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Submission to the Osteopathy Board of Australia

**Consultation on registration standards:**

- **Criminal history registration standard**
- **English language skills registration standard**

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## **Submission: Consultation on *Criminal history registration standard and English language skills registration standard***

### **This submission**

The Australian Osteopathic Association (AOA) appreciates this opportunity to comment on the preliminary consultation paper.

### **The Australian Osteopathic Association**

The AOA is the national professional body representing over 85% of osteopaths across Australia. This gives us a unique voice for representing the profession and lobbying to ensure high industry standards are established and maintained. Our core work is liaising with state and federal governments, regulatory or other statutory bodies, and key stakeholders throughout the healthcare landscape. We always welcome opportunities for input and collaboration, such as this.

### **Background**

The AOA supports accurate criminal history checking within Australia and outside of Australia as part of AHPRA's role in protecting the public.

The AOA strongly supports an English language skills registration standard. These will be treated in turn.

### **Criminal history registration standard**

In general, the AOA submits that, while criminal history is important, professional conduct is normally more directly relevant to the consideration of an applicant's application than minor criminal conduct.

The AOA supports Option 1, the status quo, with some provisos.

1. The AOA cannot agree that the proposal to refine the approach to international criminal history "is not affected by" this review of the (domestic) criminal history registration standard.

There are two distinct but related aspects: the standard itself, and the bases on which a board may consider criminal history.

Absent such a set of bases from the international criminal history standard, the Board runs the risk of having not only disparate standards for international or Australian applicants and practitioners but different ways of applying them.

This is unfair to applicants and practitioners, who could have the same history interpreted in different ways, depending only on the location of the criminal history.

It is also a concern from the perspective of public safety. The public is most protected by a synchronised, consistent approach, and AHPRA does not seem likely to obtain one with the current approach. Does this inconsistency put the public at risk?

2. Option 1 contains an inaccuracy: “no major issues have been raised with the existing standard.”

The AOA notes that the existing standard encompasses conduct that is emphatically not evidence of criminality, such as arrests, withdrawn charges, findings of not guilty, and acquittals on appeal.

This is problematic for reasons of natural justice in that the Board is substituting allegations for findings and accusations for proof.

The AOA does not suggest that no information short of guilty verdicts or guilty pleas should be taken into account. When a criminal history raises significant concerns about conduct relating to privacy, confidentiality, or violence, or any kind of professional misconduct, the AOA naturally sides with public safety.

But conduct of a kind wholly immaterial to the practice of a regulated health service—being arrested at a peaceful demonstration, for example—is not, in the AOA’s view, intrinsically related to one’s profession or to public safety at all.

### **Additional Observations**

These observations pertain to the stages of the registration process, published here and reproduced as an attachment to this submission.

<http://www.ahpra.gov.au/Registration/Registration-Process.aspx>

- If, on the basis of criminal history, the Board proposes to register an applicant with conditions or reject an application, the applicant should be permitted to view the information on which that decision is made and should be afforded an opportunity to make a submission about its relevance or significance before such a determination is made.

Specifically, the AOA recommends that the process be amended so applicants can have relevant and timely input into a decision to recommend (or not recommend) the approval of an application at Stage 2, i.e. before the recommendation is made by a board’s delegate.

Permitting applicants to make a submission only after Stage 5 means an applicant has not had an opportunity to submit that criminal history on which a board has relied to reject or conditionally approve an application is in fact irrelevant, immaterial, or insignificant.

- The AOA is concerned about the possibility for inconsistency across boards. Boards may well delegate precisely the same authority to approve straightforward applications, but once the decision to refer an application to the board for consideration in light of criminal history, each board can apply the “Requirements” consistency, and for the protection of the public.
- The AOA is concerned that the two separate criminal history standards—for overseas applicants and for Australian applicants—may differ or vary in results, even if not in appearance. There is a fundamental issue of fairness to Australian applicants, who seem to be held to a higher standard in that the words of overseas applicants are simply taken at face value until their criminal records arrive sometime down the track. Australian applicants enjoy no such period of grace.
- Finally, it would be desirable in future if, where possible and appropriate, the criminal history checks could be coordinated with state-based working with children checks.

### **English language standard**

The AOA represents our members’ desire for high professional standards that maintain and improve the quality of osteopathy and other health professions in Australia.

The AOA is concerned about the possibility for inconsistency across boards.

The overarching promise of national boards is a set of nationally consistent standards for health practitioners. Introducing variation in standards undercuts the coherence of national regulation.

For this reason the AOA respectfully submits that there should be one and only one English language standard.

In no other respect would workforce pressures (or anything else) be allowed to determine a standard. The notion that there should be variations in criminal background standards among professions, for example, would be laughable. Why should diminished English language proficiency be different? (Conversely, if a lower standard of English proficiency is indeed acceptable for one profession, why keep it higher for any other professions?)

Because of this proposed discrepancy, the statement of assessment against AHPRA’s *Procedures for development of registration standards* is difficult to accept.

If it is true that the new standard will “provide for the protection of the public by ensuring that applicants have the English language skills necessary,” then it must be asserted that different professions necessitate different standards of English language skill.

The AOA is not persuaded this is the case.

Moreover, by casually asserting that the proposed standard meets AHPRA's *Procedures* when it plainly does not, the Boards are undermining not only their standards but their procedures for examining them.

With respect to the precise scores on various tests, what information or advice is incorporated into the proposed thresholds for each of the IELTS, the OET, and (in the future) "other English language tests approved by the Board from time to time"? For example, what precisely is it about a TOEFL score of "237" that the Chinese Medicine Board regards as indicating proficiency? This subject deserves more examination than the subsidiary question of whether applicants who fail one of several sections should be permitted to re-take just that section, which seems determinable simply by the advice of the relevant test about whether it is designed for this or not.

The foregoing notwithstanding the AOA appreciates that the majority of overseas trained osteopaths seeking registration in Australia come from English-speaking countries and satisfy the requirement for demonstrating English proficiency by virtue of their education, not by passing a test.

### **Conclusion**

The AOA thanks the Board for this opportunity to comment on the consultation paper.

We look forward to the revised standards, which we trust will favourably reflect the recommendations of this submission.

For further information or clarification, please contact Samuel Dettmann, Policy Advisor, on [REDACTED]



## **Attachment—Stages of the Registration Process**

### **Stage 1: Application**

When the hardcopy application form or online renewal form is submitted, it is reviewed internally for completeness.

### **Stage 2: Assessment**

The supplied information is assessed against registration standards. At this stage the applicant may be required to supply further information or undergo various tests or examinations regarding competency or health issues. A recommendation is then made, which may be to register, register with conditions, or reject.

If the application is straight forward and the recommendation is to register, a delegate of the Board may register the applicant without referring to the relevant National Board. Complicated cases will be referred to the National Board for resolution.

### **Stage 3: National Board Decision**

The Board may accept the recommendation or take some other action. The Board's decision will either be to register, register with conditions, or reject the application.

### **Stage 4: Registration**

Registration is finalised and relevant letters and certificates are prepared for the applicant.

### **Stage 5: Submission**

If a National Board accepts the application with conditions or rejects the application, the applicant will be informed at this stage. The applicant may then elect to make a submission to the National Board.

### **Stage 6: Submission Assessment**

Following Stage 5, the response from the applicant is considered and a final decision is made.

### **Stage 7: Tribunal**

If applicants do not agree with the final decision of the Board, they may take their case to a tribunal for a decision.

### **Stage 8: Withdrawn Incomplete**

If a required response from the applicant is not received within a reasonable period, the application is closed - withdrawn and incomplete.