

What next for the homebirth insurance exemption?

Australian women's access to midwifery care in homebirth is due for a big shakeup in July 2015, when "the exemption" expires or is extended. If it expires, homebirth care is likely to be transformed in a way we have never seen before, not necessarily for the better.

What is the exemption, and what might happen next?

Background

The 2010 maternity reforms

In 2010 the Australian Government implemented extensive reforms to maternity care in Australia, under the leadership of Health Minister Nicola Roxon. The central element of these was Medicare rebates for women receiving care from eligible private practice midwives. The Government was committed to providing women with continuity of care, including labour and birth, so a full range of Medicare items was developed, including a rebate for labour and birth care in hospital.

For private midwives to be able to practice in hospitals (and provide labour and birth care there), they needed to have professional indemnity insurance (**PII**).

Establishment of the Australian Health Practitioners Regulation Agency (**AHPRA**) in 2010, also brought a new requirement for all practitioners to hold PII. However, no PII had been available for midwives in Australia since 2001. Therefore a professional indemnity insurance product for midwives was needed.

For these reasons, a Commonwealth-subsidised PII product was part of the May 2009 Commonwealth budget plan for the maternity reforms, recognising the precedent of PII subsidies provided to medical practitioners. An insurer: MIGA; was contracted to provide a PII insurance product for "eligible" midwives in private practice, at a price set by the Commonwealth, with conditions set by the Commonwealth.

Threat to homebirth - 2010

For political reasons, homebirth was excluded from both new sources of Commonwealth funding for midwifery care: Medicare rebates and Commonwealth-subsidised PII. In itself, exclusion from subsidies was not a problem for homebirth. With the exception of the few public homebirth programs, homebirthing women in Australia have adapted to uninsured midwives and self-funding. However, the exclusion led to a crisis: the potential exclusion of midwifery care from women birthing at home.

National registration required midwives to be insured for all of their practice, but no PII product covered homebirth. Under the conditions which were planned for implementation in July 2010, midwives would not be able to provide homebirth care without breaching their regulated obligations to hold PII.

Consumer and midwifery stakeholders came to realise this problem in 2010. However bureaucrats and advisors did not consider this problem to be their responsibility, and it took months for the message to get to the Minister. During this time, a great deal of drama and protest was generated by homebirth women and families, resulting in some extraordinary statements of support for women's right to homebirth in Commonwealth Parliament. Once the problem was understood at the political level, Minister Roxon acted swiftly to implement a solution.

The exemption

Implementing the “exemption”

The problem was that there was no PII product to cover labour and birth at home, when PII was required by the National Law. The solution was to give midwives an exemption to the PII requirement when they were providing labour and birth care at home.

At a meeting of the Australian health ministers, Nicola Roxon gained a nearly instant, almost-consensus on implementation of an exemption for homebirth. The only way to create an exemption was to amend the National Law for regulation of health practitioners, in each state and territory.

One government did not go along with the plan. Northern Territory, which had not allowed uninsured homebirth midwifery before national registration, maintained their opposition to uninsured homebirth and did not enable an exemption for homebirth. There are still no legal private homebirths in NT (although this is currently under review).

All states and territories, other than NT, amended their National Laws to implement the exemption and enable women’s access to homebirth midwifery. However the exemption was not unconditional or open-ended. It was planned to expire in 2013, providing about three years to find a more permanent solution. Midwives were required to practice within a set of conditions, now known as the “*Safety and Quality Framework for Privately Practising Midwives attending homebirths*”, published by the NMBA (see link in references). Conditions include informing women that their homebirth care is not insured and implementing a set of practice processes including documentation and risk management.

Extending the exemption

In 2012 it became clear that a solution to the homebirth PII problem was not ready for the 2013 expiry of the exemption. The Standing Council On Health (the national health ministers’ group) agreed to extend the exemption to 2015. Now, in 2014, women will soon be conceiving babies who will be born after the exemption expires, so it’s time for some answers about what will be in place for their birth care.

Will PII become available?

Commercial PII

PII for homebirth was investigated in detail in 2013 by PricewaterhouseCoopers for the NMBA (see link at end). Several significant obstacles were found to PII becoming available as a commercial insurance product:

- Lack of clarity about midwives’ practice in homebirth
- Lack of data about homebirth outcomes
- Lack of data about litigation arising from homebirths
- The small number of homebirths and midwives providing homebirth care in Australia
- The inherent risks of maternity care
- The high potential cost of poor outcomes in maternity care

None of these problems will change soon, so the problem of PII for homebirth cannot be expected to be solved by the commercial insurance market alone in the foreseeable future. If PII is to become available for midwives providing homebirth care, some sort of government intervention and probably funding will be required.

Government intervention

If governments consider particular insurance products to be important enough, they get involved. Medicare is an example of a huge, government-owned and run insurance scheme which supports access to private health care. The Commonwealth also subsidises private insurance products, such as PII insurance for doctors and the new PII system for midwives. There is adequate precedent for government to subsidise PII for homebirth.

Options after the exemption

The decision about what happens after the homebirth PII exemption expires in 2015 sits with the Australian health ministers. They have a range of options, each of which has political implications.

Doing nothing

The first possible option is for the Australian health ministers to do nothing and let the exemption expire. If this was to occur, after 1 July 2015, any midwife providing labour and birth care at home would be in breach of her conditions of registration.

We can't be certain how AHPRA would respond to this, but it seems unlikely they would let midwives continue to practice. *Most private midwives could be expected to cease providing homebirth care.*

The closing down of private midwifery has previously occurred within Australia. When PII providers stopped insuring Australian midwives in 2001, all private midwives in the Northern Territory were forced to cease practice. Nursing and midwifery legislation there already required PII. This led to the rapid implementation of a public homebirth program in NT, which employed a number of midwives who had previously provided private homebirth care.

Letting the exemption expire at a national level would probably result in loss of access to homebirth care for most Australian women. Some women would have access to public homebirth models, and an increased number of women could be expected to birth with non-registered caregivers or no caregiver at all.

State-based PII

An upgraded version of "doing nothing" would be to progress without a national solution, with states committing to each developing their own solution. One solution which has already had some discussion in Qld is the provision of PII to private midwives from the state.

States/territories could find a way to insure some private midwives in a state-based plan, subject to conditions. For example, contractual arrangements between midwives and health departments or public hospitals could provide PII cover from existing government or hospital insurance.

This option is very risky for women and midwives. Some states might just not deliver. States that provided insurance could be expected to set different sets of rules regarding women's choices and midwives' practice. Each state would be dealing with a very small number of midwives, increasing costs dramatically. Insurance, when available, could be at varying costs, possibly unaffordable for many midwives. Potentially, different insurers could be involved, without the expertise of the current Commonwealth-subsidised insurer. Our experience of the last 3 ½ years is that a lot of problems arise simply from the complexity of the arrangements around private midwifery in Australia, and the limited understanding of this landscape.

Public homebirth models

An alternative state-based option would be for states and territories to commit to a similar plan to the NT's in 2001. Private homebirth midwifery would cease, and states would undertake to establish more public homebirth services.

Effective implementation of such a plan is not a plausible outcome. The creation of public homebirth models is a complex, clinical, cultural task, requiring cooperation from a range of diverse and often recalcitrant players. Implementation would need to occur in public hospitals, that have cultures highly resistant to outside influence and very limited points of leverage from government. Government commitments of these sorts are of limited value, especially when not tied to Commonwealth money. Turning a promise made at a health ministers' meeting into hundreds of functioning public homebirth services, within a limited time, is not a realistic expectation.

If we are left to eight state-based solutions to the expiry of the exemption, we can expect a shambles which would take many years to resolve. Many midwives would be left uninsured, leaving women planning homebirths without care. Again, women could be expected to make difficult, potentially risky, choices.

Extend the Exemption

The ministers have the option of simply extending the homebirth PII exemption for another year or more. This would give more time, to further embed private midwifery as part of the Australian maternity care system and perhaps see the development of new provisions which could support the development of an insurance product.

Health Ministers and the NMBA are keen to close this messy gap in the insurance net. Largely, this is because of the risks to women and midwives of leaving homebirth uninsured. When something goes wrong in a homebirth, there is no legal protection for midwives and little chance for women or their babies to receive compensation for the damages which can occur.

The ministers might be more willing to willing to grant some extension to the exemption, if it was part of a plan to fix the problem properly. One relatively simple option is available to them.

Extend Commonwealth-subsidised PII to include homebirth

As outlined above, eligible midwives are able to purchase Commonwealth-subsidised PII from MIGA, which covers all of their private practice except for labour and birth at home. This product could be slightly modified to include homebirth, without necessarily changing anything else.

Eligible midwives are already insured by MIGA to provide antenatal care, including for women who subsequently birth at home. It is safe to assume that if a woman or baby were damaged by a midwife's care in a homebirth and legal advice was sought, lawyers would look closely at the antenatal care preceding the homebirth for evidence of negligence. As the antenatal care is insured, there is a potential source of compensation. From this perspective, the Commonwealth-subsidised PII product is already insuring homebirth to a recognisable extent.

Under current arrangements, only midwives annotated as eligible are able to access Commonwealth-subsidised PII. Therefore, if the exemption is allowed to expire and the existing PII product is extended to homebirth, this would mean that only eligible midwives were able to provide homebirth midwifery care. Non-eligible midwives providing homebirth care would need to either become eligible or cease providing homebirth care. This would be a major disruption to the existing homebirth landscape.

Extending Commonwealth-subsidised PII to homebirth faces one huge hurdle: the overwhelming political influence of the medical lobby. Subsidising PII for midwives in homebirth is spending taxpayer money on homebirth. Medical stakeholders have

locked themselves into a position of intractable opposition to homebirth, and it would be a brave Commonwealth Government who would cross this line. Still, governments are brave sometimes...

Making PII for homebirth more viable

Whether Commonwealth-subsidised, or purely commercial, PII for homebirth becomes more achievable as the inherent risks of maternity care, and the specific risks of homebirth midwifery, are managed and seen to be managed. A range of possibilities are identified in the PricewaterhouseCooper report and the NMBA's response:

- Restricting PII (and thus ability to provide homebirth care) to a specific group of midwives. Eligible midwives are currently the obvious group, but other options are conceivable.
- Group practice requirement. Insuring a group or company of midwives, with good organisation and governance, is regarded as less risky than insuring individual practitioners who may have less structured collaboration, support and backup from midwifery colleagues, and who may have less structured practice processes. It also improves the scale, which decreases costs.
- Safety and quality frameworks. Agreed, national, clinical guidelines and practice frameworks for homebirth are considered desirable for predictable management of clinical risks.
- Better data collection. Current maternity data systems are inconsistent between states, and collect incomplete data. We don't even know how many midwives in Australia provide homebirth care.
- Better relationships between stakeholders. Midwives, their professional college (Australian College of Midwives), their regulator (NMBA), governments, medical stakeholders, insurers and various other players have considerable room to improve communication and shared visions for the profession.
- Collaboration with hospitals. Community midwifery will be safer if midwives have good collaboration with hospitals and their staff. Four years after all states and territories agreed to organise public hospitals to credential and provide access to eligible midwives, only Queensland has any functioning agreements in place.
- Professional supervision or mentoring. The NMBA has recently started a project to develop a system of "supervision", or professional support, for midwives from expert midwife mentors or supervisors. This is seen as effective in improving practice standards and communication.

What's the best way forward?

Resolving the exemption problem is difficult. Any solution can be expected to significantly disrupt Australia's existing homebirth midwifery arrangements.

The only option that maintains the status quo is indefinite extension of the exemption, leaving homebirth midwifery uninsured. This leaves midwives and women vulnerable when things go wrong, and is not acceptable to governments or the NMBA. A time-limited extension is a possibility, if it is part of a pathway towards proper insurance.

State-based solutions involving insurance from government or hospitals cannot be expected to maintain women's access to private homebirth care. Eight states and territories trying out eight ways to solve very challenging problems. A commitment by

state governments to provide public homebirth care would not be believable. See how ineffectual states and territories have been implementing relatively easy reforms like access for eligible midwives.

Extending Commonwealth-subsidised PII to include labour and birth at home would limit homebirth care to eligible midwives, but would enable private homebirth to continue in a consistent way across Australia, with effective support from an insurer who has significant experience in private midwifery. If the political obstacles could be overcome, this is likely to be the most protective option for women's ability to choose.

My preference would be to have a further extension of the exemption – perhaps to 2017 – with a commitment from the Commonwealth to include homebirth in subsidised PII. The time gained by extending the exemption would enable the implementation of a range of measures which would reduce the uncertainty, and perhaps cost, of including homebirth in Commonwealth-subsidised PII.

Conclusion

None of the options to resolve the expiry of “the exemption” are easy or familiar. The best require major reshaping of private midwifery, the worst bring the end of homebirth as an option for most women.

Women's access to homebirth midwifery is a tiny part of Australia's maternity care system. However it is also a gigantic symbol of women's rights to make choices in their birth care, and midwives' identity as professionals who take responsibility for their own practice. The homebirth subculture has had a huge effect on reforms to maternity services in Australia, and energised much of the consumer representative movement. There is benefit to all birthing women in the retention of homebirth as an option.

It is really important that a solution be found to the PII problem for homebirth midwifery. Consumers and midwives need to be engaged in the political conversation about this now, so that homebirth remains an option for Australian women after June 2015.

Safety and Quality Framework

www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines.aspx

PricewaterhouseCoopers report on PII for homebirth and NMBA response

<http://www.nursingmidwiferyboard.gov.au/News/2013-12-06-media-statement.aspx>