Australian Nursing and Midwifery Federation submission to

The Nursing and Midwifery Board of Australia's public consultation on the draft revised Safety and quality guidelines for privately practising midwives

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Australian Nursing & Midwifery Federation

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INTRODUCTION

The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 322,000 nurses, midwives and carers across the country.

Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF welcomes the opportunity to provide feedback on the draft *Safety and quality guidelines for privately practising midwives*. This is an important document to support midwives to meet broader safety and quality measures in private practice.

We offer the following feedback in response to the consultation questions.

QUESTIONS FOR CONSIDERATION:

1. **Is the updated content of the draft *Safety and quality guidelines for privately practising midwives* helpful, clear and relevant? Why or why not?**

   The structure of the revised guideline is set out in a clearer way to the current guideline, however there are elements of the revised content that remain confusing and are therefore not helpful or relevant.

   It is the view of the ANMF that the guidelines should only apply to privately practising midwives (PPMs) as defined under s284 of the National Law. The guidelines should be limited to include only the additional requirements of PPMs seeking the exemption for professional indemnity insurance (PII), not those required of all midwives.

   Whilst we note the updated content provides some additional information on the requirements for midwives who attend a homebirth as the second health practitioner to be eligible for the PII exemption, the statement on page 10 contradicts the overarching guidance regarding who constitutes a PPM and their obligations to comply with all of the requirements of PPMs as described by the draft.

   The updated content should address the PII requirements for the second health practitioner in attendance at a planned home birth.

2. **Is there any content that needs to be changed or removed in the draft revised *Safety and quality guidelines for privately practising midwives?***

   ### Definition of 'privately practicing midwife'

   The Safety and Quality Guidelines for PPMs exist as a result of section 284(1)(c) of the *Health Practitioner Regulation National Law* (National Law) as enacted in each state and territory. Their existence is inextricably linked with the provision of the exemption from the requirement for PII for PPMs. It is the view of the ANMF that these guidelines should *only* apply to PPMs who rely on that exemption in order to comply with the Registration Standard: Professional Indemnity Insurance.

Section 284(5) of the *National Law* states:

private midwifery *means practising the nursing and midwifery profession—*

(a) in the course of attending a homebirth; and

(b) without appropriate professional indemnity insurance arrangements being in force in relation to that practise; and

(c) other than as an employee of an entity.

The scope of the current Safety and Quality Guidelines for PPMs is already broader than those midwives who meet the above definition. The revised guideline has not provided any clear or rational basis, nor shown any evidence to support the inclusion of midwives who do not rely on the exemption. The definition of private midwifery needs to be consistent with the National Law.

Duplication of professional obligations of all midwives

The proposed guidelines contain significant and unnecessary replication of the professional obligations required of all midwives.

The guidelines identify their aim is to describe PPMs regulatory and clinical governance requirements given they are practicing outside of the governance arrangements of a health service. However, the guidelines not only outline these requirements but articulate additional professional practice obligations PPMs must meet beyond those required of all midwives. All midwives, regardless of the context in which they are practicing, must meet the registration standards, code of conduct and frameworks of the Nursing and Midwifery Board of Australia (NMBA) to ensure the provision of safe, high quality care. A requirement to provide additional evidence to demonstrate compliance with obligations mandatory for all midwives as described in these guidelines is repetitious.

The guidelines should focus only on the clinical governance requirements of PPMs eligible for the intrapartum PII exemption. Appendix A and B should be removed.

Compliance with the proposed guidelines asks PPMs to provide additional evidence to demonstrate their adherence to professional practice obligations required by all midwives regardless of their context of practice. The ANMF suggests the guidelines focus on:

- The development and maintenance of clinical governance frameworks that support the provision of safe, quality care; and,
- The additional professional practice requirements relevant to PPMs eligible for the intrapartum PII exemption.

To achieve this, *Table 1: Mandatory requirements for privately practising midwives* should be amended by:

- Dividing the relevant information into two tables – one which describes clinical governance activities and another which sets out the additional professional practice requirements of PPMs eligible for the intrapartum PII exemption;
- Amending section one, *informed consent*, to only included guidance on consent required for homebirth services in relation to section 284 (1)(b) and (5) of the National Law;
- Retaining section two, *risk management* if the application of the guidelines was limited to PPMs who meet the definition under s284 of the National Law;
- Removing section three, *referral pathways*, as this is a requirement of all midwives regardless of context of practice and is articulated in the NMBA *Midwife standards for practice*[1], the *Code of conduct for midwives* and the *Decision-making framework for nursing and midwifery*[2];
- Removing section four, *collaborative arrangements*, as it is not a requirement for PPMs who rely on the exemption under s284;
- Retaining section five, *clinical governance and reporting*:
- Amending section six, *documentation,* to only include the last paragraph on maintaining and storing health records /clinical notes. This relates to clinical governance and public protection however the remainder of the content is the obligation of all midwives regardless of context of practice and is articulated in the NMBA *Midwife standards for practice*;
- Retaining section seven, *incident management*;
- Replacing section eight, *privately practising midwife portfolio* with clinical governance activities consistent with the National Safety and Quality Health Service Standards such as engaging in planned, systematic audits of clinical services, and regular case reviews. All midwives are required to adhere to the NMBA Continuing professional development registration standard which outlines the additional requirements for endorsed midwives. There is a lack of evidence to support that requirements for additional and specific regulatory CPD for PPMs or participation in a professional practice review program results in safer care provision; and,
- Removing of Appendix A.

[1] Nursing and Midwifery Board of Australia (2018) *Midwife standards for practice* Access 25 July 2022 at https://www.nursingmidwiferyboard.gov.au/codes-guidelines-statements/professional-standards.aspx

[2] Nursing and Midwifery Board of Australia (2020) *Decision-making framework for nursing and midwifery* Accessed 25 July 2022 at https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Frameworks.aspx

Requirements for the second registered health practitioner attending a homebirth

The proposed guidelines need to provide more guidance in relation to the second person required to be in attendance during a planned homebirth.

Whilst the guidelines outline the clinical competencies the second health practitioner must have, it does not articulate how that person is able to comply with their PII requirements. If they are not someone who meets the definition of a privately practicing midwife under s284 of the National Law, they are not eligible for the PII exemption. Despite this, they still require PII for their practice as a health practitioner under the National Law but have no way of being able to acquire this as PII for intrapartum care is not available in Australia. The guidelines should clearly articulate how the NMBA expects the PII requirement of a second health practitioner attending a homebirth is able to be met.

The statement on page 10 of the consultation paper under "*Second Health Practitioner",* contradicts the overarching requirement that all PPMS comply with the guidelines and the description of a midwife outlined under "*What is a privately practicing midwife?"* According to the draft guidelines, a midwife practicing in any private context of practice is required to meet all of the obligations set out in the safety and quality guidelines for PPMs including those who attend homebirths as the second health practitioner. It is inconsistent then, that a midwife who practices as the second health practitioner during a homebirth "*must comply with all requirements of the guidelines relevant to the role of the second health practitioner to be eligible for the PII exemption"* when they are identified as a PPM in the same sentence.

It is best practice for the second health practitioner to be a midwife. However the requirement to comply with the guidelines as a PPM creates a barrier to midwives performing this role where they are otherwise not in private practice. This will have the greatest impact on services where there are small numbers of PPMs and birthing services, particularly rural and remote areas, subsequently limiting access to midwifery care and choice for women and families. The guidelines should clearly articulate the requirements for midwives attending homebirths as the second health practitioner so that they are aware they can undertake this role without being an s284 PPM. These requirements must align with the requirements of any health practitioner attending a home birth as the second health practitioner.

The statement under "*Second Health Practitioner*" needs to be amended to clearly identify that a midwife who attends a birth as the second health practitioner, where they are not practicing in any other PPM capacity, is not defined as a PPM. It should also state these midwives are not required to comply with the requirements for PPMS as described by the *Safety and Quality guidelines for privately practicing midwives* in Table 1 and only those requirements of the second health practitioner to be eligible for the PII exemption.

Restricted birthing practices

The guidelines describe restricted birthing practices in Appendix B. Reference to restricted birthing practices, including the jurisdictions where they apply and the impact on the second health practitioner, should be included in the body of the guidelines.

Gender diversity

The ANMF supports the addition of a statement that recognises the gender diversity of people accessing maternity services. The statement in the draft guidelines should be amended to include a reference that demonstrates the consultation process that has taken place to verify that its use conveys inclusivity.

3. **Is there any new content that needs to be added in the draft revised *Safety and quality guidelines for private practising midwives?* Why or why not?**

   The NMBA should very clearly articulate how the second registered health practitioner is able to meet their own professional obligations with regard to PII in circumstances where they are not a s284 PPM, or where they are not a midwife.

   Please note suggested changes in response to question 2.

4. **Would the proposed updates result in any potential negative or unintended effects for women and families, including members of the community accessing PPM services who may be more vulnerable to harm? If so, please describe them.**

   Yes. There has been an increase in the demand for homebirths due to the COVID-19 pandemic. In a 2020 study, 93% of PPMs reported an increase in the number of enquiries relating to homebirth, with 28% receiving over 20 extra calls in a month[3]. Additional regulatory requirements for PPMs are a deterrent to midwives moving into private practice as well as a barrier to the retention of skilled and experienced midwives who care for women in their home. This ultimately decreases access and choice of maternity care provider and the model of care for families. It is therefore imperative that any additional regulatory obligations required of PPMs are clearly supported by evidence demonstrating a direct link to the provision of safer care.

[3] Homer, C., Davies-Tuck, M., Dahlen, H. and Scarf, V., (2020). *The impact of planning for COVID-19 on private practising midwives in Australia,* Women and Birth 34 https://doi.org/10.1016/j.wombi.2020.09.013 .

The scope of these guidelines, which apply to any midwife providing any midwifery care outside of a health service, is likely to limit access and choice to women and their families. Due to COVID-19, women are understandably more reluctant to attend hospitals where previously a significant amount of education has traditionally been delivered. As health services experience pressure, families are also looking elsewhere for midwifery services. The high uptake of digital health programs demonstrates this demand. The revised guidelines should not apply to a midwife whose practice is limited to providing education and support to women and their families by whatever means. There are already Ahpra/NMBA guidelines on the use of social media and advertising which midwives are required to comply with.

The proposed guidelines would also apply to midwives who volunteer, such as those who provide telephone counselling via the Australian Breastfeeding Association. This is a vital service and volunteers are needed to ensure that these resources are accessible to vulnerable members of the community. There is no evidence to suggest that any midwife providing advice, support or education requires additional regulatory requirements in order to protect the public.

5. Would the proposed updates result in any potential negative or unintended effects for Aboriginal and**/or Torres Strait Islander Peoples? If so, please describe them.**

Yes. The new definition of private midwifery practice now seeks to include midwives who practice when employed by private organisations or NGOs. This includes midwives who provide culturally specific care for Aboriginal and Torres Strait Islander women and who may provide access to birthing on country. Expanding the definition and increasing the regulatory requirements for those midwives may lead to a reduction in recruitment and/or issues with retention of those midwives and as such limit the models of care available to Aboriginal and Torres Strait Islander women.

6. **Would the proposed updates result in any potential negative or unintended effects for PPMs, other health practitioners or stakeholders? If so, please describe them.**

Yes.

The focus of the guidelines should be on the provision of guidance to support PPMs who provide intrapartum care to women in their homes to develop and maintain their own clinical governance systems as well as articulate the additional professional practice obligations not already addressed by other NMBA documents. As described in the responses to the questions above, the proposed guidelines should only apply to s284 PPMs and clearly articulate their clinical governance requirements and the professional practice obligations in addition to those expected of all midwives.

Midwives' choice of private practice midwifery as their preferred context of practice will be affected by excessive regulatory requirements. Any additional regulation of PPMs must be supported by evidence that demonstrates it leads to the provision of safer care. This will in turn support midwives to move into, and stay in, private practice.

As detailed in response to the questions above, the PII requirements of the second health practitioner attending a home birth, who is not a midwife, needs to be clarified. Without clear guidance health practitioners may be induced to inadvertently breach their professional obligations due to the requirements set out in these guidelines.

7. Do you have any other comments on the proposed revised Safety and quality guidelines for private practising midwives?

The ANMF is aware of difficulty faced by midwives deciphering the current guidelines to determine whether they are applicable to their individual practice. The ANMF has also received many enquiries relating to how the second health practitioner meets their professional obligations with regard to PII. Some midwives working independently do not meet the definition of "private practice" under s284 as they are not attending homebirths. The ANMF recommends that the NMBA provide education to all midwives on any updated guidelines to ensure there is clear understanding of the additional professional obligations.

Nurses in private practice are not required to meet any additional regulatory obligations even where their private practice is in areas outlined by these guidelines such as childbirth education, sleep and settling support services and lactation consultancy. The proposed context of practice wording even prevents midwives from using their discretion in applying their knowledge and skills to support friends and family. The NMBA should not place expectations on midwives that they do not also place on nurses.

Whilst the work of the NMBA and Ahpra is underpinned by the Regulatory Principles for the National Scheme, regard must be also be given to the objectives of the National Registration and Accreditation Scheme broadly which include[4]:

(e) to facilitate access to services provided by health practitioners in accordance with the public interest; and
(f) to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.

[4] Section 3(2)(e) and (f) of the *Health Practitioner Regulation National Law* as enacted in each state and territory.

Imposing additional requirements on the practice of a large number of midwives across the country creates barriers to their continued participation in the workforce and the provision of services to the public and therefore is inconsistent with these objectives.

CONCLUSION

Thank you for the opportunity to provide feedback on the draft revised *Safety and quality guidelines for PPMs*. It is essential that the intention to provide clinical governance guidance to PPMs and requirements for midwives attending homebirths who rely on the exemption from PII arrangements is the focus of these guidelines. Duplicating professional practice obligations required of all midwives regardless of their context of practice and already outlined in other NMBA documentation is repetitious and unnecessary. Amendment of these draft revised guidelines will ensure they are clear to all and achieve their specific purpose.