Homebirth Access SYDNEY

The Committee Secretary
Senate Standing Committee on Community Affairs
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19 July 2009

Dear Sir/Madam,

Senate Standing Committee on Community Affairs Inquiry into Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills

I make the following submission on behalf of Homebirth Access Sydney (HAS) in relation to the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009, the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and the Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009 as referred by the Senate on 25 June 2009.

HAS is principally a consumer organisation with a focus on supporting homebirth families and increasing access to birthing choices – in particular homebirth - for women in NSW. HAS was established in the 1970s to provide information and support to people interested in homebirth, including parents, midwives, child birth educators and birth support workers.

HAS currently has a membership of around 400 families and birth professionals.
We are one of the very few maternity consumer organisations in Australia with a large and active membership of families in their pregnancy and early parenting years.

HAS values the opportunity to put forward the perspective of maternity consumers in relation to this legislation and request the opportunity to speak to the Committee about our concerns about this legislation in the public hearings to be held in the coming weeks.

In general terms HAS is pleased with the directions the Government has taken with introducing these Bills into the Parliament with the aim of reforming the provision of maternity services in Australia, and implementing announcements in the Government's 2010 Budget. The aim of expanding the role of midwives in the provision of maternity services, by giving them access to the Medical Benefits Schedule (MBS) and the Pharmaceutical Benefits Scheme (PBS), and by providing a Commonwealth-supported professional indemnity insurance (PII) scheme for eligible midwives is one we applaud.

However, our organisation has grave concerns that one class of midwives will be excluded from the reforms: midwives who attend births at home. By excluding these midwives, the Government is effectively making attended homebirth illegal. This is because, under the proposed National Registration and Accreditation Scheme, due to be implemented in July 2010, any midwife who cannot obtain insurance cannot be registered and it will be an offence under both Federal and State laws to practise as a midwife while unregistered.

Professional indemnity insurance is currently not available for private midwife practitioners in Australia. This largely results from the small number of midwives in private practice, which currently cannot support a market-priced premium level that is affordable.

The consequence of the legislation presently before the Parliament is to make it illegal for a qualified midwife to attend a homebirth in Australia. Such a move is dangerous for mothers and babies, bucks international trends in maternity care, and is inconsistent with the Government's stated policy of providing pregnant women with greater choice and less interventionist maternity care.

Although the criminalisation of attended homebirth is due to commence on 1 July 2010, this proposal affects every woman becoming pregnant from October 2009, as she must plan her maternity care and will have no certainty that her choice of birth location and attendant will be legal for any baby conceived after that time.

The attached submission sets out our concerns about these Bills, some background information on why women choose homebirth and the safety of that choice, and the likely consequences of criminalising homebirth in Australia. Finally, we describe the amendments to the legislation that we believe are necessary to ensure safety, choice and equity in maternity services in Australia.

We appreciate your time in considering this submission and the importance of providing choice and ensuring safety for pregnant women and their families. We wish to elaborate upon this submission at the public hearings to consider this legislation.

Yours sincerely

Jo Tilly
HAS Coordinator

A. The legislation

The *Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009* enables eligible midwives to access the MBS and PBS. In order to be eligible, a midwife must be registered and satisfy any other requirements in regulations made under the section (section 21). It was introduced into the House of Representatives on 24 June 2009 and the following day referred to the Senate Standing Committee on Community Affairs for consideration, with a report due 7 August 2009.

Also introduced on 24 June 2009 and immediately referred to the Senate Standing Committee on Community Affairs were the *Midwives Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009* and the *Midwives Professional Indemnity (Runoff Cover Support Payment) Bill 2009* (**'the PII bills'**). The PII Bills implement the Government's new professional indemnity scheme for certain midwives (called "eligible midwives" in the PII Bills).

Pursuant to the PII Bills, the Commonwealth will contract with an insurer to provide professional indemnity insurance at an affordable price to eligible midwives. In doing so, it will also require the contracted insurer to develop and maintain a database that the wider insurance market will be able to use in developing longer-term products. The insurance is intended to be available so that eligible midwives can be appropriately covered from 1 July 2010, in line with proposed new requirements of the National Accreditation and Registration Scheme.

Under section 5 of the PII Bills, an "eligible midwife":

(a) is licensed, registered or authorised to practice midwifery by or under a law of the Commonwealth, a State or a Territory; and
(b) meets such other requirements (if any) as are specified in the Rules for the purposes of this paragraph; and
(c) is not included in a class of persons specified in the Rules for the purposes of this paragraph.

No draft Rules are currently available, and Rule-making power is vested in the Minister. However, the Minister has indicated via public statements and a press release on the day of introducing the legislation into parliament that homebirth midwives will be excluded from the scheme. It is therefore assumed that this exclusion is intended to be achieved by way of the Rules, after the legislation is passed.

At the same time as this legislation has been introduced, an exposure draft of the *Health Practitioner Regulation National Law 2009*, (known as **'Bill B')** has been released. This Bill will establish the proposed National Registration and Accreditation Scheme for Health Practitioners ('**the Registration Scheme'**) and will set up, among other things, a national register of midwives, eligibility for which includes holding professional indemnity insurance. The Registration Scheme is also the subject of a Senate Inquiry by the Standing Committee on Community Affairs, with the Inquiry receiving further submissions specifically in relation to the exposure draft.

Bill B requires by section 69(1)(d) that an individual be covered by appropriate professional indemnity insurance arrangements in order to be eligible for registration. A National Board, established under section 24 of Bill B, is empowered to determine whether the professional indemnity insurance arrangement of an individual is appropriate, including whether the type and level of cover are sufficient (section 73).

Bill B prevents the use of the terms "registered health practitioner", "midwife" and "midwife practitioner" or the use of any title, name, initial, symbol, word or description that might indicate that the person is a health practitioner or authorised or qualified to practise in a health

profession (sections 128 and 129). The penalty for breach is $30,000 for an individual or $60,000 for a body corporate.

In addition to being prohibited from practicing under the National Registration and Accreditation Scheme, any person who is not registered will be subject to prosecution under state laws if she provides birth services. For example, section 10AG of the *Public Health Act 1991 (NSW)* prohibits a person from engaging in a restricted birthing practice unless she is a registered midwife or medical practitioner, with a penalty of $5,500 or imprisonment of 12 months or both. Similar legislation exists in most, if not all, state and territory jurisdictions in Australia, along with prohibitions against holding oneself out as a midwife if not registered.

Therefore, a currently practising, registered, qualified midwife who is unable to obtain insurance, may not either practice or identify herself as a midwife after the national registration system is in place. This presents a safety risk to those women who will continue to choose to birth at home after the Registration Scheme is in effect. Currently, midwives are not insured, but they are registered, so a woman has a degree of quality assurance and is able to distinguish a registered midwife from a lay midwife, doula, or other birth attendant. Without registration, and where a fully trained and previously registered midwife cannot call herself a midwife purely because of a market failure in the provision of insurance products, a woman has no means of assessing the adequacy and currency of her caregiver's qualifications.

B. Why are homebirth midwives excluded?

The explanatory memoranda to the PII Bills states that:

> Professional indemnity insurance is currently not available for private midwife practitioners in Australia. From the perspective of the insurance industry, the two most commonly stated reasons for this are: (1) there is a lack of accurate and up-to-date data (which is necessary for insurers to be able to assess their actuarial liability); and (2) the potential premium pool is very low and would currently not support a market-priced premium level that is affordable for midwives.

These reasons are relevant to all private midwife practitioners in Australia, whether they practise in hospital or in home environments and do not provide a reason to exclude homebirth midwives from the Government-backed insurance scheme.

The Maternity Services Review Report which forms the basis of the Government policy sought to be implemented by legislation currently before parliament noted that "a situation where a health professional operates without appropriate professional indemnity cover is not considered acceptable."[1] We agree entirely. However, for midwives, there has been no other option since 2002.

Following a number of multi million dollar compensation payouts against obstetricians in the early 2000s, an insurance crisis affected all providers of birthing services. However the Commonwealth stepped in to subsidise insurance to obstetricians and general practitioners through the Premium Support Scheme and High Cost of Claims Scheme, both of which continue to operate. Despite considerable lobbying efforts by consumer organisations and professional bodies, similar options have not been made available to midwives, even though, to our knowledge, there had been no successful insurance claim against a midwife and there had been several against obstetricians. The enormous cost of PII discouraged many midwives from private practice and as the pool of homebirth midwives shrank to an uncommercial size, the existing insurers ceased offering professional indemnity coverage to privately practising midwives in 2002. This means that women birthing with private midwives have had no protection through their midwife's PII since 2002.

[1] Australian Government, 2009, *Improving Maternity Services in Australia: The Report of the Maternity Services Review*, p 54.

However, it also means that until 2002, there was insurance coverage for privately practicing homebirth midwives, and claims data should be available through the insurers who covered them until that time. This undermines the Government's claim, including in the Explanatory Memorandum to the PII Bills, that insufficient data exists. We have not seen such data, but since our organisation is unaware of a single successful claim against a midwife, we believe that it would not reveal midwives to be uninsurable because of their risk profile.

The second reason noted in the Explanatory Memorandum for the unavailability of PII—that the pool of midwives is too small to enable and commercially viable insurance product—is further reason to include homebirth midwives in the scheme (thus increasing the size of the pool). The Government in the PII Bills is addressing a market failure in the availability of insurance products, just as the then Government did in 2002 with the Premium Support Scheme and High Cost of Claims Scheme. This is an appropriate action for Government. However, the market failure applies in both cases most particularly to homebirth midwives and to exclude them from the proposed PII Scheme is both illogical and unfair.

There is no reason of principal—not safety, not pool size, not the availability of data—for excluding homebirth midwives from the PII Scheme.

The reason homebirth midwives have been excluded from the PII Scheme is evident from the Maternity Services Review Report, which notes that since:

> homebirthing is a sensitive and controversial issue, the Review Team has formed the view that the relationship between maternity health care professionals is not such as to support homebirth as a mainstream Commonwealth-funded option (at least in the short term). The Review also considers that moving prematurely to a mainstream private model of care incorporating homebirthing risks polarising the professions...[2]

The report also notes:

> General practitioners (GPs), medical specialists and their representative organisations identified their highest priority as that of maintaining Australia's excellent record of safety in maternity care and emphasised the need for specialist expertise within the maternity care team. An issue of concern was the loss of skilled professionals and its impact on the provision of maternity care, most noticeably in rural and remote areas. These professional groups also expressed concern about moves towards homebirthing.[3]

The opposition of some health professionals, whose position in the maternity services system is already subsidised, to the inclusion of homebirth midwives in that circle of Government-subsidised care is unsupportable. By bowing to pressure from medical lobby groups to criminalise a birthing choice proved safe by the overwhelming weight of international evidence and experience, the Government is placing political pragmatism ahead of women's rights and good policy.

Our organisation has made repeated attempts to engage with the Government on this issue, prior to, during and following the Maternity Services Review process. Indeed, our members, along with other supporters of homebirth, provided the majority of individual submissions to the Review. Unfortunately, the consumer voice has been given little if any weight in this professional turf war over financial gain that places our bodies and our babies at serious risk.

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[2] Australian Government, 2009, *Improving Maternity Services in Australia*: The Report of the Maternity Services Review, p 21.

[3] Australian Government, 2009, *Improving Maternity Services in Australia*: The Report of the Maternity Services Review, p 4.

C. Why women choose to birth at home – the evidence on the safety of homebirth

Homebirth is a minority choice in Australia, as it is in most jurisdictions of the world. Women choose this for a variety of reasons, including:

- to avoid interventions (such as inductions of labour, episiotomy, epidural, forceps or vacuum extraction of their babies and caesarean section deliveries),
- to have a natural, drug-free birth,
- to birth in an environment where they feel safe,
- to have continuous care from a known midwife during pregnancy, birth and the postnatal period,
- to enable the full participation of the woman's partner and children in the birth,
- because they don't see birth as an illness or hospital as necessary,
- to avoid repetition of previous poor hospital birth experiences, and
- because research supports the safety of birthing at home.

Currently, just over 700 women in Australia plan a homebirth each year. Women who choose homebirth are typically well informed about their options for care, the risks of different models of care, the evidence regarding safety of different birth locations, the possible consequences of their decision and the physical and emotional stages of childbirth. Most homebirth families have back-up plans for transfer to hospital if complications arise during labour.

There is a wealth of international evidence to support the safety of planned, assisted homebirth for women with low risk pregnancies[4].

In a study published in April 2009 in *BJOG: An International Journal Of Obstetrics And Gynaecology* of more than half a million women, researchers found no difference in death or serious illness among either mothers or their babies if they gave birth at home rather than in hospital[5]. This study looked at almost 530,000 low-risk births over seven years in the Netherlands where homebirth rates are close to 30% of all births.

Treating low-risk birth within a highly medicalised model has seen intervention rates rise rapidly, to approximately 30% caesarean section rates across Australia. This contrasts with a World Health Organization recommended caesarean section rate of 10-15%. Among the homebirth population, the caesarean section rate is much lower, approximately 5% (though reliable data is unavailable). Indeed, reversing the trend to high intervention and medicalised birth models is a driving force behind the Government's proposed reforms to give a greater role to midwives in maternity care.

Planned homebirth for low-risk women using certified professional midwives is clearly associated in international research with significantly lower rates of medical intervention and no higher intrapartum and neonatal mortality than that of low-risk hospital births.[6]

Registered midwives use the Referral Guidelines[7] of the Australian College of Midwives to support informed decision making by their clients when it may be necessary for the woman or baby to be seen by, or transferred to the care of, other health professionals or facilities such as obstetricians and hospitals.

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[4] Ackermann-Leibrich et al (1996); Bastian, Keirse, & Lancaster (1998); Campbell R, Macfarlane A (1994); Chamberlain, Wraight, & Crowley (1997); Crotty, Ramsay, Smart, & Chan (1990); Gulbransen, Hilton, & McKay (1997); Johnson & Daviss (2005); Macfarlane A, McCandlish R, Campbell R. (2000); Murphy & Fullerton (1998), Olsen O. (1997); Wiegers, Keirse, & van der Zee (1996); Woodcock, Read, Moore, Springer NP, Van Weel C (1996); Stanley, & Bower (1990)

[5] A de Jonge, BY van der Goes, ACJ Ravelli, MP Amelink-Verburg, BW Mol, JG Nijhuis, J Bennebroek Gravenhorst, and SE Buitendijk *Perinatal mortality and morbidity in a nationwide cohort of 529 688 low-risk planned home and hospital births* BJOG An International Journal of Obstetrics and Gynaecology RCOG 2009 (15 April)

[6] See footnote 4.

[7] These can be found at http://www.acmi.org.au/text/ corporate_documents/ref_guidelines.htm

Preventing the registration of midwives attending homebirth will put consumers at grave risk of either choosing to birth without the assistance of any health care professional or receiving sub-standard care.

The Government's Maternity Services Review, published in February 2009 and whose recommendations form the basis of the legislation currently before Parliament, noted that "The Review concluded that, while homebirth is the preferred choice for some women, they represent a very small proportion of the total."[8] Though the number of women birthing at home in Australia is small as a proportion of the total births, it is the role of the Government to ensure that *all* consumers in the health system are provided with appropriate protection, not just the majority. In fact, this is a human right established by international law (see below).

D. Consequences of criminalising homebirth

1. Danger to mothers and babies

Birthing at home *without* the attendance of a qualified midwife, known as 'freebirthing', can be extremely dangerous and is not supported by our organisation. The very reason attended homebirth is so safe is the same reason that freebirth is not: a midwife is trained and skilled at detecting complications during labour and either addressing them or transferring her client. At an attended homebirth, the midwife observes the birthing woman in a one-to-one situation (unlike in a hospital, where a midwife cares simultaneously for several labouring women) and can act quickly to address any complications. If it becomes illegal for midwives to attend homebirths, more women will freebirth and there will be no person present who is trained and skilled at recognising and managing the onset of complications.

This was recognised by NSW coroner Nick Reimer in June 2009, when he handed down findings into the death of a baby born at home. Mr Reimer noted that homebirth was a woman's inherent right and a practice that "will not go away" and urged the Federal and State Health Ministers to exercise "great care" in drafting legislation that would make homebirthing illegal, saying homebirths will be driven underground with "disastrous ramifications"[9].

In April 2009, the death of the baby of a prominent freebirth advocate also gained significant public attention. There has not yet been a coronial report into the death of that baby, though perhaps the presence of a qualified midwife would have prevented that death.

Sections of the press fail to distinguish between freebirth and professionally attended homebirth, so that the dangers of the former taint the safety of the latter. This distinction, so often blurred, is at the heart of the current legislation, which will not stop homebirth, but will prevent or punish those who undertake homebirth safely. Under the PII Bills and Bill B, the safe option of attended homebirth will become criminal and the dangerous option of freebirth will be unintentionally promoted.

Other than through small-scale trials and in limited geographic areas, homebirth has never been publicly funded and widely available in Australia. Despite this, a small minority of women have continued to choose to birth at home. We expect that, if homebirth were to be criminalised, the number of women birthing without the presence of a qualified midwife will rise, and their births would become immeasurably riskier.

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[8] Australian Government, 2009,*Improving Maternity Services in Australia*: The Report of the Maternity Services Review, p 20.

[9] Sydney Morning Herald 30 June 2009

2. Internationally isolated backwards step

A second consequence of criminalising homebirth is to isolate Australia internationally in terms of best practice maternity care. In many countries, homebirth is both legal and publicly funded (for example, New Zealand, the United Kingdom, the Netherlands). Indeed, some countries actively encourage the choice to birth at home as explicit policy and as a key element of increasing the rate of normal birth (for example, the United Kingdom[10]). We are not aware of any countries where homebirth is illegal.

The World Health Organization has stated that:

> The midwife is the most appropriate and cost effective type of health care provider to be assigned the care of normal pregnancy and normal birth, including risk assessment and the recognition of complications.[11]

Furthermore:

> *a woman should give birth in a place she feels is safe, and at the most peripheral level at which appropriate care is feasible and safe* (FIGO 1992). For a low-risk pregnant woman this can be at home, at a small maternity clinic or birth centre in town or perhaps at the maternity unit of a larger hospital. However, it must be a place where all the attention and care are focused on her needs and safety, as close to home and her own culture as possible. If birth does take place at home or in a small peripheral birth centre, contingency plans for access to a properly-staffed referral centre should form part of the antenatal preparations.[12]

3. A breach of human rights law

The Convention on the Elimination of All Forms of Discrimination Against Women states that "States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary…"[13]

For low-risk women who wish to birth at home, the most appropriate maternity service is homebirth attended by a qualified midwife, so criminalising homebirth is discriminatory and a breach of her human rights, as well as a breach of the government's obligations under the Convention.

E. How to remedy the legislation

We believe the problems that we have identified with the PII Bills could be easily overcome through amendment to the legislation so that homebirth midwives are included as eligible midwives in these Bills and can thus access professional indemnity insurance. This would then enable these midwives to become registered and continue providing midwifery services to women who choose to birth at home.

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[10] See Royal College of Obstetricians and Gynaecologists, Royal College of Midwives and National Childbirth Trust, 2007, *Making normal birth a reality: Consensus statement from the Maternity Care Working Party*
our shared views about the need to recognise, facilitate and audit normal birth and UK Department of Health, 2004, *National Service Framework for Children, Young People and Maternity Services.* London.

[11] World Health Organization: Care in Normal Birth, 1996, p 6.

[12] World Health Organization: *Care in Normal Birth*, 1996, p 12 (emphasis added). The reference within the quote to 'FIGO 1992' is a reference to the publication: Recommendations accepted by the General Assembly at the XIII World Congress of Gynecology and Obstetrics. *Int J Gynecol Obstet* 1992; 38(Suppl):S79-S80.

[13] Convention on the Elimination of All Forms of Discrimination Against Women, article 12.2

Specifically, we believe the definition of "eligible midwife" in section 5 of the *Midwives Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009* must be amended to remove the power of the Minister to make Rules that may exclude from the definition midwives who attend homebirths.

Alternatively, if the Minister needs for other reasons to have the power to make Rules under section 5 (for example, if it is necessary to place in the Rules requirements relating to ongoing educational requirements) the necessary legislative amendment could be an addition to the definition of "eligible midwife" circumscribing the Minister's rule-making power such that homebirth midwives may not be excluded on that basis alone. (For example, by adding amendment which specifies that "nothing in this section or the Rules excludes a person on the basis of the location or venue of the births that person may attend".)

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