



Consultation on the review of the Criminal history registration standard

June 2024

The National Boards and Ahpra acknowledge the Traditional Owners of Country throughout Australia and their continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures and Elders past and present.

This consultation paper discusses criminal behaviour and criminal offending. This may be emotionally challenging or distressing for some people.

Information about [support services](#) for both the public and for registered health practitioners is available on the Ahpra website.

Information for people who have a [concern](#) that a health practitioner may be putting public safety at risk is also available on the Ahpra website.

Introduction

The core role of Ahpra and the National Boards when regulating health practitioners is public protection, including when checking people are appropriately qualified and suitable to be registered as health practitioners.

All National Boards expect registered health practitioners to behave in a way that warrants the trust and respect the community places in them. A person's criminal history may be an indication that they are not a suitable person to be a registered health practitioner. There are some criminal histories that are so serious they are incompatible with registration regardless of the time passed, the behaviour of the individual since the criminal offending, or any other information.

In phase one of our consultation in 2023, patients and consumers told us that they must be able to trust registered health practitioners and a serious criminal history was usually incompatible with that trust, especially where it involves sexual offending.

We heard that it is important that the criminal history registration standard has the right factors that are applied in the right way so that Boards only register people who are suitable to be registered health practitioners. We aim to achieve this through a combination of a clearer registration standard and better guidance about how the standard is applied. Together, we believe this provides an approach which is much clearer about the types of criminal history that are incompatible with being a registered health practitioner.

Background to the Criminal history registration standard

National Boards develop registration standards that set out the requirements that registered health practitioners must meet when applying for or renewing their registration. National Boards set the standards for registration and how to stay registered as a health practitioner and work with Ahpra to manage concerns.

Whenever possible National Boards work together to develop common or similar standards across professions. This helps registered health professions understand each other, supports them to practise together and makes it easier for consumers to understand the standards registered health practitioners must meet.

All of the National Boards share and are developing a revised *Criminal history registration standard* (the criminal history standard) to ensure it remains a relevant and effective tool that contributes to public safety.

The criminal history standard is a fundamental part of the controls which check registered health practitioners are safe to practise. Being safe to practise means not only that a person has the appropriate training and qualifications in their profession, but that they are also a suitable person to be a registered health practitioner, given the trust and confidence that the public places in them. National Boards consider the criminal history standard when deciding if an individual is a suitable person to be a registered health practitioner or if a registered health practitioner remains an appropriate person to practise the profession.

What are we consulting on?

In August/September 2023, as part of [our work to improve public safety in health regulation](#) the National Boards and Ahpra consulted widely on a range of reforms (the 2023 consultation), including a series of questions about the current criminal history standard.

We have now had an opportunity to consider this feedback and propose changes to the criminal history standard and have drafted new supporting material for the standard.

We want your feedback.

We want to hear from you on how we have responded to feedback, the draft changes we have made to the criminal history standard, and the other material we have developed to explain how the standard is applied.

We have some specific questions for you about the draft changes and material along with an opportunity for general comment.

How to have your say

Consultation opens on **4 June 2024** and closes at **5pm (AEST) 30 July 2024**.

You can provide your feedback using our [online form](#).

Alternatively, you can provide feedback using the [submission template](#) (Word document) and email us at AhpraConsultation@ahpra.gov.au

The questions in the online form and submissions template are the same and are based on the questions listed on Page 10 of this consultation paper.

Publication of submissions.

We publish submissions at our discretion. We generally [publish submissions to 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 place 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 to 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 organisations that made the submission unless confidentiality is expressly requested.

Next steps.

Your feedback will form part of the consideration in drafting the final version of the revised criminal history standard.

The revised criminal history standard must be approved by Health Ministers before it takes effect.

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Consultation Paper

Overview

1. The National Law requires National Boards to establish five core registration standards, including a standard for assessing the criminal history of people who apply for registration as a health practitioner and any changes to the criminal history of health practitioners and students registered by a National Board.
2. The five core registration standards are an important part of regulation for each profession. They set national standards that practitioners must meet to be registered and stay registered, they make the National Board's requirements of practitioners clear, and they inform decision-making when concerns are raised about a registered health practitioner's conduct, health, or performance.
3. In August/September 2023 National Boards consulted on the current version of the criminal history standard, as part of a consultation on other work being undertaken as part of the Boards' [blueprint to improve public safety in health regulation](#). This work included a range of reforms to better protect patients from serious misconduct, including sexual misconduct, by registered health practitioners.
4. We asked for feedback before any changes were drafted to the criminal history standard. We also invited feedback on some materials drafted to better explain how the criminal history standard worked in practice.

Feedback from consultation

5. We received 84 submissions from stakeholders as part of this initial public scoping consultation. More information on the consultation responses is available in the consultation report on our [website](#).
6. Overall, most stakeholders were supportive of the factors outlined in the current criminal history standard and agreed that it largely got the balance right between protecting the public and an individual's right to work in their chosen profession. Stakeholders also agreed that it was necessary to provide better and clearer information about how decisions are made and how the criminal history standard is applied in practice. Most submissions agreed that the initial draft material we provided was useful and largely appropriate.
7. The following table shows the major themes from feedback and how we have responded to this feedback:

Feedback	Proposed response
<ul style="list-style-type: none">Decision making about the criminal history standard should recognise the disproportionate representation of Aboriginal and Torres Strait Islander people in the Australian criminal justice system and ensure all processes are culturally safe for Aboriginal and Torres Strait Islander People.	Proposed changes to standard.
<ul style="list-style-type: none">Ahpra and the National Boards should provide more information about the factors within the standard, how they work in practice and what the process is when the standard is applied to an individual's criminal history.	See new explanatory material – <i>Guide to the application of the Criminal history registration standard and Information for practitioners and students about criminal history checks and declarations and the criminal history standard</i>
<ul style="list-style-type: none">Offences against children, sexual offences, offences involving violence, homicide offences, dishonest and offences that involved taking advantage of vulnerable people are serious offences that impact on public safety.	Proposed changes to standard highlight that a practitioner must not have a criminal history inconsistent with registration. New explanatory material explains serious offences are usually incompatible with registration.
<ul style="list-style-type: none">Family or domestic violence offences should be given greater consideration by decision makers.	See new explanatory material – <i>Guide to the application of the Criminal history registration standard and Information for practitioners and students about criminal history checks and declarations and the criminal history standard</i>

<ul style="list-style-type: none"> • There should be a better explanation and more information, including examples, of how decisions are made. 	See new explanatory material – <i>Guide to the application of the Criminal history registration standard and Information for practitioners and students about criminal history checks and declarations and the criminal history standard</i>
<ul style="list-style-type: none"> • Decision makers should consider each application and the individual circumstances and context behind it. 	Standard clarifies and explanatory material explains the types of criminal history likely to be incompatible with registration.
<ul style="list-style-type: none"> • Ahpra and the National Boards should provide a better explanation about how 'spent' convictions and no-conviction offences are considered and how fairness is ensured for practitioners. 	See new explanatory material – <i>Guide to the application of the Criminal history registration standard and Information for practitioners and students about criminal history checks and declarations and the criminal history standard</i>
<ul style="list-style-type: none"> • There should be more information about what practitioners need to provide to show that despite a criminal history, they do not pose a risk to the public and should be registered. 	See new explanatory material – <i>Guide to the application of the Criminal history registration standard and Information for practitioners and students about criminal history checks and declarations and the criminal history standard</i>

8. As part of the initial consultation, we also tested an approach that listed criminal offences against their likely impact on a decision about registration. Feedback on this approach was mixed.
9. Some stakeholders recognised that there were likely some circumstances and criminal offending after which a practitioner should not be permitted to practise their profession, regardless of the circumstances of the offending. Others thought that a list would prevent decision makers from considering all the circumstances and the individual context behind a person's criminal history and thought that there might be some rare circumstances where even a criminal history of serious offending might not necessarily mean a practitioner was a risk to the public.

Changes to the standard after initial consultation

10. While some stakeholders suggested that the draft explanatory material should be included in the criminal history standard itself, National Boards want to test maintaining the current approach where the criminal history standard sets out a series of high-level principles, however it is now supported by separate material that explains how these are applied. The new material expands on the principles and provides examples of their application to support the criminal history standard. This is because it is important to ensure the application of the standard remains in line with public expectations, and its simpler and quicker to update explanatory materials than a registration standard.
11. We have made important changes to the criminal history standard to clarify and strengthen its application. A table illustrating the changes made to the criminal history standard and the reasoning for these changes is at **Appendix A**.

The major changes to the criminal history standard are:

- Making it clear a practitioner cannot have a criminal history incompatible with registration.
- Explaining the purpose and the requirements of the criminal history registration standard and how a registered health practitioner or individual applicant may 'meet' the requirements of the standard. This does not appear in the current standard and was one of the themes in the feedback we received.
- Separating the consideration of nature and gravity, or seriousness, of a criminal offence. This change reflects feedback received that while the nature of some offences may be seen as 'minor' within the criminal justice system, these offences have a greater impact when considered in the context of regulated health practice.
- Adding a new consideration of Aboriginal and Torres Strait Islander experiences of inequity and racism, and the disproportionate impact these experiences may have on an individual's criminal history. Including this principle aligns with recent amendments to the National Law which set a specific

objective of the National Scheme to build the capacity of the Australian health workforce to provide culturally safe health services and a guiding principle that this workforce is responsive to Aboriginal and Torres Strait Islander Peoples. Consideration that an individual's criminal history may arise due to the experiences of racism and inequity of Aboriginal and Torres Strait Islander Peoples, and the various reasons behind this, does not mean a lowering of the criminal history standard, but will ensure that the factors within the criminal history standard are applied equitably to all applicants.

12. In addition to the changes to the criminal history standard, the draft explanatory material is entirely new and seeks to better explain the principles within the criminal history standard, which addresses the feedback received which called for greater explanation of how the criminal history standard works in practice. The explanatory material aims to reassure the public that when individuals have committed serious offences that are directly relevant to practice, it is unlikely that they will be registered in a health profession. There will be more explanatory material developed to provide more comprehensive information, including a fact sheet for the public.
13. Combined, we consider the revised criminal history registration standard and explanatory material provide greater transparency to practitioners and the public about how criminal history is considered when making registration decisions.

Definition of criminal history

14. Criminal history is defined within the National Law and the definition is broad. The National Law definition of criminal history is:
 - Every conviction of the person for an offence.
 - Every plea of guilty or finding of guilt by a court of the person for an offence, regardless of whether or not a conviction is recorded for the offence.
 - Every charge made against the person for an offence.
15. This definition means that criminal penalties such as good behaviour bonds or diversion orders will appear on criminal history records obtained under the National Law.
16. Spent conviction legislation also does not apply to the definition of a criminal history in the National Law. Spent conviction legislation differs in all states and territories, but all allow some offences to be removed from a criminal history after a certain period of time, unless an exemption applies. Criminal history checks for the purposes of registration under the National law are exempt from spent conviction legislation. This means that applicants and registered health practitioners must tell the National Board about all their criminal history, even if the criminal offence occurred a long time ago.
17. Information about criminal charges, regardless of whether or not a conviction is recorded, and information about very old offences are part of a criminal history for the purposes of registration because it is important that National Boards have enough information to ensure that everyone who is a registered health practitioner is a safe and appropriate person to be registered in their profession. Health practitioners are in positions of power and responsibility and National Boards, and the public expect health practitioners to be fit and proper people to practise their profession.

Relevance of a criminal history

18. A National Board will consider a registered health practitioner's criminal history when:
 - an individual applies for registration as a health practitioner
 - when a practitioner renews their registration and declares that there has been a change to their criminal history, or
 - when a registered health practitioner or a registered student notifies a Board of a change to their criminal history that is defined in the National Law as a 'relevant event'.

Criminal history and registered students

19. Criminal history checks are not undertaken on registration as a student. This is because students do not apply for registration directly but are registered based on information from their education provider.

20. However, the criminal history standard will be applied if a student is charged with an offence punishable by 12 months imprisonment or more or the student is convicted or found guilty of an offence punishable by imprisonment and under the National Law the student must notify the Board of these events¹.
21. Where a Board becomes aware of criminal charges or convictions of a registered student the National Board may take immediate action² and suspend or impose a condition on the student's registration, accept an undertaking or the surrender of the student's registration³.

Options for managing assessment of practitioners and applicants with a criminal history.

Option A: No changes to the current criminal history standard

22. Under this option the criminal history standard would remain as is. The current version of the criminal history standard is largely unchanged from the first draft of the criminal history standard in 2010 and revised in 2015. This could indicate that the current standard is fit for purpose.
23. However, feedback to the initial public consultation and a comparison with similar information published by other regulators indicates that there is an opportunity for National Boards to make changes to the standard in order to clarify requirements of practitioners, to better explain the principles within the criminal history standard and to include a specific consideration for Aboriginal and Torres Strait Islander Peoples.

Option B: Proposed revised criminal history registration standard.

24. Option B would involve the National Boards submitting the revised criminal history standard to health ministers for approval. The revised standard continues to outline high level principles for decision making about applicants or registered health practitioners' criminal history, while providing greater clarity and language to make the standard easier to understand and implement.
25. The revisions to the criminal history standard are supported by the feedback received in the initial public scoping consultation. There will also be new explanatory material to explain how the standard is applied.

Preferred option

26. Option B is the National Boards' preferred option.

Estimated impact

27. The draft revised criminal history standard continues to set out the high-level principles National Boards consider when assessing an applicant or practitioner's criminal history. The draft revised standard proposes more information as to how it is relevant at both application and after an individual is registered as a health practitioner, along with a clearer indication of how the standard can be 'met'.
28. We anticipate the impact on practitioners arising from these changes to be minimal, given the principles within the standard remain largely unchanged, with the addition of a consideration of Aboriginal and Torres Strait Islander Peoples. For registered health practitioners the criminal history standard is only relevant when their criminal history changes, and for the majority of practitioners this is unlikely to occur. For new applicants for registration, we anticipate that the draft revised criminal history standard provides a better explanation as to how their criminal history, if any, may be considered when they apply for registration. For registered students, the draft revised criminal history standard provides greater clarity on when the criminal history standard would be applied to them as students, and how their application for registration may be impacted by their criminal history at the time they apply for registration as a health practitioner.
29. The National Boards will continue to review and revise the draft supporting information about the criminal history and, if indicated, develop further resources to support applicants and practitioners including information about what they can provide to the National Board to support their submissions in relation to a criminal history.

¹ National Law section 130(3(b)(i)and(ii)

² National Law section 156(1)(b)

³ National Law section 155

Questions for consideration

The National Boards are inviting general comments on the draft revised criminal history standard, and the draft supporting material, as well as feedback on the following questions.

Criminal history registration standard

1. Is the content, language, and structure of the proposed revised criminal history standard clear, relevant and workable? Why/why not?
2. Is the standard clear that practitioners must not have a criminal history that's inconsistent with being a registered health practitioner? Why/why not?
3. Is it a reasonable approach for the criminal history standard to remain as a set of high-level principles with separate information about how the standard is applied? Why/why not?
4. Do you support the approach to emphasise there are some offences that are usually incompatible with registration rather than including a list of 'disqualifying offences? Why/why not?
5. Does the additional information in the draft criminal history adequately explain how and when the criminal history standard applies and what the requirements of the criminal history standard are? Why/why not?

Explanatory material

6. Is the content, language, and structure of the additional explanatory material to support the draft revised criminal history standard clear, relevant and useful? Why/Why not?
7. Is there any content that needs to be changed, added or removed in the additional explanatory material? If so, please describe.
8. Should the guidance include more information about the types of criminal offences and their potential impacts on registration?

Both criminal history registration standard and explanatory material

9. Would the proposed revised criminal history standard and/or the new draft explanatory material result in any potential negative or unintended effects for Aboriginal and Torres Strait Islander peoples? If so, please describe.
10. Would the proposed revised criminal history standard and/or the new draft explanatory material result in any potential negative or unintended effects for people experiencing vulnerability or disadvantage? If so, please describe.

Appendix A: Changes to the Criminal history registration standard

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
<p>Summary</p> <p>This registration standard sets out the factors the National Board will consider in deciding whether a health practitioner’s criminal history is relevant to the practice of their profession under the Health Practitioner Regulation National Law as in force in each state and territory (the National Law). While every case will need to be decided on an individual basis, these 10 factors provide the basis for the Board’s consideration.</p>	<p>Summary</p> <p>Under the National Law⁴, an applicant for registration must declare to the National Board their criminal history within and outside of Australia⁵. Registered practitioners must also declare changes to their criminal history when renewing registration⁶ and registered practitioners and registered students must declare certain criminal history while holding registration⁷.</p> <p>An assessment of an individual’s criminal history forms part of a National Board’s consideration of whether it is appropriate or in the public interest that the individual hold registration⁸ or whether the individual is a fit</p>	<p>This section has been expanded and the definition included here, rather than at the end of the document, in order to provide clearer information on the purpose of the criminal history standard.</p>

⁴ The Health Practitioner Regulation National Law as in force in each state and territory.

⁵ National Law, section 77(3)(c)

⁶ National Law, section 109(1)(b)

⁷ National Law, section 130(1)

⁸ National Law, section 55(1)(b)

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
	<p>and proper person⁹ to practise the profession.</p> <p>The primary consideration in applying this standard is public protection. This registration standard sets out the factors the National Board will consider in deciding whether a health practitioner’s criminal history will impact on the practitioner’s registration or application under the National Law. While every case will be decided on an individual basis, these factors provide the basis for the Board’s consideration.</p> <p>More information on how decision makers consider each factor appears in the <i>Guide to the application of the Criminal History Registration Standard</i>.</p> <p>Definitions</p> <p>Criminal history is defined in the National Law and includes:</p> <ul style="list-style-type: none"> • every conviction of the person for an offence • every plea of guilty or finding of guilt by a court of the person for an offence, whether or not a conviction is recorded for the offence; • every charge made against the person for an offence. <p>Criminal history checks under the National Law are exempt from spent</p>	

⁹ National Law, section 55(1)(h)(j)

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
	<p>convictions legislation. This means that when making a declaration about criminal history, applicants and registered health practitioners must declare their entire criminal history, from Australia and any other country, including any spent or aged convictions¹⁰.</p>	
<p>Does this standard apply to me?</p> <p>This standard applies to all applicants for registration and all registered health practitioners. It does not apply to students.</p>	<p>Does this standard apply to me?</p> <p>This standard applies to all applicants for registration as a health practitioner.</p> <p>It applies to all registered health practitioners as part of their annual statement at renewal of registration if their criminal history has changed and to all registered practitioners who are charged with or convicted of certain criminal offences called ‘relevant events’ under the National Law.</p> <p>Criminal history checks are not undertaken before student registration, but the criminal history standard will apply if students are charged or convicted with certain criminal offences during their registration¹¹.</p>	<p>More information has been included in this section in order to better explain when the criminal history standard is applied, and in particular how the standard is applied to registered students.</p>
<p>Requirements</p>	<p>Requirements</p> <p>An individual applicant or registered practitioner must not have a criminal history</p>	<p>More information is provided here in order to make it clear that the requirements of the criminal history standard are that an individual applicant or registered practitioner</p>

¹⁰ Spent conviction legislation differs in all states and territories but all allow criminal histories to be amended by removing some offences after a certain period of time, unless an exemption applies.

¹¹ The criminal history of students will be considered at the time of an application for registration as a practitioner. Criminal conduct while a registered student is required to be notified to the relevant National Board (National Law section 130(3)(b))

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
<p>In deciding whether a health practitioner’s criminal history is relevant to the practice of their profession, the Board will consider the following factors.</p>	<p>the National Board considers inconsistent with suitability to hold registration or practice their profession.</p> <p>How do Boards decide if a criminal history is inconsistent with suitability to hold registration or practice the profession?</p> <p>In deciding whether an applicant or health practitioner’s criminal history is inconsistent with suitability to hold registration or practise the profession, the Board will consider and, in its discretion, assign weight to the factors outlined below.</p>	<p>cannot have a criminal history that is inconsistent with suitability to hold registration or practice their profession.</p>
<p>No equivalent in current standard</p>	<p>Note - Public protection and public confidence comes first¹²</p> <p>In any decision-making and applications of the National Law¹³, the most important considerations are the protection of the public and the public’s confidence in the safety of registered health practitioners.</p>	<p>This information is included in order to ensure that the information in the criminal history standard accurately reflects the requirements in the National Law and in a direction to National Boards from health ministers, wherein Boards must put public protection and public confidence first in any decision making.</p>
<p>1. The nature and gravity of the offence or alleged offence and its relevance to health practice.</p> <p>The more serious the offence or alleged offence and the greater its relevance to health practice, the more weight that the Board will assign to it.</p>	<p>1. The nature of the offence or alleged offence and its relevance to health practice.</p> <p>Usually, the nature of the offence or alleged offence is closely related to the gravity, or seriousness of the offence or alleged offence. However, some offences</p>	<p>Consideration of the nature of the offence and the seriousness of the offence have been separated to make it clear that some offending, while classified as minor may be still be considered seriously as the nature of the offence will impact on suitability to hold registration or practise the profession.</p>

¹³ National Law section 3A(1)(a) and (b) and Policy Direction 2019-01

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
	<p>may not be ‘serious’ criminal offences but will be of a nature that relates strongly to health practice and will impact on suitability to hold registration or to practise the profession.</p> <p>2. The gravity or seriousness of the offence or alleged offence.</p> <p>Generally, the more serious the offence or alleged offence, the stronger the likelihood it will impact on suitability to hold registration or to practise the profession. Serious offending or alleged offending may impact on registration regardless of whether the nature of the offending is relevant to health practice.</p>	
<p>2. The period of time since the health practitioner committed, or allegedly committed, the offence.</p> <p>The Board will generally place greater weight on more recent offences.</p>	<p>3. The period of time since the health practitioner committed, or allegedly committed, the offence.</p> <p>Generally, the more time that has elapsed since the offence or alleged offence was committed, the less impact a criminal history will have on suitability to hold registration or to practise the profession. However, with serious offences, along with some offences that are of a nature that is directly relevant to health practice, the period of time elapsed since the offending may not lessen the impact of the criminal history on decision making.</p>	<p>Further information has been added here in order to emphasise that serious offending or alleged offending or criminal offences or alleged offences that are directly relevant to health practice may still impact on suitability to hold registration or practise the profession, regardless of the time that has passed.</p>

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
<p>3. Whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending.</p> <p>In considering the relevance of the criminal history information, the Board is to have regard to the type of criminal history information provided. The following types of criminal history information are to be considered, in descending order of relevance:</p> <ul style="list-style-type: none"> a. convictions b. findings of guilt c. pending charges d. non conviction charges; that is, charges that have been resolved otherwise than by a conviction or finding of guilt, taking into account the availability and source of contextual information which may explain why a non-conviction charge did not result in a conviction or finding of guilt. 	<p>4. Whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending.</p> <p>The type of criminal history information provided will be considered. Generally, the following is the descending order in which types of criminal history information will impact suitability to hold registration or to practise the profession:</p> <ul style="list-style-type: none"> a. convictions b. findings of guilt c. pending charges d. non conviction charges; that is, charges that have been resolved otherwise than by a conviction or finding of guilt, taking into account the availability and source of contextual information which may explain why a non-conviction charge did not result in a conviction or finding of guilt. 	<p>Minor changes were made here to improve clarity regarding the factors considered.</p>
<p>4. The sentence imposed for the offence.</p> <p>The weight the Board will place on the sentence will generally increase as the significance of the sentence increases, including any custodial period imposed. The Board will also consider any mitigating factors raised in sentencing, where available, including rehabilitation.</p>	<p>Unchanged other than numbering.</p>	

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
<p>5. The ages of the health practitioner and of any victim at the time the health practitioner committed, or allegedly committed, the offence.</p> <p>The Board may place less weight on offences committed when the applicant is younger, and particularly under 18 years of age. The Board may place more weight on offences involving victims under 18 years of age or other vulnerable persons.</p>	<p>6. The age of the health practitioner at the time the health practitioner committed, or allegedly committed, the offence.</p> <p>Generally, offences committed when the individual is younger, and particularly under 18 years of age, will have less impact on decisions about suitability to hold registration or to practise the profession.</p>	<p>The amendment to this section removes reference to the consideration of the age of victims when considering the age of the health practitioner. The age of the victim or other factors which may indicate that a person has care and support needs that make them vulnerable to harm forms part of the consideration of the nature of the offence.</p> <p>This section is now confined to consideration of offending when an individual is young.</p>
<p>6. Whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the health practitioner committed, or allegedly committed, the offence.</p> <p>The Board will generally place less or no weight on offences that have been decriminalised since the health practitioner committed, or allegedly committed, the offence.</p>	<p>7. Whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the health practitioner committed, or allegedly committed, the offence.</p> <p>Offences that have been decriminalised since the health practitioner committed, or allegedly committed, the offence will usually have no impact on decisions about registration or practice of the profession.</p>	<p>Minor alterations were made to this section to aid clarity.</p>
<p>7. The health practitioner’s behaviour since he or she committed, or allegedly committed, the offence.</p> <p>Indications that the offence was an aberration and evidence of good conduct or rehabilitation since the commission, or alleged commission of the offence, will tend to be a mitigating factor. However,</p>	<p>8. The health practitioner’s behaviour since they committed, or allegedly committed, the offence.</p> <p>Indications that the offence was an aberration and evidence of good conduct or rehabilitation since the commission, or alleged commission of the offence, will tend to be a mitigating factor. However, indications that the offence is part of a</p>	<p>Minor alterations to remove unnecessary use of pronouns were made to this section.</p>

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
indications that the offence is part of a pattern of behaviour will tend to have the opposite effect.	pattern of behaviour may have the opposite effect.	
<p>8. The likelihood of future threat to a patient of the health practitioner.</p> <p>The Board is likely to place significant weight on the likelihood of future threat to a patient or client of the health practitioner.</p>	Unchanged	
No equivalent in current standard	<p>10. Experiences of racism and inequity for Aboriginal and Torres Strait Islander peoples.</p> <p>National Boards recognise that the disproportionate contact Aboriginal and Torres Strait Islander people experience with the Australian criminal justice system occurs for a range of reasons. Boards recognise the possibility that the criminal history of an individual may arise from racism and inequitable treatment of Aboriginal and Torres Strait Islander people, rather than differences in behaviour and will take this into account in any decision making about suitability to hold registration or to practise the profession.</p>	This is a new consideration in the proposed revised Criminal history registration standard.
<p>9. Any information given by the health practitioner.</p>	Unchanged	

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
<p>Any information provided by the health practitioner such as an explanation or mitigating factors will be reviewed by the Board and taken into account in considering the health practitioner’s criminal history.</p>		
<p>10. Any other matter that the Board considers relevant.</p> <p>The Board may take into account any other matter that it considers relevant to the application or notification. A Board will not require an applicant or registered health practitioner to provide further information that may prejudice their personal situation pending charges and the Board must not draw any adverse inference as a result of the fact that information has not been provided.</p>	<p>12. Any other matter that the Board considers relevant.</p> <p>The Board may take into account any other matter that it considers relevant to the application or notification.</p> <hr/> <p>Note: A Board will not require an applicant or registered health practitioner to provide further information that may prejudice their personal situation pending charges and the Board must not draw any adverse inference as a result of the fact that information has not been provided.</p>	<p>This section was modified to ensure the decision making factors within the standard are clear.</p>
<p>No equivalent in current standard</p>	<p>What if I have a criminal history?</p> <p>If you have a criminal history, you need to provide information to help the Board to decide whether you are a suitable person to be registered or to practise the profession.</p> <p>Not all applicants with a criminal history are refused registration, and not all registered practitioners with a criminal history are required to stop practising.</p> <p>There are a number of possible consequences in the National Law if you have a criminal history, including that:</p>	<p>This additional information was added to the proposed revised Criminal history registration standard in order to provide better information within the standard of how the standard works in practise.</p>

Current wording – Criminal history registration standard	Proposed new wording – Criminal history registration standard	Comments
	<ul style="list-style-type: none"> • The Board can refuse your application for registration or renewal of registration. • The Board can impose conditions on your application or your registration which may, for example require you to undertake education, restrict your practice location or type or to take part in mentoring or a supervised practice arrangement. • The Board may require you to undertake an examination or assessment. • Registration standards, codes and guidelines may be used in disciplinary proceedings against you as evidence of what constitutes appropriate practice or conduct for registered health practitioners. 	

Appendix B: Draft revised Criminal history registration standard

Registration standard: Effective from **DATE**

Registration standard: Criminal history

Effective from: **DATE**

Summary

Under the National Law¹⁴, an applicant for registration must declare to the National Board their criminal history within and outside of Australia¹⁵. Registered practitioners must also declare changes to their criminal history when renewing registration¹⁶ and registered practitioners and registered students must declare certain criminal history while holding registration¹⁷.

An assessment of an individual's criminal history forms part of a National Board's consideration of whether it is appropriate or in the public interest that the individual hold registration¹⁸ or whether the individual is a fit and proper person¹⁹ to practise the profession.

The primary consideration in applying this standard is public protection. This registration standard sets out the factors the National Board will consider in deciding whether a health practitioner's criminal history will impact on the practitioner's registration or application under the National Law. While every case will be decided on an individual basis, these factors provide the basis for the Board's consideration.

More information on how decision makers consider each factor appears in the *Guide to the application of the Criminal History Registration Standard*.

Definitions

Criminal history is defined in the National Law and includes:

- every conviction of the person for an offence
- every plea of guilty or finding of guilt by a court of the person for an offence, whether or not a conviction is recorded for the offence;
- every charge made against the person for an offence.

¹⁴ The Health Practitioner Regulation National Law as in force in each state and territory.

¹⁵ National Law, section 77(3)(c)

¹⁶ National Law, section 109(1)(b)

¹⁷ National Law, section 130(1)

¹⁸ National Law, section 55(1)(b)

¹⁹ National Law, section 55(1)(h)(j)

Criminal history checks under the National Law are exempt from spent convictions legislation. This means that when making a declaration about criminal history, applicants and registered health practitioners must declare their entire criminal history, from Australia and any other country, including any spent or aged convictions²⁰.

Does this standard apply to me?

This standard applies to all applicants for registration as a health practitioner.

It applies to all registered health practitioners as part of their annual statement at renewal of registration if their criminal history has changed and to all registered practitioners who are charged with or convicted of certain criminal offences called 'relevant events' under the National Law.

Criminal history checks are **not** undertaken before student registration, but the criminal history standard will apply if students are charged or convicted with certain criminal offences during their registration²¹.

Requirements

An individual applicant or registered practitioner must not have a criminal history the National Board considers inconsistent with suitability to hold registration or practice their profession.

How do Boards decide if a criminal history is inconsistent with suitability to hold registration or practice the profession?

In deciding whether an applicant or health practitioner's criminal history is inconsistent with suitability to hold registration or practise the profession, the Board will consider and, in its discretion, assign weight to the factors outlined below.

Note - Public protection and public confidence comes first²²

In any decision-making and applications of the National Law²³, the most important considerations are the protection of the public and the public's confidence in the safety of registered health practitioners.

1. The nature of the offence or alleged offence and its relevance to health practice.

Usually, the nature of the offence or alleged offence is closely related to the gravity, or seriousness of the offence or alleged offence. However, some offences may not be 'serious' criminal offences but will be of a nature that relates strongly to health practice and will impact on suitability to hold registration or to practise the profession.

2. The gravity or seriousness of the offence or alleged offence.

Generally, the more serious the offence or alleged offence, the stronger the likelihood it will impact on suitability to hold registration or to practise the profession. Serious offending or alleged offending may impact on registration regardless of whether the nature of the offending is relevant to health practice.

3. The period of time since the health practitioner committed, or allegedly committed, the offence.

Generally, the more time that has elapsed since the offence or alleged offence was committed, the less impact a criminal history will have on suitability to hold registration or to practise the profession. However, with serious offences, along with some offences that are of a nature that is directly relevant to health practice, the period of time elapsed since the offending may not lessen the impact of the criminal history on decision making.

²⁰ Spent conviction legislation differs in all states and territories but all allow criminal histories to be amended by removing some offences after a certain period of time, unless an exemption applies.

²¹ The criminal history of students will be considered at the time of an application for registration as a practitioner. Criminal conduct while a registered student is required to be notified to the relevant National Board (National Law section 130(3)(b))

²³ National Law section 3A(1)(a) and (b) and Policy Direction 2019-01

4. Whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending.

The type of criminal history information provided will be considered. Generally, the following is the descending order in which types of criminal history information will impact suitability to hold registration or to practise the profession:

- a. convictions
- b. findings of guilt
- c. pending charges
- d. non conviction charges; that is, charges that have been resolved otherwise than by a conviction or finding of guilt, taking into account the availability and source of contextual information which may explain why a non-conviction charge did not result in a conviction or finding of guilt.

5. The sentence imposed for the offence.

Generally, the weight the Board will place on the sentence will increase as the significance of the sentence increases, including any custodial period imposed. The Board will also consider any mitigating factors raised in sentencing, where available, including rehabilitation.

6. The age of the health practitioner at the time the health practitioner committed, or allegedly committed, the offence.

Generally, offences committed when the individual is younger, and particularly under 18 years of age, will have less impact on decisions about suitability to hold registration or to practise the profession.

7. Whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the health practitioner committed, or allegedly committed, the offence.

Offences that have been decriminalised since the health practitioner committed, or allegedly committed, the offence will usually have no impact on decisions about registration or practice of the profession.

8. The health practitioner's behaviour since they committed, or allegedly committed, the offence.

Indications that the offence was an aberration and evidence of good conduct or rehabilitation since the commission, or alleged commission of the offence, will tend to be a mitigating factor. However, indications that the offence is part of a pattern of behaviour may have the opposite effect.

9. The likelihood of future threat to a patient of the health practitioner.

The Board will place significant weight on a criminal history that indicates a likelihood of future threat to a patient or client of the health practitioner.

10. Experiences of racism and inequity for Aboriginal and Torres Strait Islander peoples.

National Boards recognise that the disproportionate contact Aboriginal and Torres Strait Islander people experience with the Australian criminal justice system occurs for a range of reasons. Boards recognise the possibility that the criminal history of an individual may arise from racism and inequitable treatment of Aboriginal and Torres Strait Islander people, rather than differences in behaviour and will take this into account in any decision making about suitability to hold registration or to practise the profession.

11. Any information given by the health practitioner.

Any information provided by the health practitioner such as an explanation or mitigating factors will be reviewed by the Board and taken into account in considering the health practitioner's criminal history.

12. Any other matter that the Board considers relevant.

The Board may take into account any other matter that it considers relevant to the application or notification.

Note: A Board will not require an applicant or registered health practitioner to provide further information that may prejudice their personal situation pending charges and the Board must not draw any adverse inference as a result of the fact that information has not been provided.

What if I have a criminal history?

If you have a criminal history, you need to provide information to help the Board to decide whether you are a suitable person to be registered or to practise the profession.

Not all applicants with a criminal history are refused registration, and not all registered practitioners with a criminal history are required to stop practising.

There are a number of possible consequences in the National Law if you have a criminal history, including that:

- The Board can refuse your application for registration or renewal of registration.
- The Board can impose conditions on your application or your registration which may, for example require you to undertake education, restrict your practice location or type or to take part in mentoring or a supervised practice arrangement.
- The Board may require you to undertake an examination or assessment.
- Registration standards, codes and guidelines may be used in disciplinary proceedings against you as evidence of what constitutes appropriate practice or conduct for registered health practitioners.

Review

This standard will commence on **date**. The Board will review this standard at least every five years.

Authority

This registration standard was approved by the Australian Health Workforce Ministerial Council on **date**.

Registration standards are developed under section 38 of the National Law and are subject to wide ranging consultation.

Appendix C: Draft explanatory material for revised criminal history registration standard

Guide to the application of the Criminal history registration standard

DATE

Summary

Communities and people place their trust in registered health practitioners and the National Boards expect registered health practitioners to behave in a way that warrants this trust... A person's criminal history may be an indication that they are not a suitable person to be a registered health practitioner.

There are some criminal histories that are so serious they are incompatible with being a registered health practitioner regardless of the time passed, the behaviour of the individual since the criminal offending, or any other information available.

This guide explains how Boards apply the factors in the *Criminal history registration standard* (the criminal history standard) to ensure suitable people are registered health practitioners. It also describes the types of criminal history that are incompatible with being a registered health practitioner.

Background

The National Law²⁴ requires an applicant for registration as a health practitioner to declare to the National Boards their criminal history within and outside of Australia²⁵ and imposes an ongoing obligation on registered health practitioners to declare changes to their criminal history at renewal of registration²⁶ and while holding registration²⁷.

Under the National Law, a Board's overarching obligation is public protection²⁸. Assessment of an individual's criminal history forms part of a Board's consideration of whether it is appropriate or in the public interest that the individual hold registration²⁹ or whether the individual is a fit and proper person³⁰ to practise the profession.

In line with the requirements of the criminal history standard a practitioner must not have a criminal history that the Board considers inconsistent with suitability to hold registration or practice of their profession.

The criminal history standard sets out the factors a Board will consider in deciding whether a health practitioner's criminal history will impact on the practitioner's registration. This guide provides more

²⁴ The Health Practitioner Regulation National Law as in force in each state and territory

²⁵ National Law, section 77(3)(c)

²⁶ National Law, section 109(1)(b)

²⁷ National Law, section 130(1)

²⁸ Policy Direction 2019-01

²⁹ National Law, section 55(1)(b)

³⁰ National Law, section 55(1)(h)(j)

information in relation to the 12 factors outlined in the criminal history standard and provides examples of how the standard is applied.

When does the criminal history standard apply?

The criminal history standard applies whenever a Board considers the criminal history of a registered health practitioner or student.

Criminal history checks are undertaken for all individuals applying for registration as a registered health practitioner.

Under the National Law when registered health practitioners renew their registration they must declare if their criminal history has changed³¹ and all registered health practitioners who are charged with or convicted of certain criminal offences called 'relevant events' must tell their Board³².

Criminal history checks are not undertaken prior to registration as a student because students do not apply for registration directly but are registered based on information from their education provider. However, the criminal history standard will apply if, whilst registered as a student, they are charged with or convicted of certain criminal events called 'relevant events' under the National Law³³. The criminal history of a student will be considered at the time of application for registration as a practitioner.

For more information on when the criminal history standard applies and what a criminal history declaration must contain see *Information for practitioners and students about criminal history checks and declarations*.

What are the requirements of the standard?

An individual applicant or registered practitioner must not have a criminal history that is inconsistent with suitability to hold registration or to practise their profession.

When is a criminal history inconsistent with suitability for registration or practice?

Whether or not a criminal history is inconsistent with suitability for registration or to practise the profession is a case-by-case decision. , made by a Board considering, and in using its discretion to assigns weight to a range of factors. Information about the factors considered appears below.

There are some criminal histories, such as a history of serious sexual or violence offences, that are so serious they are incompatible with registration as a registered health practitioner regardless of the time passed, the behaviour of the individual since the criminal offending or any other information available.

Factors considered in decisions about criminal history.

NOTE: Public protection and public confidence comes first

In any decision making and applications of the National Law the most important considerations are the protection of the public and the public's confidence in the safety of registered health practitioners. The obligation for Boards to put public protection first appears in the National Law, and in a policy direction given by health ministers to National Boards in 2019. The Boards protect the health and safety of the public by only registering health practitioners who are suitably trained and qualified to practise in a competent and ethical manner.

1. The nature of the offence or alleged offence and its relevance to health practice.

The nature of the offence or alleged offence and the gravity or seriousness are separate considerations, although they are closely related in terms of public protection. The nature of the offence refers to the type of offending or alleged offending, for example whether the offence was property related or was against a person.

³¹ National Law, section 109(1)(b)

³² National Law, section 130 (3)(a)(i) and (ii)

³³ See information for practitioners and students about criminal history checks and declarations.

The more the nature of the offence is relevant to health practice, the stronger the likelihood that the criminal history will impact on decision making about suitability to hold registration or to practise the profession. Some criminal offences may not be considered 'serious' criminal offences by the justice system but may be of a nature that relates so strongly to health practice that they will impact on suitability to hold registration or to practise the profession. This is because some offences may undermine the necessary trust relationship between the practitioner and patient/consumer and/or demonstrate that the individual does not meet the standards the public and the profession expect.

Offending that occurs within professional practice is an example of offending that is directly relevant to health practice. However, criminal offending does not need to have occurred in the course of professional practice for the nature of the offence to be relevant to registration. Offences which involve dishonesty (such as robbery, theft or fraud), or offences intended to cause physical or psychological harm (such as assault, domestic or family violence offences, stalking and offences involving hostility to others based on race, religion, ethnicity, age or sexual orientation) are other examples of offences whose nature is likely to be seen as directly relevant to practice.

Similarly, offences involving negligence, family or domestic violence, offences against public health and offences committed against people who have care and support needs that may make them more vulnerable to harm will be directly relevant to practice and considered of a serious nature. This is because these offences go to the heart of the trust and confidence that is placed in registered health practitioners. In this context people with care and support needs include, but is not limited to, infants and children, the elderly, people experiencing mental illness, people from a culturally or linguistically diverse background, and people with a physical or intellectual disability.

These are examples only and are not a complete list of all offences that will be considered to be of a serious nature or directly related to practice.

2. The gravity or seriousness of the offence or alleged offence

The gravity of the offence means the seriousness of the offending or alleged offending. Generally, the more serious an offence or alleged offence, the stronger the likelihood it will impact on suitability to hold registration or to practise the profession.

There are some offences or alleged offence that are of such gravity that they are likely to be considered inconsistent with the individual being registered in the profession, regardless of whether or not the offending or alleged offending occurred in, or relates to, the context of health practice and regardless of the amount of time since offending. Examples of these types of offences may include (but are not limited to) serious offences against a person (for example, murder, people trafficking or serious assault), sexual offences (for example rape and sexual assault), offences in relation to pornography and child exploitation, offences against the public (for example terrorism) and serious drug offences (for example trafficking or manufacturing).

Multiple offences, whether serious or not, may indicate a pattern of behaviour that may also be given more weight in decisions about suitability for registration or practice of the profession. While an individual case of the offending may not seem relevant or serious, when considered all together it may indicate a pattern of behaviour that may compromise the ability and suitability of an individual to practise their profession safely and appropriately.

3. The period of time since the health practitioner committed, or allegedly committed, the offence.

Generally, the more time that has elapsed since the individual committed or allegedly committed the offence, the less the offending or alleged offending will impact on suitability to hold registration or to practise the profession. This is because the passing of time may indicate that the offending is no longer of relevance or a risk to the public, particularly if there has been no subsequent offending during this time.

However, this consideration depends on the nature, gravity and/or relevance to practice of the type of offending. More serious offending, patterns of offending and/or offences considered to pose a risk to the public are likely to still weigh against registration, regardless of the time elapsed since the offending occurred. For example, a single criminal charge for drunk and disorderly behaviour or shoplifting as a student with no further offending may not impact on registration, whereas a charge for drug trafficking or possession of child sexual material at the same age, even if no further offending has occurred is still likely to impact on registration, regardless of the time that has elapsed.

4. Whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending.

In considering criminal history information, the Board will consider the types of criminal history information in the following descending order of relevance:

- convictions
- findings of guilt
- pending charges, and
- non conviction charges; that is, charges that have been resolved otherwise than by a conviction or finding of guilt, taking into account the availability and source of contextual information which may explain why a non-conviction charge did not result in a conviction or finding of guilt.

Decisions by a criminal court about whether or not to record a conviction or record a finding of guilt involve a consideration of punishment of an offender, whereas the role of a Board in decisions about criminal history and registration is one of public protection. For this reason, a Board may consider criminal charges regardless of whether there is a conviction or a finding of guilt. This is because even if a conviction is not recorded, the offending may still represent behaviour which raises concerns about an individual's suitability to hold registration.

An example may be an offence of a racially aggravated assault. The police or a jury may not be satisfied that the individual assaulted someone, but there may be evidence that the individual did use racist language. Given this discriminatory behaviour the Board could form a concern about the individual's suitability to be registered and may take regulatory action.

Generally, a conviction or finding of guilt is likely to be considered more relevant and therefore weigh against a decision to grant, reinstate, or to continue registration than charges that are still pending or that resulted in a no conviction finding.

However, if the alleged offending is serious, indicates a pattern of behaviour, is considered to pose a risk to the public and/or is relevant to practice a decision may be made before the charges are heard or finalised. If this occurs, a decision may be a temporary one, such as immediate action to protect the public³⁴.

5. The sentence imposed for the offence.

The sentence passed by a criminal court is likely to be a relevant consideration when deciding the seriousness of criminal offending. Generally, the weight the Board will place on the sentence will increase as the significance of the sentence increases, including any custodial period imposed. Usually, the sentence imposed reflects the gravity of the offence, and in some cases the individual's prior convictions. The Board will also consider any mitigating factors raised in sentencing, where available, including rehabilitation.

However, criminal sentencing may not always be a reliable guide to whether or not a criminal history will impact on suitability to hold registration. In criminal courts one of the purposes of sentencing is to punish people for offending. In contrast the role of the Boards is to protect the public. This means that there are different considerations under the National Scheme than those in a criminal court. Offending that resulted in a non-custodial sentence or a lesser punishment in criminal proceedings may still impact on suitability for registration or practice of the profession if the behaviour underlying the criminal offending gives rise to concerns about public protection.

Similarly, in relation to sentencing options other than imprisonment, such as fines, correction orders or youth detention orders, a penalty imposed at the upper end of the range of sentencing options would indicate that the offence was considered more serious and therefore this will increase the weight given to this factor in any decision-making about criminal history.

³⁴ National Law, section 156.

6. The age of the health practitioner at the time they committed, or allegedly committed, the offence.

Similar to considerations of the time elapsed since the offence a Board may place less weight on offences committed when an individual is younger, and particularly under 18 years of age.

Generally, offences committed when the individual was likely to be young and immature and where the offending represents a minor, isolated incidence are not likely to be given much weight in decision-making about criminal history. However, if the offending was serious, relates to health practice, represents a continued pattern of behaviour and/or an ongoing risk to the public, the age of the individual at the time of offending may not be a consideration.

7. Whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the health practitioner committed, or allegedly committed, the offence.

Generally, the Board will place less or no weight on offences appearing on a criminal history that have been decriminalised since the health practitioner committed, or allegedly committed, the offence. In particular no weight is placed on offences where there is no uniformity about the particular offence across states and territories, for example marijuana offences. Similarly, offences committed in other countries, where the behaviour does not constitute an offence in Australia, may not impact on decisions about criminal history and registration.

There may be circumstances where, despite the subsequent decriminalisation of the offence, the behaviour that led to the criminal history at the time gives rise to concerns for public safety, and this behaviour may be considered in decisions about registration.

8. The health practitioner's behaviour since they committed, or allegedly committed the offence.

Indications that the offence was an aberration and evidence of good conduct or rehabilitation since the commission, or alleged commission of the offence, will tend to be a mitigating factor. However, indications that the offence is part of a pattern of behaviour will tend to have the opposite effect.

A demonstrated awareness of the causes, contributors and underlying behaviours that led to the criminal offending and evidence of endeavours to address these factors may demonstrate rehabilitation. Where the offending was serious or represents a pattern of behaviour, the purpose of protection of the public is likely to weigh more heavily against evidence of good conduct or rehabilitation.

9. The likelihood of future threat to a patient of the health practitioner.

This factor is closely related to the nature and gravity of the offence and its relevance to practice. Generally, the Board is likely to place significant weight on a criminal history that indicates a likelihood of future threat to a patient or client of the health practitioner.

This would include circumstances where the registration of the individual, having regard to the nature and gravity of their criminal history, is likely to undermine the public's confidence in the profession.

When considering risk to the public, Boards need to consider how likely the individual is to repeat similar behaviour or if there are other concerns illustrated by the criminal history, such as deep-rooted attitudes which indicate a risk to the public.

10. Experiences of racism and inequity for Aboriginal and Torres Strait Islander people

There are many reports and inquiries³⁵ which consistently speak to the factors behind why Aboriginal and Torres Strait Islander Peoples are over-represented in incarceration rates and contact with the criminal and youth justice systems. We know for example that the harm from institutional racism, inequitable access to justice for Aboriginal and Torres Strait Islander Peoples and other prior policies of administration and the ongoing effects of colonisation, all contribute to the disproportionate representation of Aboriginal and Torres Strait Islanders within Australia's criminal justice system.

In considering the criminal history of Aboriginal and Torres Strait Islander applicants or registrants, the possibility that an individual's criminal history may arise from the different treatment of Aboriginal and Torres Strait Islander Peoples and other Australians, rather than differences in behaviour, will be recognised and considered.

Consideration that an individual's criminal history may arise due to the unjust and inequitable experiences of Aboriginal and Torres Strait Islander Peoples in law enforcement and justice processes, and the various reasons behind this, does not mean a lowering of the criminal history standard, but will ensure that the factors within the criminal history standard are applied equitably to all applicants.

11. Any information given by the health practitioner.

Any information provided by the health practitioner such as an explanation or mitigating factors will be reviewed by the Board and taken into account in considering the health practitioner's criminal history. However, this will be considered in the context of the overriding priority of public protection.

Information is available for practitioners and students about what to provide the Board about a criminal history in the *Information for practitioners and students about criminal history checks and declarations*.

12. Any other information that the Board considers relevant.

The Board may consider any other matter that may be relevant to the application or notification, this may include prior applications for registration, previous renewal declarations or regulatory history.

Note: A Board will not require an applicant or registered health practitioner to provide further information that may prejudice their personal situation pending charges and the Board must not draw any adverse inference as a result of the fact that information has not been provided.

What decisions can a Board make about applicants, students, or practitioners with criminal histories?

When an applicant applies for registration

Where an applicant for registration declares a criminal history to the Board, the Board will consider this against the *Criminal history registration standard*.

The Board may decide that because an individual's criminal history is relevant to the profession, the individual is not an appropriate person to practise the profession, or it is not in the public interest for that person to practice the profession³⁶. Or a Board may decide that the individual's criminal history means the individual is not a fit and proper person to hold registration in the profession³⁷.

³⁵ For example the 2018 report [Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples](#) from the Australian Law Reform Commission, the 2016 Senate report [Aboriginal and Torres Strait Islander experience of law enforcement and justice services](#) and various publications by the [Australian Human Rights Commission](#) and the [Closing the Gap](#) reports.

³⁶ National Law section 55(1)(b)

³⁷ National Law section 55(i)(g) and 55(1)(h)(i)

If the Board decides a person is unsuitable or not a fit and proper person to hold registration or that the person has not met the requirements in the criminal history standard, they may refuse to grant registration³⁸.

Alternatively, the Board may decide to register the person with conditions on their registration³⁹. This means they have decided to register the person but, because of their criminal history, they've found it necessary to restrict the person's registration in some way to protect the public.

If the Board plans to refuse to grant registration or to impose conditions on registration, they must provide a notice to the applicant or practitioner about this decision, including the reasons for the decision. The applicant or practitioner will be given an opportunity to make submissions to the Board about the decision and reasons before the Board makes a final decision.

A decision by a Board to refuse to register a person or to impose a condition on a registration are decisions which may be appealed to the relevant tribunal⁴⁰.

When a student is charged with criminal offences

Criminal history checks are not undertaken prior to registration as a student because students do not apply for registration directly but are registered based on information from their education provider. However, if a registered student is charged with an offence punishable by 12 months imprisonment or more or is convicted of, or the subject of a finding of guilt for an offence punishable by imprisonment, under the National Law the student must notify the Board⁴¹.

Where a Board becomes aware of criminal charges or convictions of a registered student, they may take immediate action⁴² and suspend or impose a condition on the student's registration, accept an undertaking or the surrender of the student's registration⁴³. They may also refer the matter to a tribunal⁴⁴, who have the power to suspend the student's registration or impose conditions on the student's registration⁴⁵.

If a Board plans to take immediate action or to impose conditions on a student's registration they must provide a notice to the student about this decision, including the reasons for the decision. The student will be given an opportunity to make submissions to the Board about their decision and the reasons for their decision before the Board finalises its decision.

A decision by a Board to suspend or to impose a condition on a registration are decisions which may be appealed to the relevant tribunal⁴⁶.

When a registered health practitioner is charged or convicted of criminal offences

Registered health practitioners are required to declare any change to their criminal history at the annual renewal of their registration⁴⁷. A change to a criminal history is any criminal charges or convictions that have not already been declared or dealt with previously.

³⁸ National Law section 82(1)(C) and (D)

³⁹ National Law section 83(1)

⁴⁰ National Law section 199

⁴¹ National Law section 130(3)(b)(i)and(ii)

⁴² National Law section 156(1)(b)

⁴³ National Law section 155

⁴⁴ National Law section 193

⁴⁵ National Law section 197

⁴⁶ National Law section 199

⁴⁷ National Law section 199(1)(b)

Annual declarations are routinely randomly audited to verify the information given. If a practitioner makes a declaration that is false or misleading, the Board may refuse to renew the practitioner's registration⁴⁸, impose conditions on their registration⁴⁹ or take disciplinary action.

If a registered health practitioner is charged with a criminal offence punishable by 12 months imprisonment or more or convicted of any criminal charge punishable by imprisonment, they must notify the Board⁵⁰.

If a Board becomes aware of criminal charges or convictions of a registered practitioner, they may take immediate action⁵¹ and suspend the practitioner's registration or impose conditions on the registration⁵².

The Board may also investigate the practitioner, or take disciplinary action, such as imposing conditions or accepting an undertaking from the practitioner, which restricts their practice. The Board may also refer the matter to a tribunal, who have the power to cancel, suspend or impose conditions on the practitioner's registration.

If the Board plans to take immediate action or impose conditions on a practitioner's registration, they must provide a notice to the practitioner about this decision, including the reasons for the decision. The practitioner will be given an opportunity to make submissions to the Board about their decision and their reasons for this decision before the Board finalises its decision.

A decision by a Board to take immediate action, suspend or impose a condition on a registration are decisions which may be appealed to the relevant tribunal⁵³.

More information about National Board decisions

More information about how the National Boards make decisions is available in the [Regulatory guide](#).

⁴⁸ National Law section 112

⁴⁹ National Law section 112(3)(b)

⁵⁰ National Law section 130

⁵¹ National Law section 156

⁵² National Law section 155

⁵³ National Law section 199

Information for practitioners and students about criminal history checks and declarations and the criminal history standard

The *Criminal history registration standard* (the criminal history standard) applies at the following times as a registered health practitioner or registered student:

1. When applying for registration as a registered health practitioner.
2. When completing your annual declaration at renewal of registration as a registered health practitioner.
3. Whenever a relevant event occurs, whether you are a registered health practitioner or registered student.

1. Applying for registration

We conduct an Australian criminal history check when you apply for registration as a health practitioner. This is to ensure only people who are suitable and safe to practice are granted registration in Australia. When you apply for registration, you are required to declare any criminal history in Australia and overseas.

We ask you to consent to the criminal history check as part of your application for registration. When you consent, you are consenting to a criminal history check to be obtained at any time during the period of registration, as required by the National Board in accordance with the National Law.

Criminal history checks are not undertaken when you are registered as a student. This is because students do not apply directly for registration but are registered based on information from their education provider.

[Australian criminal history check](#)

In your application you must tell us about your criminal history. An Australian criminal history check will also be completed by us as part of your application – the cost is covered in your application fee.

Criminal history checks are obtained through the National Police Checking Service (NPCS) of the Australian Criminal Intelligence Commission (ACIC).

Where required, we will provide you with a copy of your criminal history report if a result is received.

[International criminal history check](#)

If you have lived outside Australia as an adult for more than six months, you will need to request and pay for an international criminal history check through an Ahpra-approved supplier. The results of this criminal history check will be passed to us directly.

[What type of criminal history to tell the Board about](#)

Criminal history includes:

- every charge made against you for an offence

- every plea of guilty or finding of guilt by a court for an offence, whether or not a conviction is recorded for the offence, and
- every conviction recorded against you for an offence.

This is different to a criminal history check for employment, because for decisions about registration the role of the National Boards is to protect the public, so there are different considerations under the National Scheme than those in a criminal court.

You need to tell us about your complete criminal history, regardless of the time since the charge or a finding of guilt. This is because criminal history checks for registration under the National Law are exempt from spent or aged convictions legislation. This means charges that may have been removed from a criminal history under spent convictions legislation will still appear on a criminal history check for registration.

There are different requirements in different states and territories:

Because of the way different states and territories define criminal charges, some offences appear on a criminal history check in some states and not others. You must let us know if:

- You're in Western Australia and you've been convicted for unpaid parking fines.
- You're in Queensland and pleaded guilty to an offence charge, and the outcome was guilty without conviction.
- You're in Tasmania and you've received a speeding or parking fine.

If you do not declare your criminal history, and a criminal history is found in the screening process, your application for registration will be significantly delayed, and your failure to declare your criminal history may be considered in a decision about registration.

The criminal history standard and the *Guide to the criminal history registration standard* illustrates how Boards consider minor offending.

Where required, we will provide you with a copy of your criminal history report if a result is received.

[What to do if you have a criminal history](#)

If you have a criminal history that you need to tell us about, you should answer yes to the question 'do you have a criminal history?' and provide details of the conduct.

You should also provide a statement **XX form** regarding the facts and circumstances of the criminal history, and what steps, if any, you have taken to address the conduct, in order to reassure the Board that you are a suitable person to practise the profession.

See section 'What information should I provide to a Board about my criminal history?' below.

2. Annual declaration at renewal

Each year when you renew your registration as a health practitioner, you will be asked if there have been any changes to your criminal history. This means you need to declare any criminal charges or convictions that you have not already declared. (If you declared the criminal charges or convictions at application for registration or at a previous renewal, and nothing has altered, you do not need to re-declare this criminal history).

The Board will consider any declaration against the criteria set out in the criminal history standard.

If you are audited, a criminal history check will be carried out to verify your declaration. National Boards routinely audit a randomly selected number of practitioners each year and you will need to be able to substantiate your declarations if audited. Making a declaration that is false or misleading can be grounds for the Board to refuse to renew your registration, impose conditions on your registration or take disciplinary action.

What changes to criminal history do I have to declare at renewal?

Similar to an application for registration, changes to your criminal history means that you must tell the Board about:

- every charge made against the person for an offence
- every plea of guilty or finding of guilt by a court for an offence, whether or not a conviction is recorded for the offence, and
- every conviction of a person for an offence.

If you declared the criminal charges or convictions at application for registration or at a previous renewal, and nothing has altered (for example a pending charge remains pending and has not resulted in a finding of guilt or conviction) you do not need to declare this criminal history again.

Remember, there are different requirements in different states and territories:

Because of the way different states and territories define criminal charges, some offences appear on a criminal history check in some states and not others. You must let us know if:

- You're in Western Australia and you've been convicted for unpaid parking fines.
- You're in Queensland and pleaded guilty to an offence charge, and the outcome was guilty without conviction.
- You're in Tasmania and you've received a speeding or parking fine.

What to do if your criminal history has changed

If you have a change to your criminal history that you need to tell us about, you should answer yes to the question 'has your criminal history changed?' and provide details of the change.

You should also provide a statement on **XX FORM** regarding the facts and circumstances of the criminal history, and what steps, if any, you have taken to address the conduct, in order to reassure the Board that you remain a suitable person to practise the profession.

See section 'What information should I provide to a Board about my criminal history?' below.

3. Notice of a relevant event

Under section 130 of the National Law, all registered health practitioners and registered students have a responsibility to inform the Board within seven days of becoming aware of a relevant event. Some of the 'relevant events' in this section of the National Law are about a change to a criminal history. These are changes to your criminal history that you should tell the Board about straight away, and not wait until your annual renewal declaration.

The Board will consider any declaration from a practitioner about a change to criminal history, against the criteria set out in the criminal history standard. What is a relevant event?

For registered health practitioners

Relevant events in relation to criminal history are:

- The practitioner is charged, whether in a participating jurisdiction or elsewhere, with an offence punishable by 12 months imprisonment or more, or
- The practitioner is convicted of, or the subject of a finding of guilt for an offence, whether in a participating jurisdiction or elsewhere, punishable by imprisonment.

For registered students

Relevant events in relation to criminal history are:

- The student is charged with an offence punishable by 12 months imprisonment or more, or
- The student is convicted of, or the subject of a finding of guilt for an offence punishable by imprisonment.

NOTE: The changes to criminal history that are 'relevant events' differ from the definition of 'criminal history' under the National Law. If you have been charged with a criminal offence or found guilty or subject to a finding of Guilt for a criminal offence, and you are not sure if it is a relevant event, you should seek advice from your legal representative, professional association, or education provider.

What to do if a relevant event has occurred.

You should complete and follow instructions on the Ahpra form NOCE-00 *Notice of Certain Events*. You must attach a separate sheet to the notice, outlining information in relation to the relevant event. For criminal history changes that are relevant events this information should include details of the offence, and the circumstances around it, including the date, and details of any condition of bail (if relevant) and similar information.

See section 'What information should I provide to a Board about my criminal history?' below.

What will the Board do if I have a criminal history?

Not all practitioners with a criminal history will be refused or will lose their registration. While criminal behaviour is considered serious, National Boards consider the range of factors outlined in the criminal history standard before making decisions about whether or not a person with a criminal history should be registered or should remain registered and/or practising their profession. The factors in the criminal history standard include considering things like the severity of the offence, its relevance to practice, and the individual's own conduct and experiences.

Even if a Board decides that they have concerns about a person's criminal history, they have a range of options when making decisions about applicants and practitioners.

Applicants for registration

The most serious decision available to a National Board in considering an application for registration by a person with a criminal history is to refuse to grant registration⁵⁴.

There are other decisions a Board can make about a person's registration. A Board may decide to register the person with conditions on their registration⁵⁵. This means they may decide to register the person but, because of their criminal history, find it is necessary to restrict the person's registration in some way to protect the public. Conditions on registration may be that the person is required to undertake education or mentoring, or that the person practises under a supervised practice arrangement.

If the Board plans to refuse an application for registration or to impose conditions on a registration, they must provide a notice to the practitioner about this decision, including the reasons for the decision. The applicant will be given an opportunity to make submissions to the Board about this decision and reasons before the Board makes a final decision.

A decision by a Board to refuse to register a person or to impose a condition on a registration are decisions which may be appealed to the relevant tribunal⁵⁶.

Criminal offending by an individual while a registered student

Where a Board becomes aware of criminal charges or convictions of a registered student, they may take immediate action⁵⁷ and suspend or impose a condition on the student's registration, accept an undertaking or the surrender of the student's registration⁵⁸ they might also refer the matter to a tribunal⁵⁹, who have the power to suspend the student's registration or impose conditions on the student's registration⁶⁰.

If a Board plans to take immediate action or to impose conditions on a student's registration they must provide a notice to the student about this decision, including the reasons for the decision. The student will be given an opportunity to make submissions to the Board about this decision and the Board's reasons for the decision before the Board finalises its decision.

A decision by a Board to suspend or to impose a condition on a student's registration are decisions which may be appealed to the relevant tribunal⁶¹.

When a registered health practitioner is charged or convicted for criminal offences

⁵⁴ National Law section 82(1)(C) and (D)

⁵⁵ National Law section 83(1)

⁵⁶ National Law section 199

⁵⁷ National Law section 156(1)(b)

⁵⁸ National Law section 155

⁵⁹ National Law section 193

⁶⁰ National Law section 197

⁶¹ National Law section 199

If a National Board becomes aware of criminal charges or convictions of a registered practitioner, they may take immediate action⁶² and suspend or impose conditions on the practitioner's registration⁶³.

The Board may also investigate the practitioner, or take disciplinary action, such as imposing conditions or accepting an undertaking from the practitioner, which restricts their practice. The Board may also refer the matter to a tribunal, who have the power to cancel, suspend or impose conditions on the practitioner's registration.

If the Board plans to take immediate action or impose conditions on a practitioner's registration, they must provide a notice to the practitioner about this decision, including the reasons for the decision. The practitioner will be given an opportunity to make submissions to the Board about this decision and the reasons for this decision before the Board finalises its decision.

A decision by a Board to take immediate action, suspend or impose a condition on a registration are decisions which may be appealed to the relevant tribunal⁶⁴.

What information should I provide to a Board about my criminal history?

You should provide information to the Board that demonstrates that you are not a risk to the public and that you are an appropriate person to hold registration as a health practitioner.

This includes information about the criminal history, including the facts and circumstances of the offending, or a background as to how the criminal charges came about.

You should also provide information to the Board that demonstrates what you have done since the criminal charges. The Board will want to see that you are aware of any causes or things that contributed to the criminal charges, and that you have taken steps to address these things, to make sure they do not happen again.

The more serious your criminal history is, and/or the more relevant your criminal history is to health practice, the stronger the evidence you will need to provide the Board to demonstrate that your criminal history is no longer relevant to who you are now.

⁶² National Law section 156

⁶³ National Law section 155

⁶⁴ National Law section 199



Appendix D: Statement of assessment against Ahpra' procedures for the development of registration standards, codes and guidelines

Revised criminal history registration standard.

The Australian Health Practitioner Regulation Agency (Ahpra) has *Procedures for the development of registration standards, codes and guidelines* which are available at: <https://www.ahpra.gov.au/Resources/Procedures.aspx>.

Section 25 of the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law) requires Ahpra to establish procedures for the purpose of ensuring that the National Registration and Accreditation Scheme (the National Scheme) operates in accordance with good regulatory practice.

The National Boards are carrying out a multi-profession scheduled review of their mandatory *Criminal history registration standard*.

The review is being undertaken in line with good regulatory practice to produce a contemporary registration standard that continues to support safe and appropriate individuals to be registered as health practitioners. The review also formed part of the work by Ahpra under the [blueprint to improve public safety in health regulation](#) which aims to better protect patients from serious misconduct, including sexual misconduct, by registered health practitioners.

Below is the National Board's assessment of their proposed draft revised criminal history standard against the three elements described in the Ahpra procedures.

1. The proposal takes into account the National Scheme's objectives and guiding principles set out in section 3 of the National Law
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National Boards assessment

The National Boards consider that the proposed draft revised criminal history standard meets the objectives and guiding principles of the National Law.

The draft revised criminal history standard takes into account the National Scheme's key objective of protecting the public by defining requirements for practitioners who have a criminal history so that only safe and appropriate individuals are registered as health practitioners.

The proposed additions to the criminal history standard also support the National Scheme's objective of cultural safety for Aboriginal and Torres Strait Islander Peoples by including a specific consideration of the experience and overrepresentation of Aboriginal and Torres Strait Islander Peoples within the Australian criminal justice system and its potential impact on criminal history.

If approved the draft revised criminal history standard will support the National Scheme to operate in a transparent, accountable, efficient and effective way by providing clear guidance to practitioners, including overseas health practitioners and registered students, about the National Board's expectation where an individual has a criminal history.

2. Steps have been taken to achieve greater consistency within the national scheme (for example, by adopting any available template, guidance or good practice approaches used by national scheme bodies), and the consultation requirements of the National Law are met

National Boards assessment

All of the National Boards within the National Scheme are jointly reviewing the criminal history standard, to ensure the standard is consistent across the professions.

The National Law requires wide-ranging consultation on the proposed standards, codes, and guidelines. The National Law also requires National Boards to consult each other on matters of shared interest.

The initial public scoping consultation undertaken in 2023 enabled National Boards to seek feedback and measure expectations on the current version of the *Criminal history registration standard*, and this feedback has informed the revised criminal history scheme.

This subsequent consultation will seek feedback and test proposed changes with key stakeholders including the public, practitioners, professional stakeholders and patient safety and healthcare consumer bodies.

We are ensuring that there is an opportunity for broader public comment by publishing a consultation paper on the relevant National Boards and Ahpra websites and providing information health to practitioners and the community via the National Boards electronic newsletters and a social media campaign. If there is sufficient interest, focus groups will be held with interested groups, such as victim survivors of crime support agencies, in order to ensure broad feedback is received.

3. The proposal takes into account the principles set out in the Ahpra procedures

A. Whether the proposal is the best option for achieving the proposal's stated purpose and protection of the public

National Board assessment

National Boards are seeking feedback on the best option for achieving public safety, high quality and professional practice and regulatory effectiveness. The proposed draft criminal history standard seeks to improve the public and practitioners understanding of the criminal history standard, contribute to the safety and quality of registered health practitioners and promote consistency in the regulatory environment.

When reviewing the criminal history standard, National Boards considered the feedback from the initial public scoping consultation as well as international benchmarking. We have taken this information and our regulatory experience into account when developing the revised standard. National Boards will also take consultation feedback from stakeholders into account.

B. Whether the proposal results in an unnecessary restriction of competition among health practitioners

National Board assessment

National Boards consider that their proposal is unlikely to restrict competition as the proposed revised criminal history standard applies to all applicants, registered health practitioners and registered students when applicable. The draft revised criminal standard maintains cross-profession consistency in an assessment of criminal history across the National Scheme and is not expected to impact on levels of competition among health practitioners.

C. Whether the proposal results in an unnecessary restriction of consumer choice

National Board assessment

National Boards consider that their proposal will not result in any unnecessary restrictions of consumer choice as the proposed revised criminal history standard would only apply to practitioners applying for or holding registration with the National Boards who have a criminal history. The criminal history standard provides assurance that only suitable and appropriate people hold registration in a health profession.

D. Whether the overall costs of the proposal to members of the public and/or registrants and/or governments are reasonable in relation to the benefits to be achieved

National Board assessment

National Boards have considered the overall costs of the proposed revised criminal history standard to members of the public, health practitioners and governments, and concluded that the likely costs are minimal as we are not proposing significant changes. We expect that the revised criminal history standard may reduce costs for applicants for registration, as the revised criminal history standard and its explanatory material will provide greater clarity and set clearer expectations of Board considerations around applicants with a criminal history.

National Boards are aware that changes to the criminal history standard may impact on practitioners, other stakeholders and staff who need to become familiar with the changes. If approved, the proposed revised criminal history standard will provide practitioners with clear, consistent guidance about our considerations of criminal history.

National Boards consider that the benefits of the revised standard will outweigh any minimal costs related to health practitioners and other stakeholders needing to become familiar with and comply with the revised standard. We have drafted additional explanatory information to help stakeholders understand the revised standard and may draft further material if a need is identified.

E. Whether the proposal's requirements are clearly stated using 'plain language' to reduce uncertainty, enable the public to understand the requirements, and enable understanding and compliance by registrants.

National Board assessment

National Boards are committed to a plain language approach that will help health practitioners and the public understand the criminal history standard. We consider the revised draft standards have been written in plain language.

To support implementation of the revised criminal history standard, National Boards have developed explanatory material to support transparency and public understanding. This will include Easy English guides where appropriate.

F. Whether the Board has procedures in place to ensure that the proposed registration standard, code or guideline remains relevant and effective over time.

National Board assessment

National Boards will review the criminal history standard at least every five years, including an assessment against the objectives and guiding principles of the National Law and the principles for best practice regulation.

However, National Boards may choose to review the standard earlier, in response to any issues which arise, or new evidence which emerges to ensure its continued relevance and workability.

Appendix E: National Boards Patient and Consumer Health and Safety Impact Statement

Statement purpose

The National Boards' Patient and Consumer Health and Safety Impact Statement (the Statement)⁶⁵ explains the potential impacts of a proposed registration standard, code or guideline on the health and safety of the public, vulnerable members of the community and Aboriginal and Torres Strait Islander Peoples.

The four key components considered in the Statement are:

1. The potential impact of the proposed revisions on the registration standard, code or guideline on the health and safety of patients and consumers particularly vulnerable members of the community including approaches to mitigate any potential negative or unintended effects.
2. The potential impact of the proposed revisions on the registration standard, code or guideline on the health and safety of Aboriginal and Torres Strait Islander Peoples including approaches to mitigate any potential negative or unintended effects.
3. Engagement with patients and consumers, particularly vulnerable members of the community, about the proposal.
4. Engagement with Aboriginal and Torres Strait Islander Peoples about the proposal.

The National Boards' Health and Safety Impact Statement aligns with the National Scheme's [Aboriginal and Torres Strait Islander Cultural Health and Safety Strategy 2020-2025](#), [National Scheme engagement strategy 2020-2025](#), [National Scheme Strategy 2020-2025](#) and reflects key aspects of the revised consultation process in the [AManC Procedures for developing registration standards, codes and guidelines and accreditation standards](#).

Below is our initial assessment of the potential impact of the proposed revision to the criminal history standard on the health and safety of patients, clients, and consumers, particularly on vulnerable members of the community and Aboriginal and Torres Strait Islander Peoples. This statement will be updated after consultation feedback.

1. How will this proposal impact on patient, client and consumer health and safety, particularly on vulnerable members of the community? Will the impact be different for vulnerable members compared to the general public?

National Boards have carefully considered the impact that the draft revised criminal history standard could have on patient, client and consumer health and safety, particularly those vulnerable to harm within the community, to ensure the best option is put forward for consultation. The proposed option is informed by

⁶⁵ This statement has been developed by Ahpra and the National Boards in accordance with section 25(c) and 35(c) of the Health Practitioner Regulation National Law as in force in each state and territory (the National Law). Section 25(c) requires AHPRA to establish procedures for ensuring that the National Registration and Accreditation Scheme (the National Scheme) operates in accordance with good regulatory practice. Section 35(c) assigns the National Boards functions to develop or approve standards, codes and guidelines for the health profession including the development of registration standards for approval by the COAG Health Council and that provide guidance to health practitioners registered in the profession. Section 40 of the National Law requires National Boards to ensure that there is wide-ranging consultation during the development of a registration standard, code, or guideline.

the public scoping consultation and international benchmarking. The draft criminal history registration standard addresses many of the issues raised during this consultation, and the supporting material aims to better explain the criminal history standard to patients, clients, and consumers.

A robust process for the assessment of applicants and registered health practitioners and students with a criminal history ensures that only suitable and appropriate people are registered as health practitioners and practise the profession. The revised criminal history standard should have positive impacts then for patients, clients, and consumers. The fact that the criminal history standard is consistent across professions improves understanding for practitioners.

Our assessment is that there will be no negative impact on the health and safety of patients, clients, and consumers, particularly people vulnerable to harm within the community, and Aboriginal and Torres Strait Islander Peoples. The additional consideration of Aboriginal and Torres Strait Islander experiences within the Australian criminal justice system was drafted in consultation with Ahpra's Aboriginal and Torres Strait Islander Health Strategy Unit and was supported during preliminary public consultation.

Our further engagement on draft changes to the criminal history standard will help us to better understand possible outcomes and meet our responsibilities to protect patient safety and health care quality.

2. How will consultation engage with patients, clients and consumers, particularly with vulnerable members of the community?

In line with our [consultation processes](#) and obligations under the National Law, National Boards are carrying out wide-ranging consultation. We will engage with patients, clients and consumers, peak bodies, community and other relevant organisations to get input and views from people vulnerable to harm within the community.

Our consultation questions specifically ask whether the proposed changes will impact on patient, client and consumer health and safety, particularly people vulnerable to harm within the community. Responses will help us better understand possible outcomes and address them.

3. What might be the unintended impacts for patients, clients and consumers, particularly for vulnerable members of the community? How will these be addressed?

National Boards have carefully considered possible unintended impacts of the revised criminal history standard. Consulting with relevant organisations will help us to identify any potential impacts. We will fully consider and take action to address any potential negative impacts for patients, clients and consumers that may be raised during consultation, particularly for people vulnerable to harm within the community.

4. How will this proposal impact on Aboriginal and Torres Strait Islander Peoples? How will the impact be different for Aboriginal and Torres Strait Islander Peoples compared to non-Aboriginal and Torres Strait Islander Peoples?

The initial public consultation invited feedback about whether the criminal history standard should acknowledge the overrepresentation of Aboriginal and Torres Strait Islander Peoples in the criminal justice system and that this may reflect systemic issues such as discrimination and racism rather than individual issues. The overwhelming majority of stakeholders supported including this acknowledgement. This review is working closely with Ahpra's Aboriginal and Torres Strait Islander Health Strategy Unit to ensure impacts on Aboriginal and Torres Strait Islander Peoples are carefully considered and appropriately addressed.

5. How will consultation about this proposal engage with Aboriginal and Torres Strait Islander Peoples?

The National Boards are committed to the National Scheme's [Aboriginal and Torres Strait Islander Cultural Health and Safety Strategy 2020-2025](#) which focuses on achieving patient safety for Aboriginal and Torres Strait Islander Peoples as the norm, and the inextricably linked elements of clinical and **cultural safety**.

As part of our consultation process, we will explore the best ways to meaningfully engage with Aboriginal and Torres Strait Islander Peoples with input from Ahpra's Aboriginal and Torres Strait Islander Health

Strategy Unit. We will engage directly with Aboriginal and Torres Strait Islander organisations and stakeholders, including offering opportunities to meet to discuss the revised criminal history registration standard in more detail and understand potential impacts for Aboriginal and Torres Strait Islander Peoples.

6. What might be the unintended impacts for Aboriginal and Torres Strait Islander Peoples? How will these be addressed?

National Boards have carefully considered and have not identified any unintended impacts for Aboriginal and Torres Strait Islander Peoples in the revised criminal history standard. The inclusion of an acknowledgement of the overrepresentation of Aboriginal and Torres Strait Islander Peoples in the Australian criminal justice system and the fact that this may reflect system issues such as discrimination and racism, rather than individual issues is hoped to provide reassurance to Aboriginal and Torres Strait Islander applicants and registrants.

Consulting with Aboriginal and Torres Strait Islander Peoples and stakeholders will help us to identify any other potential impacts. We will consider and take actions to address any potential negative or unintended impacts for Aboriginal and Torres Strait Islander Peoples raised during consultation.

7. How will the impact of this proposal be actively monitored and evaluated?

Part of National Boards' work in keeping the public safe is ensuring that all our standards, policies, codes and guidelines are regularly reviewed.

In developing the revised criminal history standard and in keeping with this approach, the National Boards will regularly review the revised standards to check they are working as intended.