



Attachment D – Submissions template

Public consultation: Review of the Criminal history registration standard and other work to improve public safety in health regulation

The Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards are inviting stakeholders to have their say as part of our review of the *Criminal history registration standard* (the criminal history standard). There are 19 specific questions we'd like you to consider below (with an additional question 20 most relevant for jurisdictional stakeholders). All questions are optional, and you are welcome to respond to any you find relevant, or that you have a view on.

Your feedback will help us to understand what changes should be made to the criminal history standard and will provide information to improve our other work.

Please email your submission to AhpraConsultation@ahpra.gov.au

The submission deadline is close of business **14 September 2023**

How do we use the information you provide?

The survey is voluntary. All survey information collected will be treated confidentially and anonymously. Data collected will only be used for the purposes described above.

We may publish data from this survey in all internal documents and any published reports. When we do this, we ensure that any personal or identifiable information is removed.

We do not share your personal information associated with our surveys with any party outside of Ahpra except as required by law.

The information you provide will be handled in accordance with [Ahpra's privacy policy](#).

If you have any questions, you can contact AhpraConsultation@ahpra.gov.au or telephone us on **1300 419 495**.

Publication of submissions

We publish submissions at our discretion. We generally [publish submissions on our website](#) to encourage discussion and inform the community and stakeholders about consultation responses. Please let us know if you do not want your submission published.

We will not publish on our website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the subject of the consultation. Before publication, we may remove personally identifying information from submissions, including contact details.

We can accept 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 These submissions will not be published on the website or elsewhere.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. A request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Cth), which has provisions designed to protect personal information and information given in confidence. Please let us know if you do not want us to publish your submission or if you want us to treat all or part of it as confidential.

Published submissions will include the names of the individuals and/or the organisations that made the submission unless confidentiality is expressly requested.

Australian Health Practitioner Regulation Agency
National Boards
GPO Box 9958 Melbourne VIC 3001 Ahpra.gov.au 1300 419 495

Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.

Initial questions

To help us better understand your situation and the context of your feedback please provide us with some details about you. These details will not be published in any summary of the collated feedback from this consultation.

Question A

Are you completing this submission on behalf of an organisation or as an individual?

Your answer:

Organisation

Name of organisation: Sexual Assault Support Service (SASS) Inc

Contact email: [REDACTED]

Myself

Name: [Click or tap here to enter text.](#)

Contact email: [Click or tap here to enter text.](#)

Question B

If you are completing this submission as an individual, are you:

A registered health practitioner?

Profession: [Click or tap here to enter text.](#)

A member of the public?

Other: [Click or tap here to enter text.](#)

Question C

Would you like your submission to be published?

Yes, publish my submission **with** my name/organisation name

Yes, publish my submission **without** my name/ organisation name

No – **do not** publish my submission

Focus area one – The Criminal history registration standard

Question 1

The *Criminal history registration standard* (**Attachment A**) outlines the things decision-makers need to balance when deciding whether someone with a criminal history should be or stay registered such as the relevance of the offence to practice, the time elapsed and any positive actions taken by the individual since the offence or alleged offence. All decisions are aimed at ensuring only registered health practitioners who are safe and suitable people are registered to practise in the health profession.

Do you think the criminal history standard gets this balance right?

If you think the *Criminal history registration standard* does not get this balance right, what do you think should change to fix this?

Your answer:

We believe that overall the *Criminal history registration standard* strikes an appropriate balance.

When looking particularly at the nature and gravity of the offence/alleged offence and its relevance to health practice there may be merit in specifically considering any aggravating factors associated with the offence/alleged offence. These include:

- Any abuse of trust or power by the offender;
- Any particular vulnerabilities the victim has due to their age, disability, sexuality, etc;
- The level of harm suffered by the victim;
- Premeditation; and
- Use of a weapon as part of the offence.

There are also particular aggravating factors detailed under the different state sentencing acts that relate to sexual crimes against children and young people, which it would be worth exploring.

Question 2

Do you think the information in the current *Criminal history registration standard* is appropriate when deciding if an applicant or registered health practitioner's criminal history is relevant to their practice? If not, what would you change?

Your answer:

We believe that the information is largely appropriate. There is one area of slight ambiguity, which is the extent to which the offence is relevant to health practice. Some clarification around what it means for an offence to be relevant to health practice could be beneficial (this may more appropriately fit under Attachment B).

Question 3

Do you think the information in the current *Criminal history registration standard* is clear about how decisions on whether an applicant or registered health practitioner's criminal history is relevant to their practice are made? If you think it is not clear, what aspects need further explanation?

Your answer:

We believe it is clear.

Question 4

Is there anything you think should be removed from the current *Criminal history registration standard*? If so, what do you think should be removed?

Your answer:

We don't feel that anything needs to be removed.

Question 5

Is there anything you think is missing from the 10 factors outlined in the current *Criminal history registration standard*? If so, what do you think should be added?

Your answer:

As above under our answers to Questions 1 and 2.

Question 6

Is there anything else you would like to tell us about the *Criminal history registration standard*?

Your answer:

Focus area two – More information about decision-making about serious misconduct and/or an applicant or registered health practitioner’s criminal history

Question 7

Do you support Ahpra and National Boards publishing information to explain more about the factors in the *Criminal history registration standard* and how decision-makers might consider them when making decisions? Please refer to the example in **Attachment B**. If not, please explain why?

Your answer:

We support this. Transparency and clarity about why certain decisions are made are critical in fostering public confidence in the professions governed by Ahpra.

Question 8

Is the information in **Attachment B** enough information about how decisions are made about practitioners or applicants with a criminal history? If not, what is missing?

Your answer:

We believe it is sufficient information.

Question 9

Is there anything else you would like to tell us about the information set out in **Attachment B**?

Your answer:

Question 10

Thinking about the examples of categories of offences in **Attachment C**, do you think this is a good way to approach decision-making about applicants and registered health practitioners with criminal history? If you think this is a good approach, please explain why. If you do not agree with this approach, please explain why not.

Your answer:

With regards to Category B offence, although these are of a lesser level of seriousness than Category A offences, we recommend that consideration be given to whether the practitioner has demonstrated repeat patterns of offending within this category – particularly relating to offences involving family violence. A persistent pattern of this type of criminal behaviour may indicate that the practitioner is not a suitable person to be delivering medical services to the public, and this should be considered even though the offences may not seem as serious in nature as those in Category A.

Question 11

Do you think there are some offences that should stop anyone practising as a registered health practitioner, regardless of the circumstances of the offence, the time since the offence, and any remorse, rehabilitation, or other actions the individual has taken since the time of the offence? Please provide a brief explanation of your answer. If you answered yes, please explain what you think the offences are.

Your answer:

We feel that this question is outside the scope of our organisation's field of expertise, and so will not provide comment.

Question 12

Is there anything else you would like to tell us about the possible approach to categorising offences set out in **Attachment C**?

Your answer:

Focus area three – Publishing more information about decisions that are made about serious misconduct by registered health practitioners

Question 13

Were you aware that disciplinary decisions by tribunals about registered practitioners were published to Ahpra and National Board websites and are linked to an individual practitioner's listing on the public register?

Your answer:

We have received mixed feedback from staff regarding whether they were aware of this – some were and others weren't, but all thought this was a very helpful approach.

Question 14

Do you think decisions made to return a practitioner to practice after their registration has been cancelled or suspended (reinstatement decisions) for serious misconduct should be published where the law allows? Please explain your answer.

Your answer:

Yes. Again, this relates to transparency regarding why a practitioner is being allowed to return to practice following cancellation or suspension of their registration. Without transparency as to the rationale for this, it is very hard to support public confidence in the profession and in the processes by which the profession is regulated.

Publication of these decisions also gives individuals information to assist them in making an informed choice about whether they are comfortable seeing a certain practitioner. Choice is a cornerstone of trauma-informed care, which is particularly integral when working with survivors of sexual violence.

Question 15

Is there anything else you would like to tell us about the approach to publishing information about registered health practitioners with a history of serious misconduct?

Your answer:

We consider that in the cases of sexual offences and misconduct, it is also important that tribunal decisions are published and a link included to the practitioner's profile where that practitioner has: been cautioned or reprimanded; had a condition/s imposed upon their registration; been required to pay a fine or had their registration suspended for a certain period. Again this relates to the provision of trauma-informed care - providing patients with information about a medical practitioner so that they can make an informed choice about whether they are comfortable seeing them or not.

Focus area four – Support for people who experience professional misconduct by a registered health practitioner

Question 16

What do you think Ahpra and National Boards can do to support individuals involved in the regulatory process who are affected by sexual misconduct by a registered health practitioner? (For examples, see paragraph 47 of the consultation paper.)

Your answer:

How organisations such as Ahpra respond to complaints of sexual misconduct can make a significant difference to survivors - either by retraumatising survivors or by supporting them to heal.

In 2021 SASS provided a detailed submission to Ahpra containing recommendations on how Ahpra could improve its response to complaints of sexual misconduct by medical practitioners. This submission was informed by our recent experience of supporting several clients who had made complaints to Ahpra in relation to historical professional misconduct by health professionals.

In the submission we stated our concerns that the complaints process currently employed by Ahpra fails to adequately recognise and address the trauma experienced by survivors in relation to sexual misconduct. We gave a series of recommendations that related to:

- training for all staff involved in the complaints process;
- appropriate support for survivors when making a notification;
- investigating the context of sexual misconduct;
- the process of determining whether there is a matter to answer;
- the Tribunal process, including the use of language in Tribunal proceedings and Determinations; and
- remorse as a factor in determining sanctions.

We have attached this submission and ask that Ahpra consider it as part of this Review.

Question 17

Is there anything else you would like to tell us about how we can support individuals affected by a registered health practitioner's professional misconduct?

Your answer:

As above, we have outlined our concerns and recommendations in this area in our submission (attached).

Focus area five – Related work under the blueprint for reform, including research about professional misconduct

Question 18

Are the areas of research outlined appropriate?

Your answer:

We support these areas of research, with the following comment:

- a) Commissioning research on the outcomes of sexual misconduct matters, looking at whether patients are being protected and what might need to change.

We suggest that this be expanded to explore patients' experience of the complaints process and accompanying outcomes. Protection of patients is important but in itself is a fairly narrow concept – patients also need to be validated in their concerns, feel that they are being heard and supported and that appropriate action is being taken. This enables a far more collaborative approach where the patient – their needs and experiences - is integral to the process.

Question 19

Are there any other areas of research that could help inform the review? If so, what areas would you suggest?

Your answer

As above.

Additional question

This question is most relevant to jurisdictional stakeholders:

Question 20

Are there opportunities to improve how Ahpra and relevant bodies in each jurisdiction share data about criminal conduct to help strengthen public safety

Your answer: