

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment Act 2024

No. 126, 2024

An Act to amend the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*, and for related purposes

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No. 126, 2024

An Act to amend the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*, and for related purposes

[*Assented to 10 December 2024*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Amendment Act 2024*.

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. The whole of this Act | The later of:  (a) 1 July 2025; and  (b) the day after this Act receives the Royal Assent. | 1 July 2025 |

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

1 Paragraph 3(2)(a)

After “midwives”, insert “(other than in the circumstances set out in paragraph (aa))”.

2 After paragraph 3(2)(a)

Insert:

(aa) meeting the full cost of settlements or awards paid by eligible insurers that indemnify eligible midwives (or in certain circumstances eligible entities) in relation to intrapartum care outside of a hospital; and

3 Subsection 5(1)

Insert:

***Aboriginal or Torres Strait Islander child*** means a child who is:

(a) an Aboriginal person; or

(b) a Torres Strait Islander.

***Aboriginal or Torres Strait Islander person*** means:

(a) an Aboriginal person; or

(b) a Torres Strait Islander.

***Aboriginal person*** has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

***Birthing on Country model*** means a model designed to provide continuous, culturally safe care to:

(a) an Aboriginal or Torres Strait Islander person who is pregnant; or

(b) a person who is pregnant with an Aboriginal or Torres Strait Islander child.

***Birthing on Country out‑of‑hospital incident*** means an out‑of‑hospital incident that occurs in relation to intrapartum care provided under a Birthing on Country model.

***eligible entity***, for a midwife,means a person:

(a) specified in the Rules; and

(b) that employs or engages the midwife to provide intrapartum care under a Birthing on Country model; and

(c) to which any circumstances prescribed by the rules do not apply.

***hospital*** has the same meaning as in the *Private Health Insurance Act 2007*.

***intrapartum care*** means care provided:

(a) at any time during the period from the onset of labour to delivery of the placenta; and

(b) in the course of a person’s practice as an eligible midwife; and

(c) in accordance with any other requirements prescribed by the Rules.

***out‑of‑hospital incident*** means an incident that occurs or occurred in the course of an eligible midwife providing intrapartum care outside of a hospital.

Note: For example, an incident that occurs in the course of an eligible midwife attending a homebirth.

***Torres Strait Islander*** has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

4 At the end of section 7

Add:

(4) To avoid doubt, the Rules may set a different Level 1 termination date, Level 2 termination date or run‑off cover termination date for claims in relation to out‑of‑hospital incidents.

5 Subsection 9(1)

Omit “more than a particular”, substitute “an”.

6 At the end of subsection 9(1)

Add:

; and (c) for a claim that relates to an incident that is not an out‑of‑hospital incident—exceed the Level 1 claim threshold.

Note: The Level 1 claim threshold does not apply to a Level 1 Commonwealth contribution in relation to a claim for an out‑of‑hospital incident: see subsection 10(1A).

7 Subsection 9(2)

After “a midwife”, insert “or, in certain circumstances, the liability of the eligible entity for the midwife,”.

8 Subparagraph 9(2)(a)(i)

Omit “person’s”, substitute “midwife’s”.

9 Paragraph 9(2)(b)

Omit “in relation to a particular claim against the midwife”, substitute “for a particular claim in relation to the midwife”.

10 Subsection 10(1) (heading)

After “*threshold*”, insert “*for claims that are not out‑of‑hospital claims*”.

11 Subsection 10(1)

After “***threshold***”, insert “for a claim that relates to an incident that is not an out‑of‑hospital incident”.

12 After subsection 10(1)

Insert:

No Level 1 claim threshold for out‑of‑hospital claims

(1A) There is no Level 1 claim threshold for a claim that relates to an out‑of‑hospital incident.

13 Paragraph 11(3)(a)

Repeal the paragraph, substitute:

(a) for a claim that relates to an incident that is not a Birthing on Country out‑of‑hospital incident—the claim is or was made against a person (the ***midwife***); or

(aa) for a claim that relates to a Birthing on Country out‑of‑hospital incident—the claim is or was made against:

(i) a person (also the ***midwife***); or

(ii) the eligible entity for a person (also the ***midwife***); and

Note 1: A claim may be made against a midwife and the eligible entity that employed or engaged the midwife in relation to the same incident.

Note 2: A claim may be made against a midwife in relation to an incident that occurs or occurred in the course of the midwife attending a homebirth under a Birthing on Country model.

14 Paragraph 11(3)(e)

Before “the claim”, insert “if the claim relates to an incident that is not an out‑of‑hospital incident—”.

15 Paragraph 11(3)(h)

After “certificate”, insert “for a claim that relates to an incident that is not an out‑of‑hospital incident”.

16 After paragraph 11(3)(h)

Insert:

(ha) if the application is for a Level 1 qualifying certificate for a claim that relates to an out‑of‑hospital incident, the incident occurs or occurred:

(i) on or after 1 July 2025; and

(ii) on or before the Level 1 termination date for claims in relation toout‑of‑hospital incidents (if any); and

17 Paragraph 11(3)(i)

After “certificate”, insert “for a claim that relates to an incident that is not an out‑of‑hospital incident,”.

18 After paragraph 11(3)(i)

Insert:

(ia) if the application is for a Level 2 qualifying certificate for a claim that relates to an out‑of‑hospital incident, the incident occurs or occurred:

(i) on or after 1 July 2025; and

(ii) on or before the Level 2 termination date for claims in relation toout‑of‑hospital incidents (if any); and

19 Paragraph 11(3)(j)

Repeal the paragraph, substitute:

(j) the claim is not in substance an aggregation of:

(i) two or more separate claims against the midwife; or

(ii) for a claim made against the eligible entity—two or more separate claims against the entity in relation to the midwife; and

20 Subparagraph 11(6)(a)(iii)

After “certificate is a”, insert “Level 1 qualifying claim certificate in relation to an out‑of‑hospital incident or a”.

21 At the end of paragraph 11(6)(a)

Add:

(iv) if the claim is made against the eligible entity—the entity; and

22 Paragraph 11(6)(b)

Repeal the paragraph, substitute:

(b) if the certificate is a Level 1 qualifying claim certificate for a claim that relates to an incident that is not an out‑of‑hospital incident—specify the Level 1 claim threshold; and

(c) if the certificate is a Level 2 qualifying claim certificate—specify the Level 2 claim threshold.

23 At the end of subsection 11(6)

Add:

Note: The Level 1 claim threshold does not apply to a Level 1 Commonwealth contribution in relation to a claim for an out‑of‑hospital incident: see subsection 10(1A).

24 After paragraph 12(3)(b)

Insert:

(ba) if the application relates to an out‑of‑hospital incident—specify that fact; and

(bb) specify whether the application relates to a claim that is or was made against:

(i) if the claim relates to an incident that is not a Birthing on Country out‑of‑hospital incident—the midwife concerned; or

(ii) if the claim relates to a Birthing on Country out‑of‑hospital incident—the eligible entity concerned for the midwife concerned, or the midwife concerned; and

25 Paragraph 12(3)(c)

After “the midwife concerned”, insert “or, in the case of an application in relation to a claim against the eligible entity, the entity concerned”.

26 Subparagraph 14(1)(c)(ii)

Omit “Level 1 or”, substitute “a”.

27 Paragraph 16(1)(a)

Repeal the paragraph, substitute:

(a) a claim (the ***current claim***) is, or was, made against:

(i) for a claim that relates to an incident that is not a Birthing on Country out‑of‑hospital incident—a person (the ***midwife***); or

(ii) for a claim that relates to a Birthing on Country out‑of‑hospital incident—a person (also the ***midwife***), or the eligible entity for a person (also the ***midwife***); and

28 Paragraph 16(1)(c)

After “the midwife”, insert “(in the case of a claim made against the midwife) or the eligible entity (in the case of a claim made against the entity)”.

29 Paragraph 16(1)(e)

Before “the amount”, insert “if the current claim relates to an incident that is not an out‑of‑hospital incident—”.

30 After paragraph 16(1)(e)

Insert:

Note: The Level 1 claim threshold does not apply to a Level 1 Commonwealth contribution in relation to a claim for an out‑of‑hospital incident: see subsection 10(1A).

31 Paragraph 16(3)(b)

After “the midwife”, insert “or, in the case of a claim against the eligible entity, the entity”.

32 Paragraph 16(3)(d)

After “the midwife”, insert “or, in the case of a claim against the eligible entity, the entity,”.

33 Section 17 (after the heading)

Insert:

Claims for incidents that are not out‑of‑hospital incidents

34 Section 17

Before “The”, insert “(1)”.

35 Section 17

After “a claim”, insert “for an incident that is not an out‑of‑hospital incident”.

36 At the end of section 17

Add:

Claims for out‑of‑hospital incidents

(2) The amount of a Level 1 Commonwealth contribution in relation to a claim for an out‑of‑hospital incident is 100% of the eligible insurer’s qualifying payment, or the sum of the eligible insurer’s qualifying payments, for the claim, if the amount does not exceed the Level 2 claim threshold.

37 Paragraph 18(1)(a)

Repeal the paragraph, substitute:

(a) a claim (the ***current claim***) is, or was, made against the following person by another person:

(i) for a claim that relates to an incident that is not a Birthing on Country out‑of‑hospital incident—the midwife;

(ii) for a claim that relates to a Birthing on Country out‑of‑hospital incident—the eligible entity for the midwife, or the midwife; and

38 Paragraph 18(1)(d)

After “the midwife”, insert “(in the case of a claim made against the midwife) or the eligible entity (in the case of a claim made against the entity)”.

39 Subsection 19(1)

After “(the ***midwife***)”, insert “or, in the case of a claim against the eligible entity for a midwife in relation to a Birthing on Country out‑of‑hospital incident, the entity”.

40 Subsection 19(1)

Omit “made against the midwife”.

41 Subparagraph 19(1)(a)(iii)

Omit “of the midwife”.

42 Paragraph 19(1)(b)

Omit “against the midwife”.

43 Paragraph 19(1)(d)

After “midwife”, insert “or entity”.

44 Paragraph 19(2)(a)

Omit “midwife’s”, substitute “midwife or entity’s”.

45 Paragraph 19(2)(b)

After “by the midwife” (wherever occurring), insert “or entity”.

46 Subsection 19(3) (definition of *defence of the claim*)

After “midwife”, insert “or eligible entity”.

47 Paragraph 24(1)(b)

Repeal the paragraph, substitute:

(b) another amount (not being an amount referred to in subsection (2)) has been paid in relation to the incident to which the liability relates:

(i) if the incident is not a Birthing on Country out‑of‑hospital incident—to a person covered by subsection (3); or

(ii) if the incident is a Birthing on Country out‑of‑hospital incident—to a person covered by subsection (4); and

48 At the end of section 24

Add:

Recipients of amounts—incidents that are not Birthing on Country out‑of‑hospital incidents

(3) A person is covered by this subsection if the person is:

(a) the midwife; or

(b) the eligible insurer; or

(c) another person.

Recipients of amounts—Birthing on Country out‑of‑hospital incidents

(4) A person is covered by this subsection if the person is:

(a) the midwife; or

(b) the eligible insurer; or

(c) the eligible entity for a midwife; or

(d) another person.

49 Paragraph 25(1)(a)

After “(the ***midwife***)”, insert “or an eligible entity”.

50 Paragraph 25(1)(b)

Repeal the paragraph, substitute:

(b) another amount (not being an amount referred to in subsection (5)) has been paid in relation to the incident to which the claim relates:

(i) if the incident is not a Birthing on Country out‑of‑hospital incident—to a person covered by subsection 24(3); or

(ii) if the incident is a Birthing on Country out‑of‑hospital incident—to a person covered by subsection 24(4); and

51 Paragraph 26(1)(a)

After “(the ***midwife***)”, insert “or an eligible entity”.

52 Paragraph 26(1)(b)

Repeal the paragraph, substitute:

(b) the person (the ***applicant***) who applied for the Level 2 Commonwealth contribution becomes aware that another amount has been paid in relation to the incident to which the claim relates:

(i) if the incident is not a Birthing on Country out‑of‑hospital incident—to a person covered by subsection 24(3); or

(ii) if the incident is a Birthing on Country out‑of‑hospital incident—to a person covered by subsection 24(4); and

53 Paragraphs 27(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) an amount of Level 2 Commonwealth contribution has been paid in relation to a qualifying liability that relates to a claim made against:

(i) for a claim that relates to an incident that is not a Birthing on Country out‑of‑hospital incident—a person (the ***midwife***); or

(ii) for a claim that relates to a Birthing on Country out‑of‑hospital incident—a person (also the ***midwife***) or the eligible entity for a person (also the ***midwife***); and

(b) another amount is paid in relation to the incident to which the claim relates:

(i) if the incident is not a Birthing on Country out‑of‑hospital incident—to a person covered by subsection 24(3); or

(ii) if the incident is a Birthing on Country out‑of‑hospital incident—to a person covered by subsection 24(4); and

54 At the end of subsection 31(1)

Add:

Note: A claim is not an eligible run‑off claim if it is a claim made against an eligible entity in relation to a person to whom subsection (2) applies.

55 Paragraph 31(1)(b)

Before “it”, insert “for an incident that is not an out‑of‑hospital incident—”.

56 After paragraph 31(1)(b)

Insert:

(ba) for an incident that is an out‑of‑hospital incident—it relates to an incident that occurred:

(i) on or after 1 July 2025; and

(ii) on or before the run‑off cover termination date (if any); and

57 Paragraph 32(1)(e)

Before “either”, insert “for an incident that is not an out‑of‑hospital incident—”.

58 After paragraph 32(1)(e)

Insert:

(ea) for an incident that is an out‑of‑hospital incident—either the incident occurs or occurred:

(i) on or after 1 July 2025; and

(ii) on or before the run‑off cover termination date (if any); and

59 Subsection 51(1)

After “a midwife”, insert “or eligible entity for a midwife”.

60 Subparagraph 51(1)(a)(ii)

Before “the”, insert “for a claim against a midwife—”.

61 Paragraph 51(1)(b)

Before “the Chief”, insert “for a claim against a midwife—”.

62 After paragraph 51(1)(b)

Insert:

(ba) for a claim against an eligible entity—the Chief Executive Medicare is satisfied that there is a person, other than the entity, against whom a claim has been or is reasonably likely to be made, in relation to the incident to which the claim relates; and

63 At the end of subsection 51(1)

Add:

Note: For claims relating to a Birthing on Country out‑of‑hospital incident, a person referred to in paragraph (b) may include the eligible entity for the midwife, and a person referred to in paragraph (ba) may include the midwife concerned.

64 Paragraph 51(2)(a)

After “midwife”, insert “or eligible entity”.

65 Subsection 52(1)

After “against an eligible midwife”, insert “or eligible entity for an eligible midwife”.

66 Paragraph 52(1)(b)

After “midwife”, insert “or eligible entity”.

67 Paragraph 52(1)(d)

After “midwife”, insert “or entity”.

68 Paragraph 52(2)(a)

Omit “midwife’s”, substitute “midwife or entity’s”.

69 Paragraph 52(2)(b)

After “midwife” (wherever occurring), insert “or entity”.

70 Subsection 52(3) (at the end of the definition of *defence of the claim*)

Add “or entity”.

71 Subsection 53(1)

Repeal the subsection, substitute:

(1) An eligible insurer in relation to a claim made against a midwife or eligible entity for a midwife must apply for the issue of an apportionment certificate in relation to the claim if the eligible insurer considers that:

(a) for a claim made against a midwife—there is a person other than the midwife against whom a claim has been, or is reasonably likely to be, made in relation to the incident to which the claim relates; or

(b) for a claim made against an eligible entity—there is a person other than the entity against whom a claim has been, or is reasonably likely to be, made in relation to the incident to which the claim relates.

Note: For claims relating to a Birthing on Country out‑of‑hospital incident, a person referred to in paragraph (a) may include the eligible entity for the midwife, and a person referred to in paragraph (b) may include the midwife concerned.

72 Subparagraph 53(2)(b)(i)

After “the midwife”, insert “or entity”.

[*Minister’s second reading speech made in—*

*House of Representatives on 20 November 2024*

*Senate on 28 November 2024*]

(145/24)