



Aged Care Legislation Amendment (Requirements for Staff Members and Volunteers) Instrument 2021

I, Richard Colbeck, Minister for Senior Australians, Aged Care Services, make the following instrument.

Dated 11 June 2021

Richard Colbeck
Minister for Senior Australians, Aged Care Services

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1 Name

This instrument is the *Aged Care Legislation Amendment (Requirements for Staff Members and Volunteers) Instrument 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	16 June 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Aged Care Act 1997*;
- (b) the *Aged Care Quality and Safety Commission Act 2018*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments relating to NDIS worker screening clearances

Accountability Principles 2014

1 Section 4

Insert:

NDIS worker screening clearance means a clearance within the meaning of the NDIS worker screening rules.

NDIS worker screening rules means the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018*.

process of obtaining an NDIS worker screening clearance means the process of obtaining a clearance within the meaning of the NDIS worker screening rules.

2 Paragraph 47(a)

Repeal the paragraph, substitute:

- (a) that each person who is a staff member of the approved provider, or a volunteer for the approved provider:
 - (i) has been issued with a police certificate or has an NDIS worker screening clearance; and
 - (ii) if necessary, has made a statutory declaration stating that the person has not been convicted of certain offences; and

3 Sections 48 and 49

Repeal the sections, substitute:

48 Requirements in relation to new staff members and volunteers

- (1) An approved provider must not allow a person to become a staff member of the approved provider, or a volunteer for the approved provider, unless the approved provider is satisfied that subsection (2) or (3) applies to the person.

Police certificates

- (2) This subsection applies to a person if:
 - (a) subject to subsection 49(1), there is for the person a police certificate that is dated not more than 3 years before the day on which the person would first become a staff member or volunteer; and
 - (b) the police certificate does not record that the person has been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault; and
 - (c) for a person who has been, at any time after turning 16, a citizen or permanent resident of a country other than Australia—the person has made 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.

NDIS worker screening clearances

- (3) This subsection applies to a person if:
 - (a) subject to subsection 49(2), the person has an NDIS worker screening clearance that:
 - (i) was issued not more than 5 years before the day on which the person would first become a staff member or volunteer; and
 - (ii) is not suspended; and
 - (b) for a person who has been, at any time after turning 16, a citizen or permanent resident of a country other than Australia—the person has made 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.

49 Arrangements for new staff members or volunteers who do not yet have a police certificate or an NDIS worker screening clearance

Police certificates

- (1) Despite paragraph 48(2)(a), an approved provider may allow a person to become a staff member of the approved provider, or a volunteer for the approved provider, if:
 - (a) a police certificate has not been issued for the person; and
 - (b) the care or other service to be provided by the person is essential; and
 - (c) an application for a police certificate for the person has been made before the day on which the person would first become a staff member or volunteer; and
 - (d) until the police certificate is issued, the person will be subject to appropriate supervision during periods when the person has access to care recipients; and
 - (e) 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.

NDIS worker screening clearances

- (2) Despite paragraph 48(3)(a), an approved provider may allow a person to become a staff member of the approved provider, or a volunteer for the approved provider, if:
 - (a) the person is in the process of obtaining an NDIS worker screening clearance; and
 - (b) the care or other service to be provided by the person is essential; and

- (c) until the person has an NDIS worker screening clearance, 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.

4 Subsection 50(1)

Repeal the subsection, substitute:

- (1) An approved provider must ensure that for each person who is a staff member of the approved provider, or a volunteer for the approved provider, either:
 - (a) there is a police certificate for the person that is not more than 3 years old and that does not record that the person has been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault; or
 - (b) the person has an NDIS worker screening clearance that:
 - (i) is not more than 5 years old; and
 - (ii) is not suspended.
- (1A) Subsection (1) does not apply in relation to a period during which there is no police certificate for a person, or the person does not have an NDIS worker screening clearance, as permitted by section 49.

5 Subsection 50(2)

Omit “that a police certificate issued for the person, or a statutory declaration made by the person, does not record”, substitute “that neither a police certificate issued for the person (if any), nor any statutory declaration made by the person, records”.

6 Paragraph 53B(2)(a)

Repeal the paragraph, substitute:

- (a) the provider must obtain (with the person’s written consent) a police certificate for the person, unless the provider is satisfied that the person has an NDIS worker screening clearance that:
 - (i) was issued not more than 5 years before the day on which the person would first become a key personnel of the provider; and
 - (ii) is not suspended;

Grant Principles 2014

7 Paragraph 17(2)(a)

Repeal the paragraph, substitute:

- (a) the body is satisfied that the person meets the requirements in subsection (2A) in relation to that day; and

8 After subsection 17(2)

Insert:

- (2A) A person meets the requirements in this subsection in relation to a day if:
- (a) there is for the person a police certificate that:
 - (i) is dated not more than 3 years before that day; and
 - (ii) does not record that the person has been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault; or
 - (b) the person has an NDIS worker screening clearance that:
 - (i) was issued not more than 5 years before that day; and
 - (ii) is not suspended.

Records Principles 2014

9 Section 4

Insert:

NDIS worker screening clearance has the meaning given by section 4 of the *Accountability Principles 2014*.

NDIS worker screening rules has the meaning given by section 4 of the *Accountability Principles 2014*.

process of obtaining an NDIS worker screening clearance has the meaning given by section 4 of the *Accountability Principles 2014*.

10 Section 9

Repeal the section, substitute:

9 Records about staff members and volunteers—police certificates and NDIS worker screening clearances etc.

An approved provider must keep records that enable the provider to demonstrate that:

- (a) in accordance with Part 6 of the *Accountability Principles 2014*, there is for each person who is a staff member of the approved provider, or a volunteer for the approved provider, one of the following at all times during which the person remains a staff member or volunteer:
 - (i) a police certificate that is not more than 3 years old;
 - (ii) an NDIS worker screening clearance that is not more than 5 years old and is not suspended; and
- (b) for any period that a staff member or volunteer is allowed under Part 6 of the *Accountability Principles 2014* to be without such a police certificate or NDIS worker screening clearance:
 - (i) an application for a police certificate has been made; or
 - (ii) the staff member or volunteer is in the process of obtaining an NDIS worker screening clearance; and

- (c) any statutory declaration required to be made by a staff member or volunteer under Part 6 of the *Accountability Principles 2014* has in fact been made.

11 Section 10

Repeal the section, substitute:

10 Duty to keep police certificates and documents relating to NDIS worker screening clearances

- (1) If a police certificate, or a copy of a police certificate, is kept by an approved provider under section 9, the police certificate or copy must be kept in accordance with the *Privacy Act 1988*.
- (2) If an NDIS worker screening clearance, or a copy or other evidence of an NDIS worker screening clearance, is kept by an approved provider under section 9, the clearance or copy must be kept in accordance with the *Privacy Act 1988*.

Sanctions Principles 2014

12 Section 6

Before “The following”, insert “(1)”.

13 Subparagraph 6(b)(i)

Repeal the subparagraph, substitute:

- (i) obtain (with the person’s written consent) a police certificate for the person, unless the provider is satisfied that the person meets the requirements in subsection (2); and

14 At the end of section 6

Add:

- (2) A person meets the requirements in this subsection if the person has an NDIS worker screening clearance that:
 - (a) was issued not more than 5 years before the day on which the person would first become a key personnel of the provider; and
 - (b) is not suspended.

Part 2—Amendments relating to police certificates

Accountability Principles 2014

15 Section 4 (definition of *CrimTrac*)

Repeal the definition.

16 Section 4 (definition of *police certificate*)

Repeal the definition, substitute:

police certificate, for a person, means a report about the person’s criminal conviction record prepared by:

- (a) the Australian Federal Police; or
- (b) the Australian Criminal Intelligence Commission; or
- (c) an agency accredited by the Australian Criminal Intelligence Commission;
or
- (d) the police force or police service of a State or Territory.

Aged Care Quality and Safety Commission Rules 2018

17 Section 4

Insert:

police certificate, for a person, means a report about a person’s criminal conviction record prepared by:

- (a) the Australian Federal Police; or
- (b) the Australian Criminal Intelligence Commission; or
- (c) an agency accredited by the Australian Criminal Intelligence Commission;
or
- (d) the police force or police service of a State or Territory.

18 Section 4 (definition of *police report*)

Repeal the definition.

19 Paragraph 90(1)(c)

Omit “police report”, substitute “police certificate”.

20 Paragraph 92(1)(d)

Repeal the paragraph, substitute:

- (d) a police certificate, issued for the applicant not more than 2 years before the end of the applicant’s current period of registration, does not record that the applicant has a serious offence conviction in Australia; and

Classification Principles 2014

21 Section 4

Insert:

police certificate, for a person, means a report about a person's criminal conviction record prepared by:

- (a) the Australian Federal Police; or
- (b) the Australian Criminal Intelligence Commission; or
- (c) an agency accredited by the Australian Criminal Intelligence Commission;
or
- (d) the police force or police service of a State or Territory.

22 Section 4 (definition of *police report*)

Repeal the definition.

23 Paragraph 45(c)

Repeal the paragraph, substitute:

- (c) a police certificate issued for the person within the last 2 years does not record that the person has a serious offence conviction in Australia;

Grant Principles 2014

24 Section 4 (definition of *CrimTrac*)

Repeal the definition.

25 Section 4 (definition of *police certificate*)

Repeal the definition (not including the note), substitute:

police certificate, for a person, means a report about the person's criminal conviction record prepared by:

- (a) the Australian Federal Police; or
- (b) the Australian Criminal Intelligence Commission; or
- (c) an agency accredited by the Australian Criminal Intelligence Commission;
or
- (d) the police force or police service of a State or Territory.

Records Principles 2014

26 Section 4 (definition of *police certificate*)

Repeal the definition, substitute:

police certificate, for a person, means a report about the person's criminal conviction record prepared by:

- (a) the Australian Federal Police; or
- (b) the Australian Criminal Intelligence Commission; or
- (c) an agency accredited by the Australian Criminal Intelligence Commission;
or
- (d) the police force or police service of a State or Territory.

Sanctions Principles 2014

27 Section 4 (definition of *police certificate*)

Repeal the definition, substitute:

police certificate, for a person, means a report about the person's criminal conviction record prepared by:

- (a) the Australian Federal Police; or
- (b) the Australian Criminal Intelligence Commission; or
- (c) an agency accredited by the Australian Criminal Intelligence Commission;
or
- (d) the police force or police service of a State or Territory.