

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Health and Aged Care

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

Midwife Professional Indemnity (Commonwealth Contribution) Scheme (Amendment and Repeal) Rule 2016

Section 90 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.

The Act gives effect to the Government's professional indemnity scheme for eligible midwives and provides Commonwealth support for professional indemnity insurance for certain midwives, improving access to maternity services. The Act is currently supported by the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010* (the Principal Rules) and also the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010 (No. 2)* (the Principal Rules (No. 2)).

The purpose of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme (Amendment and Repeal) Rule 2016* (the Amendment Rule) is to:

- (a) amend the definition of 'eligible midwife' in the Principal Rules so that it reflects key changes to registration standards for midwifery in Australia; and
- (b) repeal the Principal Rules (No. 2) consequential to its incorporation into the Principal Rules, streamlining Commonwealth legislation.

A registered midwife will be an eligible midwife for the Act if he or she meets additional requirements specified in the Principal Rules. Currently, the Principal Rules specify that the additional requirements are those in the Eligible Midwife Registration Standard set by the Nursing and Midwifery Board of Australia (the Board). Meeting this registration standard enables a midwife to be notated as an eligible midwife.

From 1 January 2017, the Board will start phasing out this registration standard, replacing it with a revised Registration Standard: Endorsement for scheduled medicines for midwives. A midwife who meets this new registration standard will be eligible for endorsement under section 94 of the Health Practitioner Regulation National Law (the National Law).

Section 94 of the National Law provides that the Board may endorse the registration of registered midwives subject to compliance with qualification requirements and any approved registration standard relevant to the endorsement.

From 1 January 2017, new applications for notation as an eligible midwife will no longer be accepted by the Board. Midwives granted notation as an eligible midwife before 31 December 2016 will have 18 months from the date of notation to complete a Board-approved program of study and apply for endorsement.

To reflect these changes, the Amendment Rule amends the meaning of the term 'eligible midwife' for the purposes of section 5 of the Act. It also incorporates new definitions in relation to the revised registration standard developed by the Board and the National Law as in force in each state and territory.

This Rule commences on 1 January 2017.

This Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this Rule are set out in the [Attachment](#).

Consultation

Consultation was undertaken with the Chief Nurse and Midwifery Officer, the Nursing and Midwifery Board of Australia, Medical Insurance Group Australia and other midwifery organisations.

ATTACHMENT

Details of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme (Amendment and Repeal) Rule 2016*

Section 1 – Name

This section provides that the title of the Rule is the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme (Amendment and Repeal) Rule 2016*.

Section 2 – Commencement

This section provides that the Rule commences on 1 January 2017.

Section 3 – Authority

This section provides that the Rule is made under section 90 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* (the Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010

Item 1 – Rule 3 (after definition of Board)

Item 1 inserts new definitions in rule 3 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010* (the Principal Rules), including relevantly ‘endorsed by the Board’. This is defined to mean endorsed by the Nursing and Midwifery Board of Australia (the Board) under section 94 of the National Law to prescribe schedule 2, 3, 4 and 8 medicines and to provide associated services required for midwifery practice in accordance with relevant state and territory regulation.

Item 2 – Rule 5

Item 2 repeals and substitutes rule 5 with new rules 5 and 5A.

Rule 5 applies from 1 January 2017 to the end of 30 June 2018. This rule provides two means by which a registered midwife may meet the additional requirements to be an eligible midwife under the Act. The first of these is being endorsed by the Board.

The second is meeting the additional requirements currently specified in the Principal Rules, which include, among other things, holding current general registration as a midwife in Australia without restrictions on practice, midwifery experience that constitutes the equivalent of 3 years full time post initial registration as a midwife,

and successful completion of a professional practice review program approved by the Board for midwives working across the continuum of midwifery care, or giving an undertaking to complete such a course within 18 months. These reflect the requirements of the Board that allow notation as an eligible midwife.

However, if a midwife has been endorsed at any time after 1 January 2017 the midwife must rely on continued endorsement to be an eligible midwife under the Act. The specification of endorsement reflects the Board's phasing out of the concept of notation as an eligible midwife.

Rule 5A applies from 1 January 2018. From that time, all registered midwives will require endorsement to be an eligible midwife for the Act.

Item 3 – After Rule 8

Item 3 inserts a new rule 9, consequential to the repeal of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010 (No. 2)* (the Principal Rules (No. 2)). This rule was previously rule 4 of the Principal Rules (No. 2). The effect of the rule is that:

- (a) certain midwives who effectively practise as self-employed midwives, but who operate their practice through a corporation, all shareholders and directors of which are practising midwives, can be an eligible midwife despite reasonably being expected to be indemnified by their employer; and
- (b) run-off claims made in respect of services provided by such midwives can be eligible run-off claims for section 31 of the Act.

No change has been made to the operation of the rule.

Schedule 2 – Repeals

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010 (No. 2)

Item 1 – The whole of the instrument

Item 2 repeals the Principal Rules (No. 2). The only substantive rule in the Principal Rules (No. 2) has been incorporated into the Principal Rules by item 3 of Schedule 1.

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 and Repeal) Rule 2016***

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 Legislative Instrument

The *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* (the Act) gives effect to the Government's professional indemnity scheme for eligible midwives and provides Commonwealth support for professional indemnity insurance for certain midwives, improving access to maternity services.

The purpose of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme (Amendment and Repeal) Rule 2016* (the Rule) is to:

- (a) amend the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010* (the Principal Rules) reflecting changes to the registration standard for midwifery in Australia as set by the Nursing and Midwifery Board of Australia (the Board); and
- (b) repeal the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010 (No. 2)* (the Principal Rules (No. 2)) consequential to its incorporation into the Principal Rules.

Currently, a registered midwife who meets the additional training and experience requirements in the Eligible Midwife Registration Standard can be notated by the Board as an eligible midwife. The Board has developed a new Registration standard: Endorsement for scheduled medicines for midwives which will replace the Eligible Midwife Registration Standard from 1 January 2017.

The Board will no longer accept new applications for notation as an eligible midwife from 1 January 2017 and will introduce a transition period of 18 months for current midwives granted notation as an eligible midwife to complete a Board-approved program of study and apply for endorsement. A midwife who meets the new registration standard will be eligible for endorsement under the Health Practitioner Regulation National Law (the National Law).

This Rule replaces the current definition of an eligible midwife for the Act, which reflects the requirements of the Eligible Midwife Registration Standard, with two new definitions, one applying for the 18 month transitional period from 1 January 2017 to 30 June 2018 and another applying from 1 July 2018. During the transitional period, a registered midwife meets the additional requirements to be an eligible midwife if the person is either:

- (a) endorsed by the Board to prescribe schedule medicines; or
- (b) meets the existing requirements to be an eligible midwife and has not been endorsed at any time after 1 January 2017.

From 1 July 2018, only midwives who are endorsed will be eligible midwives for the Act. This change reflects the end of the Board's 18 month transition period enabling notated midwives to become endorsed midwives.

This Rule also inserts a new rule, consequential to the repeal of the Principal Rule (No. 2) so that:

- (a) certain midwives who practise as self-employed midwives, but who operate their practice through a corporation, all shareholders and directors of which are practicing midwives, can be an eligible midwife; and
- (b) run-off claims made in respect of services provided by such midwives can be eligible run-off claims for the Act, without making any changes to the operation of the rule.

These were the only substantive provisions in the Principal Rule (No. 2), and the opportunity has been taken to streamline the legislation.

Human rights implications

This Legislative Instrument engages the following human rights:

Right to Health

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 International Covenant on Economic Social and Cultural Rights (ICESCR). Whilst the UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not to be understood as a right to be healthy, it does entail a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The amendments to the Principal Rules will ensure that during the Board's transition period, both midwives who met the additional requirements set by the Board under the current Eligible Midwife Registration Standard and have thus been granted notation, and midwives who meet the new Registration standard: Endorsement for scheduled medicine and have been endorsed are recognised as an eligible midwife for the purposes of the Act.

The amendment also ensures that from the latest date by which a notated midwife can complete the additional training to achieve endorsement, a registered midwife must be endorsed to be an eligible midwife for the Act.

This will impact positively on the right to health by ensuring the Principal Rules reflect the Board's current and future arrangements for recognising additional training and experience. In particular, the amendments made by this Rule ensure that the eligible midwife definition recognises the phasing out by the Board of notated

midwives and their transition to endorsement. This will ensure continued access to and quality of pre-natal and post-natal health care.

This Rule also repeals the Principal Rules (No. 2) after moving their content to the Principal Rules and effectively streamlines Commonwealth legislation, however this amendment is machinery in nature and does not affect any human rights recognised or declared in relevant instruments.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.