Ms Natasha Ryan  
Assistant Secretary  
Medical Specialist Services Branch, Medical Benefits Division  
Department of Health  
By email: medical.indemnity@health.gov.au

Monday, 31 July 2017

Dear Ms Ryan

Re: Thematic Review of Medical Indemnity and Midwife Professional Indemnity Legislation

Thank you very much for inviting the Australian College of Midwives to comment as part of the Department of Health’s thematic review of the Commonwealth’s medical legislation, including midwife professional indemnity legislation.

The Australian College of Midwives (ACM) is a national, not-for-profit organisation that serves as the peak professional body for midwives in Australia. The ACM was founded nationally in 1984, when midwifery associations in a number of states and territories came together to create a national peak body for Australian midwives. We provide a unified voice for the midwifery profession, support midwives to reach their full potential and set professional practice and education standards.

In our work with privately practising midwives, we have encountered a number of concerns regarding professional indemnity and welcome this opportunity to give you our feedback on this issue.

1. Do you consider that any of the Acts/legislative instruments are no longer fit-for-purpose or are otherwise redundant or unnecessary?

The Acts/legislative instruments are no longer fit for purpose for a number of reasons.

- The lack of indemnity insurance for intrapartum care for a planned birth at home is restricting midwifery practice; impacting on women’s choice of place of birth, and forcing women to choose unsafe options such as employing support people who are not midwives, or having unassisted births. This is placing midwives in untenable positions and resulting in less than optimal clinical outcomes for both women and babies. The ACM advocates for full indemnity insurance to be provided to midwives who facilitate planned birth at home according to relevant conditions, standards and policies such as the ACM National Midwifery Guidelines for Consultation and Referral, Birth at Home Practice Standards and Transfer from Planned Birth at Home Guidelines.

- The complexity of insurance legislation has resulted in all but one option for insurance being available for private midwives ie MIGA. In order for midwives to gain that insurance they have to become endorsed with the NMBA. This is not necessarily the choice of all private midwives, especially
who not want to practice in hospital facilities, or have small homebirth practices, or have small practices in in rural and remote areas. The cost of becoming endorsed and as well as the cost of the more expensive MIGA insurance product has been prohibitive for these midwives and a number of excellent privately practicing midwives has been lost from the profession.

**NB:** The Midwife Professional Indemnity (Commonwealth Contribution) Scheme Rules 2010, definition of eligible midwife is incorrect as the new Nursing and Midwifery Board of Australia (NMBA) “endorsement” came in place on the 1st January 2017, not 1st July 2018 as indicted.

2. Are the Acts/legislative instruments simple, clear and easy to read? If not, which elements of the legislation pose particular challenges, and what changes would you suggest?

Acts/legislative instruments are never easy to read and understand if you are not used to reading legislation. Plain English versions of the acts/instruments are always welcome.

3. Do you consider that there would be value in consolidating the legislative instruments made under each Act? If so, which instruments do you suggest be consolidated?

Agree that it would be useful to consolidate all instruments with legislation impacting on midwives into one Act. This would make it easier for midwives to find information and ensure they are practicing according to the law.

4. Do you consider that any of the Acts/legislative instruments impact adversely on any of the following matters (and if so, how):

- Human rights particularly the rights and freedoms recognised or declared by international conventions
- Administrative law, particularly merits or judicial review, administrative decision making processes and alternative dispute resolution
- Privacy law, particularly compliance with the national privacy principles

The lack of insurance for intrapartum care at a planned homebirth has resulted in the loss of a basic human right for many women – the right to be able to choose their place of birth – as outlined in Question 1.

5. Do any of the Acts/legislative instruments generate unnecessary administration (for insurers, medical practitioners/midwives, government or others)? If so, what changes could be made to address this?

No additional comments.

6. Do any of the Acts/legislative instruments impose significant compliance costs on business, community organisations and individuals? If so, how could compliance costs be reduced?
It is timely to re-visit the conditions of endorsement, which privately practising midwives must meet in order to be able to access the MIGA product, particularly the requirement around collaboration. Midwives are the only group of health professions who work in private practice who are required to have collaborative arrangement with another health profession to access Medicare rebates. This is unnecessary from a clinical practice perspective, as midwives are regulated and educated to practice to a scope as autonomous practitioners. Further, midwives around Australia have found it very difficult to establish collaborative arrangements with doctors or facilities for a number of reasons, not least because other professionals wanting to maintain competitive advantage. Being at the “mercy” of another profession or business is anti-competitive and is a restriction of trade, resulting in midwives being unable to carry out their business. The ACM advocates that the requirement for collaboration is removed from legislation, and midwives required to comply with the same regulatory, professional and facility requirements as any other private health practitioner.

7. Are there any other opportunities for reducing regulatory burden or improving the operation of the legislation?

The ACM advocates for a no-fault compensation scheme for medical error. The current insurance scheme encourages defensive practice and fosters a punitive environment in which to practice. Defensive practice impacts on clinical care by encouraging medical interventions that are not evidence-based which in turn results in less than optimal outcomes and increased costs. Further, it is unacceptable that women choosing a planned birth at home have no recourse for compensation, apart from suing their midwife) should their baby need extra care from complications at birth, regardless of where the fault lies. A no-fault system has the potential to be fairer and more transparent; leading to practice that is evidence-based and woman/patient-centered as opposed to being driven by fear of reprisal and litigation. A no-fault system will do away with the complexities of insurance for midwives, especially for planned birth at home. This will provide greater choice of birthing for women and reduce the need for them to engage with unsafe practices such as unassisted home birth.

The ACM is extremely willing to part of any further review or discussion of issues relating to insurance and midwives. If you have any further questions about the ACM submission, or pursue a further conversation, please do not hesitate in contacting me: sarah.stewart@midwives.org.au

Yours sincerely,

Sarah Stewart
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