the contract) in relation to claims that may be made against the eligible midwife in relation to incidents that occur or occurred in the course of, or in connection with, the practice by the eligible midwife of the profession of midwifery; and

3 Subsection 34ZZB(2)

Repeal the subsection.

4 Paragraph 34ZZK(1)(c)

Repeal the paragraph, substitute:

- (c) if the allied health profession is midwifery—the practitioner is not:
- (i) an eligible midwife for whom a contract of insurance with a midwife insurer provides midwife professional indemnity cover in relation to the claim; or
 - (ii) an eligible midwife who has a contract of insurance that names the eligible midwife as the only person to whom the insurance cover provided by the contract extends, and that indemnifies the eligible midwife (subject to the terms and conditions of the contract) in relation to claims that may be made against the eligible midwife in relation to incidents that occur or occurred in the course of, or in connection with, the practice by the eligible midwife of the profession of midwifery; and

5 Subsection 34ZZK(2)

Repeal the subsection.

6 Subparagraph 34ZZR(2)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) practice by the practitioner of midwifery, unless the practitioner is an eligible midwife for whom a contract of insurance with a midwife insurer provides midwife professional indemnity cover in relation to the other claims, or an eligible midwife who has a contract of insurance that names the eligible midwife as the only person to whom the insurance cover provided by the contract extends, and that indemnifies the eligible midwife (subject to the terms and conditions of the contract) in relation to claims that may be made against the eligible midwife in relation to incidents that occur or occurred in the course of, or in connection with, the practice by the eligible midwife of the profession of midwifery.

7 Subsection 34ZZR(3)

Repeal the subsection.

8 Transitional provision—eligible midwives

- (1) Despite the amendments of section 34ZZB of the *Medical Indemnity Act 2002* by this Schedule, an allied health high cost claim indemnity is payable to an eligible MDO or eligible insurer if:
- (a) a claim is, or was, made against an eligible midwife; and
 - (b) the claim relates to:
 - (i) an incident that occurs or occurred before 1 July 2021; or
 - (ii) a series of incidents, the first of which occurs or occurred before 1 July 2021; and
 - (c) either:
 - (i) the claim does not relate to provision of treatment to a patient during a pregnancy where the pregnancy ends on or after 1 July 2021; or
 - (ii) if the claim relates to provision of treatment to a patient during a pregnancy where the pregnancy ends on or after 1 July 2021—the eligible midwife is not a person for whom a contract of insurance with a midwife insurer provides midwife professional indemnity cover on or after 1 July 2021 in relation to the claim; and
 - (d) an allied health high cost claim indemnity in relation to the claim would have been payable under that section if those amendments had not been made.
- (2) Despite the amendments of section 34ZZK of the *Medical Indemnity Act 2002* by this Schedule, the Chief Executive Medicare may issue a certificate stating that a claim is a qualifying allied health claim if:
- (a) the claim is a claim that is or was made against an eligible midwife; and
 - (b) the claim relates to:
 - (i) an incident that occurs or occurred before 1 July 2021; or
 - (ii) a series of incidents, the first of which occurs or occurred before 1 July 2021; and
 - (c) either:
 - (i) the claim does not relate to provision of treatment to a patient during a pregnancy where the pregnancy ends on or after 1 July 2021; or

- (ii) if the claim relates to provision of treatment to a patient during a pregnancy where the pregnancy ends on or after 1 July 2021—the eligible midwife is not a person for whom a contract of insurance with a midwife insurer provides midwife professional indemnity cover on or after 1 July 2021 in relation to the claim; and
 - (d) the Chief Executive Medicare could have issued a certificate in relation to the claim under subsection 34ZZK(1) of that Act if those amendments had not been made.
- (3) Despite the amendments of section 34ZZR of the *Medical Indemnity Act 2002* by this Schedule, an incident or series of related incidents is covered by subsection 34ZZR(2) if:
 - (a) the incident or series of related incidents occur or occurred in the course of, or in connection with, the practice of midwifery by an eligible midwife; and
 - (b) the incident, or the first of the series of related incidents, occurs or occurred before 1 July 2021; and
 - (c) either:
 - (i) the incident or series of related incidents do not or did not occur in the course of providing treatment to a patient during a pregnancy where the pregnancy ends on or after 1 July 2021; or
 - (ii) if the incident or series of related incidents occur or occurred in the course of providing treatment to a patient during a pregnancy where the pregnancy ends on or after 1 July 2021—the eligible midwife is not a person for whom a contract of insurance with a midwife insurer provides midwife professional indemnity cover on or after 1 July 2021 in relation to a claim relating to the incident or series of related incidents; and
 - (d) the incident or series of related incidents would have been covered by that subsection if those amendments had not been made.

Schedule 2—Amendments commencing 1 July 2021

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

1 Subsection 5(1) (paragraphs (a) and (b) of the definition of *midwife professional indemnity cover*)

Repeal the paragraphs, substitute:

- (a) the insurance cover provided by the contract is cover (other than midwife professional indemnity run-off cover) that an eligible insurer is required, under an arrangement in force between the eligible insurer and the Commonwealth, to provide; and
- (b) the person is specified or referred to in the contract, whether by name or otherwise, as a person to whom the insurance cover extends; and

2 Subsection 5(1) (at the end of the definition of *midwife professional indemnity cover*)

Add:

Note: A single contract of insurance may provide midwife professional indemnity cover for more than one person.

3 Paragraph 11(3)(g)

Repeal the paragraph.

4 Subsections 11(3A) and (3B)

Repeal the subsections.

5 Subsections 31(5) to (7)

Repeal the subsections, substitute:

- (5) In this section:

private practice as an eligible midwife means practice as an eligible midwife other than:

- (a) practice consisting of treatment of public patients of a hospital; or
- (b) practice for which:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) a local governing body; or
 - (iii) an authority established under a law of the Commonwealth, a State or a Territory; indemnifies eligible midwives from liability relating to compensation; or
- (c) practice conducted outside both Australia and the external Territories; or
- (d) practice of a kind specified in the Rules.

6 Application provision

The amendments of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* made by this Schedule apply in relation to a claim if the claim relates to:

- (a) an incident that occurs on or after 1 July 2021; or
- (b) an incident that occurred before 1 July 2021 in the course of providing treatment to a patient during a pregnancy where the pregnancy ends on or after 1 July 2021.

[*Minister's second reading speech made in—
House of Representatives on 27 May 2021
Senate on 17 June 2021*]

(63/21)