MINORITY REPORT BY COALITION SENATORS

Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and Two Related Bills

Introduction

1.1 The Legislation considered by the inquiry seeks to reform the provision of maternity services in Australia by providing midwives access to the Medical Benefits Schedule (MBS), the Pharmaceutical Benefits Scheme (PBS), and a Commonwealth-supported Professional Indemnity Insurance (PII) scheme. However, the legislation will exclude midwives who attend homebirths from accessing these schemes and, as such, from being registered on the National Registration and Accreditation Scheme.

1.2 Coalition Senators believe that the Chair's Report addressed a number of issues within the legislation, but drew the wrong conclusions from the evidence and misrepresented some of the submissions made. For instance, the Chair's report states that the legislation was generally supported by submitters, and the Maternity Coalition are provided as an example of this support.[1] However, the Maternity Coalition and similar submissions, whilst supporting the Bill's policy towards midwives in general, were very critical of the consequences the legislation will have towards midwives involved in homebirths.[2]

1.3 Coalition Senators have approached this inquiry with two principles. Firstly, that expecting parents should have a right to choose where their child is born. Secondly, the Parliament must not allow the practice of home-birthing to go underground. By essentially outlawing homebirths, the Government will force many mothers to give birth in potentially unsafe environments.

1.4 The Committee took submissions and heard evidence from numerous groups and individuals seeking to comment on the exclusion of homebirth midwives. This Minority Report outlines these concerns with comments on the Government discrimination against home birth practitioners, Professional Indemnity Insurance for them, and the family's right to choose a birthplace. Coalition Senators also wish to comment on the measure that allows a midwife or nurse to refer the patient directly to an obstetric specialist without consulting the patient's General Practitioner (GP), and the availability of a hospital place for all women giving birth.

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[1] Chair's Draft Report, *Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and Two Related Bills*, p. 4.

[2] Maternity Coalition, *Submission 13*, p. 2.

Discrimination of midwife practitioners

2.1 The incidence of homebirths in Australia is relatively small when compared to other types of births available. In 2006 there were 832 births in homes, compared to 269,945 births in hospitals.[3] Homebirths only accounted for 3 of every 1000 births. The Minister for Health and Ageing has used an even lower figure, stating that 708 babies were homebirthed in 2006 out of 282,000 total births.[4] The reason for such a small percentage of homebirths is not necessarily due to the choice made by families. State regulations already prevent midwives from practicing unless they are a registered midwife or medical practitioner.[5] Such regulations have already minimised the availability of midwives who are eligible to perform homebirths.

2.2 Despite the small number of midwives assisting homebirths in Australia, the sector is a vocal group and strongly passionate about the practice. This inquiry received over 2000 submissions, many from women hoping to share their homebirth stories. The Australian Private Midwives Association was formed from a number of independent groups in response to the Bills "impacting upon the private practice midwifery workforce and through a desire to have an input into the maternity reform agenda."[6]

2.3 The Government appears to have discriminated against midwives when seeking advice concerning midwife reforms. For instance, the Department of Health and Ageing has formed the Maternity Services Advisory Group which includes industry groups but includes very few representatives of midwives and does not include any representatives of midwives involved in homebirth.[7] Professor Sally Tracy of the Australian College of Midwives made the following statement:

> I have to put on the table my objection to the maternity services advisory group, too, because it looks like I might be the only midwifery voice at it who can speak for midwifery. We do have other midwives who are representing other big organisations and they will not actually be wearing a midwifery hat. We do have 13 doctors' organisations on that advisory group.[8]

2.4 Coalition Senators agree with Professor Tracey that any group formed for the purposes of informing and reviewing government policy in the area of maternity services must include adequate representation from the midwives profession. As such, Coalition Senators recommend that the Department reorganise the Maternity Services Advisory Group to ensure that midwives organisations make up at least 25 per cent of the Group.

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[3] Department of Health and Ageing, *Submission 28*, p. 5.

[4] 'IVF, eye surgery safety net cut', *The West Australian* 12 August 2009, p. 19.

[5] Homebirth Access Sydney, *Submission 33*, p. 4.

[6] Australian Private Midwives Association, *Submission 10*, p. 1.

[7] Department of Health and Ageing, Ms V. Huxtable, *Committee Hansard*, 6.8.09, p. 60.

[8] Australian College of Midwives, Prof Sally Tracy, *Committee Hansard*, 6.8.09, p. 20.

2.5 The legislation is in response to the National Maternity Services Review conducted by the Department. The reason for excluding Midwives from the legislation is explained in the Department's submission as follows:

> The review did not recommend Commonwealth funding for homebirths at this stage. Accordingly, the Government is not proposing, to extend the new arrangements for midwives to homebirths.[9]

2.6 However, the Department's submission also stated that the legislation 'delivers a range of measures aimed at providing Australian women with more choice in their maternity care.' Coalition Senators are confused as to how the immediate exclusion of homebirth midwives from both the consultation process and the legislation will provide Australian women with more choice in maternity care. The legislation follows a worrying trend in Government policy being produced with inappropriate industry and stakeholder consultation.

2.7 The number of issues raised by homebirth advocates to this inquiry highlights the complexities surrounding policy with regards to homebirthing in Australia. Coalition Senators believe that these issues should be canvassed in an inquiry with a wider scope. As such, Coalition Senators are recommending that a reference be made to the Community Affairs References Committee for a full inquiry into Homebirthing in Australia.

Professional indemnity insurance

3.1 Professional indemnity insurance for private midwife practitioners is not currently available. Homebirth Access Australia submits that the unavailability of insurance is due to the relatively small number of private practitioners registered to practice under State regulations. The system cannot support "a market-priced premium level that is affordable."[10] Nonetheless, practitioners who meet the State requirements are currently able to practice.

3.2 The Medical Indemnity Insurance Association of Australia submitted that it is essential midwives who practice independently be provided with appropriate professional indemnity insurance. The MIIAA states that, "otherwise, this could potentially create an incentive to sue medical practitioners preferentially over midwives based on their insurance coverage."[11] Coalition Senators believe that this is a reasonable position.

3.3 Many submissions to the inquiry made by supporters of private practitioners agreed that private practitioners should be obligated to hold professional indemnity insurance. Ms Justine Caines of Homebirth Australia gave evidence that:

> We have no problem with the national registration. Some in our world have said, 'there shouldn't be a requirement to have indemnity insurance.' Well, to me, indemnity insurance is a professional requirement but also, very much, a consumer right.[12]

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[9] Department of Health and Ageing, *Submission 28*, p. 6.

[10] Homebirth Access Sydney, *Submission 33*, p. 5.

[11] Medical Indemnity Insurance Association of Australia, *Submission 4,* p. 2.

[12] Homebirth Australia, Ms Justine Caines, *Committee Hansard*, 6.8.09, p. 11.

3.3 The requirement to hold professional indemnity insurance did not appear to be a significant issue in the inquiry. As such, the exclusion of private midwives from being eligible midwives under the Commonwealth's PII scheme proved to be the biggest concern for those making submissions or appearing as witnesses. The Australian Nursing and Midwifery Council note in their submission, that:

> …although only a small minority of women choose homebirth, women will continue to make this choice. Application of an insurance requirement that cannot be met by midwives is likely to result in women giving birth without a midwife in attendance. This will make homebirth very dangerous, even for low risk health women for whom homebirth is currently a safe option.[13]

3.4 The Government's PII scheme will operate by inviting insurance companies to tender for the right to provide indemnity insurance to midwives. A company will be chosen which can best carry out the policies supported by the Government. However, it is clear from the submissions made and evidence given to the inquiry that the Department has not reviewed the risk profile involved in insuring midwives and has not provided the insurance industry with enough information relating to the proposed tender process. For instance, Dr Vernon of the Australian College of Midwives pointed out that insurers are telling the College that they are unsure "…from the documentation the government has currently provided as to what it is that they are being asked to tender for…there is no information about the collaboration and how that will occur between midwives and doctors and between midwives and hospitals."[14]

3.5 In giving evidence to the committee, the Department was unable to give a clear picture of how the tender process would operate and what information would be available to tenderers. Professor Rosemary Calder of the Department stated:

> The process looks confusing – I agree – but the intention is that, as we work towards identifying the insurer that is appropriate for this, we will also be working on the issues around eligibility, noting that it is initially defined by registration and scope of practice. That is an assurance to the insurance industry of where this will go and that, as it reaches the point where insurance products need to be developed, the eligibility criteria will have firmed up.[15]

3.6 The fact that insurers are unsure as to the costs involved in providing indemnity insurance and tendering for the government contract was made clear by Mr David Nathan of the Medical Indemnity Insurance Association of Australia. Mr Nathan points out that "there is not a great deal of compelling data that one can point to as to the relative risks of homebirths versus birthing centres and this and that…the sense is that there is more risk

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[13] Australian Nursing and Midwifery Council, *Submission 20*, p. 2.

[14] Australian College of Midwives, Dr B Vernon, *Committee Hansard*, 6.8.09, pp 24-25.

[15] Department of Health and Ageing, Prof R Calder, *Committee Hansard*, 6.8.09, pp 69-70.

associated with homebirthing than there is in terms of the independent midwife model that is being mooted as we speak.”[16]

3.7 Coalition Senators believe that the Department has not undertaken adequate modelling of the risk factors and profile of different classes of homebirthing and an immediate review would allow potential tenderers to consider the costs involved in tendering for the Government scheme, as well as allow the Department to draft appropriate selection criteria for the tendering process.

3.8 With regards to homebirthing, the Chair's report takes note of comments made by the Minister which stated:

> I recognise that a very small proportion of women would like to have home births and am currently investigating if there is some way that we can provide this as an option without making the proposed midwife indemnity insurance unaffordable.[17]

Given the small amount of homebirths being performed in Australia each year, Coalition Senators would like the Government to prove that the costs of insuring homebirth midwives would be prohibitive. Coalition Senators believe that further modelling of the risk profile of both midwifery, including homebirthing, and the costs of indemnity insurance should be formally undertaken by the Department to ascertain the feasibility of including private homebirth midwives in the scheme considered.

The right to choose a birthplace

4.1 As noted above, the Department's reasons for legislating the Midwife policies are that the measures will provide "Australian women with more choice in their maternity care, while maintaining Australia's strong record of safe, high quality maternity services.[18]

4.2 However, many submissions and witnesses noted that the legislation will not expand choice, but will reduce choice by removing the option of undertaking a homebirth for the majority of Australian women and families. The personally enabling nature of allowing women to make such a choice should not be underestimated. As Dr Barbara Vernon of the Australian College of Midwives stated in evidence: "What we need to do is say we have a particular views on whether or not women's choices are good choices but we respect that women can make those choices".[19] Bruce Teakle of the Maternity Coalition made similar sentiments:

> …I think (this) is a strong reminder that we must respect women's choices in the development of care rather than take a patriarchal,

[16] Medical Indemnity Insurance Association of Australia, Mr D Nathan, *Committee Hansard*, 6.8.09, pp 53.

[17] 'Homebirth risks becoming underground practice', AAP, 11 August 2009.

[18] Department of Health and Ageing, *Submission 28*, p. 6.

[19] Australian College of Midwives, Dr Barbara Vernon, *Committee Hansard*, 6.8.09, p. 26.

> advice-giving approach where we decide what choices women must make otherwise they do not get any care.[20]

4.3 Coalition Senators believe that women and their partners should be free to choose the venue for their birth, so long as that venue is appropriate given the health of the woman. There will always be a small amount of women who choose to give birth at home. As such, Coalition Senators believe that the inclusion of private homebirth midwives within this legislation would increase the safety of women choosing homebirths.

4.5 The Chair's Report notes the amount of criticism made by submissions about an increase in unattended homebirths if the proposed changes went ahead. For instance, Ms Elizabeth Wilkes of the Australian Private Midwives Association pointed out:

> If this is forced underground…midwives will be deregistered, and not providing that care – will step out of home birth care – and women will be cared for by unregulated, unregistered care providers or no care providers at all. The disasters of women turning up bleeding, with babies unable to be born or whatever else will certainly increase if this legislation goes ahead as it stands.[21]

4.6 The Chair's Report does not offer any solutions to how the safety issues of unattended homebirthing can be resolved. Coalition Senators believe that the health consequences in outlawing private midwifery should have been considered by the Government and addressed by the Department before this legislation was introduced.

References to a specialist

5.1 The legislation also contains provisions which allow midwives to refer patients to obstetric specialists without the patients being assessed by the patients' general practitioner. Many submissions highlighted the potential problems caused by allowing nurses and midwives to make a direct referral. For instance, the Rural Doctor's Association of Australia (RDAA) submitted:

- The training that midwives have undertaken does not include specific training in medical diagnosis and assessment and, in particular, does not include training on what conditions are appropriately managed in general practice;
- Unnecessary referrals will take place causing significant additional costs to patients, communities and to the taxpayer; and,
- The arrangements that were supported by the maternity services review envisaged the midwife working in a collaborative team with a GP or specialist obstetrician which would remove any need for the midwife to make referrals.[22]

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[20] Maternity Coalition, Mr Bruce Teakle, *Committee Hansard*, 6.8.09, p. 16.

[21] Australian Private Midwives Association, Ms Elizabeth Wilkes, *Committee Hansard*, 6.8.09, p. 52.

[22] Rural Doctors Association of Australia, *Submission 17*, p. 2.

5.2 As mentioned by the Chair's Report, Dr Barbara Vernon of the Australian College of Midwives noted concerns that a woman's General Practitioner may not understand what kind of care the woman will need after birth if the woman is referred directly to a specialist without seeking the General Practitioner's advice. However, Dr Vernon believes that "midwives make safe and responsible decisions for engaging with GP obstetricians or specialist obstetricians and that if you had a woman in labour and something emerged where she would need medical input it is a nonsense to think that we would build in some kind of additional layer of referral before we could bring the doctor in to provide assistance to that woman." [23]

5.3 Coalition Senators agree that there are potential problems with allowing midwives to refer their patient to a specialist without consulting a General Practitioner. However, the fact that a woman giving birth may need immediate attention without time for a referral to the GP before a specialist adds weight to the argument that the additional referral is superfluous and potentially dangerous. Coalition Senators believe that the operation of the legislation aims to ensure that practicing midwives have the professional skills needed to decide upon when to call in a specialist. However, we believe that the operation of this measure needs to be monitored and reviewed in due course in order to ensure that the health of women is not put into jeopardy by allowing direct referrals to specialists.

Access to a hospital bed

6.1 Some submissions to the inquiry raised the issue that women choosing to undertake a birth outside of hospital are doing so without available immediate access to a hospital in the case that their health becomes at risk. Dr Kathryn Dwan shared her experience as follows: “After 22 hours of labour, my husband and I made the decision, in collaboration with our independent midwife, to transfer to the hospital…Narayan (the born child) had to spend the first five days of his life in intensive care at the Canberra Hospital, and during this time Marie, my midwife, was our advocate and our most trusted source of information.”[24] Unfortunately, Dr Dwan’s son had a problem with his lungs and needed to spend the first five days in an intensive care unit.

6.2 Dr Dwan’s story highlights the importance of a woman giving birth having immediate access to a hospital if something goes wrong with the birth. Dr Dwan’s midwife had registered with Canberra Hospital to ensure that a bed be ‘on-call’ if anything had gone wrong and she was able to be transferred quickly and easily. Unfortunately, it is not always common practice for midwifes who operate outside hospital to ‘pre-book’ a bed. Ms Caines gave evidence that

> “For every woman who has a normal vaginal birth – but of course, more so a homebirth, because the outcomes are even better – we reduce an amazing level of cost. For a start, we do not even have a hospital admission, so we do not have a bed day stay”.[25]

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[23] Australian College of Midwives, Dr B Vernon, *Committee Hansard*, 6.8.09, p. 22.

[24] Dr K Dwan, *Committee Hansard*, 6.8.09, p. 30.

[25] Homebirth Australia, Ms Justine Caines, *Committee Hansard*, 6.8.09, p. 12.

6.3 Coalition Senators believe that Dr Dwan’s story is an example of why all practicing midwifes should be required to ‘pre-book’ a hospital room in the chance that the mother or child requires hospital treatment. Some of the purported risks of homebirthing might be mitigated if a hospital bed was immediately available. Coalition Senators believe that ensuring access to a hospital bed should be a requirement for private midwives to practice and are recommending that the Government legislate such a requirement.

Recommendations

7.1 Coalition Senators recommend that the Department reorganise the membership of the Maternity Services Advisory Group to ensure that midwife organisations make up at least 25 per cent of the Group, and that homebirth midwives are represented.

7.2 Coalition Senators recommend that the Department of Health and Ageing undertake an actuarial analysis on the risk profile of home births in Australia, with a distinction between professionally supported homebirthing and unsupported free births, and a full analysis of the costs involved in including homebirth midwives within the Commonwealth's Professional Indemnity scheme.

7.3 If the costs of including private homebirth midwives within the Commonwealth's Professional Indemnity scheme proves to be feasible, Coalition Senators recommend that the Minister include midwives who perform homebirths as a category of 'eligible midwife' in the regulations and rules to be attached to the three Bills.

7.4 Coalition Senators recommend that Medicare Australia monitor and make a review after 12 months, of the ability of nurse practitioners and midwives to be able to refer a patient to a specialist without first referring the patient to their General Practitioner.

7.5 Coalition Senators recommend that the Government legislate to ensure any eligible midwife performing a birth outside of hospital be required to register with a hospital to ensure that a bed be made available for the patient in the case that medical attention is required during or after the birth.

7.6 Coalition Senators recommend that a reference be made to the Community Affairs References Committee for a full inquiry into Homebirthing in Australia

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