

Key Recommendations

- Extend PII exemption until AHPRA research project completed.
- Investigate Vero/MIA insurance as an additional product to MIGA for private midwives for intrapartum care at home.
- Ensure women with risk factors will continue to be able to access midwives at home.
- Rescind the Collaboration Determination.
- All Australian women require equitable access to health care funding and insurance.
- Further expand publicly funded hospital homebirth programs.
- Improve interface between home and hospital.

1. Introductory Remarks

Homebirth Australia welcomes consultation with the sector on homebirth issues.

2. Indemnity insurance (PII) for intrapartum care at home for private midwives

Homebirth Australia supports the extension of the exemption for privately practising midwives for homebirth until a workable solution has been found. We understand the Australian Health Practitioner and Regulation Authority (AHPRA) has issued a tender for research into the issue and we recommend the exemption be extended until July 2014 to allow time for that research to be completed in May 2013 so that the best possible outcome can be obtained.

Action – extend exemption for PII for intrapartum care at home until July 2014 while AHPRA research is completed to inform best outcome.

Homebirth Australia supports a product that covers all women for all births. All Australian women should have equitable access to health care funding and insurance. We are extremely concerned about further fragmentation of care for women who homebirth and increasing marginalisation of women who choose homebirth – especially women who may fall outside the category of ‘low-risk’.

In a national survey recently conducted by Homebirth Australia of over 1000 women:

- 40% of women who had previously had a safe successful homebirth said they had been identified as having risk factors (such as previous caesarean, multiple pregnancy, breech, post-dates or previous obstetric complications.)
- 87% of women said they would still choose to birth at home with identified risk factors even if the Government did not allow midwives to support these women.
- 67% of women surveyed said they would consider a freebirth if they did not have access to a midwife to birth at home. (*See Appendix B for survey results*)

Action – ensure women who have risk factors will not be abandoned and left without professional midwifery care if they choose to birth at home. Clear pathways accepted by all stakeholders must be put in place to ensure women and their babies can access registered midwives and midwives will not face regulatory action for supporting these women and their babies. Australian College of Midwives Consultation and Referral Guidelines - Appendix A provides this framework.

Many private midwives currently choose Vero/Medisure Indemnity Australia (MIA) insurance as well as the product provided by the Medical Insurance Group of Australia (MIGA). Homebirth Australia has consulted with Vero/Medisure Indemnity Australia (MIA) and they have advised that they would be very happy to have discussions around providing a product for intrapartum care for private midwives at home. We are advised that there are 130 private midwives currently insured with Vero/Medisure Indemnity Australia (MIA) which is the majority of private midwives.

Many midwives do not wish to become Medicare eligible or are unable to access MIGA insurance if they have a complaint against them. Sometimes it takes several years for these complaints to be resolved, during which time they are not able to become eligible and hence cannot access MIGA insurance.

Action – Investigate if Vero/Medisure Indemnity Insurance (MIA) product can also be provided as well as MIGA to private midwives for intrapartum care at home.

3. Collaboration Determination

Homebirth Australia recommends the determination be rescinded. Until such a time that professional bodies such as the Royal Australian College of Obstetrician and Gynaecologists and the Australian Medical Association recognise and support homebirth as a legitimate birth choice, then it is impossible for midwives to effectively be forced to collaborate with them under these circumstances. Women need respectful collaborative maternity care – they must have access to the whole spectrum of professional maternity care professionals according to their unique needs. Yet they should not be forced in to being placed under the care of an obstetrician. It is illegal to force a woman into medical care against her will. Midwives are highly skilled professionals in their own right and this must be respected in all codes, frameworks and legislation. This is not currently the case.

Action – rescind the Collaboration Determination.

4. Medicare funding for intrapartum care at home

Homebirth Australia supports equity in Medicare funding for intrapartum care by private practice midwives at home. Women should be able to access rebates regardless of the insurance product held by their midwife. Just as they can in hospital, ALL women should be able to access Medicare regardless of their perceived 'risk' factors or birth choices.

The ideal model would be based on the New Zealand system where a woman receives a set payment for maternity care to employ the services of the care provider of her choice and have access to a no fault standard cover for all recipients of care under a national compensation scheme.

Action – extend Medicare funding to cover all intrapartum care at home by private midwives.

5. Publicly funded Hospital Homebirth Program

Homebirth Australia encourages all jurisdictions to adhere to their commitment to provide more choice for women by delivering more publicly funded hospital homebirth programs and work to ensure these programs are as flexible and inclusive as possible so more women can make use of these services.

Action – further expand publicly funded hospital homebirth programs in a flexible inclusive way.

6. Interface with Hospitals and Medical Practitioners

Homebirth Australia would like to see significant improvements in the interface between hospitals and home. This will ensure better access to care, make transfers faster and therefore safer and ensure mothers and babies are receiving the best possible care at all times. Women require continuity of care with their chosen midwife, also when they decide to birth in hospital. Many hospitals refuse to allow women to book in as a backup when having a planned homebirth. This is stressful for women and increases delays if transfer is required.

Homebirth Australia received recent reports of General Practitioners declining women care and refusing to provide referrals to ultrasounds or prescriptions on advice of insurance companies. These women are planning a homebirth being cared for by registered midwives. Refusing women and their unborn children medical care based on their decision to have a homebirth is unsafe and illegal. We ask the Government to address ongoing discrimination and marginalisation of women who homebirth by showing leadership on this issue and to explicitly recognise a woman's right to choose homebirth as a safe legitimate choice.

Action –

- *Ensure private midwives have visiting rights in hospitals nationwide.*
- *Have a designated staff member in each hospital with experience as a homebirth midwife to be contact person for homebirth mothers and midwives as needed when issues arise around care, referrals, transfers.*
- *Ensure all Australian hospitals accept women who book in as backup for a homebirth.*

7. Concluding Comments

The number of private midwives practising has reduced by over 65% since the introduction of the National Registration and Accreditation Scheme in July 2010. Australia has lost some of our best midwives as a direct impact of the Federal Government's maternity reforms and we cannot afford to lose any more midwives providing care to women at home. Every day we receive calls and emails from women across Australia who want a homebirth looking for a midwife. Many regions in Australia no longer have any registered midwives practising and obstetric services are closing down nationwide. Women are forced to travel long distances from their family in rural and remote areas to give birth with obstetric providers.

If women are denied access to registered midwives at home for whatever reason, some women will choose to use unregistered care providers or will be forced to birth at home without a midwife. This is already happening in some jurisdictions and is unacceptable, unsafe and a poor policy outcome. Women should not be losing access to services as an unintended consequence of government reforms. Services provided must be responsive to the needs of women, have a focus on outcomes and performance indicators and work to reduce inequalities (in all settings – hospital, birth centre and home.)

We support the work of the Government to improve the delivery of safe and affordable homebirth services to women and babies across Australia and will continue to assist where we can.

Yours faithfully



Michelle Meares
Secretary - Homebirth Australia

Appendix A - Feedback on recommendations from South Australian Coroner¹

Deputy SA Coroner's recommendation - The Minister for Health "introduce legislation that would render it an offence for a person to engage in the practice of midwifery, including its practice in respect of the three stages of labour, without being a midwife or a medical practitioner registered pursuant to the National Law"

Homebirth Australia believes all Australian women should have access to a registered midwife if they choose to give birth at home. Homebirth Australia has serious concerns that criminalising the practice of midwifery will effectively make ANY birth without a Registered Practitioner present a criminal act. This would include planned freebirths (birth without a registered practitioner) and births attendant by Aboriginal Traditional Birth Attendants. Women always have and will continue to choose to freebirth alone, with a friend, lay birthworker or traditional birth attendant. The right to choose how and with whom a woman gives birth was recently upheld in the European Court of Human Rights² grounded in the fundamental human rights to privacy and autonomy. The judgement imposes positive obligations on all European States to comply with its basic instructions for insuring that pregnant women have genuine choice to birth outside the hospital.

Key points were:

a. The State must not sustain a regulatory or legal framework that generates ambiguity about whether home birth is “legal.” It must provide for home birth within its healthcare regulations.

b. The State may not bring legal proceedings against healthcare professionals for supporting women in their choice to birth outside a hospital. The Court held that the persecution of midwives for supporting home birth is a violation of the rights of the birthing women who would wish to rely upon such professional support.³

It is important for public safety to have Registered Practitioners available who are accountable to Professional Standards. Whether or not women consult a registered practitioner however should remain her choice. The focus should not be on controlling unregistered practitioners but on offering flexible services that meet women's needs and allow for continued support by registered practitioners even when women make choices that fall outside guidelines.

There is no point in a pregnancy when a woman should lose her civil rights – any attempts to criminalise pregnant women for her behaviour or choices and/or care providers who support women to birth at home as suggested by the West Australian President of the Australian Medical Association, David Mountain have no place in our democratic society.⁴

Deputy SA Coroner's recommendation - The Minister for Health "consider introducing legislation that would impose a duty on any person providing a health service, including midwifery services, to report to the South Australian Department for Health and Ageing the intention of any person under his or her care to undergo a homebirth in respect of deliveries that are attended by an enhanced risk of complication"

¹ *South Australian Coroner, Inquest Number 17/2010 (0984/2007, 0703/2009) & 45/2011 (1628/2011)*

² *Ternovsky v Hungary, 67545/09 [2010] ECHR (14 December 2010)*

³ *Ibid.*

⁴ <http://au.news.yahoo.com/thewest/a/-/newshome/13017489/charge-reckless-mums-doctors-union/>

Deputy SA Coroner's recommendation -The chief executive of that [Health] Department "upon notification of a person's intention to undergo a homebirth attended by an enhanced risk ... cause advice to be tendered to that person from a senior consultant obstetrician as to the desirability or otherwise, in the circumstances of the particular case, for the homebirth to be conducted"

Mandatory reporting of high-risk homebirth will lead to women not seeking care from any registered health professional who has the potential to report them and push homebirth even further underground.

In each of the cases under the investigation of the coroner it was the inflexible nature of our health services that were unable to provide for these women's needs and led them to value the risks of homebirth over the risks of not getting their needs met in the hospital system. The focus should not be on regulating homebirth and who should or should not be having a homebirth, but on providing services that meet women's needs and respect their choices

The following excerpts are taken from a recent case in the Massachusetts Supreme Court regarding the homebirth of a breech baby who died. It addresses both the reporting of high risk homebirths and the criminalisation of medically unassisted childbirth.

As noted by US Attorney, [Farah Diaz-Tello](#), from the organisation National Advocates for Pregnant Women:⁵ “The court rightly recognised that criminalising a failure to summon medical treatment during childbirth would “result in the effective criminalisation of medically unassisted childbirth, such as unattended births [which occur as a matter of circumstance or choice] or home births with a lay midwife.” Creating a duty to refrain from negligence during pregnancy, the court reasoned, would create virtually limitless opportunities for the state to police pregnant women, with serious questions as to when the duty attaches: e.g., at what point in pregnancy? How complicated would the childbirth have to be? What risks would a woman have to be aware of?”

The court also addressed the due process nightmare that would ensue from such a duty:

“Drawing the line between what is lawful and what is criminal conduct on the part of pregnant women and women in labor would be left to individual law enforcement officials and judges. Given the socially freighted nature of questions surrounding a pregnant woman's relationship to her fetus, it is not difficult to foresee a patchwork of unpredictable and conflicting prosecutorial and judicial actions resulting from the newly created duty to summon medical assistance...”

Diaz-Tello notes “Even faced with a set of difficult facts and a bad birth outcome, the court unanimously held that women retain their carefully-guarded right to control of their bodies and lives, “however unwise [her] sense of values may be in the eyes of the medical profession,” on equal footing with all other people under our Constitution. From this tragic case emerged a rule affirming women's fundamental personhood:

“All births, regardless of venue, carry inherent risks; in the ordinary course, competent women who are pregnant may weigh these risks themselves and make decisions about the course of their own pregnancies and childbirths.”⁶.

In a case heard by the Nurses and Midwives Tribunal of New South Wales in 2007, it was stated that:

⁵ <http://www.rhrealitycheck.org/article/2012/06/15/when-hard-cases-make-good-law-ma-supreme-court-upholds-personhood-pregnant-women>

⁶ *Commonwealth v. Pugh, No. SJC-10895* (Mass. June 15, 2012) *Commonwealth v. Pugh, No. WOCR 2007-1323* (Worcester Sup. Ct. Jan. 26, 2009).

“It is appreciated that a client who had agreed to transfer on the recommendation of the midwife at the time the service agreement was entered into, may withdraw that agreement at the time the recommendation is made. It is also appreciated that a midwife cannot force a competent client to transfer to hospital no matter how appropriate such a transfer is in the interests of the client, the foetus or both of them. However, the midwife must make their recommendation on transfer clear to the client and firmly and carefully explain to the client their reasons for the recommendation, ensuring that the client actually understands. If after they have been properly informed, and this may take more than one period of explanation to the client, the client refuses to accept the midwife’s recommendation and transfer to hospital, the midwife should record their recommendation and, their reasons for it, and the client’s reaction to that recommendation and those reasons. The midwife is then entitled to withdraw their services and to record that fact.....The midwife should then, without being at risk of professional disciplinary censure, be entitled to stay and assist the now former client.’

Deputy SA Coroner’s recommendation - "Consideration be given to the establishment of a position known as the Supervisor of Midwives based upon the position described as such in the United Kingdom"

Homebirth Australia has some concerns and recommends that any supervisory midwife model considered must ensure that all supervisors have experience working as homebirth midwives.

Deputy SA Coroner’s recommendation - "Consideration be given to the establishment of alternative birthing centres"

Homebirth Australia fully supports this recommendation. There is huge demand for more flexible, supportive services offering continuity of care with a known midwife in more home-like environments and reduced intervention rates, yet this will not remove the need to ensure ongoing delivery of safe homebirth services. Women will always continue to choose to birth at home as they always have and women and their babies must have access to professional midwifery care wherever they choose to birth.

Treatment of Homebirth Families by Media and Authorities

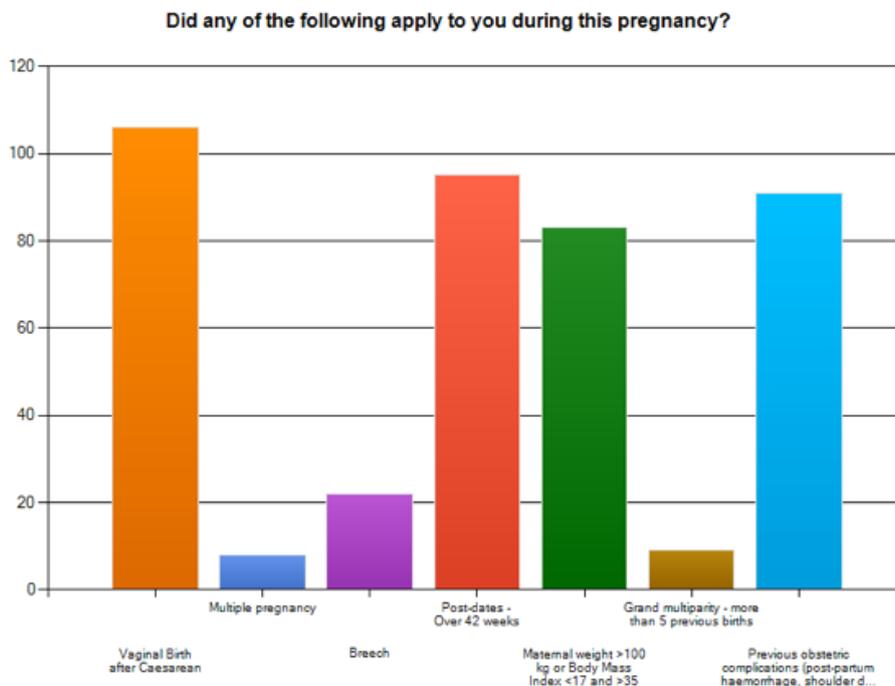
Homebirth Australia is extremely concerned at the recent treatment of homebirth families by the media and Coroner’s courts. Families who have experienced a tragic loss of a baby have had to endure intense media scrutiny into their lives during their grief and this has often been worsened by the behaviour of authorities.

We ask that the Government work with all jurisdictions to ensure that families who experience a tragic loss of a baby or mother during birth are treated with the same respect and compassion shown to those families who experience death of a mother or baby in hospital.

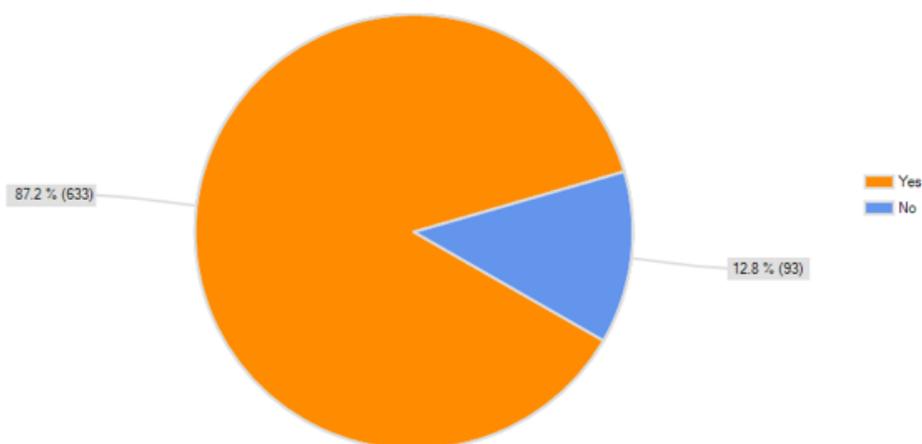
We would like to see reforms to the *Coroners Act* in all jurisdictions to require suppression orders on the identities of the families involved in any coronial inquests involving homebirth in the future.

Appendix B – National Homebirth Survey Results

A survey was conducted online by Homebirth Australia in May 2012 using Survey Monkey. Below are the results from 1016 submissions made by women who had recently had a homebirth.



If the government does not allow midwives to support women to birth at home with the factors above and these applied to you, would you still plan to birth at home?



Would you consider freebirth if you could not access a registered midwife to support you to give birth at home?

