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AMA submission to the Australian Health Practitioner Regulation Agency- Public Consultation Paper on International Criminal History Checks

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The AMA cannot support the proposal that criminal history checks for international applicants be done after the applicant is registered. All applicants should undergo the relevant criminal history checks before they are registered.

The AMA does not share the view in the consultation paper that Option 5 will achieve better outcomes than any of the four options presented in August 2012 for managing international criminal history checking of applicants for registration.

Under subsection 79(1) of the *Health Practitioner Regulation National Law Act 2009* (the National Law) a National Board must check the applicant's criminal history before deciding an application for registration. This provision exists because it is material to protecting the public.

In Option 5 it is proposed that applicants who require an international criminal history check will be registered before the international check is completed – the national board will rely on the applicant's declaration about their international criminal history, the provision of Certificates of Registration Status or Good Standing and an Australian criminal history check. The AMA cannot support this aspect of Option 5.

For applicants who have never lived in Australia, Option 5 does not comply with subsection 79(1) and does not sufficiently protect the public. The Australian criminal history check will be redundant, and the Board will not have access to information about the applicant to be satisfied about the applicant's criminal history. While international applicants will have to supply Certificates of Registration Status or Good Standing from every jurisdiction in which they are currently or have previously been registered, these are not a substitute for full criminal history checks. The AMA is not aware that these certificates are a guarantee that the issuing jurisdiction has recently reviewed the applicant's criminal history status. Consequently, Option 5 would mean that applicants who have never lived in Australia will be treated more advantageously than applicants who have only lived in Australia who will not be registered until their criminal history has been checked.

The issue then is the method for obtaining the check (or clearance) before the applicant is registered. There are two options – Option 2 where the applicant provides criminal history clearance evidence with their applications; and Option 5 where AHPRA engages an external provider to conduct international criminal history checks and the applicant pays the costs with their application.

In the absence of evidence to the contrary, the AMA considers the majority of international applicants will be able to, and therefore should, provide a criminal history clearance with their applicant for registration in Australia. International applicants should factor the timing of obtaining of criminal history clearances into their plans to move to and work in Australia. The AMA assumes that the cost to these registrants, and the timing of obtaining clearances, would be the same whether Option 2 or Option 5 was used.

In August 2012 the AMA suggested that where applicants were unable to provide a criminal history (because the relevant jurisdiction does not routinely provide such documentation) they should provide a notarised declaration documenting their efforts to obtain such a clearance. However, if Option 5 would mean that the external provider can always obtain a criminal history record from any jurisdiction, then the AMA would support Option 5 in so far as it would ensure criminal history checks are obtained in all cases.

In addition, if the external provider is able to obtain criminal history clearances more quickly because it has established relationships with the relevant organisations, then it may be a more favorable avenue for applicants to use in preference to obtaining and providing documentation with their applications for registration. However, the AMA cannot support the proposal that checks be done after the applicant is registered.

For applicants who have lived in Australia and overseas, Option 5 only partially complies with subsection 79(1). The AMA considers that criminal history clearances should be obtained from all countries that the applicant has resided in before the applicant is registered.

Other comments

In terms of the length of residency that warrants an international criminal history clearance, the AMA is not aware of any conventions that would be appropriate to apply. Accordingly, the AMA considers that three months or more is a reasonable period. This could be reviewed after some years' experience with obtaining criminal history clearances for all applicants from all countries of residence.

In respect of applicants meeting the cost of an external provider obtaining clearances, it is appropriate that applicants pay the costs of the checks with their application i.e. before they are registered.

The AMA supports the proposal to place no time limits on international criminal history checks so that they apply to the applicant's entire criminal history.

The AMA appreciates that for applicants from countries that have 'spent' convictions and therefore not recorded in criminal histories, the Board will have to weigh up the offence declared by the applicant and its relevance to registration as a health practitioner.

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