



Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009

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Contents

Purpose.....	2
Background.....	2
What is run-off cover?	2
Committee consideration	3
Financial implications.....	3
Key issues	4
Main provisions	4

Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009

Date introduced: 24 June 2009

House: House of Representatives

Portfolio: Health and Ageing

Commencement: 1 July 2010

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill seeks to impose a tax on midwives' professional indemnity insurance to contribute to the costs of 'run-off' cover (cover for midwives who cease practise).

Background

More detailed information on the policy issues raised by this suite of Bills is included in the Bills Digest for the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and in particular insurance issues are dealt with in the Digest for the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009.

What is run-off cover?

There are two types of medical indemnity insurance policy which are known as a 'claims made' policy or a 'claims incurred' policy.

Under a 'claims incurred' policy, the policy holder pays a premium for each year and is covered for all claims that are lodged in relation to an incident in that year, regardless of when the actual claim is lodged.

Under a 'claims made' policy, the policy holder pays a premium for each year and is covered for all claims that are lodged in that year and which relate to an incident that occurs in that year. Claims made in other years for an incident that occurs in that policy year will not be covered by a 'claims made' policy.

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If a policy holder wishes to leave practice for a period of time or retire altogether, they must take out an additional insurance policy, known as ‘run-off cover’, if they wish to have insurance cover for claims made in those non-practising/retirement years.

The Midwife Professional Indemnity (Commonwealth Contributions) Scheme Bill 2009 sets up a professional indemnity scheme in the form of a ‘claims made’ policy.

Committee consideration

Along with two cognate Bills, the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009, this Bill has been referred to the Senate Community Affairs Committee for inquiry and was due to report by 7 August 2009. On that date the Committee issued an interim report pointing to the 1880 submissions received and suggesting that more time was necessary to give due consideration to the submissions. The new reporting date is 17 August 2009.¹ Details of the inquiry are at http://www.aph.gov.au/Senate/committee/clac_ctte/health_leg_midwives_nurse_practitioners_09/index.htm

Financial implications

The Explanatory Memorandum estimates that the two Bills dealing with midwives indemnity will have a total cost of \$25.2 million over four years (including the effects of delegated legislation). This figure incorporates ‘the budgeted annual costs, which include administrative and Department of Health and Ageing costs, and administrative costs for Medicare Australia to introduce the necessary systems changes and manage the program’:²

2009-10 (\$ million)	2010-11 (\$ million)	2011-12 (\$ million)	2012-13 (\$ million)	Total (\$ million)
\$4.7	\$8.1	\$4.4	\$7.9	\$25.2

1. Details of the inquiry are at the Senate Community Affairs Committee website, viewed 11 August 2009, http://www.aph.gov.au/Senate/committee/clac_ctte/health_leg_midwives_nurse_practitioners_09/index.htm
2. Explanatory Memorandum, Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009, Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009, p. 3.

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Key issues

The Bill purports to impose a tax,³ referred to as a ‘run-off cover support payment’ on ‘eligible insurers’.

Sections 53 and 55 of the *Commonwealth of Australia Constitution Act* (the Constitution) deal with laws imposing taxation. In particular such a law:

- cannot originate in or be amended by the Senate⁴
- must deal only with the imposition of taxation, so that any provision in the proposed law dealing with any other matter has no effect.⁵

It would appear from the form and content of the Bill that it conforms with the provisions of section 55 of the Constitution as clause 4 imposes the run-off cover support payment as a tax.

Main provisions

At the outset it is important to note that **clause 8** provides that the Minister⁶ may, by legislative instrument, make Rules in respect of the matters covered by the proposed Act which are necessary and convenient to give effect to the Act.⁷ Likewise **clause 9** provides for the making of regulations in respect of the proposed Act. It would appear that most of the relevant instruments will be Rules. Although both Rules and Regulations are legislative instruments in accordance with the *Legislative Instruments Act 2003*, rule-making is slightly faster than regulation-making as regulations must be approved by Executive Council whereas Rules do not. In any event, Rules and Regulations are required to be tabled in both Houses of Parliament and are subject to disallowance.

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3. A ‘tax’ is defined as a ‘compulsory exaction of money by a government for public purposes, being neither a pecuniary penalty nor a fee for services rendered’. *Butterworths Concise Australian Legal Dictionary*, Third edition, LexisNexis Butterworths, Australia, 2004, p. 423.
 4. Section 53, *Commonwealth of Australia Constitution Act*.
 5. Section 55, *Commonwealth of Australia Constitution Act*.
 6. In accordance with section 19A of the *Acts Interpretation Act 1901*, a reference to ‘the Minister’ is a reference to the Minister for Health and Ageing.
 7. Section 6 of the *Legislative Instruments Act 2003* provides that a legislative instrument includes, amongst other things, Statutory Rules. A legislative instrument must be tabled in both houses of the Parliament and is subject to disallowance.

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Clause 4 of the Bill provides that for each '**contribution year**' a run-off cover support payment is imposed as a tax on each eligible insurer. An 'eligible insurer' is an insurer included in a class of insurers specified in the Rules.⁸

Clause 5 of the Bill defines the term '**contribution year**' which is either:

- a financial year that starts on or after 1 July 2010: **paragraph 5(1)(a)**, or
- another period of 12 months, specified in the Rules, which starts on or after 1 July 2010: **paragraph 5(1)(b)**.

A period set by rule under proposed paragraph 5(1)(b) may relate to a particular insurer or a class of insurers: **subclause 5(3)**. In addition, the Rules may declare that a specific financial year is the last 'contribution year': **subclause 5(2)**.

Clause 6 provides that the amount of run-off cover support payment payable by an eligible insurer in a contribution year is calculated having regard to a percentage of the insurer's '**premium income**' in the 12 months ending on 31 May in the contribution year or another period set out in the Rules.

Paragraph 6(2)(a) limits the applicable percentage to a maximum of 15 per cent. However, according to the second reading speech:

The actual rate will be set through rules detailed in a legislative instrument that will be tabled in Parliament.

It is expected that the actual rate will be initially set, on the advice of the Australian Government Actuary, at 10 per cent of premiums.⁹

Subclauses 6(3) and **(4)** allow for the making of Rules which may specify a different period or a different applicable percentage respectively for a particular eligible insurer or class of insurers.

An eligible insurer's '**premium income**' is calculated in accordance with the formula in **clause 7**. The calculation takes into account all premiums paid to the insurer during the period in respect of midwife professional indemnity cover, which is reduced by:

- the amount of goods and services tax payable in respect of premiums
- stamp duty payable under a State or Territory law

8. **Clause 3** of the Bill defines the term '**eligible insurer**' by reference to the same term in the *Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*.

9. N Roxon (Minister for Health and Ageing), 'Second reading speech: Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009', [House Hansard](#), 24 June 2009, p. 10.

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- other amounts specified in the Rules, and
- an amount calculated having regard to the formula in **subclause 7(3)**.

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