**EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Health

*Medical Indemnity (Run-off Cover Support Payment) Act 2004*

*Medical Indemnity (Run-off Cover Support Payment) Regulations 2020*

**Authority**

Section 8 of the *Medical Indemnity (Run-off Cover Support Payment) Act 2004* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this 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 Regulations**

The *Medical Indemnity (Run-off Cover Support Payment) Regulations 2008* (2008 Regulations) provide that:

* the amount of the run-off cover support payment is 5% of the insurer’s premium income for contribution years beginning on or after 1 July 2008; and
* for the purpose of working out the insurer’s premium income for a contribution year, the income is to be reduced by any amount of refund payable by a medical indemnity insurer to a medical practitioner in respect of an overpayment of a premium for medical indemnity cover.

The purpose of the *Medical Indemnity (Run-off Cover Support Payment) Regulations 2020* (Regulations) is to remake the previous 2008 Regulations and remove redundant provisions prior to sunsetting on 1 October 2021.

The Run-Off Cover Scheme (ROCS) was introduced in 2004. Under the ROCS, the Commonwealth will pay the costs of eligible medical indemnity claims made against eligible medical practitioners for incidents that occurred in the course of their medical practice. To be eligible, medical practitioners must have held medical indemnity cover and ceased practising in private medical practice. The *Medical Indemnity Act 2002* sets out a range of circumstances in which a medical practitioner is eligible under the ROCS.

The Commonwealth’s support for the scheme continues to be funded through the run-off cover support payment. The amount of the support payment paid by an insurer is calculated by reference to the insurer’s premium income for a contribution year.

The Regulations specify the applicable percentage for calculating the run-off support payment (by reference to the calculation in the Act) and also specify an additional kind of amount by which a medical indemnity insurer’s premium income is reduced (again, for the purposes of calculating of the amount of support payment).

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

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 July 2020.

**Regulation Impact Statement**

The Office of Best Practice Regulation has certified that the [First Principles Review](http://www.health.gov.au/internet/main/publishing.nsf/content/medical_Indemnity_First_Principles_Review) and [Thematic Review](https://www1.health.gov.au/internet/main/publishing.nsf/Content/F923F31B70D61C37CA25815C00142243/%24File/Thematic%20Review%20of%20Commonwealth%20Medical%20and%20Midwife%20Indemnity%20Legislation.pdf) of the Medical and Midwife Indemnity Schemes are equivalent to a Regulatory Impact Statement.

**Consultation**

The Australian Government has worked collaboratively with the Australian Medical Association, relevant peak bodies, medical indemnity insurers and relevant government agencies.

The Government has consulted extensively during the development of the medical and midwife indemnity reforms, including through the First Principles Review and Thematic Review, the development of the *Medical and Midwife Legislation Amendment Act 2019* and targeted stakeholder consultation on limited exposure drafts of the legislative instruments. The proposed Regulations would incorporate submissions received through the limited exposure draft consultation process in November 2019.

The result of this consultation and Thematic Review was that the provisions contained in the 2008 Regulations are still necessary (other than regulation 3 and 4 which repeal the 2004 Regulations and provide for transitional matters and certain related definitions).

**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 2003* 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**

**Section 1 – Name**

This section provides for the title of the Regulations to be the *Medical Indemnity (Run-off Cover Support Payment) Regulations 2020.*

**Section 2 – Commencement**

This section provides that the Regulations will commence on 1 July 2020.

**Section 3 – Authority**

This section provides for the Regulations to be made under section 8 of the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

**Section 4 – Schedules**

This section provides for each instrument specified in a Schedule in the instrument, these instruments are amended or repealed as set out in the items listed in the relevant Schedule. Any other item in a Schedule to this instrument operates in accordance with its terms.

**Section 5 – Definitions**

This section provides that for the purposes of the Regulations, ***Act*** means the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*.

**Section 6 – Applicable percentage for working out amount of run-off cover support payment**

Section 6 of the Act provides that the run-off support payment that a medical indemnity insurer must pay for a contribution year is the applicable percentage of the insurer’s premium income for the 12 month period that ends on 31 May in the contribution year.

Subsection 6(2) of the Act sets the application percentage at 15%, or such lower percentage as is specified in the regulations.

For the purposes of paragraph 6(2)(b) of the Act, this section will specify that the lower applicable percentage is 5%, for a contribution year beginning on or after 1 July 2020.

**Section 7 – Kind of amounts by which premium income is reduced**

This section is made under paragraph 7(2)(c) of the Act, and has the same substantive effect as regulation 7 of the 2008 Regulations; it clarifies the amount by which premium income relating to medical indemnity cover will be reduced. It makes clear to insurers that they need to exclude the net refund on premiums from their assessment of their premium income for the purposes of subsection 7(1) of the Act for a contribution year.

The amount by which the premium income is reduced is the amount of refund payable by the medical indemnity insurer to a medical practitioner in respect of an overpayment relating to the medical indemnity cover (whether or not the overpayment was made during the period for which the insurer’s premium income is being calculated).

The 2008 Regulations provide that the run-off cover support payment is paid as a percentage of premium income from a specific contribution year. Each doctor provides an estimate of his or her medical income to their insurer when taking out or renewing medical indemnity cover. However, if the doctor’s estimated income is significantly different to his or her actual income, the premium will be retrospectively adjusted by the insurer. Given this practice of retrospectively adjusting premiums, a corresponding mechanism was developed to accommodate these changes to the amount which constitutes an insurer’s premium income for the purposes of the run-off cover scheme support payment.

**Schedule 1 – Repeals**

This Schedule repeals the entirety of the *Medical Indemnity (Run-off Cover Support Payment) Regulations 2008*.

This repeal is a consequence of the recommendations made in the Thematic Review and enables the restructure and consolidation of delegated legislation to remove redundant sections prior to sunsetting.

The recommendations of the Thematic Review were that the 2008 Regulations should be remade with changes to remove provisions that have been exhausted such as regulations 3 and 4 and the definition of Avant in regulation 5. The note under regulation 6 should also be removed (consequential to the removal of regulation 4).

**Attachment B**

**Statement of Compatibility with Human Rights**

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

***Medical Indemnity (Run-off Cover Support Payment) 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 (Run-off Cover Support Payment) Regulations 2020* (Regulations) is to remake the previous *Medical Indemnity (Run-off Cover Support Payment) Regulations 2008* (2008 Regulations) and remove redundant provisions prior to sunsetting on 1 July 2021.

The Run-Off Cover Scheme (ROCS) was introduced in 2004. Under the ROCS, the Commonwealth will pay the costs of eligible medical indemnity claims made against eligible medical practitioners for incidents that occurred in the course of their medical practice. To be eligible, medical practitioners must have held medical indemnity cover and ceased practising in private medical practice. The *Medical Indemnity Act 2002* sets out a range of circumstances in which a medical practitioner is eligible under the ROCS.

The Commonwealth’s support for the scheme continues to be funded through the run-off cover support payment. The amount of the support payment paid by an insurer is calculated by reference to the insurer’s premium income for a contribution year.

The Regulations specify the applicable percentage for calculating the run-off support payment (by reference to the calculation in the Act) and also specify an additional kind of amount by which a medical indemnity insurer’s premium income is reduced (again, for the purposes of calculating of the amount of support payment).

**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**