

Criminal history disclosure and checking for all applicants for registration, enrolment or authorisation as a nurse or midwife

This information sheet outlines the responsibilities of applicants for registration, enrolment, authorisation to practise nursing or midwifery or for restoration to the register or roll in Queensland regarding disclosure of their criminal history.

The Queensland Nursing Council

The Queensland Nursing Council (Council) is the nurse regulatory authority for the State of Queensland, Australia. If you want to practise nursing or midwifery in Queensland, you must hold a current licence issued by Council.

The Nursing Act 1992

The *Nursing Act 1992* governs the regulation of nursing and midwifery in Queensland. Amendments to the Act that came into effect on 4 October 2004, allow Council to take account of a person's criminal history in the circumstances set out below.

(a) Deciding a person's competence and fitness to practise nursing

Section 54(3A) gives Council the discretion to consider an applicant's criminal history in deciding whether the person is competent and fit to practise as a registered or enrolled nurse¹.

(b) Deciding whether a person is a suitable person to practise nursing or midwifery

Section 77A of the Act gives Council the discretion to consider the person's criminal history and any other issue relevant to the person's ability to practise nursing or midwifery when deciding whether the person is a suitable person to be authorised to practise nursing or midwifery.

What is a criminal history?

A criminal history means:

- (i) every conviction of the person for an offence, in Queensland or elsewhere, and
- (ii) every charge made against the person for an offence in Queensland or elsewhere.

All convictions and charges are included, no matter when they occurred. Convictions include pleas of guilty or findings of guilt by a court, even if the conviction is not recorded.

How will Council obtain this information?

All applicants will be asked to declare any criminal history on their application form.

Council will also request a criminal history report from the Queensland Police Service (QPS) for the following applications:

- ▀ Queensland graduates
- ▀ Restoration
- ▀ Interstate applicants who do not hold a current licence.

Applicants who have spent 12 months or more overseas in the last 10 years may also be required to provide an overseas police clearance.

What will the report contain?

The report that the QPS must provide in response to Council's request will include information about all convictions and charges that the Commissioner of the QPS has access to.

The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the report. This means that even convictions that do not need to be reported elsewhere, or which occurred a long time ago, will still be included in the criminal history report about the person, and should be disclosed.

Will Council request a criminal history report from the police for every applicant?

All nurses and midwives will be required to make a declaration regarding their criminal history as part of the application process. Council will also seek a report from the QPS to obtain as much information as possible that will inform its decision about the applicant for the following applications:

- ▀ Queensland graduates
- ▀ Restoration
- ▀ Interstate applicants who do not hold a current licence

As a quality measure, a random sample of one in five internationally qualified applicants who declare that they have no criminal history to disclose will be selected for audit. Criminal history reports will be requested from the QPS for these audited applicants and the applicant must also provide a police report from all countries where they have resided for more than 12 months in the past ten years.

What will happen when I inform council about my criminal history?

All convictions or charges that you report will be considered according to the circumstances of the case. Matters will be considered in the context of relevant information provided by you and obtained through other legal processes.

The focus of the assessment will be on determining whether you are safe and competent to practise nursing or midwifery in Queensland. Existing Council processes and appeal rights ensure that all applicants will be accorded natural justice and procedural fairness. Possible outcomes are:

- ▀ no action is taken
- ▀ conditions are placed on your licence to practise
- ▀ an undertaking is accepted from you
- ▀ your application for a licence is refused.

If you have been given a licence prior to the police criminal history report being received, and a significant criminal history is found in that report, other possible actions include the matter being referred to Council's Nursing Program for further action.

What information must I provide?

All professionals are expected to disclose to their regulatory authority all matters that may be relevant to their competence, fitness or suitability to practise. You are required to provide the

¹ Section 64A gives Council the discretion to consider a person's criminal history in deciding whether they are a suitable person to be temporarily registered.



information about your criminal history in the form of a statutory declaration on the application form.

If you are disclosing a criminal history, you should provide as much information as possible. Certificates of conviction, transcripts of evidence, sentencing remarks and other court documents will assist Council in deciding whether your criminal history is relevant to your competence, fitness or suitability to hold a licence to practise nursing or midwifery in Queensland.

In addition, you are invited to provide any other information to assist in assessing the connection between your criminal history and the inherent requirements of the profession. This may include:

- the circumstances in which the offence took place, (e.g. in a work, domestic or personal context), which may provide mitigating circumstances
- any indications that a court viewed the offences as relatively minor (e.g. if the conviction was not recorded)
- if the offence was a 'one-off'
- your age at the time of the offence
- the length of time since the offence occurred
- your youth or immaturity when you committed the offence
- any steps you have taken in your personal or work life to move on from your past (e.g. evidence that you have accepted responsibility for your action and/or undertaken rehabilitation).

Does this mean I won't get a licence until the criminal history check is complete?

Yes. Applications will not be finalised until the criminal history screen is complete. A clear report is usually returned to Council from QPS within two (2) business days. Applicants who declare a history on their initial application will be advised of the timeframe for the processing of their applications.

What if I have already had a criminal history check done for other purposes?

Council may accept these and will consider them if they are supplied by the applicant. However, criminal history checks done for other purposes may consider different crimes and different criteria from those that Council believes are relevant to nursing or midwifery. Therefore, Council will still obtain a QPS criminal history report.

What is a statutory declaration?

A statutory declaration is a formal declaration made under the *Oaths Act 1867*. The declaration must be in the approved form and be signed in the presence of a Justice of the Peace, solicitor or Commissioner for Declarations, who will witness your signature.

What if I do not inform Council of a conviction or charge?

If you fail to notify Council of your criminal history, Council may prosecute you in the Magistrates Court for a breach of Section 143 for making a false statement, declaration or representation. This could result in a fine of up to 100 penalty units (a penalty unit is currently \$75.00), or imprisonment for up to six months

and an order to pay legal and other costs. Failure to disclose may also be considered in deciding whether you are a fit person to hold a licence or authorisation to practise nursing or midwifery.

What will Council consider in making its decision about competence, fitness or suitability?

- Council's decision will take account of all available information including, but not limited to, the following
- (a) The potential risk to the health or safety of clients receiving nursing or midwifery services.
 - (b) The nature of the conduct, behaviour or action(s) that was the basis for the conviction / charge.
 - (c) The nexus between the conduct, behaviour or actions that led to the conviction / charge and nursing or midwifery practice.
 - (d) Whether the conduct, behaviour or action was an isolated incident or formed a pattern.
 - (e) Whether the applicant declared the criminal history voluntarily.
 - (f) Recency of the conduct, behaviour or action(s) that was the basis for the conviction / charge, and whether the penalty for any conviction has been satisfied (i.e. all sentences and probationary periods completed, fines paid etc)
 - (g) Mitigating or extenuating circumstances at the time of the conduct, behaviour or action(s) that led to the conviction/charge.
 - (h) Evidence of insight/rehabilitation/restitution by the applicant since the conduct, behaviour or action(s) that led to the conviction.
 - (i) Whether the offence is still an offence in the place where it was committed or whether it is an offence in Queensland.

Who is responsible for the costs of the police criminal history check?

A criminal history screen charge (refer to the *Schedule of fees and charges* information sheet) applies to the following types of applications:

- Queensland graduates
- Restoration
- Interstate applicants who do not hold a current licence.

There may also be charges that the individual will be responsible for if the police search identifies a criminal history in another jurisdiction. A person with a criminal history may be expected to pay to obtain documentation, such as court transcripts, necessary for Council to make an informed decision.

Who will have access to the information about my criminal history?

Council staff and Council members are subject to a strict confidentiality provision (section 139) in the *Nursing Act 1992*. Council also has a *Privacy Policy* which is accessible on its website or by contacting the numbers below.

Information obtained from applicants or the police relating to a person's criminal history will be treated in strict confidence and only released if that release is authorised by law. For example, the information will not be provided to third parties such as employers without the consent of the applicant.