

Aged Care Services – Police Certificates

Scope

This Fact Sheet intends to provide information on recent legislative amendments to the *Accountability Principles 1998* under the *Aged Care Act 1997* which now requires staff and volunteers who have **direct and unsupervised access** to aged care recipients, to undergo police checks. This will affect work experience, vocational placement and work placement participants under the Department of Employment and Industrial Relations (DEIR) *Skilling Queenslanders for Work* initiative.

Background

The Australian Government announced, as part of the 2006/07 Federal Budget, that operators of aged care services subsidised under the *Aged Care Act 1997* 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 introduction of requirements to obtain police certificates for aged care staff and volunteers is part of an integrated package of measures aimed at greater security and protection for older people receiving Australian Government subsidised aged care services.

Amendments were made to the *Accountability Principles 1998* under the *Aged Care Act 1997* in December 2006 which gave effect to the requirements for police certificates.

The requirement for police checks will be phased in progressively with key dates listed below:

- From 1 March 2007, *all new staff and new volunteers* engaged after this time have a current (within 3 years) police check prior to commencing in the aged care service
- *Existing staff* (excluding volunteers) must have had a current police check or have lodged an application for a police check and completed a statutory declaration by 1 June 2007
- By 1 September 2007, all *existing volunteers* have had a police check or have lodged an application for a police check and have completed a statutory declaration.

Holders of current blue cards are considered to hold 'police certificates' as defined by the new legislation. However, if a blue card lapses, the person will be required to apply for a police certificate.

What is a police check?

A police check (national criminal history record check across all jurisdictions in Australia) is undertaken by State or Territory Police Services or the Australian Federal Police, and 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.

Before undertaking police checks

It will be critical that close liaison occurs between the DEIR-funded organisation/RTO and the host aged care service as each aged care service may differ as to what they may require in order to satisfy their legislative compliance obligations. For example, some may accept current blue card holders and others may demand that people have police certificates. Bearing this in mind, DEIR funded organisations/RTOs ought to allow at least 3 weeks for the processing of police check applications **before making any placements**.

Before proceeding, the DEIR funded organisation or the RTO must inform the participant how their information is to be used and stored and that the host organisation may request a copy of the police certificate be kept on their files in order to comply with their legislative obligations.

Refusal to obtain a police certificate and/or statutory declaration where applicable will preclude a person from employment in aged care.

Who can apply?

Individuals must apply for their own police check. It is not possible for a DEIR-funded organisation or an RTO to apply on behalf of *Skilling Queenslanders for Work* participants. Participants must be over the age of 18 as Queensland Police do not conduct police checks for people under 18 years of age. For those young people under 18, other forms of background checking, such as referee reports will be particularly important in cases where these young people will be working directly with aged care recipients.

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

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

This is in addition to a current Australian jurisdiction police certificate which lists only convictions recorded in Australian jurisdictions.

DEIR-funded organisations or RTOs may co-ordinate the application and certification of identity for participants but the police certificate will be sent to the individual and it becomes their responsibility to share the information with the DEIR-funded organisation or RTO. Host organisations need to sight an original or a certified copy of the police certificate and may request that a copy be kept on their files.

People can complete an application for a police check at their local police stations at a cost of \$40.25. The application may take approximately 2-3 weeks to process and be sent to the applicant.

The costs associated with a police certificate application can be covered from DEIR grant funds.

Assessment of police certificates

Who makes the assessment as to whether a person is suitable?

For a **work placement** it is the responsibility of the **DEIR-funded organisation** which intends to place a participant into aged care services to make the decision as to whether a person is deemed suitable to work or volunteer in aged care services.

However, for **work experience** or **vocational placement**, it becomes the responsibility of the RTO to make the decision.

Key points to consider when assessing police certificates:

- 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
- Information about a person's criminal record should be stored in a private and confidential manner.

Who is not suitable to provide 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:

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

Any person with a conviction for the serious offence 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.

What about those people who have other convictions and offences?

When assessing a person with other convictions and offences recorded on their police certificate, the organisation 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.

An organisation's decision to place 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.

This approach taken by the organisation would need to be considered as consistent with natural justice, procedural fairness and equity principles. This means that assessment decisions are balanced, fair and just.

Further Information

More information on applying for and the assessment of police certificates can be obtained from:

www.police.qld.gov.au/services/purchase/polcert.htm

[www.health.gov.au/internet/wcms/publishing.nsf/Content/AF5E84C758509F54CA2572490012C48C/\\$File/Police%20Check%20Guidelines%20for%20Approved%20Providers%20of%20Aged%20Care%20-%20%20FINAL%20December%202006.pdf](http://www.health.gov.au/internet/wcms/publishing.nsf/Content/AF5E84C758509F54CA2572490012C48C/$File/Police%20Check%20Guidelines%20for%20Approved%20Providers%20of%20Aged%20Care%20-%20%20FINAL%20December%202006.pdf)