

15



NEW ZEALAND COLLEGE OF MIDWIVES (INC)

20 December 2007

Ryan McLean
Sector Policy Directorate
Ministry of Health
PO Box 5013
WELLINGTON

Dear Ryan,

Re: Health Practitioners Competency Assurance Act (HPCAA) submission

The New Zealand College of Midwives (NZCOM) is the professional organisation for midwives, representing over 85% of practising midwives in New Zealand. The majority of pregnant women in New Zealand are choosing a midwife as a Lead Maternity Carer. NZCOM offers information, education and advice to women, midwives, District Health Boards and the Ministry of Health regarding midwifery issues. The College encourages consumer membership and involvement, and makes places on all of its national and regional committees for consumer membership. The College works in partnership with Maori membership, which has representation on the Colleges National Executive.

Thank you for the opportunity to comment on the review of the Health Practitioners Competency Assurance Act (HPCAA). We have answered the specific questions in the consultation document that we have a view on.

Q1. Is the Act achieving its purpose?

Overall, the New Zealand College of Midwives views the HPCAA as a positive piece of legislation. The benefits to the midwifery profession since its inception have been significant. The model of regulation that the HPCAA characterizes; facilitative, educative, supportive and flexible, allows for the ongoing development of a profession as well as providing the necessary controls to ensure public safety.

The development of a stand alone regulatory authority for midwifery has seen benefits that would not have been possible if midwifery had continued to be regulated alongside a large profession like nursing. Whenever this co-regulation occurs (both in New Zealand in the past and in numerous countries overseas currently) the needs of the larger profession (nursing) subsume the smaller one (midwifery). It has therefore been an enormously positive step for midwives to have a single dedicated regulatory authority.

The evidence that we have to support this view is the engagement of midwives in the Recertification programme and the overwhelming positive feedback from midwives about their participation. With the increased availability of ongoing education for registered midwives and the focus of the Midwifery Council around specific Recertification needs for midwives there is now a demonstrated understanding of the midwifery scope of practice and what it means in relation to midwifery practice.

As a result of a stand alone Midwifery Council we also have more detailed information available about the midwifery workforce. Previously when regulated with nursing it was difficult to ascertain the true number of midwives and their work setting.

Q4. & 6. Provisions in relation to Section 7 and Section 9.

The Ministry has taken a seemingly permissive approach to the issue of Restricted Activities. In the example of midwifery, there is nothing within the HPCAA and the currently listed restricted activities that stops anyone actually practising as a midwife as long as they don't call themselves a midwife. An example where this issue is increasingly being observed within the New Zealand setting is in the employment of unqualified health care assistants within maternity units in tertiary level hospitals where an acute shortage of qualified midwives is being experienced. These health care assistants are required to undertake clinical tasks under the direction of midwives. There is currently no regulatory framework surrounding what these health care assistants can and cannot do. Within a resource constrained environment (both financial and workforce) it is likely that the tasks these assistants are required to do will be tasks that are normally undertaken by qualified midwives. This raises questions of safety for women and babies within these facilities, and places an enormous burden on midwives who are in effect accountable for the actions of unqualified and unregulated carers. The Midwifery Council has recently consulted on the development of a second scope of practice for a Midwifery Assistant to address this issue. As yet there is no decision as to what the Council intends to do about this.

Another concerning trend in maternity services is the rising role of the 'doula', a non regulated role which supports women during childbirth. This role has the potential to undermine the maternity service model that is operating in New Zealand in the face of workforce shortages. Although originally a North American role, there are now doulas operating within New Zealand. Without controls and regulation around what untrained carers can do, the New Zealand public is potentially placed at risk. We urge the Ministry to reconsider its approach to Restricted Activities and include aspects of care which are provided by midwives and other regulated health professionals in relation to childbirth.

Q 8. & 9. Scopes of practice

It is our view that the scope of practice 'concept' is working well for midwifery. Midwifery has a well defined and internationally recognized scope. Some midwives, as a result of their work setting, have had issues around their ability to maintain their practice across the scope over the three year period (a requirement of the Midwifery Council's Recertification programme). These issues are being addressed as both midwives and their employers develop a greater understanding of what is required of them.

The ability of authorities to place conditions or limits on individual's Annual Practising Certificates allows for public safety considerations to be paramount without necessarily removing the right of the practitioner to practise and thus maintain a livelihood. This approach also means that educative competence building processes can be put in place to assist the practitioner to reach the required standard in order to hold a full practising certificate. This is more effective than a punitive disciplinary approach which risks losing practitioners from the profession.

Q 10. Development of new scopes

We are not certain that the process for developing new scopes of practice is working well. Service need / consumer need as opposed to professional self interest should be the driver for the development of new scopes. From our interpretation, we are not certain that the legislation has this as a focus.

NZCOM has been consulted by several regulatory authorities on the development of expanded scopes of practice for existing practitioner types. Despite this we are not clear that there is a suitable mechanism for managing and overseeing the process. It is possible that new scopes could be driven by the interest of the profession or interest groups within a profession, rather than service need or health care recipient / consumer interest. It would be useful to have clearer requirements around this and a requirement that regulatory authorities feed back on what issues arise from consultation. A time frame for a comprehensive review of any new roles when and if they are implemented would also be useful to determine the impact.

Q 12. Recertification programmes

For the midwifery profession, this has been one of the clear and direct benefits of the HPCAA. Midwives throughout New Zealand are now engaged in the same professional development and ongoing education framework, regardless of where they work. This has been an important mechanism for the Midwifery Council to address issues which arise within midwifery practice from time to time and also to ensure that midwives throughout New Zealand are meeting a consistent standard. A positive spin off of this is the increase in ongoing education opportunities which are now available to midwives; something which is likely to continue to increase in the future. The midwifery Recertification programme incorporates consumer feedback as a component. It provides women with the opportunity to give written feedback to the midwife(s) who provided care to them. This feedback is part of the information that a midwife is required to provide in her Midwifery Standards Review. The opportunity for women to provide feedback about their care has been positively received by women and midwives alike.

One of the issues which has arisen within midwifery about the Recertification programme is the cost. These increased costs were largely unrecognized prior to the implementation of the HPCAA.

The Midwifery Council has continued to be responsive to these issues and is in the process of reviewing the Recertification programme requirements. It has consulted with the profession on what if any changes should occur to the current Recertification programme requirements.

Q. 17. Reporting of colleagues

In general we support the status quo within the HPCAA regarding this issue.

Q 23. Competence and Recertification programmes

Recertification should be a general programme, aimed at every midwife maintaining a standard of competence set by the profession. Competence programmes should be set by the Council for individuals who may have fallen below the standard of competence expected by the profession. These individuals may also have restrictions placed on their Annual Practising Certificate. Competence programmes identify specific areas of practice which need to be addressed.

Q 26. Quality Assurance Activities.

NZCOM has considerable concerns about the lack of confidentiality provisions for non employed individuals such as self employed midwives, in relation to DHB Quality Assurance Activities. We have written to the Ministry about this issue before.

The HPCA Act allows organisations to register quality assurance activities, such as perinatal mortality review meetings, as Protected Quality Assurance Activities (PQAA). Registering the activities protects the information that is shared in these forums and means that it cannot be used in other processes which may arise, such as Health and Disability Commissioner investigations.

District Health Boards (DHBs) have registered their perinatal mortality review processes as PQAA. However, an anomaly exists in that the DHB applications do not explicitly reference self employed midwives who are access agreement holders to the DHB facilities. This would also apply to specialists acting in a private capacity or GPs accessing the facility in the capacity as an LMC. This means that the information provided by self employed midwives during these processes is not afforded the same confidentiality status as the information that is provided by the DHB employees. This is a significant concern to the midwifery profession and appears to be an oversight. Both the Section 88 Primary Maternity Services Notice and the New Zealand Public Health and Disability Act 2000 require midwives to participate and share information with perinatal and maternal mortality review processes. Whilst midwives wish to participate, doing so places them at risk.

Urgent corrective action is required to address this situation. We note that the time frame of your review means that you will not be reporting to the Minister until December 2008. **It is our view that this issue needs to be addressed prior to this.** Nonetheless, we suggest that the review consider confidentiality provisions related to PQAA to ensure that future revisions to the HPCA Act address this concern.

Q 27. Professional Conduct Committees

As far as we are aware, the process of the Professional Conduct Committees is working well and allows for an 'ambulance at the top of the cliff' approach and educative and rehabilitative approaches are being used. This protects public safety, yet can allow the practitioner to maintain practice (albeit with restrictions) and change their practice in line with professional standards. NZCOM sees this as a positive method of regulation.

Q 30. Health Practitioners Disciplinary Tribunal (HPDT)

Midwifery has had only one case presented before the HPDT since the HPCAA was enacted, therefore we do not have a great amount of experience on which to base our views. However we are concerned with the potential cost implications the Tribunal may have on the small midwifery profession, in the highly litigious area of maternity care, should larger numbers present. It could potentially be a significant burden if the costs in hearings increase as a result of other larger disciplines creating a baseline the midwifery profession cannot afford.

Q 35. Regulatory authorities

It is our view that the public safety benefits of having a single authority far out weigh any potential benefits of combining authorities. We would be concerned if small boards were directed to amalgamate their running costs. Corporate costs are not necessarily reduced by amalgamation as the Midwifery Council experienced when managed by the Small Registration Boards (SRB). Being a stand alone authority gives it the autonomy to develop processes which

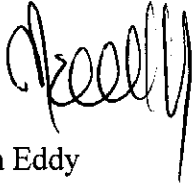
suit its own need rather than having to fit in with the needs of other professions. We are unclear that combining authorities will result in cost savings or quality benefits in relation to the aim of regulating professions for public safety concerns.

Q 37. Membership of authorities

We agree that Ministerial appointments are necessary to ensure that the correct mix and skill of members on the authorities is maintained. We do however support that boards should maintain the right to elect some members if they desire. We believe that Ministerially appointed members must come with professional endorsement – ie they should be nominated by the professional body which represents that profession in order to be considered by the Minister. Similarly lay people nominees should come with the endorsement of a relevant consumer organisation. Without this endorsement there is no means for ascertaining whether nominees are suitable for the role nor have the confidence of the profession or the public.

Thank you for the opportunity to provide feedback on the consultation document. We look forward to working with the Ministry in the future on any further work about the HPCAA.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Eddy', written in a cursive style.

Alison Eddy
Professional Projects Advisor
NZCOM

