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| Victorian Safety Screening Policy |
| For registered NDIS providers operating in Victoria,  October 2019 |

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# Part A: Introduction

# Background

* 1. In December 2016, the Council of Australian Governments (COAG) endorsed the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework (the Framework) setting out a new nationally consistent approach to regulation under the NDIS.
  2. The NDIS Worker Screening Check is an important part of the Quality and Safeguarding Framework and will work with other components of the Framework to support the dignity, safety and wellbeing of NDIS participants.
  3. Once fully implemented, the NDIS Worker Screening Check will enable screened workers to deliver NDIS services and supports in any state or territory, with any employer delivering services and supports under the NDIS.
  4. The NDIS Worker Screening Check will be progressively rolled out across jurisdictions as worker screening units are established in each state and territory. This *Safety Screening Policy* *for registered NDIS providers operating in Victoria* (Safety Screening Policy) will be in operation from 1 July 2019 until Victoria’s NDIS Worker Screening Unit (NDIS WSU) is operational, which will be by July 2020.
  5. Terms used in this policy have the meaning given in the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act) unless otherwise specified or the context otherwise requires.

# Purpose

* 1. The policy detailed in this document underlines the Victorian Government’s commitment to ensuring there is no diminution of safeguards for people with a disability transitioning to and following full transition to the NDIS, and confirms Victoria’s position that a person cannot be engaged by a registered NDIS provider in a risk assessed role unless that person has:
* an NDIS Worker Screening Check clearance (see **Appendix 1**) or
* been screened in line with this Safety Screening Policy and the person’s safety screening is current in accordance with the requirements of this policy.
  1. The Secretary of the Department of Health and Human Services (the department) is issuing this interim Safety Screening Policy to set out the special arrangements that apply to registered NDIS providers operating in Victoria both during the transition period[[1]](#footnote-1) for worker screening and after the transition period for worker screening.[[2]](#footnote-2)
  2. This Safety Screening Policy details:
* the safety screening checks required for existing workers (including sole traders) who are employed or otherwise engaged by registered NDIS providers at 30 June 2019 (Part B)
* the safety screening checks registered NDIS providers are required to undertake before an offer of employment or engagement can be made to a prospective worker from 1 July 2019 (Part C)
* the safety screening requirements for subcontractors, labour hire agencies and secondary students (Part C)
* the safety screening requirements after the transition period for worker screening (Part D).
  1. Part B and C of this Safety Screening Policy also detail the requirements that authorised labour hire agencies must comply with when an agency has engaged or proposes to engage a person in a risk assessed role with a registered NDIS provider. Authorised labour hire agencies must comply with these requirements in accordance with the terms of their Authorised Labour Hire Agency Agreement entered into with the department.

# Transition period for worker screening

* 1. Under section 25(8) of the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018* as amended by the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Amendment Rules 2019* (NDIS Worker Screening Rules), the transition period is defined as:
* starting on 1 July 2019, and
* ending on the earlier of 30 June 2020 or the day the relevant Commonwealth Minister gives notice under section 30 of the NDIS Worker Screening Rules that the Victorian NDIS WSU is operational.
  1. During the transition period for worker screening, providers registered under section 73E of the NDIS Act that deliver specified services and supports (see List of specified services and supports on the [NDIS Commission website](https://www.ndiscommission.gov.au/document/891) <https://www.ndiscommission.gov.au/document/891> to a participant in Victoria must comply with this Safety Screening Policy in order to meet their obligations under the NDIS Worker Screening Rules and thereby comply with their NDIS registration requirements.
  2. The sections below provide a description of the registered NDIS providers who must comply with this Safety Screening Policy and the workers who need to undergo safety screening under this policy.

# Overview of registered NDIS provider requirements

## NDIS Act[[3]](#footnote-3)

* + 1. The NDIS Act requires registered NDIS providers to comply with the NDIS Practice Standards. Non-compliance with the NDIS Practice Standards by a registered NDIS provider constitutes a breach of a condition of registration (see sections 73F(1)(c) and 73J of the NDIS Act).

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| **Section 73F** | 1. The registration of a person as a registered NDIS provider is subject to the following conditions: 2. the conditions set out in subsection (2);   …   1. the conditions (if any) determined by the National Disability Insurance Scheme rules under section 73H. 2. The registration of a person as a registered NDIS provider is subject to the following conditions:   …  (c) a condition that the person comply with all applicable standards and other requirements of the NDIS Practice Standards. |
| **Section 73J** | A person contravenes this section if the person:   1. is a registered NDIS providers; and 2. breaches a condition to which the registration of the person is subject. |

* + 1. The NDIS Worker Screening Rules have been made for the purposes of section 73T of the NDIS Act which enables the NDIS Practice Standards to deal with matters relating to worker screening.

## NDIS Worker Screening Rules[[4]](#footnote-4)

* + 1. Section 13 of the NDIS Worker Screening Rules provides that a registered NDIS provider must only allow workers to engage in risk assessed roles if the person has a valid NDIS Worker Screening Check clearance.
    2. Section 14 of the NDIS Worker Screening Rules provides exceptions to the requirement that workers engaged in risk assessed roles by registered NDIS providers must have an NDIS Worker Screening Check clearance. One of the exceptions for registered NDIS providers delivering services in Victoria is where the registered NDIS provider is complying with the special arrangements set out in section 25 of the NDIS Worker Screening Rules.
    3. Subsection 25(3) of the NDIS Worker Screening Rules sets out the special arrangements that apply to registered NDIS providers operating in Victoria during the transition period for worker screening:

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| **Section 13(2)** | Subject to the exceptions contained in this Division, a registered NDIS provider must only allow a worker to engage in a risk assessed role, if the worker has a [NDIS Worker Screening Check] clearance. |
| **Section 14** | A registered NDIS provider may allow a person to engage in a risk assessed role when the person does not have a clearance at a time when…  (b) the registered NDIS provider:  (i) is subject to transitional arrangements; and  (ii) the registered NDIS provider is complying with the transitional arrangements. |
| **Section 25(3)** | A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:  (a) it is during the transition period; and  (b) the provider is compliant with the safety screening requirements in relation to the   person in accordance with the safety screening policy issued by the Victorian  Department of Health and Human Services and as in force from time to time; and  (c) the person’s safety screening is current in accordance with the requirements; and  (d) a notice (if any) issued to the provider by the Commissioner pursuant to   subsection (7) has not come into effect. |
| **Compliance with special arrangements in Victoria means that a worker may be engaged by a registered NDIS provider in a risk assessed role at a time when the person does not have a NDIS Worker Screening Check clearance during and after the transition period if:**   * **the registered NDIS provider has complied with this Safety Screening Policy and** * **the registered NDIS provider’s workers’ safety screening requirements are current in accordance with the requirements of this policy.** | |

# Providers and workers who must comply with this policy

* 1. Providers registered under section 73E of the NDIS Act are obliged to comply with the NDIS Worker Screening Rules as part of the NDIS registration requirements (section 73F(1)(c)). Workers[[5]](#footnote-5) of registered NDIS providers are required to have a valid and current NDIS Worker Screening Check clearance or been screened in line with this Safety Screening Policy if they:

1. are involved in the direct delivery of specified supports and specified services to persons with disability as a part of their normal duties (see **Appendix 2**), or
2. are likely to have more than **incidental contact** with people with disability as a part of their normal duties (see section 6 of the NDIS Worker Screening Rules for what may constitute more than incidental contact), or
3. are key personnel (see section 11A of the NDIS Act), which includes those holding executive, senior management and operational positions in a registered NDIS provider, such as, a Chief Executive Officer, Chairperson or Board Member.

Note: (a) and (b) may include supervisors or managers of workers.

The term worker also includes sole traders.[[6]](#footnote-6)

* 1. **Contact** includes physical contact, face-to-face contact, oral communication, written communication and electronic communication (section 6 of the NDIS Worker Screening Rules).
  2. Without limiting what may constitute more than incidental contact, section 6(2) of the NDIS Worker Screening Rules states the normal duties of a role are likely to require **more than incidental contact** with a person with a disability if those duties include:

1. physically touching a person with disability or
2. building a rapport with a person with disability as an integral and ordinary part of the performance of those duties; or
3. having contact with multiple persons with disability:
   1. as part of the direct delivery of a specialist disability support or service; or
   2. in a specialist disability accommodation setting.

# Purpose of safety screening

* 1. Safety screening has a preventative effect in deterring individuals who pose a risk of harm from seeking work in the sector and reducing the potential for registered NDIS providers to employ or otherwise engage workers who pose an unacceptable risk of harm to people with a disability. Safety screening also has a corrective effect in prohibiting those persons who pose an unacceptable risk or are proven to have harmed vulnerable people from having more than incidental contact with people with a disability when working for a registered NDIS provider.
  2. It is not a means of precluding people with an adverse history from employment with the disability service workforce. The relevance of any adverse history should be assessed strictly in relation to the work environment and job role. All these checks must be undertaken in strict compliance with privacy and confidentiality principles as required by the relevant legislation. Safety screening is only one of a range of strategies that operate together to reduce risk of harm to people with a disability in the delivery of services and supports in the NDIS. Registered NDIS providers must also promote positive organisational cultures that do not tolerate violence, abuse, neglect or exploitation, and which have robust complaints mechanisms, systems to report serious incidents and strategies to eliminate the use of restrictive practices.

# Part B: Safety screening requirements during the transition period for worker screening – existing workers

# Existing workers

* 1. Compliance with this Safety Screening Policy is recognised as compliance with Victoria’s special arrangements for the purposes of the NDIS Worker Screening Rules, in Victoria only. It will not be recognised as a valid NDIS Worker Screening Check clearance in other participating NDIS jurisdictions. That is, if a person is cleared under this policy in Victoria and then wishes to work in another state or territory, that person will need to meet the requirements of the relevant section of the NDIS Worker Screening Rules that apply to that jurisdiction.
  2. During the transition period for worker screening, registered NDIS providers will continue to be responsible for ensuring the safety screening of their workers and must be able to demonstrate to a third party quality auditor that safety screening has been undertaken for workers engaged in risk assessed roles.
  3. Part 4 of the NDIS Worker Screening Rules as amended by the *National Disability Insurance Scheme (Practice Standards - Worker Screening) Amendment Rules 2019* provides that a registered NDIS provider’s compliance with the safety screening requirements set out in this Safety Screening Policy issued by the Victorian Department of Health and Human Services will be required during the transition period for worker screening (see section 25 of the NDIS Worker Screening Rules).
  4. Under this policy, all relevant workers employed or otherwise engaged (including by third parties such as labour hire agencies) by a registered NDIS provider delivering specified services or supports (**Appendix 2**) in Victoria at 30 June 2019 **and** who have had the checks outlined in Table 1 below, will be considered cleared to work in risk assessed roles for a registered NDIS provider during the transition period for worker screening.
  5. Note, sole traders are considered to be workers for the purposes of this Safety Screening Policy and the NDIS Worker Screening Rules.

Table 1: Checks required to have been undertaken for existing workers[[7]](#footnote-7) to be considered cleared to work in risk assessed roles for a registered NDIS provider during the transition period for worker screening.

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| Disability workers[[8]](#footnote-8) | Workers of community managed mental health services under the NDIS[[9]](#footnote-9) | Workers providing early intervention supports for early childhood[[10]](#footnote-10) |
| * Police check * Disability Worker Exclusion List Check * Victorian Working with Children Check (if required) | * Police check * Victorian Working with Children Check (if required) | * Police check * Victorian Working with Children Check |

* 1. Workers (including those who have been engaged by third parties) who have not undertaken the requisite checks as outlined in Table 1, must obtain the relevant check as soon as possible and will not be cleared to work in risk assessed roles for a registered NDIS provider without the requisite checks. The relevant checks in Table 1 need to be obtained and stored, not just for compliance with this policy, but for the purposes of auditing, which forms part of the conditions of registration as a registered NDIS provider.

# Part C: Safety screening checks and processes during the transition period for worker screening requirements for prospective workers

# Prospective workers

* 1. Under this policy, during the transition period for worker screening an offer of employment or engagement (including by third parties) cannot be made to a prospective worker until the safety screening requirements have been completed and any issues have been assessed by the registered NDIS provider through a safety screening risk assessment (refer to section 14).
  2. The following sections outline the specific checks and policies required to be complied with as part of this Safety Screening Policy:
* Proof of identity check (section 10)
* Police check, including an international police check (section 11)
* Working with Children Check, if required (section 12)
* Disability Worker Exclusion List check (section 13).

# Recruitment processes

To comply with the requirements of the *Privacy and Data Protection Act 2014* *(Vic)*, registered NDIS providers and authorised labour hire agencies must provide each applicant with information about this Safety Screening Policy at the beginning of the recruitment process. This includes informing applicants that their details will be provided to the Disability Worker Exclusion Scheme (DWES) Unit to check if their name is on the Disability Worker Exclusion List (DWEL) before permitting them to engage in a risk assessed role, and informing prospective workers that if they do not agree, they cannot be engaged by the registered NDIS provider in a risk assessed role, that is a role where the worker:

1. is involved in the direct delivery of specified supports and specified services to persons with disability as part of their normal duties (see **Appendix 2**) or
2. is likely to have more than **incidental contact[[11]](#footnote-11)** with people with disability as a part of their normal duties or
3. is a key personnel[[12]](#footnote-12) such as those holding executive, senior management and operational positions in a registered NDIS provider (for example, as a Chief Executive Officer, Chairperson or Board Member).

## Informing applicants of their obligations in relation to safety screening

* + 1. Applicants and prospective workers can be informed of their obligations through:
* position descriptions
* information for applicants
* application for employment forms.
  + 1. **Appendix 3** contains examples of statements that can be included in position descriptions, information for applicants and application for employment forms.
    2. This information should also be repeated to applicants verbally, particularly during the job interview process.
    3. Registered NDIS providers and authorised labour hire agencies should also provide an opportunity for prospective workers to disclose their criminal record or disciplinary actions as part of the recruitment process.

## Statutory declarations

* + 1. It is prudent for registered NDIS providers and authorised labour hire agencies to ask prospective workers to sign a statutory declaration stating that they have fully disclosed to the registered NDIS provider or authorised labour hire agency all relevant information regarding their criminal record and employment history.
    2. Statutory declarations could be drafted to require prospective workers to disclose to the registered NDIS provider or authorised labour hire agency all details of any:
* charges laid against them by police concerning any offence committed in Australia or in another country
* offence of which they have been found guilty, committed in Australia or in another country
* formal disciplinary action taken against them by any current or former employer
* finding of improper or unprofessional conduct by them by any Court or Tribunal
* investigations they have been the subject of by an employer, law enforcement agency or any integrity body or similar in Australia or in another country.
  + 1. By signing such a statutory declaration, workers are stating they have disclosed all relevant information[[13]](#footnote-13) regarding their criminal and employment history.
    2. **Appendix 4** contains an example of wording that can be used for this purpose.

# Proof of identity check

* 1. Establishing the identity of an applicant is critical to ensuring any criminal history information identified through the police check belongs to the correct person. An applicant must complete a police check form (see section 11) giving their consent to have their criminal history checked. This form also contains the Proof of Identity check.
  2. Effective 1 July 2018, the Australian Criminal Intelligence Commission (ACIC) (formerly known as CrimTrac) strengthened the proof of identity requirements and adopted the standards of the National Identity Security Strategy, with respect to the acceptability of proof of identity documents.
  3. Applicants must now provide a minimum of four pieces of identification:
* one commencement of identity document (such as a full Australian birth certificate or current Australian passport)
* one primary use in the community document (such as a current Australian driver’s licence or marriage certificate)
* two secondary use in the community documents (such as a Medicare card or a credit card).
  1. **Appendix 5** contains a list of acceptable documents under each of the three categories.
  2. All safety screening processes (such as the DWEL check) conducted by a registered NDIS provider or authorised labour hire agency should use the applicant’s details as verified against the applicant’s identity documents. Applicant details should not be taken from any application or consent form completed by the applicant as these details may be abbreviated or may otherwise differ from those contained in police or court records.

# Police check

## National police history check (police check)

* + 1. A police check must be undertaken on a prospective worker prior to a formal offer of employment or engagement being made by a registered NDIS provider or authorised labour hire agency.
    2. The police check is processed through the National Police Checking Services (NPCS) Support Service (NSS) which is run by ACIC. Police checks may be conducted concurrently with referee checks.
    3. If information is obtained from police services in jurisdictions other than Victoria, the relevant legislation and/or release policies operating in the specific jurisdiction is applied before the Police History Information is released.
    4. In Victoria, the release of an applicant’s criminal history information may be restricted by the *Victoria Police Information Release Policy* – September 2017 (Information Release Policy).
    5. The Information Release Policy identifies the information that will be released and the exceptions. For example, if ten years have elapsed since an applicant was last found guilty of an offence, Victoria Police will advise that the person has no disclosable outcomes unless an exemption applies. However, information will always be released:
* about offences that resulted in a term of imprisonment longer than 30 months
* about serious violent or sexual offences and the police check is for the purpose of employment or voluntary work with children or vulnerable people
* where the release of the information is considered to be in the interests of security or crime prevention.
  + 1. Findings of guilt without conviction and good behaviour bonds are released. Pending matters or charges that are awaiting a final court outcome may also be released.
    2. Full details of the Information Release Policy can be viewed at the [Victoria Police website](http://www.police.vic.gov.au) <www.police.vic.gov.au>.
    3. Where adverse information is identified through a police check, registered NDIS providers should check the information against the exclusion and provisional exclusion offences listed in section 11.4.
    4. Registered NDIS providers should notify the DWES Unit of any adverse information obtained through the police check (see section 13.7.1 for information about notifications to the DWES Unit).

### Obtaining a police check

* + 1. Police checks can be obtained directly from [Victoria Police](http://www.police.vic.gov.au/content.asp?Document_ID=274) <http://www.police.vic.gov.au/content.asp?Document\_ID=274> or through an authorised service or agency accredited by the ACIC. ACIC provides a list of [accredited agencies](https://www.acic.gov.au/our-services/national-police-checking-service/find-out-more-information/accredited-bodies#accordion-1) <https://www.acic.gov.au/our-services/national-police-checking-service/find-out-more-information/accredited-bodies#accordion-1>.

### Cost of police checks

* + 1. Current information on the cost of obtaining a police check can be obtained from [Victoria Police](http://www.police.vic.gov.au/content.asp?Document_ID=274) <http://www.police.vic.gov.au/content.asp?Document\_ID=274>. Applicants and organisations conducting police checks may be able to access reduced fees for checks on volunteers and students on placement.
    2. Some authorised service providers may also offer reduced fees for volunteers. For more information refer to [ACIC](https://www.acic.gov.au/our-services/national-police-checks) <https://www.acic.gov.au/our-services/national-police-checks>.

### Prior to lodging a police check

* + 1. Registered NDIS providers and authorised labour hire agencies operating in Victoria must inform applicants that a police check will be conducted prior to any offer of employment or engagement being made.
    2. Requests for police checks can only be submitted if the individual's written consent has been obtained. Written consent is obtained when the individual completes the relevant consent form provided by Victoria Police or the ACIC accredited agency.
    3. If a registered NDIS provider or authorised labour hire agency is conducting police checks through an ACIC accredited agency, the provider or agency should ensure that they provide applicants with relevant information as outlined by the accredited agency.

### Lodging a police check

* + 1. Procedures for lodging a police check can be obtained from [Victoria Police](http://www.police.vic.gov.au/content.asp?Document_ID=274) <http://www.police.vic.gov.au/content.asp?Document\_ID=274> or the ACIC accredited agency providing the police check service.

## International police check

* + 1. An international police check is required for applicants who have lived overseas for 12 months or longer during the past ten years. These checks are not available through ACIC accredited agencies or Victoria Police. Applicants should contact the relevant foreign police agency to obtain an international police check. Details of foreign police agencies are available from the [Department of Home Affairs website](http://www.homeaffairs.gov.au) at <www.homeaffairs.gov.au> (search for Character Requirements – How to obtain police checks).
    2. Alternatively, there are reputable organisations which can provide international police checks. These can be found on the internet through searching for “international police checks”.
    3. International police checks are subject to the legislation of the country where the person was a resident and some countries will not release any information regarding an individual for personal or third-party purposes.
    4. International police checks are required even if the Department of Home Affairs has granted the individual a visa, as the applicant may have criminal history information that should be assessed in relation to the specific role being applied for.
    5. There is an expectation that applicants will pursue international police checks as advised in the pre-employment literature provided by the registered NDIS provider. However, in limited and exceptional circumstances where there are delays in an applicant obtaining their international police check and it is critical for the person to commence in the role (provided their national police check result has been returned and considered), the worker may be asked to complete a statutory declaration (see section 9.2).
    6. When accepting the statutory declaration, the offer of employment or engagement by a registered NDIS provider or authorised labour hire agency should be subject to an assessment of the international police check when received.

### Where an international police check is not possible

* + 1. In **extenuating circumstances** where an international police check may not be possible, character references must be conducted with a number of individuals who personally knew the applicant while they were residing in the foreign country. The applicant must be informed that referees will be asked whether they know any information concerning the applicant which would adversely affect the applicant’s ability to perform in the role, including any relevant criminal offences. People providing character references can include previous employers, government officials and family members.
    2. The applicant should also complete a statutory declaration (see section 9.2).
    3. In the case of asylum seekers and refugees who may be unable to provide character references to accompany a statutory declaration, the statutory declaration will suffice with proof of status. However, eligibility to work should be confirmed using the Department of Home Affairs’ Visa Entitlement Verification Online (VEVO) checking system or their faxback service.

### Authenticity of an international police check

* + 1. If there are suspicions as to the authenticity of the international police check, further investigation may be warranted. The relevant consulate may be contacted to obtain guidance on the correct form of the documentation (this must be done without the registered NDIS provider or authorised labour hire agency breaching its privacy obligations).

### When an additional international police check is not required for an individual who has been overseas for twelve months or more in the last ten years

* + 1. If an individual has not returned to a country where they previously resided for a considerable period, other than for a holiday, they would not require an international police check.
    2. Example: A British applicant (with permanent residency) has been in Australia for eight years and has only been overseas intermittently for holidays and has an international police check from when they first arrived in Australia. They would not be required to obtain an additional international police check; they can use the international police check that they used for immigration purposes.

## Adverse information from a police check or an international police check

* + 1. Where adverse information is identified through a police check, an international police check or character reference check, registered NDIS providers or authorised labour hire agencies should check whether the exclusion offences criteria are met (see section 11.4).
    2. Registered NDIS providers and authorised labour hire agencies must also notify the DWES Unit of any adverse information obtained through a police check or an international police check (see section 13.7.1 for information on making a notification to the DWES Unit).

## Exclusion offences

* + 1. This Safety Screening Policy incorporates two levels of exclusion offences which are comparable to the exclusion and presumed exclusion offences outlined in *the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme, May 2018* (see paragraph 61 of the Agreement).

### Category 1

* + 1. Exclusion (or disqualifying) offences as specified in clause 61b of the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme. These comprise murder and attempted murder, serious assault against a child or vulnerable person including incest, child pornography-related offences, abduction or kidnapping of a child or vulnerable person involving a sexual or abusive element and bestiality and serious animal cruelty.
    2. An applicant with a conviction for a Category 1 exclusion offence, where the applicant was at least 18 years old at the time of the offence, must not be offered a risk assessed role and must be notified to the DWES Unit (see section 13.7.1).

### Category 2

* + 1. Presumed exclusion offences as specified in clause 61c of the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme. These comprise manslaughter, assault offences not captured in clause 61b, sexual assault offences not captured in clause 61b, dangerous or negligent acts against a person under care, abduction or kidnapping offences not captured in clause 61b, animal cruelty offences not captured in clause 61b, drug trafficking offences, fraud and deception offences against a child or vulnerable person, national security offences and pending charges for offences captured in clause 61b.
    2. An applicant with a conviction for a Category 2 offence or pending charge for a Category 1 or 2 offence, where the applicant was at least 18 years old at the time of the offence, must be notified to the DWES Unit (see section 13.7.1) and should not be offered a risk assessed role unless there are exceptional circumstances.
    3. The Director responsible for DWES will make a determination in each case about whether exceptional circumstances apply.

### DWES Unit to make a determination on ‘exceptional circumstances’

* + 1. An applicant with convictions for offences listed in Category 2 or a pending charge for a Category 1 or 2 offence, where the applicant was at least 18 years old at the time of the offence, is presumed to pose an unacceptable risk of harm to a person with a disability unless there are ‘exceptional circumstances’ that justify a determination that the person does not pose such a risk.
    2. ‘Exceptional circumstances’ are circumstances the Director responsible for the DWES considers are unusual, uncommon, or special and result in the Director being satisfied that the person does not pose an unacceptable risk of harm to people with a disability (see section B6 in Schedule B of the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme).
    3. In determining that there are exceptional circumstances, the Director must consider the safety, welfare and wellbeing of persons with a disability, and in particular, their right to live free from abuse, violence, neglect and exploitation (including financial) as the paramount consideration. The Director will also take into account any nationally agreed risk assessment criteria when determining whether exceptional circumstances exist in each case (see section 66 of the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme).
    4. For other offences or pending charges not covered by Category 1 or 2, but which:
* involve bodily harm,
* involve violence or threats of violence,
* are of a sexual nature,
  + involve dishonesty, or
* involve neglect of a person in their care,

registered NDIS providers and authorised labour hire agencies must notify the DWES Unit (see section 13.7.1).

* + 1. For all other offences, registered NDIS providers and authorised labour hire agencies will be required to undertake a safety screening risk assessment of the person on whether they pose an unacceptable risk to people with a disability in light of their criminal history or other relevant information in accordance with section 14.
    2. Where a notification to the DWES Unit has been made, an offer of employment or engagement cannot be made until the registered NDIS provider or authorised labour hire agency receives confirmation from the DWES Unit that a decision has been made NOT to put the applicant on the DWEL.

# Working with Children Check

## What is the Working with Children Check?

* + 1. In 2006, the Victorian Government introduced a checking system which requires people who work with, or care for children, to apply for a Working with Children Check (WWCC). The WWCC helps to protect children from sexual or physical harm by checking a person's criminal history for serious sexual, violence or drug offences and adverse findings from professional disciplinary bodies. The introduction of the WWCC creates a mandatory minimum checking standard across Victoria. Note, each state has their own process, they are not transferable interstate. In Victoria, a Victorian WWCC is required.

## What is child-related work?

* + 1. The *Working with Children Act 2005* (WWC Act) establishes a framework for those people engaged in child-related work. Under the WWC Act, a person needs a WWCC if they meet ALL of the following conditions of child-related work:
* They are an adult who ‘works’ with children aged under 18 years of age. The term ‘work’ includes engaging in voluntary work and providing practical training as well as paid employment.
* They are working with children at or for one of the services, places or bodies, or in one of the activities listed in the WWC Act.
* Their work usually involves direct contact with children. Direct contact includes written, oral and electronic communication as well as physical contact and face-to-face contact.
* The contact they have with children is not occasional direct contact that is incidental to their work.
* They are not exempt from having a WWCC under the WWC Act[[14]](#footnote-14).
  + 1. **Appendix 6** contains the list of services, places or bodies, or activities that constitute child-related work.
    2. Workers delivering NDIS early intervention supports for early childhood must hold a current WWCC (unless those workers are exempt from having a WWCC under the WWC Act, such as teachers registered with the Victorian Institute of Teaching).

## How does the WWCC work and for how long is it valid?

* + 1. The WWCC is undertaken by the Department of Justice and Community Safety and determines if a person poses an unjustifiable risk to the safety of children. The WWCC screens a person’s criminal record and in some cases, any adverse professional conduct determinations and findings from prescribed bodies listed in the WWC Act. The WWCC focuses on offences relevant to the safety of children such as serious sexual, violent and drug offences.
    2. The Department of Justice and Community Safety will continue to monitor these records for the life of the WWCC. A WWCC holder’s criminal record is monitored by Victoria Police on a weekly basis and the Department of Justice and Community Safety is notified of relevant charges, convictions and findings of guilt. Upon receipt of these notifications, the Department of Justice and Community Safety will re-assess the WWCC holder’s eligibility to have a WWCC.
    3. A WWCC card is valid for five years unless the person is given an Interim Negative Notice or Negative Notice or it is suspended or revoked by the Department of Justice and Community Safety.

## What are the obligations of registered NDIS providers in relation to the WWCC?

* + 1. Registered NDIS providers and authorised labour hire agencies operating in Victoria are responsible for ensuring that their organisations comply with the WWC Act and, that:
* all workers, including employees, labour hires, volunteers or students 18 years or over who are engaged in child-related work obtain a WWCC as defined by the WWC Act
* individuals engaged by the registered NDIS provider or authorised labour hire agencies or volunteers issued with a Negative Notice do not undertake child-related work as defined by the WWC Act
* periodically visit the [WWCC website](https://online.justice.vic.gov.au/wwccu/checkstatus.doj) and check the status of all persons engaged and volunteers with WWCC cards using Check Status function <https://online.justice.vic.gov.au/wwccu/checkstatus.doj>.
  + 1. If the workers and volunteers of the registered NDIS provider or authorised labour hire agency require a WWCC, they must:
* show their WWCC Application Receipt to the registered NDIS provider or authorised labour hire agency upon request as evidence that they have submitted an application,
* present their WWCC card to the registered NDIS provider or authorised labour hire agency on request or when applying for child-related work,
* inform the registered NDIS provider or authorised labour hire agency within seven days if they have been issued with an Interim Negative Notice or Negative Notice, have had their WWCC suspended or revoked, or if they have a relevant change in circumstances,
* not engage in child-related work if they have been issued with a Negative Notice or had their WWCC suspended or revoked, and
* ensure the accuracy of their personal details and registered NDIS provider or authorised labour hire agency information using the online MyCheck/Change of Details function on the WWCC website - http://www.workingwithchildren.vic.gov.au.

## Other obligations in relation to the safeguarding of children with a disability: Child Safe Standards and Reportable Conduct Scheme

* + 1. The WWCC is just one of a registered NDIS provider’s and authorised labour hire agency’s responsibilities in creating and maintaining a child-safe environment. The WWCC does not assess a person’s suitability to work with or care for children in a particular role. It is the responsibility of registered NDIS provider or the authorised labour hire agency to assess if a person is suitable to work with children and to continue monitoring their workers' behaviour around children.
    2. Registered NDIS providers and authorised labour hire agencies should always be vigilant by doing thorough reference checks and establishing sound, ongoing supervision practices so that children are safe from harm.
    3. Organisations must comply with the [Child Safe Standards](https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards/) <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards/> that have been introduced as part of the Victorian Government's response to the [Betrayal of Trust Inquiry](http://www.parliament.vic.gov.au/fcdc/article/1788) <https://www.parliament.vic.gov.au/fcdc/article/1788>. These are compulsory minimum standards under the *Child Wellbeing and Safety Act 2005* that apply to organisations that provide services for children (see schedules 1 and 2 which outline the entities that must comply with the Child Safe Standards unless otherwise exempt). Individuals identified in section 23 of the *Child Wellbeing and Safety Act 2005* must also comply with the Child Safe Standards. The standards help ensure the safety of children.
    4. Organisations to which the reportable conduct scheme applies under the *Child Wellbeing and Safety Act 2005* and that exercise care, supervision or authority over children must also comply with the [Reportable Conduct Scheme](file:///C:\Users\35890\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\CVA9TVMT\Reportable%20Conduct%20Scheme) <https://ccyp.vic.gov.au/reportable-conduct-scheme/> requirements that came into effect on 1 July 2017. Schedules 3 and 4 of the *Child Wellbeing and Safety Act* *2005* contain a list of entities that must comply with the Reportable Conduct Scheme. For more information go to [Commission for Children and Young People](https://ccyp.vic.gov.au/) <https://ccyp.vic.gov.au/>.

# Disability Worker Exclusion List (DWEL) check

## The Disability Worker Exclusion Scheme

* + 1. In September 2014, the department established the Disability Worker Exclusion Scheme (DWES) to exclude from employment disability workers who have been identified as posing a risk to the safety and wellbeing of clients.
    2. The scheme initially applied to disability residential services. The *Parliamentary Inquiry into abuse in disability services* (Parliament of Victoria, May 2016) recommended the scheme be expanded beyond residential services and, from 1 November 2017, the scheme was expanded to cover all disability services operating under the *Disability Act 2006*.

## The Disability Worker Exclusion List

* + 1. Workers placed on the Disability Worker Exclusion List (DWEL) have been assessed as being an unacceptable risk to the health, safety or welfare of a person with a disability.
    2. There are four broad categories of conduct which may qualify a person for placement on the DWEL under this policy. These are known as the DWES criteria.
    3. During the transition period for worker screening, registered NDIS providers and authorised labour hire agencies placing workers with registered NDIS providers must notify the DWES Unit of applicants, workers and other personnel falling into the DWES criterion (1) only. For all other misconduct and incidents which may fall within criteria (2) to (4), these should be reported to the NDIS Commission in accordance with the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.
    4. The DWES Unit may receive notifications from other entities such as the NDIS Commission and other NDIS WSU of applicants falling into criteria (2) to (4).

### Criterion 1 – criminal offences (including exclusion offences)

Where a person has been found guilty of any offence, regardless of whether they are imprisoned, which:

* is either a category 1 or category 2 NDIS exclusion offence (see section 11.4)
* involves bodily harm
* involves violence or threats of violence
* is of a sexual nature
* involves dishonesty
* involves neglect of a person in their care.

### Criterion 2 – misconduct: resulting in termination

Where a person’s engagement has previously been terminated or a person has been removed from the role of a disability worker for conduct which includes abusing a client, sexual misconduct with a client or otherwise placing a client at risk of serious harm (including financial harm). This includes where such conduct occurred outside a disability service, for example conduct occurring within the context of a school or a nursing home would satisfy this criterion, regardless of whether there was a criminal prosecution.

### Criterion 3 – misconduct: worker resigned prior to the completion of a workplace investigation

Where a person has been the subject of a workplace investigation because of an allegation relating to conduct falling within the scope of the criteria, but has resigned before that investigation or workplace disciplinary action has been concluded.

### Criterion 4 – misconduct: other

Where there are reasonable grounds to consider that the engagement of a person as a disability worker in a disability service or in a risk assessed role for a registered NDIS provider would represent an unacceptable risk to the health, safety or welfare of a person with a disability.

* + 1. A person only needs to fall within one of the criteria to be considered for placement on the DWEL.
    2. Falling within one of the criteria means that a person has been considered for placement on the DWEL but does not mean that the person is automatically placed on the DWEL.
    3. People on the DWEL have been assessed by the Director responsible for the scheme as being unsuitable to be engaged as a disability worker in a disability service or in a risk assessed role for a registered NDIS provider. In making this assessment, the Director will consider:
* whether the person was found guilty of an offence which falls within categories 1 and 2 of the NDIS exclusion offences (see section 11.4)
* whether the engagement of the person would pose an unacceptable risk to the health, safety or welfare of persons with a disability
* the relevance of the conduct or criminal offence, in relation to the job or placement
* the nature of the conduct or offence and the relationship of the conduct or offence to the job or placement for which the person is being considered
* the length of time since the relevant conduct took place
* whether the person was dismissed from their role as a disability worker or resigned during the course of an investigation
* whether the person was convicted or found guilty and placed on a bond
* whether there is evidence of a history of the person engaging in similar conduct or an extended police record
* the number of offences committed, or incidents involved which may establish a pattern of behaviour which renders the person unsuitable
* whether the conduct or offence was committed by the person as an adult or a juvenile
* the severity of any punishment imposed, or disciplinary action taken
* if the person was convicted of a crime, whether the offence has now been decriminalised
* if the person was convicted of a crime when overseas, whether the offence is a crime in Australia
* whether there are other factors that may be relevant for consideration
* the general character of the person since the conduct or since the offence was committed.

## The Disability Worker Exclusion Scheme Unit (DWES Unit)

* + 1. The DWES Unit, which is part of the department, has been established by the Secretary of the department to administer the scheme. Its functions include compiling and maintaining the DWEL, responding to queries regarding the DWEL, managing requests for review of decisions and communicating with persons whose names are on, or may be placed on, the DWEL.
    2. The Secretary has authorised the Director responsible for the DWES to make decisions regarding whether a person’s name should be placed on, or removed from, the DWEL.
    3. The DWES Unit operates an online system called the DWES Portal to facilitate the lodgement of DWEL check requests and notifications. Access to the DWES Portal is limited to authorised persons nominated by each registered NDIS provider (see **Appendix 1** for a definition of authorised person). The DWES Portal can be accessed through the department’s [DWES site](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>.
    4. Any questions about the operation of the DWEL check should be directed to the DWES Unit.

Email: [DWESU@dhhs.vic.gov.au](mailto:DWESU@dhhs.vic.gov.au) Phone: (03) 9096 3203.

## Transition arrangements

* + 1. All existing authorised persons of a registered NDIS provider or authorised labour hire agency will continue to be the authorised person for the organisation through the transition period for worker screening, unless a registered NDIS provider or authorised labour hire agency advises the DWES Unit that an authorised person should be removed.
    2. As part of the implementation of this interim Safety Screening Policy, registered NDIS providers and authorised labour hire agencies operating in Victoria must:
* Advise the DWES Unit in writing if any authorised person should be removed.
* Complete and submit the authorised person nomination form, to nominate any new authorised persons. The form can be found at the [DWES internet page](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) under related resources <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>.
* Ensure they have at least one authorised person at all times. This may require the nomination of several authorised persons to account for planned and unplanned leave.
  + 1. Any existing notifications will continue to be assessed and finalised in accordance with the [*DWES Instruction, October 2017*](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>.

## Checking a prospective worker against the DWEL

* + 1. Prospective workers who fall within the definitions outlined in ‘Part A – Providers and workers who must comply with this policy’ must have the safety screening checks outlined in this Safety Screening Policy completed before an offer of employment or engagement can be made by registered NDIS providers or authorised labour hire agencies.
    2. To check the name of a prospective worker against the DWEL, a registered NDIS provider or authorised labour hire agency should submit to the DWES Unit a check request as well as a copy of the *Consent and Acknowledgment Form* (**Appendix 7**) signed by the prospective worker.
    3. The authorised person for a registered NDIS provider or authorised labour hire agency should use the applicant’s details as verified against the applicant’s identity documents, not the applicant details from the *Consent and Acknowledgement Form*, when completing and submitting a check request. This is because the *Consent and Acknowledgement Form* may contain abbreviations or may otherwise differ from police and court records.
    4. Please note the DWES Unit may not undertake a check against the DWEL without a copy of the *Consent and Acknowledgement Form* signed by the prospective worker.
    5. A copy of the check request, the signed *Consent and Acknowledgement Form*, and a copy of the department’s response to the check request, must be kept by registered NDIS providers or authorised labour hire agencies for seven years for ongoing compliance check purposes and so that the registered NDIS provider or authorised labour hire agency can show that it has complied with the requirements of the DWES.

## Outcome of the check

* + 1. When a check against the DWEL is made, the DWES Unit will provide the registered NDIS provider’s or authorised labour hire agency’s authorised person with one of four responses:

|  |  |
| --- | --- |
| Response to check request from the DWES Unit | Requirements under the Scheme |
| **Clear** | 1. The person is NOT on the DWEL and can be engaged by a registered NDIS provider as a worker in a risk assessed role. |
| **Excluded** | 1. The person is ON the DWEL and CANNOT be engaged by a registered NDIS provider as a worker in a risk assessed role. |
| **Subject of Investigation** | 1. The person is the subject of a Notification and CANNOT be engaged by a registered NDIS provider as a worker in a risk assessed role. |
| **Current appeal/review** | 1. The person is ON the DWEL, but subject to an appeal or review, and CANNOT be engaged by a registered NDIS provider as a worker in a risk assessed role. |

## Notifications and reportable incidents

* + 1. As indicated in sections 11.1.9 and 11.3.2, registered NDIS providers and authorised labour hire agencies to whom this policy applies must notify the DWES Unit of adverse findings arising out of a national police check or international police check. Adverse findings are those which indicate a person has been found guilty of any offence, regardless of whether they are imprisoned, which:
* involves bodily harm,
* involves violence or threats of violence,
* is of a sexual nature,
* involves dishonesty,
* involves neglect of a person in their care, and
* is either a category 1 or category 2 exclusion offence (see section 11.4).
  + 1. All notifications to the DWES Unit must be made using the [DWES Portal](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) (see section 13.3.3) by an authorised person of the registered NDIS provider or authorised labour hire agency.
    2. The DWES Unit will also consider information provided by other entities such as other NDIS WSU and the NDIS Commission. For example, a worker subject to a banning order issued by the NDIS Commission will be considered for placement on the DWEL.

**Registered disability service providers providing services to people under the *Disability Act 2006[[15]](#footnote-15)* must comply with the current DWES notification requirements. That is, they must notify the DWES Unit of workers whose conduct falls into any of the four DWES criteria (see section 13.2.4). This requirement also applies to authorised labour hire agencies providing staff to registered disability service providers.**

## Process for inclusion on the DWEL

### Provisional exclusion assessment

* + 1. Where the Director considers that the name of a person may be placed on the DWEL, the person will be advised in writing:
* that their name may be placed on the DWEL,
* the reasons why their name may be placed on the DWEL,
* that they may not be engaged in a risk assessed role with a registered NDIS provider unless they are notified that their name is not on the DWEL, and
* that they have 30 days in which to make a written submission as to why their name should not be placed on the DWEL as set out below (a ‘show cause’ submission).
  + 1. If further information supporting the placement of the relevant person on the DWEL comes to the attention of the Director following a notification to the DWES Unit, then the person will be advised of the substance of that information.
    2. Where the Director considers that the person should not be placed on the DWEL, the person will be advised in writing that their name will not be placed on the DWEL and that they may be employed or otherwise engaged in a risk assessed role with a registered NDIS provider.
    3. The Director will also advise any disability service provider, registered NDIS provider, authorised labour hire agency or self-managed NDIS participant that had engaged or was seeking to engage the person at the time of the notification that the person is not on the DWEL and may be engaged, or continue to be engaged, in a risk assessed role with a registered NDIS provider.

### ‘Show cause’ submission by a person following advice of Provisional Exclusion Assessment

* + 1. If a person wishes to provide a ‘show cause’ submission explaining why they should not be placed on the DWEL, they must write to the DWES Unit or submit a *Disability Worker Exclusion Scheme Worker Review Form* available on the [department’s website](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>. The Disability Worker Exclusion Scheme Worker Review Form and any supporting documents must be provided within 30 business days of being notified that a provisional exclusion assessment has been made.
    2. Prior to the expiration of 30 days, the person may seek additional time to make their submission by writing to the DWES Unit. The Director may at their discretion grant an extension of time.
    3. If no submission is received from the person within 30 days, the outcome of the notification may be recorded as a decision to exclude the worker and their name placed on the DWEL.

### Decision to place a worker on the DWEL

* + 1. In making their decision to place a worker on the DWEL, the Director will consider the written material submitted by that person (the ‘show cause’ submission). The Director may also contact the authorised person of the registered NDIS provider or authorised labour hire agency prior to finalising the decision to ensure all relevant information has been considered. There will be no formal hearing in relation to whether a person’s name will be placed on the DWEL.
    2. The outcome of the Director’s decision will be provided to the person in writing. If the Director’s decision is to place the person on the DWEL, reasons for the decision to place the worker on the DWEL will be provided.
    3. If a person is dissatisfied with a decision to place their name on the DWEL, they can apply to appeal the Director’s decision.
    4. If the Director decides that the person’s name should not be placed on the DWEL, the person and any disability service provider, registered NDIS provider, authorised labour hire agencies or self-managed NDIS participant that has sought to engage or has engaged the person at the time of the notification, will be advised accordingly.

## Appeals of placement on the DWEL

* + 1. The Secretary to the department will authorise a Deputy Secretary of the department to consider applications to appeal decisions made by the Director responsible for the DWES. The Deputy Secretary’s functions include reviewing the provisional exclusion assessment (and the decision to place the person’s name on the DWEL).
    2. Within 30 business days of being notified of the Director’s decision to place a person on the DWEL, that person may appeal the decision to the Secretary by submitting a *Disability Worker Exclusion Scheme Worker Review Form* with any supporting documents to the DWES Unit.
    3. The *Disability Worker Exclusion Scheme Worker Review Form* can be obtained from the [Disability Worker Exclusion Scheme website](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>.
    4. The person will be notified of the outcome of the appeal by the Deputy Secretary.

### Matters to be considered during an appeal

* + 1. When applying for an appeal of placement on the DWEL, a person may provide any information that can be used to determine whether they continue to pose a risk to the health, safety and welfare of people with a disability. This may include:
* written references from current or past employers,
* evidence of professional development or training the person has undertaken to improve their skills,
* evidence that the person is or has been working in a similar role elsewhere,
* information regarding the original investigation or allegations, or
* any changes to the person’s personal situation since the time of their placement on the DWEL that they believe should be taken into consideration.
  + 1. At any time, a person’s name may be removed from the DWEL in the following circumstances:
* where a person can demonstrate that they have been placed on the DWEL because they have been wrongly identified,
* where a person can demonstrate that they have been placed on the DWEL because a public record contains an error, or
* where new information has become available that was not previously considered by the Director, the registered NDIS provider or authorised labour hire agency that made the notification to the DWES Unit in respect of the person.

# Safety screening risk assessment

## Risk to be assessed and associated behaviours

* + 1. A safety screening risk assessment in accordance with this Safety Screening Policy is an evaluation of whether a person poses an unacceptable risk to persons with a disability considering their criminal history and/or other relevant information and is consistent with the requirements of the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme (see clauses 61 and 64).
    2. Until the Victorian NDIS WSU is operational, registered NDIS providers and authorised labour hire agencies will continue to be responsible for evaluating whether a person poses an unacceptable risk to people with a disability based on the information the registered NDIS provider or authorised labour hire agency has.
    3. The risk to be assessed is risk of harm to a vulnerable person, including, risk of sexual, physical, psychological, emotional and financial harm or neglect (see **Appendix 8** for examples of the conduct that constitute each type of harm).
    4. If the registered NDIS provider or authorised labour hire agency is satisfied that the person does not pose an unacceptable risk of harm to people with a disability, the worker may be engaged in a risk assessed role.
    5. If the registered NDIS provider or authorised labour hire agency is satisfied that the person does pose an unacceptable risk of harm to people with a disability, the worker **must not** be engaged in a risk assessed role.

## Criteria for assessing risk to persons with disability

* + 1. The following criteria should be used to assess risk. These are consistent with the criteria outlined in the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme (clause 66 and Schedule B):
* the nature, gravity and circumstances of the offence, misconduct and/or other relevant information, and how this is relevant to disability-related work
* the length of time that has passed since the event occurred
* the vulnerability of the victim at the time of the event and the person’s relationship to the victim or position of authority over the victim at the time of the event
* the person’s criminal, misconduct and disciplinary, or other relevant history, including whether there is a pattern of concerning behaviour
* the person’s conduct since the event
* all other relevant circumstances in respect of their offending, misconduct or other relevant history, and the impact on the worker’s eligibility to be engaged in disability-related work.
  + 1. Offences which fall within the category 1 and 2 NDIS exclusion offences (see section 11.4) or which:
* involves bodily harm
* involves violence or threats of violence
* is of a sexual nature
* involves dishonesty
* involves neglect of a person in their care,

must be notified to the DWES Unit (see section 13.7.1).

# Use of subcontractors and labour hire agencies

## Requirements for engaging subcontractors

* + 1. The requirements for registered NDIS providers when engaging other personnel and subcontractors, are outlined in section 13 of the NDIS Worker Screening Rules:

|  |  |
| --- | --- |
| **Section 5** | ***other personnel*** in relation to a registered NDIS provider means an individual who:   1. is not employed or otherwise engaged by the registered NDIS provider; and 2. performs work at the premise of, or otherwise as part of the provision of supports and services to any person with disability by, the registered NDIS provider.   ***subcontractor*** in relation to a registered NDIS provider, means a person or entity that makes the services of other personnel available to the provider. |
| **Section 13(3)** | Subject to the exceptions contained in this Division, a registered NDIS provider must only allow a member of other personnel to engage in a risk assessed role, if the registered NDIS provider has:   1. identified to the relevant subcontractor each risk assessed role that the member of other personnel engages in; 2. entered into an appropriate contract with the subcontractor; and 3. taken reasonable steps to satisfy itself that the member of other personnel has a clearance. |

* + 1. Therefore, a registered NDIS provider is not excused from its obligations arising under this policy to undertake a police check, DWEL check and WWCC, if required, because a person it proposes to engage in a risk assessed role is provided by a subcontractor such as a third party labour hire agency.
    2. Registered NDIS providers must ensure they take reasonable steps to satisfy themselves that the personnel engaged by a labour hire agency or any other third party has the clearances required by this Safety Screening Policy. If a registered NDIS provider uses an authorised labour hire agency, this requirement will be fulfilled if the registered NDIS provider receives written confirmation from the authorised labour hire agency that all the necessary safety screening checks outlined in this policy have been satisfied for the worker who is being placed with the registered NDIS provider (see section 15.2.1 below).

## Use of an authorised labour hire agency

* + 1. There are a number of labour hire agencies that the department has entered into an agreement with to implement the requirements of this Safety Screening Policy and the department’s other requirements for labour hire agencies. These agencies have agreed that all of their workers will have undertaken DWES checks and other safety screening requirements in accordance with this Safety Screening Policy and are named as being an authorised labour hire agency (see the [DWES internet page](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>). A registered NDIS provider may engage a worker from such an authorised labour hire agency in an NDIS service outlined in **Appendix 2** and rely upon safety screening checks undertaken by these agencies in respect of that prospective worker, provided that the following applies:
  + The labour hire agency must be named as being an authorised labour hire agency see [Disability Workers Exclusion Scheme](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme> at the time of placement.
  + The registered NDIS provider must receive written confirmation from the authorised labour hire agency prior to the first occasion that the worker is placed with the registered NDIS provider specifying:
* that the worker is aware of and agrees to be bound by the operation of this policy,
* that the requirements of this Safety Screening Policy have been met and the date when screening took place, including when the results of a police check were received, and the outcome of that check for the worker, the date when the name of the worker was checked against the DWEL and confirmation was received from the DWES Unit that the name of worker was not on the DWEL, and
* that the authorised labour hire agency is not aware of any DWES notifications in respect of the worker and that the authorised labour hire agency consents, and the worker has given their consent, to the registered NDIS provider notifying the DWES Unit in respect of the worker if they become aware of circumstances requiring DWES notification under this Safety Screening Policy.
  + 1. For a copy of the suggested pro forma confirmation that a registered NDIS provider should require an authorised labour hire agency to provide, see [Disability Workers Exclusion Scheme](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) on the Service Providers website <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>.
    2. A copy of the confirmation received should be retained by a registered NDIS provider for a minimum period of seven years.
    3. A registered NDIS provider must check to ensure that an authorised labour hire agency’s authorisation remains current at the time of placement by confirming the authorised labour hire agency is listed at that time on the [Disability Workers Exclusion Scheme](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) page on the Service Providers website <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>.

## Use of an agency not authorised by the department

A registered NDIS provider may use labour obtained from an agency that has not been authorised by the department. However, in such circumstances, the registered NDIS provider must undertake their own safety screening checks in accordance with this Safety Screening Policy or, alternatively, suggest that the labour hire agency become an authorised agency by entering into an agreement with the department to implement the requirements of the this Safety Screening Policy and the department’s other requirements for authorised labour hire agencies before the registered NDIS provider engages a worker from that labour hire agency.

## Obtaining authorisation for a labour hire agency

* + 1. Labour hire agencies that are used by a registered NDIS provider may apply to become an authorised labour hire agency. Generally, this will involve the agency satisfying the department that it is aware of and understands the requirements of this Safety Screening Policy and will implement its requirements together with other requirements imposed by the department (**Requirements**).
    2. If the department is satisfied that an agency is able to meet the department’s Requirements, that agency will be asked to enter into an agreement with the department to implement the Requirements.
    3. To find out more information about how a labour hire agency may become an authorised labour hire agency under the department’s safety screening policy, please contact the DWES Unit at [DWESU@dhhs.vic.gov.au](mailto:DWESU@dhhs.vic.gov.au) or on (03) 9096 3203.
    4. Authorised labour hire agencies may lose their authorised status if they fail to comply with the Requirements.

# Engaging secondary school students

* 1. During and after the transition period for worker screening, registered NDIS providers may allow secondary school students to be engaged in a risk assessed role at a time when the person does not have an NDIS Worker Screening Check clearance where the person is:
* A secondary school student on a formal work experience placement with the registered NDIS provider; and
* At a time during the transition period for worker screening, directly supervised by a person who meets the requirements of Victoria’s special arrangements. That is the supervising person meets the requirements of Part B or Part C of this Safety Screening Policy (whichever is relevant) (section 25(4) of the NDIS Worker Screening Rules).
* At a time after the end of the transition period for worker screening, directly supervised by a person who meets the requirements of Victoria’s special arrangements. That is, the supervising person meets the requirements of Part D of this Safety Screening Policy (section 25(6) of the NDIS Worker Screening Rules).
  1. Note, this only applies to registered NDIS providers who have not been given a written notice under section 25(7) from the NDIS Commissioner indicating that section 14(b) of the Worker Screening Rules no longer applies to that provider.

# Part D: Safety screening requirements after the end of the transition period for worker screening

# Phasing to the NDIS Worker Screening Check clearance

* 1. All workers will need to undergo an NDIS Worker Screening Check through an NDIS WSU. This includes workers engaged by authorised labour hire agencies.
  2. Transition arrangements for workers in Victoria who have been engaged or employed during the transition period for worker screening will depend on the type of screening the worker has undertaken during or prior to the transition period for worker screening:
* Workers who have a Victorian Working with Children Check (WWCC) which was in place during the transition period for worker screening and is still current at the end of the transition period for worker screening, will have until the expiry of their WWCC to obtain an NDIS Worker Screening Check clearance through the Victorian NDIS WSU (see section 25(5)(d)(i) of the NDIS Worker Screening Rules).
* Workers whose WWCC expires during the transition period for worker screening will be required to renew their WWCC, and if issued to the person before the end of the transition period will have until the expiry of the renewed WWCC to obtain an NDIS Worker Screening Check clearance through the Victorian NDIS WSU (see section 25(5)(d)(i) of the NDIS Worker Screening Rules).
* Workers who have not had a WWCC in place during the transition period for worker screening will have 6 months from the end of the transition period for worker screening to apply for an NDIS Worker Screening Check through the Victorian NDIS WSU (section 25(5)(d)(iii) of the NDIS Worker Screening Rules).
  1. Note, this only applies to registered NDIS providers that have not received a notice from the NDIS Commissioner indicating that section 14(b) of the NDIS Worker Screening Rules no longer applies to the provider (section 25(5)(e) of the NDIS Worker Screening Rules). Where this notice is provided by the NDIS Commissioner, the registered NDIS provider must not allow a person to be engaged in a risk assessed role when the person does not have an NDIS Worker Screening Check clearance at the time, unless the exceptions in sections 14(a) or (c) of the NDIS Worker Screening Rules apply.

# Appendix 1 – Term definition

**Term definition**

| **Term** | **Explanation** |
| --- | --- |
| **Australian Criminal Intelligence Commission (ACIC)** | Formerly known as CrimTrac. A national agency which conducts Police Checks and administers NSS. |
| **authorised labour hire agency** | A labour hire agency that has entered into an agreement with the department to implement the requirements of this Safety Screening Policy and the department’s other requirements for labour hire agencies, and which is named as being an authorised labour hire agency (see the [DWES internet page](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>. |
| **authorised person** | A person nominated by a registered NDIS provider or authorised labour hire agency to make check requests and give notifications to, and receive confidential information from, the DWES Unit in relation to workers.  All existing authorised persons will continue to be authorised from 1 July 2019, unless a registered NDIS provider or authorised labour hire agency advises the DWES Unit that an authorised person should be removed. |
| **authorised officer** | An employee who has undertaken the Proof of Identity training and is identified by the work area as being qualified to establish an applicant’s Proof of Identity during a recruitment process. |
| **check request** | A request to check the status of a prospective or current worker against the DWEL made to the DWES Unit by an authorised person of a registered NDIS provider or authorised labour hire agency. |
| **department** | Department of Health and Human Services. |
| **Disability Worker Exclusion Scheme (DWES)** | A scheme to collect, store and use information about people who are unsuitable to work with clients in disability services or NDIS funded services. People who are found to be unsuitable are placed on the Disability Worker Exclusion List and prevented from obtaining a direct support worker role in a disability service or being engaged in a risk assessed role for a registered NDIS provider. |
| **Disability Worker Exclusion List (DWEL) check** | The process by which an applicant for a direct support worker role in a disability service or being engaged in a risk assessed role for a registered NDIS provider is checked against the Disability Worker Exclusion List (DWEL). |
| **Disability Worker Exclusion Scheme Unit (DWES Unit)** | A unit established internally by the Secretary to the department to administer the DWES. |
| **key personnel** | 1. Each of the following is one of the key personnel of a person or entity: 2. a member of the group of persons who is responsible for the executive decisions of the person or entity; 3. any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the person or entity 4. Without limiting paragraph (1)(a), a reference in that paragraph to a person who is responsible for the executive decisions of a person or entity includes: 5. if the person or entity is a body corporate that is incorporated, or taken to be incorporated, under the *Corporations Act 2001* – a director of the body corporate for the purposes of that Act; and 6. in any other case – a member of the person’s or entity’s governing body   (section 11A of the NDIS Act).  This may include, for example, those holding executive, senior management and operational positions in a registered NDIS provider, such as a Chief Executive Officer, Chairperson or Board Member. |
| **National Police History Check (police check)** | The process by which an applicant’s identity is checked against police records in all Australian jurisdictions. |
| **NDIS Commission** | The NDIS Quality and Safeguards Commission. |
| **NDIS Worker Screening Check** | An NDIS Worker Screening Check means the assessment of whether a person who works, or seeks to work, with a person with disability poses a risk to such a person. |
| **NDIS Worker Screening Check clearance** | An NDIS Worker Screening Check clearance means a decision made under the NDIS worker screening legislation of a jurisdiction:   1. in response to an application for an NDIS worker screening check; 2. having the effect that the person who made the application is cleared to work with people with disability in a risk assessed role; 3. irrespective of whether the making of the decision is described as an assessment, clearance, approval or otherwise and being a decision which is current and operative,   (section 5 of the NDIS Worker Screening Rules).  If the operation of the decision with respect to a person is suspended, or the decision is revoked, there is no longer an NDIS Worker Screening Check clearance for the relevant person because there is no longer an operative decision for that person. |
| **Negative Notice** | A notice issued by the Department of Justice and Community Safety to a person who has failed a WWCC. Being issued with a negative notice means that the person will be prevented from doing any child-related work for a period of five years, unless their circumstances change. |
| **notification** | A notification by a registered NDIS provider or authorised labour hire agency, notifying the DWES Unit that a former, current or prospective worker or other personnel has been found guilty of an offence, regardless of whether they are imprisoned, which:   * involves bodily harm * involves violence or threats of violence * is of a sexual nature * involves dishonesty or involves neglect of a person in their care * is either a category 1 or category 2 NDIS exclusion offence (see section 11.4). |
| **NSS** | The system used to process Police Checks (administered by the ACIC) - National Police Checking Service (NPCS) Support System |
| **Police Check Consent Form** | The application form – consent to check and release national police record which the applicant completes with their information. The applicant’s signature needs to be witnessed by an authorised officer. The form provides the applicant’s consent to have a police check undertaken and the results released. |
| **Police History Information** | The record of any disclosable criminal history for a person, as released in accordance with the relevant information release legislation and/or policy of the relevant Australian jurisdiction. |
| **risk assessed role** | means:   1. a key personnel role of a person or an entity 2. a role for which the normal duties include the direct delivery of specified supports or specified services to a person with disability, or 3. a role for which the normal duties are likely to require more than incidental contact with a person with disability,   (section 5 of the NDIS Worker Screening Rules). |
| **safety screening risk assessment** | An assessment framework used to assess the overall risk of employing a person, with a relevant history, in a particular role. |
| **subcontractor** | In relation to a registered NDIS provider, means a person or entity that makes the services of other personnel available to the provider  (section 5 of the NDIS Worker Screening Rules). |
| **transition period for worker screening** | In accordance with section 25(8) of the NDIS Worker Screening Rules, the transition period for Victoria will:   * start on 1 July 2019, and * end on the earlier of 30 June 2020 or the day the relevant Commonwealth Minister gives notice under section 30 of the NDIS Worker Screening Rules that the Victorian NDIS WSU is operational. |
| **worker** | Means a person employed or otherwise engaged by a registered NDIS provider (section 5 of the NDIS Worker Screening Rules).  The term ‘worker’ is a broad term which covers a wide range of people who perform work as part of the business of a registered NDIS provider, and includes employees, contractors, consultants and volunteers.  Where a registered NDIS provider is a **sole trader**, that provider is also a worker (see Explanatory Statement issued by the Commissioner of the NDIS Quality and Safeguards Commission relating to the NDIS Worker Screening Rules). |
| **WSU** | Worker Screening Unit |
| **WWCC** | Working with Children Check |

# Appendix 2 – List of specified services and specified supports

The list of specified services and specified supports in the table below is the list published by the Commissioner pursuant to section 7 of the NDIS Worker Screening Rules <https://www.ndiscommission.gov.au/document/891>. The Table sets out the specified services and specified supports provided to a person with a disability for which workers or other personnel delivering these services or supports are required to have an NDIS Worker Screening Check clearance or be screened in accordance with this policy**.**

| **Item number**[[16]](#footnote-16) | **Descriptor** |
| --- | --- |
| 2 | assistance to access and maintain employment or higher education |
| 4 | high intensity daily personal activities |
| 6 | assistance in coordinating or managing life stages, transitions and supports |
| 7 | assistance with daily personal activities |
| 8[[17]](#footnote-17) | assistance with travel/transport arrangements, but only if the services are with respect to specialised transport to school/educational facility/employment/community |
| 10 | specialist positive behaviour support |
| 14 | community nursing care |
| 15 | assistance with daily life tasks in a group or shared living arrangement |
| 16 | innovative community participation |
| 17 | development of daily living and life skills |
| 18 | early intervention supports for early childhood |
| 19 | specialised hearing services |
| 21 | interpreting and translating |
| 25 | participation in community, social and civic activities |
| 26 | exercise physiology and personal training |
| 27 | management of funding for supports in participant plans |
| 28 | therapeutic supports |
| 29 | specialised driver training |
| 33 | specialised support coordination |
| 34 | specialised supported employment |
| 35 | hearing services |
| 36 | customised prosthetics |
| 37 | group and centre-based activities |

# Appendix 3 – Recruitment documents

**Position descriptions**

All position descriptions should contain the notification that safety screening is mandatory for all relevant positions.

Examples of such statements include:

* All applicants are subject to a National Police History Check.
* Applicants who have lived overseas for 12 months or longer during the past 10 years are required to provide the results of an international police check. Applicants should contact the relevant overseas police force to obtain this and submit as part of their application. Details of overseas police agencies are available on the Department of Home Affairs website: https://immi.homeaffairs.gov.au/ search under ‘police check'
* Safety screening will include checking whether your name is on the Disability Worker Exclusion List (DWEL) maintained by the Disability Worker Exclusion Scheme (DWES) Unit. The DWEL includes names of persons unsuitable for employment as a disability support worker in a disability service previously provided, funded or registered by the Department of Health and Human Services or in a risk assessed role for a registered NDIS provider.

**Information for Applicants**

The relevant information for applicant documents should contain detailed information about safety screening, when it occurs and what is required of the applicant as part of the process. An example of this is available at <https://dhhs.vic.gov.au/application-process> and reference should be made to it in the advertisement and acknowledgement of application.

**Application for employment form**

Any forms used should contain information about safety screening as well as requirements if an applicant becomes a competitive applicant.

There should also be statements in employment agreements confirming that all staff are obliged to:

* Advise their manager if they have been charged with a criminal offence which is punishable by imprisonment or, if found guilty, could reasonably affect their ability to meet the inherent requirements of their job.
* Disclose any formal disciplinary action taken against them by any current or former employer (many staff have multiple employers). This includes any finding of improper or unprofessional conduct by any Court or Tribunal and any investigations that the staff member has been subject of by an employer, law enforcement agency or any integrity body or similar in Australia or in another country.
* Report any new criminal charges and/or disciplinary actions during their employment/engagement.

# Appendix 4 – Safety screening statutory declaration

**Example of a safety screening statutory declaration**

I, [full name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Of [address] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

make the following statutory declaration under the **Oaths and Affirmations Act 2018.**

I have fully disclosed in writing to [name of organisation], all details of:

* Any charges laid against me by police concerning any offence committed in Australian or in another country in the past
* Any offence of which I have been found guilty, committed in Australia or in another country in the past
* Any formal disciplinary action taken against me by any current or former employer
* Any finding of improper or unprofessional conduct by me by any Court or Tribunal of any kind
* Any investigations I have been the subject of by an employer, law enforcement agency or any integrity body or similar in Australia or another country

and that a copy of my responses to the above issues which I have provided to [name of organisation] as part of the recruitment process to a position of [position name/title] is attached.

I declare that the content of this statutory declaration is true and correct, and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Declared at:

On the day of 20

**Signature of person making this declaration**

Signature

I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration

Before me \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signature of Authorised Witness**

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

A person authorised under section 30(2) of the **Oaths and Affirmations Act 2018** to witness the signing of a statutory declaration.

If an alternative form of statutory declaration is used, providers should ensure it deals with all matters which are dealt with in the example statutory declaration.

# Appendix 5 – Proof of identity documents[[18]](#footnote-18)

**Proof of identity check – acceptable documents**

Applicants must provide a minimum of four pieces of identification:

**One commencement of identity documents**

1. full Australian birth certificate (not an extract or birth card)
2. current Australian passport (not expired)
3. Australian visa current at time of entry to Australia as a resident or tourist
4. ImmiCard issued by The Department of Home Affairs that enables the cardholder to prove their visa and/or migration status and enrol in services
5. certificate of identity issued by the Department of Foreign Affairs and Trade to refugees and non-Australian citizens for entry to Australia
6. document of identity issued by the Department of Foreign Affairs and Trade to Australian citizens or persons who have the nationality of a Commonwealth country for travel purposes
7. certificate of evidence of resident status.

**One primary use in the community document**

* 1. current Australian drivers’ licence, learner permit or provisional licence issued by a state or territory, showing a signature and/or photo and the same name as claimed
  2. Australian marriage certificate issued by a state or territory (church or celebrant-issued certificates are not accepted)
  3. current passport issued by a country other than Australia with a valid entry stamp or visa
  4. current proof of age or photo identity card issued by an Australian Government agency in the name of the applicant, with a signature and photo
  5. current shooters or firearms licence showing a signature and photo (not minor or junior permit or licence)
  6. for persons under 18 years of age with no other Primary Use in Community Documents, a current student identification card with a signature or photo

**Two secondary use in the community documents**

* 1. certificate of identity issued by the Department of Foreign Affairs and Trade
  2. document of identity issued by the Department of Foreign Affairs and Trade
  3. convention travel document secondary (United Nations) issued by the Department of Foreign Affairs and Trade
  4. foreign government issued documents (for example, drivers’ licence)
  5. Medicare card
  6. enrolment with the Australian Electoral Commission
  7. security guard or crowd control photo licence
  8. evidence of right to an Australian government benefit (Centrelink or Veterans’ Affairs)
  9. consular photo identity card issued by the Department of Foreign Affairs and Trade
  10. photo identity card issued to an officer by a police force
  11. photo identity card issued by the Australian Defence Force
  12. photo identity card issued by the Australian Government or a state or territory government
  13. Aviation Security Identification Card
  14. Maritime Security Identification card
  15. credit reference check
  16. Australian tertiary student photo identity document
  17. Australian secondary student photo identity document
  18. certified academic transcript from an Australian university
  19. trusted referees report
  20. bank card
  21. credit card

If an applicant provides a Working with Children Check card as part of their proof of identity, this is acceptable. If it is an older version with a photograph and a signature, it can count as a primary use in the community document. However, if it is a newer version without the signature, it is a secondary use in the community document.

A Visa Entitlement Verification Online (VEVO) print out showing the visa grant date and visa expiry date (if relevant to the visa type) is an acceptable document to use for commencement of identity.

# Appendix 6 – WWCC – list of occupational fields indicating child-related work

The lists below identifies the services or places of work where workers may need a WWCC (see the [Working with Children Check Victoria website](https://www.workingwithchildren.vic.gov.au/about-the-check/resources/list-of-occupational-fields) <https://www.workingwithchildren.vic.gov.au/about-the-check/resources/list-of-occupational-fields>).

**List of occupational fields indicating child related work**

| **Occupational fields** | | |
| --- | --- | --- |
| **Service or place of work** | **Details** | **Code** |
| Camps | All overnight camps for children | 10 |
| Child care services | Child care services including:  -     centre-based long day care  -     occasional care  -     family day care  -     in-home care  -     outside school hours care | 14  16  18  20  22 |
| Child employment -supervisors | Supervision of a child (under 15 years of age) in employment under the *Child Employment Act 2003* | 76 |
| Child minding | Babysitting or child minding services arranged by a commercial agency | 12 |
| Child protection services | Child protection services | 24 |
| Children's services | Children's services including kindergartens or preschools under the *Children's Services Act 1996* and *Education and Care Services National Law (Victoria) Act 2010* | 26 |
| Clubs and associations | Clubs, associations or movements of a cultural, recreational or sporting nature that provide services of conduct activities for, or directed at, children or whose membership comprises primarily children | 42 |
| Coaching and tuition | Coaching or private tuition services of any kind specifically for children | 28 |
| Counselling services | Counselling or other support services for children | 40 |
| Educational institutions | Educational institutions for children, specifically:   * state schools (all primary, secondary, technical and special state schools) * non-government schools (all primary, secondary and special non-governmental schools) * TAFE colleges and TAFE divisions of universities providing VCE and/or Victorian Certificate of Applied Learning (VCAL) subjects * Some adult education providers offering VCE and/or VCAL subjects * Other institutions providing children’s study or training programs | 44  46  48  50  52 |
| Entertainment and party services | Commercial entertainment or party services for children unless they are merely incidental to or in support of other business activities | 30 |
| Foster care | Fostering children | 54 |
| Gym or play facilities | Commercial gym or play facilities for children unless they are merely incidental to or in support of other business activities | 32 |
| Kinship care | Caring for a child placed by Child Protection under the *Children, Youth and Families Act 2005* | 80 |
| Out-of-home care services | Out-of-home care services (under the *Children, Youth and Families Act 2005)* | 38 |
| Paediatric wards | Paediatric wards of public, private or denominational hospitals as defined in the *Health Services Act 1988* | 58 |
| Photography services | Commercial photography services for children unless they are merely incidental to or in support of other business activities | 34 |
| Refuges | Refuges or other residential facilities used by children | 62 |
| Religion | Religious organisations | 64 |
| School crossings | School crossing services | 66 |
| Student exchange programs / homestay arrangements | Student exchange or homestay arrangement under Part 4.5A of the *Education and Training Reform Act 2006*, including accommodation in a person’s home | 78 |
| Talent and beauty competitions | Commercial talent or beauty competitions for children unless they are merely incidental to or in support of other business activities | 36 |
| Transport | Publicly funded or commercial transport services specifically for children | 60 |
| Youth justice | Youth remand, residential, or justice centres, supervision units and probation services within the meaning of the *Children Youth and Families Act 2005* | 56 |

# Appendix 7 – DWES consent and acknowledgement form

**DWES consent and acknowledgement form**

I am aware that the Department of Health and Human Services (the department) operates a Disability Worker Exclusion Scheme and has a Disability Worker Exclusion List (the List).

I consent to my personal details being provided to the department for the purpose of checking against the List.

I consent to the department collecting personal information and sensitive personal information about me, including information relating to any criminal, disciplinary and employment history of mine, for the purposes of the department compiling and maintaining the List.

I accept that if my name is on or is placed on the List, I will be prevented from being engaged by

1. a disability service provider (as defined in the *Disability Act 2006* (Vic)) as:

A Disability Worker, being a person engaged by a service provider who:

* + - 1. provides, or supervises or manages a person who provides direct support to a person with a disability, and
      2. has direct contact or access to a person with a disability,

and excluded from any work at the disability service that falls within the definition of Excluded Work being work at a disability service:

* + - 1. as a Disability Worker, or
      2. that involves regular direct contact with or access to a person with a disability.

1. a registered NDIS provider registered under section 73E of the *National Disability Insurance Scheme Act 2013* (Cth) as:
   * + 1. an NDIS worker involved in the direct delivery of specified supports and services to people with a disability as a normal part of their duties or
       2. an NDIS worker likely to require more than incidental contact with people with a disability as a normal part of their duties
       3. a key personnel as defined under section 11A of the *National Disability Insurance Act 2013 (Cth)* which includes executive, senior management and operational positions in a registered NDIS provider (such as, a Chief Executive Officer, Chairperson or Board Member).

I agree that the department may inform any registered NDIS provider, disability service provider, labour hire agency or self-managed NDIS participant that has engaged me or proposes to engage me that I am on the List, or that I am the subject of a Notification by a disability service provider, registered NDIS provider, labour hire agency or self-managed NDIS participant.

I agree to inform **[ORGANISATION]** of the name and address of any other disability service provider or registered NDIS provider I am, or intend to be, engaged by.

|  |  |
| --- | --- |
| Full Name |  |
|  |  |
| Address |  |
|  |  |
| Telephone |  |
|  |  |
| Email |  |
|  |  |
| Signature |  |
|  |  |
| Date |  |

***[ORGANISATION]*** *and the department are committed to protecting your privacy.* ***[ORGANISATION]*** *and the department collect and handle personal and sensitive information for the purposes of the operation of the Disability Worker Exclusion Scheme.*

*In order to manage the Disability Worker Exclusion Scheme, the department may share your personal information with external parties such as other service providers or registered NDIS providers.*

*For more information on the department’s privacy collection, please refer to the department’s privacy policy or visit our website on*  [*https://dhhs.vic.gov.au/publications/privacy-policy*](http://www.dhhs.vic.gov.au/privacy)

*You may request to access your information that is provided to* ***[ORGANISATION]****.* ***[ORGANISATION]*** *can be contacted on* ***[insert appropriate phone number and email address]*** *or you may contact the department’s Privacy Unit by emailing privacy@dhhs.vic.gov.au.*

# Appendix 8 – Examples of behaviour and conduct constituting different types of harm

|  |  |  |
| --- | --- | --- |
| **Harm type** | **Description** | **Examples** |
| **Financial abuse** | The misuse of a person’s assets, property, possessions and finances without their consent | denying a person with a disability the use of their own assets, property, possessions and finances  theft, fraud, exploitation and pressure in relation to assets, property, possessions and finances  obtaining assets through deception |
| **Emotional abuse** | Actions or behaviours that reject, isolate, intimidate or frighten by threats, or the witnessing of family violence, to the extent that the person’s behaviour is disturbed, or their emotional/psychological wellbeing has been, or is at risk of being, seriously impaired. | rejecting, isolating, terrorising and ignoring behaviours  denying cultural or religious needs and preferences  where a person subjects another person to behaviour that may result in psychological trauma, such as bullying, harassment, humiliation and threats. |
| **Physical abuse** | Actions that involve the inappropriate use of physical contact or force against a person. | threats of physical abuse made to a person with a disability  excessive use of physical force or restraint |
| **Sexual abuse** | Actual or attempted unwanted sexual actions that are otherwise forced on a person with a disability against their will or without their consent, using physical force, intimidation or coercion. | rape – the actual or attempted penetration (anal, oral, vaginal) using physical force, intimidation and/or coercion without that person’s consent.  sexual exploitation, which includes:  The exchange of sex or sexual acts for money, goods, substances or favours  Involving children and youth in creating pornography  Contact with known sex offenders  Showing pornography to children or youth under 18. |
| **Neglect** | The failure to care adequately for a person with a disability to the extent that the health, wellbeing and development of the person is significantly impaired or at risk. | inadequate care that involves depriving a person of the basic necessities of life such as food, drink, shelter, clothing and medical care or treatment.  inappropriate behaviour in response to disruptive of dangerous behaviour exhibited by a person with a disability. |

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1. See subsections 25(3) and (4) of the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018* as amended by the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Amendment Rules 2019.*  [↑](#footnote-ref-1)
2. See subsections 25(5) and (6) of the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018* as amended by the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Amendment Rules 2019.* [↑](#footnote-ref-2)
3. The NDIS Act is published on the [Federal Register of Legislation](https://www.legislation.gov.au/) <https://www.legislation.gov.au/> and can be also accessed through the [NDIS Commission’s website](https://www.ndiscommission.gov.au/about/legal-information/legislation-rules-policies) <https://www.ndiscommission.gov.au/about/legal-information/legislation-rules-policies>. [↑](#footnote-ref-3)
4. The NDIS Worker Screening Rules are published on the [Federal Register of Legislation](https://www.legislation.gov.au/) <https://www.legislation.gov.au/> and can also be accessed through the [NDIS Commission’s website](https://www.ndiscommission.gov.au/about/legal-information/legislation-rules-policies) <https://www.ndiscommission.gov.au/about/legal-information/legislation-rules-policies>. [↑](#footnote-ref-4)
5. Worker means a person who is employed or otherwise engaged by a registered NDIS provider (see section 5 of the NDIS Worker Screening Rules). ’Worker’ is a broad term which covers a wide range of people who perform work as part of the business of a registered NDIS provider, and includes employees, contractors, consultants and volunteers (see Explanatory Statement issued by the Commissioner of the NDIS Quality and Safeguards Commission relating to the NDIS Worker Screening Rules). [↑](#footnote-ref-5)
6. Where a registered NDIS provider is a sole trader, that provider is also a worker (see Explanatory Statement issued by the Commissioner of the NDIS Quality and Safeguards Commission relating to the NDIS Worker Screening Rules). [↑](#footnote-ref-6)
7. Worker means a person who is employed or otherwise engaged (including by third parties) by a registered NDIS provider. The term is intended to be a broad term which covers a wide range of people who perform work as part of the business of a registered NDIS provider, and includes employees, contractors, consultants, labour hire workers and volunteers (see Explanatory Statement issued by the Commissioner of the NDIS Quality and Safeguards Commission relating to the NDIS Worker Screening Rules). [↑](#footnote-ref-7)
8. A requirement under Schedule 1 of the Service Agreement for funded agencies: Safety screening for funded agencies contained in the Service Agreement Information Kit prior to 1 July 2019. [↑](#footnote-ref-8)
9. A requirement under Schedule 1 of the Service Agreement for funded agencies: Safety screening for funded agencies contained in the Service Agreement Information Kit prior to 1 July 2019. [↑](#footnote-ref-9)
10. A requirement under the Early Childhood Intervention (ECI) Standards 2016: Standard 5, criteria 5.3, prior to 1 July 2019. [↑](#footnote-ref-10)
11. See section 6 of the NDIS Worker Screening Rules for what may constitute more than incidental contact. [↑](#footnote-ref-11)
12. See section 11A of the NDIS Act. [↑](#footnote-ref-12)
13. Under various pieces of Commonwealth, state and territory legislation, a person has the right, in particular circumstances or for a particular purpose, to not disclose certain convictions (for example, findings of guilt after a certain period of time). [↑](#footnote-ref-13)
14. Refer to the [WWCC website](https://www.workingwithchildren.vic.gov.au/about-the-check/when-you-dont-need-a-check) <https://www.workingwithchildren.vic.gov.au/about-the-check/when-you-dont-need-a-check> for scenarios where those doing child-related worker are exempt from requiring a WWCC. Note, these exemptions do not apply if a person has previously failed the check and given a Negative Notice. [↑](#footnote-ref-14)
15. Includes providers providing disability services to state-funded clients, providing in-kind services and providing services to clients who have yet to transition to the NDIS. [↑](#footnote-ref-15)
16. Item number refers to the Item number for the class of supports in the table at subsection 20(3) of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018.* [↑](#footnote-ref-16)
17. The services specified in item 8 would include things like a bus service which is available only to children with a disability on a school route. It does not include things like taxi, bus and train services available to the public at large, even if they involve vehicles, which have specific modifications to better facilitate their use by people with a disability. [↑](#footnote-ref-17)
18. Adapted from [ACIC website](https://www.acic.gov.au/our-services/national-police-checking-service/i-need-check-myself#accordion-5) <https://www.acic.gov.au/our-services/national-police-checking-service/i-need-check-myself#accordion-5> >. [↑](#footnote-ref-18)