

National Disability Insurance Scheme (Worker Screening) Bill 2020

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

**National Disability Insurance Scheme
(Worker Screening) Bill 2020**

A Bill for

**An Act to provide for the screening of workers in connection with
the operation of the National Disability Insurance Scheme and to
amend certain other Acts as a consequence of this Act.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *National Disability Insurance Scheme (Worker Screening) Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act binds Crown

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

4. Paramount consideration

In performing a function under this Act, the CEO or the State Administrative Tribunal must regard the safety and wellbeing of people with disability and, in particular, their right to live free from abuse, violence, neglect and exploitation, as the paramount consideration.

5. Terms used

- (1) In this Act —

Aboriginal child means a child who is a descendant of the Aboriginal people of Australia;

adult means a person who has reached 18 years of age;

another jurisdiction means a jurisdiction other than this State (including jurisdictions outside Australia);

approved means approved by the CEO;

- 1 **authorised officer** means an officer designated under section 53
2 for the purposes of this Act or for the purposes of the provision
3 in which the term is used;
- 4 **authorised person** means —
- 5 (a) a person or body exercising functions in the operation or
6 administration of a relevant law; or
- 7 (b) the NDIS Commission; or
- 8 (c) a law enforcement agency of this State or another
9 jurisdiction; or
- 10 (d) a person or body prescribed by the regulations for the
11 purposes of this definition;
- 12 **CEO** means the chief executive officer of the Department;
- 13 **CEO (Justice)** means the chief executive officer of the
14 department of the Public Service principally assisting in the
15 administration of the *Sentence Administration Act 2003* Part 8;
- 16 **charge** means a non-conviction charge or a pending charge;
- 17 **child** means a person who is under 18 years of age;
- 18 **Class 1 offence** — see section 6(1);
- 19 **Class 2 offence** — see section 6(2);
- 20 **Class 3 offence** means an offence (including an offence under a
21 law of another jurisdiction) that is not a Class 1 offence or a
22 Class 2 offence;
- 23 **Commissioner of Police** means the person holding or acting in
24 the office of Commissioner of Police under the *Police Act 1892*;
- 25 **contact** includes any form of face-to-face or physical contact,
26 and communication, whether oral, written or electronic;
- 27 **conviction** — see section 7;
- 28 **corresponding law** means a law of another State or a Territory
29 that —
- 30 (a) contains provisions that substantially correspond with
31 the provisions of this Act; and

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- 1 (b) is prescribed by the regulations as a corresponding law
2 for the purposes of this Act;
- 3 ***court*** means a court constituted in this State or another
4 jurisdiction;
- 5 ***criminal record***, in relation to a person, means —
- 6 (a) every conviction of the person for an offence in this
7 State or another jurisdiction; and
- 8 (b) every charge made against the person for an offence in
9 this State or another jurisdiction;
- 10 ***criminal record check*** means the procedures set out in
11 section 33 to enable the CEO to determine whether a person has
12 a criminal record and, if so, to obtain related information about
13 the person;
- 14 ***criminal records agency*** means —
- 15 (a) the Commissioner of Police; or
16 (b) the Commissioner of the Australian Federal Police; or
17 (c) the Commissioner (however designated) of the police
18 force of another jurisdiction; or
19 (d) a person or body that is —
- 20 (i) established or constituted under the law of
21 another jurisdiction; and
22 (ii) prescribed by the regulations for the purposes of
23 this definition;
- 24 ***Department*** means the department of the Public Service
25 principally assisting the Minister in the administration of this
26 Act;
- 27 ***designated person*** means a person who has —
- 28 (a) applied for a clearance under this Act or a corresponding
29 law; or
30 (b) a clearance under this Act or a corresponding law; or
31 (c) applied to cancel an NDIS worker check exclusion
32 certificate under this Act or a corresponding law; or

1 (d) applied for an internal review or external review under
2 this Act or a corresponding law;

3 **disqualified person** — see section 8(1);

4 **DPP** means the Director of Public Prosecutions appointed under
5 the *Director of Public Prosecutions Act 1991* section 5 or a
6 person or body exercising functions that substantially
7 correspond to the functions of the Director of Public
8 Prosecutions under the law of another jurisdiction;

9 **engage** includes to engage or act in any of the following
10 capacities —

11 (a) as a paid or unpaid employee;

12 (b) as a self-employed person or as a contractor or
13 subcontractor;

14 (c) as a volunteer;

15 **exclusion** means a decision on which an NDIS worker check
16 exclusion certificate is issued;

17 **family member**, in relation to a child, means —

18 (a) a parent, grandparent, brother, sister, uncle, aunt or
19 cousin of the child, whether the relationship is
20 established by, or traced through, consanguinity,
21 marriage, a de facto relationship, a written law or a
22 natural relationship; or

23 (b) for an Aboriginal child — a person regarded under the
24 customary law or tradition of the child's community as
25 the equivalent of a person mentioned in paragraph (a);
26 or

27 (c) for a Torres Strait Islander child — a person regarded
28 under the customary law or tradition of the Torres Strait
29 Islands as the equivalent of a person mentioned in
30 paragraph (a); or

31 (d) a person determined by the CEO to be in a relationship
32 with the child that is similar to a relationship mentioned
33 in paragraph (a);

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- 1 **government agency** means —
- 2 (a) a department of the Public Service; or
- 3 (b) a government department established or constituted
- 4 under a law of another jurisdiction; or
- 5 (c) a body, whether incorporated or not, that is established,
- 6 constituted or continued for a public purpose under a
- 7 written law of this State or another jurisdiction and that,
- 8 under the authority of a written law of this State or
- 9 another jurisdiction, performs a statutory function on
- 10 behalf of this State or a government of another
- 11 jurisdiction;
- 12 **harm** includes but is not limited to any detrimental effect on a
- 13 person’s physical, sexual, psychological, emotional or financial
- 14 wellbeing;
- 15 **health professional** means a person who is —
- 16 (a) a health practitioner registered under the *Health*
- 17 *Practitioner Regulation National Law (Western*
- 18 *Australia)*; or
- 19 (b) in a class of persons prescribed for the purposes of this
- 20 definition;
- 21 **interstate screening agency** means a person or body exercising
- 22 functions in the operation or administration of a corresponding
- 23 law that substantially correspond to the functions of the CEO
- 24 under this Act;
- 25 **key personnel** has the meaning given in the NDIS Act
- 26 section 11A;
- 27 **National Disability Insurance Scheme** has the meaning given
- 28 in the NDIS Act section 9;
- 29 **NDIS Act** means the *National Disability Insurance Scheme*
- 30 *Act 2013* (Commonwealth) and includes any regulations or rules
- 31 under that Act;
- 32 **NDIS Commission** means the NDIS Quality and Safeguards
- 33 Commission established under the NDIS Act section 181A;

1 **NDIS employer** means a person who engages a person to do
2 NDIS work;

3 **NDIS purpose** —

- 4 (a) means any purpose that is for, or connected with, the
5 operation or administration of, or compliance with, a
6 relevant law (insofar as may be relevant to the National
7 Disability Insurance Scheme); and
- 8 (b) includes any of the following purposes —
- 9 (i) verifying the identity of a person who is, or who
10 has at any time been, an applicant for, or the
11 holder of, a clearance under this Act or a
12 corresponding law;
- 13 (ii) considering and deciding a person's application
14 for a clearance under this Act or a corresponding
15 law;
- 16 (iii) assessing and determining under this Act or a
17 corresponding law whether a person poses a
18 relevant risk of harm;
- 19 (iv) assessing and determining whether a risk
20 assessment of a person is required under this Act
21 or a corresponding law;
- 22 (v) ongoing monitoring of a person who holds a
23 clearance under this Act or a corresponding law
24 for the purpose of determining whether the
25 person requires a risk assessment or poses a
26 relevant risk of harm;
- 27 (vi) considering and deciding a person's application
28 for the cancellation of an NDIS worker check
29 exclusion certificate under this Act or a
30 corresponding law;
- 31 (vii) conducting an internal review or external review
32 under this Act or a corresponding law;

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NDIS work —

- (a) means work comprising, or connected with, the provision of supports or services to people with disability under the National Disability Insurance Scheme; and
 - (b) includes work that —
 - (i) is the subject of requirements under the NDIS Act for a person to have 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
 - (ii) is undertaken in the exercise or performance by a person of a power or duty delegated to the person by the CEO under this Act; or
 - (iii) the CEO is satisfied is work in respect of which it is otherwise necessary or convenient for a person to have a clearance to facilitate the person’s engagement in particular work;
- but
- (c) does not include, if the regulations so provide, work that is carried out in circumstances, or by a person, prescribed by the regulations for the purposes of this definition;

NDIS worker check clearance or clearance means a clearance granted under section 15(1) or 28(7) or under a corresponding provision under a corresponding law (however a clearance may be described under the corresponding law);

NDIS worker check clearance certificate means a certificate issued on the granting of a clearance;

NDIS worker check exclusion certificate means a certificate issued under section 15(4) or 25(11) or (14) or under a corresponding provision under a corresponding law (however such a certificate may be described under the corresponding law);

1 ***non-conviction charge*** means a charge for an offence that has
2 been disposed of by a court otherwise than by way of a
3 conviction, and has a meaning affected by subsection (5);

4 ***notifiable person***, in relation to an applicant for a clearance or
5 the holder of an NDIS worker check clearance certificate under
6 this Act, means —

7 (a) any person who proposes to engage, or who engages, the
8 applicant or holder in NDIS work, as has been made
9 known to the CEO under, or for the purposes of, this
10 Act; or

11 (b) any other person prescribed by the regulations for the
12 purposes of this definition;

13 ***officer*** means a person employed in, or engaged by, the
14 Department whether as a public service officer under the *Public*
15 *Sector Management Act 1994*, under a contract for services, or
16 otherwise;

17 ***pending charge*** means a charge for an offence that has not yet
18 been disposed of by a court;

19 ***presumptively disqualified person*** — see section 8(2);

20 ***public authority*** means —

21 (a) a department of the Public Service; or

22 (b) a body, whether incorporated or not, that is established,
23 constituted or continued for a public purpose under a
24 written law and that, under the authority of a written
25 law, performs a statutory function on behalf of this
26 State; or

27 (c) an entity established by or under the *Health Practitioner*
28 *Regulation National Law (Western Australia)*; or

29 (d) any other entity prescribed by the regulations for the
30 purposes of this definition;

31 ***relevant information***, in relation to a person, means —

32 (a) information relevant to verifying the identity of the
33 person; or

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- 1 (b) information about the person disclosed in an application
2 for a clearance, or for the cancellation of an NDIS
3 worker check exclusion certificate, under this Act or a
4 corresponding law; or
- 5 (c) information relating to the person's criminal record, and
6 any other information relating to the person that is
7 connected with, or otherwise related to, a conviction or
8 charge mentioned in a criminal record; or
- 9 (d) information about workplace misconduct by the person
10 in this or another jurisdiction, being misconduct that
11 concerns persons to whom a relevant risk of harm
12 relates; or
- 13 (e) information about any order imposed on the person by a
14 court or tribunal relating to child protection,
15 apprehended violence or domestic or family violence in
16 this or another jurisdiction; or
- 17 (f) information relevant to determining whether the person
18 requires a risk assessment under this Act or a
19 corresponding law; or
- 20 (g) information about the person's clearance history; or
- 21 (h) information about any current or past engagement of the
22 person by an NDIS employer in this State or another
23 State or a Territory; or
- 24 (i) other information relevant to determining whether the
25 person poses a relevant risk of harm; or
- 26 (j) information about —
- 27 (i) the status of any application under this Act; or
- 28 (ii) any process or step that is being taken, or has
29 been taken, under a relevant law; or
- 30 (iii) any certificate held, suspended or cancelled
31 under this Act or a corresponding law; or
- 32 (iv) any interim bar imposed under this Act or a
33 corresponding law;

- 1 or
- 2 (k) any other information prescribed by the regulations for
- 3 the purposes of this definition;
- 4 **relevant law** means —
- 5 (a) this Act; or
- 6 (b) a corresponding law; or
- 7 (c) the NDIS Act;
- 8 **relevant risk of harm** means risk of harm to people with whose
- 9 protection a relevant law is concerned;
- 10 **risk assessed role** means —
- 11 (a) a key personnel role of a person or an entity; or
- 12 (b) a role for which the normal duties include the direct
- 13 delivery of specified supports or specified services to a
- 14 person with disability; or
- 15 (c) a role for which the normal duties are likely to require
- 16 more than incidental contact with a person with
- 17 disability;
- 18 **risk assessment** has the meaning given in section 17(1);
- 19 **Torres Strait Islander child** means a child who is a descendant
- 20 of the indigenous inhabitants of the Torres Strait Islands;
- 21 **unacceptable risk** means the risk described in section 17;
- 22 **vulnerable person** means an adult who is, or may be, unable to
- 23 care for themselves, or unable to protect themselves from harm
- 24 or exploitation, due to age, illness or disability.
- 25 (2) For the purposes of this Act —
- 26 (a) a self-employed person who does NDIS work will be
- 27 taken to be an NDIS employer who engages themselves
- 28 to do that work; and
- 29 (b) a person may do NDIS work as a volunteer in their own
- 30 right and, in this case, the person is taken to be
- 31 self-employed as a volunteer.

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- 1 (3) For the purposes of the definition of *relevant information* in
2 subsection (1), a person's *clearance history* is the history of
3 action taken under a relevant law in respect of —
- 4 (a) an application for a clearance by the person, or a
5 clearance granted to the person under this Act or a
6 corresponding law, including any risk assessment,
7 determination, imposition of an interim bar, refusal of an
8 application, or suspension or cancellation of an NDIS
9 worker check clearance certificate under this Act or a
10 corresponding law; or
- 11 (b) an application for the cancellation of an NDIS worker
12 check exclusion certificate under this Act or a
13 corresponding law.
- 14 (4) For the purposes of the definition of *risk assessed role* in
15 subsection (1), and without limiting what may constitute more
16 than incidental contact, the normal duties of a role are likely to
17 require more than incidental contact with a person with
18 disability if those duties include —
- 19 (a) physically touching a person with disability; or
- 20 (b) building a rapport with a person with disability as an
21 integral and ordinary part of the performance of those
22 duties; or
- 23 (c) having contact with multiple people with disability —
- 24 (i) as part of the direct delivery of a specialist
25 disability support or service; or
- 26 (ii) in a specialist disability accommodation setting.
- 27 (5) A reference in this Act to a non-conviction charge includes a
28 reference to an expunged conviction as defined in the *Historical*
29 *Homosexual Convictions Expungement Act 2018* section 3(1).
- 30 (6) Subsection (5) applies despite anything in the *Historical*
31 *Homosexual Convictions Expungement Act 2018*.

1 (7) Except where the contrary intention appears, a term used in this
2 Act that is defined in the NDIS Act has the same meaning in
3 this Act as it has in that Act.

4 **6. Class 1 offence and Class 2 offence**

5 (1) A *Class 1 offence* is —

6 (a) an offence against a provision listed in Schedule 1 (if the
7 offence complies with any condition specified in that
8 Schedule or prescribed by the regulations); or

9 (b) an offence under a law of another jurisdiction the
10 elements of which, if they had occurred in this State,
11 would have constituted an offence of a kind referred to
12 in this subsection; or

13 (c) an offence under a law of this State or another
14 jurisdiction that is prescribed by the regulations to be a
15 Class 1 offence; or

16 (d) an offence that, at the time it was committed or alleged
17 to have been committed —

18 (i) was a Class 1 offence for the purposes of this
19 Act; or

20 (ii) in the case of an offence committed, or alleged to
21 have been committed, before the commencement
22 of this section — was an offence of a kind
23 referred to in this subsection;

24 or

25 (e) an offence of attempting, or of conspiracy or incitement,
26 to commit an offence of a kind referred to in
27 paragraphs (a) to (d).

28 (2) A *Class 2 offence* is —

29 (a) an offence against a provision listed in Schedule 2 (if the
30 offence complies with any condition specified in that
31 Schedule or prescribed by the regulations); or

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- 1 (b) an offence under a law of another jurisdiction the
2 elements of which, if they had occurred in this State,
3 would have constituted an offence of a kind referred to
4 in this subsection; or
- 5 (c) an offence under a law of this State or another
6 jurisdiction that is prescribed by the regulations to be a
7 Class 2 offence; or
- 8 (d) an offence that, at the time it was committed or alleged
9 to have been committed —
- 10 (i) was a Class 2 offence for the purposes of this
11 Act; or
- 12 (ii) in the case of an offence committed, or alleged to
13 have been committed, before the commencement
14 of this section — was an offence of a kind
15 referred to in this subsection;
- 16 or
- 17 (e) an offence of attempting, or of conspiracy or incitement,
18 to commit an offence of a kind referred to in
19 paragraphs (a) to (d).
- 20 (3) An offence ceases to be classified as a Class 1 offence or a
21 Class 2 offence if a pardon is granted in relation to the offence.
- 22 (4) For the purposes of Schedule 1 or 2, an offence falls within the
23 ambit of this subsection if —
- 24 (a) the victim of the offence is a child who has reached
25 14 years of age; and
- 26 (b) the age difference between the victim and the offender
27 does not exceed 5 years.

1 **7. Conviction**

- 2 (1) For the purposes of this Act, a reference to a *conviction*, in
3 relation to an offence committed by a person, is a reference to
4 any of the following —
- 5 (a) a court making a formal finding of guilt in relation to the
6 offence;
- 7 (b) a court convicting the person of the offence, if there has
8 been no formal finding of guilt before conviction;
- 9 (c) a court accepting a plea of guilty from the person in
10 relation to the offence;
- 11 (d) a court acquitting the person following a finding under
12 *The Criminal Code* section 27 that the person is not
13 guilty of the offence on account of unsoundness of mind
14 or an acquittal following an equivalent finding under a
15 law of another jurisdiction.
- 16 (2) For the purposes of this Act, a reference to a *conviction*
17 includes a reference to a conviction that is a spent conviction.
- 18 (3) For the purposes of subsection (2), an offence becomes spent if,
19 under a law of this State or another jurisdiction, the person
20 concerned is permitted not to disclose the fact that the person
21 was convicted or found guilty of the offence.
- 22 (4) For the purposes of this Act, a reference to a *conviction* does
23 not include a reference to a conviction that is subsequently
24 quashed or set aside by a court.

25 **8. Disqualified person and presumptively disqualified person**

- 26 (1) For the purposes of this Act, a person is a *disqualified person* if
27 the person has a conviction for a Class 1 offence committed by
28 the person when an adult.

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- 1 (2) For the purposes of this Act, a person is a *presumptively*
2 *disqualified person* if —
- 3 (a) there is a pending charge against the person for an
4 offence that is a Class 1 offence or a Class 2 offence
5 alleged to have been committed by the person when an
6 adult; or
- 7 (b) the person has a conviction for a Class 2 offence
8 committed by the person when an adult; or
- 9 (c) the person —
- 10 (i) has a conviction for a Class 3 offence committed
11 by the person when an adult; and
- 12 (ii) the offence was committed against, towards, or
13 in the presence of, a child or vulnerable person;
14 and
- 15 (iii) the CEO reasonably believes that in the course of
16 committing the offence the person performed an
17 indecent act.

18 **9. Conduct, circumstances and criminal matters before**
19 **commencement of Act**

- 20 (1) This Act extends to conduct and circumstances occurring before
21 the commencement of this section.
- 22 (2) References in this Act to convictions and charges extend to —
- 23 (a) convictions and charges that relate to events that
24 occurred when a person was a child; and
- 25 (b) convictions and charges that occurred or were laid
26 before the commencement of this section.

1 **Part 2 — NDIS worker check clearances and**
2 **exclusions**

3 **Division 1 — Applications for clearance**

4 **10. Making an application**

5 (1) Subject to subsection (2), a person may apply to the CEO for an
6 NDIS worker check clearance in accordance with this section if
7 the person is engaged, or proposed to be engaged, in NDIS
8 work.

9 (2) An applicant must —

10 (a) reside, or intend to reside, in this State; or

11 (b) undertake, or intend to undertake, NDIS work in this
12 State.

13 (3) The application must be —

14 (a) in the approved form; and

15 (b) accompanied by the fee prescribed by the regulations.

16 (4) The approved form must include provision for information —

17 (a) for the purposes of identifying the applicant; and

18 (b) about the person who has engaged, or who is proposing
19 to engage, the applicant in NDIS work.

20 (5) The approved form may require the provision of such other
21 information as the CEO thinks fit.

22 (6) The approved form may also provide for authorisation by the
23 applicant of, and consent by the applicant to, the following —

24 (a) the making of inquiries about the applicant by the CEO
25 for an NDIS purpose;

26 (b) the obtaining of relevant information about the applicant
27 by the CEO from any person or body for an NDIS
28 purpose;

- 1 (c) the disclosure of relevant information about the
2 applicant by the CEO to any person or body for an
3 NDIS purpose.
- 4 (7) An authorisation or consent under this section is not limited to
5 operating for the purposes of an application for a clearance and
6 extends to the making of inquiries, and the obtaining and
7 disclosure of information or documents, in connection with and
8 for the purposes of the ongoing monitoring of the holder of a
9 clearance.
- 10 (8) An authorisation or consent under this section does not require
11 the applicant to be given notice of the making of inquiries or the
12 obtaining or disclosure of information or documents pursuant to
13 the authorisation or consent.
- 14 (9) On receiving an application, the CEO may ask the applicant, by
15 written notice or otherwise, to provide any further information
16 or documents, within a reasonable specified period, that the
17 CEO reasonably needs for the proper consideration of the
18 application.
- 19 (10) The regulations may prescribe —
20 (a) other requirements that apply in relation to an
21 application or the consideration of an application; and
22 (b) circumstances where an application is taken to be
23 cancelled.

24 **11. Certain persons not entitled to apply**

- 25 (1) A person must not apply for a clearance if the person —
26 (a) is a disqualified person who has been refused a
27 clearance, or has had a clearance cancelled, under this
28 Act or a corresponding law; or
29 (b) has made an application for a clearance under this Act or
30 a corresponding law and that application is pending; or
31 (c) currently has a clearance under this Act or a
32 corresponding law, unless the application is made no

- 1 more than 3 months before the expiry of the clearance or
2 as provided by section 23(1)(c); or
- 3 (d) is subject to a 5-year ban on applying for a clearance
4 following refusal or cancellation of a clearance, as
5 provided by subsection (2).
- 6 (2) Subject to subsection (3), a person who has had a clearance
7 refused or cancelled under this Act or a corresponding law is not
8 entitled to apply for a clearance for 5 years following the refusal
9 or cancellation.
- 10 (3) Subsection (2) does not apply in relation to a cancellation that
11 was made —
- 12 (a) at the request of the person under this Act or a
13 corresponding law; or
- 14 (b) by the CEO acting under section 25(2) or 38(2) or an
15 interstate screening agency acting under an equivalent
16 provision under a corresponding law.
- 17 (4) This section does not limit the operation of section 28.

18 **12. Determination of application**

- 19 (1) An application for a clearance made in accordance with this Part
20 cannot be determined until the CEO has, in respect of the
21 applicant —
- 22 (a) carried out a criminal record check; and
23 (b) considered any information provided by the NDIS
24 Commission in relation to the applicant.
- 25 (2) Subsection (1) does not limit —
- 26 (a) any other step or inquiry that the CEO may take under
27 this Act before determining an application for a
28 clearance; or
29 (b) any other process or requirement under this Act as to the
30 assessment of an application for a clearance.

- 1 (3) An application for a clearance must be refused by the CEO if —
2 (a) the applicant is a disqualified person (and in such a case
3 a risk assessment will not be conducted under
4 Division 2); or
5 (b) a risk assessment of the applicant is conducted under
6 Division 2 and the CEO determines that there is an
7 unacceptable risk that the applicant may cause harm to
8 people with disability in the course of carrying out
9 NDIS work.
- 10 (4) The CEO may suspend consideration of an application pending
11 the outcome of any process, step or inquiry under a
12 corresponding law.

13 **13. Interim bar**

- 14 (1) The CEO may, at any time after receiving an application for a
15 clearance but before the application is determined, impose an
16 interim bar on the applicant —
17 (a) if the CEO is of the opinion that there is a reasonable
18 likelihood that a risk assessment of the applicant will
19 determine that there is an unacceptable risk that the
20 applicant may cause harm to people with disability in
21 the course of carrying out NDIS work; or
22 (b) on any other ground the CEO determines to be
23 appropriate in the circumstances.
- 24 (2) The CEO must impose an interim bar if the CEO has
25 information which indicates —
26 (a) that the applicant is a disqualified person or a
27 presumptively disqualified person; or
28 (b) that the applicant was issued with an NDIS worker
29 check exclusion certificate on the last occasion when the
30 applicant applied for a clearance under a corresponding
31 law; or
32 (c) in the case of an applicant who has previously held an
33 NDIS worker check clearance certificate under a

1 corresponding law — that on the last occasion on which
2 the applicant held such a certificate, the clearance was
3 cancelled and the applicant was issued with an NDIS
4 worker check exclusion certificate; or

5 (d) that the applicant is the subject of a risk assessment
6 under a corresponding law.

7 (3) The CEO imposes an interim bar by giving written notice of the
8 interim bar to the applicant.

9 (4) The CEO may give written notice of an interim bar to —

10 (a) any person that the CEO reasonably believes to be a
11 notifiable person in relation to the applicant; and

12 (b) the NDIS Commission; and

13 (c) any person or body exercising functions in the operation
14 or administration of a relevant law.

15 (5) The CEO may, if the CEO considers it appropriate to do so, by
16 giving written notice to the applicant, revoke an interim bar.

17 (6) Unless sooner revoked, an interim bar ceases to have effect
18 when the application to which the interim bar relates is granted
19 or refused.

20 (7) The CEO must give any person or body that received a notice
21 under subsection (4) written notice of —

22 (a) the revocation of the interim bar under subsection (5); or

23 (b) the interim bar ceasing to have effect under
24 subsection (6).

25 **14. Notice of proposed refusal of application**

26 (1) If the CEO proposes to refuse to grant a clearance to an
27 applicant, the CEO must give written notice to the applicant —

28 (a) of the proposed decision; and

29 (b) that the applicant may make a submission to the CEO, in
30 writing or in an approved form, within the period (being
31 a period of at least 28 days) specified in the notice.

- 1 (2) Before deciding the application, the CEO —
- 2 (a) must consider any submission made by the applicant
- 3 within the period specified in the notice under
- 4 subsection (1); and
- 5 (b) may, if the CEO thinks fit, consider any submission
- 6 made after the expiration of that period.
- 7 (3) If the applicant is a disqualified person, the only submission that
- 8 the applicant may make is that the applicant's criminal record
- 9 does not include a conviction for a Class 1 offence committed
- 10 by the person as an adult.

11 **15. Notice of final decision**

- 12 (1) The CEO must decide an application for a clearance under this
- 13 Act —
- 14 (a) by granting a clearance to the applicant; or
- 15 (b) by refusing to grant a clearance to the applicant.
- 16 (2) The CEO must give written notice to the applicant of the CEO's
- 17 decision on the application.
- 18 (3) In the event of a decision to grant a clearance, the notice of the
- 19 decision must be accompanied by an NDIS worker check
- 20 clearance certificate.
- 21 (4) In the event of a decision to refuse a clearance, the notice
- 22 must —
- 23 (a) set out the reasons for the decision; and
- 24 (b) state that the applicant may, within 28 days after the
- 25 date of the notice, apply to the CEO under Part 4
- 26 Division 1 for an internal review of the decision; and
- 27 (c) explain how the application for review is made; and
- 28 (d) be accompanied by an NDIS worker check exclusion
- 29 certificate.
- 30 (5) A certificate under this section may be in a form, or represented
- 31 in any manner, determined by the CEO.

- 1 (6) The CEO may give notice of the CEO's decision on an
2 application to —
- 3 (a) any person that the CEO reasonably believes to be a
4 notifiable person in relation to the applicant; and
- 5 (b) the NDIS Commission; and
- 6 (c) any person or body exercising functions in the operation
7 or administration of a relevant law.

8 **16. Withdrawal of application**

- 9 (1) Subject to this section, an application for a clearance may be
10 withdrawn in an approved manner.
- 11 (2) An application cannot be withdrawn under subsection (1) if —
- 12 (a) the applicant is subject to an interim bar; or
- 13 (b) the CEO has notified the applicant that the CEO
14 proposes to refuse to grant a clearance to the applicant
15 and has not yet determined the application; or
- 16 (c) the withdrawal would be contrary to any provision made
17 by the regulations.
- 18 (3) In addition, an application for a clearance is taken to be
19 withdrawn if subsection (4), (5) or (6) applies.
- 20 (4) This subsection applies if —
- 21 (a) the applicant has failed to provide to the CEO any
22 information or documents the CEO requires for the
23 purposes of the application under section 10; and
- 24 (b) the CEO has given the applicant a written notice stating
25 that the application is taken to be withdrawn.
- 26 (5) This subsection applies if —
- 27 (a) an NDIS employer or proposed NDIS employer
28 identified by the applicant fails, within a period
29 determined by the CEO to be reasonable in the
30 circumstances, to verify that they have engaged, or
31 propose to engage, the applicant in NDIS work; and

- 1 (b) the CEO has given the applicant a written notice stating
2 that the application is taken to be withdrawn.
- 3 (6) This subsection applies if —
- 4 (a) an NDIS worker check exclusion certificate is issued to
5 the applicant under a corresponding law after the
6 application for a clearance is made under this Act; and
- 7 (b) the CEO has given the applicant a written notice stating
8 that the application is taken to be withdrawn.
- 9 (7) The CEO may give written notice of a withdrawal under
10 subsection (1) or (3) to —
- 11 (a) any person that the CEO reasonably believes to be a
12 notifiable person in relation to the applicant; and
- 13 (b) the NDIS Commission; and
- 14 (c) any person or body exercising functions in the operation
15 or administration of a relevant law.

16 **Division 2 — Risk assessment**

17 **17. Nature of risk assessment**

- 18 (1) A *risk assessment* is an assessment and determination by the
19 CEO as to whether there is an unacceptable risk that a person
20 may cause harm to people with disability in the course of
21 carrying out NDIS work.
- 22 (2) The following principles are relevant to determining whether a
23 risk is an unacceptable risk to people with disability —
- 24 (a) the risk may arise from conduct that is intended or
25 otherwise;
- 26 (b) the risk may arise from conduct that is attributable to a
27 single act, omission or circumstance, or a series or
28 combination of acts, omissions or circumstances
29 (whether actual or alleged);
- 30 (c) the risk does not need to arise from recent events;

- 1 (d) the risk may arise whether or not harm has been shown
2 to have resulted from any past or alleged conduct;
- 3 (e) the risk does not need to be based on an assessment as to
4 whether any conduct is likely to reoccur;
- 5 (f) the risk does not need to be likely.
- 6 (3) The following matters are irrelevant to determining whether a
7 risk is an unacceptable risk to people with disability —
- 8 (a) whether any alleged conduct has not been proved
9 beyond reasonable doubt or on the balance of
10 probabilities;
- 11 (b) the adverse impact on a person of a decision that will
12 prevent them from holding, or continuing to hold, an
13 NDIS worker check clearance certificate;
- 14 (c) any potential benefit that will result from a person
15 holding, or continuing to hold, an NDIS worker check
16 clearance certificate.

17 **18. Circumstances in which risk assessment will occur**

- 18 (1) A risk assessment of an applicant for a clearance must be
19 conducted by the CEO if —
- 20 (a) the CEO is aware of a pending charge against the
21 applicant in respect of a Class 1 offence or a Class 2
22 offence; or
- 23 (b) the CEO is aware that the applicant has a non-conviction
24 charge in respect of a Class 1 offence or a Class 2
25 offence; or
- 26 (c) the CEO is aware that the applicant has been convicted
27 of a Class 1 offence or a Class 2 offence for which a
28 pardon has been granted; or
- 29 (d) the CEO is aware of a Class 2 offence or a Class 3
30 offence for which the applicant has been convicted; or

- 1 (e) the CEO is aware of a pending charge against the
2 applicant in respect of a Class 3 offence and the CEO
3 has reason to believe —
- 4 (i) that an indecent act was performed by the
5 applicant in the course of allegedly committing
6 the offence; or
- 7 (ii) that the applicant engaged in conduct that was of
8 a threatening or violent nature in the course of
9 allegedly committing the offence;
- 10 or
- 11 (f) the CEO is aware of a Class 1 offence for which the
12 applicant has been convicted, committed by the
13 applicant when the applicant was a child; or
- 14 (g) the applicant has previously had a clearance refused or
15 cancelled under this Act or a corresponding law; or
- 16 (h) the CEO is in possession of other information that
17 applies under subsection (3) and the CEO considers that
18 it is necessary or appropriate to conduct a risk
19 assessment; or
- 20 (i) any circumstance prescribed by the regulations applies.
- 21 (2) A risk assessment of the holder of an NDIS worker check
22 clearance certificate may be conducted by the CEO, at any time,
23 if the CEO has received information that applies under
24 subsection (3) and the CEO considers that it is necessary or
25 appropriate to conduct a risk assessment.
- 26 (3) The following information applies under this subsection —
- 27 (a) information received from an applicant for an NDIS
28 worker check clearance or from the holder of an NDIS
29 worker check clearance certificate (as the case may be);
- 30 (b) information received from the NDIS Commission;
- 31 (c) information received from an interstate screening
32 agency;
- 33 (d) information received from a criminal records agency;

- 1 (e) information received from a relevant official under
2 section 35;
- 3 (f) information received from a prescribed authority under
4 section 36;
- 5 (g) information prescribed by the regulations.

6 **19. Risk assessment of presumptively disqualified person**

7 If a risk assessment is conducted in relation to a presumptively
8 disqualified person, the person must be issued with an NDIS
9 worker check exclusion certificate unless the CEO is satisfied
10 that, because of the exceptional circumstances of the case, an
11 NDIS worker check clearance should be granted.

12 **20. Matters to be considered in risk assessment**

- 13 (1) The CEO must consider the following for the purposes of a risk
14 assessment of a person —
- 15 (a) the safety and wellbeing of people with disability and, in
16 particular, their right to live free from abuse, violence,
17 neglect and exploitation, as the paramount
18 consideration;
- 19 (b) the person's criminal, disciplinary, misconduct or other
20 relevant history;
- 21 (c) the nature, gravity and circumstances of any criminal
22 offending, misconduct or other action, circumstance or
23 event relating to the person that is revealed by or
24 referred to in any information in the possession of the
25 CEO, and how it is relevant to NDIS work;
- 26 (d) any inferences or conclusions that may be drawn from
27 1 or more matters being considered by the CEO;
- 28 (e) the length of time that has passed since any relevant
29 offending, misconduct or other action, circumstance or
30 event occurred;
- 31 (f) the vulnerability of any victim of any relevant
32 offending, misconduct or other action, circumstance or

- 1 event at the time of its occurrence and the person's
2 relationship to the victim or position of authority over
3 the victim at that time;
- 4 (g) the person's conduct since any relevant offending,
5 misconduct or other action, circumstance or event
6 occurred;
- 7 (h) anything else that the CEO reasonably considers
8 relevant to the assessment.
- 9 (2) The consideration of any matter under subsection (1) does not
10 derogate from the operation of section 17.

11 **Division 3 — Duration and renewal of clearances**

12 **21. Duration of clearances**

- 13 (1) Subject to this Act, a clearance remains in force for a period of
14 5 years.
- 15 (2) The CEO may specify a date from which a clearance takes
16 effect for the purposes of this Act (and if no date is specified in
17 the relevant NDIS worker check clearance certificate then the
18 clearance takes effect from the date on which the NDIS worker
19 check clearance certificate is issued by the CEO).
- 20 (3) A clearance is —
- 21 (a) suspended if the relevant NDIS worker check clearance
22 certificate is suspended; and
- 23 (b) cancelled if the relevant NDIS worker check clearance
24 certificate is cancelled.

25 **22. Application for further clearance**

- 26 (1) If a clearance granted under this Act is no longer in force, or
27 will expire within a period of 3 months, the person to whom it
28 was granted may apply for a further clearance.

1 (2) Divisions 1 and 2 apply to the application as if the application
2 for a further clearance were an application for an initial
3 clearance.

4 **23. Alignment with working with children checks**

5 (1) The following arrangements apply for the purpose of facilitating
6 alignment of the periods for which a clearance granted to a
7 person under this Act and an assessment notice issued to the
8 person under the *Working with Children (Criminal Record*
9 *Checking) Act 2004* are in force —

- 10 (a) an NDIS worker check clearance may, at the discretion
11 of the CEO and with the agreement of the applicant, be
12 granted so as to be in force for a period of less than
13 5 years;
- 14 (b) the period for which an NDIS worker check clearance is
15 in force may be shortened after the clearance is granted
16 at the discretion of the CEO and on the application of
17 the holder of the clearance;
- 18 (c) the holder of an NDIS worker check clearance may,
19 with the approval of the CEO, apply for a new NDIS
20 worker check clearance earlier than 3 months before the
21 expiry of the clearance;
- 22 (d) the CEO may approve a reduction in the fee payable, or
23 a refund of part of any fee paid, to reflect any reduction
24 in the period for which an NDIS worker check clearance
25 is or is to be in force.

26 (2) Sections 21 and 22 apply subject to the operation of this section.

- 1 (5) The CEO may, if the CEO considers it appropriate to do so, by
2 giving written notice to the holder of the certificate, revoke the
3 suspension of the certificate.
- 4 (6) Unless sooner revoked, the suspension of an NDIS worker
5 check clearance certificate ceases to have effect when —
6 (a) the certificate is cancelled; or
7 (b) the period for which the clearance was to remain in
8 force expires; or
9 (c) in the case of a suspension under subsection (3) — the
10 interim bar ceases to have effect.
- 11 (7) The CEO must give any person or body that received a notice
12 under subsection (4) written notice of —
13 (a) the revocation of the suspension under subsection (5); or
14 (b) the suspension ceasing to have effect under
15 subsection (6)(b) or (c).
- 16 (8) The CEO may suspend an NDIS worker check clearance
17 certificate even if it has not come into operation.

18 **25. Cancellation of NDIS worker check clearance certificates**

- 19 (1) Subject to this section, the CEO must cancel an NDIS worker
20 check clearance certificate if —
21 (a) the CEO becomes aware that the person holding the
22 certificate is a disqualified person; or
23 (b) the CEO determines on a risk assessment that there is an
24 unacceptable risk that the person holding the certificate
25 may cause harm to people with disability in the course
26 of carrying out NDIS work.
- 27 (2) The CEO may cancel an NDIS worker check clearance
28 certificate if —
29 (a) the CEO is not satisfied that the holder of the certificate
30 is or will be engaged to do NDIS work; or

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- 1 (b) the clearance was granted pursuant to an application that
2 was not valid; or
- 3 (c) the holder of the certificate also holds a certificate under
4 a corresponding law and that certificate is cancelled; or
- 5 (d) the CEO is authorised to cancel the certificate on a
6 ground prescribed by the regulations.
- 7 (3) The CEO must not act under subsection (1) unless the CEO has
8 in respect of the person holding the NDIS worker check
9 clearance certificate —
- 10 (a) carried out a criminal record check; and
- 11 (b) considered any information provided by the NDIS
12 Commission in relation to the person.
- 13 (4) Subsection (3) does not limit —
- 14 (a) any other step or inquiry that the CEO may take under
15 this Act; or
- 16 (b) any other process or requirement under this Act as to the
17 reassessment of the person as the holder of an NDIS
18 worker check clearance certificate.
- 19 (5) In addition, if the CEO proposes to cancel a certificate under
20 subsection (1), the CEO must give written notice to the person
21 holding the certificate —
- 22 (a) of the proposed cancellation; and
- 23 (b) that the person may make a submission to the CEO, in
24 writing or in an approved form, within the period (being
25 a period of at least 28 days) specified in the notice.
- 26 (6) Before deciding whether to cancel the certificate, the CEO must
27 consider any submission made by the person holding the
28 certificate within the period specified in the notice under
29 subsection (5) (and may, if the CEO thinks fit, consider any
30 submission made after the expiration of that period).
- 31 (7) If the cancellation is on the ground that the person holding the
32 certificate is a disqualified person, the only submission that

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- 1 person may make is that the person's criminal record does not
2 include a conviction for a Class 1 offence committed by the
3 person as an adult.
- 4 (8) The CEO may suspend the certificate pending the outcome of
5 the processes set out in subsections (3) to (6).
- 6 (9) Subsection (8) does not limit the operation of section 24.
- 7 (10) The CEO must give written notice to the person holding an
8 NDIS worker check clearance certificate of the CEO's decision
9 to cancel the certificate.
- 10 (11) The notice must —
- 11 (a) set out the reasons for the cancellation; and
- 12 (b) in the case of a cancellation under subsection (1) —
- 13 (i) state that the person may, within 28 days after
14 the date of the notice, apply to the CEO under
15 Part 4 Division 1 for an internal review of the
16 decision; and
- 17 (ii) explain how the application for review is made;
18 and
- 19 (iii) be accompanied by an NDIS worker check
20 exclusion certificate.
- 21 (12) A certificate under subsection (11)(b)(iii) may be in a form, or
22 represented in any manner, determined by the CEO.
- 23 (13) The CEO may give written notice of the cancellation of an
24 NDIS worker check clearance certificate under this section to —
- 25 (a) any person that the CEO reasonably believes to be a
26 notifiable person in relation to the holder of the
27 certificate; and
- 28 (b) the NDIS Commission; and
- 29 (c) any person or body exercising functions in the operation
30 or administration of a relevant law.

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- 1 (14) If the term of a clearance expires while the cancellation of the
2 NDIS worker check clearance certificate is being considered
3 under this section, the CEO may, as the CEO thinks fit,
4 determine —
- 5 (a) not to take any further steps under this section; or
6 (b) to complete any process that has been commenced and
7 then, if the CEO would have been required to cancel the
8 certificate under subsection (1) had the clearance still
9 been in force, issue an NDIS worker check exclusion
10 certificate.
- 11 (15) The CEO may cancel an NDIS worker check clearance
12 certificate even if it has not come into operation.

13 **26. Cancellation at request of holder**

- 14 (1) The holder of an NDIS worker check clearance certificate may
15 at any time request the CEO to cancel the certificate.
- 16 (2) The request must be made in an approved manner.
- 17 (3) The CEO must, on receipt of a request under subsection (1),
18 cancel the certificate except in the following circumstances (and
19 must refuse to cancel the clearance in those circumstances) —
- 20 (a) the certificate is suspended;
21 (b) the holder of the certificate has applied for a further
22 clearance under section 22(1) and is subject to an
23 interim bar;
24 (c) the CEO is undertaking or is proposing to undertake a
25 risk assessment of the holder of the certificate.
- 26 (4) The CEO must give written notice to the holder of the certificate
27 when the certificate is cancelled.
- 28 (5) The CEO may give written notice of the cancellation of an
29 NDIS worker check clearance certificate under this section to
30 any person that the CEO reasonably believes to be a notifiable
31 person in relation to the holder of the certificate.

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Division 5 — Exclusions

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27. Duration of exclusion

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Subject to this Act, an NDIS worker check exclusion certificate issued under this Act remains in force indefinitely.

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28. Cancellation of NDIS worker check exclusion certificate

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(1) A person to whom an NDIS worker check exclusion certificate has been issued under this Act (other than a disqualified person) may apply to the CEO for the certificate to be cancelled.

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(2) Subject to this section, the application cannot be made sooner than 5 years after —

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(a) the date on which the NDIS worker check exclusion certificate was issued; or

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(b) if the person has previously applied under this section — the date on which the most recent previous application was determined.

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(3) Subsection (2) does not apply if —

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(a) a pending charge for an offence to which subsection (4) applies, being an offence on which the exclusion was based, or the decision on which the previous application was made, is disposed of by a court otherwise than by way of a conviction; or

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(b) a conviction for an offence on which the exclusion was based, or the decision on which the previous application was made, is quashed or set aside by a court; or

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(c) the exclusion was based on, or the decision on which the previous application was made relates to, a Class 1 offence or a Class 2 offence and a pardon has been granted in relation to the offence; or

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(d) a finding the subject of a risk assessment on which the exclusion was based, or the decision on which the previous application was made, is quashed or set aside

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- 1 or otherwise expressly or impliedly ceases to have
2 effect; or
- 3 (e) any other significant or exceptional change of
4 circumstances or other factor that the CEO considers
5 should result in the person being able to apply for the
6 cancellation of the NDIS worker check exclusion
7 certificate has occurred or applies.
- 8 (4) This subsection applies to the following offences —
- 9 (a) Class 1 offences;
- 10 (b) Class 2 offences;
- 11 (c) Class 3 offences where the CEO had reason to believe
12 that —
- 13 (i) an indecent act was performed by the person in
14 the course of allegedly committing the offence;
15 or
- 16 (ii) the person engaged in conduct that was of a
17 threatening or violent nature in the course of
18 allegedly committing the offence.
- 19 (5) An application for the cancellation of an NDIS worker check
20 exclusion certificate must be —
- 21 (a) in the approved form; and
- 22 (b) accompanied by the fee prescribed by the regulations.
- 23 (6) The following provisions apply (with any specified
24 modifications) in relation to an application under this section as
25 if the application were an application for a clearance —
- 26 (a) section 10(4)(a), as if the reference to the approved form
27 were a reference to the approved form under this
28 section;
- 29 (b) section 10(5) and (6), as if the reference to the approved
30 form were a reference to the approved form under this
31 section;
- 32 (c) section 10(7), (8) and (9);

- 1 (d) section 12(1), (2) and (3)(b);
2 (e) section 14(1) and (2);
3 (f) section 15(6);
4 (g) section 16(3) and (4);
5 (h) sections 17, 18(1), 19 and 20.
- 6 (7) If the CEO grants an application under this section, the
7 CEO must —
8 (a) cancel the NDIS worker check exclusion certificate; and
9 (b) grant a clearance and issue an NDIS worker check
10 clearance certificate.
- 11 (8) If the CEO refuses an application under this section, the CEO
12 must give the applicant a written notice that —
13 (a) states the reasons for the decision; and
14 (b) states that the applicant may, within 28 days after the
15 date of the notice, apply to the CEO under Part 4
16 Division 1 for an internal review of the decision; and
17 (c) explains how the application for review is made.
- 18 (9) Despite a preceding subsection, if the CEO receives information
19 (verified in such manner as the CEO thinks fit) that a person to
20 whom an NDIS worker check exclusion certificate has been
21 issued holds a clearance granted under a corresponding law, the
22 CEO must cancel the NDIS worker check exclusion certificate.

23 **Division 6 — Change in criminal record or other information**

24 **29. Meaning of relevant change in criminal record and**
25 **requirement to give notice of that change**

- 26 (1) For the purposes of this Division, there is a relevant change in a
27 person's criminal record, whether or not the person has a
28 criminal record, if the person is charged with or convicted of a
29 Class 1 offence or a Class 2 offence.

- 1 (2) A requirement imposed on a person under this Division to give
2 notice about a relevant change in the person's criminal record
3 does not require the person to give any information about the
4 change except that the change has occurred.

5 **30. Applicant must notify CEO of relevant change in criminal**
6 **record**

- 7 (1) This section applies to a person if —
8 (a) the person has applied to the CEO —
9 (i) for an NDIS worker check clearance; or
10 (ii) for an NDIS worker check exclusion certificate
11 to be cancelled;
12 and
13 (b) the application is pending.

- 14 (2) The person must notify the CEO in writing, in an approved
15 form, of a relevant change in the person's criminal record as
16 soon as practicable after the change occurs.

17 Penalty for this subsection: imprisonment for 5 years and a fine
18 of \$60 000.

19 **31. Person holding clearance must notify CEO of relevant**
20 **change in criminal record**

- 21 (1) A person holding an NDIS worker check clearance certificate
22 must notify the CEO in writing, in an approved form, of a
23 relevant change in the person's criminal record as soon as
24 practicable after the change occurs.

25 Penalty for this subsection: imprisonment for 5 years and a fine
26 of \$60 000.

- 27 (2) If the CEO receives a notice under subsection (1), the CEO may
28 advise the person's NDIS employer, and any person who is
29 proposing to engage the person in NDIS work, of the relevant
30 change in the person's criminal record disclosed in the notice.

1 **32. Change in particulars**

2 (1) This section applies to a person if —

3 (a) the person has applied to the CEO for an NDIS worker
4 check clearance and the application is pending; or

5 (b) the person is the holder of an NDIS worker check
6 clearance certificate; or

7 (c) the person has applied to the CEO for an NDIS worker
8 check exclusion certificate to be cancelled and the
9 application is pending.

10 (2) The person must notify the CEO in writing, in an approved
11 form, of a relevant change of particulars as soon as practicable
12 after the change occurs.

13 Penalty for this subsection: a fine of \$5 000.

14 (3) For the purposes of subsection (2), a relevant change of
15 particulars is any of the following —

16 (a) a change in the person's name, residential address or
17 contact details;

18 (b) a change in the person's NDIS employer or in the person
19 who is proposing to engage the person in NDIS work;

20 (c) a change prescribed by the regulations.

1 **Part 3 — Information gathering and sharing**

2 **Division 1 — Criminal record checks**

3 **33. CEO may carry out criminal record checks**

- 4 (1) This section applies in respect of a person who —
- 5 (a) has applied for a clearance under this Act or a
6 corresponding law; or
- 7 (b) has given notice of a relevant change in their criminal
8 record; or
- 9 (c) has a clearance under this Act or a corresponding law; or
- 10 (d) has applied to cancel an NDIS worker check exclusion
11 certificate under this Act or a corresponding law; or
- 12 (e) has applied for an internal review or external review
13 under this Act.
- 14 (2) The CEO may ask a criminal records agency for information or
15 access to the respective records of the criminal records
16 agency —
- 17 (a) to determine whether the person has a criminal record;
18 and
- 19 (b) if the person has a criminal record — to obtain details of
20 the criminal record.
- 21 (3) If the person has a criminal record, the CEO may ask a criminal
22 records agency or the DPP for any information relating to the
23 person in its possession that is connected with, or otherwise
24 related to, a conviction or charge mentioned in the criminal
25 record.
- 26 (4) Subsection (3) does not limit the powers of the CEO to request
27 or obtain information under another provision of this Act.

- 1 (c) a purpose relating to the administration or enforcement
2 of a law (including a law of another jurisdiction)
3 prescribed by the regulations for the purposes of this
4 paragraph that is relevant to the screening of people who
5 work with people with disability.
- 6 (6) However, a report obtained from the CEO (Justice) under
7 section 39 cannot be disclosed for the purpose applying under
8 subsection (5)(b) without the approval of the CEO (Justice).
- 9 (7) Subsections (3), (4) and (6) do not limit the ability of the CEO
10 to disclose information for any other purpose under this Act.

11 **Division 3 — Provision of specific information**

12 **35. Provision of information by police and other officials or**
13 **bodies**

- 14 (1) In this section —
15 *relevant official* means —
16 (a) the Commissioner of Police; or
17 (b) a person or body that is prescribed by the regulations for
18 the purposes of this definition.
- 19 (2) This subsection applies if a relevant official —
20 (a) knows or reasonably believes that a person charged with
21 or convicted of an offence —
22 (i) is a designated person; or
23 (ii) carries out NDIS work;
24 and
25 (b) reasonably believes that the charge or conviction —
26 (i) indicates that it is, or may be, inappropriate for
27 the person to hold an NDIS worker check
28 clearance certificate under this Act or a
29 corresponding law, or to carry out NDIS work;
30 or

- 1 (ii) is otherwise relevant to the performance of a
2 function by the CEO under this Act.
- 3 (3) In a case where subsection (2) applies, the relevant official may
4 give the CEO any of the following information —
- 5 (a) the person’s name and address;
- 6 (b) the person’s date of birth;
- 7 (c) the offence with which the person has been charged or
8 of which the person has been convicted;
- 9 (d) the details of the offence;
- 10 (e) the date of the charge or conviction;
- 11 (f) such other information as the relevant official thinks fit.
- 12 (4) This section does not limit the ability of the CEO to use relevant
13 information obtained by the CEO from any source for an NDIS
14 purpose, including information obtained from the Commissioner
15 (however designated) of the police force of another jurisdiction.
- 16 **36. Provision of information by registration and regulatory**
17 **authorities**
- 18 (1) In this section —
- 19 ***prescribed authority*** means any of the following —
- 20 (a) a registration, licensing or other regulatory authority that
21 is established or constituted under an Act and that is
22 prescribed by the regulations for the purposes of this
23 definition;
- 24 (b) a professional or other body that supervises the conduct
25 of a particular group or class of persons and that is
26 prescribed by the regulations for the purposes of this
27 definition;
- 28 (c) without limiting paragraph (a) or (b), a person or body
29 with the authority or power to make findings or
30 determinations that are relevant to the conduct of any
31 person and that is prescribed by the regulations for the
32 purposes of this definition;

- 1 (d) any other person, authority or body that is prescribed by
2 the regulations for the purposes of this definition.
- 3 (2) This subsection applies if a prescribed authority —
- 4 (a) knows or reasonably believes that a finding made by or
5 on behalf of the prescribed authority, or that is otherwise
6 connected with the performance of a function by the
7 prescribed authority, relates to —
- 8 (i) a designated person; or
9 (ii) any other person who carries out NDIS work;
10 and
- 11 (b) reasonably believes that the finding —
- 12 (i) indicates that it is, or may be, inappropriate for
13 the person to hold an NDIS worker check
14 clearance certificate under this Act or a
15 corresponding law, or to carry out NDIS work;
16 or
- 17 (ii) is otherwise relevant to the performance of a
18 function by the CEO under this Act.
- 19 (3) In a case where subsection (2) applies, the prescribed authority
20 may give the CEO any of the following information —
- 21 (a) the person's name and address;
22 (b) the person's date of birth;
23 (c) the details of the finding;
24 (d) such other information as the prescribed authority thinks
25 fit.
- 26 (4) A prescribed authority may, by written notice to the CEO,
27 inform the CEO of any variation to, or substitution, cancellation
28 or setting aside of, any information supplied under
29 subsection (3).

- 1 (5) In addition, the regulations may require —
- 2 (a) the provision to the CEO by a prescribed authority of
- 3 particulars of any conduct or finding of a prescribed
- 4 kind, or of any other information that may be relevant to
- 5 the performance of a function by the CEO under this Act
- 6 or otherwise relevant to the operation of this Act; and
- 7 (b) the keeping of records by a prescribed authority of
- 8 information that may be relevant to the performance of a
- 9 function by the CEO under this Act or otherwise
- 10 relevant to the operation of this Act.
- 11 (6) On receiving any information from a prescribed authority under
- 12 subsection (3), (4) or (5), the CEO may request the prescribed
- 13 authority to provide any further information or documents to the
- 14 CEO that the CEO reasonably requires for the purposes of this
- 15 Act.
- 16 (7) A prescribed authority may provide any information or
- 17 document in its possession in response to a request under
- 18 subsection (6).
- 19 (8) References in this section to a finding extend to a finding that
- 20 relates to events that occurred when the person was a child.

21 **Division 4 — Information sharing for national register or**

22 **database**

23 **37. Information sharing for national register or database**

24 The CEO may disclose information obtained or created by the

25 CEO in the administration of this Act to an authorised person

26 for the purpose of providing information for entry in a national

27 register or database established under the NDIS Act.

1 **Division 5 — Ability to require the provision of information**

2 **38. Power to require information from clearance holder**

3 (1) The CEO may, by written notice to the holder of an NDIS
4 worker check clearance certificate, request the holder of the
5 certificate to provide relevant information about the person for
6 an NDIS purpose.

7 (2) The CEO is authorised to cancel the NDIS worker check
8 clearance certificate if the holder of the certificate fails, without
9 reasonable excuse, to provide the requested information within
10 the time required for compliance with the request (unless the
11 CEO has withdrawn the request).

12 (3) The period for compliance with a request is the period (being a
13 period of at least 28 days) specified in the notice by which the
14 request was made.

15 (4) The CEO may extend and further extend the period required for
16 compliance with the request.

17 **39. Power to require reports from CEO (Justice)**

18 (1) In this section —

19 *prescribed report* means any of the following —

20 (a) a written pre-sentence report, or a record of an oral
21 pre-sentence report, made under the *Sentencing*
22 *Act 1995* Part 3 Division 3;

23 (b) a report prepared for the purposes of the *Sentence*
24 *Administration Act 2003* section 11A, 17 or 51;

25 (c) a report prepared for the purposes of the *Young*
26 *Offenders Act 1994* section 47, 48(1) or 159;

27 (d) a report —

28 (i) made under, or prepared for the purposes of, the
29 *Bail Act 1982*, the *Dangerous Sexual Offenders*
30 *Act 2006*, the *Sentence Administration Act 2003*,

- 1 the *Sentencing Act 1995*, the *Prisons Act 1981* or
2 the *Young Offenders Act 1994*; and
3 (ii) of a kind prescribed by the regulations for the
4 purposes of this definition.
- 5 (2) The CEO may, for an NDIS purpose, by written notice request
6 the CEO (Justice) to provide to the CEO a copy of a prescribed
7 report.
- 8 (3) A request to the CEO (Justice) under this section may only
9 relate to obtaining a report about an offender or alleged
10 offender.
- 11 (4) The CEO (Justice) must comply with a request under this
12 section within a reasonable period after the request is received.
- 13 (5) The CEO (Justice) is authorised to provide the requested report
14 to the CEO.
- 15 (6) This section does not limit the operation of section 34.

16 **Division 6 — Related provisions**

17 **40. Access to police information**

- 18 (1) The Commissioner of Police may disclose the following
19 information about a person for an NDIS purpose —
- 20 (a) information relating to any matter that may cause the
21 person to be a disqualified person or require a risk
22 assessment of the person, whether under this Act or a
23 corresponding law;
- 24 (b) information relating to the person’s criminal record;
- 25 (c) without limiting paragraph (a) or (b), information
26 relating to the person that is connected with, or
27 otherwise related to, a conviction or charge mentioned
28 in a criminal record, or the investigation or
29 circumstances of any conduct or alleged conduct.

- 1 (2) A disclosure under this section is limited to the following —
- 2 (a) the CEO;
- 3 (b) an interstate screening agency;
- 4 (c) the Commissioner of the Australian Federal Police;
- 5 (d) the Commissioner (however designated) of the police
- 6 force of another jurisdiction;
- 7 (e) a person or body that is —
- 8 (i) established or constituted under the law of
- 9 another jurisdiction; and
- 10 (ii) prescribed by the regulations for the purposes of
- 11 this subsection.
- 12 (3) A person to whom information is disclosed under this section
- 13 may disclose that information to the NDIS Commission or to an
- 14 interstate screening agency for an NDIS purpose.
- 15 (4) This section does not limit the powers of a person or body to
- 16 disclose information under another provision of this Act.
- 17 (5) This section does not limit the persons to whom, or the
- 18 circumstances in which, information may be disclosed apart
- 19 from under this Act.

20 **41. Access to other information**

- 21 (1) In this section —
- 22 *prescribed authority* means —
- 23 (a) a public authority; or
- 24 (b) any other person or body that is prescribed by the
- 25 regulations for the purposes of this definition.
- 26 (2) A prescribed authority may disclose any information in its
- 27 possession or control for an NDIS purpose as it thinks fit.
- 28 (3) A disclosure under this section is limited to the following —
- 29 (a) an interstate screening agency;

- 1 (b) a person or body that is —
- 2 (i) established or constituted under the law of
- 3 another jurisdiction; and
- 4 (ii) prescribed by the regulations for the purposes of
- 5 this subsection.
- 6 (4) A person to whom information is disclosed under this section
- 7 may disclose that information to the NDIS Commission or to an
- 8 interstate screening agency for an NDIS purpose.
- 9 (5) This section does not limit the powers of a prescribed authority
- 10 to disclose information under another provision of this Act.
- 11 (6) This section does not limit the persons to whom, or the
- 12 circumstances in which, information may be disclosed apart
- 13 from under this Act.

14 **42. Provision of information to NDIS employers**

- 15 (1) The CEO may disclose the following information about a
- 16 person to an NDIS employer, or to any person who is proposing
- 17 to engage the person in NDIS work —
- 18 (a) information relevant to the verification of the identity of
- 19 the person;
- 20 (b) information about the outcome of any application for a
- 21 clearance by, or risk assessment of, the person under this
- 22 Act or a corresponding law;
- 23 (c) any other information prescribed by the regulations for
- 24 the purposes of this subsection.
- 25 (2) This section does not limit the powers of the CEO to disclose
- 26 information under another provision of this Act.

27 **43. Provision of information to certain bodies**

- 28 (1) The CEO may give a notice under subsection (2) to a public
- 29 authority prescribed by the regulations in relation to a particular

1 person if the CEO considers that it is in the public interest to do
2 so.

3 (2) A notice under this subsection may provide the following
4 information about the person to whom it relates —

5 (a) that an application for a clearance has been made by the
6 person in respect of which no decision has yet been
7 made under this Act;

8 (b) that an NDIS worker check clearance certificate has
9 been issued to the person;

10 (c) that an application for a clearance has been withdrawn
11 by the person;

12 (d) that an interim bar has been imposed on the person;

13 (e) that an NDIS worker check exclusion certificate has
14 been issued to the person;

15 (f) that an NDIS worker check clearance certificate granted
16 to the person has been suspended or cancelled;

17 (g) that the person does not have a current NDIS worker
18 check clearance certificate.

19 (3) The CEO must give a further notice to a public authority if —

20 (a) a notice under subsection (2) related to the imposition of
21 an interim bar or to the issue of an NDIS worker check
22 exclusion certificate and the interim bar is revoked or
23 ceases to have effect or the certificate is cancelled (as
24 the case may be); or

25 (b) an NDIS worker check clearance certificate is
26 subsequently issued to the person after the notice under
27 subsection (2) is given; or

28 (c) a notice under subsection (2) related to the suspension of
29 an NDIS worker check clearance certificate and the
30 suspension is revoked or ceases to have effect.

31 (4) A notice under this section must be in writing.

1 **44. Disclosure of information to prevent harm**

2 (1) In this section —

3 *prescribed authority* means —

4 (a) an authorised person; or

5 (b) a public authority; or

6 (c) any other person or body that is prescribed by the
7 regulations for the purposes of this definition.

8 (2) The CEO may disclose to a prescribed authority any
9 information obtained as a result of the exercise of a function
10 under this Act if there are reasonable grounds to suspect that
11 there is a risk to the wellbeing of a person with disability, a
12 child or a vulnerable person, or to a class of those persons, and
13 the disclosure is reasonably necessary to prevent or address that
14 risk.

15 (3) This section does not limit or derogate from any other Act or
16 law relating to the disclosure of information for the protection
17 of children or other persons.

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Part 4 — Review

Division 1 — Internal review

45. Terms used

In this Division —

applicant means the person who applied for the clearance to which a designated decision relates;

designated decision means a decision of the CEO —

- (a) imposing an interim bar under section 13;
- (b) refusing to grant an NDIS worker check clearance under section 15;
- (c) suspending an NDIS worker check clearance certificate under section 24;
- (d) cancelling an NDIS worker check clearance certificate under section 25(1);
- (e) refusing to cancel an NDIS worker check exclusion certificate under section 28.

46. Application for internal review

- (1) An applicant may apply to the CEO for an internal review of a designated decision.
- (2) The application must be —
 - (a) in the approved form; and
 - (b) accompanied by the fee prescribed by the regulations.
- (3) The application must be made —
 - (a) for a decision imposing an interim bar or suspending an NDIS worker check clearance certificate — at least 6 months after the CEO gives the applicant written notice of the interim bar or suspension; and

1 (b) for any other designated decision — within 28 days after
2 the CEO gives the applicant written notice of the
3 decision.

4 (4) If the applicant is a disqualified person, the only ground on
5 which the applicant may seek review of a designated decision is
6 that the applicant’s criminal record does not include a
7 conviction for a Class 1 offence committed by the applicant as
8 an adult.

9 **47. Extension of time to apply for internal review**

10 (1) The CEO may, on application by the applicant or on the CEO’s
11 own initiative, extend the time for making an application for an
12 internal review.

13 (2) An application for an extension of time must be —

14 (a) in the approved form; and

15 (b) accompanied by the fee prescribed by the regulations.

16 (3) The CEO must give written notice to the applicant of the CEO’s
17 decision to grant or refuse an application for an extension of
18 time.

19 (4) In the case of a decision to refuse an application for an
20 extension of time, the notice must —

21 (a) set out the reasons for the decision; and

22 (b) state that the applicant may apply to the State
23 Administrative Tribunal within 28 days after the date of
24 the notice to have the decision reviewed; and

25 (c) explain how an application for review is made.

26 **48. Consideration of application for internal review**

27 (1) In dealing with an application for review, the CEO —

28 (a) must give the applicant a reasonable opportunity to
29 make a submission in relation to the application (in such

- 1 manner as the CEO determines to be appropriate in the
2 circumstances); and
- 3 (b) may consider new material, whether or not it existed at
4 the time the designated decision was made; and
- 5 (c) may exercise any power of the CEO under this Act that
6 was able to be exercised in relation to the matter that
7 gave rise to the designated decision (and any relevant
8 provisions of this Act apply accordingly); and
- 9 (d) subject to the regulations, may adopt such other
10 procedures and processes as the CEO thinks fit (taking
11 into account the requirement to afford procedural
12 fairness to the applicant).
- 13 (2) If the applicant is a disqualified person, the CEO may only
14 review the issue of whether the applicant’s criminal record does
15 not include a conviction for a Class 1 offence committed by the
16 applicant as an adult.
- 17 (3) The CEO may —
- 18 (a) if the applicant is a disqualified person —
- 19 (i) confirm the designated decision; or
- 20 (ii) where the CEO finds that the applicant’s
21 criminal record does not include a conviction for
22 a Class 1 offence committed by the applicant as
23 an adult — set aside the designated decision and
24 substitute another decision for it, or take steps for
25 the matter to be reconsidered on the basis that the
26 person is not a disqualified person;
- 27 or
- 28 (b) in any other case —
- 29 (i) confirm or vary the designated decision; or
- 30 (ii) set aside the designated decision and substitute
31 another decision for it, or take steps for the
32 matter to be reconsidered under this Act.

- 1 (4) As soon as practicable after making a decision under
2 subsection (3), the CEO must give written notice to the
3 applicant of the CEO's decision.
- 4 (5) In the case of a decision that is adverse to the applicant, the
5 notice must —
- 6 (a) set out the reasons for the decision; and
7 (b) state that the applicant may apply to the State
8 Administrative Tribunal within 28 days after the date of
9 the notice to have the decision reviewed; and
10 (c) explain how an application for review is made.

11 **49. Withdrawal of application**

12 The applicant may withdraw an application under this Division
13 at any time.

14 **Division 2 — External review**

15 **50. Terms used**

16 In this Division —
17 *applicant* has the meaning given in section 45;
18 *reviewable decision* means a decision made by the CEO under
19 Division 1, including a decision refusing an application for an
20 extension of time.

21 **51. Application for external review**

- 22 (1) An applicant may apply to the State Administrative Tribunal for
23 a review of a reviewable decision.
- 24 (2) The application must be made within 28 days after the date of
25 the notice of the decision issued by the CEO under Division 1.
- 26 (3) A decision that is the subject of an application for review under
27 subsection (1) continues to have effect pending the outcome of
28 the review (and the State Administrative Tribunal cannot make

- 1 an order, or grant an interim injunction, staying the operation of
2 the decision).
- 3 (4) If the applicant is a disqualified person, the only ground on
4 which the applicant may seek review of a reviewable decision is
5 that the applicant's criminal record does not include a
6 conviction for a Class 1 offence committed by the applicant as
7 an adult.
- 8 (5) In dealing with an application for review by a disqualified
9 person, the State Administrative Tribunal —
- 10 (a) if it is satisfied that the applicant's criminal record does
11 not include a conviction for a Class 1 offence committed
12 by the applicant as an adult — may set aside the
13 reviewable decision and refer it back to the CEO for
14 assessment under this Act; and
- 15 (b) if it is not satisfied that the applicant's criminal record
16 does not include a conviction for a Class 1 offence
17 committed by the applicant as an adult — must confirm
18 the reviewable decision.
- 19 (6) Despite the *State Administrative Tribunal Act 2004*
20 section 29(5), a decision by the State Administrative Tribunal to
21 set aside or vary a reviewable decision has effect from the date
22 that it is delivered by the State Administrative Tribunal.
- 23 (7) For the purposes of the *State Administrative Tribunal Act 2004*
24 in respect of a review of a reviewable decision, any information
25 that might enable an applicant to be identified must not be
26 published.
- 27 (8) Despite subsection (7), the CEO is authorised to provide
28 information referred to in that subsection to —
- 29 (a) the NDIS Commission; and
30 (b) an interstate screening agency; and

- 1 (c) any other person or body engaged in the administration
2 of this Act or a corresponding law; and
3 (d) the CEO under the *Working with Children (Criminal*
4 *Record Checking) Act 2004*.

1 **Part 5 — Authorised officers and enforcement**

2 **Division 1 — Preliminary**

3 **52. Terms used**

4 In this Part —

5 *entry warrant* has the meaning given in section 64(1);

6 *investigation* means an investigation of a suspected offence
7 under this Act;

8 *magistrate* means a magistrate of the Magistrates Court;

9 *record* —

10 (a) means a record of information, irrespective of how the
11 information is recorded or stored or able to be
12 recovered; and

13 (b) includes —

14 (i) any thing from which images, sounds or writings
15 can be reproduced, with or without the aid of
16 anything else; and

17 (ii) any thing on which information is recorded or
18 stored, whether electronically, magnetically,
19 mechanically or by some other means;

20 *relevant record* means a record or document that contains
21 information that is or may be relevant to an offence under this
22 Act.

23 **Division 2 — Authorised officers**

24 **53. Designation of authorised officers**

25 The CEO may, in writing, designate officers to be authorised
26 officers —

27 (a) generally for the purposes of this Act; or

28 (b) for the purposes of a provision of this Act specified in
29 the designation.

1 **54. Identity cards**

- 2 (1) The CEO must ensure that each authorised officer is issued with
3 an identity card in an approved form.
- 4 (2) An authorised officer must display the authorised officer’s
5 identity card whenever dealing with a person in respect of
6 whom the officer has exercised, is exercising, or is about to
7 exercise, a power under this Act.
- 8 (3) In any proceedings the production by an authorised officer of
9 the authorised officer’s identity card is conclusive evidence of
10 their designation under section 53.

11 **Division 3 — Powers of investigation**

12 **55. Entry to places**

- 13 (1) An authorised officer may, for the purpose of an investigation,
14 enter a place if —
- 15 (a) its occupier gives informed consent to the entry; or
16 (b) the entry is authorised by an entry warrant.
- 17 (2) An occupier gives informed consent to entry to a place if the
18 occupier gives consent after being informed by an authorised
19 officer —
- 20 (a) of the powers the officer wants to exercise in respect of
21 the place; and
22 (b) of the reasons why the officer wants to exercise those
23 powers; and
24 (c) that the occupier can refuse to consent to the officer
25 entering the place.

26 **56. Powers after entering place**

- 27 An authorised officer who enters a place under section 55 may,
28 for the purpose of an investigation, do any of the following —
- 29 (a) inspect the place and any thing at the place;

- 1 (b) search the place and any thing at the place;
- 2 (c) measure, test, photograph or film any part of, or any
- 3 thing at, the place;
- 4 (d) take any thing, or a sample of or from any thing, at the
- 5 place for analysis or testing;
- 6 (e) operate equipment or facilities at the place or direct a
- 7 person at the place to do so;
- 8 (f) make a copy of, or take an extract from, any record or
- 9 document at the place;
- 10 (g) seize any thing that is or may afford evidence of an
- 11 offence under this Act;
- 12 (h) direct (orally or in writing) the occupier of the place, or
- 13 a person at the place, to give the officer such assistance
- 14 as the officer reasonably requires.

15 **57. Directions to provide information or documents**

- 16 (1) An authorised officer may, for the purpose of an investigation,
- 17 do any of the following —
- 18 (a) direct a person —
- 19 (i) to give information; or
- 20 (ii) to answer a question put by the authorised
- 21 officer;
- 22 (b) direct a person to produce a record or document that is
- 23 in the person's possession or under the person's control;
- 24 (c) make a copy of a record or document produced in
- 25 response to a direction under paragraph (b).
- 26 (2) A direction under subsection (1)(a) —
- 27 (a) must specify the time at or within which the information
- 28 or answer must be given; and
- 29 (b) may require that the information or answer —
- 30 (i) be given orally or in writing; and

- 1 (ii) be given at, or sent or delivered to, a place
2 specified in the direction; and
- 3 (iii) in the case of written information or a written
4 answer — be sent or delivered by a means
5 specified in the direction; and
- 6 (iv) be verified by statutory declaration.
- 7 (3) A direction under subsection (1)(b) —
- 8 (a) must specify the time at or within which the record or
9 document must be produced; and
- 10 (b) may require that the record or document be produced —
- 11 (i) at a place specified in the direction; and
- 12 (ii) by a means specified in the direction.
- 13 (4) A person is not excused from complying with a direction under
14 this section to give information, answer a question or produce a
15 record or document on the ground that complying with the
16 direction might tend to incriminate the person or render the
17 person liable to a penalty.
- 18 (5) However, any information or answer given by an individual in
19 compliance with a direction under subsection (4) is not
20 admissible in evidence against the individual in criminal or civil
21 proceedings other than proceedings for perjury or for an offence
22 under section 69.
- 23 (6) In directing a person under this section, an authorised officer
24 must explain to the person —
- 25 (a) that it is an offence to contravene the direction; and
- 26 (b) the effect of subsections (4) and (5).
- 27 (7) A direction under this section may be given orally or in writing.

1 **58. Additional powers for relevant records**

2 An authorised officer may, for the purpose of an investigation,
3 do any of the following —

- 4 (a) operate a computer or other thing on which the officer
5 suspects on reasonable grounds a relevant record is or
6 may be stored or direct a person who has the custody or
7 control of the computer or thing to do so;
- 8 (b) direct (orally or in writing) a person who is, or appears
9 to be, in control of a record or document that the officer
10 suspects on reasonable grounds is a relevant record to
11 give the officer a translation, code, password or other
12 information necessary to gain access to, or interpret and
13 understand, the record or document;
- 14 (c) make a copy of, take an extract from, download, print
15 out, photograph or film, a record or document that the
16 officer suspects on reasonable grounds is a relevant
17 record;
- 18 (d) seize a record or document that the officer suspects on
19 reasonable grounds is a relevant record and retain it for
20 as long as is necessary for the purposes of this Act;
- 21 (e) seize a computer or other thing on which the officer
22 suspects on reasonable grounds a relevant record is or
23 may be stored and retain it for as long as is necessary for
24 the purposes of this Act;
- 25 (f) take reasonable measures to secure or protect a relevant
26 record, or computer or other thing on which a relevant
27 record is or may be stored, against damage or
28 unauthorised removal or interference.

29 **59. Offence to contravene directions**

30 A person who, without reasonable excuse, fails to comply with
31 a direction given to the person under this Division commits an
32 offence.

33 Penalty: imprisonment for 12 months and a fine of \$12 000.

1 **60. Exercise of powers may be recorded**

2 An authorised officer may record the exercise of a power under
3 this Division, including by making an audiovisual recording.

4 **61. Assistance and use of force to exercise power**

5 (1) An authorised officer exercising a power under this Division
6 may authorise as many other people to assist in exercising the
7 power as are reasonably necessary in the circumstances.

8 (2) In exercising the power, an authorised officer, and a person
9 authorised under subsection (1) to assist the officer, may use
10 force that is reasonably necessary in the circumstances.

11 **62. Procedure of seizing things**

12 (1) If an authorised officer seizes any thing under this Division, the
13 officer must give the person who was in possession of the thing
14 a receipt for it in the approved form.

15 (2) If an authorised officer seizes any thing under this Division, the
16 officer must, if practicable, allow a person who is otherwise
17 entitled to possession of the thing to have reasonable access to
18 it.

19 (3) An authorised officer who seizes any thing under this Division
20 may take reasonable measures to prevent the thing being
21 concealed, lost, damaged or destroyed.

22 (4) If it is not practicable to move any thing that has been seized, an
23 authorised officer may do whatever is reasonably necessary to
24 secure the thing where it is situated and to notify people that it is
25 under seizure.

26 (5) A person must not, without the approval of an authorised
27 officer, interfere or deal with any thing that the person knows,
28 or ought reasonably to know, has been seized by an authorised
29 officer.

30 Penalty for this subsection: imprisonment for 12 months and a
31 fine of \$12 000.

1 **63. Application of *Criminal and Found Property Disposal***
2 ***Act 2006***

3 (1) The *Criminal and Found Property Disposal Act 2006* applies to
4 any thing that is seized under this Division.

5 (2) For the purposes of the *Criminal and Found Property Disposal*
6 *Act 2006*, the Department is a prescribed agency.

7 **Division 4 — Entry warrants**

8 **64. Application for entry warrant**

9 (1) An authorised officer may apply to a magistrate for a warrant
10 (an *entry warrant*) authorising the entry of a place for the
11 purpose of an investigation.

12 (2) Subject to this section —

13 (a) an application for an entry warrant must be in writing
14 and include the information prescribed by the
15 regulations; and

16 (b) the grounds of the application must be verified by
17 affidavit; and

18 (c) the applicant must appear in person before the
19 magistrate to provide information in support of the
20 application on oath.

21 (3) An application for an entry warrant may be made by remote
22 communication if a magistrate considers that such an
23 application is reasonable in the circumstances.

24 (4) If an application for an entry warrant is made by remote
25 communication and it is not practicable to send the magistrate
26 written material —

27 (a) the application may be made orally; and

28 (b) the magistrate must make a written record of the
29 application and information given in support of it; and

- 1 (c) if the warrant is issued — the applicant must, as soon as
2 practicable, send the magistrate an affidavit verifying
3 the application and information given in support of it.

4 **65. Issue and content of entry warrant**

- 5 (1) On an application for an entry warrant, a magistrate may issue
6 the warrant if satisfied that it is necessary for an authorised
7 officer to enter a place for the purpose of an investigation.
- 8 (2) An entry warrant must contain the following information —
- 9 (a) a reasonably particular description of the place to which
10 the warrant relates;
- 11 (b) a reasonably particular description of the purpose for
12 which entry to the place is required;
- 13 (c) the provision of this Act suspected of being
14 contravened;
- 15 (d) the period, not exceeding 14 days, during which the
16 warrant may be executed;
- 17 (e) the name of the magistrate who issued the warrant;
- 18 (f) the date and time when the warrant was issued.
- 19 (3) An entry warrant must be in the form prescribed by the
20 regulations.
- 21 (4) If a magistrate issues an entry warrant on an application made
22 by remote communication —
- 23 (a) if it is practicable to send a copy of the original warrant
24 to the applicant by remote communication — the
25 magistrate must do so; or
- 26 (b) if it is not practicable —
- 27 (i) the magistrate must provide the applicant by
28 remote communication with the information that
29 must be set out in the warrant; and
- 30 (ii) the applicant must complete a form of warrant
31 with the information received and give the

- 1 magistrate a copy of the form as soon as
2 practicable after doing so; and
3 (iii) the magistrate must attach the copy of the form
4 to the original warrant and any affidavit received
5 from the applicant and make them available for
6 collection by the applicant.
- 7 (5) The copy of the original warrant, or the form of the warrant
8 completed, under subsection (4) has the same force and effect as
9 the original warrant.

10 **66. Refusal of entry warrant**

11 If a magistrate refuses to issue an entry warrant, the magistrate
12 must record on the application, or the written record of the
13 application, the fact of, the date and time of, and the reasons for,
14 the refusal.

15 **67. Effect of entry warrant**

- 16 (1) An entry warrant comes into force when it is issued by a
17 magistrate.
- 18 (2) An entry warrant may be executed according to its terms by an
19 authorised officer entitled to enter the place for the purpose
20 specified in the warrant.
- 21 (3) However, if an applicant for an entry warrant contravenes
22 section 64(4)(c) or 65(4)(b)(ii), evidence obtained under the
23 entry warrant is not admissible in proceedings in a court or
24 tribunal.

Part 6 — General

1
2 **68. Offence to work without clearance, without having applied**
3 **for clearance or if subject to an exclusion**

4 (1) A person must not start or continue to be employed or otherwise
5 engaged by a registered NDIS provider in NDIS work which
6 involves (wholly or in part) a risk assessed role unless —

7 (a) the person is the holder of an NDIS worker check
8 clearance certificate and the certificate is not suspended;
9 or

10 (b) the person has applied for an NDIS worker check
11 clearance, the application is pending, and the person is
12 not subject to an interim bar.

13 Penalty for this subsection: imprisonment for 5 years and a fine
14 of \$60 000.

15 (2) A person must not start or continue to be employed or otherwise
16 engaged by a registered NDIS provider in NDIS work which
17 involves (wholly or in part) a risk assessed role if the person is
18 subject to an NDIS worker check exclusion certificate.

19 Penalty for this subsection: imprisonment for 5 years and a fine
20 of \$60 000.

21 **69. Offence to give false or misleading information**

22 A person must not give information to the CEO for the purposes
23 of this Act that the person knows to be false or misleading in a
24 material particular.

25 Penalty: imprisonment for 2 years and a fine of \$24 000.

26 **70. Service of documents**

27 (1) In this section —
28 *serve* includes to give, send or notify.

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- 1 (2) A document that is authorised or required by this Act to be
2 served on any person may be served by any of the following
3 methods —
- 4 (a) by email sent to an email address specified by the person
5 for the service of documents under this Act;
- 6 (b) by any other method to which the person agrees for the
7 service of documents under this Act;
- 8 (c) by any other method prescribed by the regulations.
- 9 (3) A document served under subsection (2)(a) is taken to have
10 been served at the time of transmission.
- 11 (4) A document served under subsection (2)(c) is taken to have
12 been served at the time prescribed by the regulations.
- 13 (5) This section does not limit the operation of the *Interpretation*
14 *Act 1984* sections 75 and 76.

15 **71. Offence to use or disclose information obtained**

16 A person who is or has been engaged in the performance of
17 functions under this Act must not, directly or indirectly, disclose
18 or make use of information obtained in the course of performing
19 those functions except —

- 20 (a) for the purpose of, or in connection with, performing
21 functions under this Act; or
- 22 (b) for the purpose of the investigation of a suspected
23 offence under this Act or the conduct of proceedings
24 against a person for an offence under this Act; or
- 25 (c) as required or allowed under this Act or another written
26 law; or
- 27 (d) where the disclosure is for the purpose of providing
28 reports to the NDIS Commission, or is otherwise
29 connected with the operation of the National Disability
30 Insurance Scheme; or

- 1 (e) where the disclosure involves the provision of statistical
2 or other information or data that could not reasonably be
3 expected to identify a specific person; or
- 4 (f) for the purpose of referring a matter to a law
5 enforcement agency, or an agency exercising functions
6 under an Act or other written law relating to the care or
7 protection of children or people with disability
8 (including an agency in another jurisdiction and
9 including an Act or other written law of another
10 jurisdiction); or
- 11 (g) as authorised under the regulations; or
- 12 (h) with the written consent of the Minister or the person to
13 whom the information relates.

14 Penalty: imprisonment for 2 years and a fine of \$24 000.

15 **72. Ability to provide information and protection from liability**

- 16 (1) In this section —
17 *law* includes the common law and any rules of equity.
- 18 (2) This subsection applies to information disclosed —
- 19 (a) to the CEO for the purposes of, or in connection with,
20 any provision of this Act; or
- 21 (b) without limiting paragraph (a), in connection with the
22 administration or enforcement of this Act; or
- 23 (c) by the CEO —
- 24 (i) to the NDIS Commission, or to any other person
25 or body in connection with the operation of the
26 National Disability Insurance Scheme; or
- 27 (ii) to a law enforcement agency, or an agency
28 exercising functions under an Act or other
29 written law relating to the care or protection of
30 children or people with disability (including an
31 agency in another jurisdiction and including an
32 Act or other written law of another jurisdiction);

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- 1 or
2 (d) as otherwise authorised or required under any provision
3 of this Act; or
4 (e) as authorised under the regulations.
- 5 (3) In a case where subsection (2) applies, information may be
6 disclosed despite any other enactment, law or agreement that
7 prohibits or restricts its disclosure.
- 8 (4) Subsection (3) does not derogate from the operation of
9 section 34(6).
- 10 (5) Subsections (2) and (3) extend to information relating to —
11 (a) spent convictions; or
12 (b) children.
- 13 (6) If information is disclosed by a person in good faith in a case
14 where subsection (2) applies, the person —
15 (a) does not incur any civil or criminal liability; and
16 (b) is not to be taken to have breached any duty of
17 confidentiality or secrecy imposed by law; and
18 (c) is not to be taken to have breached any professional
19 ethics or standards or any principles of conduct
20 applicable to the person’s employment or to have
21 engaged in unprofessional conduct.
- 22 (7) Subsection (6) does not apply to the disclosure of information
23 by a government agency established or constituted under a law
24 of another jurisdiction.

25 **73. Protection from personal liability**

- 26 (1) A person does not incur any civil liability for anything that the
27 person has done in good faith, in the performance or purported
28 performance of a function under this Act.

1 (2) The State is also relieved of any liability that it might otherwise
2 have had for another person having done anything as described
3 in subsection (1).

4 (3) The protection given by this section applies even though the
5 thing done as described in subsection (1) may have been
6 capable of being done whether or not this Act had been enacted.

7 (4) In this section, a reference to the doing of anything includes a
8 reference to the omission to do anything.

9 **74. Failure to give notice of decision**

10 A failure by the CEO to give notice of a decision or act of the
11 CEO, as required by this Act, does not of itself affect the
12 validity or effect of the decision or act under this Act.

13 **75. Protection of legal professional privilege**

14 Nothing in this Act requires a person to disclose information
15 that is the subject of legal professional privilege.

16 **76. Effect of Act on other rights and procedures**

17 (1) Nothing in this Act affects any statutory right that an employee
18 may have in relation to employment or the termination of
19 employment.

20 (2) However, any court or tribunal exercising jurisdiction with
21 respect to any such right must have regard to —

22 (a) the results of any determination of an application for a
23 clearance or risk assessment carried out under this Act
24 in connection with the work concerned; and

25 (b) the welfare of people with disability as the paramount
26 consideration in that determination or assessment.

27 (3) Despite a provision of any other Act or law, the Western
28 Australian Industrial Relations Commission and any other court
29 or tribunal are taken not to have jurisdiction to order the
30 payment of damages or compensation for any removal from

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1 employment of a person in connection with the operation of this
2 Act.

3 **77. Evidentiary matters**

4 (1) The CEO may issue a certificate stating that, on a specified date
5 or during a specified period —

6 (a) a specified person was or was not the holder of an NDIS
7 worker check clearance certificate; or

8 (b) a specified person had or had not made an application
9 for a clearance; or

10 (c) an NDIS worker check clearance certificate held by a
11 specified person was or was not suspended; or

12 (d) a specified person was or was not subject to an interim
13 bar; or

14 (e) a specified person was or was not subject to an NDIS
15 worker check exclusion certificate; or

16 (f) an NDIS worker check clearance certificate held by a
17 specified person was or was not cancelled.

18 (2) A certificate given under this section is admissible in legal
19 proceedings as evidence of the matters stated in the certificate.

20 (3) In proceedings for an offence against this Act, an NDIS worker
21 check clearance certificate, NDIS worker check exclusion
22 certificate, interim bar notice or other notice issued under this
23 Act may be proved by tendering a copy of it certified by the
24 CEO to be a true copy of the original.

25 (4) Unless the contrary is proved, it must be presumed that a
26 document purporting to have been signed by the CEO was
27 signed by a person who at the time was the CEO.

28 (5) Unless the contrary is proved, it must be presumed that a
29 document purporting to have been signed by a delegate of the
30 CEO was signed by a person who at the time was a delegate of
31 the CEO and was authorised to sign it.

1 (6) This section is in addition to, and does not affect the operation
2 of, the *Evidence Act 1906*.

3 **78. Delegation by CEO**

4 (1) In this section —

5 *public sector employee* means an employee as defined in the
6 *Public Sector Management Act 1994* section 3(1).

7 (2) The CEO may delegate to a public sector employee or, with the
8 approval of the Minister, another person, any power or duty of
9 the CEO under another provision of this Act.

10 (3) The delegation must be in writing signed by the CEO.

11 (4) The delegation may expressly authorise the delegate to further
12 delegate the power or duty.

13 (5) A person exercising or performing a power or duty that has been
14 delegated to the person under this section or as authorised under
15 this section is taken to do so in accordance with the terms of the
16 delegation unless the contrary is shown.

17 (6) Nothing in this section limits the ability of the CEO to perform
18 a function through an officer or agent.

19 **79. Delegation by prescribed authorities**

20 (1) In this section —

21 *chief executive officer*, in relation to a prescribed authority,
22 means the principal officer (however described) of that body;

23 *prescribed authority* means a public authority or other body
24 prescribed by the regulations for the purposes of this definition.

25 (2) The chief executive officer of a prescribed authority may
26 delegate to an officer or employee of the prescribed authority
27 any power or duty of the prescribed authority under this Act.

28 (3) The delegation must be in writing signed by the chief executive
29 officer.

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- 1 (4) The delegation may expressly authorise the delegate to further
2 delegate the power or duty.
- 3 (5) A person exercising or performing a power or duty that has been
4 delegated to the person under this section or as authorised under
5 this section is taken to do so in accordance with the terms of the
6 delegation unless the contrary is shown.
- 7 (6) Nothing in this section limits the ability of the prescribed
8 authority to perform a function through an officer of the
9 prescribed authority or an agent.

10 **80. Commencement of proceedings**

- 11 (1) Proceedings under this Act for an offence or in respect of any
12 other matter may be commenced in the name of the CEO by the
13 CEO or by a person authorised to do so by the CEO.
- 14 (2) In any proceedings no proof is required of —
15 (a) the appointment of the CEO; or
16 (b) the authorisation of a person under subsection (1).
- 17 (3) An averment in a prosecution notice that a person is appointed
18 or authorised under subsection (2) is taken to be proved unless
19 the contrary is proved.
- 20 (4) Subsection (1) does not limit the ability of a person to
21 commence or conduct the prosecution of an offence if the
22 person has authority at law to do so.

23 **81. Regulations**

- 24 (1) The Governor may make regulations prescribing all matters that
25 are required or permitted by this Act to be prescribed, or are
26 necessary or convenient to be prescribed, for giving effect to the
27 purposes of this Act.
- 28 (2) Without limiting subsection (1), the regulations may —
29 (a) provide for the receipt and storage of information
30 obtained or created under this Act that relates to a

- 1 person's criminal record and the restriction of access to
2 that information; and
- 3 (b) provide for procedures and processes associated with the
4 review of decisions of the CEO under this Act; and
- 5 (c) create offences and provide, in respect of an offence so
6 created, for the imposition of a penalty not exceeding a
7 fine of \$6 000.

8 **82. Transitional regulations**

- 9 (1) In this section —
- 10 **publication day**, for transitional regulations, means the day on
11 which those regulations are published in the *Gazette*;
12 **specified** means specified or described in transitional
13 regulations;
14 **transitional matter** —
- 15 (a) means a matter of a transitional nature that arises as a
16 result of the enactment of this Act; and
- 17 (b) includes a saving or application matter;
- 18 **transitional regulations** means regulations referred to in
19 subsection (2).
- 20 (2) If there is not sufficient provision in this Act for dealing with a
21 transitional matter, regulations under this Act may prescribe
22 anything required, necessary or convenient to be prescribed in
23 relation to that matter.
- 24 (3) Transitional regulations may provide that specified provisions
25 of this Act —
- 26 (a) do not apply to or in relation to a specified matter; or
27 (b) apply with specified modifications to or in relation to a
28 specified matter.

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- 1 (4) Transitional regulations may provide that a state of affairs is
2 taken to have existed, or not to have existed, on and from a day
3 that is —
4 (a) earlier than publication day; but
5 (b) not earlier than the day on which this section comes into
6 operation.
- 7 (5) A provision referred to in subsection (4) does not operate so as
8 to —
9 (a) affect in a manner prejudicial to any person (other than
10 the State) the rights of that person existing before
11 publication day; or
12 (b) impose liabilities on any person (other than the State) in
13 respect of anything done or omitted to be done before
14 publication day.

15 **83. Review of Act**

- 16 (1) The Minister must review the operation and effectiveness of this
17 Act, and prepare a report based on the review, as soon as
18 practicable after the 5th anniversary of the day on which this
19 section comes into operation.
- 20 (2) The Minister must cause the report to be laid before each House
21 of Parliament as soon as practicable after it is prepared, but not
22 later than 12 months after the 5th anniversary.
- 23 (3) If, in the Minister's opinion, a House of Parliament will not sit
24 during the period of 21 days after finalisation of the report, the
25 Minister must send the report to the Clerk of the House.
- 26 (4) When the report is sent to the Clerk of a House it is taken to
27 have been laid before the House.
- 28 (5) The laying of the report that is taken to have occurred under
29 subsection (4) must be recorded in the Minutes, or Votes and
30 Proceedings, of the House on the first sitting day of the House
31 after the Clerk receives the report.

1 **Part 7 — Consequential amendments to other Acts**

2 **Division 1 — *Spent Convictions Act 1988* amended**

3 **84. Act amended**

4 This Division amends the *Spent Convictions Act 1988*.

5 **85. Section 28 amended**

6 In section 28(2)(a) delete “a child; and” and insert:

7

8 a child or a person with disability; and

9

10 **86. Schedule 3 amended**

11 (1) In Schedule 3 clause 2(6) the Table after item 2 insert:

12

- 13 3. A person who is disclosing information where the *Working with Children (Criminal Record Checking) Act 2004* section 39A applies.

13

14 (2) In Schedule 3 clause 2 after subclause (7) insert:

15

- 16 (8) The CEO as defined in the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 5(1) is
17 excepted from the provisions of section 28(1) in respect of
18 all spent convictions in disclosing information under
19 section 34 of that Act if the disclosure is to —

20

- 21 (a) the CEO as defined in the *Working with Children*
22 *(Criminal Record Checking) Act 2004* section 4; or
23 (b) a corresponding authority as defined in the *Working*
24 *with Children (Criminal Record Checking)*
25 *Act 2004* section 37(1) and that agency is a person
26 prescribed under section 28(2).

26

27

1 (3) After Schedule 3 clause 2 insert:

2

3 **3. Exceptions as to spent convictions relating to the**
4 **protection of people with disability**

5 (1) The persons specified in the Table to this subclause are
6 excepted from the provisions of sections 27 and 28 in
7 respect of all spent convictions.

8

Table

1. A person in respect of whom the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 33 applies.
2. A person making, or giving effect to, a request for a criminal record check as defined in the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 5(1).
3. A person making, or giving effect to, a request for a report or information under the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 10, 34, 38, 39, 40 or 41.
4. A person who is disclosing information under the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 72.

9 (2) The CEO as defined in the *National Disability Insurance*
10 *Scheme (Worker Screening) Act 2020* section 5(1) is
11 excepted from the provisions of section 28(1) in respect of
12 all spent convictions in disclosing information under
13 section 34 of that Act if the disclosure is to —
14 (a) an interstate screening agency as defined in the
15 *National Disability Insurance Scheme (Worker*
16 *Screening) Act 2020* section 5(1) and that agency is
17 a person prescribed under section 28(2); or
18 (b) a government agency as defined in the *National*
19 *Disability Insurance Scheme (Worker Screening)*
20 *Act 2020* section 5(1) and that agency is a person
21 prescribed under section 28(2); or

- 1 (c) a person or body prescribed under section 34(4)(b)
2 of the *National Disability Insurance Scheme*
3 (*Worker Screening*) Act 2020 and that person or
4 body is a person prescribed under section 28(2).
- 5 (3) The CEO as defined in the *Working with Children (Criminal*
6 *Record Checking*) Act 2004 section 4 is excepted from the
7 provisions of section 28(1) in respect of all spent
8 convictions in disclosing information under section 37A of
9 that Act if the disclosure is to —
- 10 (a) the CEO as defined in the *National Disability*
11 *Insurance Scheme (Worker Screening)* Act 2020
12 section 5(1); or
- 13 (b) an interstate screening agency as defined in the
14 *National Disability Insurance Scheme (Worker*
15 *Screening)* Act 2020 section 5(1) and that agency is
16 a person prescribed under section 28(2).
17

18 **Division 2 — *Working with Children (Criminal Record***
19 ***Checking)* Act 2004 amended**

20 **87. Act amended**

21 This Division amends the *Working with Children (Criminal*
22 *Record Checking)* Act 2004.

23 **88. Section 4 amended**

24 In section 4 insert in alphabetical order:

25
26 ***CEO (Justice)*** means the chief executive officer of the
27 department of the Public Service principally assisting
28 in the administration of the *Sentence Administration*
29 *Act 2003* Part 8;

30 ***corresponding law*** means a law of another State or a
31 Territory that —

- 32 (a) contains provisions that substantially
33 correspond with the provisions of this Act; and

- 1 (b) is prescribed by the regulations as a
2 corresponding law for the purposes of this Act;
3

4 **89. Section 37A inserted**

5 After section 37 insert:
6

7 **37A. Exchange of information under *National Disability***
8 ***Insurance Scheme (Worker Screening) Act 2020***

9 (1) In this section —

10 ***prescribed report*** means any of the following —

- 11 (a) a written pre-sentence report, or a record of an
12 oral pre-sentence report, made under the
13 *Sentencing Act 1995* Part 3 Division 3;
14 (b) a report prepared for the purposes of the
15 *Sentence Administration Act 2003* section 11A,
16 17 or 51;
17 (c) a report prepared for the purposes of the *Young*
18 *Offenders Act 1994* section 47, 48(1) or 159;
19 (d) a report —
20 (i) made under, or prepared for the
21 purposes of, the *Bail Act 1982*, the
22 *Dangerous Sexual Offenders Act 2006*,
23 the *Prisons Act 1981*, the *Sentence*
24 *Administration Act 2003*, the *Sentencing*
25 *Act 1995* or the *Young Offenders*
26 *Act 1994*; and
27 (ii) of a kind prescribed by the regulations
28 for the purposes of this definition.

29 (2) The CEO may disclose to the CEO or an interstate
30 screening agency (as those terms are defined in the
31 *National Disability Insurance Scheme (Worker*
32 *Screening) Act 2020* section 5(1)) information obtained

- 1 or created under this Act that relates to a person’s
2 criminal record or to an application made by, or a
3 notice issued to, a person under this Act.
- 4 (3) The CEO may ask the CEO or an interstate screening
5 agency (as those terms are defined in the *National*
6 *Disability Insurance Scheme (Worker Screening)*
7 *Act 2020* section 5(1)) to disclose to the CEO
8 information obtained or created by the CEO or
9 interstate screening agency that —
- 10 (a) corresponds to the information referred to in
11 subsection (2); and
- 12 (b) relates to a person who has made an
13 application, or has been issued with a notice,
14 under this Act.
- 15 (4) However, a prescribed report obtained from the
16 CEO (Justice) cannot be disclosed under subsection (2)
17 without the approval of the CEO (Justice).
- 18

19 **90. Section 39A inserted**

20 After section 39 insert:

21

22 **39A. Ability to provide information and protection from**
23 **liability**

- 24 (1) In this section —
- 25 *external government agency* means —
- 26 (a) a government department established or
27 constituted under a law of another jurisdiction;
28 or
- 29 (b) a body, whether incorporated or not, that is
30 established, constituted or continued for a
31 public purpose under a written law of another
32 jurisdiction and that, under the authority of a

National Disability Insurance Scheme (Worker Screening) Bill 2020

Part 7 Consequential amendments to other Acts

Division 2 Working with Children (Criminal Record Checking) Act 2004 amended

s. 90

- 1 written law of another jurisdiction, performs a
2 statutory function on behalf of a government or
3 another jurisdiction;
- 4 *law* includes the common law and any rules of equity.
- 5 (2) This subsection applies to information disclosed —
- 6 (a) to the CEO for the purposes of, or in
7 connection with, any provision of this Act; or
- 8 (b) without limiting paragraph (a), in connection
9 with the administration or enforcement of this
10 Act; or
- 11 (c) by the CEO to —
- 12 (i) the CEO as defined in the *National*
13 *Disability Insurance Scheme (Worker*
14 *Screening) Act 2020* section 5(1); or
- 15 (ii) an interstate screening agency as
16 defined in the *National Disability*
17 *Insurance Scheme (Worker Screening)*
18 *Act 2020* section 5(1);
- 19 or
- 20 (d) as otherwise authorised or required under any
21 provision of this Act; or
- 22 (e) as authorised by the regulations.
- 23 (3) In a case where subsection (2) applies, information
24 may be disclosed despite any other enactment, law or
25 agreement that prohibits or restricts its disclosure.
- 26 (4) Subsection (3) does not derogate from the operation
27 of —
- 28 (a) section 37A(4); or
- 29 (b) the *National Disability Insurance Scheme*
30 *(Worker Screening) Act 2020* section 34(6).

- 1 (5) Subsections (2) and (3) extend to information relating
2 to —
3 (a) spent convictions; or
4 (b) children.
- 5 (6) If information is disclosed by a person in good faith in
6 a case where subsection (2) applies, the person —
7 (a) does not incur any civil or criminal liability;
8 and
9 (b) is not to be taken to have breached any duty of
10 confidentiality or secrecy imposed by law; and
11 (c) is not to be taken to have breached any
12 professional ethics or standards or any
13 principles of conduct applicable to the person’s
14 employment or to have engaged in
15 unprofessional conduct.
- 16 (7) Subsection (6) does not apply to the disclosure of
17 information by an external government agency.

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Schedule 1 — Class 1 offences

[s. 6(1)]

Provision	Description of offence	Condition
<i>The Criminal Code</i>		
s. 181	Carnal knowledge of animal	
s. 186	Occupier or owner allowing young person to be on premises for unlawful carnal knowledge	
s. 187	Facilitating sexual offence against child outside Western Australia	
s. 191	Procuring person to be prostitute	The victim is a child or a vulnerable person
s. 192	Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug	The victim is a child or a vulnerable person
s. 204A	Showing offensive material to child under 16	The offensive material is child exploitation material as defined in <i>The Criminal Code</i> section 217A The offence does not fall within the ambit of section 6(4)
s. 204B	Using electronic communication to procure, or expose to indecent matter, child under 16	The offence does not fall within the ambit of section 6(4)
s. 217	Involving child in child exploitation	The offence does not fall within the ambit of section 6(4)

Provision	Description of offence	Condition
s. 218	Producing child exploitation material	The offence does not fall within the ambit of section 6(4)
s. 219	Distributing child exploitation material	The offence does not fall within the ambit of section 6(4)
s. 220	Possession of child exploitation material	The offence does not fall within the ambit of section 6(4)
s. 279	Murder	
s. 283	Attempt to unlawfully kill	
s. 284(3)(c)	Culpable driving (not of a motor vehicle) causing death	The offence is committed with intent to cause death
s. 284(3)(d)	Culpable driving (not of a motor vehicle) causing grievous bodily harm	The offence is committed with intent to cause grievous bodily harm to a child or a vulnerable person
s. 293	Stupefying in order to commit indictable offence	The victim is a child or a vulnerable person
s. 294	Act intended to cause grievous bodily harm or prevent arrest	The victim is a child or a vulnerable person
s. 305	Setting dangerous thing	The intended victim is a child or a vulnerable person
s. 306(2)	Female genital mutilation	The victim is a child or a vulnerable person
s. 306(4)	Female genital mutilation — taking or arranging for a child to be taken from the State	
s. 317A(b)	Assault with intent to do grievous bodily harm	The victim is a child or a vulnerable person

National Disability Insurance Scheme (Worker Screening) Bill 2020
Schedule 1 Class 1 offences

Provision	Description of offence	Condition
s. 320	Sexual offences against child under 13	
s. 321	Sexual offences against child of or over 13 and under 16	The offence does not fall within the ambit of section 6(4)
s. 321A	Persistent sexual conduct with child under 16	The offence does not fall within the ambit of section 6(4)
s. 322	Sexual offences against child of or over 16 by person in authority	
s. 323	Indecent assault	The victim is a child or a vulnerable person The offence does not fall within the ambit of section 6(4)
s. 324	Aggravated indecent assault	The victim is a child or a vulnerable person The offence does not fall within the ambit of section 6(4)
s. 325	Sexual penetration without consent	The victim is a child or a vulnerable person The offence does not fall within the ambit of section 6(4)
s. 326	Aggravated sexual penetration without consent	The victim is a child or a vulnerable person The offence does not fall within the ambit of section 6(4)
s. 327	Sexual coercion	The victim is a child or a vulnerable person

Provision	Description of offence	Condition
s. 328	Aggravated sexual coercion	The victim is a child or a vulnerable person
s. 329(2)	Sexual penetration of a child who the offender knows to be his or her lineal relative or de facto child	
s. 329(3)	Procuring, inciting or encouraging a child who the offender knows is his or her lineal relative or a de facto child to engage in sexual behaviour	
s. 329(4)	Indecently dealing with a child who the offender knows is his or her lineal relative or a de facto child	
s. 329(5)	Procuring, inciting or encouraging a child who the offender knows is his or her lineal relative or a de facto child to do an indecent act	
s. 329(6)	Indecently recording a child who the offender knows is his or her lineal relative or a de facto child	
s. 329(7)	Sexually penetrating a person who the offender knows is his or her lineal relative	The victim is a vulnerable person
s. 330	Sexual offences against incapable person	
s. 331B	Sexual servitude	The victim is a child or a vulnerable person

National Disability Insurance Scheme (Worker Screening) Bill 2020
Schedule 1 Class 1 offences

Provision	Description of offence	Condition
s. 331C	Conducting business involving sexual servitude	The victim is a child or a vulnerable person
s. 331D	Deceptive recruiting for commercial sexual service	The victim is a child or a vulnerable person
s. 332	Kidnapping	The victim is a child or a vulnerable person, other than where the victim is a child and the offender is a family member of the child
s. 343	Child stealing	The offence is committed by a person other than a family member of the child
s. 562	Accessory after the fact to an indictable offence	The principal offence is the offence of murder

Children and Community Services Act 2004

s. 192	Employing a child, or permitting a child to be employed, to perform in an indecent, obscene or pornographic manner
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Classification (Publications, Films and Computer Games) Enforcement Act 1996

s. 59(1)	Possessing or copying an indecent or obscene article with intent to sell or supply, or selling or supplying, or offering to sell or supply, an indecent or obscene article	The article is child exploitation material as defined in <i>The Criminal Code</i> section 217A
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Provision	Description of offence	Condition
s. 59(3) or (4)	Displaying, exhibiting or demonstrating an indecent or obscene article in specified circumstances	The article is child exploitation material as defined in <i>The Criminal Code</i> section 217A
s. 59(5)	Possessing or copying an indecent or obscene article	The article is child exploitation material as defined in <i>The Criminal Code</i> section 217A The offence does not fall within the ambit of section 6(4)
s. 101	Using a computer service to transmit, obtain, demonstrate, advertise or request transmission of objectionable material	The material is child exploitation material as defined in <i>The Criminal Code</i> section 217A
 <i>Prostitution Act 2000</i>		
s. 16	Causing, permitting or seeking to induce a child to act as a prostitute	
s. 17	Obtaining payment for prostitution by a child	
s. 18	Agreement for prostitution of a child	
 <i>Road Traffic Act 1974</i>		
s. 59	Dangerous driving causing death	The offence is committed with intent to cause death
s. 59	Dangerous driving causing grievous bodily harm	The offence is committed with intent to cause grievous bodily harm to a child or a vulnerable person

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Schedule 2 — Class 2 offences

[s. 6(2)]

Provision	Description of offence	Condition
<i>The Criminal Code</i>		
s. 192	Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug	The victim is a person other than a child or a vulnerable person
s. 204A	Showing offensive material to child under 16	The offensive material is child exploitation material as defined in <i>The Criminal Code</i> section 217A The offence falls within the ambit of section 6(4)
s. 204B	Using electronic communication to procure, or expose to indecent matter, child under 16	The offence falls within the ambit of section 6(4)
s. 217	Involving child in child exploitation	The offence falls within the ambit of section 6(4)
s. 218	Producing child exploitation material	The offence falls within the ambit of section 6(4)
s. 219	Distributing child exploitation material	The offence falls within the ambit of section 6(4)
s. 220	Possession of child exploitation material	The offence falls within the ambit of section 6(4)
s. 221BD	Distribution of intimate image	The image is of a child or a vulnerable person

Provision	Description of offence	Condition
s. 262	Failing to provide necessities of life in breach of duty	The victim is a child or a vulnerable person, the offender is involved in the provision of care, support or services to the child or vulnerable person, and the care, support or services relate to the vulnerability of the child or the vulnerable person but are not care, support or services provided by a member of the family of the child or the vulnerable person as part of a normal familial care relationship
s. 263	Duty of head of family	
s. 280	Manslaughter	
s. 281	Unlawful assault causing death	
s. 284(3)(c)	Culpable driving (not of motor vehicle) causing death	The offence causes death but without intent to cause death
s. 284(3)(d)	Culpable driving (not of a motor vehicle) causing grievous bodily harm	The offence causes grievous bodily harm but without intent to cause harm to a child or a vulnerable person
s. 288	Procuring, counselling or aiding another to commit suicide	
s. 290	Preventing birth of live child	
s. 292	Disabling in order to commit indictable offence	

National Disability Insurance Scheme (Worker Screening) Bill 2020
Schedule 2 Class 2 offences

Provision	Description of offence	Condition
s. 293	Stupefying in order to commit indictable offence	The victim is a person other than a child or a vulnerable person
s. 294	Act intended to cause grievous bodily harm or prevent arrest	The victim is a person other than a child or a vulnerable person
s. 297	Grievous bodily harm	
s. 298	Suffocation and strangulation	
s. 300	Persistent family violence	One or more of the prescribed offences applying under <i>The Criminal Code</i> section 299 are offences listed in Schedule 1 or this Schedule and the victim is a child or a vulnerable person
s. 301	Wounding and similar acts	
s. 305	Setting dangerous thing	The intended victim is a person other than a child or a vulnerable person
s. 306(2)	Female genital mutilation	The victim is a person other than a child or a vulnerable person
s. 317A(b)	Assault with intent to do grievous bodily harm	The victim is a person other than a child or a vulnerable person
s. 321	Sexual offences against child of or over 13 and under 16	The offence falls within the ambit of section 6(4)
s. 321A	Persistent sexual conduct with child under 16	The offence falls within the ambit of section 6(4)

Provision	Description of offence	Condition
s. 323	Indecent assault	The victim is a person other than a child or a vulnerable person or The offence falls within the ambit of section 6(4)
s. 324	Aggravated indecent assault	The victim is a person other than a child or a vulnerable person or The offence falls within the ambit of section 6(4)
s. 325	Sexual penetration without consent	The victim is a person other than a child or a vulnerable person or The offence falls within the ambit of section 6(4)
s. 326	Aggravated sexual penetration without consent	The victim is a person other than a child or a vulnerable person or The offence falls within the ambit of section 6(4)
s. 327	Sexual coercion	The victim is a person other than a child or a vulnerable person
s. 328	Aggravated sexual coercion	The victim is a person other than a child or a vulnerable person

National Disability Insurance Scheme (Worker Screening) Bill 2020
Schedule 2 Class 2 offences

Provision	Description of offence	Condition
s. 329(7)	Sexually penetrating a person who the offender knows is his or her lineal relative	The victim is a person other than a vulnerable person
s. 329(8)	Consenting to be penetrated by a person who the offender knows to be his or her lineal relative	
s. 331B	Sexual servitude	The victim is a person other than a child or a vulnerable person
s. 331C	Conducting business involving sexual servitude	The victim is a person other than a child or a vulnerable person
s. 331D	Deceptive recruiting for commercial sexual service	The victim is a person other than a child or a vulnerable person
s. 332	Kidnapping	The victim is a person other than a child or a vulnerable person or The victim is a child and the offender is a family member of the child
s. 343	Child stealing	The offence is committed by a family member of the child
s. 380	Concealing a will	A beneficiary of the testamentary instrument is a child or a vulnerable person
s. 381	Concealing a document that is evidence of title to any land or estate in land	A person with an interest in the land is a child or a vulnerable person

Provision	Description of offence	Condition
s. 409	Fraud	The victim is a child or a vulnerable person
s. 473	Forgery and uttering	The victim is a child or a vulnerable person
s. 510	Personation	The victim is a child or a vulnerable person
s. 511	Personating owner of shares	The victim is a child or a vulnerable person

Animal Welfare Act 2002

s. 19	Cruelty to animals	This item does not apply if the CEO is satisfied that the offence did not involve serious cruelty to an animal
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Children and Community Services Act 2004

s. 101	Failing to protect child from harm	
s. 102	Leaving child unsupervised in vehicle	

Classification (Publications, Films and Computer Games) Enforcement Act 1996

s. 59(5)	Possessing or copying an indecent or obscene article	The article is child exploitation material as defined in <i>The Criminal Code</i> section 217A The offence falls within the ambit of section 6(4)
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Provision	Description of offence	Condition
<i>Disability Services Act 1993</i>		
s. 53	Offence of ill-treatment	The victim is a child or a vulnerable person, the offender is involved in the provision of care, support or services to the child or the vulnerable person, and the care, support or services relate to the vulnerability of the child or the vulnerable person but are not care, support or services provided by a member of the family of the child or the vulnerable person as part of a normal familial care relationship
<i>Misuse of Drugs Act 1981</i>		
s. 6(1)(a) or (c)	Offence concerned with prohibited drugs	The sale or supply was to, or intended to be to, a child or a vulnerable person
s. 6(1)(b)	Offence concerned with prohibited drugs	The act constituting the offence endangered the life, health or safety of a child under the age of 16 years or of a vulnerable person
s. 7(1)(a)	Offences concerned with prohibited plants or drugs generally	The act constituting the offence endangered the life, health or safety of a child under the age of 16 years or of a vulnerable person
s. 7(1)(b)	Offences concerned with prohibited plants generally	The sale or supply was to, or intended to be to, a child or a vulnerable person

Provision	Description of offence	Condition
s. 7(2)	Offences concerned with prohibited plants generally	The act constituting the offence endangered the life, health or safety of a child under the age of 16 years or of a vulnerable person
s. 7B(4)	Selling drug paraphernalia to a child	
s. 8Q(1)	Manufacturing a psychoactive substance	The act constituting the offence endangered the life, health or safety of a child under the age of 16 years or of a vulnerable person
s. 8Q(2)	Sale or supply of psychoactive substance	The sale or supply was to a child or a vulnerable person
s. 15	Sale or supply of category 1 item	The sale or supply was to a child or a vulnerable person
s. 17	Sale or supply of category 2 item	The sale or supply was to a child or a vulnerable person
 <i>Road Traffic Act 1974</i>		
s. 59	Dangerous driving causing death	The offence causes death but without intent to do so
s. 59	Dangerous driving causing grievous bodily harm	The offence causes grievous bodily harm but without intent to cause grievous bodily harm to a child or a vulnerable person

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Aboriginal child	5(1)
adult	5(1)
another jurisdiction	5(1)
applicant.....	45, 50
approved	5(1)
authorised officer	5(1)
authorised person	5(1)
CEO	5(1)
CEO (Justice).....	5(1)
charge.....	5(1)
chief executive officer.....	79(1)
child	5(1)
Class 1 offence.....	5(1), 6(1)
Class 2 offence.....	5(1), 6(2)
Class 3 offence.....	5(1)
clearance	5(1)
clearance history	5(3)
Commissioner of Police.....	5(1)
contact.....	5(1)
conviction	5(1), 7(1), (2) and (4)
corresponding law	5(1)
court	5(1)
criminal record.....	5(1)
criminal record check.....	5(1)
criminal records agency	5(1)
Department.....	5(1)
designated decision	45
designated person.....	5(1)
disqualified person	5(1), 8(1)
DPP	5(1)
engage.....	5(1)
entry warrant	52, 64(1)
exclusion	5(1)
family member	5(1)
government agency	5(1)
harm.....	5(1)
health professional	5(1)
interstate screening agency	5(1)
investigation.....	52
key personnel	5(1)

law.....	72(1)
magistrate.....	52
National Disability Insurance Scheme	5(1)
NDIS Act	5(1)
NDIS Commission.....	5(1)
NDIS employer	5(1)
NDIS purpose	5(1)
NDIS work.....	5(1)
NDIS worker check clearance.....	5(1)
NDIS worker check clearance certificate.....	5(1)
NDIS worker check exclusion certificate	5(1)
non-conviction charge.....	5(1)
notifiable person	5(1)
officer.....	5(1)
pending charge	5(1)
prescribed authority	36(1), 41(1), 44(1), 79(1)
prescribed report	39(1)
presumptively disqualified person	5(1), 8(2)
public authority	5(1)
public sector employee	78(1)
publication day.....	82(1)
record	52
relevant information.....	5(1)
relevant law.....	5(1)
relevant official	35(1)
relevant record	52
relevant risk of harm	5(1)
reviewable decision.....	50
risk assessed role.....	5(1)
risk assessment.....	5(1), 17(1)
serve	70(1)
specified	82(1)
Torres Strait Islander child.....	5(1)
transitional matter	82(1)
transitional regulations.....	82(1)
unacceptable risk.....	5(1)
vulnerable person	5(1)

