



Australian Government
Department of Health and Ageing

FACT SHEET ON POLICE CHECKS IN AGED CARE

What is this requirement all about?

Operators of aged care services subsidised by the Australian Government are required to ensure staff and contractors who have, or are reasonably likely to have, access to care recipients undergo a national criminal history record check, which must be renewed every three years. In addition, volunteers who have, or are reasonably likely to have, unsupervised access to care recipients must also have a national criminal history record check.

Does this only apply to people working in residential aged care homes?

No. People who work for the following community care and flexible care services must also have police checks – Community Aged Care Packages (CACP), Extended Aged Care At Home (EACH) packages, EACH-Dementia, Multi-Purpose Service (MPS), transition care and certain respite care.

What is a national criminal history record check?

A national criminal history record check (commonly known as a police check) is a process undertaken by the relevant state/territory police or the Australian Federal Police (for the ACT), which reveals whether an individual has been charged with and/or convicted of a criminal offence which has not been removed from their record under a 'spent conviction' scheme. Police jurisdictions then provide a police certificate detailing any criminal offences, with the exception of any spent convictions.

Who needs to get a police check?

STAFF	POLICE CHECK REQUIRED
Staff, contractors* or consultants employed by the approved provider within a residential aged care home who have, or are reasonably likely to have, access to care recipients or with access to the care recipient's own home through a CACP, EACH or EACH-Dementia package	YES
Staff* not directly engaged by the approved provider but who work under the authority of the approved provider (eg staff sent by a nursing agency)	YES
Independent contractors (eg tradespeople) engaged by the approved provider from time to time	NO
People employed or requested by the care recipient or on the care recipient's behalf to deliver any kind of service to the care recipient, either at an aged care home or within the care recipient's own home (eg the care recipient's general practitioner or audiologist)	NO
VOLUNTEERS	POLICE CHECK REQUIRED
Volunteers visiting care recipients under the Community Visitors Scheme	YES
Volunteers organised by the approved provider who are reasonably likely to have unsupervised access to care recipients	YES
	NO

Volunteers organised by the approved provider who only have supervised access to care recipients (eg someone helping with activities when staff are present)	
Volunteers who are under the age of 16 or full-time students under the age of 18	NO
Anyone invited by a care recipient to visit them in an aged care home (eg family and friends)	NO

*It is the responsibility of the approved provider to ensure contracts with agencies require staff provided through the contract to meet the police check requirements.

What if a person has had a police check in the last three years for another purpose?

If the person can provide the National Criminal History Record Check, they do not need to have another check done until it is three years old.

Assessing a police certificate/check

Approved providers have a responsibility to ensure that they have in place policies and procedures to adequately assess the police certificates of staff and volunteers and document the decisions they have made in relation to the requirements. These policies and procedures should have the highest regard for the protection and safety of care recipients when considering if a person is suitable to provide services to care recipients. They must also protect the privacy of the individuals who are the subject of the police check.

Persons who are precluded from becoming a staff member or an unsupervised volunteer are those whose police certificate/check (or statutory declaration where applicable) record that they have been convicted of murder or sexual assault, or convicted of and sentenced to imprisonment for any other form of assault.

To assist approved providers to complete and assess records for staff and volunteers, two template documents have been prepared that may be used by providers:

1. Police Check Requirements – Individual Assessment; and
2. Police Check Requirements – Police Certificate Register

The Police Certificate Register includes the following headings –

- Name and Position
- Reference Number
- Date Certificate was Obtained
- Date Certificate due for Renewal

These two documents are provided at Appendix 3 of the *Police Certificate Guidelines for Aged Care Providers*.

What are the consequences for staff whose police checks reveal a criminal offence?

Anyone whose police check shows they have been convicted of murder or sexual assault, or convicted of and sentenced to imprisonment for any other form of assault, is not permitted to work within an aged care service if they are reasonably likely to have access to care recipients.

For all other types of convictions and work roles, it is up to the approved provider to determine whether the individual is suitable to be hired or to continue in their current role. *Even if a police check reveals a criminal record, it might still be acceptable for that person to work in an aged care service.* Providers should consider matters such as the seriousness and relevance of the conviction, the level of access the person has to care recipients and the length of time since the conviction. There are a range of factors to weigh up, and providers should consult Section 6 of the *Police Certificate Guidelines for Aged Care Providers* when making their decision. (The website link to the Guidelines is listed below). The overriding principle that providers should bear in mind is to minimise the risk of harm to care recipients.

Is it unlawful for staff to be dismissed or refused employment due to a conviction for sexual assault or serious physical assault?

Dismissal or refusal of employment due to convictions for sexual assault or serious physical assault would not generally be viewed as unlawful, particularly as failure to dismiss employees with such specified convictions would constitute a breach of an approved provider's responsibilities under the *Aged Care Act 1997*. However, a provider should seek their own legal advice for an assessment of the particular factual circumstances before any prejudicial action is taken against an individual.

Under the *Australian Human Rights Commission Act 1986*, the Australian Human Rights Commission has the power to inquire into discrimination in employment on the ground of criminal record. Criminal record discrimination may also be unlawful under State and Territory anti-discrimination legislation. The Australian Human Rights Commission's guidelines for the prevention of discrimination in employment on the basis of criminal record set out general principles to ensure discrimination does not occur. These guidelines require that criminal record information may only be sought and used if it is relevant to the inherent requirement of the job. The guidelines would also generally require that the person be told the reason for their proposed dismissal or refusal of employment and that they be given an opportunity to make submissions, eg regarding the identity of the person whose conviction is disclosed on the police records check. The guidelines can be accessed at:
http://www.humanrights.gov.au/human_rights/criminalrecord/on_the_record/.

What about people who have lived overseas – will a police check cover the time they spent in other countries?

No. Police checks only show criminal offences perpetrated in Australia. People who have lived in a foreign country for any period of time *after the age of 16* must provide a statutory declaration stating they were not convicted of murder or sexual assault, and not convicted of and sentenced to imprisonment for any other form of assault, during their time living overseas. Any such criminal record would exclude the person from working within an aged care service if they would be reasonably likely to have access to care recipients. In addition to the statutory declaration, the person must *also* get a police check to cover the time (after age 16) that they have lived in Australia.

Are approved providers required to keep their staff and volunteers' police checks on file?

Storage of personal information about staff and volunteers must comply with state/territory and federal privacy regulations (more information can be found at www.privacy.gov.au). In any jurisdiction where it is not possible to retain the actual record, providers need to keep records showing that the police check requirements have been undertaken (for example, a register detailing that a police check was sighted for each relevant staff member and volunteer, its date, registration number and if any relevant convictions were recorded).

Where can I get more information about the police check requirements?

The *Police Certificate Guidelines for Aged Care Providers* (a detailed document prepared by the Australian Government Department of Health and Ageing) was mailed to approved providers in January 2007. Following amendment to the relevant legislation, the Guidelines have been updated. A copy of the updated Guidelines is available for download from the Department's website at www.health.gov.au/internet/main/publishing.nsf/Content/ageing-quality-factsheet-policechecks-guidelines.htm

You can also call the Department's Aged Care Information Line on **1800 500 853** (freecall).