

To the National Registration and Accreditation Implementation Project Team,

Re: Comments on draft legislation for the National Registration and Accreditation Scheme (Bill B)

I am writing to express my concern about the draft legislation for the National Registration and Accreditation Scheme (Bill B). This bill will see the transfer of 10 health professions from control by state registration boards to national registration boards. As a mother of two children (the 2nd born at home with an independent midwife) and a paediatric Registered Nurse, this issue affects me both personally and professionally.

I am calling for all clauses in the exposure draft linking registration to indemnity to be removed.

Strengths of the proposed legislation

I have read the proposed legislation, and find the majority of it to be very good health reform. In my opinion, the strengths of this legislation are:

- **No need to register more than once**
Some health professionals consult in more than one state, needing registration in each state. Also, it is my understanding that Retrieval Nurses and Doctors at the Women's and Children's Hospital and Royal Adelaide Hospital need to be registered in many states because they are the referral hospital for patients in South Australia, southern Northern Territory as well as western Victoria and NSW, so patients needing emergency care get retrieved to Adelaide, crossing state borders and therefore registration jurisdictions. National registration would make interstate consultation and retrieval far easier.
- **Standardised rules for registration**
Rules for registration vary across Australia, so national registration will provide uniformity of registration criteria within each health profession.
- **Increased mobility of health professionals**
As with the first point, health professionals will be able to relocate interstate more easily as their registration will be portable.
- **Harder for incompetent people to register in other jurisdictions**
By having one registration body for each profession, people who are banned from working in a profession will no longer be able to "slip under the radar" by attempting to register in another state. Communication between the boards is good, but sometimes things fall through the cracks. One register for each health profession rather than seven or eight will stop these cracks.

Weaknesses of the proposed legislation

The draft legislation, however, will be changing the historical criteria for registering as a health professional by adding clause 101 Conditions of registration point (ii), which stipulates *'that the registered health practitioner must not practise the health profession unless professional indemnity insurance arrangements are in force in*

relation to the practitioner's practice of the profession.' The basis for this clause is that indemnity insurance protects the public and makes our health system safer. I disagree with this assertion for the following reasons.

Indemnity insurance does not make for safer health professions

Historically, registration has provided safety for the public because health professionals must have adequate education, skills and knowledge to be entered on the register and therefore legally takes the title of the profession (such as “Registered Nurse”, “Physiotherapist”, etc). It is only then that the health professional is given access to patients and provides health care. That is, *registration of health professionals acts before the professional - patient interaction by ensuring only competent people provide health care.*

Indemnity insurance only acts after the professional - patient interaction, and after the health professional has engaged in malpractice. It does this by increasing the amount of money available to be paid in compensation, and by protecting the health professional and their family from financial ruin if a lawsuit is brought against them. Indemnity insurance is an “after the fact” economic mechanism, not something which can act in any way to make a safer workforce of health professionals!

Tying registration of health professionals to indemnity insurance poses many downfalls for our health system. Some of those issues are:

- **Relying on independent business makes for a vulnerable health system**
By making registration contingent on indemnity insurance, the Federal Government is handing over the future of 10 health professions to third party businesses on the assumption that there will always be a company around to insure the professions and all the specialities that are contained within those professions. *That is, if an insurance company will cover you, you have the profession, if not, it will be wiped out.* Independent Midwives are the “here and now” symptom of the vulnerability this legislation is opening our health system up to.
- **The impact of a multimillion dollar lawsuit**
Taxpayers have already subsidised private obstetric indemnity to the tune of millions since the medical indemnity crisis. What happens if there is another multimillion dollar lawsuit and insurance companies flee from a speciality or profession (as they did with obstetrics after an \$11mill cerebral palsy payout, leaving midwives also uninsured in the process)? *By tying insurance to registration, the Government will be forced to either bailout the affected private professionals, or see the whole profession become unregistered and therefore illegal.* Will the Government be prepared to save professionals in private practice such as chiropractors, acupuncturists, physiotherapists, or dental hygienists? And at what cost to the taxpayers?
- **Volunteering after national registration**
For health professionals who aren't in private practice, indemnity insurance is provided through their employer. Once indemnity insurance is mandatory to practice as a health professional, working when you are not covered by the insurance will be illegal, as you know. So health professionals will go from being "Registered" 24/7 under the current system (because it's based on

competency so they meet the educational and skills criteria at all times) to only being "Registered" while they are covered under an insurance policy. This means that while I am not in my work capacity (off shift, out of the hospital) then my employer's insurance policy does not cover me and it is illegal for me to undertake the activities of a Registered Nurse. This is where, as health professionals, volunteering our skills, knowledge and time as first aid officers will become illegal, because it is outside our work capacity and therefore outside the insurance policy that our registration is contingent on. *As of July 1, 2010, I will not be able to volunteer as a first aid officer at any event despite having adequate skills and knowledge, or I will risk deregistration and a \$30,000 fine.* This will have a massive impact on charities and non-profit organisations that rely on these the health professionals as volunteers.

- **Changing the historical prerequisites of Registration**

Historically, registration of health professionals has been undertaken to protect the public by showing that a person is "competent" to practice in that profession. That is, they possess the education, skills and knowledge required of that profession, they work within professional guidelines and legislation, and undertake ongoing education. *This proposed legislation changes this history of public safety by adding the clause of indemnity insurance (an economic criterion),* and as I stated previously, indemnity insurance does not equate with safe health professionals, just ones who can provide enough compensation in the event of litigation.

- **The Government is not listening to the people**

Last year, the Maternity Services Review called for submissions on improving our maternity system. Over half of the submissions were advocating for more accessible homebirth services including publicly funded homebirth. *This proposed legislation will legislate conversely to what the Federal Government was told by respondents to the Maternity Services Review, by legislating to reduce access to homebirth rather than increasing it.* The Government is not representing the people on this issue.

- **Private homebirth to become illegal**

As I stated previously, due to a lawsuit involving an Obstetrician, private midwives (also known as Independent Midwives) have been left without indemnity insurance because there are not enough of them in Australia for insurance companies to be able to provide enough coverage at a reasonable premium. The intersection of the National Registration and Accreditation Scheme (Bill B) with the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related bills will prevent private practice homebirth midwives from registering. *If these legislations go ahead unamended, on July 1, 2010, private homebirth will become illegal, leaving Australia totally out of step with nations such as the United Kingdom, Canada, New Zealand and The Netherlands, where the rights of the women to choose homebirth are supported and the provision of a registered midwife is funded through their national health scheme.*

I understand that homebirth is a sensitive issue, as the Australian Medical Association (national and SA branches) repeatedly slam homebirths as unsafe

for any women. However, the South Australian Department of Health Perinatal Statistics show that planned homebirth attended by a health professional has the same maternal and neonatal mortality and morbidity rates as hospital births, and less interventions. It is homebirths which are unattended by health professionals (“free births”) which have higher rates of mortality and morbidity, but which the AMA include in their statistics of homebirth. It is due to this statistical safety of midwife attended homebirth that the Women’s and Children’s Hospital and the Lyell McEwin Hospitals in South Australia both have publicly funded homebirth units, and Flinders Medical Centre is in the process of setting a homebirth unit up. Unfortunately, these units are small and have strict zoning regulations which preclude many women, facilitating the need for private midwives who providing private homebirths.

As is see in some states of the United States of America, making private homebirth illegal increases the number of families who chose to “free birth” or birth with an unregistered midwife (who may or may not have adequate education, skills or knowledge that regulated health professionals must possess). *The stated outcomes of this proposed legislation is for safer health care, but leaving these consumers without registered, regulated health carers will produce the opposite effect.*

I ask that the Government seriously reconsider handing 10 of Australia’s health professions over to third party business on the assumption that there will always be a company to insure the professions. For this to be avoided, you must remove all clauses mandating indemnity insurance for health professionals from otherwise very good health regulation reforms.

Yours sincerely,
Mrs Amy Mann