

10 October 2013

## **Consultation on International Criminal History Checks**

*This submission has been prepared on behalf of the Physiotherapy Board. Any enquiries should be addressed to Jeanette Woltman-Black, Chief Executive, P.O. Box 10-734, Wellington.*

Phone: [REDACTED]

### **1.0 Introduction**

- 1.1 Thank you for the opportunity to provide comment on the consultation paper on international criminal history checking.
- 1.2 The Physiotherapy Board acknowledges the requirement for robust criminal history and endorses AHPRA for considering standardisation and improvement in criminal conviction checks for registrants both national and international.
- 1.3 Consideration of any changes will need to be cognisant of the Trans-Tasman Mutual Recognition Act 1997 on the registration process. Further detail of this is required below.
- 1.4 The Criminal Records (Clean Slate) Act 2004 has the effect of concealing certain types of convictions from being disclosed on a criminal conviction record.

### **2.0 The Physiotherapy Board New Zealand (NZPB)**

- 2.1 The Physiotherapy Board of New Zealand, one of sixteen Responsible Authorities established by the Health Practitioners Competence Assurance Act 2003 ("HPCA Act", has statutory responsibility for regulating all physiotherapists.
- 2.2 The primary purpose of the HPCA Act is to protect the health and safety of the public. In so doing, the Board is required to undertake and carry out specified prescribed statutory functions.
- 2.3 The purpose of the Physiotherapy Board is to set, monitor and promote competence, continuing professional development and proper conduct for the practice of physiotherapy in the interests of public health and safety.

### **3.0 NZPB Criminal Checks Policy and Approach**

- 3.1 The HPCA Act requires the Board to ensure that those seeking registration or an Annual Practising Certificate are fit to practise.
- 3.2 The Board requires applicants for registration within the general scope and registrants applying for their Annual Practising Certificate to disclose certain criminal convictions.

- 3.3 These disclosures are referred to the Board for consideration.
- 3.4 The Board consider the disclosures and determine whether that applicant or registrant is fit to practise as a physiotherapist in New Zealand.
- 3.5 The “Criminal Convictions Policy” of the NZPB seeks to treat those applicants and registrants from overseas countries in the same way as applicants and registrants in New Zealand.
- 3.6 New Zealand educated applicants applying for registration must supply a criminal conviction records issued by the New Zealand Ministry of Justice as part of their application (note there is no fee paid for this service from the Ministry of Justice). A criminal conviction record (or its equivalent) must also be supplied by the relevant authority in every other country that the applicant has lived in for 12 months or more in the last 10 years, over the age of 18 years. The criminal conviction record(s) must be an original and dated not more than 3 months prior to the date of receipt by the Board.
- 3.7 Overseas educated applicants for registration must provide a criminal conviction record (or its equivalent) from the relevant authority in their current country of practice as part of their application. A criminal conviction record (or its equivalent) must also be provided from the relevant authority in every other country that the applicant has lived in for 12 months or more in the last 10 years, over the age of 18 years. As with NZ educated applicants the criminal conviction record(s) must be an original and dated not more than 3 months prior to the date of receipt by the Board.
- 3.8 The New Zealand criminal conviction record discloses convictions or the applicant chooses to disclose convictions that are covered by the Clean Slate Act 2004. Any New Zealand convictions disclosed by the applicant even though covered by the Clean Slate Act will be disregarded by the Board as though they were not disclosed. The same criteria applies for overseas applicants i.e. if the disclosure would have been covered in the Clean Slate Act, then the Board disregards this.
- 3.9 Registrants must declare any criminal convictions obtained since their last application for an Annual Practising Certificate unless covered by the Clean Slate Act. If a registrant declares a criminal conviction, then it is referred to the Board for decision.
- 3.10 The Criminal Convictions Disclosure Policy does not apply to registration under the Trans Tasman Mutual Recognition Act 1997. See comments below.

#### **4.0 Comments on International Criminal History Checks AHPRA Consultation**

- 4.1 The consultation is seeking specific comment on Option 5 where an external provider conducts international criminal history checks. There are clear benefits of an external entity undertaking the required criminal history checks in terms of consistency of approach, recognition of what is required from other countries and may streamline the application process in this specific area. There is wide scope and content of international jurisdictions and can be complex for entities to ensure the correct information is being provided. The other benefits are noted in the consultation paper.
- 4.2 The NZPB agrees that the same criteria / test for criminal history checks should apply for national and international applicants.

- 4.3 NZBS agrees that the cost is to the applicant. This is consistent with the approach in New Zealand for physiotherapists.
- 4.4 Like NZPB the timing of checks at the point of registration application is appropriate.
- 4.5 Trans Tasman Mutual Recognition Act 1997 places some restrictions on New Zealanders that AHPRA will need to consider as this approach will require modification for New Zealand registered physiotherapists.
- 4.6 Feedback is sought on the specific period where the applicant has lived. The options in the consultation are 3 months or more and 6 months or more. As above NZPB states 12 months or more in the last 10 years, over the age of 18. The time periods proposed are much shorter than the NZPB requirements and cost consideration may be a factor AHPRA could balance against the risk given the requirement for disclose annually.
- 4.7 It is agreed that Certificates of Good Standing are required and this is consistent with the NZPB requirements and balances the risk as per 4.6..

## **5.0 Trans-Tasman Mutual Recognition Act 1997**

- 5.1 The AHPRA approach will be required to take cognisance of the impact of the Trans-Tasman Mutual Recognition Act 1997 (“TTMRA”) on the registration process. The net effect of the TTMRA is that if a practitioner is registered and able to practise in New Zealand (or Australia) they are entitled as of right without further process to be registered and practise in Australia (and New Zealand visa versa). The legislation is founded on the principle of equivalence and an applicant is deemed registered unless within thirty days of the application being made, the Board objects on the basis of the application containing a significant misrepresentation.

## **6.0 Vulnerable Children Bill**

- 6.1 The New Zealand Government Select Committee is considering a Vulnerable Children Bill in October 2013 and if passed as legislation will further extend the vetting and screening for practitioners who work with children.
- 6.2 If passed there will be a requirement for additional safety checks for employees in the government and government funded children’s workforce and a restriction on the employment of persons with disqualifying convictions.
- 6.3 It is unclear as yet what the implications / requirements will be on Responsible Authorities.

## **7.0 Conclusion**

- 7.1 NZPB requires the applicant to provide all the required documentation on application for registration. The documentation (including criminal history documentation must be provided as part of the application and must be the original document. This approach has to date provided appropriate assurance and evidence for the Board to make determinations of fitness to practise.
- 7.2 The TTMRA may have implications for what is being proposed and it is requested that compliance with this Act is taken into account in any decisions.

- 7.3 There is significant variance in the specific period where the applicant has lived and further consideration of this is suggested for consistency with the New Zealand approach.
- 7.4 Thank you for the opportunity to comment on this consultation and we look forward to the outcome.