



Aboriginal and Torres Strait  
Islander Health Practice  
Chinese Medicine  
Chiropractic  
Dental  
Medical  
Medical Radiation Practice  
Nursing and Midwifery  
Occupational Therapy  
Optometry  
Osteopathy  
Pharmacy  
Physiotherapy  
Podiatry  
Psychology

Australian Health Practitioner Regulation Agency

## International criminal history checks Consultation report

November 2014

# Contents

<b>Introduction.....</b>	<b>3</b>
<b>Previous consultation on international criminal history checks.....</b>	<b>4</b>
<b>2013 public consultation.....</b>	<b>5</b>
<b>Overview and results .....</b>	<b>6</b>
<b>Next steps.....</b>	<b>10</b>
<b>Attachment 1 – Consultation at AHPRA.....</b>	<b>11</b>

## Introduction

To register as a health practitioner with the relevant National Board, applicants must currently undergo a domestic criminal history check and make a declaration about any overseas criminal history. The approach to international criminal history checks has been under review with the aim of strengthening the current approach, and ensuring consistency with the objectives and guiding principles of the National Law, whilst avoiding unnecessary delays to registration.

Initial consultation on National Boards' and AHPRA's approach to international criminal history checks took place in 2011 and 2012. The initial public consultation in May 2012 asked stakeholders to consider four options on international criminal history checks. From the 68 external submissions received, feedback was mixed.

A fifth option, where an external provider would conduct international criminal history checks, was then developed to address issues raised in the consultations. The new option was considered the best available approach. This report presents the findings from further public consultation on option 5 in October 2013.

This consultation received 60 written submissions, with the majority supporting option 5. The feedback, and the response to it, is summarised in this report. The submissions have been published [online](#) (except where the respondent has requested that their response is not published).

In line with the feedback from this consultation, option 5 will be piloted for a 12-month period from early 2015, followed by an evaluation of how the option has worked in practice. As supported by most submissions, international criminal history checks will be conducted for countries where an applicant has resided for six months or more from the age of 18 onwards.

Applicants for registration will still undergo a domestic criminal history check and AHPRA will also undertake international criminal history checks whenever registered health practitioners declare a criminal history regardless of how long the practitioner has resided in the relevant country. The pilot approach will also provide an opportunity to address issues raised during consultation.

The National Boards and AHPRA will now work to implement the pilot approach to this option. The implementation work will include an information campaign to ensure that health practitioners, the public and other stakeholders understand the pilot approach.

AHPRA and the National Boards are grateful to all who contributed their feedback to this consultation (see published responses at <http://www.ahpra.gov.au/News/Consultations/Past-Consultations.aspx>).

### The current process for international criminal history checks

When a practitioner first applies for registration, the National Boards' current process for checking their criminal history is to:

- conduct a domestic criminal history of the applicant through CrimTrac
- require the applicant to declare their criminal history in all countries, including Australia.
  - a. In cases where applicants declare that they have no criminal history outside Australia; no further evidence, audit or authentication is currently required, nor sought.
  - b. In cases where applicants declare that they have a criminal history, further investigations are made and the criminal history is assessed according to the relevant Board's *Criminal history registration standard*.

Once registered, practitioners have an obligation to:

- give written notice to their respective National Board – within 7 days after becoming aware that a relevant event has occurred – of changes to their criminal history, and
- declare any changes to their criminal history in Australia or overseas when renewing their registration.

Under the National Law, a National Board may obtain a report about a registered health practitioner's criminal history at any time.

## Previous consultation on international criminal history checks

To balance the requirements for public protection with the need for responsive application and assessment processes for health practitioners seeking registration in Australia, National Boards and AHPRA have been considering possible ways to strengthen the approach to international criminal history checks.

During 2011–13, National Boards and AHPRA conducted extensive public and targeted consultations on a revised approach to international criminal history checks in applications for registration for the 14 health professions regulated under the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

Feedback from public consultation on the four options in May 2012 was mixed. In response, a fifth option – where an external provider conducts international criminal history checks – was developed. Features of this proposed option include:

- a user-pays approach, where the applicant pays for the cost of the checks
- an international criminal history check sought post-registration, with the period between granting registration and the completion of the check covered by the applicant's declaration about their international criminal history (provided no significant criminal history is disclosed) and a domestic criminal history check
- a streamlined process using an external provider which regularly obtains checks and has relationships with the relevant organisations in each country, and
- a continuation of existing general requirements for applicants (a domestic criminal history check, a declaration about their criminal history, provision of Certificates of Registration Status or Good Standing from every jurisdiction where they have been registered).

National Boards and AHPRA consider that this fifth option:

- strikes a better balance between the undertaking of comprehensive criminal history checks while not imposing unnecessary delays on an applicant's registration
- mirrors the current process for checking registrants' domestic criminal histories
- will increase efficiency and reduce impact on applicants, as they will not need to communicate with overseas jurisdictions to gain the required information.
- does not add cost to the National Scheme, as the applicant meets the cost of the international checks, and
- provides a consistent and comprehensive approach to checking international criminal history which is only reliant on the applicant's declaration for a short time.

Public consultation on option 5 occurred in October 2013, and is summarised below.<sup>1</sup>

---

<sup>1</sup> Previous consultation papers regarding international criminal history checks, as well as the submissions that were received for each, are published under [Past consultations](#) on the AHPRA and National Boards' websites.

## 2013 public consultation

The public consultation, conducted from 1–31 October 2013, sought feedback on five possible options for refining international criminal history checks. Option 5 was proposed as a new approach to conducting international criminal history checks, with the potential to achieve better outcomes than the other four options (which had received mixed responses in public consultation in 2012).

- Option 1:** Applicant declaration only (the applicant only needs to make a declaration about their international criminal history, without providing evidence, as is the current approach)
- Option 2:** Applicant provides criminal history clearance evidence with application
- Option 3:** AHPRA obtains clearance/information from jurisdictions outside Australia when processing application
- Option 4:** Applicant makes declaration and AHPRA undertakes random sample audit
- Option 5:** External provider conducts international criminal history checks

The consultation was advertised on the National Board and AHPRA websites and to key stakeholders by email. It was also promoted in Board newsletters and communiqués.

The [consultation paper](#) outlined the five available options for international criminal history checking, including their benefits and risks, as well as:

- the relevant sections of the National Law
- the current process for checking criminal history
- the results of previous consultations on international criminal history checks
- what an international criminal history check by an external service provider would involve
- the scope of international criminal history checking
- the proposed time period for the check and scope of declaration (including advice on countries with spent convictions and rehabilitation of offenders legislation)
- which current requirements would be continued (domestic criminal history check, criminal history declaration and certifications of registration status or good standing from every jurisdiction in which they are currently, or have previously been registered as a health practitioner), and
- advice on how claims of persecution and 'questionable' international convictions will be addressed.

Respondents were asked to respond to the following questions.

- Is the proposed new approach the best option?
- Is the proposed approach clear?
- Are there any risks or issues about the proposed process that need more consideration?
- Should international criminal history checks be conducted for countries where applicants have spent three months or more, or six months or more?
- Do you have any other comments?

Sixty responses from organisations and individuals were received and analysed, including to identify the option with the most support as well as issues to be considered in implementation. All written submissions have been published on the AHPRA website (unless the respondent has indicated that their response is not for publication).

## Overview and results

The majority of submissions (38) supported option 5.

A small number of respondents did not support option 5 on the basis that they considered:

- it does not sufficiently protect the public for applicants who have never lived in Australia
- to protect the public, Boards must check criminal history before deciding an application for registration, and
- it may treat international applicants more advantageously than domestic applicants.

Respondents also preferred a requirement for applicants to provide international criminal history checks for countries in which they had resided for six months or more.

A summary of the feedback received based on the consultation paper questions is below, with the National Boards' and AHPRA's response.

### Is the proposed new approach the best option?

The majority of respondents indicated that there was support for option 5, and that it provided a reasonable balance between protecting the public and delaying registration.

Specific feedback in support of option 5:

- One respondent indicated that option 5 would minimise the risk of fraud while also being transparent and consistent.
- The Australasian College for Emergency Medicine said that this adopting this option would ensure 'a robust system which provides adequate protection for the community'.
- The SA Dental Service commented that it 'would strike a reasonable balance between risk, undertaking comprehensive checks where appropriate and not imposing unnecessary delays on applicants becoming registered.'

Specific objections to option 5:

- The Australian Medical Association (AMA) commented that option 5 contravened the National Law requirement to check the applicant's criminal history before deciding an application for registration, a provision which exists because it is material to protecting the public. The AMA also considered that adopting option 5 would treat applicants who have never lived in Australia 'more advantageously than applicants who have only lived in Australia who will not be registered until their criminal history has been checked.'
- The Australian Psychological Society also commented that 'the rigid one-size-fits-all approach of Option 5 will have limitations and unintended consequences.'

Other concerns from respondents included:

- the risk of false declaration
- the length of time between the initial registration and receipt of the completed international criminal history check. The Consumers Health Forum of Australia commented: 'CHF recommends that AHPRA ensure that the time lapse between an applicant registration and the completion of the international criminal history check is strictly time restricted to minimise the risk of unsuitable applicants being registered.'
- the potential impact on costs for currently registered practitioners, and
- the ability of AHPRA to address 'the inherent challenges associated with obtaining documentation from some countries [...] and the potential for applicants to remain temporarily registered for a long period of time (if not permanently).'

Other comments included:

- a suggestion from the Australian Nursing and Midwifery Federation that there should be a provision for audit to act as a deterrent to fraudulent declarations. The Consumers Health Forum of Australia also suggested that 'AHPRA enact a more comprehensive provision that removes any

loophole created by an applicant's omission regarding working overseas and requiring an international criminal history check.<sup>1</sup>

### **National Boards and AHPRA response to feedback**

Balancing the feedback received during the consultations with the requirements and objectives of the National Law, AHPRA and the National Boards will pilot option 5 and evaluate its effectiveness after 12 months. This option will:

- not impact on registration fees for applicants not requiring an international criminal history check, and
- require evidence from applicants who need an international criminal history check that they have applied for the check when they submit their registration application.

In most cases, the international criminal history check will be available by the time the registration application has been processed. There is a small risk that a practitioner with a substantial criminal history will be registered for a short period of time before the international criminal history report is received. The number of cases where this might occur is expected to be small. In the event that the international criminal history report is not received before the application is determined, the applicant will be registered on the basis of a declaration about their international criminal history (as is the current approach). We will monitor this potential risk during the pilot approach and refine the process if needed.

We are confident that the proposed approach does not contravene the National Law. The National Law indicates that an applicant's criminal history must be checked by the relevant National Board before deciding an application for registration, and suggests possible approaches to conducting criminal history checks.<sup>2</sup> AHPRA and the National Boards consider that the applicant's criminal history declaration will suffice as an indication of the applicant's criminal history until the results of the domestic and international criminal history checks are provided.

The current approach to checking international criminal history comprises registration on the basis of the applicant's declaration, followed by possible audit of the health practitioner's compliance with the *Criminal history registration standard*. Option 5, in which international criminal history checks are conducted for all applicants and existing registered health practitioners when required, represents a stronger approach.

The risk of registering a practitioner with a substantial criminal history will be further reduced by the approach to implementing option 5, as most other countries do not require international criminal history checks for health practitioners applying for registration. This should help achieve a balance between public protection and workforce considerations for most respondents to the consultation, an approach which also responds to the objectives and guiding principles of the [National Law](#) and upholds our [regulatory principles](#).

### **Is the proposed approach clear?**

The majority of respondents indicated that the proposed approach was clear.

One respondent indicated that the process for cost recovery from practitioners who already hold registration may need to be clarified.

### **National Boards and AHPRA response to feedback**

AHPRA will publish information about the cost recovery process for registered practitioners as part of implementing option 5.

### **Are there any risks or issues about the proposed process that need more consideration?**

The majority of respondents indicated that there were not any risks or issues about the proposed process that needed more consideration.

---

<sup>2</sup> S.79 Health Practitioner Regulation National Law Act 2009

Two respondents were interested to understand what process would be followed if an international criminal history check revealed serious criminal history.

### **National Boards and AHPRA response to feedback**

In most cases, the results of an applicant's international criminal history check will be available before they are granted registration and will be taken into account considering the factors in the Criminal History Registration Standard in the usual way. In any cases where a practitioner is registered before the results of their international criminal history check are available, any checks that show criminal convictions will be addressed as a priority. When a check result is returned with criminal history information, AHPRA conducts an assessment of the criminal history information as to any potential impact the information may have on an applicant/registrant's suitability for registration/renewal and provides advice to the relevant Board.

Further information about this process will be published on the National Boards and AHPRA websites as part of the pilot.

### **Should international criminal history checks be conducted for countries where applicants have spent three months or more, or six months or more?**

While many respondents were in favour of international criminal history checks being conducted for countries where applicants had spent three months or more, the majority of respondents supported these checks being conducted for countries where applicants had spent six months or more.

### **National Boards and AHPRA response to feedback**

As there was slightly more support for international criminal history checks being conducted for countries where applicants had spent six months or more, the pilot approach will use this option.

### **Do you have any other comments?**

Other issues raised in submissions and National Boards and AHPRA response is summarised below:

<b>Comment</b>	<b>National Boards and AHPRA response</b>
<b>Will time limits be placed on international criminal history checks?</b>	There will be no time limits on international criminal history checks consistent with the approach to domestic criminal history checks.
<b>External providers undertaking criminal history checks</b>	Identifying a suitable external provider is a critical aspect of effective implementation. AHPRA will ensure that the selection process is open and thorough, and that the provider(s) selected will offer value for money.
<b>Is there potential to collaborate with the Department of Immigration and Border Protection (DIBP) in relation to international criminal history checks (to avoid duplication or additional cost to applicants, for example)?</b>	AHPRA will liaise with external agencies to explore any potential for collaboration.
<b>Fraudulent declarations</b>	Fraudulent declarations will be mitigated by the requirement for applicants to provide a curriculum vitae which will be checked against their declaration of the countries where they have resided.  Auditing registered health practitioners will also provide another level of security.
<b>What are the costs to the applicant, particularly if an applicant had lived in a number of</b>	Costs to the applicant will depend on the number of, and which countries, where they have resided.



<b>countries?</b>	Applicants will have a choice of provider to conduct the international criminal history check.
<b>The scope of the criminal history checks relating to charges, spent and 'questionable' convictions</b>	<p>The requirement to declare all charges is consistent with the National Law.</p> <p>Information will be published about how National Boards and AHPRA will manage spent or questionable convictions as part of the pilot approach to implementing option 5.</p>
<b>Country-specific issues with criminal history checks</b>	Country-specific issues, such as the requirement to obtain a criminal history check in person, will be addressed in the pilot approach to implementing option 5.

## Next steps

The feedback from this consultation will be incorporated into the pilot approach to conducting international criminal history checks.

It is proposed that option 5 will be piloted for a 12-month period from early 2015 followed by an evaluation of how the option has worked in practice. As supported by the majority of respondents from this consultation, international criminal history checks will be conducted for countries where an applicant has resided for 6 months or more. The pilot approach will also address other issues identified in the feedback.

AHPRA is proceeding with work to implement the pilot approach, including:

- seeking expressions of interest for external providers to conduct international criminal history checks
- implementation planning, including producing communications for applicants (on meeting the requirements and costs) and the public, internal staff training, and
- continued liaison with external agencies such as the Department of Immigration and Border Protection and the Australian Federal Police to determine possible collaborations or exchange of information.

National Boards and AHPRA look forward to strengthening the approach to international criminal history checking while avoiding unnecessary delays to registration in Australia; consistent with the objectives and guiding principles of the National Law and our regulatory principles.

## Attachment 1 – Consultation at AHPRA

The Australian Health Practitioner Regulation Agency (AHPRA) works in partnership with the [14 National Boards](#) in the National Registration and Accreditation Scheme (the National Scheme) to implement the requirements of the National Scheme, which has maintaining public safety at its heart.

Consultation is an important part of the Boards' work and is a requirement under the Health Practitioner Regulation National Law as in force in each state and territory (the National Law). The feedback provided through consultation is greatly valued, and informs the Board's development and implementation of policy.

Consultation also provides individuals and organisations with an opportunity to say how they think health practitioners should be regulated. It also helps us to gain feedback from practitioners, members of the community and other stakeholders on potential policy approaches as well as to identify potential unintended consequences.

Consultation feedback is considered by AHPRA and the National Boards in conjunction with our [regulatory principles](#) and obligations under the National Law. The intent to make our processes less onerous for practitioners is also a consideration. There is a balance between setting adequate systems and standards that will help protect the public by ensuring that only ethical and adequately qualified practitioners are registered, and ensuring that practitioners are able to apply for registration without unnecessary burdens or delay.