



australian
nursing federation

Submission to Health Legislation Amendment
(Midwives and Nurse Practitioners) Bill 2009 and
two related Bills:

Midwife Professional Indemnity (Commonwealth
Contribution) Scheme Bill 2009 and Midwife
Professional Indemnity (Run-off Cover Support
Payment) Bill 2009

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1. Introduction

The Australian Nursing Federation (ANF) was established in 1924. The ANF is the largest professional and industrial organisation in Australia for nurses and midwives, with Branches in each State and Territory of Australia.

With a membership of over 175,000 nurses and midwives, the core business for the ANF is the professional and industrial representation of our members and the professions of nursing and midwifery. Members of the ANF are employed in a wide range of enterprises in urban, rural and remote locations in both the public and private sectors.

The ANF participates in the development of policy in nursing and midwifery, nursing and midwifery regulation, health, community services, veteran's affairs, education, training, occupational health and safety, industrial relations, social justice, immigration, foreign affairs and law reform.

2. Nurse Practitioners and Midwives

Nurse practitioners and midwives are educated to function autonomously and collaboratively within a regulated framework. Their roles include assessment and management of clients using knowledge and skills, and may include, but is not limited to, the direct referral of patients to other health care professionals, prescribing medicines, and ordering diagnostic investigations. Grounded in the professions' values, knowledge, theories and practice, their roles provide innovative and flexible health care delivery that complements other health care providers. The scope of practice of nurse practitioners and eligible midwives is determined by the context in which they are legally authorised to practice.¹

Within the universal provision of health care, nursing and midwifery have the right to determine the nature and parameters of nursing and midwifery care, to examine current practice and to explore new models of nursing and midwifery care, thereby responding in a dynamic way to changing individual and community needs.

3. Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and related Bills (Midwife Professional Indemnity)

The ANF has been advocating for many years for the role and function of nurse practitioners and eligible midwives to be recognised for the significant contribution these clinicians make to the health and aged care sector. The ANF has argued this role has not been able to fulfil its full potential due to constraints imposed through legislative barriers to access to Medicare Benefits Schedule (MBS) rebates and Pharmaceutical Benefits Scheme (PBS) subsidised medicines for their clients.

The ANF is therefore pleased to finally see acknowledgment of nurse practitioners and eligible midwives, through the introduction of the proposed Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills: Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009, by the Minister for Health and Ageing, in June 2009.

The enactment of these Bills would provide for greater access for the community to health and aged care services. Specifically this is through the amendments to the Health Insurance Act 1973 and the National Health Act 1953 to enable nurse practitioners and eligible midwives, to request appropriate diagnostic imaging and pathology services for which Medicare benefits may be paid, and prescribe certain medicines under the PBS.

The 2009-2010 Federal Budget measures also provided for the creation of new Medicare items, and referrals under the MBS from these health professionals to specialist/consultant physicians.

The ANF and the peak nursing and midwifery organisations more broadly are greatly concerned at the delay in the passage of the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills.

The ANF provides comment through this submission to the Community Affairs Legislation Committee, to its inquiry into the impact of the proposed Government amendments to the above named Bills. In this second referral of these Bills to the Committee, the ANF urges the Committee to deliberate on what outcome for the legislation will best serve the interests of the health and well being of the public.

4. Committee considerations

The ANF submission will provide commentary on the Committee's stated areas for consideration.

4.1 Whether the consequences of the Government's amendments for professional regulation of midwifery will give doctors medical veto over midwives' ability to renew their licence to practice

Midwives, as members of a self-regulated health profession, are autonomous providers of midwifery care under the nurses and midwives Acts within the State/Territory in which they are regulated and in which they practice. This means they have independent authority to act within their scope of practice and are accountable for their own clinical decision-making and the outcomes of their actions when caring for women in the ante-natal, intra-partum and post-natal phase of pregnancy.

As from 1 July 2010 the regulatory framework governing the practice of midwives will operate under the Health Practitioner Regulation National Law Bill 2009. Under this legislation midwives will be required to have professional indemnity cover². Midwives who are employed by an organisation, access insurance cover through vicarious liability. Midwives who are self employed - private practitioners, will be required to obtain their own professional indemnity insurance cover. Where this is not available, especially for midwives undertaking home birth activities as private practitioners, the Australian Government has proposed a two year grace period to determine appropriate professional indemnity insurance arrangements.

The requirements under the Health Practitioner Regulation National Law Bill 2009 for midwives to obtain professional indemnity insurance in order to be able to practise should remain as just that, a requirement to practise as a midwife. This requirement should in no way, shape or form be linked to any arrangements for collaborating with other health professionals in the care of women, and with a subsequent link to the midwife's ability to practise.

The ANF is firmly of the view that the consequence of the Government's amendments to the Bills will mean that a medical practitioner could have veto over the ability of a midwife to practise. This is due to the requirement in the legislative amendment for eligible midwives to demonstrate collaborative arrangements with a medical practitioner.

The ANF's recommendation is:

Recommendation 1: That the requirement to obtain professional indemnity insurance for registration/practise as a midwife and the requirement for establishing a collaborative arrangement between a midwife and a medical practitioner, must not be linked.

4.2 Whether the Government's amendments' influence on the health care market will be anti-competitive

It is the right of women to choose the health professionals they want to be involved in their care during all phases of pregnancy and birthing.³ It is the view of the ANF that any legislation proposing to link the ability of a midwife to register to practice with their ability to enter into working arrangements with another health professional, contravenes health care market principles.

Should legislation be passed which requires that a midwife must have an established collaborative arrangement with a medical practitioner in order to provide care to a woman this places the medical practitioner in the position of being able to influence the ability of the midwife to practise. This then has the potential for limiting midwifery involvement in the care of women and the choice of women for their health professional provider.

The ANF's recommendation is:

Recommendation 2: That the Government's amendment to the legislation be removed, or changed to include collaborative arrangements with 'one or more medical practitioners of a kind or kinds specified in the regulations or one or more health services of a kind or kinds specified in the regulations'.

4.3 Whether the Government's amendments will create difficulties in delivering intended access and choice for Australian women

The Australian Government's Maternity Services Review⁴ heard from consumers about their desire for more choice in the health professionals involved in their maternity care.

The Review Team considered that greater choice for women would be provided by broader acknowledgment of the role that midwives can play as a member of a collaborative maternity team, potentially in a number of different care models.⁵

The amendments will indeed create difficulties in delivering intended access and choice for Australian women and, for the broader community as the amendments will also impact on nurse practitioners.

The Government's amendment has the effect of limiting access and choice for Australian women by enshrining in the legislation the requirement for a midwife to have a collaborative arrangement in place with 'one or more medical practitioners' in order for them to be able to provide maternity care. While all midwives work in collaborative teams, the flexibility must be for them to have collaborative arrangements - either with medical practitioners in private practice and/or with a health service/s that provide maternity care.

The ANF foresees difficulties for women in being able to choose their maternity care provider if the practice of midwives is restricted by legislation that links their practice to other health professionals. Consultation and referral guidelines currently exist in midwifery, and provide a firm basis on which to build collaborative relationships.

4.4 Why the Government's amendments require 'collaborative arrangements' that do not specifically include maternity service providers including hospitals

Way, Jones and Busing (2000)⁶ report in an article on collaboration about a research project undertaken with family doctors and nurse practitioners. The authors highlight the fact that "collaboration has become a buzzword that too few healthcare planners or providers can accurately define". Through their project on collaborative practice they developed the following definition:

Collaborative Practice is an inter-professional process for communication and decision making that enables the separate and shared knowledge and skills of care providers to synergistically influence the client/patient care provided.⁷

Way (et al, 2000) concluded that “collaborative practice involves working relationships and ways of working that fully utilises and respects the contribution of all providers involved”⁸. Seven essential elements are identified through this research project as being integral to successful collaborative practice: responsibility and accountability, co-ordination, communication, co-operation, assertiveness, autonomy, and mutual trust and respect. It is worth noting the commentary on ‘autonomy’

*Autonomy involves the authority of the individual providers to independently make decisions and carry out the treatment plan. Autonomy is not contrary to collaboration and serves as a complement to shared work. Without the ability to work independently, the provider team becomes inefficient and work becomes unmanageable. Both partners need to fully understand and support practice autonomy, as well as, shared decision making from a liability perspective.*⁹

It is the ANF’s view that collaboration does not mean one profession dominating or overseeing another. It means respecting each other’s interest and professional responsibility. In relation to the Bill being considered by the Committee it requires midwives and medical colleagues having confidence that each will inform and discuss client needs with the right clinician at an appropriate time. It also means that each health professional will act in a professional manner at all times, recognising the limit of one’s scope of practice, calling on another professional if needed. Existing regulatory processes for each profession which underpin professional practice ensure quality, safety, accountability and responsibility in the public’s interest.

The proposed Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills allow access for nurse practitioners and eligible midwives to Medicare Benefits Schedule rebates and Pharmaceutical Benefits Scheme subsidies for the clients requires collaboration between doctors and nurses/midwives. The ANF insists that nurse practitioners/eligible midwives and medical practitioners do not need a written contract with each other to make sure that collaboration occurs. Collaborative practice is long standing between health professionals. Collaborative arrangements do not need to be formalised in legislation. Nurse practitioners/eligible midwives, and their medical colleagues, act ethically, professionally and within a legal framework.

The current Government amendment specifies that ‘collaborative arrangements’ be made between nurse practitioners/eligible midwives and ‘one or more medical practitioners’. The ANF is strongly of the view that, should the Government amendment be retained, then the ‘collaboration’ should be described as being either between health professionals or between a health professional and a health service provider/s, and that it not be stipulated as being a formal arrangement, that is, requiring an individual written agreement. This provides for greater flexibility in working arrangements and more importantly, accommodates all geographical settings in which maternity services are provided to meet client needs.

The ANF's recommendations are:

Recommendation 3: That collaborative arrangements between health professionals should not be enshrined in legislation, but rather, described in regulations accompanying the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills.

Recommendation 4: That the term 'collaborative arrangement' be removed from the legislation pertaining to professional indemnity of eligible midwives.

Recommendation 5: That, as is the case for medical practitioners, Medicare Australia review nurse practitioners and eligible midwives case records or other documentation. This review can then be used to obtain evidence of collaborative arrangements.

4.5 Whether the Government's amendments will have a negative impact on safety and continuity of care for Australian mothers

The Government's amendments will have the effect of forcing midwives to enter into formal collaborative arrangements with a medical practitioner/s (an approach which, as has been outlined, the ANF is opposed to), and links collaborative arrangements with professional indemnity insurance cover. The ANF maintains that with the Government's amendments, midwives who undertake homebirths and who may not be able to obtain professional indemnity insurance, will not be able to enter into required collaborative arrangements. This will mean that a) homebirth midwives may no longer register in order to continue to provide care for women, or b) some women who wish to have a homebirth will turn to unlicensed carers, or simply the support of friends (a practice known as free-birthing). These outcomes will clearly have a negative impact on the safety and continuity of care for women requiring maternity care.

5. Conclusion

The ANF is pleased to provide advice to the Community Affairs Legislation Committee to assist in its deliberations on the impact of the proposed Government amendments to the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills: Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009.

The recommendations of the Australian Nursing Federation are:

Recommendation 1: That the requirement to obtain professional indemnity insurance for registration/practise as a midwife and the requirement for establishing a collaborative arrangement between a midwife and a medical practitioner, must not be linked.

Recommendation 2: That the Government's amendment to the legislation be removed, or changed to include collaborative arrangements with 'one or more medical practitioners of a kind or kinds specified in the regulations or one or more health services of a kind or kinds specified in the regulations'.

Recommendation 3: That collaborative arrangements between health professionals should not be enshrined in legislation, but rather, described in regulations accompanying the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills.

Recommendation 4: That the term 'collaborative arrangement' be removed from the legislation pertaining to professional indemnity of eligible midwives.

Recommendation 5: That, as is the case for medical practitioners, Medicare Australia review nurse practitioners and eligible midwives case records or other documentation. This review can then be used to obtain evidence of collaborative arrangements.

The ANF has advocated for many years that nurse practitioners and eligible midwives can provide greater access to health and aged care services to the Australian community. The passage of the proposed Bills (with reworded amendments, as outlined above) will enable nurse practitioners and eligible midwives to work to the full scope of their practice with the removal of legislative barriers to access to Medicare Benefits Schedule (MBS) rebates and Pharmaceutical Benefits Scheme (PBS) subsidised medicines for their clients. The ANF urges the Committee to make decisions which will not only expedite the passage of this important legislation through the Parliament but will result in processes which will enhance the collaborative teamwork of all health professionals, while maximising the health and well being of the Australian community.

The ANF is the largest professional and industrial body for nurse and midwives in Australia, and as such would welcome the opportunity to provide further advice to the Committee should that be required.

References

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4. Ibid.
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7. Ibid. p. 3.
8. Ibid. p. 4.
9. Ibid. p. 5.