



## Queensland Nurses' Union

# Submission in response to Exposure Draft

# Health Practitioner Regulation National Law

17 July 2009

Gay Hawksworth  
Secretary  
Ph: 0738401444  
Fax: 0738449387  
Email: [gnu@gnu.org.au](mailto:gnu@gnu.org.au)  
Website: [www.gnu.org.au](http://www.gnu.org.au)



# **PART 1**

## **Introduction**

- 1) The Queensland Nurses' Union (QNU) welcomes the opportunity to provide a submission in response to the exposure draft of the *Health Practitioner Regulation National Law* (the draft Law). We request that this submission is read in conjunction with the submission of our federal body, the Australian Nursing Federation (ANF), and those of other state branches of the ANF. The ANF has made their submission to this consultation process through the Australian Peak Nursing and Midwifery Forum (APNMF) and where appropriate we have referenced the APNMF position throughout this submission.

## **About the QNU**

- 2) The QNU is the principal health union operating in Queensland. It is registered in this state and in the federal industrial relations jurisdictions as a transitionally registered association. In addition, the QNU operates as the state branch of the federally registered ANF. The QNU supports the submissions by the ANF via the APNMF.
- 3) The QNU covers all categories of workers that make up the nursing and midwifery workforce in Queensland including registered nurses, midwives, enrolled nurses and assistants-in-nursing employed in the public, private and not-for-profit health sectors. 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, and nurse and midwife practitioner positions.
- 4) The Union has both industrial and professional objectives. We firmly see nurses and nursing as being situated within a societal context – nurses being both providers and “consumers” of health services. In recent years we have attempted to lead and contribute to the debate within nursing and the wider community about the role and contribution of nursing through the development, implementation and regular review of a Social Charter of Nursing in Queensland. The QNU and the Queensland Nursing Council (the “QNC”) are co-sponsors of this charter and we see this document as forming an important foundation for responsive and innovative nursing practice that is based on community needs and expectations, mutual respect and trust.
- 5) Nurses are the largest occupational group within health, with nurses making up over 50% of the total employed health workforce and around 40% of the Queensland Health (QH) workforce. Membership of the QNU has grown steadily since its formation in 1982 and as at June 2008 was in excess of 37,000 and still growing. The QNU represents the largest number of organised women workers of any union in Queensland. Like the nursing profession as a whole, the overwhelming majority of our members are female (93%).
- 6) The Union has a democratic structure based on its workplace and geographical branches. Branches elect delegates to attend the annual QNU conference which is the principal policy making body of the Union. As such, it is rank and file membership that drives the agenda of the QNU. 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 QNU.

- 7) 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 factories). We therefore have a clear and comprehensive understanding of the complexity of contemporary health service delivery as well as the diversity of locations where health services are delivered.
- 8) An important professional representative function of the QNU is representing enrolled and registered nurses and midwives in relation to:
  - a) registration and enrolment processes with the QNC;
  - b) health conduct and competency complaints made to the QNC;
  - c) investigations instituted by the QNC, into both individual nurses, accredited education providers and health facilities;
  - d) charges preferred against nurses by the QNC to the Nursing Tribunal of Queensland (the "Nursing Tribunal").
- 9) The QNU employs licensed nurses in a range of positions. These officials include membership servicing officers who routinely receive the first contact from members who are seeking advice about professional nursing matters. Other officials, including organizers, industrial, legal and professional officers, routinely provide advice and support to members who are responding to allegations in relation to their professional competence and conduct.

### **Format of Submissions**

- 10) These submissions will address specific sections of the draft Law that the QNU has concerns and/or recommendation about. Recommendations for amendments to the draft Law are included in the text of the submission. A summary of these recommendations is provided in the Executive Summary.

## **PART 2 EXECUTIVE SUMMARY**

### **Recommendation 1**

QNU submits that a new objective and guiding principle should be inserted into the draft Law to the following effect:

New objective in section 4:

*"to provide for a transparent, accountable, efficient, effective and fair process for handling complaints against health practitioners and investigation in relation to health practitioners."*

### **Recommendation 2**

QNU recommends that the draft Law include a definition of the term “*professional standards*” as “*codes and guidelines approved by the relevant National Board*”.

### **Recommendation 3**

QNU recommends that the definition of “*health service*” in the draft Law include “*aged care services*”.

### **Recommendation 4**

QNU recommends that the definition of “*performance assessment*” in the draft Law be amended as follows:

*“performance assessment means an assessment of the knowledge, skill or judgment possessed, or care exercised by, a registered health practitioner in the practice of the health profession in which the practitioner is registered, using a methodology approved by the relevant National Board.”*

(amendment emphasised)

### **Recommendation 5**

QNU recommends that the definition of “*impairment*” in the draft Law be amended to read:

*“impairment, in relation to a registered health practitioner or student, means the practitioner or student has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects ~~or may detrimentally affect~~:*  
*(a) the practitioner’s capacity to practise the practitioner’s profession, or*  
*(b) the student’s capacity to undertake clinical training in the profession.”*

(amendment emphasised)

That the Law should not seek to exempt registration and complaints matters from the coverage of Commonwealth and State Discrimination legislation.

### **Recommendation 6**

QNU recommends that all reference to the Public Interest Assessor role be deleted from the draft Law.

### **Recommendation 7**

QNU recommends that section 41 *Consultants and contractors* be amended to include a provision similar to section 39(3), that is:

*“41(3) Subsection 2 is subject to any relevant industrial award or agreement that applies to consultants and contractors”.*

### **Recommendation 8**

QNU does not support delegation of National Board functions to “*a person engaged as a contractor by the National Agency*” and recommends that section 55(1)(d) be deleted.

## **Recommendation 9**

QNU recommends that subsection 57(2) of the draft Law be deleted so that a code or guideline developed by a National Board without wide consultation is invalid.

## **Recommendation 10**

QNU recommends that subsection 59(c) be amended to read:

*“(c) assessing programs of study relevant to registration in a health profession that have been accredited by authorities in other countries to decide whether the programs of study accredited by the authorities give persons who complete the programs the necessary knowledge and clinical skills to practise the profession in Australia.”*

## **Recommendation 11**

QNU recommends that section 59 *definition (of accreditation function)* be amended to include the additional function of performance of examinations or assessments for individual health practitioners as required by a National Board.

## **Recommendation 12**

QNU recommends that reasons should be provided for a decision to revoke the accreditation of an approved program of study, and that review and appeal rights should be available to an education provider subject to a decision to revoke an approved program of study.

## **Recommendation 13**

QNU recommends that section 68 be amended to read:

*“(3) If the accreditation authority believes the program of study no longer meets an approved accreditation standard for the health profession, the accreditation authority may must:*

- (a) revoke the accreditation of the program of study, and*
- (b) give the National Board written notice that the accreditation has been revoked.”*

(amendment emphasised)

## **Recommendation 14**

QNU recommends that the National Law does not impose a requirement on applicants seeking to re-register after a period of absence to complete a current approved program of study, and that provision be made for re-entry programs to be recognised as a means of regaining registration.

## **Recommendation 15**

(1) QNU recommends that section 69(1)(d) be amended to read:

*“(d) there is, or will be, in force in relation to the individual appropriate professional indemnity insurance arrangements, including a policy held, or arrangements made, by the individual’s employer, or an entity that represents health practitioners, that will cover the individual.”*

(amendment emphasised)

(2) That in the absence of independent Midwives in private practice being able to obtain professional indemnity insurance, independent Midwives in private practice be exempted from the registration requirement in s.69(1)(d) of the Law.

### **Recommendation 16**

QNU recommends that consideration be given for ‘approved forms’ required for applications for registration include provision for collection of critical workforce planning data.

### **Recommendation 17**

QNU recommends that there be a five year recency of practice requirement included in the National Law.

### **Recommendation 18**

QNU recommends that section 98 *Board’s other powers before deciding application for registration* include a requirement for any costs associated with an examination, assessment, or health assessment to be met by the National Board.

### **Recommendation 19**

QNU recommends that all time frames relating to consideration of applications for registration in section 103 be amended to 28 days.

### **Recommendation 20**

QNU recommends that the intent of section 110 be considered, and the section reworded as necessary to clarify whether or not all health practitioners will require an endorsement for scheduled medicines, or whether this is intended to provide for endorsements to be available for nurses and midwives with expanded scope of practice as currently exists under the *Nursing Act 1992* (Qld).

### **Recommendation 21**

QNU recommends that a section analogous to section 99 *applicant may make submissions about proposed refusal of application or imposition of condition* be included in the draft Law in relation to decisions about renewal.

### **Recommendation 22**

QNU recommends that the draft Law be amended to include a defence against a breach of section 129 *Restriction on use of titles* in circumstances where the prohibited title being

used is contained within a nursing related classification in an industrial instrument with application to the employee whose title is prohibited.

### **Recommendation 23**

In order to avoid the circumstance where an employer or other party seeks to exploit this defence by making further industrial instruments that contain prohibited titles, the Bill could include a further offence:

*“129(d) a person must not promote or require a person to use a prohibited title.”*

### **Recommendation 24**

The QNU recommends that Part 7 Division 12 Subdivision 2 be reviewed with the aim of clarifying the difference between conditions and undertakings, and that amendments be made to these provisions in the draft Law to reflect similar provisions in the *Nursing Act 1992* (Qld).

### **Recommendation 25**

The QNU recommends that section 139(2) be deleted from the draft Law so that a health practitioner may apply for a change to be made to a condition (or undertaking) during a review period applying to the condition or undertaking.

### **Recommendation 26**

The QNU recommends that subsection 140(3) and subsection 141(3) be deleted from the draft Law so that conditions or undertakings may be changed or removed during a review period.

### **Recommendation 27**

The QNU submits that employers are the most likely people to direct or incite unprofessional conduct or professional misconduct and recommends that the protection provided in subsection 148(2) be deleted from the draft Law.

### **Recommendation 28**

The QNU submits that a provision on similar terms to s.101 of the *Nursing Act 1992* should be included in Part 8 Division 1 of the Law.

### **Recommendation 29**

In relation to Section 153 if the complainant does not confirm the complaint in writing within 28 days of making the complaint, or execute a written record of the complaint in circumstances where they may have difficulty writing a complaint because of English language skills or disability, that the complaint is deemed to lapse.

### **Recommendation 30**

In relation to s.154, the QNU's view the power of the National Agency to provide "reasonable assistance" to complainants should be confined to the following circumstances:

- b) the provision of information in relation to the grounds upon which a complaint can be founded pursuant s.155 of the Law; and
- c) any code or policy applicable to the competence or conduct of the health professional, a breach of which may found a ground for complaint pursuant to s.155; and
- d) assisting an individual who is not able to put the individual's complaint in writing, as a consequence of a disability or literacy problems or English language difficulties, to put the complaint in writing;
- e) if the individual needs assistance to clarify the nature of the individual's complaint, assisting the individual with identifying the proper ground under s.155 of the law.

### **Recommendation 31**

(1) The QNU submits that there should be a specific exclusion from the mandatory reporting obligations in s.156 as follows:

*"(4) Subsection (2) does not apply if:*

*...*

*(d) the first health practitioner:*

- (i) is an employee of a employee organization representing the industrial and professional rights of the second health practitioner; and*
- (ii) forms the reasonable belief in course of providing industrial or professional services to the second health practitioner."*

(2) The QNU is of the view that there should be a specific civil penalty for mandatory reports that a complainant new or should have known were without substance or vexatious, or were not made in good faith, at the time they made the complaint.

### **Recommendation 32**

In relation to Section 157, the QNU is of the view that there should be a specific civil penalty for mandatory reports that a employer new or should have known were without substance or vexatious, or were not made in good faith, at the time they made the complaint.

### **Recommendation 33**

The QNU recommends that where the phrase "*reasonably believes*" in the Law, particularly in Part 8, it should be substituted with the phrase "*believes on reasonable grounds*". There is an established line of authority in relation to the interpretation of the statutory phrase "*on reasonable grounds*". There is little judicial interpretation of the phrase "*reasonably believes*", the majority of which is in the criminal jurisdiction in relation to the criminal defences of duress and self-defence. It does not import the requirement, which arises from the phrase "*believes on reasonable grounds*" that there exist "*a fact or*

*state of facts and not the mere belief by the person challenged that the fact or state of facts existed*".

### **Recommendation 34**

The QNU recommends that s.163(c) be deleted. Such a power is adequately accommodated by the investigation provisions.

### **Recommendation 35**

The QNU submits s.164b b3 amended to add:

#### ***(QNU Proposed Section)***

***Applicant may make submissions about proposed action that may be taken in relation to a complaint***

- (2) If, after considering a complaint, a National Board is proposing to take an action specified in s.165(4), the Board must give the applicant written notice of the proposal.*
- (3) The notice must:*
  - (a) state the reasons for the proposal, and*
  - (b) invite the applicant to make a written submission to the Board by the date stated in the notice, being not less than 28 days after the day the notice is given to the applicant, about the proposal."*

### **Recommendation 36**

(1) The QNU is of the view that if the independent assessor and the National Board are unable to agree on the action to be taken then it should be the **less** serious of the proposed actions which should be taken.

(2) The QNU submits that s.165 should allow for the National Boards to invite health practitioners to enter into undertakings as a "action" under s.165(4)

(3) A health practitioner must be afforded the opportunity to respond to the complaint prior to the National Board recommending any of the actions in s.165(4).

### **Recommendation 37**

In the QNU's submission, s167(2) should be deleted from the Law. It is entirely inappropriate for the Board to take into consideration as evidence of a "*pattern of conduct*" complaints that the National Board has previously dismissed because the complaint was "*frivolous, vexatious, misconceived or lacking in substance*".

### **Recommendation 38**

The QNU submits that s.168(1) be amended to read as follows:

*"(1) This section applies if a National Board believes on reasonable grounds that:"*

### **Recommendation 39**

Section 169 (2)(b)(ii) should be amended or deleted. Details of the condition imposed should not be publically available. This is particularly the case in relation to conditions

imposed in relation to an impairment. Simply noting the existence of a condition on the registration of a health practitioner is in our view all that should be required.

#### **Recommendation 40**

In the QNU's view, s.172(2) should be deleted. It is entirely inappropriate for the responsible tribunal to take into consideration previous complaints that have been dismissed as being frivolous, vexatious, misconceived or lacking in substance.

#### **Recommendation 41**

In the QNU's view, s.173(1)(e) should be amended to provide for a maximum fine of \$10,000.00, or the equivalent in Commonwealth penalty units.

#### **Recommendation 42**

The QNU recommends that section 177 be amended to provide for the health practitioner to provide written submissions to the Board prior to it making a decision pursuant to s.178 in relation to the assessor's report.

#### **Recommendation 43**

(1) The QNU does not agree with s.178. In the QNU's view the Board should not be empowered to determine that a health practitioner has engaged in unprofessional conduct, or professional misconduct solely on the basis of the assessor's report.

(2) In the QNU's view, a determination that a health practitioner has engaged in unprofessional conduct or professional misconduct should be the sole jurisdiction of the responsible tribunal for the participating jurisdiction.

#### **Recommendation 44**

Section 180 should be amended to provide that a member of the professional standards panel is a Australian Legal Practitioner or the panel has access to counsel assisting or legal advise in relation to legal matters.

#### **Recommendation 45**

Section 182 should be amended by inserting a new sub-section (3) in words to the following effect:

*“(3) The professional standards panel must send with the notice a copy of all documents in possession of the professional standards panel relating to the complaint.”*

#### **Recommendation 46**

Section 183 should be amended to allow a health practitioner to be represented by a legal practitioner or industrial organisation before the professional standards panel.

#### **Recommendation 47**

The QNU recommends that the professional standards panel should be able to decide the matters in s.189(1)(a), (d) and (e). If the panel believes on reasonable grounds that the health practitioner has engaged in unprofessional conduct or professional misconduct, then the panel should refer that matter to the responsible tribunal for a participating jurisdiction.

#### **Recommendation 48**

The QNU recommends that s.193(2) be amended to provide a new subsection(f) which provides as follows:

*“(f) the reasons for the National Board’s decision to refer the health practitioner to the health assessment.”*

#### **Recommendation 49**

The QNU does not agree with s.197. In the QNU’s view the Board should not be empowered to determine that a health practitioner has engaged in unprofessional conduct or professional misconduct solely on the basis of the assessor’s report. This should be the role of the responsible tribunal for a participating jurisdiction.

#### **Recommendation 50**

The QNU recommends that s.202 be amended by inserting a new sub-section (3) in words to the following effect:

*“(3) The health panel must send with the notice a copy of all documents in possession of the professional standards panel relating to the complaint unless the health panel reasonably considers that the documents contains information the health panel considers may, if disclosed to the health practitioner or student, be prejudicial to the health practitioner’s or student’s physical or mental health or wellbeing, in which case the documents must be sent to a medical practitioner or psychologist nominated by the practitioner or student or the representative nominated under s.204.”*

#### **Recommendation 51**

The QNU recommends that the health panel should be able to decide the matters in s.208(1)(a) and (d) or in relation to matter of unsatisfactory professional performance. If the health panel believes on reasonable grounds that the health practitioner has engaged in unprofessional conduct or professional misconduct, then the panel should refer that matter to the responsible tribunal for a participating jurisdiction.

#### **Recommendation 52**

In relation to s212, the QNU recommends that the National Board should be required to provide updates under s.212(3) on a monthly rather than 3 monthly basis.

#### **Recommendation 53**

The QNU recommends that a s.213(2) be inserted as follows:

*“213(2) If the no action is taken by the investigator within 3 months of being appointed to investigate a complaint, the investigation into the complaint is deemed to have lapsed. A lapsed investigation constitutes a dismissal of the complaint.”*

#### **Recommendation 54**

The QNU does not agree with section 217. The QNU does not believe that it is necessary to provide investigators with the power to compel a person to attend an interview and answer an investigator's questions. This is a highly intrusive power and the QNU does not believe it is justified by evidence from existing participating jurisdictions in relation to the cooperation of witnesses in investigations.

### **Recommendation 55**

Section 217 should be amended as follows:

***“217 Powers of investigators***

*For the purposes of conducting an investigation into a complaint, an investigator may, by written notice given to a person, other than the health practitioner the subject of the complaint, require the person to:*

- (c) give stated information relevant to the complaint to the investigator within a stated reasonable time and in a stated reasonable way, or*
- (d) attend before the investigator at a stated time and a stated place to answer questions or produce documents relevant to the complaint.”*

(amendment emphasised)

### **Recommendation 56**

The QNU does not agree with s.218(2)(c). The QNU objects to the investigator being given a power to compel a person to answer the investigators questions. In the QNU's view such a power is intrusive and not required by a person investigating a matter under the Law. It is untenable and unjustifiable diminishment of the personal liberties of Australian citizens.

### **Recommendation 57**

In relation to s.222, the QNU recommends that s222(2)(a) be deleted. The investigator should not be empowered to use force to enter a premise. The investigator in such circumstance should be required to seek assistance from a police officer to assist with execution of the warrant.

### **Recommendation 58**

The QNU disagrees with s.241(4). The QNU submits that when there is a disagreement between the independent assessor and the National Board, the least serious of the actions proposed should be taken.

### **Recommendation 59**

In relation to s.242, submits that in circumstances where the National Board and the independent assessor have agreed in relation to action to be taken against the health practitioner, the health practitioner should be provide with a complete copy of the investigators report.

### **Recommendation 60**

The QNU submits that the Law should not make any provision for costs in the responsible tribunal. This should remain a matter for the responsible tribunal. The QNU recommends that Section 248 should be deleted from the Law.

## **Recommendation 61**

The QNU recommends that the draft Law be amended to include midwifery practice restrictions.

## **Recommendation 62**

The QNU recommends that expected costs associated with introduction of the national registration scheme, and anticipated fees for each of the regulated professions, be published as part of the consultation processes around Bill B.

## **Recommendation 63**

The QNU recommends that the draft Law include a section similar to the *Nursing Act 1992* (Qld) section 145(1A), which provides that:

*“A proceeding for an offence against the Law must start—*  
*(e) within 1 year after the commission of the offence; or*  
*(f) within 1 year after the offence comes to the complainant’s knowledge, but within 2 years after the commission of the offence.”*

# **PART 3 SUBMISSIONS ADDRESSING SPECIFIC SECTIONS OF THE DRAFT LAW**

## **Part 1 Preliminary**

### *Section 4 Objectives and guiding principles of national registration and accreditation scheme*

- 11) The objectives and guiding principles of the scheme which were agreed in the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions*<sup>1</sup> (the ‘COAG Agreement’) are reflected in the draft Law. One of the guiding principles for the scheme is that *‘it should operate in a transparent, accountable, efficient, effective and fair manner’*.
- 12) The QNU submits that there is clearly an intention that registered health professionals subject to the scheme are treated in a ‘fair manner’. The QNU believes that this intention should be reflected with more clarity in the legislation. The QNU submits that it is essential that the objectives and guiding principles of national registration provided for in section 4 of the draft Law include a provision which relates to the complaint handling and investigations and notes that these processes should be undertaken in a ‘transparent, accountable, efficient, effective and fair manner’.
- 13) Section 5 of the draft Law requires statutory bodies tasked with discharging functions and exercising powers under the Law to have regard to the Object, objectives and guiding principles of the Law. Courts tasked with interpreting the Law will also refer to

---

<sup>1</sup> *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions*

the Object, objectives and guiding principles of the Law. It is therefore crucial that the objectives and guiding principles note that one of the principle objectives of the legislation is to provide a complaint handling and investigation process and that, in accordance with the principles established in the COAG Agreement these processes should be transparent, accountable, efficient, effective and fair.

14) QNU submits that a new objective and guiding principle should be inserted into the draft Law to the following effect:

New objective in section 4:

*“to provide for a transparent, accountable, efficient, effective and fair process for dealing with complaints under this Law and conducting investigation under this Law.”*

### *Section 6 Definitions*

15) The definition of ‘*reportable conduct*’ includes at subsection (d) a reference to ‘*accepted professional standards*’. In order to establish whether a health practitioner has departed from accepted professional standards it is necessary, in our view, for the meaning of ‘professional standards’ to be defined in the legislation.

16) QNU recommends that the draft Law include a definition of the term “*professional standards*” as “*codes and guidelines approved by the relevant National Board*”.

17) Aged care services are not included in the definition of ‘*health service*’ in the draft Law. Given that more than seventy percent of residents in residential aged care services in Australia require high levels of care, including complex health care, it is essential that such aged care services are included in the definition of ‘health service’.

18) QNU recommends that the definition of “*health service*” in the draft Law include “*aged care services*”.

19) The definition of ‘*performance assessment*’ does not provide for a standard or agreed process to be followed by any person conducting the assessment. In the QNU’s experience, the adoption of a wide range of methodology and tools by which performance assessments have been made of licensed nurses in Queensland has resulted in unfair outcomes for nurses.

20) These often unfair outcomes arise from the diversity of performance assessment process in the market which vary substantially in their methodology. An inconsistent methodology causes unfairness to individual registrants but also undermines public safety by not guaranteeing a consistent standard of assessment for poor performing registrants.

21) QNU recommends that the definition of “*performance assessment*” in the draft Law be amended as follows:

*“performance assessment means an assessment of the knowledge, skill or judgment possessed, or care exercised by, a registered health practitioner in the practice of the health profession in which the practitioner is registered, using a methodology approved by the relevant National Board”.*

(amendment emphasised)

- 22) The QNU believes that the current definition of impairment is too broad and may result in unfair treatment of health practitioners.
- 23) Presently the QNU is of the view that registrants with an impairment may be exposed to less favourable treatment which may constitute discrimination, and which may not be justified by the public protection Objective of the law, as a consequence of the current wording of the definition of impairment.
- 24) In our view, the registrants applying for registration or registered with a National Board should be subject to the protection afforded State and Commonwealth Anti-discrimination legislation.
- 25) For example the *Anti-Discrimination Act 1991* (Qld) (the “ADA”) provides that an area of activity in which discrimination in relation to impairment is unlawful is in relation to decision of qualifying bodies, such as a proposed National Board. Section 21 of the ADA relevantly provides as follows:

**21 Discrimination by qualifying body in pre-qualification area**

*A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for, or facilitates, the practice of a profession, or the carrying on of a trade or business must not discriminate—*

- (a) in granting, renewing or extending a qualification or authorisation or failing to do so; or*
- (b) in the terms on which a qualification or authorisation is granted, renewed or extended.*

- 26) Section 22 of the ADA relevantly provides as follows:

**22 Discrimination by qualifying body in qualification area**

*A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for, or facilitates, the practice of a profession, or the carrying on of a trade or business must not discriminate against another person—*

- (a) in any variation of the terms on which a qualification or authorisation was granted, renewed or extended; or*
- (b) in revoking or withdrawing a qualification or authorisation or failing to do so; or*
- (c) by treating the other person unfavourably in any way in connection with the grant, renewal or extension of a qualification or authorisation.*

- 27) The QNU submits that the Law must be subject to relevant state and federal discrimination laws. The QNU believes that the present defence allowing discrimination to occur in relation to, for example public health and safety, are sufficient to allow the National Boards to discharge their registration functions and deal with complaints under Part 8 of the Law.

- 28) QNU recommends that the definition of “*impairment*” be amended to read:

*“impairment, in relation to a registered health practitioner or student, means the practitioner or student has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects ~~or may detrimentally affect~~:*

- (a) the practitioner’s capacity to practise the practitioner’s profession, or*
- (b) the student’s capacity to undertake clinical training in the profession.”*

(amendment emphasised)

29) That the Law should not seek to exempt registration and complaints matters from the coverage of Commonwealth and State Discrimination legislation.

## **Part 2 Ministerial Council**

### *Section 10 Policy directions*

30) The QNU supports the APNMF's submission that accreditation functions of the professions must be independent of the Ministerial Council.

## **Part 4 Australian Health Practitioner Regulation Agency**

### **Division 1 National Agency**

#### *Section 24 Health profession agreements*

31) The QNU supports the APNMF's recommendations related to the need for financial independence for the National Boards. The QNU supports the APNMF's submissions that there should be no cross subsidization of funds for professions in the national scheme.

32) The QNU agrees with the provisions in the draft National Law that support the financial independence of the National Boards.

### **Division 4 Public interest assessor**

#### *Section 35 Public Interest Assessor*

#### *Section 36 Functions of Public Interest Assessor*

33) The draft National Law introduces the role of the Public Interest Assessor. There was no prior consultation with stakeholders about the introduction of this role into the draft Law. However, the discussion about the proposed Public Interest Assessor role provided at the forum on the National Scheme conducted in Brisbane on Friday 10 July 2009 was helpful in clarifying the proposed functions of this role.

34) The QNU **does not** support introduction of the Public Interest Assessor role in its current form. In our view it is likely to increase the costs associated with the national scheme, and result in delays in management of complaints about health practitioners.

35) QNU recommends that all reference to the Public Interest Assessor role deleted from the draft Law.

### **Division 5 Staff, consultants and contractors**

#### *Section 41 Consultants and contractors*

36) The QNU's view is that the use of consultants and contractors should be managed through an industrial instrument, subject to any jurisdictional impediments in the making of the industrial instrument.

37) QNU recommends that section 41 Consultants and contractors be amended to include a provision similar to section 39(3), that is:

*“Subsection 2 is subject to any relevant industrial award or agreement that applies to consultants and contractors”.*

## **Part 5 National Boards**

### **Division 1 National Boards**

#### *Section 45 Membership of National Boards*

38) The QNU supports the APNMF’s submissions in relation to the composition of the National Nursing and Midwifery Board. Section 45 (4) of the draft Law provides for at least half, but not more than two-thirds, of the members of a National Board to be practitioner members. A Board made up of only half health practitioner members does not provide appropriate representation by health practitioners. The QNU supports the APNMF’s position that the minimum acceptable representation of practitioner members is two thirds of the positions on the National Board.

39) The QNU supports the APNMF’s submissions that, given the size and composition of the nursing and midwifery workforce in Australia, section 45 (11) of the draft Law should provide for each participating jurisdiction to have a health practitioner representative on the Nursing and Midwifery Board.

### **Division 2 Functions and powers of National Boards**

#### *Section 49 Functions of National Boards*

#### *Section 50 Powers of National Boards*

40) The QNU supports the APNMF’s submissions that the most effective structure for regulation of nursing and midwifery is for the National Board to 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 contracts, acquire, hold, deal with and dispose of property, conduct general banking and make financial investments.

#### *Section 55 Delegation of functions*

41) The QNU does not support the delegation of National Board functions to ‘*a person engaged as a contractor by the National Agency*’, with the exception of investigation functions. Such functions should remain the purview of officers/employees of the national agency.

42) QNU does not support delegation of National Board functions to “*a person engaged as a contractor by the National Agency*” and recommends that section 55(1)(d) be deleted.

### **Division 3 Registration standards and codes and guidelines**

#### *Section 57 Consultation about registration standards, codes and guidelines*

43) Section 57 (1) of the draft Law requires a National Board to consult widely about the content of any code or guideline developed. However this requirement for consultation is effectively negated in sub-section 57 (2). The QNU believes that it is appropriate for the National Boards to be required to consult widely about the content of any code or guideline developed.

44) QNU recommends that subsection 57 (2) of the draft National Law be deleted so that a code or guideline developed by a National Board without wide consultation is invalid.

## **Part 6 Accreditation**

### **Division 1 Preliminary**

#### *Section 59 Definition (accreditation function)*

45) Section 59 (c) refers to the accreditation functions including '*assessing authorities in other countries...*'. It appears that the intent of the section is for an assessment to be made of the program of study, rather than the overseas authority itself.

46) QNU recommends that subsection 59 (c) be amended to read:

*“(c) assessing programs of study relevant to registration in a health profession that have been accredited by authorities in other countries to decide whether the programs of study accredited by the authorities give persons who complete the programs the necessary knowledge and clinical skills to practise the profession in Australia.”*

47) The accreditation functions identified in section 59 do not include a function that is apparent in later sections of the draft Law. For example, section 71 of the draft Law provides that any examination or assessment required by a National Board must be conducted by an '*accreditation authority*'.

48) QNU recommends that section 59 be amended to include the additional function of performance of examinations or assessments for individual health practitioners as required by a National Board.

### **Division 3 Accreditation functions**

#### *Section 68 Accreditation authority to monitor approved courses of study*

49) Section 68 of the draft Law does not provide for reasons for a decision to revoke the accreditation of an approved program of study, or for review or appeal rights for the education provider.

50) QNU recommends that reasons should be provided for a decision to revoke the accreditation of an approved program of study, and that review and appeal rights should be available to an education provider subject to a decision to revoke an approved program of study.

51) Section 68 makes it mandatory for a National Board to revoke an accreditation of a program of study even in circumstances where there is only minor non-conformity with

an approved accreditation standard. The QNU's view is that the National Board should have capacity to manage minor non-conformity with an approved accreditation standard without revoking accreditation of a program of study.

52) QNU recommends that section 68 be amended to read:

*"(3) If the accreditation authority believes the program of study no longer meets an approved accreditation standard for the health profession, the accreditation authority may ~~must~~:*

*(a) revoke the accreditation of the program of study, and*

*(b) give the National Board written notice that the accreditation has been revoked."*

(amendment emphasised)

53) Many current licensed nurses have obtained their registration on the basis of attainment of qualifications that would not now meet the accreditation standards for approved programs of study. It will be essential that individuals who leave the workforce for a number of years, and do not maintain registration, are not then required to complete the approved course of study that is current at the time that the individual seeks to re-register. It will be essential that re-entry programs, rather than a full program of study, be the requirement for re-registering after a period of absence from the workforce.

54) QNU recommends that the new Law does not impose a requirement on applicants seeking to re-register after a period of absence to complete a current approved program of study, and that provision be made for re-entry programs to be recognised as a means of regaining registration.

## **Part 7 Registration of health practitioners**

### **Division 1 General registration**

#### *Section 69 Eligibility for general registration*

55) Section 69 (d) of the draft Law requires an applicant for general registration to have appropriate professional indemnity insurance in place, *'including a policy held, or arrangements made, by the individual's employer'*. Many applicants for general registration may not have an employer at the time of application. A considerable number of applicants for general registration may intend to seek employment with more than one employer. A requirement that the applicant must be able to demonstrate arrangements made with an employer would not be practical in these circumstances. In any event, an individual may make arrangements for professional indemnity insurance with entities other than employers.

56) A further more significant problem with the requirement that registrants hold professional indemnity insurance exists; Independent Midwives in private practice cannot obtain professional indemnity insurance.

57) The problems with obtaining professional indemnity insurance for these midwives are well known and were discussed in detail at the Forum in Brisbane on 10 July 2009.

58) The QNU, and other branches of the ANF, have attempted for many years to obtain affordable professional indemnity insurance for these midwives. These efforts have not been successful.

59) In the absence of the Commonwealth or the states stepping in to provide professional indemnity insurance, or an insurer releasing an affordable product onto the market before 30 June 2009, the QNU submits the requirement to hold professional indemnity insurance should not apply to independent Midwives in private practice.

60) If an exemption for Independent Midwives in private practice is not introduced into the Law, and no insurance is available, by 30 June 2009, there will be a mass exodus of midwives from the profession. Alternatively, the public may be exposed to unlicensed operators which will definitely compromise the safety of the public. Enforcement of a professional indemnity insurance requirement as a condition of registration, and therefore continuing practice, will in effect stop women birthing without a registered midwife in attendance. This is profoundly unsafe and immoral. Unregulated/unlicensed birth attendants that do not possess accountability to competence and conduct standards and with no obligation to maintain contemporaneous practice will, in the vacuum left by the exodus of midwives unable to comply with the professional indemnity insurance requirement, obviously grow ensuring that women who, at best at low risk and healthy, are placed in an extremely dangerous position, putting themselves and the lives of their babies at risk.

61) QNU recommends that section 69(1)(d) be amended to read:

*"(d) there is, or will be, in force in relation to the individual appropriate professional indemnity insurance arrangements, including a policy held, or arrangements made, by the individual's employer, or an entity that represents health practitioners, that will cover the individual".*

(amendment emphasised)

62) That in the absence of independent Midwives in private practice being able to obtain professional indemnity insurance, independent Midwives in private practice be exempted from the registration requirement in s.69(1)(d) of the Law.

#### **Division 4 Limited registration**

##### *Section 85 Limited registration for area of need*

63) Under section 85(1) of the draft Law an individual may apply for limited registration to work in an area of need decided by the responsible Minister. Section 85(2) of the draft Law provides for a National Board to grant limited registration to an individual if that *'individual's qualifications and experience are relevant to the practice of the profession in an area of need'*.

64) The QNU does not support the granting of limited registration for the purpose of working in an area of need in the nursing and midwifery professions if such an approval is provided to individuals who would not otherwise be eligible for registration or endorsement.

#### **Division 6 Application for registration**

### *Section 94 Application for registration*

- 65) Section 94(2)(a) requires that an application for registration must be made on the form approved by the National Board. The QNU supports the APNMF's submissions in relation to the desirability for collection of workforce data to be mandatory. However, we note that the discussions that occurred at the forum on the National Scheme conducted in Brisbane on Friday 10 July 2009 highlighted the difficulties in making collection of workforce data mandatory under section 263(3) of the draft Law.
- 66) The QNU believes it would be desirable to consider alternative methods of obtaining data that is critical for workforce planning, such as numbers of individuals who identify as being of non-English speaking background, or of Aboriginal and Torres Strait Islander background.
- 67) QNU recommends that consideration be given for 'approved forms' required for applications for registration include provision for collection of critical workforce planning data.

### *Section 97 Power to enquire about qualifications, registration status and practice in health profession*

- 68) At the forum on the National Scheme conducted in Brisbane on Friday 10 July 2009 it was suggested that the intent of section 97(1)(c) was to impose a recency of practice provision of three years. It was noted, however, that there will be further deliberation about whether a recency of practice requirement will be inserted in the National Law, or whether it would be the subject of professional standards established by the National Boards.
- 69) The QNU believes that the current five year recency of practice standard for the nursing and midwifery professions is appropriate, and should be maintained. Given the high percentage of women in the nursing and midwifery workforce, imposition of a three year recency of practice requirement is likely to disadvantage individuals who leave the workforce for periods for family and other reasons.
- 70) QNU recommends that there be a five year recency of practice requirement included in the National law.

### *Section 98 Boards' other powers before deciding application for registration*

- 71) Section 98 gives the National Board power to require an applicant to undergo an examination or assessment, or a health assessment.
- 72) QNU recommends that section 98 *Board's other powers before deciding application* include a requirement for any costs associated with an examination, assessment, or health assessment, to be met by the National Board.

### *Section 103 Failure to decide application*

- 73) Section 103 provides for a time frame of 90 days for the steps in deciding an application for registration either after its receipt or following compliance with a requirement under s98 of the Law. The QNU believes that these time frames are excessive and have the potential to cause financial hardship to applicants for registration.
- 74) In the QNU's view, it should be possible for the Nations Board to determine a compliant application within 28 days of receipt of the application if it is not necessary to direct the applicant to undertake a matter referred to in s.98.
- 75) Further, following receipt of the material required by s.98 (b)-(e), the National Board should be able to determine an application significantly faster than within 90 days.
- 76) If a National Board, for example, required the applicant pursuant to a written notice issued under s.98(c) to attend and answer questions, it is in our view, unreasonable for the National Board to essentially sit on the issue for a further three months following the applicant complying with the notice before rendering a decision on the application.
- 77) The provision as currently drafted will result in applicants being left in limbo for the period that the Nation Board is allowed to consider the application. The applicant, particularly a new graduate, will not be able to apply for jobs in the profession if there is uncertainty as to whether their application will be successful.
- 78) QNU recommends that all time frames relating to consideration of applications for registration in section 103 be amended to 28 days.

## **Division 8 Endorsement of registration**

### **Subdivision 1 Endorsement in relation to scheduled medicines**

#### *Section 110 Endorsement for scheduled medicines*

- 79) Section 110 provides for a National Board to endorse the registration of a registered health practitioner '*as being a person who is qualified to administer, obtain, possess, prescribe, sell, supply, or use a scheduled medicine or class of scheduled medicines*'. The construction of the section appears to indicate that all licensed nurses would need to have an endorsement from the national Board in order to administer medications.
- 80) QNU recommends that the intent of section 110 be considered, and the section reworded as necessary to clarify whether or not all health practitioners will require an endorsement for scheduled medicines, or whether this is intended to provide for endorsements to be available for nurses and midwives with expanded scope of practice as currently exists under the *Nursing Act 1992 (Qld)*.

## **Division 9 Renewal of registration or endorsement**

#### *Section 125 Decision about renewal*

- 81) Section 125 relates to a decision about renewal. The QNU believes that an applicant should be advised if the National Board proposes not to renew a registration or

endorsement prior to a decision being made, and that the applicant should be invited to make submissions to the Board about the proposal.

82) QNU recommends that a section analogous to section 99 *applicant may make submissions about proposed refusal of application or imposition of condition* be included in the draft Law in relation to decisions about renewal.

## **Division 11 Title and practice protections**

### **Subdivision 1 Title protections**

#### *Section 129 Restriction on use of titles*

83) Section 129(a) prohibits a person from using a title that is protected, '*with or without any other words*'. Nursing and Midwifery protected titles include the term 'nurse'. The term 'nurse' is not currently a restricted title in Queensland. The classification title of 'assistant nurse' currently exists in some industrial instruments in Queensland.

84) QNU recommends that the draft Law be amended to include a defence against a breach of section 129 *Restriction on use of titles* in circumstances where the prohibited title being used is contained within a nursing related classification in an industrial instrument with application to the employee whose title is prohibited.

85) In order to avoid the circumstance where an employer or other party seeks to exploit this defence by making further industrial instruments that contain prohibited titles, the Bill could include a further offence:

*"129(d) a person must not promote or require a person to use a prohibited title."*

#### *Section 134 Claims by persons as to registration in recognised specialty*

86) Section 134 (c) prohibits a person from using a title of 'specialist' (in a recognized specialty under the Law). It is unclear as to what, if any, nursing and/or midwifery specialties will be recognized under the National Law. However the QNU wishes to draw attention to the fact that there are currently various nursing titles including the word 'specialist' in Queensland, such as clinical nurse specialist, or oncology nurse specialist.

## **Division 12 Miscellaneous**

### **Subdivision 2 Review of conditions and undertakings**

87) The QNU believes that provisions relating to undertakings as exist currently in the *Nursing Act 1992* (Qld) are a beneficial mechanism for the management of less serious professional practice concerns. The present codified and informal practices relating to undertakings should be allowed to continue.

88) The QNU recommends that Part 7 Division 12 Subdivision 2 be reviewed with the aim of clarifying the difference between conditions and undertakings, and that amendments be made to these provisions in the draft Law to reflect similar provisions in the *Nursing Act 1992* (Qld). The present codified and informal practices relating to undertakings should be allowed to continue.

*Section 139 Changing or removing conditions or undertaking on application by registered health practitioner or student*

89) Sub-section 139(2) prevents a health practitioner or student from applying for a change to be made to a condition (or undertaking) during a review period applying to the condition or undertaking. The QNU believes that this is not provide a practical or fair process for registrants. The present provision does not allow for the National Boards to be responsive to changes in the particular circumstances or health practitioners with undertakings or conditions on their registration.

90) The QNU recommends that section 139(2) be deleted from the draft Law so that a health practitioner may apply for a change to be made to a condition (or undertaking) during a review period applying to the condition or undertaking.

*Section 140 Changing conditions or undertakings on Board's initiative*

*Section 141 Removal of condition or revocation of undertaking*

91) The QNU believes that it would be reasonable for conditions or undertakings to be changed or removed during a review period. The present provision does not allow for the National Boards to be responsive to changes in the particular circumstances or health practitioners with undertakings or conditions on their registration.

92) The QNU recommends that subsection 140(3) and subsection 141(3) be deleted from the draft Law so that conditions or undertakings may be changed or removed during a review period.

**Subdivision 6 General**

*Section 148 Directing or inciting unprofessional conduct or professional misconduct*

93) Subsection 148(2) protects a person who is the owner or operator of a public health facility or another health facility that is licensed under a law of the Commonwealth or participating jurisdiction from prosecution for directing or inciting unprofessional conduct or professional misconduct. This protection is inappropriate given that employers are the most likely people to offend against this section.

94) The QNU submits that employers are the most likely people to direct or incite unprofessional conduct or professional misconduct and recommends that the protection provided in subsection 148(2) be deleted from the draft Law.

**PART 8 COMPLAINTS, PERFORMANCE, HEALTH AND CONDUCT**

**Division 1 Preliminary**

*Section 150 Part also applicable to former registered health practitioners*

95) The QNU agrees that Part 8 should apply to former registered health practitioners.

96) The QNU submits that this part should exclude lawful industrial action taken by employees. For example, s.101 of the *Nursing Act 1992* relevantly provides:

***“101 Action taken because of industrial disputes etc.***

*This part does not apply to action taken, or not taken, by a person because of an industrial dispute that does not involve civil or criminal negligence by the person.”*

97) The QNU submits that a provision on similar terms to s.101 of the *Nursing Act 1992* should be included in Part 8 Division 1 of the Law.

98) *Section 151 Responsible Minister may nominate independent assessor*

99) The QNU agrees that the power to appoint the independent assessor should rest with the responsible minister in each state and territory. It is the QNU's preference that the independent assessor be a health complaints entity.

**Division 2 Making a complaint**

*Section 152 Who may make complaint*

100) The QNU agrees with s.152 of the Law.

*Section 153 How complaint is made*

101) The QNU agrees that complaints may be made to the National Agency. However, the QNU submits that there should be a requirement that verbal complaints must be confirmed by a complainant in writing prior to the complaint being dealt with under Division 4.

102) If the complainant does not confirm the complaint in writing within 28 days of making the complaint, or execute a written record of the complaint in circumstances where they may have difficulty writing a complaint because of English language skills or disability, that the complaint is deemed to lapse.

103) Such a provision would reduce the number of vexatious or malicious complaints, or complaints that may be made in the heat of the moment.

*Section 154 National Agency to provide reasonable assistance to complainant*

104) The QNU is concerned that the scope of s.154 of the Law may result in complainants, particularly vexatious complainants, being provided assistance to advance unmeritorious complaints.

105) The section provides little guidance to staff of the National Agency as to exactly what constitutes “reasonable assistance” aside from the matters referred to in s.154(2) which clearly deal with assisting illiterate or impaired complainants make a complaint.

106) The QNU is of the view that the broad drafting of this section could result in the National Agency, prior to the assessment phase or in the absence of a properly appointed investigator, being asked to essentially draft the substance of complaints rather than simply record a complaint in writing or advise on proper grounds for a complaint.

107) In the QNU's view the power of the National Agency to provide “reasonable assistance” to complainants should be confined to the following circumstances:

- a) the provision of information in relation to the grounds upon which a complaint can be founded pursuant s.155 of the Law; and

- b) any code or policy applicable to the competence or conduct of the health professional, a breach of which may found a ground for complaint pursuant to s.155; and
  - c) assisting an individual who is not able to put the individual's complaint in writing, as a consequence of a disability or literacy problems or English language difficulties, to put the complaint in writing;
  - d) if the individual needs assistance to clarify the nature of the individual's complaint, assisting the individual with identifying the proper ground under s.155 of the law.
- 108) Alternatively, the circumstances specified in s.154(2) should be the limits of the power.
- 109) The QNU is concerned that without proper limitation on the National Agencies powers to assist complainants, it may result in decisions of the National Agency/Board being tainted by health practitioners forming a legitimate apprehension of bias.

*Section 155 Grounds for complaint*

- 110) The QNU agrees with grounds upon which a complaint can be made in s.155(a) through (e).

**Division 3 Other matters taken to be complaints**

*Section 156 Mandatory reporting by health practitioners*

- 111) The QNU generally agrees with the mandatory reporting obligations provided for in s.156 of the Law. However, the QNU submits that there should be a specific exclusion from the mandatory reporting obligations in s.156 as follows:

*“(4) Subsection (2) does not apply if:*

*...*

*(d) the first health practitioner:*

*(i) is an employee of a employee organization representing the industrial and professional rights of the second health practitioner; and*

*(ii) forms the reasonable belief in course of providing industrial or professional services to the second health practitioner.”*

- 112) The QNU submits that education providers should also be provided with mandatory reporting obligations in relation to student registrants.
- 113) The QNU is of the view that there should be a specific penalty for reports the complainant new or should have known were without substance or vexatious, or were not made in good faith, at the time they made the complaint.
- 114) The making of a complaint against a health practitioner can have a devastating impact on the health practitioner reputation and employment. Often reputational damage persists even after a baseless complaint has been dismissed. There is unfortunately a small number of health practitioners who will utilise complaints to the registration body as a means of bullying and harassing co-workers. The QNU has been involved in many complaints against registered and enrolled nurses in

Queensland which were made by co-workers as part of a concerted campaign of workplace harassment and vilification of the subject of the complaint.

- 115) In the QNU's submissions there must be a specific penalty for the making of vexatious complaints or complaint lacking in substance to the National Agency.
- 116) It should be conduct which constitutes a behaviour for which the health practitioner may be subjected to disciplinary action. In the QNU's view, the making of false of vexatious complaints should constitute unprofessional conduct.

*Section 157 Mandatory reporting by employers*

- 117) The QNU generally agrees with the mandatory reporting provisions of s.157. However, the definition of "*reportable conduct*" in s.6 of the Law is too broad. The breadth of the definition makes it liable for excessive and unnecessary reporting by employers or the reporting of minor competency errors. It is clearly not desirable for an employer to be reporting to the National Board each instance of poor documentation or a single medication error with no negative patient outcome.
- 118) In relation to the requirement at subsection (d) of the definition of reportable conduct, the QNU's view is that an employer should only be required to mandatorily report in circumstances where the employer believes, *on reasonable grounds*, that the health practitioner has behaved in a manner that places the public at risk of substantial harm because the health practitioner has practised in a way that constitutes a departure from codes and guidelines approved by the relevant National Board.
- 119) The QNU would also recommend that there should be a specific penalty for reports which are without substance or vexatious. As stated above, the making of a complaint against a health practitioner can have a devastating impact on the health practitioner reputation and employment.
- 120) It is an unfortunate fact that some employers may make complaints against individual health practitioners:
- a) in pursuit of their own industrial objectives; or
  - b) in retaliation for the health practitioner making a complaint to a health complaints body or internal complaint; or
  - c) in retaliation for the health practitioner expressing their dissatisfaction with their industrial conditions;
  - d) in response to the health practitioner making a anti-discrimination complaint; or
  - e) in retaliation to a workers compensation application.
- 121) Although there are some exiting statutory provisions which make it a civil offence or provide a civil remedy to such acts of retaliation in many circumstances they are difficult and/or expensive to prosecute.
- 122) In the QNU view, there should be a penalty provision in the Law which makes it a civil offence punishable by a penalty for the making of a vexatious complaint to the

National Agency. Such an offence would act as a deterrent to entities who may wish to make such complaints for inappropriate purposes.

*Section 158 National Board may take action on own initiative*

123) The QNU agrees with this provision.

#### **Division 4 Dealing with complaints**

*Section 159 Referral of complaint to National Board*

124) The QNU agrees with this provision.

*Section 160 National Board to give notice of receipt of complaint*

125) The QNU strongly endorses the 28 day period for notifying a health practitioner of a complaint.

126) The QNU submits that it is essential that such notification occurs before a preliminary assessment has been made by the National Board.

127) The QNU generally agrees with what appears to be the intent of this provision but, in our view, the phrase “*reasonably believes*” in s.160(3), should be substituted with the phrase “*believes on reasonable grounds that*”. There is an established line of authority in relation to the interpretation of the statutory phrase “*on reasonable grounds*”<sup>2</sup>. There is little judicial interpretation of the phrase “*reasonably believes*”, the majority of which is in the criminal jurisdiction in relation to the criminal defences of duress and self-defence<sup>3</sup>.

128) Although the QNU accepts that the phrase “*reasonably believes*” still imports an objective test, it is, in our view, a lesser test than is usual in relation to the exercise of statutory power that has the potential to effect the professional rights and privileges of a person. It does not import the requirement that there exist “*a fact or state of facts and not the mere belief by the person challenged that the fact or state of facts existed*”<sup>4</sup> that, in the QNU’s view, is liable to occur and satisfy the test required by the phrase “*reasonably believes*”.

129) In our view, the failure to notify a health practitioner of a complaint should only occur in the rarest of circumstances. In the QNU’s view the objective test required by the phrase “*on reasonable grounds*” ensures that before the National Board determines not to notify a person of a complaint there must be actual grounds upon which the National Board forms the view that a real possibility of prejudice to an investigation exists, a person’s health and safety is at risk, or intimidation of a person is likely, rather than the mere suspicion or belief.

130) The amendment of the provision to include the phrase “*on reasonable grounds*” provides sufficient protection to the to the matters referred to in s.160(2)(a)&(b)

*Section 161 National Board may deal with complaints about same person together*

---

<sup>2</sup> *George v Rockett* [1990] HCA 26

<sup>3</sup> *Oblach v Regina* [2005] NSWCCA 440

<sup>4</sup> *Liversidge v Anderson* [1941] UKHL 1; see also *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142

131) The QNU agrees with this provision.

*Section 162 National Boards may deal with complaints collaboratively*

132) The QNU agrees with this provision.

*Section 163 National Board may require further information*

133) The QNU agrees with s.163(a) and s.163(b) of this provision. However, the QNU notes an inconsistency between the heading for the section and language of the section. In the heading the word “*require*” is used to describe the Boards power, while in the section the more passive word “*ask*” is used. The QNU submits that, putting aside the provisions of Schedule 4, s.4(4) of the Law, the word “*require*” in the heading to the section should be replaced with the phrase “*ask for*” to avoid any doubt that the section does not provide the National Board with a power to compel a person to provide further information in relation to a Part 8, Division 4 process .

134) The QNU does not agree with s.163(c). This provision potentially allows the National Board to go on a fishing trip intruding into, in the case, for example, of a health practitioner working in a large public hospital, the personal medical history and lives of possibly thousands of patients. It is a power which is simply not necessary in the initial preliminary assessment stage of a complaint.

135) This is a matter in our view adequately covered by the investigation powers under Division 9.

*Section 164 Preliminary assessment*

136) The QNU is concerned that there is no provision in the Law presently which requires the National Board to provide a health practitioner subject of a complaint with an opportunity to provide a submission during the Preliminary Assessment phase. In the QNU’s view a provisions analogous to the present s.99 of the Law would be appropriate, such as:

***“(QNU Proposed Section)***

***Applicant may make submissions about proposed action that may be taken in relation to a complaint***

*If, after considering a complaint, a National Board is proposing to take an action specified in s.165(4), the Board must give the applicant written notice of the proposal.*

*The notice must:*

- (a) state the reasons for the proposal, and*
- (b) invite the applicant to make a written submission to the Board by the date stated in the notice, being not less than 28 days after the day the notice is given to the applicant, about the proposal.*

137) The QNU believes that in order to ensure that procedural fairness and natural justice is afforded to the health practitioner the health practitioner must be afforded the opportunity to respond to the complaint prior to the National Board recommending any of the actions in s.165(4).

*Section 165 Agreement with independent assessor about complaint*

138) The QNU agrees with s.165(1).

139) The QNU agrees with s.165(2).

- 140) The QNU does not agree with s.165(3) of the Law. Section 165(3) provides that in the event of a disagreement between the independent investigator and the Board the most serious action proposed will be taken. Section 165(4) provides that, in descending order of severity, the “actions” are as follows:
- a) suspension or the immediate imposition of condition(s);
  - b) refer the matter to the tribunal, in Queensland this would be the Queensland Civil and Administrative Tribunal (“QCAT”), to take disciplinary action against the health practitioner;
  - c) commence an investigation into the health practitioner;
  - d) refer the matter to the professional standards panel;
  - e) refer the matter to health assessment;
  - f) refer the matter to another health complaints entity;
  - g) reject the complaint.
- 141) There is no scope for the complaint to be referred to other entities such as the Police Service or health department.
- 142) The QNU is of the view that if the independent assessor and the National Board are unable to agree on the action to be taken then it should be the **less** serious of the proposed actions which should be taken.
- 143) These decisions have the ability to substantially affect the professional rights and privileges of a health practitioner. Many of the possible actions can have a serious impact on the professional reputation of the health practitioner. This reputational damage may not be repaired merely as a consequence of the complaint being dismissed.
- 144) All the proposed actions, and particularly the most serious actions, may also have substantial impacts on the health practitioner personal life. For example a consequence of suspension of the health practitioner may be the termination of the health practitioner’s employment. Similarly the immediate imposition of a condition focused on addressing the gravamen of a complaint, for example the prohibition of administering or handling schedule medications, could also be sufficient to frustrate the contract of employment resulting in the termination of the employment relationship. The health practitioner and their family would then be faced with substantial financial hardship.
- 145) This situation could arise when for example the independent assessor recommends that the complaint should be dealt with under Division 5 of the Law while the Board believes that the matter should be dealt with under Division 7 of the Law. The result is that the Board, by virtue of s.165(3), has no choice other than to suspend or impose an immediate condition on a health practitioner.
- 146) To be trite, such a conflict, as rare as it may be envisioned to be, will almost certainly result in litigation by health practitioners appealing to the relevant tribunal.

- 147) In our view, the current s.165(3) does more than is required to protect the public safety. The independent assessor and the Board are both required to observe the objects and objectives and guiding principles of the Law when discharging their functions<sup>5</sup>. One of these is to protect the public. It would be unusual for there to often be substantive disagreement in relation to the appropriate action to be taken in relation to a complaint when regard is had to these objects, objectives and guiding principles. However, the health practitioner is entitled also to a presumption of innocence in relation to the allegations made in a complaint. This should suggest that the least serious action be taken.
- 148) Taking the most serious of the actions proposed when there is disagreement between the Board and independent assessor could result in completely unfair and harsh penalties being imposed upon innocent health practitioners.
- 149) Further, the QNU submits that in order to ensure that procedural fairness and natural justice is afforded to the health practitioner, the health practitioner must be afforded the opportunity to respond to the complaint prior to the National Board recommending any of the actions in s.165(4).
- 150) Finally, there is no scope for the National Board to engage at an initial stage in an informal process to deal with minor health, competency or conduct matters.
- 151) Presently, the Queensland Nursing Council (“QNC”) utilises a process whereby it may invite nurses and midwives to enter into undertakings which generally allow the QNC to monitor a nurse or midwife in relation to minor competency, conduct or health matters prior to engaging in a more formal process such as those provided for under Divisions 7 and 8.
- 152) This allows for health practitioners to address minor competency, conduct or health concerns without having to practice with a limited registration on condition which can have a significantly detrimental impact on their employment or employability.
- 153) The QNU submits that s.165 should allow for the National Boards to invite health practitioners to enter into undertakings as a “*action*” under s.165(4)

*Section 166 Relationship with health complaints entity*

- 154) The QNU agrees with this provision.

*Section 167 Rejection of complaint*

- 155) The QNU agrees with s.167(1),(3), and (4) of the Law. The QNU does not agree with s.167(2). To be frank, s.167(2) of the Law is nonsensical.
- 156) It is entirely inappropriate for the Board to take into consideration as evidence of a “*pattern of conduct*” complaints that the National Board has previously dismissed because the complaint was “*frivolous, vexatious, misconceived or lacking in substance*”. Dismissed complaints **do not** show that a person has a ‘continuing propensity to behave in some way or with some state of mind’.

---

<sup>5</sup> see s.5 of the Law.

157) Further, in the absence of any investigation or determination of a rejected prior complaint, the prior complaint is a mere allegation and cannot sensibly be evidence of a “*pattern of conduct*”; that is used as similar fact or propensity evidence. The use of complaints rejected at the preliminary assessment stage would not satisfy the common law test for the use of similar fact evidence. The use of complaints rejected at the preliminary assessment stage is highly prejudicial to the health practitioner and grossly unfair.

158) In the QNU’s submission, s167(2) should be deleted from the Law.

### **Division 5 Immediate action**

#### *Section 168 Immediate suspension or imposition of condition*

159) The QNU submits that s.168(1) be amended to read as follows:

“(1) *This section applies if a National Board believes on reasonable grounds that.*”

(amendment emphasised)

160) In our view, the pre-requisite to the exercise of such a significant power must be the establishment of a proper objective basis for its exercise. It is important that the power only be exercised where sufficient evidence is before the National Board (or the officer who may be delegated with this power). Mere suspicion that that a health practitioner has engaged in the unsatisfactory professional performance, unprofessional conduct or professional misconduct is in our view an insufficient basis for the exercise of the power. In such circumstances it is open to the Board to institute an investigation under Division 9 or refer the matter to the Professional Standards Panel under Division 7. This power as a condition on its exercise requires, in the QNU’s view, the “*existence of a fact or state of facts and not the mere belief by the*”<sup>6</sup> Board that the fact or state of facts exists.

161) The QNU, aside from requesting the abovementioned amendment, agrees with the remainder of s.168 of the Law.

162) The QNU strongly endorses the time limits contained in section 168(6) of the Act. The QNU regularly deals with members who are subject to suspension, investigation or condition for long period of time. The length time in its own right can have a substantially negative effect on a health practitioner and materially contribute to the person failing to improve and satisfy the requirements for the removal of a suspension or condition or to address a health or competency concern.

163) The QNU strongly supports the imposition of efficiency requirement such as the time limits in s.168(6) to encourage the National Boards to deal with matters expeditiously.

#### *Section 169 Suspension or conditions to be recorded in Register*

164) The QNU does not agree with this provision. Details of the condition imposed should not be publically available. This is particularly the case in relation to conditions imposed in relation to an impairment. Simply noting the existence of a condition on the registration of a health practitioner is in our view all that should be required.

---

<sup>6</sup> Lord Atkin in *Liversidge v Anderson* [1941] UKHL 1 at 228

165) Entities with a legitimate interest in knowing the nature of the condition, such as employers and patients, should be able to obtain such information. However, entities without a legitimate interest, such as media, neighbours, family, or people who do not need to utilise the services of the health practitioner, should not be able to access the particulars of a condition.

166) Section 169 (2)(b)(ii) should be amended or deleted.

## **Division 6 Referring complaints to tribunals**

### *Section 170 Complaint to be referred to responsible tribunal*

167) The QNU agrees with this provision, but again suggests the use of the phrase “*believes on reasonable grounds*” rather than the phrase “*reasonably believes*” at the commencement of s.170(1)(a) & (b).

### *Section 171 Parties to the proceedings*

168) The QNU agrees with this provision.

### *Section 172 Decision*

169) The QNU agrees with s.172(1).

170) The QNU does not agree with s.172(2). It is entirely inappropriate for the responsible tribunal to take into consideration previous complaints that have been dismissed as being frivolous, vexatious, misconceived or lacking in substance.

171) In any event, the existence of prior similar complaints is a matter any most boards would (and presently do) consider in reviewing a fresh complaint. It is unnecessary to have a specific statutory provision which provides for what is allowable already.

172) In the QNU’s view, s.172(2) should be deleted.

### *Section 173 Action that may be taken by tribunal*

173) The QNU agrees with this section of the law though believes that the proposed maximum fine of \$30,000 is excessive. In the QNU’s view the maximum fine should be no more than \$10,000.00.

174) The QNU submits that given the financial situation of enrolled and registered nurses and midwives, the proposed fine in s.173(e) may result in registered nurses and midwives electing not to defend themselves against charges in the QCAT of unsatisfactory professional; conduct or professional misconduct.

175) For example, presently some of the highest paid nurses in Australia are those working for Queensland Health (“QH”) under enterprise bargaining agreements. The vast majority of QH enrolled nurses receive base annual remuneration of \$45,810. The vast majority of QH registered nurses are employed as Level 1 RNs on base annual remuneration of \$64,496. Level 2 registered nurses, a minority of registered nurses, receive a base annual remuneration of \$70,277.

- 176) The lowest paid nurses are employed by aged care providers under the *Aged Care Award*. Enrolled nurses working under the *Aged Care Award* can earn as little as \$35,882.00, with Level 1 Registered Nurses earning as little as \$38,442.
- 177) It should also be noted that many nurses with families work part-time or casually through nursing agencies and their remuneration is consequently lower.
- 178) If the fine in s.173(1)(e) is enacted, nurses and midwives faced with charges in the responsible tribunal could be faced with monetary penalty orders equivalent to a substantial proportion, if not greater (in the case of part-time and casual workers) than, their yearly remuneration.
- 179) Nurses simply won't defend themselves against matters in a jurisdiction where the fine may financially cripple them or their families. Such a denial to nurses and midwives accessing justice is entirely unacceptable.
- 180) In the QNU's view, a maximum fine of \$10,000.00, or the equivalent in Commonwealth penalty units, is appropriate.

## **Division 7 Professional standards matters**

### **Subdivision 1 Performance assessment**

#### *Section 174 Requirement for performance assessment*

- 181) The QNU agrees with this section, but again suggests the use of the phrase "*believes on reasonable grounds*" rather than the phrase "*reasonably believes*" at the commencement of s.174(1).
- 182) The QNU refers to our submissions on the definition of performance standards and reiterates that these standards must be based on a methodology determined by the National Board.

#### *Section 175 Appointment of assessor to carry out assessment*

- 183) The QNU agrees with this section.

#### *Section 176 Report from assessor*

- 184) The QNU agrees with this section.

#### *Section 177 Copy of report to be given to health practitioner*

- 185) The QNU generally agrees with this section. It is submitted that section 177 should also be amended to provide for the ability to provide written submissions to the Board prior to it making a decision pursuant to s.178 in relation to the assessor's report.
- 186) In this respect a section analogous to s.99 of the Law should be inserted.

#### *Section 178 National Board's decision*

- 187) The QNU does not agree with s.178. In the QNU's view the Board should not be empowered to determine that a health practitioner has engaged in unprofessional conduct, or professional misconduct solely on the basis of the assessor's report.

188) In the QNU's view, a determination that a health practitioner has engaged in unprofessional conduct or professional misconduct should be the sole jurisdiction of the responsible tribunal for the participating jurisdiction.

189) In the QNU's view Section 178 and 179 should be amalgamated as follows:

***"178 National Board's decision and action***

- (1) After considering the assessor's report and the discussions held with the registered health practitioner under section 177(2), the National Board may decide that the practitioner has behaved in a way that constitutes unsatisfactory professional performance. If the National Board decides that the practitioner has behaved in a way that constitutes unsatisfactory professional performance the National Board may:
  - (a) require the practitioner to undertake further education or supervised practice, or*
  - (b) counsel the practitioner or refer the practitioner to another person for counselling, or*
  - (c) accept an undertaking from the practitioner, or*
  - (d) impose a condition on the practitioner's registration, or*
  - (e) refer the practitioner for health management and, if appropriate, a health assessment, or*
  - (f) refer the matter for hearing by a professional standards panel, or*
  - (g) investigate the matter, or*
  - (h) refer the matter, or part of the matter, to the responsible health complaints entity,**
- (2) If, after considering the assessor's report and the discussions held with the registered health practitioner under section 177(2), the National Board reasonably believes that the practitioner may have behaved in a way that constitutes unprofessional conduct or professional misconduct the National Board must refer the matter to:
  - (a) the responsible tribunal for the participating jurisdiction in which the behaviour that formed the subject of the complaint occurred, or*
  - (b) if the behaviour occurred in more than one jurisdiction, the responsible tribunal for the participating jurisdiction in which the practitioner's mailing address is located,**
- (3) After considering the assessor's report and the discussions held with the registered health practitioner under section 177(2), the National Board may decide
  - (a) the practitioner's registration was, or may have been, improperly obtained because the practitioner or someone else gave the National Board that registered the practitioner information or a document that was false or misleading in a material particular, or*
  - (b) the complaint is to be dismissed.**
- (4) If the National Board makes a decision referred to in section 178(3)(a), the Board must decide:
  - (a) to investigate the matter, or*
  - (b) to refer the matter to another entity for investigation, or*
  - (c) to refer the matter for hearing by a professional standards panel.**
- (5) If the National Board decides to impose a condition on the registered health practitioner's registration or to accept an undertaking from the practitioner, the Board may also decide a review period for the condition or undertaking."*

*Section 179 Action that may be taken by National Board at end of proceeding*

190) Please see the QNU response in relation s.178.

**Subdivision 2 Professional standards panels**

*Section 180 Establishment of professional standards panel*

191) The QNU agrees with this section but suggests that a member of the panel should also be an Australia Legal Practitioner given the matters in s.183 or that the panel should have access to "Counsel assisting" or external legal advice in relation to legal issues that may arise during a complaint process.

*Section 181 List of approved persons for appointment to professional standards panels*

192) The QNU agrees with this section.

*Section 182 Notice to be given to registered health practitioner*

193) The QNU agrees with this section.

194) The QNU is also of the view that the professional standards panel must be required to provide to the health practitioner a copy of all documents in the possession of the professional standards panel relating to the complaint. This could be by way of a new section or as an addition to s.182(2) by inserting a new sub-section (3) in words to the following effect:

*“(3) The professional standards panel must send with the notice a copy of all documents in possession of the professional standards panel relating to the complaint.”*

*Section 183 Procedure of professional standards panel*

195) The QNU agrees with this section.

*Section 184 Legal representation*

196) The QNU strongly disagrees with this section.

197) A health practitioner should be entitled to be represented at the professional standards panel. We see no reason why a person should be able to choose to attend the hearing with a lawyer or “*other person*” but it is only the lawyer who is prohibited from appearing on behalf of the health practitioner.

198) The QNU submit that the phrase “other person” should be substituted with the word “agent”.

199) The health practitioner should be able, given the serious nature of the action that may be taken in the event of the negative finding by the panel, be represented in the by a person of their choice without restriction.

200) In the QNU’s view, allowing the practitioner to be legally represented could also save costs by avoiding appellate proceedings, and avoiding panel processes being frustrated by inexperienced “bush lawyers”, or people lacking experience and understanding of the health profession or panel procedure, appearing on behalf of health practitioners.

201) Further, the QNU submits that this section should be amended to include a reference to health practitioners being represented by an industrial organisation.

*Section 185 Panel may proceed in absence of registered health practitioner*

202) The QNU agrees with this section.

*Section 186 Complainant*

203) The QNU agrees with this section.

*Section 187 Hearing not open to the public*

204) The QNU agrees with this section.

*Section 188 Referral to responsible tribunal*

205) The QNU agrees with this section.

206) There also appears to be a typographical error in the second line of s.188(1). Where it reads “*established the Board*” the QNU believes that the section should read “*established the panel*”.

*Section 189 Decision of professional standards panel*

207) The QNU again raises objection to empowering a body other than the responsible tribunal of a participating jurisdiction from making a determination that a health practitioner has engaged in unprofessional conduct or professional misconduct.

208) In the QNU’s view such a serious determination should remain within the purview of a responsible tribunal that has the ability to more thoroughly investigate such alleged conduct and which has the ability to hear the evidence of witness and experts.

209) In our view the professional standards panel should be able to decide the matters in s.189(1)(a), (d) and (e).

210) If the panel believes on reasonable grounds that the health practitioner has engaged in unprofessional conduct or professional misconduct, then the panel should refer that matter to the responsible tribunal for a participating jurisdiction. There should be no determination by the panel.

*Section 190 Action by professional standards panel at end of proceeding*

211) The QNU refers to our comments in relation to s189 in this respect..

*Section 191 Notice to be given to registered health practitioner*

212) The QNU agrees with this section.

**Division 8 Health matters**

**Subdivision 1 Self-referral**

*Section 192 Procedure if registered health practitioner or student informs National Board of impairment*

213) The QNU agrees with this section.

**Subdivision 2 Health assessments**

*Section 193 Requirement for health assessment*

214) The QNU submits that s.193(1) should be amended to replace the phrase “*reasonably believes*” at the commencement of section with the phrase “*believes on reasonable grounds*”.

215) The QNU recommends that s.193(2) be amended to provide a new subsection(f) which provides as follows:

*“(f) the reasons for the National Board’s decision to refer the health practitioner to the health assessment.”*

*Section 194 Appointment of assessor*

216) The QNU agrees with this section.

*Section 195 Report from assessor*

217) The QNU agrees with this section.

*Section 196 Copy of report to be given to health practitioner*

218) The QNU agrees with this section.

*Section 197 Decision of National Board*

219) The QNU does not agree with s.197. In the QNU's view the Board should not be empowered to determine that a health practitioner has engaged in unprofessional conduct or professional misconduct solely on the basis of the assessor's report.

220) In the QNU's view a determination that a health practitioner has engaged in unprofessional conduct or professional conduct should be the sole jurisdiction of the responsible tribunal for the participating jurisdiction.

221) The QNU does not object to the National Board making the decisions provided for in 197(1)(a) & (d). However the determinations provided for in s.197(1)(b) & (c) should be decisions solely in the purview of the responsible tribunal for the participating jurisdiction given the more intensive analysis that this tribunal can engage in relation to a complaint.

*Section 198 Action by National Board at end of proceeding*

222) The QNU agrees with the actions provided for in s.198(1)(a).

223) In relation to the decisions provided for in s.197(1)(b) & (c) the QNU is of the view that matters relating to unprofessional conduct or professional misconduct should be referred to the responsible tribunal for the participating jurisdiction.

*Section 199 Notice to be given to registered health practitioner or student and complainant*

224) The QNU agrees with this section.

**Subdivision 3 Health panels**

*Section 200 Establishment of health panel*

225) The QNU agrees with this section.

*Section 201 List of approved persons for appointment to health panels*

226) The QNU agrees with this section.

*Section 202 Notice to be given to registered health practitioner or student*

227) The QNU is of the view that the health panel must be required to provide to the health practitioner a copy of all documents in the possession of the health panel relating to the complaint. This is important not only from the perspective of affording

the health practitioner procedural fairness but also to allow a health practitioner to be able to properly brief any relevant treating medical practitioner who may be able to provide a report on the health practitioner's behalf.

228) This could be remedied by way of a new section or as an addition to s.202 by inserting a new sub-section (3) in words to the following effect:

*“(3) The health panel must send with the notice a copy of all documents in possession of the professional standards panel relating to the complaint unless the health panel reasonably considers that the documents contains information the health panel considers may, if disclosed to the health practitioner or student, be prejudicial to the health practitioner's or student's physical or mental health or wellbeing, in which case the documents must be sent to a medical practitioner or psychologist nominated by the practitioner or student or the representative nominated under s.204.”*

*Section 203 Procedure of health panel*

229) The QNU agrees with this section.

*Section 204 Legal representation*

230) The QNU agrees with this section. This provision should be inserted in s.184.

*Section 205 Complainant*

231) The QNU agrees with this section.

*Section 206 Hearing not open to public*

232) The QNU agrees with this section.

*Section 207 Referral to responsible tribunal*

233) The QNU agrees with this section.

*Section 208 Decision of health panel*

234) The QNU again raises objection to empowering a body other than the responsible tribunal of a participating jurisdiction from making a determination that a health practitioner has engaged in unprofessional conduct or professional misconduct.

235) In the QNU's view such a serious determination should remain within the purview of a tribunal that has the ability to more thoroughly investigate such alleged conduct and which has the ability to hear the evidence of witness and experts.

236) In our view the health panel should be able to decide the matters in s.208(1)(a) and (d) or in relation to matter of unsatisfactory professional performance.

237) If the health panel believes on reasonable grounds that the health practitioner has engaged in unprofessional conduct or professional misconduct, then the panel should refer that matter to the responsible tribunal for a participating jurisdiction.

*Section 209 Action by health panel at end of proceeding*

238) The QNU refers to its submission in relation to s.208. The QNU does not object to the health panel taking the action particularised in s.209(1)(a) and s.209(2).

*Section 210 Notice to be given to registered health practitioner and complainant*

239) The QNU agrees with this section.

**Division 9 Investigations**

**Subdivision 1 Preliminary**

*Section 211 When investigation may be conducted*

240) The QNU agrees with this section.

*Section 212 Registered health practitioner to be given notice of investigation*

241) The QNU generally agrees with this section, however believes that the National Board should be required to provide updates under s.212(3) on a monthly rather than 3 monthly basis.

242) The monthly updates will in the QNU's view encourage the expeditious resolution of investigations. The cliché "*justice delayed is justice denied*" is pertinent for both complainants and health practitioners in this respect. A requirement for 3 monthly updates could imply that investigators can take a significant time to complete their investigation. This is undesirable. The QNU is of the view that most investigations into individual health practitioners should be able to be finalised within a three month period. Therefore monthly progress updates should be preferred.

243) The QNU has observed the deleterious effect prolonged investigations can have on the physical and emotional well-being of the subject of the investigation. Regular updates as to the progress of the investigation can assist in mitigating somewhat these negative impacts while concomitantly encouraging the investigator to conduct their investigation efficiently and expeditiously.

*Section 213 Investigation to be conducted in timely way*

244) The QNU strongly agrees with this section and refers to our submissions in respect of s.212 in this respect.

245) The QNU also suggests that a s.213(2) be inserted as follows:

*"213(2) If the no action is taken by the investigator within 3 months of being appointed to investigate a complaint, the investigation into the complaint is deemed to have lapsed. A lapsed investigation constitutes a dismissal of the complaint."*

246) The QNU is again concerned that investigations should be carried out in a timely manner. The QNU believes that some temporal limits need to be placed on the duration that a health practitioner can be subject to an investigation.

247) The QNU agrees that investigations need to be undertaken in a timely way and that what is "timely" will vary in relation to each investigation. The QNU is therefore of the view that, in the absence of being able to a sensibly put a limit on the time a person can be investigated it is important that investigators be motivated to conduct their investigations expeditiously and efficiently. This can be achieved by the investigators and the Board having to comply with statutory reporting time frames which encourage action on the investigation, such as the suggested monthly progress reports, and that punish a National Board or investigator's indolence in commencing or

progressing an investigation, for example in cases where the Board or investigator takes no action for an extended period of time such as three months, by lapsing the investigation and having the complaint dismissed.

## **Subdivision 2 Investigators**

### *Section 214 Appointment of investigators*

248) The QNU agrees with this section.

### *Section 215 Identity card*

249) The QNU agrees with this section.

### *Section 216 Display of identity card*

250) The QNU agrees with this section.

## **Subdivision 3 Power to obtain information**

251) The QNU is genuinely concerned with the punitive nature of ss.217-219. It appears to be provisions drafted with the worst possible opinion of health practitioners in mind.

### *Section 217 Powers of investigators*

252) The QNU does not agree with section 217.

253) It is an unusually broad and vague section given the serious powers it gives to an investigator. Section 217 should be deleted.

254) The QNU does not believe that it is necessary to provide investigators with the power to compel a person to attend an interview and answer an investigator's questions. This is a highly intrusive power and the QNU does not believe it is justified by evidence from existing participating jurisdictions in relation to the cooperation of witnesses in investigations.

255) It is not a power which exists under the Nursing Act 1992 presently.

256) In any event, the power should not be applicable to the subject of the investigations regardless of the "*reasonable excuse*" exception provided for in s.218(3).

257) In the QNU's view the power in s.217 needs to be prescribed to accord with investigators jurisdiction in s.211. Therefore we suggest that s.217 be amended as follows:

#### ***"217 Powers of investigators***

*For the purposes of conducting an investigation into a complaint, an investigator may, by written notice given to a person, other than the health practitioner the subject of the complaint, require the person to:*

- (a) give stated information relevant to the complaint to the investigator within a stated reasonable time and in a stated reasonable way, or*
- (b) attend before the investigator at a stated time and a stated place to answer questions or produce documents relevant to the complaint."*

(amendment emphasised)

258) The QNU is also of the view that the written notice that an investigator must provide to a person under s.217 should also specify the following:

- a) the purpose of the notice;
- b) penalties which apply for a failure to comply with the direction in the notice;
- c) particulars of the complaint relevant to the investigator exercise of the power in s.217(a) & (b);
- d) the right of the person to seek legal advice prior to complying with the notice.

*Section 218 Offence for failing to produce information or attend before investigator*

259) The QNU does not agree with s.218(2)(c).

260) The QNU objects to the investigator being given a power to compel a person to answer the investigators questions. In the QNU's view such a power is intrusive and not required by a person investigating a matter under the Law. It is untenable and unjustifiable diminishment of the personal liberties of Australian citizens.

261) The QNU does not believe that there exists an over-riding public policy objective which justifies this proposed degradation of the human rights of citizens who may be employed by, or come in contact with, health services provided by health practitioners.

262) In the QNU's experience, persons asked to provide information or answer questions by an investigator in relation to an investigation into a health practitioner are cooperative. Given this, such powers, particularly backed by coercive penalties, are not required.

263) Further the scope of the exception, or "reasonable excuse", for refusing to provide information, documents or answers in circumstances where a person may incriminate themselves identified by s.218 is not clear.

264) The common law privilege against self-incrimination entitles a person to refuse to answer any question, or produce any document, if the answer or the production of the document (or provision of information) would tend to incriminate that person<sup>7</sup>. The privilege against self-incrimination encompasses three distinct privileges:

- a) a privilege against self-incrimination in criminal matters;
- b) a privilege against self-exposure to a civil or administrative penalty (including any monetary penalty which might be imposed by a court or an administrative authority, but excluding private civil proceedings for damages); and
- c) a privilege against self-exposure to the forfeiture of an existing right

265) In High Court in *Environment Protection Authority v Caltex Refining Co Pty Ltd*<sup>8</sup> ("Caltex") described the privilege as 'a human right which protects personal freedom,

---

<sup>7</sup> *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328, 335

<sup>8</sup> (1993) 178 CLR 477

*privacy and dignity* from the power of the state. The QNU submits that it is fundamental that the Law not in anyway undermine this human right.

266) The provision is unclear as to whether it relate only to matter which may incriminate in a criminal context, whether it also relates to matter which may incriminate a person in relation to a civil penalty or professional disciplinary matter.

267) It is not clear on the present drafting whether it was the drafters' intent to fully codify the privilege. Given this, the QNU is of the view that the privilege should be against incrimination and exposure or liability to a criminal or civil penalty, forfeiture of a right or any other sanction, action or offence under the Law or any other Act.

268) Further, given the standard of proof which applies to substantiating allegations in civil investigations, the balance of probabilities, the QNU agrees that the protection against self-incrimination should apply to matter which "*might*" tend to incriminate a person as appears to presently be the intent of s.218(3).

269) Finally, the QNU submits that attached to the claim of the privilege should be a provision which explicitly provides that a claim of the privilege cannot form the basis for drawing a negative inference as to the "guilt" of the person claiming the privilege by the investigator in coming to his or her findings under s.240(2)(a), or the National Board or the responsible tribunal.

270) The QNU does not believe that the privilege should be available to body corporates.

#### *Section 219 Inspection of documents*

271) The QNU agrees with this section.

#### **Subdivision 4 Power to enter places**

##### *Section 220 Entering places*

272) The QNU agrees with this section.

##### *Section 221 Application for warrant*

273) The QNU agrees with this section.

##### *Section 222 Issue of warrant*

274) The QNU agrees with this section except for s.222(2)(a).

275) The investigator should not be empowered to use force to enter a premise. The investigator in such circumstance should be required to seek assistance from a police officer to assist with execution of the warrant.

##### *Section 223 Application by electronic communication*

276) The QNU agrees with this section.

##### *Section 224 Procedure before entry under warrant*

277) The QNU generally agrees with this section however does not agree that it is justifiable to allow an investigator appointed by a National Board the ability to use force to enter a place under warrant.

278) If a person refuses to comply with a warrant without reasonable excuse they are liable for prosecution under s.226. If the investigator genuinely believes that immediate entry is required to ensure that effective execution of the warrant is not frustrated they should be required to seek assistance from the police.

279) The QNU submits that the investigator should also be required before entering a place to advise the person that a failure to comply with the warrant is an offence unless they have a reasonable excuse.

*Section 225 Powers after entering places*

280) The QNU agrees with this section.

*Section 226 Offences for failing to comply with requirement under section*

281) The QNU agrees with this section.

*Section 227 Seizure of evidence*

282) The QNU agrees with this section.

*Section 228 Securing seized things*

283) The QNU agrees with this section.

*Section 229 Receipt for seized things*

284) The QNU agrees with this section.

*Section 230 Forfeiture of seized thing*

285) The QNU agrees with this section.

*Section 231 Dealing with forfeited things*

286) The QNU agrees with this section.

*Section 232 Return of seized things*

287) The QNU agrees with this section.

*Section 233 Access to seized things*

288) The QNU agrees with this section.

**Subdivision 5 General enforcement matters**

*Section 234 Damage to property*

289) The QNU agrees with this section.

*Section 235 Compensation*

290) The QNU agrees with this section.

*Section 236 False or misleading information*

291) The QNU agrees with this section.

*Section 237 False or misleading documents*

292) The QNU agrees with this section.

*Section 238 Obstructing investigators*

293) The QNU agrees with this section.

*Section 239 Impersonation of investigators*

294) The QNU agrees with this section.

### **Subdivision 6 Procedure after investigation**

*Section 240 Investigator's report about investigation*

295) The QNU agrees with this section.

*Section 241 Agreement with independent assessor about action to be taken*

296) The QNU agrees with s.241(1),(2) & (3). The QNU disagrees with s.241(4). Given the serious ramifications of a finding that a complaint has been substantiated against a health practitioner, the QNU submits that when there is a disagreement between the independent assessor and the National Board, the least serious of the actions proposed should be taken.

*Section 242 Notice to be given to health practitioner and complainant*

297) The QNU generally agrees with this section but submits that in circumstances where the National Board and the independent assessor have agreed in relation to action to be taken against the health practitioner, the health practitioner should be provided with a complete copy of the investigators report.

### **Division 10 Review**

*Section 243 Reviewable decisions*

298) The QNU agrees with this section.

*Section 244 Application for review*

299) The QNU agrees with this section.

*Section 245 Review of reviewable decision*

300) The QNU agrees with this section.

### **Division 11 Appeals**

*Section 246 Appellable decisions*

301) The QNU agrees with this section.

*Section 247 Parties to the proceedings*

302) The QNU agrees with this section.

*Section 248 Costs*

303) The QNU disagrees with this provision.

304) The issue of costs of an appeal should remain the purview of, and be subject to the rules of, the responsible tribunal for a participating jurisdiction.

305) Section 248 as currently drafted can be read as giving the responsible tribunal an unfettered ability to award costs in appeals. This could result in substantial costs orders against nurses and midwives.

306) The proposed Section 248 would also result in nurses and midwives having a substantially less favourable costs regime applying to them than presently exists. For example,

- a) the *Victorian Health Professions Registration Act 2005* does not empower the Victorian Civil and Administrative Tribunal (“VCAT”) to make an order as to the costs of the proceeding against health practitioners, including nurses and midwives<sup>9</sup>.
- b) under the s.166(4) of the *Nursing Act 1992* (QLD) a nurse or midwives’ costs liability is presently capped at 135 penalty units or \$13,500.
- c) the West Australian State Administrative Tribunal cannot make an order for costs against a nurse or midwife in a disciplinary matter<sup>10</sup>.
- d) the ACT Civil and Administrative Tribunal is not empowered to make a costs order against a nurse or midwife<sup>11</sup>.
- e) the Nurses and Midwives Tribunal in New South Wales can only make an order for costs “if it is satisfied that there are special circumstances warranting an award of costs”<sup>12</sup>.

307) Only the Northern Territory and Tasmania jurisdictions provide for their relevant Tribunal to make an award of costs in a disciplinary matter. This is clearly a cost shifting public policy which recognises the limited resources available to regulatory bodies in these two small jurisdictions. However, even the Northern Territory and Tasmanian cost provisions do not provide for an unfettered costs power as proposed by Section 248 of the Law. Both the *Nursing Act 1995* (TAS) and the *Health*

---

<sup>9</sup> s.77 Determinations of VCAT, *Victorian Health Professions Registration Act 2005*;

<sup>10</sup> s.81 Powers of the State Administrative Tribunal on dealing with a disciplinary matter, *Nurses and Midwives Act 2006*;

<sup>11</sup> S.44 Occupational discipline orders, *Health Professions Act 2004*; s.65 Considerations before making orders on application for occupational discipline, *ACT Civil and Administrative Tribunal Act 2008*;

<sup>12</sup> s.64(6) Determinations of the Tribunal, *Nurses and Midwives Act 1991*;

*Practitioners Act 2004* (N.T.) provide for a limited costs power, allowing the Tribunal to award such costs as the “*Tribunal thinks fit*”<sup>13</sup>.

- 308) To the best of the QNU’s knowledge, only one costs order has ever been made in these jurisdictions, in the Northern Territory, in a decision which was appealed and the issues of costs resolved.
- 309) The consequence of this amendment is to substantially increase the potential costs liability for nurses and midwives who decide to defend themselves against “*disciplinary matters*” referred to the responsible tribunal or appeal against appellable decisions. This provision will substantially reduce nurses’ and midwives’ access to justice.
- 310) The proposed Section 248 represents a largely unfettered costs provision. It does not cap costs awards. Depending on the nature, complexity and duration of the hearing, these costs could potentially be in excess of \$100,000.00. This is particularly the case given that health regulators regularly brief Senior Counsel and instruct Solicitors to prosecute nurses and midwives. There is no reason to suggest that the National Boards will not continue to brief external solicitors and Senior Counsel.
- 311) The effect of the proposed s.248 will be to substantially reduce the ability of nurses and midwives to defend themselves against charges brought in the responsible tribunal or appeal appellable decisions. The QNU submits that nurses and midwives, facing the possibility of cost orders many times greater than their annual income, will simply not challenge disciplinary charges referred to the responsible tribunal or appeal appellable decisions because of the possible cost consequences. This has been the QNU’s experience in relation to an unfettered costs power previously held by the Nursing Tribunal of Queensland prior to amendments to the *Nursing Act 1992 (Qld)* in 2003 which capped costs. Under the former provision, nurses rarely challenged charges in the Nursing Tribunal because of the possibility of crippling costs orders. Nurses and midwives rarely appeal decision of the QNC to the District Court of Queensland because of its unfettered costs jurisdiction.
- 312) The other effect of such a potentially harsh costs provision was that prior to the October 2003 amendments, the QNU’s experience was that the Queensland Nursing Council (“QNC”) rarely, if ever, negotiated plea deals with nurses and midwives. Essentially the registrants were faced with the options of pleading guilty to the full particulars of the charges or to go to hearing and face the possibility of being bankrupted by a costs order.
- 313) Following the repeal of the former provision, the QNU noticed an increased willingness on behalf of the QNC to negotiate plea deals. It could be inferred that this was as a consequence of the QNC modifying its prosecution strategy after realising that it could no longer recover all the costs that it spent on a Nursing Tribunal prosecution. The QNC, following the repeal of the former provision started to negotiate a reduction in charges, or the merging of charges, in consideration for an early plea of guilty.
- 314) The QNU submits that given the financial situation of enrolled and registered nurses and midwives, the proposed costs regime will result in registered nurses and

---

<sup>13</sup> s.65(1) Costs and expenses of inquiries, Nursing Act 1995 (TAS); s.66(1) *Health Practitioners Act 2004* (N.T.)

midwives rarely electing to defend themselves against charges in the QCAT of unsatisfactory professional; conduct or professional misconduct.

- 315) As stated above, presently, the highest paid nurses are those working for Queensland Health (“QH”). The vast majority of QH enrolled nurses receives annual remuneration of \$45,810. The vast majority of QH registered nurses are employed as Level 1 RNs on annual remuneration of \$64,496. Level 2 registered nurses, a minority of registered nurses, receive annual remuneration of \$70,277.
- 316) The lowest paid nurses are employed by aged care providers under the *Aged Care Award*. Enrolled nurses working under the *Aged Care Award* can earn as little as \$35,882.00, with Level 1 Registered Nurses earning as little as \$38,442.
- 317) If this cost provision is enacted, nurses and midwives faced with charges in the responsible tribunal or who wish to appeal appellable decisions could be faced with costs orders many times their annual salary if they are unsuccessful.
- 318) Nurse and midwives are not in the same position financially as other health practitioners. For example, based on information that is publicly available, the average base wage for medical practitioners in Queensland in \$180,000<sup>14</sup>.
- 319) If a nurse or midwife cannot repay a costs order then the National Board will commence recovery proceedings which could result in the nurse or midwife losing their home and becoming a bankrupt. The consequential social and family impact of such an order on the nurse or midwife and the nurse or midwife’s family, is grossly disproportionate to the penalty that should be imposed in relation to unsatisfactory professional conduct or professional misconduct. It is a severe punishment which may flow from a jurisdiction which is established to protect the public not punish nurses and midwives.
- 320) It is trite to note that a reason for the ability of Courts to make costs order is that it acts as a disincentive to stop people from engaging in vexatious, trivial or baseless litigation. This reason is not relevant to nurses and midwives who are *compelled* to respond to charges preferred against them by the National Board. The impact of potentially significant costs order will result in nurses and midwives with otherwise good defences, pleading guilty to charges because of the fear of the financial consequences of a costs order on them and their families. As discussed above, it may also result in reluctance on behalf of the National Boards to negotiate pleas. It will also result in nurses and midwives with otherwise meritorious appeals being saddled with unfair and unjustified appellable decisions.
- 321) Nurses and midwives should be entitled to defend themselves against untrue charges. Nurses and midwives should be entitled to challenge unfair appellable decisions. The penalties that flow from a finding that a nurse or midwife has engaged in unprofessional conduct or professional misconduct are very serious; a nurse or midwife could have their registration or enrolment cancelled and be deprived of their ability to earn an income in their chosen profession. The consequences of an adverse finding will follow a nurse or midwife for the remainder of their career.

---

<sup>14</sup> <http://content.mycareer.com.au/salary-centre/healthcare/medical-practitioner/gld>

- 322) These serious consequences should not be compounded by financially ruinous cost orders.
- 323) Charges of unprofessional conduct or professional misconduct are not black and white issues. There is often a significant divergence of opinions as to what conduct constitutes unprofessional conduct or professional misconduct. What may be the minimum level of accepted nursing practice or conduct in a situation for one nurse or midwife may not be that accepted by another nurse or midwife. Allegations of boundary violations are the perfect example of the difficulty of defining what appropriate and inappropriate conduct is.
- 324) The QNU acknowledges that in many instances it is relatively simple to examine the alleged conduct of a nurse or midwife and make a determination that, if proved, the conduct constituted unprofessional conduct or professional misconduct. However, there are many circumstances where such a decision may not be possible or require expert opinion. It is allegations which fall in this grey area which in the QNU's experience are where most disputes exist in relation to charges preferred against nurses in disciplinary tribunals or which may constitute appellable or reviewable decisions. The barrier that the proposed cost provision places on nurses and midwives defending themselves against these prosecutions, or appealing appellable or reviewable decisions, will have the result of not allowing these "grey areas" to be defined by properly informed decisions of the responsible tribunal.
- 325) Further the National Board, being a body tasked with the function in s.49 of the Law should appropriately aim to encourage best practice nursing standards. However, "*best practice*" can and often does diverge from what may be accepted minimum nursing practice. A failure to comply with "*best practice*" guidelines in relation to a particular aspect of nursing care does not necessarily mean a nurse or midwife has engaged in unprofessional conduct. The real danger is that the proposed costs provision may cause nurses to plead guilty to charges of unprofessional conduct (or professional misconduct) brought by the National Board or not appeal a decision, in a grey area, for not engaging in "*best practice*", thereby creating an unrealistically high standard for nursing to professional to achieve.
- 326) This could have the consequence of:
- a) forcing employers to invest substantial funds in retraining nursing staff or improving facilities to ensure that their nursing staff do not breach artificial best practice standards;
  - b) at time when there is a desperate shortage of nurses and midwives, discourage currently non-practicing nurses and midwives from returning to the profession;
  - c) acting as a disincentive for nurses to remain in the profession.
- 327) The risk of an adverse costs order will undoubtedly have more of an affect on the nurse, with very limited financial means, than on the National Board or National Agency, with its multi-million dollar legal budget.

- 328) Another undesirable outcome is that the proposed costs provision could result in matters before the responsible tribunal becoming more technical and formal.
- 329) Costs are a critical element in an individual's ability to have access to justice. Costs are a fundamental barrier to those wishing to pursue litigation or to defend themselves against prosecution.
- 330) The general rule as it related to costs in tribunals, such as the responsible tribunals tasked with functions under the Law, is generally that each party bear their own costs, aside from in very specific or exceptional circumstances: eg s.570 of the *Fair Work Act 2009*.
- 331) It is difficult to fathom how an amendment which will in effect discourage nurses and midwives from defending themselves against allegations of unprofessional conduct and professional misconduct because of the possibility of substantial adverse cost orders enhances openness and accountability of the public administration of justice. The effect of the amendment would be to deny nurses and midwives access to the responsible tribunal.
- 332) The QNU submits that the Law should not make any provision for costs in the responsible tribunal. This should remain a matter for the responsible tribunal.
- 333) Section 248 should be deleted from the Law.

#### *Section 249 Decision*

- 334) The QNU agrees with this provision.

#### Section 250 Relationship with Act establishing responsible tribunal

- 335) The QNU agrees with this provision subject to its above submissions.

### **Division 12 Miscellaneous**

#### *Section 251 Notice from disciplinary body*

- 336) The QNU agrees with this provision.

#### *Section 252 Implementation of decisions*

- 337) The QNU agrees with this provision.

#### *Section 253 National Board to give notice to registered health practitioner's employer*

- 338) The QNU agrees with this provision.

### **Part 9 Finance**

- 339) The QNU supports the provisions that provide for the financial independence of the National Boards.

### **Part 10 Information and Privacy**

### **Division 3 Registers in relation to registered health practitioner**

#### *Section 269 National Registers*

340) The QNU supports the inclusion of separate registers for nurses and midwives.

### **PART 4 SUBMISSIONS IN RELATION TO MATTERS NOT ADDRESSED IN THE DRAFT LEGISLATION**

#### **Practice restrictions for midwifery**

341) The *Nursing Act 1992* (Qld) contains one core area of practice that is restricted to midwives. Section 771 of that *Act* states that a person must not care for a woman in childbirth unless the person is authorised by Council to practise midwifery. The QNC *Scope of Practice Framework for Nurses and Midwives* (2005) restricts certain activities to midwives, including midwifery care planning, and delegation of care activities from a midwifery care plan to the most appropriate person to perform the activity. The QNU strongly urges that practice restrictions for midwifery are included in the draft Law.

342) The QNU supports the APNMF's submissions in relation to professional indemnity insurance and private midwifery practice.

343) The QNU recommends that the draft Law be amended to include midwifery practice restrictions.

#### **Fees**

344) The QNU remains concerned that the introduction of the national scheme will result in unreasonable increases in fees and costs for nurses and midwives. The QNU believes that a cost analysis of the proposed new scheme should be conducted, if not already completed, and that the results of such analysis should be provided to stakeholders as part of consultation processes around draft Bill B.

345) The QNU recommends that expected costs associated with introduction of the national registration scheme, and anticipated fees for each of the regulated professions, be published as part of the consultation processes around Bill B.

#### *Section 282 Proceedings for offences*

346) The QNU is of the view that s.282 should be amended to have a provision analogous to the present s.145(1A) of the *Nursing Act 1992* (Qld). This will encourage the expeditious prosecution of offences under the Act.

347) The QNU recommends that the draft Law include a section similar to the *Nursing Act 1992* (Qld) section 145(1A), which provides that:

*"A proceeding for an offence against the Law must start—  
(a) within 1 year after the commission of the offence; or*

*(b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence."*

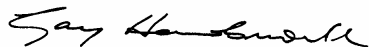
### **Unlicensed health care workers**

348) The number of unlicensed health care workers in the health and aged care systems is growing at an exponential rate that has the potential and increasingly real likelihood of impacting on the quality and safety of care provided to the community through these systems. The QNU believes that currently unlicensed health care workers (howsoever titled) should be regulated. While this group of workers is not included in the proposed national registration and accreditation scheme for health professions, the QNU believes that currently unlicensed health workers should be considered a priority for inclusion in the national system at the earliest possible time.

### **Conclusion**

349) The QNU will be pleased to participate in further discussions about the recommendations contained in this submission.

Yours Faithfully,



**Gay Hawksworth**  
**State Secretary**  
**Queensland Nurses' Union of Employees**