

Policy on Criminal Convictions

Refer Health Practitioners Competence Assurance Act 2003:
Sections 15 – 24 and 67-67A

Refers to the following legislation:

1. Health Practitioners Competence Assurance Act 2003
2. Children’s Act 2014
3. Criminal records (Clean slate Act) 2004.

Document Control	Policy
Name: Criminal Conviction Policy	Version: 3.0
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Purpose

1. The purpose of the Health Practitioners Competence Assurance Act 2003 (the HPCAA) is to protect the health and safety of members of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions
2. The HPCAA sets out the conditions a health professional must meet in order to be registered and to practise. The specific sections of the HPCAA around registration, fitness to practise, and criminal convictions are:
 - a. s15 Requirements for registration of practitioners;
The authority appointed in respect of a health profession may register an applicant as a health practitioner permitted to practise within a scope of practice if the applicant:
 - i. is fit for registration in accordance with section 16
 - b. s16 Fitness for registration;
No applicant for registration may be registered as a health practitioner of a health profession if:
 - ii. he or she has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer, and he or she does not satisfy the responsible authority that, having regard to all the circumstances, including the time that has elapsed since the conviction, the offence does not reflect adversely on his or her fitness to practise as a health practitioner of that profession.
3. Criminal convictions may occur prior to and/or after registration. Registered midwives may disclose a conviction to the Council; or the Ministry of Justice or another body may notify the Council of a conviction. Part four of the Act describes the processes that must be followed when a Responsible Authority receives details of a conviction that relates to a registered midwife.

Scope

4. This Policy applies to all applicants for registration with the Midwifery Council (the Council) and to all registered midwives.

Policy

5. The Council recognises that the safety of the public is protected by ensuring that midwives are fit to practise
6. The Council will not register any person unless it has satisfied itself that person is fit to practise midwifery. However, the Council recognises that convictions in a person's past should not invariably mean that the person is unfit to practise midwifery. The Council accepts that people are capable of change or that the circumstances that led to a conviction may change and, therefore, it is possible for a person with previous convictions to be registered as a midwife, provided certain conditions are fulfilled
7. The Council has in place a consistent and transparent process to ascertain if a person applying for registration has a past conviction/s and to satisfy itself that a person is fit to be registered
8. The Council will follow a fair, reasonable, and proportionate process when advised that a registered midwife has been convicted of an offence as stipulated in the HPCAA, or where the Council considers there are concerns about the appropriateness of the conduct of the midwife or the safety of the midwife's practice.

Criminal Records (Clean Slate) Act 2004

9. This legislation is designed to allow individuals with less serious convictions who have been conviction free for at least seven years and who meet all other relevant criteria to not disclose past convictions in most circumstances
10. However, under the Children's Act 2014, a midwife is an exception to the general effect of the clean slate scheme. Under the Children's Act, midwives are core workers and core workers are required to have safety checks. Section 31 (3) of the Children's Act states that nothing in the Criminal Records (Clean Slate) Act (the Clean Slate Act) authorises the concealment of a conviction for a specified offence of a person who is subject to a safety check
11. Additionally, s19(3) of the Clean Slate Act states that an individual is an exception to the eligibility criteria contained in s7 of that Act if the individual has made an application to act in a role predominantly involving the care and protection of, but not predominantly involving the delivery of education to, a child or young person
12. As a midwife is involved in the planning, management and delivery of services to children, the s19(3) exception to the eligibility criteria as set out in s7 applies. Any Police Check will, therefore, release any information the Police may hold on the applicant, including their full criminal record.

Process where criminal convictions are disclosed prior to registration

13. All applicants for registration are required to provide consent to a New Zealand Police Vet. They are also required to provide a criminal record check from any country in which they have lived for more than one year from the age of 18
14. Any applicant who discloses that they have a conviction is asked to complete the statement on criminal conviction (Appendix A)
15. If the applicant discloses a conviction, then the Council will usually wait until the Police Vet and/or criminal history report is received before any decision making occurs
16. If the Council does not receive a self-disclosure and the Police Vet or criminal history check discloses a conviction then, the Council will write to the applicant seeking an explanation on the conviction and lack of disclosure
17. When deciding if the applicant is fit to be registered, the Council will consider:
 - a. The nature of the conviction and the role that the applicant played in the matter
 - b. The length of time since the criminal behaviour happened
 - c. Whether the criminal behaviour happened under such unusual circumstances that it is unlikely to recur
 - d. Whether the criminal behaviour casts doubt on the applicant's reliability, honesty, trustworthiness and good judgement
 - e. The number of convictions that the applicant has
 - f. The applicant's acknowledgement of the event and circumstances that led to the conviction
 - g. Any changes the applicant has made to their life since the conviction
 - h. Whether there is evidence of successful rehabilitation, including but not limited to, the passage of time without recurrence of criminal activity, evidence of remorse or restitution, job training or higher education, good employment record
 - i. The applicant's disclosure of the conviction prior to entry to the school of midwifery or if the conviction occurred during their programme of education
 - j. Character references lodged with the application for registration
 - k. The extent to which the conviction may reflect adversely on fitness to practise as a midwife
 - l. The extent to which the conviction indicates the applicant may pose a risk to the health and safety of the public.

Process where the Council receives conviction information about a registered midwife

18. When the Council receives conviction information regarding a midwife from the Department of Justice or the midwife makes a disclosure to the Council as part of her application for her APC, then the following will usually occur:
 - a. Information is sought about the nature of the conviction to ascertain if it meets the threshold for action under section 67A of the HPCAA
 - b. If the conviction does not meet that threshold, then the midwife is advised that the matter is closed and that no further action will be taken. All correspondence is retained in the file
 - c. If the conviction meets the threshold in the Act then, depending on the nature of the conviction, the Council will consider whether the matter is to be managed by a PCC or if it should order the midwife to undergo medical or health assessments under s67(a)(2)
 - d. In both cases the midwife is advised of the process
 - e. If a midwife is referred for a health assessment, then the midwife's consent to that process will be obtained.