



Australian College of Nursing

INQUIRY INTO THE ADMINISTRATION OF REGISTRATION AND NOTIFICATIONS BY THE AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY AND RELATED ENTITIES UNDER THE HEALTH PRACTITIONER REGULATION

NATIONAL LAW AUSTRALIAN COLLEGE OF
NURSING RESPONSE TO THE SENATE COMMUNITY
AFFAIRS REFERENCES COMMITTEE (APRIL 2021)

General comments

The Australian College of Nursing (ACN) would like to thank the Senate Community Affairs References Committee for the opportunity to provide feedback on the **Inquiry into the administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law**.

As the pre-eminent and national leader of the nursing profession, ACN is committed to enhancing the health care and aged care system to ensure nurses are supported to provide safe, professional, high-quality and person-centred care.

ACN is a membership organisation with members in all states and territories, health care and aged care settings and nursing specialties.

ACN is an accredited Higher Education Provider and registered training organisation (RTO) as well as providing endorsed Clinical Professional Development to nurses in all settings.

ACN's corporate and individual membership reach is in excess of 130,000 nurses and we have graduated over 100,000 nurses in the past 15 years with post graduate education. ACN is also the Australian member of the International Council of Nurses headquartered in Geneva, in collaboration with the Australian Nursing and Midwifery Federation (ANMF).

Our membership includes nurses in roles of influence, including senior nurses, organisational leaders, academics, educators and researchers, as well as early- and mid-career nurses looking to move into leadership roles within the profession.

ACN principles

Above all else, ACN believes patient safety must be protected and preserved at all costs. ACN recognises regulatory processes are fundamental in providing accountability for the health care workforce and ensuring the public's trust in the regulatory framework to keep them safe.

As the leader of the nursing profession, ACN is committed to supporting nurses to uphold the highest possible standards of integrity, clinical expertise, ethical conduct and professionalism. As registered and regulated health care practitioners, nurses have an obligation to fulfill all legislative requirements, as well as demonstrate sound judgement and a person-centred approach to care provision.

To this end, ACN strongly advocates for all health care workers to be registered and regulated, namely personal care workers, also referred to as unregulated health care workers.¹ Only through strong regulatory processes can the public have trust in the health and aged care system.

In cases where credible notifications have been made against a nurse, ACN advocates for timely, just and transparent notification processes. This means processes that protect nurses':

- right to privacy
- right of reply
- right to procedural fairness
- opportunity for independent investigation
- right of appeal
- right to cultural safety.

ACN response to the terms of reference

ACN has elected to respond to only the terms of reference most relevant to the nursing profession, while noting the Nursing and Midwifery Board of Australia (the Board) also includes midwives.

a) 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);

ACN strongly supports the primary purpose of all Boards established by AHPRA under the National Law: to protect the public. The Board's registration standards define the requirements that applicants, registrants or students need to meet in order to be registered and practice as a nurse in Australia. The Board has established five core registration standards. These are:

- The criminal history registration standard; which came into effect in July 2015 and is the same across all regulated health professions
- The English language skills registration standard; came into effect in March 2019 and applies to all applicants whether their initial qualification was obtained in Australia or overseas
- The continuing professional development registration standard; the revised standard came into effect in June 2016
- The recency of practice registration standard; the revised standard came into effect in June 2016
- The professional indemnity insurance arrangements registration standard; the revised standard came into effect in June 2016.²

ACN has had no cause to question these standards in the past, and as such has every confidence in the Board, state and territories to continue to employ the standards to ensure nurses provide safe, high-quality health and aged care.

b) the role of AHPRA, the National Boards, and other relevant organisations, in addressing concerns about the practice and conduct of registered health practitioners;

The Board's professional practice standards for nurses includes the Code of Conduct for Nurses (2018). The Code applies to all nurses and its use provides a standard for assessment as to whether an individual's conduct "varies significantly from the values outlined in the Code". The Code also stipulates that "Nurses respect and adhere to professional obligations under the National Law and abide by relevant laws" (Principle1: Legal compliance).³

Since the Board establishes practice standards in consultation with the profession, including ACN, we are confident AHPRA and the Board make fair, just and appropriate judgements about complaints brought to them. For nurses, complaints to AHPRA and thus to the Board is the usual route for complaints. This occurs either once the complaint has been initially raised with only the Board or not dealt with satisfactorily at a local level and is thus escalated to Board level.

c) the application of additional requirements for overseas-qualified health practitioners seeking to become registered in their profession in Australia;

ACN is aware that overseas-qualified nurses who do not meet registration requirements must undertake additional training and tests in order to become registered in Australia. This includes the [Objective Structured Clinical Examination](#) (OSCE). The OSCE is part of a staged process some overseas-trained nurses must undertake through the Australian Nursing and Midwifery Accreditation Council and the Nursing and Midwifery Board of Australia to have their qualifications recognised and obtain national registration in Australia.⁴ Considering the relatively recent shift to the OSCE model, and the impact of the COVID-19 pandemic on Australia's borders and thus skilled migration, ACN does not believe there is sufficient data available on which to judge the effectiveness of the OSCE model.

ACN continues to provide the accredited Bridging and Re-Entry qualification for overseas trained registered nurses to obtain registration in Australia. We have trained over 5000 nurses in this program.

d) access, availability and adequacy of supports available to health practitioners subject to AHPRA notifications or other related professional investigations;

ACN advocates for greater access and availability of supports for nurses subject to AHPRA notifications or investigations to not only ensure public safety is protected, but also works towards rehabilitation and development. ACN believes in many cases – with access to best practice educational and mental health support – nurses can learn from their mistakes and ultimately provide ethical, safe, high-quality and person-centred care.

e) the timeliness of AHPRA's investigation of notifications, including any delays in handling, assessment and decision-making, and responsiveness to notifiers;

ACN has received feedback from some members who indicate it is not uncommon for investigations into the professional conduct of a nurse to exceed 6 months, even when there is little substance to the allegations. Investigations into a nurse's professional conduct is deeply stressful and can have a significant impact on their mental health and wellbeing. It is therefore important all investigations and outcomes of hearings are completed in a swift and timely manner. This will aid in reducing stress and uncertainty for those health practitioners involved. Timely resolution of notifications will also reduce the likelihood that the investigation itself, rather than any alleged notified behaviour, adversely impacts safety due to the increased stress on the health practitioner involved.

In addition, ACN continues to receive adverse feedback from some members regarding the AHPRA complaints process, including:

- poor or delayed communication of investigation and hearing outcomes, including the outcomes of panel and tribunal hearings
- issues of procedural fairness
- inconsistency of outcomes.

To ensure a fair response for practitioners, ACN suggests comprehensive, transparent analysis of all notifications lodged with AHPRA and their outcomes. This would help to establish whether a consistent approach is taken. For instance, ACN members suggest significant variability in responses

to the same behaviours, such as stealing equipment or medications. In some cases, these practitioners are immediately suspended, while others are given a warning and are free to practice.

ACN would also like to ensure that nurses are supported against vexatious, false or misleading allegations which may arise as a result of bullying and harassment in the workplace.⁵ ACN would like to be ensured that fair and appropriate measures are in place to protect nurses from incorrect allegations; whilst also supporting nurses in the delivery of vital care to maintain public safety and confidence.

There should be minimum standards to enforce timely AHPRA notification and investigative processes. AHPRA has a duty to uphold standards of practice and to ensure public confidence in the regulatory system.

f) how the recommendations of previous Senate inquiries into the administration of notifications under the National Law have been addressed by the relevant parties

ACN notes there have been several amendments to the National Law in the past 12 months, though it is unclear whether these changes were based on recommendations from previous Senate inquiries.

In [March 2020](#), the threshold for reporting a concern about impairment, intoxication and practice outside of professional standards was raised, following a government decision to amend the National Laws governing health practitioner regulation. This amendment has seen the standard raised from 'risk of harm' to the public to 'substantial risk of harm'. The amendments apply in all states and territories, except Western Australia, and affect the mandatory reporting obligations for doctors who treat other health practitioners.⁶

ACN recognises that mandatory notifications are an important aspect of patient safety. We need to know when patients may be at substantial risk of harm from a registered health practitioner so that we can take action to protect the public.

ACN also wants to ensure nurses with mental health concerns feel safe to seek treatment without fear of an unnecessary mandatory notification being made about them. Many health professionals had been concerned the previous standard deterred health practitioners from seeking help, due to fears that mental health crises might constitute an impairment, which could threaten their career.

ACN notes there are four behaviours that may trigger a mandatory notification. Depending on the concern, an assessment of risk of harm to the public must be made when deciding whether to make a mandatory notification. The four behaviours of concern are:

- impairment
- intoxication while practising
- significant departure from accepted professional standards
- sexual misconduct.

In March 2021, AHPRA and the 15 National Boards published a [joint statement](#) to help registered health practitioners and students understand expectations around:

- being vaccinated against COVID-19 unless medically contraindicated-being appropriately trained and qualified to administer COVID-19 vaccines if authorised
- providing accurate advice and information about COVID-19 vaccination including in social media and advertising
- Social media content. Content must not contradict public health campaigns or messaging. Breaches of this may be subject to investigation and possible regulatory action by a National Board; and advertising that includes false, misleading or deceptive claims about COVID-19, including anti-vaccination material, may result in prosecution by AHPRA.⁷

(I) any other related matters.

ACN has long advocated for ‘third tier’ personal care workers to be registered and regulated.⁸ While it is difficult to ascertain exact numbers due to the lack of registration requirements, this workforce makes up an estimated 70% of aged care staff,⁹ and a significant proportion of the wider health care workforce.¹⁰ Considering these workers are often involved with the most intimate aspects of patient care, such as bathing, toileting and putting patients to bed, it is critical there be accountability mechanisms in place to ensure safe, ethical and professional conduct.

Following the Final Report from the Royal Commission into Aged Care Quality and Safety, it is expected some form of registration and mandatory training will be required, at least for those workers employed in aged care. ACN would strongly support AHPRA to play a greater role in regulating this unregulated workforce. Only through a transparent and fair regulatory framework that covers all health care workers can the public have trust in the health and aged care system to keep them safe and well.

In addition, ACN would like to see the development of a culturally safe and respectful health workforce that is responsive to the needs of Aboriginal and Torres Strait Islander peoples as well as those from culturally and linguistically diverse backgrounds. It is critical that the nursing workforce is strengthened to address the health, wellbeing as well as social, emotional and cultural aspects of these communities.^{11 12}

¹ Australian College of Nursing (ACN). 2019, ‘Regulation of the Unregulated Health Care Workforce across the Health Care System – A White Paper by ACN 2019’, ACN, Canberra.
<https://www.acn.edu.au/wp-content/uploads/white-paper-regulation-unregulated-health-care-workforce-across-health-care-system.pdf>

² Nursing and Midwifery Board of Australia 2016. Registered nurses standards for practice.
<https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards/registered-nurse-standards-for-practice.aspx>

³ Nursing and Midwifery Board of Australia 2018. Code of conduct for nurses.
<https://www.nursingmidwiferyboard.gov.au/codes-guidelines-statements/professional-standards.aspx>

⁴ Nursing and Midwifery Board of Australia 2020. What is the OSCE?
<https://www.nursingmidwiferyboard.gov.au/Accreditation/IQNM/Examination/Objective-structured-clinical-exam.aspx>

⁵ Australian College of Nursing 2019. Bullying in the workplace. <https://www.acn.edu.au/wp-content/uploads/position-statement-bullying-in-the-workplace.pdf>

⁶ Australian Health Practitioner Regulation Agency 2021. Making a mandatory notification.
<https://www.ahpra.gov.au/Notifications/mandatorynotifications/Mandatory-notifications.aspx>

⁷ Nursing and Midwifery Board of Australia 2021. Registered health practitioners and students: What you need to know about the COVID-19 vaccine rollout. <https://www.ahpra.gov.au/News/2021-03-09-vaccination-statement.aspx>

⁸ Australian College of Nursing (ACN). 2019, 'Regulation of the Unregulated Health Care Workforce across the Health Care System – A White Paper by ACN 2019', ACN, Canberra. <https://www.acn.edu.au/wp-content/uploads/white-paper-regulation-unregulated-health-care-workforce-across-health-care-system.pdf>

⁹ Australian Institute of Health and Welfare 2017. The aged care workforce 2016. https://www.gen-agedcaredata.gov.au/www_ahwgen/media/Workforce/The-Aged-Care-Workforce-2016.pdf

¹⁰ Australian College of Nursing (ACN). 2019, 'Unregulated Health Care Workers – Position Statement', ACN, Canberra. <https://www.acn.edu.au/wp-content/uploads/position-statement-unregulated-health-care-workers.pdf>

¹¹ CATSINaM and Australian College of Nursing 2018. Submission to the Australian Human Rights Commission Consultation about the Wiyi Yani U Thangani (Women's Voices) Project. https://www.acn.edu.au/wp-content/uploads/2019/01/CATSINaM-and-ACN_WiyiYaniUThangani_Joint-Submission.pdf

¹² National Aboriginal Health Strategy Working Party, A National Aboriginal Health Strategy 1989. Government of Australia: Canberra