

SUBMISSION

Monday, 29 July 2024

AMA submission to consultation on the review of the criminal history registration standard

The Australian Medical Association welcomes the opportunity to comment on the review of the criminal history registration standard. We appreciate the changes made based on earlier feedback provided by the AMA to this review. As with all aspects of the Health Practitioner National Law (National Law), it is essential Ahpra balances the protection of the public with the rights and expectations of practitioners. The provision of medical care requires the highest levels of trust between patients and their doctors. Patients need to know their practitioners will practise in a way that upholds trust and community respect.

Revised criminal history standard

The content, language and structure of the revised criminal history standard is reasonable, clear and relevant. It is a reasonable approach for the criminal history standard to remain as a set of high-level principles, with a separate document pertaining to how the standard is applied. Like many areas, a person's history is judged on individual merits, so a high-level statement allows for reasonable interpretation. The distinction between the documents denotes the principles the National Boards consider when assessing the criminal history of its applicants and current practitioners, so public safety is at the forefront of consideration. In the AMA's view:

- the information adequately explains how and when the criminal history standard applies and what the requirements of the standard are
- the standard appropriately and fairly balances the rights of the public to access safe healthcare against the rights of practitioners who have been subject to regulatory action.

We note also that under the National Law, the definition of criminal history includes any charges that may have been laid at any time, even if no conviction is 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 would strongly support the National Health Practitioner Ombudsmen reviewing the use of these powers in the near future to ensure this broad remit is used judiciously.

The Standard cannot reasonably cover information about all the types of criminal offences and impacts on registration. To address this, information should be provided on how to obtain further advice. For example, providing practitioners with the option of contacting Ahpra or a lawyer to obtain specific information will provide transparency and individualised advice for practitioners.

Do you support the approach to emphasise there are some offences that are usually incompatible with registration rather than including a list of 'disqualifying offences'?

The AMA supports this approach. There is no black-and-white algorithmic manner to apply a standard procedure to assess criminal history of each practitioner. A list of disqualifying offences will not allow the National Boards to exercise discretion and consider individual circumstances. The AMA believes practitioners should not be punished in perpetuity and in an unfair way for relatively minor offences committed a long time ago. 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. This is to minimise potential practitioner distress from the regulatory process. For those applying for registration, there should be clear information provided that ensures new registrants are aware that certain offences are likely to mean they are not able to be registered. The current drafting of the Standard is ambiguous on matters that occurred prior to becoming registered.

Explanatory material

Overall, new Appendix C is supported by the AMA as it provides additional guidance to decision-makers as to how the standard will be applied. To create clarity and greater certainty for practitioners, the AMA recommends adding a longer, more robust series of examples. The AMA also recommends adding more information about offences and the resultant outcomes and the implications on practitioners' registrations. Appendix C should include examples relating to fraud, white collar crimes and breaches of Consumer Law.

Impacts on Aboriginal and Torres Strait Islander people and those experiencing vulnerability or disadvantage

The AMA appreciates the feedback Ahpra has used from our previous submission regarding the experiences of Aboriginal and Torres Strait Islander peoples. It is appropriate the Standard acknowledges the societal impacts of racism and provides opportunity for judgement on individual merits. To enhance the registration standard for Aboriginal and Torres Strait Islander peoples, Appendix C should stipulate how the process will be fairer, and what measures Ahpra will take to demonstrate this procedural fairness. This will provide greater clarity and transparency and help ensure Aboriginal and Torres Strait Islander people seeking registration, feel safer and have more trust with this process. However, there are offences incompatible with registration which must be upheld as well.

The AMA defers commentary to more appropriate organisations such as the Australian Indigenous Doctors' Association and the National Aboriginal Community Controlled Health Organisation on whether the documentation presented poses any negative impacts on Aboriginal and Torres Strait Islander peoples. We note there may be some negative impacts on practitioners who experience mental health issues.

Other comments

On page 38 of the consultation paper: "The more serious your criminal history is, and/or the more relevant your criminal history is to health practice, the stronger the evidence you will need to provide the Board to demonstrate that your criminal history is no longer relevant to who you are now."

The AMA recommends the inclusion of general examples to assist practitioners in understanding the types of evidence required. For example, practitioners could be required to provide:

- a statutory declaration outlining the circumstances surrounding the criminal offences that have been declared
- any remedial action taken since
- court notice or jurisdictional outcome two references who can independently attest to the practitioner's current character.

This will assist the National Boards to make decisions around whether to reinstate or impose restrictions.

The AMA would like to see the development and inclusion of a frequently asked questions component.

Conclusion

The AMA reiterates the sensitivity of this area and the need for the rights and expectations of practitioners and patients to be carefully balanced and calibrated. Patients must be confident their practitioners will practise in a way that ensures trust and upholds community respect. Equally, practitioners should not continue to be penalised for historic offences where Ahpra is satisfied they no longer pose a threat to the public. Doing so has a disproportionate impact on the livelihoods and mental health of practitioners and unnecessarily reduces the pool of practitioners.

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