

The Australian Border Force Act 2015

APNA Position Statement

Key statement

APNA acknowledges the secrecy requirements imposed on nurses and other health workers under the terms of the *Australian Border Force Act 2015* (the Act). It is now an indictable offence for Immigration and Border Protection workers (which includes nurses) to disclose information about their work.

APNA believes the terms of the Act are inconsistent with the duties and obligations placed on nurses by the Code of Professional Conduct for Nurses in Australia and the Code of Ethics for Nurses in Australia. APNA also believes these terms are inconsistent with the International Council of Nurses (ICN) Code of Ethics for Nurses.

Immigration and Border Protection nurses have a duty to the health and care of their patients. These nurses are on the frontline of healthcare for immigration centre detainees, and in many cases may be the only internal advocates available to people in detention.

APNA believes the terms of the new law will constrain nurses from voicing any concerns about conditions or practices for patients in detention and advocating for patients' rights. Nurses may therefore find themselves in a position whereby adherence to the terms of the Act breaches their own professional Codes. This would undermine nurses' professional integrity and may be contrary to human values and rights.

Nurses are caring and committed professionals dedicated to the health and wellbeing of the people they care for in the community. APNA is greatly concerned about the imposition of any legislation that restricts nurses from undertaking this important role.

Background

On 20 May 2015 the *Australian Border Force Act 2015* (the Act) received Royal Assent (see [here](#)). The Act commenced on 1 July 2015.

Section 42 of the Act makes it an offence punishable by imprisonment for two years if an 'entrusted person' makes a record of, or discloses 'protected information'. An entrusted person includes any Immigration and Border Protection worker. Protected information means 'information that was obtained by a person in the person's capacity as an entrusted person'.

There are some exceptions to the secrecy requirement under section 42 of the Act, including disclosure to certain bodies such as the Australian Federal Police and a coroner. Section 48 of the Act also allows disclosure of protected information if the person 'reasonably believes that the disclosure is necessary to prevent or lessen a serious threat to the life or health of an individual' and 'the disclosure is for the purposes of preventing or lessening that threat'.

Nurses and other professional health workers that work in immigration detention centres (or in any other capacity for the Department of Immigration and Border Protection) are prevented under the provisions of this Act from disclosing information about their work; this would include information about living or health conditions of immigration detention centre detainees.

Australian nurses are also bound by the terms of the Nursing and Midwifery Board of Australia (NMBA) Code of Professional Conduct for Nurses in Australia and the Code of Ethics for Nurses in Australia (see [here](#)) as well as the International Council of Nurses (ICN) Code of Ethics for Nurses (see [here](#)). Relevantly, these Codes state the following:

NMBA Code of Ethics

Introduction: This Code outlines the nursing profession's commitment to respect, promote, protect and uphold the fundamental rights of people who are both the recipients and providers of nursing and health care.

Human Rights and the Nursing Profession: The nursing profession also acknowledges the diversity of people constituting Australian society, including immigrants, asylum seekers, refugees and detainees, and the responsibility of nurses to provide just, compassionate, culturally competent and culturally responsive care to every person requiring or receiving nursing care.

NMBA Code of Conduct

Conduct Statement 3 (2): Nurses witnessing the unlawful conduct of colleagues and other co-workers, whether in clinical, management, education or research areas of practice, have both a responsibility and an obligation to report such conduct to an appropriate authority and take other appropriate action as necessary to safeguard people and the public interest.

Conduct Statement 3 (3): Where nurses make a report of unlawful or otherwise unacceptable conduct to their employers, and that report has failed to produce an appropriate response from the employers, nurses are entitled and obliged to take the matter to an appropriate external authority.

Conduct Statement 4 (4): In making professional judgements in relation to a person's interests and rights, nurses do not contravene the law or breach the human rights of any person, including those deemed stateless such as refugees, asylum seekers and detainees.

ICN Code of Ethics

1. Nurses and people: In providing care, the nurse promotes an environment in which the human rights, values, customs and spiritual beliefs of the individual, family and community are respected.

The nurse shares with society the responsibility for initiating and supporting action to meet the health and social needs of the public, in particular those of vulnerable populations.

3. Nurses and the profession: The nurse contributes to an ethical organisational environment and challenges unethical practices and settings.

APNA endorses the ICN's position statement on 'Nurses' role in the care of detainees and prisoners' (see [here](#)). Included in this document is the following statement: Nurses' primary responsibility is to those people who require nursing care. In caring for detainees and prisoners nurses are expected to adhere to human rights and ethical principles and to the following... Nurses who are aware of abuse and maltreatment take appropriate action to safeguard the rights of detainees and prisoners.

About APNA

Australian Primary Health Care Nurses Association (APNA) is the peak professional body for nurses working in primary health care. APNA champions the role of primary health care nurses; to advance professional recognition, ensure workforce sustainability, nurture leadership in health, and optimise the role of nurses in patient-centred care.

APNA is bold, vibrant and future-focused. We reflect the views of our membership and the broader profession by bringing together nurses from across Australia to represent, advocate, promote and celebrate the achievements of nurses in primary health care.

Nurses in primary health care contribute to a healthy Australia through innovative, informed and dynamic care.

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