



## Registration standard: Criminal history

### Summary

This registration standard sets out the Disability Worker Registration Board of Victoria's (the Board's) requirements for checking criminal history. It outlines the factors the Board considers when working out whether a person's criminal history is relevant to their suitability to practise as a disability worker.

The standard aligns the Board's test with that applied in the National Disability Insurance Scheme Worker Screening Check (NDIS worker screening check). This means that any criminal history is assessed using the same decision-making framework for applications for NDIS worker screening checks set out in the *Worker Screening Act 2020*.

### Does this standard apply to me?

This standard applies to all disability workers who apply for registration and all registered disability workers, including those who hold non-practising registration.

### What must I do?

#### When you apply for registration, you must:

- agree to a Nationally Coordinated Criminal History Check (NCCHC) **and**
- tell us about any criminal history you have in Australia and overseas (from any countries you lived in for 12 months or more in the past 10 years) **or**
- provide your Victorian NDIS worker screening identification number (if you have one).

The Board can require an applicant to provide an international criminal history check if they have lived overseas for 12 months or more in the past 10 years.

#### When you are registered, you must:

- tell us within 7 days if:
  - you are charged with an offence punishable by 12 months' or more in prison
  - you are convicted or found guilty of an offence punishable by a prison term in Australia or overseas.

#### When you apply to renew your registration, you must:

- tell us about any changes to your criminal history since your last period of registration
- tell us if you are convicted or found guilty of an offence punishable by a prison term in Australia or overseas, within 7 days.

### How does the Board assess whether I have met the standard?

The Board assesses your criminal history to work out whether it is relevant to practise as a disability worker and to determine your suitability to hold registration. The Board assesses criminal history consistently with the NDIS worker screening check under the Worker Screening Act.

In deciding whether a person is suitable to hold registration, the Board must consider the guiding principles in s 7 of the *Disability Service Safeguards Act 2018*. These principles says that registration of disability workers must occur in a way that is transparent, accountable, effective, efficient and fair.

In deciding whether your criminal history is relevant to practise as a disability worker, the Board considers whether the charge, offence or conduct would be classified as NDIS Category A, B or C under the Worker Screening Act:

- Category A application – the Board will consider refusing the application because the disability worker is not suitable for registration.
- Category B application – the Board will consider refusing the application because the disability worker is not suitable for registration unless there are exceptional circumstances.
- Category C application – the Board will consider granting registration because the disability worker does not pose an unacceptable risk of harm to people with disability.

## **Offence categories and how the Board assess criminal history**

How an offence is categorised depends on details of the offences and the circumstances – for example, whether the person charged was an adult or child at the time. In all cases, if the Board proposes to refuse registration, the Board will tell the applicant why and give them a chance to respond. The Board will consider the response before making a final decision.

Category A offences are the most serious types of offending and include murder and rape. These are listed in Schedule 1 of the Worker Screening Act. In the case of convictions or a finding of guilt for a Category A offence committed when the person was an adult, the Board will consider refusing registration.

Category B offences are in Schedule 3 of the Act. They include offences such as theft, fraud, some sexual offences and assault. For Category B offences the Board will consider whether exceptional circumstances mean an application should not be refused.

Category C offences are those not covered by Schedules 1 or 3 of the Act. For Category C offences, the Board will consider whether the applicant poses an unacceptable risk of harm to people with disability.

Factors the Board considers in deciding whether there are exceptional circumstances (for Category B) or whether you pose an unacceptable risk of harm to people with disability (for Category C) are:

- the nature, gravity and circumstances of the offending or conduct
- the period of time since the offence or conduct
- the vulnerability of the victim
- the disability worker's relationship to the victim
- whether the disability worker had a position of authority in relation to the victim
- the disability worker's criminal, misconduct and disciplinary history, including whether there was a pattern of concerning behaviour
- the disability worker's behaviour since the offence or conduct
- all other relevant circumstances about the offence, misconduct and other relevant history.

These factors allow the Board to consider social factors that may affect offending and criminal history.

Not all applicants with a criminal history will be refused registration. And not all registered disability workers with a criminal history will have to stop practising. Applications are risk-assessed on a case-by-case basis. This assessment considers the context and circumstances of the offence or charge to decide if it is relevant for practising as a disability worker.

### **If you have criminal history:**

- The Board will consider the nature of your criminal history. The Board may decide you are not a suitable person to hold registration and it is not in the public interest for you to be registered.

- The Board may take action against you if do not declare your criminal history, or if you engage in criminal conduct while registered. Available actions include to:
  - counsel or caution you
  - accept an undertaking from you
  - suspend or impose a condition on your registration
  - accept surrender of your registration
  - cancel your registration, prohibiting you from providing disability services.

## Are there exemptions to this standard?

No. The Board assesses the criminal history of all applicants for registration. All registered workers must tell the Board about specific criminal charges or offences when practising.

## What if I do not meet this standard?

### When you apply for registration or renewal

If you do not meet this standard when you apply, the Board will propose to refuse your application. The Board will notify you and invite you to make a submission about its proposal. The Board will then consider all available information, including any submission you make, and decide your application. For example, the Board may decide you do meet the standard or consider whether it would be appropriate to grant you registration subject to a condition.

### When you are registered

If you do not meet this standard when you are registered, the Board may take action against you under the Disability Service Safeguards Act. This may include to:

- counsel or caution you
- accept an undertaking from you
- suspend or impose a condition on your registration
- accept surrender of your registration
- cancel your registration, prohibiting you from providing disability services.

## More information

You can find out more about criminal history checks and factors the Board considers when assessing a disability worker's criminal history on the [Victorian Disability Worker Commission website](https://www.vdwc.vic.gov.au/registration-standards) <<https://www.vdwc.vic.gov.au/registration-standards>>.

## Authority

This standard was approved by the Disability Worker Registration Board Victoria.

Registration standards are developed under Part 10, Division 1 of the Disability Service Safeguards Act.

## Definitions

**Criminal history** is defined in s 3 of the Disability Service Safeguards Act. Criminal history includes:

- every conviction of the person for an offence, in Victoria or elsewhere
- every plea of guilty or finding of guilt by a court of the person for an offence, in Victoria or elsewhere, and whether or not a conviction is recorded for the offence
- every charge made against the person for an offence, in Victoria or elsewhere].

Importantly: **'spent conviction laws'** do not apply to the definition of criminal history under the Disability Service Safeguards Act. That means, if you have a charge or conviction covered by 'spent conviction law', the Board may still be able to obtain and assess this information.

**Nationally Coordinated Criminal History Check (NCCHC)** (commonly referred to as national police check) is a nationally coordinated check of Australian police/criminal history information about a person subject to relevant spent convictions/non-disclosure legislation and information release policies. Results provided on an NCCHC outline whether the applicant has 'disclosable court outcomes'.

A check with disclosable court outcomes may list:

- charges
- court convictions, including penalties and sentences
- findings of guilt with no conviction
- court appearances
- good behaviour bonds or other court orders
- matters awaiting court hearing
- warrants and warnings
- traffic offences.

**NDIS worker screening check** means the assessment conducted by a state or territory Worker Screening Unit under a corresponding NDIS worker screening law. It helps assess whether a person who provides disability services, or wants to provide disability services, poses a risk to people with disability. The assessment includes an NCCHC and determines whether a person is cleared or excluded from working in certain roles with people with disability.

**NDIS worker screening identification number** means the identification number provided to a disability worker when they receive an NDIS worker screening clearance.

**Schedule 1 and 3 of the Worker Screening Act** outlines the NDIS categories of charges and offences:

- Category A offence is an 'NDIS category A offence' as defined in the Worker Screening Act, specified in Schedule 1 of that Act.
- Category B offence is an 'NDIS category B offence' as defined in the Act, specified in Schedule 3.
- All other convictions and findings of guilt for offences that are **not found** in either Schedule 1 or 3 of the Act are still risk-assessed on a case-by-case basis to determine whether there is an unacceptable risk of harm to people with disability.
- A **'No Category'** application is where a person was charged with a minor offence that has been dealt with and they were not convicted or found guilty, and the offence is not one that is listed in Schedule 1 or 3 of the Act. For those minor offences the Board does not need to conduct a risk assessment.