



australian nursing federation

17 August 2012

Mr Martin Fletcher
Chief Executive Officer
Australian Health Practitioner Regulation Agency
GPO Box 9958
Melbourne VIC 3001
criminalhistoryconsult@ahpra.gov.au

Dear Mr Fletcher

National Boards consult on international criminal history checks

Thank you for providing an opportunity for the Australian Nursing Federation (ANF) to participate in the National Boards' consultation on international criminal history checks used to assess applications for registration as a health practitioner in Australia.

With a membership of over 220,500, the ANF is the largest professional and industrial organisation in Australia for nurses, midwives, and assistants in nursing. Our members provide clinical care in all settings where health and aged care is delivered, across all geographical areas. The ANF has a genuine interest in all aspects relating to the registration of health professionals, and our members have a particular concern for the protection of the public for whom they provide care, through the application of regulatory standards.

The ANF was, and continues to be, a strong supporter of the move to a national registration and accreditation scheme for health professions in Australia. Given our commitment to both the success of this important scheme, and to provision of safe, competent care, the ANF welcomes this current consultation by the Australian Health Practitioner Regulation Agency (AHPRA), on behalf of the National Boards.

As an overarching statement the ANF is fully supportive of a nationally consistent standard across all the regulated health practitioner groups, on international criminal history checks. A national approach, applied consistently by all regulated disciplines, provides strength to the registration standard and clarity in guidance for everyone involved in the processing of applicants – nationally and internationally – as well as for applicants themselves.

In reviewing the options outlined in AHPRA's public consultation paper, the ANF has taken into account in our response the fact that "Boards must balance their responsibility under the National Law to protect the public, with the need to ensure there is no unnecessary red tape in assessing and managing applications for registration as a health practitioner in Australia". We also acknowledge that this is a difficult and complex issue and there may not be one absolutely 'right' process.

However, the solution we suggest provides for a 'hybrid' of the options in an attempt to share responsibility between the applicant and the regulator, in demonstrating accountability to the Australian public.

Overview of AHPRA options

The ANF provides the following comments against the AHPRA options:

Option 1: Applicant declaration only

As the status quo this approach involves a low level checking and a low level of action by AHPRA. The ANF considers this current arrangement is not sufficient to demonstrate accountability to the Australian public.

Option 2: Applicant provides criminal history clearance evidence with application

Under this scenario the onus is on the applicant to take action. Essentially it is not resource intensive for AHPRA. It does however, mean that there may be a delay in the processing of applicants, during the time the applicant is waiting for a response from the relevant overseas jurisdiction to gain a criminal clearance certificate (CCC).

Option 3: AHPRA obtains clearance/information from jurisdictions outside Australia when processing application

This option places the onus on AHPRA to obtain the information and so is human and finance resource intensive for AHPRA. On the face of it this option appears to be a rigorous process, however, it doesn't circumvent the possibility of corruption in processing of character checks in the country from which a CCC may be required. It also relies on AHPRA being able to develop a trust relationship with the authorities from jurisdictions outside of Australia.

Option 4: Applicant makes declaration and AHPRA undertakes random sample audit

This option combines Option 1 with a random audit process by AHPRA. While this option is attractive it is based on the possibility of AHPRA being able to develop a trust relationship with the relevant overseas authorities. This option is human and finance resource intensive for AHPRA.

ANF preferred position

The preferred position of seven State and Territory Branches of the ANF is for a hybrid of Option 2 and Option 4. That is, the applicant provides criminal history clearance evidence with application and AHPRA undertakes random sample audit. The preferred option of one Branch is for Option 4 as proposed in the consultation paper.

Rationale for choice of a hybrid Option 2 and Option 4:

- There is a shared responsibility for both the applicant and AHPRA. The impost on AHPRA is diminished, however, while still being able to demonstrate a level of accountability to the Australian public.
- For temporary residents/visa applicants applying for registration: applying Option 2 would potentially capture the subclass 457 visa cohort and other temporary work related visa holders, for whom the current process of having to provide a CCC to the Department of Immigration and Citizenship (DIAC) does not always apply. In conjunction with Option 4 this would provide an additional level of encouragement to obtain genuine documentation with the risk of an audit.

While Option 2 makes an impost on the applicant, the numbers are small. Information obtained from DIAC* indicates an approximate number of 3,000 subclass 457 visas having been granted to international nurses in the last financial year.

- For permanent residents/visa applicants applying for registration: DIAC already undertakes the process of obtaining CCC's for any applicant who had resided for 12 months or more in a country outside of Australia (in the last 10 years) (essentially Option 2). Adding a hybrid of Option 4 to this process would provide an additional level of encouragement to obtain genuine documentation, with the risk of an audit.
- There is merit in an audit system as the applicant knows a process is in place for checking the veracity of documentation they have submitted. This would serve as a deterrent for those who have a criminal history.
- A positive knock-on effect for temporary visa holders is that they may choose to apply for permanent residency sooner than they might have otherwise intended. This is due to the fact that they can bypass the process of having to apply for the CCC again, potentially submitting the same clearance/s as part of their application for permanent residency to DIAC (DIAC accepts CCC for up to 12 months from their date of issue). The ANF has always supported the supplementary role that skilled migration has in helping to meet Australia's skill needs, although our preference is for this to happen primarily through permanent migration where migrants enter independently. The ANF would welcome any initiative which encourages temporary visa holders down this pathway.

Including Option 2 in our preferred option does have a consequence of introducing possible delays in obtaining information from overseas authorities, as mentioned previously. Therefore, we suggest that AHPRA encourages applicants to ensure that they obtain all necessary CCC's prior to lodging their application for registration, ensuring applications are complete and decision ready. We further suggest that AHPRA do this through educating applicants in preparation of lodgement of their application for registration. This could be via the website or promotional material, providing very clear instructions of their registration requirements ahead of application. If applicants are 'front end loaded', this will minimise processing times both for the applicant and for AHPRA.

We acknowledge that there are countries which would be known to present difficulties in obtaining information for some applicants, for example due to fear of persecution. We suggest that AHPRA would need to build in to the process an element of flexibility for this cohort of applicants, such as a possible waiver provision. The ANF is aware that DIAC applies a similar level of flexibility in cases such as these; we recommend that AHPRA consult with DIAC on this matter. Due to DIAC's experience with character checks (criminal clearance certificates) they are in the best position to determine and advise on cultural differences in relation to assessment of character and criminal activity checks across various countries of origin, of applicants.

Another issue for consideration is the manner in which the National Boards will interpret criminal convictions from overseas. For example, an offence of marijuana possession in some countries might have incurred a prison sentence, whereas the same offence in Australia is often penalised less harshly than some traffic offences. Conversely, unlawful acts in Australia might not be unlawful in some other countries. AHPRA would, therefore, need to consider the different legal systems in place in various countries, with potentially vastly different laws, penalties and appeal processes than apply within Australia.

While the ANF acknowledges it is not possible to have a system which is 100% fool proof, we consider a hybrid of options 2 and 4 provides the best scenario for mitigating risk.

Fundamental to the success of a refined process for international criminal history checks for assessing applications for registration as a health practitioner will be the provision of clear directions for such foreign qualified applicants (providing supporting documentation such as an application ready check list); and, investment in education programs for all personnel involved both in Australia and offshore.

While the nursing profession is forecast by Health Workforce Australia to continue to experience shortages for the future, it is the view of the ANF that a carefully considered approach should be taken to reduce the gap between supply and demand of nurses. One aspect of this, migration of foreign registered nurses to Australia, must be accompanied by the implementation of mechanisms for rigorous criminal history checking, to ensure the Boards' responsibility of protection of the public is enacted.

Should you require any additional information or wish to discuss this matter further please contact Elizabeth Foley, Federal Professional Officer, on (03) 9602 8500 or elizabethf@anf.org.au.

Yours sincerely,



Lee Thomas
Federal Secretary

**Source: Department of Immigration and Citizenship, 2012 (BE5627.02) and (BE5627.03)*

The industrial and professional organisation for nurses and midwives in Australia

Canberra Office

Unit 3, 28 Eyre Street Kingston ACT 2604 Australia
PO Box 4239 Kingston ACT 2604 Australia
+ 61 2 6232 6533 (T) + 61 2 6232 6610 (F)
anfcanberra@anf.org.au

Melbourne Office

Level 1, 365 Queen Street Melbourne VIC 3000 Australia
+ 61 3 9602 8500 (T) + 61 3 9602 8567 (F)
industrial@anf.org.au
anfmelbourne@anf.org.au

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anj@anf.org.au ajan@anf.org.au
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