



1 November 2013

Mr Martin Fletcher
Chief Executive Officer
Australian Health Practitioner Regulation Agency
GPO Box 9958
Melbourne VIC 3001
criminalhistoryconsult@ahpra.gov.au

Dear Mr Fletcher

National Boards consultation on international criminal history checking

The Australian Nursing and Midwifery Federation (ANMF) welcomes the opportunity to participate in this second round of consultation by the Australian Health Practitioner Regulation Agency (AHPRA) on international criminal history checking.

With over 230,000 members, the ANMF is proud to be the largest professional and industrial organisation in Australia for the nursing and midwifery professions. Our members provide clinical care in all settings delivering health and aged care, and across all geographical areas. Along with concern for the professional and socio-economic welfare of our members, the Federation has a paramount interest in the provision of safe and competent care to the community, and protection of the public through registration of health professionals.

The Federation has carefully considered Option 5 - the proposal to the use of an external provider to conduct international criminal history checks. Feedback is provided against the questions posed in the consultation paper.

Is the proposed new approach the best option?

As stated in our response to the initial consultation in 2012, and reinforced by the mixed feedback from other groups, this is a difficult and complex issue and there may not be one absolutely 'right' process.

Generally the ANMF acknowledges the proposed new approach of Option 5 has some merit, but many concerns have been expressed by State and Territory Branches as outlined in this paper.

The positive features of Option 5 are:

- applications can be processed on the basis of a domestic criminal history check and the applicant's self-declaration about their international criminal history, and
- applicants can be given a clearance on domestic criminal history, and, provided no significant criminal history is disclosed, registration can proceed. We agree the level of risk is small that an applicant with an international criminal history may be inappropriately registered for a short period of time, due to a self-declaration being proven false.

The industrial and professional organisation for nurses and midwives in Australia

Canberra Office

Unit 3, 28 Eyre Street Kingston ACT 2604 Australia
PO Box 4239 Kingston ACT 2604 Australia
(T) + 61 2 6232 6533 (F) + 61 2 6232 6610
anfc Canberra@anf.org.au

Melbourne Office

Level 1, 365 Queen Street Melbourne VIC 3000 Australia
(T) + 61 3 9602 8500 (F) + 61 3 9602 8567
anfmelbourne@anf.org.au

ANF Journals

Australian Nursing Journal
Australian Journal of Advanced Nursing
anj@anf.org.au ajan@anf.org.au
ABN 41 816 898 298



The ANMF is not, however, able to give a definitive answer whether this is the best option or not, until we receive further information and clarification on the issues raised in this response letter.

Is the proposed approach clear?

Not entirely. The ANMF has concerns about the application of Option 5, as described in the consultation document, to applicants and/or registrants generally. There are several points on which we seek clarity in order to more accurately assess the merits of this option.

Are there any risks or issues about the proposed process that need more consideration?

The risks and issues we raise about the proposed process that need more consideration and clarification fall under the following broad headings:

- Definition issues
- Cost of international criminal history check
- Spent convictions

Definition issues:

In 2009 the then ANF made submission to the development of the National Registration and Accreditation Scheme registration standards¹. In that submission we stated clearly that

Convictions, pending charges and findings of guilt should be the only types of criminal history to be considered. Non conviction charges such as minor traffic offences, or parking fines, must not be considered”.

And, further, that *‘The charges must be relevant to the practice area.*

More recently this message was reiterated by members of the ANMF with a resolution being passed by delegates at the ANMF Biennial conference (Brisbane, 2013) to “...abolish the need for minor infringements to be included in the Criminal history declaration made by renewing registrants”. The ANMF asserts that the above minor offences should not be a component of the criminal history declaration by health practitioner registrants. To do so creates unnecessary workload for the Boards; there is no “likelihood of future threat to a patient of the health practitioner” (one of the 10 NMBA factors for relevance of criminal history); and, in our view, serves to diminish the importance of disclosing criminal offences of a serious nature and which are relevant to health practice.

The need for clarity on relevance of offences in relation to health practitioners becomes apparent when one considers the definitions of ‘criminal history’ and ‘relevant events’ in the National Law.

The industrial and professional organisation for nurses and midwives in Australia

Canberra Office

Unit 3, 28 Eyre Street Kingston ACT 2604 Australia
PO Box 4239 Kingston ACT 2604 Australia
(T) + 61 2 6232 6533 (F) + 61 2 6232 6610
anfc Canberra@anf.org.au

Melbourne Office

Level 1, 365 Queen Street Melbourne VIC 3000 Australia
(T) + 61 3 9602 8500 (F) + 61 3 9602 8567
anfmelbourne@anf.org.au

ANF Journals

Australian Nursing Journal
Australian Journal of Advanced Nursing
anj@anf.org.au ajan@anf.org.au
ABN 41 816 898 298



'Criminal history' is defined in the National Law (p30, and included in the NMBA Criminal history registration standard) as:

- a) *every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;*
- b) *every plea of guilt or finding of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of the Law and whether or not a conviction is recorded for*
- c) *every charge made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law*

Under the section on requirement to notify the Board of certain events, s130 of the National Law, a 'relevant event' is defined (section 3, p 130) as:

- a) *In relation to a registered health practitioner-*
 - I. *the practitioner is charged, whether in a participating jurisdiction or elsewhere, with an offence punishable by 12 months imprisonment or more; or*
 - II. *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...*

There is potential for confusion as to which obligation must be complied with by the individual registrant. It appears the Registration Standard considerably exceeds the requirements of the National Law under 'relevant events' for health practitioners. The ANMF supports a common requirement for both applicants and existing registrants, and recommends the Registration Standard be amended to reflect the 'relevant event' reporting requirements. In light of the foregoing commentary, this would settle the issue of excluding minor offences.

Cost of international criminal history check

The ANMF seeks full transparency and quantification in relation to any costs associated with engaging an external provider to undertake international criminal history checks.

AHPRA needs to clarify the indicative cost to individual applicants of an external agency doing the international criminal history check, so that we can more accurately judge this approach as a viable option. Costs, to be borne by the individual, should not be prohibitive. Obviously there will be higher cost in the case of checks needing to be made in more than one country.

ANMF Branches have expressed concerns that if the cost is considered too burdensome for individual applicants these costs may be redirected into increasing the registration fees for all registrants.

The industrial and professional organisation for nurses and midwives in Australia

Canberra Office

Unit 3, 28 Eyre Street Kingston ACT 2604 Australia
PO Box 4239 Kingston ACT 2604 Australia
(T) + 61 2 6232 6533 (F) + 61 2 6232 6610
anfc Canberra@anf.org.au

Melbourne Office

Level 1, 365 Queen Street Melbourne VIC 3000 Australia
(T) + 61 3 9602 8500 (F) + 61 3 9602 8567
anfmelbourne@anf.org.au

ANF Journals

Australian Nursing Journal
Australian Journal of Advanced Nursing
anj@anf.org.au ajan@anf.org.au
ABN 41 816 898 298



The ANMF advocates for and advises members as part of core business and as such must be able to clearly identify costs involved in this process as opposed to another more cost efficient option, for example the hybrid adoption of Options 2 and 4 as previously proposed by ANMF in our August 2012 submission to AHPRA.

Spent convictions:

The ANMF has concerns about, and seeks clarification on, disclosure and processes regarding 'spent convictions' from other countries. For example, Attachment 2 of the consultation paper provides examples of varying conditions and considerations about when a conviction is deemed "spent" within different countries. We seek further information in relation to the potential ramifications of considering and relying on an applicant's disclosure of a conviction overseas when the international criminal history check will not provide this information due to the relevant conviction being deemed 'spent' in that particular country.

The ANMF reiterates our support for the prime consideration of public safety matters. We are concerned, however, with potential ramifications of differing 'spent convictions' legislation between jurisdictions/countries (as identified in Attachment 2). We seek clarification that applications for registration will not be prejudiced unnecessarily by relying on declarations in regard to international criminal history disclosure in cases where another jurisdiction has deemed the conviction to be 'spent'.

Should international criminal history checks be conducted for countries where applicants have spent three months or more, or six months or more?

There are differing views but generally the ANMF supports a period of residence in another country of more than six months. Most probably the approach to determining a timeframe would be to adopt the existing National Law definition of 'relevant event' for the Registration Standard and then a 12 month period of 'residing' in another country would be the more logical period.

With respect to public safety any agreed timeframe may also need to be subject to the nature of the offence/conviction. That is, there will be a distinct difference between a serious offence, such as assault versus a considerably more minor offence like disorderly behavior, when assessing an applicant's registration application.

It is incumbent upon AHPRA to consider the circumstances in which other countries consider serious crimes in the same way that it proposes to deal with 'claims of persecution and questionable international convictions' (p7) on the basis of an individual's circumstances.

Do you have any other comments?

- We seek clarification as to what applies to a current registered health practitioner who identifies a "relevant event" (under the National Law definition) that has not previously been declared, when renewing their registration.

The industrial and professional organisation for nurses and midwives in Australia

Canberra Office

Unit 3, 28 Eyre Street Kingston ACT 2604 Australia
PO Box 4239 Kingston ACT 2604 Australia
(T) + 61 2 6232 6533 (F) + 61 2 6232 6610
anfc Canberra@anf.org.au

Melbourne Office

Level 1, 365 Queen Street Melbourne VIC 3000 Australia
(T) + 61 3 9602 8500 (F) + 61 3 9602 8567
anfmelbourne@anf.org.au

ANF Journals

Australian Nursing Journal
Australian Journal of Advanced Nursing
anj@anf.org.au ajan@anf.org.au
ABN 41 816 898 298



australian nursing federation

Will the health practitioner be able to continue to practice whilst this check is being undertaken and is the Board proposing to take action against such individuals for failure to declare/notify given the previous lack of parameters of time lived outside of Australia?

- We note that in the normal registration audit process an Australian criminal history check will be conducted on those individuals identified for auditing. Will an additional international criminal history check be conducted as part of the normal process, or if the individual has travelled outside of Australia? If so will the individual health practitioner be expected to pay for this?
- While Option 5 proposes an improvement to the current situation of criminal history checking, there are still areas of concern. In the absence of evidence that a risk to the public exists, should such onerous obligations apply to all applicants? An alternative is for the process of Option 5 but with the random auditing of criminal history of Option 4, for individuals who have lived for the determined period of time after their 18th year in a country other than Australia. This process would act as a deterrent for any possible fraudulent declarations.

The ANMF has previously argued for a hybrid of Option 2 and Option 4. It may be the new option proposed by AHPRA, Option 5, provides additional safeguards over and above options two and four together. However, the ANMF has outlined concerns which must be addressed before the Federation can make a final analysis of the most appropriate option for international criminal history checks for health practitioner registrants.

Due to the extent of concerns and questions amongst the ANMF State and Territory Branches on this matter, we request a face to face meeting with AHPRA representatives in order to be able to fully discuss and explore options. [REDACTED]

[REDACTED] Executive Assistant, can be contacted on [REDACTED] [REDACTED] [REDACTED] or [REDACTED] to arrange a mutually suitable time for a meeting.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Lee Thomas".

Lee Thomas
Federal Secretary

Reference:

1. http://anmf.org.au/documents/submissions/Sub_Consultation_Paper_Registration_Standards.pdf

The industrial and professional organisation for nurses and midwives in Australia

Canberra Office

Unit 3, 28 Eyre Street Kingston ACT 2604 Australia
PO Box 4239 Kingston ACT 2604 Australia
(T) + 61 2 6232 6533 (F) + 61 2 6232 6610
anfc Canberra@anf.org.au

Melbourne Office

Level 1, 365 Queen Street Melbourne VIC 3000 Australia
(T) + 61 3 9602 8500 (F) + 61 3 9602 8567
anfmelbourne@anf.org.au

ANF Journals

Australian Nursing Journal
Australian Journal of Advanced Nursing
anj@anf.org.au ajan@anf.org.au
ABN 41 816 898 298