Attachment D – Submissions template

Public consultation: Review of the Criminal history registration standard and other work to improve public safety in health regulation

The Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards are inviting stakeholders to have their say as part of our review of the *Criminal history registration standard* (the criminal history standard). There are 19 specific questions we'd like you to consider below (with an additional question 20 most relevant for jurisdictional stakeholders). All questions are optional, and you are welcome to respond to any you find relevant, or that you have a view on.

Your feedback will help us to understand what changes should be made to the criminal history standard and will provide information to improve our other work.

Please email your submission to AhpraConsultation@ahpra.gov.au

The submission deadline is close of business **14 September 2023**

How do we use the information you provide?

The survey is voluntary. All survey information collected will be treated confidentially and anonymously. Data collected will only be used for the purposes described above.

We may publish data from this survey in all internal documents and any published reports. When we do this, we ensure that any personal or identifiable information is removed.

We do not share your personal information associated with our surveys with any party outside of Ahpra except as required by law.

The information you provide will be handled in accordance with Ahpra's privacy policy.

If you have any questions, you can contact AhpraConsultation@ahpra.gov.au or telephone us on **1300 419 495.**

Publication of submissions

We publish submissions at our discretion. We generally publish submissions on our website to encourage discussion and inform the community and stakeholders about consultation responses. Please let us know if you do not want your submission published.

We will not publish on our website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the subject of the consultation. Before publication, we may remove personally identifying information from submissions, including contact details.

We can accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. A request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Cth), which has provisions designed to protect personal information and information given in confidence. Please let us know if you do not want us to publish your submission or if you want us to treat all or part of it as confidential.

Published submissions will include the names of the individuals and/or the organisations that made the submission unless confidentiality is expressly requested.

Initial questions

To help us better understand your situation and the context of your feedback please provide us with some details about you. These details will not be published in any summary of the collated feedback from this consultation.

Question A

Are you completing this submission on behalf of an organisation or as an individual?

Your answer:

☒ Organisation

Name of organisation: The Royal Australian College of General Practitioners (RACGP)

Contact email: [redacted]

☐ Myself

Name: Click or tap here to enter text.

Contact email: Click or tap here to enter text.

Question B

If you are completing this submission as an individual, are you:

☐ A registered health practitioner?

Profession: Click or tap here to enter text.

☐ A member of the public?

☐ Other: Click or tap here to enter text.

Question C

Would you like your submission to be published?

☒ Yes, publish my submission **with** my name/organisation name

☐ Yes, publish my submission **without** my name/organisation name

☐ No – **do not** publish my submission

Focus area one – The Criminal history registration standard

Question 1

The *Criminal history registration standard* (**Attachment A**) outlines the things decision-makers need to balance when deciding whether someone with a criminal history should be or stay registered such as the relevance of the offence to practice, the time elapsed and any positive actions taken by the individual since the offence or alleged offence. All decisions are aimed at ensuring only registered health practitioners who are safe and suitable people are registered to practise in the health profession.

Do you think the criminal history standard gets this balance right?

If you think the *Criminal history registration standard* does not get this balance right, what do you think should change to fix this?

Your answer:

No comment.

Question 2

Do you think the information in the current *Criminal history registration standard* is appropriate when deciding if an applicant or registered health practitioner's criminal history is relevant to their practice? If not, what would you change?

Your answer:

The RACGP opposes the requirement for practitioners to declare their entire criminal history to Ahpra when applying for or renewing their registration. Some minor offences (eg parking fines) are not relevant to clinical practice and should not have to be declared, particularly if years have passed since the offence occurred. While laws differ between jurisdictions, and in turn impact what types of offences practitioners must declare, Ahpra should enforce a standardised approach to declarations to ensure national consistency.

Ahpra advises that in 2021-22, it received 75,543 domestic and international criminal history checks of practitioners and applicants, with only a few results serious enough to affect a practitioner's registration. Of those, 15 applicants were granted registration with restrictions, while six had their applications refused. It is clear that criminal history only affects registration status in exceptionally limited circumstances, further highlighting the need to review the onerous declaration requirements currently in place.

Question 3

Do you think the information in the current *Criminal history registration standard* is clear about how decisions on whether an applicant or registered health practitioner's criminal history is relevant to their practice are made? If you think it is not clear, what aspects need further explanation?

Your answer:

No comment.

Question 4

Is there anything you think should be removed from the current *Criminal history registration standard?* If so, what do you think should be removed?

Your answer:

No comment.

Question 5

Is there anything you think is missing from the 10 factors outlined in the current *Criminal history registration standard?* If so, what do you think should be added?

Your answer:

The RACGP has no concerns about the factors listed in the *Criminal history registration standard*.

Question 6

Is there anything else you would like to tell us about the *Criminal history registration standard*?

Your answer:

No comment.

Focus area two – More information about decision-making about serious misconduct and/or an applicant or registered health practitioner's criminal history

Question 7

Do you support Ahpra and National Boards publishing information to explain more about the factors in the *Criminal history registration standard* and how decision-makers might consider them when making decisions? Please refer to the example in **Attachment B.** If not, please explain why?

Your answer:

Attachment B includes the following clause:

The primacy of public protection

1. *In any decision-making and application of the National Law, the protection of the public is the paramount consideration, and this includes the need to maintain public confidence in the profession and in the regulatory processes of the National Law.*

Giving primacy to public protection is a very reasonable principle. However, the two constructs of 'maintain public confidence in the profession', and '[maintain public confidence] in the regulatory processes of the National Law' could be interpreted as being misaligned with 'public protection'. This statement suggests that Ahpra and the National Boards will prioritise decision-making that is supported by popularist sentiment, rather than principles not given primacy such as natural justice and procedural fairness.

Our members advise that the attachments do not sufficiently outline the broader principles and values underpinning Ahpra's work. While they are aspirational and reflect a desire to operate with respect for the law and collaboratively with stakeholders (members of the public, professional bodies, health practitioners), they are unbalanced.

Attachment B is largely a more verbose version of Attachment A, with little additional information or insight given. Most of the statements are vague descriptions of issues that influence decision-making, with wording such as 'more', 'lesser' and 'may' used. Members suggest that the document should be reframed around the principles and values that underlie decision-making, along with the types of decisions that could be made and the potential ramifications of these. Within this framework, the factors outlined in Attachment A can be better understood.

Question 8

Is the information in **Attachment B** enough information about how decisions are made about practitioners or applicants with a criminal history? If not, what is missing?

Your answer:

No comment.

Question 9

Is there anything else you would like to tell us about the information set out in **Attachment B**?

Your answer:

No comment.

Question 10

Thinking about the examples of categories of offences in **Attachment C**, do you think this is a good way to approach decision-making about applicants and registered health practitioners with criminal history? If you think this is a good approach, please explain why. If you do not agree with this approach, please explain why not.

Your answer:

If the categories are used as a way of triaging an approach and process, the RACGP does not have any objections to this. However, if they are used such that in practice, less critical consideration of the facts and issues of the specific case are undertaken (i.e. decision-making is effectively deferred to the original categorisation, which is a type of decision-making), this is a counterproductive way to approach good decision-making. If this was the intention, the RACGP would object.

Question 11

Do you think there are some offences that should stop anyone practising as a registered health practitioner, regardless of the circumstances of the offence, the time since the offence, and any remorse, rehabilitation, or other actions the individual has taken since the time of the offence? Please provide a brief explanation of your answer. If you answered yes, please explain what you think the offences are.

Your answer:

In principle, there are likely some offences that should automatically stop anyone practising as a registered health practitioner. A robust consultation process and public debate would be needed to determine what these offences are.

Question 12

Is there anything else you would like to tell us about the possible approach to categorising offences set out in **Attachment C**?

Your answer:

Our members note that the categories of offences listed in Attachment C are inconsistent and highly subjective. For example:

- sexual offences are listed under Category A, as are 'offences against morality', which includes sexual abuse as an example. It is unclear what else would be defined as an offence against morality
- both Category A and B include domestic violence
- drug possession and use may sit better under Category C (currently listed under Category B)
- while serious drug related offences under Category A may bring the healthcare sector into disrepute, consideration should be given to the importation of drugs/medications for non-personal use as part of professional activities and drug trials.

Further to the response provided to question 2 – some of the offences listed in Category C of Attachment C may not be relevant to a practitioner's practice and should not have to be declared. The requirement to declare minor historical offences such as parking fines is onerous and an additional administrative burden for GPs who are applying for or renewing their registration.

Other offences that warrant consideration, as they are unlikely to impact a person's ability to practise, include:

- offences committed for political reasons (eg protesting against climate inaction). Heavy sentences for this type of offending are possible, but should not necessarily influence Ahpra's decision-making
- offences committed overseas in countries with corrupt political regimes (eg by international medical graduates), where the charges or conviction were politically motivated.

Focus area three – Publishing more information about decisions that are made about serious misconduct by registered health practitioners

Question 13

Were you aware that disciplinary decisions by tribunals about registered practitioners were published to Ahpra and National Board websites and are linked to an individual practitioner's listing on the public register?

Your answer:

Yes, the RACGP is aware that disciplinary decisions are published in this way.

As noted in our submission on Ahpra's draft data strategy, there is a need to balance the competing rights of the practitioner with the public's interest in disclosure to enable informed decisions and public protection. It is important that the public register does not move away from its primary regulatory purpose of indicating current registration status.

The RACGP has previously raised concerns regarding the publication of information in relation to disciplinary proceedings on the public register. We do not support publishing tribunal outcomes where allegations against the practitioner have been disproved.

Additional concerns were raised around the publication of tribunal outcomes for complex cases, such as those which result in time-limited conditions or those where allegations were proven in part. The RACGP recommended the publication of tribunal outcomes for these complex cases be considered on a case-by-case basis as we agree that the publication of previous disciplinary history has the potential to impact beyond the intended consequences of any regulatory action. The RACGP also recommended that the publication of time-limited conditions be removed from the public register once the condition has expired.

The publication of any case should also be delayed whilst an appeal is pending. Members have advised of instances where disciplinary action was published before their successful appeal was lodged.

The RACGP supports allowing practitioners to request that information be removed from the public register where there is a risk to their safety or that of their family. Such applications should also be able to be made by a practitioner's friend or relative on their behalf and with their knowledge. Information which may be suppressed should include employment details.

It could be argued that there are some elements of disciplinary history likely to be relevant to patients seeking an opinion on whether a doctor has a previous disciplinary record (eg inappropriate relationships), while others are not likely to be relevant (eg alcohol use). The Medical Board should exercise discretion in determining whether something should be published and consider establishing some general thresholds on what elements of disciplinary history should be published. This could either be through the Board's own initiative or in response to a practitioner request.

Question 14

Do you think decisions made to return a practitioner to practice after their registration has been cancelled or suspended (reinstatement decisions) for serious misconduct should be published where the law allows? Please explain your answer.

Your answer:

Members advise that they are concerned by the framing of this question. It would seem obvious that a respectful and just organisation would seek permission from the relevant practitioner in a scenario such as this and be guided by their preference. Overriding the preference of the practitioner cannot be in the public interest, nor contribute meaningfully to public protection.

Question 15

Is there anything else you would like to tell us about the approach to publishing information about registered health practitioners with a history of serious misconduct?

Your answer:

No comment.

Focus area four – Support for people who experience professional misconduct by a registered health practitioner

Question 16

What do you think Ahpra and National Boards can do to support individuals involved in the regulatory process who are affected by sexual misconduct by a registered health practitioner? (For examples, see paragraph 47 of the consultation paper.)

Your answer:

Ahpra should acknowledge its boundaries and limits as a regulatory body and have a well-designed process to refer the individual to an appropriate clinical service that is independent of Ahpra. Funding for support services should also be independent of Ahpra.

Question 17

Is there anything else you would like to tell us about how we can support individuals affected by a registered health practitioner's professional misconduct?

Your answer:

No comment.

Focus area five – Related work under the blueprint for reform, including research about professional misconduct

Question 18

Are the areas of research outlined appropriate?

Your answer:

In addition to the current framework, the research needs to consider the impacts of increased public hearings/public reporting on health professionals. Appropriate supports need to be provided for health professionals being investigated by Ahpra, as they would be for patients making allegations about inappropriate conduct.

Question 19

Are there any other areas of research that could help inform the review? If so, what areas would you suggest?
Your answer There may be other groups to consider in addition to Aboriginal and Torres Strait Islander people regarding previous convictions/records. International medical graduates may also be impacted, particularly those who have sought asylum or who are from minority groups that were persecuted by legal systems in their country of origin.
Additional question *This question is most relevant to jurisdictional stakeholders:*
Question 20 Are there opportunities to improve how Ahpra and relevant bodies in each jurisdiction share data about criminal conduct to help strengthen public safety
Your answer: No comment.