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Griffith University Submission to the Senate Inquiry Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two other Bills

Introduction

The introduction of Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009, Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009 into the Australian Parliament is an historical development. The report of the National Maternity Service review provided a number of recommendations with overarching aims of improving access for women Australia-wide to a variety of maternity care options whilst maintaining high levels of quality and safety (Commonwealth of Australia 2009 p 1). Whilst the report of the National Maternity Service review did not specifically mention safety concerns relating to homebirth, the review decided that homebirth should be excluded from reform measures as it had "potential to polarize the professions" (Commonwealth of Australia 2009 p 21). The areas of concern are:

- Health Practitioner National Regulation law currently being developed by COAG has the impact of making attendance at a homebirth by a registered midwife (without indemnity insurance) outside of the conditions of the midwife's registration.
- The legislation being examined by this Senate inquiry does discuss homebirth however the Minister has specifically outlined that homebirth will be excluded from indemnity cover and funding in her second reading of the legislation (Roxon 2009)

This creates an issue of public safety which is contrary to the government's stated aims. Two possibilities exist for resolving this situation;

1) that private practice midwives providing homebirth care are exempt from the requirement to demonstrate indemnity for all areas of practice

or

2) that the Federal government extend indemnity provisions to cover intrapartum homebirth care.

Option 1 may serve a temporary solution while a longer term resolution is achieved however as it denies consumers the protection of insurance if injured as a result of negligent actions by a health practitioner, it is an unsuitable long term solution. Therefore, extension of indemnity insurance provisions to include intrapartum homebirth care is the focus of this submission.

Safety

Homebirth is a safe option for women when it is integrated into the health care system under a public or private model (Bastian et al 1998, de Jonge, 2009, Ackermann-Liebrich et al.

1996; Northern Region Perinatal Mortality Survey Coordinating Group 1996; Wiegers et al. 1996; Gulbransen et al. 1997; Murphy & Fullerton 1998; Young et al. 2000; Janssen et al. 2002; Johnson & Daviss 2005). Homebirth is integrated into maternity services for low risk women in several other OECD countries including in the Netherlands, United Kingdom, Canada and New Zealand. In countries where homebirth is an accepted component of routine services significant numbers of women prefer this model of care. For example, in the Netherlands in the largest ever study of homebirth (over 500,000 births) over 2/3 of women planned a homebirth (de Jonge 2009).
Australian private practice midwives have been marginalized for many years. Private practice midwives have had difficulty in developing collaborative relationships and integrating their practice with hospital-based care. Specifically, private practice midwives have experienced

- difficulty obtaining visiting rights to hospitals,
- unhelpful or hostile reactions when consulting with hospital staff or referring women to public hospitals
- no government or private fee rebates or indemnity insurance
- difficulties accessing pathology (ordering tests) and providing medications (prescribing)

These barriers have not supported development of quality and safety mechanisms or enabled seamless consultation, referral and transfer of women as required. Despite this, homebirth care has been demonstrated to provide good outcomes for low risk women. The largest Australian study of homebirth (7002 women over 5 years in all planned homebirth in Australia), although retrospective, states "Homebirth for low risk women compares favourably with hospital birth" (Bastian et al 1998 p384). The latest available Australian perinatal data (Laws 2008) indicates that in 2006 of the 706 planned homebirths, all infants were live-born.

Homebirth and the midwifery profession

The International definition of a midwife states that a midwife is able to provide care on her own responsibility across all aspect of the childbirth continuum, and in any setting including the home (International Confederation of Midwives 2005). The Australian Nursing and Midwifery Council (ANMC) Competency Standards for the Midwife also support this position (Australian Nursing and Midwifery Council 2006). The ability to provide care across a variety of settings is an integral part of midwifery.

Midwives work in partnership with women. Women of sound mind have the legal right to self-determination in their care. Midwives in private practice are contracted by women to provide them with care across the childbirth continuum. Midwives and women will be in an untenable position if a woman chooses to have her baby at home, and the midwife is unable to attend her as a condition of her registration. Women have the right to refuse to go to hospital for birth. Professional standards would prevent a contracted private practice midwife from leaving a woman unattended during labour and birth if she chose to remain at home.

Implications of this legislation

- **Exclusion of homebirth and safety**

Private practice midwives provide the majority of homebirth care. Although few doctors practice homebirth, this proposed legislation does not impact on their right to do so as they are not reliant on the Midwife Professional Indemnity (Commonwealth Contribution) Scheme. If private practice midwives are unable to obtain indemnity insurance to provide

homebirth care they will be acting outside of the conditions of their registration (Australian Health Workforce Ministerial Council 2009). This may result in disciplinary action at significant cost to the midwife.

Exclusion of homebirth from legislation denies consumers the protection as exists under regulatory frameworks. Midwives registering under the proposed national regulatory framework must provide evidence of continuing professional development, recency of practice and ongoing competence to practice (Australian Health Workforce Ministerial Council 2009). This provides a degree of assurance to the public about the professional attributes of the attending practitioner. A component of the regulatory framework provides a mechanism for consumers to complain about health professionals under a complaints mechanism. The regulatory framework is designed to enhance public safety.

The proposed legislation will result in the provision of homebirth care by unregulated practitioners. No data exists to demonstrate that provision of homebirth care by unregulated practitioners is safe. No data will be collected under this system as there will be no ability to monitor and require reporting. The risks associated with homebirth will likely increase is this matter is not resolved.

Reports demonstrate that the incidence of "freebirth" or unassisted homebirth is rising due to difficulties in obtaining care from midwives (Newman 2008 p 451). A number of highly publicised deaths of babies during freebirths over the last 12 months have been reported. Women choosing to homebirth following implementation of this legislation will be forced into the unregulated marketplace as a result of registered midwives being unable to attend them for birth at home.

- **Impact on education of midwives**

Education of midwives in Australia is evolving slowly when compared internationally. In May 2009 the ANMC released newly developed national standards for the education of midwives. These standards will ensure comparability nationally and internationally of midwifery courses and graduate outcomes. Graduates must be able to demonstrate the ability to work across their full scope of practice. Griffith University's newly developed undergraduate Bachelor of Midwifery program, commencing 2010, complies with these standards.

Education in homebirth care is integral to student learning and development of graduates able to work to the full scope of midwifery practice. Students' exposure to models where midwives work to their full scope of practice would be negatively impacted by a decision to prevent registered midwives providing homebirth care. Homebirth provides students with the only opportunity to provide care for labouring women in an unhindered environment. Students at Griffith University complete continuity of care experiences which require the student to provide care for women across the pregnancy with an aim that they experience public and private models of midwifery care across community (including home) and hospital settings supported by a registered midwife.

- **Impact on the workforce of private practice midwives**

The report of the National Maternity Service review recommended a greater role for midwives in the maternity care system (Commonwealth of Australia 2009 p 2). The legislation being examined by this inquiry demonstrates that removing barriers (i.e. access to MBS funding, PBS and indemnity) for midwives to work in private practice is a priority for the government. The exclusion of homebirth flies in the face of this priority. Most private practice midwives provide homebirth care. Midwives provide homebirth care because

women choose to have homebirths and because midwives recognise the value of this choice not only because they are restricted from providing hospital based care. It is likely that many midwives currently working in private practice providing homebirth care will not continue to practice if they are unable to provide homebirth care. The loss of these highly experienced professionals will be detrimental to the profession, a loss to childbearing women and a retrograde step in relation to this reform process.

Proposed solutions

Introduction of the reforms proposed in this legislation provides an opportunity to ensure quality and safety frameworks exist across maternity services including public and private homebirth care. Private practice midwives providing homebirth care recognise that the barriers to integration, seamless transfer, data collection and regulation must be removed. The Australian College of Midwives in conjunction with several groups supporting private practice midwives (MIPP's Queensland, the Australian Private Midwives Association, ASIM) and consumer groups such as Maternity Coalition have campaigned for many years to increase collaborative arrangements to support homebirth care.

A strong system of homebirth care should include private and public models of care linked to regulatory processes. The suggested mechanisms to ensure quality and safety would include:

- a credentialing process (Midwifery Practice Review),
- evidence of continuing professional development (MidPLUS),
- access to indemnity insurance (as subsidised by the Federal government or through alternative processes),
- collection and submission of data relating to practice and outcomes
- evidence of visiting rights to a hospital and ability to collaborate with medical practitioner when required

The Australian College of Midwives National Consultation and Referral Guidelines for the Midwife could form the basis of a collaborative framework in the absence of another collaboratively developed set of guidelines. These are the only existing guidelines developed in consultation with a wide range of stakeholders from medical, midwifery, and consumer organisations and based on the best available evidence (Boxall 2009). The guidelines emphasise women's right to make decisions and embody the principles informed consent and right of refusal in care.

Conclusion

The consequence of the intersection of the current package of draft legislation (excluding homebirth) and the Health Practitioner National Regulation is that attendance at a homebirth by a registered midwife will fall outside of conditions of midwifery registration. Women will continue to birth at home and will now be without the protection afforded through health professional regulatory processes. This will jeopardize public safety.

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Yours sincerely

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