



NEW SOUTH WALES NURSES' ASSOCIATION

In association with the Australian Nursing Federation

The Secretary
Senate Community Affairs Committee
PO BOX 6100
Parliament House
Canberra ACT 2600

BH:ABU
29 April 2009

Re: Inquiry into National Registration and Accreditation Scheme for Doctors and other Health Workers

Thank you for the opportunity to contribute to the Senate Inquiry into National Registration and Accreditation. The New South Wales Nurses' Association (NSWNA) is the industrial and professional body that represents over 51,000 nurses in New South Wales. The membership of the NSWNA comprises all those who perform nursing work, from assistants in nursing, who are unregulated, to enrolled and registered nurses at all levels including management and education.

NSWNA works in association with the Australian Nursing Federation (ANF) and the Australian Peak Nursing and Midwifery Forum (APNMF) on national matters and as such supports the APNMF's submission, developed in consultation with key nursing and midwifery organisations including all ANF Branches, to the Senate Community Affairs Committee. Additional comments that follow specifically reflect the views and perspectives of nurses and midwives working in NSW.

NSWNA welcomes every opportunity to contribute to the development of the scheme. While NSWNA therefore welcomes the opportunity to contribute to this Inquiry, it should be noted that it is difficult to offer precise commentary on the impacts and effects of the scheme without having had the opportunity to review the legislation. The following comments are therefore related to design of the scheme as it has been proposed.

The design of the Federal Government's national registration and accreditation scheme

The professions of nursing and midwifery are committed to national regulation. This commitment is based on ensuring the protection of the public and on maintaining the highest standards of nursing and midwifery care to the Australian community. This includes a commitment to ensuring that the scheme that is developed is best practice in terms of protection of the public and is implemented thoroughly, thoughtfully and transparently.

a. The impact of the scheme on state and territory health services

A national registration and accreditation scheme, if implemented well, has the potential to have a positive impact on state and territory health services by delivering national consistency in the fundamental aspects of the regulation of health professionals i.e. registration/licensure, education/accreditation, professional standards and management of breaches of professional standards. It will also, through the issuing of a national licence to health professionals, facilitate the mobility of the workforce, which is of benefit to both practitioners and the community.

It is important, however, to appreciate that while national registration will enable nurses and midwives to practise in and across all jurisdictions this increased mobility will not solve the current workforce shortages which beset the health care system.

NSWNA has some concerns that the lack of precision with respect to the function and subsequent powers of the Health Workforce Advisory Council may risk a situation that allows workforce need (as determined by governments) to override or compromise professional standards. The function of the Advisory Council as currently set out is very broad and thus essentially undefined. Its powers are described as anything which enables the Advisory Council to perform its functions (which as stated are somewhat unclear).

b. The impact of the scheme on patient care and safety

The key purpose of regulation of the health professions is to protect the health and safety of the public. This is achieved through the provision of mechanisms which ensure that health professionals are fit to practise through definitions of the profession and its members, determination of the professions' scopes of practice, and establishment of necessary standards of education and practice and systems of accountability.

A national scheme, which realises this purpose, has the potential to contribute to improved patient care and safety through the implementation of national standards and consistency in their application. However, to achieve this purpose, the National Boards and the professions themselves must be responsible for the development of the professions' standards as outlined above.

NSWNA has concerns that, as currently structured, the scheme could allow the National Agency to place unnecessarily restrictive requirements on the Boards, which may interfere or impede their capacity to perform their functions fully. We have further concerns about the powers of the Ministerial Council with respect to policy directions, whereby the *Ministerial Council may give directions to the National Agency as to the policies to be applied by the National Agency in exercising its functions under the law.*

There is no indication as to how such policy direction would be developed, that is which advice or other information would be used in the development of these directions and whether the appropriate professions would be involved in developing policy directions.

c. The effect of the scheme on standards of training and qualification of relevant health professionals

The establishment and maintenance of appropriate standards of education is absolutely critical to ensure protection of the public. For this reason the approval of standards for the accreditation of courses must be independent of tangential influences such as workforce shortages. The National Nursing and Midwifery Board of Australia should assume responsibility for approval of the standards for the accreditation of nursing and midwifery courses. This is international best practice. The Ministerial Council has no role in the accreditation of courses.

While NSWNA is generally supportive of the key features of the proposed system of accreditation for the scheme, we have some concerns regarding the governance arrangements for any new external body assigned the accreditation functions of the national board. Contracts negotiated between the agency/board and the body assigned accreditation functions as part of the health profession agreement must be transparent with the specific roles and functions of the committee determined by the national board. These arrangements must be structured such that the integrity of the body responsible for the accreditation of courses for nursing and midwifery is preserved and operates within the standards expected by the professions. This will be best achieved by the

establishing committees (however titled) of the national board to undertake accreditation functions rather than an external body or agency.

NSWNA has some concerns regarding the proposed role of the Australian Health Workforce Advisory Council with respect to accreditation and the potential effect on standards of training. This is particularly concerning in the context of the scheme's proposal for special registration for 'areas of need'. Providing for individuals or groups of people to gain registration without appropriate qualifications, experience or competence to meet workforce needs and/or provide 'fillers' for areas of shortage is not supported by NSWNA and is not in the public interest.

Any situation which could permit perceived workforce need, exemplified as shortages, to override professional standards and risk compromises to patient safety, would be unacceptable.

The proposals for resourcing the costs of accreditation are unclear, particularly with regard to proposed mechanisms for 'cost recovery'. While we appreciate that there would be some circumstances where charges to individuals for examinations would be appropriate, e.g. overseas qualified nurses and midwives, the guidelines for the purpose and conduct of any such examinations need to be completely transparent. Arrangements for examinations must be structured so that there is no possibility for the agency or national board or any of its committees responsible for accreditation to conduct unnecessary examinations due to financial pressures.

NSWNA also questions how the sheer volume of work, and the knowledge and skills required, in the accreditation of courses for nursing and midwifery will be achieved. Effective conduct of this work cannot be achieved by a single national accreditation body.

d. How the scheme will affect complaints management and disciplinary processes within particular professional streams

There are substantial differences between the states and territories in terms of the systems they have developed to manage complaints and disciplinary processes. The systems are complex and involve many other state and territory bodies (such as Health Complaints Commissioners and Tribunals) and multiple pieces of state and territory legislation (for example Drugs and Poisons Acts). To develop a single national approach will take a considerable amount of time, resources and preparation. Unfortunately the current implementation, consultation and transition schedule for the national scheme does not allow for this, if it is possible to achieve at all. It is absolutely critical that sufficient time and resources are devoted to the development and implementation of this aspect of the scheme to ensure protection of the public.

NSWNA has significant concerns that the scheme is an attempt to shift towards greater self-regulation of the boards with a consequent lack of 'separation of powers' and loss in independence and integrity of the investigative process.

The scheme currently proposes that the boards will control the assessment of notifications, investigations and prosecutions of all matters, other than those considered sufficiently serious to warrant suspension or cancellation of registration. We consider that that it is imperative for these functions to remain separate, most particularly the investigative process from the prosecution process.

In NSW this separation is achieved through the co-jurisdictional operation of the health professional boards and the Health Care Complaints Commission (HCCC). This system provides for independent management of the investigative process while requiring continuous consultation between the boards and the HCCC on all matters.

The scheme recognises that professional regulation is focused on public protection for which a punitive model of law is inappropriate, but acknowledges the importance of issues of due process given the potentially serious impact of the outcome of a disciplinary process on a practitioner.

The only mechanism to ensure due process is to separate the investigative and prosecution function from the registration board and establish internal checks in the assessments and decision making processes, such as outlined above. Therefore, the capacity for an independent investigative process must be provided within the legislation.

It must be noted that it is critical that appropriate liaison between investigations and the board remains.

e. The appropriate role, if any, in the scheme for state and territory registration boards

In order to manage the volume of practitioners (in excess of 300,000) the geographical spread of the country, the differing health systems and the associated volume of work the National Board for Nursing and Midwifery will be reliant upon state and territory bodies to manage registration, complaints and accreditation. These bodies (currently named committees under the proposed scheme) would operate under a delegation from the national board. It is crucial that they are adequately resourced in order to fulfil their statutory obligations.

f. Alternative models for implementation of the scheme

The National Board must have access to, and control over, sufficient and suitable financial and human resources to allow it to fulfil its regulatory responsibilities appropriately. The National Board should be established as a statutory authority with perpetual succession, a common seal, the capacity to sue and be sued in its corporate name, the power to enter into contracts, acquire, hold, deal with and dispose of property, conduct general banking, make financial investments and appoint and employ its own staff.

Financial management

The National Board must have independent authority in terms of funding so that it has the capacity to communicate policy changes to registrants which impact on their practice, establish schemes to assist and support impaired practitioners, provide educational grants, research grants and scholarships to registrants and continue to be involved in international regulation activities. This cannot be achieved without independent powers and control in terms of funding. This must include access for the National Board to all the revenue raised from nurses and midwives to use in the regulation of nursing and midwifery.

In addition the nursing and midwifery professions will not accept any cross subsidisation of other health professionals by their fees or any increase in their fees to fund additional bureaucratic structures. Additional governance structures such as the Advisory Council and the National Agency should be government funded.

Human resources

The National Board must have control over human resources through the employment of appropriate expertise, particularly suitably qualified nurses and midwives. This expertise is of critical importance for nursing and midwifery to ensure

maintenance of standards and quality and prevent a loss of essential corporate knowledge.

NSWNA would not necessarily object to administrative staff across Boards being employed by the National Agency providing that their employment is also funded by the National Agency and not from the fees collected from health professionals and that there is sufficient staff available for Boards to perform their functions. However, the need for Boards to have complete control over employment of the professional staff it considers necessary to perform its functions fully and appropriately is non-negotiable.

In accordance with the APNMF, NSWNA is committed to the implementation of national regulation on the proviso that the system developed is focused on maintaining the highest standards of nursing and midwifery care to the Australian community. To design such a system takes time. Retrospective amendments to legislation also take considerable time and in the interim if the legislation is flawed the system fails the community it seeks to serve. This is critical. If insufficient time is allowed for legislative drafting and consultation with stakeholders on the development of the scheme we will have let the community down. NSWNA seeks your support to ensure that the national registration and accreditation scheme developed is best practice in terms of protection of the public and is implemented carefully, thoughtfully and transparently.

Thank you for your consideration of these issues. If you have any questions regarding this submission, please do not hesitate to contact me at this office.

Yours sincerely,

A handwritten signature in black ink that reads "Brett Holmes". The signature is written in a cursive, slightly slanted style.

BRETT HOLMES
General Secretary