



# Appendix D – Commonwealth Home Support Program (CHSP) Police Certificate Guidelines

## Contents

1. Introduction.....	1
2. Your obligations.....	1
3. Police certificates.....	2
4. Staff, volunteers and executive decision makers.....	3
5. Assessing a police certificate .....	5
6. Police Check Administration.....	9

## 1. Introduction

The Police Certificate Guidelines help CHSP providers with the management of police check requirements.

Police checks are additional to rigorous recruitment practices. They are a part of a service provider’s responsibility to ensure all staff, volunteers and executive decision makers are suitable to provide services to clients of the CHSP.

## 2. Your obligations

CHSP providers must ensure that all staff, volunteers and executive decision makers working in CHSP services are suitable for the roles they are performing. They must undertake thorough background checks to select staff in accordance with the requirements under the CHSP Grant Agreement and the Aged Care Quality Standards.

As part of this, providers must ensure National Criminal History Record Checks, no more than 3 years old, are held by:

- staff who are reasonably likely to interact with clients
- volunteers who have unsupervised interaction with clients
- executive decision makers.

CHSP providers must ensure they have policies and procedures in place to assess police certificates. A provider’s decision to employ or retain the services of a person with any relevant recorded convictions will need to be rigorous, defensible, and transparent.

## 3. Police certificates

### 3.1 Police certificates and police checks

A police certificate is a report of a person's criminal history. A police check is the process of checking a person's criminal history. The 2 terms are often used interchangeably in aged care.

### 3.2 Police certificate requirements

A police certificate that satisfies requirements under the CHSP Grant Agreement and CHSP Program Manual is a nation-wide assessment of a person's criminal history (also called a National Criminal History Record Check or National Police Certificate). This must be prepared by the Australian Federal Police, a state or territory police service, or an [Australian Criminal Intelligence Commission \(ACIC\) accredited agency](#).

Note: the NDIS Worker Screening Check will also meet this requirement. If a staff member has a valid and current NDIS Worker Screening Check, they do not need an additional police certificate. More information about [NDIS Worker Screening Check](#).

In place of a National Criminal History Record Check, CHSP providers may accept staff members and volunteers who hold a card issued by a state or territory authority following a vetting process that enables the card holder to work with vulnerable people.

Executive decision makers are required to have a National Criminal History Record Check and have additional requirements to meet.

### 3.3 Australian Criminal Intelligence Commission (ACIC) checks

The department accepts National Police History Checks prepared by ACIC accredited agencies. They are considered as being prepared on behalf of the police services and therefore meet requirements. More information about [ACIC](#).

### 3.4 Statutory declarations

Statutory declarations are required in addition to police checks in the following instances:

- for essential new staff, volunteers and executive decision makers who have applied for, but not yet received, a police certificate
- for any staff or volunteers who have been a citizen or permanent resident of a country other than Australia after the age of 16
- executive decision makers who hold (or have held) citizenship or permanent residency of a country other than Australia after the age of 16.

In these instances, a staff member, volunteer or executive decision maker can sign a statutory declaration stating either:

- they have never, in Australia or another country, been convicted of an offence, or
- if they have been convicted of an offence, setting out the details of that offence.

Note: if a person has been convicted for a 'spent conviction', they are entitled to sign a statutory declaration stating that they have not been convicted of an offence (see 5.8).

Statutory declarations relating to police certificate requirements must be made on the form prescribed under the *Commonwealth Statutory Declarations Act 1959* (the Declarations Act). Anyone who makes a false statement in a statutory declaration is guilty of an offence under the Declarations Act.

More information about [statutory declarations](#).

## **4. Staff, volunteers and executive decision makers**

### **4.2 Definition of a staff member**

A staff member is defined, for the purposes of the guidelines, as a person who:

- has turned 16 years of age
- is employed, hired, retained or contracted by the service provider (whether directly or through an employment or recruitment agency) to provide care or other services under the control of the service provider
- interacts, or is reasonably likely to interact, with clients.

Examples of individuals who are staff members include:

- employees and subcontractors of the service provider who provide services to clients whether in a community setting or in the client's own home
- employees and subcontractors who contact the client by phone.

### **4.3 Definition of non-staff members**

Individuals not considered to be staff members for the purposes of the guidelines, include:

- employees who but do not interact with clients (e.g. prepare the payroll)
- independent contractors.

An independent contractor is defined, for the purposes of these guidelines, as a person who:

- is paid for results achieved
- provides all or most of the needed materials and equipment to complete the work
- is free to delegate work to others
- has freedom in the way that they work
- does not provide services exclusively to the service provider
- is free to accept or refuse work
- is in a position to make a profit or loss.

For the purposes of these guidelines, a subcontractor who has an ongoing contractual relationship with the service provider is considered a staff member, not an independent contractor. A person who is contracted to perform a specific task on an ad-hoc basis may fall within the definition of an independent contractor.

Note: having an Australian Business Number (ABN) does not automatically make a person an independent contractor.

## **4.4 Definition of a volunteer**

A volunteer is defined, for the purposes of these guidelines, as a person who:

- is not a staff member
- offers services to the service provider without financial gain
- provides care or other services on the invitation of the service provider and not solely on the express (or implied) invitation of a client
- has, or is reasonably likely to have, unsupervised interaction with clients.

For example, a student undertaking a clinical placement in the community who is over 18 years and has, or is reasonably likely to have, unsupervised interaction with clients.

Examples of people who are not volunteers, under this definition, include a person who:

- is under the age of 16 (except a full-time student, then under the age of 18)
- receives an express (or implied) invitation into the client's home by a client (e.g. family and friends of the client)
- only have supervised interaction with clients.

## **4.5 Definition of unsupervised interaction**

Unsupervised interaction is defined as interaction with a client where a volunteer is unaccompanied by another volunteer or staff member.

Regarding volunteers, if volunteers are visiting a client in pairs, it is not a requirement for either of those volunteers to have a police certificate.

## **4.6 Definition of an executive decision maker**

An executive decision maker is:

- a member of a group of people who is responsible for the executive decisions of the entity at that time
- any other person who has responsibility for (or significant influence over) planning, directing or controlling the activities of the entity at that time
- any person who is responsible for the day-to-day operations of the service, whether or not the person is employed by the entity.

In determining who are their executive decision makers, CHSP providers need to consider the functional role individuals perform rather than their job title.

## **4.7 New staff**

CHSP providers must aim to ensure all new staff members, volunteers and executive decision makers have obtained a police certificate before they start work. However, there are exceptional circumstances where they may start working prior to obtaining a police certificate.

A person can start work prior to obtaining a police certificate if:

- the care or other service they will provide is essential
- an application for a police certificate has been made before their start date
- until the police certificate is obtained, they will be subject to appropriate supervision during periods when they interact with clients
- they make a statutory declaration stating either:
  - they have never, in Australia or another country, been convicted of an offence, or
  - if they have been convicted of an offence, setting out the details of that offence.

In such cases, the service provider must have policies and procedures in place to demonstrate:

- that an application for a police certificate has been made
- the care and other service to be provided is essential
- the way in which the person would be appropriately accompanied
- how a person will be appropriately accompanied in a range of working conditions (e.g. during holiday periods when staff numbers may be limited).

## **4.8 Staff, volunteers and executive decision makers who have resided overseas**

A person must make a statutory declaration before starting work with any CHSP provider in the following circumstances:

- staff members or volunteers who have been citizens or permanent residents of a country other than Australia since turning 16 years of age
- executive decision makers who have held or hold citizenship, or hold or have held permanent residency of a country other than Australia after the age of 16.

The statutory declaration must state either:

- they have never, in a country other than Australia, been convicted of an offence, or
- if they have been convicted of an offence, setting out the details of that offence.

This statutory declaration is in addition to a current national police certificate, as this reports only those convictions recorded in Australian jurisdictions.

# **5. Assessing a police certificate**

## **5.1 Police certificate format**

Police certificates may have different formats, including printed certificates or electronic reports. Every police certificate or report must record:

- the person's full name and date of birth
- the date of issue
- a reference number (or similar).

A service provider must be satisfied that a certificate is genuine and has been prepared by a police service or ACIC accredited agency. An original police certificate or a certified copy must be provided. CHSP providers cannot accept an uncertified photocopy.

It is up to the service provider to be satisfied that a certificate meets the requirements and enables them to assess a person's criminal history. Any police certificate decision must be documented by the service provider.

## 5.2 Purpose of a police certificate

The department recommends specifically obtaining a police certificate for the purposes of aged care. However, if a person has done a police check done for another purpose, it will also satisfy the requirements for the CHSP. It is best practice to specify the purpose of the police check to the police service or ACIC agency issuing the certificate.

## 5.3 Police certificate disclosure

A police certificate discloses whether a person:

- has been convicted of an offence
- has been charged with and found guilty of an offence but discharged without conviction
- is the subject of any criminal charge still pending before a court.

The information on the certificate is drawn from all Australian jurisdictions and is subject to relevant state and territory spent conviction schemes (see [5.8](#)).

## 5.4 Assessing information obtained from a police certificate for staff and volunteers

CHSP providers may use discretion when assessing a person's criminal history to determine whether recorded offences are relevant to the job. As an underlying principle, CHSP providers must determine the risk of harm to clients to make their decision.

CHSP providers must ensure they have policies and procedures in place to assess police certificates. A service provider's decision to employ or retain the services of a person with any relevant recorded convictions will need to be rigorous, defensible and transparent.

### A risk assessment approach

The following considerations are intended as a guide to assist CHSP providers to assess a person's police certificate for their suitability to be either a staff member or volunteer.

- **Access:** the degree of access to clients, their belongings, and their personal information. 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. community or home-based settings).

- **Relevance:** the type of conviction and sentence imposed for the offence in relation to the duties a person is or may be undertaking. A service provider must only have regard to any criminal record information indicating that the person is unable to perform the inherent requirements of the particular job.
- **Proportionality:** whether excluding a person from employment is proportional to the type of conviction.
- **Timing:** when the conviction occurred.
- **Age:** the age of the person, and of any victim, at the time the person committed the offence. The service provider may place less weight on offences committed when the person is younger, and particularly under the age of 18 years. The service provider may place more weight on offences involving vulnerable persons.
- **Decriminalised offence:** whether or not the conduct that constituted the offence (or to which the charge relates) has been decriminalised since the person committed the offence.
- **Employment history:** whether an individual has been employed since the conviction and the outcome of referee checks with any such employers.
- **Individual's information:** the findings of any assessment reports following attendance at treatment or intervention programs, or other references. Also consider the individual's attitude to the offending behaviour.
- **Pattern:** whether the conviction represents an isolated incident or a pattern of criminality.
- **Likelihood:** the probability of an incident occurring if the person continues with (or is employed for) particular duties.
- **Consequences:** the impact of a prospective incident if the person continues (or commences) particular duties.
- **Treatment strategies:** procedures that will assist in reducing the likelihood of an incident occurring including (e.g., modification of duties).

## 5.5 Assessing information obtained from a police certificate for executive decision makers

CHSP providers may use limited discretion when assessing a person's criminal history to determine whether any recorded offences are relevant to performing the functions and duties of an executive decision maker.

A CHSP provider must **not** allow a person to perform the functions and duties of an executive decision maker if their police certificate records any of the following precluding offences:

- a conviction for murder or sexual assault
- a conviction and sentence to imprisonment for any other form of assault
- a conviction for an indictable offence within the past 10 years.

Whether or not an offence is an indictable offence will depend on legislation within the jurisdiction. CHSP providers might need to seek legal advice if there is any doubt.

If a conviction for what would otherwise be a precluding offence is considered 'spent' under the law of the relevant jurisdiction, the conviction does not prevent the person from performing the functions and duties of an executive decision maker (see [5.8](#)).

Note: CHSP providers may use discretion to determine whether any **other** recorded convictions are relevant to performing the functions and duties of an executive decision maker. A CHSP provider's decision to allow a person with **any** recorded convictions to perform as an executive decision maker must be rigorous, defensible, and transparent. The overriding principle that providers must bear in mind, is to minimise the risk of harm to clients.

## **5.6 Committing an offence during the police certificate period**

CHSP providers must take reasonable measures to require their staff members, volunteers and executive decision makers to notify them if they are convicted of an offence in the period between obtaining and renewing their police check.

If an executive decision maker has been convicted of a precluding offence, they must not be allowed to continue as an executive decision maker.

## **5.7 Refusing or terminating employment on the basis of a criminal record**

If a CHSP provider refuses or terminates employment on the basis of a person's conviction for an offence, the conviction must be considered relevant to the inherent requirements of the position. If in any doubt, CHSP providers must seek legal advice regarding the refusal or termination of a person's employment on the basis of their criminal record.

Under the *Fair Work Act 2009* there are provisions relating to unfair dismissal and unlawful termination by employers. More information about the *Fair Work Act 2009* is available at: [Fair Work Commission](#).

Under the *Human Rights and Equal Opportunity Act 1986*, the Australian Human Rights Commission has the power to inquire into discrimination in employment on the ground of criminal record. If a person feels they have been discriminated against based on their criminal record in an employment decision, they may make a complaint to the Australian Human Rights Commission. More information on discrimination on the basis of criminal record is available at [Australian Human Rights Commission](#).

## **5.8 Spent convictions**

The aim of the Spent Conviction Scheme is to prevent discrimination on the basis of old minor convictions, once a waiting period (usually 10 years) has passed and provided the individual has not re-offended during this period.

Spent conviction legislation varies from jurisdiction to jurisdiction. In some circumstances or jurisdictions certain offences cannot be spent.

Convictions that are considered 'spent' under state, territory and Commonwealth legislation will not be disclosed on a police certificate unless the purpose for the application (e.g, working with children) is exempt from the relevant spent conviction scheme.

If a conviction has been 'spent' the person is not required to disclose the conviction.

More Information on the [Spent Convictions Scheme](#).

## 6. Police Check Administration

### 6.1 Record keeping responsibilities

CHSP providers must keep records that can demonstrate that:

- there is a police certificate, which is not more than three years old, for each staff member, volunteer and executive decision maker
- an application has been made for a police certificate where a new staff member, volunteer or executive decision maker does not have a police certificate
- a statutory declaration has been provided by any staff member, volunteer or executive decision maker who has not yet obtained a police certificate or was a citizen or permanent resident of a country other than Australia.

How a provider demonstrates their compliance with record keeping requirements is a decision for their organisation to make based on their circumstances.

The ACQSC may review this record keeping as part of *Expected Outcome 1.2 Regulatory Compliance* under the Aged Care Quality Standards.

### 6.2 Sighting and storing police certificates

The collection, use, storage and disclosure of personal information about staff members and volunteers must be in accordance with the *Privacy Act 1988* (Commonwealth).

State and territory privacy laws can also impact on the handling of personal information such as a police certificate. Further information about privacy is available at the [Office of the Australian Information Commissioner](#).

When individuals obtain their own police certificate, or employment agencies hold police certificates, CHSP providers must keep on file:

- an original or a certified copy of the police certificate
- record the information and reference number.

If it is impossible to assess a person's police certificate for any reason, the individual may be required to obtain a new police certificate to meet responsibilities under the CHSP police check procedure.

### 6.3 Cost of police certificates

The payment of the cost of obtaining a police certificate is a matter for negotiation between the service provider and the individual.

Individuals may be able to claim the cost of the police certificate as a work-related expense for tax purposes. Further advice on this issue is available from the [Australian Taxation Office](#).

Volunteers may be eligible to obtain a police certificate at a reduced cost whether the certificate is requested by an individual or by a service provider on behalf of a volunteer. This must be confirmed with the agency issuing the police certificate.

## **6.4 Obtaining certificates on behalf of staff, volunteers or executive decision makers**

A person may provide a police certificate to the service provider or give consent for the service provider to obtain a police certificate on their behalf.

CHSP providers can obtain consent forms from the relevant police services or accredited agencies. In some jurisdictions, parental consent may be required to request a police certificate for an individual under 18 years old.

## **6.5 Police certificate expiry**

Police certificates for all staff, volunteers and executive decision makers must remain current and need to be renewed every 3 years before they expire.

If a police certificate expires while a staff member is on leave, the new certificate must be obtained before the staff member can resume working at the service.

It is the responsibility of the service provider to ensure that staff have a new police certificate prior to the expiry date. CHSP providers must note that the application or renewal process can take longer than 8 weeks.

## **6.6 Documenting decisions**

Any decision taken by a service provider must be documented in a way that can demonstrate to an auditor the:

- date the decision was made
- reasons for the decision
- people involved in the decision (i.e. the service provider, the individual, a legal representative, board members etc).

## **6.7 Monitoring compliance with police check requirements**

CHSP providers must have policies and procedures in place to demonstrate suitable management and monitoring of the police certificate requirements for all staff members, volunteers, and executive decision makers. This includes:

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