



ANMF (Vic Branch) Policy

Criminal history – working with children checks

The Australian Nursing and Midwifery Federation (Victorian Branch) (ANMF (Vic Branch)) recognises that employees of residential aged care facilities or those working with children in a healthcare service may be required by their employer to have a criminal history check and/or Working with Children check (WWC) if it is relevant to a particular role and as required by legislation. These are in addition to the legislated requirements of the Australian Health Practitioners Regulation Agency (AHPRA) and/or the Nursing and Midwifery Board of Australia (NMBA).

Having a criminal record can have a significant impact on a person's employment prospects, and may result in a person being unfairly discriminated against.

Policy

In the event that a criminal history check is required, it is the policy of the ANMF (Vic Branch) that:

1. The cost of the check should be borne by the requesting employer, for both existing and new staff.
2. A current employee or an applicant to become an employee must give prior written consent before an employer can request a National Police Record check or a Working with Children check.
3. Discrimination on the ground of criminal record can be a basis for a complaint of discrimination under the *Human Rights and Equal Opportunity Commission Act 1986*. A basic principle of this Act is to ensure that an employer can only refuse to employ someone if their criminal record is genuinely relevant to the essential or inherent requirements of the employment.
4. The onus is on the employer to determine the inherent requirements of a particular position and consider their applicability to the specific employee, before the 'inherent requirements exception' may be invoked. Deciding the inherent requirements of the job needs to occur at the start of the recruitment process, rather than when an applicant with a criminal record applies for the job. There must be more than a 'logical link' between the job and the criminal record.
5. An applicant should not be automatically precluded from an offer of employment or placement for employment (ie nursing students) on the basis of having a police/criminal record.
6. Unless there is a requirement under legislation to disclose a criminal record, (for example application for registration or renewal of registration as a nurse/midwife with - AHPRA, WWC or the elderly in residential or community care), there is no obligation on a job applicant to answer questions about their criminal record.

Criminal history is defined in the National Law as:

- every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;

- every plea of guilty or finding of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;
 - whether or not a conviction is recorded for the offence; and
 - every charge made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.
7. In determining suitability for employment where an applicant has a criminal record the following should be considered:
- a) The nature of the offence and the relationship of the offence to the particular nature of the inherent requirements of the job or placement;
 - b) The relevance of the offence in relation to the appointment or placement;
 - c) The length of time since the original offence took place;
 - d) The severity of the punishment imposed;
 - e) Whether the person was convicted or found guilty and placed on a bond;
 - f) Whether the person has an extended criminal history;
 - g) Whether offences were committed as a juvenile or an adult;
 - h) Whether there are other factors that may be relevant – for example the general character of the person since the offence was committed; and
 - i) Legislative limits on employment in certain sectors in circumstances where a person has a criminal history.

Employer obligations

All employers should have a policy and procedure in place that contains:

1. A statement about the employer's commitment to treating people with a criminal record fairly and in accordance with privacy legislation and the Human Rights and Equal Opportunity Commission's anti-discrimination laws.
2. A brief summary of the employee and employer rights and responsibilities under these laws.
3. An outline of other relevant legal requirements for the workplace, such as the employer's responsibilities under licensing and registration laws, or working with children laws.
4. The procedure for assessing the inherent requirements of the position; requesting criminal record information and assessing individual job applicants or employee histories.
5. Information on internal or external complaint or grievance procedures if someone thinks they have been unfairly treated.
6. Designated officers with responsibility for different elements of the procedure.
7. Reference to the Spent Convictions Scheme. This scheme is governed by Commonwealth legislation and relates to the collection, use and disclosure of old convictions. The scheme aims to prevent discrimination in the basis of certain old convictions, once a waiting period has elapsed and provided an individual has not re-offended.
8. Use and storage of information in relation to an employee, contractor, volunteer or applicant's criminal history.

Footnotes

This policy shall be read in conjunction with the Australian Nursing and Midwifery Federation (Victorian Branch) Privacy Policy.

Reference should also be made to the:

1. Human Rights and Equal Opportunity Commission Act 1986; and
2. Department of Human Services – Victoria. Service Agreement Information for Agencies 2003-06: Chapter 5.3 – Pre-employment/pre-placement safety screening.
http://dhs.vic.gov.au/srvc_agmnt/chpt53.htm accessed 02.06.06

<http://humanrights.gov.au>

http://police.vic.gov.au/files/documents/515_820Ajun05.pdf

<http://crimtrac.gov.au>

http://hreoc.gov.au/human_rights/criminalrecord/index.html

<http://police.vic.gov.au>

http://police.vic.gov.au/content.asp?Document_ID=256

[NMBA Registration standards](#)