

# Nursing and Midwifery Board of Australia commentary on professional indemnity insurance for midwives research report

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## Professional indemnity insurance for midwives research project

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## Introduction

The purpose of this document is to provide the Nursing and Midwifery Board of Australia's (National Board or NMBA) commentary on PricewaterhouseCoopers' (PwC) [Professional indemnity insurance for privately practising midwives research project report](#).

Under section 129 (1) of the Health Practitioner National Law, as in force in each state and territory (the [National Law](#)), all health professionals – including midwives – must have appropriate professional indemnity insurance (PII) arrangements if they intend to practise their profession.

This provision states:

*A registered health practitioner must not practise the health profession in which the practitioner is registered unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession.*

In Australia, professional indemnity insurance (PII) for privately practising midwives (PPMs) providing homebirths has not been available since 2001. In April 2012, the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010* (Cth) was established. This scheme covers the provision of antenatal and postnatal care despite planned birth location and for intrapartum services where the birth is planned to take place in a hospital. However, it does not cover intrapartum care provided in the home.

The Australian Health Workforce Ministerial Council (AHWMC) resolved to give exemption from PII to PPMs providing intrapartum services in the home *only if* certain conditions outlined in section 284 of the National Law are met. This exemption is currently in place until June 2015.

However, the National Board is keen to seek a more lasting and acceptable solution.

## Professional indemnity insurance for midwives research project

The National Board commissioned PricewaterhouseCoopers (PwC) in September 2012 to research models of PII for PPMs. The project comprised an extensive literature review as well as analysis of quantitative data collected nationally and within a select number of international jurisdictions.

From the research into national and international PPM practice and PII arrangements, PwC:

- outlines a number of key findings throughout the report
- discusses detailed descriptions of areas that appear to make the PII market for PPMs unattractive for insurers and the difficulty in producing a commercially viable product, and
- identifies different insurance models, models of practice, the impact of frameworks of care and health policies, while addressing the issue of communication through data collection and collaboration.

With these areas highlighted, the report outlines different strategies for reducing the risk profile for PPMs and producing a commercially viable PII product that may be attractive to both the insurance market and PPMs.

The report gives key insights and considerations to initiate discussions on the future provision of PII for PPMs in Australia.

In addressing all options covered in the *Future directions* and *Considerations* sections of the PwC report, the National Board has considered the following:

- objectives and guiding principles of the National Law
- principles of best practice regulation from the [Office of Best Practice Regulation \(OBPR\)](#)
- the NMBA current strategic work plan and projects currently in place
- the current system in Australia with the Commonwealth Government supported PII scheme for obstetricians, and
- the NMBA *Safety and quality framework for midwives* available under [Codes and guidelines](#) on the National Board website.

## Recommendations from the report and next steps

### 1. Future directions

As discussed in the PwC report, the findings do not identify a clear way forward for the provision of PII for PPMs in Australia. However, the report identifies potential barriers to current PII provision and gives insight into why PII for intrapartum care provided by PPMs is not available.

The report proposes two possible options:

#### **Remove the exemption and establish the market**

This option involves removing the exemption from the National Law and engaging with the Federal Government, PPMs and the insurance industry to establish a commercially viable PII product.

The National Board supports this option and has started implementing service and risk frameworks that guide quality and safety. These measures will ultimately lead to establishing a risk profile for PPMs.

#### **Status quo**

This is the 'do nothing' option in which the exemption from the National Law stays indefinitely in place.

The National Board has determined that this option is not viable as it does not address the risks to which PPMs and women remain exposed.

### 2. Considerations

PwC has identified the following eight options for further consideration by the National Board and its stakeholders. These options are set out in the headings below, with the National Board's considerations on each option set out underneath.

#### **2.1 Specific registration of PPMs**

**Consider the requirement for PPMs to register as a separate sub-class or as an eligible midwife, or be required to practise in a professionally networked supportive model of practice in order to access PII.**

##### **National Board response**

The National Board believes it is the insurer's prerogative to specify who they wish to insure. Should the insurer wish to specify that PPMs need to be eligible midwives in order to gain insurance, the National Board already has the mechanism in place to enable PPMs to obtain this requirement.

The role of the National Board is to protect the public by making sure that registered midwives are safe and competent to practise. To provide a robust regulatory framework and make sure that midwives have clarity and support to practise safely, the National Board has developed a *Safety and quality framework for midwives (SQF)*.

The National Board does not currently require every PPM to be an eligible midwife. However elements within the SQF identify specific requirements for PPMs seeking an exemption under section 284 of the National Law.

To be considered eligible for PII exemption from the insurance requirement of the National Law, all PPMs who provide homebirth services must:

- comply with the Board-approved SQF, and
- be able to demonstrate with supported evidence that they meet the following requirements:
  - informed consent
  - practice in accordance with the SQF
  - submission of reports and data
  - referral pathways

- collaborative arrangements
- clinical audit, and
- peer review.

If the PPM is notated as an eligible midwife, there are requirements that form part of the application for notation and the ongoing compliance with the registration standard that address the above specifications in part.

A PPM who chooses not to practise with the notation as an eligible midwife but who is seeking an exemption under the National Law must be able to:

- meet the requirements within section 284 of the National Law, and
- show annual evidence of meeting those requirements.

This documented evidence (covering competency, skill, professional development and experience) of meeting requirements will give insurers an understanding of PPMs and contribute to the development of a risk profile.

The National Board strongly supports the requirement of professionally networked models of practice and is currently exploring work to put in place strategies that require professional networking as an element of continuing professional development.

## 2.2 PPM practice models

**Explore the facilitation of different options for private midwifery practice, i.e. partnership or group legal entities as mandated for service delivery to the extent that it does not restrict practice or violate trade and practices legislation.**

### [National Board response](#)

The National Board sees this as a requirement that insurers could put in place. There is evidence in literature that shows the risks associated with working in isolation. The National Board recognises the right of the insurer to stipulate the need for integrated support networks as a means to prevent risks of practising in isolation.

To this end the National Board encourages efforts from employers, practice partners and the midwifery profession in general to develop mechanisms and strategies for integrated networked supportive practices.

The National Board is also funding a research project to explore models of supervision for midwives. The outcomes of this project may give additional evidence about models of midwifery practice. The National Board regards clinical supervision as an important mechanism in the training, support and ongoing safe practice of midwifery. It incorporates elements of direction and guidance through a process of professional support and learning which enables a midwife to:

- develop knowledge and competence
- assume responsibility for their own practice, and
- enhance public protection and safety.

The structure and practical application of this model needs to be reviewed extensively for applicability in the Australian context.

## 2.3 Frameworks of care

**Develop clearer national safety and quality (including risk assessment) frameworks for births in the community and support models for PPMs that address compliance, complaints and the capability to meet framework requirements.**

## National Board response

The National Board recognises that states and territories currently have a number of different risk assessment frameworks in place. To address this, the National Board has undertaken a comprehensive review of the existing *Safety and quality framework for privately practising midwives attending homebirths*.

The revised SQF is designed to support regulatory accountability for safe and professional midwifery practice for all midwives, including – and where appropriate – specific advice and requirements for PPMs.

The SQF addresses compliance, complaints and capabilities, and forms the basis for safe and effective care for midwifery practice in Australia. Different jurisdictions may wish to build on this framework. However, the SQF remains the core document for safe midwifery practice and to protect the public.

The National Board also plans to develop a model risk assessment framework to complement the national SQF.

### 2.4 Data reporting requirements

**Assess the feasibility of improving data quality and collection. Ensure that data collection systems can identify women attended by PPMs, place of birth and transfers from home to hospital.**

#### National Board response

The National Board agrees that data collected by different government agencies about birth in Australia is inconsistent.

As the data currently collected is a minimum data set, the National Board is interested in exploring how existing data can be expanded, shared and accessed more easily.

In an effort to improve data quality, the National Board will contact the National Perinatal Data Collection Unit (NPDCU), Medicare, the Australian Bureau of Statistics, the Australian Institute of Health and Welfare (AIHW) and the broader insurance market. Increasing the sophistication in data collection and maintenance will improve its quality and accessibility and thus improve the ability for an accurate risk profile to be established on PPMs.

While the National Board recognises that good comparable data is essential for developing an accurate risk profile, it also acknowledges that this problem is not isolated to the midwifery profession in relation to maternity services.

As part of the SQF, any midwife seeking an exemption under section 284 of the National Law will be asked, at the annual renewal of their registration, whether they:

- are providing homebirth services, and
- are an eligible midwife.

### 2.5 Strengthen ties between insurers and the industry

**Encourage stronger relationships between insurers, the NMBA, state / territory and Federal governments, midwifery and medical practitioner representatives.**

#### National Board response

The National Board has a consultation and engagement strategy for the midwifery profession that will be reviewed and strengthened to include medical practitioners, government and insurers.

### 2.6 Alternative insurance models

**Consider the range of insurance models and enabling factors seen internationally for the provision of PII for PPMs.**

## National Board response

The National Board strongly encourages the Commonwealth and insurers to explore alternative insurance models and seek a resolution before June 2015. The National Board is interested in engaging with the Commonwealth Government to explore the options of alternate insurance models and the current Premium Support Scheme.

### 2.7 Enhance collaborative partnerships

#### Identify factors enhancing collaborative partnerships between PPMs and health services that could mitigate PPM practice risk for PII development.

## National Board response

The National Board wholeheartedly supports the [determination of collaborative arrangements between health services and PPMs](#) that came into effect on 1 September 2013, and strongly recommends that health services collaborate with midwives in order to facilitate access to services for women seeking the care of a PPM.

The PwC report identifies collaboration between PPMs and other maternity service providers and health services as a key area to be addressed. The National Board supports stakeholders exploring programs to progress and improve collaborative partnerships. A nationally consistent model for clinical privilege and access to collaborative arrangements with health services will make sure effective pathways for consultation, referral and collaboration are in place.

The ability of PPMs to access hospitals and health services promises benefits to the community, the PPM, and the health service in a number of ways. Increased collaborative arrangements allow easier consultation and referral pathways and support the continuum of care – they encourage a more seamless transfer when required. Collaborative arrangements with a health service would also allow PPMs access to the health service's risk management system and lead to a decrease in their risk profile.

The National Board encourages stakeholders to support good collaborative arrangements that will give PPMs better access to health services.

### 2.8 Understand the impact of broader health policies on PPMs

#### Consider the impact of policies, particularly enablers that will support the provision of PII for PPMs.

## National Board response

The National Board supports the development of broader health policies to resolve this matter because the broader health context does affect the practice of PPMs.

The PwC report outlines the following as areas for further consideration in relation to policy:

- Disability Care Australia
- Medicare Locals
- publically funded homebirth schemes, and
- cap on claims.

Some health services across Australia have introduced *publicly funded homebirth schemes* in an effort to accommodate women who wish to have a homebirth. These programs operate within the public hospital system and are often linked with existing birth centres or midwifery group practise.

## Conclusion

The number of PPMs and babies born at home has steadily increased since 2011. When looking at issues highlighted in the PwC report, the National Board does not wish to confine this discussion to PPMs providing homebirth services.

The National Board is keen to see competitive insurance cover available for midwives practising in any setting across the continuum of care and believes this to be reasonable for both women and their maternity service providers.

Any strategy to address this vision needs to look at the broader picture. Addressing the issues highlighted in the report (such as scope of practice, safety and quality frameworks, collaboration and clinical privilege) will lead to:

- greater choice
- better continuity of care
- greater understanding of the practice of a PPM, and
- ultimately, improved collaboration among maternity services providers and maternity services.

This will offer a better framework for insurers to provide an appropriate insurance product.

The National Board encourages all stakeholders to work closely with PPMs to achieve this result and optimise outcomes for women and their families.

#### **Useful documents on the National Board website**

- [Position statement on midwives in private practice](#)
- [PII exemption extended to 30 June 2015 for midwives in private practice](#)
- PII arrangements registration standard under [Registration standards](#)
- [Guideline for professional indemnity insurance arrangements for midwives](#)
- [Midwife professional indemnity scheme](#) (Medicare website)

#### *For more information*

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