

## Fact sheet

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Updated June 2019

### Professional indemnity insurance arrangements

#### Introduction

The Nursing and Midwifery Board of Australia (NMBA) undertakes functions as set by the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law). The NMBA regulates the practice of nursing and midwifery in Australia, and one of its key roles is to protect the public. The NMBA does this by developing registration standards, professional codes, guidelines and standards for practice which together establish the requirements for the professional and safe practice of nurses and midwives in Australia.

Under section 129 of the National Law, a registered health practitioner must not practise the profession in which they are registered unless appropriate professional indemnity insurance (PII) arrangements are in force in relation to their practice. Requiring registered health practitioners to hold appropriate PII arrangements is an important part of how the National Registration and Accreditation Scheme (the National Scheme) protects the public by addressing the risk posed by uninsured practitioners.

The NMBA's [Registration standard: Professional indemnity insurance arrangements](#) sets out the minimum requirements for (PII) arrangements for enrolled nurses, registered nurses and midwives. Nurses and midwives can be covered by their own or third party PII arrangements.

This fact sheet provides guidance to nurses and midwives regarding their requirements for PII arrangements.

#### Meeting the requirement to hold PII arrangements

As a nurse and/or midwife you are required to meet the NMBA's registration standards. These obligations include having appropriate PII arrangements in place when you practise your profession.

You need to take steps to make sure that you have PII arrangements in place which provide adequate and appropriate cover for all aspects of your practice. The NMBA's *Registration standard: Professional indemnity insurance arrangements* requires enrolled nurses, registered nurses, nurse practitioners and midwives who hold insurance cover in their own name to retain evidence of their insurance and to provide it to the NMBA on request. PII arrangements may be provided:

- through your private or public sector employer
- as part of membership of a professional body, trade union or defence organisation
- through a contract of insurance obtained by you directly from an insurer or through an insurance broker, or
- through a combination of the above.

#### Employed nurses and midwives

If you are employed, and you only work for an employer, your employer is likely to have PII arrangements that provide appropriate cover for your practice and the risks involved in your work. An employer's PII arrangements will only provide cover for activities you carry out as part of your duties during your employment.

Arrangements can vary between different employers, so if you are not sure about what is covered by your employer's PII arrangements, you should always check with your employer.



## Self-employed nurses and midwives

If you are self-employed, you will need to make sure that you have made your own PII arrangements. Some professional bodies, trade unions and defence organisations offer PII cover as part of their membership or for an extra fee. Alternatively, you can also arrange your own cover directly through an insurer or an insurance broker.

## PII requirements for privately practising midwives providing homebirth services

For further information on PII arrangements for privately practising midwives, see Appendix I 'If you are a midwife working in private practice'.

## Practising in a combination of employed and self-employed roles

**If you carry out a combination of employed and self-employed roles**, you will need to make sure that you have PII arrangements in place for your self-employed work, as this will not be covered by any PII arrangements put in place by your employer. You should always make sure you have PII arrangements in place which provide appropriate cover for all parts of your practice.

**If you are practising as a volunteer** or in an unpaid position, you are still required to have appropriate PII arrangements in place. Some voluntary organisations will have PII arrangements which cover their volunteers' activities. If you hold your own PII arrangements, you should check to see if these cover any practice you do as voluntary work.

## What are the PII requirements if I hold non-practising registration?

If you are registered but are not practising for part of the registration period (for example, if you take a six month leave of absence), you do not need to have PII arrangements for that period. However, when you decide to cease practice, you must take out appropriate run-off cover for matters that would otherwise be uncovered arising from your previous practice as a nurse and/or midwife.

## What does 'amount of cover' mean?

You must make sure that your PII arrangements provide an appropriate amount of cover. This means that your PII arrangements provide cover appropriate to the nature, context and risks of your professional practice. Practising without appropriate PII arrangements in place is behaviour for which health, conduct or performance action may be taken under the National Law.

The amount of cover needs to be enough to meet any liability (that is, legal responsibility) to pay compensation if a successful claim is made against you. The appropriate amount of cover for you may depend on a combination of factors, including, for example:

- the practice area or areas you work in
- the service users you work with
- the risks involved with your practice
- your previous history of insurance claims and the type of claim made against you in the past, if any, and
- your professional experience.

What might be appropriate cover for one registered health practitioner may be not be appropriate for another. You need to make sure that you consider the risks which may arise from your own practice and make sure that your PII arrangements provide adequate cover appropriate for those risks.

You are in the best position to seek advice from your insurer or insurance broker, defence organisation, professional body, trade union, and/or employer, to make reasonable, informed decisions about the level of cover appropriate to you and your practice. You need to be able to justify your decisions.

## What does 'run-off cover' mean?

Run-off cover is a type of cover that practitioners may need when they stop practising, depending on the type of PII arrangements they have held while practising. It protects a health practitioner who has ceased practice, against claims that arise out of or are a consequence of activities that were undertaken when the practitioner was conducting that practice.

If you have held a PII policy that is a 'claims made' policy, this only covers you for claims made during the period of cover, and you would need to have run-off cover to deal with any claims made after you stop practising and your claims made cover has ended.

If you have held a PII policy that covered you for any incidents which occurred during the period of cover, known as 'occurrence-based' cover (either through an individual policy or other arrangements), you will not need run-off cover to deal with any claims arising from when you finish practice.

### **What does the requirement for automatic reinstatement mean?**

'Automatic reinstatement' is a provision in insurance policies which allows for the amount insured (the limit of indemnity or liability) to be reinstated (restored) for new, unrelated claims, after one or more claims has been paid to the limit of the amount insured.

It is a requirement under the NMBA's *Registration standard: Professional indemnity insurance arrangements* that PII arrangements for nurses and/or midwives include automatic reinstatement to ensure that cover would not be exhausted if there was a single large claim made.

This outcome may also be achieved by a practitioner's PII policy providing for aggregate coverage of a certain amount, with a lower limit (usually half of the total insured) set on the amount that will be covered in relation to any one claim.

### **What is my duty of disclosure?**

As with any insurance policy, you have a duty to disclose any information to your PII arrangements provider (or the third party responsible for your PII arrangements) that you know, or could reasonably be expected to know, might affect their decision to provide or to continue providing your PII arrangements.

The duty of disclosure exists whether the insurance is provided under a contract of insurance or any other PII arrangement.

### **Is it my responsibility to ensure that my PII arrangements are in place?**

As a nurse and/or midwife, you are responsible for continuing to meet the NMBA's standards and all other obligations of your registration. It is your responsibility to ensure that the PII arrangements you organise, or are organised on your behalf by a third party, are appropriate for your practice and meet the NMBA's *Registration standard: Professional indemnity insurance arrangements*.

When you apply for registration you are asked to declare that you will not practise the profession unless you have PII arrangements in place. Each year when you renew your registration, you will be asked to make a declaration that you practised the profession in accordance with the requirements of the NMBA's *Registration standard: Professional indemnity insurance arrangements* and that you will not practise the profession unless you have PII arrangements in place that meet this standard.

Because having PII arrangements in place is a requirement of your registration, if you do not complete the declaration, the NMBA can refuse your application for registration or renewal or impose a condition on your registration. For example, the NMBA may impose a condition that you must not practise your profession until you have appropriate PII arrangements in place.

The NMBA will not ask you to routinely provide certificates or other evidence of your PII arrangements. However, you may be asked for evidence for routine audit purposes or if, for example, there is concern that you may not have PII arrangements in place or that the PII arrangements may not provide appropriate cover. The type of evidence you need to demonstrate compliance is set out in the NMBA's *Registration standard: Professional indemnity insurance arrangements*.

### **What do I do if my practice changes?**

The NMBA recognises that your practice may change. For example, this might be because you decide to focus your practice on a particular area, expand your practice into new areas, start working with a new client group, or move into a role in management, education or research.

This might mean that the level of cover you need changes or that you need to make other arrangements. You must make sure that you continue to have PII arrangements in place which provide appropriate cover for your practice.

### What do I do if my PII arrangements change?

You need to inform the NMBA in writing within seven days, if at any point when you are registered, you no longer have appropriate PII arrangements in place for your professional practice. Failing to notify the NMBA within seven days is considered behaviour for which health, conduct or performance action may be taken under the National Law.

However, you do not need to inform the NMBA about routine changes, such as a change of insurance provider or if you do not have PII arrangements in place because you are no longer practising.

### For more information

- [Registration standard: Professional indemnity insurance arrangements](#)
- [Audit](#) information on the NMBA website
- Visit [www.nursingmidwiferyboard.gov.au](http://www.nursingmidwiferyboard.gov.au) under *Contact us* to lodge an online enquiry form
- For registration enquiries: 1300 419 495 (in Australia) +61 3 9275 9009 (overseas callers)

### **Australian Government-supported insurance scheme**

From 1 July 2010, privately practising midwives have had access to Australian Government-supported PII, and can purchase insurance from Medical Insurance Group Australia (MIGA).

The Government-supported insurance does not cover the planned delivery of babies in the home. There are a number of specific requirements that midwives must meet to qualify for this insurance cover.<sup>1</sup>

#### **Exemption for intrapartum care during homebirth**

Under section 284 of the National Law, there is exemption from PII arrangements for midwives practising private midwifery who provide intrapartum services for women planning to have homebirths.

This exemption is strictly limited to the provision of private intrapartum care provided in a homebirth setting. Midwives working in private practice will still require appropriate insurance to provide antenatal and postnatal care to women in their care, regardless of the planned location of the birth. The exemption is only available if midwives meet the requirements set out in section 284 of the National Law.

Section 284(2) of the National Law provides that midwives who practise private midwifery are not required to include in an annual statement to the NMBA under section 109, a declaration required by subsection (1)(a)(iv) and (v) of that section, in relation to the practise of private midwifery during a period of registration that is within the transition period.

Section 284 of the National Law is a transitional provision and this exemption will be available only from 1 July 2010 to 31 December 2021.

#### **Requirements for exemption of midwives under section 284 of the National Law**

Section 284 of the National Law outlines a number of requirements making it possible for midwives in private practice to be able to provide intrapartum care at a homebirth for women and their infants without having the PII cover required for all other aspects of midwifery care across antenatal care and postnatal care.

For the PII exemption to apply under the National Scheme and satisfy NMBA requirements, midwives in private practice will be required to demonstrate they meet all obligations in the NMBA's [Safety and quality guidelines for privately practising midwives](#).

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<sup>1</sup> Available at [www.miga.com.au](http://www.miga.com.au)

## Glossary

**Automatic reinstatement** is a provision in policies which allows for the limit of indemnity (amount insured) to be reinstated for new, unrelated claims, after one or more claims has been paid to the limit of the indemnity.

**Civil liability insurance** means insurance that covers the costs of liability incurred by the insured arising from civil claims seeking compensation for personal injury, harm or loss incurred, where the claim arises directly from an alleged act, error or omission committed in the conduct of the practitioner's practice or professional business during the policy period. Civil liability cover includes cover for legal expenses incurred in defence or settlement of a civil claim and for damages payable.

**Exemption for midwives practising private midwifery** means under section 284 of the National Law a midwife who practices private midwifery may be exempt from the requirement for PII arrangements for intrapartum care.

**Midwife** includes all midwives, including any midwives with a scheduled medicines endorsement.

The NMBA has endorsed the [International Confederation of Midwives](#) (ICM) definition of a midwife (that includes the statement below on scope of practice) and has applied it to the Australian context.

The [ICM](#) defines a midwife as follows:

*A midwife is a person who has successfully completed a midwifery education programme that is duly recognised in the country where it is located and that is based on the ICM essential competencies for basic midwifery practice and the framework of the ICM global standards for midwifery education; who has acquired the requisite qualifications to be registered and/or legally licensed to practise midwifery and use the title 'midwife'; and who demonstrates competency in the practice of midwifery.*

Scope of practice<sup>2</sup>

*The midwife is recognised as a responsible and accountable professional who works in partnership with women to give the necessary support, care and advice during pregnancy, labour and the postpartum period, to conduct births on the midwife's own responsibility and to provide care for the newborn and the infant. This care includes preventative measures, the promotion of normal birth, the detection of complications in mother and child, the accessing of medical care or other appropriate assistance and the carrying out of emergency measures. The midwife has an important task in health counselling and education, not only for the woman, but also within the family and the community. This work should involve antenatal education and preparation for parenthood and may extend to women's health, sexual or reproductive health and child care.*

*A midwife may practise in any setting including the home, community, hospitals, clinics or health units*

**National Law** means the Health Practitioner Regulation National Law, as in force in each state and territory.

**National Scheme** means the National Registration and Accreditation Scheme for health professions. More information about the National Scheme is available at [www.ahpra.gov.au](http://www.ahpra.gov.au)

**Nurse** includes enrolled nurse, registered nurse, nurse practitioner and any registered nurse with a scheduled medicines endorsement.

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<sup>2</sup> Scope of practice forms a part of the ICM definition of a midwife [www.internationalmidwives.org](http://www.internationalmidwives.org)

**Nursing and Midwifery Board of Australia (NMBA)** means the national body responsible for the regulation of nurses and midwives in Australia

**Occurrence-based policy** means a policy that is in place when the event which is the subject of the claim occurred, even if the policy has not been renewed.

**Practice** means any role, whether remunerated or not, in which an individual uses their skills and knowledge as a health practitioner in their profession. For the purpose of this registration standard, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge (working) in a direct non clinical relationship with clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.

**Privately practising midwives (PPMs)** means a midwife who is working as sole practitioner, in partnership or in self-employed models and working on their own account. Midwives may also be deemed to be working in a private capacity when they provide midwifery services in a voluntary capacity as an individual or as part of a program run by a welfare, aid or charitable organisation where the organisation is not formally an employer.

**Professional indemnity insurance (PII) arrangements** means arrangements that secure for the practitioner's professional practice, insurance against civil liability incurred by, or loss arising from, a claim that is made as a result of a negligent act, error or omission in the conduct of the practitioner. This type of insurance is available to practitioners and organisations across a range of industries and covers the cost and expenses of defending a legal claim, as well as any damages payable. Some government organisations under policies of the owning government are self-insured for the same range of matters.

**Retroactive cover** means PII arrangements which cover the insured against claims arising out of or in consequence of activities that were undertaken in the course of the practitioner's professional practice, prior to the date of the commencement of the insurance.

**Run-off cover** means insurance that protects a practitioner who has ceased a particular practice against claims that arise out of or are a consequence of activities that were undertaken when he/she was conducting that practice. This type of cover may be included in a PII policy or may need to be purchased separately.

**Third party cover** means the cover that an individual holds through a third party's insurance arrangement, such as through an employer, education provider or union.

## Document control

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