

Consultation on the review of the Criminal history registration standard

The Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards are inviting stakeholders to have their say as part of our review of the *Criminal history registration standard* (the criminal history standard). There are 10 specific questions we'd like you to consider below. All questions are optional, and you are welcome to respond to any you find relevant, or that you have a view on.

This consultation 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.

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

Please email your submission to AhpraConsultation@ahpra.gov.au

The submission deadline is close of business **COB 30 July 2024**

How do we use the information you provide?

The survey is voluntary. All survey information collected will be treated confidentially and anonymously. Data collected will only be used for the purposes described above.

We may publish data from this survey in internal documents and any published reports. When we do this, we ensure that any personal or identifiable information is removed.

We do not share your personal information associated with our surveys with any party outside of Ahpra except as required by law.

The information you provide will be handled in accordance with [Ahpra's privacy policy](#).

If you have any questions, you can contact AhpraConsultation@ahpra.gov.au or telephone us on **1300 419 495**.

Publication of submissions

We publish submissions at our discretion. We generally [publish submissions on 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 publish 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 of 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

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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 the organisations that made the submission unless confidentiality is expressly requested.

Initial questions:

To help us better understand your situation and the context of your feedback, please provide us with some details about you.

Question A

Are you completing this submission on behalf of an organisation or as an individual?

☒ Organisation

Name of organisation: Royal Australian College of General Practitioners (RACGP)

Contact email: healthreform@racgp.org.au

☐ Individual

Name: [Click or tap here to enter text.](#)

Name of organisation: [Click or tap here to enter text.](#)

Contact email: [Click or tap here to enter text.](#)

Question B

If you are completing this submission as an individual, are you:

☐ A registered health practitioner?

Profession: [Click or tap here to enter text.](#)

☐ A consumer / patient?

☐ Other – please describe: [Click or tap here to enter text.](#)

☐ Prefer not to say

Question C

Do you give permission for your submission to be published?

☒ Yes, publish my submission **with** my name/organisation name

☐ Yes, publish my submission **without** my name

☐ Yes, publish my submission **without** organisation name

☐ Yes, publish my submission **without** both my name and organisation name

☐ No – **do not** publish my submission

Questions for consideration – The Criminal history registration standard

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.

Question 1:

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

Your answer:

The content, language and structure of the revised standard is generally clearer and more relevant than the current version. Providing more context upfront about the purpose and application helps practitioners understand the 'why' behind the requirements, which is crucial for buy-in and compliance. The plain language approach and expanded definitions and explanations make the standard easier to interpret and apply in practice. Once the standard is in force, any legal challenge with determine its workability.

Royal Australian College of General Practitioners (RACGP) members suggested more concrete examples of what terms like 'suitability' and 'fit and proper' mean in practice would be helpful. Additionally, the 'relevant events' terminology is somewhat opaque.

Page 24 of the consultation paper lists possible consequences under the National Law if a practitioner has a criminal history. This list could also include no action being taken by the relevant Board, which may be the case where offences have been minor.

Question 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?

Your answer:

Yes, the revised standard states unequivocally that an applicant or registrant 'must not have a criminal history that is inconsistent with suitability to hold registration or to practice their profession'. The standard expands on the factors the relevant Board considers in determining whether criminal history deems a practitioner unsuitable to practise, providing helpful insight into how the standard will be applied.

However, the phrasing 'considers inconsistent' still leaves quite a bit of discretion and subjectivity in the Board's hands. While it is important to preserve flexibility to assess each case on its merits, this language may leave some practitioners feeling uncertain and exposed. There could be benefit in tightening this phrasing. Members also noted there is some ambiguity regarding offences that occurred prior to becoming registered and how these are dealt with.

Advocacy

Many doctors have advocated on health-related issues such as climate change and refugee detention. Doctors overseas have faced threats to their registration for taking part in climate protests¹, and there have been moves by Australian states to criminalise protests and give police more powers.^{2,3} Health professionals who are vocal on matters shown to be harming community and population health may face increased contact with law enforcement and changes to the law that criminalise protest will increase potential criminal consequences. Their registration is therefore placed at risk when they are no risk to the public.

Members noted this issue is particularly relevant to Aboriginal and Torres Strait Islander health professionals who might protest issues of self-determination, land rights and destruction of sacred sites, where there is evidence of health impacts on Aboriginal and Torres Strait Islander people.

There will need to be some discretion exercised to decide if charges and convictions arising from these types of activities warrant action in regard to medical registration. The RACGP submits that there is a clear distinction to be drawn. Arguably, offences involving physical harm to others could be distinguished from trespass or property damage offences.

The RACGP recommends Ahpra issue guidance around advocacy, freedom of assembly and association, particularly in the context of evidence of health impacts, noting doctors' obligation to promote health and safety but also maintain trust in the profession.

Question 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?

Your answer:

Yes. A person's criminal history is judged on individual merit and subjective factors, so a high-level statement allows for reasonable interpretation of the standard. This approach allows the core tenets of the standard to remain clear and concise, while enabling the more detailed explanatory material to be updated over time without having to amend the standard itself.

However, there is a risk that the explanatory material, being separate from the standard itself, is perceived as less authoritative or is simply overlooked. The status and role of the additional documents could be made clearer, perhaps by including a link/reference to them within the standard and narrative that explains that the additional explanatory materials need to be considered in the application of the standard. It is crucial that practitioners engage with the full suite of materials to properly understand the standard's operation.

It is also important that the principles in the standard are sufficiently clear without depending too heavily on the explanatory material. The standard is the source of the binding obligations, so it needs to be robust and comprehensive enough to stand alone. Some of the principles, such as the very broad 'Any other matter that the Board considers relevant', could benefit from more precision to enhance clarity and confidence.

Question 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?

Your answer:

Not including an exhaustive list of disqualifying offences is appropriate, as it allows the Board discretion to consider each matter on its merits. Exhaustive lists can quickly become outdated and risk a blunt, over-inclusive approach.

However, applicants must be clearly informed that certain offences are likely to mean they are not registerable. These include, for example, serious violent or sexual offences, and crimes relating to an abuse of the privileged position of a health practitioner. This signals the severity with which the Board will treat these matters, while still preserving some flexibility.

Question 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?

Your answer:

There were some conflicting views from members regarding the additional information explaining when the standard applies and what the requirements are. It was noted that the expanded information in the revised standard gives helpful clarity about when it applies (at initial registration, renewal, and when a 'relevant event' occurs). However, others observed that the additional information is not necessarily more enlightening and uses more words to essentially convey the same message.

Separating out the requirements and relevant considerations makes it easier to understand how the standard operates in practice. Providing information on the variable requirements in different jurisdictions is also helpful. These should be highlighted as part of the registration process to support compliance, especially where convictions with perceived reduced severity may not be considered by individuals as significant.

The new material on when the standard may apply to registered students is important, as this may be a surprise to many. However, the information on the consequences for students is quite brief – more detail here would support better understanding. The standard would also benefit from greater clarity on the transition from being registered as a student to being registered as a professional, as reporting requirements change once this occurs.

There is mention of the length of time since a criminal charge, which is supported. There may also be something to be said about a criminal charge that occurred prior to registration, or before becoming a student. Members noted this could be important for Aboriginal and Torres Strait Islander people who enter the profession later in life. When someone enters a student program or becomes registered, their obligations are much clearer than before embarking on study, especially if they did not know at that time that they may become a health professional. It is therefore recommended that stage of life be considered alongside the length of time since an offence occurred.

There may be rare circumstances where a civil rather than a criminal court declares that someone committed a criminal act, but this has not been tested in a criminal court (eg due to a mistrial). These types of cases could involve behaviour incompatible with registration, and the standard may need to outline or refer to the Board's process for dealing with them.

While the revised standard is clearer overall, members suggested the interaction between the different 'triggering' events could be further clarified. For example, how do the obligations on renewal intersect with the 'relevant event' notification duties? A flowchart or visual aid could help practitioners better understand this.

Questions for consideration – Explanatory material

Question 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?

Your answer:

Members observed the new explanatory material as thorough, clearly structured and adding substantial value in elucidating the standard. The use of concrete examples to accompany each factor brings the considerations to life and will aid practitioner comprehension. The case examples are well-chosen to illustrate key principles. The 'notice of a relevant event' section is particularly useful in outlining practitioners' mandatory reporting obligations.

However, the large volume of explanatory material may be overwhelming and inaccessible for some practitioners, particularly those from non-English speaking backgrounds or with learning difficulties. Condensing the core information into a short summary guide could make the material more digestible.

Additionally, while the material is comprehensive, it is quite technical and dry in tone. Members noted it would be enhanced by more 'human' language that recognises the lived experience of practitioners going through the process. For example, acknowledging the stress and anxiety a practitioner may feel when making a notification, and providing information on wellbeing supports, would make the material more relatable and supportive. Over time the explanatory material may be modified based on input from health professionals and the public.

Question 7:

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

Your answer:

The following suggestions were proposed:

a) Consider including a visual flowchart or decision tree showing the key decision points and pathways in the assessment process. This would help practitioners understand how the various factors fit

together and what to expect at each stage. While the material is comprehensive, the current linear format makes it difficult to grasp the 'big picture' of how the standard operates. A clear, accessible summary of the core process would be a valuable inclusion.

b) Expand the information on the Board's powers at each stage and the practitioner's appeal rights (building on the information on p34 of the consultation paper), to help practitioners appreciate the significance and implications of the standard. The current material focuses heavily on the 'front end' of the process – the triggering events and initial consideration stages. Practitioners also need to understand what comes next: the range of registration actions the Board can take, the thresholds for each action, and their rights of reply and appeal. This is crucial information that directly impacts a practitioner's interests.

More broadly, the overall tone of the explanatory material is quite formal and legalistic. There is an opportunity to make the content more engaging and relatable by including greater acknowledgment of the human dimension. It was suggested anecdotal case studies or quotes from practitioners who have gone through the process could powerfully illustrate the real-world impact of the standard.

Question 8:

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

Your answer:

The case examples already provided are helpful, but further de-identified case studies or hypotheticals showing how different types of offences may be viewed would be even more illuminating, especially for 'grey area' offences. For example, scenarios involving lower-level substance offences, public order offences, or crimes arising from mental health crises would be instructive. This could help practitioners better understand where the Board is likely to land on less clear-cut matters.

However, it is essential that any additional examples reiterate that every matter is considered individually, to avoid creating false certainty or hard rules. The examples should be carefully chosen to illustrate the nuances and contextual factors the Board will consider, rather than implying definite outcomes. Ultimately, applicants seeking registration should seek independent legal advice as it is difficult to cover all potential pathways.

The material could also benefit from more direct exploration of the general principles and values the Board applies in its decision-making (eg proportionality, public confidence in the profession etc), to guide practitioners' understanding at a higher level. This could assist them to predict how the Board is likely to approach novel situations.

From a practitioner wellbeing perspective, the inclusion of more case examples carries both benefits and risks. On one hand, practical illustrations can help demystify the process and alleviate anxiety. Alternatively, seeing scenarios that resemble their own situation depicted as concerning or incompatible with registration could be highly distressing. Any additional examples should therefore be carefully crafted with a view to practitioner mental health.

Questions for consideration – Both criminal history registration standard and explanatory material

Question 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.

Your answer:

The new Factor 10 on considering the systemic racism faced by Aboriginal and Torres Strait Islander people is a crucial and welcome addition. Whilst there remain offences that are incompatible with registration, it is appropriate to assess an individual's offending against the backdrop of systemic discrimination in the justice system. The language used is respectful and strikes the right tone in

recognising historical and contemporary injustices without condescension.

However, the material could go further in explaining how this factor will be considered in practice. For instance, will the Board consider expert advice or community input in assessing this factor? What weight will it be given compared to other considerations? More concrete guidance on how the Board will incorporate this factor into its decision-making would give more substance. Furthermore, some additional clarifying statements are required regarding sanctions that tend to disproportionately affect Aboriginal and Torres Strait Islander people, such as fines.⁴

The acknowledgment of systemic racism should arguably extend beyond the criminal justice system to encompass broader social disadvantage, reduced access to culturally safe healthcare and support services, and more complex determinants of health and offending. A broader framing would better capture the full context of Aboriginal and Torres Strait Islander practitioners' experiences.

The material could also include more targeted information for Aboriginal and Torres Strait Islander practitioners on culturally safe support pathways if they have a relevant history, recognising the unique barriers they may face in engaging with the process. Proactive outreach and collaboration with trusted organisations (if not already done) could help create a more culturally safe and accessible system.

Question 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.

Your answer:

People experiencing disadvantage or vulnerability (eg those with a disability, from a refugee background, or of low socioeconomic status) often face systemic barriers and discrimination that can increase their exposure to and contact with the criminal justice system. These groups are also more likely to experience complex health and social challenges that can be risk factors for offending. There is therefore a real risk that a more stringent criminal history standard could disproportionately impact these groups, creating additional challenges to entering and remaining in the health workforce.

This is particularly concerning given Australia's current overreliance on overseas trained doctors. One in two doctors who first registered to practise last financial year were educated overseas.⁵ Research shows a projected shortfall of more than 11,000 full-time general practitioners (GPs) by 2032⁶, highlighting the importance of a nuanced approach to medical registration for practitioners from disadvantaged backgrounds.

Members noted the explanatory material does not currently acknowledge the broader social context of disadvantage or commit to any particular approach for practitioners from these groups. This is a missed opportunity. At a minimum, the material should recognise the over-representation of certain groups in the criminal justice system and the need for a nuanced, case-by-case approach to assessing their circumstances. There was support for the inclusion of a specific factor, similar to Factor 10, mandating consideration of social disadvantage and discrimination in weighing up an individual's history.

The Board's discretion to consider context is crucial. More targeted information for practitioners experiencing vulnerability on available support services, advocacy and legal assistance pathways would also improve equity and build trust in the system.

From a practitioner health perspective, any disproportionate impact on disadvantaged groups is highly concerning. Evidence shows that practitioners from culturally and linguistically diverse backgrounds already face unique stressors and barriers in the profession, which can negatively impact their wellbeing. Applying an inflexible criminal history standard with insufficient regard to social disadvantage would only exacerbate this.

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- ¹ Kaminski I. UK doctors involved in climate protests face threat of being struck off. The Guardian. 16 March 2024.
- ² Australian Human Rights Institute. Explainer: What are your rights to protest in Australia? Sydney: Australian Human Rights Institute. Available at www.humanrights.unsw.edu.au/research/commentary/explainer-what-are-your-rights-to-protest-australia
- ³ McNamara L, Quilter J. Criminalising protest through the expansion of police 'move-on' powers: A case study from Australia. Int J Law Crime Justice 2019;58:22–34.
- ⁴ Kirkup Z. Abolition of fines imprisonment shows the vast potential of law reform to change lives. National Indigenous Times. 20 January 2023.
- ⁵ Department of Health and Aged Care. Record numbers of doctors, nurses, and health professionals moving to Australia. Canberra: DoHAC, 23 June 2024. Available at www.health.gov.au/ministers/the-hon-mark-butler-mp/media/record-numbers-of-doctors-nurses-and-health-professionals-moving-to-australia?language=en
- ⁶ Deloitte Access Economics. General Practitioner workforce report 2022. Prepared for Cornerstone Health Pty Ltd. Sydney: Deloitte, 2022.