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Treasury Insurance Access and Pricing Unit
Attention: Medical Indemnity
Langton Crescent CANBERRA ACT 2600


Introduction:
Midwives in Victoria, and throughout Australia, have been unable since 2001 to purchase any professional indemnity insurance. As most midwives are employed by hospitals and other health care facilities, their professional actions are covered by the vicarious liability of the employer. The small number of self-employed midwives who practise independently do so at present without professional indemnity insurance.

Victoria’s Nurses Act 1993, the main legislation covering midwifery practice, gives the Nurses Board discretionary powers in relation to indemnity insurance. To date the Board has not required midwives to show proof of indemnity insurance in order to register or renew registration. Recent changes to legislation in Northern Territory have made indemnity insurance mandatory. This has effectively outlawed independent midwifery practice in the Northern Territory. We are very concerned that this effect could flow on to other States, depriving midwives of their livelihood, and potentially depriving mothers and babies of the services provided by midwives.

We consider that the work of a midwife is an essential professional service in all communities, and that serious social, professional and health implications would result if midwives were denied the ability to work.

The requirement for professional indemnity insurance is supposed to be in the public interest, ensuring that clients are able to sue for damages. The client of an uninsured midwife who claims to have been harmed may not be able to obtain any financial compensation, even with a strong case against the midwife.

With this being the status quo, much of the Discussion Paper is irrelevant to midwives. Our brief responses to the questions posed in the Discussion Paper are given in the hope that the government will act to overcome the current lack of availability of indemnity insurance for midwives. We are happy to provide further information or discussion if the review committee should so desire.

This response has been prepared and submitted on behalf of MIPP by Joy Johnston.
Response to the Discussion Paper’s questions

Question 1-3. Prudential supervision of insurers of health care providers
The introduction of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 has not led to any indemnity for midwives, despite its current scope. Prudential supervision could enable health insurance companies to provide suitable arrangements for midwives.

Question 4-5. Minimum contract cover amount
There is no agreed minimum amount of insurance for midwife managed care.

Question 22-23. Additional changes to regulations and to the Act
In the November 1995 Review of Professional Indemnity Arrangements for Health Care Professionals, Compensation and Professional Indemnity in Health Care, known as the ‘Tito Report’ (PIR), Chapter 10 is devoted to ‘Birthing Services: case study of reform’. The PIR (page 292) notes that in “recommending professional indemnity cover be compulsory for all health professionals either through vicarious liability for employed health professionals, or through the holding of separate cover by self-employed people”, the self-employed midwife faced, at the time of the report, limited availability of such cover. The PIR makes specific recommendations (160 and 161) in relation to availability of cover for midwives, including that the government “ensure that products are available at a reasonable cost to the full range of self-employed professionals, including midwives, to minimise any unintended workforce effects of professional indemnity arrangements.” (Recommendation 161, page 292)

Clearly this recommendation has not eventuated, and ten years after publication of the PIR midwives are unable to obtain any indemnity insurance.

We believe the reasons for this include the small numbers of midwives involved, the small annual earnings of midwives, and the small number of mothers who access the services of self-employed midwives. We do not seek to justify to the Treasury our right to exist, or the reasons for our minority status and relatively uncompetitive position.

We therefore take this opportunity to ask the Treasury prudential supervision body to make the required amendments to the Act, or to take other action to ensure suitable products are available so that the public serviced by self-employed midwives are protected in the same way as the clients of other health professionals who are able to purchase indemnity insurance.

Reference: