

NURSING ACT 1992

**NATIONAL COMPETITION POLICY REVIEW
OF NURSING AND MIDWIFERY PRACTICE
RESTRICTIONS**

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EXECUTIVE SUMMARY

Title

Nursing Act 1992

Background

The nursing and midwifery professions are regulated under the *Nursing Act 1992* (the Act). The Act aims to ensure safe and competent nursing practice consistent with the community's expectation for consumer protection. This objective is principally achieved through the requirement for authorisation to practise as a nurse. Applicants for authorisation under the Act must hold appropriate qualifications and must be fit to practise.

The Act also contains restricted activities and offence provisions designed to protect consumers by providing a means to distinguish between authorised and non-authorised practitioners. These restrictions and offence provisions are the subject of this review. They effectively prevent a person misrepresenting themselves (holding out), or someone else, as being a registered nurse, an enrolled nurse, a midwife, or someone authorised to practise nursing. Paid nursing practices, or performing paid nursing services, are restricted to persons who are registered nurses, enrolled nurses and persons authorised to practise nursing. In addition, the Act imposes a prohibition on a person caring for a woman in childbirth unless the person is authorised to practise midwifery or exempt from the prohibition under the legislation (e.g. a medical practitioner).

The Queensland Nursing Council (the QNC) is responsible for administration of the licensing scheme and other authorities under the Act. To be a registered or enrolled nurse the Act requires a person to satisfy the QNC that he or she:

- has completed an accredited nursing course in Queensland, or completed another course outside Queensland based on similar competencies and has gained registration or enrolment at a place outside Queensland; and
- is competent and fit to practise nursing.

A similar process applies to an authorisation to practise midwifery and other specialist areas of nursing such as mental health nursing.

In 2001, 43912 nurses were authorised under the Act, 36817 (83.8%) of whom were registered nurses, and 7095 (16.2%) were enrolled nurses.¹ The QNC reports that 10674 nurses were endorsed to practise midwifery, and a further 15 people were endorsed to practise midwifery without being a nurse (i.e. direct-entry midwives with recognised qualifications gained outside Queensland).

Nurses provide a range of health-related and administrative services to the public, generally in the context of institutional health care, including public and private hospitals, and aged care facilities. Midwives generally provide services within a formal health care facility, such as an obstetric ward in a hospital or a birthing centre attached to a hospital. In 1997, midwives performed 39.1 per cent of all births in Queensland, including 89.7 per cent of 'homebirths', 97.8 per cent of births in birthing centres, 49.5 per cent of births in public facilities, and 9.3 per cent of births in private facilities.²

Policy objectives

Under National Competition Policy (NCP), Queensland and all other Australian jurisdictions are committed to implementing a series of competition reforms. In recognition of the benefits of competition, the obligations require the review, and where necessary the reform, of all legislation that contains unjustified restrictions on competition. The purpose of this review is to make recommendations to Government about restrictions on the practice of nursing and midwifery in Queensland, having regard to NCP obligations, the objects of the Act, and the costs and benefits of the particular regulatory options. It is not the purpose of the review to examine other policy reforms to the Nursing Act.

The stated object of the Nursing Act is to “make provision for ensuring safe and competent nursing practice”. The Second Reading Speech by the sponsoring Minister for the Act, when introduced as a Bill, stated that the legislation was to ensure “that quality nursing care is delivered to the public by nurses with appropriate qualifications”.³

Quality nursing and midwifery care is achieved under the Act by prescribing education standards, minimum qualifications and recency of practice. Professional standards in the nursing and midwifery profession are enforced in conjunction with an independent complaint investigation and determination process.

The Act restricts competition, as it restricts free entry into the nursing and midwifery services market, through practice restrictions in association with licensing requirements.

When conducting the review, consideration was given to factors other than competition, that affect the nursing and midwifery services market, including unique aspects of individual consumer behaviour when obtaining a health service. Consideration was also given to the regulation of other health professions in Queensland, and the regulatory arrangements affecting the nursing profession in other jurisdictions.

Options

The PBT assessment for this review examined several regulatory options that were developed out of submissions received in response to public notice of the review and a subsequent discussion paper. The options considered as part of this review are briefly discussed below. Only realistic options that satisfied the objectives of the Act were considered. As discussed in the body of the report, the deregulation of nursing and midwifery services was regarded as an option that failed to satisfy the objective of the Act, which is to make provision for ensuring safe and competent nursing practice.

All of the options considered for nursing and midwifery included title restrictions and holding-out offences. Following extensive consultation, two realistic options for nursing were identified which would replace the current title restriction and holding-out offence with clearer provisions. One option would omit the statutory practice restriction on nursing practice. The second option would provide a clearer practice restriction. Two options for midwifery were considered that also replaced the current title restriction and holding-out offence. These options ranged from no practice restriction to a refined specific practice restriction.

Appendices 1 and 2 provide a tabular summary of the impact assessment for each option, for nursing and midwifery respectively. The stakeholders potentially affected by the regulatory options for nursing and midwifery principally include individual consumers, the QNC, the nursing profession (including midwives), other health professionals, unregulated health workers, employers, and training institutions.

Nursing

Option 1 Title restriction and holding-out offence, but no practice restriction

This option would remove the current holding-out offence under the Act and replace it with a clear title restriction and holding-out offence. Under this option the Act would prohibit use of the titles ‘registered nurse’ and ‘enrolled nurse’, and any other use of the title nurse in a way that suggests the person has a QNC nursing authorisation, unless the person holds such an authorisation conferred by the QNC. The option would also prohibit other conduct that misrepresents a person as being authorised to practise nursing, or as having a particular QNC nursing authorisation without the appropriate authorisation. However, the option would not prevent a person from providing a nursing service, or practising as a nurse, as long as the person did not misrepresent him- or herself as a registered or enrolled nurse. Penalties for committing an offence against these provisions would be increased to provide consistency with the other registered health professions.

Option 2 Title restriction, holding-out offence and practice restriction

This option includes amending the Act to provide a clear title restriction and holding-out offence as described in option 1. The option would also provide a practice restriction that would:

- allow non-nursing staff to provide nursing services under the supervision of a nurse;
- recognise the role of other health professionals who provide services, within their professional training and expertise, that may be regarded as nursing type services;
- allow for the Ministerial endorsement of a document, prepared by QNC in consultation with key stakeholders, that will provide guidance with respect to the scope of nursing practice;
- allow the endorsed QNC document to be admitted as evidence in a prosecution of a person for contravening the practice restriction; and
- prescribe increased penalties for contravening the restrictions.

Midwifery

Option A Title restriction and holding-out offence, but no practice restriction

This option applies a similar regulatory framework that is described in option 1 (nursing), to midwifery. The option would prevent use of the title ‘midwife’ or other title that suggests the person has a QNC midwifery authorisation, unless the person holds a midwifery authorisation conferred by the QNC. Also, the option would prohibit other conduct that misrepresents a person as being authorised to practise midwifery. The option would not prevent a person from practicing as a midwife or providing a midwifery service. Penalties for committing an offence against these provisions would be increased to provide consistency with the other registered health professions.

Option B Title restriction, holding-out offence and specific practice restriction

This option includes a refined title restriction and holding-out offence restriction, as described in option A. The option would also result in a refined specific practice restriction that would:

- allow persons without a midwifery authorisation to practise midwifery under the supervision of a midwife;
- recognise the role of other health professionals that provide services, within their professional training and expertise, that may be regarded as midwifery type services;
- allow for the Ministerial endorsement of a document, prepared by QNC in consultation with key stakeholders, that will provide guidance with respect to the scope of nursing practice;
- allow the endorsed QNC document to be admitted as evidence in a prosecution of a person for contravening the practice restriction; and
- prescribe increased penalties for contravening the restrictions.

Under this option unlawful midwifery practice would be a separate offence from unlawful nursing practice. The separation of nursing and midwifery provisions is recognition that many regard these fields of practice to be separate although related. However, the option would not alter current arrangements that allow nurses, without a midwifery authorisation, to provide nursing services to a woman during childbirth. The current restriction on caring for a woman in childbirth would continue and the term childbirth will be defined in the Act.

Costs and benefits

Nursing

Option 1, which represents the minimal level of regulation, would appear to offer greater choice and lower costs for consumers, more flexibility and potentially lower costs for employers, and greater employment and vocational opportunities for unregulated care providers. However, this option would potentially result in increased health risks and a lower level of consumer protection, especially in the community health and aged care settings. The level of training and supervision required limit the scope for unregulated care providers to perform delegated nursing activities beyond current circumstances. On balance, the potential for increased risks to patients associated with removal of the practice restriction outweighs the potentially lower costs to consumers that may arise from removal of the practice restriction.

Option 2 provides greater consumer protection by applying a statutory practice restriction in addition to the title restriction and holding-out offence proposed under option 1. Option 2 provides the additional benefit of reducing the current ambiguity associated with the nursing practice offence. The option provides a framework for the QNC to develop, and for the Minister to endorse, a scope of nursing practice document to assist consumers and industry participants to understand what is considered the scope of nursing practice within different health care settings. Providing exemptions for medical practitioners and other registered health professionals would benefit the health care industry by removing doubt about the provision of services that may breach the nursing practice restriction. This option would also deliver greater transparency and public accountability in the development of the scope of practice for nursing.

Midwifery

Option A represents a minor benefit to consumers, UCPs and health sector employers as a result of removing the statutory midwifery practice restriction. These benefits are most likely to affect the small proportion of births that occur outside formal health settings. However, this option would also bring about a minor decrease in the standard of health care and a continued lack of clarity about midwifery practice.

Option B retains the consumer protection advantages of a statutory midwifery practice restriction, but without the current ambiguities. The option provides a framework for the QNC to develop, and for the Minister to endorse, a document to describe the specifically restricted midwifery practices to assist consumers and industry participants to understand what is considered to be the scope of the midwifery practice offence. Exemptions would be provided for health professionals, operating within their professional training and expertise, which would further remove doubt about potential breaches of the midwifery practice restriction. Similar to the proposal for nursing, this option would provide greater transparency and public accountability in the development of the scope of practice for midwifery

Conclusions

On balance, option 2 (nursing) would deliver greater net benefits overall, compared with option 1 and the base case. The provision of a clear title restriction, with higher penalties for unlawful use of a restricted title, would overcome some of the risks associated with information asymmetry between consumer knowledge of nursing services and the training and expertise necessary to safely provide those services. The title restriction and a clearer holding-out offence would bring about greater consumer protection by providing a means of distinguishing between authorised and non-authorised service providers.

However, retaining title restrictions and holding-out offences without a statutory practice restriction in the nursing services market would increase health risks to consumers. A large number of unregulated care providers operate within the broad nursing services market. In a wide range of circumstances, unregulated care providers legitimately deliver services that could be considered to be nursing services. Additionally, it may be difficult for consumers to distinguish between activities that may be performed by an unregulated care provider and those that require a higher level of qualification.

The retention of a statutory practice restriction for nursing would reduce the risk of a person receiving care from an unsupervised provider who does not possess the qualifications that are necessary in the circumstances. Examples of such circumstances include the care of a lower limb wound on a person with diabetes, and the regular assessment of an elderly person who is taking a number of medications for a complex medical condition. The provision in legislation of clearer exemptions would reduce the risk that other health professionals operating within their own recognised training and expertise could be prosecuted for committing a practice offence.

The establishment of a scope of nursing practice would remove the current ambiguity as to the extent of the statutory practice offence in such a way that would enable future developments in nursing practice to be recognised. Such an approach would also be consistent with recommendations made by the *National Review of Nursing Education 2002*.⁴

The requirement for the QNC to consult with relevant stakeholders on the development of the scope of practice document would ensure greater transparency of decision making concerning the statutory practice offence. Additionally, the requirement for the Minister to approve the scope of practice document would ensure public accountability of the document and ensure the scope is broad enough to provide adequate consumer protection without limiting the legitimate activities of UCPs.

Option B (midwifery) would deliver greater net benefits compared with option A and the base case. The provision of a clear title restriction, with higher penalties for unlawful use of a restricted title, overcomes some of the risks associated with information asymmetry amongst consumers. The title restriction and a clearer holding-out offence would bring about greater consumer protection by providing a means of distinguishing between authorised and non-authorised service providers.

The provision of a specific statutory practice offence would ensure that only suitably qualified practitioners could lawfully undertake a function that poses a high risk of harm to consumers. The provision in legislation of clearer exemptions would reduce the risk that other health professionals operating within their own recognised training and expertise could be prosecuted for committing a practice offence.

Similar to option 2 (nursing), the establishment of a scope of practice document would remove the current ambiguity as to the extent of the statutory midwifery practice offence. The requirement for the QNC to consult with relevant stakeholders on the development of the scope of practice document would ensure greater transparency of decision making concerning the statutory practice offence. Additionally, the requirement for the Minister to approve the scope of practice document would ensure public accountability of the document and ensure the scope is neither too narrow nor too broad.

Accordingly, it is recommended that the *Nursing Act 1992* be amended to reflect:

- the title restriction, holding-out offence and practice restriction under option 2; and
- the title restriction, holding-out offence and specific practice restriction under option B.

Consultation

Notice of the NCP review was published in the *Courier Mail* and major regional newspapers on Saturday, 4th March 2000. The notification invited submissions to the review from all interested community and health professional groups and individuals. Interested persons and key stakeholders were given information about the review, including possible regulatory options. Queensland Health received 27 submissions following notice of the review.

A Discussion Paper entitled *Nursing Act 1992: National Competition Policy review of nursing and midwifery practice restrictions*, which further refined the possible regulatory options was released in 2001 for public comment. Notification appeared in the *Courier Mail* on Saturday, 24th November 2001. Key stakeholders were also provided with a copy of the Paper. 39 submissions on the Discussion Paper were received. The submissions were considered as part of the process of subjecting the restrictions and the alternative regulatory arrangements to a public benefit test. Persons and organisations that provided submissions on either the Discussion Paper or the Terms of Reference have been listed in Appendix 5.

Sunset/Review

In accordance with NCP requirements a review of the continued need for anti-competitive restrictions that are adopted as a result of this review will be undertaken after 10 years.

1. BACKGROUND

Purpose

The purpose of this review is to make recommendations to Government about restrictions on the practice of nursing and midwifery in Queensland. The review examines regulatory options that may impact on competition and the costs and benefits of the particular regulatory options, against the social objectives under the Act. The review examines whether the objectives of the Act, which is to “make provision for ensuring safe and competent nursing practice”, can only be achieved by imposing restrictions on the practice of nursing and midwifery. It is not the purpose of the review to examine other policy reforms to the Act.

National Competition Policy objectives

In April 1995 the Commonwealth, State and Territory Governments signed a set of agreements to implement a National Competition Policy (NCP). Under the agreements each participating jurisdiction committed to implementing a series of competition reforms, including the review and, where appropriate, reform of all legislation that contained measures restricting competition. The Queensland Legislation Review Timetable identified potential restrictions in competition in the *Nursing Act 1992*.

The guiding principle is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

In accordance with the Competition Policy Agreement, a NCP review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction(s) on competition;
- analyse the likely effect of the restriction(s) on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction(s); and
- consider alternative means for achieving the same result, including non-legislative approaches.

This review has been undertaken in accordance with the Queensland Government’s “Public Benefit Test Guidelines”. Under these guidelines the Government requires that NCP reforms “are only implemented where it is demonstrated that such reforms are clearly in the public interest, that is, there is a clear demonstration that competitive reform will yield a net benefit and no significant detriment to the community”. Further, the Government will continue to ensure that “competition is not pursued for competition’s sake and that a considered and pragmatic approach is taken to NCP”. In this context, there is a specific requirement of each review to consider the government’s priority outcomes for Queensland as an integral part of the review process. A Public Benefit Test (PBT) is the prescribed method for determining if there is a net benefit supporting exemption from competition.

The PBT process used in Queensland involves an assessment of the benefits and costs of the regulatory options, which takes full account of employment, regional development, social, consumer and environmental factors. Steps in the review process to date have included:

- public notification of the review and notification of key stakeholders, including a call for submissions on possible alternative arrangements for the restrictions;
- consideration of the submissions received in response to notification of the review;
- development and subsequent release of a discussion paper “*Nursing Act 1992: National Competition Policy review of nursing and midwifery practice restrictions*”;
- consideration of the submissions received in response to the discussion paper;
- subjecting the restrictions and the alternative arrangements to a public benefit test;
- the preparation of this public benefit test report (the PBT report), including a recommendation for alternative regulatory arrangements.

Current regulatory arrangements

Occupational regulation is widely regarded as a highly effective means of providing protection to the public, addressing inadequate consumer information and ensuring that practitioners uphold professional standards. The registration and enrolment of nurses is undertaken by the QNC, which is established under section 6 of the *Nursing Act 1992* (the Act). To be a registered or enrolled nurse section 54 of the Act requires a person to satisfy the QNC that he or she:

- has completed an accredited nursing course in Queensland, or has completed another course outside Queensland and has gained registration or enrolment at a place outside Queensland; and
- is competent and fit to practise nursing.

A similar process applies to an authorisation to practise midwifery.

In addition to demonstrating the necessary level of training and qualification, a person who is authorised to practise nursing or midwifery may also be subject to the investigation of a complaint, or the taking of disciplinary action, by the QNC under Part 5 of the Act.

The Act also contains restrictions and offence provisions which are designed to protect consumers by providing a means of distinguishing between authorised and non-authorised service providers. These restrictions and offence provisions are the subject of this review, and may be briefly summarised as:

- holding-out offence; and
- practice restriction prescribing who may provide nursing or midwifery services.

Section 141 (Prohibited practices) of the Act effectively prohibits a person knowingly doing anything to misrepresent (hold out) himself or herself as a registered or enrolled nurse, midwife or person authorised to practise nursing. The scope of the offence would extend to circumstances where someone else, such as a private health facility, misrepresents a person as a nurse or midwife.

Section 142 (Unauthorised nursing) of the Act restricts practising as a nurse or performing a nursing service for a fee or reward, to persons who are registered nurses, enrolled nurses, certificate holders and persons authorised to practise nursing. However, the Act does not define the terms ‘practise as a nurse’ and ‘perform a nursing service’.

The section also prevents a person caring for a woman in childbirth, unless the person is authorised as a midwife by the QNC. The nursing and midwifery practice restrictions do not

apply to a person rendering assistance in an emergency. Also, the midwifery practice restriction exempts:

- medical practitioners; and
- student medical practitioners or student midwives, acting under the supervision of a medical practitioner or midwife.

The maximum penalty for an offence under sections 141 or 142 is a fine of 20 penalty units (currently \$1,500).

The current holding-out offence is unclear. To prosecute for an offence under this provision, it must be proved that a person knowingly took action, or knowingly assisted another person to take action, to indicate that the person had a particular authorisation under the Act. Unlike the 13 other registered health professions in Queensland, there is no clear title restriction.

Unlike midwifery, the practice restriction for nursing does not provide an exemption to other health practitioners operating within their professional training and expertise. Arguably, such a specific exemption is unnecessary because, for example, a medical practitioner performing a function is practising as a medical practitioner and not as a nurse. However, the presence of specific exemptions for midwifery, and the absence of similar exemptions for nursing provide uncertainty as to whether other health practitioners operating within their professional training and expertise could be seen to be committing a statutory practice offence. Additionally, the practice restriction does not expressly exempt others acting under the supervision of a registered nurse, enrolled nurse, midwife or another person authorised to practise nursing.

The term 'nursing practice' is defined by the Act to include "midwifery practice, mental health nursing practice and practice in any other area of nursing". However, the terms 'practise nursing', 'practise as a nurse', 'nursing service' and 'midwifery practice', are not defined by the Act. The terms are open to interpretation and do not assist in materially defining what nursing practice is.

The term 'midwife' defines "a person who is authorised by the council to practise midwifery". A person, including a nurse, must be authorised to practise midwifery by the QNC to lawfully care for a woman in childbirth. However, the Act defines neither 'childbirth' nor 'care' in this context.

The Act does not expressly impose a practice restriction, or prescribe a holding out offence that specifically applies to mental health nursing.

The current provisions are ambiguous, in a number of other respects, including whether 'nursing practice' and 'practise as a nurse' have the same meaning, and whether giving a woman unpaid care in childbirth is an offence. Additionally, the scope of the practice offences is not clear. For example, it is not clear from the legislation what acts would constitute unlawful nursing practice. As a result, a prosecution for the practice offence under section 142(1) may necessitate the giving of evidence by expert witnesses and lengthy legal argument to establish whether the statutory practice restricted has been breached.

The current maximum penalty for a breach of the practice or holding-out restrictions are considered extremely low in comparison with other recent health practitioner registration legislation, such as the *Medical Practitioners Registration Act 2001*, which has maximum

penalties of between 500 and 1,000 penalty units (currently \$37,500 and \$75,000) for certain title and holding-out offences.

The relevant provisions of the Nursing Act are reproduced in Appendix 3.

Industry profile of nursing and midwifery

In Queensland, the nursing profession comprises registered nurses and enrolled nurses. In 2001, 43912 nurses were authorised under the Act, 36817 (83.8%) of which were registered nurses, and 7095 (16.2%) enrolled nurses. In 2001, 10674 registered nurses in Queensland held midwifery endorsements. Approximately one third of these registered nurses are currently practising as midwives in Queensland. In 2001, 15 direct entry midwives were authorised to practise in Queensland.⁵

The context in which nursing practice occurs is extremely broad, and provides an indication of the diverse range of health services provided by registered and enrolled nurses. The responsibilities undertaken by, and the skills required of, registered and enrolled nurses are similarly diverse. The major roles undertaken by nurses are described by the National Health and Medical Research Council as:

- providing health care through the use of clinical judgements regarding a person's wellbeing and needs;
- teaching and counselling with the aim of preventing illness;
- managing and coordinating the provision of nursing care within a health service facility;
- representing the interests of patients through an advocacy role;
- providing a consulting service for other nurses, health professionals and service providers;
- providing education services within higher education and health service settings; and
- undertaking research regarding the provision of health care.⁶

Health care settings that registered and enrolled nurses work in include:

- public and private hospitals;
- community and home-based services, such as doctors' surgeries, community health centres, community development programs, youth and women's shelters, school and university clinics, rural and remote areas;
- health-focused services such as wellness clinics and fitness programs; and
- clinical support and information services such as public health programs and public administration.⁷

Other Queensland work settings for nurses include residential aged care facilities, defence forces, schools, tertiary education institutions, developmental disability services, workplace health and safety units, and the Royal Flying Doctor Service.

The Australian Institute of Health and Welfare's 1997 national survey, published in 2001, revealed the following distribution of clinical work settings for nurses employed in Queensland and Australia:

Clinical Setting	Queensland %	Australia %
Mixed medical and surgical	17.0	14.9
Aged Care (geriatric/gerontology)	14.7	17.9
Surgical	8.5	7.8
Perioperative/operating Theatre/recovery	7.2	7.1
Medical	7.0	8.6
Midwifery	6.8	7.2
Mental health/psychiatric	6.4	6.2
Critical care/intensive care	5.0	4.8
Community nursing	4.7	4.2
Paediatric	3.2	2.3
Casualty accident/emergency	3.1	3.1
No one principal area	2.7	1.6
Oncology	1.7	1.4
Child and family health	1.3	1.4
Occupational health	0.6	0.5
Developmental disability	0.5	1.3
School children's health	0.3	0.3
Other	9.0	5.5

TABLE 1: Area of Clinical Nursing: Queensland and Australia

The Australian Institute of Health and Welfare report also confirms that nationally, the public sector employs more than twice as many nurses as the private sector.⁸

Registered nurses are now university educated, completing a three-year Bachelor of Nursing degree. Registered nurses who wish to be authorised to practise midwifery must obtain a post-graduate qualification in midwifery. In 2001, six Queensland Universities offered accredited pre-registration courses in nursing and post-graduate midwifery courses. A further eight TAFE institutes offered accredited pre-enrolment courses. A range of other accredited training courses are offered across Queensland, to nurses, by these and other accredited course providers. These other accredited training courses include hospital-based specialist practice courses, as well as certificate, diploma and post-graduate courses.

The Act recognises the two levels of nurse: registered nurses and enrolled nurses. As indicated earlier registered nurses must complete an undergraduate degree in nursing, while enrolled nurses must complete a much shorter pre-enrolment course. Consequently, registered nurses are prepared for a higher level of decision-making and nursing responsibility. Registered nurses may delegate certain nursing tasks to an enrolled nurse. According to the *Scope of Nursing Practice Decision Making Framework* published by the QNC:

*“The enrolled nurse role is complementary to that of the registered nurse. Enrolled nurses work with other health professionals under the supervision of registered nurses”.*⁹

According to the New South Wales Midwives Association, midwifery practice differs from nursing practice as “nursing involves treating and caring for people who are ill while midwifery involves caring for healthy pregnant women”.¹⁰

Under the *Code of Practice for Midwives* published by the QNC, midwives have the “educational preparation and competence to:

- give necessary advice, care and support to the woman pre-conceptually, and during pregnancy, labour, birth, and the postpartum period;
- assist the birthing woman, conduct deliveries and care for the infant;
- recognise the signs of deviations from normal in the woman or infant which necessitates referral, and to initiate the necessary emergency measures;
- care for the woman and infant and provide support and guidance in the postnatal period;
- provide health education and counselling for the woman, her family and the community;
- participate in health promotion and education which could include childbirth and parenthood classes;
- provide comprehensive family planning information and advice;
- participate in data collection and documentation of care, and maintenance of records; and
- undertake and participate in research for the development of midwifery practice”.¹¹

Registered nurses may also supervise and delegate certain tasks to unregulated care providers. The majority of this group of unregulated care providers works in community-based or aged care services.¹² Titles used to describe unregulated care providers in these settings include ‘assistant in nursing’, ‘personal care assistant’, ‘aged person carer’ and ‘disabled person carer’.

Unregulated care providers may legitimately undertake activities that could be broadly described as nursing work. In many cases, such activities require a broad spectrum of skills. Unregulated care providers may commonly perform activities at one end of the spectrum, whereas registered and enrolled nurses undertake activities requiring a higher level of training and qualification. The following describe examples of such activities:

- It may be considered safe for an unregulated care provider to apply a simple dressing to a minor skin laceration. However, if the wound were on the foot of a person with diabetes, there may be a risk that the person could lose part of their limb if the wound is not managed appropriately. A registered nurse would have the necessary training and skills to have a detailed understanding of the possible risks associated with diabetes; to assess whether the wound is responding to treatment; to recognise early signs of deterioration of the surrounding tissue; and to adjust the treatment plan accordingly.
- An unregulated care provider may be suitably trained to provide daily care of a patient, and to recognise changes in the patient’s condition. However, a registered nurse would have a level of training and skills necessary to recognise the emergence of clinical symptoms at an early stage. In the case of a patient with complex medical problems, which are common in the elderly, regular assessment of the patient by a registered nurse would reduce the risk that the patient were not provided the appropriate care in a timely manner. Similarly, the registered nurse would possess the necessary skills to recognise the emergence of side effects from what may be a number of medications being taken by the patient; to identify the likely cause of the side effects; and to take appropriate action within their particular authority.

2. ISSUES

The nursing and midwifery services market

The Act restricts competition, as it restricts free entry into the nursing and midwifery services market, through a nursing and midwifery practice restriction. Restricting free entry to a market may reduce the number of sellers of a product or service in the market. Competition theory suggests that the potential benefits for consumers of increasing the number of sellers of a product are lower prices, better quality, a wider choice of goods or services, and a wider choice of producers. Other possible benefits include the potential for more innovation in the use of resources and increased productivity in the delivery of goods and services.

A market may also be affected by factors other than competition, including:

- the level of information asymmetry between buyers and providers of a service;
- factors, other than price, that influence a purchasing decision by individual and organisational consumers; and
- government intervention in price, supply and demand, which may include minimum wage levels in the case of nursing, the number of undergraduate university places and prescribed staffing levels for particular health settings.

The extent of relevant information that is available to both buyers and sellers is the level of information asymmetry. A high level of information asymmetry affects the operation of a market, to the extent that a lack of information can exacerbate distortions in the operation of the market.¹³ In the case of nursing and midwifery services, the potential for information asymmetry is high. As discussed above, nurses operate in a wide range of settings and carry out a similarly wide range of activities. Additionally, a large number of unregulated care providers carry out some activities in common with, or under the supervision of, authorised nurses.¹⁴ As a result, it may be difficult for individual consumers to clearly identify the necessary level of qualifications and training required by a nurse to supply a service to a competent standard.

The nursing and midwifery services market has a number of unique features. These are outlined in the following paragraphs.

Individual consumers are more likely to purchase a nursing service through a third party, such as a hospital or community care agency, and not directly from an individual nurse. As a result, the price of a nursing service may not directly affect individual consumer demand for the service.

As nursing services are likely to be consumed as part of a health service, the price of nursing services would have an effect on the cost of a health service. Where a health service is planned and not immediately required, such as in the case of elective surgery, the cost of the health service may affect a purchasing decision by an individual consumer. Similarly, where a consumer is deciding on a provider of a health service, the price of different providers, may affect a purchasing decision. For example, for a person seeking nursing home type care, the price of different providers may affect which provider is selected. However, in some circumstances, the price of the health service may not affect a purchasing decision by an individual consumer. For example, a person requiring emergency care is unlikely to make a purchasing decision based on price.

Organisational consumers are more likely to be, or substantially be, the direct purchasers of nursing services. As a result, the cost of a health service, received by an individual consumer, may be paid by, or substantially paid by, a private health insurer or the public sector. The public sector is the largest employer of qualified nurses.¹⁵

Demand for qualified nursing services is influenced by a complex array of factors such as accepted health care standards, community expectations, government requirements, industrial mechanisms, and risk management (which is to some extent driven by insurance costs). This array of factors would tend to act as a buffer, reducing the impact of a change in any one factor on its own. There is no available evidence to suggest that statutory practice restrictions on nursing affect demand for qualified nursing services.

Because Australia has an ageing population the demand for aged care is expected to grow substantially in the future.¹⁶ Demand for both unregulated care providers and qualified nurses may increase as a result. Additionally, it has been recognised that there is a global shortage of qualified nurses. As a result of the demand for nursing services, changes to restrictions on qualified nursing services would be unlikely to result in a reduction of the price of these services. Supply constraints are considered in industrial arrangements through non-wage items, such as remote area incentives.

Midwives generally provide services within the context of larger health care facilities, either an obstetric ward in a hospital or a birthing centre attached to a hospital. In 1997, midwives performed 39.1 per cent of all births in Queensland, including 89.7 per cent of ‘homebirths’, 97.8 per cent of births in birthing centres, 49.5 per cent of births in public facilities, and 9.3 per cent of births in private facilities.¹⁷ Midwives may practise as independent practitioners within the community, providing services, for example in home births. Homebirths constitute 0.3 to 0.6 per cent of all births in Queensland, and 0.5 per cent of all births in Australia per annum.¹⁸ According to the Brisbane Independent Midwives Association, in 2000, there were three independent midwives operating in Queensland.

Consultation

Consultation as part of the review process to date has included:

- public notification of the review, including a call for submissions on possible alternative arrangements for the restrictions;
- consideration of the 27 submissions received in response to the notification of the review;
- the development and subsequent release of a discussion paper in November 2001, “*Nursing Act 1992: National Competition Policy review of nursing and midwifery practice restrictions*”; and
- consideration of the 37 submissions received in response to the discussion paper.

The possible options outlined in the initial consultation were:

- Option 1 (nursing)– title restriction and holding-out offence only;
- Option 2 (nursing) – title restriction, holding-out offence and ‘core practice’ restriction;
- Option 3 (nursing) – title restriction, holding out offence and broad practice restriction;
- Option A (midwifery)– title restriction and holding-out offence only;
- Option B (midwifery) – title restriction, holding-out offence and ‘core practice’ restriction.

The discussion paper further refined the possible options. Option 2 (nursing) was not supported by a vast majority of stakeholders during consultation, and so this option was not further considered. The possible options outlined in the discussion paper were:

- Option 1 (nursing)– title restriction and holding-out offence only;
- Option 2 (nursing) – identified as not to be further considered;
- Option 3A (nursing) – title restriction, holding out offence and broad practice restriction (current model);
- Option 3B (nursing) – title restriction, holding-out offence and broad practice restriction (alternate model);
- Option A (midwifery)– title restriction and holding-out offence only;
- Option B (midwifery) – title restriction, holding-out offence and ‘core practice’ restriction (refined model).

Submissions on the discussion paper with respect to nursing generally supported restricting use of the title nurse and a broad practice restriction, arguing that these measures would provide a high level of consumer protection. Several submissions identified option 1 (nursing), title protection only, as providing insufficient consumer protection. One submission identified option 2 (nursing) as deserving further consideration.

Most of the submissions to the discussion paper commented on midwifery only. While views expressed were diverse, most of the submissions either commented on the importance of consumer choice or consumer protection. Support for a reduced level of regulation or for the current level of regulation was fairly even.

The submissions that supported option A (midwifery) or opposed option B (midwifery) often expressed dissatisfaction with the current childbirth options available to women, and to the “medicalisation” of childbirth. One submission stated:

“Consumers who choose to birth at home are turning away from medicalised childbirth and mainstream maternity services because they believe it is a safer and /or more fulfilling option for their family.”¹⁹

Others expressed a view that nurses provided a different service to midwifery service providers who were not trained as a nurse. One submission opposed nurses being involved in midwifery practice. Similar views about birthing choices for women, midwifery practice, non-hospitalised births, non-medicalised births, and a nursing dominated midwifery profession were expressed to a Senate Inquiry into child birth procedures, a Senate Committee Inquiry into the Nursing Profession, and a Commonwealth Government review of nurse education.²⁰

Several submissions, by persons who had participated in or received midwifery care, identified the benefits of ‘midwifery’ as opposed to obstetric nursing care. The submissions often cited the midwifery practice arrangements in the United Kingdom (the UK), Europe and New Zealand, in support of the need to change the current regulatory arrangements. As correctly stated in the submissions, these countries have operated under a direct entry midwifery system for several years.

Some submissions that supported option B recommended broader practice and title restrictions. One submission suggested that midwives should only provide services under the supervision of a medical practitioner.

It should be noted that it is not within the scope of the NCP Review of nursing and midwifery to review the model of service delivery for midwifery.

Persons and organisations that provided submissions on either the Discussion Paper or the Terms of Reference have been listed in Appendix 5.

3. OPTIONS

The PBT assessment for this review examined several options for both nursing and midwifery. The options outlined in the report were developed after consideration of the potential impact on consumers, employers, the QNC, training institutions, nurses, midwives and other health professionals. Particular attention was given to submissions made during consultation and to the current or proposed regulatory arrangements in other Australian jurisdictions.

An absence of regulation or a de-regulation of the occupations of nursing and midwifery was not considered a realistic option as this approach would fail to meet the principal objective of the Act. The cost of raising the community's level of knowledge to the extent required to make informed decisions in respect of health care transactions with authorised nurses and midwives would be an inefficient use of resources. Providing no benchmarks for consumers on practitioner competence would leave consumers subject to social and economic impacts through increased ill health, disability, misadventure and fraud. Statutory title, holding out and practice offences would limit the potential loss to the community from information imbalances.

All of the options considered for nursing and midwifery included title restrictions and holding-out offences. Three options for nursing arose following the consultation, ranging from no practice restriction, retaining the current broad practice restriction, to a refined practice restriction. Two options for midwifery were considered that ranged from no practice restriction to a refined specific practice restriction. It was not considered a realistic option to retain the practice restriction on midwifery in its current form, as the majority of stakeholders did not support this option. It is therefore not discussed here.

The options considered as part of this review are briefly discussed below. Appendices 2 and 3 provide a tabular summary of the impact assessment for each option, for nursing and midwifery respectively.

NURSING

Option 1 Title restriction and holding-out offence, but no practice restriction

This option would remove the current title restrictions and holding-out offences and replace them with more clearly defined provisions to provide clearer consumer protection. However, the option would not prevent a person from providing a nursing service or engaging in the same practices as a nurse as long as the person did not misrepresent him- or herself as being authorised to do so.

Under this option the Act would be amended to:

- prohibit a person who is not suitably authorised by the QNC from taking the titles 'registered nurse' and 'enrolled nurse';

- prohibit a person, such as an employer, from using a restricted title to refer to a person who is not suitably authorised by the QNC;
- prohibit use of any other title or symbol that falsely indicated the person had a QNC nursing authorisation; and
- prohibit other conduct that misrepresents a person as being authorised to practise nursing, or has having a particular QNC nursing authorisation.

To ensure a greater level of compliance with the title and holding-out restrictions, the penalties for non-compliance would be increased to a maximum of between 500 and 1,000 penalty units (currently \$37,500 and \$75,000), consistent with the 13 other registered health professions in Queensland.

Option 2 Title restriction, holding-out offence and practice restriction

Similar to option 1, this option would remove the current title restrictions and holding-out offences and replace them with more clearly defined provisions. This option would also retain a practice restriction. However, the current practice restriction would be refined to remove the current ambiguity and to provide greater transparency and accountability.

Under this option the Act would be amended to:

- prohibit a person who is not suitably authorised by the QNC from taking the titles ‘registered nurse’ and ‘enrolled nurse’;
- prohibit a person, such as an employer, from using a restricted title to refer to a person who is not suitably authorised by the QNC;
- prohibit use of any other title or symbol that falsely indicated the person had a QNC nursing authorisation; and
- prohibit other conduct that misrepresents a person as being authorised to practise nursing, or has having a particular QNC nursing authorisation.

Unlike the current arrangements, this option would exempt a person from the practice restriction if the person were practicing nursing under the direction and supervision of a nurse. For example, an unregulated care provider such as a nursing assistant or orderly performing specific activities under the direction and supervision of a registered nurse. The supervised person would only be exempted from the practice restriction to the same extent as the particular supervising nurse.

This option would also recognise the role of other health professionals whose functions may overlap with recognised nursing practice. The Act would be amended to expressly exempt other health professionals operating within their professional training and expertise from the nursing practice restriction.

Similar to the current provisions, the legislation would exempt activities for which no fee or reward is expected or received. An example of an activity that would be exempted would be a person assisting a family member to take dispensed medication.

It is also proposed that the Act be amended to enable a scope of practice document to be developed to decrease the current ambiguity concerning the statutory practice restriction. The authority to develop such a scope of practice for nursing is expected to be similar to the authority under section 374 of the *Health Practitioners (Professional Standards) Act 1999*.

The purpose of the scope of practice document would be to provide guidance in the interpretation of the statutory nursing practice restriction. The scope of practice document should take account of the following areas:

- the nature of potential harm to a person associated with the practices and practice environments described in the document;
- the degree of risk of harm to a person associated with the practices and practice environments described in the document;
- the extent of knowledge that a reasonable person would have about the degree of risk associated with the practices and practice environments described in the document;
- the existence of other controls on the practices described in the document; and
- the extent to which restricting the practices described in the document to particular professionals would significantly reduce the risk of harm.

The document would assist nurses, unregulated care providers and other health workers to understand the extent of the statutory practice restriction. However, it would not prevent other health workers from performing activities normally considered within their own professional training and expertise. The scope of nursing practice document would assist health sector employers determine staffing requirements. It would assist consumers to understand the services provided by authorised nurses.

The document will also be a guide to people involved in investigations, disciplinary proceedings and court proceedings for which the document may be relevant. The Act would include a provision expressly allowing the document to be admitted as evidence in a proceeding for an offence against the Act. The particular court would decide the weight given to the document, or the extent the document is regarded as being relevant to the proceeding.

The QNC will be required to undertake consultation with specified relevant stakeholders before developing, amending or adopting a scope of practice document. Such stakeholders would include:

- the Health Rights Commissioner;
- relevant community groups and other entities with an interest in consumer health issues in Queensland;
- relevant professional associations;
- accredited universities and training institutions that provide education and training relevant to nursing and midwifery; and
- any other stakeholder identified by the Minister.

To ensure procedural accountability, the document would not have effect unless the Minister approves the document or changes to the document. The Minister would be required to be satisfied that the:

- document met the purpose as outlined in the Act;
- QNC has consulted with the required stakeholders;
- stakeholders have been given reasonable opportunity to comment on the proposed document or amendment; and
- views expressed have been reasonably considered by the QNC before developing or amending the document.

Ministerial approval of the document or an amendment would be notified by notice in the Government Gazette. The notification would identify a date, subsequent to the notification,

when the document or amendment is to have effect. The notification would be identified as subordinate legislation. Public accountability would be ensured, as subordinate legislation may be subject to disallowance by Parliament under the *Statutory Instruments Act 1992*.

Once a scope of practice document has effect, the QNC would have a statutory responsibility to review the document on a regular basis. Additionally, the QNC would be required to make the document available for inspection by any person. Finally, the QNC would have responsibility for taking reasonable steps to help ensure relevant stakeholders and other persons having an interest in nursing were notified of the making of the document or any amendment.

To ensure a greater level of compliance with the title, holding-out and practice restrictions, the penalties for non-compliance would be increased to a maximum of between 500 and 1,000 penalty units (currently \$37,500 and \$75,000), consistent with the other registered health professions.

MIDWIFERY

Option A Title restriction and holding-out offence, but no practice restriction

This option applies the regulatory framework described under option 1 (nursing) to midwifery. Option A would prevent use of the title ‘midwife’ or any other title that suggests the person has a QNC midwifery authorisation, unless the person holds a midwifery authorisation. Also, the option would prohibit other conduct that misrepresents a person as being authorised to practise midwifery. This option would not prevent a person from practising as a midwife or providing a midwifery service.

This option represents the least restrictive of the regulatory options considered for midwifery. Option A would permit any person to offer their services as a midwife, including caring for a woman in childbirth, without needing a formal qualification or professional endorsement. As the option only prevents a person who is not an authorised midwife from using the title ‘midwife’, the option represents a minimum level of consumer protection. Consumers would need to be aware of the restriction to fully benefit from this type of protection.

Option B Title restriction, holding-out offence and specific practice restriction

This option represents a higher level of regulation than that proposed under option A (midwifery). In addition to the clearer title and holding out restrictions proposed under the previous option, option B includes a midwifery practice restriction. Option B would retain the current specific practice restriction of caring for a woman in childbirth. However, the option would provide more clarity about the statutory practice restriction than the current provisions by defining the term ‘childbirth’ and providing for the development of a scope of practice document relating to the restricted aspects of midwifery practice.

Option B would also separate the provisions regulating nursing and midwifery. The separation of nursing and midwifery provisions is recognition that many regard these fields of practice to be separate although related. However, the option would not alter current arrangements that allow nurses, without a midwifery authorisation, to provide nursing services to a woman during childbirth, for example, administering medication for a separate health condition during labour.

With the exception of medical or midwifery students, currently there is no clear statutory authority for other persons to provide supervised midwifery assistance. Similarly, the position of health practitioners such as physiotherapists, who may provide specific advice and treatment during antenatal and postnatal stages, is also unclear. While such treatment and advice may properly be regarded as being within a health practitioner's professional training and expertise, it may also fall within the scope of midwifery practice. The option would address these shortfalls by providing limited exception to the current midwifery practice restriction to the extent that other health practitioners are practising within their professional training and expertise. Similar to the current provisions, the legislation would exempt medical or midwifery trainees who are under the supervision of a medical practitioner or midwife from the practice restriction. Additionally activities for which no fee or reward is expected or received, such as assistance given to a woman in labour by a family member in an emergency, would be exempted.

It is also proposed that the Act be amended to enable a scope of practice document to be developed to decrease the current ambiguity concerning the statutory practice restriction. The authority to develop such a scope of practice for midwifery is expected to be similar to the authority under section 374 of the *Health Practitioners (Professional Standards) Act 1999*.

The scope of practice document would be a framework to assist in the interpretation of the restricted aspects of midwifery practice. The scope of practice document should take account of the following areas:

- the nature of potential harm to a person associated with the practices and practice environments described in the document;
- the degree of risk of harm to a person associated with the practices and practice environments described in the document;
- the extent of knowledge that a reasonable person would have about the degree of risk associated with the practices and practice environments described in the document;
- the existence of other controls on the practices described in the document; and
- the extent to which restricting the practices described in the document to particular professionals would significantly reduce the risk of harm.

The document would assist midwives and other nurses, unregulated care providers and other health workers to understand the extent of the statutory practice restriction. However, it would not prevent other health workers from performing activities normally considered within their own professional training and expertise. The scope of practice document would assist health sector employers determine staffing requirements. It would assist consumers to understand the services provided by authorised midwives.

The document will also be a guide to people involved in investigations, disciplinary proceedings and court proceedings for which the document may be relevant. The Act would include a provision expressly allowing the document to be admitted as evidence in a proceeding for an offence against the Act. The particular court would decide the weight given to the document, or the extent the document is regarded as being relevant to the proceeding.

The QNC will be required to consult with relevant stakeholders prior to the development or amendment of the document. Stakeholders would include:

- the Health Rights Commissioner;

- relevant community groups and other entities with an interest in consumer health issues in Queensland;
- relevant professional associations;
- accredited universities and training institutions that provide education and training relevant to nursing and midwifery; and
- any other stakeholder identified by the Minister.

Ministerial approval of the document or an amendment would be notified by notice in the Government Gazette. The Minister would be required to be satisfied that the:

- document met the purpose as outlined in the Act;
- QNC has consulted with the required stakeholders;
- stakeholders have been given reasonable opportunity to comment on the proposed document or amendment; and
- views expressed have been reasonably considered by the QNC before developing or amending the document.

The notification would identify a date, subsequent to the notification, when the document or amendment is to have effect. The notification would be identified as subordinate legislation. Public accountability would be ensured, as subordinate legislation may be subject to disallowance by Parliament under the *Statutory Instruments Act 1992*.

Once a scope of practice document has effect, the QNC would have a statutory responsibility to review the document on a regular basis. Additionally, the QNC would be required to make the document available for inspection by any person. Finally, the QNC would have responsibility for taking reasonable steps to help ensure relevant stakeholders and other persons having an interest in midwifery were notified of the making of the document or any amendment.

To ensure a greater level of compliance with the title, holding-out and specific practice restrictions, the penalties for non-compliance would be increased to a maximum of between 500 and 1,000 penalty units (currently \$37,500 and \$75,000), consistent with the other registered health professions in Queensland.

Arrangements in other jurisdictions

Tables 2 and 3, summarise the title restrictions, holding-out offences and practice restrictions relating to nurses and midwives operating in other Australian states and territories. Appendix 4 outlines the approaches and the wording of relevant provisions from each jurisdiction.

The legislation in other states and territories varies in regard to nursing and midwifery title restrictions, holding-out offences and practice restrictions.

All jurisdictions have restrictions on the use of titles, with most restricting the titles ‘nurse’, ‘registered nurse’ and ‘enrolled nurse’. Victorian legislation also recognises endorsement of ‘nurse practitioners’. All jurisdictions restrict the title ‘midwife’, except Western Australia and the Australian Capital Territory (ACT) where a midwife is considered a registered nurse. Following review of its nursing legislation, the ACT proposes to protect the following titles: ‘nurse’, ‘nurse practitioner’, ‘mental health nurse’ and ‘midwife’.

In all Australian jurisdictions, it is an offence for a person to hold him- or herself out to be a nurse who is subject to occupational regulation; for example, a registered nurse. Victoria and South Australia also prohibit a person whose registration or enrolment is subject to conditions or restrictions from holding him- or herself out not being subject to such conditions or restrictions. Additionally, South Australia prohibits a person holding someone else out as a nurse who is subject to occupational regulation. All jurisdictions except for South Australia, Western Australia and the ACT contain similar holding-out offences in relation to midwives.

New South Wales (NSW), Tasmania and Victoria do not restrict nursing practice. Following review of its nursing legislation, the ACT proposes removing practice restrictions on performing a ‘nursing service’. The Northern Territory, South Australia and Western Australia have broad statutory practice restrictions which are not defined.

The ACT, Tasmania, Victoria and Western Australia do not have specific midwifery practice restrictions, while NSW, South Australia and the Northern Territory have a general midwifery practice restriction. However, the review of nursing legislation in NSW recommended changing the midwifery practice restriction under the *Nurses Act 1991* to a specific practice restriction that focuses on the management of labour and the delivery of a baby. This is consistent with other NSW health practitioner reviews (eg. chiropractors, osteopaths), which have restricted practices that have a significant risk of harm.

State/Territory	Title Restrictions	Holding-Out Offences	Practice Restrictions
New South Wales	‘registered nurse’; ‘enrolled nurse’; ‘enrolled nurse (mothercraft)’; ‘nurse practitioner’	Yes	None
Victoria	‘registered nurse’ (five divisions); ‘nurse practitioner’	Yes	None
South Australia	‘nurse’; ‘registered nurse’; ‘enrolled nurse’; ‘mental health nurse’; ‘psychiatric nurse’		Yes – broad restriction on ‘nursing practice’
Western Australia*	‘nurse’; ‘registered nurse’	Yes	Yes – broad restriction on the practice of nursing
Australian Capital Territory*	‘nurse’; ‘registered nurse’; ‘enrolled nurse’ <i>Proposes amendments to restrict the following: ‘nurse, ‘nurse practitioner’ & ‘mental health nurse’</i>	Yes	Yes – broad restriction on performing any ‘nursing service’ <i>(Proposed to be removed)</i>
Northern Territory	‘nurse’; ‘registered nurse’; ‘enrolled nurse’; ‘licenced nurse’; ‘qualified nurse’	Yes	Yes – broad restriction on practising nursing
Tasmania	‘nurse’; ‘registered nurse’; ‘enrolled nurse’; ‘certified nurse’; ‘licensed nurse’; ‘qualified nurse’; ‘authorised nurse’; ‘psychiatric nurse’	Yes	None

* Nursing legislation is currently under review.

TABLE 2: Nursing Title and Practice Restrictions in Other Jurisdictions

State/Territory	Title Restrictions	Holding-Out Offences	Practice Restrictions
New South Wales	'midwife'	Yes	Yes – broad restriction on 'midwifery', NCP review recommended restriction on childbirth only, and allowing direct-entry midwives.
Victoria	'midwife'	Yes	None
South Australia	'midwife'	None specific to midwife.	Yes - broad restriction on 'midwifery' (ie. 'care, assistance or support provided to a mother or child in relation to pregnancy or the birth of a child'.
Western Australia*	None	None	None
Australian Capital Territory*	None – midwife is a registered nurse <i>Proposal to restrict the title 'midwife'</i>	None specific to midwife	None – midwife is a registered nurse
Northern Territory	'midwife'	Yes	Yes – broad practice restriction
Tasmania	'midwife'	Yes	None

* Nursing legislation is currently under review.

TABLE 3: Midwifery Title and Practice Restrictions in Other Jurisdictions

4. PBT ANALYSIS

The following is an analysis of the possible impacts on directly affected groups, compared with the base case. The size and nature of the possible impacts was evaluated relative to the current arrangements. The perceived likelihood and impact of the benefit or cost influenced the ratings for each benefit or cost. As discussed above, a complex array of factors impacts on the demand for qualified nursing services, which would tend to reduce the impact of changes to the statutory restrictions on nursing and midwifery. The range of possible impacts was negligible to medium.

Organisations such as trade unions, while having a significant interest in the possible options, were not included in the analysis on the basis that these organisations often represent groups included in the analysis, and on the basis that the possible options would not have a substantial impact on the organisation itself.

NURSING

Option 1 Title restriction and holding-out offence, but no practice restriction

Consumers and community

Establishing a clear title offence would improve consumer protection by assisting consumers to identify practitioners with QNC authorisation. This option may also provide greater certainty for employers seeking to engage unregulated care providers (UCPs) in delegated nursing activities because removal of the nursing practice offence may reduce the risk of prosecution. This would potentially result in an increased use of UCPs. As a result, lower costs may be passed on to consumers. However, this would be a minor benefit. The level of

training and supervision required limit the ability for UCPs to undertake delegated nursing activities beyond current circumstances.

This option may result in a decreased standard of health care due to the removal of the practice restriction and potentially increased risks of harm if services are provided inappropriately by an unqualified carer. Under option 1, a consumer could receive nursing care from a de-registered nurse as a result of the practice restriction being removed. However, the likelihood of receiving care from such a provider is low, as very few nurses are de-registered each year: six persons out of approximately 37000 registered nurses had their nursing registration revoked or suspended in the year 2000-01.²¹ As circumstances such as this are likely to be rare, the cost to consumers would be minor. On balance, option 1 would result in a neutral net impact on consumers and the community.

Registered and enrolled nurses

Option 1 is likely to result in continued lack of clarity about the statutory restrictions on nursing practice for registered and enrolled nurses, producing a minor net cost to this group.

Unregulated care providers (UCPs)

Removal of the practice offence for nursing would reduce the risk of prosecution for UCPs who may be seen to be engaged in nursing practice. As there are very few prosecutions for nursing practice offences each year, the impact of this benefit is likely to be minor. This option would also bring about reduced costs to maintain competency for nurses who may choose to become UCPs as a result of the removal of the practice restriction.

Under this option, there is a minor risk that some UCPs would be expected to function as licensed nurses. On balance however, option 1 would result in a minor benefit for UCPs.

Health sector employers including government

As identified above, removal of the practice restriction under this option would provide employers with greater certainty about circumstances in which UCPs could be engaged. Costs to employers may be reduced as a result of an increased use of UCPs to perform delegated nursing activities. However, the benefit to employers is likely to be minor. As discussed above, the removal of the statutory practice restriction would be likely to have a minor impact on the total number of UCPs undertaking delegated nursing activities in the context of the complex array of factors influencing demand for nursing services. The minor potential for decreased standards of health care delivery, discussed above, may also give rise to increased complaints affecting health sector employers.

As a result of the factors mentioned above, option 1 would have a neutral net impact on employers.

Queensland Nursing Council

This option would potentially reduce costs associated with enforcing the statutory practice restrictions. At the same time, there may be a minor decrease in licensing revenue, as a small number of nurses who are currently licensed may choose to become UCPs if there is no

statutory restriction on nursing practice. As a result, option 1 is likely to have a neutral net impact on the QNC.

Other health practitioners including allied health professionals

Option 1 is likely to have no net impact on other health professionals including allied health professionals.

Training institutions

The potential demand for training courses for UCPs may increase in conjunction with the minor potential for increased use of UCPs engaged in delegated nursing activities. As a result, the potential cost of providing training would increase. These impacts are likely to be negligible, and would result in a neutral net impact.

Option 2 Title restriction, holding-out offence and practice restriction

Consumers and community

Similar to option 1, establishing a clear title offence would improve consumer protection by assisting consumers to identify practitioners with QNC authorisation.

This option would also reduce health risks to consumers through provision of a clear statutory practice offence. As identified above, a large number of unregulated care providers operate within the broad nursing services market. The statutory practice offence would reduce the risk of a person receiving care from an unsupervised provider who does not possess the qualifications that are necessary in the circumstances. An example of such circumstances is the care of a lower limb wound on a person with diabetes.

Greater clarity about the extent of the statutory practice offence provided by a scope of nursing practice document would also reduce the risk that a person is provided a service by a provider who does not possess the necessary qualifications.

As a result of these factors, this option would represent a minor net benefit to consumers and the community, in comparison with the base case.

Registered and enrolled nurses

Option 2 would provide greater clarity about nursing practice for registered and enrolled nurses. The resulting potential for improved efficiency would represent a minor net benefit for this group.

Unregulated care providers (UCPs)

Greater clarity about the scope of nursing practice provided by this option would potentially reduce the risk that a UCP carrying out delegated nursing activities would be prosecuted for a nursing practice offence. As a result, option 2 would bring about a minor net benefit for UCPs.

Health sector employers including government

Maintenance of the current standard of health care under this option would represent a minor benefit to health sector employers. Option 2 would also result in greater certainty about the circumstances in which employers could engage UCPs. The net effect of this option on health sector employers would be a minor benefit.

Queensland Nursing Council

Clearer offence provisions are likely to bring a moderate reduction in regulatory costs for the QNC. However, the QNC would bear the relatively minor cost of developing and maintaining a scope of nursing practice document. As a result, there would be a minor net benefit for the QNC under this option.

Other health practitioners, including allied health professionals

Greater clarity about the scope of nursing practice and specific exemptions from the practice restriction would potentially reduce the risk that other health practitioners would be prosecuted for a nursing practice offence. This would bring about a minor net benefit for other health professionals including allied health professionals.

Training institutions

Training institutions may have to update their training material about practice restrictions to reflect the changes. However, the impact of this option is likely to be relatively negligible.

MIDWIFERY

Option A Title restriction and holding-out offence, but no practice restriction

Consumers and community

Consumers would potentially benefit from a greater choice of service providers because removal of the midwifery practice offence may reduce the risk of prosecution of UCPs engaged in activities that could be seen to be midwifery. However, the impact of this option is likely to be minor, as potential use of UCPs is more likely to occur outside formal services (eg. home births), which represent a small proportion of all births.

Establishing a clear title offence would improve consumer protection by assisting consumers to identify practitioners with QNC authorisation. However, this option may result in a decreased standard of health care due to the removal of the midwifery practice restriction. Similarly to option 1 (nursing), a consumer could receive midwifery care from a de-registered nurse. As this is likely to be a rare occurrence, the cost to consumers would be minor. This option would bring about a neutral net impact on consumers and the community.

Registered and enrolled nurses without midwifery authorisation

This option would reduce the risk of prosecution for registered and enrolled nurses who may be seen to be practising midwifery by removing the practice offence. As there are very few

prosecutions for midwifery practice offences each year, the impact of this benefit is likely to be minor.

Removal of the practice offence may bring about a minor risk that some registered and enrolled nurses who are not authorised to practise midwifery would be expected to function as midwives. As a result, option A would have a neutral net impact on registered and enrolled nurses without midwifery authorisation.

Licensed midwives, including registered and enrolled nurses with midwifery authorisation

This option is likely to result in continued lack of clarity about the statutory restrictions on midwifery practice, producing a minor net cost to licensed midwives.

Unregulated care providers (UCPs)

Removal of the practice offence for midwifery would reduce the risk of prosecution for UCPs who may be seen to be engaged in midwifery practice. As there are very few prosecutions for midwifery practice offences each year, the impact of this benefit is likely to be minor. This option would also bring about reduced costs to maintain competency for a small number of licensed midwives who may choose to become UCPs as a result of the removal of the practice restriction.

Under this option, there is a minor risk that some UCPs would be expected to function as midwives. On balance however, option 1 would result in a minor benefit for UCPs.

Health sector employers including government

This option may provide employers with greater certainty about circumstances in which UCPs could be engaged in delegated midwifery activities because removal of the midwifery practice offence may reduce the risk of prosecution. As a result, costs to employers may be reduced if they chose to increase use of non-authorised midwives. However, the benefit to employers is likely to be minor, as the level of training and supervision required limit the scope for non-authorised midwives to undertake delegated midwifery activities beyond current circumstances.

The minor potential for decreased standards of health care delivery, discussed above, may also give rise to increased complaints affecting health sector employers. As a result, option A would have a neutral net impact on employers.

Queensland Nursing Council

Similarly to option 1 (nursing), removal of the midwifery practice offence would potentially reduce costs associated with enforcing the statutory practice restrictions. At the same time, there may be a minor decrease in licensing revenue, as a small number of midwives who are currently licensed may choose to become UCPs if there is no statutory restriction on midwifery practice. As a result, option A is likely to have a neutral net impact on the QNC.

Other health practitioners including allied health professionals

This option would provide little benefit for other health practitioners.

Training institutions

This option would have little or no impact on training institutions.

Option B Title restriction, holding-out offence and specific practice restriction

Consumers and community

Similar to option A, establishing a clear title offence would improve consumer protection by assisting consumers to identify practitioners with QNC authorisation.

The clearer practice offence for midwifery is likely to bring about a minor increase in health standards in a similar way to option 2 (nursing). Option B would strengthen the current safeguards against the possibility that a person could receive midwifery care from a person without the necessary qualifications. As a result, individual consumers and the community would benefit in a minor way under this option.

Registered and enrolled nurses without midwifery authorisation

This option would reduce the risk of prosecution for registered and enrolled nurses without midwifery authorisation. This would be achieved by clarifying the scope of the midwifery practice offence and enabling this group to practise midwifery under the supervision of a midwife or to engage in antenatal or postnatal care. As a result, option B would represent a minor benefit to registered and enrolled nurses who are not authorised to practise midwifery.

Licensed midwives, including registered and enrolled nurses with midwifery authorisation

Option B would provide greater clarity about restricted midwifery practice for licensed midwives. The resulting potential for improved efficiency would represent a minor net benefit for this group. Under this option, the critical role of midwives in antenatal and postnatal care would be maintained.

Unregulated care providers (UCPs)

This option would clarify the role of UCPs, such as alternative or complementary health practitioners, in antenatal or postnatal care. Under this option, a UCP would not be able to perform restricted midwifery activities unless under the supervision of a licensed midwife. As a result, option B would potentially reduce the risk that a UCP would be prosecuted for a midwifery practice offence when undertaking unregulated activities or when operating under the supervision of a licensed midwife.

The impact of costs and benefits under this option is likely to be minor, as it represents only a minor refinement of the current statutory restriction. Additionally, the potential use of UCPs is more likely to occur outside formal services (eg. home births), which represent a small proportion of all births. On balance, the net effect is likely to be neutral.

Health sector employers including government

Maintenance of the current standard of health care under this option would represent a minor benefit to health sector employers. Option B would also result in greater certainty about the

circumstances in which employers could engage UCPs. The net effect of this option on health sector employers would be a minor benefit.

Queensland Nursing Council

Clearer offence provisions are likely to bring a minor reduction in regulatory costs for the QNC. However, the QNC would bear the relatively minor cost of developing and maintaining a scope of midwifery practice document. As a result, there would be a neutral net impact for the QNC under option B.

Other health practitioners including allied health professionals

Option B would provide greater certainty to other health practitioners, such as physiotherapists and dieticians, who engage in antenatal or postnatal care. However, the impact of this benefit is likely to be minor, as it represents only a minor refinement of the current statutory restriction. As a result, option B is likely to represent a minor net benefit for other health professionals including allied health professionals.

Training institutions

This option would have a negligible net impact on training institutions.

Net impact of options

Nursing

Option 1 would have a neutral net impact on most of the affected groups and a minor beneficial impact on UCPs as a result of removing the statutory restriction on nursing practice. While this option would give rise to greater certainty about UCPs performing delegated nursing activities and a minor potential for lower costs, these benefits would be offset by a potential minor increase in health risks due to removal of the practise restriction.

The consumer protection advantages associated with the current arrangements would be retained under option 2, but with a clearer nursing practice offence, achieved through statutory recognition of an agreed scope of nursing practice. As a result, this option would deliver minor benefits to consumers, registered and enrolled nurses, UCPs, other health practitioners, health sector employers and the QNC. There is likely to be little or no net impact of this option on training institutions.

Midwifery

Option A would potentially bring minor benefits to consumers, UCPs and health sector employers as a result of removing the statutory midwifery practice restriction. These benefits are most likely to affect the small proportion of births that occur outside formal health services. This option would also bring about a minor decrease in the standard of health care and a continued lack of clarity about midwifery practice. As a result, option A would have a neutral net impact on most of the affected groups. However, there may be a minor net benefit to UCPs and a minor net cost to licensed midwives.

Option B would result in a possible minor increase in the standard of health care and reduce ambiguity surrounding the statutory midwifery practice restriction. While the critical role of midwives in antenatal and postnatal care would be maintained, this option would help to clarify the roles of other practitioners currently providing care in these circumstances. As a result, option B is likely to bring about minor net benefits to most affected groups. At the same time, there would be a neutral net impact on UCPs, the QNC and training institutions under this option.

5. CONCLUSION AND RECOMMENDATIONS

On balance, option 2 (nursing) would deliver greater net benefits overall, compared with option 1 and the base case. The provision of a clear title restriction, with higher penalties for unlawful use of a restricted title, would overcome some of the risks associated with information asymmetry between consumer knowledge of nursing services and the training and expertise necessary to safely provide those services. The title restriction and a clearer holding-out offence would bring about greater consumer protection by providing a means of distinguishing between authorised and non-authorised service providers.

Retaining title restrictions and holding-out offences without a statutory practice restriction in the nursing services market would increase health risks to consumers. A large number of unregulated care providers operate within the broad nursing services market. In a wide range of circumstances, unregulated care providers legitimately deliver services that could be considered to be nursing services. Additionally, it may be difficult for consumers to distinguish between activities that may be performed by an unregulated care provider and those that require a higher level of qualification.

The retention of a statutory practice restriction for nursing would reduce the risk of a person receiving care from an unsupervised provider who does not possess the qualifications that are necessary in the circumstances. Examples of such circumstances include the care of a lower limb wound on a person with diabetes, and the regular assessment of an elderly person who is taking a number of medications for a complex medical condition. The provision in legislation of clearer exemptions would reduce the risk that other health professionals operating within their own recognised training and expertise could be prosecuted for committing a practice offence.

The establishment of a scope of nursing practice would remove the current ambiguity as to the extent of the statutory practice offence in such a way that would enable future developments in nursing practice to be recognised. Such an approach would also be consistent with recommendations made by the *National Review of Nursing Education 2002*.²² The requirement for the QNC to consult with relevant stakeholders on the development of the scope of practice document would ensure greater transparency of decision making concerning the statutory practice offence. Additionally, the requirement for the Minister to approve the scope of practice document would ensure public accountability of the document and ensure the scope is broad enough to provide adequate consumer protection without limiting the legitimate activities of UCPs.

Option B (midwifery) would deliver greater net benefits compared with option A and the base case. The provision of a clear title restriction, with higher penalties for unlawful use of a restricted title, overcomes some of the risks associated with information asymmetry amongst consumers. The title restriction and a clearer holding-out offence would bring about greater

consumer protection by providing a means of distinguishing between authorised and non-authorised service providers.

The provision of a specific statutory practice offence would ensure that only suitably qualified practitioners could lawfully undertake a function that poses a high risk of harm to consumers. The provision in legislation of clearer exemptions would reduce the risk that other health professionals operating within their own recognised training and expertise could be prosecuted for committing a practice offence.

Similar to option 2 (nursing), the establishment of a scope of practice document would remove the current ambiguity as to the extent of the statutory midwifery practice offence. The requirement for the QNC to consult with relevant stakeholders on the development of the scope of practice document would ensure greater transparency of decision making concerning the statutory practice offence. Additionally, the requirement for the Minister to approve the scope of practice document would ensure public accountability of the document and ensure the scope is neither too narrow nor too broad.

Accordingly, it is recommended that the *Nursing Act 1992* be amended to reflect:

- the title restriction, holding-out offence and practice restriction under option 2; and
- the title restriction, holding-out offence and specific practice restriction under option B.

NOTES

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APPENDIX 1

IMPACT MATRIX – REGULATORY OPTIONS FOR NURSING¹

Affected group	Option 1 Refined title restriction and holding-out offence, but no practice restriction		Option 2 Refined title restriction, holding-out offence and practice restriction	
	Benefits	Costs	Benefits	Costs
Consumers and Community	<ul style="list-style-type: none"> potential for reduced consumer costs as a result of use of UCPs² (minor). 	<ul style="list-style-type: none"> potentially decreased standard of health care (minor). 	<ul style="list-style-type: none"> potentially increased standard of health care (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Neutral net impact		Minor net benefit	
Registered and enrolled nurses (nursing profession)	<ul style="list-style-type: none"> nil for nursing professionals. 	<ul style="list-style-type: none"> continued lack of clarity about nursing practice (minor). 	<ul style="list-style-type: none"> greater clarity about nursing practice (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Minor net cost		Minor net benefit	
Unregulated Care Providers (UCPs)	<ul style="list-style-type: none"> reduced risk of prosecution for practising nursing (minor). reduced costs to maintain competency for nurses who become UCPs (minor). 	<ul style="list-style-type: none"> risk that UCPs would be expected to function as licensed nurses (minor). 	<ul style="list-style-type: none"> clearer practice restriction would reduce risk of prosecution for practising nursing (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Minor net benefit		Minor net benefit	

¹ Cost/benefit impacts have been assessed between negligible and medium. The perceived likelihood and impact of the benefit or cost influenced the ratings for each benefit or cost. For example, for option 1 an identified cost for consumers was the possibility of receiving nursing care from a person deemed by QNC as unsuitable to be a nurse. While the consequence is potentially high, this cost was perceived as minor, as very few nurses are deemed unsuitable each year. As a result, the likelihood of receiving care from such a provider would be low.

² UCP = unregulated care provider who may be seen to be engaged in nursing practice.

	Option 1 Refined title restriction and holding-out offence, but no practice restriction		Option 2 Refined title restriction, holding-out offence and practice restriction	
Affected group	Benefits	Costs	Benefits	Costs
Health sector employers (including Government)	<ul style="list-style-type: none"> greater certainty about circumstances in which employers could engage UCPs may lower costs (minor). 	<ul style="list-style-type: none"> potential for decreased standards of health care delivery and increased complaints (minor). 	<ul style="list-style-type: none"> maintain current standard of health care (minor). greater certainty about circumstances in which employers could engage UCPs (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Neutral net impact		Minor net benefit	
Queensland Nursing Council	<ul style="list-style-type: none"> reduced cost of administering legislation (minor). 	<ul style="list-style-type: none"> decrease in licensing revenue (minor). 	<ul style="list-style-type: none"> clearer offence provisions would reduce regulatory costs (medium). 	<ul style="list-style-type: none"> cost of developing and maintaining a scope of nursing practice document (minor).
Net impact for group	Neutral net impact		Minor net benefit	
Other health practitioners, including allied health professionals	<ul style="list-style-type: none"> nil. 	<ul style="list-style-type: none"> nil. 	<ul style="list-style-type: none"> clearer practice restriction would reduce risk of prosecution for practising nursing (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Neutral net impact		Neutral net impact	
Training institutions	<ul style="list-style-type: none"> potential demand for training courses for UCPs may increase (negligible). 	<ul style="list-style-type: none"> potential cost of providing training (negligible). 	<ul style="list-style-type: none"> nil. 	<ul style="list-style-type: none"> potential cost of updating training material about practice restrictions (negligible).
Net impact for group	Neutral net impact		Neutral net impact	

APPENDIX 2

IMPACT MATRIX – REGULATORY OPTIONS FOR MIDWIFERY

	Option A Refined title restriction and holding-out offence, but no practice restriction		Option B Refined title restriction, holding-out offence and specific practice restriction	
Affected group	Benefits	Costs	Benefits	Costs
Consumers and Community	<ul style="list-style-type: none"> potential for increased choice for consumers as a result of use of UCPs (minor). 	<ul style="list-style-type: none"> potentially decreased standard of health care (minor). 	<ul style="list-style-type: none"> potentially increased standard of health care (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Neutral net impact		Minor net benefit	
Registered and enrolled nurses without midwifery authorisation	<ul style="list-style-type: none"> reduced risk of prosecution for practising midwifery (minor). 	<ul style="list-style-type: none"> risk that some nurses without midwifery authorisation would be expected to function as midwives (minor). 	<ul style="list-style-type: none"> greater certainty about circumstances in which nurses without midwifery authorisation could engage in antenatal and postnatal care (minor). enables nurses to carry out midwifery activities under the supervision of a midwife (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Neutral net impact		Minor net benefit	
Licensed midwives, including registered and enrolled nurses with midwifery authorisation	<ul style="list-style-type: none"> nil. 	<ul style="list-style-type: none"> continued lack of clarity about midwifery practice (minor). 	<ul style="list-style-type: none"> greater clarity about midwifery practice (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Minor net cost		Minor net benefit	
Unregulated Care Providers (UCPs)	<ul style="list-style-type: none"> reduced risk of prosecution for practising midwifery (minor). reduced costs to maintain competency for midwives who become UCPs (minor). 	<ul style="list-style-type: none"> risk that some UCPs would be expected to function as midwives (minor). 	<ul style="list-style-type: none"> greater certainty about circumstances in which UCPs could engage in antenatal and postnatal care (minor). 	<ul style="list-style-type: none"> removes the option of lawfully practising midwifery unless under the supervision of a licensed midwife or providing unrestricted midwifery care (minor).
Net impact for group	Minor net benefit		Neutral net impact	

	Option A Refined title restriction and holding-out offence, but no practice restriction		Option B Refined title restriction, holding-out offence and specific practice restriction	
Affected group	Benefits	Costs	Benefits	Costs
Health sector employers (including Government)	<ul style="list-style-type: none"> greater certainty about circumstances in which employers could engage non-authorized midwives (minor). 	<ul style="list-style-type: none"> potential for decreased standards of health care delivery and increased complaints (minor). 	<ul style="list-style-type: none"> maintain current standard of health care (minor). greater certainty about circumstances in which employers could engage UCPs (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Neutral net impact		Minor net benefit	
Queensland Nursing Council	<ul style="list-style-type: none"> reduced cost of administering legislation (minor). 	<ul style="list-style-type: none"> decrease in licensing revenue (minor). 	<ul style="list-style-type: none"> clearer offence provisions would reduce regulatory costs (minor) 	<ul style="list-style-type: none"> cost of developing and maintaining a scope of midwifery practice document (minor).
Net impact for group	Neutral net impact		Neutral net impact	
Other health practitioners, including allied health professionals	<ul style="list-style-type: none"> nil. 	<ul style="list-style-type: none"> nil. 	<ul style="list-style-type: none"> greater certainty about circumstances in which other health practitioners could engage in antenatal and postnatal care (minor). 	<ul style="list-style-type: none"> nil.
Net impact for group	Neutral net impact		Minor net benefit	
Training institutions	<ul style="list-style-type: none"> potential demand for training courses for UCPs may increase (negligible). 	<ul style="list-style-type: none"> potential cost of providing training (negligible). 	<ul style="list-style-type: none"> nil 	<ul style="list-style-type: none"> potential cost of updating training material about practice restrictions (negligible).
Net impact for group	Neutral net impact		Neutral net impact	

NURSING AND MIDWIFERY
TITLE AND PRACTICE RESTRICTIONS
UNDER THE *NURSING ACT 1992*

141 Prohibited practices

(1) A person must not knowingly take action, or knowingly assist another person to take action, that, having regard to the circumstances in which it is taken, indicates, is capable of being understood to indicate, or is calculated to lead persons to believe, that the person or other person is—

- (a) a registered nurse, unless the person or other person is a registered nurse; or
- (b) an enrolled nurse, unless the person or other person is an enrolled nurse; or
- (c) a midwife, unless the person or other person is authorised to practise midwifery; or
- (d) a person authorised to practise nursing, unless the person or other person is authorised to practise nursing; or

the holder of an annual licence certificate, unless the person or other person holds an annual licence certificate.

Maximum penalty—20 penalty units.

(2) Action mentioned in subsection (1) may include, but is not limited to, taking or using a name, initial, word, title or description.

142 Unauthorised nursing

(1) A person who is not a nurse, or a person authorised to practise nursing, must not practise as a nurse or perform a nursing service.

Maximum penalty—20 penalty units.

(2) A nurse or another person authorised to practise nursing must not contravene a term, condition, limitation or restriction to which the person's right to practise nursing is subject.

Maximum penalty—20 penalty units

(3) Subsections (1) and (2) do not apply to a person rendering assistance in an emergency.

(4) For the purposes of this section, a person who does not act for, or in expectation of, a fee or reward does not practise as a nurse or perform a nursing service.

(5) A person who does not have current authorisation from the council to practise as a midwife must not care for a woman in childbirth.

Maximum penalty—20 penalty units.

(6) Subsection (5) does not apply to—

(a) a medical practitioner; or

(b) a medical or midwifery student acting under the direct supervision of a medical practitioner or midwife respectively; or

(c) a person rendering assistance in an emergency; or

(d) a person acting in prescribed circumstances.

APPENDIX 4 **AUSTRALIAN NURSING AND MIDWIFERY**
TITLE RESTRICTIONS, HOLDING-OUT OFFENCES
AND PRACTICE RESTRICTIONS

NEW SOUTH WALES

New South Wales completed a review of its *Nurses Act 1991* in 2001. It is recommended that the provisions relating to nursing title restrictions, holding-out offences and practice restrictions remain largely consistent with the present approach.

The *Nurses Act 1991* prohibits a person from using the titles ‘registered nurse’, ‘enrolled nurse’, ‘enrolled nurse (mothercraft)’ and ‘nurse practitioner’ unless the person is authorised by the Nurses Registration Board to practise as a registered nurse’, ‘enrolled nurse’, ‘enrolled nurse (mothercraft)’ or ‘nurse practitioner’. The definitions of ‘registered nurse’, ‘enrolled nurse’, ‘enrolled nurse (mothercraft)’ and ‘nurse practitioner’ contained in the Act do not provide any information regarding the scope of practice of each position.

The *Nurses Act 1991*, also prohibits a person from claiming or holding him or herself out to be a registered nurse, enrolled nurse or enrolled nurse (mothercraft) or entitled to practise as such unless the person is registered as a nurse or, as the case requires, is enrolled as an enrolled nurse or enrolled nurse (mothercraft)

There are no nursing practice restrictions under the Act.

The Act also prohibits a person from using the title ‘midwife’ unless the person is a registered nurse who is authorised to practise midwifery by the Nurses Registration Board. There is a midwifery practice restriction in the Act that prohibits a person from practising midwifery unless the person is a registered nurse who is authorised to practise midwifery by the Nurses Registration Board. Exemptions to this practice restriction are provided. The Act does not define ‘midwife’ or ‘midwifery’. Under the review it is proposed that the title ‘midwife practitioner’ will replace the title ‘midwife’ and the practices of a midwife practitioner will relate to the management of labour and the delivery of a baby. This restriction will be consistent with other NSW health practitioner legislation (eg. chiropractors, osteopaths), which has restricted practices that have a significant risk of harm.

It is also proposed that direct entry midwives will be authorised to practice midwifery, although existing registered nurses must maintain their registration under the Act (ie. the must remain registered nurses).

VICTORIA

The Victorian *Nurses Act 1993* was reviewed in 1999 and the existing provisions relating to nursing title and practice restrictions were retained.

The Act prohibits a person from using the title ‘registered nurse’ unless the person is a registered nurse. Registered nurses are currently separated into five Divisions:

- Division 1 Nurses;
- Division 2 Nurses (formerly State Enrolled Nurses);
- Division 3 Nurses (formerly Psychiatric Nurses);
- Division 4 Nurses (formerly Mental Retardation Nurses); and

- Division 5 Nurses (formerly Mothercraft Nurses).

Since 1993, all newly registered or enrolled nurses can only be placed into Divisions 1 and 2. As a result, the three remaining Divisions will, over time, become redundant. The *Nurses (Amendment) Act 2000*, which followed the review, includes:

- amendments that recognise the endorsement of ‘nurse practitioners’;
- title and holding-out provisions consistent with registered nurse restrictions; and
- amendments to provide nurse practitioners with the ability to prescribe certain medications.

The definition of ‘registered nurse’ contained in the Act does not provide any information regarding the scope of practice of each position.

There are no nursing practice restrictions under the Act. However, in August 2001, the Victorian Department of Human Services released a discussion paper entitled *Regulation of Medical Practitioners and Nurses in Victoria*. This paper discusses outstanding issues of concern raised during the NCP review, including the legislative restrictions on nursing practice and the penalties for breaches of the Act. No changes were made to the Victorian legislation arising from the discussion paper.

The Act also prohibits a person who has not successfully completed a course in midwifery approved by the Nurses Board of Victoria from using the title of ‘midwife’ (which is not defined). However, the Code of Practice for Midwives in Victoria, which is published by the Nurses Board of Victoria adopts the International Confederation of Midwives’ definition of midwife.

There are no midwifery practice restrictions under the Act.

SOUTH AUSTRALIA

The South Australian *Nurses Act 1999*:

- restricts the use of the title of ‘nurse’ to persons registered and enrolled under the Act. ‘Nurse’ is defined as a registered or enrolled nurse;
- restricts the use of the titles ‘mental health nurse’ and ‘psychiatric nurse’ to only persons registered under the Act as a mental health nurse;
- prohibits a person from practising nursing for remuneration, fee or other reward unless the person is registered or enrolled under the Act. ‘Nursing practice’ is not defined under the Act; and
- states that a nurse must not perform a function in the provision of nursing care that the person is not authorised to perform under the Act. Whilst ‘nursing care’ is not defined, the Act clarifies the role of the enrolled nurse by stating that an enrolled nurse is authorised to practise in the field of nursing under the supervision of a registered nurse. Supervision includes ‘oversight, direction, guidance or support (whether directly or indirectly)’.

The Act prohibits a person from holding him- or herself or someone else who is not registered or enrolled under the Act, to be registered or enrolled. Additionally, it is an offence for a person with limitations or conditions on their registration or enrolment to hold themselves out to be fully registered or enrolled.

In relation to midwifery, the Act restricts the use of the title ‘midwife’ to persons registered as midwives under the Act. Midwifery is classed as a ‘special practice area’ under the Act and therefore only a nurse who is registered by the Nurses Board of South Australia to practise as a midwife may do so without supervision. This is also applicable to ‘mental health nursing’. The Act defines midwifery as “care, assistance or support provided to a mother or child in relation to pregnancy or the birth of a child”. It is an offence for a person who is not registered to practise as a midwife to hold him- or herself out to have such registration.

WESTERN AUSTRALIA

The Health Department of Western Australia (WA) completed a review of this jurisdiction’s Health Practitioner Legislation, including the *Nurses Act 1992*, in 2001. The review recommended retaining the current approach to the regulation of nursing. A further review, focusing on core practices, is to be undertaken within three years of the original review.

The Act provides for persons registered by the Nurses Board of WA to be placed into one of six divisions:

Division 1 – registered nurses (ie. capable of practising independently as professional nurses);

Division 2 – persons capable of practising nursing only – under the professional direction of a nurse registered in division 1 (ie. enrolled nurse); or in a particular prescribed nursing speciality;

Division 3 – bodies corporate ;

Division 4 – persons granted honorary registration;

Division 5 - persons granted provisional registration; and

Division 6 – persons granted temporary registration.

In relation to nursing title restrictions, the Act confers on registered persons the right to practise nursing under the title of ‘nurse’. However, there is no offence for a breach of this ‘privilege’, although it is an offence for a person other than a registered nurse (ie. registered in Division 1) to use the title ‘registered nurse’.

Under the Act it is an offence for a person to hold him- or herself out to be:

- registered or entitled, either alone or with others, to practise nursing, unless that person is registered;
- qualified or entitled, either alone or with others, to practise nursing or teach clinical nursing in a particular nursing speciality, unless that person holds and has entered in the register in respect of his or her name, qualifications that are approved by the Board in respect of the particular nursing speciality; or
- registered in a particular division of the register, unless the name of the person is entered in that division of the register.

The Act requires that only a registered person or a person with the written consent of the Board can be employed or receive remuneration in connection with the practice of nursing. The Act states that ‘practise’, in relation to nursing, includes teaching nursing in a clinical situation.

There are currently no midwifery title restrictions, holding-out offences or practice restrictions in WA.

AUSTRALIAN CAPITAL TERRITORY

The *Nursing Act 1988* prohibits a person who is not a registered nurse or an enrolled nurse from taking or using, either alone or in combination with any other words or letters:

- the name or title of a nurse or a name, title, addition or description (including initials or letters placed after his or her name) indicating or implying that the person is a registered nurse or an enrolled nurse or that the person practices, or is qualified to practice nursing; or
- hold himself or herself out, by advertisement or otherwise, as being qualified or authorised to practise nursing or as being a person who practises nursing.

Under the current review of the legislation, it is proposed that the following titles will be restricted under the Act: ‘nurse’, ‘nurse practitioner’, ‘mental health nurse’ and ‘midwife’.

A person who is not a registered nurse or an enrolled nurse is prohibited from holding him or herself out, by advertisement or otherwise, as someone who practises nursing or is qualified or authorised to practise nursing. The Act provides that a person who is not a registered nurse or an enrolled nurse shall not give or perform, for fee or reward, any nursing service. It is proposed that this provision will be removed from the Act. Additionally, registered and enrolled nurses may only perform or give a nursing service in a branch of nursing that they are not registered or enrolled in unless they are under the immediate supervision of a registered nurse who is registered in that branch of nursing. The Act also states that a midwife is a registered nurse.

NORTHERN TERRITORY

The *Nursing Act 1999* states that a person must not practice a profession or trade under any one or more of the following titles unless he or she is a registered nurse:

- nurse;
- registered nurse;
- licensed nurse;
- qualified nurse; or
- any other title that is prescribed.

Similarly, under the Act, a person must not practice a profession or trade under any one or more of the following titles unless he or she is an enrolled nurse:

- nurse;
- enrolled nurse; or
- any other title that is prescribed.

Under the Act a person who is not a registered or enrolled nurse must not hold himself or herself out, or allow himself or herself to be held out, as being a registered or enrolled nurse or as being in any way authorised or qualified to practise nursing. A person who does not hold a practising certificate must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise nursing.

It is an offence for a person who is not a registered or enrolled nurse, and who does not hold a practising certificate, to practice nursing.

The Act restricts the practise area of midwifery, and states that it is an offence for a person who is not a registered or enrolled nurse, and does not hold a practising certificate, to carry out an act (ie nursing) that is legally required to be carried out by a nurse holding a practising certificate. The Act also prohibits a person from practising a profession or trade under one or more of the following titles unless he or she is authorised to practice in the area of midwifery:

- nurse;
- authorised nurse;
- midwife; or
- any other title that is prescribed.

Additionally, a person who does not hold an authorisation to practise in a restricted practice area (such as midwifery) must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in that restricted practice area.

TASMANIA

The Tasmanian *Nursing Act 1995* provides list of nursing titles, stating that a person who is not a registered or enrolled nurse must not practise a profession or trade under any one or more of the following titles:

- nurse;
- registered nurse;
- enrolled nurse;
- certified nurse;
- licensed nurse;
- qualified nurse;
- authorised nurse;
- midwife;
- psychiatric nurse; or
- such other title as may be prescribed.

The Act also prohibits the unauthorised use of the title “midwife” by a person who is not a registered or enrolled nurse.

Under the Act, a person who is not a registered or enrolled nurse must not hold himself or herself out, or allow himself or herself to be held out, as being a registered or enrolled nurse or as being in any way authorised or qualified to practise nursing. A person who does not hold a practising certificate must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise nursing. Additionally, a person who does not hold an authorisation to practise in a restricted practice area (such as midwifery) must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in that restricted practice area.

TABLE A: Extracts of Nursing Title and Practice Restrictions

Jurisdiction	Title and Practice Restrictions
<p>NSW <i>Nurses Act 1991</i></p>	<p><u>Title and holding out</u> 5 Unregistered and unenrolled persons not entitled to hold themselves out as nurses (1) A person must not: (a) claim to be or hold himself or herself out as being, or (b) take or use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is taken or used: (i) indicates, or (ii) is capable of being understood to indicate, or (iii) is likely to lead persons to infer, that the person is, a registered nurse, enrolled nurse or enrolled nurse (mothercraft) or entitled to practise as such unless the person is registered as a nurse or, as the case requires, is enrolled as an enrolled nurse or enrolled nurse (mothercraft).</p> <p>5A Unauthorised persons not to hold themselves out as nurse practitioners A person must not: (a) claim to be or hold himself or herself out as being a nurse practitioner or entitled to practise as a nurse practitioner, or (b) take or use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is taken or used: (i) indicates, or (ii) is capable of being understood to indicate, or (iii) is likely to lead persons to infer, that the person is a nurse practitioner or entitled to practise as a nurse practitioner, unless the person is a registered nurse who is authorised by the Board to practise as a nurse practitioner.</p>
<p>Victoria <i>Nurses Act 1993</i></p>	<p><u>Title and holding out</u> 60 Claims by persons as to registration (1) A person who is not a registered nurse must not - (a) take or use the title of registered nurse or any other title calculated to induce a belief that the person is registered under this Act; or (b) claim to be registered under this Act or hold herself or himself out as being registered under this Act; (c) take or use the title of “nurse practitioner” or any other title calculated to induce a belief that the person is a nurse practitioner; or (d) claim to be registered under this Act with endorsement as a nurse practitioner or hold herself or himself out as being so registered; (2) A registered nurse must not - (a) take or use any title calculated to induce a belief that the nurse is registered in a division of the register in which the nurse is not registered; or (b) claim to be or hold herself or himself out as being registered in a division of the register in which the nurse is not registered. (3) A registered nurse whose registration is restricted must not - (a) take or use any title calculated to induce a belief that the nurse's registration is not restricted; or (b) claim to have or hold herself or himself out as having unrestricted registration. (4) A registered nurse whose registration is subject to a condition, limitation or restriction must not - (a) take or use any title calculated to induce a belief that the nurse's registration is not subject to any condition, limitation or restriction; or (b) claim to have or hold herself or himself out as having a registration which is not subject to any condition, limitation or restriction.</p>
<p>SA <i>Nurses Act 1999</i></p>	<p><u>Title</u> 39 Other restrictions (2) Subject to the regulations, a person must not take or use the title "nurse", or another title calculated to induce a belief on the part of another that the person is a nurse, unless the person is registered or enrolled under this Act.</p>

	<p>(8) A person who is not registered as a mental health nurse under this Act must not-</p> <p>(a) take or use the title "mental health nurse" or "psychiatric nurse", or another title calculated to induce the belief on the part of another that the person is a mental health nurse or psychiatric nurse.</p> <p><u>Holding out</u></p> <p>36 Illegal holding out as being registered</p> <p>(1) A person who is not registered under this Act must not hold himself or herself out as being a registered nurse or permit another person to do so.</p> <p>(2) A person must not hold out another as being a registered nurse unless the other person is registered under this Act.</p> <p>37 Illegal holding out as being enrolled</p> <p>(1) A person who is not enrolled under this Act must not hold himself or herself out as being an enrolled nurse or permit another person to do so.</p> <p>(2) A person must not hold out another as being an enrolled nurse unless the other person is enrolled under this Act.</p> <p>38 Illegal holding out concerning restrictions or conditions</p> <p>A registered or enrolled nurse whose registration or enrolment is restricted or subject to a limitation or condition under this Act must not hold himself or herself out as having a registration or enrolment that is unrestricted or not subject to a limitation or condition.</p> <p><u>Practice</u></p> <p>39 Other restrictions</p> <p>(1) Subject to the regulations, a person must not practise nursing for remuneration, fee or other reward unless the person is registered or enrolled under this Act.</p> <p>(4) A person who is registered or enrolled under this Act must not perform a function in the provision of nursing care that the person is not authorised to perform under this Act.</p> <p>(5) A person must not require another to perform a function in provision of nursing care that the other person is not authorised to perform under this Act.</p>
<p>WA <i>Nurses Act 1992</i></p>	<p><u>Title and holding out</u></p> <p>30 Effect of Registration</p> <p>...registration confers on the holder of a certificate of registration the right to carry on in the State the practice of nursing under the title of "nurse".</p> <p>47 Use of title "registered nurse"</p> <p>A person shall not use the title "registered nurse" unless the person's name is entered in division 1 of the register.</p> <p>48 Pretending to be registered etc</p> <p>(1) Subject to this Act, a natural person shall not hold himself or herself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he or she is —</p> <p>(a) registered or entitled, either alone or with others, to practise nursing, unless that person is registered;</p> <p>(b) qualified or entitled, either alone or with others, to practise nursing or teach clinical nursing in a particular nursing speciality, unless that person holds and has entered in the register in respect of his or her name, qualifications that are approved by the Board in respect of the particular nursing speciality; or</p> <p>(c) registered in a particular division of the register, unless the name of the person is entered in that division of the register.</p> <p><u>Practice</u></p> <p>46 Employment or remuneration of unregistered persons</p> <p>(1) A person shall not be employed or receive remuneration in connection with the practice of nursing unless the person — (a) is registered;.....</p>

<p>ACT <i>Nurses Act 1988</i></p>	<p><u>Title and holding out</u> 70 Use of title of nurse (1) A person other than a registered nurse or an enrolled nurse shall not — (a) take or use, either alone or in combination with any other words or letters, the name or title of a nurse or a name, title, addition or description (including initials or letters placed after his or her name) indicating or implying that the person is a registered nurse or an enrolled nurse or that the person is a person who practises, or is qualified to practise, nursing; or (b) hold himself or herself out, by advertisement or otherwise, as being qualified or authorised to practise nursing or as being a person who practises nursing.</p> <p><u>Practice</u> 69 Persons who may practise nursing (1) A person other than a registered nurse or an enrolled nurse shall not give or perform, for fee or reward, any nursing service.</p> <p>71 Registered nurse or enrolled nurse — provision of services etc (1) A registered nurse or an enrolled nurse shall not give or perform, for fee or reward, a nursing service in a branch of the nursing profession in relation to which the registered nurse or enrolled nurse is not registered or enrolled, as the case may be, unless the service is given or performed under the immediate supervision of a registered nurse who is registered in that branch.</p>
<p>NT <i>Nursing Act 1999</i></p>	<p><u>Title</u> 72 Unauthorised use of certain titles (1) A person must not practise a profession or trade under any one or more of the following titles: (a) nurse; (b) registered nurse; (c) licensed nurse; (d) qualified nurse; (e) any other title that is prescribed. unless he or she is a registered nurse.</p> <p>(2) A person must not practise a profession or trade under any one or more of the following titles: (a) nurse; (b) enrolled nurse; (c) any other title that is prescribed. unless he or she is an enrolled nurse.</p> <p><u>Holding out</u> 71 False claims (1) A person who is not a registered or enrolled nurse must not hold himself or herself out, or allow himself or herself to be held out, as being a registered or enrolled nurse or as being in any way authorised or qualified to practise nursing. (2) A person who does not hold a practising certificate must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise nursing. (3) A person who does not hold an authorisation to practise in a restricted practice area must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in that restricted practice area.</p> <p><u>Practice</u> 70 Offence to practise nursing etc., if unregistered etc. (1) “A person who is not a registered or enrolled nurse, and does not hold a practising certificate, must not (a) practise nursing:....”</p>
<p>Tasmania <i>Nursing Act 1995</i></p>	<p><u>Title</u> 76 Unauthorised use of certain titles A person who is not a registered or enrolled nurse must not practise a profession or trade under any one or more of the following titles: (a) nurse; (b) registered nurse; (c) enrolled nurse; (d) certified nurse;</p>

	<p>(e) licensed nurse; (f) qualified nurse; (g) authorised nurse; (h) midwife; (i) psychiatric nurse; (j) such other title as may be prescribed.</p> <p><u>Holding out</u> 75 False claims (1) A person who is not a registered or enrolled nurse must not hold himself or herself out, or allow himself or herself to be held out, as being a registered or enrolled nurse or as being in any way authorised or qualified to practise nursing. (2) A person who does not hold a practising certificate must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise nursing. (3) A person who does not hold an authorisation to practise in a restricted practice area must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in that restricted practice area.</p>
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TABLE B: Extracts of Midwifery Title and Practice Restrictions from Australian Jurisdictions' Nursing Legislation

Jurisdiction	Title and Practice Restrictions
NSW <i>Nurses Act 1991</i>	<p><u>Title and holding out</u> 6 Unregistered persons not entitled to hold themselves out as midwives A person must not: (a) claim to be or hold himself or herself out as being, or (b) take or use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is taken or used: (i) indicates, or (ii) is capable of being understood to indicate, or (iii) is likely to lead persons to infer, that the person is, a midwife or entitled to practise midwifery, unless the person is a registered nurse who is authorised by the Board to practise midwifery.</p> <p><u>Practice</u> 7 Unauthorised practice of midwifery (1) A person must not practise midwifery unless the person is a registered nurse who is authorised by the Board to practise midwifery. (2) Subsection (1) does not apply to or in respect of: (a) any medical practitioner, or (b) any person rendering assistance to a woman who is giving or has just given birth to a child where the assistance is rendered in an emergency, or (c) any medical or nursing student, or any accredited nurse, acting under the supervision of a registered nurse who is authorised by the Board to practise midwifery, or any medical student (as defined in the <i>Medical Practice Act 1992</i>) acting under the supervision of a medical practitioner.</p>
Victoria <i>Nurses Act 1993</i>	<p><u>Title and holding out</u> 62 Claims as to additional qualifications A registered nurse who has not successfully completed a course in midwifery approved by the Board must not - (a) take or use the title of "midwife" or any other title calculated to induce a belief that the person is a midwife; or (b) claim to be a midwife or hold herself or himself out as being a midwife.</p>
SA <i>Nurses Act 1999</i>	<p><u>Title</u> 39 Other restrictions (6) A person who is not registered as a midwife under this Act must not- (a) take or use the title "midwife", or another title calculated to induce a belief on the part of another that the person is a midwife; or (b) hold himself or herself out as being a midwife or permit another person to do so. (7) A person must not hold out another as a midwife unless the other person is registered as a midwife under this Act.</p>

	<p><u>Practice</u> 3 Interpretation (3) For the purposes of this Act, the following are special practice areas: (a) midwifery;....</p> <p>23 Registration only a nurse registered in a special practice area may practise in that area without supervision.</p>
WA <i>Nurses Act 1992</i>	<p><u>Title</u> No title restriction for the title ‘midwife’</p> <p><u>Practice</u> Midwives are classed as Division 1 RNs and therefore have restrictions as a registered nurse under s.46</p>
ACT <i>Nurses Act 1988</i>	<p><u>Title</u> Midwife is a registered nurse under the Act – see provisions in Table A above</p> <p><u>Practice</u> Midwife is a registered nurse under the Act – see provisions in Table A above</p>
NT <i>Nursing Act 1999</i>	<p><u>Title</u> 72 Unauthorised use of certain titles (2) A person must not practise a profession or trade under any one or more of the following titles: (a) nurse; (b) authorised nurse; (c) midwife; (d) any other title that is prescribed, unless he or she is authorised to practice in the restrictive practice area of midwifery.</p> <p><u>Holding out</u> 71 False claims (1) A person who is not a registered or enrolled nurse must not hold himself or herself out, or allow himself or herself to be held out, as being a registered or enrolled nurse or as being in any way authorised or qualified to practise nursing. (2) A person who does not hold a practising certificate must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise nursing. (3) A person who does not hold an authorisation to practise in a restricted practice area must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in that restricted practice area.</p> <p><u>Practice</u> 28 Restricted practice areas (1) Midwifery is a restricted practice area.</p> <p>70 Offence to practise nursing etc., if unregistered etc. (1) A person who is not a registered or enrolled nurse, and does not hold a practising certificate, must not - (c) carry out an act that by or under an Act is required to be carried out by a nurse holding a practising certificate.</p>
Tasmania <i>Nursing Act 1995</i>	<p><u>Title</u> 76 Unauthorised use of certain titles A person who is not a registered or enrolled nurse must not practise a profession or trade under any one or more of the following titles: (h) midwife;</p> <p><u>Holding out</u> 75 False claims (1) A person who is not a registered or enrolled nurse must not hold himself or herself out, or allow himself or herself to be held out, as being a registered or enrolled nurse or as being in any way authorised or qualified to practise nursing. (2) A person who does not hold a practising certificate must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise nursing. (3) A person who does not hold an authorisation to practise in a restricted practice area must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in that restricted practice area.</p>

**APPENDIX 5 SUBMISSIONS RECEIVED IN RESPONSE TO
DISCUSSION PAPER, RELEASED NOVEMBER 2001**³

Dr M Barnes, President, Australian College of Midwives Inc. (Qld Branch)
Ms F Blines, consumer
Mrs D Bowman, consumer, Home Program Coordinator
Ms R Bryant, Executive Director, Royal College of Nursing, Australia
Dr S Buckley, General Practitioner, consumer
Ms A Clarke, Midwife
Convenor, Australian Midwives Act Lobby Group Submission Working Party
Ms L Cramer, National Homebirth Educator
Ms D Cullen, consumer
Ms J Fisher, Midwife
Ms J Fletcher, Overseas Assessment Manager, Australian Nursing Council Inc.
Ms S Foster, consumer
Ms J Gamble, Registered Nurse, Registered Midwife
Dr B Glasson, President, Queensland Branch of Australian Medical Association
Ms C Glenie and Ms S Amazon, Homebirth Network of South Australia
Ms Gay Hawksworth, Secretary, Queensland Nurses' Union
Ms L Hinson, Administration Manager, Pharmacy Guild of Australia, Qld Branch
Ms E Hobba, consumer
Mr M Issac, Aged Care Queensland Incorporated
Ms I Lake, Corporate Director of Nursing, Mater Misericordiae Health Services Brisbane Ltd
Ms K McGovern, consumer
Mr P Mayne, President, Pharmaceutical Society of Australia
Ms K Marshall, Midwife
Mr J O'Dempsey, Executive Officer, Queensland Nursing Council
Ms M Palmer, consumer
Dr M Pawsey, Executive Manager, Australian Council on Healthcare Standards
Ms M Pease, Director of Nursing, Hervey Bay Hospital
Ms D Podbury, District Manager, The Prince Charles Hospital Health Service District
Ms R Smith, Convenor, Home Midwifery Association (Qld) Inc.
Mr I Staib, Health Rights Commissioner

³ The notice inviting submissions stated that a confidential response could be provided. None of the respondents advised that they wished to provide a confidential response.

Mr D Sunn and Ms P Sunn, consumers
Mr B Teakle, consumer
Ms T Templeton, Alliance to Expose GATS (Qld)
Dr L Toft, President, Medical Board of Queensland
Assoc. Prof. K Usher, Head of School, School of Nursing Sciences, James Cook University
Ms K Wade, Registered Nurse, Registered Midwife
Ms Y Zardani OAM, State Secretary, Australian. Pensioners' & Superannuants' League Qld Inc.