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Australian Health Practitioner Regulation Agency (AHPRA)
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Dear AHPRA,

RE: Consultation on the review of the Criminal history draft registration standard

RACS appreciates the opportunity to contribute to this targeted consultation on the review of the Criminal history draft registration standard.

RACS is the leading advocate for surgical standards, professionalism and surgical education in Australia and Aotearoa New Zealand, representing more than 8,300 surgeons and 1,300 surgical trainees and Specialist International Medical Graduates.

RACS would like to acknowledge the contributions from its Health Policy and Advocacy Committee, Medicolegal Section Committee and others towards preparing this submission.

Please find below short answers in feedback to the questions posed as part of this targeted consultation.

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:
At large the document is clear, relevant and workable. However RACS wishes to raise that any publication of the registered health practitioners' criminal history should be clearly explained in the registration standard. Should AHPRA and the Boards think the criminal history does not make the practitioner a risk to the public then there is no reason to publish this information on the website for the life of the practitioner. Only information that is pertinent to maintaining patient safety and protection should remain publicly available.

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:
RACS appreciates the distinction presented in the document that aims to explain how AHPRA and the Boards' application of the criminal history check aims to protects patient safety, which is distinct from how it is applied in the criminal court.

However there is no standard of good standing. If there was a central agency that certified good standing for a health practitioner where the data gets linked (whether it's bullying or harassment,

poor outcomes, fraud, criminal behaviour, family violence, drug and alcohol abuse), it may be easier for individual hospitals to ensure good governance is maintained in their credentialling of staff. This could further reduce risks to specialist medical colleges in instances when we nominate someone for an award or select mentors for Trainees. To ask the health practitioners to provide a certificate of good standing from a central body that certifies for good standing would have many beneficial applications.

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:
While we can appreciate that the registration standard should be kept succinct for readability, we would recommend that the wording referencing the explanatory material be strengthened to ensure readers are fully informed. A suggested change to Summary paragraph 4 could be: The registration standard: Criminal history should be read in conjunction with the *Guide to the application of the Criminal history registration standard.* It provides more information on how the Board makes decisions when considering each factor.

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:
RACS is in support of this approach that emphasises the assignment of weight to each factor. However examples and case studies demonstrating how these weights are applied in decision making would be beneficial.

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 is a need for better notification to AHPRA and the Boards that does not rely on the practitioner (perpetrator or victim) to report. The system should automatically share relevant criminal history information which is inclusive of police jurisdictions and state-based health complaint statutory bodies.

The lack of data sharing between police, AHPRA (HCCC) and specialist medical colleges prevent prompt action. The data sharing should be national as practitioners move between states and this data sharing could include serious warnings including Apprehended Violence Orders. Whilst these are not necessary to be accessible to the public, it allows specialist medical colleges and hospitals to provide a safe environment for patients and staff. It also allows cluster identification in at risk individuals before significant public harm has occurred. For instance, a patient complaint of sexual harassment by a practitioner may need to be viewed more seriously if there is also a concurrent AVO against the practitioner for a separate incident.

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:
RACS is in support of the creation of the explanatory material. The Guide appears to be clear, relevant and useful when read in conjunction with the registration standard.

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 explanatory material should consider adding an explanation as to how federal, state and territory police force share data on criminals including those associated with violence including domestic violence. There must be transparent sharing of information with AHPRA from relevant police jurisdictions where that knowledge will affect community safety, and in some cases medical or allied health safety in the workplace. Similarly the information sharing between AHPRA, the Boards and state based health complaint statutory bodies should be strengthened.

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

Your answer:
The explanatory material would benefit with case studies and examples to provide context and demonstrate how the weights are applied with the 12 factors in determining the Board's decisions when considering criminal offences.

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:
RACS agrees that Aboriginal and Torres Strait Islander peoples should be given special consideration. It is important to ensure that the health system provides a culturally safe environment free of racism and discrimination. More information should be included in the registration standard and explanatory material as to how the 12 factors will impact the Board's decision making when considering the criminal history.

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:
No feedback.

We are looking forward to further engaging on this important initiative with Ahpra in the interest of improving patient safety.

Yours sincerely,

Professor Mark Frydenberg AM MBBS FRACS FAICD
Chair, Health Policy and Advocacy Committee
Royal Australasian College of Surgeons