



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



POSITION STATEMENT ON SEXUAL HARASSMENT

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NSW Nurses and Midwives' Association
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Position Statement on Sexual Harassment

This position statement should be read in conjunction with the NSWNMA Policy on Work Health and Safety¹.

Nurses and midwives are entitled to a safe and respectful working environment that is free of sexual harassment. Sexual harassment of nurses and midwives at work is prohibited by the *Sex Discrimination Act 1984 (Cth)* and the *Anti-Discrimination Act 1977 (NSW)*.

For the purposes of this position statement sexual harassment is defined as:

“any unwelcome sexual advance, request for sexual favours or conduct of a sexual nature in relation to the person harassed in circumstances where a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated”².

SEXUAL HARASSMENT COULD BE:

- Staring or leering in a sexual manner
- Comments about your physical appearance or sexual characteristics
- Sexual or physical contact such as slapping, kissing, touching, hugging or massaging
- Displaying or circulating sexual material, for example on a noticeboard or by email
- Repeated sexual invitations when you have refused such invitations before
- Intrusive questions about sexual activity
- Sexual assault (also a crime under the *Crimes Act 1900 [NSW]*)
- sexually suggestive comments or jokes in person, on the phone, in emails, or on social media
- any other unwelcome conduct of a sexual nature that happened online or on some form of technology³.



Workplace sexual harassment of nurses and midwives can be perpetrated by fellow staff, by clients of the service or by the families and associates of clients of the service. It has nothing to do with mutual attraction or friendship⁴. Both men and women can experience sexual harassment at work.

A single incident can be considered sexual harassment – it does not need to be a pattern of behaviour. Equally a broader pattern of behaviour can constitute sexual harassment.

If a nurse or a midwife raises a complaint of sexual harassment, or if sexual harassment is observed, then it should be responded to as soon as practical.

Your employer must take 'all reasonable steps' to make sure that there is no sexual harassment in the workplace. They must do their best to make sure that you are not sexually harassed by your supervisor, your workmates or your patients or clients.

In this context, all reasonable steps may include:

- having a clearly defined policy that sexual harassment is not acceptable, and procedures for addressing harassment when it occurs (including where the perpetrator is a patient/client);
- making sure all employees know about this policy, what constitutes sexual harassment and the procedures for addressing it;
- ensuring that the policy and procedures are followed.

There are times that a patient's underlying clinical condition (e.g. cognitive impairment, mental illness), may contribute to their sexually inappropriate behaviour. It is important to note that regardless of such conditions, sexual harassment is inappropriate, and your employer still has an obligation to take all reasonable steps to ensure that you are not exposed to sexual harassment in the workplace.

Where sexual harassment of the nurse or midwife is perpetrated by a patient/client, then a work health and safety (WHS) risk management approach is generally most appropriate. WHS risk management involves identifying the hazard, assessing the risk arising from the hazard, putting measures in place to ensure that the risk is eliminated or minimised, and reviewing those controls to make sure they are effective.

Measures to protect nurses and midwives from sexual harassment by patients/clients and clients' associates could include:

- patient alerts (e.g. flagged in medical records and/or noted on patient journey board) along with patient behaviour management plans which may include things, such as, patient allocation to male staff or attended by two staff at all times
- verbal or written warnings, or conditional patient treatment agreements
- conditional visiting rights or exclusion from the premises



- formal recognition of inability to treat in certain circumstances
- any behaviour that may constitute a criminal offence should be notified to the police by the facility and an event number obtained and recorded. Should a nurse/midwife wish to pursue Police charges they should be supported in doing so.

POST INCIDENT RESPONSE:

Appropriate support must be offered to nurses/midwives who have experienced sexual harassment, this may include (but not be limited to):

- providing access to counselling
- temporarily relocating or changing the role of the staff member making the complaint of harassment (the complainant) to protect them from further exposure

Patient alerts should be documented and communicated to relevant staff and patient behaviour management plans must be put in place with suitable controls to ensure that other nurses or midwives are not exposed.

REFERENCES

1. NSWMA policy on Work Health and Safety <http://www.nswnma.asn.au/wp-content/uploads/2013/07/NSWNMA-Policy-on-Work-Health-and-Safety.pdf>
2. *Sex Discrimination Act 1984 (Cth)*
3. Anti-Discrimination Board of NSW, https://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/sexualharassment.aspx
4. Australian Human Rights Commission, <https://humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints/complaints-under-sex-discrimination-act>