

Accountability Principles 1998

Part 4 Requirements relating to certain Staff members and Volunteers

Excerpt:

1.18 Definitions

Staff member, of an approved provider, means a person who:

- (a) has turned 16; 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 under the control of the approved provider; and
- (c) has, or is reasonably likely to have, access to care recipients.

Examples of persons who are staff members:

- key personnel of the approved provider
- employees and contractors of the approved provider who provide care to care recipients
- allied health professionals contracted by the approved provider to provide care to care recipients
- kitchen, laundry, garden and office personnel employed by the approved provider
- consultants, trainers and advisors for accreditation support or systems improvement who are under the control of the approved provider.

Examples of persons who are not staff members:

- 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 who perform work otherwise than under the control of the approved provider (that is, as independent contractors).

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; 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 or, if the person is a full-time student, has turned 18.



Australian Government

Department of Health and Ageing

**CLARIFICATION OF THE REVISED POLICE CHECK ARRANGEMENTS
APPLICABLE FROM 1 JANUARY 2009**

Peak organisations have asked for clarification regarding police checks for contractors, in particular trades people who perform work otherwise than under the control of the approved provider (eg an independent contractor such as a plumber or electrician or delivery person) and who therefore do not fall under the definition of a ‘staff member’.

The following information has been provided to clarify the meaning of “under the control of” in relation to Part 4, Section 1.18 of the *Aged Care Principles* which defines staff member of an approved provider.

The intention of this amendment was to clarify for approved providers that contractors who were utilised on an ‘ad hoc’ basis are not required to have police checks.

The issue of whether a person is under the control of an entity is generally decided on the basis of the degree of control that is exercised over the person’s work.

The indicators approved providers can use as a guide to establish whether a person is an employee or an independent contractor, include:

- the service provider has an ABN;
- the service provider advertises his or her services;
- the service provider has clients other than the approved provider;
- the approved provider does not determine the working hours and wages of the service provider;
- the approved provider does not make superannuation payments on behalf of the service provider; and
- the approved provider does not pay the service provider holiday pay or sick leave.

A precise determination of whether a contractor is under the control of an aged care service provider can be difficult and whether someone is an employee or an independent contractor is a matter that might ultimately be determined by the courts.

However the policy intention is to allow for reasonable judgements to be made. When for example, an allied health professional regularly provides services to clients of an approved provider at a date and time determined by the approved provider, under a contractual arrangement, it would be expected that arrangement makes a provision for the allied health professional to have a police check.

If however the allied health professional provided ad hoc services to clients of the approved provider at a time and date determined by the allied health professional, or at the request of the care recipient, then a police check would not be required.

The police check policy is not intended to extend the requirement to people contracted on an ad-hoc or one-off basis, to provide services such as plumbing, electrical, removalists services and the like. Tradespeople and allied health professionals engaged on an 'ad hoc' basis by the approved provider (for example, to repair an appliance or to provide a 'one off' service at a date and time determined by the person providing the service) do not require police checks.

However those providing ad hoc services should be subject to appropriate supervision to ensure that the approved provider meets its responsibility to ensure the health, safety and well-being of care recipients.

This matter represents an area of potential significant risk to the quality care outcomes for service recipients and directly relates to an approved providers' duty of care. Therefore, in establishing service agreements with service providers who have direct access to care recipients, such as podiatrists and physiotherapists, approved providers are encouraged to consider the appropriateness of police check requirements in meeting their obligation to protect the health, safety and well-being of those care recipients.

Any person who does not have, and is not likely to have, access to care recipients is not required to have a police check.

A further question has been asked about the Explanatory Memorandum, Item 10, which deals with transitional issues. In this providers are given a 3 month period after 1 January 2009 to meet the new police check requirements.

Section 1.23 of the *Accountability Principles 1998* currently provides a 3 month transition period in which approved providers must ensure that staff members (previously working in a supervised capacity who may not have had a police check) have now obtained or applied for a police check.

In the interim, the staff member should lodge a police check application AND make a statutory declaration saying s/he has done so and has not committed any offences that would preclude her/him from working in a residential aged care facility.

These staff would also need to be supervised until their police checks have been processed/confirmed as clear.