

# **Police Certificate Guidelines for Aged Care Providers**

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**These Guidelines are prepared to assist all approved providers under the Aged Care Act 1997 to meet the requirements for criminal history record checks (police checks) for relevant staff and volunteers working in Australian Government subsidised aged care services**

## Summary of the police certificate requirements

Requirements for national criminal history record checks (police checks) for relevant staff in aged care came into effect from 1 March 2007. The requirements apply to all relevant staff members and volunteers (as defined in the legislation and the detailed Guidelines) of aged care services subsidised under the *Aged Care Act 1997* (the Act).

These requirements apply to all Australian Government subsidised services, specifically:

- Residential aged care;
- Community aged care services under the Act: Community Aged Care Packages (CACP); and
- Flexible care services under the Act: Extended Aged Care at Home (EACH) and Extended Aged Care at Home Dementia (EACHD) packages, Multi-Purpose Service places and Transition Care.

Operators of aged care services subsidised under the Act will be required to ensure that staff employed by them, or engaged through an employment agency, and certain volunteers undergo regular criminal history record checks (commonly known as police checks), obtain a national police certificate (a person's criminal conviction record) that is dated not more than three years old and that they are assessed as suitable to work in aged care.

The requirements for current police certificates also apply to key personnel and are consistent with an approved provider's responsibility to ensure that all staff are suitable to provide aged care under the Act.

While the Accountability Principles detail the types of convictions which preclude a person from working in an aged care service, approved providers should have in place policies and procedures for assessing a person's suitability to work in aged care in relation to other convictions and offences.

### ***Implementation timeframe***

- Such policies should consider the level of risk and relevance to the position they hold, including the extent of direct and unsupervised access to care recipients.
- Approved providers should refer to the Human Rights and Equal Opportunity Commission's (HREOC) prepared guidelines: On the Record – Guidelines for the prevention of discrimination in employment on the basis of criminal record. The Guidelines outline the key points that approved providers should consider when assessing a person's police certificate, including that:
  - written consent from the person to obtain a police certificate is required;
  - a police certificate can only be used for the purpose for which it was obtained;
  - the relevance of a person's criminal record should be assessed on a case-by-case basis against the inherent requirements of the job; and - information about a person's criminal record should be stored in a private and confidential manner.
- These Guidelines are available on the HREOC website at:  
[http://www.humanrights.gov.au/human\\_rights/criminalrecord/on\\_the\\_record/index.html](http://www.humanrights.gov.au/human_rights/criminalrecord/on_the_record/index.html)

### ***Monitoring requirements for police certificates***

- Requirements for police certificates in residential aged care will be monitored by the Aged Care Standards and Accreditation Agency as part of its normal audit process in relation to the Accreditation Standards, and the Department through its responsibility to ensure homes meet their obligations under the Act.
- For other aged care services under the Act, police certificate requirements will be monitored through existing monitoring programs.

### ***Obtaining a police certificate***

- While the approved provider is responsible for ensuring that all relevant staff and volunteers have police certificates, arrangements for obtaining the certificate are a matter for negotiation between the provider and the individual, as part of the employment arrangements.
- A person may either provide a police certificate or give consent for an approved provider to request the police certificate from the relevant State or Territory Police Service, the Australian Federal Police or CrimTrac.
- For a police certificate to be effective the details of name and date of birth need to be accurate. Approved providers, who are requesting a police certificate on behalf of a staff member or volunteer, should ensure the correct name and spelling, correct date of birth and other identifying information is checked to ensure an accurate and timely response.

### ***Further information***

- Further information is available in the Accountability Principles and the attached detailed Guidelines. These Guidelines are being distributed to all approved providers and aged care services to assist them in meeting the new requirements that come into effect from 1 March 2007, and once the arrangements are in place, to comply with their responsibilities.
- The Guidelines include additional definitional information and explanations of the legislative requirements, and a range of templates, resources and Internet links. The Guidelines are available on the Department of Health and Ageing website at: [www.health.gov.au/OACQC](http://www.health.gov.au/OACQC)

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## **1. INTRODUCTION**

The Guidelines will assist approved providers with the implementation and ongoing management of the police certificate requirements.

## **2. LEGISLATION**

The *Accountability Amendment Principles 2006* (Accountability Principles) formulated under the *Aged Care Act 1997*, namely, Part 4, Schedule 2, deal with requirements for police certificates.

The *Records Amendment Principles 2006* (Records Principles) formulated under the *Aged Care Act 1997*, namely Schedule 1, 19.5A and 19.5B describe the kinds of records and evidence that needs to be kept by approved providers to meet the legislative requirements and the duty to keep records in accordance with the National Privacy Principles set out in Schedule 3 to the *Privacy Act 1988*.

Schedule 1 of the *Community Visitors Grant Amendment Principles 2006* describes the requirements for Community Visitors Scheme (CVS) auspices to ensure their volunteers have had or applied for police certificates.

## **3. APPROVED PROVIDER RESPONSIBILITIES**

Police certificates are intended to complement robust recruitment practices that are part of an approved provider's responsibilities under the *Aged Care Act 1997* (the Act) to ensure staff are suitable to provide aged care.

Under the Act, approved providers are required to maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met.

It is the responsibility of all approved providers to ensure that effective human resource management systems, including selection and recruitment processes and procedures, are in place.

Approved providers have a responsibility to ensure that all staff and volunteers working in aged care services are suitable for employment and to undertake thorough background checks to select and manage staff in accordance with the requirements under the Act.

The requirement in the Accountability Principles for police certificates, and statutory declaration where applicable, places a legislative obligation upon approved providers in relation to their employment practices for relevant staff and volunteers. This requirement is in addition to existing requirements that relate to recruitment and retention of staff, including suitability of "Key Personnel" under the Act.

## **4. GUIDELINES**

### ***4.1 Continuing approved provider responsibilities***

An approved provider must ensure that, except for exceptional circumstances where a person is allowed not to have a police certificate (see Section 4.4.7), each staff member and volunteer has the required police certificate and, if necessary, a statutory declaration, and that persons with certain criminal convictions do not provide aged care (see Section 4.4.2).

### ***4.2. What is a national police certificate?***

A police check (national criminal history record check) is a check undertaken by State or Territory Police Services or the Australian Federal Police that discloses evidence of whether a person:

- has no recorded convictions; or
- has been convicted of an offence; or
- has been charged with, and found guilty of, an offence but discharged without conviction; or
- is the subject of any criminal charge still pending before a Court.

Individuals and organisations seeking police checks through police services are provided with a 'National Police Certificate' or police record report.

National police certificates from either a State or Territory Police Service or the Australian Federal Police reveal and record convictions across all jurisdictions in Australia (subject to each jurisdiction's spent convictions scheme – see further information under Section 4.4.4).

### **4.3. Who is required to have a police certificate?**

Relevant staff and volunteers will be required to undergo a police check for suitability to work in aged care.

#### **A staff member is a person who:**

- a) has turned 16 years of age; and
- b) is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruitment agency) to provide care or other services; and
- c) has, or is reasonably likely to have, unsupervised access to care recipients.

Examples of staff members include:

- key personnel of the approved provider
- employees and contractors of the approved provider who provide care to care recipients whether in the residential aged care setting, a community setting or in the care recipient's own home
- allied health professionals contracted by the approved provider to provide care to care recipients
- kitchen, cleaning, laundry, garden and office personnel employed by the approved provider either directly or through a contract agency who are reasonably likely to have unsupervised access to care recipients
- consultants, trainers and advisors for accreditation support or systems improvement who are reasonably likely to have unsupervised access to care recipients

Examples of persons who are not staff members include:

- visiting medical practitioners, pharmacists and other allied health professionals who have been requested by, or on behalf of, a care recipient but are not contracted by the approved provider
- trades people and management consultants who do not have unsupervised access to care recipients

A volunteer, for an approved provider, means a person who:

- a) is not a staff member; and
- b) offers his or her services to the approved provider on an unpaid basis; and
- c) provides care or other services on the invitation of the approved provider and not solely on the express or implied invitation of a care recipient; and
- d) has, or is reasonably likely to have, unsupervised access to care recipients; and
- e) has turned 16 years of age; or if the person is a full-time student — has turned 18 years of age.

Examples of persons who are not volunteers under this meaning include:

- persons volunteering who are under the age of 16 (except where they are a full-time student, then under the age of 18)
- persons who are expressly or impliedly invited into the aged care service by a care recipient (for example, family and friends of the care recipient)
- persons that volunteer in aged care services who may undertake tasks such as reading to care recipients but are not alone with one care recipient

Approved providers should establish policies and procedures to demonstrate compliance with the requirements for police certificates for relevant staff and volunteers. See Sections 4.5 and 4.6 for further information.

## **Contractors**

Approved providers must ensure that any contractors engaged who are reasonably likely to have unsupervised access to care recipients have a current police certificate in place, and have been assessed as suitable to provide aged care. An approved provider's contract arrangements must include provision for police certificate requirements, imposing the same obligations on the contractor or supplier or broker as imposed on the approved provider, including where suppliers sub-contract work to others.

Approved providers should establish policies and procedures to demonstrate compliance with the requirements for police certificates for contracted staff, including staff employed through an agency. See Sections 4.5 and 4.6.

## **Staff and volunteers under 16 years of age**

The records of persons under the age of 16 years will not generally be available for scrutiny as part of a police report. Other forms of background checking, such as following up referee reports, will be particularly important in cases where a younger person is to be working directly with care recipients.

### ***4.4. What are the responsibilities of approved providers in relation to police certificates?***

In summary, approved providers must be satisfied that:

- staff members (including relevant volunteers) who work or provide services at an aged care service, have obtained, within the previous three years, a police certificate, and a statutory declaration where applicable; and
- the police certificate and / or statutory declaration, indicates that the person is a suitable person to provide aged care to care recipients.

A refusal to obtain a police certificate and / or provide a statutory declaration where applicable will preclude a person from employment in an aged care service.

Approved providers should note that failure to meet the police certificate requirements may result in compliance action under Part 4.4 of the Aged Care Act 1997 (the Act).

The monitoring of residential aged care homes for compliance with their obligations under the Act is a responsibility of both the Department of Health and Ageing (the Department) and the Aged Care Standards and Accreditation Agency (the Agency).

The Agency has responsibility for monitoring residential aged care homes against the Accreditation Standards. The Department has responsibility for ensuring homes meet all their obligations under the Act and for taking compliance action where approved providers have breached their responsibilities under the Act.

For community care and flexible care services under the Act, the Department is responsible for monitoring systems and processes as part of the ongoing quality management and reporting systems.

#### **4.4.1. Obtaining a police certificate**

While the approved provider is responsible for ensuring that all relevant staff and volunteers have police certificates, arrangements for obtaining for the certificate are a matter for negotiation between the provider and the individual, as part of the employment arrangements.

A person may either provide a police certificate or give consent for an approved provider to request a police certificate from the relevant State or Territory Police Service or the Australian Federal Police.

Approved providers should allow adequate time from the time an application for a police certificate is made to receipt of the certificate.

A list of contact details and websites for all of the Australian Police Services is available at [Appendix 1](#).

#### **Approved Providers**

Approved providers, with appropriate consent to obtain police certificates on behalf of individuals, may obtain the police certificates from the relevant State/Territory Police Service. The exception is Queensland, where only Government agencies with legislative authority can obtain police certificates on behalf of individuals. Other organisations may coordinate the application and certification of identity for their employees but the police certificate will be returned to the individual.

Approved providers that request 500 or more police certificates per year may consider seeking accredited agency status. Accredited agencies deal directly with CrimTrac at a reduced rate and response time rather than with the State and Territory Police Services.

The approved provider is responsible for obtaining an individual's consent and recording it in an acceptable format that meets the provisions of the *Privacy Act 1988*. Approved providers should access consent forms from the relevant State/Territory Police Services or CrimTrac.

Approved providers should note that in specific jurisdictions parental consent may be required to request a police certificate for staff members and volunteers under the age of 18.

For a police certificate to be effective the details of name and date of birth need to be accurate. Approved providers, who are requesting a police certificate on behalf of a staff member or volunteer, should ensure the correct name and spelling, correct date of birth and other identifying information is checked to ensure an accurate and timely response. Approved providers should direct queries to their relevant State, Territory or Australian Federal Police Service.

## Individuals

Individuals, including prospective employees and relevant volunteers, may request a police certificate through the police service in the State/Territory where they live. For Australian Capital Territory residents, the relevant police service is the Australian Federal Police.

Individuals may be able to claim the police certificate as part of work-related expenses for tax purposes and further advice on this issue is available from the Australian Taxation Office through their website at: <http://www.ato.gov.au>

Volunteers may be eligible for reduced fees for police certificates, whether requested by an individual or by an approved provider on behalf of a volunteer.

When individuals undertake to obtain their own police certificate, approved providers should sight an original or a certified copy of the police certificate and will need to record this information for compliance purposes.

## Community Visitors Scheme

Community Visitors Scheme (CVS) auspices will be required to ensure police certificate arrangements are in place for each community visitor.

Volunteers under the CVS will supply the approved provider with a proforma letter stating that they are approved as visitors under the CVS, including having had a current police certificate and being assessed as suitable to work in a nominated aged care home.

### 4.4.2. Convictions that preclude a person from employment

The Accountability Principles outline the matters that preclude a person from employment in an aged care service subsidised under the Aged Care Act 1997.

Schedule 2, Part 4: Requirements relating to certain staff members and volunteers outlines the criminal convictions that preclude a person from providing aged care services. A person is **not suitable to provide aged care** if there is a police certificate or statutory declaration that records that the person:

- a) has been convicted of murder or sexual assault; or
- b) has been convicted of, and sentenced to imprisonment for, any other form of assault.

Any person with a conviction for the serious offences outlined above is deemed to be unsuitable and must not be employed, contracted, hired, retained, accepted as a volunteer, or allowed to provide any other care or ancillary duties, in an aged care service subsidised under the Act.

### **4.4.3. Other convictions**

Approved providers have a responsibility to ensure that aged care services have in place policies and procedures for assessing a person's suitability to work in aged care in relation to other convictions and offences. Such policies should consider the level of risk and relevance to the position they hold, including the extent of direct and unsupervised access to care recipients.

Additional information on assessing a police certificate is included at Section 4.8 of these Guidelines.

### **4.4.4. Spent convictions**

The Commonwealth, States and Territories all have "spent conviction" schemes, allowing former offenders to "wipe the slate clean" after a relevant period of time, depending on the offence. Once a conviction has been "spent" a person is not required to disclose the conviction. The aim of the Scheme is to prevent discrimination on the basis of old minor convictions, once a waiting period (for example, usually 10 years) has passed and provided the individual has not re-offended during this period.

Convictions considered "spent" under state, territory and federal legislation will not be included in the National Police Certificate unless the category of employment or purpose of the application is considered exempt from relevant legislation. Legislation varies from jurisdiction to jurisdiction. In some jurisdictions convictions for relevant serious offences are not protected.

Approved providers should also note that if criminal history information is retained for an indefinite time there is the likelihood that some convictions could become spent. Therefore, these are non-disclosable under spent convictions legislation, and should not be a consideration for any decision regarding employment under the Act.

Approved providers should take reasonable steps to ensure that information about spent convictions is removed and/or kept securely, and in accordance with the provisions of the Privacy Act 1988. (See also Section 4.7).

### **4.4.5. Requirements for staff members and volunteers**

Approved providers are required to ensure that all staff employed by them, or engaged through an employment agency, and relevant volunteers, have obtained, within the previous three years, a police certificate.

The approved provider must ensure that a staff member or volunteer must not be employed or be allowed to continue to provide services, if he or she has certain convictions recorded that preclude them from working in an aged care service, as described in the Accountability Principles.

Approved providers should also have internal policies and procedures in place to:

- monitor and renew police certificates to ensure that the three-year requirement is met, including timely re-application for police certificates;
- ensure relevant staff turning 16 apply for a police certificate;
- document decisions in relation to employment and retention based on a police certificate assessment; and to

- encourage staff and volunteers to notify the approved provider (or key personnel) if they have had a change in their police record status at any time before the renewal date for their next police certificate, particularly if they have a conviction recorded that would preclude them from working in aged care.

#### **4.4.6. Additional requirements for staff members and volunteers who have lived overseas**

For staff members or volunteers who have been citizens or permanent residents of another country other than Australia since turning 16 years of age, a statutory declaration is required to be provided before starting in any aged care service, stating:

- a) that they have never been convicted of murder or sexual assault; or
- b) have never been convicted of, and sentenced to imprisonment for, any other form of assault in a country other than Australia.

This statutory declaration is in addition to a current Australian jurisdiction police certificate required for all relevant staff and volunteers, which lists only convictions recorded in Australian jurisdictions. See further information, including a sample statutory declaration form, under Section 4.4.8.

The requirement for a statutory declaration in relation to a person's criminal history record check to work in aged care complements the requirement to meet certain criteria as a condition of obtaining a visa to enter Australia.

Everyone who applies for a visa to enter Australia must first be assessed by the Department of Immigration and Multicultural Affairs against the character provisions of the Migration Act 1958. The character check includes the provision (by the applicant) of a police certificate from any country that they have lived in for a period of 12 months or more since turning 16 years of age.

Approved providers should note that a staff member or volunteer, who leaves the aged care service and becomes a citizen or permanent resident of another country and, on return to Australia, seeks work or volunteers in any aged care service, would be treated as a new staff member and would be required to provide a statutory declaration.

#### **4.4.7. Arrangements for new staff members and volunteers who do not yet have police certificates**

While approved providers should aim to ensure all relevant staff and volunteers have obtained a police certificate before they start working in the aged care service, the legislation sets out those exceptional conditions where a person could start work, prior to obtaining the police certificate and pending an assessment of any criminal conviction identified in the certificate.

A person who does not have a current police certificate may become a staff member or volunteer only if:

- a) the care or other service to be provided by the person is essential; and
- b) an application for a police certificate has been made before the date on which the person first becomes a staff member or volunteer; and
- c) the person will be subject to appropriate supervision during periods when the person has access to care recipients; and

- d) the person makes a statutory declaration stating that they have never been convicted of murder or sexual assault, or have never been convicted of, and sentenced to imprisonment for, any other form of assault.

An approved provider is encouraged to develop internal service policies and procedures to ensure they can meet the police certificate requirements for prospective new staff and volunteers that demonstrate and describe, for example:

- the ability to track the progress of an application for a police certificate;
- what is an essential service and/or a range of situations where a new person/s may be required to be employed pending their police certificate;
- the way in which this person/s would be appropriately supervised; and
- how this would be achieved during a range of different working conditions, ie during night shifts and holiday periods when staff numbers, including staff supervisors, may be limited.

#### **4.4.8. Statutory declarations**

A statutory declaration is a written statement declared to be true in the presence of an authorised witness. A person wishing to use a statutory declaration in connection with a law of the Commonwealth, the Australian Capital Territory or relevant other Territories must make the declaration in accordance with the *Commonwealth Statutory Declarations Act 1959* and the *Commonwealth Statutory Declarations Regulations 1993*.

Approved providers should note that anyone who makes a false statement is guilty of an offence under Section 11 of the Statutory Declarations Act 1959.

Approved providers should note that as the police certificate requirements are in connection with a law of the Commonwealth, the form that must be used for purposes requiring a statutory declaration is the form that is prescribed under the *Commonwealth Statutory Declarations Act 1959*.

A statutory declaration may be invalid if it is made using an incorrect form, is witnessed by a person not prescribed by the Regulations as an authorised witness, or if it is incomplete.

With regard to the conditions outlined above, relevant staff members and volunteers who are required by law to provide a statutory declaration regarding their criminal conviction history will only be required to do so once.

An information sheet for persons making a statutory declaration and for witnesses can be accessed from the Attorney-General's website at: <http://www.ag.gov.au/statdec>.

A sample statutory declaration form is available for approved providers at Appendix 2.

#### **4.5. Monitoring compliance with police certificate requirements**

Requirements for police certificates in residential aged care homes will be monitored by the Aged Care Standards and Accreditation Agency as part of its normal audit process in relation to the Accreditation Standards, and the Department through its responsibility to ensure homes meet their obligations under the Act.

For other aged care services under the Act, police certificate requirements will be monitored through existing monitoring programs.

Approved providers must, therefore, have policies and procedures in place to demonstrate suitable management and monitoring of the police certificate requirements for all relevant staff and volunteers. This includes, for example:

- three-year renewal procedures;
- appropriate storage, security and access requirements for information recorded on a police certificate; and
- evidence of an approved provider's decisions in respect of all individuals, or where staff are contracted through another agency, evidence of arrangements with the agency that demonstrates the police certificate requirements.

#### **4.6. Record Keeping – Demonstrating compliance with police certificate requirements**

To be compliant with the police certificate requirements, approved providers will need to keep records and retain evidence that the requirements have been undertaken for relevant staff and volunteers.

Under the Records Principles, Schedule 1, section 19.5A, an approved provider must keep records that enable the provider to demonstrate:

- (a) that, in accordance with Part 4 of the Accountability Principles, there is for each person who is a staff member or volunteer, a police certificate that is, at all times during which the person remains a staff member or volunteer, not more than three years old; or
- (b) for any period that a staff member or volunteer is allowed under Part 4 of the Accountability Principles to be without such a report, an application has been made for a police certificate; or
- (c) that any staff member or volunteer who does not have a police certificate is exempt from having such a report under Part 4 of the Accountability Principles (ie has provided a statutory declaration).

Approved providers should liaise with external agencies from which staff or volunteers are contracted, on established arrangements between the provider and the agency, to enable the provider to be satisfied that the agency staff or volunteers have the appropriate police certificate before providing care to care recipients.

Volunteers supplied through auspice organisations under the Community Visitors Scheme (CVS) will supply the approved provider with a proforma letter stating that they are approved as visitors under the scheme, including having a current police certificate and being assessed as suitable to work in a nominated aged care home.

This letter (or evidence that it has been sighted by the approved provider) acts as documented evidence for the approved provider in being compliant with the police certificate requirements for CVS volunteers.

#### **4.7. Record Keeping – Privacy considerations**

Approved providers have a responsibility to ensure that aged care services have in place systems and procedures that will allow them to meet all of their responsibilities under the *Aged Care Act 1997* (the Act), including:

- a) complying with requirements in relation to protection of personal information (in section 62.1 of the Act), and
- b) ensuring compliance with all relevant legislation and regulatory requirements in relation to privacy issues, including State/ Territory or Commonwealth legislation.

If a police certificate, or a copy of a police certificate, is kept by an approved provider under section 19.5A of the Records Principles, it must be kept in accordance with the National Privacy Principles set out in the Privacy Act 1988. Further information about these responsibilities can be obtained from the Office of the Privacy Commissioner's website at: <http://privacy.gov.au>

This requirement includes, for example, that criminal history information about applicants for employment or for volunteering work:

- should not be retained for the purpose of making any future decisions in relation to subsequent work; and
- should not be retained if the applicant is not subsequently employed or retained.

#### **4.8. Assessing a police certificate**

This section provides guidance to approved providers in assessing any recorded convictions on a person's police certificate in order to make a decision whether to employ or retain the services of that person in an aged care service managed by the provider.

Approved providers have a responsibility to ensure that they have in place policies and procedures to adequately assess staff and volunteers and document the decisions in relation to police certificate 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.

The persons that approved providers are required to preclude from providing direct care in their aged care services are those whose police certificate, and 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 [Schedule 2, Part 4, Divisions 2 and 3 of the Accountability Principles].

In assessing persons with other convictions and offences recorded on their police certificate, approved providers should consider the level of risk. For example, taking into account factors including seriousness and relevance of the conviction, the level of access the person has to care recipients and the length of time since the conviction.

In addition, in assessing a person's suitability based on other conviction approved providers should consider whether it is relevant to the inherent requirements of the job they are being considered for.

An approved provider's decision to employ or retain the services of a person with any recorded convictions will need to be rigorous, defensible and transparent. The overriding purpose of any policy implemented is to minimise the risk of harm to care recipients.

Approved providers should refer to the Human Rights and Equal Opportunity Commission's prepared guidelines: *On the Record – Guidelines for the prevention of discrimination in employment on the basis of criminal record*.

The Guidelines are available on the website at:

[http://www.humanrights.gov.au/human\\_rights/criminalrecord/on\\_the\\_record/index.html](http://www.humanrights.gov.au/human_rights/criminalrecord/on_the_record/index.html)

Approved provider should ensure the following processes are included as part of their assessment policies and procedures:

1. obtaining and recording consent to request a police certificate for relevant persons;
2. retaining evidence of a police certificate having been obtained in accordance with the National Privacy Principles of the Privacy Act 1998;
3. appropriately assessing staff and volunteers as suitable to work in aged care;
4. documenting the final decision to employ or retain in the service; and
5. not retaining any record of personal documents relating to a person who has not subsequently been employed.

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

1. an individual assessment form.
2. a police certificates register document, and These documents are provided at Appendix 3 of the Guidelines.

#### **4.8.1. Guiding principles for assessing a police certificate**

Two important factors should guide approved providers in the assessment of a police certificate that indicates past convictions, other than those convictions described in the legislation that would automatically preclude them: *relevance and proportionality*. Is the offence relevant to the position or task the person is being considered for?. Would denying the person employment because of the past conviction be a disproportionate response to the particular offence?

The following principles have been developed as a guide to assist approved providers to assess a person's police certificate for suitability to provide aged care services:

- Access: the degree of direct and unsupervised access to care recipients, their belongings, and information about care recipients. Considerations include whether the individual will work alone or as part of a team, the level and quality of direct supervision, the location of the work i.e. residential, community or home based settings.
- Relevance: the type of conviction in relation to the duties a person is, or may be, undertaking; an approved provider should only have regard to criminal record

information indicating that the person is unable to perform the inherent requirements of the particular job.

- Significance: of the type of conviction in relation to the duties a person is, or may be, undertaking.
- Proportionality: whether excluding a person from employment is an outcome proportional to the type of conviction.
- Timing: how long ago the conviction occurred.
- Employment history: whether an individual has been satisfactorily employed since the conviction.
- Individual's Information: the findings of any assessment reports following attendance at treatment or intervention programs, or other references, the individual's attitude to the offending behaviour.
- Pattern: whether the conviction represents an isolated incident or a pattern of criminality.
- Likelihood: what is the possibility of an incident occurring if the person continues with, or is employed for, particular duties.
- Consequences: what would be the impact of a prospective incident if the person continues, or commences, particular duties.
- Treatment Strategies: what procedures will assist in reducing the likelihood of an incident occurring, including, for example modification of duties or work environment.

#### **4.8.2. Natural justice considerations**

In developing assessment policy and procedures for employees, approved providers should consider an approach that is consistent with natural justice, procedural fairness and equity principles.

These principles are based on the premise that there would be a rationale for excluding a person from working in an aged care service that is transparent, relevant, evident and objective and which is not a harsh or disproportionate response to the offence or conviction.

In the context of screening employees and volunteers, natural justice can be understood to mean that assessment decisions are balanced, fair and just, and that persons have an opportunity to have input into the decision-making process as well as an opportunity to have the decision independently reviewed. It also means that such persons have a right to know about any information that is held about them and could be used to declare them ineligible to be employed in an aged care service.

A person may be afforded natural justice if they are:

- given an opportunity to dispute the contents of a police certificate (through the relevant police service) before any decision is made;

- given an opportunity to provide information regarding his or her criminal history or other information and references, and for this information to be considered;
- informed of any proposed decision to be made about them;
- provided with the rationale for the proposed decision; and
- given the right to have a final assessment decision reviewed by an independent body.

At the Federal level, there is no legislation that makes discrimination on the basis of a person's criminal record unlawful. However, if a person feels they have been discriminated against based on their criminal record in an employment decision of an approved provider, they may make a complaint to the Human Rights and Equal Opportunity Commission (the Commission).

The Commission investigates and conciliates complaints of discrimination lodged under the *Human Rights and Equal Opportunity Commission Act 1986*, including discrimination in employment because of a criminal record. Discrimination can include being refused employment or promotion, being given less favourable conditions of employment, or being dismissed.

If the complaint cannot be successfully conciliated by the Commission there is no option of going to court and the Commission is unable to make legally enforceable orders against an employer. However, the Commission can report the matter to the Federal Attorney-General, together with recommendations for remedial action, who can table the report in the Parliament.

At the state and territory level, there is discrimination legislation in Tasmania and the Northern Territory, which makes it unlawful to discriminate on the basis of "irrelevant criminal record". Unlike the Commission, under these laws binding orders can be made against employers.

For further information refer to the Commission's Human Rights and Equal Opportunity Commission's prepared guidelines: *On the Record – Guidelines for the prevention of discrimination in employment on the basis of criminal record*. The Guidelines are available on the website at:

[http://www.humanrights.gov.au/human\\_rights/criminalrecord/on\\_the\\_record/index.html](http://www.humanrights.gov.au/human_rights/criminalrecord/on_the_record/index.html) or email: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

In addition, under the Workplace Relations Act 1996 there are provisions relating to unfair dismissal and unlawful termination.

In order to minimise the possibility of a discrimination complaint, approved providers would need to demonstrate that the relevant criminal conviction was of a type that necessarily rendered the individual unsuitable for aged care work.

Approved providers should seek their own advice on a case by case basis regarding the potential termination of an employee and any entitlements they may have.

Approved providers should familiarise themselves with their responsibilities in relation to the *Workplace Relations Act 1996*. More information is available from the Work Choices website at: <https://www.workchoices.gov.au/>

#### **4.9. Informing existing and prospective employees/ volunteers of requirements for police certificates**

Approved providers should undertake the following practices as part of administering the police certificate requirements:

- advise existing and prospective persons seeking employment or retention in Australian Government subsidised aged care services, on a permanent or casual basis, of the requirements under aged care legislation for a police certificate to be obtained;
- inform relevant persons whether they will request the police certificate on the person's behalf and with their written consent, or whether it is a requirement for the person to obtain a police certificate as a condition of consideration for engagement or continuing employment/ volunteering;
- preclude a person from employment who is not willing to consent to, or does not have a police certificate undertaken within the last three years;
- inform relevant persons that an assessment of the police certificate, and any recorded convictions, will be undertaken to assess suitability to work in an aged care service and with vulnerable older people;
- provide information to relevant persons on the offences/ convictions that would exclude a person from employment/ volunteering in an aged care service under the aged care legislation;
- inform relevant persons that evidence of a criminal conviction record, that may be unrelated to any risk to care recipients, will not automatically preclude a person from being or remaining employed;
- provide a copy or original of a police certificate to the individual for their records;
- inform relevant persons on what will happen to any information on their police certificate, and who will have access to the information; and
- allow relevant persons a chance to provide further information about their police certificate if they choose and before determining the appropriate outcome.

## APPENDIX 1 - AUSTRALIAN POLICE SERVICES CONTACT NUMBERS AND WEBSITE ADDRESSES

Australian Police Services contact numbers and website addresses	
Australian Federal Police (for ACT)  Criminal history checks	Phone: (02) 6202 3333 Email Criminal Records: <a href="http://www.afp.gov.au/email_forms/criminal_records">http://www.afp.gov.au/email_forms/criminal_records</a>  <a href="http://www.afp.gov.au/">http://www.afp.gov.au/</a>
New South Wales  Police Service Criminal Records Section	Phone: (02) 8835 7888  Email: <a href="mailto:crs@police.nsw.gov.au">crs@police.nsw.gov.au</a>  <a href="http://www.police.nsw.gov.au/">http://www.police.nsw.gov.au/</a>
Victoria Police  Police Records Check	Phone: (03) 9247 5907 <a href="mailto:publicenquiryservice@police.vic.gov.au">publicenquiryservice@police.vic.gov.au</a>  <a href="http://www.police.vic.gov.au/">http://www.police.vic.gov.au/</a>
Queensland Police Service  Police certificate - (Australia-wide Criminal History)	Phone: (07) 3364 6854  <a href="http://www.police.qld.gov.au/">http://www.police.qld.gov.au/</a>
Western Australia Police Service  National Police Certificate Services	The Information Release Manager  Phone: (08) 9268 7754  Email: <a href="mailto:information.release.unit@police.wa.gov.au">information.release.unit@police.wa.gov.au</a>  <a href="http://www.police.wa.gov.au/">http://www.police.wa.gov.au/</a>
South Australia Police  Records Release Unit	Phone: (08) 8204 2455  Email: <a href="mailto:SAPOL.records@police.sa.gov.au">SAPOL.records@police.sa.gov.au</a>  <a href="http://www.sapolice.sa.gov.au">http://www.sapolice.sa.gov.au</a>
Tasmania Police  Criminal History Services	Phone (03) 6230 2928  Email: <a href="mailto:criminalhistoryservices@police.tas.gov.au">criminalhistoryservices@police.tas.gov.au</a>  <a href="http://www.police.tas.gov.au">http://www.police.tas.gov.au</a>
Northern Territory  Criminal History	Phone: (08) 9268 7754  <a href="http://www.nt.gov.au/pfes/index.cfm">http://www.nt.gov.au/pfes/index.cfm</a>

## **APPENDIX 2 – STATUTORY DECLARATION**

Commonwealth of Australia  
STATUTORY DECLARATION  
*Statutory Declarations Act 1959*

1 *Insert the name, address and occupation of person making the declaration*

I,<sup>1</sup>

make the following declaration under the *Statutory Declarations Act 1959*:

2 *Set out matter declared to in numbered paragraphs*

2

1. I declare that (*place a tick or cross in applicable box*):

since turning 16 years of age, I have been a citizen or permanent resident of a country/countries other than Australia.

since turning 16 years of age, I have never been a citizen or permanent resident of a country/countries other than Australia

2. I declare that I have never been:

(a) convicted of murder or sexual assault; or

(b) convicted of, and sentenced to imprisonment for, any other form of assault.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 *Signature of person making the declaration*

3

4 *Place*  
5 *Day*  
6 *Month and year*

Declared at <sup>4</sup> \_\_\_\_\_ on <sup>5</sup> \_\_\_\_\_ of <sup>6</sup> \_\_\_\_\_

Before me,

7 *Signature of person before whom the declaration is made (see over)*

7

8 *Full name, qualification and address of person before whom the declaration is made (in printed letters)*

8

*Note 1* A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

*Note 2* Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

**A statutory declaration under the *Statutory Declarations Act 1959* may be made before—**

(1) a person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor    Dentist    Legal practitioner  
Medical practitioner    Nurse    Optometrist  
Patent attorney    Pharmacist    Physiotherapist  
Psychologist    Trade marks attorney    Veterinary surgeon

(2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) a person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public  
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)

Bailiff

Bank officer with 5 or more continuous years of service

Building society officer with 5 or more years of continuous service

Chief executive officer of a Commonwealth court

Clerk of a court

Commissioner for Affidavits

Commissioner for Declarations

Credit union officer with 5 or more years of continuous service

Employee of the Australian Trade Commission who is:

- (a) in a country or place outside Australia; and
- (b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and
- (c) exercising his or her function in that place

Employee of the Commonwealth who is:

- (a) in a country or place outside Australia; and
- (b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and
- (c) exercising his or her function in that place

Fellow of the National Tax Accountants' Association

Finance company officer with 5 or more years of continuous service

Holder of a statutory office not specified in another item in this list

Judge of a court

Justice of the Peace

Magistrate

Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*

Master of a court

Member of Chartered Secretaries Australia

Member of Engineers Australia, other than at the grade of student

Member of the Association of Taxation and Management Accountants

Member of the Australasian Institute of Mining and Metallurgy

Member of the Australian Defence Force who is:

- (a) an officer; or
- (b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
- (c) a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:

- (a) the Parliament of the Commonwealth; or
- (b) the Parliament of a State; or
- (c) a Territory legislature; or
- (d) a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*

Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority; or
- (c) a local government authority;

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

(a) the Commonwealth or a Commonwealth authority; or

(b) a State or Territory or a State or Territory authority

Sheriff

Sheriff's officer

Teacher employed on a full-time basis at a school or tertiary education institution

**APPENDIX 3 - Police Check Requirements – Individual Assessment  
Part A**

**Q1. Name of person:**

**Q2. Description of position the person occupies or will occupy:**

**Q3. The person provided, or gave consent for the Approved Provider to obtain, a report of his/her police certificate**

Yes  *Evidence recorded*

No  *A person who does not provide, or give consent for an Approved Provider to obtain his/her police certificate, is precluded from employment in an aged care service.*

**Q4. Date of the police certificate.**

**Q5. The person provided, or gave approval for the Approved Provider to obtain, an original or certificate copy report of his/her police certificate, which disclosed no convictions.**

Yes  No

**Q6. The person provided, or gave consent for the Approved Provider to obtain, a report of his/her police certificate which discloses any convictions of murder or sexual assault; or a conviction of, and sentence to imprisonment for, any other form of assault.**

Yes  *A person with a positive criminal conviction of murder or sexual assault; or a conviction of, and sentence to imprisonment for, any other form of assault*

No

**Q7. The person provided, or gave approval for the Approved Provider to obtain, a report of his/her criminal conviction record which disclosed a conviction requiring further assessment.**

Yes  *Further assessment action required – refer to Guiding Principles*

No

Name of assessor: \_\_\_\_\_ Position/Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

