



## Secretary

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Freda Villella  
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65 Kavanagh Street  
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Dear Ms Villella

**Re: Investigation into the death of CAROLINE LOVELL – Coroners Court ref: COR 2012 000293**

Thank you for your letter of 24 March 2016 regarding the findings of the State Coroner Peter White into the tragic death of Ms Caroline Emily Lovell.

The Coroner raises a number of issues in his investigation which relate to the regulatory framework for privately practising midwives who attend homebirths, the training of these midwives, the monitoring of their practice, and the information available to women and their partners who may be considering a homebirth.

As a result of his investigation into Ms Lovell's death, the Coroner has made four recommendations relating to the Department of Health and Human Services (the department). The department has considered these recommendations and provides its response in the attached document.

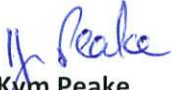
The department's response includes a number of initiatives underway which are expected to strengthen regulation both within Victoria and nationally, and thereby address deficiencies in the regulatory system that were highlighted by the Coroner's investigation.

The department is working closely with the Nursing and Midwifery Board of Australia, Australian Health Practitioner Regulation Agency and the Health Services Commissioner on all the above elements of regulatory reform. The department has also been in contact with all state, territory and Commonwealth governments with a view to addressing the findings from the Coroner's investigation as part of the development and implementation of these reforms.

I wish to thank the Coroners Court for the opportunity to provide feedback on these recommendations.

If you require any further information regarding the department's response, please contact Dean Raven, Director Health and Human Services Workforce, at [dean.raven@dhhs.vic.gov.au](mailto:dean.raven@dhhs.vic.gov.au) or by telephone on 9096 7716.

Yours sincerely

  
Kym Peake  
Secretary  
10/8/2016

## **Department of Health and Human Services' response to the Coroner's recommendations into the death of Caroline Lovell (Coroner's Court Reference COR 2012 000293)**

The department has a number of initiatives underway which are expected to strengthen regulation both within Victoria and nationally, and thereby address deficiencies in the regulatory system that were highlighted by the Coroner's investigation. These initiatives form the response to the Coroner's recommendations (a) and (f) and are set out below.

### **Recommendation (a)**

*The Department of Health and Human Services, in conjunction with the Australian Health Practitioner Regulation Agency, 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.*

### **Department response**

The department accepts this recommendation and is committed to identifying and addressing the shortcomings of the current regulatory system that governs privately contracted midwives (i.e. privately practising midwives) who work in a home setting.

The department, on behalf of the Australian Health Workforce Ministerial Council (the Ministerial Council) is leading development of new standards under the *Health Practitioner Regulation National Law Act 2009* (the National Law). The Ministerial Council is constituted with all state, territory and Commonwealth health ministers, and exercises statutory functions under the National Law in every state and territory. The objective of this regulatory reform work is to establish minimum standards for privately practising midwives who provide homebirth services and ensure an effective system for monitoring compliance with these standards.

Currently, midwives in private practice are unable to obtain professional indemnity insurance (PII) for the intrapartum component of a homebirth, because there is no insurance product available. Since commencement of the National Registration and Accreditation Scheme (National Scheme) in July 2010, under section 284 of the National Law, a midwife in private practice is exempt when attending a homebirth from the mandatory requirement to hold PII that applies under section 38(1)(a). This exemption is due to expire by 31 December 2016 (the date prescribed by regulation under the National Law).

In April 2016, the Ministerial Council considered this issue, and agreed that to maintain women's choices of birthing options, the exemption under section 284 should be extended for a further three years, but conditional upon the midwife in private practice meeting minimum standards to be established by regulation under the National Law.

This is to be progressed in consultation with the Nursing and Midwifery Board of Australia (NMBA) as the relevant National Board supported by the Australian Health Practitioner Regulation Agency (AHPRA), peak midwifery bodies such as the Australian College of Midwives (ACM) and the Australian Nursing and Midwifery Federation (ANMF), and consumer representative bodies. The standards are expected to address matters such as:



- the minimum qualifications and clinical practice experience before a privately practising midwife can offer intrapartum care in the home
- minimum standards for clinical assessment of women who are contemplating homebirth, to identify and exclude high risk women from eligibility for a homebirth
- minimum standards for clinical monitoring during a homebirth and collaborative arrangements, including for transfer of care to a hospital if necessary
- minimum requirements for audit and review of the practice of privately practising midwives who attend homebirths.

A number of other steps have been taken to strengthen midwifery practice with respect to homebirths and improve data collection on privately practising midwives who may attend homebirths.

- In February 2016, the NMBA issued *Safety and quality guidelines for privately practising midwives* which set standards with respect to informed consent, risk assessment, referral pathways, collaborative arrangements, submission of reports and data, clinical audit, adverse event management, and participation in a 'professional practice review program'. These guidelines were reviewed in June 2016 and will take effect from 1 January 2017.
- In August 2015, the department released the document *Implementing a public home birth program: guidance for Victorian public health services*. This document was produced in collaboration with Monash Health, Western Health and the Royal Women's Hospital and overseen by the Ministerial Perinatal Services Advisory Committee. It includes guidance on the skills and competencies required by midwives who provide homebirths and gives information on training and education.
- In March 2016, the ACM released its *Transfer from Planned Birth at Home Guidelines*, which apply to both publicly and privately practising midwives who attend homebirths. These guidelines:
  - establish clear processes, a consistent approach to transfer to hospital and communication tools that enhance safety
  - provide clear and easy to follow procedures where transfer is indicated and also cover situations where women may decline transfer.
- At the request of the state and territory governments, the NMBA has commenced collecting data on midwives in private practice. At the last two registration renewal cycles for midwives, undertaken in May-June 2015 and May-June 2016, all midwives nationwide were required to advise the NMBA if they currently are in private practice as a midwife and if so, whether they are providing, or intending to provide, homebirth services.

## Recommendation (f)

*I also recommend that the Department of Health and Human Services, in conjunction with the Australian Health Practitioner Regulation Agency, 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).*

## Department response

The department has examined this question and expects that two regulatory reform initiatives will provide regulators with powers to prohibit a currently registered or an unregistered health service provider from providing a service or attending at a place of birth, in circumstances where this presents a risk to the public. New powers will apply to both registered and unregistered persons and will apply whether the practitioner attends the homebirth in a paid or unpaid capacity.

*Proposed reforms to strengthen prohibition order powers under the Health Practitioner Regulation National Law*

The NMBA sets standards for entry to and practice of the profession of midwifery and monitors compliance with these standards. Matters of professional misconduct are prosecuted by the NMBA and AHPRA before the responsible state or territory tribunal. Section 196(4)(b) of the National Law empowers the responsible tribunal to prohibit a person from using a specified title or providing a specified health service, when cancelling the person's registration, or when dealing with a practitioner who has withdrawn their registration or let it lapse during the disciplinary process. The Victorian Civil and Administrative Tribunal is a responsible tribunal under the National Law.

In 2014-15, an independent review of the National Scheme was undertaken, and in August 2015, the Ministerial Council accepted a recommendation to strengthen the prohibition order powers under the National Law. A package of legislative reforms is currently being prepared. The content of the package will be subject to final government approval in each state and territory and passage through the relevant Parliaments. Under consideration are potential mechanisms to:

- expand the scope and grounds for a responsible tribunal to issue prohibition orders when cancelling a practitioner's registration or when dealing with a practitioner who has withdrawn or let their registration lapse during disciplinary proceedings
- establish powers to issue interim prohibition orders to respond quickly to serious risks and to issue public statements and warnings in such circumstances
- establish offences for breach of a prohibition order issued under section 196(4)(b)
- provide a mechanism to ensure that prohibition orders issued by one state or territory tribunal apply automatically in all states and territories.



*New powers to regulate unregistered health service providers under the Health Complaints Act 2016 (Vic)*

The *Health Complaints Act 2016* (the Act) was passed by the Victorian Parliament in April this year and is scheduled to commence in February 2017. The new Act contains provisions that give effect to decisions of the Ministerial Council in April 2015, to implement in Victoria the agreed National Code of Conduct for health care workers and a 'code regulation' regime.

The Act includes specific powers to deal with an unregistered health service provider, including a former midwife, who continues to practise as an unregistered provider and places the public at risk. The Act includes provision for the making of a code of conduct by regulation that sets minimum standards applying to health service providers who are not registered under the National Law. The arrangements will cover any person who provides a health service, regardless of the type of health service they provide or whether they identify with a particular profession. On commencement of the Act, the Health Complaints Commissioner will have powers to:

- investigate breaches of a code of conduct (Part 4)
- issue public warnings (Division 2, 84)
- issue an order prohibiting an unregistered health service provider from continuing to provide health services, or place conditions on their practice, where there is a serious risk to the life, health, safety or welfare of an individual or to public health and safety (Part 8).

Breach of a prohibition order will be punishable by imprisonment of up to two years (Division 3, 101).

**Recommendation (d)**

*The Department of Health and Human Services provides ongoing training for registered midwives specifically engaged in providing home birth services. For the protection of all concerned, participation in such ongoing training should be mandatory.*

**Department response**

The department is investigating an alternative response to the Coroner's recommendation, to address the concerns and deficiencies of the current system relating to the training of midwives who provide homebirth services. The department does not directly provide training to private practising midwives.

It is the responsibility of the NMBA to ensure that all registered midwives, including those who work in private practice, maintain their professional competencies. The applicable requirements are set out in mandatory registration standards developed by the NMBA under section 38 of the National Law and approved by the Ministerial Council under section 12. These standards are:

- Nursing and Midwifery Board of Australia Registration Standard: Continuing Professional Development, 1 June 2016
- Nursing and Midwifery Board of Australia Registration Standard: Recency of Practice, 1 June 2016

- Nursing and Midwifery Board of Australia Registration Standard: Professional Indemnity Insurance Arrangements, 10 January 2012.

Under the NMBA's registration standard on continuing professional development (CPD), a midwife must complete 20 hours of CPD each year. If the midwife holds an endorsement for scheduled medicines under section 97 of the National Law, the midwife must complete a further 10 hours of CPD each year.

In addition to these standards, the NMBA has issued the aforementioned *Safety and quality guidelines for privately practising midwives* scheduled to take effect from 1 January 2017.

As outlined in the department's response to Recommendation (a) above, the department will be seeking, in conjunction with the regulation process associated with extending the exemption for PII for a further period, to set minimum standards for training and practice, for privately practising midwives who provide homebirth services. The department will also seek to strengthen the NMBA's role in auditing midwives in private practice for compliance with registration standards and guidelines, including entry to practice qualifications and continuing competence requirements.

At a minimum, the department will request the NMBA to audit, during the first 12 months of operation of the guidelines, all the privately practising midwives who are practicing in Victoria and have advised the NMBA that they offer intrapartum care in the home. The audit would be expected to assess compliance with all mandatory registration standards, including the CPD registration standard, and with the qualification and clinical practice requirements set out in the guidelines.

#### **Recommendation (e)**

*I recommend that the Department of Health and Human Services undertakes a public campaign designed to provide education for women and for their partners who maybe considering home birth, to seek to inform as to how safe and otherwise reasonable decisions on this matter should be reached.*

#### **Department response**

The department accepts the Coroner's recommendation.

The department will implement the recommendation through a review of the content and targeting of existing departmental materials available for women and their partners. These materials will be revised and updated to provide appropriate information on birthing options including homebirth. Relevant pages of the Victorian Government's Better Health Channel (the Channel) ([www.betterhealth.vic.gov.au](http://www.betterhealth.vic.gov.au)) will be reviewed and updated. The Channel provides a central platform for the publication of consumer information on maternity and newborn care in Victoria.