

Good afternoon,

I refer to AHPRA's document Public consultation paper on international criminal history checks ("consultation paper") and its request for comments by 17 July. SA Health has been given an extension of the due date for comments until today, 20 July 2012. The consultation paper invites in the first instance comments on the 4 options presented and request the reasons for preferences. It also allows for general comments and comments on the content of the consultation paper.

Option 1: A declaration by the applicant regarding his/her criminal record (It is stated that this is not a statutory declaration)

Comments:

- This approach may not comply with the objectives of national registration as stated in the Health Practitioner Regulation National Law Act ("National Law")– e.g.
 - "to facilitate the rigorous and responsive assessment of overseas-trained health practitioners;" further:
 - Section 79 (1) of the National Law states that AHPRA must check the applicants criminal history - it is doubtful that a declaration by the applicant him/herself could be viewed as a check by AHPRA –especially in context of the legal requirement for a rigorous check;
 - Section 79 (2) appears to provide a limited list the options of acceptable evidence (a "written report") of criminal history. The list is comprehensive as the options include obtaining a written report from "an entity in a jurisdiction outside Australia that has access to records about the criminal history of persons in that jurisdiction".
- As this declaration by the applicant is not a statutory declaration, the risk for an applicant with an adverse criminal history of making a false declaration would be non-existent, while the risk of AHPRA of not complying to the National Law; or of harm to the public may be significant.
- This is not an acceptable option.

Option 2: Applicants provide evidence of criminal record with application

Comments:

- This option is attractive as it puts the onus and responsibility for costs on the applicant to obtain evidence of Criminal History Clearance.
- The applicant would be in a better position than AHPRA to manage issues that may cause delays in obtaining the Criminal Clearance Certificates (CCC) if they request the CCC themselves.
- It appears to be the only option in international jurisdictions such as China where the authorities will only provide such documents directly to the applicant.
- It significantly relieves AHPRA from the burden of obtaining CCC for applicants, but there is a risk that fraudulent documents may be submitted.
- The option is viable as Attachment 1 in the consultation paper indicates that the applicants from most international jurisdictions should be able to obtain (CCC) themselves.
- It is understood that DIAC requires criminal history clearance for visa assessment and this is provided by the applicant. An applicant will therefore know that they are required to provide this information and is likely to apply for it well in advance of them applying to AHPRA.

Option 3:AHPRA obtains clearance/information from international jurisdictions

Comments:

- This option complies with Section 79 (2) of the National Law which appears to provide a list the options of acceptable evidence of criminal history. It includes AHPRA obtaining a written report from "an entity in a jurisdiction outside Australia that has access to records about the criminal history of persons in that jurisdiction".
- This would therefore be the preferred option where AHPRA is able to obtain a CCC directly from an international jurisdiction. AHPRA advised in the consultation paper that "a large percentage" of international authorities/jurisdictions will only provide criminal history reports directly to the

applicant, however, considering the key “source countries” for medical professions (reflected on page 4 of the consultation paper) in the majority of cases AHPRA should be able to obtain the CCCs. If this option is not achievable, Option 2 would be the preferred approach.

- In terms of ensuring quality of checks or minimising risks of fraud, option 3 may also be attractive; however, this should be weighed against the cost and resource implications for AHPRA and the likely delay the registration process compared to the applicant dealing directly with the international authority.

Option 4: Applicants make declarations and AHPRA undertakes random sample audits

Comments: (Comments provided under Option 1 apply to Option 4 also):

- This approach may not comply with the objectives of national registration as stated in the Health Practitioner Regulation National Law Act (“National Law”)– e.g.
 - “to facilitate the rigorous and responsive assessment of overseas-trained health practitioners;” further:
 - Section 79 (1) of the National Law states that AHPRA must check the applicants criminal history - it is doubtful that a declaration by the applicant him/herself could be viewed as a check by AHPRA –especially in context of the legal requirement for a rigorous check;
 - Section 79 (2) appears to provide a limited list the options of acceptable evidence (a “written report”) of criminal history. The list is comprehensive as the options include obtaining a written report from “an entity in a jurisdiction outside Australia that has access to records about the criminal history of persons in that jurisdiction”.
- As this declaration by the applicant is not a statutory declaration, the risk for an applicant with an adverse criminal history of making a false declaration would be non-existent, while the risk of AHPRA of not complying to the National Law; or of harm to the public may be significant.
- This is not an acceptable option.

General comments

- Regardless the barriers to obtaining criminal history checks from some international jurisdictions, this is not the rule regarding most “source countries” for health professionals.
- The bar should not be lowered for the majority of applicants for whom criminal history reports can be obtained in order to accommodate exceptions. Rather, a procedure could be considered for alternative assessment of applications where exceptional circumstances prevent obtaining a CCC conditional however that it complies with the National Law.
- Delays in registration is of minor importance when weighed against the risks of registering/appointment of unsuitable people who can have adverse impact on peoples lives;
- Local and international applicants should be scrutinised on the same level (as far as practical). If this is not done, it creates the impression that local criminal history checks standards are arbitrary or excessive.”

Regards

M Leigh