



# Ensuring staff are safe to work with participants

Employee recruitment practices, including criminal history screening, are an important first step in preventing abuse.

People with disability have the right to feel and be safe when they access supports under the NDIS.

In achieving this, it is essential to minimise the risk that those who work or volunteer with people with disability may pose to their wellbeing and safety.

## Current arrangements

All states and territories now require people who work with children (including children with disability) to undergo risk-based assessments by a government screening agency.

Most funding agreements between providers and their state or territory government include requirements for their staff to undergo police and referee checks at specified intervals.

However, the information considered, as well as ongoing monitoring arrangements, vary significantly between jurisdictions. This is a problem because workers may have to go through different processes in each state and territory limiting their flexibility. It also means that workers who have endangered people with disability in one jurisdiction may fall through the cracks and go undetected when they move interstate.

Four jurisdictions now require centralised screening of adult disability workers:

- Victoria has a register of people barred from working in state-funded disability accommodation services, based on their convictions or past work history.
- Queensland's yellow card system excludes some people from the sector on the basis of their criminal history.
- South Australian assessments take into account criminal history, criminal charges, spent convictions and workplace records, along with other categories of information deemed 'relevant history' by regulation.
- The Australian Capital Territory has a risk-assessment-based check for those who work with vulnerable people.

## Understanding the difference between police checks and centralised risk-based checks

### Police checks:

- list any criminal convictions a person may have
- generally exclude 'spent' convictions (where an individual has not reoffended for a specified period, even for crimes that may be relevant to a particular job), charges that did not proceed, apprehended violence orders, child protection orders and other information held by police or the courts
- do not mean that a person with a conviction cannot be employed — the decision on whether or not the conviction is relevant to the job is normally a decision for the employer.

### Centralised risk-based checks:

- provide approved government vetting agencies access and the ability to assess a wider range of relevant information that may contain 'non-conviction information', as well as unrelated minor offences that lead to a warning or other action — but not a formal conviction
- involve the screening agency, not the employer, in judging the risk a person poses, based on assessment of the relevance and importance of their past history.

## Possible approaches

### Option 1: risk management by employers

Employers would be encouraged, rather than required, to have appropriate staff recruitment and supervision practices, including systems that reduce the likelihood of employing individuals who may pose a risk to participants.

### Option 2: referee checks and police checks

In addition to adopting their own risk management systems as outlined under Option 1, employers who provide certain types of supports, such as personal care, could be required as a condition of registration with the NDIA to review potential employees' previous work history and request police checks and undertake referee checks.

Employers could also be expected to update these clearances at regular intervals. The employer would be able to decide whether the potential employee was a suitable person, regardless of their criminal history.

### Option 3: working-with-vulnerable-people clearances

A more comprehensive approach would gather more information about a person's history and introduce a system of centralised checks.

Under this approach, a screening agency would assess the risk a person poses.

Checks would be conducted on employees, drawing on broader information than police checks (such as non-conviction information) and assess whether the potential employee would be a suitable person.

A screening agency, not the employer, would then decide whether the potential employee was a suitable person to work with vulnerable persons.

#### **Option 4: creation of a barred persons list**

An excluded or barred persons list would be set up and held by the NDIA.

A condition of registration for selected providers would require them to notify certain types of events in which an employee or volunteer endangered the safety of a participant.

As a condition of registration, employers would also need to check potential workers against the list before appointing them. This option could be combined with any of the other options under consideration.

#### **Questions**

- Who should make the decision about whether employees are safe to work with people with disability?
- How much information about a person's history is required to ensure they are safe to work with people with disability?
- Of the options described above, which option, or combination of options, do you prefer?