



**Aged & Community  
Services • Australia**

## **ELDER PROTECTION**

# ***Policies and Procedures Resource Guide***

**October 2007**



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# 1. Introduction

The protection of older people is an important public policy issue which has received significant attention throughout 2006. While abuse is relatively uncommon in aged and community care services it is important that organisations providing services have clear policies and procedures in place to manage and respond to allegations and/or actual cases of abuse.

Most aged and community care providers already have policies and procedures in place. These may be a stand alone elder abuse policy and/or aspects of the management of abuse issues may be incorporated in other relevant policies, such as a Human Resource Policy.

ACSA has been proactively working on elder protection issues with industry and has produced a number of documents to assist its members in dealing with this issue including:

- “Elder Abuse: A Holistic Response Background Paper”
- “Confronting Elder Abuse: An Aged Care Industry Response”
- “Protecting Older People: How to recognise and address elder abuse” (a brochure for workers)

This document is another resource in this series. It aims to provide information on developing or updating policies on elder protection and related issues based on industry practice.

To develop this resource sheet ACSA reviewed a number of documents, policies and standards to distil common practice and highlight issues that need to be considered and addressed in policies.

Generally the material contained in this resource can be used by residential and community care services. Providers may need to contextualise the material in their own policy statements.

This resource guide has three distinct sections:

- 1. Elder Protection Policies & Procedures;**
- 2. Related Policy Development Considerations – Human Resources; and**
- 3. A list of resource and reference documents.**

The Australian Government has now passed legislation to enact a range of elder abuse measures which has required changes to the *Aged Care Act* and *Principles*. This Resource Guide makes reference to and incorporates the requirements of aged care providers in relation to:

- Police checks; and
- Compulsory reporting.

The Department of Health and Ageing have released a Fact Sheet and Guidelines on Police Checks as well as Guidelines on compulsory reporting requirements and details from these are included in this Guide. This Resource Guide should be read in conjunction with these Guidelines.

The Resource Guide has been prepared in good faith by ACSA however ACSA cannot be responsible for the use of the advice contained in this document and the resources it references. If in doubt you should obtain your own legal advice specific to your circumstances.

## 2. ELDER PROTECTION POLICY DEVELOPMENT

An excellent starting place for developing a policy on elder protection is the model policy “Abuse of Older People: Preventing and Responding to the Abuse of Older People who live in Residential Aged Care” developed and generously made available to industry by The Benevolent Society. This policy was developed before the introduction of Australian Government requirements on police checks and compulsory reporting and would need to be modified to incorporate these requirements. Nevertheless it remains a useful starting point and is attached to this Guide. It can also be accessed at [www.bensoc.org.au/uploads/documents/model-policy-abuse-of-older-people-jun2006.doc](http://www.bensoc.org.au/uploads/documents/model-policy-abuse-of-older-people-jun2006.doc)

From a review of other policies and documents on elder abuse some additional elements for inclusions in policy came to light and they are outlined below.

### Duty of Care

The importance of reinforcing the worker’s duty of care is highlighted in much of the documentation about elder abuse. Specific policy inclusions include highlighting that:

- duty of care governs the advice provided by a worker to an older person and that no worker should provide advice beyond their competence or beyond what would be expected in their position. Organisations must be specific about the advice that can be provided.
- becoming aware of an abusive situation and not acting in accordance with organisational policy, is a breach of the duty of care.

### Client Confidentiality

Policies need to clearly communicate confidentiality requirements in relation to alleged, suspected or actual cases of elder abuse including that:

- confidentiality is between the client or carer and the organisation, not the individual worker.
- The client has the right to decide what personal information is revealed outside of the organisation except in relation to “reportable assaults” in residential care facilities as defined by the Aged Care Act (refer pg x for further information). However there are (additional) circumstances where confidentiality can be overridden in residential or community services including when:
  - There is an obligation not to conceal a completed or intended crime;
  - Disclosure may be required in the person’s interest; and
  - There is a duty to warn a third party who is in danger (although generally a person’s consent must be obtained to pass information on to a third party).

The policy should state that workers must inform clients of the circumstances in which confidentiality cannot be maintained.

The organisation needs to have regard to relevant legislation applying in each State and Territory.

## Responsibilities

Some policies are quite specific about responsibility levels in terms of:

- responsibilities for developing, maintaining and communicating relevant policies and procedures; and
- reporting of abuse for particular classes of workers.

### ***Policy & Procedure Responsibilities***

- **Boards/Committees of Management** have the responsibility to ensure policies are in place.
- **Organisational Management (CEO/General Manager)** has the responsibility for ensuring that policies and procedures, systems and processes to assist identification and appropriate action are developed, in place and observed by staff. (Compliance auditing could be considered.)
- **Care Management** have the responsibility to ensure staff are aware of policies and procedures, systems and processes and observe them.
- **Staff** have the responsibility to comply with organisation's policies, procedures, systems and processes. If unclear about the policies they must seek clarification from their immediate supervisor.

## Reporting

### ***General Responsibilities***

- If a volunteer or any staff suspects or identifies that abuse is occurring they are responsible for:
  - informing the client/carer of the need to talk to their service co-ordinator/manager;
  - informing their co-ordinator/manager; and
  - completing initial documentation.
- When a Co-ordinator/Manager/DON receives reports from staff/volunteers they are responsible for:
  - completion of documentation;
  - required record keeping; and
  - liaison with client/carer re reporting and further action (e.g. with Police).

The above outlines standard or good practice for organisational management of elder abuse reports. However Australian Government compulsory reporting requirements identify a number of people to whom staff can choose to report and these guidelines take precedence. For more details on compulsory reporting requirements go to pg 6 and refer to Australian Government Guidelines.

### ***Reporting System***

All services require a clear reporting system to be in place to handle any elder abuse incidents. The system to be used must be clearly communicated to all staff and volunteers. Residential care providers will need to ensure that the additional specific processes for "reportable assault" (see page 7 for details) are also known and understood by all staff.

It is recommended that, in the first instance, the report is made to a senior staff member within the organisation. Residential care services must ensure that their staff are aware that they can report a "reportable assault" directly to the Department or the Police.

A policy and procedure for reporting abuse should:

- detail who staff should report abuse to (The Aged Care Amendment (Security & Protection) Act 2007 identify the following persons as appropriate to receive reports – the approved provider, a key personnel staff member, another person authorised by the approved provider, the police and the Department of Health & Ageing);
- what action staff receiving a report of abuse must take;
- outline the timeframe in which the report must be made;
- include procedures for informing relatives/guardians/holders of power of attorney etc
- include documentation requirements such as:
  - the date of the allegation or suspicion;
  - a brief description of the allegation or circumstances giving rise to the suspicion;
  - information on reports made/not made – including any associated record/file numbers;
  - action taken and resolution/outcomes; and
  - requirements and formats for suspected and actual cases.

In addition residential aged care services need to include the following in a reporting system:

- outline an investigation procedure/process to determine whether it is a “reportable assault” or subject to exemption from those requirements;
- information on reports made or an explanation about why a report wasn’t made;
- to whom the report was made;
- any record/report number given by the Police or the Department;
- the relationship with the discloser (e.g. staff member);
- the name of the alleged offender if known;
- the offender (if known) relationship with the resident;
- action taken to support the affected persons and to protect other residents;
- where the incident occurred;
- when the provider became aware of the incident;
- who else is aware of the incident;
- whether protection is required for the discloser; and
- action taken and outcomes achieved.

The Departmental Guidelines provide suggested templates to assist residential care providers capture the information they will require.

Consolidated records of all incidents involving allegations or suspicions of reportable assaults must be kept by residential care providers as these records will be monitored by the Department and the Agency. This may be a useful record for all other providers to maintain as well.

Information and training for all staff on the reporting system and process should be provided on an ongoing basis.

Staff with responsibility for determining whether an assault is a “reportable assault” or exempt must receive training on the process, documentation required and steps to take as a result of the investigation.

### ***Record Keeping***

Secure storage of all documentation related to reports of elder abuse must be provided. The policy should outline what happens to the documentation if a suspected case is not confirmed (i.e. some organisations destroy the record if the case is not confirmed).

The documentation system should include adequate protection to keep the identity of the reporter/discloser private.

A person within your organisation should be given the responsibility for keeping all necessary records.

The record keeping system must comply with State/Territory or Commonwealth legislation including the *Privacy Act 1988*.

## **Managing Reports of Abuse**

### ***Reportable Assaults in Residential Aged Care***

A reportable assault means unlawful sexual contact, unreasonable use of force or assault on a resident in Australian Government subsidised aged care facilities (referred to throughout this document as residential care services.)

The term “unlawful sexual conduct” is used in the legislation and is intended to capture any sexual contact, without consent, that is unlawful under any Commonwealth, State or Territory law. This term has been used to avoid the use of specific terms, such as sexual intercourse, rape and sexual assault which are all defined differently in different legislation. It is not intended to cover situations where there is no physical contact.

Unreasonable use of force is intended to capture assault ranging from deliberate and violent physical attacks on residents to the use of unwarranted physical force on a resident. This would, for example, capture hitting, punching or kicking a resident regardless of whether this causes visible harms such as bruising.

The Departmental Guidelines recognise that there may be circumstances where a staff member is genuinely trying to assist a resident but the resident is injured because they bruise easily or have weak skin. Injury alone therefore may not provide conclusive evidence of either the use of unreasonable force or the seriousness of an assault.<sup>1</sup>

Residential care services are required to report allegations, suspicion of an actual “reportable assault” to the police and the Secretary of the Department of Health & Ageing as soon as is reasonably practicable but at least within 24 hours.

An allegation requires a claim or accusation to have been made and can be associated with physical evidence or the witnessing of an assault. Reporting suspicion allows reports to be made where staff observe signs that an assault may have occurred but without having evidence or having witnessed an assault.

Reports must be made within 24 hours to the:

- Department of Health & Ageing via the Aged Care Complaints Investigation Scheme on 1800 550 552. The line is staffed from 9 – 5 AEST on weekdays and 10 – 5 AEST on the weekends and public holidays. Outside of these hours reports are recorded on an answering machine which is regularly checked and actioned.
- Police – organisations are encouraged to discuss these reporting requirements with their local police and determine an appropriate method and protocol for reporting. In cases of unlawful sexual contact there may be a particular unit for reporting. ACSA State Associations may also be able to provide information and advice about reporting to the police.

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<sup>1</sup> Department of Health & Ageing *Compulsory Reporting Guidelines For Aged Care Providers* June 2007

It is suggested that organisations develop a facsimile template for reporting, which includes the information about the allegation or suspicion, and that this is also sent to the Department and the Police. This provides a better level of evidence in cases where there may be a dispute about receipt of a telephone report.

If the police do become involved in investigating an allegation or suspicion and wish to interview a resident who has a cognitive or mental impairment the organisation should inform the resident and/or their representatives that they are entitled to support from an independent third party from the Office of the Public Advocate.

### ***Later Allegations***

The requirement to report assaults does not apply to later allegations which are:

- Related to the same, or substantially the same, factual situation or event as an earlier allegation;
- Has previously been reported to the Police or the Department;
- Where different people report the same event; and/or
- The same person makes allegations repeatedly where these allegations have been followed up.<sup>2</sup>

The only exclusion to reporting such an assault is where resident to resident abuse occurs and the resident involved has previously been assessed by an appropriate health professional as suffering from a cognitive or mental impairment.

### ***Managing an assault exempt from reporting in residential care services***

Where a resident is assaulted by another resident and that person has an existing assessment of cognitive or mental impairment a report to the police and the Secretary of DHA does not have to be made.

Cognitive impairment means declining ability in judgement, memory, learning, comprehension, reasoning and/or problem solving and can be a result of conditions including dementia, delirium and/or depression.

The Criminal Code Act 1995 identifies that mental impairment includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

The assessment should have been undertaken by an ACAT, a residents GP, a registered nurse or other appropriate health professional such as a geriatrician, psycho-geriatrician, geriatric nurse or clinical psychologist. The assessment may have been undertaken in the residential facility, a community setting or a hospital.<sup>3</sup>

An appropriate staff member must be given the responsibility of determining whether an exemption can be made.

When an exemption is made arrangements for behaviour management of the resident must be put in place within 24 hours.

A behaviour management plan must be developed, monitored and reviewed by a qualified health professional and include the following information:

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<sup>2</sup> Ibid

<sup>3</sup> Ibid

- Environmental factors which contribute to, or cause, the behaviour;
- Possible health or medical factors which contribute to, or cause, the behaviour;
- Possible communication needs of the person which may be contributing to the behaviour; and
- What approaches are being considered, or are in place, including alternatives to restraint, for managing the behaviour.<sup>4</sup>

Careful documentation of the exemption decision backed up by a copy of the assessment of the cognitive or mental impairment and a record of the behaviour management approach adopted is required.

This exemption does not prevent an approved provider from reporting an assault to the Police or the Department where this may be the most appropriate response. Depending on the level of severity of an assault on a resident and in cases where a resident is seriously harmed the Department strongly encourages reporting.<sup>5</sup>

### ***Managing staff reporting abuse***

The organisation needs to develop policies and procedures to support staff reporting any suspicion or actual abuse they witness or of which they are aware. The policy should encourage a culture of reporting but discourage vexatious or false reports.

The policy should make clear that you support staff members who make disclosures and include information on:

- the obligations to report, particularly in relation to “reportable assaults” in residential aged care;
- how you will support the discloser, including keeping the identity of any discloser confidential; and
- your position on any victimisation of a discloser.

In addition residential care providers should:

- ensure that someone is qualified to assess whether a disclosure is a protected one, whether it must be reported and whether there is an exemption;
- allocate responsibility for protecting disclosers from victimisation or any detriment;
- establish responsibility for protecting the welfare of the discloser;
- establish systems for dealing with the disclosure of identity, victimisation and actual or threatened detriment; and
- put into place steps to deal with persons who are the subject of allegations which protect their rights.

The Departmental Guidelines outline the legal protection (from civil or criminal liability, victimisation, enforcement of a contractual remedy against the discloser) afforded to disclosers and the conditions to be met (being an approved provider or staff member, having disclosed to an appropriate/approved person and given their name, has reasonable grounds on which to report and makes the report in good faith) to be eligible for protection.

### ***Managing staff involved in abuse***

- The organisational policy should clearly state what will happen to any staff alleged to have committed an abusive act. This may include that workers suspected of abuse:
  - will not have contact with residents/clients until a thorough investigation has occurred;

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<sup>4</sup> Department of Health & Ageing *Compulsory Reporting Guidelines For Aged Care Providers* June 2007

<sup>5</sup> Ibid

- may be suspended from all duty;
- have the right to have the allegation put to the staff member;
- have the right of reply to the allegation; and
- have the right to representation.

## **The Role of the Department of Health & Ageing and The Agency with Reportable Assaults**

Both the Department of Health & Ageing and the Standards and Accreditation Agency may play a role in following up on reportable assaults. Neither of these agencies can investigate the reportable assault as a criminal offence – only the Police can do this.

### *Department of Health & Ageing*

The role of the Department is to ensure that the approved provider has not breached its responsibilities under the Act to ensure the health, safety and well being of residents, compliance with compulsory reporting requirements and that internal systems and protocols are in place and complied with. The following steps will be undertaken by the Department in their role:

- establish the detail, including when the assault took place and if it was reported within 24 hours;
- establish if a report has been made to the Police and make one where it has not;
- advise staff or the provider on the protections available where the discloser qualifies for such protection;
- establish that residents are not at further risk from the alleged perpetrator; and
- undertake an investigation to ensure that the approved provider has met their legislative responsibilities.

The Department can take compliance action where the legislative requirements for compulsory reporting are not met.

### **The Agency**

The Agency will monitor compliance with the compulsory reporting requirements through its usual audit and accreditation processes. This will include monitoring that processes are in place to encourage staff to report and monitoring record keeping. In addition the Agency will review the providers decisions on not reporting (exempt) assaults. Where a breach in compliance is identified the Agency will inform the Department.

## **Language Considerations**

Policies on elder protection may need to include the provision to arrange interpreter services to ensure the client understands what is happening and can be clearly understood.

## **Training/Support for Staff**

Training and support for staff on elder protection issues could be appropriately included in a specific policy on elder protection or captured as part of a broader organisation human resource or training policy.

The key points to include in either approach are:

- the provision of information and/or training the organisation provides or makes available to staff about elder abuse; and

- outlining any debriefing service/procedure for staff encountering abuse situations and how they can access it. Such a service could include:
  - Confidentially discussing the case and sharing frustrations and concerns;
  - Evaluating organisation/worker input to the case;
  - Information on the progress of the case;
  - Learn and share new ideas, skills and approaches for dealing with abuse cases; and
  - Input into organisations' continuous improvement processes for dealing with abuse cases.

Residential care services should develop specific training and information for all staff outlining the obligations for reporting assaults and the systems, policies and procedures you have developed for such reporting.

### 3. RELATED POLICY AREAS

Not all organisations will elect to develop a separate policy covering all aspects of their management of elder protection issues. There are related policy areas, such as human resource management, which should contain some aspects, such as the organisation's policy on employment screening, that impact or contribute to the good management of elder protection issues.

HR policies should generally include:

- Promotion of practices to protect the rights of clients and staff;
- Staff selection;
- Employment screening;
- Positive attitudes to older people and abuse prevention; and
- Performance management requirements with clear expectations of staff behaviour towards older people.

The Australian Government's proposed elder abuse measures include the introduction of police record checks for aged care employees. Many organisations already routinely require this to occur while others have a different approach to screening employees.

This section of the resource guide focuses on employment screening.

#### 3.1 Employment Screening

##### ***The Australian Standard<sup>6</sup>***

Standards Australia has produced an Australian Standard on Employment Screening (AS4811-2006) which is available for purchase from [www.standards.org.au](http://www.standards.org.au).

The Standard outlines the importance of the employment screening process highlighting that

- Informed consent for screening is required.
- Probity is a primary requirement and must be considered throughout the process and employment period.
- If a potential employee has lived overseas for a considerable period, the equivalent check for that country should be undertaken.
- It is better for the employment screening process to be finalised before hiring a person but this may not always be possible. Where it isn't possible the organisation should document why this is the case.
- The level of screening conducted should match the level of risk posed by a particular role.
- Employees should be required to advise their employer if their circumstances change during the life of their employment i.e. they are charged with a criminal offence.)

##### ***On the Record – Guidelines for the prevention of discrimination in employment on the basis of criminal record.***

The Human Rights and Equal Opportunity Commission (HREOC) has prepared the above guidelines which outline key points to be considered when assessing a police certificate.

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<sup>6</sup> Standards Australia AS4811-2006 "Australian Standard – Employment Screening", July 2006

The Guidelines also contain useful information in relation to requesting criminal record information from existing employees highlighting considerations and action if an employee failed to disclose their criminal record at recruitment stage. Where the criminal record is relevant to the job an employer may have grounds for dismissal but should consider:

- relevance to the job;
- the reasons for not revealing the criminal record;
- the employees work history; and
- obligations under unfair dismissal laws.

The Guidelines can be downloaded from the HREOC website at [www.humanrights.gov.au/human\\_rights/criminalrecord/on\\_the\\_record/index.html](http://www.humanrights.gov.au/human_rights/criminalrecord/on_the_record/index.html).

The *Workplace Relations Act 1996* includes provisions on unfair dismissal and unlawful termination.

Advice should be sought on a case by case basis on any potential termination of an employee and their entitlements.

### ***Police Record Checks***

Police record checks are a key component of a good employment screening process.

A Police check provides evidence of whether a person:

- 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 pending criminal charge.

Police record checks can be undertaken by the Australian Federal Police (AFP) or a State Police Authority. In addition there are organisations who offer to undertake police checks. Such organisations have an account with the AFP to enable the checks to be undertaken.

Police record checks can be instigated by an:

- individual (prospective) employee/volunteer who can then supply a copy of the record to the employer; or
- employer with the consent of an individual.

Where an organisation undertakes the police record check they must provide a copy of the police check to the individual.

### ***Procedures***

- Police record checks should only be carried out through the State, Territory or Federal police or a recognised authorised agent.
- The organisation's policy should specify who is responsible (individual/organisation) for obtaining the police record check, who sights the police record check and determines appropriateness for employment.
- The collection, storage, use and disclosure of personal information about individuals obtained through a police check is governed by the *Privacy Act 1988*. Organisations must ensure that their policies and practices meet these guidelines.

- Where the police record check is retained for a long period of time a conviction could become spent.<sup>7</sup> This means that these convictions are non-disclosable and should not be a consideration for any employment decisions. Information about spent convictions should be removed and/or kept securely in accordance with the *Privacy Act 1988*.

## 3.2 Other Employment Screening Policy Considerations

### ***Who is required to be screened?***

An organisation's policy should be clear about who is required to be screened prior to commencing employment. Many organisations already screen all staff and volunteers.

Where an organisation elects not to screen all staff and volunteers this should form part of an organisation's risk management policy.

Residential, CACP's, EACH, EACH-D, MPS and Transition Care providers (referred to throughout this section as Australian Government Funded Services) are now required to undertake a police check for:

- all people who are employed, hired, retained or contracted by an approved provider (whether or not for financial reward) to provide care or services within an aged care service; and
- all people who have, or are reasonably likely to have, unsupervised access to care recipients within an aged care service.

This will include all people over the age of 16 who work or provide services at the aged care service including:

- key personnel of the approved provider;
- employees and contractors such as allied health professionals who are contracted by the approved provider to provide on-site services to care recipients;
- employees and contractors who are contracted by the approved provider to provide services to care recipients in their own home;<sup>8</sup>
- consultants engaged by the approved provider who, in their role, may have unsupervised access to care recipients, for example, a trainer or advisor in Accreditation Support/Systems Improvement;
- staff who are not directly engaged by the approved provider but who work under the authority of the approved provider. For example, staff that have been made available to the approved provider by an employment agency;
- anyone who is working "on-site" at the aged care service regardless of whether they actually work directly with care recipients. For example, the requirement will apply not just to carers but also to kitchen and laundry staff, office staff and employee gardeners etc;
- volunteers who are organised by the provider (i.e. invited into the service by the provider) who have, or are reasonable likely to have, unsupervised access to a care recipient; and
- volunteers visiting care recipients under the Community Visitors Scheme.<sup>9</sup>

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<sup>7</sup> A spent conviction allows former offenders to "wipe the slate clean" after a relevant period of time, depending on the offence. Once a conviction has been "spent" a person is not required to disclose the conviction.

<sup>8</sup> Contract arrangements must include provision for police check requirements, imposing the Australian Government obligations on the contractor/supplier/broker.

<sup>9</sup> DHA "New Arrangements for Criminal History (Police) Check for Staff and Certain Volunteers Working in Australian Government Subsidised Residential Aged Care Homes and Community Care Services "Dec2006.

Police Checks are not required for:

- volunteers who are under the age of 16<sup>10</sup> (except where they are a full-time school student, then under the age of 18);
- people who are expressly or impliedly invited into the aged care service by a care recipient (for example, family and friends of the care recipient);
- visiting medical practitioners, pharmaceutical professionals and other allied health care personnel who are requested by, or on behalf of, the care recipient but not contracted by the approved provider. This includes those people who accompany the health professionals on visits to aged care services or are directed by them to visit the service; and
- people who do not have unsupervised access to care recipients such as contracted service providers (for example, a plumber who visits a service to fix a tap), consultants (for example, a management/administrative consultant advising an approved provider on matters other than resident care), or volunteers (for example, who read to care recipients but are not alone with one care recipient).<sup>11</sup>

If a potential employee has a police records check or similar not more than 3 years old organisations may decide to accept that rather than seeking another certificate.

If a (potential) staff member or volunteer has been a citizen or permanent resident of another country a Statutory Declaration in addition to a current Australian Police Record Check, is required to be provided stating:

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

Attachment 2 is an essential checklist which will assist you to identify all of the action required to ensure you comply with these requirements.

### ***Commencing Employment***

An organisation's policy should state that a satisfactory police record certificate check or similar should be obtained prior to commencement.

The policy should also outline what action the organisation would take where waiting for the certificate will cause operational difficulties. Options include making an offer of employment conditional on the organisation being satisfied with the police certificate when received. This requires the prospective employee/volunteer/contractor completing and signing a Statutory Declaration. Statutory Declarations must be made in accordance with the *Commonwealth Statutory Declarations Act 1959* and the *Commonwealth Statutory Declarations Regulations 1993*. An information sheet on Statutory Declarations and a sample form can be accessed at [www.ag.gov.au/statdec](http://www.ag.gov.au/statdec). For Australian Government funded services refusal to provide a statutory declaration precludes a person from employment.

Where an employee is taken on prior to receiving a police check the policy will outline the level of supervision provided in the interim.

The Australian Government has specified the exceptional circumstances under which a person could commence as a staff member or volunteer prior to receiving a police record check for Australian Government funded services.

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<sup>10</sup> Other forms of background checking, such as following up referee reports, will be important where a younger person is to be working directly with older people.

<sup>11</sup> DHA "New Arrangements for Criminal History (Police) Check for Staff and Certain Volunteers Working in Australian Government Subsidised Residential Aged Care Homes and Community Care Services" Dec2006

The circumstances are:

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

The policy should state what action will be taken if an unsatisfactory police certificate is obtained i.e. the conditional employment contract is terminated. As there is a possibility of legal action the organisation must clearly be able to justify the relevance of the offence as the reasoning for terminating the employment though termination without justification is possible in a probationary period which should apply to all employees.

### **Cost**

An organisation's policy should determine and clearly state who bears the cost of the police record check. It may be the organisation itself or the individual seeking employment. In some instances the individual may bear the cost initially but receive a rebate on employment.

In determining an organisational policy on payment for police checks workforce issues, including the difficulty in recruiting and retaining staff and the generally lower pay received in aged care, should be considered.

### ***Who Can be Employed?*<sup>12</sup>**

An organisation's policy should clearly state categories of offences which will automatically disqualify a person from being employed.<sup>13</sup>

Australian Government funded services cannot employ people with a police certificate or statutory declaration that records:

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

Policies should enable other offences to be considered on a case by case basis, taking into account exceptional circumstances to be considered and employment approved by the CEO. Where this occurs and employment is offered the organisation should develop a risk management plan which must be regularly monitored. The decision must be defensible and transparent.

The policy should allow for discretionary approval for employment where a minor or relatively serious misdemeanour or offence that would not pose a risk in the past is uncovered. The policy should state the consideration taken into account in determining this which could include:

- The seriousness of the offence;
- The person's age at the time;
- How long ago it occurred;
- Whether there have been repeat offences;
- Whether a conviction was recorded;

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<sup>12</sup> Services provided under the *Aged Care Act 1997* (residential and packaged care) must already conduct police checks for "key personnel" to ensure they are not a disqualified individual.

<sup>13</sup> Australian Government legislative changes will outline those matters which preclude a person from employment. Offences not specified in the legislation will remain at the discretion of the employer.

- The relevance of the offence to the role to be performed;
- The level of direct and unsupervised access the person would have to residents/clients;
- Any extenuating circumstances.

A fuller list of potential considerations is included at Attachment 3.

The Australian Government “Police Certificate Guidelines for Aged Care Providers” provide guiding principles as a template for assessing a police certificate.

### ***Frequency of Screening***

- The policy should state the frequency required for police checks.
- Australian Government funded services employees are required to have current checks that are not more than 3 years old.
- Australian Government funded services are required to have a policy and procedure for monitoring and renewing police certificates to ensure they are updated every 3 years. This policy may include encouraging staff to notify the organisation if the status of their police record changes within the time they are employed.

### ***Advertising Vacancies***

Organisations should make reference to the need for police record checks in any job advertisements.

### ***Employment Contracts***

- Employment contracts need to be modified to outline the obligations regarding police checks including information on your organisation’s position on:
  - Who is responsible for ensuring checks are not more than 3 years old;
  - Who bears the expense of ongoing checks; and
  - A requirement for the employee to disclose any relevant criminal charges or convictions which would affect employment which occurs between police checks
- For new employees new contracts can be developed. Attachment 4 provides sample clauses that could be included in new contracts.
- For current staff an addendum covering this needs to be made to existing contracts. A sample addendum for existing contracts is at Attachment 5.

## **3.3 Contract Staff**

Contract staff – including those who provide care to clients, ancillary services (e.g. building, tradespeople) and volunteers provided through an agency (such as the Red Cross) are also required to have police checks. The legislation makes it the responsibility of the provider to ensure that police checks are obtained. Contracts should be amended to include the requirement for police checks when the contractor/s have, or are likely to have unsupervised access.

The contract should state that any staff provided who have unsupervised access must have had a police check and must not have a conviction which would otherwise preclude their direct employment in the home.

There is no requirement for providers to:

- Undertake a separate suitability test for contractors
- Insist that agency staff or contractors carry a police check with them

## **4. RESOURCES/REFERENCES**

Beth Kingsley, "Elder Abuse: Protocol and policy guidelines to prevent the abuse of older people in community and residential care", Curtin University of Technology, February 2001.

Alliance for the Prevention of Elder Abuse, "The Western Australian Elder Abuse Protocol: Guidelines for Action for Agencies and Service Providers", Draft for comment by agencies and service providers.

NSW Ageing & Disability Department "Dealing with Abuse of Clients and their Carers: A Training Kit". February 1999.

The Benevolent Society "Abuse of Older People: Preventing and Responding to the Abuse of Older People who live in Residential Aged Care Model Policy," Revised August 2007.

Aged & Community Care Victoria "Pathways to Safety – An employer and organisation guide to police checking of staff and volunteers in community and residential care services." May 2007

Aged & Community Services Australia "Elder Abuse: A Holistic Response Background Paper", March 2006

Aged & Community Services Australia "Confronting Elder Abuse: An Aged Care Industry Response", March 2006

Aged & Community Services Australia "Protecting Older People: How to recognise and address elder abuse" (a brochure for workers) 2006

Standards Australia AS4811-2006 "Australian Standard – Employment Screening", July 2006

### **Policies Reviewed**

Thanks to the following organisations who shared their policies to enable this guide to be compiled:

- The Benevolent Society
- ACH Group
- Tabeel Lutheran Home
- Inglewood & Districts Health Service
- Bayside Community Options
- Alwyndor Aged Care

### **Legal Advice**

Thanks also to Victor Harcourt of the Kennedy Strang Legal Group, an ACSA National Partner, for his advice on the document's contents.

## ABUSE OF OLDER PEOPLE:

### PREVENTING AND RESPONDING TO THE ABUSE OF OLDER PEOPLE WHO LIVE IN RESIDENTIAL AGED CARE

## **MODEL POLICY (REVISED AUGUST 2007)**

**ADAPT FOR YOUR ORGANISATION WHERE INDICATED**

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## 1 INTRODUCTION

This Policy consists of:

- Background information about the abuse of older people.
- Information about the types and signs of abuse to which older people living in residential aged care may be subjected.
- Procedures for care staff and for supervisory staff in residential care for reporting and responding to physical and sexual abuse
- Sources of further information, advice and assistance.

### 1.1 Our responsibility *(Adapt for your organisation)*

The Benevolent Society's purpose is to create caring and inclusive communities and a just society. In the services we run we are working to help older people age with dignity and respect.

The Society is responsible for ensuring the safety of the older people who live in our residential aged care facilities. The Society is also responsible for ensuring that residents, their families and staff at all levels can feel free to raise any concerns they may have about the abuse or possible abuse of residents, and to have those concerns dealt with appropriately.

The focus of this policy is to protect residents living in residential care in New South Wales. A framework for the development of policies and protocols for older people living in the community is outlined in the *Inter-Agency Protocol for Responding to Abuse of Older People*<sup>14</sup> produced by the NSW Department of Ageing, Disability and Home Care.

## 2 THE ABUSE OF OLDER PEOPLE

The definition endorsed by all Australian states and territories through the Healthy Ageing Taskforce on 8 December 2000, states that "*The abuse of older people occurs when there is any act occurring within a relationship where there is an implication of trust, which results in harm to an older person. Abuse can include physical, sexual, financial, psychological and social abuse and/or neglect*".

Abuse of older people can occur in any setting, including in residential care. Older people in residential care may be especially vulnerable because of cognitive deficits such as dementia and because of physical frailty.

Most people who work in aged care are committed to providing quality care for residents. However, awareness of the possibility of abuse is essential in order to ensure that residents' rights are upheld and their safety is maintained.

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<sup>14</sup> NSW Department of Ageing, Disability and Home Care (2007), *Interagency Protocols for responding to Abuse of Older People*. Available from [www.dadhc.nsw.gov.au](http://www.dadhc.nsw.gov.au)

Perpetrators of abuse in the residential aged care facilities may be other residents, family members, others visitors, volunteers or staff.

Abuse may be reported by the victim or others. Suspicions that abuse has occurred may be aroused by physical signs and symptoms or by the behaviour of the resident. It is important for staff to be aware of any sudden or unusual changes in the behaviour patterns of residents.

### **3 FORMS OF ABUSE IN RESIDENTIAL AGED CARE FACILITIES**

This section describes the different forms of abuse and exploitation that can occur and the signs that may indicate that a resident has been abused.

#### **3.1 Physical abuse**

Physical abuse is a non-accidental act which results in physical pain or injury, and which may include physical coercion and physical restraint.

**Signs of physical abuse include:**

- Bruises
- Lacerations or abrasions
- Welts or rashes
- Broken or healing bones
- Burns
- Weight loss
- Facial swelling or missing teeth
- Pain or restricted movements
- Cringing or acting fearful
- Agitation
- Drowsiness
- Unexplained hair loss
- Noticeable decline in physical well being
- Unexplained accidents or injuries
- Conflicting stories between resident and staff or family members about the cause of injuries.

#### **3.2 Psychological/emotional abuse**

Psychological or emotional abuse is language or actions designed to intimidate another person and is usually characterised by a pattern of behaviour repeated over time, intended to maintain a 'hold of fear' over them. Forms of psychological abuse include:

- Intimidation, humiliation and harassment – e.g. threats, calling a resident names, treating a resident like a child, shouting at a resident
- Withholding of affection
- Refusing a resident access to family members or close friends
- Depriving a resident of sleep
- Inappropriate removal of a resident's decision-making powers.

### **Signs of psychological/emotional abuse include:**

- Loss of interest in self or environment
- Passivity
- Helplessness
- Withdrawal
- Apathy
- Insomnia.
- Fearfulness
- Reluctance to talk openly
- Huddling or nervousness around a particular person
- Paranoid behaviour or confusion not associated with illness

### **3.3 Sexual abuse (assault)**

Sexual assault is the general term used for a broad range of unwanted sexual behaviour, whether through physical force, emotional intimidation or any type of coercion. Sexual assault is a crime. Sexual abuse is a form of sexual assault. Abuse and assault are mainly about violence and power over another person, rather than sexual gratification or pleasure.

Sexual abuse includes rape, indecent assault, sexual harassment and sexual interference. Sexual activity with an adult who is incapacitated by a mental or physical condition (such as dementia) that impairs his or her ability to grant informed consent, is defined as sexual assault/abuse.

Sexual abuse can be overt and obvious (rape, penetration, oral-genital contact) or more subtle (inappropriate comments or interest in the older person's body). It can also include practices such as the inappropriate, and possibly painful, administration of enemas or genital cleansing.

### **Signs of sexual abuse include:**

- Unexplained sexually transmitted disease or infections
- Bruising in genital areas, inner thighs or around the breasts
- Unexplained vaginal or anal bleeding
- Increased anxiety and/or other emotional changes
- Fear of certain people or places.
- Fingertip bruising on upper arms
- Torn, stained or bloody underclothing, continence pads or bed linen
- Difficulty in walking or sitting
- Use of sexually explicit language or references by a resident
- Changes in sleep patterns, sleep disturbance, recurring nightmares

### **3.4 Neglect**

Neglect is the failure of a carer to provide the necessities of life to a person for whom they are caring. Neglect can be intentional or unintentional.

Unintentional neglect occurs when a carer does not have the skills or knowledge to care for a dependent person, although this is a situation that is unlikely to occur in the residential care setting. The carer may not be aware of the types of support that are available, or they may be ill themselves and unable to provide care.

Neglect is considered intentional when an older person is abandoned or not provided with adequate food, clothing, personal items, medical or dental care. Inappropriate use of medication (overuse, under-use or misuse), not providing adequate hygiene and personal care, and not allowing other people to provide adequate care are also forms of neglect.

**Signs of neglect include:**

- Poor hygiene or personal care
- Unkempt appearance
- Lack of personal items
- Absence of health aids.
- Inappropriate or lack of clothing
- Weight loss
- Secretiveness or agitation

**3.5 Social abuse**

Social abuse involves preventing a person from having contact with friends or family or access to social activities. Forms of social abuse include discouraging or stopping a resident from seeing other people, including family or friends, and preventing them from joining in activities in or outside the residential aged care facility.

**Signs of social abuse include:**

- Sadness and grief because of people not visiting
- Anxiety after visits by particular person
- Withdrawal, lack of interaction with others
- Low self esteem, sadness
- Appearing ashamed
- Passivity (not wanting to participate)
- Listlessness.

**3.6 Financial abuse**

Financial abuse involves the illegal or improper use or mismanagement of a person's money, property or resources. Stealing, fraud, forgery, embezzlement, forced changes to a will, inappropriate removal of a resident's decision making powers and misuse of power of attorney are all forms of financial abuse or exploitation.

**Signs of financial abuse include:**

- Unpaid accounts
- Unwillingness to provide or purchase items for a resident
- Withholding of funds from a resident

- Resident lacks money for items needed or to pay for outings
- Loss of jewellery or personal belongings
- Removal of cash from a wallet or handbag
- Money missing from resident's bank accounts, unprecedented transfer of funds
- Resident is fearful and anxious when discussing finances
- Resident frequently changes her/his mind about their power of attorney
- Management of a competent resident's finances by another person when not asked to do so

#### 4 WHEN TO REPORT AN ABUSIVE SITUATION

It is important always to search for the cause of a change in a resident's behaviour or unexplained physical symptom. If a resident shows one or more of the possible signs of abuse, it does not automatically mean she or he is being abused, but it must be reported.

**You must report to your supervisor (or next most senior manager) if:**

- A resident shows a change in behaviour or mood or any of the signs described above.
- You observe someone behaving towards a resident in a way that makes you feel uncomfortable.
- A resident tells you that they are being abused by another person.
- A person tells you that they are abusing a resident.
- A resident, staff member or visitor tells you that they have observed abusive acts.
- You observe an action or inaction that may be considered abusive.

**Note:** Do not dismiss what a resident with dementia tells you as merely 'dementia talk'.

**Failure to report an abusive situation may result in disciplinary action.**

## **5 HOW TO RESPOND TO AN ABUSIVE SITUATION**

### **5.1 Procedures for Care Staff – Any form of abuse**

#### **5.1.1 *If there is an immediate threat to a resident***

- Remain calm.
- Consider whether you can safely take immediate action to stop the abuse occurring, without endangering the resident, yourself or other people.
- Alert other staff by using call bell or alarm systems.
- Report to, or get someone else to contact, your supervisor immediately.
- Reassure and comfort the resident.

After taking the necessary immediate action:

- Complete an incident form.
- Record your observations or discussions with (or concerning) the resident that might indicate that abuse has occurred.
- Do not attempt to ask extra questions or to investigate in any way. That is not your role.
- Do not disturb the area or remove any items involved in the incident.
- Report to your supervisor any additional changes or concerns that you think of or observe later.

#### **5.1.2 *If there is no immediate threat to the resident***

- Reassure and comfort the older person.
- Report directly to your supervisor.
- Complete an incident form.
- Record your observations or discussions with (or concerning) the resident that might indicate that abuse has occurred.
- Do not attempt to ask extra questions or to investigate in any way. That is not your role.
- Do not disturb the area or remove any items involved in the incident.
- Report to your supervisor any additional changes or concerns that you think of or observe later.

The Society will protect staff who report signs or suspicions of abuse to their supervisor, if they do so in good faith. Their identity will be kept confidential and they will be protected from reprisal.

The Society expects care staff to report abuse or suspicions of abuse to their supervisor as set out above at 5.1.1 and 5.1.2. However, care staff may report allegations or suspicions of physical or sexual abuse direct to the Department of Health and Ageing on 1800 550 552 if they feel unable to report their concerns to their supervisor or to a more senior manager of the Society.

## **5.2 Procedures for Supervisors - Physical or Sexual Abuse**

### **5.2.1 *If you suspect that abuse has occurred, or abuse or suspected abuse is reported to you***

- Place the interests of the resident first.
- Determine whether the situation is urgent (happening now). If yes, consider whether you can take immediate action to stop the abuse occurring, without endangering the resident, yourself or other people.
- Call for the police if necessary.
- Call for an ambulance if necessary.
- Report to your Senior Manager/Director.
- Seek medical treatment if necessary.
- Treat the area as a crime scene until advice is given otherwise.
  - Do not remove any articles or items from the area
  - Ensure the older person does not wash or shower
  - Do not allow others to enter into the area.
- Ensure that there is no risk of exposure to or contact with the alleged perpetrator (i.e. the person who is alleged to have carried out the abuse) by the resident.
- Reassure the resident.
- Provide support to the care staff involved.
- Counsel the resident and document the events.
- If the abuse is of a sexual nature, seek immediate advice from the nearest Sexual Assault Service (see 6.2).
- Establish if the resident has the capacity (is competent) to understand their circumstances and make decisions. If unsure, seek a medical assessment of this.

### **5.2.2 *If the resident is competent to make their own decisions***

- Raise your concerns about what has, or may have, happened with the resident and discuss their wishes. (Remember that an older person who is capable of making an informed decision has the right to make his or her own choices, including the right to refuse assistance.)
- Determine if confidentiality may need to be overridden, due to safety issues for the person or others (e.g. where the rights of other residents are endangered by the suspected abuse), or where a criminal act may have occurred, or due to the Society's obligation to report allegations or suspicions of sexual or physical abuse of aged care residents to the Police and the Department of Health and Ageing.
- Inform the resident of her/his right to an independent advocate of their choice.

- Ensure that the resident is aware of her/his rights to make a complaint through the facility's internal complaints system or through the Aged Care Complaints Investigation Scheme (see 6.1). Ensure that they are aware of how to do so.
- Complete incident forms and document on the resident's file.
- If the abuse is of a sexual nature, report it to and seek guidance from the local Sexual Assault Service.
- Seek guidance from the resident about notifying family or friends as support.

### **5.2.3 If the resident is not competent or you are unsure of their competency**

Seek a medical assessment of the resident's competency if this is in doubt. Remember there is an assumption of mental capacity unless there is evidence of incapacity.

If the person is not competent:

- Notify the resident's family and any appointed substitute decision maker.
- If medical treatment is needed seek consent from their 'person responsible'.
- If the person has no family or substitute decision maker (or there are concerns about them as they are suspected of the abuse) contact the Guardianship Tribunal (see 6.3) for advice about substitute decision-making.
- If the abuse is of a sexual nature, seek guidance from the local Sexual Assault Service.
- Contact the Guardianship Tribunal for advice if consent is required to gather forensic evidence from a resident's body (e.g. tissue samples) or to release a sexual assault kit to police. (Family members cannot give consent in these circumstances).
- Determine if confidentiality may need to be overridden, due to safety issues for the person or others (e.g. where the rights of other residents are endangered by the suspected abuse), or where a criminal act may have occurred, or due to the Society's obligation to report allegations or suspicions of sexual or physical abuse of aged care residents to the Police and the Department of Health and Ageing.
- Complete incident forms and document on the resident's file.

## **5.3 Guidelines for Managers/ Senior Managers / HR Directors / Divisional Directors –**

### **5.3.1 Reporting to the Department of Health and Ageing and Police**

The (*specify position, e.g. Senior Manager or Division Director*) is responsible for ensuring that the Society meets its obligations under the Aged Care Act to report allegations or suspicions of unlawful sexual conduct or unreasonable use of force.

The (*specify position*) must:

- Assess whether an incident is a 'reportable assault'
- Assess whether the incident must be reported or is exempt from the requirement to report (where the perpetrator has an assessed cognitive or mental impairment;
- Within 24 hours of receiving an allegation or starting to suspect that a reportable assault has occurred, make a report to
  - the local Police, and
  - Department of Health and Ageing on 1800 550 552;
- In the case of exemptions, document the exemption decision;
- Ensure that consolidated records of all incidents involving allegation or suspicions of reportable assaults are maintained at (*insert location*), including those that are exempt from being reported to the Police and Department.

### **5.3.2 Responding to the alleged abuser**

The Manager, Senior Manager, Human Resources Director or Divisional Director may need to respond to the alleged abuser, especially in cases where the alleged abuser is a member of the facility staff or another resident.

Care must be taken to ensure procedural fairness.

- Do not jump to conclusions or make assumptions.
- Plan what you are going to say.
- Record all facts.
- Explain to the alleged abuser that you have a responsibility to resolve the concerns expressed.
- Assure the alleged abuser that you want to involve them in finding a resolution to the concerns.
- Ensure that your language and approach is non judgmental, calm and relaxed.
- Do not escalate the situation by using confronting behaviour, challenging actions or words.
- Have a witness present during all conversations with the alleged abuser.

### **5.3.3 If the alleged abuser is a member of staff**

- Assure the alleged abuser that their rights as an employee will not be compromised while the incident is under investigation.
- Depending on the severity of the incident, a process involving counselling, disciplinary action, or suspension will proceed.
- Report the incident to the next line of management.

### **5.3.4 If the alleged abuser is another resident**

The Manager/Senior Manager must ensure that:

- Appropriate behaviour management plans for the alleged abuser are in place
- The resident's care plan is updated within 24 hours
- The assessment of the person's cognitive state is reviewed.

## **6 ADDITIONAL RESOURCES**

### **6.1 Department of Health and Ageing**

#### **Office of Aged Care Quality and Compliance**

Freecall 1800 550 552

Website [www.health.gov.au/oacqc](http://www.health.gov.au/oacqc)

Contact to report allegations or suspicions of unlawful sexual contact or unreasonable use of force against residents, or to obtain copies of the *Compulsory Reporting Guidelines for Aged Care Providers*.

#### **Aged Care Complaints Investigation Scheme**

Freecall 1800 550 552

Residents, their family members, friends or anyone else may contact the Complaints Investigation Scheme if they have concerns about or wish to make a complaint about the health, safety and/or well-being of people who receive aged care.

### **6.2 Sexual Assault Services** (*Adapt if outside NSW*)

There are Sexual Assault Services in all Area Health Services in NSW, contactable 24 hours a day and based at major hospitals or community health centres. Ring your closest major hospital to obtain the contact details of the Sexual Assault Services nearest to your facility:

*(insert contact details here)*

There is a full list of services in the NSW Health Services Directory at <http://www2.health.nsw.gov.au/services/Default.cfm>, under Service Type 'Sexual Assault Services'.

### **6.3 The Guardianship Tribunal** (*Adapt if outside NSW*)

Ph (02) 9555 8500 (day time and after hours)

Website [www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)

The Guardianship Tribunal operates a free enquiries service during business hours which can be contacted for information and guidance about whether the Tribunal can assist in cases of abuse.

The Tribunal can:

- Appoint a guardian for a person with a cognitive disability, such as dementia. The guardian can be a private person or the Public Guardian.
- Consent to medical treatment if there is no other person who can legally consent to medical treatment on behalf of a person who cannot give consent themselves.
- Review the appointment of an enduring guardian or an enduring power of attorney if there are concerns that these arrangements are not working in the best interests of the person with a disability.
- Provide brochures and information sheets about substitute decision-makers for medical decisions for people who are unable to provide consent themselves.

#### **6.4 Other sources of information, advice and referral** *(Adapt if outside NSW)*

Sources of information, advice and referral that may be helpful in cases of abuse or suspected abuse include:

##### **Community legal centres**

Website [www.nswclc.org.au/clcs.html](http://www.nswclc.org.au/clcs.html)

Community Legal Centres in NSW can provide confidential free information, advice and assistance on a range of issues. Anyone needing legal advice or assistance who cannot afford the services of a private solicitor can contact a Community Legal Centre. They may be a source of information and assistance for residents with decision making capacity in cases of financial abuse.

##### **The Aged-Care Rights Service**

Website [www.tars.com.au](http://www.tars.com.au)

Ph (02) 9281 3600

Country callers 1800 424 079

The Aged-care Rights Service (TARS) is a legal advice and advocacy service for residents of aged care facilities.

##### **Aged and Community Services Association (NSW & ACT)**

Ph (02) 9743-4066

Website [www.agedservices.asn.au](http://www.agedservices.asn.au)

##### **Aged Care Association Australia - NSW**

Ph (02) 9212 6922

Website [www.acaansw.com.au](http://www.acaansw.com.au)

#### **6.5 Useful web links**

##### **Preventing Abuse of Older People**

[www.sa.agedrights.asn.au/prevent/home.html](http://www.sa.agedrights.asn.au/prevent/home.html)

##### **The Elder Abuse Prevention Unit (Queensland)**

[www.eapu.com.au](http://www.eapu.com.au)

## **6.6 Related policies and procedures** *(Adapt for your organisation)*

These are not included in this document and will vary from organisation to organisation. They may include:

- Organisational Code of Conduct
- Privacy and dignity policy
- Intimacy and sexuality policy
- Incident reporting procedure
- Whistleblower policy

## **ESSENTIAL CHECKLIST**

Determine whether the legislation directly impacts you or another organisation with whom you have a business relationship or partnering arrangement.

Communicate the requirements with all existing staff , volunteers and other persons with unsupervised contact of residents.

- Letter to all relevant staff, volunteers and other persons
- In-service information sessions
- Reminders on pay slips
- Notices in staff areas
- Reminders at staff or other relevant meetings
- 

Determine the framework of policies which exists in your organisation which will need to be amended to reflect the requirements of the legislation including:

- Executive, Management, Directors, Board Members, etc.
  - Risk polices
  - Accountability and reporting
  - Industrial relations/legal advisory services
  - Delegated decisions
- Human Resources:
  - Recruitment and selection
  - Equal Employment Opportunity
  - Employment Contracts
  - A stand alone “police checks” policy details the specific offences at law and the individual circumstances to be considered in relation to other offences.
  - Record keeping and access
  - Probity and external relationships
  - Whistle-blowing and disclosure
  - Termination
- Privacy and confidentiality

- Risk Management
  - Client/ Resident complaints and disclosures
  - Elder Abuse
  - Compulsory Reporting
  - Education
  
- Business and Quality
  - Service agreements, contracts and partner agreements.
  - Auditing of internal and external information systems
  
- Information and Record Keeping
  - Personnel data.
  - Access and firewall
  - System administrator privileges
  - Record formats (electronic vs paper)

Ensure contracts for new and existing employees are amended to reflect their obligations to have a police check certificate (no more than three years old) or statutory declaration if the person has been a permanent resident or citizen outside of Australia any time since the age of 16.

Review all services agreements, contracts and other partnering agreements to ensure that the legislative requirements are reflected. Communicate the new requirements to all relevant parties.

Establish a secure register (refer Department of Health and Ageing Guidelines to record all police certificate details). However, you should also record details about the nature of other offences or the sighting of statutory declarations where required for people who have had expatriate citizenship or permanent residency since the age of 16.

Establish a secure system to store police check certificates included in the Department of Health and Ageing Guidelines to record all police certificate details.

Decide how you will source police check certificates for relevant staff, volunteers and other persons involved in unsupervised contact of residents/clients.

Determine who will make decisions about staff and volunteers who do not have a clear police check certificates and how this will occur.

Put an information system in place to track and flag 3 yearly rechecking requirements for staff and volunteers and contractors/other persons involved in unsupervised contact.

Communicate these requirements to your stakeholders and community using appropriate means. This may be very important if there is resistance to these new requirements where, for example, contractors may have reacted against the new requirements. It also helps to win public confidence in what essentially is an extremely well run and vital human services sector.

## **MAKING DECISIONS ABOUT STAFF OR VOLUNTEERS WITH OTHER OFFENCES**

### **What to consider:**

*Remember, your paramount concern is the safety of the older people to whom you provide care and services. Not all harm might be occasioned by way of a criminal act. As much as an offence of itself might not constitute a risk of harm for your resident or client, nor does the absence of specific recorded offences guarantee the absence of risk to harm a resident or client.*

### **What is the nature of the offence?**

- If you are unsure what the offence is, then seek legal advice. Different terms are used in different jurisdictions and common terms for offences may no longer be used in law.

### **What potential offence could occur?**

- Apart from those designated offences under The Aged Care Act's Police Certificates requirements, what is it about the person's offence which suggests that they could abuse or harm client/ residents, fellow employees, or the organisation?

### **When did the offence occur?**

- Was this offence committed during a difficult period of the person's life?

### **What is the pattern of offending?**

- Has the offence been a one-off occurrence, or is there a pattern?

### **Who did they offend against?**

- Was it a vulnerable person?
- What power relationship was involved or breach of trust?
- Did it occur in a similar setting of work against a client or customer?
- Would society nowadays consider the offence as elder abuse or exploitation?

### **What happened as a result?**

- Was a custodial sentence served, or the sentence suspended?
- Did the person incur a fine or community based order?
- Did they have to make reparation or undergo treatment, counselling, or some other offender rehabilitation program?

### **What evidence is there of a change in the likelihood of re-offending?**

- Has the person dramatically altered their life course?
- Do they demonstrate evidence of making a contribution to the community?

- Subsequent to their offence have they held positions of trust relevant to their offence demonstrating that your clients will be safe?

### **What is the work you require them to do with clients or residents?**

- How does the offence relate to potential to abuse your client/ resident or criminally harm your organisation in relation to their work?

### **What is the setting and structure for the work?**

- Is it home and community based or facility / centre based?
- Are there other staff in close proximity?
- What are the supervision arrangements
- What are the arrangements for supervision and “checking-in” in the community care setting?

### **What has been the person’s subsequent work history?**

- What type of role have they been engaged in?
- On what basis have they been employed?
- What do colleagues say?
- What has their movement between employers been like?

### **What do previous employers or referees say?**

- Knowing their obligations to provide an honest reference check under the Trade Practices Act, would a professional referee,
  - Recommend employment?
  - Re-employ?
- Were there any issues which they think might be cause for concern in their role with you or were a cause of concern when they were with another employer?
- How long has the person been in the role in yours or other organisations?

### **How well am I placed to make a good decision?**

- What is my personal morals and values framework?
- Have I spoken to or interviewed the person?
  - Did it occur with appropriate written notice, in an appropriate time frame and setting?
  - Did I prepare well?
  - Did I gather all of the information I needed?
  - Did I listen?
  - Did I engage an independent observer?
  - Did I offer the opportunity for the person to have a support person present?
  - Did I inform them of the legislation requirements?
  - Did I document the interview?
- What are my personal feelings towards the person? - How might it bias my decision making?
- What are my vested interests in the decision outcomes?
- What are other people’s vested interests in the decision outcomes? Are they seeking to unduly influence my decision?
- What do our organisation’s policies say?

- Do I have a good mentor(s)
- Have I sought advice from people well qualified or experienced to provide it?
- Is this is a rushed decision?
- Can I bide time? - if so, what is my risk management plan in the mean time?

## ATTACHMENT 4

### SAMPLE LETTER CONTENTS FOR NEW STAFF

#### POLICE CHECKS

The Employee agrees that he/she is under an obligation to provide the Employer with a current police check at the commencement of employment and a fresh police check prior to the expiration of each three (3) years of employment and as required. The employee understands and accepts that if this obligation is not met, this contract and his or her employment may be terminated.

Under some circumstances a person who does not have a police certificate required under section 1.19 of the Accountability Amendment Principles 2006 (No. 1) which form part of the Commonwealth Aged Care Act 1997 may become a staff member or volunteer if:

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

It is agreed that, in the event the employment commences under these circumstances that continuing employment is conditional upon that police check not disclosing a criminal record which would disqualify the Employee from being employed. The employer reserves full rights to determine a person as suitable for continuing employment following assessment of any criminal record, charges or convictions.

It is agreed that there is an obligation on the Employee to disclose any relevant criminal charges or convictions which would disqualify the Employee from being employed in the period between the 3 yearly police checks. Failure to do so may result in the termination of employment.

The Employee agrees and acknowledges that a criminal offence, determined by the Employer as relevant to the inherent requirements of the position, may result in termination of employment.

## **SAMPLE LETTER CONTENTS FOR CURRENT STAFF**

### **POLICE CHECKS**

We wish to advise that this letter forms an addendum to your current contract of Employment and that this action is necessary to meet the requirements of the Federal Government in relation to police checks for all people working in aged care as specified in the Accountability Amendment Principles 2006 (No. 1) which form part of the Commonwealth Aged Care Act 1997 Section 1.18 of this legislation specifies that a 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; and
- c. has, or is reasonably likely to have, unsupervised 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 who are reasonably likely to have unsupervised access to care recipients

Section 1.21 specifies that an approved provider must, except for certain periods under section 1.22, 1.23 or 1.25 when a person is allowed not to have a police certificate, there is for each person who is a staff member or volunteer a police certificate that is, at all times during which the person remains a staff member or volunteer, not more than 3 years old.

Section 1.21 also specifies that an approved provider must ensure that a person who is a staff member or volunteer must not be allowed to continue as a staff member or volunteer if there is for the person a police certificate or statutory declaration that records that the person has been:

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

In addition there is an obligation on the Employee to disclose any criminal charges or convictions in the period between the 3 yearly police checks so that we may determine your suitability under the Aged Care Act to have unsupervised direct access to care recipients. Failure to do so may result in the termination of employment.

In order for us to process the police check, we need to ensure we have all your details correct, including your full name and date of birth. Accordingly, you are required when requested to provide proof of these details and this proof is to be in the form of a driver's licence, extract of birth, original birth certificate or passport.

In addition to the employment requirement of a satisfactory police checks, section 1, 25 of the new legislation specifies that a person who is a staff member on 1 March 2007; and

- a) who continues to be a staff member on 1 June 2007; and

- b) who, at any time after the person turned 16, was a citizen or permanent resident of a country other than Australia.
- c) must have made by, 1 June 2007, a statutory declaration stating that they person has never been:
- d) convicted of murder or sexual assault; or
- e) convicted of, and sentenced to imprisonment for, any other form of assault.

The Federal Government and the Department of Health and Ageing are taking this issue seriously and there are severe penalties available for any employers who do not ensure all the requirements of the new legislation are met.

Accordingly, you are required to sign below indicating your acceptance and understanding of the contents of this letter and that it forms part of your contract of employment and to sign indicating your agreement to obtain a police check as required.

Should any staff member fail to return this signed letter as required, disciplinary procedures may be instigated and this may result in the termination of your employment. We are simply unable to allow any staff member to continue working for us without the police check and without that police check being revised each three years. We are also unable to continue to employ staff who have a conviction, are charged with designated offences.

The employer reserves full rights to determine a person as suitable for continuing employment following assessment of any criminal record, charges or convictions. or deemed by the Employer to be unsuitable.

If any staff member is concerned about this issue or has any matter they wish to discuss or ask questions about, please contact me as soon as possible.

The Employee is required to comply with all policies and procedures of the Employer. The policies and procedures do not form part of the terms of this employment contract. Unless expressly inconsistent with any provision of this employment contract, the policies and procedures constitute lawful and reasonable directions from the Employer as to how the employee's duties are to be carried out. The Employee acknowledge that the Employer will review and update its policies from time to time and will develop new policies as it deems appropriate.

Yours sincerely,

I ..... (your name) hereby agree that I have read and understood this letter and that it forms part of my Contract of Employment.

Signature ..... Date ...../...../.....