

Nursing and Midwifery Office, Queensland

REVIEW OF CONSULTATION PAPERS, STANDARDS AND GUIDELINES

Template for Comments

Date	16 August 2012
Consultation Paper: International Criminal History checks	
Principle	Comments
Public Interest	<ul style="list-style-type: none"> • Criminal History checks on international health professional's poses significant public interest in Queensland in the area of patient safety. The Queensland Public Hospitals Inquiry is a point in reference, this Commission of Inquiry arose out of complaints relating to Dr Jayant Patel at Bundaberg Base Hospital in 2004 and early 2005. • Excerpt from the Queensland Public Hospitals Commission of Inquiry Report: 'The Medical Board negligently failed to properly check Dr Patel's paper credentials and to make any assessment of whether he had the qualifications and experience for practising surgery in Bundaberg. He came to be registered because of a negligent omission by the Medical Board to advert to a notation on Dr Patel's Certificate of Licensure from Oregon, United States of America which, if pursued, would have revealed a restriction imposed on him, as a disciplinary measure, from performing certain types of surgery in Oregon; a negligent failure by the Board to make independent inquiries about Dr Patel's past practice in the United States which would probably also have revealed that he had surrendered his licence to practise in New York in consequence of disciplinary proceedings against him there and that he had been unemployed for over a year; and a negligent failure by the Medical Board to assess, or to have assessed, his qualification and experience suitable for practising as a Senior Medical Officer performing general surgery at the hospital as required of s135(2) of the <i>Medical Practitioners Registration Act 2001</i>.' • It was only one clinician (Patel) who did not disclose under the applicants declaration with the then Medical Board of Qld who was then subsequently found to have notations against his practice in an overseas jurisdiction. It is of note that this is the 'current approach' of AHPRA even though this is against the National Law's mandatory requirement. This clinician (Patel) was then found to be guilty of manslaughter relating to the deaths of 3 individuals, and guilty of causing grievous bodily harm to another. Patel was sentenced to seven years' jail in July 2010.
Implications for workforce	<ul style="list-style-type: none"> • As identified by the Nursing and Midwifery Office, Queensland's consultation in preparing this feedback, AHPRA considers, based on the statistics AHPRA gathered between 1 July 2010 and 30 June 2011 that the risk to the workforce of registering an applicant with an adverse criminal history due to the involvement of CrimTrac screening is acceptably low. • What is considered an acceptably low risk by AHPRA and what is considered an acceptably low risk by the public and Health Services can be two very different things. Prior to the Queensland Public Hospitals Commission of Inquiry the requirement of Medical Board regarding international criminal history checking under the <i>Medical Practitioners Registration Act 2001</i> may also have considered the registration of an international medical officer low risk. It has now however been established that the public considers the registration of even one health professional with a criminal history record as unacceptable.

	<ul style="list-style-type: none"> • Health care services within Queensland rely on AHPRA to have undertaken the necessary criminal history checks as this is not something that all facilities have the capacity or resources to undertake themselves. • Hawthorne’s (2012) Health Workforce Australia scoping report on health workforce migration to Australia identifies that the scale of Australia’s interim dependence on internationally qualified health professionals is high. While the exact percentage of the nursing workforce that is internationally qualified is not well documented it is recorded to be as high as 11%. According to the Australian Institute of Health and Welfare, by 2009 24.5% of Australia’s 72,739 medically employed workforce was overseas-trained, including 6% of doctors from the UK/Ireland, 3% from New Zealand, and 16.4% (or 11,948) from, other countries. The majority of these international medical graduates (all sources) were concentrated in NSW (5,829), Victoria (3,829), Queensland (3,025), Western Australia (2,858), and South Australia (1,681), with minuscule numbers practising in other territories or states. In 2008-09, based on state and territory medical board/council data, 17,141 doctors (including IMGs) were employed under various forms of conditional registration, most notably in NSW (6,100), Victoria (3,971) and Queensland (2,803). This category covered medical practitioners, not meeting the requirements to become a generally registered medical practitioner. Further, 2,695 IMGs were employed through, area of need registrations (primarily in Queensland, with 1,351) in a context where Australia had become disproportionately reliant on medical migrants for primary health care in outer regional and remote/ very remote sites.
<p>Legislative and regulatory issues</p>	<ul style="list-style-type: none"> • The National law requires a national board to check the criminal history of an applicant for registration under section 79 of the National Law, this imposes a mandatory requirement on the national boards for each application received. • Currently this mandatory requirement is not being carried out in respect to applicants who have lived and/ or worked overseas within the last 10 years • Currently, AHPRA, on behalf of the national boards, requires applicants who have lived or worked in an overseas jurisdiction to make a declaration that they were or were not, whilst in an overseas jurisdiction or jurisdictions, the subject of a ‘criminal history’ as defined by the National Law. • It has been established that AHPRA considered the following factors when it developed its current approach to assessing overseas applicants: <ol style="list-style-type: none"> a) If an applicants who have not previously lived or worked overseas have an acceptably low incidence of potential adverse ‘disclosable court outcomes’ which affect registration, it is reasonable to expect a similar outcome when considering applicants who have lived or worked overseas prior to application; b) Australian Immigration require international applicants to declare that they are of ‘acceptable character’, which might include the applicant providing a criminal clearance certificate from each country where he/she has lived for 12 months or more, within the previous 10years. If Immigration is satisfied that the applicant has an acceptable character then the risk they might present as a registrant is further reduced, and c) The difficulty in dealing with overseas law enforcement authorities, especially as a third party would result in increased costs in processing applications both to the applicant and to the national boards, as well as resulting in delayed assessment of applications. • The issue NMOQ has also identified with point b) is that the Department of Visa and Immigration state that they only require those apply fro temporary or permanent residency from within Australia to provide criminal clearance certificates (police certificates). This provides a loop hole for anyone with a criminal history when AHPRA is currently reliant of applicant disclosure and the back up of the Department of Visa and Immigration. Applicants only need to apply from outside Australia and these documents are not required. • The Nursing and Midwifery Office Queensland has identified that by remaining with Option One that AHPRA has put forward to maintain the current approach, AHPRA will remain non compliant with the Section 79 of the National Law. This option is therefore not supported.

<p>Impact in rural and/or remote areas and other areas of workforce shortage</p>	<p>Rural / remote areas</p> <ul style="list-style-type: none"> • The Australian Institute of Health and Welfare data shows that in 2008-09 2,695 IMGs were employed through, area of need registrations (primarily in Queensland, with 1,351). This data as identified above under ‘implications for the workforce’ shows that Australia has become disproportionately reliant on medical migrants for primary health care in outer regional and remote/ very remote sites. • While currently there is no area of need registrations for nursing, midwifery or allied health professionals, there remains an increasing number of overseas qualified individuals as the local workforce refuse to relocate to take up vacancies in rural and remote locations. The regional Sponsored migration Scheme (subclass 119/857) has been open to individuals until recently (30 June 2012). This has been replaced by Skill Select. It allows for employers in regional, remote or low population areas of growth in Australia to sponsor employers who are foreign nationals for a permanent visa to work in Australia. <p>Other areas of workforce shortage</p> <ul style="list-style-type: none"> • It is noted that Option Three put forward by AHPRA that AHPRA obtain the criminal clearance certificate/s or applicant declaration poses potential increases in processing times due to dealing with Overseas law enforcement authorities, this not only has implications on section 85 of the National Law which imposes a 90 day period in which to register the applicant, it also could add to the time frame of an applicant being able to commence in a position adding to workforce shortage issues for some professions and geographical locations.
<p>Timing of any proposed changes</p>	<ul style="list-style-type: none"> • As the National Law currently states under section 79 that criminal history checking is mandatory then this process should commence as a matter of priority. • The Nursing and Midwifery Office, Queensland puts forward a 5th Option not suggested by AHPRA as the proposed way forward, this option required that along with Option 2, AHPRA receive a copy from the applicants previous registration authority regarding any criminal clearance, this will then provide information regarding any undertakings currently against the individual which CrimTec will not be able to uncover as they do not fall within its jurisdiction.. • With the responsibility placed on the applicants previous registration authority it removes the issues of: <ul style="list-style-type: none"> - AHPRA not being a law enforcement agency attempting to work with international law enforcement organisations - Increased costs to AHPRA for undertaking international criminal history checks - Increased chances of fraud due to requiring the applicant to supply the documents or make self disclosure • Including Option 2 in the way forward for AHPRA is suggested as the Department of Immigration and Citizenship currently when it does request police clearance certificates form individuals, requires the individuals to provide these documents themselves. The risk does exist that fraudulent documentation may be submitted however as with any of the paperwork submitted to AHPRA the risk of this exists. AHPRA may choose also add to undertake random audits as an additional deterrent such as occurs with domestic registrants. • All checking of criminal history has implications on section 85 of the National Law which imposes a 90 day period in which to register the applicant, however in the interest of public safety this must be places above all else in ensuring that those registered are of a level safe to care for the Australian public. • The Australian Nursing and Midwifery Council’s position statement on verification and good standing of international registration states that it supports not granting of licensure to an overseas applicant until documentary evidence is provided of registration/licensure/eligibility to practice and evidence of good standing in the country of most recent practice is provided by the applicant.

