

Supported Residential Services– Guidelines for the Appointment of Personal Care Staff

Section 108L(2)(aa) of the *Health Services Act 1988* came into effect on 1 January 2005, and requires that :

*"The proprietor of a supported residential service must not appoint or continue to employ a person as a member of staff who is engaged in the special or personal care needs of residents if that person –
(aa) is not a fit and proper person, having regard to guidelines issued by the Secretary in relation to the employment of persons in a supported residential service".*

Failure to comply with the requirements of section 108L(2)(aa) can result in a maximum penalty in excess of \$25,000.

As of 1 January 2005, it is an offence for a proprietor of a supported residential service to appoint or continue to employ a person as a member of staff who is engaged in the special or personal care needs of residents *if that person is not a fit and proper person.*

It is essential that those working in positions that involve the provision of special or personal care to vulnerable people are trustworthy and reliable, as well as appropriately skilled. Many potential problems can be avoided if thorough pre-appointment checks are undertaken before a position is filled. Applicants to positions must provide accurate and truthful information regarding their background, which may be taken into consideration by proprietors when considering who to appoint to a particular position.

These Guidelines are issued by the Secretary of the Department of Health pursuant to section 108L(2)(aa) of the *Health Services Act 1988*. A proprietor of a service must have regard to these Guidelines in relation to the employment of a person in the service.

What is relevant background information?

Relevant background information may include:

- Has the person been charged with a criminal offence in Australia or in another country?
- Has the person received a police caution, final warning or reprimand?
- Is the person currently the subject of any police investigation?
- Has the person been dismissed from any previous position by reason of misconduct?

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- Is the person subject to any orders, such as an apprehended violence order, or an intervention order?

Victoria Police applies strict guidelines to the release of criminal history information to employers, and does not release information without an individual's consent. Employers must decide whether to require an applicant to disclose relevant information, or to require an applicant to give consent to the employer seeking relevant information from Victoria Police. Please note that failure by an applicant to disclose relevant background information may be grounds for dismissal from the position.

Information relating to an applicant's criminal record should not be routinely sought from every person who applies for a position, as this may prove time-consuming, invasive and difficult. Proprietors may consider obtaining the required information from only the successful applicant before making an offer of appointment.

Consideration of background information

It is for the proprietor to decide whether to offer an applicant a position involving the provision of special or personal care, based on a full and fair assessment of the person's circumstances and the risks associated with the position. A previous criminal conviction should not automatically bar a person from appointment or continued appointment in a supported residential service.

When assessing the fitness and propriety of a current or potential employee, the proprietor is essentially engaging in a risk assessment process. What is the relevance of the background information that has been provided, and what are the potential risks to residents? A proprietor may wish to consider:

- How old are the offences or circumstances of offending behaviour?
- How serious were the past offences or circumstances of offending behaviour?
- How relevant are the offences or behaviours to the provision of special or personal care to residents?
- Do the past offences illustrate a pattern of behaviour?
- What were the circumstances (if any) surrounding the past offences or offending behaviour?

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For example, a proprietor would give considerably less weight to an isolated shoplifting conviction from nine years ago, than to a charge in the last two years for assault. Similarly, a drunk and disorderly conviction over five years old would not be as concerning to a proprietor as a dismissal from prior employment for deceptive or fraudulent behaviour.

Any relevant information declared by an applicant or current employee, or released by Victoria Police, should be explored fully by the proprietor in open discussion with the person concerned.

Privacy and confidentiality

It is important that the information obtained during the background check process be treated with the utmost confidentiality. Information obtained should only be provided to others with the consent of the person, or in accordance with relevant law.