

EXPLANATORY STATEMENT

Issued by the Minister for Health

Medical Indemnity Act 2002

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

Medical and Midwife Indemnity Legislation Amendment (Eligible Run off Claims) Rules 2020

Authority

Section 80 of the *Medical Indemnity Act 2002* (the MI Act) (as amended by the *Medical and Midwife Indemnity Legislation Amendment Act 2019*) provides that the Minister may make rules prescribing matters, which are required or permitted by the Act to be prescribed, by the rules, or which are necessary or convenient to be prescribed for carrying out or giving effect to the MI Act.

Section 90 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* (the MPICCS Act) provides that the Minister may 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 MPICCS 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

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 and Midwife Indemnity Legislation Amendment (Eligible Run off Claims) Rules 2020* (the Amending Rules) 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 run-off cover scheme (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 Rules amend the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010*, *Medical Indemnity Rules 2020* and *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* by inserting a temporary exemption that applies to any doctor or eligible midwife who is eligible for the ROCS and who return to private practice. This temporary exemption allows these retired doctors and midwives to return to private practice in order to provide treatment during the COVID-19 pandemic without the doctor or midwife losing their eligibility under the ROCS.

The exemption also operates on the basis that these doctors or midwives have the requisite registration to practice and that the exemption only applies on a temporary basis for the duration of the pandemic.

Details of the Amending Rules are set out in [Attachment A](#).

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

The Amending Rules commence on the day of registration.

Regulation Impact Statement

A Regulatory Impact Statement (RIS) is not required because the Amending Rules 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 and Midwife Indemnity Legislation Amendment (Eligible Run off Claims) Rules 2020*****Section 1 – Name**

This section provides that the name of the instrument is the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run Off Claims) Rules 2020* (the Rules).

Section 2 – Commencement

This section provides that sections 1 to 4, and Part 1 of Schedule 1 of the Rules commence the day after the Rules are registered. Part 2 of Schedule 1 of the Rules commence on 1 July 2020.

Section 3 – Authority

This section provides that this instrument is made under the following:

- (a) the *Medical Indemnity Act 2002* (MI Act); and
- (b) the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* (MPICCS 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**Part 1—Amendments commencing day after registration*****Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010*****Item 1: Rule 3**

This item inserts a definition of the expression ***COVID-19 human biosecurity emergency period*** in rule 3 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010*.

Item 2: Part 2 (heading)

This item replaces the phrase “and specified rates” with “, specified rates etc.” in the heading of Part 2 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010*.

Item 3: At the end of Part 2

This item inserts new rule 10 at the end of Part 2 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010*.

New subrule 10(1) provides that, for the purposes of paragraph 31(2)(f) of the MPICCS Act, the class of persons to each of whom subrule (2) of this rule applies is specified as persons to whom subsection 31(2) of the MPICCS Act applies.

New subrule 10(2) provides that, subject to subrule (3) of this rule, this rule applies to a person if subsection 31(2) of the MPICCS Act applies to the person (disregarding this rule) were it not for practice as an eligible midwife that the person begins to engage in:

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

New subrule 10(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 an eligible midwife, subrule (2) of this rule ceases to apply to the person at the end of that month.

New subrule 10(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.

Part 2—Amendments commencing 1 July 2020***Medical Indemnity Rules 2020***Item 4: At the end of this instrument

This item inserts new Part 5, Division 1, section 23 in the Medical Indemnity Rules 2020.

New subsection 23(1) provides that, for the purposes of paragraph 34ZB(2)(f) of the MI Act, subsection 34ZB(2) of the MI Act applies to the persons covered by subsection (2) of this section.

New subsection 23(2) provides that, subject to subsection (3) of this section, this subsection covers a person if subsection 34ZB(2) of the MI Act applies to the person (disregarding this section) were it not for practice as a medical practitioner that the person begins to engage in:

- on or after the commencement of the *Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020*; and
- during a COVID-19 human biosecurity emergency period.

New subsection 23(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, subsection (2) of this section ceases to cover the person at the end of that month.

New subsection 23(3) 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.

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020

Item 5: Before section 1

This item inserts the following headings “Part 1 – Preliminary” and “Division 1 – Preliminary” before section 1 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020*.

Item 6: Before section 5

This item inserts the heading “Division 2 – Definitions” before section 5 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020*.

Item 7: Before section 8

This item inserts the heading “Part 2 – Midwife Professional Indemnity Commonwealth Contributions” before section 8 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020*.

Item 8: After section 10

This item inserts new Part 3, Division 1, section 11 in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020*.

New subsection 11(1) provides that, for the purposes of paragraph 31(2)(f) of the MPICCS Act, subsection 31(2) of the MPICCS Act applies to the persons covered by subsection (2) of this section.

New subsection 11(2) provides that, subsection (3) of this section, this subsection covers a person if subsection 31(2) of the MPICCS Act applies to the person (disregarding this section) were it not for practice as an eligible midwife that the person begins to engage in:

- on or after the commencement of Part 1 of Schedule 1 to the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) Rules 2020*; and
- during a COVID-19 human biosecurity emergency period.

New subsection 11(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 an eligible midwife, subsection (2) of this section ceases to cover the person at the end of that month.

New subsection 11(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 and Midwife Indemnity Legislation Amendment (Eligible Run off Claims) Rules 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

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 and Midwife Indemnity Legislation Amendment (Eligible Run off Claims) Rules 2020* (the Amending Rules) is 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-practising doctors from re-entering private practice to assist with the delivery of essential health services during the COVID-19 pandemic.

Under the run-off cover scheme (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 Rules amend the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010*, *Medical Indemnity Rules 2020* and *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* by inserting a temporary exemption that applies to any doctor or eligible midwife who is eligible for the ROCS and who return to private practice. This temporary exemption allows these retired doctors and midwives to return to private practice in order to provide treatment during the COVID-19 pandemic without the doctor or midwife losing their eligibility under the ROCS.

The exemption also operates on the basis that these doctors or midwives have the requisite registration to practice and that the exemption only applies on a temporary basis for the duration of the pandemic.

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