Australian College of Midwives

Submission

Senate Inquiry:

Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law

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The Australian College of Midwives:

The Australian College of Midwives (ACM) is a national not-for-profit membership organisation and **the peak professional body for midwives in Australia**. ACM was created when independent local and state based organisations came together to create a stronger, single voice for the midwifery profession. Together we are working towards building a resilient midwifery workforce for the future by advocating for the profession at a government level, promoting the benefits of midwifery care to the wider community and ensuring midwives in Australia are supported with industry information, quality education, career development and personal support through all stages of their career.

Our Vision: To enable strong and confident midwives
Our Mission: To position and profile midwifery as the primary profession for quality maternity care

Summary:

Midwifery is recognised in legislation as a distinct and separate profession from nursing, but not in regulation. It is clear to ACM that many of the issues reported by midwives in relation to registration and notifications stem from a basic lack of understanding of the philosophy, context and scope of the midwife. The current combined Nursing and Midwifery Board lacks understanding into the scope, ethos and practice of the midwife

As such, ACM recommends:

- a separate and distinct midwifery board be developed; and
- that this Midwifery Board is informed, governed and operationalised by midwives.

Notifications and subsequent investigations cause high levels of distress to midwives. There is a concerning level of vexatious reporting of midwives, particularly midwives working in private practice. Midwives report a lack of understanding of their context and scope of practice by investigators. Worryingly, there remains a lack of acknowledgement of a woman's informed choice and human right to seek care from a care provider of her choice and to birth where she chooses.

The process for investigations into reports against midwives lacks transparency. Issues include:

- midwives feeling that they must prove their innocence;
- midwives being told they cannot talk to anyone during the investigation;
- lack of transparency in terms of progress and length of investigation;
- confusing investigative tactics – including but not limited to, not talking to the woman involved in the report, but talking to the hospital staff involved;
- investigators showing up at midwives' doors unannounced;
- lack of experience or understanding of those reviewing the case.

Registration of overseas midwives in Australia is onerous, expensive and unnecessarily drawn out. The current process is prohibitive to overseas midwives and may prevent highly skilled, experienced midwives from working in Australia.

Full Submission:

(a) the current standards for registration of health practitioners by the Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards under the Health Practitioner Regulation National Law (National Law);

There is no doubt that the standard for registration of health practitioners is a necessary requirement and while a National body that oversees the registration and therefore, regulation of health practitioners in Australia may in principle, improve or streamline the process of regulation, there remain significant issues as identified by this Senate Inquiry and more specifically, for regulation of the midwifery workforce.

Despite nearly every other health profession having its own dedicated board to oversee the professional standards and regulation of disciplines, nursing and midwifery remain combined. This is despite the fact that midwifery is now recognised and identified as a profession, in legislation, separate from nursing.

The consequence of this has multiple implications, not least of all, misunderstanding of the scope of midwife. Without exception, regulatory, legal, political, clinical and industrial level issues related to midwifery are derived through a nursing lens; including education standards. Nursing is a much larger profession and as such, the advocacy and support for nursing is louder and more assertive. As a consequence, key issues with respect to the provision of midwifery care and subsequent regulatory issues such as standards for registration are not equitably acknowledged, understood and recognised.

(b) the role of AHPRA, the National Boards, and other relevant organisations, in addressing concerns about the practice and conduct of registered health practitioners;

The lack of a distinct midwifery board has implications for midwifery regulation, practice, policy and most importantly, care provided to women and families Australia wide. As well of course with the management and review of complaints related to midwives. As discussed, in under a), the failure to exercise and enact legal recognition of midwifery as a separate profession from nursing in regulation and oversight of midwifery practitioners and care has contributed to a lack of understanding about the role of a midwife and the expertise midwives hold in caring from women and families during pregnancy, birth and the postnatal period up to 6 weeks. Midwives are highly skilled, educated and knowledgeable clinicians; they are experts in the provision of maternity care. While they work collaboratively with medical practitioners and other health professionals, they are largely autonomous practitioners with the scope to provide care to women across the childbearing experience.

The current combined board fails to understand the scope of the midwife and does not acknowledge the unique midwifery philosophy, ethos and practice. This is further hampered by the board being situated within the Australia Health Practitioner Regulation Agency which manages 13 other boards – the consequence of which is a dilution of the recognition and understanding of midwifery principles and practice. While this applies to all midwives regardless of context, the most significant impact appears to be on midwifery practice who work in private practice. The lack of acknowledgement of the scope of a midwife and the largely autonomous

work that they do in working alongside of women has seen to it that those midwives who seek to provides services independently from a health service or institution are subjected to the greatest level of scrutiny, interrogation and what has been labelled as vexatious reporting.

Concerns raised by midwives with respect to the role of AHPRA and the Nursing and Midwifery Board of Australia highlight a significant lack of expertise to understand and interpret what is acceptable and appropriate for a midwife in the provision of midwifery care. More importantly, there remains a lack of acknowledgement of a woman's informed choice and human right to seek care from a care provider of her choice and to labour and birth where she chooses. Midwives, particularly those in private practice, describe a vulnerability in providing services within their scope of practice as defined by regulation. They describe feelings of being misunderstood, targeted and harassed for providing care within their role as a midwife. This is escalated further when there is a clinical need from a woman to be transferred into a hospital following a complication or emergency. Privately practicing midwives talk of the fear and anxiety they experience in appropriately consulting and referring onto local health services for fear of being reported, even when care they have provided has been in line with what is expected of a midwife registered with AHPRA.

ACM implores the committee to acknowledge the impact that the above has on midwives and as such recommends that:

1. A separate and distinct midwifery board be developed, and
2. That this Midwifery Board is informed, governed and operationalised by midwives.

The ACM receives at least two phone calls per month from midwives who are under investigation following a report to AHPRA/NMBA. The majority of these midwives work in private practice. While direct contact about these issues may seem relatively small, ACM is aware that the majority of privately practicing midwives have been reported or sadly, are expecting to be reported in the future. ACM is aware of and very concerned about of the overrepresentation of reports to AHPRA within the private practicing midwifery workforce. This despite over 98% being found to be compliant with relevant safety and practice guidelines in the 2017 audit of all private midwives. The significant stress and strain of the process is a common theme across all examples. Common themes/problems are outlined below.

Midwives feeling that they must prove their innocence

A common theme across all interactions with midwives who have or are currently subject to an investigation is the belief that their efforts to demonstrate sound practice and processes are in vain. They discuss feelings of already having been found guilty before they have had the opportunity to share their story or version of events. Midwives talk of feeling like that complaint was less about the safety of their practice and the rigor of their processes and more to do with personal vendettas. This leading to vexatious reporting. This is particularly relevant for privately practicing midwives who commonly discuss being subjected to scrutiny following transfer of a woman to a hospital from an intended home birth with this leading to clinicians within the hospital reporting them on the basis of negligence or malpractice. Midwives describe this as a "witch hunt" where they feel that the system labels them as "dangerous" and "cowboys".

The current complaints process appears to lack mechanisms via which true negligence or malpractice can be separated from personal grievances and vendettas. Consequently, midwives are guilty until proven otherwise by the existing process. This contributes to longstanding trauma and abuse particularly given the process itself in drawn-out and may occur over many months to years. This is further compounded by the fact that midwives report not receiving feedback nor a formal apology after being cleared of any wrongdoing.

Midwives being told they cannot talk to anyone during the investigation

ACM have consistently heard from midwives who have been told at the outset of the investigation that they are not to discuss the matters of the investigation with others, including the woman for whom they have provided care. They are at a loss as to how to seek support and guidance and are fearful of reaching out. This adds to the circulating trauma of being subjected to investigation particularly where there is lack of transparency in the process and unclear timelines for investigation. Midwives have also spoken of the fact that they are unable to source consistency in information from AHPRA in that each episode of correspondence is often with a different person. The need to repeat their stories time and time again, contributes to the associated stress, anxiety and trauma that comes with being reported.

Lack of transparency in terms of the length of time and progress of the investigation

ACM are aware of multiple cases where midwives were not informed of the notification or complaints process and/or did not receive information outlining what to expect. Nor were they informed of when they may expect further communication following being informed of the complaint or notification. This uncertainty contributes to significant distress for those involved. It is highly important that midwives who are reported are well informed, not only of what the allegations are but that they also have a clear understanding of the process and the associated timeline.

Members of the ACM have noted that they are concerned about the lack of security pertaining to the sharing of information as part of an investigation. The primary means of providing information requested is email, which is neither secure nor appropriate given the nature of the information requested. Midwives have raised concerns about sharing of client information via email and that this may subject them to further prosecution. This aligns with the concerns raised by the midwife in (d) in that security and privacy during the process of seeking registration with AHPRA was questionable. As such, priority must be given to developing a more robust and secure process to facilitate the sharing of highly personal and sensitive information.

Confusing investigative tactics – including but not limited to, not talking to the woman involved in the report, but talking to the hospital staff involved

Midwives have consistently raised concerns about the validity of the processes used in gathering evidence. Many have stated that evidence has been sought from other clinicians, but not from the women to whom they were providing care. In the case of privately practicing midwives, this is often staff they have handed over to at the time they have transferred women into the hospital. The omission of the woman's experience of receiving care from the midwife is significant and compounds an already flawed process. The full context is needed to provide a comprehensive

evidence base and ensure that the midwife is fairly and equitably treated in the process of investigation.

The use of a snowballing approach to interviews, as part of the investigative process

In addition to the above, midwives have discussed that there is often a snowball-like approach to interviews in that staff interviewed will mention other practitioners names who may not have been directly involved in the event and/or circumstance leading to the notification or complaint. As such, there are suspicions that this leads to sharing of information among staff members and an agreed narrative about what information will be provided to the administrator of the complaints process, whether true or not. This unfairly precipitates into a large body of evidence against a single midwife.

Investigators showing up at midwives' doors unannounced to confiscate clinician notes, mobile phones and laptops

The ACM is aware of instances where AHPRA representatives have presented to a midwife's house unannounced and proceeded to confiscate clinical notes, mobile phones and laptops for the purposes of investigation. This raises significant concerns for midwives who have an obligation to safeguard the clients' information under the Privacy Act.

Lack of experience or understanding of those reviewing the case

When people face a group of their "peers" who are reviewing their case, they often report none of them have experience in private practice and will often suggest further education which does not exist.

(c) the adequacy and suitability of arrangements for health practitioners subject to supervised practice as part of the registration process or due to a notification;

Nil comments.

(d) the application of additional requirements for overseas-qualified health practitioners seeking to become registered in their profession in Australia;

There remain significant hurdles in the transition and preparedness for internationally qualified midwives to seek registration and to practice midwifery in Australia. The process via which overseas registered midwives are vetted prior to registration in Australia is lengthy,

Highly renowned and experienced midwives, from English speaking countries (eg. The United Kingdom) speak of being subjected to multiple levels of scrutiny with some describing the process as "being on trial." They have also described it as a "money grabbing" exercise in that demands for additional information, police checks and other clearances which come at a significant cost. This is not to mention the psychological impact and time invested in meeting the stringent requirements as set by AHPRA.

One highly experienced midwife who had practiced for 40 years overseas shared her experience of seeking registration with AHPRA over almost two years. The constant delays contributed to police and other clearances being rendered redundant due to expiry which in turn necessitated the need for further checks to be sought at a significant cost. After 18 months of "ticking the

boxes", this midwife received a threatening email that suggested that if the required documentation was not received in a timely manner, her application would lapse and be denied – this was in spite of the fact that the required evidence had been submitted multiple times and was largely a result of the drawn-out and onerous process.

Another spoke of her extensive midwifery experience prior to coming to Australia across clinical practice, education, regulation and research with this including working for a significant period of time in a midwifery-led model of care. Similarly, to the abovementioned example, the process was long and arduous and while the midwife was eventually granted registration, this was not before she was required to complete 450 clinical hours and continuity of care of 10 women unpaid. There was no recognition of her vast and extensive experience.

Recent research of internationally qualified midwives highlighted the significant barriers when entering and registering as a midwife in Australia. As discussed in (a), midwifery is not well recognised as an autonomous occupation in Australia and as such, midwives entering Australia experience a lack of professional recognition and are unable to exercise skills and knowledge they have attained in their country of origin.

(e) the role of universities and other education providers in the registration of students undertaking an approved program of study or clinical training in a health profession;

The inclusion of a student register was welcomed by ACM.

The impetus for such a register is sound in principle, however, the operationalisation of the same is much more complex. ACM has been contacted on multiple occasions with concerns about student performance, safety and skill base. While there is an awareness of the reporting mechanism via which student misconduct or unsafe practice can be raised with AHPRA, the process and outcomes of this process are less transparent.

There are also concerns with respect to the disciplinary action that can be taken in light of a complaint or notification against a student. While the education institution itself may initiate the report, the subsequent actions surrounding the investigation are often within the jurisdiction of the educational processes. Concerns have been raised about the rigor and objectivity of these processes where there are concerns for community wellbeing.

(f) access, availability and adequacy of supports available to health practitioners subject to AHPRA notifications or other related professional investigations;

ACM members have raised concerns regarding the lack of support available to midwives who are under investigation. Many have been told they are not to discuss the details of the complaint with anyone and so they feel isolated, and unsure of who to turn to. The associated stress and anxiety contribute to uncertainty and confusion with many suggesting that when they are expected to provide evidence, the stress impedes their ability to think clearly and to provide articulate answers to questions. Many have stated that this inadvertently adds to the evidence against them. Failing to provide midwives with support in such situations is yet another flaw of the current process and impacts on a fair and equitable investigation.

At a minimum, the administrators of the complaints process should acknowledge that the process itself is stressful and as such, should provide midwives with a list of support services. Awareness of available support mechanisms is especially important for midwives working in rural and remote areas and those who have recently migrated to Australia; many of whom have little professional or social support.

ACM is aware of midwives and practitioners from other health professions who experience high levels of distress, to the point of significant depression, anxiety and suicidal ideation. Midwives have suicided while under investigation by AHPRA.

(g) the timeliness of AHPRA's investigation of notifications, including any delays in handling, assessment and decision-making, and responsiveness to notifiers;

As mentioned in (b) above, ACM holds concerns regarding timeliness of the investigative process. These issues contribute to the significant stress midwives experience as a consequence of the complaints and investigative processes. There appears to be no guidelines that ensure consistency in the process of investigation and as such, the process appears to be largely ad hoc in nature leading to uncertainty and uneasiness. Compounding this issue, is a lack of consistency in the personnel managing individual complaints. Midwives' state that they have difficulty accessing the same person for correspondence and information.

Some midwives have experienced long and tedious investigations over months to years which not only have psychological impacts but implications for their reputation and financial wellbeing. Many have stated that they have been advised that they cannot work while the investigation is taking place while others have suggested that the outcome of the investigation has been made public without sufficient time to appeal the preliminary decision.

Without a clear framework or set of guidelines and the inclusion of appropriate personnel to collect and analyse data related to complaint, the process appears to evolve indefinitely until a "strong" case against the midwife is built. The time delay raises serious concerns about the validity of the information and evidence that has been captured particularly where there is significant delay and the ability for multiple individuals to corroborate a story against an individual.

(h) management of conflict of interest and professional differences between AHPRA, National Boards and health practitioners in the investigation and outcomes of notifications;

A recurrent concern raised by members is that Australian Health Practitioner Regulation Agency (AHPRA) should not be all things to all practitioners. There appears to be no clear understanding of who is involved in the management of complaints and whether or not there are conflicts of interest. There also does not appear to be sufficient consideration of the importance of appropriately qualified investigators who have a sound understanding of the issues related to midwifery. This is particularly the case for privately practicing midwives who consistently suggest that there is a bias in that peers who oversee or investigate their case have never worked privately and therefore do not fully understand that nuances of working in such a capacity.

(i) the role of independent decision-makers, including state and territory tribunals and courts, in determining the outcomes of certain notifications under the National Law;

Nil comments.

(j) mechanisms of appeal available to health practitioners where regulatory decisions are made about their practice as a result of a notification;

ACM has been informed of circumstances where details of a complaint, including findings of the investigation, have been published online prior to completion of an appeals process. This is of particular concern where the midwife is in private practice. Their livelihood and reputation are significantly impacted, and this may continue beyond a finding of no wrongdoing.

(k) how the recommendations of previous Senate inquiries into the administration of notifications under the National Law have been addressed by the relevant parties; and

Nil comments

(l) any other related matters.

There are significant concerns that there is no action or retribution for those who make vexatious reports against midwives who are later found innocent of any wrongdoing. As such, there remains no deterrent for unsubstantiated claims and no penalty for the complainant even though midwives who are reported suffer emotional, psychological, social, professional and financial strain and stress as a consequence of such ill-founded investigations. There is also no mechanism via which compensation can be sought. Given these points, there is a pressing need for the process via which complaints are handled to be better governed and managed. Transparency of the processes involved is essential.

References:

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