



## 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 These submissions will not be published on the website or elsewhere.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
<i>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.</i>
<b>Question A</b> Are you completing this submission on behalf of an organisation or as an individual?
<b>Your answer:</b> <input checked="" type="checkbox"/> Organisation Name of organisation: New Zealand Chiropractors' Association (NZCA) Contact email: <span style="background-color: black; color: black;">[REDACTED]</span> <input type="checkbox"/> Myself Name: <a href="#">Click or tap here to enter text.</a> Contact email: <a href="#">Click or tap here to enter text.</a>
<b>Question B</b> If you are completing this submission as an individual, are you: <input type="checkbox"/> A registered health practitioner? Profession: <a href="#">Click or tap here to enter text.</a> <input type="checkbox"/> A member of the public? <input checked="" type="checkbox"/> Other: <span style="background-color: black; color: black;">[REDACTED]</span>
<b>Question C</b> Would you like your submission to be published? <input checked="" type="checkbox"/> Yes, publish my submission <b>with</b> my name/organisation name <input type="checkbox"/> Yes, publish my submission <b>without</b> my name/ organisation name <input type="checkbox"/> No – <b>do not</b> 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:

- 1) In general terms the Registration Standard should provide more transparent and detailed criteria covering improved due process and rationale upon which the National Board makes its decisions, how those decisions are made, and the justifications and arguments which must be published to affirm the decision reached with regards to an individual's registration.
- 2) The Standard should make clear that minor offending conducted more than 7 or 10 years ago where the individual has demonstrated reform and is no longer at risk of offending shall almost always be excluded from consideration by the National Board.
- 3) The Standard should take into account the sentencing remarks made by the judge or magistrate particularly with respect to rehabilitation, likelihood of recidivism, prospects for future contribution to the community, severity of the crime committed, sincerity of remorse, etc. If the National Board makes conclusions or decisions which are contrary to or negate these sentencing remarks the National Board shall justify that with evidence and rationale.
- 4) The overriding factor for deciding whether or not an individual's criminal history is relevant should be the safety of the public, the trustworthiness of the individual in terms of their ability and willingness to put the interests of their patients first and the likelihood of recidivism if any.
- 5) The decision of the National Board with regards to an individual's registration should focus on 3). It should be made explicit that such a decision shall not be punitive in character and should not act as an extra-judicial punishment of the individual.
- 6) The Registration Standard should make clear that depriving an individual of their career and livelihood is a significant decision of considerable weight and impact both on that individual and their entire family. Such a decision should be taken primarily when it has been assessed that there is an ongoing risk by that individual to the public and to patients and there are no other alternatives to ensuring the safety of the public and of patients if that individual were to be registered.
- 7) The National Board should have a clear range of options to choose from in addition to de-registration or declining the registration of an individual. This may include rehabilitative programmes, supervised practice, ongoing counselling and assessment or other conditions or limitation on their registration.
- 8) The individual should be given a clear process and clear grounds to appeal any decision of the National Board.

## 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:

- 1) As per our response in Question 1: The Standard should make clear that minor offending conducted more than 7 or 10 years ago where the individual has demonstrated reform and is no longer at risk of offending shall almost always be excluded from consideration by the National Board. This is to ensure that such minor offending does not become a kind of 'life time sentence' for the individual preventing them from fully contributing to society.
- 2) As per our response in Question 1: The Standard should take into account the sentencing remarks made by the judge or magistrate particularly with respect to rehabilitation, likelihood of recidivism, prospects for future contribution to the community, severity of the crime committed, sincerity of remorse, etc. If the National Board makes conclusions or decisions which are contrary to or negate these sentencing remarks the National Board shall justify that with evidence and rationale.
- 3) As per our response in Question 1: The overriding factor for deciding whether or not an individual's criminal history is relevant should be the safety of the public, the trustworthiness of the individual in terms of their ability and willingness to put the interests of their patients first and the likelihood of recidivism if any.

## 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:

- 1) As per our response in Question 1: In general terms the Registration Standard should provide more transparent and detailed criteria covering improved due process and rationale upon which the National Board makes its decisions, how those decisions are made, and the justifications and arguments which must be published to affirm the decision reached with regards to an individual's registration.
- 2) More specifically the weight of a judge or magistrate's sentencing remarks should be established, independent or professionally assessed evidence of reform, rehabilitation or risk of recidivism should also be considered.
- 3) The process by which the National Board makes its decisions with regards to relevance of the criminal history should be further detailed eg. process of deliberations, minutes kept and criteria used, detail of justifications, arguments and options considered in the interim and final conclusions reached to be published.

- 4) As per our response in Question 1: The individual should be given a clear process and clear grounds to appeal any decision of the National Board.

#### 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:**

N/A

#### 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:**

- 1) Re: point 8 of the Registration standard: "The likelihood of future threat to a patient of the health practitioner" should also include "the likelihood of a future threat to the public or the community of the health practitioner." Note if the individual is highly unlikely to pose any future threat to a patient, to the public, or to their community, that should weigh significantly in the individual's favour.
- 2) Evidence of reform and rehabilitation and especially an assessment of a low risk of recidivism which has then been consistently demonstrated over time should be given more significant weighting.

#### Question 6

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

**Your answer:**

N/A

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:**

- 1) Yes, the NZCA supports AHPRA and the National Boards publishing additional information in order to give both individuals/practitioners and the public increased transparency on the decision making and criteria used.
- 2) The decisions reached by AHPRA and the National Boards should always provide detail describing how these factors were considered to reach conclusions regarding an individual.

**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:**

- 1) Evidence of reform and rehabilitation and especially an assessment of a low risk of recidivism which has been demonstrated over a significant time (multiple years) should be given more significant weighting.
- 2) As per our response to question 5: Evidence of reform and rehabilitation and especially an assessment of a low risk of recidivism which has then been consistently demonstrated over time should be given more significant weighting.

#### Question 9

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

#### Your answer:

- 1) As per our response to Question 3: The process by which the National Board makes its decisions with regards to relevance of the criminal history should be further detailed eg. process of deliberations, minutes kept and criteria used, detail of justifications, arguments and options considered in the interim and final conclusions reached to be published.
- 2) This is necessary to reassure the public and the individual concerned that proper consideration and due process was used to come to the National Board's conclusions.

#### 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:

- 1) The NZCA does not believe this is a good approach as it undermines the principle of every case being considered on its merits; at a minimum Category A should be limited to the most severe offending conceivable (note "offending" as that relates to the specific criminal actions of the individual as opposed to "offences" which relates to criminal law). An example of a twenty two year old who gets involved in a pub fight which would otherwise have ended unremarkably except that a freak event results in the death of a participant in the fight. As a result the criminal justice system imprisons the twenty two year old being imprisoned for four years for manslaughter. Ten years after release and having displayed maturity, reform, remorse and good behaviour the entire time this individual seeks registration as a competent and well trained health professional. Our position is that this individual should not necessarily be classified via Category A where is offending in a pub at age twenty two is now held against him in his late thirties long after the courts have decided that he has paid his dues to society.

### 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:

- 1) The most extreme and severe offending (as noted by the level of sentencing and in the judge's or magistrate's sentencing remarks) should certainly be a permanent disqualifier from healthcare practice. However that type of offending makes up only a tiny percentage of crimes seen by the courts. The vast majority of crimes seen by the courts are of minor to moderate severity which should not qualify for an automatic unconditional or lifetime ban from healthcare practice.

### 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:

- 1) The NZCA has serious reservations about "serious offences involving hostility to others based on race, ethnicity, age, sexual orientation" being included in category A as a separate class. If that hostility resulted in homicide, acts intended to cause injury or sexual violence, that offending is already included in category A and should not be in a separate class in category A. If those offences did not result in physical violence or physical damage of any kind then it seems that this class opens up the inappropriate possibility of thought crime (criminalisation of inner motivations not expressed in any behaviour), political views, spoken or social media remarks being classified under category A.

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:**

- 1) No, the NZCA was not aware but we are also not surprised at this.

**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:**

- 1) Yes, the public deserves full transparency on these decisions including the grounds upon which the decisions are made.

**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:**

N/A

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:**

N/A

**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:**

N/A

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:**

N/A

**Question 19**

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

**Your answer**

N/A

**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:**

N/A

