



australian  
nursing federation

Submission to the Australian Health Practitioner Regulation  
Agency (AHPRA) on consultation for the Aboriginal and  
Torres Strait Islander Health Practice Board

October 2011

---

Lee Thomas  
Federal Secretary

Yvonne Chaperon  
Assistant Federal Secretary

Australian Nursing Federation  
PO Box 4239 Kingston ACT 2604

T: 02 6232 6533

F: 02 6232 6610

E: [anfcanberra@anf.org.au](mailto:anfcanberra@anf.org.au)

<http://www.anf.org.au>

## 1. Introduction

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

The ANF has membership of over 205,000 nurses, midwives and assistants in nursing, who are employed in a wide range of enterprises in urban, rural and remote locations in both the public and private health and aged care sectors.

The ANF participates in the development of policy relating to: nursing and midwifery practice, professionalism, regulation, education, training, workforce, socio-economic welfare, health and aged care, community services, veterans' affairs, occupational health and safety, industrial relations, social justice, human rights, immigration, foreign affairs and law reform.

As a strong supporter of national registration the ANF welcomes the opportunity to respond to the Aboriginal and Torres Strait Islander Health Practice Board consultation on mandatory registration standards for Aboriginal and Torres Strait Islander Health Practitioners.

## 2. General Comment

National registration and accreditation was introduced for registered nurses, enrolled nurses and midwives on 1 July 2010 under the Health Practitioner Regulation National Law Act 2009 (National Law). The newly constituted national regulatory body for our professions, the Nursing and Midwifery Board of Australia (NMBA), developed and issued a range of nationally applicable standards for nurses and midwives (effective 1 July 2010) which include (but are not limited to):

- continuing professional development;
- criminal history;
- English language skills;
- professional indemnity insurance arrangements, and
- recency of practice.

As regulated health professionals the mandatory registration standards outlined above, and in your consultation paper, apply to all our members except the assistants in nursing. The ANF has made application to the Australian Health Ministers Advisory Council for registration of assistants in nursing, as they engage in direct care activities in a range of settings. We contend that licensing should apply to all health and aged care workers with direct care responsibilities. The ANF is therefore pleased that Aboriginal and Torres Strait Islander health practitioners will be afforded national registration from July 2012.

The ANF is committed to making sure that statutory regulation processes provide a just and equitable system for health professionals while ensuring protection of the public through safe and competent practice.

The specific comments to follow on the draft mandatory registration standards and other board proposals are made in response to the questions posed in the Aboriginal and Torres Strait Islander Health Practice Board of Australia Proposed Registration Standards consultation paper.

## 1. Draft registration standard: Continuing Professional Development (CPD)

### 1.1 *Is the requirement of 20 hours per annum adequate for practitioners to maintain competence as an Aboriginal or Torres Strait Islander health practitioner and meet the needs of the employer?*

Under the Nursing and Midwifery Board of Australia's *Continuing professional development registration standard* the requirement is for registered nurses, enrolled nurses and midwives to "participate in at least 20 hours of continuing professional development (CPD) per year" relevant to their context of practice.<sup>1</sup> The requirement for at least 20 hours of CPD has been deemed adequate for the nursing and midwifery professions to maintain competence in their field.

The ANF considers that the requirement of 20 hours per annum of CPD is also adequate for Aboriginal or Torres Strait Islander Health Practitioners to maintain their competence and meet the needs of their employer. We note that the words 'relevant to their context of practice' do not appear in this draft standard for Aboriginal or Torres Strait Islander Health Practitioners and consider that the inclusion of these words would strengthen the standard (as per reference 1).

### 1.2 *CPD will comprise of formal and informal activities. Should there be more 'formal' CPD time than 'informal' CPD time, and what should formal and informal CPD include?*

The ANF does not believe that there should be a distinction made between formal and informal CPD in terms of time spent on these activities. The Frequently Asked Questions (FAQs) for CPD provided by the NMBA<sup>2</sup> carries a listing of examples of active learning activities for the nursing and midwifery professions. There is no weighting of activities or categorising into formal or informal CPD.

While the inclusion of examples of informal and formal learning activities on the Aboriginal and Torres Strait Islander Health Practitioner registration standard is useful guidance, the choice of CPD activities should remain with the individual practitioner. The choice may well be influenced by the availability and/or access (both funding and geographic) to learning activities.

### 1.3 *Is it reasonable to expect people to keep a logbook of their CPD activities from the beginning of the introduction of the national scheme, or would it be better for this requirement to start 12 months after the beginning of the national scheme?*

It is reasonable to expect people to keep a logbook of their CPD activities from the beginning of the introduction of the national scheme. This activity will reinforce the importance of the standard and facilitate the documentation of all the CPD log book activities.

However, the registration of Aboriginal and Torres Strait Islander Health Practitioners will be new for all such practitioners except for those working in the Northern Territory. It is therefore reasonable to provide a period of grace before the CPD standard can be expected to be enacted in terms of auditing of individual practitioners. Precedent has been set in this regard in that nurses and midwives in New South Wales did not have a requirement for CPD attached to their registration prior to the transition to national registration on 1 July 2010. A period of grace has been applied to this standard for nurses and midwives in that random auditing to ascertain compliance will not be instituted until the re-registration process of 2012.

*1.4 Should a logbook of CPD activities be kept for more, or less than three years?*

The requirement for nurses and midwives is that the individual “should hold your evidence for three years in case you are selected for audit”.<sup>2</sup> There is no reason why the standard for Aboriginal and Torres Strait Islander Health Practitioners should not be consistent with that for nurses and midwives.

*1.5 Is it reasonable to gradually implement the requirements of the proposed CPD standard up until 2015?*

It is reasonable to gradually implement the requirements of the proposed CPD standard, but 2014 is a more appropriate timeframe.

**2. Draft registration standard: Criminal history**

*2.1 The Board proposes to seek Ministerial Council approval for this registration standard to apply to the Aboriginal and/or Torres Strait Islander health practitioner profession.*

This registration standard applies to the currently regulated health professionals. The ANF considers that this mandatory criminal history registration standard should also apply to the Aboriginal and/or Torres Strait Islander health practitioner profession when they are regulated.

*2.2 The Board would welcome any comments on this standard.*

The ANF agrees with the statement in the consultation paper as follows:

*The Board considers it is important to have a consistent, fair, and transparent standard that enables all National Boards to make equitable decisions about whether a health practitioner’s criminal history is relevant to the practice of their profession.*

**3. Draft registration standard: English language skills**

*3.1 If an applicant has obtained the proposed qualification set out in the “Eligibility for Registration Standard”, is this enough to demonstrate English Language Proficiency?*

The ANF considers that obtaining the proposed qualification set out in the “Eligibility for Registration Standard” is sufficient for the Aboriginal or Torres Strait Islander Health Practitioner applicant to demonstrate English Language Proficiency. These applicants will have completed their studies in English within Australia.

#### 4. Draft registration standard: Professional indemnity insurance (PII)

##### 4.1 Does the Professional Indemnity Insurance (PII) standard adequately describe the PII requirements?

In relation to Requirement 1:

*The most critical 'Requirement' imposed by the Standard, is that identified in Requirement 1 [statement 1 also in the ATSIHP document]. That is, that 'appropriate PII arrangements are, or will be, in place while they practice nursing or midwifery'. The rest of the Standard then essentially leaves it to the nurse or midwife to decide what is and is not 'appropriate'.*

In relation to Requirement 4:

*... it is noted that the proposed amended Standard retains the proposition under Requirement 3 [Requirement 4 in the ATSIHP document] that:*

*"Nurses and midwives in a genuine employment or student relationship would be covered vicariously by the employer's or education institution's insurance."*

*The ANF remains of the view that this proposition is misleading and confusing. Embedded in what is a statement of opinion, are a set of assumptions as to the existence of a contract of insurance and such insurance containing an extension of cover clause applying to the employer's employed nurses and midwives. There is no legal obligation on employers to provide insurance that extends to nurses in respect of their liability. If the NMBA consider that the fact of genuine employment in Australia is of itself adequate to provide "appropriate" PII cover for nurses and midwives it should say so in clear terms. If not, then the proposition in Requirement 3 [statement 4 in the ATSIHP document] should be omitted.*

*In either case, the ANF suggests that the proposition should be deleted.*

*Requirement 3 [Requirement 4 in the ATSIHP document] imposes a responsibility 'to understand the nature of the cover under which they are practising' but does not go beyond that.*

In relation to structure of the Standard:

*Furthermore, the structure of the proposed Standard is unsatisfactory. Under the heading of 'Requirements' the Standard contains seven paragraphs. Of these, five paragraphs identify what might be called 'requirements'. The other two requirements, numbers 3 and 6 [requirements 4 and 6 in the ATSIHP document], are not properly 'requirements' of a Registration Standard at all.*

*Requirement 6 [requirement 6 also in the ATSIHP document] is not a 'requirement' at all, but rather a statement of encouragement. It simply provides a list of matters nurses are encouraged to consider in assessing whether they have 'appropriate' professional indemnity insurance in place. As a 'Standard' it avoids establishing any PII standard at all, beyond that which is 'appropriate'.*

*It is the view of the ANF that the proposed Standard places an obligation upon nurses and midwives to make an assessment with reference to the factors identified in statement 6, which they may not be equipped to make. In many States and Territories the legal profession does not place the onus upon lawyers and barristers to make such complex assessment as to what constitutes insurance 'arrangements' appropriate to their practice – it designates approved insurance providers. If the legal profession has determined lawyers should not make their own assessments, the question must be asked, why the NMBA thinks that nurses and midwives are any better equipped to do so. The ANF contends that this would undoubtedly lead to many nurses and midwives under insuring. The consequence of this would undermine the public policy objective of the Standard and the objective in Section 129 of the National Law.*

*Thus, in essence, the draft proposed Standard remains confusing, unhelpful and unfair to those to whom it applies - nurses and midwives.*

The ANF provides these comments as they are pertinent to the draft registration standard being developed for the Aboriginal and Torres Strait Islander Health Practitioner.

#### *4.2 What is the best way for an Aboriginal and or Torres Strait Islander health practitioner to demonstrate that they are covered by PII?*

Either that they be able to produce a letter from their employer that professional indemnity cover is provided as a condition of their employment, or from their professional organisation, should that organisation provide professional indemnity insurance as a part of membership. For example, the ANF includes professional indemnity insurance cover in membership in all States and Territories except New South Wales.

#### *4.3 What should the Board require from Aboriginal and or Torres Strait Islander health practitioners to prove that appropriate PII arrangements are in place (for example a letter from their employer or the employers insurance policy number)*

See 4.2 above.

## 5. Draft registration standard: Recency of practice

### *5.1 Do you think the timeframes in this draft recency of practice standard are reasonable and if not why not?*

The ANF fully supports the role of national regulatory bodies in providing for protection of the public through registration and accreditation approval activities legislated under the National Law. The essence of this role is to ensure that any person who is registered is safe and competent to practice.

While the ANF agrees that “the specific requirement for recency of practice depends on the length of absence from the field” this is only one part of the work history equation. There must be flexibility to individually assess:

- the competence of the Aboriginal or Torres Strait Islander Health Practitioner,
  - their experience history,
  - the length of time they spent in practice prior to registration lapsing, and
  - the degree to which they have maintained links with their profession, (for example, through continuing professional development),
- during their period of absence from the workplace.

The recency of practice requirement for registered nurses, enrolled nurses and midwives is to be able to demonstrate competence in their professions within the preceding **five** years. The ANF considers that the timeframe for Aboriginal or Torres Strait Islander Health Practitioners should be consistent with that for nurses and midwives, rather than the **three** years specified in the draft registration standard.

The ANF supports the proposed requirements for practitioners who “have not practiced in the profession for the previous three to five years” to “undertake clinical competency assessment as determined by the Board”; and, “have not practiced in the profession for more than five years but less than ten years” to be assessed individually by the Board.

With regard to practitioners who have not practiced in the profession for ten years or more the ANF takes a firm stance that the requirements must include a flexible approach by giving consideration to the individual profile of the returning Aboriginal or Torres Strait Islander Health Practitioner, as outlined above. It is not clear exactly if Requirement (d) “will need to undertake relevant studies that provide entitlement to registration” means a partial or complete repeat of original qualifications. Aboriginal or Torres Strait Islander Health Practitioners who have not practiced for more than ten years should be given the opportunity to demonstrate competence prior to the decision as to what clinical or theoretical component of a course may be required for re-entry to the workforce.

There will be huge variance in the profile of individual Aboriginal or Torres Strait Islander Health Practitioners wishing to return to the profession. It is not therefore sufficient to apply an arbitrary ‘ten year’ cut off point in isolation of this individual profile.

The approach of rigid exclusions based entirely on a pre-determined time limit with respect to recency of practice is currently in the proposed standard for nurses and midwives. It is however out of step with the other regulated health professional groups governed by the National Law. The ANF has not supported the proposed standard for nurses and midwives. We have argued that the aim of the policy should be to provide guidance to nurses and midwives, and likewise in this instance, for Aboriginal or Torres Strait Islander Health Practitioners, seeking to re-enter their profession and the workforce, rather than a deterrent. It is the assessment process of the individual Aboriginal or Torres Strait Islander Health Practitioner which will determine competence to practice and the necessary pathway for re-entry and reinstatement to the register.

## 6. Statement of Assessment against AHPRA's Procedures for Development of Registration Standards for the mandatory registration standards

In summary, as with the existing ten regulated professions, the ANF agrees that the following proposed issues:

- continuing professional development;
- criminal history;
- English language skills;
- professional indemnity insurance arrangements, and
- recency of practice,

be constituted as mandatory registration standards for Aboriginal and Torres Strait Islander Health Practitioners as from 1 July 2012, taking into account the foregoing comments.

## 10. Conclusion

The ANF contends that licensing should apply to all health and aged care workers with direct care responsibilities. The ANF therefore supports the fact that Aboriginal and Torres Strait Islander Health Practitioners will be afforded national registration from July 2012.

We are committed to making sure that statutory regulation processes provide a just and equitable system for health professionals while ensuring protection of the public through safe and competent practice.

The foregoing comments have been provided with the intention of assisting in the development of registration standards which will achieve that aim for Aboriginal and Torres Strait Islander Health Practitioners and the people for whom they provide care.

## References

1. Nursing and Midwifery Board of Australia. 2010. *Continuing professional development registration standard*. Available at:  
<http://www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx>
2. Nursing and Midwifery Board of Australia. 2010. Frequently Asked Questions (FAQs) and Fact Sheets. Available at:  
<http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/FAQ.aspx>