



Senator Claire Moore  
Chairperson  
Senate Standing Committee on Community Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Senator

Thank you for the opportunity to address the Community Affairs Committee at the hearings into the Inquiry into *Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009* and two related Bills held on 6<sup>th</sup> August.

I am writing to follow up on a question I took on notice at that hearing and to clarify a number of points about how our organisation (HAS) believes the issue of the continuing legality homebirth might be resolved.

### **1. Question on notice: home to hospital transfer rates**

Firstly, the Committee requested some further information about the rate of transfer to hospital of women planning a homebirth. Please see Attachment 1 for further information about these statistics.

### **2. More women will birth unattended as a result of the legislation, as currently drafted**

Our frequent contact with consumers leads us to believe that women will not stop birthing at home and, in the absence of safe, legal and affordable attended homebirth, will continue to do so without professional assistance.

Women birthing without any health care practitioner or birthing with a non-qualified assistant is not an acceptable outcome of maternity reform and one which we believe the Senate should reject.

### **3. Indemnity and Medicare must both be extended to homebirth because making professionally attended homebirth even less affordable will have similar results.**

Homebirth families are already in the precarious position of paying substantial out of pocket costs of up to \$5000 per birth and with no assurance that their health provider has professional indemnity insurance cover in case of negligence.

While the legislation pertaining to professional indemnity insurance is key, as it is this issue which has the potential to make attended homebirth unlawful, it is important that homebirth consumers should also have equal access to making claims under the Medicare Benefits Schedule.

Differential insurance premiums or Medicare rebates for homebirth midwives could substantially increase already significant costs for homebirth consumers. If the

outcome was that homebirth midwives were included in an insurance scheme but with such high premiums that they could not sustain their practice, or that, when passed on to their clients in the form of higher fees, make homebirth unaffordable, this is little better than criminalising attended homebirth. Any significant increases in costs are likely to also exacerbate trends of women birthing unattended.

#### **4. Excluding homebirth midwives from indemnity coverage, with the effect of prohibiting them from continuing their midwifery practice, is not an appropriate matter for regulation or other delegated legislation.**

We note that the *Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009* allows (in s21A) the Minister to restrict premises at which services by an eligible midwife might be provided, presumably with the aim of excluding homebirth. The Minister's power to do this is contained in an as-yet not available Common Form of Undertaking that each midwife must provide.

And in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009*, the definition of "eligible midwife" (in s5) allows the Minister to promulgate Rules that can exclude a class of persons, which could also enable the exclusion of those midwives who provide homebirth services.

Matters such as this are not appropriately dealt with by regulation or common undertakings required by the Minister of the day. These issues have significant public health implications for consumers and also directly impact the capacity of a group of professionals to their work.

As you would be aware, the *Senate Regulations and Ordinances Committee* Principle C states that delegated legislation should not make rights unduly dependent on administrative decisions which are not subject to independent review of their merits. Principle C specifically mentions delegated legislation affecting the right to practice a trade or profession or to carry on a business or otherwise affecting livelihood. Clearly homebirth midwives would fall into this category and as such we contend that these matters are not appropriately addressed via regulation, including the undertakings required by the *Health Legislation Bill*.

#### **5. Appropriate amendments to address the problems in the legislation.**

Given the current form of the legislation and that restrictions on home based midwifery practice are likely to be contained in Common Form of Undertaking/Rules yet to be made, HAS believes these issues might be best resolved by amendment of the *Midwives Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009* and the *Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009*.

The definition of "eligible midwife" in section 5 of the *Midwives Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009* should be amended to specify 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".

Further, the *Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009* should be similarly amended to provide that "nothing in the Common Form of Undertaking/Rules can affect the right of the midwife to attend homebirths."

#### **Conclusion**

Homebirth Access Sydney does not believe that exempting homebirth midwives from arrangements introduced for other midwives is an appropriate outcome in terms of consumer safety or equity.

Thank you again for your interest in this important matter and please do not hesitate to contact me on 0432 561 232 should you require any further information.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long, horizontal, wavy line that tapers to the right.

**Jo Tilly**  
**Coordinator**  
**Homebirth Access Sydney**

Attachment 1  
National Statistics – Homebirth transfer rates

The most recent national statistics relating to planned and actual homebirth are available from the Australian Institute of Health and Welfare's National Perinatal Statistics Unit (see tables 3.11 and 3.12 below).<sup>1</sup>

National data does not specifically indicate transfer rates, but these can be estimated from the planned and actual birth numbers. From the national data it is unclear whether prospective homebirth clients are transferred during their pregnancy or during labour.

The jurisdictions collect intended place of birth at different times during pregnancy - Victoria, South Australia and Tasmania collect this item at the time of booking, while the remaining states and territories collect the intended place of birth at the onset of labour. As a result, care must be taken when comparing data across the jurisdictions.

In 2006, the overall intended place of birth across Australia was home for 0.3% of mothers with the same number actually giving birth at home.

**Table 3.11: Women who gave birth by actual place of birth and state and territory, 2006**

Place of birth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Australia
<b>Number</b>									
Hospital	88,844	66,705	54,898	27,688	17,091	5,920	5,127	3,562	269,835
Birth centre	1,870	1,294	472	264	1,271	87	202	—	5,460
Home	125	197	47	194	86	12	13	34	708
Other	385	351	300	107	70	34	12	<sup>(a)</sup> 86	1,345
Not stated	79	—	2	—	—	—	—	7	88
<b>Total</b>	<b>91,303</b>	<b>68,547</b>	<b>55,719</b>	<b>28,253</b>	<b>18,518</b>	<b>6,053</b>	<b>5,354</b>	<b>3,689</b>	<b>277,436</b>
<b>Per cent</b>									
Hospital	97.3	97.3	98.5	98.0	92.3	97.8	95.8	96.6	97.3
Birth centre	2.0	1.9	0.8	0.9	6.9	1.4	3.8	—	2.0
Home	0.1	0.3	0.1	0.7	0.5	0.2	0.2	0.9	0.3
Other	0.4	0.5	0.5	0.4	0.4	0.6	0.2	<sup>(a)</sup> 2.3	0.5
Not stated	0.1	—	0.0	—	—	—	—	0.2	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

(a) The majority of these births occurred in remote community health centres.

Note: For multiple births, the place of birth of the first born baby was used.

<sup>1</sup> Paula Laws and Lisa Hilder, *Australia's mothers and babies 2006*, December 2008, AIHW National Perinatal Statistics Unit, Sydney, Cat. no. PER 46

**Table 3.12: Women who gave birth by intended place of birth and state and territory, 2006**

Place of birth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Australia
<b>Number</b>									
Hospital	87,556	66,141	55,054	27,270	16,048	5,870	4,959	3,613	266,511
Birth centre	3,118	2,097	571	704	2,328	n.p.	379	<5	9,368
Home	172	230	77	230	102	n.p.	16	n.p.	886
Other	388	—	12	48	40	—	—	<sup>(a)</sup> 11	499
Not stated	69	79	5	1	—	—	—	18	172
<b>Total</b>	<b>91,303</b>	<b>68,547</b>	<b>55,719</b>	<b>28,253</b>	<b>18,518</b>	<b>6,053</b>	<b>5,354</b>	<b>3,689</b>	<b>277,436</b>
<b>Per cent</b>									
Hospital	95.9	96.5	98.8	96.5	86.7	97.0	92.6	97.9	96.1
Birth centre	3.4	3.1	1.0	2.5	12.6	n.p.	7.1	n.p.	3.4
Home	0.2	0.3	0.1	0.8	0.6	n.p.	0.3	n.p.	0.3
Other	0.4	—	0.0	0.2	0.2	—	—	<sup>(a)</sup> 0.3	0.2
Not stated	0.1	0.1	0.0	0.0	—	—	—	0.5	0.1
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

(a) Includes remote community health centres.

n.p. Data not published to maintain confidentiality of small numbers.

Note: Intended place of birth at time of booking for Vic, SA and Tas. Intended place of birth at onset of labour for NSW, Qld, WA, ACT and NT.

A number of State jurisdictions do collect data specifically about transfer before and during labour.

The following table provides a best estimate of homebirth transfer rates for each state and territory where figures are available.

State/Territory	Total planned homebirths	Total actual homebirths	Transfers prior to labour	Transfers during labour	Total transfers	Total % transfers
NSW <sup>2</sup>	172	125		47		27%
Victoria <sup>3</sup>	229 (AIHW records 230)	197	13	19	32	14%
Qld	77	47				39%
WA <sup>4</sup>	234 (AIHW records 230)	194		39		17%
SA <sup>5</sup>	102	86				16%
Tas	n.p.*	12				?
ACT	16	13				19%
NT <sup>6</sup>	n.p.*	34				?
Australia	886	708				20%

\* AIHW does not publish this data so as to maintain confidentiality of small numbers

<sup>2</sup> Centre for Epidemiology and Research, NSW Department of Health, *New South Wales Mothers and Babies 2006*, NSW Public Health Bull 2007; 18(S-1).

<sup>3</sup> Consultative Council on Obstetric and Paediatric Mortality and Morbidity Perinatal Data Collection Unit, *Births in Victoria 2005 and 2006*, Statewide Quality Branch, Victorian Department of Human Services, 2008

<sup>4</sup> Professor Caroline Homer and Dr Michael Nicholl, August 2008, *Review of homebirths in Western Australia* Undertaken for the Department of Health WA

<sup>5</sup> Annabelle Chan, Joan Scott, Anh-Minh Nguyen, Leonie Sage, *Pregnancy Outcome In South Australia 2006*, November 2007, Pregnancy Outcome Unit, Government of South Australia Department of Health

<sup>6</sup> Xiaohua Zhang, Karen Dempsey and Sonya McNellee, 2009, *Mothers and Babies 2004*, Northern Territory Midwives' Collection, NT Department of Health and Families