



australian
nursing federation

Submission to Consultation Paper
'Proposed Registration Arrangements'

Issues that will be covered in the second stage to be
introduced in the Queensland Parliament

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Introduction

The Australian Nursing Federation (ANF) was established in 1924. The ANF is the national union for nurses and midwives, with Branches in each State and Territory of Australia.

The ANF is also the largest professional and industrial organisation in Australia, with a membership of over 170,000 nurses and midwives, employed in a wide range of enterprises in urban, rural and remote locations in both the public and private sectors. The ANF's core business is the industrial and professional representation of our members and of the industry of nursing and midwifery.

The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veteran's affairs, education, training, occupational health and safety, industrial relations, immigration, foreign affairs and law reform.

We refer to your paper of 19 September 2008 inviting comments on the 'Proposed Registration Arrangements' to be submitted to the Practitioner Regulation Subcommittee by Monday 3 November, 2008. The ANF appreciates the extension of time given for completion of the submission.

The nursing and midwifery professions continue their strong support for the establishment and implementation of a national regulation and accreditation scheme, ensuring protection of the public and maintaining the highest standards of nursing and midwifery services through a transparent and well designed model.

The eight state and territory Branches have reached a consensus view in relation to the matters raised in your correspondence and we are pleased to provide the following comments. The numbering of our submission reflects that of your consultation paper.

2 Principles and approach

2.1 The ANF supports the proposal as set out in the consultation paper.

3 Regulated Professions

Table 1 Boards, Registers and divisions of registers

BOARD	TITLE OF REGISTER	DIVISIONS OF REGISTER
Nursing and Midwifery Board of Australia	Register of Nurses	Registered nurses Enrolled nurses
	Register of Midwives	

The issue of whether a single register exists for both nurses and midwives or whether separate registers are advisable is not as clear cut as it sounds.

Midwives who have general nursing training and postgraduate qualifications in midwifery, practise over two clinical areas *not* solely in maternity services. Maternal

and Child Health nurses in Victoria for example are required to have both general and midwifery qualifications and nurses who work in rural and remote areas are usually required to work across many different clinical areas, operating both as a midwife and a nurse.

We are also concerned that separating the registers in their entirety could limit the opportunities that midwives currently take up to return to nursing practise through either refresher or re-entry programs, or vice versa for nurses who would like to recommence using their midwifery skills after a break.

The ANF is also concerned that separating the registers could lead to a narrowing of the eligibility criteria for nurses to be endorsed as midwives, disadvantaging many people who work across different clinical areas.

Therefore the ANF supports a register for nurses and a register for midwives but only subject to the following:

- a) Dual registration is possible allowing a single person to appear on both registers;
- b) A single fee is applied for dual registration therefore a nurse having dual registration pays the same fees as a person appearing on one register;
- c) In the event that a nurse or midwife who is eligible for dual registration, but does not take up this option for a period of time, she or he is not excluded from re-registering on either register, subject to refresher/re-entry requirements; and
- d) The eligibility criteria to practice as a midwife at the time of transition to national registration is not so narrow as to prevent nurses currently endorsed as midwives to register on the midwife register.

4 Initial Registration

- 4.1.1 The ANF concurs with this proposal with the addition of a 4th dot point:
 - Accompanied by the fee set or prescribed by regulation for the relevant profession.
- 4.2.1 The ANF concurs with points (a) (b) (c) (d) and (f).

With respect to point (e), we believe that evidence of recency of practice should be reliant upon demonstration of proficiency and competence rather than a mandatory time.

Nursing and midwifery is predominantly comprised of women. A position that requires registrants to demonstrate recent practice after two years absence would disadvantage nurses and midwives given issues such as maternity leave and child rearing. A consequence of such action may discourage nurses returning to the workforce following periods of leave and lead to increasing workforce shortages.

If however, it is deemed necessary to have a prescribed time then the ANF would support **no less than 5 years**.

In respect to part (g) the ANF is of the view the proposal should read:
(g) any other matter as prescribed by regulation.

The legislation should ultimately attempt to make clear the types of information required, therefore avoiding future conflict between registrants and the national board as to whether information is 'reasonably required'.

- 4.3.1 The ANF does not support the mandatory requirement for criminal history checks, however, there is support for option 4 with the addition of an annual self declaration being signed by the nurse upon annual renewal. The ANF is also of the view the Criminal Records Act 1991 should apply to the criminal history requirements under the Scheme.

5 Qualification for registration

- 5.1 The ANF supports the proposal in the consultation paper with one additional provision:
- An approved course of study at an approved institution conducted **by an approved education provider.**
- 5.2 The ANF agrees with the proposal but recommends replacing the word 'training' throughout the document with the contemporary word 'education'.

6 Registration decisions

- 6.1.1 The ANF agrees with the proposal with an addition of:
(a) definition of the scope of the investigation.

The ANF is of the view the scope and purpose of the investigatory powers must be further defined.

- 6.2.1 (a) iii. The ANF questions the need for the inclusion of a lawyer on a committee established to deal with matters in relation to registration. Generally the inclusion of a lawyer would be to ensure that the rules of procedural fairness are followed in making registration decisions. It is the view of the ANF this matter can be adequately dealt with by proper education and training of committee members and clear procedures. The ANF believes it is more desirable to have representatives of the professions on such committees.

(a) v. The ANF would support this proposal being amended to read:

- A majority of members being registrants from the profession but no more than two thirds.

- 6.2.2 The ANF supports the proposal with an additional power to remove a registrants name from the register in the event of their death.

- 6.3.1 The issue of professional indemnity insurance (PII) is one which in our estimation requires careful consideration.

Firstly, most nurses and midwives are covered by the PII of their employers as a consequence of the principles of vicarious liability. A problem arises in relation to this proposal with respect of independent contractors, sole traders, partnerships and those engaged through trusts or corporations. A compulsory requirement that registrants have PII could result in independent midwives being unable to be registered by the national board. Similarly, the experience of the state Branches of the ANF that provide members with PII is that nurses and midwives who work as independent contractors, sole traders, in partnership etc may have significant difficulties obtaining insurance cover. The requirements that registrants have PII must be very carefully thought through to ensure that the introduction of the scheme does not result in an immediate exodus of nurses from the profession because of their inability to obtain PII.

- 6.3.2 The ANF is likely to support the proposition where there is some scope to ensure a variety of methods (including the protection afforded by vicarious liability principles) might be employed to overcome the issues raised.

- 6.4.1 The ANF agrees with the following parts of the proposition (a), (e), (f), (h), (i) and (j).

However, (b) the ANF would like included a definition of 'character' and as is the case already in nursing and midwifery some reference to being a 'fit and proper' person.

(c) should be amended to read 'the applicant is considered by the board to be unfit to practice because of impairment due to drug or alcohol abuse or physical or mental health issues'.

(d) the ANF is of the view the basis for refusal to grant registration is far too broad. The refusal should only be in circumstances where the applicant has been convicted of an indictable offence under state or commonwealth law, or an offence under equivalent foreign law. We also believe that the Criminals Records Act 1991 should apply to criminal history requirements under the Scheme and that present exemptions to the operation of this legislation are sufficient to protect the public.

(g) states that 'insufficient recent practice' will be a ground upon which a Board may refuse to grant registration. Whilst a precise time period is yet to be determined by the Board, two (2) and five (5) years are mentioned. It is our position that these time periods are arbitrary. There is no evidence that supports a prescribed time frame. Consideration for an application of registration should be based on meeting competencies relevant to the profession and to the area in which the practitioner practises or proposes to practise and other Board requirements for registration, such as 'fit and

proper', medical fitness and English language proficiency (for those from a non English speaking background). It is our position that the Board ought to be satisfied by the self-declaration process combined with the capacity to make further enquiries, as considered necessary in the circumstances. See part 4.2.1 (e) of this submission.

(k) the ANF would also add an inclusion at point (k) - the applicant has an inappropriate qualification/s.

6.4.2 The ANF agrees with the proposition with the addition that the Board has the power also to 'reinstate' registration.

6.5.1 The ANF agrees with the proposition with the addition that it must have strict guidelines in place to ensure timeliness of notification. The ANF also submits that an applicant must be provided with complete copies of all material considered by the Board in deciding to refuse the application for registration. For example, if the Board is in receipt of a complaint from a person about the applicant which causes the Board to decide to refuse the applicants registration, a complete copy of this complaint must be provided to the applicant.

6.5.2 The ANF generally agrees with the proposition. However, we are concerned that notification of the decision to refuse an application must be made to the applicant within seven days of the decision being made. The basis for this submission is registration is a condition of employment. If registration is refused, the applicant's contract of employment will be frustrated and therefore terminated. The financial burden of the termination on applicants, or alternatively the applicants inability to obtain employment, is significant. The process of notification should therefore be expeditious to reduce these financial consequences.

6.6.1 The ANF agrees with this proposition with the addition of:
(e) decision to vary or revoke conditions.

7 Types of registration granted

7.1 Table 1. The ANF understands from discussion with the project team there may be some revision to this table, however, there are a range of issues we would seek to change.

7.1 Type of registration-general. The word general has historical meanings within nursing and we have a view that either the word is changed or a clear definition is included to ensure registrants are aware of the intention.

7.2 Type of registration-specific. The ANF suggests the use of the term is too closely aligned with specialist which clearly is not the intention and therefore perhaps *limited or restricted* would better describe the class.

Within this group there are 2 further issues that the ANF seeks to have removed.

(b) area of need; rural or remote areas are likely to constitute 'areas of need'. It is these areas that are less likely to provide practitioners with professional support and supervision required by a practitioner who does not qualify for 'general' (unrestricted) registration. As such, it is inappropriate for both the practitioner and the public for a practitioner who does not qualify for general registration to be placed in these areas. Areas of need are most often the very areas that require practitioners who do not require additional support or supervision and therefore qualify for unrestricted ('general') registration. It is unclear how an applicant who does not hold approved qualifications could be registered 'in the public interest'. The purpose of regulation in the public interest is to ensure that those registered hold the requisite qualifications, skills and experience which result in eligibility for registration to ensure adequate protection of the public.

(h) temporary registration in the public interest; the ANF can see no reason to include this category. Furthermore if one is truly regulating in the public interest how is it possible to hold registration without an approved qualification. The ANF would seek to have this class removed.

7.3.1 Type of registration-Non practicing; the ANF believes non practicing should be defined.

7.4 Type of registration-Student; the ANF would seek inclusion of the following:

- Applicants who are enrolled in an approved course of study or undertaking approved supervised clinical training *and education or who are participating in a nursing employee student model.*

7.4.1 The ANF does not, at this stage, support mandatory registration for students of nursing and midwifery.

However, the ANF does support providing Boards with the discretion to include or not include a student category of registration for those professions requiring such registration at this time and recognises that regulation of students of nursing and midwifery may be beneficial in the future. This would be once the standards and conditions for registration of students had been determined in consultation with the professions.

Currently, approved education providers are responsible for overseeing and ensuring the safety of student practice while on clinical placement. However, many students, both to obtain an income and to increase their exposure to clinical environments, work as unlicensed care workers while studying.

As ANF strongly supports regulation of all unlicensed workers dealing with and caring for individuals in all variety of care situations, particularly when many of those individuals receiving care include the frail and vulnerable, we can

foresee a situation where we would support regulation of students and others working in these situations once the standards for regulation of these workers had been established.

- 7.5 The ANF seeks clarification as to whether this proposal refers to the registration of natural persons.

8 Authorities conferred by registration

- 8.1 The ANF supports the included proposals for nursing and midwifery with respect to protection of titles

9 Renewal of registration and continuing competence

- 9.1 The ANF believes annual self-declaration at the time of renewal is an appropriate method by which a nurse or midwife can establish her recency of practice, continuing professional development and continuing competence.

- 9.3.1 The ANF seeks at point (c) either its complete removal or reference to professional practice claims rather than medical negligence.

- 9.4.1 Is supported by the ANF.

- 9.4.2 The ANF believes that the guidelines should be developed in conjunction with the professions and should be just that, guidelines for the professions and the community. They should not be mandatory and should not be used during disciplinary hearings.

It should also be clear that failure by a registrant to comply with non mandatory guidelines is not, in the absence of unsatisfactory professional conduct, a basis for disciplinary action.

- 9.4.3 Is supported by the ANF with the amendment at part (d) any other matter prescribed by legislation.

10 Endorsement of registration

- 10.1 The ANF agrees with the proposal and recommends the national Board has the capacity to endorse specialties and/or specialist nurses providing it is in the public interest. However, we also note the only reference to specialist endorsement and associated protection of professional title relates to Nurse Practitioners. It is our position that specialist recognition/endorsement processes are an appropriate mechanism to achieve this recognition and protection.

We would support the following categories of nurse to be included in specialist endorsement as recognised as a speciality:

- Mental Health Nurses;
- Mothercraft nurses;
- Child health nurses;
- Rural and remote practice;

- Immunisation;
- Sexual health; and
- Enrolled nurse medication endorsement.

10.2.1 The ANF agrees with the proposal.

10.3.1 The ANF agrees with the proposal.

11 Other matters

11.2.2 The ANF supports this proposal.

11.2.4 The ANF supports the alternative option.

11.2.5 The ANF supports the alternative option.

11.3.1 The ANF supports this option.

11.4.1 The proposal refers to a time-limitation period of two years on re-application to the register following a lapse of registration. We consider that this time-frame has no logical foundation. We support the principle that a nurse or midwife should be eligible for registration on the basis that they meet the accepted competency and other Board requirements, as determined by the Board in the public interest, in the context of the area in which the practitioner proposes to practice. The ANF supports mechanisms that recognise a nurse or midwife may have acquired contemporary experience and skills despite having an 'older qualification'.

It is our position that the Board ought to be satisfied by the self-declaration process combined with the capacity to make further enquiries, as considered necessary in the circumstances.

12 Transition arrangements

12.1 The ANF agrees with the proposal with the addition of a 'savings clause' to ensure that on transition any nurse or midwife on a existing register was deemed to be registered until such time as they appeared on an equivalent register at the national level. This is to protect any nurse who may get 'lost' during the transition.

The ANF is pleased to offer this submission and again recognises the significant work of the project team.

We thank you for taking the time to consider our views.