

BH:JMO
Ref:

29 August 2011

Ms Anne Copeland
Chair
Nursing and Midwifery Board of Australia
PO Box 16085
Collin Street West
Melbourne Vic 8007

Dear Ms Copeland

Re: Nursing and Midwifery Recency of Practice Registration Standard

We are writing to express our concerns about the introduction of the Nursing and Midwifery Recency of Practice Registration Standard (**the Standard**) by the Nursing and Midwifery Board of Australia (**the Board**) when the *Health Practitioner Regulation National Law NSW 2009* came into effect on 1 July 2010.

We are aware of nurses who have been seriously disadvantaged by the retrospective application of the Standard in NSW.

In particular nurses who have taken parental leave in the five years prior to the introduction of the Standard report that they have fallen short of the requirements necessary to be eligible for renewal of their registration.

On its face the Board's retrospective imposition of the Standard constitutes indirect discrimination on the grounds of sex/pregnancy and/or family and carer's responsibilities.

Section 18 of the *Sex Discrimination Act 1984* C'th (**SDA**) provides:

Qualifying bodies

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy, breastfeeding or family responsibilities:

(a) by refusing or failing to confer, renew or extend the authorization or qualification;

(b) in the terms or conditions on which it is prepared to confer the authorization or qualification or to renew or extend the authorization or qualification; or

(c) by revoking or withdrawing the authorization or qualification or varying the conditions upon which it is held.

See also equivalent state anti discrimination legislation including section 49ZYG of the *Anti-Discrimination Act 1977 NSW (ADA)* and section 49T on what constitutes discrimination on the grounds of carer's responsibilities.

Indirect discrimination

Indirect discrimination occurs where a requirement or condition that is the same for everyone disadvantages a particular group of people, for example, nurses on parental leave and/or those with carer's responsibilities. If a substantially higher proportion of people with a particular characteristic are not able to comply compared with the proportion of people without that characteristic, and if the requirement is unreasonable in the circumstances, this may constitute indirect discrimination.

In our view the retrospective application of the Standard imposes a requirement which a substantially higher proportion of nurses on extended parental leave, or on leave due to their carer's responsibilities, in the five years prior to the introduction of the Standard are unable to comply.

It is also our view that the requirement is not reasonable in the circumstances. This is because we believe re-entry should be assessed on the basis of meeting competencies relevant to the profession and to the area in which the practitioner practices or proposes to practice and other Board requirements for registration.

Conclusion

In the circumstances, it is our view that the Board should implement an extended period of special consideration for the cohort of nurses and midwives in NSW who have been disadvantaged by retrospective application of the Standard.

To discuss this matter further, please contact Kate Adams, Manager of Professional Services at this office.

Yours sincerely

BRETT HOLMES
General Secretary