

SUBMISSION

AMA Submission to consultation on the review of the Criminal history registration standard

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The AMA welcomes the opportunity to comment on the review of the Criminal history registration standard and other work to improve public safety in health regulation. This is a very sensitive area where the rights and expectations of practitioners and patients alike needs to be carefully balanced.

As the provision of medical care requires the highest levels of trust between patients and their doctors, patients need to know that their practitioners will practice in a way that justifies their trust and the very high respect that the community places in them.

At the same time practitioners should not be punished in perpetuity and in a disproportionate way for relatively minor offences committed long ago.

There is no black or white answer that can be applied in an algorithmic way to the circumstances and criminal history of each practitioner and it is important that National Boards are able to exercise discretion in a way that is proportionate to the circumstances and context pertaining to each practitioner's individual history. We note also that under the National Law, the definition of criminal history not only applies to convictions but to charges that may have been laid against them at any time – even if no conviction is eventually recorded. This provides National Boards with a much wider range of information to consider – and therefore a commensurate responsibility to apply their discretion carefully.

The AMA considers that the current wording in the Criminal history registration standard is generally appropriate, subject to the comments below. We support the provision of additional guidance to decision-makers as to how the standard (Attachment B) can be applied; as well as the grouping of particular offences (Attachment C) that may be used to determine whether a practitioner should be able to be registered.

Whilst we are supportive of the above guidance, we reiterate the need for decisions about registration to be proportionate to the seriousness and nature of the offence, length of time since the offence, and age at time of committing the offence.

The AMA also supports the need for the standard to take into account the background and context of applicants' criminal history – particularly as it may apply to Aboriginal and Torres Strait Islander peoples. As set out in Paragraph 6 of the Consultation paper, Aboriginal and Torres Strait Islander people are overrepresented in the criminal and youth justice systems – often as a result of systemic racism, inter-generational trauma and colonisation.

Closing the many health gaps will require a significant increase in the number of Aboriginal and Torres Strait Islander health practitioners and it is important that the life history and context of an individual is appropriately taken into account if we are going to be able to increase the number of Aboriginal and Torres Strait Islander health practitioners, including doctors.

Publication of history after return to practice

This area is particularly sensitive and has been highlighted in public discourse as a result of a number of high-profile cases – particularly involving sexual boundary offences and offences against young and or otherwise vulnerable people.

Again, there is a need to carefully balance the rights of the public to safe health care and those of health practitioners who have been subject to regulatory action, including suspension of registration.

Health practitioners who have completed their period of suspension and have been allowed to resume practice will have been required to demonstrate that they no longer pose a threat to the public. They should have a reasonable expectation that, once they have served out both the criminal sentence, together with the additional punishment imposed from the suspension of their registration, and have been found to be safe to return to practice, that they will not be punished in perpetuity by having their criminal history published as part of their registration information.

In saying this, the AMA notes that the decisions of tribunals to suspend practitioners (and any related criminal court proceedings and decisions) are in the public domain and remain on the public record in perpetuity and remain searchable by members of the public. We also note that in some jurisdictions, where reinstatement decisions are made by tribunals, that this information is publicly available in perpetuity.

Given the highly sensitive nature of these decisions, the AMA welcomes further exploration and consideration being given to the type of information that is and should be published in relation to practitioners who have engaged in serious misconduct and have completed their period of regulatory action under the National Law. It will be important to ensure balance, sensitivity and proportionality is maintained in whatever approach is adopted going forward.

Support for people who experience professional misconduct by a practitioner

The AMA is supportive of greater support being provided to people who experience professional misconduct from a health practitioner – again recognising the need for balance to ensure the rights of all parties are maintained.

The AMA recognises that the regulatory process itself can be additionally traumatising for people who have already been subject to the harm arising from the misconduct. Enabling a person who has been subject to misconduct at the hands of a practitioner express the impact of the misconduct on them could form part of the healing process as well as inform (in a deidentified form) the wider community of health practitioners of the impact of unacceptable conduct.

Proposed research about serious misconduct

The AMA considers the proposed areas for further research to be appropriate.

Conclusion

In conclusion, the AMA reiterates the sensitivity of this area and the need for the rights and expectations of practitioners and patients alike to be carefully balanced and calibrated.

Patients need to know that their practitioners will practise in a way that justifies their trust and the very high respect that the community places in them, whilst practitioners should not be punished in perpetuity and in a disproportionate way for offences committed long ago and/or where the individual has served the punishment and no longer poses a threat to the public.