



anf position
statement

australian nursing federation

criminal record checks for nurses and assistants in nursing (however titled) caring for older persons)

Older people in receipt of 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. The abuse of older people occurs when there is any act occurring within a relationship where there is an implication of trust, which results in harm to an older person. Abuse can include physical, sexual, financial, psychological and social abuse and/or neglect.¹

This position statement applies to registered and enrolled nurses and assistants in nursing (however titled)² providing care and services to older people regardless of the setting in which that care is provided.

Compulsory national criminal record checks of aged care staff and volunteers was introduced by the Australian Government from September 2007, as a measure to safeguard against elder abuse in residential aged care facilities.³

It is the position of the Australian Nursing Federation that:

1. Criminal record checks are one element of a comprehensive response to the abuse of older persons. On their own, criminal record checks will not prevent the abuse of older people.
2. All prospective employees and existing employees must give their consent prior to a criminal record check being undertaken.
3. The cost of criminal record checks must be met by the employer. This includes criminal record checks prior to employment and all criminal record checks required while employed.
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*.⁴
5. The Nursing and Midwifery Board of Australia's National "Criminal History Registration Standard".⁵ This standard 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 decriminalized 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 board considers relevant.
6. Information obtained as a result of a criminal 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 record check that they consider is not accurate.
7. All information obtained as a result of a criminal record check must be kept confidential and held in a secure place.
8. Information obtained as a result of a criminal record check must not be shared with any other employer/other employees/colleagues according to the general principles of the Commonwealth Privacy Act 1988.⁶

endorsed by federal executive november 2006

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references

1. This definition of abuse was endorsed in 2000 by all Australian state and territories through the Healthy Ageing Taskforce. Available at: <http://www.eapu.com.au/ElderAbuse.aspx>
2. This is a generic term to describe such classifications as assistants in nursing or personal care assistants.
3. Australian Government. Information on criminal record checks for workers in residential aged care facilities. 2007. Available at: <http://www.health.gov.au>
4. 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
5. Nursing and Midwifery Board of Australia (2010) Registration Standard: Criminal History Registration Standard. Available at <http://www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx>
6. Australian Government. Office of the Privacy Commissioner. *Privacy Act Snapshot*. Available at: <http://www.privacy.gov.au/aboutprivacy/snapshot>. Viewed 11/10/09