



**NEW SOUTH WALES NURSES AND MIDWIVES' ASSOCIATION**  
**AUSTRALIAN NURSING AND MIDWIFERY FEDERATION NEW SOUTH WALES BRANCH**



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# **POSITION STATEMENT ON NON-CONSENSUAL ADMINISTRATION OF MEDICAL TREATMENT TO IMMIGRATION DETAINEES**

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**Re-Endorsed by Annual Conference 2019**

**NSW Nurses and Midwives' Association**  
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# Position Statement on Non-consensual Medical Treatment to Immigration Detainees

Note: This position statement should be read in conjunction with the Australian Nursing and Midwifery Federation Position Statement on Refugees.

## THE NSW NURSES AND MIDWIVES ASSOCIATION ADOPTS THE POSITION THAT:

1. Australia has an obligation to treat every human being humanely and with respect, courtesy and consideration.
2. The *Migration Act 1958* (Commonwealth) and its associated *Regulations* is the legislative framework governing the management of immigration detainees. There is nothing within the *Migration Act* or the *Regulations* which provide that rights afforded Australian citizens are to be withheld from immigration detainees other than the right to live freely in the community.
3. Regulation 182C of the *Migration Regulations* indicates that medical treatment, including sedation, can be given to a detainee in circumstances where the detainee does not consent to such treatment, if a number of factors are satisfied. They are, that the Secretary of the Department of Home Affairs (*and only the Secretary*) authorises the administration of the medication after (a) receiving *written advice from a Commonwealth Medical Officer or another registered medical practitioner* and (b) on the basis of that advice forms the opinion that the detainee needs medical treatment; and that if medical treatment is not given to that detainee, that there will be a serious risk to his or her life or health. Further, and most importantly, a medical practitioner must administer, or be physically present during the administration of the medical treatment.
4. If there is a serious risk to the detainee's life or health to the extent of requiring non-consensual medical treatment, then that detainee would not be in a reasonable state to be deported.
5. If a detainee is so psychologically or psychiatrically disturbed that his or her life or health is at serious risk and therefore requiring non-consensual sedation, it is clear that the detainee should be assessed by an appropriate medical practitioner pursuant to the *Mental Health Act (2007)* and not deported until such time as a medical practitioner provided advice that the detainee is no longer at serious risk.

6. A detainee has no less rights than a citizen in relation to the administration of medication or other treatment and consent. The principles governing nurse or midwife practice in relation to administration of medication or other treatment in a detention centre are no different to those governing nurse or midwife practice in any other health care setting. Any medications to be used during the repatriation of a detainee must be prescribed by a nurse practitioner or medical practitioner and, in circumstances where the detainee does not consent, the prescribing by the medical practitioner must be in accordance with Regulation 182C, as set out in point 3 above.
7. There is nothing in the *Mental Health Act 2007* (NSW) which would allow sedation to be given to a detainee for the purpose of the deportation. The *Mental Health Act* relates to the care, treatment and control of mentally ill and mentally disordered persons. The *Mental Health Act* sets out the processes required to have a person determined to be mentally ill or disordered and the care and treatment of such persons. Notwithstanding that it is possible that a person being deported may come within the description of a mentally disordered person as set out above, the process of determination, care and treatment required by the *Mental Health Act* does not allow for sedation for the purpose of deportation.
8. Nursing and midwifery personnel, regardless of where they work, are bound by the law and the Code of Ethics and the Code of Professional Conduct. Nurses and midwives working in detention centres are entitled, and indeed are obligated, to ensure that non-consensual administration of medication is carried out strictly in accordance with the provisions of Regulation 182C. Nursing and midwifery personnel are entitled, and obligated, to refuse to administer medication in the absence of consent from the detainee unless the provisions of Regulation 182C are adhered to.
9. A nurse or midwife is also entitled to refuse to do something, such as administer medication, in circumstances where she or he forms the opinion that it is not clinically warranted and/or is contrary to her or his moral/ethical beliefs. Furthermore, in circumstances where a nurse or midwife is instructed by her or his employer to administer medication in circumstances where it is not clinically warranted and/or is contrary to the provisions of Regulation 182C, that nurse or midwife should refuse to administer it, advise the employer why she or he is refusing to administer it and write an incident report both in the detainee's medical records and separately. It is also open to the nurse or midwife to report the matter to the Health Care Complaints Commission.
10. It is also the case that if a nurse or midwife observes the administration of medication contrary to the provisions of Regulation 182C, she or he should write incident reports, advise the employer and, if necessary, notify the Health Care Complaints Commission. It would, in either circumstance, be prudent for the nurse or midwife to consult with her or his representative from the Association.

## RESOURCES

1. Migration Act 1958:  
[http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol\\_act/ma1958118/](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/ma1958118/)
2. Section 182C of the Migration Regulations:  
[http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/num\\_reg/mr1992n451334/s2.html](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/num_reg/mr1992n451334/s2.html)



3. Mental Health Act 2007:  
[http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol\\_act/mha2007128/](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/mha2007128/)
4. Codes and Guidelines, Nursing and Midwifery Board of Australia:  
<https://www.nursingmidwiferyboard.gov.au/codes-guidelines-statements/codes-guidelines.aspx>