



Disability Services Employment Screening Standards

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1. Introduction

Purpose

People with disability have the right to feel and be safe when accessing services funded under the *Disability Services Act 1993 (Act)*. An essential element in achieving this is to ensure that those who work or volunteer with people with disability pose no threat to their wellbeing and safety. Screening of relevant history aims to decrease the likelihood that unsuitable people are engaged in disability-related work.

The outcome of a relevant history assessment can prevent a person from working in the disability sector. Therefore the screening process must be balanced, fair and justified.

These Standards provide a framework for considering relevant history information and assessing whether a person poses a level of risk to people with disability that is not acceptable. The Standards aim to ensure that decision-making in relation to assessment of risk is rigorous, defensible, transparent and consistent, and that the paramount consideration is the rights of people with disability to live lives free from abuse, neglect and exploitation.

Who is covered by requirements under the Act

Section 5B of the Act places a legal obligation on prescribed disability service providers funded under the Act to ensure that before a person is appointed or engaged in a prescribed position, he or she must undergo an assessment of his or her relevant history by an authorised screening unit. This includes an employee, volunteer, agent, contractor or subcontractor. The Act also provides that the responsible authority may cause an assessment to be undertaken for existing staff or volunteers at any stage for the purpose of ensuring the safety and welfare of persons for whom disability services are provided. Assessments are valid for three years.

Disability services employment screening is an assessment of information about a person for the purpose of determining the level risk he or she poses to people with disability. The driving force behind this statutory screening regime for all relevant history assessments is to ensure the safety and welfare of people with disability. Applicants who pose a level of risk to the safety and welfare of people with disability, as determined by application of these Standards, should not be placed in a prescribed position within disability services. This gives effect to the legislative intent of section 5B and 5C of the Act, and the accompanying Regulations.

In making such a determination, the Authorised Screening Unit should advise applicants and their prospective employer that either:

1. there is nothing in the applicant's relevant history that would indicate he or she poses a risk to the welfare and safety of people with disability and that the Authorised

Screening Unit is satisfied the applicant is a suitable person to be engaged in the prescribed position for which he or she has applied; or

2. an assessment of the applicant's relevant history has revealed information that indicates he or she may pose a risk to the welfare and safety of people with disability and the Authorised Screening Unit is not satisfied that the applicant is a suitable person to be engaged in the prescribed position for which they have applied.

It is important to note that the use of the terms 'suitable' or 'unsuitable' throughout this document **only** refers to the screening process. The Screening Unit bases its decision on an assessment of risk **only**. Being found suitable is **not** an offer of employment. The prescribed disability service provider will make the final decision as to whether an applicant who is found suitable by the Screening Unit is employed in the organisation. Therefore applicants still need to satisfy the recruitment process of the organisation of which they have applied.

Exemptions

A disability service provider is exempt from the requirement under section 5B(1) of the Act to ensure that an assessment of a person's relevant history is undertaken before the person is appointed to, or engaged to act in, a prescribed position if:

- the position is a prescribed position within the meaning of section 8B of the *Children's Protection Act 1993*; and
- the prescribed functions required or involved in the position relate only to people with a disability who are under 18 years of age; and
- an assessment of the person's relevant history is undertaken under section 8B of the *Children's Protection Act 1993*.

In which case, the person will have a child-related employment screening check.

2. Context

Research shows that people with disability are at an increased risk of abuse, harm, exploitation and neglect due to a range of factors that may include:

- Dependence on others for care and support
- Difficulties with communication that may hamper the person's ability to disclose experiences of abuse
- Social isolation
- Lack of access to support services
- Cultural devaluation of people with disability
- Disability service design that favours shared supported accommodation arrangements.

Mistreatment comes in many forms and although the type of abuse perpetrated against people with disability varies according to particular circumstances and context, commonalities can be drawn from the literature. In general, people with disability are at increased risk of experiencing:

- Physical violence
- Sexual assault
- Emotional and psychological abuse and neglect
- Financial and material abuse and exploitation.

Alleged or actual incidents of staff to client abuse in disability services have been identified such as destruction or withholding of mobility and assistive devices, medication manipulation, refusal to provide essential care or poor quality care, as well as cruelty and neglect.

The unauthorised and unnecessary use of restrictive practices within disability services without the appropriate consent from the person with disability, guardian, or Guardianship Board has also been recognised as a form of abuse, used by service providers to remove a person's freedom or to interfere with a person's ability to make their own decisions. Examples of restrictive practices include unnecessary detention, seclusion, exclusion, aversive restraint (using inappropriate or unwanted physical, sensory or verbal stimuli including voice tone, commands, threats, in an attempt to reduce a person's undesirable behaviour), chemical restraint (use of any medication to modify or control a person's behaviour or bodily function for a non-therapeutic reason), physical restraint, and medical restraint.

Studies into abuse of people with disability have found a consistent pattern of abuse perpetrated by those who wield power within the relationship. Research indicates that people with disability are much more likely to experience abuse in a service setting than people without disability because the service provider / client relationship can often be characterised by an inherent power inequality. This is particularly evident where the person with disability is in a position of service dependency and reliant on the assistance of the service provider for day-to-day support.

The mistreatment mentioned above reflects an underlying abuse of power and demonstrates a particular vulnerability experienced by people with disability when negotiating the relationship with their service provider.

A common perpetrator characteristic is previous offending, especially where a person with disability or other vulnerable person was a victim. Misconduct, particularly within the disability sector, is another indicator of risk.

Currently, there is a lack of deterrence for perpetrators of abuse within disability services sector because it often goes unnoticed and unreported. Perpetrators therefore rarely experience adverse consequences.

Disclosure of abuse may be difficult for people with disability in a position of service dependency, particularly if they do not see they have any realistic care alternatives. People may fear losing services, or not being believed if they disclose abuse. Language and communication difficulties, a lack of rights awareness and what constitutes abuse are also contributing factors to the underreporting of abuse.

As a funder and provider of disability services, the Government has a duty of care to protect people with disability from harm that may result from the inappropriate action of employees or volunteers. Government must also ensure that the rights of people with disability are protected and promoted. Assessment of an applicant's past conduct is necessary within the context of safeguarding the fundamental human rights of people with disability to live lives free from abuse. Any action that constitutes an abuse of power is a violation of basic human rights and conflicts with the fundamental values of dignity, respect and equality.

As a general rule, an applicant who has displayed this type of behaviour (for example has been found guilty of an offence involving violence or who has a history of professional misconduct) is therefore considered to pose an unacceptable risk to people with disability. However, as set out in these Standards, this will be decided on a case-by-case basis following consideration of the factors and circumstances of the applicant's relevant history.

3. Principles

The United Nations Convention on the Rights of Persons with Disabilities, which is enshrined in the *Disability Services Act 1993* (the Act), is recognised as a set of best practice principles that should guide the administration and provision of disability services. The Convention states that Parties shall take appropriate steps to safeguard and promote the rights of people with disability. Specifically, Article 16 directs Parties to take all appropriate measures to protect people with disability from all forms of exploitation, violence and abuse.

There is a strong community expectation within the community that government will take all necessary steps to create a safe environment for people with disability when accessing services funded under the Act.

The paramount consideration when conducting disability employment screening is therefore the **wellbeing and safety of people with disability, and their right to live lives free from abuse, neglect and exploitation.**

Decision-making will also follow principles of:

- Duty of care – Disability service providers owe their clients a duty of care to take all reasonable steps to ensure that unsuitable people are not engaged to undertake any prescribed functions.
- Consistency – the same standards will be applied to every disability employment screening assessment regardless of where and to whom the services will be provided. In particular, Aboriginal people have a right to the same protections as everyone else in the community irrespective of where they are located.
- Transparency – all outcomes will be documented.
- Privacy – the privacy of people will be strictly protected. Sensitive and personal information will be protected from inappropriate disclosure in accordance with the Screening Unit Information Privacy Policy.
- Use – Information obtained in the course of conducting a disability employment screening assessment will not be used for any other purpose.
- Natural justice and procedural fairness – all disability employment screening processes and decisions will be ethical and defensible, and will be based on sufficient and relevant information. Applicants will be afforded procedural fairness during the screening assessment process. Before issuing an adverse decision, the Screening unit will provide the applicant with an opportunity to respond to his or her relevant history and will take any submission from the applicant into consideration before making its decision. The assessment process will also be accompanied by provision of review against a decision.

4. Relevant History

The purpose of a disability employment screening assessment is to determine whether an applicant poses a risk to the safety and wellbeing of a person with disability. If the screening assessment process determines the applicant does pose a risk, he or she will be considered unsuitable to work in a prescribed position within the disability sector. However, being found suitable by the screening process is not an offer of employment. An applicant still needs to satisfy the recruitment requirements of the role, including reference checks, educational qualifications and character, as determined by the organisation for which they have applied.

An applicant will be considered unsuitable to work in a prescribed position by the screening process if his or her relevant history indicates that he or she poses a risk to the safety and wellbeing of people with disability. For this reason, relevant history as guided by these Standards will be captured and assessed to determine the level of risk an applicant poses to people with disability. The legislative intent behind section 5B and 5C of the *Disability Services Act 1993* (the Act) is to determine suitability to work in a prescribed position within the disability services sector.

Section 5B of the Act allows for a wide range of information about an applicant to be considered in a disability employment screening assessment. The Act specifically authorises access to criminal conviction information and charges, regardless of the outcome of those charges. Further information is prescribed in section 9 of the *Disability Services (Assessment of Relevant History) Regulations 2014* (the Regulations).

Workplace records that are relevant to working with people with disability, including professional misconduct and disciplinary action taken against, or attempted to be taken against, an applicant and allegations of abuse in disability employment will be considered as part of the screening assessment. The Regulations authorise the Authorised Screening Unit to access records lawfully held by the following sources:

- the Department for Communities and Social Inclusion
- the Department for Education and Child Development
- Licensing authorities of Supported Residential Facilities
- the Courts Administration Authority
- non-government disability service providers funded under the Act.

For the purposes of conducting a disability services employment screening assessment, convictions that would otherwise be considered spent, can be taken into consideration by the Screening Unit.

Applying these Standards

For the purpose of these Standards, information relevant to a disability employment screening assessment is divided into two categories: unacceptable risk and risk assessment triggers.

Procedural Fairness

Applicants will be afforded procedural fairness during the screening assessment process.

This will be achieved by ensuring that before issuing an adverse decision, the Screening Unit will engage the applicant to provide him or her with an opportunity to respond to the information obtained during the assessment process.

The authorised Screening Unit will take the applicant's submission into consideration before making its decision.

4.1 Unacceptable Risk

Where an assessment of relevant history ascertains any of the following information, in most cases the applicant presents an unacceptable risk to people with disability. However the applicant will be afforded procedural fairness, as outlined above, and will be offered an opportunity to provide a response to the relevant history, which will be considered on a case-by-case basis.

4.1.1 An applicant who has been found guilty¹ of the following offences:

- Homicide and related offences
- Rape or unlawful sexual intercourse
- Aggravated sexual offence
- Serious violent offence (as defined in section 3B of Criminal Law Consolidation Act 1935)
- Aggravated assault
- Any offences committed against children, including child pornography and kidnapping
- Theft or fraud related offences against a person with disability or older person
- Drug related offences involving supply to a person with disability, older person or child
- Any other offence against the person where the victim was a person with disability.

4.1.2 An applicant subject to one or more of the following regardless of how long ago the Order was issued or frequency of issue:

- Control Order
- Extended Supervision Order
- Paedophile Restraining Order.

¹ This only includes findings of guilt when the applicant was an adult. This excludes findings of guilt when the person was a juvenile, in which case, a risk assessment will be triggered.

All findings of guilt listed, with the exception of aggravated assault, are regardless of how long ago the offences occurred. Aggravated assault within the last five years will be deemed automatically unsuitable.

4.2 Risk Assessment Triggers

Where an assessment of relevant history ascertains any of the following information, further assessment will be required to determine the level of risk posed by an applicant:

4.2.1 An applicant has been found guilty of the following:

- Non-aggravated assault, and aggravated assault that occurred over five years ago
- Non-aggravated sexual offences
- Any other offence against the person
- Theft or fraud where the victim was not a vulnerable person
- Animal cruelty related offences
- Robbery, extortion and related offences
- Serious Criminal Trespass
- Weapons offence
- Arson
- Drug related offences including manufacture, cultivation and sale
- Domestic violence related offences, which may include a person subject to an Intervention Order
- Breach of court orders.

4.2.2 An applicant has a *spent conviction* for any offence outlined in section 4.2.1:

- convictions spent under Part 2 of the *Spent Convictions Act 2009*;
- pardoned convictions;
- quashed convictions;
- any findings of guilt for which no conviction was recorded;
- offences subject to an order made by a qualified magistrate under section 13A of the *Spent Convictions Act 2009*.

4.2.3 Minor offences that on their own do not constitute a risk but form part of a **pattern of behaviour** will be considered as part of the risk assessment. This includes an applicant who has been found guilty on more than one occasion of the following:

- Drug possession
- Dangerous driving, driving under the influence
- Property damage

- Public order offences.

4.2.4 An applicant was found guilty of an offence outlined in 4.1 but was a juvenile at the time.

4.2.5 An applicant has been charged with any of the offences in sections 4.1 and 4.2.1. This includes charges either finalised or yet to be finalised.

4.2.6 An applicant is the subject of child protection information held by the Department for Education and Child Development that is relevant to whether the applicant is a suitable person to perform prescribed functions.

4.2.7 An applicant's workplace record includes, but is not limited to, reports of the following (this includes substantiated or unsubstantiated reports):

- ***Physical abuse***

Any form of physical abuse including roughly pulling or pushing a client.

- ***Sexual abuse***

Any form of sexual contact between the client and employee regardless of consent.

- ***Serious financial abuse***

Regular/systemic financial exploitation and theft including accepting money/gifts from a client regardless of approval, regular borrowing from or lending money to a client.

- ***Serious emotional/psychological abuse***

For example, shouting at, ridiculing or humiliating a client on a continual basis, or verbally threatening a client.

- ***Unauthorised restrictive practices***

Any form of restrictive practice where consent is not given, including restraining the client to a chair or bed without authorisation. This does not include intervention in circumstances where the worker reasonably perceives there was an immediate risk of harm to the client, worker or a third party.

- ***Extreme neglect***

Deficit of care that has significant impact on the wellbeing of a client, which may include exposing a client to a safety risk by, for example, leaving a client who requires constant supervision whilst bathing unattended in a bath.

5. Risk Assessment

The purpose of the risk assessment process is not to determine whether a person is of good or bad character, nor guilty or innocent of any alleged conduct. The purpose is to comprehend the nature of risk and determine the level of risk posed by an applicant to people with disability. This is influenced by a combination of potential sources of risk, likelihood and its consequences.

There is a strong expectation within the community that government will take all necessary steps to create a safe environment for people with disability when accessing services funded under the Act. As mentioned previously, the principal consideration when conducting a risk assessment is the rights of people with disability to live lives free from abuse, neglect and exploitation.

5.1 Step 1: Analysing Relevant History

This risk assessment tool has been included to assist assessors in determining the likely level of risk that any applicant may pose to a person with disability. This is not intended as an exhaustive list of factors that should be considered, but an important guide. It is expected that assessors will take a holistic approach to assessing the suitability of an applicant based on all available information and draw a logical conclusion about that applicant's level of risk. Some factors may be more important than others (such as the serious nature of an applicant's conduct versus how long ago the conduct occurred) but this should be determined on a case by case basis with full access to the available range of information about an individual. It is recognised that determination of an applicant's level of risk is not an exact science, however this table should assist in directing assessors towards an appropriate determination.

Spent Convictions

As previously mentioned, for the purposes of conducting a disability services employment screening assessment, convictions that would otherwise be considered spent can be taken into consideration under the *Disability Services Act 1993* by the Screening Unit. This is as a result of changes to the *Spent Convictions Act 2009* introduced in the same Bill that amended the *Disability Services Act 1993* and these changes were made for the express purpose of enabling robust screening practices.

When the Screening Unit is provided with information about a conviction that was pardoned, quashed, no conviction was recorded or an order was made under section 13A, it is only empowered to use this information for a prescribed purpose (including disability employment screening) and must observe the following when considering the information:

- information must not be taken into account in an assessment unless the Screening Unit is of the opinion that there are 'good reasons' in the circumstances of the particular case for doing so;

- if the Screening Unit finds such 'good reasons', in taking information into account, the Screening Unit must give strong weight to the following:
 - the person has been pardoned and the conviction is considered to be spent for all other purposes under the *Spent Convictions Act 2009*;
 - the conviction has been quashed and is considered to be spent for all other purposes under the *Spent Convictions Act 2009*;
 - no conviction was recorded against the person and the conviction is considered to be spent for all other purposes under the *Spent Convictions Act 2009*;
 - a qualified Magistrate has made an order under section 13A with respect to the conviction.
- The Screening Unit must provide written reasons to the applicant for any decision to use the information and this must be done in accordance with the *Spent Convictions Regulations 2011*.

Table 1:

When assessing any relevant **conviction information** that falls outside the automatically unsuitable category the following contextual factors will be considered:

Consideration	Factors	Risk
Nature/type of the offence	<ul style="list-style-type: none">• Abuse of power• Use of force or weapon• Violent• Sexual• Fraudulent	Increase
	<ul style="list-style-type: none">• Low risk offence, for example driving or property related offences• Non-violent	Decrease
Circumstances of the offence	<ul style="list-style-type: none">• Pre-meditated or wilful• Significant impact on victim	Increase
	<ul style="list-style-type: none">• Non-premeditated• Diminished capacity due to mental state at the time	Variable
	<ul style="list-style-type: none">• Mitigating circumstances surrounding the offence, explanation offered by the applicant• Minor impact on or less risk to victim• No victim	Decrease
Relationship between offender and victim	<ul style="list-style-type: none">• Position of power and trust, for example parent or carer	Increase
	<ul style="list-style-type: none">• Peers	Variable

Time since offence or charge	• Within the last 5 years	Increase
	• Within the last 10 years	Variable
	• Over 10 years ago	Decrease
Frequency of offending	• More than one	Increase
	• One-off	Decrease
Other relevant history	• Yes	Increase
	• No	Decrease
Attitude towards the offence	• Breaches of court orders • Rejects responsibility or no acknowledgment	Increase
	• Accepted responsibility and/or apologised	Variable
	• Remorseful - recognises impact of actions on victim	Decrease
Treatment/rehabilitation undertaken by offender	• Circumstances not changed or addressed	Increase
	• Circumstances changed and treatment successful	Decrease
Impact if offence were to reoccur in disability employment	• Catastrophic or significant impact on client, including any form of assault or abuse	Increase
	• Deficit of care as a result of poor performance, including exposing client to risk	Variable
	• Insignificant or low impact	Decrease

Table 2:

In general, information about charges carries less weight than conviction information. Factors uncovered during the risk assessment, in particular where charges have not proceeded the reason why the charge has not proceeded or whether the applicant has other relevant history, may increase the risk posed by the applicant.

However, particular consideration will be given to charges where there is no conviction for matters involving people with disability. This is in recognition of the proven difficulty experienced in pursuing charges in this area. Often many matters do not proceed to court due to the particular vulnerability of victims with disability (refer to section on unsubstantiated abuse in disability sector for further detail).

When assessing any relevant **non-conviction information** the following contextual factors will be considered:

Consideration	Factors	Risk
Nature/type of the charge	<ul style="list-style-type: none">• Abuse of power• Use of force or weapon• Sexual (aggravated)• Violent	Increase
	<ul style="list-style-type: none">• Sexual (non-aggravated)• Assault (non-aggravated)	Variable
	<ul style="list-style-type: none">• Low risk charge, for example driving or property related offences Non-violent	Decrease
Circumstances of the charge	<ul style="list-style-type: none">• Pre-meditated or wilful• Significant impact on victim	Increase

	<ul style="list-style-type: none"> • Non-premeditated • Diminished capacity due to mental state at the time 	Variable
	<ul style="list-style-type: none"> • Mitigating circumstances surrounding the offence or alleged offence, explanation offered by the applicant • Minor impact on or less risk to victim 	Decrease
Reason for charge not proceeding to conviction (assessor must refer to section on unsubstantiated abuse in disability sector)	<ul style="list-style-type: none"> • High level of evidence but victim considered unreliable • Legal reason • Request of victim • Outstanding charge/incomplete investigation 	Increase
	<ul style="list-style-type: none"> • Insufficient evidence • Incomplete or inconsistent evidence 	Decrease
Victim	<ul style="list-style-type: none"> • Person with disability • Child • Older person 	Increase
	<ul style="list-style-type: none"> • Other 	Variable
Relationship between offender or alleged offender and victim	<ul style="list-style-type: none"> • Position of power and trust, for example parent or carer 	Increase
	<ul style="list-style-type: none"> • Peers 	Variable
Time since charge	<ul style="list-style-type: none"> • Within the last 5 years 	Increase

	<ul style="list-style-type: none"> • Within the last 10 years 	Variable
	<ul style="list-style-type: none"> • Over 10 years ago 	Decrease
Frequency of charges	<ul style="list-style-type: none"> • More than two 	Increase
	<ul style="list-style-type: none"> • Two 	Variable
	<ul style="list-style-type: none"> • One-off 	Decrease
Other relevant history	<ul style="list-style-type: none"> • Yes 	Increase
	<ul style="list-style-type: none"> • No 	Decrease
Impact if offence were to occur in disability employment	<ul style="list-style-type: none"> • Significant impact on client, including any form of assault or abuse 	Increase
	<ul style="list-style-type: none"> • Deficit of care as a result of poor performance, including exposing client to risk 	Variable
	<ul style="list-style-type: none"> • Insignificant or low impact 	Decrease

Table 3:

When assessing any relevant **non-criminal information**, the following contextual factors will be considered:

Consideration	Factors	Risk
Nature of the misconduct	<ul style="list-style-type: none"> • Abuse of power • Use of force or weapon • Sexual • Violent • Fraudulent • Theft • Substantiated harm against a child 	Increase
	<ul style="list-style-type: none"> • Failure to meet a certain standard of care, deficit of care 	Variable
	<ul style="list-style-type: none"> • Low risk incidence that demonstrates lack of training or support • Non-violent 	Decrease
Circumstances of the misconduct	<ul style="list-style-type: none"> • Pre-meditated or wilful • Significant impact on victim or put client at significant risk 	Increase
	<ul style="list-style-type: none"> • Error of judgement 	Variable

	<ul style="list-style-type: none"> • Accident • Minor impact on or less risk to victim 	Decrease
Substantiation	<ul style="list-style-type: none"> • Yes 	Increase
	<ul style="list-style-type: none"> • No 	Decrease
Sanction	<ul style="list-style-type: none"> • Dismissal/termination • Reprimand • Reduction in remuneration 	Increase
	<ul style="list-style-type: none"> • Written/final warning 	Variable
	<ul style="list-style-type: none"> • Managerial caution • Training or counselling 	Decrease
If unsubstantiated, reason (assessor must refer to section on unsubstantiated abuse in disability sector)	<ul style="list-style-type: none"> • High level of evidence but person resigned before organisation could complete investigation • Resigned to avoid termination 	Increase
	<ul style="list-style-type: none"> • Insufficient evidence • Incomplete or inconsistent evidence 	Decrease
Other relevant history	<ul style="list-style-type: none"> • Yes 	Increase
	<ul style="list-style-type: none"> • No 	Decrease
Frequency	<ul style="list-style-type: none"> • More than one 	Increase

	<ul style="list-style-type: none"> • One-off 	Decrease
Impact if action was to occur in disability employment	<ul style="list-style-type: none"> • Significant impact on client, including any form of assault or abuse 	Increase
	<ul style="list-style-type: none"> • Deficit of care as a result of poor performance, including exposing client to risk 	Variable
	<ul style="list-style-type: none"> • Insignificant or low impact 	Decrease
Victim	<ul style="list-style-type: none"> • Person with disability • Child • Older person 	Increase
Time since charge	<ul style="list-style-type: none"> • Within the last 5 years 	Increase
	<ul style="list-style-type: none"> • Within the last 10 years 	Variable
	<ul style="list-style-type: none"> • Over 10 years ago 	Decrease
Age of perpetrator at time of action	<ul style="list-style-type: none"> • Adult 	Increase
	<ul style="list-style-type: none"> • Child 	Decrease
Frequency of charges	<ul style="list-style-type: none"> • More than two 	Increase
	<ul style="list-style-type: none"> • Two 	Variable
	<ul style="list-style-type: none"> • One-off 	Decrease

Steps taken to respond to the issues of concern (such as successful completion of treatment programs, counselling)	• Yes	Decrease
	• No	Increase
Has the applicant demonstrated an awareness of the consequences of their actions and contrition?	• Yes	Decrease
	• No	Increase

5.2 Unsubstantiated Reports of abuse or neglect in disability sector

It is widely accepted that much of the abuse perpetrated against people with disability remains hidden or goes unreported. Where it is brought to light, reports of harm and neglect are often not pursued for a variety of reasons.

It could be the decision of the family or victim not to pursue action.

If it is a worker who has committed the abuse, the worker may resign to avoid termination, or the organisation is unable to conclude an internal investigation.

The decision not to proceed with the case may be taken at the police investigation or prosecution stage or guilt may not be able to be established beyond reasonable doubt. The difficulties experienced in securing a conviction where the victim is a person with disability is widely documented and there are many examples that highlight the challenges faced by people with disability who are victims of crime. For example, there was a case earlier in 2014 where a young man with intellectual disability was unable to testify as a witness in a trial against three men accused of raping him. This resulted in no prosecution being pursued. Another case in 2011 involved charges being dropped against a bus driver accused of abusing several children with intellectual disability. It was reported that these charges were dropped because there was concerns the victims would be unable to withstand cross-examination during a trial.

People with disability face particular difficulty when navigating the criminal justice system. Their experience, particularly people with intellectual disability, is often one of fear, anxiety and powerlessness. A Parliamentary Select Committee² inquired into this experience and in its report to Parliament, highlighted a number of instances where perceptions that people with disability were incapable of giving evidence led to cases not being pursued or being significantly compromised. These issues have been recognised by the State Government and efforts towards addressing them are outlined in South Australia's Disability Justice Plan.

In light of this, the fact that a charge or report of abuse or neglect either through previous employment or through other circumstances in the disability sector is unsubstantiated does not automatically mean the report is untrue and the information may still be relevant to the overall assessment of risk. As with all relevant history, applicants will have an opportunity to be heard in relation to any unsubstantiated reports of abuse or neglect and this will be taken into consideration by the authorised Screening Unit when making its decision.

An assessor will bear this in mind when conducting a risk assessment where a charge or other relevant unsubstantiated report of abuse or neglect is present in an applicant's history. Furthermore, unsubstantiated reports of abuse and neglect will be considered in the context of all information available about the applicant and in general an applicant will not be considered unsuitable to work in the disability sector on the basis of unsubstantiated reports alone.

² Select Committee on Access to and Interaction with the South Australian Justice System for People with Disabilities

5.3 Step 2: Other Information and Considerations

The authorised Screening Unit may also seek advice on complex matters from relevant professionals within Disability SA.

5.4 Step 3: Risk Evaluation and Assessment Outcome

In general, the level of risk identified will correspond with the following assessment outcomes:

- No or low risk = suitable to work in the disability sector
- Medium risk = unsuitable to work in the disability sector unless exceptional circumstances permit
- High risk = unsuitable to work in the disability sector
- Unacceptable risk = unsuitable to work in the disability sector.

6. Approval

This process will follow the logic that assessments of greater complexity will be undertaken and approved by more senior officers:

- Applicants with relevant history falling within the unacceptable risk category will initially be assessed by an Assessment Officer. If the applicant provides a response to the relevant history, this will be considered by the Principal Officer on a case-by-case basis (stage one).
- Applicants that have relevant history falling within the risk assessment trigger category will be undertaken in the first instance by an Assessment Officer with the Principal Assessment Officer providing final approval if the applicant is considered unsuitable (stage one).
- If the Assessment Officer is unsure the assessment will be escalated to the Principal Assessment Officer with the Manager providing final approval if the applicant is considered unsuitable (stage two).
- If the Principal Assessment Officer is in doubt, the assessment will be escalated to the Manager who can make a decision that the applicant is either suitable or unsuitable (stage three).

7. Review

7.1 Internal

If an applicant disputes a decision made by the Authorised Screening Unit, he or she can apply to have that decision reviewed internally.

Grounds

An applicant must explain why the Authorised Screening Unit should review the decision. These reasons may include:

- The applicant is able to provide new or additional information to the Authorised Screening Unit that might affect the outcome of the assessment;
- The applicant believes that information provided by him or her as part of the initial assessment was not fully or properly taken into account;
- The applicant can demonstrate that the Authorised Screening Unit incorporated information which it is not permitted to access into his or her assessment; or
- The applicant believes that irrelevant information was considered by the Screening Unit
- The process adopted was unsound or illegal.

Process

- Decisions made at stage one will be reviewed by the Manager.

- Decisions made at stages two and three will be reviewed by the Director.

It is at the discretion of the Director of the Authorised Screening Unit to seek input from Disability SA (Executive Director or nominee) on complex matters during the review process.

7.2 External

If the applicant still disputes the decision following an internal review, he or she may wish to consider referring the matter to an external body. This may include bodies like the Ombudsman or judicial review. An applicant should seek his or her own legal advice on this matter.

8. Management of Information

In accordance with regulation 12 of the *Disability Services (Assessment of Relevant History) Regulations 2014*, which prevents the use of prescribed information obtained in the course of conducting a disability employment screening assessment for any purpose other than an assessment of that kind, the Authorised Screening Unit will ensure that information collected for the purposes of section 5B of the *Disability Services Act 1993* is kept separate from any other type of criminal or relevant history assessment conducted by that unit.

Section 13 of the *Disability Services (Assessment of Relevant History) Regulations 2014* prevents any unlawful disclosure of information contained within a disability employment screening assessment. Failure to comply may result in a maximum penalty of \$10,000. Disclosure will only be exercised where consent has been given (as derived from the application form) or as may be authorised or required by law. The Authorised Screening Unit will only disclose information to authorised officers within the prescribed disability service provider that has requested the screening assessment.

Information held by the Authorised Screening Unit must be handled in a secure manner, including databases with restricted staff access and hard copy files stored in a designated room requiring key pass access. All staff handling personal and sensitive information must sign a Deed of Confidentiality.

9. Approval

Content Author:	Document Custodian:	Delegated Authority:
Date: 25 June 2014	Date: 25 June 2014	Date: 25 June 2014
Name: Elizabeth Lyster Position: Chief Project Officer Disability Strategy Disability SA	Name: Barbara Weis Position: Director Disability Strategy Disability SA	Name: Joslene Mazel Position: Chief Executive