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3 November 2008

Ms Bronwyn Nardi
Chair
Practitioner Regulation Subcommittee
of the Health Workforce Principal Committee

Dear Ms Nardi

Re: *Submission to Consultation Paper "Proposed Registration Arrangements"*

We refer to your paper of 19 September 2008 inviting comments on the Discussion Paper "Proposed Registration Arrangements". Thank you for agreeing to an extension of time for the Australian College of Midwives (ACM) to provide comment.

ACM strongly supports the moves to create a national regulation scheme for health professionals. We believe the moves to create a nationally consistent registration and accreditation scheme will enhance protection of the public and help to maintain the highest standards of midwifery care to Australian women and their families.

Before noting ACM's views on each of the options presented in the Discussion Paper there are three substantive concerns ACM has with the arrangements as proposed. The first relates to the list of regulated professions; the second to the proposed titles to be protected and the third to the requirements of the scheme for professional indemnity. ACM would urge careful consideration of the recommendations we put forward on these matters, which we understand are also supported by the Australian Nursing and Midwifery Council, as the peak regulatory body for the regulation of midwifery in Australia at present.

3 REGULATED PROFESSIONS

Our first concern relates to Table 1: Boards, Registers and Divisions of Registers on page 6 of the Discussion paper. As the nursing and midwifery professions are widely recognised as being distinct from each other the status of both professions should be separated, and this must be reflected in two distinct Registers. This is not the first time this amendment has been made, as it was also put forward in the submission from the Australian Peak Nursing and Midwifery Forum of 5 September 2008, of which the ACM is a member body.

The table of proposed registers must be revised as follows:

BOARD	TITLE OF REGISTER	DIVISIONS OF REGISTER
Nursing and Midwifery Board of Australia	Register of Nurses	Registered nurses Enrolled nurses
	Register of Midwives	Nil

It is unworkable to have a single Register of Nurses and Midwives with midwives being listed as 'Division 3' as is currently proposed. Many thousands of nurses are not midwives, and vice versa. Midwifery is no longer a 'division' of nursing in this country. With the advent in 2002 of undergraduate education programs for midwives (Bachelor of Midwifery) a rapidly growing number of midwives have no qualification in nursing. This is likely to become the dominant pathway for entry to the midwifery profession over the next 10 years, with universities in every state and territory (except for Tasmania) now educating midwives through BMid programs. Australia is also subject to the Trans-Tasman Mutual Recognition Act 1997 which enables midwives from New Zealand to register here. The vast majority of these midwives, as well as those who immigrate from the United Kingdom are not nurses. In addition, there are now, recently completed separate professional standards for midwifery regulation, with competency standards, a Code of Ethics and a Code of Professional Conduct all having been developed for Midwives in the past 3 years by the Australian Nursing and Midwifery Council in consultation with the midwifery profession. ACM would support these standards being adopted by the new Nursing and Midwifery Board of Australia when it is established as a credible and robust platform for regulating the profession of midwifery.

Midwifery is currently regulated as a distinct profession from nursing with provision for separate registers in 5 of the 8 states and territories (with the exception of QLD, VIC and TAS). Queensland and Tasmania maintain separate records of practising midwives through an endorsement mechanism. Victoria is the only state in which midwives are not regulated via a distinct register or list of endorsees, but continue to be registered as nurses, despite 3 of the state's universities producing midwifery graduates with no qualification in nursing. But for Victoria's approach, midwifery would have qualified for the COAG requirement of registration in every state and territory and been eligible for its own Board under the new national scheme. This would be in the public interest. With an estimated 12,000 practising midwives Australia wide, regulation of the midwifery profession would be more robust if there were a Board comprised of midwives, consumers of midwifery, and community or independent members responsible for its regulation.

ACM has maintained its position that it is prepared to accept a preliminary arrangement of having a Nursing and Midwifery Board, given that a small number of individuals (mostly in rural areas) continue to maintain currency as both nurses and midwives, and given that the nursing and midwifery professions have been regulated by the same body in each state and territory in the past. However we would have no confidence in the new arrangements unless there is at the very least a separate register for midwives, against which standards for

remaining on the register can be set that are pertinent to midwifery only. Midwives are responsible for making life and death decisions on a daily basis. It is imperative that the conditions under which midwives maintain their registration are pertinent to their specific professional roles and responsibilities. We cannot see that this approach can be upheld with a single register of nurses and midwives, despite the proposed concession of a division for midwives on such a register. If policy makers do not see fit to provide for a separate register for midwives under the responsibility of the Nurses and Midwives Board of Australia, then ACM seeks leave to make a late submission in response to the call last month for submissions from professions not currently included in the national scheme. We would wish to make a case for a separate Midwifery Board of Australia.

8.1 Title protection

TABLE 2: Professional Titles Proposed To Be Restricted Under The National Scheme

In addition to separate registers for nursing and midwifery it is essential that the title of ‘nurse’ and ‘midwife’ be separately protected. The scope of practice of midwifery is well defined, and recognized internationally by the World Health Organisation (WHO), the International Confederation of Midwives (ICM) and the Federation of International Gynaecologists and Obstetricians (FIGO). This international scope of practice is also recognised in Australian regulation already within the ANMC’s National Scope of Practice and Competency standards for the Midwife’ (ANMC 2006). Furthermore given the increasing substitution of midwives with nurses as an ill conceived response to workforce shortages in some states, it is essential that the title of ‘midwife’ be protected and that pregnant and labouring women be able to accurately identify who is a midwife and able to safely provide regulated midwifery care, and who is not.

To avoid ambiguity, Table 2 should be amended to read for midwifery:

Profession	Title to be Protected
Midwifery	‘midwife’ catchall provision as above

6.3 Registration Decisions: Professional Indemnity Insurance

The second major concern ACM has with the proposed arrangements relates to this clause. ACM supports the principle of midwives and other health professionals having professional indemnity insurance at all times. In a society in which there is no guarantee of access to resources to support a family that may experience catastrophic injury to either a mother or baby associated with their maternity care, it is essential that the family have access to compensation through successful litigation of an insured midwife or doctor involved.

However, as health ministers are already aware, it has not been possible for midwives to purchase professional indemnity insurance for their private work since 2001. This means that the only appropriate arrangement for midwives in the absence of resolution of this market failure is option 6.3.2 – where the Nursing and Midwifery Board could determine the arrangement to apply to midwives. Inability to either resolve the indemnity market failure, or to provide some form of flexibility to midwives who are unable to purchase professional indemnity, would pose unacceptable risks to the public. There is already a shortage of

midwives providing private care for women, as many midwives in private practice took up employed positions or left the profession altogether when insurance became unavailable in 2001. Through advice from its membership, and links with consumer organisations, ACM is aware that a growing number of women are choosing to birth at home without a registered midwife present, due to their inability to access a midwife. This poses unacceptable risks to the mother and baby. There is also a growing tendency for women to have untrained doulas or birth attendants instead of midwives present at a planned homebirth, again for want of access to more private midwives. Doulas are not registered health professionals and cannot perform the potentially life saving first aid to a baby or mother if necessary. If the national registration scheme effectively makes it impossible for experienced private midwives to maintain their registration due to an inability to buy professional indemnity insurance, the numbers of women and babies being exposed to unnecessary risks through unattended homebirths is only likely to rise.

FURTHER COMMENTS

In addition to the 3 critical points above, ACM offers the following responses and suggestions in response to the other proposals in the paper.

4. INITIAL REGISTRATION

4.1 Applications for registration

Proposal 4.1.1: ACM supports this proposal.

4.2 Information required on initial application

Proposal 4.2.1: ACM supports this proposal with the following additions:

- e. A definition of new graduate is required
- h. Proof of Identification (sufficient provisions to establish identity ie 100 point check, photo ID)
- i. English language proficiency to the standard required by the Board
- j. The provision of evidence of any physical and / or mental health issues, cognitive impairments or difficulty which affect capacity to practise, declaration of good health

4.3 Criminal history checks

Proposal 4.3.1: The ACM supports Option 3. It is noted that this will require the National Board to secure access to additional resources to undertake this new requirement as it is not currently undertaken by any state or territory nursing and midwifery regulatory authority.

5. QUALIFICATIONS FOR REGISTRATION

Proposal 5.1: ACM supports the proposal with an addition to provision 5.1:

- an approved course of study **conducted by an approved education provider.**

Proposal 5.2: The ACM agrees with the proposal but recommends replacing the word “training” throughout the document with the contemporary word “education”.

Proposal 5.3: The ACM supports the proposal with one amendment. It is important that students graduating from midwifery programs are registered against the current standards applying to entry to midwifery practice. These standards may be different somewhat from those that applied when they commenced their course of study up to 6 years earlier (for part time students in a 3 year BMid program). We would therefore suggest that the amendment to the statement as underlined below:

“Students currently enrolled in an approved / accredited program of study leading to registration in one of the health professions at the time of the commencement of the new scheme will be eligible for registration when they complete that program.”

6. REGISTRATION DECISIONS

6.1 Powers of boards before deciding applications for registration

Proposal 6.1.1: ACM generally supports this proposal but is concerned that:

- provision (a) does not specify for what, or how the applicant is to be investigated.
- provision (d) would be more accurate with the addition of and / or – i.e. written, oral and/or practical examination, as more than one of these methods may be deemed necessary for the Board to make a decision about registering an applicant.
- What statutory timeframes will be required for decision-making by the Board?. There should be some provision here to limit the time the Board can take to make a decision to protect an applicant from a completely open ended process that may never draw to a close. Conversely, provision could be included that where an applicant refuses or fails to provide additional information requested by the Board, their application is deemed to lapse, so that the Board is not forced to make a decision based on limited information.

Proposal 6.1.2: ACM supports this proposal.

6.2 Who makes Registration decisions?

Proposal 6.2.1: ACM supports the proposed provisions. We would anticipate that the Nursing and Midwifery Board make use of such powers to establish a Midwifery Regulation Standing Committee to which powers for making decisions on the registration of midwives could be delegated until such time down the track when a national Midwifery Board of Australia may be established. The only change we would propose is that there be at least 2 community members, not one, as consumer representation in such important processes should not be limited to one individual.

Proposal 6.2.2: ACM supports this proposal, but would suggest adding to (e) the proviso, except where proof is presented that the registrant has died.

6.4 Powers to refuse to grant registration

Proposal 6.4.1: The ACM proposes that changes be made to the following provisions

- b. A definition of “character” be included in a glossary of terms
- c. Add “or other substances abuse” after “drug or alcohol dependency”
- e. Change the wording to read “...has been suspended, cancelled or *conditions placed on their licence*, or during the course of that registration...”
- i. access to professional indemnity insurance must be resolved before this is a grounds for refusing registration, as outlined in our earlier comments.
- k. Additional provision which should really go first in the list – the applicant does not have an appropriate qualification

Proposal 6.4.2: ACM supports this proposal.

6.5 Refusal process

Proposal 6.5.1: ACM strongly supports this proposal. There have been examples in recent years where registered midwives have been denied this simple step of natural justice. For example, one midwife was issued with a notice that her registration was suspended via delivery by a taxi driver to her house, without ever having been notified that there was any allegation of professional misconduct that had been made against her. This is not an isolated example.

This clause should be expanded to include reference to lodgement of an allegation of professional misconduct – obliging the Board to notify a registrant if such an allegation is received and provide a response before the Board makes a decision on the matter.

The relevant National Board should also be responsible for determining and advising registrants of suitable timeframes for decision-making processes on such matters.

Proposal 6.5.2: ACM agrees, but the applicant must also have the opportunity to make a submission to the National Board within timeframes that are established by the Board before it's decision is made. ACM strongly supports the proposal that reasons for refusal or conditional registration be provided, as again there have been examples recently where midwives have been advised of decisions on their registration without being given any grounds for the decision taken. Such lack of transparency on the Board has contributed to a ‘siege’ mentality among midwives in one particular state where the existing regulatory body is behaving in such a manner.

6.6 Rights of review of registration decisions

Proposal 6.6.1: ACM strongly supports this provision as it is likely to strengthen the transparency and accountability of the Board regulating midwifery.

7 TYPES OF REGISTRATION GRANTED

7.1 Types and Sub-types of Registration: ACM supports the proposal that there be different types of registration available to the Boards of general, specific, non-practising and student. Student registration is particularly welcome, as it will pave the way for undergraduate midwifery students to gain valuable experience in a relevant workplace under the supervision of registered midwives rather than spending many hours in alternative employment unrelated to their education in midwifery to make ends meet.

7.2 Specific Registration: ACM supports this proposal but believes each Board should have the power to determine which of these options are to be available to nurses and midwives, rather than being obliged to use all of them.

7.3 Non-practising registration

Proposal 7.3.1: ACM supports this proposal. This would be particularly valuable for resolving the complexity of the current registers and endorsement lists of midwives. Midwifery was once a postgraduate qualification that attracted additional remuneration for a registered nurse. It was therefore undertaken by tens of thousands of individuals who have never practised but who maintain registration today as a midwife. This means that the registers themselves do not of their own accord protect the public. There is a high degree of reliance on employers to employ only registered or endorsed midwives who have recently practised, and on individuals themselves not to practise midwifery when they have never done so. It is very difficult in this situation to gauge the extent of the midwifery workforce, as the Australian Health Workforce Advisory Committee discovered when it undertook to report on this workforce in 2000. An option for such midwives to register as a non-practising midwife on the new national register would be a positive step, both for enhancing protection of the public and for workforce planning.

Proposal 7.3.2: ACM supports this proposal.

7.4 Student registration

Proposal 7.4.1: ACM agrees with Student Registration and supports Option 3. This is not something that is relevant only to medical or dental professions and should be something that all Boards are responsible for administering. Given that students gain clinical experience in a wide range of settings, from acute to primary care settings in the community it would be sensible to link the registration to their enrolment in an approved program of study rather than to any specific clinical placement.

7.5 Corporate Registration ACM agrees with this proposal

8 AUTHORITIES CONFERRED BY REGISTRATION

Proposal 8.1.1 - ACM supports this proposal

9. RENEWAL OF REGISTRATION AND CONTINUING COMPETENCE

9.1 **Background** - ACM supports annual renewal of a practising certificate that includes compulsory documentation and confirmation that the applicant has met competence and fitness to practise requirements. Monitoring would be in the form of an audit of selected registrants.

9.2 Continuing competence requirements

Proposal 9.2.1: ACM supports this proposal. This is one of the areas in which ACM believes the national registration scheme will provide more effectively for protection of the public than current state based schemes, as there are inconsistent approaches to this requirement across the nursing and midwifery regulatory authorities at present.

Proposal 9.2.2: ACM supports this proposal.

9.3 Annual reporting obligations on registrants

Proposal 9.3.1: ACM supports the annual reporting obligations with some amendments.

- The last sentence of the introductory paragraph should read;on a range of matters including *but not limited to*:.....
- APNMF believes that statement (b) should be replaced and aligned with previous information documented in proposal 6.4.1 that reads as follows:
“the applicant has been convicted of or made the subject of a criminal finding for an offence in any participating jurisdiction or an offence under a foreign law, and the circumstances of the offence are such as to render the applicant unfit in the public interest to practise the profession”.
- ACM believes that statement (b) should be amended to read: *any negligence claims in relation to professional practice* rather than just focus on medical negligence
- ACM believes an additional statement (f) should be included regarding a declaration on fitness to practise with reference to health and drug and alcohol dependency and other substance abuse.

9.4 Monitoring the professional competence of registrants

Proposal 9.4.1: ACM notes and accepts the proposal

Powers to issue guidelines about professional standards

Proposal 9.4.2: ACM supports the proposal regarding guidelines however seeks an assurance that professional codes such as conduct and ethics as well as competency standards for midwives will be mandatory.

Reporting obligations on registrants – during the registration period

Proposal 9.4.3: ACM supports this proposal but recommends that statement (b) should be amended to read: *any negligence claims in relation to professional practice* rather than just focus on medical negligence.

10. ENDORSEMENT OF REGISTRATION

10.1 Specialist endorsement

Proposal 10.1.1: ACM supports this proposal. With current consideration by the federal government of the possibility of providing Medicare funding for midwives, this mechanism would provide a robust method for identifying and authorising midwives who meet whatever credentials or eligibility criteria that might be required to provide Medicare rebate-able services. This is a further reason why a separate register and protection of title for midwives will be in the public interest.

10.2 Endorsement as qualified to prescribe scheduled medicines

Proposal 10.2.1: ACM notes that Clause 1.32 of the IGA has omitted 'midwifery' in the sentence "qualified registrants of the nursing and **midwifery** and allied health" and as a consequence is also omitted in **Proposal 10.2.1**. Nursing and midwifery are two separate professions requiring distinctly separate registers and therefore need to be separately described in **Proposal 10.2.1**. These seemingly simple omissions [of midwifery] in the IGA further highlight the risk of NOT making clear that midwifery and nursing are two professions requiring two registers. The power to create a prescribing endorsement for midwives will be an important power for the Nursing and Midwifery Board of Australia into the future, particularly with current policy discussion at national level of providing limited prescribing rights to midwives in line with the 1998 recommendation of the National Health and Medical Research Council's *Review of Services Offered by Midwives*, and moves by WA, NT and Queensland to establish limited prescribing rights for midwives in recent years.

10.3 Other endorsements on registration

APNMF supports the flexibility of the legislative provisions in relation to endorsements.

Proposal 10.3.1: ACM supports this proposal.

11 OTHER MATTERS

11.1 Duration of registration

Proposal 11.1.1: ACM supports the proposal of a 12 month registration period. ACM agrees that each Board should have the power to determine the renewal date and whether the annual renewal date should be fixed or staggered. The ACM supports online renewal for applications that are complete and do not require any form of review and/or decision making by the Board on the application to determine whether to grant annual renewal.

11.2 Registration certificates

Proposal 11.2.1: ACM supports this.

Proposal 11.2.2: ACM supports this.

Proposal 11.2.3: ACM supports this.

Proposal 11.2.4: ACM supports this, but proposes that the term contact 'address' be changed to contact 'details', as more than an address is needed to maintain meaningful communication with a registrant. ACM also proposes that the Board have power to grant an extension of time without penalty to registrants in extenuating circumstances.

Proposal 11.2.5: ACM is not convinced of the need for such a provision. This should be something left up to each individual Board.

11.3 Failure to renew

Proposal 11.3.1: ACM supports the **ALTERNATIVE OPTION** that no grace period be given and the inclusion of a financial penalty be available for the Board to exercise as necessary should a person fail to comply.

11.4 Reinstatement to the register

Proposal 11.4.1: ACM support this proposal with the addition of the following:

It is proposed that the legislation include provisions that allow a practitioner's name to be restored to the register, if they re-apply within a period of two years following a lapse of registration (under this Act, or a previous enactment of a participating jurisdiction), and they meet all continuing competence **and all other registration** requirements set by the responsible board.

ACM suggests they meet all continuing competence requirements and registration requirements, however in the situation of a midwife re-entering the register within the two year period they should not have to meet the educational requirements. The reason behind this is to protect a midwife who may have qualified with a previously approved midwifery qualification e.g. hospital certificate, Graduate Diploma of Midwifery and does not have the current approved education qualification; i.e. a Bachelor of Midwifery degree.

11.5 Removal from the register

Proposal 11.5.1: ACM supports the proposal and that it specify that the name can be deleted from the "live" register however provision must be made for the information to be retained for archiving and not erased from the Board's records as there may be a need for it to be retrieved in the future. Each Board is required to meet legislative requirements relating to maintenance of obsolete records for specified periods of time e.g. 7 years or more.

12 TRANSITION ARRANGEMENTS


Proposal 12.1 ACM supports this proposal. Given the complexities of the transition across so many professions this proposal captures the necessary criteria for midwifery well.

In framing transition provisions for midwives, consideration will need to be given to 2 further points:

- individuals should be required to nominate which registration type they wish to migrate to – ie general, specific, non-practising. There are literally tens of thousands of individuals who are currently on registers or endorsement lists as midwives but who have not practised midwifery for more than 5 years. The new national registration scheme will be challenged in protecting the public if there is not an offer made to all individuals holding a qualification in midwifery to nominate how they might wish to be registered in the new scheme. There should then be a process attached to the first renewal of registration to confirm that they meet the requirements for the type of registration they have nominated.
- Depending on the arrangements currently in place in different states, some midwives are currently registered as nurses with a restriction on their license to practice midwifery, as they hold no qualification in nursing. There will have to be provision for such individuals to migrate to the register for midwives instead of being obliged to move across to a register of nursing with a restriction to practice midwifery, which is non-sensical and not in the public interest.

Thank you for taking the time to consider ACM's views on these important matters. We look forward to participating in ongoing discussions and to hearing of your responses to our recommendations, particularly in relation to the registers, titles to be protected and professional indemnity issues we have raised.

Yours sincerely



Professor Pat Brodie, FACM
National President
Australian College of Midwives.