



Submission to the

Senate 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

30 April 2021

Submitted by
Amnesty International Australia

Contact: Kyinzom Dhongdue

Table of Contents

About Amnesty International	3
Summary	4
Recommendations	6
International legal human rights framework	8
Case studies (Attached as a confidential separate document)	11

About Amnesty International

Amnesty International is the world's largest independent human rights organisation with more than 10 million supporters in more than 160 countries around the world.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

1. Summary

Amnesty International Australia welcomes the opportunity to make a submission to the Senate inquiry into the administration of registration and notifications by the Australian Health Practitioner Regulation Agency (AHPRA) and related entities under the Health Practitioner Regulation National Law.

Culturally and Linguistically Diverse (CALD) migrants and refugees who graduate from medical and allied health courses have additional English language requirements to gain professional registration from the AHPRA¹. These requirements are disadvantageous to the CALD migrants and refugees and fail to recognise the depth and richness of experience and cultural and linguistic diversity they bring to the Australian public health workforce.

Part of this process requires that CALD migrants and refugees who are not from 'recognised countries' prove their English language proficiency. These recognised countries only include Australia, Canada, New Zealand, the Republic of Ireland, South Africa, the United Kingdom and the United States of America.

These countries are recognised on the basis that "they have comparable health standards, well established regulatory structures and comparable standards of education in their health professions" (AHPRA, 2019)². These comparisons between regulatory systems and comparable standards of education are too broad and do not necessarily guarantee English language proficiency; for example, English is only the sixth most spoken language in South Africa and even though it is generally the language of higher education, this is not exclusively the case. This example demonstrates the problematic conflation of acceptable 'western' regulatory systems and English language proficiency.

AHPRA's list of recognised countries excludes other countries, such as Sierra Leone, which have education systems that mandate English-medium instruction. While the regulatory structures of the health care system may differ in ways that are not acceptable for professional recognition, the lack of inclusion in the 'recognised countries' for English language proficiency is clearly disadvantageous.

CALD migrants and refugees who graduate from medical and allied health courses have the burden of time and financial costs in order to meet the language proficiency requirements. English language tests are operated by profit-making companies and charge between \$375–\$587 per test. Each of these tests comprises four skills: speaking, listening, reading and writing. Of these options, only one - the Occupational English Test (OET) - is specifically designed for healthcare professionals.

CALD migrants and refugees who graduate from medical and allied health courses are required to meet the benchmark standard in one of several English language tests: band 7 in all skills for the academic version of International English Language Testing System (IELTS), a minimum score of B in all skills for the Occupational English Test (OET), a minimum overall score and individual score of 65 in all skills for the Pearson Test of English Academic (PTE),

¹ Registration standards, AHPRA
<https://www.ahpra.gov.au/Registration/Registration-Standards.aspx>

² Accreditation publications
<https://www.ahpra.gov.au/Publications/Accreditation-publications.aspx>

or a minimum overall score of 94 and a minimum individual score in each skill of 24 in the Test of English as a Foreign Language internet-based test (TOELF IBT).

The alternative method of demonstrating English language proficiency is to provide evidence of “at least five (5) years (full-time equivalent) continuous education taught and assessed solely in English, in a recognised country, which includes tertiary qualifications in the relevant professional discipline which you are relying on to support your eligibility for registration under the National Law”³. The calculation of time engaged in continuous education fails to recognise the pauses in study that family duties or financial pressures may require an individual to take.

There is no mechanism to recognise the time spent working in other professional contexts in an English-language country, including Australia, such as working as an AIN or in aged care environments, where the individual will be working with and through the English language.

³ English language skills, AHPRA
<https://www.ahpra.gov.au/Registration/Registration-Standards/English-language-skills.aspx>

2. Recommendations

2.1 That AHPRA as a matter of urgency establishes a process and criteria to consider individual circumstances before denying registration. These individual circumstances should include: having successfully completed at least 3 years of undergraduate studying in an Australian University (or where English language is the means of instruction) and graduated as able to read, write, explain, complete assessment tasks and examinations; such an individual will not be deprived of registration.

2.2 AHPRA should expand the 'recognised countries' criteria to include all places where an applicant has received their tuition in English. These countries are currently recognised for comparable health standards, well established regulatory structures and comparable standards of education in their health professions and include the major English speaking countries of Australia, Canada, New Zealand, the Republic of Ireland, South Africa, the United Kingdom and the United States of America.

2.2 AHPRA implements alternate avenues of support for affected new graduate nurses, including, but not limited to; writing patient progress notes, facilitating safe patient care and dealing with workplace issues through other means such as in-service training, implementing a buddy system and other relevant forms of professional development that step the applicant towards successful registration.

2.3 An independent inquiry should be established to look into the pricing and failure rate of affected graduate nurses in IELTS and other language testing systems and provide the public with a statement on how ethical this is.

2.4 AHPRA should liaise with university health-related disciplines and access students' records of spoken and written communication proficiency in the clinical environment during students' clinical placements. This could be included with the attachments that are provided when submitting an application for registration.

2.5 In cases of few individuals that have made medication errors or other related clinical mistakes other meaningful avenues for supporting or upskilling those few individuals rather than a punitive approach that impacts all related applicants.

2.6 AHPRA should critically consider that many of the graduate nurses being denied registration are already Australian citizens and think through the implication of saying their citizens are not English language proficient. Other avenues of support should be explored rather than disadvantaging their own citizens.

2.7 If AHPRA has an evidence-based position that the successful completion of a university degree in English as a medium of instruction is insufficient to demonstrate a candidate's language proficiency, AHPRA must develop a purpose-driven instrument that reflects the target domain (i.e., not a repurposed English language test used for standardised assessment in other contexts).

2.8 Any such purpose-driven instrument needs to take into account the specific literacy and language requirements for the specific role in the relevant profession and should be developed in consultation with English for Specific Purposes (ESP) specialists and embedded in the program of study.

2.9 AHPRA needs to have a clear rationale and guidelines for applying any language proficiency instrument to avoid discrimination. Individuals with language backgrounds other than English should not be automatically required to undertake such a test and English as first-language speakers should not be automatically exempted. AHPRA should consider developing a purpose-built instrument that genuinely reflects the language and literacy requirements of the profession, and this would be a useful tool for all graduates to undertake.

2.10 Any assessment instrument needs to be accompanied by related professional development materials and supports to assist all graduates to successfully engage. Access to these resources should not be at an additional cost to graduates, and the Agency should partner with tertiary institutions to develop such a module.

These recommendations have been developed in consultation with Dr Olayide Ogunsiji, a senior lecturer in nursing at an Australian university.

3. International legal human rights framework

Racism and racial discrimination

3.1 The international legal human rights framework has been founded on the idea that all human beings are born free and equal in dignity and rights. The Universal Declaration of Human Rights affirms the universal entitlement of human rights and freedoms without “distinction of any kind, such as race, colour sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴

3.2 The United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 asserts the necessity of speedily eliminating racial discrimination throughout the world in all its forms, and of securing an understanding of and respect for the dignity of the human person.⁵

3.3 As a state party to the International Convention on the Elimination of All Forms of Racial Discrimination, Australia is obligated to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.”⁶

3.4 Further responsibilities under this convention include that “Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.”⁷

3.5 These legal responsibilities are reinforced by the prohibition of racial discrimination in the International Covenant on Civil and Political Rights.⁸

3.6 In a resolution adopted on 18 December 2019, the UN General Assembly reiterated that “any doctrine of racial superiority is scientifically false, morally condemnable, socially unjust and dangerous and must be rejected.”⁹

3.7 Australia has a legal obligation to reject and eradicate racial discrimination in private and public spheres, in addition to eliminating the conditions that cause or help to perpetuate racial discrimination.

⁴ United Nations, Universal Declaration of Human Rights, <https://www.un.org/sites/un2.un.org/files/udhr.pdf>

⁵ United Nations, 1963 Declaration on the Elimination of All Forms of Racial Discrimination, <https://digitallibrary.un.org/record/57682?ln=en>

⁶ United Nations, International Convention on the Elimination of all Forms of Racial Discrimination, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

⁷ Ibid.

⁸ United Nations, International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁹ United Nations, Resolution 74/137, adopted by the General Assembly on 18 December 2019, <https://undocs.org/a/res/74/137>

Equality of opportunity and right to work

3.8 As stated in Article 23 of the Universal Declaration of Human Rights, “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”¹⁰

3.9 A robust equality of opportunity international human rights framework is designed to protect this right to work. This framework is spearheaded by the International Labour Organisation.

3.10 The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) compels its members to “declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”¹¹

3.11 Australia’s ratification of this convention obliges its government to protect rights to equality of opportunity regarding employment and occupation. This equality of opportunity rejects discrimination on the basis of race, colour, and “national extraction.”

3.12 The UN Committee on Economic Social and Cultural Rights has issued a further rejection of discrimination in equality of “access to and maintenance of employment.”¹²

3.13 Migrants seeking employment in Australia are specifically addressed under the Migrant Workers (Supplementary Provisions) Convention, 1975. Under this convention, states are obliged to pursue national policy to promote and guarantee equality of opportunity and treatment in respect of employment and occupation for migrant workers or members of their families.¹³

3.14 As a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Australia is obligated to guarantee “Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.”¹⁴ The successful completion of a tertiary education in Australia, including placements, provides comprehensive evidence of equal seniority and competence to nationals (or migrants from the select few countries not subjected to language tests) pursuing post-graduate employment.

¹⁰ United Nations, Universal Declaration of Human Rights, <https://www.un.org/sites/un2.un.org/files/udhr.pdf>

¹¹ United Nations, Discrimination (Employment and Occupation) Convention, 1958 (No. 111), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/EmploymentAndOccupation.aspx>

¹² Attorney General’s Department, Public sector guidance sheet, <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-work-and-rights-work#:~:text=The%20right%20also%20encompasses%20the,requiring%20security%20against%20unfair%20dismissal.&text=equal%20opportunity%20to%20be%20promoted,those%20of%20seniority%20and%20competence>.

¹³ United Nations, Migrant Workers (Supplementary Provisions) Convention, 1975, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312288:NO.

¹⁴ United Nations, International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

Refugees and asylum seekers

3.15 Refugees have the same rights and protections from racial discrimination under international law, as stipulated in the 1951 Refugee Convention.

3.16 According to the Refugee Convention, refugees ought to be afforded a range of rights as soon as they arrive in a country seeking asylum. These rights include, but are not limited to, the right to non-discrimination (Article 3) and the right to work (Article 17).¹⁵

3.17 The Committee on the Elimination of Racial Discrimination (CERD) has delivered a number of general recommendations on state treatment of non-citizens, including a direction that state parties take “resolute action to counter any tendency to target, stigmatise, stereotype or profile on the basis of race, colour, descent, and national or ethnic origin, members of ‘non-citizen’ population groups.”¹⁶

3.18 The OECD and UNHCR have actively promoted regional dialogues on bolstering refugee employment, formulating an Action Plan in 2019 which included Action 6: “For a fair recruitment process, equal opportunities are a precondition.”¹⁷

¹⁵ United Nations, Refugee Convention 1951, <https://www.unhcr.org/en-au/3b66c2aa10>

¹⁶ United Nations, Selected Decisions of CERD, <https://www.ohchr.org/Documents/Publications/CERDSelectedDecisionsVolume1.pdf> p. 129.

¹⁷ United Nations High Commissioner for Refugees, Engaging with Employers in the Hiring Process, 9 May 2019, <https://www.refworld.org/topic.50ffbce582.50ffbce5a6.5cd3d2d54.0.UNHCR...html>

4. Case studies

Pages 12–15 of the submission contain detailed case studies of four individuals directly impacted by the AHPRA English test requirements.

For privacy reasons, we have submitted these details in a separate confidential document.
