



Police Certificate Guidelines

March 2017

Department of Health

*Better health and wellbeing for all Australians,
now and for the future generations.*



Australian Government

Department of Health

Date	Summary of changes
March 2017	Australian Criminal Intelligence Commission replaced CrimTrac. Department of Health replaced Department of Social Services. Removal of Department of Social Services postal address. Inclusion of paragraph under Introduction section.

Police Certificate Guidelines

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1 INTRODUCTION

These Guidelines have been developed to assist approved providers with the management of police check requirements under the *Accountability Principles 2014* (the Accountability Principles) made pursuant to the *Aged Care Act 1997* (the Act).

Police check requirements were implemented in 2007 and strengthened in 2009 as part of the Australian Government's ongoing commitment to protect the health, safety and wellbeing of vulnerable aged care recipients.

Police checks are intended to complement robust recruitment practices and are part of an approved provider's responsibility to ensure all [staff](#) and [volunteers](#)¹ are suitable to provide care to the aged.

Approved providers are also responsible for having appropriate systems and processes in place in relation to visitors, health professionals and contractors. An approved provider may implement additional requirements that relate to people accessing their premises.

¹ For more information please see 4.3 Definition of a staff member; and 4.7 Definition of a volunteer

2 LEGISLATIVE REQUIREMENTS

The Act provides a legislative framework for Commonwealth subsidised aged care services. The Aged Care Principles provide specific details about what is required or permitted under the Act.

Approved providers have a responsibility under the Act to familiarise themselves with these provisions, along with any state or territory specific legislation. All Commonwealth legislation is available on the [Commonwealth Law](#) website.

- Part 6 of the *Accountability Principles 2014* sets out the police check requirements.
- Sections 9 and 10 of the *Records Principles 2014* describe the types of records that need to be kept by approved providers to meet the legislative requirements, and the duty to keep records in accordance with the *Privacy Act 1988*.
- Schedule 2 of the *Quality of Care Principles 2014* (the Accreditation Standards) sets out the requirement for approved providers to have systems in place to identify and ensure compliance with all relevant legislation. This includes state and territory specific legislation.
- Schedule 4 of the *Quality of Care Principles 2014* (the Home Care Common Standards) sets out the requirement for approved providers to have systems in place to identify and ensure compliance with all relevant legislation. This includes state and territory specific legislation.
- Part 4 of the *Grant Principles 2014* sets out the requirements for Community Visitors Scheme (CVS) auspices.

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 two terms are often used interchangeably in aged care.

3.2 *Police certificate requirements*

A police certificate that satisfies requirements under the Act is a nationwide assessment of a person's criminal history prepared by the Australian Federal Police or a state or territory police service called a National Police Certificate (NPC). A National Police History Check (NPHC) is a check prepared by an Australian Criminal Intelligence Commission (ACIC) accredited organisation.

For more information about assessing police certificates, including the different types, please see section 5 [Assessing a Police Certificate](#).

3.3 *Australian Criminal Intelligence Commission checks*

National Police History Checks prepared by ACIC accredited organisations are considered by the Department as being prepared on behalf of the police services and therefore meet the requirements under the Act.

More information about ACIC is available at: <https://www.acic.gov.au/>.

3.4 *Statutory declarations*

Statutory declarations can only be accepted in two instances:

- for essential new [staff](#) and [volunteers](#)² who have applied for, but not yet received, a police certificate; or
- for any staff or volunteers who have been a citizen or permanent resident of a country other than Australia after turning 16.

In these instances, a staff member or volunteer can sign a statutory declaration stating that they have never, in Australia or another country, been convicted of murder or sexual assault, or convicted of, and sentenced to imprisonment for, any other form of assault.

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

A statutory declaration template and more information about statutory declarations are available at this [website](#).

² For more information please see 4.3 Definition of a staff member; and 4.7 Definition of a volunteer

4 STAFF, VOLUNTEERS AND CONTRACTORS

4.1 Staff and volunteers

Police certificates, not more than three years old must be held by:

- all staff members who are reasonably likely to have access to care recipients, whether supervised or unsupervised; or
- volunteers who have unsupervised access to care recipients.

4.2 Approved provider key personnel

Key personnel of approved providers are also required to undergo police checks. Obtaining police checks for key personnel is a separate process and has different assessment criteria than for aged care staff and volunteers. For more information about police check requirements for key personnel, please visit the [Department of Health](#) website or email: key.personnel@health.gov.au

4.3 Definition of a staff member

A staff member is defined in section 4 of the Accountability Principles as a person who:

- a) is at least 16 years old; 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 staff members include:

- key personnel of the approved provider;
- employees and contractors of the approved provider who provide care to recipients (this includes all staff employed, hired, retained or contracted to provide services under the control of the approved provider whether in the residential aged care setting, a community setting or in the care recipient's own home);
- allied health professionals contracted by the approved provider to provide care to recipients;
- kitchen, cleaning, laundry, garden and office personnel employed by the approved provider either directly or through a contract agency; and
- consultants, trainers and advisors for accreditation support or systems improvement who are under the control of the approved provider.

4.4 Definition of non-staff members

Under section 4 of the Accountability Principles, individuals who are not considered staff members include:

- 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; and
- trades people who perform work otherwise than under the control of the approved provider (that is, independent contractors). For example, plumbers, electricians or delivery people who are utilised on an 'ad hoc' basis.

4.5 Contractors

Where an approved provider has a contract with an agency that provides staff, the individuals may be considered staff members under the Act, including where suppliers sub-contract work to others. The contract between the agency and the approved provider should state that any staff, provided they are considered staff members under the Act, must have a current police certificate that does not preclude them from working in aged care.

Providers must meet their responsibilities under the Act. This includes the requirement that providers who subcontract services to other organisations must be **satisfied** that the individuals providing the services meet police certificate requirements.

For more information about assessing police certificate requirements for contractors, please see section 5 [Assessing a police certificate](#).

4.6 Independent contractors

Police check requirements are not intended to extend to people engaged on an adhoc basis. Trades people engaged to provide a service at a date and time determined by the person providing the service generally do not require police checks. The policy intention is to allow for reasonable judgments to be made.

Approved providers have an overarching responsibility to protect the health, safety and wellbeing of care recipients, and independent contractors should be subject to appropriate supervision.

Approved providers can use the following indicators as a guide to establish whether a person is an independent contractor:

- 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;
- the approved provider does not pay the service provider holiday pay or sick leave.

The difference between a contractor and an independent contractor is generally decided on the basis of the degree of control that is exercised over the person's work. A precise determination of whether a contractor is under the control of an approved provider can be difficult, and whether someone is a staff member or an independent contractor is a matter that might ultimately be determined by the courts.

A Contractor Decision Tool is available at this [website](#) to assist employers to determine whether an individual is a staff member or an independent contractor.

4.7 Definition of a volunteer

Under section 4 of the Accountability Principles, a volunteer is defined as 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) is at least 16 years old or, if the person is a full-time student, is at least 18 years old.

Examples of persons who are not volunteers under this meaning include:

- full-time students under the age of 18;
- persons who are expressly or impliedly invited into the aged care service by a care recipient (for example, family and friends of the care recipient);
- volunteers who only have supervised access to residents (for example, persons who volunteer in an aged care service to read to care recipients, but are not alone with any one care recipient).

4.8 New staff

While approved providers should aim to ensure all new staff members and volunteers have obtained a police certificate before they start work, the legislation does provide arrangements for commencing work prior to receipt of a police certificate in exceptional circumstances.

Section 49 of the Accountability Principles enables a person to start work prior to obtaining a police certificate and pending an assessment of any criminal conviction identified in the certificate if:

- the care or other service to be provided by the person is essential; and
- an application for a police certificate has been made before the date on which the person first becomes a staff member or volunteer; and
- until the police certificate is obtained, the person will be subject to appropriate supervision during periods when the person has access to care recipients; and
- the person makes a statutory declaration stating that they have never been:
 - a) convicted of murder or sexual assault; or
 - b) convicted of, and sentenced to imprisonment for, any other form of assault.

In such cases, the approved 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 supervised;
- how supervision will occur in a range of working conditions, e.g. during night shifts and holiday periods when supervisory staff numbers may be limited.

4.9 Staff and volunteers who have resided overseas

Staff members and volunteers who have been citizens or permanent residents of a country other than Australia at any time after turning 16 must make a statutory

declaration before starting work in any aged care service, stating that they have never:

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

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

4.10 Community Visitors Scheme (CVS) volunteers

CVS volunteers are required to undergo a police check and these are undertaken and assessed by the CVS auspices prior to a volunteer commencing with the program. Community Visitors will provide approved providers with a 'Letter of Introduction' confirming the date of expiry of their police check and that they have made a statutory declaration if they have lived permanently overseas after they turned 16. Provided that the letter is current, the home is not required to view the original police certificate or statutory declaration. The home may keep a copy of the 'Letter of Introduction' to assist with compliance requirements.

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.

An approved provider must be satisfied that a certificate is genuine and has been prepared by an Australian Police service or an ACIC accredited organisation.

The Department does not provide advice on whether a police certificate meets the requirements under the Act. It is up to the approved provider to be satisfied that a certificate meets the requirements, and enables them to assess a person's criminal history. Any police certificate decision should be documented by the approved provider. For more information on record keeping, and the sighting and storing of police certificates, please see section 6 [Police Check Administration](#).

5.2 *Purpose of a police certificate*

A police certificate that best satisfies requirements under the Act is one obtained for the purposes of aged care. However, a national criminal history record check undertaken for another purpose will generally also satisfy the requirements. It is best practice to specify the purpose of the police check to the police service or ACIC organisation 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; or
- 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. For more information about spent convictions, please see section 5.8 [Spent convictions](#).

5.4 *Assessing precluding offences*

The offences that preclude a person from working in aged care are:

- a conviction for murder or sexual assault; or
- a conviction of, and sentence to imprisonment for, any other form of assault.

Any person with a conviction for a precluding offence must not be employed, contracted, hired, retained, or accepted as an unsupervised volunteer in an aged care service subsidised by the Commonwealth.

The precluding offence definitions are deliberately broad to account for the effect different jurisdictional law has on the accepted terminology for a type of offence. Murder and all forms of sexual assault are considered suitably serious to warrant absolute preclusion from employment; and the reference to being sentenced to imprisonment for any other form of assault is intended to preclude only the more serious forms of physical assault.

5.5 Assessing other offences

Approved providers should ensure they have policies and procedures in place to assess police certificates that record convictions for offences not considered precluding under the Act. An approved provider's decision regarding the employment of a person with any recorded convictions must be rigorous, defensible and transparent.

For more information please see section 5.7 [Refusing or terminating employment on the basis of a criminal record](#)

The following considerations are intended as a guide only to assist approved providers in assessing a person's police certificate for their suitability to be either a [staff member](#) or [volunteer](#)³ in an aged care service:

Access: the degree of access to care recipients, their belongings, and their 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. residential, community or home based settings.

Relevance: the type of conviction in relation to the duties a person is, or may be undertaking. An approved provider should 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.

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; and 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.

³ For more information please see 4.3 Definition of a staff member; and 4.7 Definition of a volunteer

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, for example, modification of duties.

5.6 *Committing an offence during the three year police certificate expiry period*

Approved providers must take reasonable measures to require each of their staff members and volunteers to notify them if they are convicted of a precluding offence in the three year period between obtaining and renewing their police check. If a staff member or volunteer has been convicted of a precluding offence they must not be allowed to continue as a staff member or volunteer.

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

Approved providers are legally bound under the Act not to allow a person to become, or continue as, a staff member or volunteer if their police certificate records a precluding offence. If in any doubt, approved providers should 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 on the [Fair Work Commission](#) website. In addition, under the *Australian Human Rights Commission 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 of an approved provider, they may make a complaint to the Australian Human Rights Commission. Further information on discrimination on the basis of criminal record is available on the website for the [Australian Human Rights Commission](#).

5.8 *Spent convictions*

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 (for example, working with children) is exempt from the relevant spent conviction scheme.

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

6 POLICE CHECK ADMINISTRATION

6.1 Record keeping responsibilities

Approved 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](#) or [volunteer](#)⁴;
- an application has been made for a police certificate where a new staff member or volunteer does not have a police certificate; or
- a statutory declaration has been provided by any staff member or volunteer who has not yet obtained a police certificate or was a citizen or permanent resident of a country other than Australia.

How an approved provider demonstrates their compliance with record keeping requirements is a decision for their organisation to make, based on their circumstances. 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 from the [Office of the Australian Information Commissioner](#).

The Department recommends that approved providers keep a register of their staff and volunteers' police check information, including police certificate reference numbers and expiry dates. A register template is provided at [Appendix 2](#).

6.2 Sighting and storing police certificates

When individuals undertake to obtain their own police certificate, or employment agencies hold police certificates, approved providers should sight an original or a certified copy of the police certificate and the information and reference number should be recorded on file.

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 in order for the approved provider to meet their responsibilities under the Act.

6.3 Cost of police certificates for staff and volunteers

Approved providers have a responsibility to ensure all staff members and volunteers undergo police checks. However, the payment of the cost of obtaining a police certificate is a matter for negotiation between the 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](#) through their website.

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

⁴ For more information please see 4.3 Definition of a staff member; and 4.7 Definition of a volunteer

6.4 Obtaining certificates on behalf of staff or volunteers

A person may provide a police certificate to the approved provider or give consent for the approved provider to obtain a police certificate on their behalf. For example, in Queensland only Government agencies with legislative authority can obtain police certificates on behalf of individuals.

Approved providers can obtain consent forms from the relevant police services or an ACIC accredited organisation. In some jurisdictions, parental consent may be required to request a police certificate for an individual under the age of 18 years.

6.5 Police certificate expiry

Police certificates for all staff and volunteers must remain current and need to be renewed every three 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. Approved providers should note that the application or renewal process can take longer than eight weeks.

6.6 Documenting decisions

Any decision taken by an approved provider should be documented in a way that can demonstrate to an auditor the date the decision was made, the reasons for the decision, and the people involved in the decision, i.e. the approved provider, the individual, a legal representative, board members etc.

6.7 Monitoring compliance with police check requirements

The Australian Aged Care Quality Agency, as part of its normal audit process in relation to the Accreditation Standards and the Home Care Standards, will monitor compliance with the police certificate requirements in residential aged care and home care services. The Department also monitors compliance to ensure approved providers meet their responsibilities under the Act.

Approved providers must have policies and procedures in place to demonstrate suitable management and monitoring of the police certificate requirements for all staff members and volunteers, for example:

- three-year police check renewal procedures;
- appropriate storage, security and access requirements for information recorded on a police certificate; and
- evidence of an approved 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.

For more information please see section 6.1 [Record keeping responsibilities](#).

7 FURTHER INFORMATION

If you require advice on police check requirements, please email the Aged Care Police Checks inbox at: agedcare.police.checks@health.gov.au.

Or

Aged Care Police Checks
Department of Health
GPO Box 9848,
Canberra ACT 2601, Australia

8 APPENDICES

APPENDIX 1 - POLICE SERVICE CONTACT DETAILS

Police Service	Phone number	Website
Australian Federal Police (for ACT)	(02) 6140 6502	http://www.afp.gov.au/what-we-do/police-checks/national-police-checks.aspx
New South Wales Police Service	(02) 8835 7888	http://www.police.nsw.gov.au/about_us/structure/specialist_operations/forensic_services/criminal_records_section
Victoria Police	1300 881 596	http://www.police.vic.gov.au/content.asp?Document_ID=274
Queensland Police Service	(07) 3364 6705	http://www.police.qld.gov.au/services/purchase/polcert.htm
Western Australia Police Service	131 444	http://www.police.wa.gov.au/ABOUTUS/OurServices/ClearanceCertificates/tabid/1202/Default.aspx
South Australia Police	(08) 7322 3347	http://www.sapolice.sa.gov.au/sapol/services/information_requests/national_police_certificate.jsp
Tasmania Police	(03) 6230 2111	http://www.police.tas.gov.au/services-online/police-history-record-checks/
Northern Territory	1800 723 368	http://pfes.nt.gov.au/Police/Community-safety/SAFE-NT.aspx

