



## POLICY Criminal History Checking

Endorsed 13 October 2009

### 1.0 Purpose

- 1.1 The purpose of this policy is to ensure decisions made by the Medical Board of Queensland about an applicant's fitness to practise are made consistently, transparently and fairly.
- 1.2 Criminal History checking is an element of the fitness to practise requirement for registration under s45(1)(c) of the *Medical Practitioners Registration Act 2001* (the Act).
- 1.3 The policy outlines the relevant factors and considerations, which may be taken into account by the Board when assessing an applicant's fitness to practise with regard to an applicant's criminal history.
- 1.4 The policy is also designed to inform the staff of the Office of the Medical Board, its legal advisors, the Health Quality and Complaints Commission, registrants, and members of the public of the principles which guide the decisions made by the Board.

### 2.0 Scope

- 2.1 This policy applies to:
  - a. all applications for registration under the Act where an applicant makes a declaration, at the time of application or renewal, to the existence of a Criminal History in any jurisdiction inside or outside of Australia; and
  - b. where the Board determines a criminal history check should be undertaken in relation to an applicant.
- 2.2 This policy applies to all categories and periods of registration in Queensland:
  - general (including with intern conditions);
  - specialist;
  - short term;
  - non-practising;
  - special purpose; special purpose - deemed specialist
- 3.1 The *Mutual Recognition (Queensland) Act 1992* does not provide for the Board to conduct Criminal History checks.

### 3.0 Legislative provisions

- 3.1 Section 45 of the Act (as applied to special purpose applicants pursuant to s139 and non-practising applicants pursuant to s150D) specifies that the Board:
  - (1) In deciding whether an applicant for general registration is fit to practise the profession, may have regard to the applicant's criminal history;

- (2) When having regard to the applicant's criminal history under subsection (1)(c), it must have particular regard to the following-
- (a) any conviction of the applicant for an indictable offence;
  - (b) any conviction of the applicant for an offence against the repealed Act, this Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law;
  - (c) any conviction of the applicant for an offence, relating to the practice of the profession-
    - i. against the *Health Act 1937* or the *Fair Trading Act 1989*; or
    - ii. against another law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.

3.2 An applicant's information will be released to the Commissioner of the Police Service under s45(3) of the Act.

3.3 Under s45(4) of the Act, the Commissioner must return a written report (Police Certificate), which may include information from the CrimTrac Agency and other Australian Police Services.

3.4 As per s42(3) of the Act, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure, or consideration, of Criminal History.

#### **4.0 Definition of 'Criminal History'**

4.1 As defined in schedule 3 of the Act, Criminal History of a person, means all of the following:

a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;

b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

#### **5.0 Criminal History Declaration and Certification**

5.1 All applicants must make a declaration on the application form as to whether they hold a Criminal History in any jurisdiction inside or outside of Australia.

5.2 Applicants who have a Criminal History outside of Australia must provide a full explanation of the circumstance and detail of the criminal history and include any documents or correspondence received from the courts or law enforcement authorities relating to the charge(s) and/or conviction(s).

5.3 Where a police certificate cannot be provided, a statutory declaration is accepted as a last resort and only for countries where a police clearance certificate is unobtainable. The statutory declaration must be less than three months old, and must detail the applicant's attempts to obtain a police certificate.

5.4 Any costs associated with providing overseas Police Certificates or statutory declarations will be borne by the applicant.

#### **6.0 Criminal History Check**

6.1 All applicants who make a declaration that they hold a Criminal History in any jurisdiction inside of Australia must undergo an Australian Criminal History check coordinated by the Board.

6.2 The cost associated with providing this check will be borne by the Board.

#### **7.0 Assessment of Criminal History – where conviction or charge disclosed**

7.1 The Board will assess the relevance of an applicant's criminal history against the fitness to practice criteria for registration as a medical practitioner; this will be conducted on a case-by-case basis.

7.2 The existence of a criminal record does not mean automatic disqualification from making an application for registration as a medical practitioner.

- 7.3 An applicant's criminal history is assessed with regard to both charges and convictions for offences. In determining an application for registration, the Board will consider any charge or conviction which is disclosed in:
- a) An Australian Criminal History Check.
  - b) A Police Certificate, or equivalent, from the relevant international authority.
  - c) The applicant's application.
- 7.4 Special purpose and non-practising registrants convicted of an indictable offence or an offence against the Act, the *Health Practitioners (Professional Standards) Act 1999* or a corresponding law are subject to cancellation or refusal, as the case may be, pursuant to subsections 149(1)(b) and (c) and 150J(a) and (b).
- 7.5 In determining whether an application for registration is adversely affected by reason of the applicant's criminal history, the Board (or delegate) will consider mitigating factors and will apply the principles of natural justice. In cases where the Board's preliminary view is to refuse, or impose conditions upon registration, the Board will provide the applicant with an opportunity to make a submission. In making its decision, the Board will consider the following:
- a) The potential risk to the health and safety of patients.
  - 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 medical 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 formed the basis for the conviction.
  - i) Whether the offence is still an indictable offence/offence against a corresponding law or is an indictable offence/ offence against a corresponding law in Queensland.
- 7.6 The Board will only consider information relating to criminal history in so far as it may impact on the applicant's fitness to practise the profession. The details of a criminal record (if relevant) will not be stored on an applicant's electronic record, or accessed by anyone who does not have a reason to do so.

## **8.0 Decision and Appeals**

8.1 The Board may decide to:

- a) Register the applicant;
- b) Register the applicant with conditions; or
- c) Refuse to register the applicant.

- 8.2 The Board may also exercise its inquiry powers either by investigating the applicant or giving notice to the applicant to provide more information (s46(1)(a) and (b) of the Act).
- 8.3 Appeals may be started at-<sup>1</sup>
- (a) the District Court at the place where the person resides or carries on business; or
  - (b) the District Court at Brisbane.

## 9.0 Timeframes

- 9.1 The Board will endeavour to process all applications in a timely manner; however as the Criminal History checking process relies on numerous external agencies; time frames may vary depending upon the ease and speed of obtaining specific information.
- 9.2 The applicant will be notified of the Board's decision and advised of their appeal rights within a reasonable time period.

## 10.0 Action regarding failure to disclose a criminal history

- 10.1 The Board may take action against applicants who fail to disclose or make a materially false or misleading representation or declaration about their criminal history. Such a failure is a ground for cancellation of registration. Giving materially false information or a document to the Medical Board in connection with an application for registration is an offence, punishable with a maximum penalty of AUD \$200,000 or 3 years imprisonment.

## 11.0 Policy Review

- 11.1 This policy will be reviewed annually by the Policy Coordination and Review Unit from the date of endorsement, with amendments to be proposed to the Board as required.

## 12.0 Related Policies and Forms

### 12.1 Registration Related Policies

- [Document Resubmission after Refusal or Withdrawal](#) (PDF 70k)
- [Disciplinary Policy](#) (PDF 288k)
- [English Language Policy](#) (PDF 72k)
- [Identification Validation for Medical Registration](#) (PDF 76k)

### 12.2 Registration Application Forms

- [Intern - M1\(a\)](#) (PDF 1mb)
- [General - M1](#) (PDF 146k)
- [Specialist - M2](#) (PDF 171k)
- [Mutual Recognition](#) (PDF 850k)
- [Special Purpose - M1SP](#) (PDF 2mb)
- [Public Interest Registration\( Pandemic H1N1\)](#) (PDF 160k)
- [Short-Term Registration - Form STR](#) (PDF 31k)
- [Non practising for non-current registrants - Form M13b](#) (PDF 114k)

### 12.3 Notification Forms

- [Conviction Form](#) (PDF 8k)
- [Judgements - Settlements Form](#) (PDF 8k)
- [Events Concerning Other Medical Registration Form](#) (PDF 8k)

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<sup>1</sup> Part 7 section 237 of the Medical Practitioners Registration Act 2001  
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