CONSULTATION PAPER

ACT Government | ACT Health

Proposed legislative changes to authorise core and supplemental clinical activities performed by nurse practitioners

17 December 2022

You are invited to provide feedback

The ACT Office of the Chief Nursing and Midwifery Officer (CNMO) is consulting on proposed changes to legislation that would enable a "right-touch" regulatory approach to nurse practitioners (NPs) working in the ACT. The proposed changes would authorise NPs working within their individual scopes of practice to perform core and supplemental activities that directly relate to their clinical roles.

We are seeking feedback on the identified issues and your responses to specific questions. The CNMO has also released background documents that can be used to inform your responses to this consultation. These are:

- Results from the Australian Capital Territory Nurse Practitioner Workforce and Employer Survey
- Outcome Evaluation on Nurse Practitioner Policy and Legislation in the Australian Capital Territory

Providing feedback

Feedback can be provided by taking the online survey or submitting your responses to the consultation online at:

https://bit.ly/325bDQa

Feedback is required by close of business on **25 February 2022**.

Publication of submissions

The CNMO publishes submissions on its website to encourage discussion and inform the community and stakeholders. However, we will not publish on its website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the consultation.

Before publication of submissions, the CNMO may remove personally-identifying information including contact details. The view expressed in the submissions are those of the submitting individual or organisation and publication does not imply any acceptance of, or agreement with these views by the CNMO.

The ACT Office of the CNMO accepts submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. Any request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Commonwealth), which has provisions designed to protect personal information and information given in confidence.

Please let the ACT Office of the CNMO know if you do not want your submission published or want all or part of it treated as confidential.

All information collected will be treated confidentially and anonymity preserved in internal and published reports. Data collected will only be used for the purposes described above.

Your participation is entirely voluntary.

In providing feedback, we ask that you do not provide responses that identify you or other individuals.

If you have any questions, you can contact the ACT Office of the CNMO at nmo@act.gov.au.

ACKNOWLEDGEMENT OF COUNTRY

ACT Health acknowledges the Traditional Custodians of the land, the Ngunnawal people. ACT Health respects their continuing culture and connections to the land and the unique contributions they make to the life of this area. ACT Health also acknowledges and welcomes Aboriginal and Torres Strait Islander peoples who are part of the community we serve.

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Executive summary

The ACT Health Directorate, through the ACT Office of the Chief Nursing and Midwifery Officer (CNMO), has undertaken a project to better understand the current ACT nurse practitioner (NP) workforce, their requirements, and the legislative and policy barriers that preclude NPs from working to their full potential in the ACT.

Outcomes from this project are anticipated to optimise the ACT NP workforce in meeting priority communities, including older persons, people with chronic and/or complex health needs, and marginalised and/or vulnerable populations. The project aims to facilitate the delivery of high-quality health services, deliver value by creating greater efficiencies in the health system, and better enable workforce flexibility to meet dynamic health system needs. These aims align with the ACT Health Directorate's strategic objectives[1] of:

- healthy communities
- safe, responsive, sustainable public health system
- trusted, transparent and accountable
- high performing organisation that values our people

This consultation paper seeks feedback on proposed changes to legislation and policy that would enable *full practice authority* and "right-touch" regulation[2] of the ACT NP workforce. Right touch regulation enables proportionate, consistent, targeted, transparent, accountable and agile regulation of the health workforce. It uses the minimum regulatory force to facilitate efficient and effective healthcare delivery, whilst prioritising protection of the public. In this consultation, *practice authority* refers to all activities a *profession* is legislatively authorised to perform, whereas *scope of practice* refers to all activities an *individual* within that profession is both legislatively authorised to perform, and competent to do.

On the short term, this consultation paper seeks feedback from ACT health consumers, health professionals, professional bodies, employers, and regulators to progress work that will provide ACT NPs with the practice authority to:

- authorise death certificates
- witness non-written health directions
- prescribe medicines that induce a medical termination of pregnancy
- authorise drivers licence medicals
- authorise workers' compensation and Comcare certificates

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[1] ACT Government. (2019). *ACT Health Directorate Strategic Plan: 2020-25.* Canberra, ACT. https://health.act.gov.au/sites/default/files/2020-09/ACTH%20Strategic%20Plan%202019%20LR.pdf

[2] Professional Standards Authority [PSA]. (2015). *Right-touch Regulation Revised* [Report]. PSA. http://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=12

Over the medium-term, it is proposed that language relating to “medical practitioners”, “doctors”, “medical certificates” and other synonyms in ACT legislation be systematically reviewed, so that omnibus legislation may be considered that better enables practice authority for NPs and other regulated health practitioners in the ACT. A review would facilitate legislation that assures the right healthcare professional is able to provide the right care at the right time for health consumers in the ACT. This would align with contemporary approaches to right-touch legislation and policy for our nationally-regulated health workforce.

What is a nurse practitioner?

A NP is a registered nurse (RN) regulated by national law[3] through an endorsement process established by the nursing regulatory authority, the Nursing and Midwifery Board of Australia (NMBA). The NMBA establishes registration, endorsement, education, and practice standards for Australian nurses and midwives. The NMBA also establishes safety and quality guidelines for the nursing and midwifery professions. Currently, there are over 2100 NPs endorsed to practice across all Australian states and territories, with 54 listing their principal place of practice as the ACT. Nurse practitioners practise in over 50 different specialty areas, and are found across both the public and private healthcare sectors in every Australian jurisdiction.

Nurse practitioners practise independently and collaboratively through an extended clinical nursing role. The NP role reflects that of an RN working at an advanced level of practice, but whose specific focus is on the provision of expert clinical care. This care includes the practice authority to independently and collaboratively perform the following **core activities:**

- comprehensive and advanced health assessment
- diagnosis and treatment of medical conditions
- autonomous prescribing of medicines
- requesting and interpreting diagnostic examinations (e.g. blood tests and medical imaging examinations)
- independent referral to medical, surgical and allied health specialists

Nurse practitioners, as a result of their advanced clinical practice, are expected to undertake **supplemental activities** as relating to their individual scopes of practice. Supplemental activities are required to reduce unnecessary duplication of care, improve systems efficiencies, and improve the overall experience of healthcare consumers as they intersect with the health system. For example, a supplemental activity might include the completion of official documentation, such as worker’s compensation certificates or driver’s license medicals arising from an NP providing a comprehensive assessment, diagnosis and treatment plan for an individual. Like core activities, supplemental activities facilitate the NP role and are enabled through legislation and/or policy. The net result of these core and supplemental NP activities is the delivery of safe, effective, and efficient health

[3] *Health Practitioner Regulation National Law Act 2009* (Cth) https://www.legislation.qld.gov.au/view/html/inforce/current/act-2009-045

services to persons who may be marginalised and/or underserved. This includes communities such as the homeless, the aged, Aboriginal and Torres Strait Islanders, refugees and those living in rural and remote areas.

The ACT nurse practitioner workforce

The ACT CNMO recently examined the ACT NP workforce and their practice requirements. It identified that ACT NPs do not have the practice authority to perform core and/or supplemental activities required of their employed roles. This has resulted in significant unintended safety and quality outcomes for ACT health consumers. Inefficiencies arising from the inability of NPs to complete activities required of their roles results in increased health system expenditure. The following project reports provide greater detail:

- Results from the Australian Capital Territory (ACT) Nurse Practitioner Workforce and Employer Survey
- Outcome Evaluation on Nurse Practitioner Policy and Legislation in the Australian Capital Territory

Nurse practitioners in the ACT operate within robust governance frameworks that align an individual's clinical scope of practice with their employed roles. To improve the effective use of the ACT NP workforce, legislative authorisations are needed to enable core and supplemental activities that are within the scope of practice of individual NPs. These authorisations aim to reduce poor patient outcomes, unnecessary duplication of care, out-of-pocket patient costs, strain on public health services, and improve the clinical efficiency of the NP workforce.

Consultation questions

We invite you to provide feedback, with particular focus on the following areas:

(NOTE: ALL questions relate to NP practice authority. The core and supplemental activities highlighted below do not necessarily relate to an individual NP's scope of practice. Scope of practice is determined by NP competence, their employed role, and supporting governance frameworks.)

1. What benefits and/or issues would you envision if NPs had the *practice authority* to prescribe medicines for medical terminations of pregnancy (MToP) in the ACT before nine weeks' gestation?
2. What additional information, resources and/or restrictions to practice (if any) would be required to safely and effectively facilitate MToP practice authority for NPs in the ACT?
3. What benefits and/or issues would you envision if NPs had the *practice authority* to conduct the following supplemental practice activities?
    a. authorise death certificates
    b. witness non-written health directions

c. authorise driver's license medicals

d. authorise workers' compensation and Comcare certificates.

4. What additional information, resources and/or restrictions to practice (if any) would be required to safely and effectively facilitate the practice authorities in 3(a-d) above for NPs in the ACT?
5. What benefits, issues and/or risks do you envision if the ACT were to explore omnibus legislation for NPs working in the ACT?

The following sections provide an overview of the consultation, as well as supporting information on the NP workforce. It then provides further information on practice authority and scope of practice issues faced by NPs working in the ACT. This information is provided to inform the reader as to the background and rationale for the consultation questions.

Overview of the consultation

In April 2020, the ACT Office of the Chief Nursing and Midwifery Officer (CNMO) provided advice to the Minster for Health, Rachel Stephen-Smith MLA, on legislative and policy issues affecting NPs, in response to correspondence from the Australian College of Nurse Practitioners (ACNP). In response, the ACT CNMO initiated a project to better understand the current ACT NP workforce, their requirements, and the legislative and policy barriers that preclude NPs from achieving full practice authority in the ACT. The project aims to develop recommendations for legislative and policy change that ensures a "right touch" regulatory approach to the NP workforce, which maximises workforce potential and ensures sustainable NP contributions to the ACT health system.

The project has three primary phases. The first phase resulted in the completion of a workforce survey of NPs and their employers, to better understand the current issues affecting NP practice in the ACT. This phase was completed in January 2021 and the final report arising from the survey, *Results from the Australian Capital Territory (ACT) Nurse Practitioner Workforce and Employer Survey,* can be found on the ACT Government Nurse Practitioner webpage.

The second phase of the project resulted in the completion of an outcome evaluation that discussed significant projects relating to NP practice, policy and legislation in the ACT since 2002. This phase was completed in early February 2021 and the final report arising from the evaluation, *Outcome Evaluation on Nurse Practitioner Policy and Legislation in the Australian Capital Territory*, can also be found on the ACT Government Nurse Practitioner webpage.

The third phase of the project is this consultation process, whose insights will be used to develop final recommendations to the ACT Government. Those recommendations will relate to proposed changes to legislation that better enable NP clinical practice in the ACT.

Overview of nurse practitioners

An NP is a registered nurse (RN) who has been endorsed by the Nursing and Midwifery Board of Australia (NMBA) to practise independently and collaboratively through an extended clinical nursing role[4]. The NP role reflects that of an RN working at an advanced level of practice[5], but whose specific focus is on the provision of expert clinical care. This care includes the practice authority to independently and collaboratively perform the following *core activities*, as relevant to all nurse practitioners:

- comprehensive and advanced health assessment
- diagnosis and treatment of medical conditions
- autonomous prescribing of medicines
- requesting and interpreting diagnostic examinations (e.g. blood tests and medical imaging examinations)
- independent referral to medical and allied health practitioners

There are several key documents published or approved by the NMBA that enable the education, regulation and practice authority of NPs nationally. These include:

- Registration Standard: Endorsement as a Nurse Practitioner (2016)
- Nurse Practitioner Standards for Practice (2021)
- Nurse Practitioner Accreditation Standards (2015)
- Registered Nurse Standards for Practice (2016)
- Code of Conduct for Nurses (2018)
- Decision-Making Framework for Nursing and Midwifery (2020)
- Code of Ethics for Nurses (International Council of Nurses, 2012)
- Safety and Quality Guidelines for Nurse Practitioners (2016)

Australia legislated title protection for NPs in 1998[6], and the first two NPs were authorised to practice in New South Wales in 2000[7] in the areas of rural and remote practice and emergency care. The national endorsement awarded by the NMBA identifies those RNs who have achieved additional

[4] Nursing and Midwifery Board of Australia. (2014). *Nurse Practitioner Standards for Practice*. http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines/nurse-practitioner-standards-of-practice.aspx

[5] Nursing and Midwifery Board of Australia. (2020). *Fact sheet: Advanced nursing practice and specialty areas within nursing*. Melbourne: Australian Health Practitioner Regulation Agency.

[6] New South Wales Government. (1998). Nurses Amendment (Nurse Practitioners) Act (No. 102). Sydney, NSW: Commonwealth of Australia.

[7] Foster, J. (2010). *A History of the Early Development of the Nurse Practitioner Role in New South Wales, Australia*. (Doctor of Philosophy), University of Technology, Sydney, NSW.

qualifications, experience and specific expertise for independent practise, which meets recognised standards and guidelines.

In addition to national regulatory requirements, NPs have contextualised state and territory, as well as employer authorisation processes[8] that are required for clinical practice. Jurisdictional requirements have historically concerned themselves with authorisations relating to the *Medicines, Poisons, and Therapeutic Goods Acts* and *Regulations*, however named. Over the past 20 years those requirements have changed nationally to acknowledge the autonomous nature[9] of NP prescribing practice, as seen with medical practitioners. Currently, Tasmania is the only remaining jurisdiction that requires a separate authorisation process to allow autonomous NP prescribing[10].

In the ACT, NPs were once required to undergo Territory-wide authorisation processes to not only prescribe medicines, but to comprehensively describe the individual's clinical scope of practice through "clinical practice guidelines". Those guidelines detailed which diagnostic tests the NP could request, care pathways, as well as the medical conditions they could independently manage. In addition, before an NP was authorised to practice a supporting business case was required for approval by the ACT Government or their delegate[11]. These authorisation requirements became increasingly problematic and burdensome as NPs and their employers actualised their roles across both the public and private health sectors, particularly in generalist areas of practice such as aged care and primary health care. A report[12] commissioned by the ACT Office of the CNMO highlighted the need to align NP authorisations with other Australian jurisdictions, who had "normalised" the NP role by removing legislative authorisation provisions for NPs that were above and beyond other regulated health professions. In response, legislative changes to the *Health Act 1993* were approved in 2019, which aligned authorisation requirements for NPs with other regulated health practitioners in the ACT.

Currently, there are over 2100 NPs endorsed to practice across all Australian states and territories, with 54 listing their principal place of practice as the ACT[13]. Nurse practitioners practise in over 50

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[8] Australian Commission on Safety and Quality in Health Care. (2015). *Credentialing health practitioners and defining their scope of clinical practice: A guide for managers and practitioners* [Report](NSQHS Standards, Issue December). ACSQHC.

[9] Health Workforce Australia. (2013). *Health professionals prescribing pathway* [Report]. Health Workforce Australia.

[10] Department of Health. (2020). *Nurse practitioner authorisation to prescribe scheduled substances* [Guideline]. Tasmanian Government.

[11] Berrill, J. (2007). *Nurse practitioners in the Australian Capital Territory: The framework evaluation*. ACT Health.

[12] Adrian, A. (2017). *Nurse practitioners in the Australian Capital Territory in 2017: A review* [Report]. ACT Government.

[13] Nursing and Midwifery Board of Australia. (2020). Nurse and Midwife Registrant Data (June). Melbourne, VIC: Australian Health Practitioner Regulation Agency.

different specialty areas[14], and are supported by six empirically-derived metaspecialties[15] (*See Table 1*). The metaspecialty framework[16] is used by students in NP academic education programs and endorsed NPs to broadly describe and develop their individual scopes of practice.

Table 1: The Australian Nurse Practitioner Metaspecialties

Metaspecialties
• Primary Health Care • Emergency and Acute Care • Ageing and Palliative Care • Child and Family Health • Mental Health Care • Chronic and Complex Care

Nurse practitioner academic programs are independently accredited[17] at the Master's level and are informed by capability theory, which enables NPs to evolve their practice to meet novel and dynamic population needs[18]. As individual NPs clinically mature in their experience and expertise, they are expected to expand their practice after endorsement using the NMBA's *Decision-Making Framework*.

Nurse practitioners and scope of clinical practice

Practice authority refers to all activities a *profession* is legislatively authorised to perform, whereas *scope of practice* refers to all activities an *individual* within that profession is both legislatively authorised to perform, and competent to do[19]. Like medical practitioners and other regulated health professionals, a nurse's individual's scope of practice is always more narrowly defined than their profession's practice authority.

[14] Gardner, A., Gardner, G., Coyer, F., Henderson, A., Gosby, H., & Lenson, S. (2014). *Educating Nurse Practitioners: Advanced Specialty Competence, Clinical Learning and Governance* [Report]. Australian Government. http://www.olt.gov.au/system/files/resources/ID12-2182_Gardner_Report_2014.pdf

[15] Gardner, A., Helms, C., Gardner, G., Coyer, F., & Gosby, H. (2020). Development of nurse practitioner metaspecialty clinical practice standards: A national sequential mixed methods study. *Journal of Advanced Nursing, 77*(3), 1453-1464. https://doi.org/10.1111/jan.14690

[16] Gardner, A., Gardner, G., Coyer, F., Gosby, H., & Helms, C. (2019). *The nurse practitioner clinical learning and teaching framework: A toolkit for students and their supervisors* [Toolkit]. CLLEVER2 Research Consortium. https://doi.org/10.6084/m9.figshare.9733682.v2

[17] Australian Nursing and Midwifery Accreditation Council. (2015). *Nurse practitioner accreditation standards.* ANMAC. https://www.anmac.org.au/standards-and-review/nurse-practitioner

[18] Gardner, G., Dunn, S., Carryer, J., & Gardner, A. (2006, Sep-Nov). Competency and capability: imperative for nurse practitioner education. *Aust J Adv Nurs, 24*(1), 8-14. https://www.ncbi.nlm.nih.gov/pubmed/17019819

[19] Nurse Practitioner Schools. (2020). *Scope of Practice vs Practice Authority*. Nurse Practitioner Schools. Retrieved 13 January from https://www.nursepractitionerschools.com/faq/scope-of-practice-vs-practice-authority/

An NP's scope of clinical practice involves much more than the core activities described in the preceding section. A broad definition of the NP scope of practice was established by the Australian Nursing and Midwifery Council (ANMAC)[20] and is summarised below:

The scope of practice of the NP builds upon registered nurse practice enabling NPs to manage episodes of care, including wellness focused care, as a primary provider of care or in collaborative teams. As part of this care, NPs use advanced, comprehensive assessment techniques in the screening, diagnosis and treatment of client conditions by applying best available knowledge to evidence-based practice. NPs can independently request and interpret diagnostic imaging and pathology tests, prescribe therapeutic interventions including the autonomous prescription of medicines, and independently refer patients to healthcare professionals for conditions that would benefit from integrated and collaborative care. They accomplish this using skilful and empathetic communication with health care consumers and health care professionals. NPs facilitate patient-centred care through the holistic and encompassing nature of nursing. Finally, NPs evaluate care provision to enhance safety and quality within healthcare. Although clinically focused, NPs are also expected to actively participate in research, education and leadership as applied to clinical care.

Some NPs operate in discrete specialty areas within larger multidisciplinary care teams (e.g. a diabetes NP working within a tertiary hospital) and some may operate as primary healthcare providers serving in communities to supplement access to health services (e.g. a primary healthcare NP working in sole practice or in a regional, remote or isolated area).

An individual NP's approved clinical scope of practice is determined by their employer and the NP's individual competence[21]. For example, credentialing standards used by public sector employers[22] are commonly used by local committees to determine which medicines, interventions and diagnostic tests an employed NP is approved to prescribe, perform or request. That approval process is dependent upon the NP's employed role, and may result in differing scopes of practice for NPs working within the same specialty area and context of practice. For example, one NP working in public sector emergency department (ED) 'X' may be approved to request computed tomography (CT) scans whereas another NP in public sector ED 'Y' may be solely limited to requesting plain film x-

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[20] Australian Nursing and Midwifery Accreditation Council. (2014). Consultation Paper 2: Review of the nurse practitioner accreditation standards (p. 7). Canberra, ACT: ANMAC.

[21] Nursing and Midwifery Board of Australia. (2020). *Safety and quality guidelines for nurse practitioners*. Australian Health Practitioner Regulation Agency. Retrieved 19 February from http://www.nursingmidwiferyboard.gov.au/Registration-and-Endorsement/Endorsements-Notations/Safety-and-quality-guidelines-for-nurse-practitioners.aspx

[22] Australian Commission on Safety and Quality in Health Care. (2015). *Credentialing health practitioners and defining their scope of clinical practice: A guide for managers and practitioners* [Report](NSQHS Standards, Issue December). ACSQHC.

rays. That is not to state NP 'Y' does not have the individual competence to safely and effectively request CT scans; it merely means their employed position does not require them to do so.

Financial subsidies and their impact on nurse practitioner practice authority

There is a widely held and incorrect belief that available Commonwealth patient subsidies for health care are what determines jurisdictional NP practice authority. This belief is most prevalent with available subsidies for specific diagnostic imaging tests (e.g. X-rays, ultrasounds and CT scans) and many medicines. Although these subsidies may influence how core activities are operationalised in NP clinical practice, they do not determine NP practice authority. This concept is important and relevant to this consultation, as practice authority relating to NP clinical practice has previously been limited in the ACT Legislature based upon this incorrect belief. This issue is further discussed in the section *Practice Authority to Provide a Medical Termination of Pregnancy* below. The following paragraphs in this section provide further detail on how the Medicare Benefits Scheme (MBS) and Pharmaceutical Benefits Schedule (PBS) relate to core activities that ACT NPs currently have the practice authority to perform within their individual scopes of practice.

Private sector NP clinical scope of practice is widely influenced by available patient subsidies offered by the Commonwealth for NP-directed care. For example, the MBS provides patient subsidies for professional attendances, diagnostic pathology, simple point-of-care testing, and limited diagnostic imaging tests when requested by an eligible NP in the private sector[23]. Many diagnostic imaging tests that are within an NP's authorised and approved scope of practice to request, such as CT scans and pelvic ultrasounds, are not subsidised by the MBS. Those tests are only subsidised when requested by a medical practitioner. This does not mean the imaging test is outside the NP's clinical scope of practice; it simply means the patient will be required to pay the full private fee for those imaging tests when requested by a NP.

Likewise, the PBS provides subsidies for limited medicines prescribed by an eligible NP, and has placed additional prescribing requirements for NPs on certain medicines before the Commonwealth will subsidise the costs of those medicines[24]. A lack of PBS subsidy does not preclude NPs from prescribing medicines they are authorised to prescribe. Therefore, current restrictions to the MBS and PBS mean that patients in the private community sector are required to pay the full cost for certain diagnostic imaging tests or medicines if they choose an NP as their healthcare provider. If a patient chooses to see a general practitioner, those same tests (MBS) or medicines (PBS) would be subsidised by the Commonwealth.

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[23] Australian Government. (2018). *Eligible nurse practitioners questions and answers*. Department of Health. Retrieved 28 March from http://www.health.gov.au/internet/main/publishing.nsf/Content/midwives-nurse-pract-qanda-nursepract

[24] Australian Government. (2010). *Nurse practitioner PBS prescribing*. Department of Health. Retrieved 28 March from http://www.pbs.gov.au/browse/nurse

These financial disparities result in patients, who choose an NP as their healthcare provider, having increased out-of-pocket costs and taking longer to achieve their safety-net thresholds[25]. This is somewhat of a paradox, as NPs traditionally focus their care on populations and communities that are generally marginalised, vulnerable, and/or having a lower socioeconomic status[26]. Therefore, current funding mechanisms for patient subsidises through the MBS and PBS may serve as a mechanism to limit the clinical scope of practice for some NPs, as they do not want to financially disadvantage their clients. However, there are many clients that are seen by NPs who do not consider financial subsidy a barrier to safe and effective care, and prefer the NP continue to treat them as indicated by best practice guidelines. Some of these issues were highlighted to the Commonwealth through the recent MBS Taskforce Review[27], but recommendations to address these issues were not accepted by the Taskforce itself[28]. These recommendations are now being independently considered by the Commonwealth Minister for Health.

The private sector issues described above affect the clinical scope of practice of NPs working in the public sector, but through differing mechanisms. For example, the recent *Results from the Australian Capital Territory (ACT) Nurse Practitioner Workforce and Employer Survey* (2021) report highlighted concerns that many NPs in the ACT public sector are unable to prescribe subsidised medicines, initiate referrals to medical specialists, or request subsidised diagnostic tests in community-based settings. These limitations have severely limited the clinical scope of practice of NPs in the ACT, despite having the practice authority to perform such activities. These restrictions on clinical scope of practice are not related to NP authority or competency, but because of public hospital policies that are primarily designed to support medical practitioners, which do not account for NP clinical practice in the public sector. These issues are also compounded by current funding arrangements between the Commonwealth and Territory for publicly-subsided medicines[29], whether public hospitals make use of existing funding mechanisms for NP services through Tier 2 Non-Admitted Services[30], and policies that support how individual public hospitals pay for diagnostic

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[25] Australian Government. (2021). *Medicare safety nets.* Services Australia. Retrieved 19 February from https://www.servicesaustralia.gov.au/individuals/services/medicare/medicare-safety-nets

[26] Fiandt, K., Doeschot, C., Lanning, J., & Latzke, L. (2010, Sep). Characteristics of risk in patients of nurse practitioner safety net practices*. J Am Acad Nurse Pract, 22*(9), 474-479. https://doi.org/10.1111/j.1745-7599.2010.00536.x

[27] Nurse Practitioner Reference Group. (2018). *Report from the Nurse Practitioner Reference Group to the Medicare Benefits Schedule Review Taskforce* [Report]. Australian Government. https://www1.health.gov.au/internet/main/publishing.nsf/content/BEB6C6D36DE56438CA258397000F4898/$File/NPRG%20Final%20Report%20-%20v2.pdf

[28] Medicare Benefits Schedule Review Taskforce. (2020). *Taskforce findings - Nurse practitioner reference group report* [Report]. Australian Government. https://www.health.gov.au/resources/publications/taskforce-findings-nurse-practitioner-reference-group-report

[29] Australian Healthcare Associates. (2017). *PBS Pharmaceuticals in Hospitals Review* [Report]. Australian Commonwealth Department of Health. https://www.pbs.gov.au/reviews/pbs-pharmaceuticals-in-hospitals-review-files/PBS-Pharmaceuticals-in-Hospitals-Review.pdf

[30] Independent Hospital Pricing Authority. (2020). *Tier 2 non-admitted services classification*. Accessed 26 February from https://www.ihpa.gov.au/what-we-do/tier-2-non-admitted-care-services-classification

testing requested by clinicians through "request and refer" numbers[31]. In sum, the current clinical efficiency of the publicly employed NP workforce in the ACT is not reflective of its true capacity, because they do not have access to sufficient funding and policy mechanisms that enable core activities required for their clinical scope of practice.

Practice authority for core nurse practitioner activities

With respects to contextualised ACT legislation, NPs have full practice authority to conduct all previously described core activities. Key relevant legislation that enables those core activities are:

- *Health Practitioner Regulation National Law (ACT) 2010*
- *Medicines, Poisons and Therapeutic Goods Act 2008*
- *Health Act 1993*
- *Radiation Protection Act 2006*

However, practice authority is limited as relating to two core activities required for NP clinical practice in the ACT. The first relates to the ability of NPs to freely request diagnostic imaging examinations that are relevant to their individual clinical scopes of practice. The other limitation relates to the ability of NPs and other prescribers to prescribe certain medicines in the ACT.

In the NMBA's *Nurse Practitioner Standards for Practice* it is clear that an NP may request and/or interpret *any* diagnostic imaging test within their individual scope of practice. Provisions within the *Radiation Protection Act 2006* give NPs, as well as other regulated health practitioners, the practice authority to request diagnostic imaging test within their individual clinical scope of practice. However, the *Radiation Protection Act 2006* pt III div 3.1 stipulates that a person dealing with a regulated radiation source must take "reasonable steps" to ensure that a patient does not receive excessive exposure to ionising radiation. The division specifies this responsibility is not held by the practitioner dealing with radiation if the test has been requested by a *doctor*. The legislation is silent on other health practitioners who currently regularly request diagnostic imaging tests in the ACT, such as NPs, physiotherapists and other allied health practitioners. This has therefore raised concern with health professionals who deal with ionising radiation, as medico-legal responsibility for the consequences of ionising radiation exposure when requested by non-doctors is blurred. This has resulted in some radiologists refusing requests for diagnostic imaging when requested by NPs who are working within their individual scopes of practice. Steps to address this concern are on the forward agenda for the ACT Legislative assembly in 2021-22.

With respects to the core activity of prescribing medicines, ACT legislation currently precludes NPs and other authorised prescribers from prescribing certain medicines in the ACT. For example, the *Medicines, Poisons and Therapeutic Goods Regulations 2008* limits the prescribing of certain medicines to medical specialists under Schedule 3, Appendix D. This includes the prescribing of

[31] Centre for International Economics. (2013). *Responsive patient centred care: the economic value and potential of Nurse Practitioners in Australia* [Report]. Australian College of Nurse Practitioners.

specialist medicines for discrete medical conditions, such as oral isotrentoin for the treatment of severe cystic acne or clozapine for treatment-resistant schizophrenia. In addition, the *Medicines, Poisons and Therapeutic Goods (Category Approval) Determination 2021* limits the prescribing of controlled medicines in specific circumstances, and for certain categories of patients for all prescribers in the ACT (*See Table 2*).

Table 2: Controlled Medicines and Categories Requiring Approval through Controlled Medicines Prescribing Standards

Controlled Medicines[1]	**Patient Categories[1]**
Morphine	Controlled medicine to treat a person with chronic (non-cancer) pain
Hydromorphone	Controlled medicine to treat a person with active malignancy or life limiting disease
Tapentadol	Controlled medicine to treat a person with drug-dependency
Buprenorphine	Controlled medicine to treat a person with a licensed indication or severe insomnia
Fentanyl	Psychostimulants for Attention Deficit Hyperactivity Disorder
Oxycodone	Psychostimulants for Binge Eating Disorder
Methadone	Psychostimulants for Narcolepsy
Alprazolam	1. A nurse practitioner working within their approved scope of practice can prescribe any of these controlled medicines, within the category limitations established by the *Medicines, Poisons, and Therapeutic Goods (Category Approval) Determination 2021.* In most instances prescribing is facilitated if there is an ATRG indication, and there is documented support by a medical specialist, drug and alcohol nurse practitioner and/or palliative care nurse practitioner. Refer to the *Controlled Medicines Prescribing Standards* for more information.
Flunitrazepam	
Dexamfetamine	
Lisdexamphetamine	
Methylphenidate	
Medical cannabis	
Sodium Oxybate	

For example, the determination specifically authorises “palliative care nurse practitioners” and “drug and alcohol nurse practitioners” as prescribers who can prescribe controlled medicines for the treatment of drug-dependent persons with active malignancy or life-limiting disease.

Practice authority to provide a medical termination of pregnancy

Currently, Part 6 of the *Health Act 1993* (ACT) precludes NPs from prescribing an abortifacient for the purposes of inducing a medical (non-surgical) termination of pregnancy (MToP) before nine weeks' gestation. In 2018, the *Health (Improved Abortion Access) Amendment Bill* was debated in the ACT Legislative Assembly. The original bill intended to improve access to MToP by including NPs with medical practitioners as authorised prescribers of the medicine that induces MToP. However, after debate in the Assembly[32] NPs were eventually excluded from the Bill based upon the incorrect conclusion that MToP was outside the scope of practice of NPs because they could not perform the required care without MBS or PBS subsidies. In addition, it was recognised that a separate approval process would be required by the Therapeutic Goods Administration (TGA) before NPs were authorised to prescribe the required medicine.

A recent ACT NP workforce survey[33] identified that a lack of access to MToP in an eligible patient resulted in significant costs for an at-risk woman, even though the NP had the competence and supporting governance frameworks to prescribe the medicine. This particular issue is further complicated by the fact the company approved to supply the medicine to induce MToP has an approved Risk Management Plan (RMP) with the TGA. The current RMP asserts that only medical practitioners can undertake the requisite training before being authorised to prescribe the product[34]. The TGA itself does not regulate scope of clinical practice for regulated health practitioners. Changes to the *Health Act 1993* (ACT) would first be required before the RMP could be updated[35], and allow for NPs working within their scope of practice to prescribe this medicine.

Currently, no Australian jurisdiction has practice authority legislation that allows NPs working within their scope of practice to provide MToP before nine weeks' gestation[36]. Only medical practitioners, such as general practitioners and other medical specialists may provide MToP in Australia. Importantly, evidence to date in several international jurisdictions suggests that appropriately

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[32] ACT Government, *Parliamentary Debates,* Legislative Assembly*,* 19 Septmeber 2018, 3.20.00 (Caroline LeCouteur, Member for Murrumbidgee) https://aod.parliament.act.gov.au/A73140

[33] Helms, C. (2021). Results from the Australian Capital Territory (ACT) *Nurse Practitioner Workforce and Employer Survey* [Report]. ACT Government.

[34] Therapeutic Goods Administration. (2012). *Registration of medicines for the medical termination of early pregnancy.* Retrieved 26 February 2021 from https://www.tga.gov.au/registration-medicines-medical-termination-early-pregnancy

[35] Therapeutic Goods Administration. (2019). *Risk management plans for medicines and biologicals: Australian requirements and recommendations.* Retrieved 17 March 2021 from https://www.tga.gov.au/book-page/what-rmp

[36] Marie Stopes Australia. (2020). *Nurse-led medical termination of preganncy in Australia* [Legislative Scan]. Marie Stopes International.

trained and supported NPs can safely and effectively provide MToP[37,38,39]. This has been recognised in New Zealand, where educational and regulatory standards closely approximate those of Australian NPs. Legislation in New Zealand has recently passed that allows NPs working within their scope of practice to provide MToP[40]. It is perhaps timely to consider revisiting this practice authority for NPs in the ACT, to better support transferable skills and expertise that aligns with the intent of the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth).

Other legislative barriers relating to core NP practice activities in the ACT do not appear to be currently causing a significant effect on NP clinical practice. For example, the *Controlled Sports Act 2019* requires that pre-event medical clearances only be performed by a medical practitioner. Nurse practitioners can independently assess and diagnose any medical condition within their scope of practice. In fact, the *Public Health Act 1997, Sex Work Act 1992,* and *Road Transport (General) Act 1999* specifically place the same level of responsibility and accountability arising from assessment and diagnosis of medical conditions on NPs as medical practitioners. However, results from the ACT NP workforce survey did not indicate comprehensive assessment and diagnosis relating to the *Controlled Sports Act 2019* was an immediate problem affecting the ability of NPs to undertake core activities required of their roles. This is likely because no ACT NPs were working with populations requiring assessment in accordance with the *Controlled Sports Act 2019.*

Consultation questions

An appropriately trained and authorised NP working within their individual scope of practice could safely and effectively provide MToP before nine weeks' gestation. They would be able to perform this activity irrespective of available subsidies through the MBS or PBS. However, NPs currently do not have the *practice authority* to provide MToP in the ACT.

Practice authority requires a change to the *Health Act 1993* (ACT) to include NPs with medical practitioners as authorised prescribers of medicines to induce a MToP in the ACT. An amendment to the RMP registered with the TGA would then be required to include ACT NPs as being eligible to undertake any required training to prescribe the required medicine.

1. What benefits and/or issues would you envision if NPs had the practice authority to prescribe medicines for medical terminations of pregnancy (MToP) in the ACT before nine weeks' gestation?

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[37] Yarnall, J., Swica, Y., & Winikoff, B. (2009). Non-physician clinicians can safely provide first trimester medical abortion. *Reproductive Health Matters, 17*(33), 61-69. https://doi.org/10.1016/S0968-8080(09)33445-X

[38] National Academies of Sciences. (2018). *The Safety and Quality of Abortion Care in the United States*. National Academies Press. https://www.ncbi.nlm.nih.gov/books/NBK507233/

[39] Mainey, L., O'Mullan, C., Reid-Searl, K., Taylor, A., & Baird, K. (2020). The role of nurses and midwives in the provision of abortion care: A scoping review. *Journal of Clinical Nursing, 29*(9-10), 1513-1526. https://doi.org/https://doi.org/10.1111/jocn.15218

[40] New Zealand Parliament. (2021). Abortion Legislation Bill. https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_89814/abortion-legislation-bill?fbclid=IwAR2DLd5xKgkJzh14KcdYViwGGqVII1Mkyi4GpIMJbHupvhw4B2G0EVxVALw

2. What additional information, resources and/or restrictions to practice (if any) would be required to safely and effectively facilitate MToP practice authority for NPs in the ACT?

Practice authority for supplemental nurse practitioner activities

Nurse practitioners, as a result of their advanced clinical practice, are expected to undertake *supplemental activities* as relating to their individual scopes of practice. Supplemental activities are required to reduce unnecessary duplication of care, improve systems efficiencies, and improve the overall experience of healthcare consumers as they intersect with the health system.

Supplemental activities include the completion of required documentation arising as a result of an NP providing a complete episode of care. Like core activities (e.g. prescribing medicines, requesting diagnostic tests, etc.), supplemental activities facilitate the NP role and are enabled through legislation and/or policy. For example, as a result of assessing, diagnosing and providing therapeutic interventions for an illness that requires an absence from work, NPs in the ACT will commonly issue a 'sick certificate' that serves the purpose of a statutory declaration[41] for the patient's employer. The reason why NPs cannot provide a 'medical certificate' in this instance is because operational definitions in the *Fair Work Act 2009* (Commonwealth) and *Workers Compensation Act 1951* (ACT) require that 'medical certificates' only be written by a registered medical practitioner. If an NP were to provide a 'medical certificate' it would amount to 'holding out', which is an offence under sections 116 and 118 of the *Health Practitioner Regulation National Law 2010* (Commonwealth).

The aforementioned NP employer and workforce survey[42] demonstrated that NPs currently work in diverse areas of practice across the ACT. The survey suggested that legislative authorisations are needed for supplemental activities that are within the scope of practice for individual NPs, in order to reduce poor patient outcomes, unnecessary duplication of care, out-of-pocket patient costs, strain on public health services, and improve the clinical efficiency of the NP workforce. Such authorisations would provide NPs with the appropriate practice authority, but not necessarily be within the scope of practice of individual NPs. Table 3 below outlines the supplemental activities requiring legislative authorisation that significantly impact upon the current ACT NP workforce:

[41] Australian Government. (2021). Statutory declarations. Attorney-General's Department. Retrieved 26 February from https://www.ag.gov.au/legal-system/statutory-declarations

[42] Helms, C. (2021). *Results from the Australian Capital Territory (ACT) Nurse Practitioner Workforce and Employer Survey* [Report]. ACT Government.

Table 3: Supplemental activity authorisations currently required for nurse practitioners in the ACT

Supplemental activity	Relevant legislation	Supporting frameworks for clinical practice
Authorising death certificates[43]	• Births, Deaths and Marriages Registration Act 1997 and Regulations • Cemeteries and Crematoria Act 2003 and Regulations • Coroners Act 1997	• World Health Organisation. (1979). *Medical certification of cause of death: Instructions for physicians on use of international form of medical certificate of cause of death*. (4th ed.) WHO. https://apps.who.int/iris/handle/10665/40557 • Australian Bureau of Statistics. (2020). *Information paper: Cause of death certification in Australia*. ABS. https://bit.ly/3vgkeJA
Witnessing non-written health directions	• Medical Treatment (Health Directions) Act 2006	• Nurse Practitioner Standards for Practice • Registered Nurse Standards for Practice • Code of Conduct for Nurses • Code of Ethics for Nurses
Authorising driver's license medicals	• Road Transport (General) Act 1999 • Road Transport (Driver Licensing) Act 1999 and Regulations • Road Transport (Driver Licensing) Regulation 2000 • Road Transport (Alcohol and Drugs) Act 1977	• Austroads. (2017). *Assessing fitness to drive*. Austroads. https://bit.ly/3cnnQ3R
Authorising workers' compensation and Comcare certificates	• Workers Compensation Act 1951 and Regulation • Work Health and Safety Act 2011 (Commonwealth) and Regulations	• Comcare. (2021). *Medical practitioners: Your role in an employee's rehabilitation*. Australian Government. https://bit.ly/3rG3QQA • WorksafeACT. (2021). https://www.worksafe.act.gov.au • NSW Government. (n.d.) *Workers compensation guide for medical practitioners.* State Insurance Regulatory Authority. https://bit.ly/30E6NoV

For example, the employer and NP workforce survey identified that common supplemental activities required by palliative care NPs are the ability to authorise death certificates and non-written health directions for those persons without advance care plans. Similar regulatory jurisdictions, such as Canada, New Zealand and the USA already allow NPs and other regulated health professionals other than medical practitioners to sign death certificates[44]. Likewise, NPs in the ACT have identified that an inability to authorise workers' compensation certificates, Comcare certificates, and driver's

[43] Some registered nurses employed in in the ACT public sector are able to declare "life extinct" in a deceased patient. A death certificate is an important legal document that officially notifies the Territory registrar of a death. It reports deaths that are not required by law to be reviewed by the Coroner and are required before a body can be moved from the place of death. A declaration of "life extinct" does not meet this requirement.

[44] Millares-Martin, P. (2020). Death certification in England must evolve (Considering current technology). *Journal of Forensic and Legal Medicine, 69*(101882). doi: 10.1016/j.jflm.2019.101882

license medicals are a commonly-encountered patient requirement arising from their authority to undertake a comprehensive assessment. However, NPs in the ACT do not currently have the authorisation to perform these supplemental activities even though they may be a patient's primary healthcare provider, or have assessed and managed the complete episode of care relating to a workplace-based injury. This requires the NP to refer the patient to a medical practitioner, who duplicates the care provided by the NP in order to authorise the relevant certificate. This directly translates to increased out-of-pocket and health system costs. These restrictions to practice represent over-regulation of the nursing workforce, and are out of step with other countries that use an NP workforce with similar regulatory and educational requirements.

The supplemental activities described in Table 3 above are required by NPs working within their individual scopes of practice in every Australian State and Territory. Currently, none of these jurisdictions provide NPs with the practice authority to authorise death certificates, non-written health directions, or driver's license medicals. Only two jurisdictions, South Australia and Queensland, allow NPs working within their scope of practice to authorise worker's compensation certificates. Reportedly Tasmania is consulting with the public on the ability of NPs to authorise workers' compensation certificates. See Table 4 below for a summary of state-based practice authorities for NPs who authorise worker's compensation certificates:

Table 4: Workers' compensation and nurse practitioner practice authority

	Queensland	**South Australia**
Year practice authority granted	2010	2016
Relevant legislation and policy	• Workers' Compensation and Rehabilitation Act 2003 and Regulations • Workers' Compensation Certificate Protocol for Nurse Practitioners	• Return to Work Act 2014 and Regulations • Nurse Practitioner Work Capacity Certificates
Practice setting restrictions	• None	• Public or private emergency department contexts only.
Scope	• New injuries only • Minor injuries only	• New injuries only • No specification of severity
Restrictions	• Maximum duration 10 days • No ongoing certificates	• Maximum duration seven days • No ongoing certificates

It is proposed that NPs in the ACT be given the practice authority to perform the four supplemental activities described in Table 3 above. This is because those activities have been highlighted by the current ACT NP workforce as commonly having significant adverse effects on patient safety and/or quality outcomes, or contributing to significant inefficiencies, due to their inability to authorise those activities. These same safety and quality concerns were identified by NPs in New Zealand. In order to address these concerns "omnibus legislation" was enacted, which provided New Zealand NPs with far-reaching practice authority. A New Zealand NP working within their scope of practice may issue death certificates, complete compulsory mental health treatment orders, carry out medical examinations ordered by a court, assess fitness to drive and authorise worker's accident and

compensation certificates. This was accomplished by simply replacing the term "medical practitioner" with "health practitioner" in their legislation[45,46].

Nurse practitioners are increasingly working in public and private sector primary healthcare, where they may provide services as a patient's primary healthcare provider, or in partnership with a larger healthcare team[47,48,49]. A recent review of the ACT legislation suggests the extent to which current legislation inappropriately limits NP practice authority may be much more extensive than the supplemental activities listed above. There are currently 16 legislative instruments that provide practice authority for NPs in the ACT, but a further 63 that indirectly impact upon NPs to achieve their full practice authority. It is perhaps time to enable best practice legislation and policy in the ACT, by creating our own version of right-touch omnibus legislation. This could be accomplished by revising terms such "medical practitioner", "doctor", and "medical certificate" and replacing them with "health practitioner" or similar. Such revisions would reflect contemporary regulation and clinical practice, which facilitates safe, effective, and innovative models of care using a highly expert and regulated health workforce.

Consultation questions

Over the short-term, it is proposed that NPs in the ACT be given the practice authority to conduct the following supplemental practice activities, as relevant to their individual scopes of practice:

a) authorising death certificates

b) witnessing non-written health directions

c) authorising workers' compensation and Comcare certificates

d) authorising driver's license medicals

Over the medium-term, it is proposed that language relating to "medical practitioners", "doctors", "medical certificates" and other synonyms be systematically reviewed within ACT legislation, so that omnibus legislation may be considered that better enables the practice authority of nurse practitioners. This would align with contemporary approaches to right-touch legislation and policy of a nationally-regulated health workforce.

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[45] Coleman, J. (2015). *Health Practitioners (Replacement of Statutory References to Medical Practitioners) Bill* (51, Issue 36-2). New Zealand Government. https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL63296_1/health-practitioners-replacement-of-statutory-references

[46] Nurse Practitioners New Zealand. (2021). *Frequently asked questions*. College of Nurses Aotearoa. Retrieved 27 January from https://www.nurse.org.nz/npnz-nurse-practitioners-nz.html

[47] Currie, J., Chiarella, M., & Buckley, T. (2019, Feb). Privately practising nurse practitioners' provision of care subsidised through the Medicare Benefits Schedule and the Pharmaceutical Benefits Scheme in Australia: results from a national survey. *Aust Health Rev, 43*(1), 55-61. https://doi.org/10.1071/AH17130

[48] Currie, J., Chiarella, M., & Buckley, T. (2016, Oct). Workforce characteristics of privately practicing nurse practitioners in Australia: Results from a national survey. *J Am Assoc Nurse Pract, 28*(10), 546-553. https://doi.org/10.1002/2327-6924.12370

[49] Helms, C., Crookes, J., & Bailey, D. (2015). Financial viability, benefits and challenges of employing a nurse practitioner in general practice. *Aust Health Rev, 39*(2), 205-210. https://doi.org/10.1071/AH13231

3. What benefits and/or issues would you envision if NPs had the practice authority to conduct the above four supplemental practice activities (a-d) above?
4. What additional information, resources and/or restrictions to practice (if any) would be required to safely and effectively facilitate the practice authority to perform the above supplemental activities (a-d) for NPs in the ACT?
5. What benefits, issues and/or risks do you envision if the ACT were to explore omnibus legislation for NPs working in the ACT?

Conclusion

The NP workforce is one whose practice is well-established in Australia and internationally. There is a significant body of peer-reviewed research demonstrating the safety and ability of nurses to undertake the NP role in diverse areas of practice. They work in metropolitan to regional and remote areas of Australia, across both the public to private health sectors. They may work as stand-alone primary healthcare providers, but also work collaboratively within larger healthcare teams. They work in a multitude of specialty areas, and are highly regulated by the NMBA. After being established in Australian healthcare for over 20 years, they are recognised for their innovation, work with marginalised and vulnerable populations, and their ability to safely and effectively practise as independent practitioners who are fully accountable for their care.

Core activities of the NP role include the ability to independently, collaboratively and comprehensively assess, diagnose and treat conditions within their individual scopes of practice. This includes the ability to request and interpret diagnostic examinations, diagnose medical conditions, and autonomously prescribe medicines. Supplemental activities of the NP role are those that arise as an outcome of providing complete episodes of care. However, existing data from the ACT reveals NPs are encountering significant barriers in actualising their roles, because they lack the practice authority to perform core and/or supplemental activities relevant to their scopes of practice. They have not yet achieved their full potential in contributing to health system reform. It is now time to consider how right-touch regulation and policy can better facilitate core and supplemental activities required for NP roles within the ACT community. This will ensure a sustainable future workforce, improve systems efficiencies and patient outcomes, and demonstrate effective stewardship of the healthcare system.