

# National Disability Insurance Scheme (Worker Checks) Act 2018 No 82

[2018-82]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**  
Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Responsible Minister

- Minister for Disability Inclusion

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# National Disability Insurance Scheme (Worker Checks) Act 2018 No 82



New South Wales

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# National Disability Insurance Scheme (Worker Checks) Act 2018 No 82



New South Wales

An Act to provide for the screening of workers in connection with the operation of the National Disability Insurance Scheme.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *National Disability Insurance Scheme (Worker Checks) Act 2018*.

### 2 Commencement

This Act commences on the date of assent to this Act.

### 3 Health, safety and well-being of people with disability to be paramount consideration

The health, safety and well-being of people with disability and, in particular, protecting them from abuse, violence, neglect and exploitation is the paramount consideration in the operation of this Act.

### 4 Interpretation—key definitions

#### Note—

Schedule 1 contains other interpretative provisions.

In this Act:

**disqualified person**—see section 5.

**engage** means engage in any of the following capacities:

- (a) as a paid or unpaid employee,
- (b) as a self-employed person or as a contractor or subcontractor,
- (c) as a volunteer.

**NDIS Act** means the *National Disability Insurance Scheme Act 2013* of the

Commonwealth and includes the rules under that Act.

**NDIS employer** means a person who engages a person to do NDIS work.

**NDIS work** means work comprising or in connection with the provision of supports or services to people with disability under the National Disability Insurance Scheme, being work:

- (a) that is the subject of requirements under the NDIS Act for a person to hold a clearance under this Act or a corresponding law in order to be allowed by a registered NDIS provider to engage in that work, or
- (b) that the Screening Agency is satisfied is work in respect of which it is otherwise necessary or convenient for a person to hold a clearance to facilitate the person's engagement in that work.

**NDIS worker check clearance** or **clearance** means a clearance under this Act.

**presumptively disqualified person**—see section 5.

**risk of harm**—see section 13.

**Screening Agency** means the person or body appointed by the Minister by order in writing published in the Gazette as the Screening Agency for the purposes of this Act.

## 5 Disqualified and presumptively disqualified persons

- (1) A person is a **disqualified person** for the purposes of this Act if the person has a conviction for an offence that is prescribed by the regulations as a disqualifying offence and that offence was committed by the person when an adult.

### Note—

A disqualified person cannot be granted a clearance. See Part 2.

- (2) A person is a **presumptively disqualified person** for the purposes of this Act if:
  - (a) the person has a conviction for an offence that is prescribed by the regulations as a presumptively disqualifying offence and that offence was committed by the person when an adult, or
  - (b) there are pending criminal proceedings against the person for an offence that is prescribed by the regulations as a disqualifying offence or presumptively disqualifying offence and that is alleged to have been committed by the person when an adult.

### Note—

A presumptively disqualified person is presumed to pose a risk of harm to persons with disability and will not be granted a clearance unless there are exceptional circumstances. See Part 3.

## Part 2 Obtaining a clearance

### **Note—**

This Act does not require a person who does NDIS work to have an NDIS worker check clearance. The requirement for a clearance arises under the NDIS Act and arrangements made for the purposes of the Intergovernmental Agreement.

### **6 Making an application for a clearance**

- (1) An application for a clearance cannot be made before 1 July 2019 or such earlier date as may be prescribed by the regulations.
- (2) An application for a clearance must:
  - (a) be in the form approved by the Screening Agency, and
  - (b) be accompanied by any information required by the Screening Agency, and
  - (c) include or be accompanied by proof of the identity of the applicant in the form approved by the Screening Agency, and
  - (d) be accompanied by the fee prescribed by the regulations.
- (3) The Screening Agency may require an applicant for clearance to provide a recent photograph of the applicant, obtained in accordance with arrangements determined by the Screening Agency.
- (4) An application is not considered to be completed and is not valid until all the requirements of this section for an application have been complied with.
- (5) There is no requirement that an applicant for a clearance under this Act be a resident of NSW or have any other connection with NSW.

### **7 Certain persons not permitted to apply for clearance**

- (1) A person cannot apply for a clearance if:
  - (a) the person has had a clearance refused or cancelled under this Act or a corresponding law because the person is a disqualified person, or
  - (b) the person has made an application for a clearance under this Act or a corresponding law and that application is pending (whether or not the application is subject to an interim bar), or
  - (c) the person currently holds a clearance under this Act or a corresponding law, unless the application is made no more than 3 months before the expiry of the current clearance, or

### **Note—**

An application for a clearance cannot be made more than 3 months before the expiry of an existing clearance.

- (d) the person is subject to a 5-year ban on applying for a clearance as provided by this section following refusal or cancellation of a clearance, or
  - (e) in the previous 12 months, an application by the person for a clearance under this Act or a corresponding law has been rejected because the person failed to comply with a requirement to provide information.
- (2) A person who has had a clearance refused or cancelled under this Act or a corresponding law is banned from applying for a clearance for 5 years following the refusal or cancellation, except in the following situations:
- (a) if the cancellation was at the request of the person,
  - (b) if there has been a relevant change of circumstances for the purposes of the 5-year ban (as provided by subsection (3)),
  - (c) if the refusal or cancellation was because the person is a disqualified person.

**Note—**

The 5-year ban does not apply to a disqualified person. Such a person is permanently disqualified from reapplying for a clearance that has been refused or cancelled.

- (3) Each of the following is a **relevant change of circumstances** for the purposes of the 5-year ban after refusal or cancellation of a clearance:
- (a) proceedings for an offence on which the refusal or cancellation was based are withdrawn or dealt with without conviction of the person for the offence,
  - (b) a finding of guilt for an offence on which the refusal or cancellation was based is quashed or set aside,
  - (c) a finding the subject of a risk assessment on which the refusal or cancellation was based is quashed or set aside or otherwise expressly or impliedly ceases to have effect,
  - (d) any other change of circumstances that the Screening Agency considers should result in the person being permitted to make an application.
- (4) An application made in contravention of this section is not a valid application and must be rejected.

## **8 Determination of application**

- (1) An application for a clearance must be granted unless the application is refused under this section.
- (2) An application for a clearance must be refused if:
  - (a) the applicant is a disqualified person, or



- (b) a risk assessment of the applicant is required (as provided by Part 3) and the risk assessment determines that the applicant poses a risk of harm to persons with disability.

**Note—**

A presumptively disqualified person requires a risk assessment and is presumed to pose a risk of harm to persons with disability unless there are exceptional circumstances. See Part 3.

- (3) An application for a clearance may be refused if the Screening Agency is not satisfied that the applicant is or will be engaged to do NDIS work.

## **9 Interim bar on applicant**

**Note—**

Arrangements under the NDIS Act that allow an applicant for a clearance to do NDIS work while an application is pending will not allow this while an interim bar is in force.

- (1) The Screening Agency may, at any time after receiving an application for a clearance and pending determination of the application, impose an **interim bar** on the applicant if of the opinion that there is a reasonable likelihood that a risk assessment will determine that the person poses a risk of harm to persons with disability.
- (2) The Screening Agency imposes an interim bar by giving written notice of the interim bar to the applicant.
- (3) The Screening Agency may give written notice of an interim bar to any person that the Screening Agency reasonably believes to be a notifiable person in relation to the applicant.
- (4) An interim bar ceases to have effect:
  - (a) on notification in writing by the Screening Agency to the applicant that the interim bar is revoked, or
  - (b) if the application is granted or refused,whichever occurs first.

## **10 Notice of proposed refusal of application**

- (1) If the Screening Agency proposes to refuse to grant a clearance to an applicant, the Screening Agency must notify the applicant in writing of the proposed decision and that the applicant may make a submission to the Screening Agency within the period specified in the notice.
- (2) The Screening Agency must consider any submission made by an applicant within the specified period before finally deciding the application.
- (3) This section does not apply to an application for a clearance that is made by a

disqualified person.

## **11 Notice of final decision granting or refusing clearance**

- (1) The Screening Agency must notify the applicant in writing of the Screening Agency's decision to grant or refuse to grant a clearance.
- (2) Notice of a decision not to grant a clearance must set out the reasons for the refusal and any right to seek a review under Part 6 (Review of decisions).
- (3) The Screening Agency may give written notice of the refusal of an application to any person that the Screening Agency reasonably believes to be a notifiable person in relation to the applicant.

## **12 Withdrawal of application**

- (1) An applicant for a clearance may withdraw an application at any time by notice in writing to the Screening Agency in the form approved by the Screening Agency but the withdrawal of an application only has effect if the Screening Agency consents to its withdrawal.
- (2) The Screening Agency must consent to the withdrawal of an application except in the following circumstances (and must refuse consent in those circumstances):
  - (a) a clearance currently held by the applicant under this Act or a corresponding law is under suspension,
  - (b) the applicant's most recent previous application for a clearance under this Act or a corresponding law was refused or the clearance most recently held by the applicant under this Act or a corresponding law was cancelled (other than cancellation at the request of the holder),
  - (c) the applicant is subject to an interim bar,
  - (d) the Screening Agency has notified or is proposing to notify the applicant that it proposes to refuse to grant a clearance to the applicant and has not yet determined the application,
  - (e) the Screening Agency is of the opinion that there is a reasonable likelihood that a risk assessment of the applicant will determine that the applicant poses a risk of harm to persons with disability.
- (3) The Screening Agency may give written notice of the withdrawal of an application to any person that the Screening Agency reasonably believes to be a notifiable person in relation to the applicant.

## Part 3 Risk assessment

### 13 Nature of risk assessment

- (1) A **risk assessment** is an assessment and determination by the Screening Agency as to whether a person poses a risk of harm to persons with disability.
- (2) A reference in this Act to a risk of harm to persons with disability is to be interpreted in accordance with the following principles:
  - (a) the risk of harm must be a real and appreciable risk of harm,
  - (b) the risk of harm does not need to be likely or significant,
  - (c) the risk of harm need not arise from recent events.
- (3) In this Act, **harm** includes but is not limited to the following:
  - (a) personal harm, which means any detrimental effect on a person's physical, psychological, emotional or financial well-being,
  - (b) sexual harm, which means non-consensual or inappropriate conduct of a sexual nature with or towards a person (whether or not that conduct poses a risk of personal harm).

### 14 Requirement for risk assessment

- (1) A risk assessment of an applicant for or the holder of a clearance is required in the following circumstances:
  - (a) if the applicant or holder is a presumptively disqualified person,
  - (b) in circumstances prescribed by the regulations,
  - (c) in such other circumstances as the Screening Agency may determine, either generally or in a particular case.
- (2) A risk assessment of an applicant for a clearance is required at the time of application if there are circumstances at the time of application that require a risk assessment.
- (3) A risk assessment of the holder of a clearance is required if the Screening Agency becomes aware that there are circumstances that require a risk assessment.

### 15 Risk assessment of presumptively disqualified person

For the purposes of a risk assessment of a presumptively disqualified person, it is to be presumed that the person poses a risk of harm to persons with disability unless there are exceptional circumstances that justify a determination that the person does not pose such a risk.

## 16 Matters to be considered in risk assessment

The Screening Agency is to consider the following for the purposes of a risk assessment:

- (a) the nature, gravity and circumstances of any offence, misconduct or other event that resulted in or contributed to the requirement for a risk assessment in relation to the person (a **relevant event**), and how it is relevant to NDIS work,
- (b) the length of time that has passed since a relevant event occurred,
- (c) the vulnerability of any victim of a relevant event at the time of the event and the person's relationship to the victim or position of authority over the victim at the time of the event,
- (d) the person's criminal history, history of misconduct and other relevant history, including whether there is a pattern of concerning behaviour,
- (e) the person's conduct since a relevant event,
- (f) all other circumstances in respect of the person's criminal offending, misconduct and other relevant history and their impact on eligibility to be engaged in NDIS work,
- (g) such other matters as the Screening Agency considers appropriate.

## Part 4 Duration and termination of clearances

### 17 Duration of clearances

- (1) A clearance remains in force (unless sooner cancelled or surrendered) for a period of 5 years starting from whichever of the following start dates is applicable in the circumstances:
  - (a) if the applicant is not the holder of a clearance under this Act or a corresponding law when the application for the clearance is granted, the start date is the date on which the application for the clearance is granted,
  - (b) if the application is granted while the applicant is the holder of a clearance (an **existing clearance**) under this Act or a corresponding law, the start date is the date on which the existing clearance ceases to be in force.
- (2) The Screening Agency may extend the period for which a clearance remains in force for a period of up to 6 months after the clearance would otherwise have ceased to be in force if the holder of the clearance has made a valid application for a clearance under this Act or a corresponding law (either before or within 6 months after the clearance ceases to be in force) and that application is pending.
- (3) If the period for which a clearance remains in force is extended under this section after the date on which the clearance ceased to be in force, the clearance is taken to

have remained in force from that date until the extension takes effect.

- (4) The following arrangements apply for the purpose of facilitating alignment of the periods for which a clearance granted to a person under this Act and a clearance granted to the person under the *Child Protection (Working with Children) Act 2012* are in force:
- (a) an NDIS worker check clearance may, at the discretion of the Screening Agency and with the agreement of the applicant, be granted so as to be in force for a period of less than 5 years,
  - (b) the period for which an NDIS worker check clearance is in force may be shortened after the clearance is granted at the discretion of the Screening Agency and on the application of the holder of the clearance,
  - (c) the holder of an NDIS worker check clearance may, with the approval of the Screening Agency, apply for a new NDIS worker check clearance earlier than 3 months before the expiry of the clearance (despite any requirement of this Act that the application be made no more than 3 months before the expiry of the clearance),
  - (d) the Screening Agency may approve a reduction in the fee payable, or a refund of part of any fee paid, to reflect any reduction in the period for which an NDIS worker check clearance is or is to be in force.

## **18 Requirement to notify change of particulars**

- (1) The holder of a clearance must notify the Screening Agency in writing in a form approved by the Screening Agency of any relevant change of particulars within 3 months after the change occurs.

Maximum penalty: 5 penalty units.

- (2) In this section, **relevant change of particulars** means the following:
- (a) any change in the person's name, residential address or contact details,
  - (b) a change of employer by the person,
  - (c) any change prescribed by the regulations.

## **19 Suspension of clearance**

- (1) The Screening Agency may, by written notice to the holder of a clearance, suspend the clearance if of the opinion that there is a reasonable likelihood that a risk assessment of the holder will determine that the holder poses a risk of harm to persons with disability.
- (2) The Screening Agency may give written notice of the suspension of a clearance to any

person that the Screening Agency reasonably believes to be a notifiable person in relation to the holder of the clearance.

- (3) The suspension of a clearance ceases to have effect:
- (a) on notification in writing by the Screening Agency to the holder that the suspension is revoked, or
  - (b) if the clearance is cancelled,
- whichever occurs first.

## **20 Cancellation of clearance**

- (1) The Screening Agency must cancel the clearance of a person if the Screening Agency becomes aware that the person is a disqualified person or a risk assessment determines that the person poses a risk of harm to persons with disability.
- (2) The Screening Agency may cancel a clearance for any of the following reasons:
  - (a) the Screening Agency is not satisfied that the person is or will be engaged to do NDIS work,
  - (b) the clearance was granted pursuant to an application that was not valid,
  - (c) the clearance was granted because of a mistake and should not have been granted.
- (3) If the Screening Agency proposes to cancel a clearance other than because the person is a disqualified person, the Screening Agency must notify the person in writing of the proposed cancellation and that the person may make a submission to the Screening Agency within the period specified in the notice.
- (4) The Screening Agency must consider any submission made by the person within the specified period before finally deciding whether to cancel the clearance.
- (5) The Screening Agency must notify the holder of a clearance in writing of the Screening Agency's decision to cancel the clearance. Notice of the decision must set out the reasons for the cancellation and any right to seek a review under Part 6 (Review of decisions).
- (6) The Screening Agency may give written notice of the cancellation of a clearance to any person that the Screening Agency reasonably believes to be a notifiable person in relation to the holder of the clearance.

## **21 Surrender of clearance**

- (1) The holder of a clearance may at any time request cancellation of the clearance by notice in writing to the Screening Agency in the form approved by the Screening

Agency.

- (2) The Screening Agency must, as soon as practicable after receiving the request, cancel the clearance except in the following circumstances (and must refuse to cancel the clearance in those circumstances):
  - (a) the clearance, or a clearance held by the person under a corresponding law, is suspended,
  - (b) the Screening Agency is undertaking or is proposing to undertake a risk assessment of the holder.
- (3) The Screening Agency may give written notice of the cancellation of a clearance under this section to any person that the Screening Agency reasonably believes to be a notifiable person in relation to the holder of the clearance.

## Part 5 Information gathering and sharing

### Division 1 Key concepts

#### 22 Authorised persons

- (1) In this Part, **authorised person** means the following persons:
  - (a) the Screening Agency,
  - (b) a person exercising functions in the execution or administration of a relevant law,
  - (c) the NDIS Commission,
  - (d) a law enforcement agency of this or any other jurisdiction (including a jurisdiction outside Australia),
  - (e) any other person prescribed by the regulations.
- (2) A person exercising functions as agent for or otherwise on behalf of, or as an officer or employee of, an authorised person has and may exercise the functions conferred on the authorised person by or under this Part.

#### 23 Relevant laws

In this Part, **relevant law** means the following laws:

- (a) this Act,
- (b) a corresponding law,
- (c) the NDIS Act,
- (d) the *Child Protection (Working with Children) Act 2012*,

- (e) a law of NSW or another State or Territory that is prescribed by the regulations as a law for the protection of children or vulnerable persons.

## **24 Relevant risk of harm**

In this Part, **relevant risk of harm** means a risk of harm to persons with whose protection a relevant law is concerned.

## **25 Authorised purposes**

In this Part, **authorised purpose** means any purpose that is for or in connection with the execution or administration of or compliance with a relevant law, and includes (without limitation) the following purposes:

- (a) verification of the identity of a person who is or has at any time been an applicant for or the holder of a clearance or other authority under a relevant law,
- (b) consideration and determination of a person's application for a clearance or other authority under a relevant law,
- (c) assessing and determining under a relevant law whether a person poses a relevant risk of harm,
- (d) assessing and determining whether a risk assessment of a person is required under a relevant law,
- (e) ongoing monitoring of a person who holds a clearance or other authority under a relevant law for the purpose of determining whether the person requires a risk assessment or poses a relevant risk of harm,
- (f) administrative review (including internal review) of a decision under a relevant law.

## **26 NDIS purposes**

In this Part, **NDIS purpose** means an authorised purpose where the reference to a relevant law in the definition of **authorised purpose** is limited to this Act, a corresponding law or the NDIS Act.

## **27 Relevant information**

- (1) In this Part, **relevant information** means the following information about a person:
  - (a) information relevant to verification of the identity of the person,
  - (b) information about the person disclosed in an application for a clearance or other authority under a relevant law,
  - (c) information relating to the person's criminal history in this or any other jurisdiction,



- (d) information about workplace misconduct by the person in this or any other jurisdiction, being misconduct that concerns persons to whom a relevant risk of harm relates,
  - (e) information about any order imposed on the person by a court relating to child protection, apprehended violence or domestic or family violence in this or any other jurisdiction,
  - (f) information relevant to determining whether the person requires a risk assessment under a relevant law,
  - (g) information about the person's clearance history,
  - (h) information about any current or past engagement of the person by an NDIS employer in this or any other jurisdiction,
  - (i) other information relevant to determining whether the person poses a relevant risk of harm.
- (2) For the purposes of this section, a person's **clearance history** is the history of action taken under a relevant law in respect of an application for a clearance by the person or a clearance held by the person under the relevant law, including any risk assessment determination, interim bar, refusal of an application and the suspension or cancellation of a clearance.

## Division 2 Information gathering

### 28 Consent of applicant for clearance to obtaining and providing of information

- (1) The approved form of application by a person for a clearance must provide for the authorisation by the person of, and the consent by the person to, the following:
  - (a) the making of inquiries about the person by the Screening Agency for an NDIS purpose,
  - (b) the obtaining of relevant information about the person by the Screening Agency from any authorised person for an NDIS purpose,
  - (c) the disclosure of relevant information about the person by the Screening Agency to an authorised person for an authorised purpose.
- (2) An authorisation or consent provided for by this section is not limited to operating for the purposes of an application for a clearance and extends to the making of inquiries and the obtaining and disclosure of information in connection with and for the purposes of the ongoing monitoring of the holder of a clearance.
- (3) An authorisation or consent provided for by this section does not require the person concerned to be given notice of the making of inquiries or the obtaining and disclosure

of information pursuant to the authorisation or consent.

## **29 Power to require information from applicant or clearance holder**

- (1) The Screening Agency may, by notice in writing to an applicant for a clearance or the holder of a clearance, request the applicant or holder to provide relevant information about the person for an NDIS purpose.
- (2) The Screening Agency may terminate an application for a clearance or cancel a clearance if the applicant or holder fails, without reasonable excuse, to provide requested information within the period required for compliance with the request (unless the Screening Agency has withdrawn the request).
- (3) The period required for compliance with a request for information is the period of not less than 28 days specified by the Screening Agency in the request. The Screening Agency may extend and further extend the period required for compliance with the request.
- (4) The Screening Agency must, as soon as practicable after terminating an application or cancelling a clearance under this section, give written notice of the termination or cancellation to the applicant or holder of the clearance.
- (5) The Screening Agency may give written notice of the termination of an application or cancellation of a clearance under this section to any person that the Screening Agency reasonably believes to be a notifiable person in relation to the applicant or holder.

## **30 Power to require information from other persons**

- (1) The Screening Agency may, by notice in writing (an **assessment notice**), require any person to provide the Screening Agency with specified information relevant to an assessment of whether a person poses a risk of harm to persons with disability, for the purpose of:
  - (a) determining an application for a clearance or a risk assessment of an applicant or the holder of a clearance, or
  - (b) administrative review (including internal review) under the [Administrative Decisions Review Act 1997](#) of a decision under this Act.
- (2) A person to whom an assessment notice is given is authorised and required to comply with the notice. The Commissioner of Police is not required to comply with an assessment notice if the Commissioner is of the opinion that compliance would disclose the existence or content of criminal intelligence information.
- (3) An assessment notice may specify a day on or before which the notice is to be complied with.
- (4) If a person fails to comply with an assessment notice, the Screening Agency may, by

further notice in writing served on the person (an **enforcement notice**), direct the person to comply with the assessment notice within a period (not less than 28 days) specified in the notice. The enforcement notice must warn the person that a failure to comply with the notice is an offence.

- (5) The Screening Agency may revoke an enforcement notice at any time.
- (6) A person who fails, without reasonable excuse, to comply with an enforcement notice is guilty of an offence.

Maximum penalty: 50 penalty units.

- (7) In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.
- (8) If documents are given to the Screening Agency under this section, the Screening Agency:
  - (a) may take possession of, and make copies of or take extracts from, the documents, and
  - (b) may keep possession of the documents for such period as is necessary for the purposes of an administrative review or considering an application, and
  - (c) during that period must permit them to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the Screening Agency.

- (9) In this section:

**information** includes documents.

**person** includes a NSW government agency.

## **Division 3 Information sharing and use**

### **31 General powers to obtain, provide and use information**

- (1) The Screening Agency may obtain relevant information from an authorised person or a NSW government agency for an NDIS purpose.
- (2) An authorised person or a NSW government agency may disclose relevant information to the Screening Agency for an NDIS purpose.
- (3) The Screening Agency may disclose relevant information to an authorised person for an authorised purpose. This subsection does not authorise disclosure of relevant information to a NSW government agency unless the agency is an authorised person.
- (4) The Screening Agency may use relevant information for an NDIS purpose.

### **32 Provision of information to NDIS employers and participants**

The Screening Agency may provide the following relevant information about a person to an NDIS employer or participant who engages or proposes to engage the person to do NDIS work:

- (a) information relevant to verification of the identity of the person,
- (b) information about the outcome of any application for a clearance by or risk assessment of the person under this Act or a corresponding law,
- (c) such other information as may be prescribed by the regulations.

### **33 Access to police information**

- (1) The Commissioner of Police is authorised to disclose (or arrange for a member of the NSW Police Force to disclose) the following information for the purpose of the use of the information in assessing and determining whether a person who engages or proposes to engage in NDIS work poses a risk of harm to persons with disability:
  - (a) information relating to any matter that may cause a person to be a disqualified person or require a risk assessment of a person, under this Act or a corresponding law,
  - (b) information relating to the criminal history of a person,
  - (c) without limiting paragraph (a) or (b), information relating to the circumstances of an offence or other matter disclosed under this section.
- (2) The disclosure of information under this section is limited to disclosure to any of the following:
  - (a) the Screening Agency,
  - (b) an interstate screening agency,
  - (c) the Australian Criminal Intelligence Commission,
  - (d) a law enforcement agency of the Commonwealth or another State or Territory.
- (3) A person to whom information is disclosed under the authority of this section may disclose that information to an interstate screening agency for the purposes of the use of the information in assessing and determining whether a person who engages or proposes to engage in NDIS work poses a risk of harm to persons with disability.
- (4) Information relating to a person's criminal history may be disclosed under this section whether or not the information relates to offences that cause or may cause the person to be a disqualified person or require a risk assessment of the person, under this Act or a corresponding law.

- (5) This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record, of persons may be disclosed apart from this Act.
- (6) This section does not limit the powers of the Commissioner of Police to disclose relevant information as an authorised person under this Part.
- (7) In this section:

***interstate screening agency*** means a person or body exercising functions in the execution or administration of a corresponding law.

#### **34 Disclosure of court information**

- (1) A court or tribunal is authorised to disclose relevant information to the Screening Agency for an NDIS purpose.
- (2) Nothing in the [Court Information Act 2010](#) prevents or restricts the disclosure of information under this section.

#### **35 Power to retain relevant information indefinitely**

- (1) The Screening Agency may retain indefinitely information about a person who is or was an applicant for or the holder of a clearance under this Act whether or not the application was granted and even if the Screening Agency has no present or further use for the information.
- (2) This section applies only to information that is relevant information collected by the Screening Agency for an NDIS purpose.

### **Division 4 Miscellaneous**

#### **36 Notification by reporting bodies of conduct requiring risk assessment**

- (1) It is the duty of a reporting body to notify the Screening Agency of the name and other identifying particulars of any NDIS worker against whom the reporting body has made a finding that the worker has engaged in conduct that constitutes circumstances prescribed by the regulations as requiring a risk assessment of the person.
- (2) The duty to notify imposed by this section applies only to findings made after the commencement of this section. A reporting body is authorised (but not required) to notify the Screening Agency in respect of any such finding made before the commencement of this section.
- (3) The Screening Agency may give directions to reporting bodies as to the form and manner in which a notification required under this section must be given.
- (4) A reporting body may amend or withdraw a notification under this section at any time

by notice in writing to the Screening Agency.

(5) The regulations may make provision for or with respect to the following:

- (a) requiring the provision by reporting bodies of further particulars of any conduct in respect of which a finding is notified under this section,
- (b) the keeping of records by reporting bodies of information about findings required to be notified under this section.

(6) In this section:

**reporting body** means the following:

- (a) a NSW government agency that is prescribed by the regulations for the purposes of this section,
- (b) a registration or other licensing authority that is constituted under an Act and that is prescribed by the regulations for the purposes of this section,
- (c) any other employer or professional or other body that supervises the conduct of an employee and that is prescribed by the regulations for the purposes of this section.

### **37 Information sharing for national register or database**

The Screening Agency may disclose information obtained in the execution or administration of this Act to an authorised person for the purpose of providing relevant information for entry in a national register or database established under the NDIS Act.

### **38 Information sharing for research, monitoring and auditing purposes**

The Screening Agency may disclose information obtained in the execution or administration of this Act to an authorised person for the purpose of providing relevant information for use for the purposes of research into the operation of a relevant law or monitoring and auditing compliance with the requirements of a relevant law.

### **39 Disclosure of information about offences**

- (1) An authorised person may disclose to a law enforcement agency of this or any other jurisdiction (including a jurisdiction outside Australia) any information obtained as a result of the exercise of a function under this Act that indicates that a relevant offence may have been committed or that constitutes evidence of a relevant offence.
- (2) In this section, **relevant offence** means an offence prescribed by the regulations as a disqualifying offence or presumptively disqualifying offence or prescribed by the regulations as a relevant offence for the purposes of this section.

#### **40 Disclosure of information to prevent significant harm**

An authorised person may disclose to any other authorised person any information obtained as a result of the exercise of a function under this Act if there are reasonable grounds to suspect that there is a risk of significant harm to a person with disability, a child or a vulnerable person, or to a class of those persons, and the disclosure is necessary to prevent that harm.

### **Part 6 Review of decisions**

#### **41 Administrative review of decisions**

- (1) A person who is aggrieved by any of the following decisions (**reviewable decisions**) may apply to the Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision:
  - (a) a decision to refuse to grant an application for a clearance (including a decision to terminate an application for a clearance),
  - (b) a decision to impose an interim bar on an applicant for a clearance,
  - (c) a decision to suspend a clearance,
  - (d) a decision to cancel a clearance (other than cancellation at the request of the holder of the clearance).

**Note—**

Administrative review of a decision cannot be applied for until an internal review of the decision has been applied for and finalised. See sections 53 and 55 of the [Administrative Decisions Review Act 1997](#).

- (2) An application for administrative review (including internal review) under the [Administrative Decisions Review Act 1997](#) cannot be made to the Tribunal in respect of a decision to impose an interim bar or to suspend a clearance until the interim bar or suspension has been in force for at least 6 months.
- (3) An applicant for administrative review must fully disclose to the Tribunal any matters relevant to the application.
- (4) The Screening Agency may on its own motion review a reviewable decision at any time and without any application by an aggrieved person for administrative review.

#### **42 Non-reviewable decisions**

- (1) The following decisions are not reviewable decisions for the purposes of this Part:
  - (a) a decision to refuse to grant an application for a clearance or to cancel a clearance because the applicant or holder is a disqualified person,
  - (b) a decision to refuse to grant an application for a clearance or to cancel a

clearance if the applicant or holder is a presumptively disqualified person as a result of there being pending criminal proceedings against the person,

**Note—**

Paragraph (b) does not prevent a presumptively disqualified person from applying for administrative review of a decision to refuse a clearance when the person reapplies for a clearance after the pending criminal proceedings are finalised.

(c) a decision to terminate an application for a clearance or to cancel a clearance because the applicant or holder has failed without reasonable excuse to provide information requested by the Screening Agency.

- (2) Despite subsection (1), a decision to refuse to grant an application for a clearance or to cancel a clearance is a reviewable decision for the purposes of administrative review on the ground of error in a finding of fact that the person is a disqualified or presumptively disqualified person.
- (3) Despite subsection (1), a decision to terminate an application for a clearance or to cancel a clearance because the applicant or holder has failed without reasonable excuse to provide requested information is a reviewable decision for the purposes of administrative review on the ground of error in a finding that the failure was without reasonable excuse.

#### **43 Effect of pending application on reviewable decision**

- (1) An application to the Tribunal for an administrative review of a decision under this Act does not affect the operation of the decision under review or prevent the taking of action to implement that decision.
- (2) Sections 60–62 (Effect of pending applications on administratively reviewable decisions) of the [Administrative Decisions Review Act 1997](#) do not apply to the review of a decision provided for by this Part.

#### **44 Protection of criminal intelligence**

- (1) Notice of a decision under this Act must not (despite any other provision of this Act) disclose the existence or content of any information disclosed to the Screening Agency by the Commissioner of Police and identified by the Commissioner (at the time of its disclosure or subsequently) as criminal intelligence information (**identified criminal intelligence information**).
- (2) In determining an application for an administrative review of any decision under this Act, the Tribunal (and any Appeal Panel of the Tribunal in determining any internal appeal against such a review under the [Civil and Administrative Tribunal Act 2013](#)):
- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any identified criminal intelligence information, and



- (b) is to receive evidence and hear argument in the absence of the public, the applicant for the administrative review and the applicant's representative to the extent necessary to prevent the disclosure of the existence or content of any identified criminal intelligence information.
- (3) If the Tribunal is of the opinion that information identified by the Commissioner of Police as criminal intelligence information is not criminal intelligence information, the following arrangements are to apply:
  - (a) the Tribunal must give the Commissioner of Police the opportunity to withdraw the information from consideration by the Tribunal,
  - (b) if the Commissioner withdraws the information from consideration by the Tribunal the information is not to be taken into consideration by the Tribunal in determining an application but must otherwise continue to be treated by the Tribunal as identified criminal intelligence information for the purposes of this section,
  - (c) if the Commissioner does not withdraw the information from consideration by the Tribunal, the information is not to be treated by the Tribunal as identified criminal intelligence information for the purposes of this section.

#### **45 Fee for internal review**

An application for an internal review under section 53 of the [Administrative Decisions Review Act 1997](#) of a decision is to be accompanied by the fee prescribed by the regulations.

### **Part 7 Miscellaneous**

#### **46 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

#### **47 Effect of Act on other rights and procedures**

- (1) Nothing in this Act affects any statutory right that an employee may have in relation to employment or termination of employment.
- (2) However, any court or tribunal exercising jurisdiction with respect to any such right must have regard to the results of any determination of an application for a clearance or risk assessment carried out under this Act in connection with the work concerned and the welfare of persons with disability as the paramount consideration in that determination or assessment.
- (3) The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order the payment of damages or compensation for any removal from employment of a person in connection with the operation of this

Act.

#### **48 Protection from liability**

- (1) Anything done or omitted to be done by a person in good faith and with reasonable care:
  - (a) for the purpose of the determination of an application for a clearance or a risk assessment of an applicant for or the holder of a clearance, or
  - (b) for the purpose of exercising a function under this Act, or
  - (c) for the purpose of providing information to the Screening Agency as authorised or required under this Act,does not subject the person to any action, liability, claim or demand.
- (2) Without limiting subsection (1):
  - (a) a person has qualified privilege in proceedings for defamation in respect of anything done or omitted to be done by the person for the purposes of the determination of an application for a clearance or risk assessment or otherwise exercising a function under this Act, and
  - (b) damages or compensation (whether for breach of contract or otherwise) are not payable in respect of a decision not to grant a clearance or to cancel or suspend a clearance, or to impose an interim bar, as a result of a risk assessment carried out in good faith and with reasonable care for the purposes of this Act or an application for review (including internal review) under Part 6 (Review of decisions).
- (3) This section does not limit or affect any other right, privilege or immunity that a person has as a defendant in any proceedings.

#### **49 Offence of providing false information**

- (1) A person must not, in or in connection with an application for a clearance under this Act or in purported compliance with a request or requirement under this Act, provide information to the Screening Agency knowing the information to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (2) In this section, **information** includes any statement and document.

#### **50 Unauthorised disclosure or dishonest collection of information**

- (1) A person who discloses any information obtained by the person in the exercise of functions under this Act is guilty of an offence unless the disclosure:

- (a) is made in good faith for the purposes of the exercise of a function under this Act or in connection with administrative review (including internal review) under the [Administrative Decisions Review Act 1997](#) of a decision under this Act, or
- (b) is made with the consent of the person to whom the information relates, or
- (c) is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or
- (d) is made with other lawful excuse.

- (2) A person who dishonestly obtains confidential information relating to the exercise of functions under this Act is guilty of an offence.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

## **51 Evidentiary certificates**

- (1) The Screening Agency may issue a certificate that states that, on a specified date or during a specified period:
  - (a) a specified person was or was not the holder of a clearance, or
  - (b) a specified person had or had not made an application for a clearance, or
  - (c) a clearance held by a specified person was or was not suspended, or
  - (d) a specified person was or was not subject to an interim bar, or
  - (e) a clearance held by a specified person was cancelled.
- (2) A certificate under this section is admissible in legal proceedings as evidence of the matters stated in the certificate.

## **52 Failure to give notice of decisions**

Failure to give notice of a decision under this Act as required by this Act does not affect the validity or effect of the decision.

## **53 Public awareness and advice functions**

The Screening Agency may promote public awareness of and provide advice on requirements for NDIS worker check clearances.

## **54 Monitoring and auditing functions**

The Screening Agency may monitor and audit compliance with the requirements of this Act.

## 55 Fees

The Screening Agency may waive payment of, reduce or refund any fee payable under this Act.

## 56 Proceedings for offences

Proceedings for an offence under this Act may be dealt with summarily before the Local Court.

## 57 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

### Note—

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means a member of staff of the Screening Agency designated by the Screening Agency as an authorised officer for the purposes of this section.

## 58 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

## 59 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by any other method to which the person agrees for the service of documents of that kind,
  - (g) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, **serve** includes give or send.

## 60 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may also contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (3) A provision of a savings or transitional nature may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which a provision of a savings or transitional nature takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an

authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(5) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

## Schedule 1 Interpretative provisions

### 1 Definitions

#### Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

In this Act:

**adult** means a person who is 18 years of age or older.

**child** means a person who is under 18 years of age.

**conviction**—see clause 2 of this Schedule.

**corresponding law** means a law of another State or Territory that corresponds to this Act and includes any law that is prescribed by the regulations as a corresponding law for the purposes of this Act.

**criminal history**—see clause 2 of this Schedule.

**criminal intelligence information** means information the disclosure of which could reasonably be expected:

- (a) to prejudice the prevention, investigation, or prosecution of an offence, or
- (b) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or
- (c) to endanger a person's life or physical safety, or
- (d) to result in confidential investigative methods or techniques being revealed or discoverable.

**disqualified person**—see section 5.

**engage**—see section 4.

**function** includes a power, authority or duty, and **exercise** a function includes perform a

duty.

**Intergovernmental Agreement** means the agreement between the States, Territories and the Commonwealth titled Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme (including its Schedules) as amended and in force from time to time.

**interim bar** means an interim bar imposed under section 9.

**NDIS Act**—see section 4.

**NDIS Commission** means the NDIS Quality and Safeguards Commission established under the NDIS Act.

**NDIS employer**—see section 4.

**NDIS work**—see section 4.

**NDIS worker** means a person engaged to do NDIS work.

**NDIS worker check clearance** or **clearance**—see section 4.

**notifiable person** in relation to an applicant for a clearance or the holder of a clearance means each of the following:

- (a) any NDIS employer who engages or proposes to engage the applicant or holder,
- (b) any other person prescribed by the regulations.

**NSW government agency** means:

- (a) any government sector agency or any person employed in a government sector agency, or
- (b) any person appointed to an office by the Governor, or
- (c) any statutory body representing the Crown,
- (d) any person in the service of the Crown or of any statutory body representing the Crown.

**presumptively disqualified person**—see section 5.

**risk assessment** means a risk assessment under Part 3.

**risk of harm**—see section 13.

**Screening Agency**—see section 4.

**Tribunal** means the Civil and Administrative Tribunal.

**work** means work done in any of the following capacities:

- (a) as a paid or unpaid employee,
- (b) as a self-employed person or as a contractor or subcontractor,
- (c) as a volunteer.

## **2 Convictions and criminal history**

- (1) In this Act, **conviction** means any recorded conviction, finding of guilt or offence proven, or acceptance of a plea of guilty by a court, for an offence and includes the following:
  - (a) a finding of guilt or offence proven where the court does not proceed to conviction,
  - (b) convictions or findings to which section 579 of the [Crimes Act 1900](#) applies (despite the provisions of that section),
  - (c) a spent conviction under the [Criminal Records Act 1991](#) (despite anything to the contrary in that Act),
  - (d) a conviction that has been quashed or set aside or for which a pardon has been granted.
- (2) In this Act, a person's **criminal history** means the history of:
  - (a) the person's convictions, and
  - (b) criminal charges against the person, whether or not resulting in conviction and whether or not heard, proven, dismissed, withdrawn or discharged.
- (3) For the purpose of determining whether a person is a disqualified or presumptively disqualified person, **conviction** does not include a conviction that has been quashed or set aside or for which a pardon has been granted. However a conviction that has been quashed or set aside or for which a pardon has been granted does form part of a person's criminal history.
- (4) A reference in this Act to information relating to a person's criminal history includes a reference to information relating to the circumstances of an offence with which a conviction or criminal charge is concerned.
- (5) References in this Act to conviction and criminal charges extend to conviction and criminal charges that relate to events that occurred when the person was under the age of 18 years and to conviction and charges before the commencement of this Act.



### **3 Self-employed persons**

For the removal of doubt, a self-employed person who does NDIS work is considered to be an NDIS employer who engages themselves to do that work.

### **4 Volunteers**

For the removal of doubt, a person may be engaged by another person to do NDIS work as a volunteer or may do NDIS work as a volunteer on their own account (in which case the person is to be regarded as being self-employed as a volunteer).

### **5 References to risk of harm to persons with disability**

A reference in this Act to a person posing a risk of harm to persons with disability is a reference to a person posing such a risk if the person is engaged to do NDIS work.

### **6 NDIS Act definitions**

Expressions used in this Act that are defined in the NDIS Act have the same meaning as in the NDIS Act.

### **7 Screening Agency—functions and delegation**

- (1) A person or body appointed as the Screening Agency has and may exercise the functions of the Screening Agency while that appointment is in force and those functions are taken to have been conferred on the person or body by this Act.
- (2) The Screening Agency may delegate to an authorised person any function of the Screening Agency other than this power of delegation.
- (3) A delegate may sub-delegate to an authorised person any function delegated by the Screening Agency if the delegate is authorised in writing to do so by the Screening Agency.
- (4) A power of delegation under this clause is in addition to and does not limit any power of delegation that a person or body may have apart from this clause to delegate a function of the person or body.
- (5) In this clause, **authorised person** means an officer or employee of the Screening Agency or a person or member of a class of persons prescribed by the regulations.

### **8 Role of Intergovernmental Agreement**

In the interpretation of this Act, consideration may be given to the provisions of the Intergovernmental Agreement.

### **9 Notes**

Notes included in this Act do not form part of this Act.

## **Schedule 2 (Repealed)**