

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 2022

Purpose and operation

The *Medical Indemnity Rules 2020* and the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* (Medical and Midwife Indemnity Rules) were amended on 1 April 2020 by the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run off Claims) Rules 2020* (2020 Amending Instrument).

The 2020 Amending Instrument amended the Medical and Midwife Indemnity Rules by inserting a temporary exemption that applies to any doctor or eligible midwife (midwives endorsed by the Nursing and Midwifery Board of Australia to prescribe scheduled medicines) who is eligible for the Run-off Cover Scheme and who returns to private practice. This temporary exemption allows these retired doctors and midwives to return to private practice to provide treatment during the COVID-19 pandemic without the doctor or midwife losing their eligibility under the Run-off Cover Scheme.

On 25 March 2022, the Minister for Health and Aged Care announced that the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* made pursuant to section 475 of the *Biosecurity Act 2015*, would not be renewed when it lapsed on 17 April 2022.

The duration of the Run-off Cover Scheme exemption in the Medical and Midwife Indemnity Rules was specified to end one month after the end of COVID-19 human biosecurity emergency period, that is, 17 May 2022.

The purpose of the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) Rules 2022* (the Amending Rules) is to extend the temporary Run-off Cover Scheme exemption from 17 May 2022 to 21 October 2022. This will ensure the ongoing involvement of formerly retired private sector doctors and eligible midwives in the COVID-19 Pandemic Response by ensuring they can assist with workforce shortages without losing their entitlements under the Run-off Cover Scheme.

A cessation date of 21 October 2022 aligns the Amending Rules with the Australian Health Practitioner Regulation Agency (AHPRA) pandemic sub-register, which is currently scheduled to end on 21 September 2022. An additional month coverage after the end of the AHPRA sub-register ends will allow sufficient time to make any changes should the sub-register be extended beyond 21 September 2022.

The AHPRA pandemic sub-register was established to allow the health workforce to respond to the changing environment of the COVID-19 pandemic by ensuring there is an adequate number of registered healthcare professionals. The healthcare system has come under sustained pressure during the COVID-19 pandemic.

This change will ensure that private sector retired doctors and eligible midwives can continue to assist with the COVID-19 Pandemic Response without losing their entitlements under the Run-off Cover Scheme while AHPRA's pandemic sub-register remains active.

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.

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 MI 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.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

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

Commencement

The Amending Rules is a disallowable legislative instrument for the purposes of the Legislation Act and commences on the day after it is registered on the Federal Register of Legislation.

Consultation

The Department of Health consulted with medical indemnity insurers on the proposed changes. The Department of Health has also consulted with other Australian Government agencies and stakeholders including the Australian Government Actuary, the Department of Prime Minister and Cabinet and Services Australia.

Details of the Amending Rules are set out in **Attachment A**.

The Amending Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the Medical and Midwife Indemnity Legislation Amendment (Eligible Run off Claims) Rules 2022

Section 1 – Name

Section 1 provides that the name of the instrument is the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run Off Claims) Rules 2022*.

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that this instrument is made under the following:

- (a) the *Medical Indemnity Act 2002*; and
- (b) the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

Section 4 – Schedules

Section 4 provides that the Schedule sets out the specific terms of amendment and repeal of each instrument, and any other item in the Schedule has effect according to its terms.

Schedule 1—Amendments

Medical Indemnity Rules 2020

Item 1 – Division 1 of Part 5 (heading)

This item repeals the heading of “COVID-19 human biosecurity emergency period” in Part 5, Division 1 of the *Medical Indemnity Rules 2020* and replaces it with “Temporary measure relating to eligible run off claims”. This amendment effectively unties the duration of the Run-off Cover measure from the COVID-19 human biosecurity emergency period.

Item 2 – Section 23 (heading)

This item repeals the heading of “Eligible run-off claims—COVID-19 human biosecurity emergency period” in section 23 of the *Medical Indemnity Rules 2020* and replaces it with “Eligible run-off claims”. This is a consequential amendment resulting from the amendment in item 1.

Item 3 – Subsection 23(2)

This item omits the words after “begins to” in subsection 23(2) of the *Medical Indemnity Rules 2020* and replaces it with “engage in during the period: (a) beginning on 1 April 2020; and (b) ending on 21 September 2022.”

The period between 1 April 2020 and 21 September 2022 is specified on the basis that the *Medical Indemnity Amendment (Eligible Run-off Claims) Regulations 2020*, currently referred to in paragraph 23(2)(a) of the *Medical Indemnity Rules 2020*, commenced on 1 April 2020, and the AHPRA pandemic response sub-register will cease by 21 September 2022.

This amendment effectively extends the period which a retired medical practitioner can continue engaging as a medical practitioner without losing their Run-off Cover Scheme entitlements. This ensures certainty of Run-off cover for those who are currently still practising and intend to practise until the expiry of the AHPRA pandemic response sub-register.

Item 4 – Subsections 23(3) and (4)

This item repeals subsections 23(3) and (4) of the *Medical Indemnity Act 2020* and replaces them with a new subsection 23(3).

New subsection 23(3) provides that if the person is still engaged in practice as a medical practitioner at the end of 21 October 2022, subsection 23(2) ceases to cover the person at the end of that day. This new subsection allows for an additional month of cover following the cessation of the AHPRA sub register, which will allow sufficient time to extend this initiative further should the AHPRA sub-register be extended beyond 21 September 2022.

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020

Item 5 – Division 1 of Part 3 (heading)

This item repeals the heading of “COVID-19 human biosecurity emergency period” in Part 3, Division 1 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* and replace it with “Temporary measure relating to eligible run off claims”. This amendment mirrors the amendment made to the *Medical Indemnity Rules* (see item 1) and effectively unties the duration of the Run-off Cover measure from the COVID-19 human biosecurity emergency period.

Item 6 – Section 11 (heading)

This item repeals the heading of “Eligible run- off claims—COVID- 19 human biosecurity emergency period” in section 11 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* and replaces it with “Eligible run-off claims”. This is a consequential amendment resulting from item 5.

Item 7 – Subsection 11(2)

This item omits the words after “begins to” in subsection 11(2) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* and replaces it with “engage in during the period: (a) beginning on 1 April 2020; and (b) ending on 21 September 2022.”

The period between 1 April 2020 and 21 September 2022 is specified on the basis that Part 1 of Schedule 1 to the *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) Rules 2020*, currently referred to in paragraph 11(2)(a) of the *Midwife Professional Indemnity (Commonwealth) Scheme Rules 2020*, commenced on 2 April 2020, and the AHPRA pandemic response sub-register will cease at the end of 21 September 2022.

This amendment effectively extends the period which a retired eligible midwife can continue engaging as an eligible midwife without losing their Run-off Cover Scheme entitlements. This ensures certainty of Run-off cover for those who are currently still practising and intend to practise until the expiry of the AHPRA pandemic response sub-register.

Item 8 – Subsections 11(3) and (4)

This item repeals subsections 11(3) and (4) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2020* and replaces them with a new subsection 11(3).

New subsection 11(3) provides that if the person is still engaged in practice as an eligible midwife at the end of 21 October 2022, subsection 11(2) ceases to cover the person at the end of that day. This new subsection allows for an additional month of cover following the cessation of the AHPRA sub register, which will allow sufficient time to extend this initiative further should the AHPRA sub-register be extended beyond 21 September 2022.

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 2022

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 Amending Rules

The *Medical and Midwife Indemnity Legislation Amendment (Eligible Run-off Claims) Rules 2022* (the Amending Rules) amends the *Medical Indemnity Rules 2020* and the *Midwife Professional Indemnity (Commonwealth Contribution Scheme Rules 2020* by extending the temporary Run-off Cover Scheme exemption from 17 May 2022 to 21 October 2022. This will allow the return and ongoing involvement of formerly retired private sector doctors and eligible midwives to assist with the COVID-19 Pandemic Response without losing their entitlements under the Run-off Cover Scheme.

The Amending Rules unties the duration of the Run-off Cover measure from the COVID-19 human biosecurity emergency period and aligns with the Australian Health Practitioner Regulation Agency's (AHPRA) pandemic sub-register, which is currently scheduled to end on 21 September 2022. The Amending Rules allows for an additional month coverage after the end of the AHPRA sub-register ends, which provides sufficient time to make any changes should the sub-register be extended beyond 21 September 2022.

By aligning the Amending Rules with the active AHPRA pandemic sub-register, this legislative instrument enables the health workforce to effectively respond to the changing environment of the COVID-19 pandemic by ensuring there is an adequate number of registered healthcare professionals. The healthcare system has come under sustained pressure during the COVID-19 pandemic. The Amending Rules will ensure that private sector retired doctors and eligible midwives can continue to assist with the COVID-19 Pandemic Response without losing their entitlements under the Run-off Cover Scheme while AHPRA's pandemic sub-register remains active.

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

The instrument does not engage any of the human rights and freedoms recognised in the international human rights treaties which Australia has ratified. However, the overarching purpose of the Amending Rules is to facilitate the participation of doctors and eligible midwives in the country's COVID-19 Pandemic Response. 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