



## Criminal record checks for nurses and assistants in nursing caring for older persons

This position statement applies to registered nurses and enrolled nurses and assistants in nursing (however titled) providing care and services to older people regardless of the setting in which that care is provided.

Older people receiving aged care services have a right to be cared for in a safe environment. Any abuse of an older person is unacceptable and may be a criminal offence. There is implicit trust in the relationship between the older person and the nurse or assistant in nursing involved in aged care. Abuse of the older person may include: physical, sexual, financial, psychological, cultural and social abuse and/or neglect.

Compulsory national criminal history record checks of aged care staff and volunteers is a measure to safeguard against abuse of persons in residential aged care facilities.

### **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 abuse of older persons. On their own, these checks will not prevent the abuse of older people.
2. All prospective and existing employees must give their consent prior to a national criminal history record check being undertaken.
3. The cost of criminal history record checks must be met by the employer. This includes criminal history record checks prior to employment and for the term of employment.
4. Unless there is a requirement under legislation to disclose a criminal record, there is no obligation on a prospective or existing employee to disclose any information about a possible criminal record. 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>
5. The Nursing and Midwifery Board of Australia's national *Nursing and Midwifery Criminal History Registration Standard*<sup>2</sup> includes the following requirements to be considered in determining the suitability for employment where an applicant has criminal convictions:
  - 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;
  - 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 behavior since he or she committed, or allegedly committed, the offence;
  - the likelihood of future threat to a patient of the health practitioner;
  - any information given by the health practitioner;
  - any other matter that the Nursing and Midwifery Board of Australia considers relevant.
6. 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.
7. 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.
8. 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  
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reviewed and re-endorsed june 2014*

#### 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 (2010) 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: <http://www.oaic.gov.au/privacy/privacy-act/the-privacy-act>