



## 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](mailto: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](mailto: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 These submissions will not be published on the website or elsewhere.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](http://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: Nursing & Midwifery Council of NSW

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:

Yes.

### 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:

There are gaps in considerations relevant to the question of whether a person is 'safe and suitable'.

- 1) This is the area of Working With Children Checks (WWCC - different names in each jurisdiction) and Working with Vulnerable People Checks (in some jurisdictions). While this area remains problematic in that not all jurisdictions currently utilize the same criteria and processes, there is agreement for a move to consistency.

Fundamentally, if a person does not have a clear WWCC they should not be considered a safe and suitable person to practice as a health professional. Alternatively, conditions on registration should limit their access to children or other vulnerable persons.

- 2) Where there have been multiple occasions on which a person has been charged with similar offences which did not proceed to conviction. Regulation operates under the civil standard (with Briginshaw considerations) and not the criminal standard. At some point, multiple charges, multiple occasions, seriousness of charges should be placed into the mix of considerations.

### 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:

It is clear.

There are so many variable to consider that being too prescriptive may lead to perverse outcomes that are more liable to legal challenge. No change recommended

### 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:**

No.

**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:**

**Factor 9:** considerations should be balanced against the best evidence in relation to a criminal conviction, being the Police Fact Sheet and the remarks on sentence. Great care should be taken with any material provided by the practitioner that is either contrary to this information or seeks to 'go behind' the convictions.

**Question 6**

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

**Your answer:**

**Family violence matters:** the Council holds a general concern that offences committed in a family/domestic/intimate partner context may not be accorded weight in accordance with their objective criminality merely because of the setting in which they occur.

We are of the view that such offences should be given more weight, as they are generally occurring in a power imbalance situation – exactly the setting in which a health professional operates.

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:**

Yes

**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:**

Clearly articulating the types of offences that are likely to **preclude** a person from being registered as a health professional and making internal reference to the *Category A* offences listed in Attachment C.

**Question 9**

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

**Your answer:**

No.

**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:**

Yes. It provides clarity and forewarns applicants about the standard required for registration.

**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:**

The *Category A* list appears comprehensive. Perhaps inclusion of ‘vulnerability’ as a factor – aged, children & disability

**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:**No.

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:**

Yes. Although the Council does not believe NCAT decisions about NSW nurses and midwives are published on Ahpra or National Board websites.

**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. As they are already published in NSW, this would facilitate national consistency.

**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:**

No.

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:**

As an NSW co-regulator we question whether the *Notifier Support Service* is available to those notifying about an NSW health practitioner whose matter will be investigated and prosecuted by the HCCC. A nationally consistent approach should be the goal.

**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:**

Support should be provided consistent with the approach for sex misconduct impacts.

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:**

Suggest expanding the focus of research to professional misconduct more broadly for example to include serious matters of public interest such as multiple cases of harm by a practitioner (e.g Gayed, Reeves, Patel), exploitation of vulnerable persons (financial advantage), child-sex offenders

**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:**

Yes. Currently Ahpra is unable to share criminal history information with co-regulators in NSW. This means that the Nursing & Midwifery Council is often in the position of not having all relevant information to ensure good decision-making