

# Disability Worker Exclusion Scheme

Information sheet for service providers – 20 October 2017

## About the Disability Worker Exclusion Scheme

The Disability Worker Exclusion Scheme (the Scheme) is designed to protect the safety and wellbeing of Victorians living with disability. The Scheme excludes people who pose a threat to the health, safety or welfare of people with disability from work as a disability worker in a disability service.

In response to the *Parliamentary inquiry into abuse in disability services*, the Victorian Government has expanded the scope of the Scheme to further protect people with a disability. The Scheme was originally introduced in September 2014.

## Services the Disability Worker Exclusion Scheme applies to

As of 1 November 2017, the Scheme applies to all disability services (as defined in the *Disability Act 2006*).

Disability service is defined as a service specifically for the support of persons with a disability which is provided by a disability service provider.

Disability service provider is defined as:

- a) the Secretary to the Department of Health and Human Services (department); or
- b) a person or body registered on the register of disability service providers.

This includes all disability service providers which provide services under the National Disability Insurance Scheme that are registered under the *Disability Act 2006*.

Under the Scheme, **Disability Worker** means a person engaged by a disability service provider who:

- Provides, or supervises or manages a person who provides, direct support to a person with a disability; and
- has direct contact or access to a person with a disability.

The Scheme applies to every Disability Worker who is engaged in a disability service in the following ways:

- full-time, part-time or casual employees;
- contractors;
- persons engaged through labour hire agencies;
- students on placements; and
- volunteers.

Workers with a current notification and persons on Disability Worker Exclusion List (the List) are unable to undertake **Excluded Work**, which is defined as work at a disability service:

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

## How the Scheme works

The Scheme:

- complements other pre-employment screening processes, such as police checks and reference checking;
- generates the List of people who, because they have been assessed as posing a threat to the health, safety or welfare of people with disability, should be excluded from undertaking Excluded Work in a disability service; and
- provides for limited sharing of relevant information between the Disability Worker Exclusion Scheme unit (the DWES unit) and disability service providers or authorised labour hire agencies.

## About the Disability Worker Exclusion List

To be placed on the List, a disability worker must have been found to pose a threat to the health, safety or welfare of people with disability. For example, a person may be considered for inclusion on the List if they have been found guilty of an offence that:

- involves bodily harm, violence or threats of violence
- is of a sexual nature
- involves dishonesty, or
- involves neglect of a person living in a disability residential service.

Individuals who are assessed on reasonable grounds as presenting an unacceptable risk to the health, safety or welfare of people with disability for reasons outside those above may also be considered for inclusion on the List.

Please refer to the *Disability Worker Exclusion Scheme Instruction October 2017* for full details on the notification criteria and process.

## Privacy and legislative requirements

The Scheme is administered in accordance with the *Privacy and Data Protection Act 2014 (Vic)*.

The Scheme operates within existing legislative frameworks, including the *Disability Act 2006* and the *Occupational Health and Safety Act 2004*.

## Relationship to existing processes and procedures

The Scheme has been designed to complement and strengthen – not replace – existing pre-employment screening, investigation and disciplinary processes and procedures.

## Responsibilities of disability service providers

Under the Scheme, disability service providers are required to undertake the following actions in relation to the following matters:

### Existing Workers

- All existing disability workers are required to be checked against the List.

### Pre-employment

- As part of the pre-employment screening process, prospective employees must be checked to ensure they are not on the List.
- Notify the DWES unit that pre-employment screening conducted by the service provider, for example a police check, has raised issues that may meet the criteria for placement on the List.

### Following an allegation

- Where preliminary inquiries identify that an incident meeting the List criteria has occurred and a worker has been removed from excluded work, a notification should be provided to the DWES unit.
- An investigation must be undertaken, and the DWES unit should be advised of the outcome of the investigation and any disciplinary process.

## **What to do if a worker resigns before the end of an investigation**

The DWES unit should be advised if a worker has resigned prior to the investigation being completed. The disability service provider should then complete the investigation on the basis of the available information and advise the DWES unit of the outcome.

If the worker does not participate in the investigation or it is otherwise not possible to complete the investigation, the DWES unit may still place a worker's name on the List. The worker will subsequently be given an opportunity to show cause why their name should not be placed on the List.

## **Placing a person on the List**

### **Workers who were terminated or resigned before the start of the Scheme**

The Department of Health and Human Services (department) will work with disability service providers to obtain information about workers who have previously been terminated (or who have resigned) as a result of an investigation that meets the criteria for being placed on the List.

### **What happens if allegations are subsequently found to be unsubstantiated?**

If the allegations against a worker are found to be unsubstantiated (and there is no further evidence that they pose a risk to people with a disability), their name will not be placed on the List in relation to the notification. The worker and the disability service provider will be informed that the worker will not be placed on the List and is able to continue to be employed as a disability worker in a disability service.

### **Decision to place a person on the List**

Once an investigation is completed by the disability service provider, the department will determine whether the individual should be placed on the List. Where the department considers that an individual's name may be placed on the List, the individual will be advised in writing and will have 30 days to show cause why their name should not be placed on the List.

### **Appealing decisions under the Scheme**

Should a person's name be placed on the list, including following a show cause process, they may also appeal the decision.

## **DWES and the National Disability Insurance Scheme**

The Victorian Government has committed to continue existing Victorian quality and safeguards during transition to the National Disability Insurance Scheme. The Disability Worker Exclusion Scheme will remain in place while the Victorian Disability Worker Accreditation and Registration Scheme and the NDIS worker screening arrangements are being developed.

## **More information**

More information about the Scheme is available on the [DWES page on the department's website](http://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme) <<http://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>>. Or you can contact the Disability Worker Exclusion Scheme Unit on 9096 3203 or [by email](mailto:dwesu@dhhs.vic.gov.au) <[dwesu@dhhs.vic.gov.au](mailto:dwesu@dhhs.vic.gov.au)>

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Available at <http://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>