

24 January 2012

Australian Health Practitioner Regulation Agency
GPO Box 9958
Melbourne VIC 3001

By email: criminalhistoryconsult@ahpra.gov.au

Dear Mr O'Dempsey

Response to preliminary consultation paper – international criminal history checks

The Health Quality and Complaints Commission (HQCC) is an independent and impartial statutory body dedicated to improving the safety and quality of healthcare provided in Queensland. The HQCC provides oversight, review and reports on the quality of all health services in Queensland. The HQCC's functions include managing complaints, investigating serious healthcare issues and monitoring the quality of health services.

Summary

The consultation paper seeks feedback on four options proposed to refine international criminal history checking used by the Australian Health Practitioner Regulation Agency (AHPRA) in assessing applications for registration for the health professions regulated under the *Health Practitioner Regulation National Law Act 2010* (National Law).

This response to the consultation paper provides comments on the issues associated with the different options and the HQCC's preferred option.

Current approach

Applicants for initial registration must undergo a criminal record check under the National Law. The current approach undertaken by AHPRA is to seek an Australian criminal history through CrimTrac. Additionally, the applicant must sign a declaration on the registration application form disclosing their criminal history in all countries, including Australia. In the case of a declaration that the applicant has no criminal history outside Australia, no further evidence, audit or authentication is currently required nor sought. Where a criminal history is disclosed, further investigations are made and the criminal history is assessed according to the registration board's Criminal History Registration Standard.

Proposed options

Option 1 – requires the applicant to provide a declaration on the registration application form disclosing the applicant's criminal history in all countries, including Australia and no additional evidence of criminal history is required, sought or obtained from jurisdictions outside Australia.

This option mirrors AHPRA's current approach, which relies upon the candour of the applicant to disclose an international criminal record. It is noted that people with a criminal record are more

likely to be perceived as people that pose a higher risk of dishonesty or undesirable character and therefore are unlikely to openly disclose a criminal record. The fact that information will not be sought or obtained otherwise must further compound the potential for dishonesty.

In any event the HQCC does not consider this approach sufficient to protect, or alleviate risk of harm to, the public.

AHPRA's 2010-11 criminal history checking data details that 2992 applicants out of a total 52445 applicants returned results indicating that the applicant had a criminal history. This number of health practitioners with a criminal history registered to practise represents a considerable risk or potential for public harm. The HQCC considers an approach which accepts such declarations without critique does not sufficiently address this risk of harm. Accordingly, the HQCC does not think it appropriate to maintain the status quo.

Option 2 – requires the applicant to provide evidence of criminal history clearance or provide and/or facilitate provision of criminal history information from jurisdictions outside Australia.

While there may be delays for applicants obtaining clearance documentation from overseas jurisdictions, in the interests of public safety, the HQCC considers this must be accepted as part of the registration application process. AHPRA's registration data indicates that the top source countries for international applications have criminal clearance certificates available with no limitations. AHPRA's available data also indicates that the introduction of mandatory criminal record checks has reduced risk to public safety. Presumably, a mandatory requirement to provide criminal history information from jurisdictions outside Australia would further reduce the risk to public safety.

Option 3 – entails AHPRA obtaining a clearance and/or information from jurisdictions outside Australia when processing an application. The HQCC considers this option is overly arduous on the resources of AHPRA and that the highlighted benefits outlined in the consultation paper do not outweigh the significant increase in time, costs and resources. For these reasons the HQCC does not consider this the preferable option.

Option 4 – requires the applicant to make a declaration regarding the applicant's criminal history on the registration application form and AHPRA will undertake random audits with clear and publicised deterrent consequences.

The HQCC considers this hybrid of Option 1 does not sufficiently protect, or alleviate risk of harm to the public. The HQCC is not satisfied the assumed minimal risk of registering an applicant with a significant criminal history addresses the issue of risk of harm to the public. Again, this approach relies upon the honesty of the applicant and the possibility of a random audit detecting any fraudulent declarations. The consultation paper highlights the current difficulties associated with liaising with and obtaining criminal history checks from foreign agencies.

The HQCC notes that declarations made on application are not statutory declarations and therefore breaches attract lesser penalties and little remedy is available. Accordingly, the HQCC questions the deterrent consequences which would accompany the proposed random audit process.

Summary

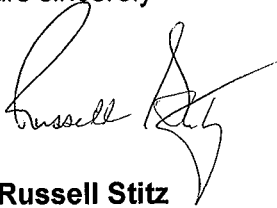
Currently there is a higher standard for criminal history checks for Australian medical graduates than there is for international medical graduates. Thus an option which is not consistent with the Australian standard cannot be supported.

Using this logic, only Options 2 and 3 are acceptable. From the information provided, Option 3 may not be viable and would require a significant increase in resources.

Therefore, the HQCC considers that Option 2 is the most cost effective way of protecting the public from risk of harm. The HQCC considers it is more appropriate to place the onus of obtaining criminal history clearance certificates on the applicant as opposed to AHPRA as it is the applicant who is best placed to obtain this information. While an application may be subjected to some delay in this process, the HQCC notes this is most likely not a significant matter for the majority of applications. Given the nature of the process, the HQCC ultimately considers the applicant should bear any inconvenience rather than AHPRA.

Thank you for the opportunity to comment on the consultation draft. If you wish to discuss the contents of this submission, please do not hesitate to contact Brooke Roberts, General Counsel, on 3120 5923 or via email at brooke.roberts@hqcc.qld.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read "Russell Stitz", with a stylized flourish extending from the end of the name.

Dr Russell Stitz
Commissioner