

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Aged Care

Medical Indemnity Act 2002

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021

Authority

Section 80 of the *Medical Indemnity Act 2002* (the MI Act) 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

The *Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021* (the Amending Rules) amends the *Medical Indemnity Rules 2020* and the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020*. The purpose of the Amending Rules is to rectify an unintended consequence resulting from legislative changes made under the medical indemnity reform implemented on 1 July 2020.

Under the Commonwealth's Run-off Cover Scheme (ROCS), a charge known as the 'ROCS support payment' is imposed on medical indemnity providers. In practice, insurers incorporate amounts equal to the support payment into each medical practitioner's and eligible midwife's annual insurance premium during their working life. The ROCS support payment is used to fund the operation of the ROCS. For eligible practitioners and midwives who are eligible for the ROCS, the scheme will cover the types of claims that a medical practitioner or eligible midwife's last insurance contract covered without further payment.

The Government can, with at least 12 months' notice, terminate the ROCS for medical practitioners or the ROCS for eligible midwives. In the event Government should terminate the ROCS, the Commonwealth would be required to pay a medical practitioner's or eligible midwife's insurer, as part of the practitioner's or midwife's premium, an amount no more than the 'total run-off cover credit' of the practitioner or midwife.

This total run-off cover credit is calculated in accordance with section 34ZS of the MI Act and section 44 of the MPICCS Act respectively, and is equal to the sum of past ROCS support payments attributable to the practitioner or midwife plus an interest rate adjustment.

No termination date has been set for either the ROCS for medical practitioners or the ROCS for eligible midwives and the Commonwealth does not currently have a liability to make any total run-off cover credits.

On 1 July 2020, the applicable interest rate adjustment for calculating the interest component of the total run-off cover credit was changed from the short-term bond rate to the General Interest Charge (GIC) as part of the 2019 medical indemnity legislative reform process.

However, it was later identified by Services Australia that the interest adjustment rate using the GIC was significantly higher than expected. Consequently, if the ROCS was terminated, the Commonwealth would be required to pay far more interest than anticipated. For example, in respect of the ROCS support payments attributable to 2019-20, the Commonwealth would be required to pay a total of approximately \$33 million in interest, in contrast with approximately \$1.4 million in interest for support payments attributable to 2018-19.

As this was not the Government's intention nor is it appropriate, an amendment to the *Medical Indemnity Rules 2020* and the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* is required to replace the existing reference to the GIC rate with a rate based on the annual change in the Consumer Price Index (CPI) rate. (*Note the CPI is currently 1.1% as of March 2021*).

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 after registration.

Consultation

The Government has not consulted with the six medical indemnity insurers that administer the Run-off Cover Scheme on this change as it does not have an impact on their business, in particular, this change does not affect the amount of ROCS support payments insurers need to pay each year.

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](#).

Details of the *Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021*

Section 1 – Name

This section provides that the title of the rules is the *Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021* (the Amending Rules).

Section 2 – Commencement

This section provides that the Amending Rules commence on the day after registration.

Section 3 – Authority

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

Schedule 1 – Amendments

Items 1 and 2 of Schedule 1 amend section 10 of the *Medical Indemnity Rules 2020* and *Midwife Professional Indemnity (Commonwealth Contribution) Rules 2020*, respectively, by replacing the General Interest Charge as the applicable interest rate for working out the total run-off cover credit, with a rate based on the annual change to the March quarter All Groups Consumer Price Index (CPI).

The new subsections 10(1) provide for the method of calculating the applicable interest rate for total run-off cover credits for the purposes of subsection 34ZS(4) of the MI Act and subsection 44(4) of the MPICCS Act based on the All Groups CPI index number published by the Australian Statistician.

Should a termination date be set for either the medical practitioner or eligible midwife ROCS, the interest rate in respect of any financial year will be the All Groups CPI for the March quarter immediately before the beginning of that financial year, divided by the All Groups CPI for the previous March quarter.

Subsections 10(2) provide that a rate of interest is to be worked out to 3 decimal places.

Subsections 10(3) provide that if a rate of interest worked out under subsections 10(1) and 10(2) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the rate is to be increased by 0.001.

Subsections 10(4) provide that if a rate of interest worked out under subsections 10(1), 10(2) and 10(3) would be less than 1, the rate is to be increased to 1.

Subsections 10(5) provide that, subject to subsection 10(6), if at any time the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published for that quarter, the publication of the later index number is to be disregarded for the purposes of this section. This ensures that the index number is fixed at the first published number.

Subsections 10(6) provide that if at any time the Australian Statistician changes the index reference period for the CPI, in applying the formula after the change takes place, regard should only be had to index numbers published in terms of the new index reference period.

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 (Run-off Claims) Rules 2021

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

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Human rights implications

The instrument does not engage any of the human rights and freedoms recognised in the seven core international human rights treaties which Australia has ratified. However, the overarching purpose of the medical indemnity legislation is to enable payments to be made to insurers to subsidise the cost of medical indemnity insurance for medical practitioners and eligible midwives such that persons who make legitimate claims against medical practitioners or eligible midwives are able to be compensated for any loss they have suffered. This supports Article 12(2)(d) of the International Covenant on Economic, Social and Cultural Rights such that it creates "conditions which would assure to all medical service and medical attention in the event of sickness".

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 and Aged Care