Australian Nursing and Midwifery Federation submission

Australian Health Practitioner Regulation Agency public consultation on the draft Data strategy

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Nursing &
Midwifery
Federation

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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 322,000 nurses, midwives, and care workers 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 and the interests of those our members care for.

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.

The ANMF welcomes the opportunity to provide a response to the Australian Health Practitioner Regulation Agency (Ahpra) for the public consultation on the draft Data strategy. The ANMF agrees with the commentary outlined in the consultation paper that describes the importance of the unique and highly valuable data asset Ahpra holds in relation to both its regulation functions and workforce planning. The ANMF also agrees with the statements in the consultation paper regarding the need for data to be secure and to balance competing interests of the public and that of privacy for practitioners.

The ANMF has been working with the Nursing and Midwifery Board of Australia (NMBA) and Ahpra since they were established to assist with improving data related to workforce planning. In particular student registration, data related to early career nurses and midwives and data on the qualifications of nurses working in particular contexts of nursing practice such as aged care, mental health or palliative care. For many years the ANMF has also expressed support for the linking of data over the career of nurses and midwives to assist with workforce planning.

However, the ANMF opposes the recording of a practitioner's disciplinary history on the public register. This is a breach of privacy and could potentially extend the punishment or restriction period for the practitioner as displaying disciplinary history could unfairly create confusion, prejudice and doubt for the public as to a practitioner's practice. This could result in significant negative consequences for a practitioner's future practice. The ANMF understands that in 2018 the National Boards have already introduced publishing links to adverse tribunal (disciplinary) decisions and court outcomes to a practitioner's record on the public register. Adding further disciplinary history to the public register is unreasonable and unfair. Disciplinary history that has been finalised has been resolved and requires finality. In the case of nurses and midwives, to remain on the register without conditions the NMBA has identified that the nurse or midwife meets the expectations and standards for registration and is safe to practice in Australia. This proposal should be removed from the data strategy.

We offer the following feedback in response to the consultation questions.

CONSULTATION QUESTIONS

DRAFT DATA STRATEGY

1. Does the draft Data strategy cover the right issues?

The data strategy covers relevant and contemporary issues related to data and regulation. However, apart from a number of high level statements the strategy does not provide detail on how data collected by Ahpra will be improved and made publicly available. As outlined above, the ANMF has been working with the NMBA and Ahpra for many years to progress the collection of important, accurate and timely data relating to nurses and midwives, particularly focused on student and early career nurses and midwives.

A critical issue across the health and aged care sectors is workforce planning which requires comprehensive data commencing in the undergraduate/student phase of a career. The impact of not having time sensitive, accurate data results in an inability to identify trends and act on them in order to make informed policy on workforce planning going forward.

Student registration data needs to be collected, accurate and made publicly available, clearly outlining student numbers per year. Ideally, students should also be tracked to ensure there is accurate information about how they progress through their course leading to registration. Further, clear data needs to be available regarding initial registration identifying the number of initial registrations each quarter with data on Australian citizenship, country of birth and the country where education leading to registration was completed.

The strategy also lacks detail on how the post renewal survey for nurses and midwives conducted by the Commonwealth Department of Health through Ahpra could be enhanced to improve data collection. The strategy should outline how this data could be better integrated and analysed using the data sets held by Ahpra to improve workforce planning.

2. Do you think that anything should be added to or removed from the draft Data strategy?

As outlined above, the ANMF recommends the removal of the proposed recording of practitioner's disciplinary history on the public register from the draft data Strategy. If practitioners are on the register without conditions then it is clear that the relevant National Board or co-regulator has determined that they meet the required standards and expectations for their profession. It is a double standard to have the practitioner on the register without conditions and provide details of their disciplinary history. A practitioner either meets the standard or does not. Adding practitioner's disciplinary history is unfair and unnecessary. It has the potential to erode public confidence and could lead to significant negative consequences for the practitioner's future practice.

Focus area 1: The public register

3. Do you agree with adding more information to the public register?
   - **If yes, how much detail should be included?**
   - **If no, please share your reasons.**

The ANMF opposes adding a practitioner's disciplinary history to the public register. In regard to the other proposed additions to the register, the ANMF cautions Ahpra against significantly increasing the content on the register for a number of reasons. The intention of the register is to enable the public, including employers and other practitioner's, easy access to identify if a practitioner is registered to practice, not to create a directory or profile of practitioners in order to advertise their services. Increasing the content on the register such as, areas of special interest or relevant licenses, will require that the information is validated, has the consent of the practitioner and is clearly relevant for regulation purposes. Ahpra and the National Boards will need to remain accountable and responsible for the accuracy of information provided on the register as it should be a trusted source of validated information. The proposed changes will require extensive resources to implement and will ultimately affect registration fees with limited benefit to the public and the practitioner. A balance needs to be found between the information that is necessary on the public register for the purpose of regulation and the resources required to ensure information provided on the register is accurate.

4. Do you agree with adding health practitioners' disciplinary history to the public register?
   - **If yes, how much detail should be included?**
   - **If no, please share your reasons.**

The ANMF opposes adding a health practitioners' disciplinary history to the public register. This proposed change could potentially extend the punishment or restriction period for the practitioner as displaying disciplinary history could unfairly create confusion, prejudice and doubt for the public as to a practitioner's competence. This could ultimately affect the practitioner's future practice. The ANMF understands that in 2018 the National Boards have already introduced publishing links to adverse tribunal (disciplinary) decisions and court outcomes on a practitioner's record on the national register. Adding further disciplinary history to this information is unreasonable and unfair to the practitioner.

Public transparency

A clear balance needs to be established between the need for public transparency and that of a practitioner's privacy. The ANMF understands and supports the need for public transparency enabling the public to easily access information about a practitioner, stating if they are registered and if there are restrictions on their practice.

However, there is no utility for the public in publishing a practitioner's disciplinary history that may have been, vexatious, dismissed without any further action or where restrictions have been met other than undermining their confidence in the practitioner.

Practitioners have a right to practice their profession and earn an income if the relevant National Board has deemed them safe to do so. Publication of a practitioners disciplinary history may risk secondary financial punishment/consequences despite the practitioner complying with conditions/restrictions imposed.

The role of the regulator

The public collectively delegate decisions about the suitability and safety of health practitioners to health regulators such as Ahpra and the National Boards. If a practitioner's full disciplinary history was made available to the public this would undermine the role of Ahpra as a regulator and defer the responsibility of decisions about the suitability of health practitioners to individuals.

If a health practitioner's name appears on the public register, it should only be because the National Board has determined that they are suitably qualified and are a fit and proper person, regardless of whether conditions are presently imposed.

It is inevitable that health practitioners, like anyone else, make mistakes and they must be given the grace to learn from those mistakes through education and reflection. Publishing outdated and irrelevant disciplinary history will undermine the trust and confidence the public need to have in health practitioners broadly in order to access essential health services and shift from protective to punitive regulation.

Underreporting

The ANMF is concerned that when practitioners fear public retribution they are less likely to report risks or incidents. Publishing disciplinary history will compound this fear and will ultimately lead to a reduction in self-reporting for practitioners and may also lead to employers/colleagues not making voluntary notifications as they will be aware that the consequences are more significant.

Further, publishing disciplinary history may fail to understand the complexity of healthcare systems, the impact of 'human factors' in quality and safety, adverse event reviews through a balanced lens of organisation and individual responsibility, and establishment of reporting cultures where an environment of trust (without fear of blame) is to be cultivated.

The ANMF recommends the Safer Care Victoria Statutory Duty of Candour and Adverse event review and response is considered. This is an example of a parallel regulatory process that supports incident review and safety in healthcare. Investigation into an individual practitioner may be required but it is not, and should not, be promoted as the sole or primary mechanism assuring public safety in our healthcare systems.

5. How long should a health practitioner's disciplinary history be published on the public register?

The length of time a practitioner's disciplinary history should be published on the public register needs to be dictated by the outcome of the finding of the notification. If the finding identifies that a practitioner must meet conditions, then any conditions should be published on the register until the matter has been finalised and the conditions are met. If the notification has been finalised with no further action then the disciplinary history should not be published on the public register.

6. Who should be able to add additional information to the public register?

As the register is a trusted source for the public, in order to be assured that practitioners are registered and therefore able to practice, it is essential that Ahpra and the National Boards remain accountable and responsible for the accuracy of information held on the register. Any information on the register should be validated and be relevant for regulation purposes. Ahpra should be the only entity to add information to the public register. Further, timely and transparent mechanisms need to be in place if the regulator publishes incorrect information. This needs to be addressed quickly to ensure the register has 'live' accurate information displayed. Redress and remediation processes also need to address situations when incorrect information directly impacts a practitioners practice.

7. Are there other ways to enhance the effectiveness and value of the public register for the public and/or practitioners?

The public register could be enhanced by improving the accuracy of the current register. ANMF members regularly report inaccuracies in the current data found on the register, particularly related to information that transitioned from the state based regulators in 2010 to Ahpra and the National Boards. Specific examples include the accuracy of the names of education providers where nurses and midwives completed their program leading to registration, the title of the qualification and the first year of registration for nurses, midwives and dual registered nurses and midwives. Unfortunately there are many examples where the first year of registration as a nurse has been incorrectly transcribed to the first year of registration as a midwife.

Focus area 2: Data sharing

8. Our National Law enables us to share data with some other organisations in certain situations. Do you have suggestions about how Ahpra could share data with and/or receive data from other organisations to benefit the public, practitioners and/or our regulatory work?

The ANMF is aware that Ahpra already shares data with a number of organisations and supports this collaborative work. However, the ANMF is particularly concerned about the regulatory duplication for nurses with the Aged Care Quality and Safety Commission and the National Disability Insurance Scheme (NDIS).

The introduction of the Code of Conduct for Aged Care implemented by the Aged Care Quality and Safety Commission has seen duplication of the eight elements expected in the Code already covered by the NMBA's Professional Practice Framework requirements in place for both registered nurses and enrolled nurses. It is essential that the NMBA/Ahpra, Governments and the Aged Care Quality and Safety Commission work collaboratively, enabling safe sharing of confidential information and processes to prevent regulatory duplication and burden for nurses, midwives and those representing them.

This is similar to the NDIS Code of Conduct and worker screening. It is essential that information sharing between Ahpra and other state-based regulators is in place. For example in Victoria, the Victorian Disability Worker Commission (VDWC) undertake investigations into complaints involving registered health practitioners. The ANMF foresee potential issues where relevant information collected by the VDWC may not be shared with Ahpra (or the Health Complaints Commission and where investigations by a number of regulators may unnecessarily occur simultaneously.

Further, registered nurses and midwives should not have to seek additional and alternate registration with other sector specific bodies when they are already registered with the NMBA. Registered health practitioners should, when required, also be investigated by the relevant National Board, not other regulators or multiple regulators. Regulatory burden and duplication must be removed.

As a key stakeholder, the ANMF would appreciate further discussion with Ahpra and the NMBA regarding regulatory duplication and the sharing of information and data to other regulators as well as the ANMF, with consent from nurses and midwives.

Focus area 3: Advanced analytics

9. Do you have any suggestions about how Ahpra should approach using advanced analytics and machine learning technologies?

The ANMF is supportive of Ahpra using advanced analytics in their regulatory role. Just as health practitioners are expected to deliver evidence-based care, which involves the use of technology, Ahpra and the NMBA should do the same. Using advanced data analytics is essential moving forward in all aspects of health care delivery including workforce planning. For example, the opportunity of linking and analysing data over the career of nurses and midwives to better understand how they are employed and where they work will significantly contribute to better workforce planning.

In regard to machine learning technologies and predictive analytics, the ANMF can see the benefits in using this technology to assist in improving efficiency, accuracy and consistency in regulatory functions. However, using predictive analytics needs to be implemented within a governance structure that ensures it is only one element that contributes to the decision or outcome ultimately made by a human or a group of humans in the case of a National Board. The governance framework must also ensure privacy, prevent bias and discrimination, and enable clear understanding of how predictions have been identified. As machine learning technologies are relatively new, particularly in regulation it is important to ensure that the regulatory governance frameworks are clearly established, implemented and improved over time as we continue to learn more about the use of these technologies.

Other

10. Please describe anything else Ahpra should consider in developing the Data strategy.

The ANMF has nothing further to add at this time.

CONCLUSION

Thank you for the opportunity to provide a response to the Ahpra public consultation on the draft Data Strategy. Ahpra holds unique, highly valuable data in relation to its regulatory functions. It is essential that this data remains secure and is used to its fullest potential whilst ensuring balance between the competing interests of the public and privacy for health practitioners. The ANMF strongly opposes adding a health practitioners' disciplinary history to the public register. This proposed change could potentially extend the punishment or restriction period for the practitioner as displaying disciplinary history could unfairly create confusion, prejudice and doubt for the public as to a practitioner's competence, ultimately affecting the practitioner's future practice. The ANMF looks forward to further consultation and engagement regarding the new Data Strategy.