



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 These submissions will not be published on the website or elsewhere.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: Pharmacy Guild of Australia

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:

The Pharmacy Guild of Australia (the Guild) is the national peak organisation representing community pharmacy. It supports community pharmacy in its role of delivering quality health outcomes for all Australians. It strives to promote, maintain, and support community pharmacies as the appropriate providers of primary healthcare to the community through optimum therapeutic use of medicines, medicines management and related services.

Community pharmacies are the most frequently accessed and most accessible health destination, with over 428 million individual patient visits annually and many pharmacies open after-hours, including on weekends.¹ This makes community pharmacy an integral part of the primary health care system.

The Guild welcomes the opportunity to respond to this public consultation to help inform a revised draft Criminal History Registration Standard.

In response to Question 1, the Criminal history registration standard mostly gets the balance right, however, an acknowledgment of wrongful convictions based on racial discrimination and bias, for example, should be incorporated into the standard. Ahpra has not made it clear in the factors listed exactly how they would assist health professionals to register if they have previously been subjected to a wrongful conviction or inequity in the justice system where a miscarriage of justice has occurred. This should be included as a factor in the standard.

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:

The information in the standard is appropriate for this purpose.

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?

¹ Vital facts on community pharmacy, Pharmacy Guild of Australia, May 2023, <https://www.guild.org.au/about-us/fact-sheets>

Your answer:

The Board could further expand on examples of what they would consider as “matter of relevance” for Factor 10: “Any other matter that the Board considers relevant”. It could be worth expanding on how the decisions are made and whether a more serious crime would be answerable to a separate deciding committee. For example, in New Zealand, if a person has been imprisoned for 3-months or longer, they are referred to a Professional Conduct Committee within their council.²

Also, for Factor 1: “The nature and gravity of the offence and its relevance to health practice”, it could be helpful to explain, clarify or provide examples of offences that are considered relevant to health practice. However, we also believe that risk to public safety should be the most relevant and important factor for Ahpra to consider when making these types of decisions.

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:

It could be beneficial for the Board to more closely consider offences committed by persons under the age of 18 where the nature of the offence is serious, for example, sexual assault offences. We suggest modifying factor 5 to the following wording or similar: “the board may place less weight on offences committed when the applicant is younger, and particularly under 18 years of age **unless the nature of the crime is more serious.**”

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:

In most states and territories, student health professionals are involved with patients in providing care. Therefore, it could be beneficial to undertake a basic criminal check on students before they undertake a placement or internship. In the UK, students on vocational placements who are above the age of 16 are required to have a criminal check undertaken before commencing placements.³

Also, the board has not made it clear in the list of factors how they would assist health professionals to register if the applicants have previously been subjected to a wrongful conviction based on discrimination and bias, for example with Aboriginal and Torres Strait Islander people and immigrants. This should be included as a factor in the criminal standard.

It would also be appropriate to emphasise, whether in the ten Factors or otherwise, the risk to patient safety as the most relevant consideration for Ahpra when making decisions about how cases are handled. Patient safety should also be the most relevant factor for Ahpra when making decisions to publish or not publish information about a health practitioner’s past suspensions and sanctions (i.e., whether the practitioner presents a risk to patient safety).

Question 6

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

Your answer:

The Guild believes that the criminal history registration standard and the contextual information about how decisions are reached are important for health practitioners and the public, and are crucial to upholding the integrity of the healthcare professions. The Guild supports Ahpra in its aim of modernising and strengthening the standard.

² [2021-May-V2-MS-Criminal-History.pdf \(mscouncil.org.nz\)](#)

³ [Criminal record checks standard | NHS Employers](#)

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:

The Guild supports Ahpra and the National Boards publishing information, including the information in Attachments B and C, to explain more about the factors in Criminal History standard and how decision-makers may consider them. This would help to clarify the process for health professionals and help them to address their own situation better. It would also make the processes more transparent for the public. Any information published should be in simple English and avoid any complex terms like legal jargon wherever possible, to help practitioners and the public understand it.

Simple education tools such as case information (redacted or de-identified) could also be shown as examples to assist health practitioners and the public understand how Ahpra have navigated the decision processes and why they have reached a certain decision.

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 support Ahpra’s recognition in Attachment B that offences involving dishonesty or a breach of trust, such as fraud, are treated seriously. It is important to recognise that many health providers also operate in a commercial environment, and so breaches of Consumer or Competition Law should be treated seriously. These types of offences reflect on the character of the offender who may be putting financial interests above the best interests of their patients, and this behaviour is inconsistent with the values of the healthcare professions.

Attachment C should also be published alongside Attachment B, since it describes the type of offences and what would be considered incompatible with a person being granted or maintaining registration as a health professional. Publicising this information may help to deter persons who are unsuited to healthcare practice from pursuing a career in healthcare, for example persons who have committed offences in Categories A or B.

Question 9

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

Your answer:

Attachment B, point 17 states that “*where the nature of the conduct or behaviour is serious and considered to pose a risk to the public, a decision may be made regardless of the fact there has been no conviction or no finding of guilt.*” This point may need to be clarified to explain that where a judicial decision such as a conviction or finding of guilt has not yet been reached, the decision made by Ahpra for the practitioner to be prohibited from practicing should be a temporary decision. In other words, prohibition from practicing in this situation should be temporary, and if a conviction or finding of guilt is reached, the practitioner would then be subject to a longer or permanent prohibition from practicing.

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:

The Guild broadly agrees with the approach set out in Attachment C of categorising offences by their gravity and nature, and providing examples of offences in each of the categories. However, we believe that a heavier weighting should be placed on a history of repeat offending in general for all types of offences, and not just for specific offences. For example, this could apply to cases of fraud or breaches of Competition and Consumer Law, as well as to driving under the influence of alcohol or drugs.

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:

Yes, where a conviction or finding of guilt has been reached for a practitioner for a serious offence like sexual assault, repeated behaviors of violence, drug and/or human trafficking or crime involving minors/persons with a disability/discrimination (i.e. most of the offences from Category A in attachment C), this should stop the individual from being able to practice, in the interest of public safety, despite having shown remorse or rehabilitation.

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:

The examples in "Attachment C – Possible examples of categories of criminal offences and the application of the Criminal history registration standard" are appropriate. It would also be appropriate to include behaviour that involves a healthcare practitioner threatening another healthcare practitioner for reporting potential misconduct, or for similar issues. Threatening behaviour should be included in the examples to remind healthcare professionals how seriously it is considered by Ahpra's decision-makers.

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 were aware that disciplinary decisions by tribunals about registered practitioners were published to the Ahpra and National Board websites and linked to an individual practitioner's listing on the public register. However, it is less clear what the timeframe is for publishing these decisions (i.e. how old the decisions are), or whether decisions are published after a practitioner's ability to practice has been reinstated, or conditions on their practice have been removed. It would not be beneficial to publish a practitioner's disciplinary history if there are no current restrictions or conditions on their ability to practice.

We recommend that any disciplinary decision published to the register should be both active and relevant at the time that someone, including a member of the public, is checking the register. Also, where a disciplinary decision has been published, the information on the register should clearly explain what the disciplinary decision is, and the reason it has been published. Additionally, we reiterate that risk to public safety should be the most relevant factor for Ahpra to consider when deciding whether to publish a disciplinary decision on the register.

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, a decision to return a practitioner to practice after their registration has been cancelled or suspended for serious misconduct should be published where the law allows. This would allow members of the public to regain confidence in visiting the health practitioner, allow the practitioner's co-workers to feel safer, and allow the practitioner to practice without prejudice.

However, we do not believe that there is a need to add disciplinary history such as "end dates of suspensions, conditions or undertakings", "registration history", "regulatory action history" or "practice names and locations" to the public register where those disciplinary actions are not currently in force. It would only be appropriate to add the end date of a suspension, for example, if the suspension is current. Information displayed in the public register should be current and not historical, it should be verified, and it should not contain any information that could potentially compromise the safety of healthcare practitioners.

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:

The Guild does not believe that health practitioners' disciplinary history should be published on the public register where disciplinary actions or restrictions on a healthcare practitioner are not currently in effect. This is important to ensure that offences in Category C (the least serious offences), for example, do not permanently and unintentionally impact the public's trust in that practitioner.

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:

Greater public awareness is needed around the fact that there is a specialised team at Ahpra to speak with individuals regarding their concerns about a health professional. Apart from expanding on the principles within Ahpra's service charter, the Board could help individuals connect with support services, for example mental health counselling, if necessary.

These resources must be made as accessible as possible on Ahpra's website, and any other government websites that affected patients are likely to visit when searching for such information should clearly direct patients to Ahpra's resources so that they are more likely to be used.

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:

We support Ahpra's intention to increase the level of support for victims of sexual misconduct and advocate for protections for people raising concerns about sexual boundary breaches. We also support Ahpra's intention to improve the cultural safety of its processes for Aboriginal and Torres Strait Islander people who notify Ahpra of a concern or an instance of misconduct. We recommend Ahpra ensures that this public consultation reaches these priority populations and that their contributions are carefully considered by Ahpra.

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:

The Guild supports Ahpra's plan to commission more research on the outcomes of sexual misconduct matters and investigate whether patients are being sufficiently protected and what may need to change. We also support Ahpra's research into reoffending, particularly with regard to sexual misconduct matters.

Question 19

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

Your answer

We recommend Ahpra conducts research into the prevalence and prevention of healthcare practitioners engaging in "white collar crimes" such as fraud and breaching Competition and Consumer Law where they are putting their financial interests ahead of the best interests of their patients. These types of crimes damage the public's trust in healthcare practitioners and demonstrate behaviour that is inconsistent with that of a healthcare practitioner, so it would be valuable to conduct research into this area.

We also suggest that Ahpra compares Australia's standard and accompanying documents with those of other countries with similar health and judicial systems such as the United States, Ireland, the United Kingdom, and New Zealand, for example. This will help to ensure the standard is modern and up to date and meets or exceeds the best practices of comparable countries.

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:

No response.