

Disclosure of forensic and/or criminal history for tāngata whaiora in vocational rehabilitation

Procedure Responsibilities and Authorisation

Department Responsible for Procedure	Mental Health and Addictions
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Procedure Review History

Version	Updated by	Date Updated	Summary of Changes			
02	Joanne Parker	July 2015	Aligned to Integrated Care Pathway terminology; and provided specific information on documentation			
03	Joanne Parker		Rename and align to clinical practice pathways			
04	Tania Christie	August 2022	Functional assessment added. Rationale provided as to why tangata whaiora are supported to obtain a history of criminal convictions. Changed to current Te Whatu Oratemplate.			

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Facilitator T	Γitle:	Therapeutic	Therapeutic Programme Coordinator			Mental Health	and Addictions
IF THIS DO	CUMEN	IS PRINTI	ED, IT IS \	OR THE DAY OF	PRINTING	Page 1 of 9	



Disclosure of forensic and/or criminal history for tāngata whaiora in vocational rehabilitation

Contents

1	Overview	3
	1.1 Purpose	3
	1.2 Scope	3
	1.3 Patient / client group	3
1	1.4 Exceptions / contraindications	3
	1.5 Definitions and acronyms	3
2	Clinical management	4
	2.1 Roles and responsibilities	4
	2.2 Competency required	4
	2.3 Equipment	4
	2.4 Procedure	5
3	Patient information	
4	Audit	8
	4.1 Indicators	
	4.2 Tools	8
5	Evidence base	8
	5.1 Summary of Evidence, Review and Recommendations	8
	5.2 Bibliography	8
	5.3 Associated Te Whatu Ora Documents	9
	5.3 Associated Te Whatu Ora Documents	17CX





Disclosure of forensic and/or criminal history for tangata whaiora in vocational rehabilitation

Overview

1.1 Purpose

The procedure is aimed at providing a guideline for mental health professionals to support tangata whaiora in making decisions about when disclosure of criminal history and / or forensic history may be justified, prior to vocational placements in the areas of employment, work experience and further education.

1.2 Scope

This procedure applies in the process of assisting tangata whalora into vocational placement opportunities. Mental Health Professionals have, in the past, supported tangata whaiora with a forensic history / criminal history into vocational placements. There has been an informal process to screen tangata whaiora to ensure the risks to the individual and the placement are minimised. This procedure aims to formalise the process to ensure all people involved are informed and follow best practice. This procedure must be acted on within the domains and to the expectations of the following policies:

Health Information Privacy (Ref. 1976)

1.3 Patient / client group

Tangata whaiora of the Mental Health and Addictions service.

1.4 Exceptions / contraindications

1.5 Definitions and acronyms

Tangata Whalord of the Memal Health and Additions Service.								
Exceptions / contrain	ndications							
Nil.								
Definitions and acro	nyms							
Criminal and traffic conviction history	Historic record of criminal and traffic convictions which is held by the Ministry of Justice							
Disclosure	The act of revealing or uncovering information. Providing information about previous criminal history							
Forensic history	A person who has a history where charges have been laid but no conviction has been entered due to either not guilty on the grounds of insanity (NGRI) or not being fit to stand trial. In this case there is no record in the criminal history of these charges.							
Mental health professional	All registered health professionals as noted in the Health Practitioners Competency Assurance Act 2003 and in addition social workers, psychotherapists, counsellors and cultural advisors.							
Multidisciplinary team	Members from various disciplines who work together with tāngata whaiora and their whānau to determine goals, evaluate outcomes, and make recommendations to support tāngata whaiora care.							
Placement supervisor	Person co-managing vocational placement who is a non-Te Whatu Ora - Waikato staff member e.g. Enrich +							

Doc ID:	2776	Version:	04	Issue Date:	14 DEC 2022	Review Date:	14 DEC 2025		
Facilitator 7	Γitle:	Therapeutic	Therapeutic Programme Coordinator			Mental Health	and Addictions		
IF THIS DO	IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING Page 3 of 9								

Disclosure of forensic and/or criminal history for tangata whaiora in vocational rehabilitation

Risk management	A systematic approach to the management of risk, staff and tāngata whaiora safety. Risk management involves identifying, assessing, controlling, monitoring, reviewing and auditing risk.
Special patient	A person who has been found not guilty on the grounds of insanity (NGRI) by the court. Those found NGRI or unfit to stand trial may become special patients. Reference to Mental Health (Compulsory Assessment & Treatment Act, 1992 and the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2003 (CPMIP).
Victim notification process	Victim notification process offers victims of serious crime an opportunity to stay informed about the person who offended against them. (Reference to Mental Health (Compulsory Assessment & Treatment Act, 1992).
Vocational Rehabilitation	Is a process which enables tangata whaiora with disabilities to overcome barriers to accessing, maintaining, or returning to employment, education or other meaningful occupation
Vocational rehabilitation team	Tāngata whaiora, mental health professional team members including: registered mental health professional and support staff.

Clinical management

2.1 Roles and responsibilities

All Staff

To support the decision making process through the multidisciplinary team.

Mental Health Professional Team

The clinical staff working with the tangata whaiora in vocational rehabilitation will follow the procedure in their clinical practice.

Managers

Charge Nurse Manager, Associate Nurse Manager and/or Team Leader will provide management and leadership to support the clinical team working in vocational ONACY rehabilitation.

2.2 Competency required

Must be a registered mental health professional.

2.3 Equipment

Ministry of Justice – Request your own criminal conviction history https://www.justice.govt.nz/criminal-records/get-your-own/

Doc ID:	2776	Version:	04	Issue Date:	14 DEC 2022	Review Date:	14 DEC 2025		
Facilitator 7	Γitle:	Therapeutic	Therapeutic Programme Coordinator			Mental Health	and Addictions		
IF THIS DO	IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING Page 4 of 9								



Disclosure of forensic and/or criminal history for tāngata whaiora in vocational rehabilitation

2.4 Procedure

1. Assessment - Recovery Planning

The tangata whaiora has identified a goal to engage in vocational rehabilitation including: employment, work experience or further education. A meeting will be held with the tangata whaiora, mental health professional, member of the multidisciplinary team and responsible clinician and/or case manager to collaborate on a vocational rehabilitation plan. The partnership with tangata whaiora and the vocational rehabilitation team and multidisciplinary team need to be in agreement regarding the nature, extent and process of disclosure of criminal history and / or forensic history. While guidance can be given, disclosure of criminal convictions and health information is at the discretion of the tangata whaiora. Whanau to be included in this process if the tangata whaiora wishes for them to do so. Assessment will include but not limited to:

- Risk assessment
- Substance Use Assessment
- Workplace assessment
- · Work skills assessment
- Functional Assessment

Following the assessment process the vocational rehabilitation team will engage with tāngata whaiora in developing the disclosure plan prior to recruitment process. The clinician will support the tāngata whaiora to be confident in their agreed disclosure plan and know how this process will occur during the recruitment phase and ongoing employment or engagement. The clinician will discuss the implications of non-disclosure with the tāngata whaiora. It is then up to the tāngata whaiora to make the decision as to whether they will disclose or not. This will not be a barrier to continued engagement in the vocational rehabilitation pathway but it may impact the timeliness and engagement in the recruitment phase.

During the process of recruitment into work, volunteer roles and education pathways the vocational rehabilitation team will collaborate with the employer or agency to meet the employer's employment processes and policies. This may include the expectation for all prospective employees to agree to a police check or drug screen depending on the organisation they are applying to.

2. Clinical Reasoning

The vocational rehabilitation team will take into account the nature of the offences and risk issues when matching the person with a suitable vocational placement. The vocational rehabilitation team with tangata whaiora will agree on the information which needs to be disclosed to the employer at the vocational placement. The vocational team will support the tangata whaiora in the process of disclosure.

Doc ID:	2776	Version:	04	Issue Date:	14 DEC 2022	Review Date:	14 DEC 2025		
Facilitator 7	Γitle:	Therapeutic	Therapeutic Programme Coordinator			Mental Health	and Addictions		
IF THIS DO	IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING Page 5 of 9								



Disclosure of forensic and/or criminal history for tāngata whaiora in vocational rehabilitation

3. Disclosure or non-disclosure of criminal history and / or forensic history

If the tangata whaiora consents to agreed disclosure of criminal history and / or forensic history the vocational rehabilitation placement will proceed.

If the tāngata whaiora declines to give consent to agreed disclosure of criminal history and / or forensic history the vocational placement will not proceed imminently. A further meeting will be arranged with the vocational rehabilitation team to review the vocational rehabilitation plan with a focus toward preparation and readiness for employment and / or education.

In the case of those detained as 'Special Patients' a wider discussion will be held with the tangata whaiora, the vocational rehabilitation team, multidisciplinary team and the DAMHS given their legal status. This team together will consult and agree on:

- The vocational rehabilitation pathway
- All legal responsibilities including informing the Ministry of Health re: leave status and any changes to leave plan as agreed by Responsible Clinician, DAMHS and multidisciplinary team for vocational rehabilitation
- Potential vocational placements
- Appropriate disclosure about legal status and the fact criminal offending led to the order being made
- Agreement on the appropriate detail of the actual offence and whether this may or may not be disclosed
- The intention of achieving safe, open and transparent communication between all parties will include full disclosure in most circumstances aiming to avoid surprises
- Leave status

In the case of those who are no longer special patients, the same process or similar process will apply as outlined above for those detained as 'Special Patients'.

4. Process of disclosure of criminal conviction history

If the tāngata whaiora gives consent to proceed with disclosure they should then be supported to obtain a history of criminal convictions so that they can take ownership of and manage the information accordingly. The information on the history can then be reviewed by the tāngata whaiora and their vocational rehabilitation team. If areas of concern are identified and additional clinical decisions are required then this information will be reviewed by the multidisciplinary team. A plan will be developed regarding what information needs to be shared for a vocational placement. The mental health professional with the tāngata whaiora will complete the request for criminal conviction history form in two ways:

- 1. Request for criminal conviction history third party. This is provided to the employer for completion and sending to the Ministry of Justice
- 2. Request for criminal conviction history individual. The tangata whaiora with the mental health professional will send this form to the Ministry of Justice.

Doc ID:	2776	Version:	04	Issue Date:	14 DEC 2022	Review Date:	14 DEC 2025	
Facilitator T	Γitle:	Therapeutic Programme Coordinator			Department:	Mental Health	and Addictions	
IF THIS DO	IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING Page 6 of 9							

Disclosure of forensic and/or criminal history for tāngata whaiora in vocational rehabilitation

5. Communication of criminal history and / or forensic history

The tangata whaiora has obtained their criminal history record and / or a decision has been made regarding what information to disclose. At this point the vocational rehabilitation will focus on developing effective communication skills specific to disclosure of criminal history and / or forensic history in preparation for vocational opportunities

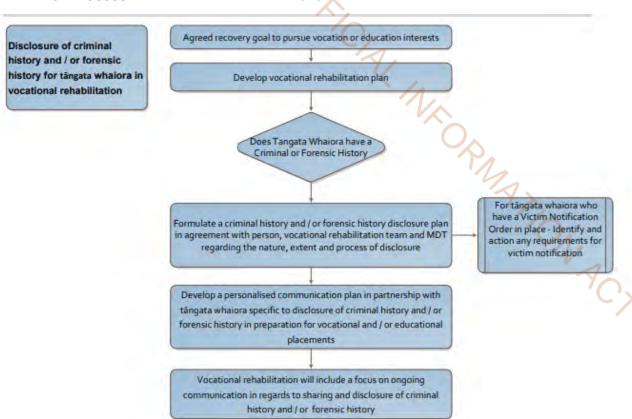
6. Vocational placement support specific to disclosure

On commencement of vocational placement from interview to employment the tangata whaiora will be supported by the vocational rehabilitation team. This will include mentoring and coaching the tangata whaiora with ongoing communication through the employment process specifically, disclosure of criminal and / or forensic history.

7. Victim notification

The victim notification process must be followed as per the Ministry of Health guidelines, prior to commencement of the vocational placement. This applies to tangata whaiora who have special patient status and those with a victim notification order in place.

8. Process



Doc ID:	2776	Version:	04	Issue Date:	14 DEC 2022	Review Date:	14 DEC 2025
Facilitator T	Γitle:	Therapeutic	Therapeutic Programme Coordinator			Mental Health	and Addictions
IF THIS DO	CUMEN	IS PRINTI	ED, IT IS \	OR THE DAY OF	PRINTING	Page 7 of 9	

Disclosure of forensic and/or criminal history for tāngata whaiora in vocational rehabilitation

3 Patient information

Nil.

4 Audit

4.1 Indicators

 Mental health professionals in the vocational rehabilitation teams understand their responsibilities and are able to articulate these. There is evidence that the tasks required are completed and documented in the clinical notes.

4.2 Tools

Monitoring and reporting by team leader.

5 Evidence base

5.1 Summary of Evidence, Review and Recommendations

- Privacy at Work A guide to the Privacy Act for employers and employees -https://www.privacy.org.nz/assets/Files/Brochures-and-pamphlets-and-pubs/Privacyat-Work-2008.pdf
- Ministry of Justice, New Zealand Criminal Records (Clean Slate) Act 2004
- Waikato DHB <u>Health Information Privacy</u> policy

5.2 Bibliography

- NHS code of practice: Confidentiality
- NHS code of practice: Public disclosures
- Mental Health Foundation of New Zealand: Social Inclusion and exclusion, stigma and discrimination, and the experience of mental distress 2017
- Mental Health Foundation of New Zealand: What Works: Positive experiences in open employment of mental health service users 2015
- Mental Health Foundation of New Zealand: Return to Work
- Health Information Privacy Code 1994 https://www.privacy.org.nz/the-privacy-act-andcodes/codes-of-practice/health-information-privacy-code-1994/
- Privacy Act 1993
 http://www.legislation.govt.nz/act/public/1993/0028/latest/DLM297038.html
- Waikato DHB Policy Health Information Privacy
- Criminal Record Checks https://www.employment.govt.nz/workplace-policies/tests-andchecks/criminal-record-checks/

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IF THIS DO	IF THIS DOCUMENT IS PRINTED, IT IS VALID ONLY FOR THE DAY OF PRINTING Page 8 of 9							



Disclosure of forensic and/or criminal history for tangata whaiora in vocational rehabilitation

- When the Clean Slate scheme applies https://www.justice.govt.nz/criminalrecords/clean-slate/
- Ministry of Justice, New Zealand Criminal Records (Clean Slate) Act 2004 http://www.legislation.govt.nz/act/public/2004/0036/49.0/DLM280840.html
- Get your own criminal record https://www.justice.govt.nz/criminal-records/get-your-own/
- Request criminal record by individual https://www.justice.govt.nz/assets/Documents/Forms/request-byindividual.pdf
- Special Patients and restricted patients: quidelines for regional forensic mental health services https://www.health.govt.nz/publication/special-patients-and-restrictedpatientsguidelines-regional-forensic-mental-health-services
- Telling someone about your criminal record https://www.govt.nz/browse/law-crimeandjustice/disclosing-your-criminal-record/
- How do I get on the Victim Notification System? https://www.police.govt.nz/faq/how-doi-get-on-the-victim-notification-system
- Victims Code http://www.victimsinfo.govt.nz/support-andservices/victimsrights/victims-code-full-text-version/
- Victims' Rights Act 2002 Guidelines 2018 https://www.health.govt.nz/publication/victims-rights-act-2002-guidelines-2018

5.3 Associated Te Whatu Ora Documents

Te Whatu Ora Waikato <u>Health Information Privacy</u> policy (Ref. 1976)

