

Submission by the Australian Nursing and Midwifery Federation

Ahpra & National Boards Consultation on the review of the Criminal history registration standard

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Introduction

The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 326,000 nurses, midwives and carers across the country.

Our members work in the public and private health, aged care, and disability sectors across a wide variety of urban, rural, and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF appreciates the opportunity to provide feedback to the Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards for the public consultation on the review of the Criminal history registration standard.

Overall, Option B: the proposed revised criminal history registration standard is supported.

The ANMF offers the following feedback in response to the consultation questions.



Questions for consideration:

Criminal history registration standard

1. **Is the content, language and structure of the proposed revised criminal history standard clear, relevant and workable? Why or why not?**

Yes. The content is clear and the language readable. The length of the standard is also appropriate.

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?**

Yes, mostly. However, for clarity, in point 4 of the revised Standard (page 23 of 44), there should be an additional point 'e' included stating that the type of criminal history information that will impact suitability to hold registration or to practice the profession includes spent/aged convictions. In its current form, it is not clear on this point. It would be useful for this to be reiterated for users as potential registrants and those renewing their registration may not be aware of this information.

In the section: **Does this standard apply to me?** (page 22 of 44):

The information related to who is subject to a criminal history check is confusing in relation to the student section:

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 registration.

This statement implies that for registered students, prior convictions do not count. This directly contradicts the statement made earlier under the heading 'Definitions':

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 convictions.

ANMF Branches have assisted students who were questioned about prior and spent convictions from their past including their teenage years. It should be made clear throughout the registration standard and accompanying explanatory material that such questions will be asked in respect to applications for initial registration and renewal.

Registered health practitioners face a level of scrutiny that is inequitable with that of other health care providers who may be increasingly involved in future models of health care, for example physician assistants. This reinforces the importance of currently unregulated workers coming under the National Regulation and Accreditation Scheme (NRAS) rather than other, less rigorous, regulatory systems, in the interest of public protection.¹

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?

Yes. The high-level principles articulate the requirement of the registration standard to registrants and set out the registrants' obligations to practice. This is a practical approach to reduce the length of the standard.



- 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?**

Yes, as offences will differ across state and territory jurisdictions, and this reinforces that there will be an individualised approach to assessment in each case. However, lists of disqualifying offences would leave prospective applicants under no misapprehension as to severity and weight placed on particular types of offences.

- 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?**

Yes, to the extent that any standard is able. There will still be ambiguity, however this will be difficult to address within the constraints of a Standard. Where ambiguity does exist, the Standard should articulate the mechanisms Ahpra will use to deal with this in a fair and timely manner and without significant cost to the practitioner.

It would be beneficial for the Standard to outline what happens when someone does not declare criminal history, either intentionally or accidentally.

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?**

Yes. However, there are several grammatical and formatting errors.



7. Is there any content that needs to be changed, added or removed in the additional explanatory material? If so, please describe.

As noted above in response to question 2, point 4 could include information about spent/aged convictions.

The Standard makes no reference to how different legislation and sentencing across jurisdictions is considered. This may result in inconsistency of application of the Standard and possible disadvantage to some registrants.

There should be guidance around vexatious complainants and charges in the context of defense against domestic violence or relationships with coercive control.

8. Should the guidance include more information about the types of criminal offences and their potential impacts on registration?

Although the Standard needs to emphasise that an individual approach is taken, an addendum would be useful. It would be beneficial to provide examples of some types of criminal offences and their potential impact on registration. This could be similar to the examples provided for declaration of a health impairment.

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.

The new consideration added as point **10. Experiences of racism and inequity for Aboriginal and Torres Strait Islander Peoples** in the proposed Standard is strongly supported.



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.

Consideration could be made to extending the provisions for First Nations Peoples to others who have been vulnerable due to a lack of cultural safety, for example, refugees and disadvantaged migrants.

The final dot point on page 7 of 44 states for First Nations Peoples:

Adding a new consideration of Aboriginal and Torres Strait Islander People's 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.

Conclusion

Thank you for this opportunity to provide feedback to Ahpra and the National Boards for the public consultation on the review of the Criminal history registration standard. The ANMF believes that in general, the balance of maintaining public safety, and treating health practitioners fairly with regard to their criminal history is appropriate in the proposed revised standard. Option B: the proposed revised criminal history registration standard is supported.



Revisions to streamline the draft Criminal history registration standard to clearly define the requirements a practitioner needs to meet for registration and to provide accompanying explanatory material for the revised criminal history registration standard in the form of a guide to application of the standard and information for practitioners and students is welcomed.

It remains imperative that there are fair, equitable, transparent and consistent decision-making processes and clear criminal history and fit-for-work checking processes for the benefit of health practitioners and those for whom they provide health and aged care. Overall, the proposed revised standard provides better and clearer information about how decisions are made and how the criminal history standard is applied in practice.

Reference

¹ HelloCare Editorial Team., (2024). Loopholes & Blowouts: The NDIS Operates Like The “Wild West”. Available at: [Loopholes & Blowouts: The NDIS Operates Like The “Wild West” - Hellocare](#)