

Mutual Recognition Review

Submission from Nurses and Midwives Board, New South Wales

1. Introduction

The purpose of occupational licensing/registration is primarily to protect the public. Any arrangements to facilitate licensing across jurisdictions must also protect the public in all participating jurisdictions.

Mutual recognition arrangements have facilitated the movement of nurses and midwives between jurisdictions and the Board supports this facilitated process.

However it is perceived that the legislation does not adequately provide for protection of the public because important information cannot always be shared between registering authorities in different jurisdictions. The legislation provides for provision of information in limited circumstances but these provisions are perceived to be inadequate when balanced against the public health and safety interest.

The Council of Australian Governments has announced a national scheme for the registration of health professionals commencing from July 2010 and this will overcome the existing problems with nurses and midwives moving between Australian jurisdictions but will not remove the possibility of ongoing problems in relation to the Trans Tasman Mutual Recognition arrangement. It would also be helpful to address these concerns prior to any similar arrangements being negotiated with any other countries in the future.

2. Perceived Problems

There are specific issues that have caused concern to the Nurses and Midwives Board of New South Wales.

2.1 *Undertakings given to a registration authority.*

One strategy used in at least one jurisdiction has been to seek undertakings from a nurse or midwife as an alternative to disciplinary proceedings. The undertakings are clearly stated not to be conditions on practice. Undertakings may involve agreement not to practise in the particular jurisdiction for a limited or indefinite period, agreement to undertake further education, agreement to practice under specified constraints *etc.*

Section 33 of the *Mutual Recognition Act 1992* states that a person's registration in the equivalent occupation in another State is affected in the same way if registration in the first state is cancelled or suspended or subject to a condition on disciplinary grounds, or as a result of or in

anticipation of criminal, civil or disciplinary proceedings. Section 32 of the *Trans Tasman Mutual Recognition Act 1997* make similar provisions. The use of undertakings to avoid disciplinary proceedings is generally perceived to preclude other jurisdictions imposing equivalent restrictions on the practice of the nurse or midwife in other jurisdictions. While the public of the first state is protected by the undertaking, another state does not appear able to impose equivalent constraints on the practice of the registrant.

The public would be protected if all information regarding complaints, practice, character, health, convictions etc. could be shared with registering authorities in all other participating jurisdictions and if any constraints on practice (e.g. voluntary undertakings) could be applied in all other participating jurisdictions in which the person is registered.

2.2 *Cancellation of registration to avoid disciplinary decisions.*

In one case, a nurse was subject to disciplinary proceedings in another state but, in accord with the law of that state, was able to cancel registration voluntarily as a way of avoiding the disciplinary outcome. The disciplinary body in the other state was not able to hand down any decision. Although voluntary cancellation of registration in the other state protected the people of that state, the nurse remained free to practise in other jurisdictions in which already registered.

In this instance the nurse had previously obtained registration in New South Wales but, in the absence of a disciplinary outcome in the other state, registration in this state could not be cancelled. Evidence was obtained from the first state and complete new disciplinary proceedings were initiated in New South Wales; after an inquiry by the Nurses and Midwives Tribunal in New South Wales, the nurse's registration was cancelled. However this required extensive resources.

In order to protect the public in all participating jurisdictions, mutual recognition arrangements need to require that matters of concern (disciplinary, health, professional performance etc.) in any jurisdiction be pursued to a final outcome unless the person consents to cancellation of registration or similar undertaking which can be applied in all participating jurisdictions.

2.3 *Inability to share information prior to imposition of disciplinary suspension or conditions.*

There have been a number of instances in which the Nurses and Midwives Board has tried to contact nurses and midwives in relation to complaints about professional practice but has been unable to do so. In some instances it is understood that the person may be practising in another jurisdiction. However in the absence of disciplinary proceedings

and a disciplinary outcome, the Board is unable to inform other jurisdictions of concerns relating to some nurses and midwives.

In cases where a nurse or midwife has moved to an unknown interstate location, the people of New South Wales appear to be protected from further inappropriate professional conduct but the person may be a danger to the public in other states.

It would appear necessary, in the interest of the public of all participating jurisdictions, that sharing of information be permitted between jurisdictions long prior to a disciplinary inquiry being initiated or completed.

2.4 *Inability to share information about applicants for registration*

Mutual recognition legislation makes it easy for registrants to move between jurisdictions once registered, but registration authorities may hold information about applicants for registration but not be able to share the information.

In New South Wales there have been instances in which there has been suspicion regarding the authenticity of documents but the applicants then made no further contact with this state. However these persons may attempt to submit same documents in one of the other participating jurisdictions where the cause for suspicion is not appreciated.

In some instances applicants have failed competence assessments in New South Wales and have then proceeded to lodge applications in another participating jurisdiction without declaring demonstration of unsafe practice and refusal of their application in New South Wales.

Protection of the public in all participating jurisdictions would appear to be protected by the ability to share information more widely.

3. Conclusion

The vast majority of nurses and midwives practise safely. Mutual recognition arrangements assist clinicians to move between participating jurisdictions and this is supported.

However, until and unless disciplinary decisions are made, registration authorities are very limited in their ability to share information about applicants and registrants.

It is perceived that the inability to share information and match practice constraints (e.g. undertakings) between jurisdictions does not protect the public and needs to be taken into account in the balance between assisting movement between jurisdictions and the protection of personal privacy.

While national registration for health professionals will address and resolve concerns within Australian jurisdictions, it would still be appropriate to address the concerns as the Trans Tasman Mutual Recognition arrangements are expected to continue. It is also possible that the Trans Tasman arrangement may provide a model if mutual recognition arrangements are negotiated with other countries and it would be appropriate that weakness in the model be addressed prior to widening its use.
