Australian Capital Territory

Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2025

Subordinate law No. 26/2025

made under the

Health Practitioner Regulation National Law (ACT)

EXPLANATORY STATEMENT

This explanatory statement relates to the Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2025 (the Regulation). It has been prepared to assist the reader of the Regulation. It does not form part of the Regulation.

The Regulation is made under section 245 of the Health Practitioner Regulation National Law (ACT) by the Ministerial Council on 1 May 2025. The Regulation came into effect on 13 May 2025 by operation of Statutory Rule No 26/2025 (Vic).

OVERVIEW OF THE REGULATION

The Health Practitioner Regulation National Law (National Law) establishes a national registration and accreditation scheme for health practitioners. Section 129 of the National Law requires registered health practitioners to maintain appropriate professional indemnity insurance (**PII**) in relation to the practice of their profession. Since the National Law commenced on 1 July 2010, there has been no suitable PII product to cover homebirths provided by privately practising midwives (**PPMs**).

To enable PPMs to have registration certainty and allow time for a suitable insurance product to be identified, section 284 of the National Law provides a transition provision which provides a time limited exemption from the requirement to hold PII for PPMs attending homebirths. The expiration date of the exemption is prescribed in the Health Practitioner Regulation National Law Regulation 2018 (**National Law Regulation**). Initially, the transition period was set to expire on 30 June 2012. The transition period has been extended several times and is currently due to expire on 1 July 2025.

The Commonwealth Government has committed funding to expand the Midwife Professional Indemnity Scheme (**MPIS**) to cover PPMs providing intrapartum care services, in both a homebirth setting and during labour outside a hospital prior to a planned hospital birth. It is expected this product will be available to PPMs on 1 July 2025. An extension of the transitional period is required to ensure there is sufficient coverage for PPMs while the new insurance product is implemented. Once the PII product is established and implemented, it will provide a permanent solution to suitable PII for PPMs that provide home birth services, and an exemption will no longer be required.

The Regulation amends the National Law Regulation to extend the current exemption for PPMs who attend homebirths to comply with the requirement to hold PII. The new expiry date is 31 December 2026.

Extending the exemption until this date will allow sufficient time for PPMs to be informed about the new insurance product and make the necessary arrangements to purchase PII to maintain their registration status. If the exemption expires before this can occur, PPMs may be unable to maintain their registration and birth givers and families seeking a homebirth may be adversely impacted if they are unable to access registered PPMs. The 18-month timeframe will also allow the Australian Health Practitioner Regulation Agency and the Nursing and Midwifery Board of Australia to update their policies and guidelines in relation to PPMs.

CONSULTATION ON THE PROPOSED APPROACH

Health Ministers from all States and Territories and the Commonwealth have agreed to extend the current exemption until 31 December 2026 to allow sufficient time to implement the insurance product for PPMs.

The Australian Health Practitioner Regulation Agency was consulted on the drafting of the Regulation and did not object to the making of the Regulation.

The Regulation was assessed by ACT Health, in accordance with section 36(1) of the Legislation Act 2001 (ACT), as meeting a category of exclusion from regulatory impact assessment on the basis that, amongst other things, the amendments are minor and technical in nature with no change of policy, and is a matter arising under a territory law that is part of a uniform scheme of legislation or complementary with legislation of the Commonwealth, a State or New Zealand (that is, the National Law).

CONSISTENCY WITH HUMAN RIGHTS

The regulation has been analysed for consistency with the *Human Rights Act 2004* (**Human Rights Act**).

Rights engaged

The regulation engages the following rights under the Human Rights Act.

- Section 9 – right to life
- Section 27B – right to work.

Right promoted – right to life

Section 9 of the Human Rights Act provides that everyone has the right to life, and that no-one may be arbitrarily deprived of life The right to life requires the ACT

Government to safeguard life where there may be a real and immediate direct or indirect risk to life.

By ensuring that PPMs have registration security, the Regulation will also promote the accessibility of key health care services to support home birth services. This Regulation therefore promotes the right to life as it will reduce the adverse impact on birth givers and their families of an otherwise more potentially limited access to reproductive health services.

Right promoted – right to work

Section 27B of the *Human Rights Act 2004* provides that everyone has the right to work, including the right to choose their occupation or profession freely. The Regulation provides registration security to PPMs, which facilities the free practice of their profession, which include providing intrapartum care in home settings. The Regulation therefore promotes the rights of PPMs to continue to practice their profession until implementation of the proposed PII product is completed.

CLAUSE NOTE

Clause 1 Short title

Clause 1 names the regulation as the *Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2025*.

Clause 2 Commencement

Clause 2 provides for the commencement of the regulation on 13 May 2025, which is the day the national regulation was published by the Victorian Government Printer.

Clause 3 Regulation amended

Clause 3 notes that this regulation amends the *Health Practitioner Regulation National Law Regulation 2018.*

Clause 4 Amendment of s 40 Transition period in relation to professional indemnity insurance arrangements for midwives practising private midwifery

Clause 4 provides for the extension of the time limited exemption from the requirement to hold PII for PPMs attending homebirths for an additional 18 months.