

Australian Health Practitioner Regulation Agency  
National Boards  
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**Re: Review of the Criminal history registration standard and other work to improve public safety in health regulation**

The Australian College of Nursing (ACN) would like to thank Ahpra for the opportunity to provide feedback on the Review of the Criminal history registration standard and other work to improve public safety in health regulation.

As the national leader of the nursing profession, ACN supports all measures aimed at ensuring the safety and wellbeing of the community. ACN welcomes the Criminal history standard and its aim to ensure a safer healthcare system for all.

ACN sought feedback from members. The following response has been compiled from feedback received.

If you have further enquiries regarding this matter, please do not hesitate to contact [REDACTED]

[REDACTED] Director of Policy and Advocacy at [REDACTED]

Yours sincerely,

[REDACTED]

[REDACTED]

Director – Policy and Advocacy  
Australian College of Nursing

29 September 2023

## ACN Response: Review of the Criminal history registration standard and other work to improve public safety in health regulation

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 These details will not be published in any summary of the collated feedback from this consultation.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: Australian College of Nursing Contact email: [REDACTED] <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: Nursing member organisation
<b>Question C</b> Would you like your submission to be published? <input type="checkbox"/> Yes, publish my submission <b>with</b> my name/organisation name <input checked="" 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:

Overall, ACN members agreed, there appears to be a good balance between the relevance of the offence, time lapse and positive actions taken by the person since the offence.

Members strongly suggest that each of these items are weighted to assist the decision-making process.

### 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:

ACN members suggests there should be recognition of the inequality that exists in our criminal justice system (i.e., over representation of Aboriginal and Torres Strait Islander People). There needs to be some level of flexibility in the process to consider the broader context of a person's life experience appropriately to inform decisions regarding their criminal history.

Examples would be helpful such as the example given of driving offences being relevant for some professions and not others, where an offence would have more weight for one person than another.

### 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:

Members considered that a flow cart would make this process clearer, as would specific examples in a range of health professions.

Also, examples explaining how decisions were made would be beneficial.

Some members were concerned that the guide suggested putting less weight on an offence that has since been decriminalised. They questioned that the previous crime would be considered at

all. If a person had been convicted of the offence of homosexuality, for example, would that still carry any weight today in anyone's opinion? Why would something that is no longer an offence be of concern?

**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, not at this stage

**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:**

Members suggest including reference to the person's mental health and well-being (current and past) as a contributing factor. That may be relevant.

**Question 6**

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

**Your answer:**

The standards would benefit from clearer explanation of each of the standards. Examples would help clarify each point.

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:**

ACN members agree, yes, this approach is supported

**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:**

Members suggest a flow chart and examples would enhance this section, as would a decision-making tree. Allowing some flexibility for the decision-maker in how they might interpret the items enables decision-makers to consider each applicant. Some members were concerned that the level of flexibility might lead to decision-makers being encouraged to make decisions that were not in the public’s best interest.

**Question 9**

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

**Your answer:**

No, not at this stage

**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:**

ACN members agreed, yes, in general. The categories can help guide the decision makers reach a decision based on the severity of the criminal offence. The severity of the crimes is relevant to the potential impact a registered health professional could impose on a patient. In Category A, members suggested changing ‘serious domestic violence offences’ to ‘all offences related to domestic and family violence’. All domestic and family offences are serious. Cybercrimes, hacking, scams, identity theft were all considered crimes with serious implications for a person’s health practitioner to be guilty of.

**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, all offences outlined in Category A.

**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, it is straightforward and self-explanatory.

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, and members mentioned that the cases are sometimes used as training resources in health ethics teaching programs.

**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:**

Members agreed, yes, for full disclosure and public safety.

**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:**

Support impact victim statements – an individual affected by serious professional misconduct by a registered health practitioner may wish to provide a statement about how this has affected them. The question is, is this best facilitated by AHPRA / National Boards or policing? An impact statement collected by the police could be shared as part of the tribunal process. Members do not support the victim/ survivor or having to make two separate statements.

**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:**

No

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:**

Yes

**Question 19**

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

**Your answer**

No not at this stage

**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, potentially. ACN suggests a consistent approach all National Boards.