Australian Nursing and Midwifery Federation submission to the

SENATE INQUIRY INTO THE ADMINISTRATION OF REGISTRATION AND NOTIFICATIONS BY AHPRA AND RELATED ENTITIES UNDER THE HEALTH PRACTITIONER REGULATION NATIONAL LAW

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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 300,000 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.

On behalf of our large and growing membership, the ANMF has both professional and industrial interest in, and concern for, matters relating to the regulation and practice of registered health practitioners. We have been a long-standing supporter of the importance of the National Registration and Accreditation Scheme (NRAS) for all regulated health professions in Australia, and continue to advocate for equity and fairness in the application of the Health Practitioner Regulation National Law (National Law).

The ANMF appreciates the opportunity to provide a response to the Senate Inquiry into the administration of registration and notifications by the Australian Health Practitioners Regulation Agency (Ahpra) and related entities under the National Law.

The ANMF was a robust advocate for the introduction of a national registration and regulation scheme (NRAS) prior to its commencement in 2010. The National Scheme provides safeguards for the public and allows our highly mobile nursing and midwifery workforces to move within jurisdictions more easily and seamlessly. Other benefits include regulatory consistency, including codes of ethics and conduct, and requirements for English language skills, criminal history checks, recency of practice, professional indemnity insurance and continuing professional development. The advantages of a nationally-regulated professional health practitioner workforce have also been unexpectedly demonstrated by the pandemic sub-register and practitioner education demanded by COVID-19 and the roll-out of vaccinations, which would have required far more organisational cooperation, discussion, and delay had the pandemic occurred prior to the NRAS.

We have developed solid, durable professional relationships with Ahpra, the Nursing and Midwifery Board of Australia (NMBA), and the Australian Nursing and Midwifery Accreditation Council (ANMAC). Consequently, Ahpra and the National Board regularly engage in consultation with the ANMF, both formally and informally, regarding decision-making, policy, standards, codes and guidelines. This most often takes the form of commentary, feedback and recommendations regarding: registration processes; notifications; management of disciplinary procedures; the fitness of education programs to meet professional practice requirements and industry needs; or to enable communication with our large national membership of nurses and midwives.

In addition, representatives from the NMBA and Ahpra regularly meet with the ANMF Federal Office elected officials and senior staff, and with the ANMF's national Professional Advisory Committee. Ahpra and the NMBA regularly attend and present at the Coalition of National Nursing and Midwifery Organisations (CoNNMO) member meetings, for which the ANMF is secretariat. Maintaining these important connections allows the regulator to understand and respond to the professions' concerns, improving the experiences of our members and safeguarding the public.

Although there are some points of difference between the ANMF and Ahpra and the National Board, the ANMF is supportive of the NRAS. We appreciate the robust engagement and communication that has been established, and now occurs regularly with the ANMF, the NMBA, Ahpra and ANMAC.

Terms of Reference

The administration of registration and notifications by the Australian Health Practitioner Regulation Agency (Ahpra) and related entities under the Health Practitioner Regulation National Law (National Law), with particular reference to:

a. The current standards for registration of health practitioners by the Ahpra and the National Boards under the National Law;

The ANMF supports the Nursing and Midwifery Board of Australia's (NMBA) registration standards regarding criminal history, English language skills, continuing professional development, professional indemnity insurance arrangements, and endorsements for nurse practitioner, scheduled medications for midwives, and scheduled medications for registered nurses (rural and isolated practice). These standards guide nurses' and midwives' professional practice.

Recency of practice

The ANMF provided a submission to the NMBA's 2020 Recency of Practice review[1] that detailed our opposition to proposed changes to the recency of practice requirements. We consider the proposed amendment to be unnecessarily complicated and more demanding, without evidence to demonstrate that the existing requirement is inadequate. The ANMF believes this proposed change will have a gendered impact on nursing and midwifery that is less pronounced with other professions, as women comprise the majority of our professions, and are most often the primary care givers for children and ageing parents, often necessitating a break from the workforce. The ANMF continues to await the NMBA decision in relation to the proposed change to the recency of practice requirement for nurses and midwives.

The ANMF does not support the current ten-year blanket cut off for applicants requesting to re-enter the register after a period of lapsed nursing and midwifery practice. At present, regardless of the length and nature of the applicant's previous professional practice experience and educational qualifications, these individuals are required to complete another NMBA-approved program of study leading to registration. We are unaware of any evidence that supports this otherwise arbitrary timeframe. The ANMF has instead long argued that a safer and more useful recency of practice standard would allow for greater flexibility that recognises length and type of experience undertaken by the previously registered nurse or midwife, in addition to time away from clinical setting.

Unlike the current standard, an individual performance assessment would recognise the difference between a formerly registered nurse with twenty years of acute clinical experience who has maintained a connection with the profession through continuing professional education, and a nurse who left the

profession after completing only their first year. Allowing this kind of individual performance assessment would be fairer for the registrant, and better meet the interests of the public by allowing safe, experienced professionals to return to nursing practice. This process would be different from but not dissimilar to that now being used for Internationally Qualified Nurses and Midwives (IQNM's), where decision-making about registration is based on the applicant's individual knowledge and skill to determine whether they meet the standards for practice.

b. The role of Ahpra, the National Boards, and other relevant organisations, in addressing concerns about the practice and conduct of registered health practitioners;

The ANMF and its Branches advise and represent nurses and midwives who are dealing with Ahpra and the NMBA notifications and specific issues concerning initial registration, compliance, registration renewal, competence, public safety, fitness to practice, and return or re-entry to practice. The ANMF is aware that there are improvements currently being made by Ahpra to its notifications process that will impact practice and conduct matters for nurses and midwives. However, the main concerns of our members relate to delays, inappropriate notifications by employers and conditions placed on registration.

Delays

Our members often report delays beyond the usual 90 days for their matters to be actioned or completed. The ANMF attribute this to a combination of staff turnover and adopting a decentralised national process for handling matters. These factors have meant practitioners no longer have continuity with the allocated officer handling their case but instead need to make contact each time through a generic email address or phone number. Our members are therefore often required to summarise events to every new officer they speak with. In some instances, the case manager goes on leave or changes position without handing the file on to a new compliance or registration officer, leaving it effectively 'on hold' until the member enquires about progress.

Under sections 85 (application for registration) and 106 (application for endorsement) of the National Law, the NMBA is obligated to make a determination within 90 days of receiving an application, but this may be extended (by a minimum of 40 days) with the agreement of the applicant. As the relevant sections state:

> *If a National Board fails to decide an application for [registration/endorsement] within 90 days after its receipt, or the longer period agreed between the Board and the applicant, the failure by the Board to make a decision is taken to be a decision to refuse to [register/ endorse] the applicant.*[2]

In other words, if the applicant doesn't agree to an extension they are refused registration or endorsement, making this less a joint decision than one made by and to suit the Board.

We acknowledge there are genuine cases where factors like seeking legal counsel and gathering sufficient evidence mean that an extension beyond ninety days is warranted. However, the experience of too many ANMF members making applications under section 85 or 106 is that this section of the National Law is used because of Ahpra's processing delays. These delays can apply to both decisions and updates about the progress of a case. They increase the workload of ANMF Branch staff and, more importantly, substantially adversely affect our members' emotional and financial wellbeing. In some cases, the delays also result in lost employment opportunities, particularly new registrants losing supported graduate program places.

This section in the National Law must only be enacted by exception, not for convenience, and the resulting time extension must be finite and justified. One of our Branches reports delays in cases of four to five years before resolution, which takes a serious toll on the health practitioner's mental health. This is not aided by the increasing likelihood that the prolonged nature of the case resolution may result in the practitioner failing to meet recency of practice requirements, resulting in further involvement with the NMBA.

Inappropriate notifications by employers

ANMF's state and territory Branches report cases where issues of conduct or clinical practice could be more appropriately dealt with locally by the employer of the nurse or midwife, but are instead referred to Ahpra. We know that, once matters are so escalated, the regulator's workload is increased, which in turn contributes to additional delay in the management of genuine cases of concern. In these instances, where these functions would be more appropriately carried out at a local level, it appears employers have used Ahpra to investigate and provide disciplinary measures.

It is our opinion that Ahpra and the NMBA should only be involved when a health practitioner's conduct is likely or carries an actual or potential risk to public safety. That does not include instances when a nurse or midwife did not comply with organisational policy or procedure, made a medication administration error that didn't result in an adverse outcome, or did not demonstrate to the employer the required professional practice and performance improvement despite performance management processes. These are all examples provided by our Branches of cases referred to Ahpra and accepted by the NMBA for investigation, despite Ahpra's guidelines clearly stating: "Mandatory notifications should not be used as a performance or risk management measure… Performance management alone does not meet the threshold for mandatory notifications."[3] Of course it is imperative that, where the practitioner poses an immediate or ongoing risk to the public, a notification is made to Ahpra and referred to the relevant Board as soon as is practicable.

Conditions placed on registration

While it is appropriate for some practitioners to have conditions on their registration, these conditions must be reasonable and able to be met. The problematic issue of supervised practice is discussed in the next section, but ANMF Branches report an increasing number of education conditions that our members find challenging, if not impossible, to comply with. While there are anecdotal reports that the NMBA's professional team checks the availability of proposed education requirements, Branches have been unable to verify this, nor find courses that meet the NMBA's conditions. A commonly required condition is that a member completes a refresher or re-entry program, even though there are very few programs available in Australia for nursing or midwifery refresher or re-entry. It should be noted that with the implementation of the NMBA's Outcomes Based Assessment for IQNMs, it is most likely education providers will find the reduction in potential student numbers will impact the financial viability of re-entry programs. The NMBA therefore needs to review the re-entry policy to ensure that there are appropriate and achievable pathways that allow previously registered nurses and midwives to re-enter the professions.

This gap between the requirement and the capacity to meet it covers other conditions, too; for example, in one case, a member was instructed to complete an ethics module that had not been delivered for over three years. Sourcing an appropriate program can be time consuming, frustrating, add to existing stress, and registrants can incur significant costs to undertake this tailored education. This would not be a problem if similar services were available from multiple providers, and members are informed of the options.

The Board needs to ensure that the mandated education conditions can be reasonably met – that is, that they actually exist, have positions available without extensive wait periods, at a reasonable cost, and are accessible to nurses and midwives (for example, through online or flexible delivery). Ideally, the NMBA would provide a list of appropriate and approved education resources/programs that, if satisfactorily completed, will allow the condition/s to be lifted.

The ANMF believes the NMBA's capacity to delivery timely, just, achievable outcomes for our members require their staff have access to regularly updated resources. These resources should include relevant education programs that address registrant short falls (from documentation modules and professional ethics courses to the availability and cost of re-entry to practice programs in each area), to inform the Board's decision-making about conditions.

c. The adequacy and suitability of arrangements for health practitioners subject to supervised practice as part of the registration process or due to a notification;

The ANMF supports the NMBA's recently revised supervision guidelines for nursing and midwifery,[4] particularly the increased flexibility allowed, and the timeframe change for notifying Ahpra of the nominated supervisor and supervised practice plan (SPP).

However, we have serious concerns about the availability and funding of supervision, particularly where the supervision is required to be direct. This is a greater issue for nurses and midwives who live and work in metropolitan settings. As rural and remote services can find staff recruitment difficult, they are often happy to provide a period of supervised practice as it will lead to a nurse or midwife who is then able to work in their health service. Nonetheless, supervision poses a major burden for our members and their employers everywhere. Some members who have been granted re-entry to practice with supervision conditions have been told by health services that their service does not offer positions with a period of supervised practice. ANMF Branches have found that members who are able to secure a position do so because of previous relationships rather than a culture of providing supervision.

The issue is three-fold:

1. This supervised time is usually unpaid, increasing the financial burden on the practitioner. It is difficult to find experienced nurses and midwives who are both prepared to undertake the supervision role, and meet the requirements of both the regulators and employers.

2. These issues are compounded when the area of practice is specialised, whether this is mental health nursing, birthing services, or intensive care.

3. The nature of direct supervision means the experienced nurse or midwife must work alongside the practitioner for the entire mandated supervisory period, with additional time spent revising the practitioner's development and practice, liaising with employers, and writing reports for the Board.

This poses a substantial and often prohibitive cost to employers, which means that a condition for direct supervision frequently results in the termination of employment on the grounds they have failed to fulfil the employment contract. As the practitioner is not able to practice without meeting the requirement, and the issues surrounding supervision are further complicated in the absence of an employer, this can mean the end of a practitioner's career. This is not acceptable, and is not the intended role of the NMBA. This issue has been raised directly with the NMBA in both written and verbal submissions by ANMF Branches but supervision continues to be a frequent requirement for the restoration of unconditional registration. Given these known difficulties, an alternative solution must be adopted.

We acknowledge the need to balance public safety against the reasonable expectations of the supervisors and health services. However, consideration must also be given to ensuring the process is not so burdensome that competent practitioners are dissuaded from participating as supervisors, and, potential supervisees are lost to the workforce due to an inability to fulfil the conditions applied.

The ANMF argues that the NMBA should consider whether a health service's existing performance review processes could meet the requirements of an individualised SPP. This would reduce delay, allow practitioners to safely return to work more quickly, and relieve some of the NMBA's regulatory burden by ensuring SPPs are only necessary in the absence of an appropriate health organisation supervisory process.

As discussed in the next section, there is an existing option that would be easier for Ahpra and more accessible to practitioners than supervised practice – utilising Objective Structured Clinical Exams (OSCEs).

The issues related to supervised practice have been raised with the NMBA directly in both written and verbal submissions over the years. Addressing concerns and looking at alternative pathways is necessary to achieve better outcomes for nurses and midwives.

d. The application of additional requirements for overseas-qualified health practitioners seeking to become registered in their profession in Australia;

Historically, this process has been expensive and disjointed. The ANMF is supportive of the new international qualified nursing and midwifery (IQNM) process, which includes the use of a multiple choice examination, orientation to the Australian context of practice and an OSCE to assess aspects of clinical capacity from knowledge and decision making to English and health care language proficiency. While the rollout of the OSCE has been affected by the COVID-19 pandemic, once it is fully operational it will be more efficient and cost effective for IQNMs.

Additionally the ANMF believes OSCEs could be used by the Board to determine practitioner's clinical capacity, replacing the highly problematic use of supervised practice in most cases. This approach would be consistent with the Health Practitioner Regulation National Law Act 2010, which requires an individual successfully completed either:

> "(i) any period of supervised practice in the health profession required by an approved registration standard for the health profession; or
>
> (ii) any examination or assessment required by an approved registration standard for the health profession to assess the individual's ability to competently and safely practise the profession…"[5]

Utilising this option would require some changes from the IQNM process. For example, many of our members seeking to re-enter practice are only interested in working in a particular context of practice, such as mental health or the operating room, in which they were formerly employed. In addition, this option would need to be available in a timely fashion. However, for appropriate candidates, assessment by modified OSCE would alleviate many of the problems currently faced by nurses and midwives seeking re-entry to their profession, without placing the public at risk.

This change of condition from supervised practice to OSCE, where appropriate, will make it much easier and more efficient for practitioners to demonstrate their progress and fitness for practice, without compromising public safety. It will also be a fairer process as testing is standardised, which means everyone undertaking the assessments will be judged by the same high regulatory stakes criteria.

e. The role of universities and other education providers in the registration of students undertaking an approved program of study or clinical training in a health profession;

The ANMF has no issue with approved education providers coordinating student registration, but we have a number of suggestions for how student registration could be improved. We support ANMAC's recent decision to move the requirement to meet the English language skills registration standard prior to commencing, rather than after completing, the approved course of study. This reduces the risk of students graduating from the program but still being unable to meet the English language requirements necessary for registration. This has been a significant issue, particularly for international students undertaking the Diploma of Nursing.

It is also important that students are fully and proactively informed about recency of practice, with a focus on recent graduate requirements. The current Recency of practice registration standard requires more clarity on whether a recent graduate, applying for registration for the first time and whose qualification was awarded between two and five years ago, meets the registration standard. Provision of this information to students should be the responsibility of education providers in partnership with the NMBA.

The ANMF believes student registration should be consistent with practitioner registration, which includes checking of identification, criminal history, and English language proficiency, so students are not in a position of discovering, once they complete their education, that they are ineligible for registration as a practitioner or experience significant delays in obtaining registration due to adverse disclosures in their application for registration. The NMBA is well positioned to support education providers to do this

Including these additional suitability requirements as part of student registration, and making the student register public (consistent with, and subject to the same exemptions recently introduced for all other registration categories) would make the transition to general registration very smooth. Linking student registration to practitioner registration would also allow more robust data collection. Workforce data could then be used to track nurses and midwives from the commencement of their program of study to registration and throughout their career. Reporting enrolment numbers, with annual retention data, would also assist with workforce planning, and identify programs that have a high attrition rate.

f. Access, availability and adequacy of supports available to health practitioners subject to Ahpra notifications or other related professional investigations;

Our members have considerable support from their ANMF Branches with regard to notifications or related professional investigations. The ANMF has also strongly supported and lobbied to ensure all nurses and midwives have free, confidential access to advice and referral through the Nurse and Midwife Support Program (a national 24-hour phone service) and the Nursing and Midwifery Health Program (Victoria).

Our members often report that their interactions with Ahpra and the NMBA are distressing and confronting, despite this support.

Practitioners who complete performance assessments due to health concerns are assured that results will only be released to their GP, which is intended to be reassuring and supportive. However, some members report being highly stressed by the process of knowing there is a report, making a GP appointment, and waiting for it while suspecting the result is not good. Further, some Branches report attempting, on several occasions, to have the results released to them so members can have in person support. Despite the members giving consent, in each case the request was denied. For members who have been significantly distressed by the process of notification and investigation, particularly when the outlook is unfavourable, this support could make the difference between being able to adjust to bad news and experiencing serious ill effects.

In addition to emotional support, the ANMF considers that subsidised drug testing should be provided for health practitioners who have a restriction on their registration linked to past substance abuse. These registrants are required to have routine urine or hair analysis in accordance with Ahpra's Drug and Alcohol Screening protocol. Depending on the substances being tested for, each test costs a minimum of several hundred dollars and can run to over $2000 per occasion, which is a significant financial impost.

While NSW has a hardship policy to assist with payment of drug and alcohol screening, which is capped at around $2000 per annum, this is the exception. This is a financially disadvantaged group of nurses and midwives, who are often unemployed as a result of their substance dependency. It is the ANMF's position that substance abuse is a health issue;[6] interventions, including monitoring, should be supportive rather than punitive. One of our Branches reports that a member was made homeless because of the financial burden of testing, and has now left the profession. The ANMF suspects this is not an isolated case. If the NMBA subsidised testing it would result in better compliance and the safe return of more nurses and midwives to the clinical setting.

g. The timeliness of Ahpra's investigation of notifications, including any delays in handling, assessment and decision-making, and responsiveness to notifiers;

The ANMF is concerned about frequent substantial delays, particularly those that affect initial or renewal of registration. While notifications against nurses and midwives are rare, the sheer number of nurses and midwives in Australia, combined with a high level of substantial delays, means a significant number of our members are affected every year.

Our Branches have examples of some cases where there have been extensive issues. In one of these the practitioner's undertaking and original notification, regarding a criminal matter, were made at the start of April 2018; the member pled guilty 11 months later, and the Board is not only still to make a determination about registration, the materials upon which this decision will be made were only received in mid-April of 2021. In another case being managed by the same Branch, the original notification was made at the beginning of September 2018, regarding conduct from 2014-2018, and the statement of agreed facts (not even an outcome) was received in April of this year.

While these examples are uncommon, extensive delays are not infrequent. In one instance a practitioner made an adverse disclosure when renewing their registration in April 2019, and the case was not resolved until the following March 2020. This meant the member was unable to experience any certainty about the outcome of this disclosure for almost a year.

These delays can also be the direct cause of a member being unable to comply with the Board's directive, as happened in one case where the practitioner disclosed information at the time of renewing in April 2019. By the time the Board imposed conditions in February 2020, the member's health condition had resolved, so there was no need to meet the imposed conditions to regain their registration.

These examples illustrate timelines that are unfair to and unfairly onerous on practitioners, who report feeling forgotten, lost in the system, or denied due process. The combination of time passing and the stress of months-long delays impair members' ability to accurately recall precise details, sequence of actions, and timelines. This is particularly the case if they were not notified until sometime after the allegations and/or event/s. Ahpra and the Board have a remit to protect the public; the diligence with which this is met cannot come at the expense of a practitioner's physical, financial, and mental wellbeing. Improved communication, consistency of case management, and accountability for delays would make a significant difference to practitioners' experiences without unduly burdening Ahpra and the NMBA or compromising the public. In every case where it is safe for a nurse or midwife to return to practice, they should be supported by the NMBA to do so.

h. Management of conflict of interest and professional differences between Ahpra, National Boards and health practitioners in the investigation and outcomes of notifications;

Conflicts of interest

It is the ANMF's expectation that any conflict of interest be declared, and the relevant party recuse themselves from any investigation, hearing or disciplinary proceeding. In addition, where the case involves clinical advisors or experts, relevant information (including their experience, qualifications, and any relevant affiliations) should be provided to all the parties.

Professional differences

Decisions made by Ahpra and the Board determine whether a nurse or midwife is able to practice, the degree of autonomy they have in the workplace, their opportunities for career advancement, and their employability. These are all factors that affect nurses' and midwives' employment status, income, physical and mental health, and ability to support their families.

ANMF Branches report inconsistencies in the way the National Law and policies are interpreted and enacted in different jurisdictions and between different professions' Boards in the same state or territory. This specifically refers to cases where an investigation has involved nurses or midwives and doctors who exhibited the same or highly similar shortfalls in practice. Invariably, the NMBA's decision-making is harsher than the Medical Board of Australia's determinations. For example, where the Medical Board offers the registrant the option of an undertaking not to practice until the completion of relevant education or counselling, the NMBA has been known to take immediate action. As described in the previous section, it can be years between commencing and completing an investigation into fitness to practice or a complaint.

If differing interpretations result in nurses and midwives being disadvantaged, sometimes significantly, and unfairly burdened with conditions, then the system is unjust. That this happens, even if only rarely, means the NMBA needs to provide further oversight to Ahpra, including investment in education that ensures officers are able to make consistent decisions about health practitioners. For this reason, we believe there is an existing, unmet need for closer alignment across the professions and National Boards, to improve consistent decision-making and thereby reduce disparities in disciplinary outcomes and handling of investigations.

i. The role of independent decision-makers, including state and territory tribunals and courts, in determining the outcomes of certain notifications under the National Law;

ANMF Branches report that the involvement of the state or territory based tribunals in cases exacerbates existing delays. The process of referring notifications made to Ahpra to tribunal means cases are double-handled, increasing the number of cases that fall through the gaps between and within agencies, and extending an already long process where decision-making is required at multiple points before a final determination is made. The ANMF believes a simplified process or the introduction of an intermediate decision-maker for uncomplicated cases would reduce the burden on state or territory tribunals, in turn improving the timeliness of outcomes for practitioners.

j. Mechanisms of appeal available to health practitioners where regulatory decisions are made about their practice as a result of a notification;

In the interests of natural justice, any decision made regarding a practitioner's registration should be open to appeal.

k. How the recommendations of previous Senate inquiries into the administration of notifications under the National Law have been addressed by the relevant parties;

The results of the 2016 Senate Community Affairs Reference Committee (the Committee) Inquiry into the medical complaints process in Australia, which focused on bullying in the medical profession, gave rise to a broader Inquiry in 2017 that examined the larger issue of Ahpra's complaints mechanisms under the National Law. As the ANMF noted in the Federal Secretary's evidence to the Inquiry and both our original[7] and subsequent submissions,[8] the emphasis in both Inquiries was on the medical profession, of which we are not part.

However, the ANMF has an abiding interest in regulatory mechanisms that affect our members and our professions in general, including workplace bullying. This kind of behaviour is a significant issue in health care, between and within professions. We have been pleased to see bullying behaviours taken more seriously across all sectors of health care, including its inclusion as a form of occupational violence. *Our Bullying in the Workplace policy*,[9] which was first approved in 2004, was complemented in 2008 by our *Prevention of occupational violence and aggression in the workplace policy*;[10] both policies have been reviewed and re-endorsed, most recently in 2018.

While occupational violence is an issue that affects the regulated professions, the primary remit of Ahpra, through the National Boards, is to protect the public. Unless a case of workplace bullying can be directly connected to actual or potential public harm, our position then and now, is that this behaviour should be dealt with by employers in the first instance and, in cases where this is inadequate, by the appropriate state or territory occupational health and safety regulator. In the event that occupational violence between regulated health practitioners were to place the public at risk, such behaviour would constitute notifiable conduct, requiring mandatory notification to Ahpra under Section 140 of the National Law.

The 2017 Committee report [11] (the Report) made fourteen recommendations. Based on the commentary points made in chapter 5 of the Report, though the recommendations were made to the National Law regulatory bodies as a whole, many were made based on issues that were profession-specific, and none of these applied to nurses or midwives.

Recommendation 1

The committee recommends that AHPRA review and amend the way it engages with notifiers throughout the process to ensure that all notifiers are aware of their rights and responsibilities and are informed about the progress and status of the notification.

Our Branches' engagement with the notification process is predominantly focused on the nurse or midwife about whom a complaint has been made, rather than the notifier's perspective. While the ANMF is aware of changes Ahpra and the NMBA have made to the descriptions of these processes, we are unable to comment on whether or not these timelines for notifiers are met.

Recommendations 2 and 3

The committee recommends that AHPRA and the national boards develop and publish a framework for identifying and dealing with vexatious complaints and

The committee recommends that the COAG Health Council consider whether recourse and compensation processes should be made available to health practitioners subjected to vexatious claims.

While this submission has addressed inappropriate referrals to Ahpra and the NMBA in section b), a vexatious complaint is more than one that is inappropriate, distressing to the practitioner, unfounded, or otherwise sub-optimal. As defined by the independent report into vexatious complaints[12] commissioned by Ahpra in response to the Committee recommendations, and which forms the basis of the regulator's resulting vexatious complaints framework, a vexatious complaint is "a groundless complaint made with an adverse primary intent to cause distress, detriment or harassment to the subject." According to the Report, genuinely vexatious complaints (i.e. of the kind that meet this definition) account for less than 1% of all those received by Ahpra.

Nurses and midwives comprise 56.3% of regulated professionals,[13] but receive only 0.5% and 0.3% respectively of notifications as a population,[14] compared with an average of 1.7% across the regulated professions.[15] Our Branches have not reported any of these to be vexatious, so while we are aware that Ahpra has adopted this recommendation, the ANMF is not in a position to comment on how this has translated into practitioner experience.

Recommendation 4

The committee recommends that AHPRA and the national boards institute mechanisms to ensure appropriate clinical peer advice is obtained at the earliest possible opportunity in the management of a notification.

Of the 1,872 notifications lodged with Ahpra about registered or enrolled nurses in 2019/2020 32.1% related to clinical care or medication, while clinical care accounted for 58.8% of the 85 notifications regarding midwives in this timeframe. It is only in these cases where appropriate clinical peer advice would be sought.

It may be the case, as mooted in points 5.31 and 5.32 of the report, that seeking the advice of clinical peers as soon as possible would reduce the time taken to perform assessments and investigations. However, as previously discussed in sections b) and h) of this submission, the ANMF believes processes that enhance case management continuity and communication would more usefully address the issues our members experience with notifications under the current system.

Recommendation 5

The committee recommends that AHPRA immediately strengthen its conflicts of interest policy for members of boards and that the Chair of the board should make active inquiries of the other decision makers about actual or potential conflicts of interest prior to consideration of a notification.

We note that while Ahpra's Conflict of Interest Procedures is dated April 2015,[16] and therefore before the Committee Inquiry, applications for membership of every National Board, as well as multiple guidelines of Ahpra and the National Boards stress that conflicts of interest must be declared. As discussed in sections b) and h) above, we would expect any party involved in decision making about policies, processes, investigations or outcomes of notifications to declare any conflict of interest as soon as the party becomes aware of it, and to then recuse themselves. Neither our members nor Branches have raised undeclared conflicts of interest as an issue in dealings with Ahpra and the NMBA.

Recommendation 6

The committee recommends that AHPRA develop a transparent independent method of determining when external advice is obtained and who provides that advice

Points 5.41 and 5.42 of the Report strongly suggest this recommendation was made because of the potential, real or perceived, that external advice sought by Ahpra or the Boards in a specific case may come from a person who was a professional rival of the practitioner under investigation. This is not a concern the ANMF holds for our members, and we are not in a position to comment on Ahpra's response to this recommendation.

Recommendation 7

The committee recommends that AHPRA consider providing greater remuneration to practitioners called upon to provide clinical peer advice.

Points 5.45 and 5.46 of the Report are not readily applicable to the nursing or midwifery professions, as detailed in our response to recommendation 4 above. The ANMF does not have concerns with the remuneration offered to clinical peers by Ahpra or the NMBA.

Recommendation 8

The committee recommends that AHPRA formally induct and educate board members on the way the regulatory powers of the board can be used to achieve results that both manages risk to the public and educates practitioners

The ANMF absolutely agrees with the Report that, wherever possible, the processes used by Ahpra and the Boards should support practitioners to reflect upon their practice, identify contributing factors, and learn from these adverse experiences. We also agree that the Boards do not centre these kinds of outcomes in all cases. As described throughout this submission, the NMBA does not communicate with members about the progress of cases or provide or facilitate mentoring or other practices that encourage nurses and midwives to return to clinical practice as improved practitioners.

Recommendations 9 and 10

The committee recommends that AHPRA conduct additional training with staff to ensure an appropriately broad understanding of the policies it administers and provide staff with ongoing professional development related to the undertaking of investigations and

The committee recommends that the COAG Health Council consider amending the National Law to reflect the Psychology Board of Australia's policy on single expert witness psychologists acting in family law proceedings.

Points 5.557 to 5.60 and 5.62 to 5.65 of the Report make it clear these recommendations were made in response to concerns about knowledge regarding chiropractors and some aspects of single expert witness psychologists. The ANMF is not in a position to comment on Ahpra's response to these recommendations.

Recommendations 11 and 12

The committee recommends that the COAG Health Council consider making a caution an appellable decision and

The committee recommends that the COAG Health Council consider whether notifiers should be permitted to appeal board decisions to the relevant tribunal.

As discussed in section j) of this submission, the ANMF believes that the capacity to appeal a decision forms part of natural justice, and therefore support the creation of processes for appeal by Ahpra and the National Boards in response to these recommendations.

Recommendation 13

The committee recommends that AHPRA take all necessary steps to improve the timeliness of the complaints process and calls on the Australian Government to consider avenues for ensuring AHPRA has the necessary additional resources to ensure this occurs.

As discussed throughout this document, our Branches report unreasonable delays in both complaints resolution and issues regarding registration and renewal. The ANMF agrees with the report that all available options be explored to remediate these delays, and does not consider that timeliness has been substantially improved in the four years since this recommendation was made.

Recommendation 14

The committee recommends that AHPRA institute a practice of providing monthly updates to complainants and medical professionals whom are the subject of complaints.

As discussed in this submission, particularly under section b), delay is a major concern for those few of our members who are subject to an investigation. We therefore argue that further action on this recommendation is needed. We once again note that nurses and midwives (along with all but one of the other regulated professions) are health professionals, not medical professionals.

l. Any other related matters.

Unregistered care workers

Over 15 years ago, the ANMF identified and advocated for the need to regulate aged care workers, who currently comprise 70% of the direct aged care workforce. Our members have long expressed concern that care workers, particularly but not only those employed in nursing homes, are not regulated. These concerns, raised by registered and enrolled nurses and by care workers themselves, relate to the current lack of consistency across educational preparation requirements and competence, and even a minimum English language standard.

As importantly, there is no national, or even local, register to track an aged care worker unless there has been an established public safety risk. Unlike the regulated professions, there is no requirement for a criminal history check unless the employer requests one, and no capacity, let alone established external process, for employers and regulated health practitioners to report concerns or manage complaints about an individual unregulated care worker. Currently, if an aged care worker is found to be unsafe in the care they provide and is dismissed from their employment, unless reported they can move on to another employer with a minimal checking process occurring or, on many occasions, without any process at all. This presents a significant and real risk of harm to the public.

These issues underpin our recommendation to the 2020 Aged Care Worker Regulation Scheme Consultation[17] that the national registration and accreditation scheme be extended to include unregulated aged care workers. Ensuring this workforce meets a national minimum standard of education, English language skills proficiency, and are fit and proper persons for their role will assist in ensuring that vulnerable elderly people receive safe care regardless of where that care is delivered.

CONCLUSION

Thank you for the opportunity to provide a response to the Senate Inquiry into the administration of registration and notifications by Ahpra and related entities under the National Law. Our submission has focused on the areas that are problematic for our members, with case management and extensive delays in case resolution being the most frequent of these. The ANMF strongly supports the NRAS and continues to work productively with Ahpra and the NMBA for the best interests of both our nurse and midwife members and the public.

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