

1. INTRODUCTION

1.1 This report has been prepared to comply with certain requirements of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*. Section 48 of the Act provides for a report on aspects of the Midwife Professional Indemnity Scheme (the Scheme) to be tabled each year in Parliament. The report is required to contain a statement of the:

- number of persons eligible for the Run-Off Cover component of the Scheme (ROC Scheme) as set out in subsection 31(2) of the Act;
- total Run-Off Cover Commonwealth contributions (ROC Commonwealth contributions) paid by the Commonwealth during the financial year;
- total Run-Off Cover support payments (ROC support payments) paid to the Commonwealth during the financial year; and
- projected Commonwealth's liabilities in relation to amounts of Run-Off Commonwealth contributions in future financial years.

1.2 This is the first report that has been prepared under section 48 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*. It relates to financial year 2010-11.

2. BACKGROUND

2.1 Midwife professional indemnity insurance

2.1.1. Midwife professional indemnity insurance covers privately practising midwives for their professional negligence.¹

2.1.2 All privately practising midwives in Australia are now required to purchase professional indemnity insurance from private sector underwriters² under National Registration and Accreditation arrangements.

1 Midwife professional indemnity insurance can also cover other costs such as those associated with appearing at coronial inquiries.

2 On the other hand, many employed midwives practising solely in a public hospital will be indemnified by their employer against negligence.

2.1.3 At the time of preparing for this report, Medical Insurance Group Australia Pty Ltd (MIGA) is the only underwriter that provides Government-supported midwife professional indemnity covers to eligible registered midwives. This insurance will not, however, cover the planned delivery of babies outside of a hospital. As a result planned home births are excluded.

2.1.4 Midwife professional indemnity claims are initiated by, or on behalf of, patients against midwives. A very low number of claims of professional negligence might be expected each year in relation to private midwifery practice in Australia. However, in percentage terms, there could be substantial variation from one year to the next. The small population of privately practising midwives makes it difficult to project the number of midwife professional indemnity claims with any precision.

2.1.5 The cost to the insurer of midwife professional negligence claims would be expected to be highly variable since the claims relate to bodily injury. The cost of a midwife professional negligence claim to the insurer is made up of damages which are payable to the plaintiff, any of the plaintiff's legal costs which the insurer is obliged to pay, and the insurer's own costs of defending and managing the claim. There is very limited data available to make any meaningful projections about the size of claims. However, similar to professional indemnity claims against doctors, the overall cost of claims against midwives is likely to be dominated by a small number of large claims.

2.1.6 The professional indemnity claim process can be long. Years can elapse between the date of a negligent incident and the date that legal action against the midwife is initiated. It is not unusual for claims to take a number of years to finalise after they have been initiated. Using the medical indemnity claim process as a guide for these claims, the whole process could be expected to take more than five years for a single claim. The ultimate cost of a claim will depend significantly on economic and judicial conditions prevailing at the time the claim is finalised (paid), rather than at the time of the relevant incident or the time that the claim is made.

2.1.7 All of these factors make midwife professional indemnity insurance difficult for an insurer to accurately assess the cost of the product. It is hard to forecast claim numbers and claim sizes reliably. Moreover, much of the cost is likely to relate to a small minority of the claims, which adds further uncertainty.

2.2 Brief history of private midwife insurance in Australia — the lead-up to the Midwife Professional Indemnity Scheme

2.2.1 Historically, midwife professional indemnity cover was only available to Australian midwives practising in public or private hospitals. There was no professional indemnity product offered by insurers to privately practising midwives.

2.2.2 There are a number of reasons for this. The main reasons are that privately practising midwives represent a small potential premium pool and there is a lack of accurate and up-to-date data on likely claims cost.

2.2.3 The Australian Government's 2008 Maternity Services Review aimed to improve maternity care in Australia by providing greater choice and access to maternity services by Australian women and their families, and by supporting the maternity services workforce. One of the recommendations adopted was providing Government supported professional indemnity insurance to eligible and qualified midwives from 1 July 2010. Under a contract with the Government, MIGA will provide such professional indemnity insurance.

2.2.4 MIGA will pay the first \$100,000 of each eligible claim; plus 20 cents in the dollar for claims costs between \$100,000 and \$2 million. The Government will contribute the remaining 80 cents in the dollar for claims costs between \$100,000 and \$2 million (that is, Level 1 Commonwealth contributions) and will meet the full costs of claims over the \$2 million threshold (that is, Level 2 Commonwealth contributions).

2.2.5 These arrangements have reduced the net claims cost and the degree of claims cost uncertainty for the contracted midwife professional indemnity insurance provider, both of which, in turn, improve premium affordability for midwives.

2.2.6 All midwife professional indemnity insurance is provided on a 'claims-made' basis. Consequently, midwives have to maintain insurance in order to remain covered against claims that might emerge, even if they are no longer practising. This form of insurance cover is known as run-off cover. Put simply, run-off cover provides insurance protection for midwives who have ceased practice. The potential delay between a pregnancy or birth-related incident and a claim for damages highlights the need for midwives to maintain run-off cover after ceasing practice.

2.2.7 Similar to the Australian Government's Run-Off Cover Scheme for doctors, the Midwife Professional Indemnity Scheme also requires eligible insurers³ to provide run-off cover to eligible midwives who have ceased private practice. The Run-Off Cover component of the Scheme (ROC Scheme) is intended to be broadly cost neutral to taxpayers on a present value basis.

2.2.8 This report covers the ROC Scheme as required under section 48 of the Act. It does not cover the Commonwealth's liabilities in relation to Level 1 and Level 2 Commonwealth contributions.

3 At the valuation date, MIGA was the only eligible insurer.

2.3 What is the Run-Off Cover Arrangement?

2.3.1 The Midwife Professional Indemnity Scheme facilitates the provision of free professional indemnity insurance cover to particular groups of midwives who have ceased private practice.

2.3.2 The rules for the Scheme appear in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* (the Act) and the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010* (ROCSPA). The principal elements of the Scheme are as follows:

- Under arrangement with the Commonwealth, MIGA is required to provide run-off cover to particular groups of midwives who have ceased private practice.
- The Act provides for the Commonwealth to make payments to the insurers to reimburse the costs associated with eligible run-off claims. These payments are known as ROC Commonwealth contributions.
- The Act also provides for the insurers to make payments to the Commonwealth to ensure that the Scheme is broadly cost-neutral to taxpayers on a present value basis. These payments are levied as a tax on insurers' premium income. In practice, the cost is met by a loading on midwives' professional indemnity insurance premiums. These payments are known as ROC support payments. The ROCSPA sets out the rules for calculating ROC support payments.

2.3.3 The Scheme provides for ROC support payments to be made by eligible insurers to the Commonwealth and for ROC Commonwealth contributions to be made by the Commonwealth to eligible insurers.

2.3.4 An important financial dynamic of the ROC Scheme is the timing mismatch between the payment of ROC support payments by an eligible insurer and the emergence, payment and reimbursement of professional indemnity claims of eligible midwives who are no longer in private practice. The first ROC support payments were received on 30 June 2011. The ROC Scheme applies to eligible professional indemnity claims that are first notified to eligible insurers on or after 1 July 2010. As a result of inherent delays in the claims process, it is to be expected that the level of ROC support payments will be greater than the level of ROC Commonwealth contributions for a number of years. This has been demonstrated in the experience of the Run-Off Cover Scheme for doctors. That is, in a cashflow sense, the ROC Scheme is immature. It will probably take many years to reach maturity when income from ROC support payments and expenditure on ROC Commonwealth contributions are of a similar order of size.