

## AHPRA Submission: Midwives' Quantum of Cover

May 5, 2011

Thank you for the opportunity to provide a submission to this important consultation process. I am an Eligible Midwife in private practice in Sydney. I support:

### Approach 1:

The Board specifies a minimum amount of cover for professional indemnity based on advice from the insurance industry.

### Rationale

#### *Adequate and appropriate insurance*

In order to consider insurance "adequate and appropriate", it must be capable of meeting any and all likely claims. The insurance industry and actuaries are the professionals with the greatest expertise in this field, qualified to advise on an appropriate quantum of insurance for midwives.

The worst case scenario in midwifery would be a mother and baby who both need extensive care for life, where such an outcome has been found to be the result of negligence on the part of the midwife. Such a situation would be rare, however, but would require significant funds. As advised by MIGA ("Questions & Answers for Midwives", June 2010):

*"Claims involving babies are often resolved for large sums mainly because of the long-term care costs that are required (it is not uncommon for claims to be resolved for between around \$3m to \$6m with the highest reported amount awarded against a health practitioner in a birth related case in Australia being in excess of \$11m)"*

The role of the Nursing and Midwifery Board of Australia is primarily to protect the public. Hence, acknowledging the unpredictable potential for a significant claim, I believe the only responsible and justifiable option for the Board to take is to:

- a) Stipulate a minimum quantum of cover; and
- b) Consult the insurance industry with regard to the quantum of cover but to recommend that such cover be unlimited

Currently, the MIGA insurance policy is the only policy providing unlimited liability for midwives.

#### *Unfair burden of responsibility*

Quantum of cover is ultimately a risk management decision informed by the best available actuarial advice. I do not consider that midwives have sufficient actuarial knowledge to make an appropriate judgment in this regard. I consider that requiring a midwife to make such an assessment:

- Places an unfair burden of responsibility on the midwife
- Potentially compromises patients' ability to access sufficient funds in the event that negligence is proven on the part of the midwife
- Places the midwife at an unnecessary risk of disciplinary action in the event that a retrospective determination is made that the midwife's cover was insufficient for the claim that arose.

### *Parity with the Medical Profession*

In 2003, the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 stipulated a quantum of cover for all Doctors, including Obstetricians. If we look to the quantum of insurance cover that an Obstetrician has, we find that it is essentially unlimited: while Medical Indemnity insurers are required to offer \$5 Million in cover, they do offer \$20 Million as a standard and Obstetricians have access to the Exceptional Claims Indemnity Scheme which provides unlimited cover for claims that exceed \$20 Million. Our (midwives') insurance ought to be determined by the Board in consultation with the insurance industry, in equivalence with the only other profession that also provides care to mothers and babies.

### *Facilitation of collaborative maternity care, supported by the Maternity Reforms*

The Maternity Reforms promote collaborative maternity care from midwives and obstetricians; this is evidenced by the National Health (Collaborative Arrangements for Midwives) Determination 2010. In order that collaborative maternity care not be undermined, members of the multidisciplinary team must have adequate and appropriate insurance in force. There can be no valid reason for midwives' quantum of cover to be self-determined (and potentially under-insured) while the quantum of obstetricians' cover be determined by the Government Actuary and unlimited, when both professions are collaboratively involved in the care of mothers and babies. Any collaborative model of maternity care that saw a midwife insured for (eg) \$1M (the minimum cover with VERO) and the Obstetrician insured for an unlimited amount, would expose the Obstetrician to an unnecessary burden of liability brought about by their ample insurance cover. Such a situation is the very reason why (insured) health practitioners have been reluctant to work with (previously) uninsured midwives. We must protect and support collaborative models of care - promoted and encouraged by the Maternity Reforms – by ensuring that participating health practitioners are appropriately insured, as determined by actuarial advice but preferably with an unlimited quantum of cover so that no health practitioner feels unnecessarily exposed to the potential liability of their collaborating practitioner.

### *Market forces and market failure of unlimited insurance cover*

If midwives were able to select the quantum of cover that they determine is appropriate for their practice, it is not impossible to imagine that midwives will under-estimate their liability (genuine incorrect assessment, over-confidence bias, lack of actuarial knowledge, other reasons) or be financially motivated to under-insure (particularly in the case of a small case-load), resulting in a situation where:

- Unlimited liability policies are unaffordable to the few who choose them
- Large claims arise that cannot be met by the midwife's policy (if the midwife chooses an inadequate quantum of cover)
- Ultimately leading to the market failure of unlimited insurance cover.

## **MIGA Policy**

### *Available*

The MIGA policy is supported by the Government and is readily available to all Eligible Midwives in private practice. The policy covers antenatal and postnatal care and birth in a clinical setting.

### *Affordable*

MIGA's policy promotes affordability in two ways:

1. It allows flexibility in premiums by enabling the midwife to adjust their premium in accordance with their caseload. In this way, the midwife is able to match his/her insurance premium to his/her income and not suffer financial hardship.
2. Midwives who are insured with MIGA are able to access Premium Funding which allows midwives to spread the cost of insurance across the year via third party funding using a low interest rate.

## *Supporting the Maternity Reforms*

The MIGA policy supports the maternity reforms and is consistent with the requirements of eligibility and collaborative arrangements. When visiting rights become a reality, the MIGA policy will be the only insurance product to provide cover to midwives wishing to attend births in a clinical setting.

## *Benefits*

The MIGA policy provides numerous benefits to midwives:

1. Midwives are encouraged to complete a risk management program that has resulted in a demonstrated reduction in claims for other practitioners
2. Access to 24-hour emergency phone support
3. Unlimited cover via access to Commonwealth funds
4. No excess payable on claims
5. Cover for expenses incurred in defending or responding to inquests, inquiries, investigations or complaints
6. Access to the Run-off Cover Scheme

In summary, I unreservedly support approach 1 whereby the Board specifies a minimum amount of cover for professional indemnity based on advice from the insurance industry. Furthermore, I advocate strong encouragement for the cover to be unlimited.

Yours sincerely,

Melissa Maimann.