



australian
nursing federation

**Submission to Health Legislation Amendment
(Midwives and Nurse Practitioners) Bill 2009
and two related Bills:**

Midwife Professional Indemnity (Commonwealth
Contribution) Scheme Bill 2009 and Midwife Professional
Indemnity (Run-off Cover Support Payment) Bill 2009

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1. Introduction

The Australian Nursing Federation (ANF) was established in 1924. The ANF is the largest professional and industrial organisation in Australia for nurses and midwives, with Branches in each State and Territory of Australia.

With a membership of over 170,000 nurses and midwives, members are employed in a wide range of enterprises in urban, rural and remote locations in both the public and private sectors. The core business for the ANF is the professional and industrial representation of our members and the professions of nursing and midwifery.

The ANF participates in the development of policy in nursing and midwifery, nursing and midwifery regulation, health, community services, veterans' affairs, education, training, occupational health and safety, industrial relations, social justice, immigration, foreign affairs and law reform.

The ANF is pleased to provide comment to the development of the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills: Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009.

2. The disciplines of nursing and midwifery

Nursing is a unique discipline which places a central emphasis on the holistic care of individuals, families, and communities, providing health care to people across their lifespan. Nursing encompasses a person-centred approach to care, which places emphasis on illness prevention and health promotion in theory and in practice. Nurses work independently or as collaborative members of a health care team in settings which include hospitals, rural and remote nursing posts, Indigenous communities, schools, prisons, aged care homes, the armed forces, universities, TAFE colleges, mental health facilities, statutory authorities, general practice offices, businesses, occupational health, professional organisations and people's homes.

Nurses provide professional and holistic care in a range of circumstances. They work to promote good health, prevent illness, and provide care for the ill, disabled and dying. Nurses also work in non-clinical roles in the promotion of a safe environment; in education and in advocacy; they conduct research, participate in developing health policy and systems of health care management.¹ Nursing places considerable emphasis on the relationship between health and human rights.

Midwifery is a woman centred, primary health care discipline founded on the relationship between women and their midwives. Midwives focus on a woman's health needs, her expectations and aspirations and recognise every woman's responsibility to make informed decisions for herself, her baby and her family with assistance, when requested, from health professionals.²

The midwife is recognised as a responsible and accountable professional who works in partnership with each woman to give the necessary support, care and advice during pregnancy, birthing and the postpartum period, to conduct births and to provide care for the newborn and infant. This care includes preventative measures, the promotion of normal birth, the detection of complications in mother and child, the accessing of medical care or other appropriate assistance and the carrying out of emergency measures.

3. The nursing and midwifery professions

Nurses and midwives form the largest health profession in Australia, providing health care to people across their lifespan. Nurses and midwives are the most geographically dispersed health professionals in Australia, working in homes, schools, communities, general practice, local councils, industry, offshore territories, aged care, retrieval services, rural and remote communities, Aboriginal and Torres Strait Islander health services, hospitals, the armed forces, universities, mental health facilities, statutory authorities, general businesses, and professional organisations.

There is a combined total of 244,360 registered and enrolled nurses actually employed in nursing in Australia, with 18,297 of these being midwives.³ Nurses and midwives comprise over 55% of the entire health workforce.⁴

Nursing and midwifery are therefore key professions to engage in achieving the aim of Australia as the healthiest country by 2020.

4. Nurse and Midwife Practitioners

A nurse practitioner is a registered nurse educated to function autonomously and collaboratively in an advanced and extended clinical role. The nurse practitioner role includes assessment and management of clients using nursing knowledge and skills and may include but is not limited to the direct referral of patients to other health care professionals, prescribing medicines, and ordering diagnostic investigations. The nurse practitioner role is grounded in the nursing profession's values, knowledge, theories and practice and provides innovative and flexible health care delivery that complements other health care providers. The scope of practice of the nurse practitioner is determined by the context in which the nurse practitioner is authorised to practice.⁵

Although relatively new in Australia the nurse practitioner role is gathering a growing body of evidence to support its effectiveness.⁶ With a key element of their role being the nursing model of practice with an emphasis on health promotion and preventative health care, the nurse practitioner role is designed to augment those of other providers of health and medical services.⁷

In order to practice as a nurse practitioner in Australia, a registered nurse who is a nurse practitioner candidate must undergo a process of authorisation in which the nurse regulatory authority sanctions the practice of a nurse practitioner within their jurisdiction.

The authorisation process invests legal authority and responsibilities on the person so authorised.⁸

Within the universal provision of health care, nursing and midwifery have the right to determine the nature and parameters of nursing and midwifery care, to examine current practice and to explore new models of nursing and midwifery care, thereby responding in a dynamic way to changing individual and community needs. The nurse practitioner role was developed as a response to perceived gaps in health service delivery, and as a means then of meeting community needs.

Midwifery does not currently have a similar mechanism in place for authorising a midwife through regulation as a midwife practitioner. This means that whereas the title 'nurse practitioner' is a protected title, 'midwife practitioner' is not, and the midwifery profession has not yet agreed on a national definition. The exception to this is in New South Wales where the precedent has been set by the NSW Nurses and Midwives Board for a process for authorising midwives as "midwife practitioners".

The ANF policy statement titled 'nurse and midwife practitioners'⁹ clearly outlines the position that both nurses and midwives who practice as clinicians at this advanced level should be operating under comparable definitions, educational preparation pathways and regulatory mechanisms, as shown in the excerpts below:

A nurse or midwife practitioner is a registered nurse or midwife who has been authorised by the state or territory nursing and midwifery regulatory authorities to use the title. The authorisation process should ensure that the registered nurse or midwife applying for authorisation has undertaken appropriate postgraduate education or equivalent to support their practice and have provided evidence of their ability to consistently practise autonomously and at an advanced level.

The role of the nurse or midwife practitioner is characterised by clinical assessment and therapeutic management of health and illness presentations within their scope of practice. This may include the initiation of diagnostic investigations, the prescription of medicines, and referral to other health care providers. Nurse and midwife practitioners practice in metropolitan, rural and remote areas of Australia, in both the public and private sectors, and in all clinical areas.

Nurse and midwife practitioners work in collaboration with other health care providers, such as doctors, other nurses and midwives and allied health professionals as well as with governments, service providers and consumers. Collaboration and cooperation is essential for optimal health outcomes.¹⁰

The ANF's policy regarding educational preparation for nurse and midwife practitioners is that the minimum educational level is preparation at Masters level or equivalent for the clinical area of practice, supported by relevant clinical experience.

5. Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and related Bills (Midwife Professional Indemnity)

5.1 Overview of amendments

The ANF welcomes the opportunity to make comment on the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and related Bills (Midwife Professional Indemnity) - referred to hereafter as Bill 2009. The proposed Bill 2009 supports the Australian Government's 2009-2010 Budget measures by facilitating new arrangements to enhance and expand the role of nurse and midwife practitioners which allow them to take a greater role in providing quality health and aged care.

The ANF has been lobbying for many years now for the role and function of nurse practitioners and appropriately qualified midwives to be recognised for the significant contribution these clinicians make to the health and aged care sector. The ANF has argued that this role has not been able to fulfil its full potential due to constraints imposed through legislative barriers to access to Medicare Benefits Schedule (MBS) rebates and Pharmaceutical Benefits Scheme (PBS) subsidised medicines for their clients.

The ANF therefore applauds the Minister for Health and Ageing for acknowledging nurse and midwife practitioners, through the introduction of this proposed Bill 2009, the enactment of which will provide for greater access for the community to health and aged care services. Specifically this will be through the amendments to the Health Insurance Act 1973 and the National Health Act 1953 which will enable nurse and midwife practitioners to:

- request appropriate diagnostic imaging and pathology services for which Medicare benefits may be paid, and
- prescribe certain medicines under the PBS.

The 2009-2010 Federal Budget measures also provide for the creation of new Medicare items, and referrals under the MBS from these health professionals to specialist/consultant physicians.

The ANF also congratulates the Minister for Health and Ageing for acting so swiftly on recommendations from the Maternity Services Review, which can be achieved through the amendments to Bill 2009 as described above.

5.2 Eligibility for participation

As outlined in the proposed Bill 2009, a core criterion for the new MBS and PBS arrangements is that the nurse and midwife practitioner is an 'eligible nurse practitioner' or 'eligible midwife'.

5.2.1 Eligibility criteria

In Section 21 of the proposed Bill 2009, as outlined in the Explanatory Memorandum, an 'eligible midwife' is defined "as a person who is a midwife and meets the requirements specified in the regulations for the purpose of the definition of eligible midwife".

Section 21 (3) outlines that the requirements that may be specified in the regulations may include one or more of the following:

- To hold particular qualifications in midwifery
- To have particular experience in midwifery
- To be credentialled by a particular body

The ANF position on 'eligible midwife' in relation to the proposed eligibility criteria shown above is as follows:

- *To hold particular qualifications in midwifery* - the ANF supports that the midwife must be licensed or registered to practice midwifery by or under a law of the Commonwealth, a State or a Territory; and in addition, that the midwife is authorised as a midwife practitioner by or under a law of the Commonwealth, a State or a Territory (with the title 'midwife practitioner' being protected in legislation);
- *To have particular experience in midwifery* - the ANF supports that there be a period of the midwife having gained experience in the field of midwifery and considers that this be a minimum period of five years full time equivalent (FTE) experience (including one year FTE at an advanced practice level) in line with the entry requirement for a nurse practitioner;¹¹
- *To be credentialled by a particular body* - the ANF does not support this concept as a means to authorising a person under legislation as a 'midwife practitioner' and takes a strong position that the midwife hold a minimum educational level at Masters degree level or equivalent for their clinical area of practice, as discussed in more detail under 5.2.2.

In relation to 'eligible nurse practitioner' it is the ANF position that this person:

- be licensed or registered to practice as a nurse practitioner by or under a law of the Commonwealth, a State or a Territory and in addition, that the nurse is authorised as a nurse practitioner by or under a law of the Commonwealth, a State or a Territory (with the title 'nurse practitioner' being protected in legislation) - as is the current legislative mechanism;
- be a nurse who has gained a minimum period of five years full time equivalent (FTE) experience as a registered nurse, including three years FTE as a registered nurse in a specialty area and one year FTE at an advanced practice level in the relevant specialty area of practice;¹²

- hold a minimum educational level at Masters degree level or equivalent for the clinical area of practice.

5.2.2 Educational pathway

The current educational pathway for a nurse practitioner in Australia, recognised by the Australian Nursing and Midwifery Council, is through "a Master's course approved by the nursing and midwifery regulatory authority that leads to registration, endorsement or authorisation as a nurse practitioner"¹³ The institutions approved by the regulatory authorities to conduct courses for nurses to apply for nurse practitioner authorisation are universities (those listed as Australian universities on the Australian Qualifications Framework Register and which meet the requirements of protocols A and D of the National Protocols for Higher Education Processes (2006) and are established by an Australian legislative instrument, as defined in Part 3 of the National Protocols).¹⁴

As stated under sections 4 and 5.2.1 of this submission, the ANF takes the position that the midwife practitioner should follow a similar educational pathway to the nurse practitioner by undertaking a master degree level midwifery program which includes essential elements of advanced clinical theory and practice, clinical research to advance the body of knowledge for midwifery, and theory and assessment in pharmaceutical competence specifically related to prescribing legislation and practice.

The ANF is concerned to institute a process for the preparation and endorsement of a midwife practitioner which assures the community and health care professional colleagues of a high standard of scholarly rigour coupled with clinical expertise. In addition, the ANF deems it critical that there be parity, between the process leading to conferring of nurse and midwife practitioner status by nursing and midwifery regulatory authorities for reasons of consistency in process in order to assure protection of the public.

The Australian College of Midwives has developed a program - Midwifery Practice Review (MPR) - which offers midwives who care for women a supportive peer review process to assist them to reflect upon and enhance their practice knowledge and skills."¹⁵ The MPR program was developed to enable Australian midwives to demonstrate their competence, confidence and capacity in providing safe, high quality care within the normal scope of practice. The process is voluntary, is open to midwives in all areas of practice across Australia, and leads to credentialling by the Australian College of Midwives. The MPR program is seen to be just as relevant to newly graduated midwives as to those with more years of experience and fits within the College's broader professional development program.

As the program is designed for midwives functioning within their "normal scope of practice" and at all points along the experience trajectory, it clearly can not be viewed as the only educational mechanism for preparing a midwife for the advanced practice level required for entry to authorisation as an 'eligible midwife' under the proposed Bill 2009.

Given the concerns outlined above relating to the definitions of 'eligible midwife' and 'eligible nurse practitioner', and the fact that the ANF is the largest professional and industrial body for nurse and midwives, the ANF believes it has an essential role in providing input into the development of details for the regulations to the proposed Bill 2009.

5.3 Consultation on Medicare inclusions

The ANF refers to the section in the Explanatory Memorandum to Bill 2009 under the heading of 'Medicare' and the issue of the inclusion of participating nurse and midwife practitioners under the MBS. This section states that as well as the Bill 2009 enabling participating nurse and midwife practitioners to request diagnostic imaging and pathology services appropriate to their scope of practice, there will be new MBS items created for services they provide in collaboration with doctors. Both participating nurse and midwife practitioners will be able to refer their patients, under the MBS, to specialists/consultant physicians.

The ANF welcomes the creation of Medicare items which will enable access to MBS rebates for the clients of participating nurse and midwife practitioners and thus improved access for the community to a choice for health professional services.

The ANF notes that it is intended that the precise details of these new MBS items will be finalised in consultation with professions and requests to be identified as the key professional group to be involved in the development of details of the secondary legislation to the proposed Bill 2009.

5.4 Consultation on Pharmaceutical Benefits Scheme

The proposed Bill 2009 will amend the National Health Act to add participating midwives and nurse practitioners to allow them to be able to apply to become authorised to prescribe under the PBS.

The ANF notes that prescribing under the PBS will be limited to certain PBS medicines and will only be permitted within the scope of practice of an authorised midwife or nurse practitioner, and according to the legislation of the State or Territory in which they practice.

The ANF further notes that the Pharmaceutical Benefits Advisory Council (PBAC) will be consulted about the range of medicines that each group can prescribe and the circumstances under which the medicines can be prescribed. The ANF considers that the PBAC will require advice from relevant nurse and midwife clinical experts in their determinations as to the range of medicines and circumstances for prescribing. The current membership of the PBAC is weighted towards medicine. To ensure broad representation of expertise and perspective offered professions should be represented equally.

Accordingly the ANF requests clarification as to the process that the PBAC will employ in determining the range of medicines that each group can prescribe. Such clarification includes whether the decisions will be undertaken by the PBAC itself, the Drug Utilisation Sub-Committee (DUSC) of the PBAC, or a specially constituted sub-committee of the PBAC; and how the designated committee will consult with the nursing and midwifery professions. The ANF is concerned that the current membership of both the PBAC and the DUSC does not include medicines experts from the nursing and midwifery professions. To ensure adequate input from all stakeholders the ANF urges the PBAC to seek appropriate nominations from the nursing and midwifery professions to participate in the decision making process. The ANF would welcome the opportunity to assist the PBAC in identifying suitable candidates.

5.5 Consequential Amendments

Professional Indemnity Insurance

The ANF policy statement 'nurse and midwife practitioners'¹⁶ says that nurse and midwife practitioners should have, or be provided with, adequate professional indemnity cover appropriate to their area of practice.

The Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 will enable the Commonwealth to contribute towards the availability of professional midwife services in Australia by providing Commonwealth assistance to support access by eligible midwives to arrangements that indemnify them for claims arising in relation to their practice of the profession of midwifery.

The ANF echoes sentiments expressed along with fellow members of the Australian Peak Nursing and Midwifery Forum (APNMF), in a recent submission to the exposure draft of Health Practitioner Regulation National Law 2009 (Bill B), that welcome the fact that obstacles to privately practising midwives accessing professional indemnity insurance have substantially been overcome following the Federal Government's budget initiative to support a professional indemnity insurance scheme for advanced practice midwives in private practice.

However, while it is pleasing that through this proposed Bill the Australian Government has recognised the need to support midwife practitioners who provide private practice midwifery services, the ANF remains concerned that the Federal Government's legislation on professional indemnity does not propose to cover the private practice of midwives where women elect to labour and birth at home. This means that the safety of the public will be gravely compromised by the application of c 101 (a) ii of Health Practitioner Regulation National Law 2009 (Bill B)¹⁷ to midwives when they are unable to purchase professional indemnity insurance to cover care of homebirths.

Although only a small minority choose homebirth, women will continue to make this choice. Application of an insurance requirement that cannot be met by a midwife is likely to result in women giving birth without a registered midwife in attendance. Unregulated birth attendants, without accountability to professional standards of competence, ethics and conduct, and without obligations regarding maintaining emergency skills, are likely to fill the vacuum created by the forced withdrawal of registered midwives from homebirth. This will make homebirth very dangerous, even for low risk, healthy women for whom homebirth is currently a safe option.

The ANF South Australian Branch has proposed a Commonwealth supported no fault insurance scheme for private practice midwives similar to the scheme introduced in New Zealand in 2001. The Federal ANF supports such a scheme being introduced in Australia.

The ANF requests consultation on this issue to determine a resolution to have this situation remedied immediately.

Conclusion

The ANF has been pleased to be able to provide advice to contribute to the development of the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and two related Bills: Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009.

The ANF has been a strong advocate for many years for the role and function of nurse and midwife practitioners to be recognised for the significant contribution these clinicians make to the health and aged care sector. The ANF has argued that this role has not been able to fulfil its full potential due to constraints imposed through legislative barriers to access to Medicare Benefits Schedule (MBS) rebates and Pharmaceutical Benefits Scheme (PBS) subsidised medicines for their clients. This proposed Bill 2009 supports the Australian Government's 2009-2010 Budget measures by facilitating new arrangements to enhance and expand the role of nurse and midwife practitioners which allow them to take a greater role in providing quality health and aged care.

The ANF policy statement titled 'nurse and midwife practitioners' clearly articulates the position that both nurses and midwives who practice as clinicians at this advanced level should be operating under comparable definitions, educational preparation pathways and regulatory mechanisms. Parity in the pathways will ensure consistency in the process leading to conferring of nurse and midwife practitioner status to assure protection of the public.

Given the concerns outlined in this submission, and the fact that the ANF is the largest professional and industrial body for nurses and midwives in Australia, the ANF would welcome the opportunity to provide further advice to the process to develop the details for the regulations to the proposed Bill 2009.

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