



## 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 These submissions will not be published on the website or elsewhere.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: Te Poari Whakaora Ngangahau o Aotearoa Occupational Therapy Board of New Zealand (Te Poari)

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:

We note that the standard does not apply to students. However, from time to time we get enquires from students or from the education institute seeking clarification on how a criminal history would be considered at registration.

In considering relevance of criminal history te Poari would consider that the primary consideration is protection of the public. We would recommend that this point is moved to number 1, even though the number does not indicate any priority ranking. Risk to the public may include considering the risks to the reputation and standing of the profession as a whole (such as bringing the profession into disrepute) as well as any risk that a practitioner may pose to an individual.

The other consideration is who is making the decisions? We would hope that a layperson is included in 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:

Te Poari would generally urge caution when considering information which has not resulted in a charge as this information may not have been formally tested.

Te Poari would also urge care when considering charges or convictions from countries where the same issue would not be considered to be at an offence of a similar level in Australia.

It would be important to identify the type of information required by the Board in making its decision. We think it would be helpful to have guidance on who could provide the information (references etc). For example a person of good standing in the community who is aware of the conviction.

### 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:

The standard does not explicitly address how decision-makers will consider health issues that contributed to any to any offending. For example, how criminal history that is related to addiction or mental health issues is considered where those issues have been addressed.

**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:**

**Question 6**

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

**Your answer:**

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:**

Te Poari supports the acknowledgement of how ethnicity, colonisation and historical racism in the justice system has played a part in convictions for some groups. While this standard acknowledges this for Aboriginal and Torres Strait islanders, this should also be considered for other ethnic and cultural groups, both in Australia and other marginalised groups overseas (e.g., NZ Māori).

This can help support diversity in the workforce by reducing institutional barriers.

Will you be identifying the make up of the decision makers?

Will there be an opportunity to meet face to face with the registrant/practitioner?

**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:**

Te Poari recommends that information for applicants and practitioners should include potential pathways and information about how restoration to registration could be achieved following a criminal offence, where appropriate.

**Question 9**

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

**Your answer:**

Is there an appeal option available?

How will you guide against the practitioner moving from an area of low risk to an area of high risk? If working with a particular client population is seen as mitigating risk.

**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:**

This approach does give clarity to applicants about how particular offences are to be viewed.

Te Poari supports the inclusion of offences related to discrimination or harassment as a more serious offence.

No mention is made of alcohol related offenses.

Will the Board be able to call on expertise e.g., health reports from a psychiatrist for example?

**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:**

Te Poari would be wary of creating a blanket rule for offences without the potential for exercising discretion. Te Poari recognises the value of lived experience in some areas of practice where rehabilitation of someone who has a serious conviction can be of value in providing care to others who may be experiencing similar issues.

**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:**

Te Poari considers the role of the regulator in considering criminal history is to protect the public and not to further punish the practitioner. However, it is acknowledged that preventing registration may be viewed as a further punishment.

We would suggest that other levels of regulatory enforcement should also be considered which may mean that the practitioner may be safely registered on a limited basis or subject to particular conditions.

**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, Te Poari is aware of this information and reviews it as appropriate.

Would be helpful to see any publishing criteria.

**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:**

Transparency in the decision-making process is generally acknowledged to build trust in the system.

Te Poari would recommend that decisions should be publicly available, but this information should be regularly reviewed to ensure that it is still relevant. It may be that a period of good standing could lead to the removal of this information from public view.

How the information is published should be explained – on the register or within other media – newspapers etc.

**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:**

**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:**

Te Poari recognises the impact that the regulatory process can have on a reporting person and supports Ahpra's recognition of this.

Te Poari suggests that supports such as 'Navigators' may be appropriate to guide individuals through the regulatory process, particularly for those who are vulnerable or may have barriers to traditional communication methods. Ideally, this would be at no charge to those affected and should be offered through an independent body to prevent the perception of bias. The support available should be inclusive and respectful of the persons ethnic and cultural identity.

**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:**

The provision of transparent information about the process which includes information about the possible outcomes, how long the process is expected to take, what is expected from the individual, and how they will remain informed is helpful so that people are informed.

Te Poari would recommend that all those who are affected by the process should be able to access support, not just those who are affected by sexual misconduct.

Support or supervision for those who are involved in the decision-making process. The ability to debrief especially when the information provided can be serious, challenging, and emotive. Just as you have suggested support for those affected by the misconduct the same measure should be afforded to those who have to deal with the information and process.



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:**

We would support research that considers the impact of regulatory standards.

**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 well as commissioning internal research, te Poari would recommend reviewing research from other areas where similar risks may be present e.g., Education or Social work.

Research considering the effectiveness of current communication methods may also be of benefit in considering how the public are best informed.

**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:**

Where a conviction has been investigated and addressed by Ahpra, the sharing of this information (with appropriate consent) would be relevant to other regulators (within Australia and other jurisdictions) and may help prevent the re-litigation of issues which have been already been addressed.