

Legislative and Regulatory Policy Framework

Introduction

NZNO provides professional leadership, advice and support to members in a range of areas relevant to nursing practice. The majority of practising registered and enrolled nurses (RNs and ENs) are members of NZNO (approximately 37,044/47,751 (Nursing Council of New Zealand [Nursing Council], 2014)), as well as a significant number of students (approximately 2691). NZNO is committed to representing members and promoting nursing and midwifery and undertakes significant activity across a range of sectors to ensure the nursing perspective is heard and included. This document focuses specifically on the regulated nursing workforce – RNs and ENs, and nurse practitioners (NPs) – and should be read in conjunction with NZNO's other policy frameworks: education (2013), models of care (2014) and employment (to be published 2015), and the 2020 and beyond: A vision of nursing background document (2011).

In 2011, NZNO developed a vision for nursing that outlined a future direction for nursing in a range of areas, including legislation and regulation (Clendon, 2011). The vision stated:

*Nursing will continue to be a **regulated profession** which meets the highest standards of quality and safety in practice. Nursing's professional associations will continue to lead the development of specialist frameworks for nursing practice, provide standards for credentialing, and develop standards of practice for all regulated nurses. Nursing will be at the forefront of research into interdisciplinary and nursing practice, and the mechanisms required to ensure safe utilisation of all health care workers to effectively meet the health needs of the New Zealand population. There will be no legislative, contractual or funding barriers to practice because people will recognise the value of nursing in improving health outcomes and addressing health inequalities and will work with nursing to remove these barriers. Nurse practitioners, registered nurses and enrolled nurses will work collaboratively to ensure the best possible health outcomes for all New Zealanders. Nurse practitioners will be widely recognised as an integral part of the health system and nurse practitioners and registered nurses will provide first point of contact care for many New Zealanders in a range of health settings. Nursing will work closely with those bodies charged with workforce planning to ensure nursing shortages do not occur and that appropriate and ethical recruitment and retention strategies are implemented... (p.12)*

One of NZNO's goals on completion of the vision project was to develop specific policy frameworks for each section of the vision. This document outlines NZNO's policy framework on legislation and regulation. The policy framework identifies key strategies

to advance the vision up to and beyond 2020. The policy framework will be reviewed as new information and evidence comes to light.

Purpose

The purpose of this document is to:

- > provide steps on how the vision can be achieved;
- > articulate NZNO's commitment to ensuring legislation and regulation enable evidence-informed nursing practice;
- > outline NZNO's vision for legislation and regulation based on international and local evidence;
- > outline NZNO's commitment to the provision of a well-educated and appropriately regulated nursing workforce that provides safe and high-quality health services; and
- > provide guidance to members and staff when making policy submissions.

Current context

Regulation and standards

Registered and enrolled nurses and NPs (nurses) are regulated under the Health Practitioners Competence Assurance Act (2003) and are accountable for ensuring all health services they provide are consistent with their education and assessed competence, are within their scope of practice, meet legislative requirements, and are supported by appropriate resourcing. Nurses are also responsible for ensuring professional standards of nursing practice, such as those outlined in the *Standards of Professional Nursing Practice* (NZNO, 2012) and the Nursing Council's *Code of Conduct for Nurses* (Nursing Council, 2012), are upheld. Further information on the difference between NZNO and the Nursing Council can be found in the NZNO document *Nursing Council or Nurses Organisation – Know the difference* (NZNO, 2009).

NZNO supports an approach to regulation that promotes excellence in patient care, enables health professionals to flourish and supports organisations to offer safe and effective health care. The United Kingdom (UK) Council for Healthcare Regulatory Excellence (CHRE) recommends Right-touch regulation as an effective approach to ensuring the right balance between over and under regulation, while ensuring patient safety and quality of care (CHRE, 2010). Right-touch regulation uses six principles to provide a foundation for the development of regulatory policy: regulation should be proportionate, consistent, targeted, transparent, accountable, and agile. Combined with the Triple Aim for health care (Health Care and Quality Commission), NZNO supports Right-touch regulation as an approach to ensuring effective and appropriate regulation in the New Zealand context.

NZNO's Definition of nursing

"Nursing in Aotearoa New Zealand is an evidence-based practice discipline underpinned by nursing theory and research. Nursing's core focus is people (he tāngata) – with or without disease. Professional nursing practice attends to the differing ways in which people experience health, well-being, illness, disability, the environment, health-care systems, and other people, and brings coherence to all that contributes to positive health outcomes. It is the relational processes, knowledge and skills of nursing that enable people to get on with their lives, whatever their health circumstance. Nursing assures a human face in health care. The discipline of nursing in Aotearoa New Zealand addresses the uniqueness of our cultural experience: professional nursing practice is founded on whakawhanaungatanga, manaakitanga, rangatiratanga, and wairuatanga."¹ This definition provides the basis from which NZNO argues for effective legislation and regulation.

Code of Health and Disability Services Consumers' Rights

The Code of Health and Disability Services Consumers' Rights (1996), or "The Code of Rights" or "the Code", as it is known, as set out in Clause 1 of the Code, states that every consumer has the rights set out in the Code and every provider is subject to the duties in the Code. Providers are required to take action to inform consumers of their rights and enable consumers to exercise their rights.² More information is available in the Code (available www.HDC.org.nz) and the NZNO document: *The Code of Health and Disability Services Consumers' Rights* (Weston & Clendon, 2012). All legislation and regulation should incorporate these obligations.

Regulated nursing workforce

The regulated nursing workforce comprises RNs, ENs and NPs. This workforce is supported in its delivery of nursing services by kaiāwhina (health care assistants (HCAs), caregivers, practice assistants, kaimahi hauora etc). Nursing remains a predominantly female occupation (92 per cent of the workforce) with New Zealand European ethnicity (67 per cent) being the most commonly identified group among New Zealand nurses (Nursing Council, 2014). This gender and ethnic mix does not reflect the composition of the general population or the population groups with the highest health-care needs. Of particular relevance, Māori make up approximately 15 per cent of the population and have poorer health status than any other group in New Zealand (Ministry of Health, 2012), yet only seven per cent of nurses identify as Māori (Nursing Council, 2014). Although this figure has increased from 2.7 per cent in 2002 (Nursing Council, 2004) and numbers of other Māori health professionals are also increasing (latest census figures show numbers of Māori working in health care and social assistance increasing from 8.5 per cent to 10 per cent since 2006 [Statistics New Zealand, 2013]), action is still required to improve numbers of Māori nurses in the workforce and to better reflect the communities they serve Pasifika people are similarly

¹ See Clendon, J. (2010). *Nursing in Aotearoa New Zealand: a definition*. Wellington: New Zealand Nurses Organisation. Available: <http://www.nzno.org.nz/Portals/0/publications/Nursing%20in%20Aotearoa%20New%20Zealand%20A%20Definition.pdf>

² The legislation specifically relevant to this position statement includes the Health and Disability Commissioner Act 1994, the Health and Disability Services (Safety) Act 2001, and the Health Practitioners Competence Assurance Act 2003.

under-represented in nursing, as are men (Nursing Council, 2014). Once in the workforce, appropriate support must be provided to ensure retention for these groups.

Work commissioned by the Nursing Council suggests a shortage of up to 15,000 nurses by 2035 (Nursing Council, 2013), yet little work has been undertaken to address this. Aotearoa New Zealand is highly dependent on internationally qualified nurses (IQNs) coming to New Zealand to address skills shortages and leadership gaps (27 per cent of RNs in the country are internationally qualified [Nursing Council, 2015]), but with impending nursing shortages worldwide, it will become increasingly difficult to attract IQNs to New Zealand to fill these gaps. A wide-ranging approach to recruitment and retention is required urgently.

There is significant work under way to improve access to first-year-of-practice placements for new graduate nurses with some improvements in placements since 2013. However, in February 2015, one in three new graduates was still having difficulty finding a nursing job (*Kai Tiaki Nursing New Zealand* 2015). This is compounded by the older nursing workforce remaining in, or returning to nursing, as an outcome of the global financial crisis (North, Leung, & Lee, 2014).

As legislation and regulation change to keep up with the changing demands of an ageing population and increased pressure on health services, nurses must respond to changes and also advocate for changes that will enable them to better meet the needs of the population. Effective, future-focused workforce planning is required to address the issues outlined in the paragraphs above, and enable the creation and sustainability of a nursing workforce fit for purpose and able to keep up with, and advocate for changes in legislation and regulation.

Policy statements

- > NZNO supports the continued regulation of nurses by the Nursing Council to ensure the highest standards of quality and safety in practice;
- > NZNO supports the removal of legislative, functional, funding and contractual barriers to RNs practising to the full extent of their scope;
- > NZNO supports the ongoing development of the EN workforce and strongly encourages employers to develop this workforce;
- > NZNO strongly supports further development and utilisation of the NP workforce and demands the removal of remaining legislative, regulatory and funding barriers to their practice;
- > NZNO supports the development and implementation of standardised, appropriately funded and nationally accessible education for kaiāwhina;
- > NZNO demands effective workforce planning to ensure sufficient regulated nurses are available to meet population health needs.

This is a high-level document and, as such, the recommended action points listed under each statement do not list the specifics of how each may be enacted: we leave this to the respective organisations listed.

Nursing Council

NZNO supports the continued regulation of nurses by the Nursing Council in order to ensure the highest standards of quality and safety in practice

Rationale

The 2003 Health Practitioners Competence Assurance (HPCA) Act is designed to protect the health and safety of the public by providing mechanisms to ensure the life-long competence of health practitioners. The Nursing Council is the regulatory authority responsible for the registration of nurses under the HPCA Act. The Nursing Council's primary function is to protect the health and safety of members of the public by ensuring nurses are competent and fit to practise. Nurses comprise New Zealand's largest health workforce. Effective regulation ensures the public can be assured the care they receive from nurses is of the highest standard. Reviews undertaken between 2007 and 2014 proposed the amalgamation of a number of health practitioner regulatory bodies. NZNO is opposed to any amalgamation that would see the Nursing Council forfeit its authority over nurses.

Action points

Members

- > Actively support the Nursing Council, if calls for amalgamation of regulatory authorities are made which may affect the regulation of the profession.

NZNO

- > Actively advocates for the Nursing Council as the only standalone regulatory body for nurses.

Ministry of Health

- > Provides ongoing and active support of regulatory bodies to ensure the health and safety of the public.

Registered nurses

NZNO supports the removal of legislative, functional, funding and contractual barriers to nurses practising to the full extent of their scope.

Rationale

Registered nurses are highly skilled, qualified and regulated health professionals who provide the majority of patient care in New Zealand. There is strong international

evidence supporting the need for a registered nursing workforce enabled to practise to the full extent of their scope to achieve optimal patient outcomes (Aiken, Sloane & Bruyneel, et al., 2014). The existence of legislative, functional, funding and contractual barriers limit nurses' ability to practise to the full extent of their scope and competence – both expanded and extended practice (National Nursing Organisations, 2009). Examples of how RNs could improve health care provision, if barriers were removed include: the ability to order diagnostic tests in appropriate circumstances; improvements in funding under Accident Compensation Corporation contracts; and the ability to take verbal orders for controlled drugs in community settings. While steps are underway to address many of the existing barriers to RN practice, it is important to remain vigilant to emerging barriers and take steps to prevent these.

Action points

Members

- > Actively participate in professional development activities that extend and affirm their ability to practise to the full extent of their scope.

NZNO

- > Advocates for the employment of RNs in expanded positions throughout the health sector;
- > Makes submissions on proposed legislation, regulation and other policies specific to nurses which support the removal of barriers to practice;
- > Reviews proposed legislation, regulation and policy to ensure new barriers do not emerge;
- > Lobbies district health boards (DHB) and other providers to support RNs to practise to the full extent of their scope of practice;
- > Ensures the NZNO/DHB multi-employer collective agreement (the MECA) provides for RNs working in expanded roles, including appropriate remuneration and protection;

DHBs and other employers

- > Support and fund professional development s that extends and affirms nurses to practise to the full extent of their scope;
- > Ensure adequate mechanisms are in place, eg clinical and professional supervision, to support all RNs, particularly those practising at the full extent of their scope
- > Ensure any proposed changes in health service delivery explore extending the use of the RN workforce;
- > Ensure systematic barriers to the RN workforce are removed, eg access to ordering appropriate diagnostic tests;
- > Ensure RNs working in expanded roles are appropriately remunerated;
- > Ensure new policies and procedures do not perpetuate existing, or cause new, barriers to practice.

Ministry of Health

- > Ensures the health system provides opportunities for professional development activities that extend and affirm nurses to practise to the full extent of their scope
- > Ensures systematic barriers to the RN workforce are removed and prevented, eg access to ordering diagnostic tests;

Explores options for the full utilisation of the RN workforce.

Enrolled nurses

NZNO supports the ongoing development of the EN workforce and strongly encourages employers to develop this workforce.

Rationale

ENs comprise six per cent of the nursing workforce in New Zealand (Nursing Council, 2014). ENs have faced a number of challenges over recent years including closure of the Roll in 2004, replacement of the EN title with nurse assistant, and finally the 2010 reinstatement of the EN title, development of a new scope of practice, and registration with the Nursing Council. Work continues to rebuild the EN workforce and encourage organisations to employ them. Challenges include the use of the unregulated workforce in roles traditionally undertaken by ENs, and poor understanding of the scope and role of the EN.

ENs provide safe and effective care in a wide range of settings (Walker, Clendon & Nelson, 2015). NZNO is committed to the EN workforce and strongly supports the continued education, employment and regulation of ENs.

Action points

Members

- > Demonstrate their support for ENs in their workplaces.

NZNO

- > Lobbies for employment and education of the EN workforce;
- > Advocates for funded supported entry to practice for ENs;
- > Advocates employment of ENs as the first choice for patient contact positions over kaiāwhina.

DHBs and other employers

- > Recognise the value of the EN workforce by developing nursing models of care that include ENs in the skill mix;
- > Ensure employment and educational opportunities for ENs and are appropriately resourced.

Ministry of Health

- > Provides information and resources on the EN workforce to ensure appropriate deployment, eg the ministry's Fact Sheet *Have you thought of employing an Enrolled Nurse?*

Nurse practitioners

NZNO strongly supports further development and utilisation of the NP workforce and demands the removal of remaining legislative, regulatory and funding barriers to their practice.

Rationale

NPs are expert nurses who work within a specific area of practice incorporating advanced knowledge and skills. They practise both independently and in collaboration with other health-care professionals to promote health, prevent disease and to diagnose, assess and manage people's health needs (Nursing Council, 2012). NPs have completed advanced education and training in a specific area (a minimum of four years' experience in an area of practice and successful completion of a clinically-focused master's degree). There is strong international and now local research demonstrating the effective role NPs have in improving health outcomes (Laurant et al 2004/2009; Peri, Boyd, Foster, & Stillwell, 2013; Roblin, Howard, Becker, Adams & Roberts, 2004). However, uptake of the NP model has been limited due to a range of factors that may include: lack of commitment among providers to the role and potential of NPs; and legislative, regulatory and funding barriers. For example, at present a NP cannot provide a medical report to the New Zealand Transport Agency where required for drivers license renewal without a change being made to the Land Transport Act (1998). Although there are initiatives underway to address such issues, barriers such as these limit the ability of NPs to provide optimal care. It is also important to ensure that future legislation and regulation does not create barriers to NP practice.

Action points

Members

- > Advocate for the employment of NPs in their workplaces.

NZNO

- > Advocates for the employment of NPs across the health sector;
- > Advocates for an ongoing, funded NP training programme linked to employers;
- > Makes submissions on proposed legislation, regulation and other policies specific to NPs supporting the removal of barriers to practice;
- > Reviews proposed legislation, regulation and policy to ensure new barriers do not emerge;
- > Lobbies DHBs and other providers to develop NP positions and internships;
- > Develop guidelines within the MECA on remuneration, access to funding, and protected time for research, teaching and leadership activities.

Primary Health Organisations

- > Advocate for the development of NP positions in general practice and other community settings;
- > Provide funding and support for NPs to establish practices within the community.

DHBs and other employers

- > Develop NP positions and internships;

- > Ensure adequate mechanisms, eg clinical and professional supervision, are in place to support NPs in practice.
- > Secure funding streams for the NP role;
- > Ensure new policies and procedures do not perpetuate existing, or cause new, barriers to practice.

Ministry of Health

- > Works with funders and providers to ensure both are aware of the impact and potential of NPs in the health sector;
- > Works with funders and providers to develop career pathways for nurses seeking to become NPs;
- > Works to identify, remove and prevent legislative and regulatory barriers to NP practice.

Kaiāwhina

NZNO supports the development and implementation of standardised, appropriately funded and nationally accessible education for unregulated kaiāwhina.

NZNO supports the Health and Disability Kaiāwhina Workforce Action Plan.

NZNO does NOT support the use of kaiāwhina in positions more appropriately filled by RNs or ENs.

Rationale

Kaiāwhina are an unregulated workforce proliferating in health care settings. Such settings include mental health (mental health support workers), aged and residential care settings (caregivers), general practice (practice assistants), hospitals (health care assistants), and in the community. With an ageing population and growing population health needs, the need for kaiāwhina is likely to increase. Research is also demonstrating the efficacy of kaiāwhina in some settings (Adair, Adair & Coster, 2013). To ensure public safety and cost effectiveness, it is essential the kaiāwhina workforce is developed in a robust and sustainable manner.

Action points

Members

- > Contribute to intelligence gathering about the roles kaiāwhina are undertaking.

NZNO

- > Ensures its presence on working groups as kaiāwhina workforce plans develop (including education, practice and workforce strategy groups);

DHBs and other employers

- > Provide career pathways for kaiāwhina that more properly reflect their education, roles and experience, as long as they are not used to replace the role of the RN or EN e;

Ministry of Health

- > Provides sufficient resources to properly remunerate a more educated kaiāwhina workforce.

Workforce planning

NZNO demands effective workforce planning to ensure sufficient regulated nurses are available to meet population health needs

Rationale

Estimates by the Nursing Council suggest New Zealand will face a shortfall of 15,000 nurses by the year 2035, if mitigating actions are not taken now (Nursing Council of New Zealand, 2013). This figure is based on population growth estimates, immigration and emigration of nurses, graduation figures and retirement estimates. What is not estimated is the impact of fiscal restraint policies on the employment of nurses. If current underfunding of the health sector continues, shortages may be even greater than those estimated. It is also well known that limiting the number of regulated nurses in the workforce has a detrimental impact on patient outcomes. For example, one study showed that an increase in a nurse's workload by one patient increased the likelihood of an inpatient dying within 30 days of admission by seven per cent and every 10 per cent increase in bachelor degree nurses was associated with a decrease in this likelihood by seven per cent (Aiken et al., 2014).

Workforce planning to date has been ad hoc and despite Health Workforce New Zealand's (HWNZ) intended mandate in this area, most workforce planning is being done on a regional basis by local DHBs and other organisations. At present there is no over-arching workforce strategy for nurses. Specific issues include poor employment rates of new graduate nurses, a lack of workforce planning specific to Māori nurses, a growing need for Pacific nurses to work in Pacific communities, and increasing numbers of IQNs who require specific workplace support. The Human Rights Commission document *A fair go for all* indicated that in health another form of structural discrimination is the under representation of the Māori workforce (Human Rights Commission, 2012). These factors are all compounded by the ageing of the nursing workforce.

Action points

Members

- > Engage with their employers to determine what workforce planning is being undertaken in their areas and ensure that it is relevant and appropriately targeted;
- > Advocate for nursing models of care to include an EN workforce;

- > Support the employment of new registered and enrolled graduate nurses in their workplaces;
- > Support the acculturation of IQNs in their workplaces.

NZNO

- > Lobbies HWNZ to direct more resources into developing a long-term workforce strategy for nurses;
- > Continues to develop a systematic programme of nursing workforce research to inform HWNZ and the wider sector;
- > Promotes a strategy to increase the numbers of Māori nurses and Pacific nurses, improve the integration of IQNs, and support older nurses as they near retirement;
- > Advocates for all graduate nurses to have access to a funded nurse- entry- to- practice/speciality practice programme position.

DHBs and other employers

- > Hold HWNZ to account for effective nursing workforce planning;
- > Ensure their systems and processes, eg data availability ,enable effective nursing workforce planning;
- > Develop new graduate nurse positions through effective workplace policy and planning;
- > Use affirmative action to employ Māori and Pacific nurses to match population health needs and to meet the needs of the communities they service.

Ministry of Health

- > Works with industry to develop an effective nursing workforce strategy that ensures sufficient nurses are available where and when they are needed;
- > Works with DHBs and other employers to create sufficient, fully-funded new graduate RN and EN positions to ensure full employment of all new graduate nurses;
- > Provides policy leadership on the employment of Māori and Pacific nurses and the employment (or restriction) IQNs.

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Mission statement

NZNO is committed to the representation of members and the promotion of nursing and midwifery. NZNO embraces Te Tiriti o Waitangi and works to improve the health status of all peoples of Aotearoa/ New Zealand through participation in health and social policy development.

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