



## National criminal history checks in aged care position statement

### 1. Purpose

This position statement sets out the principles the Australian Nursing and Midwifery Federation (ANMF) considers should underpin national criminal history checks in aged care settings. It should be read with the ANMF position statement: *Compulsory reporting of abuse in aged care*.

### 2. Definitions

A **national criminal history check** (NCHC) involves all Australian police forces identifying and releasing any relevant criminal history information (CHI) subject to relevant spent convictions and non-disclosure legislation and information release policies. A NCHC report also contains a date of issue, all names by which the person has been known, their date of birth and their primary residential address.

In this document, **abuse** refers to any mistreatment and exploitation. It includes physical, sexual, financial, psychological, cultural or social abuse or neglect.

### 3. Context

The Australian Government implemented police check requirements in 2007 and strengthened the requirements in 2009 to better protect the health, safety and wellbeing of people receiving aged care.

While NCHCs for nurses, assistants in nursing, care staff and volunteers in aged care are a useful measure to help safeguard people in residential and community aged care from abuse, they cannot be the only measure.<sup>1</sup> They are also unnecessary for employees regulated under the *Health Practitioner Regulation National Law Act* (the National Law) in their state or territory.

### 4. Position

It is the position of the ANMF that:

1. Everyone has the right to be cared for in a safe environment.
2. Any abuse of a person in care is unacceptable. It may also be a criminal offence.
3. NCHCs are an important element in a comprehensive suite of safeguards aimed at protecting people in aged care from abuse. On their own, they will not prevent abuse.
4. NCHCs are unnecessary for all registered midwives and nurses including enrolled nurses because they are already required by law to:<sup>2</sup>
  - make a criminal history declaration every year when they renew their registration with the Australian Health Practitioner Regulation Agency (Ahpra)
  - report relevant events to the Nursing and Midwifery Registration Board (NMBA) and Ahpra within seven days – this 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.

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<sup>1</sup> Assistant in nursing refers to all care workers however titled.

<sup>2</sup> These requirements are in the *Health Practitioner Regulation National Law Act* in each state and territory.



5. It is therefore for the NMBA to determine whether a health practitioner's criminal history is relevant to their practice under the National Law in their state or territory by considering the factors set out in the NMBA Criminal history registration standard.<sup>3</sup>
6. Prospective or existing employees are not required to disclose any information about a possible criminal record to their employer unless specifically required to do so by state or territory legislation or health policy.
7. Discrimination on the grounds of a criminal record can be the basis for a complaint to the Australian Human Rights Commission under the *Human Rights and Equal Opportunity Commission Act 1986* and the Australian Human Rights Commission Regulations 1989.

### Employers' responsibilities

It is the position of the ANMF that:

8. Employers must seek and obtain the consent of all prospective and existing employees before undertaking an NCHC.
9. Employers must meet the cost of all NCHCs performed before and during employment.
10. Information obtained through a NCHC is classified as 'sensitive information' under the *Privacy Act 1988* and:
  - must be treated in accordance with the Australian Privacy Principles – this includes holding it in a secure place; not disclosing it to any other employer, employees or colleagues; and ultimately destroying it in a secure way<sup>4</sup>
  - must be made available to the person to whom it refers, and they must have the right to challenge any information they consider inaccurate.

### 5. Position statement management

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<sup>3</sup> Nursing and Midwifery Board of Australia. 2015. Registration standard: Criminal history registration standard. Available at <http://www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx>.

<sup>4</sup> Criminal record information is classified as 'sensitive information' in the *Privacy Act 1988* available at: <https://www.legislation.gov.au/Details/C2016C00979>. Sensitive information is a subset of personal information that has additional protections.