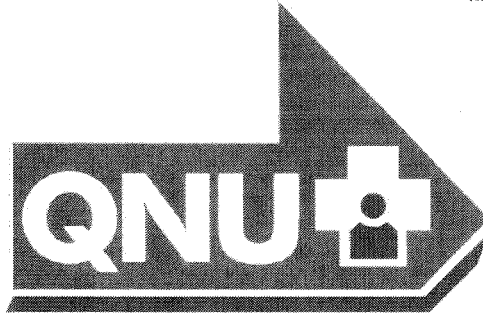



Submission No 005



The union for nurses and midwives

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Queensland Nurses' Union

Migration treatment of People with a disability

Submission to
Joint Standing Committee on
Migration

October, 2009

 **Nurses.**
For you. For life.

because
we care

Quality care for older Australians

Introduction

The Queensland Nurses' Union (QNU) welcomes the opportunity to provide a submission to the inquiry into the migration treatment of people with a disability.

In this submission we initially provide information on the QNU followed by some recent data on the Qld nursing workforce. We then provide some comments that have particular relevance for nursing and the nursing workforce.

About the QNU

The QNU is the principal health union operating in Queensland and is indeed the largest representative body of women in this state. It is registered in this state and in the federal jurisdiction as a transitionally registered association. In addition, the QNU operates as the state branch of the federally registered ANF.

The QNU covers all categories of workers that make up the nursing workforce in Queensland including registered nurses, midwives, enrolled nurses and assistants in nursing employed in the public sector or the private and not-for-profit health sectors¹. These, and other aged care workers are vital in providing the expert care that all Australians need. Our 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.

Membership of the QNU has grown steadily since 1982 when the Royal Australian Nursing Federation, Queensland Branch Union of Employees changed its name to the Queensland Nurses' Union of Employees (QNU) and began a new era of professional and industrial representation. As at June, 2009, there are in excess of 37,000 members and the union is still growing. Like the nursing profession as a whole, the overwhelming majority of our members are female (93%).

The QNU has a democratic structure based on workplace or geographical branches. Approximately 250 delegates are elected from the branches to attend the annual QNU conference which is the principal policy making body of the union. In addition to the annual conference the QNU has an elected council and an elected executive, which in turn have decision-making responsibilities between conferences. Council is the governing body of the union.

The QNU is party to over 200 enterprise agreements which cover a diverse range of health facilities and other non-health establishments that provide nursing services (eg schools, local councils, prisons and universities). We therefore have a clear and comprehensive understanding of the complexity of contemporary health service delivery as well as the diversity of employment opportunities such a system presents.

¹ Throughout this submission the terms 'nurse' and 'nursing' are inclusive of 'midwife' and 'midwifery' and all nursing designations such as 'nurse practitioner'.

The Nursing Workforce in Queensland – Some recent data.

In Queensland, there is a critical shortage of nurses across public and private hospitals and aged care facilities (conservative estimates put this at around 1400 nurses) resulting from years of neglect in developing recruitment and retention strategies. Currently in Queensland there are shortages in most areas of nursing including accident and emergency, critical/intensive care, midwifery, mental health, community care, aged care and indigenous health (Commonwealth Department of Education, Employment and Workplace Relations, 2008). The significant migration to this state and its consequent demand on health services, especially in the south east corner, has exacerbated these shortages.

ABS 2006 Census figures on the rate of nurses per 100,000 population by state or territory reveal Queensland is well below the Australian average of 1107 nurses per 100,000 population with just 1025.3 nurses per 100,000 population. As the population continues to rise in Queensland, the QNU's data modelling indicates we can expect a shortfall of 14,000 nurses by 2014 across the public, private and aged-care sectors.

In the public sector, Queensland Health's conservative shortage estimates are based only on maintaining the current service status and fail to take into account significant predicted retirements from the profession, backfill requirements for leave and training, as well as increases in services – such as new beds coming online – which all have a direct impact on the number of additional nurses required.

Data from a Private Hospitals Association of Queensland's (PHAQ) own nursing workforce survey indicates that in March 2008 there was an estimated shortage of 451 registered nurses and 129 enrolled nurses across PHAQ hospitals. By 2012 the PHAQ predicts that this will increase to a full time equivalent overall shortage of 1202 registered nurses and 529 enrolled nurses (PHAQ, 2008).

Aged care figures are difficult to determine without reliable information on staffing shortages. However, the QNU estimates shortages are even more acute in this sector due to the poor wages and conditions on offer and the lack of incentives.

According to the Australian Institute for Health and Welfare (AIHW) (2005), based on a predicted retirement age of 65, over the next 20 years Australia will lose 60% of the existing employed registered and enrolled nurse labour force through retirement. Nearly 15 per cent of nurses are retiring every five years – creating a projected cumulative exodus of 90,000 nurses by 2026 (Australian Health Workforce Institute, 2008). Unfortunately, new graduates from existing educational programs are not adequately replacing these nurses and it seems future planning for the exodus of nurses from the health system is lacking.

This data clearly indicates that we need to support a program of skilled migration as one method of providing a nursing workforce to sustain an increasing population. Yet we find that although there are many successful cases of nurses who have come to Australia on temporary visas, there are still problems for those who apply to migrate where a family member has a disability. We highlight this matter in the following case.

Case Study: UK Registered Nurse

Our member is a specialist haemodialysis nurse who commenced employment with Queensland Health (QH) on a Subclass 457 visa. He applied for his wife, also a registered nurse, and their four children to join him as secondary applicants from the UK.

In October 2008, the Department of Immigration and Citizenship (DIAC) rejected the visa application of our member's nine year old son based on findings of the Medical Officer of the Commonwealth (MOC) that the child had an intellectual impairment at a level requiring special education services which are estimated to cost the Australian community \$40,000 over a period of four years. The report provided no basis upon which such estimate was calculated.

Queensland Health (QH) advised that it was not prepared to enter into the requisite written undertaking with DIAC to meet all health care and community service costs related to the condition of the child for the duration of his temporary stay in Australia. QH also declined to enter into an undertaking proposed by our member that he would bear any costs arising out of the child's condition.

The child's current health

The child attends a special school in the UK. Medical evidence obtained by the parents suggests that the child is now in a position to attend main stream school provided he can access periods of special education classes within the school. He is otherwise a healthy child and requires no other health care or community services apart from the support he receives at his school. His social, emotional and health care needs are met by his stable, caring and supportive home environment. The child's parents have been able to provide the required level of care thus far and, given the child's steady improvement in comprehension and numerical concepts it is unlikely that the level of care and associated costs will increase.

Cost of Care

If the child were to attend a main stream school in Queensland, the child would be eligible to access a teacher aide for four hours per week which, at the highest rate of pay for a teacher aide, would amount to approximately \$2,700 per school year. The MOC report states that the child is *unlikely to prejudice the access to health care or community services of any Australian citizen or Australian permanent resident.*

The question thus becomes whether the costs associated with the required 'community services' would be likely to *result in a significant cost to the Australian community.* Even if the child required special education classes beyond what is currently offered in our main stream schools, the estimate proposed by the MOC is in our view excessive. Furthermore, there is no evidence to suggest that the extent of social welfare, medical, hospital or other institutional or day care is likely to be significant given that the only care the child requires is access to special education services within a mainstream school.

QNU submissions to Queensland Health

Under the current migration legislation, our member had no other option than to appeal to the Director General of Queensland Health that he review and overturn the decision made by the relevant district not to enter into a written undertaking with DIAC. The QNU asked QH to do so on the following grounds:

1. The estimate provided by the MOC is, in our view, excessive. Based on our enquiries made with QH and Queensland advocacy services for people with a disability, it is unlikely that costs of special education services for a child with a mild intellectual impairment in a mainstream school will amount to the costs estimated by the MOC;
2. This case bears some resemblance to ministerial interventions made in two other more public cases in 2008 insofar as their applications for permanent residency were granted despite the applicants' children having Down Syndrome, a condition far more financially, medically and socially onerous than that of our member's child;

3. The undertaking ceases upon our member successfully applying for permanent residency. Should he be unsuccessful in the first instance, he is entitled to appeal any decision made by DIAC in which case this matter would be no different than the cases referred to in the above paragraph;
4. Our member's international recruitment agency informed us that a number of registered nurses have withdrawn their applications as a result of learning about the adverse impact immigration laws have had on the families of their peers and the possibility that an assessment of a secondary applicant may result in one of their family members not meeting the health requirement;
5. Our member is a specialist haemodialysis nurse and his wife is a qualified general registered nurse. The benefit gained by our society from employing potentially two experienced registered nurses far outweighs the negligible cost of meeting the needs of a child with a mild intellectual impairment.

This case is an example of the adverse impact the health requirement under the current migration regime has on people with a disability applying for temporary visas for Australia.

Without the support of QH as the sponsor, our member was not in a position to access the appeals process available under the migration legislation. This appeals process, in our view, would be an important step in promoting a review of migration decisions involving health practitioners that are at odds with UN Disability Convention Obligations to which Australia is a signatory.

Accepting those migration decisions fundamentally compromises the core values of QH – caring for people, leadership, respect and integrity – and only serves as a deterrent to overseas trained health practitioners considering temporary or permanent employment opportunities in Australia.

The QNU recognises that the entry and stay of an individual with a disability may attract cost, but there are economic and social benefits that may also accrue. In the case of nursing, the ongoing workforce shortages mean that there will be a continuing need to employ overseas nurses.

We are also mindful of the Minister's intervention in the case of Dr Bernhard Moeller and his family who moved to Horsham in Victoria on a temporary skilled migration visa in response to the rural doctor shortage. The Department of Immigration and Citizenship initially refused the family's application for permanent residency (in accordance with the law) after a Commonwealth Medical officer assessed that Dr Moeller's 13 year old son's Down Syndrome would incur significant community and public health costs. The Minister intervened following Dr Moeller's unsuccessful appeal to the Migration Review Tribunal and granted permanent visas to the family.

The QNU supports the Minister's ability to make such determinations, however we would like the Department to make its assessment process transparent so that the public is confident that the Department treats all categories of workers equally.

Recommendations

As we have suggested above, the inability to access an appeals process without the support of a sponsor leaves some unsuccessful visa applicants with no course for redress. We recommend that

- the federal government amend the *Migration Act 1958* to allow access to an appeals process for applicants who have been denied a visa for reasons related to a disability associated with the applicant or the applicant's immediate family. The QNU believes that people in this situation need to have an opportunity to argue their case, particularly when the reasons for

denial of a visa relate to circumstances that already experience discrimination on so many levels.

- Where the Minister decides to intervene following the decision of a tribunal or court, the Minister acts according to standardised assessment criteria within a transparent process.