

Australian Health Ministers' Advisory Council
National Registration and Accreditation Implementation Project
PO Box 2089
Woden ACT 2606

July 13, 2009

**Personal submission by Nyree Yali
Re: Exposure Draft of Bill B
Health Practitioner Regulation National Law 2009**

As a woman wanting to maintain the legal right to choose to birth at home with an Independent Midwife, I would like to express my disappointment with Bill B in its current form. Although it certainly benefits women choosing to birth in hospital (which I did with my first child), losing the right to have a trained, professional midwife as my primary carer at home in future is unacceptable.

The following sections of the Bill effectively criminalise midwifery outside a clinical environment:

Subdivision 6 Registration

101 Conditions of registration

(1) If a National Board decides to register a person in the health profession for which the Board is established, the registration is subject to the following conditions:

(a) for a registered health practitioner other than a health practitioner who holds non-practising registration:

(i) that the registered health practitioner must complete the continuing professional development program required by the National Board, and

(ii) 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,

As such, attending a homebirth becomes illegal from July 2010. So far, the Government has refused to extend the same insurance subsidies to Independent Midwives that have been afforded to Obstetricians in private practice and procedural GP's. There is no scientific evidence to support this kind of disparity.

These conditions of registration indicate that unlike the current situation where midwives without insurance are still attending women at home, this could become an offence. Penalty as yet unknown, although there is this in the Bill:

Subdivision 6 General

148 Directing or inciting unprofessional conduct or professional misconduct

(1) A person must not direct or incite a registered health practitioner to do anything, in the course of the practitioner's practice of the health profession, that amounts to unprofessional conduct or professional misconduct.

Maximum penalty:

(a) in the case of an individual—\$30,000, or

(b) in the case of a body corporate—\$60,000.

Theoretically then, if a parent or someone else were to ask a registered midwife to attend a homebirth, they could face hefty penalties. This is an unacceptable situation.

I will also be making a submission to the Senate Committee regarding the specifics of the related bills, particularly addressing the claim that there is insufficient proof of the safety of home birth from an insurer's point of view. This is simply not true. What is true is that there are relatively small numbers of independent midwives, which is the other 'issue' insurers have.

Since the insurance crisis of 2001, such midwives have worked without insurance as there has not been a product offered to cover them. Families choosing homebirth have happily employed midwives with this knowledge. It has remained a legal option enjoyed by many families.

To ensure independent midwives can be registered after July 2010 and continue to legally provide evidence-based care, as supported by the WHO, **I propose the following amendments to Bill B:**

- Make changes to the draft legislation on the national registration of health professionals which allows midwives to provide care at home without insurance, until suitable insurance can be secured **OR**;
- Ensure that birth at home is included in the Government's plans to provide midwives with Medicare, Indemnity and access to the Pharmaceutical Benefits Scheme **OR**;
- And this may be more of a long-term proposition – look at a 'No-Fault' claim system as they have in New Zealand & the UK – 2 countries where homebirth is publicly supported & flourishing.

Tort Law reform is discussed here:

http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_med11sep.htm

<http://content.healthaffairs.org/cgi/content/full/25/1/278>

http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6T1B-4KD5SP7-17&user=10&rdoc=1&fmt=&orig=search&sort=d&docanchor=&view=c&acct=C000050221&version=1&urlVersion=0&userid=10&md5=569361e9d0da182b9192bf69ca970ea4

Byron Bay Coroner, Nick Reimer, has called on the Federal Government to rethink its refusal to indemnify private midwives outside hospitals, saying home births will be driven underground with "disastrous ramifications". (<http://www.smh.com.au/national/insurance-plea-for-homebirth-midwives-20090629-d2ik.html>)

Until such a time that major reform takes place, either of the other two amendments to Bill B *need* to be implemented to ensure families have a true equity of choice and women can birth where they feel comfortable & with whom – both essential to optimal birth outcomes.

I thank you for your consideration of this matter.

Yours truly,

Nyree Yali
Tasmania