



Australian Government

Australian Government Actuary

**First report on the costs of the
Australian Government's
Run-Off Cover Scheme for
midwife professional indemnity
insurers**

2010-11 financial year

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TABLE OF CONTENTS

1. INTRODUCTION	1
2. BACKGROUND	1
2.1 Midwife professional indemnity insurance	1
2.2 Brief history of private midwife insurance in Australia — the lead-up to the Midwife Professional Indemnity Scheme.....	2
2.3 What is the Run-Off Cover Arrangement?.....	4
3. DATA	5
3.1 Data collection	5
3.2 Data verification	5
3.3 Eligible midwives.....	5
3.4 Claims eligible for Run-Off Cover Commonwealth contributions	6
3.5 Run-Off Cover Commonwealth Contributions	6
3.6 Run-Off Cover support payments.....	7
4. FINANCIAL MANAGEMENT OF THE RUN-OFF COVER SCHEME	8
4.1 Future liabilities of the Run-Off Cover Scheme	8
APPENDICES	9
Appendix 1: Run-Off Cover support payments.....	9
Appendix 2: Eligible practitioners and Run-Off Cover Scheme contracts	10
Appendix 3: Run-Off Cover Scheme claims	11

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.

3. DATA

3.1 Data collection

3.1.1 For the purpose of preparing this report, certain data was collected from MIGA by Medicare Australia during late 2011 including:

- details of midwives who were identified as having become eligible for the ROC Scheme under subsection 31(2) of the Act before 30 June 2011;
- details of claims (including incidents) notified to MIGA by 30 June 2011 which might eventually become eligible for reimbursement under the ROC Scheme;
- details of ROC support payments;⁴
- actuarial estimates of that part of the future claims cost of incidents projected to be notified during the 2011-12 to 2014-15 financial years which is expected to be reimbursed under the ROC Scheme; and
- actuarial estimates of that part of the future claims cost of incidents occurring during 2011-12 which is expected to be reimbursed under the ROC Scheme.

3.2 Data verification

3.2.1 The results in this report rely on information provided by MIGA and MIGA's actuaries as well as ROC support payment data and midwife eligibility data provided by Medicare Australia. Guidance was provided as to the nature of the data, calculations and information required. This information is regarded as the most suitable information available for the current purpose.

3.3 Eligible midwives

3.3.1 Midwives performing private practice become eligible for the ROC Scheme by means of permanent retirement at age 65 years or older, cessation of private practice for three years, death, permanent disability or maternity leave.

4 A database of ROC support payments is maintained by Medicare Australia.

3.3.2 Appendix 2 describes the test of eligibility for the ROC Scheme and the process of issuing and notifying compulsory run-off cover to eligible midwives. Eligible midwives are entitled to receive notification of the terms and conditions of compulsory run-off cover from MIGA. MIGA is also required to notify Medicare Australia of the details of the compulsory run-off cover provided.

3.3.3 There are inherent lags involved in notification of the details of eligible midwives to Medicare Australia. As a result, it will be possible only to estimate the number of midwives who have become eligible for the ROC Scheme at any time. For example, there will often be a delay between the time that a midwife becomes eligible for the ROC Scheme and the time when the insurer becomes aware of this. For all of these reasons, the numbers of eligible midwives reported by MIGA need to be treated with caution.

3.3.4 According to the eligibility data provided by Medicare Australia, there were no eligible midwives⁵ as at the valuation date.

3.4 Claims eligible for Run-Off Cover Commonwealth contributions

3.4.1 MIGA is entitled to reimbursement from the Australian Government for the costs of claims which:

- are first notified to MIGA on or after 1 July 2010;
- relate to an incident which occurs or occurred on or after 1 July 2010;
- relate to a midwife who is eligible under the ROC Scheme at the date of notification⁶; and
- meet the other requirements for 'payable claims'.⁷

3.4.2 As at 30 June 2011, MIGA has not identified any claim as potentially being eligible for the Scheme.

3.5 Run-Off Cover Commonwealth Contributions

3.5.1 ROC Commonwealth contributions are the payments made by the Australian Government to MIGA as reimbursement of the costs of eligible claims.

5 That is, no midwives were eligible for the Run-Off Cover component of the Scheme.

6 Refer paragraph A.2.1.

7 Refer paragraph A.3.2.

3.5.2 If a claim is eligible for Level 1 or Level 2 Commonwealth contributions, then the amount of the ROC Commonwealth contribution is reduced by the amount of the Level 1 or Level 2 Commonwealth contribution.

3.5.3 No ROC Commonwealth contributions were made during 2010-11.

3.5.4 The Commonwealth's own administration costs are funded separately and so are not considered in this report.

3.6 Run-Off Cover support payments

3.6.1 ROC support payments are paid to Medicare Australia in the form of an annual lump sum imposed as a tax on MIGA from 1 July 2010 under the ROCSPA.

3.6.2 The amount of ROC support payments is calculated using a method set out in the ROCSPA. Appendix 1 describes the calculation in detail. Very briefly, it is based on:

Applicable rate × (premium income less taxes and charges) ÷ (1 + applicable rate).

3.6.3 In 2010-11, the applicable rate was 10 per cent.

3.6.4 In total, \$7,500 ROC support payments were received during the 2010-11 financial year.

3.6.5 In order to provide full transparency for midwives, MIGA is required to attribute ROC support payments to individual policyholders. Each premium notice specifies the amount that has been included in the policyholder's invoice to meet MIGA's ROC support payment obligations. All amounts are reported to Medicare Australia, which maintains a record of each practitioner's total run-off cover credit. Interest is applied to this balance annually at the short term bond rate in accordance with section 44 of the Midwife Professional Indemnity Act.

3.6.6 Division 4 of the Midwife Professional Indemnity Act provides for certain payments, should the Scheme ever be wound up without alternative arrangements being put in place. Thus, midwives who were still practising at the time of the windup of the ROC Scheme would be entitled to have an amount not exceeding their total run-off cover credit paid to their nominated professional indemnity provider. Midwives who were eligible for the ROC Scheme at the time of its wind-up would not be entitled to any refund but would continue to be covered for any future claims that might emerge.

4. FINANCIAL MANAGEMENT OF THE RUN-OFF COVER SCHEME

4.1 Future liabilities of the Run-Off Cover Scheme

4.1.1 The estimation of the Commonwealth's liabilities under the ROC Scheme in future years is an inherently imprecise process. The operation of the ROC Scheme is likely to be characterised by a small number of claims of highly variable size. It is not possible to predict the costs of the ROC Scheme with a high level of confidence. For example, the presence of even a single large claim in any given year would be expected to have a substantial effect on the total amount of ROC Commonwealth contributions for that year.

4.1.2 The liabilities of the ROC Scheme could be measured in a number of ways. It is normal for insurance-type liabilities to be measured on either a 'notified' or an 'occurrence' basis. On a notified basis, new liabilities would accrue to the Scheme as new claims were notified. On an occurrence basis, new liabilities would accrue to the Scheme at the time of the occurrence of the incidents which were expected to give rise to professional indemnity claims which would attract a ROC Commonwealth contribution.

4.1.3 Under the occurrence model, liabilities are recognised more quickly than under the notified model. The occurrence model is more consistent with the notion that the Scheme is ongoing. Accordingly, the occurrence model will be adopted for this purpose. The liabilities of the ROC Scheme will therefore be taken as the present value of future ROC Commonwealth contributions which relate to relevant pregnancy or birth-related incidents which occurred before the effective date of valuation.

Based on the available data, we estimate the liabilities of the Scheme at the valuation date to be \$0.



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10 May 2012

APPENDIX 1: RUN-OFF COVER SUPPORT PAYMENTS

A.1.1 ROC support payments are paid to Medicare Australia in the form of an annual lump sum imposed as a tax on each insurer (currently MIGA is the only insurer) from 1 July 2010.

A.1.2 The amount of ROC support payments is calculated as a percentage of premium income received from contributing midwives. The calculation rules are set out in the ROCSPA and regulations. The tax imposed on each insurer is the applicable percentage of the insurer's premium income (section 7) for the applicable contribution year ending on 30 June or an alternative date specified in the regulations (section 5).

A.1.3 Under section 7, an insurer's premium income for the purpose is the sum of all of the premiums paid to the insurer for midwife professional indemnity cover provided for eligible midwives by contracts of insurance with the insurer, reduced according to the formula:

Premium income equals

Net premium — Net premium × Applicable percentage ÷ (1 + Applicable percentage)

A.1.4 Net premium is calculated according to section 7 as follows:

- sum of all premiums paid to the insurer during the operation of the Scheme for midwife professional indemnity cover provided for eligible midwives;
- minus the amount of GST payable (subsection (2)(a)) and the amount of stamp duty payable (subsection (2)(b)) in relation to the premiums; and
- plus/minus other payments specified in the regulations.

A.1.5 For premium payments relating to 2010-11, the applicable percentage is specified in the regulations as 10 per cent for all insurers, and thus the ROC support payment will be calculated as net premium x 10 per cent ÷ 1.10.

APPENDIX 2: ELIGIBLE PRACTITIONERS AND RUN-OFF COVER SCHEME CONTRACTS

ELIGIBLE PERSONS

A.2.1 Eligible persons are those who fit one or more of the following eligibility categories at the time the claim (or incident) is first notified to the eligible insurer (section 31(2) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*):

- A person aged 65 years or older who has permanently retired from private practice as an eligible midwife.
- A person who has not engaged in private practice as an eligible midwife at any time during the preceding three years. (Note: unlike other categories, eligibility does not occur immediately upon ceasing practice).
- A person who has ceased the person's practice as an eligible midwife because of maternity.
- A person who has ceased the person's practice as an eligible midwife due to permanent disability.
- A legal representative of a deceased person who had been an eligible midwife.

A.2.2 Eligible midwife means a person who:

- is licensed, registered or authorised to practice midwifery by or under a law of the Commonwealth, a State or a Territory; and
- meets such other requirements (if any) as are specified in the Rules.

PROVISION AND NOTIFICATION OF COMPULSORY RUN-OFF COVER

A.2.3 Under an arrangement in force with the Commonwealth, MIGA is required to notify eligible midwives of their entitlement to run-off cover and then to provide that cover to them.

APPENDIX 3: RUN-OFF COVER SCHEME CLAIMS

A.3.1 The legislation defines claims broadly. Claims need not involve legal proceedings. Claims may include civil claims for negligence, administrative proceedings, disciplinary proceedings (including those performed by a professional body) and inquiries or investigations into conduct (subsection 5(1) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*).

A.3.2 A ROC claim is payable to an insurer under section 32 if:

- it relates to incident(s) that occurred on or after 1 July 2010;
- it relates to a person eligible under section 31(2) (see Appendix 2);
- it relates to incident(s) occurring in connection with the person's practice as an eligible midwife;
- the person has midwife professional indemnity run-off cover that indemnifies the person in relation to the claim; and
- the claim would be paid in the ordinary course of the insurer's business.

A.3.3 Where these criteria are met, the Commonwealth is liable to pay run-off cover indemnities regardless of whether the insurer has sought private reinsurance (section 71).

A.3.4 Applications for ROC Commonwealth contributions must be made to Medicare Australia (section 58 of the Act). They are paid by the CEO of Medicare Australia before the end of the month that immediately follows the month in which the eligible insurer applies for the indemnity (section 59).

A.3.5 If a Level 1 or Level 2 Commonwealth contribution is payable in respect of that payment, the amount of the run-off cover Commonwealth contribution is reduced by the amount of the Level 1 or Level 2 Commonwealth contribution (section 35(2)).

