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Optometrists Association Australia response to AHPRA's consultation regarding international criminal history checks

Optometrists Association Australia (OAA) welcomes the opportunity to respond to the Australian Health Practitioner Regulation Agency's (AHPRA's) discussion paper on international criminal history checks. OAA is the peak professional body for Australian optometrists, representing over 4,000 members (close to 95% of optometrists registered with the Optometry Board of Australia.)

OAA believes that the process employed for undertaking international criminal history checks forms an important aspect of the core work of AHPRA and its obligations relating to patient safety. The Association supports a strengthening of the current processes employed to assess applicants' suitability for national registration.

The consultation paper outlines four options for checking the criminal history of applicants. It appears that these proposed options are intended to apply only to internationally qualified applicants, though OAA notes a lack of clarity in the discussion paper with regard to whether the proposed options are intended to apply to all applicants or only those who have received their qualifications outside Australia.

The suggested options regarding criminal history checks appear to be inequitable between applicants who have trained in Australia and those who have trained internationally. OAA believes that the international criminal history checking process requires greater rigour and that both Australian qualified and internationally-qualified applicants should be subject to the same standard and process of international criminal history checks as part of registration.

We believe the location in which an applicant receives their qualification is an inappropriate determinant of the process to be applied to checking the applicant's international criminal history. It is inappropriate to assume that because an applicant is Australian qualified that they have not resided, or indeed practised, internationally or that they are less likely to have engaged in criminal activities.

The Association offers the following comments in relation to preferred options for undertaking international history checks with regard to all applicants, not only those who have received their qualification outside Australia. We encourage AHPRA to consider implementing the preferred option with regard to all applicants for registration.

The Association has carefully considered the four options for undertaking international history checks outlined through the discussion paper. We believe that option 4 is the most appropriate. This option requires applicants to make declarations on their registration application regarding their criminal history, with clear deterrent consequences established for false or misleading information. Under this option, AHPRA would also undertake random audits of registration applications.

OAA believes that this option provides the best balance of resource input (from applicants and AHPRA) and process rigour; it seeks to ensure the registration process is robust and protects

patient's interests, without creating an unnecessarily onerous barrier for applicants. Random sample audits are important to ensure the rigour of this process and we strongly agree, as outlined through the discussion paper, that effective communication of deterrents to providing false information is essential for this option to successfully provide a robust registration process protecting the public.

The Association also offers the following additional comments in response to the discussion paper:

Requiring international Criminal Clearance Certificates (CCCs) of applicants for registration

The current application process for individuals to register as a health professional requires applicants to advise whether or not they have a criminal history in Australia or in any other country (whilst the application is not described as a statutory declaration, the applicant is required to agree that they make *"this declaration in the knowledge that a false statement may amount to perjury [and]... is also a ground for the National Board to refuse registration."*) The applicant's criminal history in Australia is assessed via CrimTrac, however, there is no process for checking international criminal history. However, in signing the application the applicant authorises the relevant National Board to obtain their criminal history both in Australia and internationally.

OAA believes that testimony of an applicant regarding their international criminal history, without a process for confirming the validity of this testimony and/or additional deterrents for false testimony, is inadequate for AHPRA to meet its legal obligations and duty to patients. A checking and/or deterrent process would reduce the risk that applicants would provide false or misleading information and, potentially, reduce the risk of applicants receiving registration when this is inappropriate given their criminal history.

Other jurisdictions have requirements for people applying for registration as an optometrist regarding criminal convictions both in the country where the person is applying and elsewhere (see *Appendix 1*). In the UK for example, the candidate is required to provide full details regarding convictions or cautions of investigations regarding a criminal offence in any locality (the application form does not appear to require an official document regarding these matters.¹) In New York applicants are required to make a statement regarding criminal matters.² In New Zealand it is the responsibility of New Zealand applicants to provide a Record of Criminal Convictions from the NZ Ministry of Justice and all applicants are required to provide a Police Clearance Certificate, or equivalent, from every country where they have resided since the age of 16.³

Restriction of Criminal Clearance Certificates (CCCs) to countries of practice or residence for at least one year

The discussion paper canvasses the idea of restricting the requirements for CCCs, if they were to be required on application or considered through random audit of applications, to those places where people have lived or practised their profession or where they have lived for a period of a year.

¹ www.optical.org/en/our_work/Registration/Applying_for_registration/Full_registrants.cfm

² www.op.nysed.gov/prof/optom/optomforms.htm

³ www.odob.health.nz/optometrist_registration

This approach could allow some people to register who should not be allowed to do so, as people may have committed a serious offence whilst visiting a country on holiday or for some other purpose. However, it is impractical to ask applicants to provide information about every location where they have lived or visited. On balance, OAA recommends that if a criterion is chosen then residence of a year is a reasonable requirement. Alternatively, the New Zealand approach of requesting information from every country where they have *resided* since the age of 16 could be adopted.

Timing of requirement to provide CCCs/declaration regarding criminal status for international applicants

The Association considers that the requirement to provide CCCs or declarations regarding international criminal status under any of the options outlined in the discussion paper may be more appropriate at a much earlier stage in the process for international applicants wishing to register as health professionals in Australia. We recommend consideration be given to requiring CCCs or a declaration regarding criminal status before the person has commenced any assessment process needed to be registered in Australia. For example, in the profession of optometry it could be part of the eligibility criteria for international graduates applying to sit the Optometry Council of Australia and New Zealand (OCANZ) examination. This timing would save unnecessary time and financial investment from the assessing body, applicant and other stakeholders if the applicant did not meet requirements relating to criminal history. A subsequent declaration would then need to be sought again at the time of registration with the relevant professional board (in this case the Optometry Board of Australia), to address the period in which the assessment process was being undertaken.

Possible procedural options

As detailed above, the Association recommends the fourth option outlined through the discussion paper as the most appropriate. We provide the following comments in relation to each of the options below.

Option 1: Applicant declaration only

The Association does not think that option 1 is an appropriate requirement over the longer term.

A declaration on its own is not a valid mechanism to ensure that accurate information is being provided. If AHPRA were to implement this option OAA recommends that it be supplemented by:

- current registration checks in relevant jurisdictions and a requirement for evidence of good standing in any jurisdiction in which the person had practised⁴ (as is currently required in the registration application for optometrists)

⁴ The General Optical Council in the United Kingdom issues Certificates of Current Professional Status on behalf of registrants who are applying for registration with an overseas optical regulatory body. The Certificate of Current Professional Status provides confirmation for the overseas regulator that the person is qualified and registered with the GOC, and provides information on any past sanctions that have been applied following a fitness to practise investigation. The Certificate of Current Professional Status is valid for three months from the date of issue. www.optical.org/en/our_work/Registration/Registration_fees_and_forms/index.cfm

- a random audit process (as discussed in option 4) with a specific percentage of applicants in any health discipline having their criminal histories explored. All applicants currently authorise the Boards to undertake these checks.

However, if AHPRA were to implement option 1 then we recommend that it is clearly specified on the application that the applicant is making a statutory declaration. In the current application this is implied but not specified.

Option 2: Applicant provides criminal history clearance evidence with application

OAA believes that this is a sub-optimal option for AHPRA to meet its obligations with regard to the protection of the public as it does not provide any mechanism to check that the evidence provided is valid and that the applicant has accurately recorded all jurisdictions where they have resided, or provide additional deterrents for the provision of false information.

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

This option provides greater rigour and minimises the likelihood of false declarations. However, the process is likely to be costly if all candidates are assessed and AHPRA would need to determine how costs were to be covered. AHPRA would need to determine what countries to include in the check. As specified above, OAA recommends that checks encompass all countries where the applicant has lived for over 12 months or, in alignment with the New Zealand approach, all countries the applicant has resided since the age of 16.

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

This is the option that is preferred by the Association, providing an appropriate balance of practicality, affordability and efficiency with a sufficiently robust criminal history check system. OAA believes that the random audit process acts both as a deterrent to applicants providing false or misleading information as well as providing an additional check within the system. We further believe that this system will operate most effectively if combined with sufficient and well publicised deterrents for false declarations.

The Association notes that under this option the cost of random audits would need to be borne by AHPRA or met through an increase in application fees. OAA believes this is appropriate and warranted by the additional rigour the audit process brings to the registration process, provided that it does not require a significant increase in fees per applicant that may act as a deterrent to potential applicants.

It is unclear in the discussion paper, how extensive the proposed random audits would be, and whether or not they would address only jurisdictions the applicant has noted on their application, or whether it would seek to validate all personal details provided. This has relevance to effectiveness of the audit and the overall robustness of the criminal check process. OAA recommends that AHPRA



consider assessing the validity of all personal details provided for some, or all, of the applications selected for random audit. In appreciation that this may be a resource-intensive process it may be preferable to only undertake such comprehensive investigations in relation to some of the applicants randomly audited.

OAA further recommends AHPRA investigate establishing, if it has not already, a 'flagging' system that would support identification of potential anomalies and misleading information in an application in relation to identity and criminal history, and establishes a process to further investigate applications flagged as potentially misleading or fraudulent.

Appendix 1: Requirements regarding criminal and disciplinary proceedings for registration as an optometrist in selected jurisdictions

General Optical Council (UK)

www.optical.org/en/our_work/Registration/Applying_for_registration/Full_registrants.cfm

Section A – Criminal and disciplinary proceedings

1. Please provide full details of any convictions or cautions (or any Agreed Offer, Penalty Payment Agreement, or Absolute Discharge Order in Scotland) or any investigations in relation to a criminal offence. You must declare any conditional caution, and any convictions which led to the imposition of a conditional or absolute discharge. This must include any convictions etc that you believe spent. You should give full details of the date, the offence committed, the penalty or punishment imposed and the circumstances leading to the offence. This should include the amount of any fine and the name of the court you attended. Attach a separate sheet if necessary.

You do not need to declare road traffic offences that have been dealt with by way of a fixed penalty.

State of New York, USA: Application for Licensure www.op.nysed.gov/prof/optom/optomforms.htm

Have you ever been found guilty after trial, or pleaded guilty, no contest, or nolo contendere to a crime (felony or misdemeanor) in any court?

Are criminal charges pending against you in any court?

New Zealand www.odob.health.nz/optometrist_registration

You have no convictions in any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer True False

Section 6: Criminal history

NB: A conviction will not necessarily preclude the granting of registration. The Board will consider any convictions on a case-by-case basis. If you have a conviction, please provide a letter about the conviction to accompany your application.

New Zealand applicants:

I attach a Record of Criminal Convictions from the NZ Ministry of Justice, and, if applicable, a Police Clearance Certificate, or equivalent, from every other country in which I have resided from the age of 16.

The Board requires that every New Zealand applicant seek from the Ministry of Justice, a Record of Criminal Convictions. This lists only convictions and sentencing from court appearances and does not



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include Youth Court charges. An application form for your Record of Criminal Convictions can be obtained from your local District Court. Alternatively download a copy from the Ministry of Justice website: www.courts.govt.nz/privacy or contact the Privacy Assistant, Ministry of Justice, PO Box 2750, Wellington (ph 04 918 8800). NB: Do not have the record sent directly to the Board. It should be included with your application form. The Record of Criminal Convictions must be issued within six months prior to the date of your application.

Overseas applicants:

I attach a Police Clearance Certificate, or equivalent, from every country in which I have resided from the age of 16. The document must be an original or a certified copy and must be issued within six months prior to the date of your application.