The union for nurses and midwives

Queensland Nurses' Union

Submission in response to Draft Registration Standard Consultation Papers

Health Practitioner Regulation National Law

24 November 2009

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Nurses. For you. For life.

because we care
Quality care for older Australians

Ms. Anne Copeland
The Chair
National Nursing and Midwifery Board
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c/o National Registration and Accreditation Implementation Project
PO Box 2089
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Dear Ms Copeland,

We thank the National Nursing and Midwifery Board for the opportunity to provide submissions on the draft registration and accreditation standards contained in the Consultation papers released on 27 October 2009.

Introduction

1) The Queensland Nurses' Union (QNU) welcomes the opportunity to provide a submission in response to the exposure draft of the registration and accreditation standards contained in the Consultation papers released on 27 October 2009 ("Consultation Paper"). We request that this submission is read in conjunction with the submission of our federal body, the Australian Nursing Federation (ANF).

About the QNU

2) The QNU is the principal health union operating in Queensland. It is registered in this state and in the federal industrial relations jurisdictions as a transitionally registered association. In addition, the QNU operates as the state branch of the federally registered ANF. The QNU supports the submissions by the ANF.

3) The QNU covers all categories of workers that make up the nursing and midwifery workforce in Queensland including registered nurses, midwives, enrolled nurses and assistants-in-nursing employed in the public, private and not-for-profit health sectors. Our members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management, and nurse and midwife practitioner positions.

4) The Union has both industrial and professional objectives. We firmly see nurses and nursing as being situated within a societal context – nurses being both providers and "consumers" of health services. In recent years we have attempted to lead and contribute to the debate within nursing and the wider community about the role and contribution of nursing through the development, implementation and regular review of a Social Charter of Nursing in Queensland. The QNU and the Queensland Nursing Council (the "QNC") are co-sponsors of this charter and we see this document as forming an important foundation for responsive and innovative nursing practice that is based on community needs and expectations, mutual respect and trust.

5) Nurses are the largest occupational group within health, with nurses making up over 50% of the total employed health workforce and around 40% of the Queensland Health (QH) workforce. Membership of the QNU has grown steadily since its formation in 1982 and as at September 2009 was in excess of 37,000 and still growing. The QNU represents the largest number of organised women workers of any union in Queensland. Like the nursing profession as a whole, the overwhelming majority of our members are female (93%).

6) The Union has a democratic structure based on its workplace and geographical branches. Branches elect delegates to attend the annual QNU conference which is the principal policy making body of the Union. As such, it is rank and file membership that drives the agenda of the QNU. In addition to the annual conference, the QNU has an elected council and an elected executive, which in turn have decision-making responsibilities between conferences. Council is the governing body of the QNU.

7) The QNU is party to over 200 enterprise agreements which cover a diverse range of health facilities and other non-health establishments that provide nursing services (eg schools, local councils, prisons and factories). We therefore have a clear and comprehensive understanding of the complexity of contemporary health service delivery as well as the diversity of locations where health services are delivered.

8) An important professional representative function of the QNU is representing enrolled and registered nurses and midwives in relation to:

   a) registration and enrolment processes with the QNC;

   b) health conduct and competency complaints made to the QNC;

   c) investigations instituted by the QNC, into both individual nurses, accredited education providers and health facilities;

   d) charges preferred against nurses by the QNC to the Nursing Tribunal of Queensland (the "Nursing Tribunal") and now Civil and Administrative Tribunal ("QCAT").

9) The QNU employs licensed nurses in a range of positions. These officials include membership servicing officers who routinely receive the first contact from members who are seeking advice about professional nursing matters. Other officials, including organizers, industrial, legal and professional officers, routinely provide advice and support to members who are responding to allegations in relation to their professional competence and conduct.

Format of Submissions

10) These submissions will address specific sections of the Consultation Paper that the QNU has concerns and/or recommendation about. Recommendations for amendments to the proposed registration and accreditation standards are included in the text of the submission.

Criminal History Standard

11) The QNU has long supported the introduction of criminal history checking for nurses and midwives. The proposed registration standard would implement a system similar to that which nurses and midwives are already subject to in Queensland.

12) The QNU agrees with the proposed registration standard contained within the consultation paper.

English Language Skills Standard

13) The QNU has long held concerns in relation to the manner in which prospective enrolled and registered nurses and midwives who have undertaken their training in a foreign jurisdiction or have undertaken their nursing studies in Queensland have been treated in relation to requirements that they possess "a sufficient command of the English language, both written and oral, to ensure patients health and safety is maintained"[1].

14) In our view, at least in Queensland, the manner in which the QNC has dealt with the issue of whether a nurse has adequate English language skills to practice in the profession does not appear to be related to the *vocational* English language skills or proficiency required to safely practice nursing but rather relies largely on an unquestioned acceptance that certain English language tests constitute a fair and accurate measurement of a persons English language skills.

15) The QNU acknowledges that the Board needs to have a mechanism for assessing English language proficiency. The QNU supports the use of English language testing as a mechanism for the Board to assess whether a person has sufficient English language skills to safely practice. However, the QNU does not believe that the Board should restrict itself to only accepting English language examinations as the only means by which it can obtain satisfaction as to the English language proficiency of an applicant for registration. The current English language tests utilized in most jurisdictions by professional registration bodies, being the International English Language Testing Systems ("IELTS") and the Occupational English test ("OET"), are in our view but one of a number of ways in which the National Board could be satisfied that a person has the requisite English language skills to practice safely.

16) The QNU is concerned that the current Standard only provides for the IELTS and OET tests as measures for English language skill. The QNU is of the view that the Standard should allow the Board to accept:

a) other English language tests; and
b) evidence of vocational English language proficiency for applicants currently employed in a nursing capacity, for example enrolled nurses applying for registration;

[1] S.54(3)(b) Nursing Act 1992 (Qld)

c) workplace competency and English language proficiency assessments undertake by qualified external assessors;

17) We are of the view that there are other English language examinations available in the market which could provide the National Board with as good, if not better, indication of a nurses' vocational English language capacity. In this respect we note that the International Second Language Proficiency Ratings ("ISLPR") is an English language examination utilized by many government agencies and regulatory authorities to assess the vocational English language capacity of people from foreign jurisdictions in relation to employment in Australia. We are of the view that the ISLPR should be accorded similar status to the OET and IELTS examinations by the National Board as a means by which the National Board can be satisfied as to a persons' English language proficiency.

18) Further, we are of the view that the board should be able to take into consideration evidence of English language proficiency in addition to, and in substitution to, a recognized English language proficiency examination such as the IELTS, OET or ISLPR. One of the more vexing situations, from the QNU's view, in representing members attempting to satisfy the QNC of their English language proficiency arises where they have been unsuccessful in obtaining the required marks on an IELTS or an OET examination but from all accounts from health practitioners, consumers and their employer the applicant possess excellent English language skills. The QNU has represented a number of members who have been unable to meet the QNC required marks in primarily, an IELTS examination, and less commonly an OET examination, but where there exists an abundance of evidence from health practitioners that the nurse works with, the applicants supervising nurses, patients, and the nurses' employer attesting to the fact that the nurse's written, listening, comprehension, and oral English language skills are of a very high standard and that no concerns exist on behalf of these people, with direct experience of the applicant's English language abilities in the workplace, about the nurses ability to practice safely.

19) In our view, it should be open to the Board to consider such evidence as sufficient to be satisfied that the nurse has sufficient English language skills to be registered, or at least to be granted some form of provisional registration requiring supervision and employer reporting for a period until the Board is satisfied the applicant can practice safely.

20) The QNU has obtained advice from Professor David E Ingram, AM, Honorary Fellow, Faculty of Education, University of Melbourne, in relation to measuring vocational English language proficiency. Professor Ingram was appointed in 1987 by IDP Australia as the Australian representative on the joint British Australian project based at the University of Lancaster to develop what became known as the IELTS test. After its release in 1989, Professor Ingram was appointed as the IELTS Chief Examiner (Australia) a role which he fulfilled for ten years. Following ceasing his role as IELTS Chief Examiner, Professor Ingram joined the IELTS Australia Board of Directors and served as a director for a further five years. Professor Ingram continues to act as a consultant to IELTS Australia in relation to their Annual Research Rounds, evaluating

applications for research funding and also evaluating some of the research reports. Professor Ingram also, with his colleague Ms Elaine Willey, originated the ISLPR test in 1978. He is therefore an expert on English language testing and in our view, his opinions in relation to the use of the IELTS examination should be persuasive. Professor appropriately notes that he

21) In an interview with Radio National's Lingua Franca Program in 2005 Professor Ingram relevantly stated:

> *"IELTS is used not only for University entry but also for immigration purposes, to see whether an applicant for vocational registration has enough English to work, for example, as a teacher, a nurse or a tradesman. At best, such misuse is unethical, even if it is expedient. No test should be used for purposes for which it is not developed."*[2]
>
> (emphasis added)

22) In his advice Professor Ingram states:

> ***"II THE GAP LEFT BY MOST TESTS***
>
> *The inherent irony of language testing (indeed, of most academic testing) is that one tests one thing generally in order to say something about something else, one assesses one component of a skill or one aspect of knowledge of a field in order to say how much of the skill or the field the student has mastered, or one tests in one context in order to say something about a person's ability in other contexts. So teacher education courses test students' knowledge of educational theory, methodology or psychology to see whether they are likely to be capable of teaching effectively in the classroom and maintaining a beneficial learning programme for the students over an extended period; such tests are at best minimally supported by observation of the students' teaching ability in limited periods of classroom practice. By testing candidates' language knowledge or their ability to apply that knowledge in specified language tasks in tests in the formal context of the testing room, we assume that the results will give us information on the candidates' ability to use the language in other contexts, not least in real life. Yet we know as teachers and as testers that there is often a large gap between students' ability to perform in tests and their ability to use the language in everyday real-life situations: the gap between the language tests and real-life language experience is rarely bridged."*

23) Professor Ingram has advised that the IELTS test was specifically designed to assess the extent to which non-English background students from foreign countries could cope with studying university, senior secondary school, TAFE colleges and other training programs without English inhibiting their performance. Professor Ingram relevantly states in his advice to the QNU:

> *"As such, it focuses principally around tasks relevant to academic situations and tasks."*

[2] http://www.abc.net.au/rn/linguafranca/stories/2005/1404921.htm

24) In relation to the Band scores and overall scores in the IELTS examination Professor Ingram states:

> *"The manner in which Bandscale scores are finally assigned with the intervention of statistical norming means that the relationship between the behavioural descriptions and the candidate's actual language behaviour (the candidate's language ability) can be more tenuous than with an instrument such as the ISLPR where the process is to observe the candidate's language behaviour and match it directly to detailed descriptors."*

25) Professor Ingram continues:

> *"IELTS was developed to be a test of candidates' practical language skills in the language required for success in academic and training programmes. It is a general test, in that its Specifications require that the language tested be equally applicable to people aiming to enter academic and training programmes in all discipline areas.*
>
> *In other words, the test was not designed to cater for persons requiring a test of general proficiency (such as applicants coming to Australia under the general migration programme) nor was it designed to be a test of vocational proficiency."*
>
> (emphasis added)

26) In relation to the utility of the Band scores and the overall scores Professor Ingram relevantly states:

> *"…although the scales (especially the Overall scale) are short simple behavioural descriptions, the match between the scale and the candidate's actual behaviour is affected by the fact that a statistical process is used to assign raw scores to scale levels. The statistical process is essentially used to ensure a normal distribution of scores across the band levels from one version of the test to the next. Thus, the final score is the outcome of a statistical process rather than the matching of the candidate's actual language performance with the scale descriptions, i.e. the test produces a norm-referenced rather than strictly a criterion-referenced result.*
>
> *In addition, the Overall score, which is given highest priority by most end-users, is, in fact, a meaningless score, which the development team agreed to only because we realised that most end-users would use a single figure even though the profile of ability across each of the four macroskills was more appropriate. The Overall Bandscale score is meaningless because learners of a second language often differ in their ability in the various macroskills.*
>
> (emphasis added)

27) Professor Ingram states that the IELTS is a general test of English language ability for entry into academic and training programs. He advises that:

"It was not designed to be, and is not, a test of vocational language ability, nor of ability in any specific academic area. A test of vocational ability, for example, would be based around the language used in that vocation."

…

*In addition, because IELTS is a pre-determined, **non-adaptive** test not adaptable even in the Speaking test to individual candidates and using testers (interviewers) with relatively limited training, it is not possible for the test to be adapted to different vocational or academic areas nor to the specific levels of individual candidates without fundamental re-development occurring from the Specifications to the final test forms. Most major tests are non-adaptive with the content controlled by the original test development procedure and standardisation with the intention of maximising test reliability and leaving nothing to the discretion of individual examiners. This is in contrast to ISLPR, for example, which is an adaptive test in which trained assessors adapt the test to the level and academic, vocational or personal interests of each candidate in order to elicit the candidate's maximum language performance and to examine the candidate's ability in the relevant academic or vocational area."*

(emphasis added)

28) Professor Ingram also raised concerns about the flourishing of courses aimed at assisting people pass the IELTS examination. Professor Ingram states:

"In developing IELTS, the development team had sought to develop a test, the best preparation for which would be a good communication-focussed (or "communicative") language course. However, that is not how IELTS has evolved. In fact, a huge industry in "IELTS Preparation Courses" has developed since the test was released. The best of these provide a strong component of good communicative language teaching along with some introduction to the nature of the test with practice on the sorts of itemtypes that it has become known (despite confidential specifications) are used in the test. However, very many such "preparation courses" focus largely or entirely on intensive training on the itemtypes with little regard to whether the teaching improves communicative ability or not. Such courses develop test-taking ability but not real, practical language ability; they tend to produce candidates who do relatively well in the test but may continue to perform poorly in real language use situations whether in everyday life, academic and training contexts, or vocational contexts, i.e. they distort the test results.

(emphasis added)

29) The QNU has been concerned that IELTS has a limited ability to determine vocational english language skills Professor Ingram relevantly provides in this respect:

*"In **content**, only ISLPR can be specific to a particular vocational area. As already noted, IELTS is a general test aimed at assessing the readiness of non-English background students to study or train in English-speaking universities, colleges and senior secondary schools. It does not focus on any vocational*

area nor on the language skills required in any vocational area. Two of the OET modules (Speaking and Writing) focus on the language of the particular health area whereas Reading and Listening are said, on the OET webpage, to be "generic to all candidate types irrespective of their profession". On the other hand, ISLPR is an adaptive test in which all four modules (Speaking, Listening, Reading and Writing) are adapted to the academic or vocational area in which the candidate has to operate."

30) In relation to appropriate vocational English language levels for a profession Professor Ingram relevantly states:

> *"Ideally, to establish minimum vocational proficiency levels for any profession or other vocation, one would conduct a needs analysis of the work situation to establish the desirable proficiency level in each macroskill, i.e. to identify the language tasks to be carried out and the levels in the various macroskills on the scale that most nearly match those levels.*
> *…*
>
> *Without having undertaken a needs analysis of the nursing situation, I would probably recommend that ISLPR 3+ in all four macroskills or IELTS 7 is probably appropriate granted that nurses have to be able to communicate with doctors, other nurses and colleagues in a medical register and with patients, the general public, and also medical colleagues in a non-specialist register and, in emergencies, must do so under stress. I repeat, however, that I would not be confident about this advice until I had an opportunity to observe the nursing needs in the relevant workplace.*
>
> *"I would also recommend that a slightly lower proficiency requirement should be set on entry to a profession if the society is serious about helping new comers to Australia who have been granted entry permits on the basis of their skills to gain some form of provisional registration and into the workforce. The reason for this recommendation is that nurses and other professionals need the opportunity to interact with professional colleagues and to experience the language of the workplace if they are to develop their proficiency in that register. In addition, progression through the higher proficiency levels generally takes longer than at low levels and is more likely to occur when the learner is having active language experience, not least in trying to communicate, especially in the work situation. If they are barred from such experience and from gaining employment and the security that that provides, it is also probable that such critical issues in language learning as social and psychological distance has become aggravated and further inhibit language development even to the point of fossilization. …Obviously, if some form of provisional registration [was] available, there would be a cost involved in the additional supervision that the provisional register would require but this is likely to be considerably lower cost that implicit in the loss of an trained practitioner in the profession that is seriously short of properly trained staff."*
>
> (emphasis added)

31) Professor Ingram has advised the QNU that the most appropriate test to measure vocational language proficiency is a direct test that focuses on the practical proficiency of the candidate in a relevant vocational area:

> *"The most appropriate test to measure vocational language proficiency is a direct test that focuses on the practical proficiency of the candidate in the relevant vocational area. There can be no doubt that the ISLPR, an adaptive, direct test of practical language proficiency, that can be readily and routinely adapted to match the relevant vocational register would be the more appropriate. There are practical reasons related to the current availability of IELTS worldwide and the, at present, more restricted availability of ISLPR, why it is appropriate, where ISLPR is not available, for the compromise test, IELTS, to be accepted. However, if IELTS is accepted, the end-users must also realise its real nature as a test of readiness for academic activity, the normative component involved in the determination of its scores, the less direct and hence inevitably less effective measurement of practical language skills that it provides, and the intrusion of IELTS preparation courses on both the results themselves and hence their correlation with the candidates' real practical ability***."**

(emphasis added)

32) The Standard should allow the Board flexibility in considering a range of evidence of English language proficiency.

33) The Board should investigate developing a vocational English Language test directly relevant to nursing.

34) The Board should consider allowing applicants who do not meet the minimum test score requirements, but are not significantly below the requirement, to be registered under a form or 'provisional' or 'limited' registration which would allow registrants to practice, under supervision, in order to gain vocational language experience and therefore satisfy the relevant English language test minimum scores at a later time, for example after 6 to 12 months.

Professional Indemnity Insurance

35) The QNU supports the introduction of a requirement for nurses and midwives to hold professional indemnity insurance as a condition of practice.

36) The QNU agrees that when applying for registration or renewal of registration, nurses and midwives should be required to declare that they have appropriate professional indemnity insurance arrangements in place, or such arrangements will be in place, while they practice nursing or midwifery;

37) The QNU supports the requirement that nurses and midwives who hold private insurance be required to retain documentary evidence of this insurance and to be provided to the Board on request.

38) The QNU also supports the requirement that privately practicing midwives must provide full disclosure on their level of professional indemnity insurance to their clients, however we are of the view that point 2 of the requirements in the standard should be amended to include the following words:

> *"unless exempt under Section 284 of the Health Practitioner Regulation National Law Act 2009.*"

39) The QNU welcomes the acknowledgement in the registration standard that nurses and midwives will have compliant professional indemnity insurance arrangements:

a) by way of the principles of vicarious liability; or
b) provided as a consequence of a genuine employment; or
c) provided as a consequence of a student relationship through an education institution's insurance; or
d) (in some states) union membership.

40) In relation to requirement 4 of the standard, the QNU is concerned that the requirement that the professional indemnity insurance cover the nurses or midwives "*full scope of practice*" may place upon nurses and midwives a requirement which is impossible to meet. Most professional indemnity policies will contain a number of exceptions which may relate to particular clinical procedures or aspects of nursing practice which have such a high degree of risk that an insurer may not provide coverage or which may constitute an exemption to policy coverage. For example, all professional indemnity insurance policies will not provide coverage in relation to midwives in independent practice and most will exempt claims related to accidental *reuse* of an instrument which contacts or penetrates skin tissue. Another recent example has been the difficulties faced by health practitioners in relation to the performance of abortions and uncertainty related to the law concerning abortions in Queensland which resulted in many health practitioners ceasing to provide this service because of exemptions contained in their professional indemnity insurances policies regarding terminations not performed in accordance with relevant state law or territory legislation.

41) Therefore in the QNU's view, requirement 4 of the standard should be amended to acknowledge that it is unlikely that a product exists which covers a nurses "full scope of practice" by removing the word "full".

42) The QNU is of the view that requirement 5 of the standard could create confusion for nurses and midwives who are attempting to assess whether they have in place appropriate professional indemnity insurance requirements. The QNU acknowledges that there are a range of professional indemnity products which are available on the market which provide varying levels of indemnification for insured's under the policy. However, the premiums for these products, and an offer of insurance for these products, are generally not referenced to the particular nature of the nursing or midwifery practice engaged in by the insured. Generally a high risk nursing or midwifery practices would be exempt from coverage by professional indemnity insurance policy, for example independent private practice midwifery. In our experience, the reality is that most professional indemnity

insurance policies in relation to nursing and midwifery are developed on a claims made basis. These professional indemnity insurance policies look at the nursing profession as a whole and on the number and type of claims made on a particular policy during a policy year. Therefore it would be very difficult for a nurse or midwife to be able to, with reference to the current professional indemnity insurance market, determine whether, with reference to their particular practice, that they require a different level of professional indemnity cover to that required by other nurses and midwives. In our view, requirement 5 of the standard is confusing and fails to take into consideration the nature of products available to nurses and midwives. In our view, it would be more appropriate for requirement 5 to ensure that nurses and midwives are aware of exceptions to the professional indemnity insurance that they hold and ensuring that these exceptions are notified to the Board and that the Board gives consent to the nurse obtaining that particular professional indemnity insurance product.

43) The QNU is also concerned that requirement 5 of the standard may also have the effect of deterring nurses and midwives from working in areas which by their very nature are of higher risk. This would probably have a lesser effect on the public sector nursing workforce but could result in nurses and midwives avoiding private sector areas considered to be high risk.

44) In relation to requirement 6 of the standard, again, in our experience professional indemnity insurance products will be referenced to the nursing profession as a whole rather than to the matters provided for in dot point 1 through 4 of requirement standard 6. Although such matters are relevant to a nurse or midwife assessing their professional indemnity insurance cover, they are unlikely to provide substantial guidance to nurses in obtaining professional insurance products. For example, nurses employed by Queensland Health would be covered by the principals of vicarious liability. Queensland Health has a policy in relation to indemnification of health professionals. Queensland Health does not have a professional indemnity insurance policy, rather it pays claims out of consolidated revenue. Therefore, reference to the Queensland Health Indemnification Policy would be what is relevant to nurses in this type of employment.

45) In relation to requirement 7, the QNU supports the professional indemnity insurance product obtained by nurse or midwife being required to have run off cover. This is a sensible requirement which provides appropriate protection to consumers who may make claims following the nurse leaving the profession.

Continuing Professional Development Standard

46) The QNU generally agrees with the content of the CPD Standard. However, the QNU is of the view that nurses and midwives should be able to undertake CPD courses outside of their “context of practice”; that is CPD which may not be relevant to the nurses’ or midwives’ practice.

47) Many professional CPD policies, for example legal CPD requirements under various State and Territory Legal Professions Acts, have no such restriction on the nature of CPD undertaken or that it is relevant to the professional’s area of

practice. The absence of such a restriction encourages the relevant professional to expand their knowledge base and develop a broad understanding of their profession. It also allows the professional to explore areas of practice that they may, in the future, wish to work in and give them the exposure to make more informed decisions on the progression of their career.

48) The reality is that nurses will undertake the majority of their CPD through courses directly relevant to their area of practice either by choice or as a consequence of the fact that these courses will ultimately be largely provided by employers and will, in a majority of cases, simply constitute attendance at typical "in-service" training already provided and directly relevant to the area in which they are employed.

49) The QNU is concerned that rural, regional and remote nurses and midwives may have significant difficulty complying with the proposed CPD Standard, particularly those nurses working in smaller private employers such as aged care facilities and surgeries. This disadvantage could be remedied by reducing the documentation requirements in the CPD standard which would allow more nurses and midwives to access self-directed learning.

50) In the QNU's submissions, the current documentation requirements in the draft CPD Standard appear to impose a very high bar on nurses and midwives who wish to engage in self-directed CPD. In our view, the requirements in 4(a) to 4(d)) contain features analogous to degrees at Masters level and education aimed at nursing managers. For example, the documentation requirements would exclude many non-tertiary educated nurses and midwives and enrolled nurses who would arguably require an educator to assist them with the requirements. The CPD Standard does not seem to accommodate the different learning needs of different categories of nurses and midwives, particularly enrolled nurses.

51) The documentation requirements would also essentially exclude from self-directed learning many of the CPD programs presently offered on-line. This would have a significant impact on rural and remote nurses and midwives ability to comply with the CPD standard.

52) The QNU submits that mandatory skill acquisition should be counted as CPD. This would alleviate possible hardship by those nurses or midwives who work in a small workplaces, rural and remote workplaces and/or whose employer is unable or unwilling to provide CPD or pay for CPD.

53) The QNU is also concerned that the CPD Standard makes no accommodation for nurses or midwives who are on parental leave. In the our submission, the requirement to undertake CPD should not apply to nurses and midwives on parental leave.

54) Similarly, the CPD Standard does not make any accommodation for nurses or midwives who may be injured and/or off work for a period due to illness. In our submission, the requirement to undertake CPD should not apply to nurses and midwives while they are off work as a consequence of long term injury or illness. In our view, the CPD Standards interaction with the Recency of Practice Standard

is relevant to nurses and midwives on parental leave or long time leave related to injury or illness.

Recency of Practice Standard.

55) The QNU supports the maintenance of the present recency of practice requirement of 5 years which exists in Queensland. In our view, it is appropriate that registrants must have undertaken practice in the profession within the preceding 5 years.

56) We refer to requirement 2(a) of the Recency Standard. In our view, specifying a minimum period of practice within the five year period is unhelpful. This fails to recognize the reasons why a nurse or midwife may leave the profession. For example, a nurses or midwife who leaves the profession for the purposes of having a couple of children may only ever return to work in a part-time capacity, for example 1 day per week, for 3 out of the 5 year period. She would therefore not satisfy the requirement for 6 months practice in the 5 years during which she worked part-time and was on maternity leave. She would therefore be in jeopardy of losing her registration and therefore her income and profession. T

57) In our view, the Recency Standard on its current drafting could constitute, depending on the particular nurses or midwife's circumstances, unlawful discrimination under both Commonwealth and State legislation[3].

58) In our submission, no minimum period of practice should be specified in the Recency Standard. There are mechanisms under Part 7 and 8 of the *Health Practitioner Regulation National Law Act 2009* (the "Law") which allow the Board to address competency issues which may arise as a consequence of a person not practicing in the profession of a substantial period of time.

Registration Requirement Standard for Nurse Practitioner

59) The QNU generally supports the registration standard for Nurse Practitioners.

60) The QNU is of the view that the present requirement that a registrant demonstrate advanced nursing practice in a clinical leadership role in the area of practice in which they intend to practise as a nurse practitioner, within the last five years requires further consideration to take into account:

a) the limited number of NP roles available;
b) the limited number of clinical leadership roles available;
c) the limited number of NP and clinical leadership roles available in rural and remote settings;

61) The Standard creates a requirement that is outside the control of many nurses and may also be open to interference by an employer on purely capricious grounds. For example, a nurse active in agitating for a collective union agreement

[3] We acknowledge that defences exist in relation to acts authorised by statute. However, in our view, it would be a highly embarrassing situation for the regulatory body regulating the largest predominately female profession in Australia, to have to rely on a statutory defence against discrimination on the ground of family responsibility.

in her workplace, and who may be a nurse leader industrially, may be deliberately excluded from access to promotion to clinical leadership roles because of her trade union activism. This could arguably exclude her from satisfying the NP Standard requirement.

62) Whether a nurse is eligible to become a NP should be related to her experience and qualifications and not be subject to interference by parties external to the registration relationship or be reliant upon holding senior positions which because of location or scarcity the nurse may have been unable to obtain. The QNU in. this respect notes that a Level 1 RN can engage in advanced nursing practice but would ordinarily not be considered to be fulfilling a clinical leadership role.

63) It is entirely undesirable and unsatisfactory for the Standard to restrict the career and professional development of nurses to the position of NP by prescribing a requirement which is outside of the control of potential NP applicants.

Registration Requirement Standard for Midwife Practitioners

64) The QNU refers to our submissions in relation to NP and similarly submit that the Standard should not impose a requirement which is outside of the control of potential Midwife Practitioner applicants.

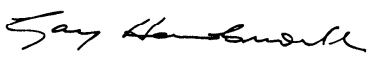
65) We are also concerned that the Standard does not acknowledge the difficulties faced by midwives working in certain midwifery models in complying with requirement 1(b) of the Standard. In our view, greater consideration needs to be given

66) We are also of the view that independent midwives in private practice, particularly those engaged in home births, would find it very difficult to comply with the requirement.

67) In the QNU's view, this Standard requires substantial review before implementation.

Should you wish to discuss this matter further then please contact Ms Sharyn Hopkins, Professional Officer, or Mr Luke Forsyth, Senior Legal Officer.

Yours Faithfully,



Gay Hawksworth
State Secretary
Queensland Nurses' Union of Employees