

Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
BY EMAIL: fpa.sen@aph.gov.au.

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SUBMISSION: administration of health practitioner registration by the Australian Health Practitioner Regulation Agency (AHPRA)

I am currently pregnant and planning a homebirth later this year. I had been a Registered Nurse (Div 1) for about 20 years. I chose not to renew my registration in 2011 due to a career change. I have been a duly admitted legal practitioner in Victoria since 2003, and a sole practitioner Barrister at the Victorian Bar since 2006.

I write in a personal capacity to highlight disproportionate procedural and practical unfairness surrounding a decision to place certain conditions on homebirth midwives registration in the early stages of a complaint/ investigation process.

This submission identifies three issues. First, the reversal of the common law presumption of innocence due to the imposition of pre-determination and (summary determination) conditions on midwife registrations. Second, the disproportionate impact of particular conditions commonly (I am informed) imposed on Homebirth Midwives' registrations. Third, the impact of such pre-determination conditions on the livelihoods of homebirth midwives, and clients of homebirth midwives.

Background

When a complaint is made to the Nursing and Midwifery Board (NMB) about a midwife, the Board meets (approximately monthly) and then decides whether the complaint needs to go to an investigation or not. In some cases "permanent" or "final" conditions will automatically go onto the midwives registration without investigation. I refer to this as 'summary' determination of conditions.

If the Board decides a matter needs investigating they may place 'interim conditions' on the midwives registration. In the case of homebirth midwives the conditions restrict the homebirth midwife from continuing to carry out her professional practice in a homebirth setting. This common wording of such a condition, I am told, is: *"Must work only in a hospital and under supervision"*. The conditions remain on the midwives registration until the investigation is complete.

Reversal of Onus of proof

The imposition of a condition at a preliminary stage puts the onus onto the midwife to challenge the decision. This effectively reverses the onus of proof onto the midwife to show that they are 'not guilty' of the alleged conduct.

I do not understand that a reversal of proof is present, or intended by the current legislative scheme, but it is one practical effect of the condition.

Because these conditions are normally unreviewable (unless the midwife can afford the stress and expense of Judicial Review proceedings, which at a preliminary stage have poor prospects of success) it is in the mind of the midwife, a matter of being found guilty until proven innocent.

Recommendation: that affordable and accessible avenues of interim challenge / review of registration conditions be provided for in the legislation.

Disproportionate impact on homebirth midwives

Plainly for a midwife who practices in a hospital, the only additional impost created by an interim condition of the type noted above is that they are under supervision. Without the word 'direct', this can be quite light supervision, and they can effectively continue their practice with another midwife available to supervise (albeit at a distance).

Homebirth midwives however, cannot be supervised in the sense that a midwife on a hospital birth unit can, because their clients are birthing in a private home. So a homebirth midwife is excluded from continuing her professional activities altogether by the same registration condition.

Recommendation: where registration conditions are deemed necessary, that they be tailored to acknowledge the fact that Homebirth midwives often work alone in clients' private homes.

Since investigations can take a year or more, registration conditions should not leave a homebirth midwife without access to income from her chosen sphere of practice (homebirthing).

I note that the imposition of conditions still leaves the midwife with an unfair presumption of guilt rather than a presumption of innocence. The more harsh the condition (eg: preclusion from practice altogether) the stronger the presumption of guilt appears. Accessible interim review of imposed conditions which are best adapted to the situation needs to be available at an early stage.

Unintended impact on clients

A condition that precludes a midwife from continuing to work in homebirthing, leaves the midwife's clients without their chosen homebirth midwife – even at a late stage of her pregnancy. Great weight should be placed on the adverse impact this can have on the pregnant mother, her child and the whole family.

It seems that clients of homebirth midwives are given no say in whether or not any interim condition (and if so, what type) should be imposed on a midwife registration. Plainly, homebirth clients have an interest in this matter, and should be invited to participate in the formulation of conditions that preserve the professional service relationship already in place.

Recommendation: any conditions on registration give weight to the realities of homebirth practice, the desirability of continuity of care for homebirth clients, and the views of actual clients.

One purpose of interim conditions is to protect the clients of a midwife suspected of improper conduct. The purpose is not, or should not, be to punish without determination of the issues. The conditions must be adapted toward the first goal without encroaching on the latter.

Protection can be achieved in any number of ways, without precluding the midwife from the practice of her profession or denial of her means of earning an income. This could include, peer review of birthing / antenatal care services by discussion and review of notes; survey of clients and (with client permission only), attendance at some pre-natal and post-natal appointments. It could include debriefing and ongoing education. I would also expect my midwife to disclose any pending matters, to enable me to make a fully informed decision about my care planning.

Continuity of care is one of the fundamental benefits of homebirth midwife-led pre and antenatal care, and such a restriction on a practicing certificate harms the mother. As a homebirth client, I would prefer to have my midwife continue to provide the service I have entrusted her with, with alternative forms of supervision if the Nurses Board considers this necessary for ongoing safety of practice.

I ask that full weight be given to these submissions.

Yours truly

Esther James