

Australian and New Zealand Podiatry Accreditation Council (ANZPAC) response to public consultation paper on international criminal history checks

ANZPAC welcomes the opportunity to provide feedback on the proposed amendments to the Australian Health Practitioner Regulation Agency (AHPRA) international criminal record checking procedure.

In providing this feedback we aim to balance the requirements for public protection with the need for responsive and timely application and assessment processes for health practitioners seeking registration in Australia.

Critical issue – Policy versus Legislation

The 2010/11 AHPRA and National Boards Annual Report figures identify that only 0.009% of applicants will have an offence recorded that has the *potential* to effect eligibility for registration.

It is important that any policy going forward takes a form that recognises all options available under the *Health Practitioner Regulation National Law Act 2009* (National Law) thus allowing an “applicant friendly” process that is in proportion to the threat to public safety.

The current practice is a declaration by the applicant at time of application combined with an onshore CrimTrac check. Anecdotal evidence suggests that AHPRA staff are currently advising applicants that the onshore CrimTrac check is the only option available to meet the requirements of the National Law. This may be AHPRA policy, however this policy is not fully recognising all options available to applicants under the legislation.

Section 79 of the National Law provides that:

1. Before deciding an application for registration, a National Board must check the applicant’s criminal history.

2. For the purposes of checking an applicant’s criminal history, a National Board may obtain a written report about the criminal history of the applicant from any of the following—

(a) CrimTrac;

(b) a police commissioner;

(c) an entity in a jurisdiction outside Australia that has access to records about the criminal history of persons in that jurisdiction.

Crucially S79(2) prescribes that a National Board “**may obtain a written report about the criminal history of the applicant from any of the following.**”

The current practice of mandatory onshore CrimTrac checking as the **only** option available to applicants is specifically excluding legislative options available under the National Law.

It is important that AHPRA consider all options available under the National Law that would provide a fairer and more streamlined process for applicants whilst fulfilling their obligations to the National Law and public safety.

Specific comments to the possible options provided within the consultation paper are provided below.

Option 1 - Status Quo Declaration and CrimTrac check onshore

Given that option 1 leads to significant delays and costs to the applicant, we therefore are of the view that the status quo is not sustainable going forward. Feedback from applicants indicates intense frustration and confusion over the current practice which is extremely unclear on the AHPRA website.

Option 1 requires that applicants present to an AHPRA office on arrival in Australia and then wait two weeks without working whilst AHPRA conduct an Australian Police Check through CrimTrac. This occurs even when the applicant fulfils the requirements of the National Law by presenting a Criminal Clearance Certificate (CCC) personally at AHPRA on arrival.

This policy leaves the fully committed applicant in the situation where by they have met the character requirements of the Department of Immigration and Citizenship (DIAC), gained entry to the country and been assessed as eligible for registration on the basis of evidence provided (including a certificate of good standing), yet they are still unable to work and are expected to fund themselves in Australia for two weeks whilst AHPRA conduct the additional onshore CrimTrac check.

Given that the applicant has only been in the country for a matter of days any onshore police check for Australian based offences has very limited validity.

Option 2 – Candidate supplied Criminal Clearance Certificate (CCC)

Option 2 satisfies S(79) of the National Law by meeting S(79)(1) and S(79)(2)(c) thus negating the need for an onshore CrimTrac check. Therefore the only outstanding requirement for an applicant on their arrival to Australia is personal presentation and proof of identity at an AHPRA office. In our view this is a far fairer process for an applicant.

This option places the onus on the candidate to provide evidence of their history in a similar way that the applicant provides evidence for their visa application. This option would also allow the applicant to obtain a document for the use of AHPRA and DIAC as required. Many of the applicants will be required to obtain clearances when they identify their travel history during the visa process, so any synergies between AHPRA and DIAC requirements should be encouraged as they are of benefit of all parties.

Any time delays under this option are encountered before lodgement not after arrival in Australia. The cost to the applicant in paying for a CCC is minimal when compared to the costs of not working whilst in Australia waiting for a CrimTrac report.

This option also provides the additional advantage of encouraging applicants to provide “decision ready” applications thus reducing the processing time for AHPRA.

AHPRA would simply go through the process of obtaining a file of sample clearances from the various jurisdictions to allow comparison if the authenticity of the document was queried. DIAC would be able to assist in this regard as they have a similar process.

It is important to keep in mind that the process of assessment includes the provision of a Certificate of Good Standing from the relevant overseas registration body that would indicate any reportable clinical concerns.

DIAC also ensure that character requirement is met and any individuals of concern will undergo more rigorous assessment.

Option 3 - AHPRA Obtaining Overseas Checks

This option would seem to be completely unworkable. AHPRA staff are better tasked to processing decision ready applications under Option 2.

Liaison with overseas authorities in order to lodge applications would be both costly and given the privacy issues extremely difficult.

Option 4 - Declaration and Random Sample Audit (RSA)

In our opinion this option does not meet the requirements of the National Law. Section 79 of the National Law provides that:

1. before deciding an application for registration, a National Board must check the applicant's criminal history.

Therefore every applicant must have his or her criminal history checked in a prescribed manner. An RSA would therefore not allow AHPRA to meet their obligations under the National Law.

In addition given that the 2010/11 AHPRA and National Boards Annual Report figures identify that only 0.009% of applicants will have an offence recorded that has the potential to effect eligibility for registration, a random audit would be statistically unlikely to be of benefit.

Recommendation

After review of the options presented in our view Option 2 provides the fairest outcome for the applicant, allows AHPRA staff to focus on processing "decision ready" applications rather than chasing documents and fulfills AHPRA's requirements under the National Law.

We would submit that a combination of a CCC and Certificate of Good Standing at the time of application, when combined with a DIAC Character Clearance for the applicant's visa are sufficient to meet the requirements of the National Law and to protect the public.

We would strongly encourage AHPRA to adopt Option 2 as it is the only option that fully utilises the options available under the National Law thus allowing an applicant friendly process that is in proportion to the threat posed to public safety.