



New South Wales

# Disability Inclusion Regulation 2014

under the

Disability Inclusion Act 2014

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Disability Inclusion Act 2014*.

JOHN AJAKA, MLC  
Minister for Disability Services

## Explanatory note

The object of this Regulation is to make provision for various matters that are authorised to be made by regulation under the *Disability Inclusion Act 2014 (the Act)*.

The Regulation:

- (a) prescribes the disability service standards that must be complied with by the Secretary and certain eligible entities when providing supports and services to persons in the target group under Part 5 of the Act, and
- (b) makes provision relating to criminal records checks (including by use of statutory declarations) for the purposes of sections 32 and 36 of the Act, and
- (c) prescribes certain entities as eligible entities and public authorities for the purposes of the Act, and
- (d) prescribes the dates by which a State Disability Inclusion Plan and disability inclusion action plans are required, and
- (e) prescribes certain premises to be premises that are or are not *supported group accommodation* for the purposes of the Act, and
- (f) prescribes consultants as relevant workers for the purposes of section 32 of the Act, and
- (g) provides for the appointment of the chairperson and deputy chairperson of the Disability Council, and
- (h) makes transitional provision with respect to the application of certain provisions of the Act.

This Regulation is made under the *Disability Inclusion Act 2014*, including the definitions of *eligible entity* and *public authority* in section 7 (1), sections 10 (1), 12 (1), 16 (5) (b) and (6), 20, 22 (2) and (3) (b), 32 (8), 36 (6) and 49 (the general regulation-making power) and clause 2 (3) of Schedule 1 and clauses 1 and 3 of Schedule 4.

This Regulation comprises or relates to matters of a machinery nature, matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public and matters of a transitional nature.

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## Disability Inclusion Regulation 2014

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Disability Inclusion Regulation 2014*.

#### 2 Commencement

This Regulation commences on 3 December 2014 and is required to be published on the NSW legislation website.

#### 3 Definition

(1) In this Regulation:

*the Act* means the *Disability Inclusion Act 2014*.

(2) Notes included in this Regulation do not form part of this Regulation.

#### 4 Entities included in definition of “eligible entity”

For the purposes of the definition of *eligible entity* in section 7 (1) of the Act, the following entities are prescribed:

- (a) a business having an ABN that is conducted by a partnership where each of the partners is an individual,
- (b) a business having an ABN that is conducted by an individual who is a sole trader,
- (c) ACT Community Services Directorate.

#### 5 Entities included in definition of “public authority”

For the purposes of the definition of *public authority* in section 7 (1) of the Act, the following entities are prescribed:

- (a) Australian Museum Trust,
- (b) Destination NSW,
- (c) Library Council of New South Wales,
- (d) Office of Finance and Services.

## Part 2 Disability planning

### 6 Day by which State Disability Inclusion Plan required

For the purposes of section 10 (1) of the Act, the prescribed day is 1 July 2015.

### 7 Days by which disability inclusion action plans required

For the purposes of section 12 (1) of the Act, the prescribed day in respect of a public authority is as follows:

- (a) for a government department—1 December 2015,
- (b) for a local council—1 July 2017,
- (c) for an entity prescribed as a public authority under paragraph (c) of the definition of *public authority* in section 7 (1) of the Act on the commencement of this Regulation—1 December 2015,
- (d) for an entity prescribed as a public authority under paragraph (c) of the definition of *public authority* in section 7 (1) of the Act after the commencement of this Regulation—the day that is 6 months after the day on which it was so prescribed.

## Part 3 Service standards

### 8 Disability service standards

For the purposes of section 20 of the Act, the disability service standards are:

- (a) the standards set out in Schedule 1, or
- (b) in such circumstances as the Secretary may determine in relation to a particular eligible entity or class of eligible entities—comparable standards of another jurisdiction approved by the Secretary as the standards applicable to that entity or class of entities.

### 9 Meaning of “supported group accommodation”

- (1) Premises are prescribed as *supported group accommodation* for the purposes of section 22 (2) of the Act to the extent that the premises are premises (other than those prescribed under subclause (2)) in which on-site support (whether or not as respite care) is provided by:
  - (a) the Secretary under section 25, or
  - (b) an eligible entity provided with financial assistance by the Secretary under section 29 (1).
- (2) Premises are prescribed not to be supported group accommodation for the purposes of section 22 (3) (b) of the Act if:
  - (a) the premises are not under the control, direction or management of a disability service provider, and
  - (b) support provided on-site for a fee in the premises is substantially under the control, direction or management of either or both of the following:
    - (i) one or more of the people with disability living at the premises,
    - (ii) a guardian or member of the family who is responsible for the care of a person with disability who is living at the premises.

## Part 4 Probity checks

### 10 Probity checks—eligible entities

- (1) For the purposes of section 32 (8) of the Act, an eligible entity may:
  - (a) conduct or obtain a criminal record check of a person, or
  - (b) require a person to provide a copy of a criminal record check that the person has arranged to be conducted or obtained to the eligible entity.
- (2) Except as provided by subclause (4), the criminal record check is to be conducted or obtained in the form of an Australia-wide assessment of the person's criminal history.
- (3) A criminal record check of a person conducted or obtained for the purposes of section 32 (3) of the Act must not be more than 6 months old.
- (4) The eligible entity may require a person to provide the eligible entity with a statutory declaration verifying the person's criminal record outside Australia if a criminal record check of a person cannot be conducted or obtained in accordance with subclause (2).
- (5) Without limiting subclause (4), the eligible entity may require the statutory declaration to verify any offences committed outside of Australia that, if committed in the State, would have constituted an offence of a kind referred to in subclause (1) of Schedule 2 to the Act.
- (6) The use of a statutory declaration under subclause (4) does not prevent the eligible entity from conducting or obtaining a criminal record check in accordance with subclauses (1) and (2) with respect to the person's criminal history in Australia.
- (7) The eligible entity must ensure any criminal record check conducted or obtained in relation to a person (and any statutory declaration provided verifying the person's criminal record) is kept in a safe and secure place for 4 years after it is conducted, obtained or provided, or until a further criminal record check is conducted or obtained in relation to the person, whichever first occurs, and is then disposed of securely.

**Note.** The Secretary may issue guidelines under section 41 of the Act to assist eligible entities in relation to compliance with conditions about probity checks.

### 11 Relevant worker—eligible entities

For the purposes of paragraph (e) of the definition of *relevant worker* in section 32 (11) of the Act, a person engaged as a consultant is prescribed.

### 12 Probity checks—departmental workers

- (1) For the purposes of section 36 (6) of the Act, the Secretary may:
  - (a) conduct or obtain a criminal record check of a person, or
  - (b) require a person to provide a copy of a criminal record check that the person has arranged to be conducted or obtained to the eligible entity.
- (2) Except as provided by subclause (4), the criminal record check is to be conducted or obtained in the form of an Australia-wide assessment of the person's criminal history.
- (3) A criminal record check of a person conducted or obtained for the purposes of section 36 (2) of the Act must not be more than 6 months old.
- (4) The Secretary may require a person to provide the Secretary with a statutory declaration verifying the person's criminal record outside Australia if a criminal

record check of a person cannot be conducted or obtained in accordance with subclause (2).

- (5) Without limiting subclause (4), the Secretary may require the statutory declaration to verify any offences committed outside of Australia that, if committed in the State, would have constituted an offence of a kind referred to in subclause (1) of Schedule 2 to the Act.
- (6) The use of a statutory declaration under subclause (4) does not prevent the Secretary from conducting or obtaining a criminal record check in accordance with subclause (1) with respect to the person's criminal history in Australia.
- (7) The Secretary must ensure any criminal record check conducted or obtained in relation to a person (and any statutory declaration provided verifying the person's criminal record) is kept in a safe and secure place for 4 years after it is conducted, obtained or provided, or until a further criminal record check is conducted or obtained in relation to the person, whichever first occurs, and is then disposed of securely.

### **13 Relevant worker—departmental worker**

For the purposes of paragraph (e) of the definition of *relevant worker* in section 36 (9) of the Act, a person engaged as a consultant is prescribed.

## **Part 5 Disability Council**

### **14 Appointment of Chairperson and Deputy Chairperson of Disability Council**

- (1) One of the members of the Disability Council is, by an instrument subsequent to the member's instrument of appointment as a member, to be appointed by the Minister as chairperson of the Council.
- (2) One of the members of the Disability Council is, by an instrument subsequent to the member's instrument of appointment as a member, to be appointed by the Minister as deputy chairperson of the Council.
- (3) The chairperson and deputy chairperson each hold office for the period (not more than one year) specified in the instrument of appointment as chairperson or deputy chairperson, but are eligible for re-appointment.

## Part 6 Savings and transitional provisions

### 15 Application of provisions about probity checks

- (1) For the purposes of clause 3 (1) of Schedule 4 to the Act, the prescribed date is 3 December 2014.
- (2) For the purposes of clause 3 (2) of Schedule 4 to the Act, the prescribed date is 3 December 2014.

### 16 Continuation of financial assistance and agreements

- (1) The reference to a prescribed condition in clause 4 (2) (b) of Schedule 4 to the Act is taken to include a reference to a condition that, no later than on 1 December 2015, an organisation to which clause 4 of that Schedule applies must ensure that a criminal record check is conducted or obtained in relation to each of its existing relevant workers and existing relevant board members.

- (2) In this clause:

*existing relevant board member* of an organisation means a relevant board member (within the meaning of section 32 of the Act) who was engaged by the organisation as a relevant board member before 3 December 2014.

*existing relevant worker* of an organisation means a relevant worker (within the meaning of section 32 of the Act) who was engaged by the organisation as a relevant worker before 3 December 2014.

### 17 Probity checks of existing departmental workers

- (1) In this clause:

*existing departmental worker*, in relation to the Department, means a relevant worker of the Department (within the meaning of section 36 of the Act) who was engaged by the Department as a relevant worker before 3 December 2014.

- (2) The Secretary must ensure that, no later than on 1 December 2015, a criminal record check is conducted or obtained in relation to each of its existing departmental workers.

## Schedule 1 Disability service standards

(Clause 8)

The disability service standards are as follows:

### **Rights**

Each person with disability receives a service that promotes and respects the person's legal and human rights and enables them to exercise choice like every one else in the community.

### **Participation and inclusion**

Each person with disability is encouraged and supported to contribute to social and civic life in the person's communities in the way the person chooses.

### **Individual outcomes**

Each person with disability is supported to exercise choice and control over the design and delivery of support and services to the person.

### **Feedback and complaints**

When a person with disability wants to make a complaint to a provider of a service, the provider of the service will make sure the person's views are respected, that the person is informed as the complaint is dealt with, and that the person has the opportunity to be involved in the resolution process.

### **Service access**

Each person with disability is assisted to access the supports and services the person needs to live the life the person chooses.

### **Service management**

Providers of services to persons with disability are well managed and have strong and effective governance to deliver positive outcomes for the persons they support.