

Disability Inclusion Act 2014 – employment screening

Employment screening for staff, volunteers and board members

The *Disability Inclusion Act 2014* (the Act) and the *Disability Inclusion Regulation 2014* (the Regulation) commenced on 3 December 2014.

Part 5 of the Act says that Family and Community Services (FACS) and FACS funded disability service providers must not engage a person to work directly with people with disability, unless they believe the person is suitable to be involved in providing supports and services to people with disability. This includes a requirement to undertake certain checks of these workers.

What checks are needed?

FACS and FACS funded disability service providers are required to undertake checks when employing or appointing a person to work with people with disability. From 3 December 2014, FACS must conduct:

- at least one referee check prior to employment;
- a criminal record check prior to employment; and
- a criminal record check at least once every four years.

Criminal record checks for existing relevant workers (those who were employed before 3 December 2014) must be undertaken by 1 December 2015.

A criminal record check is an Australia-wide assessment of a person's criminal history. Where a person has lived or worked in other countries, they can also be asked to provide a statutory declaration about relevant criminal offences.

Who needs to be checked?

FACS and FACS funded disability service providers must conduct these checks for all people who provide supports and services directly to people with disability in a way that involves face-to-face or physical contact, including:

- employees;
- volunteers;
- students undertaking training (other than school students on work experience); and

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- self-employed people, contractors, subcontractors, consultants or agency staff.

FACS funded disability service providers also need to conduct these checks for members of their governing body (board members) who work, or are likely to work, directly with people with disability in a way that involves face-to-face or physical contact.

Criminal record checks

A person who has been convicted of a criminal offence outlined in Schedule 2 of the Act, must not be engaged by FACS or any FACS funded disability service provider. These offences include:

- murder
- a prescribed sexual offence as defined under the *Criminal Procedure Act 1986* (NSW) (or equivalent law in other states or territories)
- specified other assaults under the *Crimes Act 1900* (NSW) (or equivalent law in other states or territories) for which the person was sentenced to two or more years' imprisonment.

However, where a person has been convicted of murder or a non-sexual assault in the past, but their criminal record shows no further convictions in the ten year period following the date of the person's release from prison, employers have some discretion and flexibility to consider them for employment.

What if a person objects to a criminal record check?

If a person who is required to obtain a criminal record check refuses to do so, that person must not be engaged or continue to be engaged by FACS or any FACS funded disability service providers.

Can you continue employing a person who has committed a criminal offence as outlined in Schedule 2?

The criminal record checks apply to people who work directly with people with disability. It may be possible to employ a person who does not meet the relevant checks in another capacity that does not involve working directly with people with disability.

This fact sheet is available in a range of other languages and in an Easy Read format. To access these resources and find out more about the *Disability Inclusion Act 2014* visit www.facs.nsw.gov.au/dia, email disabilityinclusionact@facs.nsw.gov.au, or call 1800 446 470. If you would like to speak to us through an interpreter, call TIS on 131 450.

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