



Submission to Discussion Paper Mandatory reporting under the Health Practitioner Regulation National Law

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*The industrial and
professional organisation
for Nurses, Midwives and
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in Australia*

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Introduction

Established in 1924, the Australian Nursing and Midwifery Federation (ANMF) is the largest professional and industrial organisation in Australia for nurses, midwives and assistants in nursing, with Branches in each State and Territory of Australia. The core business of the ANMF is the professional and industrial representation of our members and the professions of nursing and midwifery.

With a membership which now stands at over 267,000 nurses, midwives and assistants in nursing, our members are employed across all urban, rural and remote locations, in both the public and private health and aged care sectors.

The ANMF takes a leadership role for the nursing and midwifery professions by participating in the development of policy relating to: nursing and midwifery practice, professionalism, regulation, education, training, workforce, and socio-economic welfare; health and aged care, community services, veterans' affairs, workplace health and safety, industrial relations, social justice, human rights, immigration, foreign affairs and law reform.

As the largest professional organisation for nurses and midwives in Australia, the ANMF has, on behalf of our members, a genuine interest in, and concern for, matters relating to the regulation and practice of registered health practitioners. The ANMF has been a long-standing supporter of the move to the National Registration and Accreditation Scheme (NRAS) for all health professions in Australia. In providing a national regulation process, NRAS has enabled consistency of registration standards and accreditation processes for the nursing and midwifery professions.

Since the implementation of the NRAS on 1 July 2010, the ANMF has continued to support this scheme, administered by the Australian Health Practitioner Regulation Agency (AHPRA). This support is due to our contention that there are significant advantages provided by NRAS for facilitating safe, competent care to the Australian public.

In relation to nurses and midwives, the ANMF considers the implementation of NRAS for the health professions, has having a significant and positive impact on our two professions – nursing and midwifery. The overriding aim of this national scheme is to protect the public by introducing consistency, and having a shared understanding of terminology, across the country in relation to regulation of health professionals. The intention to simplify processes and terminology is essential not only for the health professionals themselves, but also, and critically, to reduce confusion for consumers of health and aged care services about the codes, guidelines and standards applying to health professionals.

Given our on-going commitment to NRAS, the ANMF has an abiding interest in ensuring mandatory reporting under the Health Practitioner Regulation National Law is nationally consistent and provides for a fair and equitable regulatory environment for health professionals, whilst delivering its primary function of public protection.

The ANMFs position on the discussion paper- Mandatory reporting under the Health Practitioner Regulation National Law and any proposed changes to Mandatory reporting is based on the following essential principles:

- Nurses and midwives, like the rest of the population, may experience at times, issues with mental health, substance abuse or periods in their life where they require support through a difficult time. The public are protected when practitioners, including nurses and midwives, feel they are able to seek and access support when required. If nurses and midwives fear retribution for seeking help then they will potentially continue working without accessing appropriate support and subsequently the benefits of early intervention will not be achieved.
- Nurses and midwives have the right, like the rest of the Australian population, to access health care when required without fear of retribution.

- The National Law needs to be consistent across all states and territories to reduce confusion for practitioners and consumers.
- The current mandatory reporting requirements under the National Law in states and territories other than Western Australia are difficult to understand and are currently not being implemented as they were intended.
- All practitioners, including nurses and midwives, require education and further information to enable them to better understand the current and any new mandatory reporting requirements from the perspective of a treating practitioner and a practitioner accessing support.
- Data needs to be collected and analysed in one central location to inform future decisions on changes to the National Law.
- It is essential that nurses and midwives have access to a confidential health program run and delivered by nurses and midwives. The Nursing and Midwifery Health Program Victoria (NMHPV) provides an excellent evidence based model that has good outcomes for nurses and midwives who require their care. It is our understanding the NMHPV support option 2.

Which option would provide the optimal nationally consistent approach to mandatory reporting that both protects the public and supports practitioners to seek treatment for their health conditions as soon as possible?

The ANMF assert that the only option that will provide public safety and national consistency is **option 2**.

With over 267,000 members across the country, we provide support and advice for our members experiencing difficult periods in their lives. We provide the same support and advice to nurses and midwives who are subject to a mandatory notification. It is our experience, nurses and midwives are less likely to access support and treatment if they fear mandatory reporting from their treating practitioner. It is clear to the ANMF that if a treating practitioner is obligated under the National

Law to report notifiable conduct for a nurse or midwife, this is one more barrier that will prevent them accessing the required support and treatment.

As health practitioners, we understand the complexity of the situation for those dealing with a potential impairment. Facing these situations, nurses and midwives need to clearly understand how and where they can access treatment to enable them to get early support and to ultimately keep the public safe. It is essential that nurses and midwives can access support and treatment from their preferred treating practitioner without fear of retribution. They need to be able to freely disclose all relevant information to the treating practitioner.

The ANMF are not alone in our support for option 2, the model which currently applies in Western Australia. Both the independent review of the National Registration and Accreditation Scheme for health professionsⁱ and the 2011 Senate Inquiryⁱⁱ recommended this model. This option makes sense and is clear. The Western Australian exemption has been in place since 2010 with no discernible difference in public protection. However, the benefit for nurses and midwives working in Western Australia is that they experience one less barrier to help when they need it.

As we have previously highlighted national consistency is important under the National Law to reduce confusion for practitioners and consumers. Western Australia have a functional exemption model for mandatory reporting for treating practitioners and it is supported. It is unreasonable and very unlikely that Western Australia would consider changing their model when this is the case. Therefore, it is important for national consistency that other jurisdictions change to this model. It is established, reasonable and ultimately reduces barriers for nurses and midwives to access support and treatment.

The evidence currently available in relation to mandatory reporting for notifiable conduct is limited. We believe it is important that with the benefit of a nationally

consistent approach it is essential that data is collected, analysed and published more effectively by one central body, ideally by AHPRA.

One of the largest studies completed in 2016, outlines that the number of mandatory reports by treating practitioners is small. Reports are more often received from a practitioner who is not the person's usual practitioner.ⁱⁱⁱ The ANMF suggest that the current mandatory reporting requirements for the treating practitioners in jurisdictions other than Western Australia are not being implemented as they were intended. Treating practitioners are not clear on the reporting threshold and require further education and advice.^{iv} It is essential that the National Law is clear and easy to understand for practitioners to ensure public safety.

The current requirements in all jurisdictions other than Western Australia are not clear, they are not being implemented as they were intended, and do not provide an extra level of public safety. What they do is, place yet another barrier for registered health practitioners to access the support and treatment they need in an already complex situation.

Should any changes be made to the preferred option or are there other options not considered here?

It is essential that option 2, provides clear wording that the treating practitioner does not also need to report past conduct issues.

Should there be any changes to the mandatory reporting obligations in respect to students?

There should not be a requirement for a mandatory report from treating practitioners in relation to students.

Conclusion

Thank you for the opportunity to provide a submission to this discussion paper- Mandatory reporting under the Health Practitioner Regulation National Law. The ANMF strongly support option 2 to ensure health practitioners seek support and early intervention from the appropriate treating practitioner when they need it.

ⁱ Final Report, Independent Review of the National Registration and Accreditation Scheme for health professions, page 37, <http://www.coaghealthcouncil.gov.au/Publications/Reports/ArtMID/514/ArticleID/68/The-Independent-Review-of-the-National-Registration-and-Accreditation-Scheme-for-health-professionals>

ⁱⁱ The administration of health practitioner registration by the Australian Health Practitioner Regulation Agency (AHPRA), Finance and Public Administration References Committee, recommendation 10, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2010-13/healthpractitionerregistration/report/index

ⁱⁱⁱ Bismark, M.M, Spittal, M.J., Studdert, D.M. (2016) Reporting of health practitioners by their treating practitioner under Australia's national mandatory reporting law. The Medical Journal of Australia, vol 204.

^{iv} Bismark, M.M., Morris, J.M and Clarke, C. (2014) Mandatory reporting of impaired medical practitioners: protecting patients, supporting practitioners. Internal Medical Journal, vol 44, issue 12a.