



27 February 2017

NRAS Review Implementation Project Secretariat
Workforce Regulation
Health and Human Services Workforce Branch
Department of Health and Human Services
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Via email: NRAS.Project@dhhs.vic.gov.au

Dear Secretariat

**National Registration and Accreditation Scheme Review
Implementation Project: draft *Health Practitioner Regulation National
Law Amendment Law 2017***

The Australian Nursing and Midwifery Federation (ANMF) welcomes the opportunity to provide comment on the draft *Health Practitioner Regulation National Law Amendment Law 2017*.

Established in 1924, the ANMF is the largest professional and industrial organisation in Australia for nurses and midwives, with Branches in each State and Territory of Australia. Our core business is the professional and industrial representation of ANMF members and the professions of nursing and midwifery.

Our members, numbering over 258,000 nurses, midwives and assistants in nursing, are employed in a wide range of settings in urban, rural and remote locations in both the public and private health and aged care sectors.

As the largest professional organisation for nurses and midwives in Australia, the ANMF has, on behalf of our members, a genuine interest in, and concern for, matters relating to the regulation and practice of registered health practitioners. The ANMF has been a long-standing supporter of the move to the National Registration and Accreditation Scheme (NRAS) for all health professions in Australia. In providing a national regulation process, NRAS has enabled consistency of registration standards and accreditation processes for the nursing and midwifery professions.

Since the implementation of the NRAS on 1 July 2010, the ANMF has continued to support this scheme, managed by the Australian Health Practitioner Regulation Agency (AHPRA). This support is due to our contention that there are significant advantages provided by the NRAS for facilitating safe, competent care to the Australian public.

In relation to nurses and midwives, the ANMF considers the implementation of NRAS for the health professions, has had a significant and positive impact on our two professions – nursing and midwifery. The overriding aim of this national scheme is to protect the public by introducing consistency, and having a shared understanding of terminology, across the country in relation to regulation of health professionals. The intention to simplify processes and terminology is essential not only for the health professionals

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themselves, but also, and critically, to reduce confusion for consumers of health and aged care services about the codes, guidelines and standards applying to health professionals.

Given our on-going commitment to NRAS, the ANMF has an abiding interest in ensuring the legislation and accompanying regulations provide for a fair and equitable regulatory environment for health professionals, whilst delivering its primary function of public protection. With respect to the proposed amendments to the *Health Practitioner Regulation National Law 2009*, as agreed by the Ministerial Council, the ANMF has four specific areas of concern as outlined below:

Amendment enabling a new power for the Ministerial Council to change the structure of National Boards by regulation (Section 31):

In providing for 'flexibility' for the Ministerial Council to change the structure of National Boards by regulations, the ANMF contends this removes safeguards for National Boards which are currently provided for under the National Law. We do not support this amendment and believe it is essential that any changes made to the structure of Boards needs to be done through legislation amendments, with full consultation with stakeholders, to ensure fair and transparent processes.

Amendment enabling community members to be appointed as chairpersons of National Boards (Section 33):

In our submission to the 2014 *Review of the National Registration and Accreditation Scheme for health professions*¹ the ANMF made clear our position that it is essential the chairperson of the NMBA continues to be a practitioner member. We would not accept a situation where the possibility existed for a compromise on decisions being made about professional standards of practice or education, accreditation of courses or professional issues by our National Board chair not being intimately acquainted with the context of the nursing and midwifery professions. These qualities are also essential in the representation role the Chair of the Nursing and Midwifery Board of Australia plays nationally and internationally. It is important that there are community members who are part of the decision making processes within the NMBA, but the position of Chair of the NMBA must remain with a practicing registered nurse and/or midwife.

Amendment to provide for a commencement date of registration up to 90 days after Board's decision (Section 56):

When the Board has made a decision that, a graduating student of a nursing or midwifery program of education or an internationally qualified nurse or midwife, is eligible for registration, there should be as little delay as possible in advising of the outcome of their application. While the ANMF appreciates there would be an administrative process following the Board's decision, a period of up to 90 days is not acceptable for a commencement date of registration. The ANMF cannot support this amendment as this excessive timeframe could have a deleterious effect on the person's ability to obtain employment and commence receiving an income.

¹ Australian Nursing and Midwifery Federation. 2014. Submission to Review of the National Registration and Accreditation Scheme for health professions. Available from the ANMF website at: http://anmf.org.au/documents/submissions/ANMF_Submission_NRAS_review_Oct_2014.pdf

Amendment regarding grounds for taking immediate action (Section 156):

The ANMF recognises notifications as an essential area of NRAS to assist Boards in their role of protecting the public. In doing this, the system must also provide a level of fairness in dealing with the regulated health professional concerned.

It is difficult to make definitive comment on this amendment given the actual words for the amended clause are not provided in the consultation document. However, our particular concern is the removal of the words 'serious risk' as a component of the immediate action criteria. Broadening of the grounds on which a National Board may take immediate action against a health practitioner, in our opinion, opens the potential for such action to be taken from a subjective view on incidents of a lesser nature. This may result in an increase in the number of notifications going to appeal, with the flow on effect of undermining confidence in the National Board and the NRAS itself.

There is also potential for a blurring of the boundaries between the practitioner's personal and practice life.

The rationale provided for changing the wording refers to the fact that the proposed amended wording currently exists in NSW legislation and thus national consistency would be achieved. The ANMF suggests the reverse should occur – that is, that the change should occur in the legislation for the one state, to reflect the National Law which applies to the rest of the country. This is particularly so because evidence has not been cited that the existing wording of 'serious risk' has not provided the protection to the public as required.

Amendment to the review of a suspension arising from a health panel decision (Section 191):

The ANMF agrees there is some merit in deciding on a review period for a suspension, as proposed, to circumvent 'uncertainty for practitioners and students about the length of time a suspension will remain in place.' However, we have concerns about imposing a fixed review date for a suspension, whether by immediate action or health panel, if there is no provision for changing that date in the event of altered circumstances. We consider the registrant should be able to apply for a review of the suspension before the set review date, if there has been a material change in the circumstances which led to the suspension. Examples are outlined below to illustrate changed circumstances which would clearly require a review of the fixed period of suspension:

1. A registrant charged with a serious offence is suspended with a review date set for two months. However, a couple of weeks after the suspension is imposed the Director of Public Prosecutions drops the charges.
2. A registrant is placed on an Inpatient Treatment Order (ITO) and admitted to a mental health unit. He/she is then suspended by the Board and a review date of that suspension imposed. The impairment is found to be the result of an acute intoxication, and there is no evidence of dependence or continuing impairment. The registrant is

subsequently discharged from the unit, prior to the review date of the suspension.

The ANMF can only support the amendment if there is an added provision for flexibility on the identified period for suspension, in the event of changed circumstances on which the suspension was based.

There is an additional issue which the ANMF wishes to raise at this time relating to 'principle place of practice', which is not currently covered by the proposed amendments to the National Law.

One reason for the 'principle place of practice' clause (section 225 (b) of the National law) is to allow the public and employers to identify nurses and midwives on the register, particularly if they have commonalities, such as names in common. However, this becomes an issue in situations of family violence (the ANMF has a member who was attacked when her partner was able to track her using the register), or, in smaller communities such as regional and rural areas.

The ANMF acknowledges that individual practitioners can apply at any time to have particular information, like principle place of practice, not listed on the public register under Section 226 (2) (a) (removal of certain information at the request of the practitioner), or 226 (2) (b), when the Board reasonably believes the inclusion of the information would present a serious risk to the health and safety of the practitioner.

Our request is that:

- Section 225 of the National Law be amended to specify that information can be withheld from the register, specifically in cases of family violence
- there be a requirement for additional information to be included on the initial registration form advising the practitioner that they can apply to have certain information withheld from the register
- priority be given by AHPRA staff administering the registration forms/requests by other means, to promptly action the request for withholding of information

The submission made by the Queensland Nurses Union (the ANMF Queensland Branch) augments this response from the Federal ANMF.

Should you require further information on this matter, please contact Julianne Bryce, Senior Federal Professional Officer, ANMF Federal Office, Melbourne on 03 96028500 or julianne@anmf.org.au.

Yours sincerely



Lee Thomas
Federal Secretary