



# Submission to

Senate Standing Committee on Community  
Affairs

*Administration of registration and notifications by  
the Australian Health Practitioner Regulation  
Agency and related entities under the Health  
Practitioner Regulation National law*

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submission

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## Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the *Senate Standing Committee on Community Affairs* (the Committee) for the opportunity to provide feedback on the Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law.

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), registered midwives (RM), enrolled nurses (EN) and assistants in nursing (AIN) and students who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 65,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU.

The QNMU has a strong interest in the development of registration standards that find an appropriate balance between protection of the public and fair and equitable standards for nurses and midwives.

The QNMU will provide several comments on the terms of reference, as they pertain to the nursing and midwifery professions.

## Recommendations

The QNMU recommends:

- A review of recency of practice standards;
- Greater consistency and transparency of English language skills requirement standards;
- Collaboration and coordination between National Boards about dual registrants;
- Addressing inconsistencies in the application of the national criminal registration standard across states and territories;
- Regulation of unregulated care workers;
- Greater clarity of direct entry midwives' scope of practice;
- Increased collaboration and transparency of aged care National Boards, regulators and other key stakeholders to address the current weaknesses of the sector;
- A more equitable and fair process for handling vexatious claims;

- Addressing barriers to supervised practice standards;
- Amending the National Law to consider an overseas-qualified health practitioner's previous nursing or midwifery experience when seeking to become registered in their profession in Australia. A more consistent and transparent process is also required;
- Universities and other education providers should inform and educate students of registration standards and requirements;
- Expanding the availability of subsidised testing to enable routine testing to be more cost-effective;
- Address the impact of delays in notification outcomes against a health practitioner;
- Well aligned and consistent decision-making across professions and National Boards, to reduce disparities in disciplinary outcomes and handling of investigations;
- An intermediate decision-maker or process to reduce the burden on the Queensland Civil and Administrative Tribunal (QCAT) and improve timeliness of outcomes for health practitioners;
- QCAT be empowered to grant stays of decisions to take immediate action and issue interim prohibition orders;

### **The current standards for registration of health practitioners by the Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards under the Health Practitioner Regulation National Law (National Law)**

#### **Recency of Practice**

The QNMU suggests recency of practice requirements should take into account all previous experience that demonstrates adequate connection to the nursing and midwifery professions. A criticism of regulators in general is that they apply broad-brush approaches and solutions to what are often individual circumstances which can result in seemingly rigid, uncaring, harsh or perverse outcomes (Gray et al., 2015). Assessment on a case-by-case basis would go a long way to addressing such concerns and demonstrate that the regulator is responsive to both individual and broader outcomes while at the same time meeting the Board's remit of protecting the public as these two outcomes are not mutually exclusive.

The QNMU believes the recency of practice standards do not account for the nuances and barriers nurses and midwives face in meeting practice requirements. This is due to factors such as employment arrangements, family, child rearing or care responsibilities. We encourage a review of the standards to allow greater flexibility for nurses and midwives to manage both their personal lives and maintain connection with their profession.

#### **English language skills requirement**

Section 38 of the National Law requires National Boards to develop registration standards that are suitable for registration in the profession (Schwartz, 2019). The QNMU considers that the current standards for English language skills are inconsistent. As such, we recommend that the standards should be reviewed.

The most serious deficiencies of the current Standard are:

- The failure to allow the Nursing and Midwifery Board of Australia (NMBA) to exercise discretion in determining sufficient evidence of English language proficiency, which proves an applicant has English language skills at a level that ensures safe and competent care will be delivered to the public;
- A lack of consistent application of the English language skills requirements. Particularly where applicants can demonstrate adequate education and assessment in English, however, are not considered to have met the English language skills requirement;
- The requirement for applicants with English as their first (and in some cases, only) language to undertake the English language examination;
- A lack of consistency between the nursing and midwifery registration standard and board standards, such as the NMBA;
- The basis upon which some countries are considered 'recognised countries' and others are deemed not to be is unfair and discriminatory;
- The difficulties in assessing International English Language testing systems in regional, rural and remote areas;
- Undertaking the English language examination is expensive, particularly for applicants who are required to repeat the test in order to address a particular component.
- Health specific language is not examined. Applicants could have years of experience as an Assistant in Nursing (AIN) or care worker by another name and have experience in health-related English. However, this is not tested.

We consider the standards should provide the NMBA with the discretion to consider evidence other than and in addition to, English language examinations approved by the NMBA without compromising the protective purpose of the Standard. We recommend that research be conducted by National Boards to evaluate the efficacy of current English language skills tests conducted in Australia.

**Case Study:**

The QNMU assisted a member who had obtained their nursing qualifications in India. The member was required to complete a 10-week bridging course in order to satisfy the National Board's English language requirements. The member provided a statement of service however, it was refused without adequate reasoning. It was found that a decision was made while the directive was in place at a local Hospital and Health Service (HHS) executive meeting that every person from a non-commonwealth country must take a bridging course to meet English language requirements. There was no consultation, policy or documentation of this decision in place. The QNMU considered that there was a lack of consistent application of the English language skills requirements applied to the member's registration. As such, the QNMU appealed to commission and won, allowing the member's previous English language skills to be recognised.

**Dual registration**

The QNMU considers the need for greater recognition of dual registration across boards.

Some of our members with dual registration in nursing and midwifery have had difficulty demonstrating recency of practice requirements in both professions. Although this is more likely a reflection of the interpretation of the Standard by state and territory AHPRA personnel, this lack of recognition creates challenges for dual registrants in continuing to practice or hold their registrations across health professions.

The QNMU seeks to circumvent any complications with recognition of dual registrations. As such, we recommend the need for greater coordination and communication between boards to identify registration, regulation considerations and any inconsistencies across registration standards.

For instance, our members with dual registration as a registered nurse or midwife and paramedic, can have trouble demonstrating recency of practice. They are required to show the hours worked across professions, such as a diary breakdown of work performed per shift that pertains to a specific profession. Dual registrants should be treated on a case-by-case basis, so they have the opportunity to show they are using their nursing and or midwifery skills and knowledge while working across other professions (and vice versa).

There is also a lack of clarity around who is responsible to inform the board of a notification about a dual registered member or another relevant matter. Further, members who are dual registrants of nursing and paramedicine, can often experience barriers to union member eligibility (that impacts upon Professional Indemnity Insurance (PII) coverage) as it is difficult to determine the applicant's predominant profession.

## **Criminal history**

The QNMU seeks to address the disparity in decisions made by state and territory AHPRA offices that may differ from those implied by the national registration standard. In some cases, this is a result of the interpretation of the standard. However, disparities can also be a result of differing state and territory legislation on criminal offences which can impact on implementation of the national criminal registration standard applied by the board.

## **Unregulated care workers**

The QNMU urges the Committee to recommend regulating unregulated care workers, such as AINs (however titled), to achieve nationally consistent standards. Regulation is essential to safeguarding the quality and safety of care provided to all Australians across health care settings. This regulation is pressing given the findings and recommendations of the Royal Commission into Aged Care Safety and Quality and the specific recommendations regarding regulation of this workforce.

While we accept that unregulated nursing and personal carers may be competent at providing a basic range of services and are valued members of the team providing care to consumers, these staff may not be able to recognise more serious issues that require intervention, supervision and support from registered nurses. AINs would require a minimum level of formal education and accountability in their practice. When developed, competency standards for AINs should be based on those currently governing the regulated nursing workforce.

## **Direct entry midwives**

The QNMU is concerned with matters where a midwife is requested to work outside of their scope of practice, such as working in a nursing specialist area. The substitution of midwives for registered nurses must never occur when the knowledge and skill of a nurse is required.

Under the National Law, nurses or midwives must not be directed, pressured or compelled by an employer to engage in any practice that falls short of, or is in breach of, any professional standard, guidelines or code of conduct, ethics or practice for their profession. Although the QNMU acknowledges that the National Law provides for the responsibilities of employers regarding nurses and midwives working within their scope of practice, the lack of understanding of role delineation between nurses and midwives is a considerable issue. As such, the QNMU recommends the need for the National Law to provide greater clarity of the scope of practice of direct entry midwives to ensure the provision of safe quality care.

## **The role of AHPRA, the National Boards, and other relevant organisations, in addressing concerns about the practice and conduct of registered health practitioners**

### **Aged care**

The QNMU considers the important role that National Boards and other relevant bodies, including the Australian Commission on Safety and Quality in Health Care (ACSQHC) and regulators such as the Fair Work Commission (FWC) have in addressing structural issues in the aged care sector. We consider the need for key parties to work collaboratively and transparently to strengthen the structural issues within the sector and avoid tragic situations such as the sudden closure of the Earle Haven Retirement Village in 2019.

### **Vexatious claims**

In the QNMU's experience, many notifications are misconceived or lacking in substance. Some are vexatious. Many matters have already been dealt with in other ways. Some employers use notifications to make the regulator manage their employees for them when this is not the regulator's role. The QNMU believes that while regulators have an important role in protecting the public, they must also be fair to practitioners and provide natural justice.

We consider the need for robust mechanisms to deal with vexatious claims, where the onus is on the regulator to differentiate legitimate claims. Whilst understanding the complexities, the QNMU considers that a balanced process is required that allows health practitioners to make claims in good faith and to provide equitable and fair processes for notified practitioners.

## **The adequacy and suitability of arrangements for health practitioners subject to supervised practice as part of the registration process or due to a notification**

Access to supervised practice is a significant concern for the QNMU, as members often experience difficulties accessing this pathway as many employers will not employ an applicant for a period of supervised practice. The NMBA requirements for supervised practice are also burdensome for employers, creating a further deterrent. Health practitioners often report having difficulty finding a health service and a registered nurse or midwife who is willing to support the person requiring supervised practice. The QNMU acknowledges the need to balance public safety against the reasonable expectations of the supervisors and health services. However, consideration must also be given to ensuring the process is not unnecessarily difficult such that competent practitioners are dissuaded from participating as supervisors, and, potential supervisees are lost to the workforce due to an inability to fulfil the conditions applied.



Securing employment with supervised practice can be extremely challenging, and considerably more difficult without practice experience. The condition of supervised practice as part of the registration process or due to a notification can render the health practitioner unemployable. Often the only viable pathway for health practitioners is through re-entry to practice. However, this imposes a significant financial burden on practitioners as well as geographical constraints for practitioners living in restricted areas. There are very few re-entry programs approved by the NMBA and many states and territories do not have any such approved programs.

The lack of supervised practice opportunities places a restrictive condition on health practitioners and significantly impacts employment prospects and consequently their ability to continue practicing in their profession. The QNMU contends that AHPRA has an obligation and must make a commitment to ensure that applicants have equitable pathways to practice.

The QNMU also questions AHPRA's decision to impose limitations on a health practitioner's practice when there has been no clear identification from the employer to say that their performance has been impacted. In our view, this is potentially restrictive.

### **The application of additional requirements for overseas-qualified health practitioners seeking to become registered in their profession in Australia**

The QNMU considers the registration process for overseas-qualified health practitioners opaque and inconsistent. We seek further clarity and explanation to be provided to health practitioners about the process and criteria for assessing equivalent qualifications. We also recommend better alignment between the NMBA and Australian Nursing & Midwifery Accreditation Council (ANMAC) for overseas qualified practitioners.

The QNMU considers that the suitability for migration assessment should be reviewed as many health practitioners are deemed ineligible. One barrier to this is the lack of recognition prescribed by the National Law for a health practitioner's previous experience as a nurse or midwife. This means that employers and National Boards do not consider a health practitioner's previous experience as a nurse or midwife, as it is not prescribed by the National Law.

### **The role of universities and other education providers in the registration of students undertaking an approved program of study or clinical training in a health profession**

The QNMU considers that universities and other education providers should have a responsibility to inform students of registration standards and requirements. Students might not be adequately informed about the challenges and standards required for establishing recency of practice, when leaving the profession or taking significant leave. The QNMU recognises the need for a proactive approach to informing students who are considering leaving or taking absence from the professions in the future, about the requirements of establishing recency of practice.

The QNMU also recommends better data collection and reporting of the number of nursing and midwifery students enrolled at universities and other education providers to assist workforce planning.

### **Access, availability and adequacy of supports available to health practitioners subject to AHPRA notifications or other related professional investigations**

In accordance with AHPRA's Drug and Alcohol Screening protocol, all health practitioners with a restriction on their registration linked to past substance abuse will be required to have routine hair testing. This can place a significant financial burden on the health practitioner. The QNMU considers the need to expand subsidised testing to enable routine testing to be more cost-effective.

### **The timeliness of AHPRA's investigation of notifications, including any delays in handling, assessment and decision-making, and responsiveness to notifiers**

AHPRA's process of investigating notifications can incur considerable delays that are profoundly stressful for health practitioners. The QNMU expresses concern for the impact that delays may have on health practitioner's mental health and for some, the inability to work during the investigation period. The QNMU notes that unjustified delays in dealing with allegations against health practitioners is unreasonable and requires redress.

The QNMU recommends the following:

- Greater alignment and communication between AHPRA, NMBA and Office of the Health Ombudsman (OHO) when triaging matters to reduce delays caused by double handling;
- Greater role clarity of matters to be dealt with by the OHO and those matters which are appropriate to refer to AHPRA.

### **Management of conflict of interest and professional differences between AHPRA, National Boards and health practitioners in the investigation and outcomes of notifications**

The QNMU notes the differential handling of matters involving nurses and doctors, often for the same investigation. In our view, the NMBA engages a harsher decision-making framework than the Medical Board of Australia. We encourage the need for well aligned and consistent decision-making across professions and National Boards, to reduce disparities in disciplinary outcomes and handling of investigations.

### **The role of independent decision-makers, including state and territory tribunals and courts, in determining the outcomes of certain notifications under the National Law**

The QNMU considers the need for an intermediate decision-maker or process to reduce the burden on the Queensland Civil and Administrative Tribunal (QCAT) and improve timeliness of outcomes for health practitioners.

### **Mechanisms of appeal available to health practitioners where regulatory decisions are made about their practice as a result of a notification**

The QNMU expresses concern that QCAT is not permitted to grant a stay of a decision to take immediate action or issue an interim prohibition order for health practitioners. This means that to overturn unfair decisions, practitioners will likely need to apply to the Supreme Court for a stay in appropriate cases. This is unnecessarily expensive for both practitioners and for the Government.

We contend QCAT should be empowered to grant stays of decisions to take immediate action and issue interim prohibition orders, in accordance with established legal criteria for stay applications. QCAT should be appropriately resourced to review immediate action and interim prohibition orders in a process which takes no longer than six months for a decision to be made.

### **How the recommendations of previous Senate inquiries into the administration of notifications under the National Law have been addressed by the relevant parties**

The QNMU and the ANMF have long provided submissions to inquiries and attended public hearings regarding the National Law. Please refer to the submission provided by the ANMF for a response.

## References

Gray, M., Rowe, J., Barnes, M. (2015). Australian midwives' interpretation of the re-registration, recency of practice standard. *Australian Health Review*, 39(4), 462-466.

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Schwartz, S. (2019). Educating the Nurse of the Future. Retrieved from:  
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