

Australian Nursing and Midwifery Federation submission to the

**NURSING AND
MIDWIFERY BOARD OF
AUSTRALIA PUBLIC
CONSULTATION ON THE
PROPOSED REVISED
REGISTRATION
STANDARD: RECENCY
OF PRACTICE**

31 AUGUST 2020



Australian
Nursing &
Midwifery
Federation



INTRODUCTION

The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 295,000 nurses, midwives and carers across the country.

Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF welcomes the opportunity to provide feedback to the Nursing and Midwifery Board of Australia's (NMBA) public consultation on the proposed revised *Registration Standard: Recency of Practice*. The NMBA objective for this review to ensure the registration standard is based on the best available evidence and is as clear as possible to registrants is supported by the ANMF.



GENERAL COMMENTS

The following general comments are made for the consideration of the NMBA regarding the proposed revised *Registration Standard: Recency of Practice*:

1. It is important that the NMBA finds the balance between the regulation requirements of protecting the public and the accessibility of pathways leading to registration to assist the supply and retention of the nursing and midwifery workforce.
2. The ANMF identifies that the current requirement of 450 practice hours in five years in the recency of practice registration standard is at a level that has shown nurses and midwives are able to maintain appropriate connection with the professions. The last decade of data has identified that 450 hours is an adequate expectation of practice required over a five year period for nurses and midwives as there is no evidence to suggest that the current requirement presents a risk to the public.
3. One clear criterion of 450 practice hours over five years is supported by the ANMF. This affords nurses and midwives the flexibility to individually identify where they can practice the minimum 450 hours over the five year period to remain connected with the professions. This flexibility is conducive to enabling nurses and midwives to manage both their personal life and connection with the professions.
4. Access to re-entry programs or a period of supervised practice, is of significant concern. ANMF members across the country have experienced ongoing difficulties in meeting the requirements of these pathways. There are very few re-entry programs approved by the NMBA and many states and territories do not have any such approved programs. There are also approved re-entry programs that are currently not taking students. Likewise, accessing supervised practice remains significantly difficult, as many employers will not employ an applicant for a period of supervised practice for a number of reasons, including that the NMBA requirements are burdensome for employers. Additionally, the ANMF is aware that many health facilities will not employ practitioners with conditions on their registration, or those with provisional registration. The ANMF contends that the NMBA has an obligation, and must make a commitment, to ensure those applicants seeking to return to the nursing and midwifery professions have accessible and equitable pathways to re-enter the register.
5. The ANMF has never supported the rigid adherence to a cut off period for applicants requesting to re-enter the register after ten years of lapsed nursing and midwifery practice. We maintain that many of these applicants should not be required to complete another NMBA approved undergraduate program of study leading to registration. We are unaware of any evidence that would give credence to this approach and have previously requested that the NMBA exercise discretion for applicants who have been absent from the register/ practice for ten years or more. These applicants require individual assessment regarding the appropriate pathway for re-entry which could include an individual independent performance assessment, not dissimilar to that now being used for internationally qualified nurses and midwives (IQNM's).
6. It is essential that the re-entry guideline and any future factsheets are consistent with the *Registration standard: Recency of Practice*. Inconsistencies in the past have created confusion and concern.



Questions for consideration

1. Is the content and structure of the proposed revised Registration standard: Recency of practice and Guidelines: Recency of practice clear and relevant?

The content and structure of the proposed revised *Registration standard: Recency of practice* and guidelines are unclear and create significant confusion regarding the criteria of practice hours required for recency of practice for nurses and midwives. The suggested premise for the proposed change is to create more flexibility for nurses and midwives but the proposed change has resulted in confusion, inequitable criteria and an unwarranted addition of 300 hours of practice required in a five year period. The ANMF oppose these proposed changes and maintains that the current criteria for practice hours must remain the same.

2. Do you support the NMBAs more flexible approach to incremental recency of practice hours and timeframes? Please explain your answer.

The ANMF does not support the NMBA's supposedly more flexible approach to incremental recency of practice hours and timeframes proposed in the draft registration standard. This proposed change is not a more flexible approach for nurses and midwives as it increases the regulatory burden without any supportive evidence. The proposed incremental criteria have actually reduced the flexibility for nurses and midwives as the requirement for practice hours in a five year period has increased from 450 hours to 750 hours. An increase in 300 hours, without any evidence to suggest that there is an issue with nurses and midwives maintaining connection with their professions with the current requirement of 450 hours in a five year period, is unwarranted. It is unclear why the NMBA would suggest and attempt to convince stakeholders that this change is more flexible when it simply is not.

The presumption that the proposed revised registration standard will offer a more flexible approach does not demonstrate an understanding of how nurses and midwives are employed, does not acknowledge the nuances of the issues which arise and, in particular, the potential for the proposed standard to discriminate on the basis of gender, pregnancy, breastfeeding and family and/or parental/carer responsibilities.

Indirect Discrimination

In accordance with our legal advice, the ANMF contends that the proposed standard must comply with the anti-discrimination laws applicable in each jurisdiction where the proposed standard will operate¹. Qualifying bodies are subject to anti-discrimination laws².

The ANMF considers that the proposed standard will result in indirect discrimination, in breach of anti-discrimination laws. Although the elements of indirect discrimination vary from jurisdiction to jurisdiction, the essential features are the imposition of an unreasonable requirement, condition or practice, which disadvantages a vulnerable, protected category of person³.

The proposed standard constitutes an unreasonable requirement, condition or practice which disadvantages protected classes of persons on the basis of gender, pregnancy, breastfeeding and family and/or parental/carer responsibilities, in breach of anti-discrimination laws.



Building on one of the concerns raised in the ANMF's response to the preliminary consultation⁴, a recurring problem is the standard of research and evidence proffered in support of the changes set out in the proposed standard. The ANMF is troubled by what seems to be a lack of attention to rigorous and critical analysis, in circumstances where women's lives stand to be adversely affected.

The ANMF's observation, over many years, of the practical operation of the current standard is that 450 hours in five years is generally achievable, making allowances for the exigencies of pregnancy, child care, breastfeeding and associated imposts on the time and capacity of women attempting to renew their registration, after a period of absence related to maternity leave or associated parental/carer duties. The hurdles facing women in such situations is well known, and highlighted in the Australian Human Rights Commission's report: *Supporting Working Parents: Pregnancy and Return to Work National Review Report* (2014).

In the present context, returning to practice is challenged with additional difficulty, due to lack of re-entry programs or access to supervised practice. As noted above and in the preliminary consultation provided by the ANMF:

*'Access to re-entry programs or a period of supervised practice, is of significant concern. ANMF members across the country have experienced difficulties in accessing these pathways. There are very few re-entry programs approved by the NMBA and many states and territories do not have any such approved programs. Likewise, accessing supervised practice remains difficult, as many employers will not employ an applicant for a period of supervised practice for a number of reasons, including that the NMBA requirements are burdensome for employers. The ANMF contends that the NMBA has an obligation and must make a commitment to ensure those applicants wanting to return to the nursing and midwifery professions have accessible and equitable pathways to re-enter the register.'*⁵

Against this background, it is disappointing that the proposed standard incorporates a net subtraction from, and erosion of, flexibility and benefits for women. The problem is common to all the stages of re-entry under the proposed standard but is especially problematic for women who avail themselves of their legal right to take maternity leave (which could extend to 2 years). They would face a challenging new regime. An increase of almost 67% in minimum hours, unsupported by evidence of risk to the community or other valid reason for change, is inexplicable. The disadvantage is exacerbated if, as is often the case, a woman chooses to have another child, close to the time of the birth of the first child, within the five year period. The 'Examples' Chart in the draft Guidelines⁶ suggests an unfamiliarity with the needs of women in the categories described above and is not tailored to the practicalities of their lived experience.

The proposed standard would also inevitably place a much greater burden on women who are attempting to return to work after maternity leave, in circumstances where a balance between work and family commitments is difficult to achieve. So embedded is the problem that judicial notice has been taken of the connection between gender and family responsibilities⁷.

The proposed standard would have a negative, disparate and discriminatory impact on women, with no material benefit. It would constitute indirect discrimination, under anti-discrimination laws applying in each of the jurisdictions in which AHPRA and the NMBA operate.



It is also pertinent to note that, under the *Equal Opportunity Act 2010* (Vic), duty holders, such as AHPRA and the NMBA, have a positive obligation to take reasonable and proportionate measures to eliminate discrimination as far as possible⁸. One would expect a similar standard to be adopted in all jurisdictions in which AHPRA and the NMBA operate, as a matter of best practice and risk reduction. The ANMF notes, in this connection, that the *Health Practitioner Regulation National Law*⁹ (the National Law) promotes transparency, accountability and fairness in the setting of registration and renewal standards¹⁰. Further, under its Regulatory Principles, AHPRA is committed (among other things) to '*identify risks... assess the likelihood and possible consequences of the risks and respond in ways which are proportionate and manage risks*', including in '*all regulatory decision making, including in the development of standards, policies, codes and guidelines*.'

Lack of supporting evidence

From the perspective of indirect discrimination, the unreasonableness of the proposed condition, requirement or practice set by the proposed standard is exemplified by the lack of underpinning evidence demonstrating risk, or any need for change. The ANMF has already expressed concerns about the absence of evidence in this context. In its response to the preliminary consultation, the ANMF stated:

"The ANMF supports retaining the current requirements of 450 hours in the past five years. There is no direct evidence that supports the definitive number of practice hours in a period of time that leads to a competent practitioner. There is also no evidence to suggest that the current requirement of 450 hours in the past five years presents a risk to the public. This requirement has not resulted in significant notifications suggesting nurses and midwives are not meeting the relevant NMBA standards for practice."

Although the Public Consultation Paper states that:

'The NMBA is reviewing the Registration standard: Recency of practice (the current registration standard) to ensure that it is based on the best available evidence, meets the objectives of the National Law and is as clear as possible'¹¹ details of such evidence are not apparent in the Public Consultation Paper.

This is also particularly difficult to understand because, as recently as 30 October 2015, the NMBA itself strongly resisted any change to the '450 hours in five years' Recency of Practice standard. NMBA's 30 October 2015 *Consultation Report on Recency of Practice*, stated:

'The Nursing and Midwifery Board of Australia (NMBA) considered feedback on their existing RoP requirements for 450 hours in five years and whether this should be reduced to three years in line with the approach taken by other National Boards. On balance, the NMBA considered that the existing requirements should remain as there have been no regulatory risks identified with this requirement and no issues raised about practitioners returning to practice following an absence of up to five years.

It is not clear why the NMBA's position has now changed. The NMBA has not provided any evidence, post-dating the 30 October 2015 Report, identifying any regulatory risks associated with the current requirement or any issues raised about practitioners returning to practice following an absence of up to five years.



Further, the ANMF notes that any such evidence appears highly unlikely to exist, given that the Public Consultation Paper refers to *'findings of little or no direct evidence that underpins regulation of recency of practice'*¹². However if, in the relatively short intervening period since NMBA's 30 October 2015 Consultation Report on Recency of Practice, there have been regulatory risks identified and/or issues raised about practitioners returning to practice following an absence of up to five years, the ANMF considers that this data should be made publicly available as a matter of urgency.

The ANMF notes the claim, in the Public Consultation Paper, that extensive work has been done to gather evidence. The Public Consultation Paper asserts that:

*"To inform an evidence-based review of the current registration standard, the NMBA commissioned a literature review on recency of practice. A comprehensive internal and external review of data was undertaken and included notification data for nurses and midwives who have re-entered the register..."*¹³

Later in the Public Consultation Paper, it is stated that:

*"The proposed revised registration standard and guidelines are informed by research, reflects international best practice."*¹⁴ However, the tables at Appendix A of the Public Consultation Paper are unclear, difficult to interpret and do not seem to support any need for change.

Appendix A, Table 1, lists a diverse range of practice hours and time frames required by other National Boards, but is not accompanied by any data concerning composition of workforce (for example, classified by gender), or analysis of whether the required hours and time frames are compatible with anti-discrimination laws. Nor is there information concerning the correlation (if any) between the various standards and risk to the public, or notifications. It is difficult to draw any meaningful conclusions from this information. There is, in fact, a danger that, if any of the listed standards for other Boards are themselves discriminatory, the NMBA's desire for consistency will merely consolidate existing discrimination, and extend it to other standards.

The Public Consultation Paper also states that:

*'Tables representing the recency of practice requirements of all National Boards and international nursing and midwifery regulators is provided at Appendix A.'*¹⁵

Unfortunately, Appendix A, Tables 2 and 3, are unhelpful. They list minimum hours and periods of time requirements for five jurisdictions other than Australia. If this is intended to supply the foreshadowed comparison of *'international nursing and midwifery regulators'*¹⁶ and demonstrate *'international best practice.'*¹⁷ More information is needed to explain why these jurisdictions were selected. The citing of standards in the UK and New Zealand, without forensic examination of why they were established in those countries, the contexts in which they operate, or how well they work (including notifications) provides an incomplete picture and does not justify the claim that they are *'international best practice'*¹⁸.

Further, it is not clear for what purpose the other two comparators - Prince Edward Island (a Canadian province) and Vermont (one of 50 US states) were included. Their selection seems random. No explanation is given for their nomination, nor, again, is there any forensic examination of their standards.



Tables 2 and 3 are not accompanied by any data concerning composition of local workforce (for example, classified by gender), or analysis of whether the required hours and time frames are compatible with Australian anti-discrimination laws. There is no information concerning the correlation (if any) between the various standards and risk to the public or notifications.

The lack of useful data is difficult to understand in circumstances where the Public Consultation Paper purports to have identified ‘a range of considerations relevant to the current registration standard that warranted review’. In so far as recency of practice requirements are concerned, the only relevant consideration appears to be ‘the variances between National Boards for the minimum recency of practice requirements’.¹⁹

If, as it seems, variance is the only concern, in relation to the recency of practice requirements, that alone is not, in the ANMF’s view, sufficient to warrant the dramatic changes proposed, especially in light of the evidentiary problems outlined in this submission. The mere desire to align standards, without regard for the consequences of doing so, and, in particular, without any evidence of a detailed examination of the operation of anti-discrimination laws and their implications, is not a sound basis for change.

In view of the incomplete and disconnected information presented in the Tables, further doubt is cast on the basis for the proposed Standard, and the ANMF’s deep concerns about the reasonableness of the proposed standard are fortified.

Loss of Flexibility

The Public Consultation Paper correctly acknowledges and accepts the gendered composition of the nursing and midwifery workforce²⁰. However, for reasons already set out above, the ANMF disputes the statement in the Public Consultation Paper that:

*“The proposed revised standard provides more flexibility for practitioners to meet the recency of practice requirements ...”*²¹

or that

*‘The flexibility of incremental practice hours to practice timeframes acknowledges the predominantly female nursing and midwifery registrant profile by supporting absence from the workforce that would include maternity breaks.’*²²

The reality is that the proposed standard subjects women to disadvantage by (among other things) reducing flexibility, is unreasonable and is not underpinned by evidence.

This imposition of significant additional barriers in the pathway of women attempting to return to work in such circumstances is also likely to result in a shortage of staff in the health sector. The ANMF notes that the barriers already faced by women have been well documented elsewhere²³, but do not appear as one of the ‘costs’ of the preferred option set out in the Public Consultation Paper²⁴.



Inconsistency with the National Law

The Public Consultation Paper states that:

*'The NMBA is reviewing the Registration standard: Recency of practice (the current registration standard) to ensure that it is based on the best available evidence, meets the objectives of the National Law and is as clear as possible.'*²⁵

However, the proposal for a dramatic, discriminatory increase in hours of practice, in compressed time frames and unsupported by evidence, is inconsistent with the guidelines underpinning the objectives of the National Law, including the objective that the scheme operate in a transparent, accountable, and fair way²⁶. This compounds the complications attending the proposed standard's inconsistency with AHPRA's own Regulatory Principles, noted earlier in this submission.

Further, as noted above, the ANMF also considers that the barriers sought to be imposed on renewal of registration are likely to result in a shortage of staff in the health sector. This is especially concerning at a time when Australia is experiencing the COVID-19 pandemic.

Unnecessarily compromising the supply of nurses and midwives would also be contrary to the objectives of the National Law, in so far as it would neither facilitate access to services provided by health practitioners in accordance with the public interest, nor enable the continuous development of a flexible, responsive and sustainable Australian health workforce²⁷.

To summarise, it is unclear whether, in formulating the proposed standard, compliance with anti-discrimination laws was considered. There is nothing in the Public Consultation Paper to pinpoint, explain or demonstrate that interaction of the proposed standard with those laws was examined. Rather, the guiding imperative, unsupported by evidence, appears to have been a desire for consistency which, in the ANMF's view, is unwarranted and unsupported by the evidence.

Crucially, the public consultation paper fails to identify a problem with the current standard. If there is a problem (which the ANMF does not accept), there should be a full and detailed discussion of the evidence and the options for addressing the problem in a fair, transparent and accountable way. For all these reasons, the ANMF is deeply concerned about the proposed standard and strongly opposes it. Further, bearing in mind that successful challenges to the proposed standard could result in it being applied in an inconsistent and fragmented way in different jurisdictions, the issues raised in this submission need to be considered carefully.

3. Do the proposed contents support recent graduates in being safe and competent to practice?

Although the ANMF agrees that graduates of NMBA approved undergraduate programs leading to registration require time to consolidate their theory and practice, we do not support the proposed new requirement for all graduates. That being, the requirement for graduates to complete 300 hours of practice within two years from the date their qualification was awarded.



The identified two year time frame and the barriers that may be encountered inhibiting the ability to satisfy these requirements is a concern. Several factors may impact and prevent a graduate from working the proposed hours within two years upon program completion. There are a number of graduates who struggle to find employment after completing their program of study and an arbitrary two year period would put more pressure and stress on graduates to be employed. Further, graduates need to be supported by their employer, both during their induction to the workplace, and to consolidate their practice, irrespective of when they commence their employment after graduation.

Life is also unpredictable and graduates may be delayed entering or maintaining their employment in the workforce in those first two years due to pregnancy, illness or caring responsibilities. The ANMF is also aware of members who have been unable to find employment following significant delays in gaining registration. These delays have resulted in graduates missing the opportunity to start transition programs at the beginning of their first year of registration. This further results in them becoming ineligible to apply for a transition program for their second year of registration. The proposed regulatory requirement for graduates will place added strain on the graduate and will also directly affect workforce supply.

The proposed requirement for graduates to complete 300 hours of practice in two years could also result in an increasing number of graduates turning to casual employment such as agency as there is no alternative. These types of employment opportunities are often insufficiently structured and lack the necessary supports to facilitate an effective transition to the workforce for newly qualified graduates.

The ANMF believes that the NMBA has a shared responsibility, along with education providers, health services, governments and the ANMF, to be part of a considered solution to ensure graduates find quality, secure employment. This includes the responsibility to ensure arbitrary barriers are not placed on graduate registration requirements.

The ANMF recommends that the recency of practice requirement for graduates remains consistent with all other nurses and midwives, that being, practising for a minimum of 450 hours in the five years from the date they were awarded their qualification. It should be noted that graduates, along with other nurses and midwives, are still required to maintain their connection with their professions by meeting the mandatory continuing professional development standard in this five year period.

4. Is the proposed content and regulatory outcome for deferred graduates clear?

The information provided in the proposed documents clearly stipulates the content and regulatory outcome for deferred graduates. The ANMF supports the NMBA's clarification of the term 'deferred graduate' as there has been confusion regarding this definition. However, consistent with our response to question three the ANMF does not support the proposed recency of practice requirements for graduates, which will result in restrictions being placed on recent or deferred graduates.

The factors outlined in our response to question three emphasise the barriers graduates already face when entering the workforce and their ability to consolidate theory and practise.



The proposed requirement of 300 hours within a two year period will add further strain on the graduate who may be encountering circumstances, many of which are out of their control, preventing them from adhering to these requirements. This can result in conditions being placed on their registration in order to satisfy the NMBA that they are safe and competent to practice. There is no individual assessment other than an arbitrary assumption that they are not safe and competent if they have not completed 300 hours of practice. To address these concerns the ANMF maintains that the recency of practice requirement for deferred graduates must remain consistent with all other nurses and midwives, that being, achieving 450 hours in the five years from the date they were awarded their qualification.

5. Is the information in the proposed revised registration standard and guidelines helpful and clear for people who have not practised for 10 years or more?

While the information provided in the proposed documents is clear, as stated above the ANMF strongly opposes this position.

As identified earlier in this submission, the ANMF has never supported the rigid adherence to a cut off period for applicants requesting to re-enter the register after ten years of lapsed nursing and midwifery practice. We maintain that many of these applicants should not be required to complete another NMBA approved undergraduate program of study leading to registration. We are unaware of any evidence that would give credence to this approach and have previously requested that the NMBA exercise discretion for applicants who have been absent from the register/ practice for ten years or more.

Nurses and midwives have varied experiences over their career. For example, an individual nurse may have had substantial experience prior to the ten year break in practice, or a midwife may have had as little as two years' experience before the break in practice. The scope of practice of the nurse or midwife, the health settings they have worked in or are seeking to gain employment in is required to be individually assessed. As outlined in the NMBA consultation paper, not all nurses and midwives work in clinical settings.

Applicants with a lapse in practice require individual assessment approved by the NMBA as outlined in Sections 52 and 54 of the *Health Practitioner Regulation National Law Act 2009* . This assessment should be used as an indicator of nurse or midwife competence prior to making a decision as to their required pathway to re-entering the register. This new model of assessment would be similar to that recently introduced for internationally qualified nurses and midwives (IQNM's). Individual assessment would enable these applicants to demonstrate whether they meet the level required for a re-entry program or a specified period of supervised practice relevant to their scope of practice.

The option of individual assessment needs to be included for this category of applicants in the revised recency of practice registration standard.



6. Is the proposed content for nurse practitioners, endorsed midwives and endorsed registered nurses helpful and clear?

The content outlined for recency of practice requirements for nurse practitioners and endorsed midwives and registered nurses is clear and consistent with the current recency of practice requirements for these nurses and midwives with an endorsement.

7. In the guidelines, is the information on clinical and non-clinical practice helpful and clear?

As the NMBA is aware, the ANMF has previously provided feedback suggesting that the current recency of practice reference to 'clinical' and 'non-clinical' practice has created confusion amongst the nursing and midwifery professions. The intention of this separation was supported by the ANMF, as it is unreasonable to require a nurse or midwife returning to employment in a role such as policy or research (non-direct care) to undertake a period of practice in a direct care role, when this is not relevant to their scope of practice.

The proposed change in the guidelines for the definitions of clinical and non-clinical practice is clearer, however, the terms 'clinical' and 'non-clinical' are additional terminology that are not required. The NMBA should simply use the definition for practice that is consistent across the National Boards. This definition should be used to identify the practice hours completed in a particular context of practice and the type of re-entry pathway an applicant is required to complete. The terms 'clinical' and 'non-clinical' practice are not required.

8. Is there anything that needs to be added to the proposed revised registration standard or guidelines?

The ANMF has a number of comments to make regarding the proposed standard which are not addressed in the identified consultation questions.

a) Re-entry pathways and assessment:

The ANMF identifies that it is unreasonable for there to be a difference in the registration type for the following three categories for application and assessment:

- i. People who are no longer on the register and have not practised for a period of between five to 10 years;
- ii. Nurses and midwives holding non-practising registration who have not practised for between five to 10 years seeking general registration as a registered nurse, enrolled nurse or midwife; and
- iii. Persons holding general registration who have not practised for between five to 10 years.

All applicants in these categories have not practised their profession for five to 10 years, however if an applicant has not continued to pay their registration for as little as 12 months, then they will be disadvantaged by having to apply for provisional registration. Not only does this registration type expire after 12 months (without an option for renewal), applicants will have to pay the first fee for provisional registration and then pay another fee to transfer to general registration. The nurses and midwives in categories two and three will not have the same expiry date for their general registration with conditions and will have to pay less than those in category one.



The ANMF has consistently highlighted, in many previous submissions, the need for timely processing of applications, particularly in relation to re-entry to practice. The timeliness in processing applications for provisional registration is essential. Given that provisional registration is time-limited to 12 months and can only be obtained twice by any one applicant, slow processing may involve further cost or create an inability to complete the re-entry requirements in the time allowed. Our concern derives from experiences of inconsistency in processing timeframes at the state and territory levels.

ANMF members consistently inform us of the significant difficulties and frustration they experience when attempting to access both re-entry and supervised practice programs. The ANMF, therefore, recommends that to ensure consistency and equity, applicants who are applying for registration under all categories be required to have general registration with conditions.

b) Unintended consequences of the proposed standard

As identified throughout this response the ANMF is opposed to the suggested increase in the required minimum practice hours to meet the recency of practice registration standard. The ANMF notes that this proposed change would also create a number of unintended consequences.

Re-entry and supervised practice

The proposed practice hours change could potentially require an adjustment to the minimum practice hours for supervised practice periods and to the accreditation standards for re-entry programs, to align these for consistency. As has been clearly identified earlier, re-entry programs or a period of supervised practice are inaccessible for many nurses and midwives seeking to return to the register. ANMF members across the country have experienced difficulties in accessing these pathways. There are very few re-entry programs approved by the NMBA and many states and territories do not have any such approved programs. Likewise, accessing supervised practice remains significantly difficult, as many employers will not employ an applicant for a period of supervised practice. If the practice hours for these pathways were to increase, it would result in additional barriers for education providers and health services in providing these pathways. This would ultimately result in less access for nurses and midwives and make re-entry pathways in their current form unattainable.

Health concerns

Nurses and midwives, like the rest of the Australian population, suffer from both mental and physical illness. At times, nurses and midwives may need to take leave and not practice due to health issues such as physical health, workplace injuries, and mental health issues. They take time out of the workplace to recover. Increasing the number of practice hours would have implications for these nurses and midwives. The proposed changes would compound the pressure they are already experiencing not to take time away from their workplace when it may be required or could necessitate returning to work earlier than wanted or needed.

Further, a change in the minimum practice hours could potentially require an adjustment to the expectations for nurses and midwives who are currently managing conditions on their registration due to health issues. It will affect the time they are able to disconnect from the profession to recover and potentially the expectations of the condition relating to minimum practice hours.



Registration conditions

The proposed changes for graduates that would result in the application of conditions on their registration if they have not met 300 hours of practice in a two year period will create another barrier to entering the workforce. The ANMF notes that placing conditions on the registration of a nurse or midwife can result in unemployment. Members have told us that a number of employers will not employ a nurse or midwife with a condition. Some health services have gone as far as developing a written position or policy prohibiting employment of practitioners with conditions. The NMBA and AHPRA need to ensure they are not placing conditions on nurses and midwives unduly.

Communication

Many nurses and midwives struggle to understand the regulatory expectations for their practice. The ANMF works closely with the NMBA and AHPRA in providing advice regarding messaging and communication to nurses and midwives. The ANMF also provides ongoing communication to members through resources and a member access line. Through this work the ANMF identifies that, after ten years of the national scheme, the majority of nurses and midwives understand the current requirements for recency of practice, that being 450 hours in a five year period. The proposed new standard is unclear and confusing and would create a significant regulatory consequence as the majority of nurses and midwives will not understand their requirements for recency of practice.

There are so many potential variables in the practice hours over a particular number of years within the three criteria. This adds to the confusion of the proposed standard. For example, a midwife who meets the 300 hours in the last two years of this renewal period but doesn't work for the next renewal period, would be required to meet 450 hours in the last three years. Or a nurse who has worked 400 hours in the last four years, but has not worked any hours in the last three of the four years would not meet the requirements for recency.

The unintended consequence of communicating these complex criteria to the largest health workforce in Australia would be to make a requirement, which is currently clear and easily understood, extremely confusing. The risk of nurses and midwives unwittingly falling short of the proposed revised requirements would be immense.

CONCLUSION

The ANMF appreciates the opportunity to provide feedback through this submission to the NMBA's consultation on the proposed revised *Registration standard: Recency of practice*. We have a primary interest in fair and equitable registration standards that are based on evidence, which will enable our members and the broader nursing and midwifery professions to be safe and competent in whichever health or aged care context they practice. The ANMF strongly opposes the proposed registration standard for the reasons outlined above. The ANMF urges the NMBA to reconsider the proposed standard in its entirety and maintain the status quo, the current practice hours of 450 in five years.



REFERENCES

1. See the *Sex Discrimination Act 1984* (Cth); *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1996* (NT); *Anti-Discrimination Act 1991* (Qld); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (Tas); *Equal Opportunity Act 2010* (Vic); *Equal Opportunity Act 1984* (WA).
2. For example, s 18 *Sex Discrimination Act* (Cth); s 16 *Discrimination Act 1991*(ACT); ss 29, 49ZB *Anti-Discrimination Act 1977* (NSW); s 33 *Anti-Discrimination Act 1996* (NT); ss 21, 22 *Anti-Discrimination Act 1991*(Qld); s 36 *Equal Opportunity Act 1984* (SA); s 3 *Anti-Discrimination Act 1998* (Tas); s 36 *Equal Opportunity Act 2010* (Vic); ss 16G, 35G *Equal Opportunity Act 1984* (WA).
3. See for example, s 8 *Discrimination Act 1991* (ACT); s 11 *Anti-Discrimination Act 1991* (Qld); s 9 *Equal Opportunity Act 2010* (Vic); s 15 *Anti-Discrimination Act 1998* (Tas); ss 24(1)(b), 49T *Anti-Discrimination Act 1977* (NSW).
4. Australian Nursing and Midwifery Federation (2020). *Submission to the Nursing and Midwifery Board of Australia Preliminary Consultation on the Proposed Revised Registration Standard: Recency of Practice*, 8 May.
5. *Ibid.*, p 4
6. Nursing and Midwifery Board of Australia (2020). *Guidelines: Recency of practice – draft for public consultation*. Table 1, p 2.
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12. *Ibid.*, item 10, p. 5
13. *Ibid.*, item 9
14. *Ibid.*, item 17, p. 6
15. *Ibid.*, p. 7
16. *Ibid.*, p. 7
17. *Ibid.*, item 17, p. 6
18. *Ibid.*, item 17
19. *Ibid.*, item 8, p. 4; item 16, p. 13
20. *Ibid.*, p. 7
21. *Ibid.*, item 3, p. 4
22. *Ibid.*, p. 7.
23. See for example: Australian Human Rights Commission (2014). *Supporting working parents: Pregnancy and return to work national review – Report*. Sydney: AHRC. Available at <https://humanrights.gov.au/our-work/sex-discrimination/publications/supporting-working-parents-pregnancy-and-return-work>
24. Op. cit., NMBA *Public consultation paper*, item 20, p. 6
25. *Ibid.*, item 2, p. 4
26. Op. Cit. *Health Practitioner Regulation National Law*. s 3 (3)(a)
27. Op. Cit. s 3 (2)(e) and (f)
28. Op. Cit. *Health Practitioner Regulation National Law*. s 52 and 54.