

Supported Residential Services (Private Proprietors) Act 2010

Assessment of the suitability of SRS Staff

Guidelines for assessing the suitability of staff working in Supported Residential Services

Legislative requirements

These Guidelines are issued by the Department of Health pursuant to sections 65 and 205 of the *Supported Residential Services (Private Proprietors) Act 2010* (the Act). A proprietor must have regard to these Guidelines in relation to the employment of a person at a Supported Residential Service (SRS).

Proprietors are required to ensure that all staff engaged in providing personal support are suitable to perform this role. It is an offence under the Act to either appoint or continue to employ a member of staff who is engaged in the special or personal needs of residents if that person is not a suitable person.

It is essential that those working in positions that involve the provision of special or personal support services to vulnerable people are trustworthy and reliable, as well as appropriately skilled. Many potential problems could be avoided if thorough pre-appointment checks are undertaken before a position is filled. In making an assessment of whether a person is a suitable person, proprietors should consider:

- the person's qualifications;
- the person's experience in a relevant facility, including their management and compliance record;
- the person's criminal record check (see below);
- the person's charges and convictions statement (this is relevant only for managers - see regulation 7);
- referee statements and referee checks completed during the recruitment process, preferably from referees that have observed the applicant in a similar role or relevant previous experience.

In the case of a person who is already employed in a role in which s/he is engaged with the special or personal needs of residents, the proprietor may consider any information that comes to the attention of the proprietor during the course of that person's employment, which

leads the proprietor to form a reasonable view that the person poses a risk or is likely to pose a risk to patient safety and wellbeing.

The matters listed above should be considered prior to appointing a person to a role that involves engagement with the special or personal needs of residents, and should be considered periodically during that person's employment.

Mandatory criminal record check of prospective employee

Before employing a member of staff, a proprietor must consider the results of a criminal record check issued no earlier than 6 months before the date on which the person is to commence employment.

Where a prospective staff member has resided in an overseas country for a period of 12 months or more in the last 10 years, a proprietor must also consider the results of a criminal record check from that country's police force obtained no earlier than 6 months before the date on which the person is to commence employment.

A proprietor **must not** employ a person whose criminal record discloses a conviction, for which a term of imprisonment has been imposed for:

- murder
- manslaughter
- a sexual offence or an offence committed in another jurisdiction that is equivalent to a sexual offence
- any other form of assault.

The Regulations use the term 'sexual offence' and in the Regulations this has the same meaning it has in the *Criminal Procedure Act 2009*.

Note that terms of imprisonment are not always served in prison and can be served in the community, or a combination of both. Terms of imprisonment include:

- Suspended sentence (which can be suspended wholly or partly)
- Intensive Correction Order (served in the community)
- Combined Custody and Treatment Order (must be served partly in prison and partly in the community)

Consideration of information disclosed in criminal record check

Other criminal offences may be relevant to specific positions, including dishonesty offences, serious drug related matters or serious traffic offences. A proprietor may employ a person whose criminal record check discloses that the person has been found guilty of any offence other than those specified in section 39(2) of the Act and discussed above, if the proprietor considers that the person is suitable to be employed, having regard to:

- The nature, seriousness, age and relevance of the conviction; and
- The type of the conviction and the role to be performed by that person.

It is for the proprietor to decide whether to offer an applicant a position involving the provision of special or personal support to residents, after a full and fair assessment of whether the person is a suitable person.

Any 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.

Anti-discrimination laws.

In addition to these guidelines, proprietors should ensure that their recruitment and employment practices comply with Victorian and Commonwealth law about discrimination in the area of employment. Information about this can be obtained from the Victorian Equal Opportunity and Human Rights Commission (www.humanrightscommission.vic.gov.au) and the Australian Human Rights Commission (http://www.humanrights.gov.au/human_rights/criminalrecord/)

Privacy and confidentiality

The date of issue and the reference number of the criminal record check must be recorded by the proprietor and kept in the staff member's file. The Act does not require proprietors to keep a copy of the actual police check.

Proprietors must ensure that any information in a criminal record check read by the proprietor is not divulged by the

proprietor directly or indirectly, to any person other than the Secretary of the Department of Health or other departmental employees in accordance with the Act.

Staff engaged through an Agency

Under the Act, the proprietor will be liable for any offence arising from the appointment or continued employment of a person who is not a suitable person. This is so, even when a person is engaged through an agency and remains paid and employed by an agency. Proprietors should obtain from the agency any information or documentation that the proprietor considers necessary in order for the proprietor to make an assessment about whether a person to be employed, or a person already employed, is a suitable person, having regard to these Guidelines,

Appointment of a manager

There are provisions in the Act that relate particularly to the appointment of an SRS Manager. A proprietor must employ a person to manage the SRS if at anytime the proprietor is not on site to carry out, direct or undertake the day to day operation of the SRS.

If a proprietor employs a person to manage the SRS, the proprietor must apply to the Secretary for the approval of the person as a suitable person to be the manager of an SRS, within 7 days of that employment. For further information about appointing a manager please visit the website at

<http://www.health.vic.gov.au/srs/registration/>

Other resources

Supported Residential Services (Private Proprietors) Act 2010

Supported Residential Services (Private Proprietors) Regulations 2012

For a copy of ***Operating a supported residential service: A guide for proprietors*** please visit:

<http://www.health.vic.gov.au/srs/resources/publications.htm>

For any other information about SRS please visit <http://www.health.vic.gov.au/srs/> or contact the department on 9096 7467.

Guidelines for assessing the suitability of staff working in Supported Residential Services

Frequently asked questions

A potential employee has a criminal conviction for assault with a sentence of imprisonment however that was years ago and they have really good qualifications and references. Can I employ them?

The legislation clearly states that a person must not be employed if their criminal record check discloses a conviction for murder, manslaughter, a sexual offence or any other form of assault.

If a person has a suspended sentence or had an Intensive Correction Order does that count as a sentence of imprisonment?

Where a police check indicates that a person has been sentenced to a term of imprisonment, it is immaterial whether the sentence was served in prison or not. Sentences that have been suspended or orders such as an intensive correction order are still terms of imprisonment. Intensive correction orders are terms of imprisonment that are served in the community.

Must I destroy the police certificate?

There is no legal obligation to destroy a police certificate, however if you retain the police certificate, or a copy of the police certificate, you must consider privacy and confidentiality requirements.

Who are staff of the SRS?

The legislation defines SRS staff as:

- the proprietor of the SRS
- the director of the SRS
- a person employed by the proprietor
- a person who provides services in exchange for accommodation at the SRS or benefits other than wages.

The following are not included as staff at the SRS:

- a volunteer
- a student undertaking a work placement
- a resident of the SRS

Do students of universities or TAFE colleges or volunteers require a police check?

No, as they do not meet the definition of staff under the legislation. However, if students or volunteers are likely to have unsupervised access to residents, they should have a current police check before being offered a placement or the opportunity to do volunteer work at the SRS.

If an electrician, plumber or other type of tradesperson attends the SRS do they need a police check?

No. Tradesmen do not meet the definition of staff under the Act. However, the proprietor should have suitable measures in place to ensure the safety of the tradesperson and the residents is maintained while the tradesperson is undertaking their work.

Is a Working with Children Check a suitable police check?

No. The Working with Children Check and a Police Check are 2 different checks. The SRS legislation specifically requires that a proprietor consider the results of a criminal record check issued no earlier than 6 months before the date on which the staff member is to commence employment. A Working with Children Check should not be accepted as an alternative to a police check due to current SRS legislative requirements.

What do I do with a staff member who tells me they have been charged with an offence after the police check, or if they have been working at the SRS for a period of time?

A proprietor is required to ensure that their staff are suitable and must not continue to employ a person if that person is not a suitable person. It is up to the proprietor to determine a person's suitability and to consider the information they have available to make this decision.

Having been charged with an offence may not lead to a guilty verdict or conviction.