

Consultation report: Phase One - Review of the Criminal history registration standard and other work to protect public safety

June 2024

About us

The Australian Health Practitioner Regulation Agency (Ahpra) works with the [15 National Boards](#) to ensure the community has access to a safe health workforce across all professions registered under the National Registration and Accreditation Scheme. Public safety is always our number one priority. Every decision we make is guided by the Health Practitioner Regulation National Law (the National Law) as in force in each state and territory.

Background

As part of our commitment to improving public safety, in February 2023 Ahpra outlined a [blueprint to improve public safety in health regulation](#) (the blueprint for reform). This work includes a range of reforms to better protect patients from serious misconduct, including sexual misconduct, by registered health practitioners. A review of the *Criminal history registration standard* (the criminal history standard) formed part of this work.

In August 2023 we invited early feedback from stakeholders before drafting any possible changes to the criminal history standard. We also sought feedback on ideas for material to better explain how the criminal history standard works, and some of the other work being carried out as part of the blueprint for reform.

How we consulted

Public consultation opened on 3 August 2023 and closed on 29 September 2023. Ahpra invited our stakeholders, including registered health practitioners, members of the public, co-regulators, other health system partners, other regulators, and pertinent organisations, such as those working with victim-survivors of crime, to give feedback on the criminal history standard and the other work being done.

To raise awareness of the consultation we used targeted emails, National Board newsletters, a social media campaign and targeted messages to the international regulatory community.

Submissions were accepted via an online form and email. Anyone who wanted to provide their submission in an alternative format was invited to contact us.

Who we heard from

We received 84 submissions.

Source	Number of submissions
Members of the public	7
Health practitioner	23
Professional association	15
Professional college	7
Support service organisation	2
Government	7

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.

Source	Number of submissions
Insurer	3
Co-regulator	5
Other regulatory body	6
Health system stakeholder	3
Student	2
Other	4
Total	84

What we heard

Overall

Submissions recognised the difficulty of balancing a practitioner's right to privacy and their ability to continue practising with ensuring the public were protected and supported if they made complaints about misconduct by registered health practitioners.

Almost all submissions agreed that we needed to provide more information about and better explain the role and purpose of the criminal history standard. We received helpful suggestions on what this information should include and how the criminal history standard might be improved. Many people also wanted us to explain how the standard applied to registered students.

Responses were divided as to whether it was a good idea to draft a list of criminal offences that would likely affect a health practitioner's registration. Most people agreed that the examples provided in Category A were offences that should impact on a decision about a health practitioner's registration but said there needed to be a better explanation than just a list. Other people thought the list idea was a bad one and that decision-making was better if it took a case-by-case approach.

Similarly, submissions were divided as to whether more information about a practitioner's disciplinary history, including publishing decisions made to return a practitioner to the public register (registration reinstated), was a good idea. The balance of a right to privacy with a right to know was recognised as an important but difficult part of these decisions.

More support for people impacted by professional misconduct of registered practitioners received a largely positive response among submissions. However, many noted it was important that this support was separate from investigating the professional misconduct and that the effect of regulatory processes on practitioners should also be considered.

Almost all submissions agreed it was appropriate for regulators to carry out research. Many suggestions for research were received that we might consider doing in the future.

Focus area one – The criminal history standard

We wanted to hear what people thought about the criminal history standard before drafting any possible changes. In particular, we asked whether stakeholders considered that the current version of the criminal history standard got the balance right in setting out what decision-makers needed to consider in deciding if someone with a criminal history should be registered or should stay registered. Considerations currently in the standard include:

- the relevance of the offence to practice
- the time since the criminal offence, and
- any positive actions taken by the individual since the offence or alleged offence.

Overall, most stakeholders were supportive of the factors outlined in the current criminal history standard and agreed that it largely got the balance right between protecting the public and an individual's right to work in a registered health profession.

What's important to our stakeholders?

- The criminal history standard should better explain its role and purpose.
- Provide more information on what practitioners need to do to meet the registration standard.
- A better explanation of what practitioners must disclose and when, specifically why there may be differences in relation to this, such as the need to disclose 'minor' offences in some states and territories.
- What practitioners need to do to show that, despite a criminal history, they do not pose a risk to the public and should be registered.
- Recognise the disproportionate representation of Aboriginal and Torres Strait Islander people in the Australian criminal justice system and ensure all processes are culturally safe for Aboriginal and Torres Strait Islander people.
- Provide more information about the factors within the standard and how they work in practice.
- Provide a better explanation of what the process is when the standard is applied to an individual practitioner's criminal history.
- Ensure the standard is applied in a way that makes the public safe.
- Ensure the standard is applied in a way that is fair to registered health practitioners and does not 're-punish' them.

Focus area two – More information about decision-making

We think we can better explain how the criminal history standard works in practice and we asked for feedback on some of our ideas about what this type of information might look like.

Almost all submissions agreed that better and clearer information on how decisions are made and about how the criminal history standard is applied was needed. Most of these submissions agreed that the information set out in Attachment B of the consultation paper was useful information.

Responses were mixed about the idea of a list of criminal offences that would impact on a decision about whether a person should be registered or not, such as that outlined in Attachment C. Some people thought a list would prevent decision makers from considering all the circumstances that led to a criminal history and thought that there might be some rare circumstances where even very serious offending might not necessarily mean a practitioner was a risk to the public. Others thought that there were some offences that should mean a practitioner cannot practise their profession, regardless of the circumstances of the offending.

What's important to our stakeholders?

- Provide more information and examples of how decisions are made.
- Provide an explanation about how 'spent' convictions and offences resulting in no conviction being recorded are considered, and how fairness is ensured for practitioners.
- Offences against children, sexual offences, violence, homicide offences, dishonesty, and offences that involved taking advantage of vulnerable people are considered serious offences that impact public safety.
- Decision-makers should be able to consider each application and the individual circumstances.
- Provide a better explanation of how the approach outlined in Attachment C will work in practice if the National Boards choose to adopt this approach.

- Family or domestic violence offences should be given greater consideration.

Focus area three – More information about the decisions we make.

As part of the blueprint for reform, Ahpra is looking at whether more information could be published on the public register about practitioners who are returned to the register after having their registration cancelled or suspended because of professional misconduct (reinstatement decisions). We wanted to hear what information might be important about these decisions and what other information would be important to publish.

Most people were aware that information about registered practitioners was available on the public register, although a number of responses indicated that they were not clear about what was published. Some people thought we published unproven allegations or a history of notifications about a practitioner as well as tribunal decisions.

Some responses to this section said they believed strongly in the public's right to be aware of a practitioner's disciplinary history. Others said they supported publishing information as it increased transparency about registration decisions.

Responses who were opposed to publishing these decisions said that if a registered practitioner had addressed all of the concerns from the finding of misconduct and were considered safe to return to practise, the practitioner should be able to put this incident behind them and their past history should remain private. Some responses that did not support publishing decisions at all said that if decisions had to be published, they supported only publishing reinstatement decisions as they were important to providing a complete story of the practitioner's conduct and how the practitioner had addressed the concerns.

[What's important to our stakeholders?](#)

- More information about what information is and is not published on the register.
- Being able to see information about the disciplinary history of practitioners.
- That practitioners are able to put their past conduct and mistakes behind them and keep this information private.
- That the public can see how practitioners who have had findings against them have addressed the concerns about this and are now safe to practise.

Focus area four - Supporting people affected by professional misconduct.

We asked for ideas about the work we are doing to support people affected by professional misconduct by registered health practitioners.

Most submissions on this issue recognised the importance that people who had been affected by professional misconduct be supported to raise complaints and receive support through the process to protect them from further trauma. We received many helpful suggestions about what this work could encompass, including two comprehensive submissions from specialist support services for survivors of sexual assault. We also heard from practitioners and professional organisations about the need to balance the rights of practitioners and ensure support is also offered for practitioners involved in the process.

[What's important to our stakeholders?](#)

- Using trauma informed approaches and trauma informed training for staff.
- Improving how we explain the process to notifiers, and regular updates for notifiers as matters progress.
- Ensuring any support offered is independent from investigations by Ahpra and the National Boards.
- Prioritise referrals to existing third party support services, in particular specialist support services.
- Advocating for the use of impact statements.

Research about professional misconduct

We asked for feedback on our research ideas and for any suggestions that might improve our work.

What our stakeholders told us

Most people considered it appropriate to carry out research into sexual misconduct by health practitioners and whether outcomes of disciplinary actions are protecting the public. There was support for the proposed areas of research, including to look at what our experience and data can tell us about risks of practitioner offending and what conduct affects public confidence in health professionals.

Many submissions provided helpful suggestions of areas that may be considered for future research, including looking at the impact of professional misconduct and subsequent investigations and processes on both notifiers and practitioners.

What we are doing next

Review of the criminal history registration standard and information about decision-making

We will consider all the feedback and suggestions received through this consultation before drafting suggested changes to the criminal history standard based on what we heard. We will also review the information currently published about criminal history and draft some possible changes. From the range of views received in this consultation we have identified that we should:

- Better explain the role and purpose of the registration standard for criminal history.
- Better explain how the standard works in practice; including what decision-makers consider and what the process for decision-making is.
- Provide more information on other aspects of our work that relate to the criminal history standard; including how the standard relates to decisions made after registration including registration renewal and offending by practitioners that occurs after they are registered.
- Provide clearer information to practitioners not only on what they need to declare about their criminal history but why they must declare it and why there are differences depending on when they are making these declarations (at registration, at renewal and the obligations to declare some criminal offences contained in the National Law, for example).
- Provide more information to students enrolled in approved programs of study and education providers about the criminal history standard.
- Ensure our processes in applying the criminal history standard are culturally safe for Aboriginal and Torres Strait Islander people and recognises the factors behind overrepresentation of Aboriginal and Torres Strait Islander people in the Australian criminal and youth justice systems.
- Ensure the criminal history standard and decision-making recognises the impact of disadvantage in society, such as that experienced by culturally and linguistically diverse communities.

Other work outlined in the blueprint for reform.

It was encouraging to see strong support in the submissions for Ahpra and National Boards to progress other work in the blueprint for reform, including publishing information about decisions made about serious misconduct, better support for people who experience professional misconduct by a registered health practitioner and research about professional misconduct.

Jurisdictions are considering [proposed reforms to the National Law](#), including the approach to publication of reinstatement decisions across all states and territories, and the feedback from this consultation has been shared with jurisdictions to highlight the broad range of views from the public, practitioners and organisations.

To better support notifiers, we have started publishing more information about the support available through our [notifier support service](#), and will continue to build on this information.

We have published a dedicated webpage about this broader [work to protect patients from sexual misconduct in healthcare](#) and will continue to provide updates as this work progresses.