



ANMF (Vic Branch) position statement

Employment screening checks

Australian Nursing and Midwifery Federation (Victorian Branch) [ANMF (Vic Branch)] members may be required to undergo pre-employment or ongoing employment screening, like a Working with Children Check (WWC), National Disability Insurance Scheme (NDIS) Worker Screening Check¹, workforce immunisation status check and Police Checks, to achieve eligibility for employment.

Employment screening aims to review an individual's criminal record and any report on their professional conduct².

Employment screening checks are designed to help ensure that the right people are chosen to work in specific role or as volunteers. Employment screening checks aim to prevent people from working or volunteering with children or vulnerable people if their records indicate they may pose a risk³.

Pre-screening or ongoing employment screening checks can be requested by employers and 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).

In Victoria, all individuals aged 18 or over who work or volunteer with children (with the exception of children under the age of 18 who are supervising children under the age of 15 in employment) and those involved with practical training with children, are required to undergo a screening process known as a *Working with Children Check*⁴.

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.

The Working with Children Check is different from a Police Check. The most common purpose is for employment screening is so that employers can more objectively assess the risk posed by individuals and ensure safe environments for what are considered "vulnerable" or "special needs" populations (such as children, the aged and those with disabilities).

Police Checks may be required for:

- Employment in areas where individuals work with "vulnerable" populations (such as aged care, childcare etc)
- For occupation-related licensing or registration (Nursing and midwifery)
- For any Commonwealth government jobs
- For voluntary work
- For immigration purposes

¹ NDIS Worker Screening Check, 2021. Available at: <https://www.vic.gov.au/ndis-worker-screening-check>

² Australian Government. 2018. Pre-Employment Screening: Working with Children Checks and Police Checks. Available at: <https://aifs.gov.au/cfca/publications/pre-employment-screening-working-children-checks-and-police-checks#:~:text=Pre%20Deployment%20screenings%20such%20as,work%20or%20volunteer%20with%20children>

³ Worker Screening Act 2020. Available at: <https://www.legislation.vic.gov.au/as-made/acts/worker-screening-act-2020>

⁴ Australian Federal Police. 2021. National Police Checks. Available at: <https://www.afp.gov.au/what-we-do/services/criminal-records/national-police-checks>

- For visa applications/overseas employment
- For adoption

Position

It is the position of the ANMF (Vic Branch) that:

1. Members meet their obligation to achieve required employment checks in accordance with relevant legislation and professional practice standards.
2. Where a mandatory requirement applies for a member to hold a specific employment check [Police check/NDIS/WWC/NCH], that the cost is met by the employer.
3. The application for all required checks, must be made by the individual seeking them, to the relevant body.
4. A principle of the *Human Rights and Equal Opportunity Commission Act 1986* 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, as a refusal of an offer of employment, on the grounds of criminal record, can be a basis for a complaint of discrimination.
5. A potential employee should not be automatically precluded from an offer of employment or placement for employment (ie - nursing students) based on whether the result of their employment screen check.
6. The Nursing and Midwifery Board of Australia must be the point of reference for all nurses and midwives as follows:

Criminal history is defined in the Health Practitioner Regulation National Law⁵ 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.
 - i) Legislative limits on employment in certain sectors in circumstances where a person has a criminal history.

⁵ Health Practitioner Regulation National Law (Victoria) Act. 2009 <https://www.legislation.vic.gov.au/in-force/acts/health-practitioner-regulation-national-law-victoria-act-2009>

8. All employers should have workplace policy and procedure in place that contains:
- a) 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.
 - b) A brief summary of the employee and employer rights and responsibilities under these laws.
 - c) An outline of other relevant legal requirements for the workplace, such as the employer's responsibilities under the Australian Health Practitioner Regulation National Law registration standards, the National Disability Insurance Scheme (NDIS) Worker Screening or working with children laws.
 - d) The procedure for assessing the inherent requirements of all job roles embedded in position descriptions, including requirement for employee compliance with any employment screening information.
 - e) Information on internal or external appeals, complaint or grievance procedures.
 - f) The appointment of designated employees with responsibility for various elements of the procedure.
 - g) Reference to the Victorian Spent Convictions Scheme⁶. This scheme is governed by Commonwealth and State 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.
 - h) Use and storage of information in relation to an employee, contractor, volunteer or applicant's criminal history.

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
2. [National Disability Insurance Scheme \(Practice Standards—Worker Screening\) Rules 2018](#)
3. 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](#)

¹ Victoria announced in February 2021, that it is taking a 'no clearance, no start' approach to the NDIS Check. As such, a person is prohibited from being employed or otherwise engaged by a registered NDIS provider in a risk assessed role unless the person has an NDIS Clearance or is subject to a transitional arrangement. Employers registered as NDIS providers, must make sure all staff who need an NDIS Clearance have one. There are 3 types of risk assessed roles outlined in the [National Disability Insurance Scheme \(Practice Standards-Worker Screening\) Rules 2018](#)

1. Key personnel
2. Any role that directly delivers a set of specified support services; ie - A nurse directly delivering community nursing care through a registered NDIS provider
3. A nurse directly delivering community nursing care through a registered NDIS provider

⁶ Spent Convictions Legislation. 2021 Available at: <https://www.legislation.vic.gov.au/bills/spent-convictions-bill-2020>