

1. Police Checks - Providers are looking 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'. Can you clarify what you mean by "under the control of"?

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.

2. Transitional Arrangements - In the Explanatory Memorandum, Item 10 deals with transitional issues. In this providers are given a 3 month period after 1 January 2009 to meet the new police check requirements. There is no reference to this in the Guide and I have been advised of cases where the Agency has deemed a service non compliant because the requirements are not being fully met now. This is of concern and needs to be dealt with to ensure this doesn't continue.

As per Item 10 of the Explanatory Statement, 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.

The Department will raise this with the Agency. However, should providers have concerns with the Agency's interpretation of this provision they should also raise this with the Agency in the first instance.

3. Sanctions – The guide states that “the new sanction allows the Department to suspend an approved provider’s eligibility for subsidies for any person entering the service of the approved provider or for any service of the approved provider.” Is this saying that a sanction in one home means you can stop subsidy for any home the service

provides? I trust this is not the case and that the Q&A can clarify that as there are concerns about exactly what this means.

The amendment to this sanction was largely a technical amendment to ensure that the existing "no funding for new care recipients" operates to give better effect to the policy intent of the sanction, which is the restriction of payment of subsidy for new residents rather than the limitation of the provider's approved provider status.

The scope of this sanction existed prior to the amendments. This existing sanction ("no funding for new care recipients") that may be imposed under section 66-1(c) of the Act can be applied to:

- restrict the payment of subsidies in one or more of an approved provider's services to only those persons who were in the care of the approved provider at the time the sanction was imposed (66-1(c) (ii) of the Act or,
- restrict the payment of subsidies in all of the approved providers services to only those persons who were in the care of the approved provider at the time the sanction was imposed (66-1(c) (i) of the Act.

The Department will normally specify that the sanction applies only to the service where the non-compliance occurred unless there are special circumstances that would justify it being applied to more or all of the services operated by the approved provider. Such circumstances might include, for example, where the non-compliance is recurrent and of a very serious nature.

The amendments ensure that, if an approved provider on whom the sanction is imposed nevertheless commences providing care to new residents, the provider will have the same responsibilities under the Act towards the new residents as it has towards existing residents, provided the new resident is approved under Part 2.3 as a recipient of residential care.

4. Notifying the Department when residents are reported missing to police - this section is still unclear for providers particularly in relation to people with limited cognitive capacity. The other concern is whether, given people are allowed to be absent, whether this implies some form of restraint on residents.

The cognitive capacity of a care recipient has no bearing on an approved provider's responsibility to notify the Department where a resident is absent *without explanation* **and** the approved provider is sufficiently concerned to have notified the police.

This measure does not restrain or inhibit a resident's right to freely "come and go" from a service. It simply requires an approved provider to notify the Department when a person who usually comes and goes is missing and has not returned when expected, or a person whose movements are usually limited (for clinical reasons) is missing and the Home has decided that it is necessary to notify the police.

This measure is not intended to impact on the freedom of residents.

5. ACAT Assessments - there is concern about the assessment of a high level community care client being eligible to receive a CACP. I assume that funding in CACPs will not increase based on the client needs levels (as they do in residential care)? This means that community care providers accept a client with higher needs and will have resourcing and security of tenure issues (with a limited number of EACH/EACHD packages available). What information is there available on how the additional eligibility would work? Some statements need to be made to clarify how it will work and address the implications for community care providers.

New arrangements in relation to aged care assessments take effect on 1 July 2009. The Department is currently developing guidelines that will address these issues. These will be released in draft form to peaks, aged care providers and ACATs prior to the implementation of the new arrangements.