



Australian Government

Department of Health and Ageing

Dear Approved Provider

POLICE CHECK RENEWAL - REMINDER

Staff and unsupervised volunteers of residential, community and flexible care services funded under the *Aged Care Act 1997* (the Act) who have access to care recipients are required to undergo a police check every three years to determine their suitability to provide aged care. The police check that satisfies the requirements under the Act is a *National Criminal History Record Check*. This arrangement was progressively implemented from 1 March 2007 and strengthened from 1 January 2009.

It is now three years since police check arrangements were first implemented. I wish to bring to your attention that police checks must remain current and need to be renewed every three years, before they expire.

The Aged Care Standards and Accreditation Agency, as part of its normal monitoring and audit processes, monitors approved provider compliance with the police check requirements. There have been cases in which providers have failed to ensure that police checks for staff or volunteers were current and in certain cases compliance action has been taken by this Department.

As part of the legislative requirements, approved providers need to have transparent policies and procedures in place to demonstrate suitable management and monitoring of the compulsory police checks. It is now timely for approved providers to check:

- the expiry dates of police certificates for all staff and volunteers;
- that procedures for detecting upcoming expiry of police checks are working effectively;
- that procedures ensure enough time has been allowed for a police check to be undertaken and returned before the expiry date; and
- storage, security and access policies are effective.

Police checks can be applied for through state or territory police services, the Australian Federal Police service, or CrimTrac accredited brokers (www.crimtrac.com.au). It should be noted that process times may vary between agencies and it may take more than a month to process a police check application. The Department has been informed that in some cases police checks may take eight weeks or more. You should factor this in to your renewal systems.

Where unforeseen circumstances have resulted in a police check expiring, approved providers should document the following:

- the date the police check application was made;
- the circumstance that gave rise to the unforeseen delay in the return of the police check;
- how existing policies and procedures have been reviewed to prevent this reoccurring; and
- details of the risk management actions taken by the approved provider.

An option the approved provider may consider as a risk management strategy to cover the period until the new police check is received is to ask the employee to sign a statutory declaration stating they have applied for a police check and they have not been convicted of any precluding offences. In these circumstances the approved provider may also need to consider whether supervision of the staff member or volunteer is appropriate until the new police check is received.

It is the responsibility of the provider to assess any risks associated with any interim measure, bearing in mind the potential time which may elapse between the expiry of the police check and when the new check is received. The Department has the obligation to monitor compliance with legislative requirements in the Aged Care Act and Principles. Compliance action may be taken where a provider does not meet its obligations; however, each case is considered on its merits, taking into account all relevant facts and circumstances.

Attached to this letter is an excerpt from the *Accountability Principles 1998* which provides definitions for staff members and volunteers, and the precluding offences. Also attached is departmental advice on the classification of independent contractors.

Further information on police checks in aged care including the Department's *Police Certificate Guidelines for Aged Care Providers* and a link to the *Accountability Principles 1998* is provided on the Department of Health and Ageing's website and can be found by following the links at www.health.gov.au/oacqc.

If you or any of your staff or volunteers require further information or clarification on police check matters, please contact the Department of Health and Ageing through the Aged Care Information Line on: 1800 500 853.



Carolyn Smith
First Assistant Secretary
Office of Aged Care Quality and Compliance
16 April 2010

Encl:

- Excerpt from the *Accountability Principles 1998* on definitions and precluding offences
- Clarification on independent contractors

Excerpt from the Accountability Principles 1998

Part 4 Requirements relating to certain Staff members and Volunteers

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.

1.19 Conditions for all new staff members and volunteers

An approved provider must not allow a person to become a staff member or volunteer unless the approved provider is satisfied that:

- (a) subject to section 1.22, there is for the person a police certificate that is dated not more than 3 years before the day on which the person first becomes a staff member or volunteer; and
- (b) the police certificate does not record that the person has been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, an other form of assault.



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Police Check Requirements – Clarification of an Independent Contractor

Peak organisations have asked for clarification regarding police checks for independent contractors, in particular trades people who perform work which is not under the control of the approved provider (e.g. 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 Section is 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 independent contractor, include that:

- 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.

The policy intention is to allow for reasonable judgements to be made. For example, where 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 this arrangement makes a provision for the allied health professional to have a police check.

If however the allied health professional provides 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. Trades people 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.