

13 April 2011

## Submission into the inquiry into the administration of health practitioner registration by the Australian Health Practitioner Regulation Agency (AHPRA)

I am greatly concerned by the current system of health practitioner registration and also the way complaints against health practitioners are processed. I am a woman who has accessed private midwifery care for three pregnancies and births, as recently as 2008. I am also currently undertaking a Bachelor of Midwifery, with the goal of being a privately practicing midwife in the future. As such, my submission is primarily directed towards the processes of the Australian Health Practitioner Regulation Agency (AHPRA) in the way it interacts with, registers and regulates privately practicing midwives.

I have heard of applications for registration not being processed in a timely way. I know of one case where an experienced and highly respected independent midwife submitted her application in December and is yet to have her application processed. This is an unacceptable delay, which has impacts for the midwife involved and her clients. Scrutiny and firm timelines must be applied to the registration process to ensure that registrations are processed in a timely way.

The notification/complaints process has a huge impact on women wanting to access the care of a private midwife. There are a limited number of independent midwives available to women, and those numbers are being reduced directly as a result of the frequency of reports made against those midwives, often not by women and their families, but more commonly by other health professionals and hospitals. There is a perception that independent midwives are working in a hostile regulatory environment and many independent midwives are ceasing independent practice to protect their registration and livelihoods.

I am concerned that a significant number of these complaints appear to be spurious in nature – where there has been a good outcome for mother and baby, but the midwife has been reported by a medical practitioner for “breach of a registration condition or undertaking”. An example of this is when a midwife is reported for supporting a woman to have a planned vaginal birth after caesarean at home (VBAC) (a real complaint scenario that has happened a number of times to my knowledge in Victoria) In these cases the woman is asserting her right to informed consent, in choosing her place of birth, and the midwife IS following the National Midwifery Guidelines for Consultation and Referral, which state *“When a woman’s choice is significantly at variance from professional advice or guidelines, the woman’s decision and the information provided by the midwife should be carefully documented.”* When a decision is made contrary to the guidelines, and that decision is documented, care with the midwife can continue. This protection for women’s right to informed consent is embedded into the guidelines.

To accept complaints which arise from the midwife respecting the woman's right to informed consent is unacceptable and places midwives in an untenable position, where they can't truly honor a woman's right to informed consent without placing themselves professionally at risk. If midwives need to practice protectively to eliminate this risk it means that a woman's right to informed consent is severely compromised, and they face the loss of their midwife and a forced hospital birth or a forced freebirth (unattended birth at home) if at any time in their pregnancy their choices do not align perfectly with the collaboration and referral guidelines. This is an unacceptable situation.

When a midwife has a complaint made against her (which may be spurious) restrictions can be placed on her practice, before her case is even heard. In Victoria there has been a well known case where a privately practicing midwife was suspended on the basis of an anonymous tip off without her even getting the benefit of a conversation to establish any facts at all. She has been waiting for 10 months to have an opportunity to defend herself and for the complaint/s against her to be addressed, all the while unable to provide midwifery services due to the suspension of her registration. While the personal impact for that midwife has been extensive and severe, there is also a very significant impact on the women who had engaged that midwife for their pregnancy and births and had to struggle to find alternative care with no warning. Some regional areas are served by only one private midwife (as was the case here) and that makes the impact more severe for the women of that area.

That a midwife can be deregistered prior to the complaints against her being heard, with such a severe impact and cost to the birthing women in that community is something that should never be taken lightly, and should be avoided if at all possible. In the event that it does happen, all steps possible should be taken to make sure the case is expedited to ensure that the midwife and the women depending on the care of that midwife have resolution and certainty as soon as possible.

Protections need to be put in place to ensure that AHPRA's notification/complaints process is not able to be utilized to perpetuate turf war bullying of one group of health professionals by another group of health professionals (in the case of a Doctor making a spurious complaint against a midwife).

A woman's right to informed consent is enshrined in many documents, including:

- The Australian College of Midwives National Midwifery Guidelines for Consultation and Referral
- Safety and Quality Framework for Privately Practicing Midwives attending homebirths
- Code of ethics for midwives in Australia (from the ANMC)
- International code of ethics for Midwives

I believe that the processes of AHPRA generally, and the delays and lack of fairness in the stages of AHPRA's notification/complaint process specifically, are currently undermining a woman's right to informed consent by making it very difficult for a midwife to fully honor a woman's right to informed consent *AND* continue to practice free from threats to their registration.

I ask that steps be taken to ensure that the health consumer's right to informed consent and right of refusal is enshrined and protected in all AHPRA policies, procedures and complaints processes, and that health practitioners who practice with full respect of informed consent and right of refusal be protected, rather than pursued and persecuted by AHPRA.

Currently AHPRA processes and systems seem to be lacking fairness, timeliness and balance, and are also failing women's right to informed consent in the area of midwifery care.

As a woman who has birthed at home with a midwife three times, and enjoyed an excellent standard of care from my midwife, it appalls me on a very deep level to think that my midwife could be subjected to the AHPRA complaints process and/or deregistered for honouring my right to informed consent and agreeing to support me to birth at home (or on my terms regardless of the place of birth) if to do so contravened the ACM Guidelines for Consultation and Referral.

As a health care consumer I expect my health care provider to respect my right to informed consent and my right of refusal throughout the care episode. I also expect AHPRA's guidelines and processes to enshrine, protect and respect my right to informed consent and my right of refusal at all times and in all scenarios.

As a student midwife who has just been registered with AHPRA, I have no confidence whatsoever in the registration process and in the way that complaints/notifications are handled. It makes me anxious as a student, and it makes me feel a sense of hopelessness for the future in terms of my ever being in a position to move into private practice midwifery with such a toxic, harmful and unjust regulatory environment. If I can't uphold the rights of women to exercise informed consent and right of refusal as a midwife, without facing severe professional penalties, then there is no future for me as a midwife in Australia. And I hold grave concerns for the birthing women of Australia, and their midwives, if this current untenable situation continues unchecked.

Yours sincerely,

*Additional information regarding informed choice:*

***From the Australian College of Midwives National Midwifery Guidelines for Consultation and Referral:***

**Informed Choice**

1. At booking, the midwife should outline the scope and boundaries of midwifery care. This will include an explanation of these Guidelines with the woman.
2. Midwifery care must be provided within the principle of informed choice. The midwife must provide the woman with sufficient information to inform the woman's consent to any procedure or advice. The woman has the right to give or refuse consent to any procedure or advice.
3. When a woman's choice is significantly at variance from professional advice or guidelines, the woman's decision and the information provided by the midwife should be carefully documented. In these circumstances Appendix A: *"When a woman chooses care outside the recommendations of the ACM Guidelines"*<sup>3</sup> provides guidance to the midwife, and a standardised consent form.<sup>4</sup>

***From: Safety and Quality Framework for Privately Practising Midwives attending homebirths***

"Primary Maternity Services in Australia – A Framework for Implementation (AHMAC 2008)" articulated the following principles which underpin the range of models of maternity care available to women in Australia. These principles involve:

- ensuring services enable women to make informed and timely choices regarding their maternity care and to feel in control of their birthing experience