



31 August 2020

Nursing and Midwifery Board of Australia (NMBA)

By email: nmbafeedback@ahpra.gov.au

Dear Nursing and Midwifery Board of Australia

Public consultation on the proposed revised *Registration standard: recency of practice*

I would like to thank the Nursing and Midwifery Board of Australia (NMBA) for the opportunity to comment on the proposed revised *Registration standard: recency of practice*.

The office of the National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC) is pleased to provide the attached response. The NHPOPC supports **Option two – Proposed revised Registration standard**.

Please feel free to contact my communications and media adviser, Lara Beissbarth on (03) 8633 4666 or by email via lara.beissbarth@nhpopc.gov.au, if you require any further information or would like to discuss my office's response in more detail.

Yours sincerely,

Richelle McCausland

National Health Practitioner Ombudsman

National Health Practitioner Privacy Commissioner

Response to the proposed revised *registration standard: Recency of practice*

Introduction

This document provides the response by the office of the National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC) to the public consultation on the proposed revised *Registration standard: recency of practice* (the standard).

In general, the NHPOPC supports **Option two – Proposed revised Registration standard**. The NHPOPC is pleased that the proposed revisions provide more flexibility for practitioners to meet the requirements of the standard, and that changes have been proposed to make the standard clearer and more consistent.

Role of the NHPOPC

The role of the NHPOPC is to provide ombudsman, privacy and freedom of information (FOI) oversight of the Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards.

The NHPOPC handles complaints and, where appropriate, conducts investigations into the administrative actions of Ahpra and the National Boards to assist members of the public and health practitioners who are dissatisfied with the way a matter has been handled.

The NHPOPC also works with Ahpra and the National Boards to address systemic issues which have been identified by the NHPOPC.

NHPOPC complaint data

The NHPOPC recorded a total of 1,035 contacts during the period 1 July 2018 to 30 June 2019. This included:

- 586 complaints about the administrative actions of Ahpra and the National Boards
- 420 enquiries relating to concerns about the regulation of health practitioners
- 29 FOI matters.

The NHPOPC has received only a small number of complaints concerning the administrative actions of Ahpra and the National Boards in relation to the application of the recency of practice registration standard. The NHPOPC has recently transitioned to a new case management system and the limitations of the previous system means it is difficult to determine the exact number of complaints that have involved this specific issue in the past. However, a basic audit of enquiries and complaints made to the NHPOPC from June 2014 to 28 August 2020 indicates that the NHPOPC has recorded 30 concerns that were in some way related to, or included mention of, recency of practice. Of these, 17 matters related to the nursing and midwifery professions.

Although the number of concerns reported to the NHPOPC about the recency of practice registration standard is relatively small, several important issues were raised by complainants. These included concerns related to:

- the adequacy of the explanation provided by Ahpra and the relevant National Board in relation to why the applicant did not satisfy the requirements of the recency of practice registration standard
- the availability of alternative pathways to registration in cases where the applicant did not satisfy the requirements of the recency of practice registration standard, and the associated costs of these pathways
- delays in the processing of a registration application due to an issue with the application of the recency of practice registration standard.

Response to public consultation paper

In general, the NHPOPC supports the proposed revisions to the registration standard. Improvements in how the registration standard is explained will clarify what applicants can expect and how applicants can ensure they meet the necessary requirements.

The NHPOPC notes that its role in the National Registration and Accreditation Scheme is to provide oversight of the administrative actions of Ahpra and the National Boards. The office's response to this consultation therefore applies an administrative lens and does not specifically comment on the content of the recency of practice registration standard.

The NHPOPC offers the following insights based on the enquiries and complaints it has received in relation to the recency of practice registration standard.

Adequacy of explanation regarding why an applicant did not meet the recency of practice registration standard

Based on complaints received by the NHPOPC, a key area of concern for applicants is the adequacy of explanations provided about why they have not satisfied the requirements of the standard. It is acknowledged that this is a broader issue than the proposal to revise the recency of practice registration standard.

However, the NHPOPC suggests that the revised standard could be effective in improving communication in relation to this issue. For example, the NHPOPC finds the table outlining the relevant hours needed for practitioners to meet the requirements of the registration standard useful. A clear breakdown of why a applicant did not meet this standard, perhaps by using a similar table, could provide applicants with a clearer understanding of why their application did not meet the relevant requirements.

Evaluation of whether work meets relevant clinical or non-clinical definitions

While the revised standard provides clearer explanations of which practice roles constitute clinical and non-clinical work, it does not provide an explanation of the criteria used by the NMBA to determine whether an applicant's experience can be considered to be clinical or non-clinical work. The lack of clarity in this area has been a source of complaints to the NHPOPC in the past.

It would therefore be helpful if the revised standards provided further information about this issue, ideally with reference to:

- experience gained through voluntary or unpaid employment
- care of family or friends.

Recognition of personal circumstances

The NHPOPC also suggests that it would be beneficial if correspondence with applicants appropriately acknowledges the personal circumstances of the applicant.

It is clear from complaints received by the NHPOPC that often practitioners who have had a long career and who do not meet the recency of practice registration standard are frustrated that their experience is not recognised. It is important to acknowledge this frustration and recognise the applicant's contribution to their profession, even if their application does not meet the requirements.

Similarly, complainants often explained to the NHPOPC that serious personal circumstances or health conditions led to them not meeting the requirements of the standard. Acknowledging the personal experiences of applicants can help them feel as though they have been heard and that their application is important.

Contact with applicants

Similarly, the NMBA should set clear expectations about the level of communication applicants can expect from Ahpra during the processing of an application for registration. Complainants to the NHPOPC often mentioned that there was a lack of updates and that they were provided with inconsistent advice from Ahpra about their application. It would therefore be beneficial if the NMBA set communication standards in relation to the registration process.

Pathways if the requirements of the recency of practice registration standard are not met

The NHPOPC recognises that the revised recency of practice standard provides substantial information about the pathways available should an application not meet the requirements. This is critical given there is an inherent complexity associated with applications which do not follow a standard pathway. There are, however, some areas where greater clarity could be provided.

New recency of practice standards

It is important that the revised standards clearly articulate the previous revisions in relation to the recency of practice standards. This may be relevant to potential applicants whose application was rejected based on the previous standards.

Exceptional circumstances

In addition to the examples provided, it is important that the standards reflect that Ahpra and the Board will consider applications where exceptional circumstances exist and a reasonable exemption may be granted on a case-by-case basis. Providing further information about what would constitute an exceptional circumstance could assist applicants to provide the necessary information.

Financial hardship

The NHPOPC also recognises that complainants often raised the impact that the registration process has had on their ability to support themselves or their families financially. The cost of the registration process is a significant issue for complainants.

While the NHPOPC recognises that this issue is also broader than the proposal to revise the recency of practice registration standard, proactive communication about how to access support for financial hardship could be beneficial.

Complaint process

It would also be beneficial if Ahpra and the NMBA proactively communicated further information about the ability of applicants to make a complaint about how their matter has been handled. This would ideally include information about how to:

- contact Ahpra's national complaints team
- contact the NHPOPC.

Delay in the processing of a registration application due to the application of the recency of practice registration standard

One of the common concerns raised with the NHPOPC by complainants is the delay in the progression of their registration matter. Delay causes concerns for complainants in numerous ways, including:

- affecting career opportunities, such as the inability to take up an offer of employment or apply for jobs
- financial hardship due to an inability to practice
- heightening feelings of frustration and anxiety about the outcome of their registration matter.

The NHPOPC notes that responding to concerns regarding delay is a broader issue concerning the whole of the registration process. However, the NHPOPC suggests that the NMBA could seek to proactively address this issue by:

- setting out expected timeframes for finalising applications where there is a question regarding whether the applicant has met the requirements of the recency of practice registration standard
- acknowledging that dealing with applications which raise issues relating to recency of practice can take more time to finalise than other more straightforward applications.