



## Criminal history checks for nurses and assistants in nursing caring for people in aged care settings

This position statement applies to registered nurses, enrolled nurses and assistants in nursing\* providing care and services to people in residential and community aged care.

People have a right to be cared for in a safe environment. Any mistreatment and exploitation of a person is unacceptable and may be a criminal offence. There is implicit trust in the relationship between the person and the nurse or assistant in nursing involved in the provision of care. Mistreatment and exploitation of the person may include: physical, sexual, financial, psychological, cultural and social abuse and/or neglect.

Criminal history record checks of nurses, assistants in nursing, care staff and volunteers are a measure to safeguard against abuse of persons in residential and community aged care.

### It is the position of the Australian Nursing and Midwifery Federation that:

1. National criminal history record checks are one element of a comprehensive response to the mistreatment and exploitation of people in aged care settings. On their own, these checks will not prevent ill treatment of people in care.
2. All prospective and existing employees must give their consent prior to a criminal history record check being undertaken by their employer.
3. The cost of criminal history record checks should be met by the employer. This includes criminal history record checks prior to employment and during the term of employment.
4. Unless there is a requirement under legislation or state/territory health policy to disclose a criminal record, there is no obligation on a prospective or existing employee to disclose any information about a possible criminal record.
5. Discrimination on the grounds of a criminal record can be a basis for a complaint of discrimination under the *Human Rights and Equal Opportunity Commission Act 1986* and the *Australian Human Rights Commission Regulations 1989*.<sup>1</sup>
6. Under the *Health Practitioner Regulation National Law Act*, as enacted in each state and territory, all nurses and midwives on the Australian Health Practitioner Regulation Agency (AHPRA) Register of Practitioners must report relevant events to NMBA/AHPRA within seven days. A relevant event includes matters relating to criminal charges which are an offence punishable with 12 months' imprisonment or more, or any conviction or finding of guilt for an offence punishable by imprisonment.
7. The Nursing and Midwifery Board of Australia (NMBA) *Registration Standard: Criminal History*<sup>2</sup> sets out the factors considered by the NMBA in deciding whether a health practitioner's criminal history is relevant to the practice of their profession under the Health Practitioner Regulation National Law, as in force in each state and territory. While every case will need to be decided on an individual basis, these ten factors provide the basis for the Board's consideration:
  - the nature and gravity of the offence or alleged offence and its relevance to health practice;
  - the period of time since the health practitioner committed, or allegedly committed, the offence;

\*The term assistant in nursing also refers to care workers (however titled)



- whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending;
  - the sentence imposed for the offence;
  - the ages of the health practitioner and of any victim at the time the health practitioner committed, or allegedly committed, the offence;
  - whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the health practitioner committed, or allegedly committed, the offence;
  - the health practitioner's behaviour since he or she committed, or allegedly committed, the offence;
  - the likelihood of future threat from the health practitioner to the person receiving care;
  - any information given by the health practitioner;
  - any other matter that the Nursing and Midwifery Board of Australia considers relevant.
8. Employers should note that criminal history declarations are required of nurses and midwives for annual renewal of AHPRA registration, negating the need for additional criminal history checks on these regulated employees.
9. Information obtained as a result of a criminal history record check must be made available to the individual to whom it refers. The individual must have the right to challenge any information obtained as a result of a criminal history record check that they consider is not accurate.
10. All information obtained as a result of a criminal history record is confidential, held in a secure place, and ultimately destroyed in a secure manner.
11. Information obtained as a result of a criminal history record check must not be shared with any other employer/other employees/colleagues according to the *Australian Privacy Principles of the Privacy Act 1988*.<sup>3</sup>

*Endorsed by federal executive November 2006  
Reviewed and re-endorsed February 2011  
Reviewed and re-endorsed June 2014  
Reviewed and re-endorsed August 2017  
Reviewed and re-endorsed May 2020*

#### References

1. Australian Human Rights Commission. Information on the Human Rights and Equal Opportunity Act 1986 and the Australian Human Rights Commission Regulation 1989. Available at: [http://www.hreoc.gov.au/human\\_rights/criminalrecord/index.html](http://www.hreoc.gov.au/human_rights/criminalrecord/index.html)
2. Nursing and Midwifery Board of Australia (2015) Registration Standard: Criminal History Registration Standard. Available at <http://www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx>
3. Criminal record information is classified as "sensitive information" in the Privacy Act 1988. Sensitive information is a subset of personal information that is given additional protections. Available at: <https://www.legislation.gov.au/Details/C2016C00979>

This position statement should be read in conjunction with the ANMF Position Statement *on Compulsory reporting of abuse in aged care settings for nurses and assistants in nursing*.