



a healthier world through
sonographer expertise

13 September 2023

Australian Health Practitioner Regulation Agency
Level 7, 111 Bourke Street
Melbourne VIC 3000

By Email: ahpraconsultation@ahpra.gov.au

Dear Consultation Team,

Consultation on the Criminal History Registration Standard

Thank you for the opportunity to contribute to AHPRA's consultation on the *Criminal history registration standard* (the Standard).

The Australasian Sonographers Association (ASA) is the professional organisation for Australasian sonographers, who are the experts in ultrasound. With over 7,000 members, and representing more than 70% of Australasia's sonographers, the ASA's purpose is to foster a sonography profession that delivers high quality ultrasound with a vision to create a healthier world through sonographer expertise.

Our **attached** submission outlines the areas of the Standard that could be strengthened.

ASA supports the need to ensure patients are safe and in the care of health practitioners who are fit and proper people to support them. The ASA also supports the rights of health practitioners to natural justice in decision-making about their fitness to practice, privacy of personal information, and appropriate support.

In the main, the Standard strikes the right balance between these priorities. Where it falls short is in clarity about the decision-making process, the factors the Board considers when assessing a health practitioner's criminal history on their fitness to practice, and the disciplinary action that can result from the Board's decisions.

Should you wish to discuss our contribution to the review of the Standard further, please contact ASA's General Manager, Policy & Advocacy, Rebecca Burdick Davies on 0401 619 280 or at rebecca.burdickdavies@sonographers.org.

Yours sincerely,

Ian Schroen
President
Australasian Sonographers Association



AHPRA Consultation on the Criminal History Registration Standard Australasian Sonographers Association: Feedback and recommendations

General comments

ASA supports the need to ensure patients are safe and in the care of health practitioners who are fit and proper people to support them. The ASA also supports the rights of health practitioners to natural justice in decision-making about their fitness to practice, privacy of personal information, and appropriate support.

In the main, the Standard strikes the right balance between these priorities. Where it falls short is in clarity about the decision-making process, the factors the Board considers when assessing a health practitioner's criminal history on their fitness to practice, and the disciplinary action that can result from the Board's decisions.

Limited application of the Standard

Sonographers perform most comprehensive medical diagnostic ultrasound examinations. Ultrasound is the most utilised diagnostic imaging modality in Australia.

Despite this, and unlike other diagnostic imaging professions, sonography is not currently regulated. As with other regulatory instruments applied to registered health practitioners, the criminal standard applies only to the 25% of sonographers who are dual qualified as radiographers. Patients of the 75% of sonographers who are not dual qualified as radiographers will not benefit from the protection the standard affords.

ASA's response to standard questions

Initial questions
Question A Are you completing this submission on behalf of an organisation or as an individual?
Your answer: <input checked="" type="checkbox"/> Organisation Name of organisation: Australasian Sonographers Association (ASA) Contact email: rebecca.burdickdavies@sonographers.org
Question B If you are completing this submission as an individual, are you: <input type="checkbox"/> A registered health practitioner? Profession: Click or tap here to enter text. <input type="checkbox"/> A member of the public? <input type="checkbox"/> Other: Click or tap here to enter text.
Question C Would you like your submission to be published? <input checked="" type="checkbox"/> Yes, publish my submission with my name/organisation name <input type="checkbox"/> Yes, publish my submission without my name/ organisation name <input type="checkbox"/> No – do not publish my submission

Focus area one – The Criminal history registration standard

Question 1

The *Criminal history registration standard* (**Attachment A**) outlines the things decision-makers need to balance when deciding whether someone with a criminal history should be or stay registered such as the relevance of the offence to practice, the time elapsed and any positive actions taken by the individual since the offence or alleged offence. All decisions are aimed at ensuring only registered health practitioners who are safe and suitable people are registered to practise in the health profession.

Do you think the criminal history standard gets this balance right?

If you think the *Criminal history registration standard* does not get this balance right, what do you think should change to fix this?

Your answer:

The Standard could be strengthened. See detailed commentary below.

Question 2

Do you think the information in the current *Criminal history registration standard* is appropriate when deciding if an applicant or registered health practitioner's criminal history is relevant to their practice? If not, what would you change?

Your answer:

The Standard currently provides significant discretion concerning charges where no finding of guilt or conviction is recorded. It is unclear how this discretion is exercised, and in what circumstances. ASA is of the view that a charge resulting in no conviction or finding of guilt should only be considered in relation to a health practitioner's fitness to practice for specific offence types: for example, sexual offences.

The Standard should be revised to exhaustively list the offence types relevant to considering a disclosure of charge/s with no finding of guilt. Doing so will provide greater certainty to practitioners, clarity to consumers, and will boost confidence in the fairness of the Board's decisions.

Question 3

Do you think the information in the current *Criminal history registration standard* is clear about how decisions on whether an applicant or registered health practitioner's criminal history is relevant to their practice are made? If you think it is not clear, what aspects need further explanation?

Your answer:

The Standard should be amended to include an appendix setting out the steps involved in the decision-making process. ASA suggests a flowchart for this purpose.

Question 4

Is there anything you think should be removed from the current *Criminal history registration standard*? If so, what do you think should be removed?

Your answer:

No.

Question 5

Is there anything you think is missing from the 10 factors outlined in the current *Criminal history registration standard*? If so, what do you think should be added?

Your answer:

Yes, the ASA suggests the following additions:

- The standard should include a section defining common terms. Definitions should link with and/or reference the relevant definitions in the *Health Practitioner Regulation National Law* (the National Law). Item 1, for example, should refer to (and use) National Law's definitions of "unprofessional conduct" and "professional misconduct".
- Item 5 should be expanded or a new item added to include other aspects of victim vulnerability as relevant considerations. The Board should place more weight on offences involving other vulnerable people such as people living with a physical disability, intellectual disability, victims of family violence, people with mental illness and/or Aboriginal and Torres Strait Islander peoples.
- Item 7 refers to the health practitioner's behaviour since the offence or alleged commence. This item should clarify the behaviour that would be relevant to consider: for example, demonstration of insight, remorse, apology, or evidence of rehabilitation such as attending relevant behavioural training, coaching, mentoring, and undergoing supervision to address competence and conduct issues.

Question 6

Is there anything else you would like to tell us about the *Criminal history registration standard*?

Your answer:

See comments above.

Focus area two – More information about decision-making about serious misconduct and/or an applicant or registered health practitioner’s criminal history

Question 7

Do you support AHPRA and National Boards publishing information to explain more about the factors in the *Criminal history registration standard* and how decision-makers might consider them when making decisions? Please refer to the example in **Attachment B**. If not, please explain why?

Your answer:

Yes. ASA supports AHPRA publishing information that will provide guidance to practitioners and the public.

Question 8

Is the information in **Attachment B** enough information about how decisions are made about practitioners or applicants with a criminal history? If not, what is missing?

Your answer:

Attachment B provides sufficient information about how decisions are made. The standard does not, however, include information about the types of disciplinary action that may be taken against a health practitioner. A section should be added on the types of disciplinary action that may be determined at tribunal.

Question 9

Is there anything else you would like to tell us about the information set out in **Attachment B**?

Your answer:

Not applicable.

Question 10

Thinking about the examples of categories of offences in **Attachment C**, do you think this is a good way to approach decision-making about applicants and registered health practitioners with criminal history? If you think this is a good approach, please explain why. If you do not agree with this approach, please explain why not.

Your answer:

Yes, the approach is helpful. It provides clear direction on different categories of offences and their impact on an applicant or health practitioner’s registration. The lists are not, however, exhaustive and do not include serious offences such as extortion, blackmail, human trafficking etc. Attachment C should categorise exhaustive lists of offences or should clearly specify that the categories are not exhaustive.

Question 11

Do you think there are some offences that should stop anyone practising as a registered health practitioner, regardless of the circumstances of the offence, the time since the offence, and any remorse, rehabilitation, or other actions the individual has taken since the time of the offence? Please provide a brief explanation of your answer. If you answered yes, please explain what you think the offences are.

Your answer

Yes. The sonography profession involves contact with a patient in a vulnerable state, in close quarters, and often with only the sonographer present. Any offences of sexual misconduct involving a minor or otherwise vulnerable person should result in permanent exclusion from the profession.

Question 12

Is there anything else you would like to tell us about the possible approach to categorising offences set out in **Attachment C**?

Your answer:

Not applicable.

Focus area three – Publishing more information about decisions that are made about serious misconduct by registered health practitioners

Question 13

Were you aware that disciplinary decisions by tribunals about registered practitioners were published to AHPRA and National Board websites and are linked to an individual practitioner's listing on the public register?

Your answer:

Yes. This information should be included in the standard.

Question 14

Do you think decisions made to return a practitioner to practice after their registration has been cancelled or suspended (reinstatement decisions) for serious misconduct should be published where the law allows? Please explain your answer.

Your answer:

Yes. The decision concerning the return of a practitioner should be published. Information on disciplinary sanctions should also remain on the public register unless/until:

- the action has expired; and/or
- a reinstatement order has been granted; and
- an application to AHPRA for re-registration is successfully completed.

Question 15

Is there anything else you would like to tell us about the approach to publishing information about registered health practitioners with a history of serious misconduct?

Your answer:

No.

Focus area four – Support for people who experience professional misconduct by a registered health practitioner

Question 16

What do you think Ahpra and National Boards can do to support individuals involved in the regulatory process who are affected by sexual misconduct by a registered health practitioner? (For examples, see paragraph 47 of the consultation paper.)

Your answer:

Victims should be given the opportunity to provide impact statements. The Board should consider victim statements where they have discretion in their decision-making (e.g. when considering the impact of Category B offence types).

Victims engaging with AHPRA and National Boards should also be proactively referred to victim support, and should be provided with regular updates concerning investigations that concern them.

Question 17

Is there anything else you would like to tell us about how we can support individuals affected by a registered health practitioner's professional misconduct?

Your answer:

Not applicable.

Focus area five – Related work under the blueprint for reform, including research about professional misconduct

Question 18

Are the areas of research outlined appropriate?

Your answer:

Yes, ASA endorses the area of focus.

Question 19

Are there any other areas of research that could help inform the review? If so, what areas would you suggest?

Your answer

Not applicable.

Additional question

This question is most relevant to jurisdictional stakeholders

Question 20

Are there opportunities to improve how Ahpra and relevant bodies in each jurisdiction share data about criminal conduct to help strengthen public safety

Your answer:

Not applicable.