

31 August 2016

Ms Freda Villella
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

Court Ref: COR 2012 000293

Sent via email: cpuresponses@coronerscourt.vic.gov.au

Dear Ms Villella

Investigation into the death of Caroline Lovell

Thank you for your letter from March 2016 and for agreeing to an extension to enable us to fully consider Mr White's recommendations. Please see below the Nursing and Midwifery Board of Australia (NMBA) and the Australian Health Practitioner Regulatory Agency (AHPRA) response to the issues raised in the letter and to the coroners' specific recommendations.

As the regulator of nurses and midwives in Australia a key function of the NMBA under section 35 of the Health Practitioner Regulation National Law Act, as in force in each state and territory (National Law) is *to develop or approve standards, codes and guidelines for the health profession, including codes and guidelines that provide guidance to health practitioners registered in the profession.*

Section 284 of the National Law is relevant to the regulation of privately practising midwives (PPMs) providing homebirth services. Section 284 sets out an exemption from the NMBA's professional indemnity insurance (PII) requirements under section 129 of the National Law. The exemption has been extended by Health Ministers on two occasions previously and is currently in place until 31 December 2016.

The exemption under section 284(c)(ii) includes that the following requirements:

- (c) the midwife complies with any requirements set out in a **code or guideline** approved by the National Board under section 39 about the practise of private midwifery, including –
 - (ii) any requirement in a code or guideline relating to the **safety and quality** of the practise of private midwifery.

There is currently a *Safety and quality framework for privately practising midwives attending homebirths* (Framework) in force and published on the NMBA website. The Framework was developed by the Victorian Department of Human Services Maternity Services Branch and adopted by the NMBA. It commenced in March 2011 and established the requirements which PPMs providing homebirth services must meet to be exempt from holding PII for intrapartum care.

The NMBA commenced a review of the Framework two years ago and after extensive analysis and consultation developed the *Safety and quality guidelines for privately practising midwives* (SQG), available on the NMBA's website. The SQG was released on 1 February 2016 and comes into effect on 1 January 2017 replacing the current Framework. This timeframe is to allow PPMs to understand the requirements of the SQG as compliance is expected from the commencement date of 1 January 2017. The NMBA is holding information sessions with PPMs across the country to ensure PPMs are aware of the requirements of the SQG. The NMBA has indicated it will audit PPMs against the SQG from the commencement date.

The SQG is a more robust and clearly articulated document that specifies the expected standard of practice of PPMs set by the NMBA in order to meet the exemption requirements of Section 284(c)(ii) of the National Law.

The key changes to the SQG are:

- clear compliance with the requirement for a risk assessment based on the Australian College of Midwives (ACM) [National midwifery guidelines for consultation and referral](#) 3rd Edition Issue 2 (endorsed by the [Royal Australian College of General Practitioners](#) (RACGP) and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG))
- the presence at a homebirth of two registered health professionals, educated to provide maternal and newborn care and skilled and current in maternity emergency management and maternal/neonatal resuscitation, one of whom is a midwife
- consideration of the distance/time to travel to an appropriately staffed hospital service
- completion of a professional practice review program (PPRP), and
- demonstration of annual competencies in adult basic life support, neonatal resuscitation and training.

We can confirm that representatives of AHPRA have met with representatives from the Department of Health and Human Services (DHHS) to discuss Mr White's recommendations made jointly to AHPRA and DHHS and have agreed to make separate responses.

Recommendation a)

*The Department of Health and Human Services (DHHS), in conjunction with the Australian Health Practitioner Regulation Agency (AHPRA), examines the **adequacy of the regulatory system currently in place** and develops a specific regulatory framework for privately contracted midwives, working in the setting of a home.*

AHPRA and the NMBA are of the view that, in reviewing the Framework, developing and consulting with key stakeholders on the *Safety and quality guidelines for privately practising midwives (SQG)*, that a review of the adequacy of the regulatory system currently in place around PPMs has been undertaken. The SQG is a specific regulatory framework for privately contracted midwives that has been developed through close consultation with governments, the midwifery profession and the women who use private midwifery services. The SQG comes into effect on 1 January 2017 and the NMBA has communicated a clear expectation to PPMs that they will need to be compliant with the requirements by that date. The NMBA has also indicated it will audit PPMs for compliance with the SQG.

Any standard, code or guideline developed under the National Law is subject to review and the NMBA has agreed to review the SQG from time to time and at least every five years. AHPRA and the NMBA will continue to monitor adequacy of the regulatory framework set out in the SQG through the audit process, ongoing consultation and any other data available through carrying out functions under the National Law.

Recommendation b)

The Nursing and Midwifery Board of Australia (NMBA) develops specific guidelines to define mandatory clinical competency and clinical experience standards, for privately contracted midwives working in the setting of a home.

There are a number of standards and requirements already in place that set out the clinical competency and clinical experience standards required of PPMs:

1. The current Midwifery competency standards (January 2006) apply to all registered midwives and set out the core competency standards by which a midwife's performance is assessed to obtain and retain registration in Australia. The NMBA has commenced a review of these

standards and will develop Midwife Standards for Practice, due for completion in early 2018. The NMBA will ensure that the new Midwife Standards for Practice clearly capture the practice standards expected of all registered midwives including PPMs.

2. The *Safety and quality guidelines for privately practising midwives* (SQG) also set clear competence requirements for PPMs. Of specific note is the requirement for compliance with the Australian College of Midwives (ACM) National midwifery guidelines for consultation and referral guidelines, demonstration of annual competencies in adult basic life support, neonatal resuscitation and training and completion of an annual professional practice review program (PPRP).
3. The NMBA does not set a specific requirement for post registration experience to practice private midwifery. However, in order for a midwife to meet the requirements of the NMBA's current *Registration standard for endorsement of scheduled medicines for midwives* (2010) and *Eligible midwife registration standard* (2010) and the revised *Registration standard: Endorsement for scheduled medicines for midwives* (commencing 1 January 2017) (Registration Standards for endorsement) a midwife must have the equivalent of three years' full-time clinical practice experience (5,000 hours) post registration and in the new Standard this must be within the past six years. A notated or endorsed midwife has access to the Medicare Benefits Schedule (MBS) and Pharmaceutical Benefits Scheme (PBS) (endorsed only). Access to MBS and PBS is essential for private practice midwifery. Therefore while not being a specific requirement before a midwife can practise privately the requirement of equivalent of three years' full-time clinical practice (5,000 hours) post registration experience is common amongst PPMs.

Recommendation c)

The NMBA develops a system for monitoring mandatory clinical competency and clinical experience standards, for privately contracted midwives working in the setting of a home.

The *Safety and quality guidelines for privately practising midwives* (SQG) comes into effect on 1 January 2017 and the NMBA has communicated a clear expectation to PPMs that they will be compliant with the requirements by that date. The NMBA has also indicated it will audit PPMs for compliance with the SQG. In addition, as explained above in order for a midwife to meet the requirements of the NMBA's Registration Standards for endorsement a midwife must have the equivalent of three years' full-time clinical practice experience (5,000 hours) post registration.

AHPRA and the NMBA will continue to monitor adequacy of the regulatory framework set out in the SQG through the audit process, ongoing consultation and any other data available through carrying out functions under the National Law.

Recommendation f)

I also recommend that the DHHS, in conjunction with the AHPRA, examines the question of whether there is a need to create a regulatory offence that would prohibit the receipt either directly or indirectly of a financial commission of any type for attending at a place of birth while being an unregistered midwife (or medical practitioner).

The issue of whether to restrict the practice of birthing services was considered as a part of the Independent Review of the National Registration and Accreditation Scheme for Health Professions (NRAS Review). Recommendation 12 from the NRAS Review was that the protection of the practice of birthing services to be adopted nationally, consistent with the South Australian amendment.

The Australian Health Workforce Ministerial Council (AHWMC) considered this recommendation and in the Communiqué released on 7 August 2015 agreed not to accept the recommendation and Ministers agreed that individual jurisdictions may choose to adopt further regulatory and non-regulatory measures to support safe birthing practice in accordance with local circumstances.

This issue has been consulted on nationally as a part of the NRAS Review and AHWMC have agreed that it is up to individual jurisdictions to determine further regulatory and non-regulatory

measures to support safe birthing practice. AHPRA support that it is therefore the assessment of the Victorian Health Minister and the DHHS whether there is a need to create a regulatory offence that would prohibit the receipt either directly or indirectly of a financial commission of any type for attending at a place of birth while being an unregistered midwife (or medical practitioner) in Victoria.

If you require any further information about the NMBA and AHPRA response please contact Tanya Vogt, Executive Officer, Nursing and Midwifery via email Tanya.vogt@ahpra.gov.au or telephone (08) 7071 5552.

Yours sincerely



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