

## **EXPLANATORY STATEMENT**

### **Issued by the Minister for Health**

#### *Medical Indemnity Act 2002*

#### *Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020*

#### **Authority**

Section 79 of the *Medical Indemnity Act 2002* (the Act) provides that the Governor-General may make regulations prescribing matters which are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving 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 and operation**

The purpose of the *Medical Indemnity Act 2002* (the Act) is to support the availability of medical services in Australia by providing Commonwealth assistance to support access by medical practitioners to arrangements that indemnify them for claims arising in relation to their practice of their medical professions.

On 11 March 2020, the World Health Organization (WHO) declared the outbreak of severe acute respiratory syndrome coronavirus (SARS-CoV-2) a pandemic. The international name given by WHO to the disease caused by SARS-CoV-2 is Coronavirus disease 2019 (COVID-19). On 18 March 2020 the Governor-General declared that a human biosecurity emergency exists regarding COVID-19 (section 475 of the Act, *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*).

The COVID-19 pandemic is putting increasing pressure on the healthcare system. Currently, it is unclear if the current numbers of doctors and eligible midwives in the workforce will be adequate to ensure the Australian population have access to medical services.

The purpose of the *Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020* (the Amending Regulations) is to amend the *Medical Indemnity Regulations 2003* to allow retired doctors to retain their eligibility under the Run-Off Cover scheme (ROCS) for prior practice. This removes a significant impediment to qualified but currently non-practicing doctors from re-entering private practice to assist with the delivery of essential health services during the COVID-19 pandemic.

Under the ROCS, a charge known as the 'ROCS support payment' is imposed on medical indemnity insurers and subsequently incorporated into each private practising medical practitioner's annual insurance premium during their working life. Upon

permanently leaving private practice, ROCS will cover the types of claims that a medical practitioner's last insurance contract covered without further payment. This is paid for by the Commonwealth.

The Amending Regulations amend the *Medical Indemnity Regulations 2003* by inserting a temporary exemption that applies to any practitioner who is eligible for the ROCS and who returns to private practice. This temporary exemption allows retired doctors to return to private practice in order to provide treatment during the COVID-19 pandemic without the practitioner losing their eligibility under the ROCS.

The exemption operates on the basis that these practitioners have the requisite registration to practice, and only applies on a temporary basis for the duration of the declaration of the Human Biosecurity Emergency Declaration and a grace period of one further month.

Details of the Amending Regulations are set out in Attachment A.

The Amending Regulations is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

The Amending Regulations commence on the day of registration.

### **Regulation Impact Statement**

A Regulatory Impact Statement (RIS) is not required because the Amending Regulations is covered by the Prime Minister's RIS exemption (OBPR ID: 26438).

### **Consultation**

Due to the nature of the pandemic it was not reasonably practicable to undertake extensive consultation. However, the Department of Health consulted with medical indemnity insurers, who support these changes, and the Australian Health Practitioner Regulation Agency on the proposed changes. In parallel, the Department of Health has also consulted with other Australian Government agencies and stakeholders including the Australian Government Actuary and the Department of Prime Minister and Cabinet.

### **Statement of Compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the Legislation Act applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. The Statement of Compatibility has been prepared to meet that requirement. The Statement of Compatibility is included at Attachment B.

**Attachment A****Details of the *Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020*****Section 1 – Name**

This section provides that the name of the instrument is the *Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020* (the Regulations).

**Section 2 – Commencement**

This section provides that the Regulations commence the day after the instrument is registered.

**Section 3 – Authority**

This section provides that the Regulations are made under *Medical Indemnity Act 2002* (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*****Medical Indemnity Regulations 2003*****Item 1: Regulation 3**

This item inserts a definition of the expression ***COVID-19 human biosecurity emergency period*** in regulation 3 of the *Medical Indemnity Regulations 2003*.

**Item 2: After regulation 12**

This item inserts new regulation 12A. This amendment creates a temporary exemption throughout the duration of the COVID-19 human biosecurity emergency period that will apply to any practitioner who is eligible for the ROCS and who returns to private practice. This temporary exemption allows retired doctors to return to private practice in order to provide treatment during the COVID-19 pandemic without the practitioner losing their eligibility under the ROCS.

This amendment also includes a one-month grace period, which will ensure that medical practitioners who continue to practice for up to one month after the end the ***COVID-19 human biosecurity emergency period*** will not lose their ROCS eligibility.

Subregulation 12A(1) provides that, for the purposes of paragraph 34ZB(2)(f) of the Act, the class of persons to each of whom subregulation (2) applies is specified as persons to whom subsection 34ZB(2) of the Act applies.

Subregulation 12A(2) provides that, subject to subregulation (3), this subregulation applies to a person if subsection 34ZB(2) of the Act applies to the person (disregarding this regulation) were it not for practice as a medical practitioner that the person begins to engage in:

- on or after the commencement of this regulation; and
- during a COVID-19 human biosecurity emergency period.

Subregulation 12A(3) provides that if, one month after the end of the COVID-19 human biosecurity emergency period, the person is still engaged in practice as a medical practitioner, subregulation (2) ceases to apply to the person at the end of that month.

Subregulation 12A(4) provides that a ***COVID-19 human biosecurity emergency period*** is a human biosecurity emergency period (within the meaning of the *Biosecurity Act 2015*) in relation to which the declaration listed human disease (within the meaning of that Act) is human coronavirus with pandemic potential.

**Statement of Compatibility with Human Rights**

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

***Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020***

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 purpose of the *Medical Indemnity Act 2002* (the Act) is to support the availability of medical services in Australia by providing Commonwealth assistance to support access by medical practitioners to arrangements that indemnify them for claims arising in relation to their practice of their medical professions.

On 11 March 2020, the World Health Organization (WHO) declared the outbreak of severe acute respiratory syndrome coronavirus (SARS-CoV-2) a pandemic. The international name given by WHO to the disease caused by SARS-CoV-2 is Coronavirus disease 2019 (COVID-19). On 18 March 2020 the Governor-General declared that a human biosecurity emergency exists regarding COVID-19 (section 475 of the Act, *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*).

The COVID-19 pandemic is putting increasing pressure on the healthcare system. Currently, it is unclear if the current numbers of doctors and eligible midwives in the workforce will be adequate to ensure the Australian population have access to medical services.

The purpose of the *Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020* (the Amending Regulations) is to amend the *Medical Indemnity Regulations 2003* to allow retired doctors to retain their eligibility under the Run-Off Cover scheme (ROCS) for prior practice. This removes a significant impediment to qualified but currently non-practicing doctors from re-entering private practice to assist with the delivery of essential health services during the COVID-19 pandemic.

Under the ROCS, a charge known as the ‘ROCS support payment’ is imposed on medical indemnity insurers and subsequently incorporated into each private practising medical practitioner’s annual insurance premium during their working life. Upon permanently leaving private practice, ROCS will cover the types of claims that a medical practitioner’s last insurance contract covered without further payment. This is paid for by the Commonwealth.

The Amending Regulations amend the *Medical Indemnity Regulations 2003* by inserting a temporary exemption that applies to any practitioner who is eligible for the ROCS and who returns to private practice. This temporary exemption allows retired doctors to return to private practice in order to provide treatment during the COVID-19 pandemic without the practitioner losing their eligibility under the ROCS.

The exemption operates on the basis that these practitioners have the requisite registration to practice, and only applies on a temporary basis for the duration of the declaration of the Human Biosecurity Emergency Declaration and a grace period of one further month.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

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

**The Hon Greg Hunt MP, Minister for Health**