Joint submission

Australian Private Midwives Association (APMA) and Midwives in Private Practice (MIPP)

Senate Inquiry into the administration of health practitioner registration by the Australian Health Practitioner Regulation Agency (AHPRA)

Summary:

We draw to the attention of the Inquiry the following matters, which will be discussed in more detail in the body of this submission:

1. **AHPRA's administration of the registration process for Medicare benefits**
   .1 Midwives are required by AHPRA to provide a reference from hospital midwife manager or obstetrician when applying for notation as eligible for Medicare benefits. This is an unreasonable request for many privately practising midwives
   .2 'Prescribing' course. Midwives who apply to AHPRA for notation as eligible for Medicare benefits are required to sign an undertaking to complete within 18 months of recognition as an eligible midwife, an accredited and approved program of study determined by the Board to develop midwives' knowledge and skills in prescribing ..." There is no such course available for midwives.
   .3 Some midwives have experienced unacceptable delays and a lack of fairness in processing applications for notation as eligible midwife
   .4 We draw to the attention of the Inquiry the implications for consumers/ private clients of midwives whose applications have been delayed without good reason.
   .5 We assert that there is a strong potential for misunderstanding in the obstetric and hospital midwifery communities as to the meaning of collaboration. Legislation that privileges obstetricians, placing them in a supervisory role for midwives, must be repealed.

2. **The administration by AHPRA of complaints against privately practising midwives**
   .1 A privately practising midwife's registration had been suspended prior to the changeover to the new legislation. This midwife has been unable to work and earn a living, yet she has not yet been given an opportunity to present her case in person, or to have her suspension lifted.
   .2 At least two midwives have recently had conditions (supervised hospital practice) placed on their registrations without any investigation into the complaint. This is as effective as a suspension, with the midwife losing her ability to earn a living while the conditions apply.

3. **Professional Indemnity Insurance.** AHPRA, through the NMBA, is currently in the process of drafting requirements for insurance for midwives. We wish to draw this to the attention of the Inquiry, as midwives in private practice are the only professional group unable to purchase indemnity insurance to meet the requirements of the national legislation.

Introduction:

The matters which we wish to address in this submission are in response to our experiences during the recent transition from individual State and Territory-based regulation of the midwifery profession to the national regulation of the midwifery profession under AHPRA.

We represent midwives who practice privately, either as sole practitioners or within privately owned and operated midwifery partnerships and group practices. The most common services provided by privately practising midwives in Australia relate to primary maternity care, spanning antenatal, intranatal, and postnatal care for women who intend to give birth at home. The midwife primary carer attending planned homebirth is responsible for the full scope of midwifery practice, articulated by the International Confederation of Midwives in the Definition of the midwife (2005), giving:

> *the necessary support, care and advice during pregnancy, labour and the postpartum period, to conduct births on the midwife's own responsibility and to provide care for the newborn and the 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.*
> *The midwife has an important task in health counselling and education, not only for the woman, but also within the family and the community. This work should involve antenatal education and preparation for parenthood and may extend to women's health, sexual or reproductive health and child care. A midwife may practise in any setting including the home, community, hospitals, clinics or health units*
> (excerpt from International Definition of the Midwife, adopted by the International Confederation of Midwives Council meeting, 19th July, 2005, Brisbane, Australia).

This Definition of the midwife has been adopted by AHPRA, and the Australian Nursing and Midwifery Council, and is foundational to current Australian midwifery education, codes and standards.

We welcome the Senate Inquiry into administration of health practitioner registration by AHPRA, and are happy to provide more detailed evidence of any matter mentioned in our submission, or to appear before the Senate committee to answer questions.

This submission has been prepared by the following midwives:

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Liz Wilkes, from Toowoomba Qld, representing Midwives Australia
Marie Heath, from Goulburn NSW, representing Australian Private Midwives Association
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1. AHPRA's administration of the registration process for Medicare benefits

1.1 Midwives are required by AHPRA to provide a reference (Appendix 1) from hospital midwife manager or obstetrician when applying for notation as eligible for Medicare benefits.

The strict requirement by AHPRA for a detailed reference (Appendix 1) has presented midwives who have practised privately for many years with an unreasonable requirement, as they may not have strong connections with current staff in hospitals. Midwives practising privately in large cities may not be well enough known by an individual midwife manager or obstetrician who would be able to vouch for the midwife's skill and competence across the full range of midwifery practice, as required by AHPRA/NMBA. Hospital based care providers do not witness the work of the midwife in antenatal or postnatal care, or in uncomplicated births.

The prescriptive nature of the reference, requiring the referee to "address the applicant midwife's performance in relation to the four competency domains as described in the *ANMC National Competency Standards for the Midwife 2006"* is a huge requirement in itself. The four competency domains are: Legal and professional practice, midwifery knowledge and practice, midwifery as primary health care, and reflective and ethical practice.

Furthermore, the referee "needs to address how the applicant midwife is qualified to provide pregnancy, labour, birth and post natal care to women and their infants; including the capacity to provide associated services, and order diagnostic investigations; appropriate to the eligible midwife's scope of practice. This includes whether the applicant midwife has the skills, knowledge and attitudes expected of a midwife to work within the midwifery scope of practice ..."

The practicalities of preparing such a reference have meant that the midwife is likely to prepare the wording of the reference, carefully following the requirements set down by AHPRA/NMBA, and asking the person giving the reference to add their professional qualifications and letterhead. This is not optimal, as the referee may be asked to sign statements for which they are unsure of the veracity.

We recommend to the Inquiry that AHPRA revise its requirements to make them more reasonable and fair for all midwives who apply for notation as eligible for Medicare benefits.

1.2 'Prescribing' course. Midwives who apply to AHPRA for notation as eligible for Medicare benefits are required to sign an undertaking to complete within 18 months of recognition as an eligible midwife, an accredited and approved program of study determined by the Board to develop midwives' knowledge and skills in prescribing ..." There is no such course available for midwives.

We recommend to the Inquiry that AHPRA be called upon to address this deficiency.

1.3 Some midwives have experienced unacceptable delays and a lack of fairness in processing applications for notation as eligible midwife

Members have reported delays over more than four months, in which their applications have been delayed for what appear to be minor administrative reasons, unrelated to the midwife's competence or evidence of professional practice. With monthly meetings, and applications being held over repeatedly, midwives have experienced great difficulties, which we consider to be unacceptable.

The management process of applications for notation under the Medicare reforms has been delegated by the national NMBA to State Boards – mainly New South Wales and South Australia. We question this delegation. The statement on the AHPRA website that: "National Law provides for a National Board to establish State and Territory Boards to exercise its functions in the jurisdiction in a way that provides an effective and timely local response to health practitioners and other persons in the jurisdiction." Midwives have experienced administrative delays by these state boards for the past 4 months, without resolution of the issues, question the claim of 'effective and timely local response'.

The process that is being followed by the State Boards in considering applications is that the matter is placed on the agenda of the Board's meeting, after the AHPRA manager for registration who is looking after the application has completed a careful process of checking applications. The inconsistency of management of applications is apparent, when some midwives' applications have been processed in a month, while others that have been taken to the Board for approval have been repeatedly delayed.

We recommend to the Inquiry that AHPRA be required to demonstrate key performance times in processing midwives applications under the government's Medicare reforms.

1.4 We draw to the attention of the Inquiry the implications for consumers/ private clients of midwives whose applications have been delayed without good reason.

Privately practising midwives who have applied for notation as eligible midwives have informed their clients of the fact, and taken steps to make arrangements that will enable these women to claim Medicare rebate as soon as the application has been approved. Those women whose midwives' applications have been delayed unreasonably, as outlined above in 1.3, have been deprived of an estimated $700 to $1000 in Medicare rebates.

We recommend to the Inquiry that AHPRA be required to demonstrate fairness and due diligence in processing applications without delay.

1.5 We assert that there is a strong potential for misunderstanding in the obstetric and hospital midwifery communities as to the meaning of collaboration. Legislation that privileges obstetricians, particularly the National Health (Collaborative arrangements for midwives) Determination 2010, National Health Act 1953, which places doctors in a supervisory role over midwives, must be repealed. 'Collaboration' that requires a midwife to obtain a signed acknowledgment of an agreement or arrangement with a doctor, without having any requirement for the doctor to agree to collaboration, in order for the woman in the midwife's care to be able to claim a Medicare rebate, has given the doctor an unacceptable level of control and authority over the midwife. A doctor cannot supervise a midwife in the practise of midwifery, as the doctor is not registered to practise midwifery.

We recommend to the Inquiry that the government be asked to revise the National Health (Collaborative arrangements for midwives) Determination 2010, removing this inequity and lack of professional respect for midwives practising midwifery.

2. The administration by AHPRA of complaints against privately practising midwives

The current administration by AHPRA of complaints against privately practising midwives appears to make the assumption of guilt and imposing of restrictions on midwives practices prior to any assumption of innocence and right to due procedural fairness, peer review and appropriate hearings. This AHPRA punitive approach to complaints handling process effectively puts privately practising midwives out of practice and left with no recourse for long intervals. The impact on those midwives, their families and their birthing community is massive.

Recent experiences of privately practicing midwives has seen the midwife notifies and given one opportunity to reply to a complaint – without due and appropriate review processes – and without adequate time frames, in some instances as short as 10 days. Restrictions have been placed on the midwives' registration, particularly restriction to "hospital practice under supervision". There has been no due process or assumption of innocence until proven guilty.

We have no problem with appropriate review of complaint. We acknowledge that the National Law requires the regulatory body to take immediate action when it believes a practitioner poses a serious risk to the public for whom they are providing professional services. However we consider that in some cases of which we are aware, midwives have been denied procedural fairness, without any evidence of potentially being a serious threat to the public. Suspension or 'hospital practice under supervision' causes huge disruption to not only the midwife whose livelihood is taken from her, but also to the women with whom she has contracted to provide midwifery care throughout the woman's pregnancy-birthing continuum.

Furthermore, we consider that when AHPRA proceeds with imposing a suspension or other condition by which a midwife in private practice loses her livelihood, it is essential in the interests of fairness and natural justice that the complaint be investigated and the matter resolved without delay. We know of instances where this has not happened, which is unacceptable.

The imposing of restrictions on privately practicing midwives registrations in this manner denies the midwives right to earn a living, can destroy their professional and personal reputation inappropriately, along with the financial and emotional costs of attempting to regain their registration without restrictions.

The other massive impact of the imposing of these restrictions on private practice midwives registrations is that to the women and their families to whom the midwife has been or would be providing midwifery care. Some of these women are as late as 38 week pregnant, due to give birth very soon, and without fair review process and reasonable notice they can be distressed to lose their private midwife's care. We are aware of instances when these women have found no other private practice midwifery options in their communities, and some have chosen to give birth at home without a professional attendant. This practice of 'free birth' is a lamentable situation, and could put the life or wellbeing of mother and child at an increased risk than when they had been in the care of a trusted midwife.

It appears that the long standing allegations of a culture within State nurses and midwives boards of vindictive and unprofessional actions against privately practising midwives has continued to be perpetuated with the culture and actions of AHPRA. Where the review process of complaints against midwives in private practice does take place, there has been a lack of true peer review, or expert opinion from other privately practising midwives.

We are not able to provide detail of unresolved complaints that may identify individuals, but have encouraged members to approach the Inquiry and request confidentiality in responding. We note the following matters:

2.1 A privately practising midwife's registration had been suspended prior to the changeover to the new legislation. This midwife has been unable to work and earn a living for almost a year, yet she has not yet been given an opportunity to present her case in person, or to have her suspension lifted.
2.2 A privately practising midwife had conditions (supervised hospital practice) placed on her registration immediately after a complaint was lodged, without any investigation into the complaint. This is as effective as a suspension, with the midwife losing her ability to earn a living while the conditions apply.
2.3 A privately practising midwife has had interim conditions (supervised hospital practice) placed on her registration prior to any investigation into the complaint. The interim conditions are effective immediately, prior to any fair process of review and the indications are that a review will occur in the future via the Health Care Complaints Commission but with no indication of time frame for that process. This is effectively means the midwife loses her ability to earn a living while the conditions apply and ceases the ongoing continuum of midwifery care to at least fifteen women and their families.

We recommend to the Inquiry that the government

- **be asked to immediately review the actions of AHPRA in relation to complaints processes against privately practicing midwives and ensure that fair and due process of law is applied, removing the immediate restrictions that have been placed on privately practise midwives and ensuring that women's midwifery care is not compromised because of the lack of procedural fairness.**
- **immediately establish a "Midwifery Board" within AHPRA – separate to Nursing.**
- **require that midwives with experience in private practice be engaged to participate in reviews and hearings involving privately practising midwives.**
- **require that AHPRA demonstrate due fairness, diligence and reasonable time frames in the review of complaints.**

3. Professional Indemnity Insurance.

AHPRA, through the NMBA, is currently in the process of drafting requirements for insurance for midwives. The unwillingness or inability of the government to provide indemnity insurance that covers births attended privately by midwives in the home is unacceptable, and demonstrates an insurance system that will not work equitably for all.

Midwives attending homebirths have been granted a 2-year exemption, until June 2012, from the government's requirement for Professional Indemnity Insurance, because no suitable product has been found. Midwives are required to practise in accordance with the NMBA's Safety and Quality Framework (S&Q Framework) in order for the exemption to apply. However, the S&Q Framework that is currently on the AHPRA website states that "Until it is approved by the NMBA it is not a legal requirement for PPM to use this framework in order to be exempt." This situation has led to confusion amongst midwives and women who seek private midwifery care.

We propose to the Inquiry that Australia needs a no-fault compensation scheme that covers at least maternity care, if not all professional health services. We refer to that in New Zealand, and the Victorian Transport Accident Compensation (TAC) no-fault scheme.

By way of example, when a woman gives birth to a child with cerebral palsy, this is one of the most tragic possibilities imaginable. The only way under current Australian law for that family to obtain compensation is to sue the doctor, hospital, and the midwife, and anyone else involved. Yet in the majority of cases of cerebral palsy it is difficult or impossible to prove that anyone was at fault or acted in an incompetent or negligent or unprofessional way.

When a no-fault compensation scheme is in force, all relevant practitioners pay into the scheme, and all who suffer adverse outcomes, regardless of the causation, are entitled to compensation.

We recommend to the Inquiry that the government be asked to introduce a no-fault compensation scheme for maternity care, to replace the requirement for individual professional indemnity insurance.

APPENDIX 1

Professional Practice Reference/s to support an application for notation as an Eligible Midwife to the Nursing and Midwifery Board of Australia.

Please note that more than one reference may be required to ensure that all aspects of the midwife's performance and scope of practice are addressed.

Reference from Midwife Manager

A professional reference provided by a suitably qualified and experienced midwife is required to support the midwife's application for notation as an Eligible Midwife to the Nursing and Midwifery Board of Australia.

Each referee must provide the following professional details of their registration in the reference letter:

- Full name as it appears on the AHPRA Register;
- Professional and education qualifications;
- Employment position;
- Employer details (including name of organisation and address); and
- Employment status.

In addition the referee must note their professional relationship with the applicant midwife, including the time period of that professional relationship.

The following aspects of the midwife's performance and detail of the scope of midwifery practice are required to support the application.

The referee should address the applicant midwife's performance in relation to the four competency domains as described in the *ANMC National Competency Standards for the Midwife 2006*.

The referee needs to address how the applicant midwife is qualified to provide pregnancy, labour, birth and post natal care to women and their infants; including the capacity to provide associated services, and order diagnostic investigations; appropriate to the eligible midwife's scope of practice. This includes whether the applicant midwife has the skills, knowledge and attitudes expected of a midwife to work within the midwifery scope of practice which includes giving:

> *the necessary support, care and advice during pregnancy, labour and the postpartum period, to conduct births on the midwife's own responsibility and to provide care for the newborn and the 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.*
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> *The midwife has an important task in health counselling and education, not only for the woman, but also within the family and the community. This work should involve antenatal education and preparation for parenthood and may extend to women's health, sexual or reproductive health and child care. A midwife may practise in any setting including the home, community, hospitals, clinics or health units*

(excerpt from International Definition of the Midwife, adopted by the International Confederation of Midwives Council meeting, 19th July, 2005, Brisbane, Australia).

Reference from member of the multidisciplinary team (other than midwife manager)

A professional reference provided by an obstetrician or member or the multidisciplinary team may be necessary to support the midwife's application for notation as an Eligible Midwife to the Nursing and Midwifery Board of Australia if the midwife is working in private practice.

Each referee must provide the following professional details of their registration in the reference letter:

- Full name as it appears on the AHPRA Register;
- Professional and education qualifications;
- Employment position;
- Employer details (including name of organisation and address); and
- Employment status.

In addition the referee must note their professional relationship with the applicant midwife, including the time period of that professional relationship.

The following aspects of the midwife's performance and detail of the scope of midwifery practice are required to support the application.

The referee should address how the applicant midwife is qualified to provide pregnancy, labour, birth and post natal care to women and their infants; including the capacity to provide associated services, and order diagnostic investigations; appropriate to the eligible midwife's scope of practice.

The referee needs to provide evidence that the applicant midwife has the skills, knowledge and attitudes expected of a midwife to work within the midwifery scope of practice which includes giving:

> *the necessary support, care and advice during pregnancy, labour and the postpartum period, to conduct births on the midwife's own responsibility and to provide care for the newborn and the 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.*
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> (excerpt from International Definition of the Midwife, adopted by the International Confederation of Midwives Council meeting, 19th July, 2005, Brisbane, Australia).