

South Australia

Disability Inclusion (NDIS Worker Check) Regulations 2020

under the *Disability Inclusion Act 2018*

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Legislative history

1—Short title

These regulations may be cited as the *Disability Inclusion (NDIS Worker Check) Regulations 2020*.

2—Commencement

These regulations come into operation on the day on which Part 5A of the *Disability Inclusion Act 2018* (as enacted by the *Statutes Amendment (Screening) Act 2019*) comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Disability Inclusion Act 2018*;

child means a person aged under 18 years old;

relative, of a person, means a person who is or was—

- (a) related by marriage, consanguinity or adoption to the person; or
- (b) related through a domestic partnership to the person; or
- (c) a step-child or step-sibling of the person (regardless of age); or
- (d) the guardian of the person; or
- (e) acting in *loco parentis* in relation to the person; or
- (f) related to the person according to Aboriginal or Torres Strait Islander kinship rules, or where both persons are members of some other culturally recognised family group; or
- (g) a carer of the person (within the meaning of the *Carers Recognition Act 2005*);

vulnerable person means an adult person who, by reason of age, illness or disability, is unable to properly care for themselves, or protect themselves against harm or exploitation.

4—Meaning of *corresponding law*

For the purposes of paragraph (b) of the definition of *corresponding law* in section 18A(1) of the Act, the following laws are prescribed:

- (a) the *Working with Vulnerable People (Background Checking) Act 2011* of the Australian Capital Territory;
- (b) the *National Disability Insurance Scheme (Worker Checks) Act 2018* of New South Wales;
- (c) the *National Disability Insurance Scheme (Worker Clearance) Act 2020* of the Northern Territory;
- (d) the *Registration to Work with Vulnerable People Act 2013* of Tasmania;
- (e) the *Worker Screening Act 2020* of Victoria.

5—Meaning of *disqualification offence*

For the purposes of the definition of *disqualification offence* in section 18A(1) of the Act, the offences set out in Schedule 1 are, subject to that Schedule, declared to be disqualification offences.

6—Meaning of *presumptive disqualification offence*

For the purposes of the definition of *presumptive disqualification offence* in section 18A(1) of the Act, the offences set out in Schedule 2 are, subject to that Schedule, declared to be presumptive disqualification offences.

7—Relevant laws

For the purposes of paragraph (e) of the definition of *relevant law* in section 18A(1) of the Act, the following laws are prescribed:

- (a) the *Children and Young People (Safety) Act 2017*;
- (b) the *Guardianship and Administration Act 1993*;
- (c) the *Ageing and Adult Safeguarding Act 1995*;
- (d) a law of the Commonwealth, or another State or Territory, corresponding to the *Children and Young People (Safety) Act 2017*;
- (e) the *Ombudsman Act 1989* of the Australian Capital Territory;
- (f) the *Working with Vulnerable People (Background Checking) Act 2011* of the Australian Capital Territory;
- (g) the *Child Protection (Working with Children) Act 1998* of New South Wales;
- (h) the *Ombudsman Act 1974* of New South Wales;
- (i) the *Care and Protection of Children Act 2007* of the Northern Territory;
- (j) the *Working with Children (Risk Management and Screening) Act 2000* of Queensland;
- (k) the *Disability Services Act 2006* of Queensland;
- (l) the *Registration to Work with Vulnerable People Act 2003* of Tasmania;
- (m) the *Working with Children Act 2005* of Victoria;
- (n) the *Disability Service Safeguards Act 2018* of Victoria;
- (o) the *Working with Children (Criminal Record Checking) Act 2004* of Western Australia;
- (p) a previous enactment corresponding to a law referred to in a preceding paragraph.

8—Protected information

- (1) The Registrar must maintain a register of all decisions to classify information as protected information.
- (2) The register may include such information as the Registrar thinks fit.
- (3) The register may only be inspected with the permission of the Registrar.

9—Prescribed functions and powers

For the purposes of section 18E(2) of the Act, the classification of information as protected information under section 18D(1) of the Act is prescribed.

10—Additional powers to terminate NDIS worker check clearance application

- (1) Pursuant to section 18G(9) of the Act, the central assessment unit may refuse or terminate an application if—
 - (a) the application is not verified by an NDIS employer who is registered with the NDIS Commission; or

- (b) the applicant is excluded by another jurisdiction while their application is being processed; or
 - (c) the applicant is, either at the time of application or while their application is being processed, suspended by another jurisdiction from working with people with disability (however described); or
 - (d) the applicant is not permitted to apply pursuant to section 18H of the Act.
- (2) For the purposes of subregulation (1), a reference to an applicant being *excluded* includes a reference to the applicant being prevented under the laws of the Commonwealth, or any other State or Territory, from working with people with disability (however described).

11—Requirements relating to notice of grant of NDIS worker check clearance etc

- (1) For the purposes of section 18L(1) of the Act, the grant of an NDIS worker check clearance, or the issue an NDIS worker check exclusion, must comply with any relevant requirements set out in guidelines published under section 12 of the Act.
- (2) For the purposes of section 18L(1) of the Act, a notice under that subsection must be issued as soon as is reasonably practicable after the determination to grant an NDIS worker check clearance or issue an NDIS worker check exclusion (as the case requires) is made.

12—Court to provide notice of certain findings of guilt to central assessment unit

- (1) For the purposes of section 18U of the Act, the following information relating to a finding of guilt is prescribed:
- (a) the full name, date of birth and residential address of the person to whom the finding of guilt relates;
 - (b) the particulars of the offence of which the person was found guilty;
 - (c) the date on which the person was found guilty of the offence;
 - (d) the court that made the finding of guilt.
- (2) For the purposes of section 18U of the act, the information prescribed by subregulation (1) must be provided to the central assessment unit in a manner and form determined by the Registrar.

13—Commissioner of Police to provide information on charging of certain persons

- (1) For the purposes of section 18V of the Act, the following information relating to a charge of a disqualification offence or presumptive disqualification offence against a person is prescribed:
- (a) the full name, date of birth and residential address of the charged person (if known);
 - (b) particulars of the charge;
 - (c) a description of any conduct to which the charge relates (including, but not limited to whether the alleged victim was a child or an adult);

- (d) if the charge relates to an aggravated offence under the *Criminal Law Consolidation Act 1935*—the aggravating circumstances.
- (2) For the purposes of section 18V of the act, the information prescribed by subregulation (1) must be provided to the central assessment unit in a manner and form determined by the Registrar.

14—Central assessment unit may disclose etc information with other jurisdictions

For the purposes of paragraph (b) of the definition of *prescribed person or body* in section 18Y(3) of the Act, the following persons and bodies are prescribed:

- (a) the NDIS Commission;
- (b) the Australian Criminal Intelligence Commission;
- (c) the National Disability Insurance Agency;
- (d) the Department of Social Services of the Commonwealth.

15—Disclosure of information about offences

For the purposes of the definition of *relevant offence* in section 18ZG(2) of the Act, any offence determined by the central assessment unit to be a relevant offence is prescribed.

16—Non-reviewable decisions

For the purposes of paragraph (c) of the definition of *non-reviewable decision* in section 18ZI(5) of the Act, the following decisions are declared to be included in the ambit of that definition:

- (a) a decision to refuse to grant a clearance under section 18I(2) of the Act;
- (b) a decision to cancel a clearance under section 18S(2) of the Act;
- (c) a decision to terminate an application for a clearance or cancel a clearance under section 18W of the Act;
- (d) a decision to terminate an application under regulation 10(1).

17—Minister may establish advisory panel

- (1) For the purposes of section 18ZP(2) of the Act, the Minister may establish an advisory panel to assist the central assessment unit in the performance of its functions under Part 5A of the Act.
- (2) The advisory panel consists of such members as the Minister thinks fit.
- (3) A member of the advisory panel will hold office for a term, and on conditions, determined by the Minister.
- (4) A member of the advisory panel (not being a member who is a member of the Public Service) is entitled to such allowances and expenses as may be determined by the Minister.
- (5) Subject to any direction of the Minister, the advisory panel may determine its own procedures.

18—Requirement to notify central assessment unit of change of particulars

- (1) The holder of an NDIS worker check clearance must notify the central assessment unit in a form approved by the central assessment unit of any relevant change of particulars within 3 months of the change occurring.

Maximum penalty: \$50 000.

- (2) In this section—

relevant change of particulars means—

- (a) a change in the holder's name, residential address or contact details; or
- (b) the use of another name or names by the holder.

Schedule 1—Disqualification offences

1—Disqualification offences

- (1) Subject to this clause, the offences listed in the table in clause 2 are disqualification offences.
- (2) If there is a reference to condition A in column 3 of the table in respect of a particular offence, the offence will only be taken to be a disqualification offence if the victim of the offence was a child or vulnerable person, or the offence involved a child or vulnerable person.

Note—

If condition A is not satisfied, the offence is instead a presumptive disqualification offence—see Schedule 2 clause 2(1)(a).

- (3) If there is a reference to a condition or conditions in column 3 of the table in respect of a particular offence, the offence will be taken not to be a disqualification offence if the condition is satisfied:
 - (a) condition B—at the time of the offence the victim was more than 14 years of age and the offender was not more than 5 years older than the victim, and the offence did not involve violence or coercion;
 - (b) condition C—the offender was a relative of the victim.

Note—

Such an offence is instead a presumptive disqualification offence—see Schedule 2 clause 2(1)(b).

- (4) A reference to an offence in the table in clause 2 will be taken to include a reference to the following offences:
 - (a) an attempt to commit the offence;
 - (b) a conspiracy to commit the offence;
 - (c) aiding, abetting, counselling or procuring the offence;
 - (d) a corresponding offence under a previous enactment;
 - (e) a corresponding offence under a law of another State or Territory, including an offence referred to in a preceding paragraph in relation to the corresponding offence.

2—Table of disqualification offences

Act	Offences	Conditions
<i>Criminal Law Consolidation Act 1935</i>	section 11 (Murder)	
	section 12 (Conspiring or soliciting to commit murder)	
	section 19A(1) (Causing death or harm by use of vehicle or vessel) being an offence where the offender intended to cause death	
	section 20A (Choking, suffocation or strangulation in a domestic setting)	A
	section 23 (Causing serious harm)	A
	section 24 (Causing harm)	A
	section 29 (Acts endangering life or creating risk of serious harm)	A
	section 33A (Female genital mutilation)	A
	section 33B (Removal of child from state for genital mutilation)	
	section 39 (Kidnapping)	A, C
	section 40 (Unlawful removal of child from jurisdiction)	C
	section 48 (Rape)	A
	section 48A (Compelled sexual manipulation)	A
	section 49(1) (Unlawful sexual intercourse where victim under 14)	
	section 49(3) (Unlawful sexual intercourse where victim under 17 years)	B
	section 49(5) (Unlawful sexual intercourse in position of authority)	
	section 49(6) (Sexual intercourse with intellectually disabled person)	
	section 50(1) (Persistent sexual abuse of child)	
	section 51 (Sexual exploitation of a person with a cognitive impairment)	
	section 56 (Indecent assault)	A, B
section 58 (Acts of gross indecency)	A, B	
section 59 (Abduction of male or female person)	A	
section 60 (Procuring sexual intercourse)	A	
section 61 (Permit unlawful sexual intercourse on premises)		
section 63 (Production etc of child exploitation material)	B	

Act	Offences	Conditions
	section 63AA (Production etc of child-like sex dolls)	
	section 63A (Possession of child exploitation material)	B
	section 63AAB (Possession of child-like sex dolls)	
	section 63AB (Offences relating to websites)	
	section 63B (Procure child to commit indecent act etc)	B
	section 66 (Sexual servitude and related offences)	A
	section 67 (Deceptive recruiting for commercial sexual services)	A
	section 68 (Use of children in commercial sexual services)	
	section 69 (Bestiality)	
	section 72 (Incest)	A
	section 74 (Persistent sexual abuse of a child) as in force before the commencement of the <i>Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008</i>	B
	section 80 (Abduction of child under 16 years)	C
	section 83E(2) (Participation in criminal organisation)	A
	section 139A (Dishonest communication with children)	
	section 241 (Impeding investigation of offences or assisting offenders) being an offence of assisting a principal offender who commits murder	
	section 270B (Assault with intent)	A
<i>Aircraft Offences Act 1971</i>	section 9 (Destroy an aircraft to cause death)	
<i>Summary Offences Act 1953</i>	section 33(3) as in force before the commencement of the <i>Criminal Law Consolidation (Child Pornography) Amendment Act 2004</i>	A, B
<i>Criminal Code of the Commonwealth</i>	section 71.2 (Murder of a UN person etc)	
	section 71.4 (Intentionally causing serious harm to a UN person etc)	A
	section 71.5 (Recklessly causing serious harm to a UN person etc)	A
	section 71.8 (Unlawful sexual penetration)	A
	section 71.9 or 10 (Kidnapping etc a UN person etc)	A, C

Act	Offences	Conditions
	section 73.2, 3 or 3A (People smuggling)	A
	section 115.1 (Murder of an Australian citizen etc)	
	section 115.3 (Intentionally causing serious harm to an Australian citizen etc)	A
	section 115.4 (Recklessly causing serious harm to an Australian citizen etc)	A
	section 268.3, 5, 6 or 7 (Genocide)	
	section 268.4 (Genocide by causing serious bodily or mental harm)	A
	section 268.8 or 9 (Crimes against humanity)	
	section 268.10, 13 to 16, 19 or 21(1) (Crimes against humanity)	A
	section 268.24, 47(1), 48(1), 49(1), 70, 71(1), 76(2), 90(1), 92(1) or 93(1) (War crimes)	
	section 268.38(1), 40(1), 41 to 44, 50, 55, 56, 65, 91, 97 or 98 (War crimes—various) being an offence that results in the death of a person	
	section 268.25 to 28, 47(2), 48(2), 59, 60, 61, 64, 71(2), 73, 82, 84, 87(1) or 92(2) (War crimes—various)	A
	section 270.3, 5, 6A, 7, 7B or 7C (Slavery etc)	A
	section 271.2, 3, 4, 5, 6, 7, 7B, 7C, 7D or 7E (Trafficking in persons etc)	A
	section 272.8, 9, 10, 11, 12, 13, 14, 15, 18, 19 or 20 (Child sex offences outside Australia)	
	section 273.6 or 7 (Offences involving child abuse material outside Australia)	
	section 273A.1 (Possession of child-like sex dolls etc)	
	section 274.2 (Torture)	A
	section 471.19, 20, 22, 24, 25 or 26(1) (Postal offences)	
	section 474.22, 22A, 23, 24A, 25A, 25B, 25C, 26, 27 or 27A(1) (Telecommunications offences)	
<i>Crimes (Internationally Protected Persons) Act 1976 of the Commonwealth</i>	section 8(1) (Murder of internationally protected person)	
	section 8(2) (Attack internationally protected person) being an offence that results in grievous bodily harm	A

Act	Offences	Conditions
<i>Customs Act 1901</i> of the Commonwealth	section 233BAB	

Schedule 2—Presumptive disqualification offences

1—Interpretation

In this Schedule—

person under care, in respect of an offender, means a child or vulnerable person who has a relationship with the offender in the context of receiving supports or services because of their vulnerability (other than activities that are part of normal familial care relationships).

Example—

The following are examples of persons who may be persons under care:

- (a) a child in foster care;
- (b) an elderly person in residential aged care;
- (c) a person with mental illness receiving treatment in a hospital;
- (d) a person with disability receiving services (to support their disability) in their home or in the community.

2—Presumptive disqualification offences

- (1) Subject to this clause, the following offences are presumptive disqualification offences:
 - (a) an offence referred to in the table in Schedule 1 clause 2 (being an offence that is subject to condition A under that Schedule) when committed against, or involving, a person who is not a child or vulnerable person;
 - (b) an offence that would, but for the operation of Schedule 1 clause 1(3), be a disqualification offence;

Note—

These are offences where, at the time of the offence, the victim was more than 14 years of age and the offender was not more than 5 years older than the victim and the offence did not involve violence or coercion, or where the victim was a relative of the offender.

 - (c) an offence listed in the table in clause 3 (other than offences that are disqualification offences);
 - (d) any other offence declared by the Minister by notice in the Gazette to be a presumptive disqualification offence.
- (2) If there is a reference to a condition in column 3 of the table in clause 3 in respect of a particular offence, the offence will only be taken to be a presumptive disqualification offence if the condition is satisfied:
 - (a) condition A—the victim of the offence was a child or vulnerable person, or the offence involved a child or vulnerable person;

- (b) condition D—the victim of the offence was a person under care in respect of the offender, or the offence involved such a person under care;
 - (c) condition E—the offence is an aggravated offence (within the meaning of the *Criminal Law Consolidation Act 1935*) aggravated by the circumstances referred to in section 5AA(1)(a) of that Act.
- (3) A reference to an offence in the table in clause 3 will be taken to include a reference to the following offences:
- (a) an attempt to commit the offence;
 - (b) a conspiracy to commit the offence;
 - (c) aiding, abetting, counselling or procuring the offence;
 - (d) a corresponding offence under a previous enactment;
 - (e) a corresponding offence under a law of another State or Territory, including an offence referred to in a preceding paragraph in relation to the corresponding offence.

3—Table of presumptive disqualification offences

Act	Offences	Conditions
<i>Criminal Law Consolidation Act 1935</i>	section 7 or 10A (Treason)	
	section 13 (Manslaughter)	
	section 13A (Criminal liability in relation to suicide)	
	section 14 (Criminal neglect)	D
	section 14A (Failing to provide food etc)	D
	section 19A(1) (Cause death or harm by use of vehicle or vessel)	
	section 19AA(2) (Unlawful stalking)	E
	section 20 (Assault) being an aggravated offence	A
	section 137 (Robbery)	E
	section 139 (Deception)	A
	section 140(4) (Dishonest dealing with documents)	A
	section 142 (Dishonest exploitation of position of advantage)	A
	section 144B (False identity etc) where the serious offence to which the offence relates involves a child or vulnerable person	
	section 144C (Misuse of personal identification information) where the serious offence to which the offence relates involves a child or vulnerable person	
	section 144D(1) or (2) (Prohibited material)	A
section 169 (Serious criminal trespass—non-residential buildings)	E	

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 Schedule 2—Presumptive disqualification offences

Act	Offences	Conditions
	section 170 (Serious criminal trespass—places of residence)	E
	section 174 (Piracy)	
	section 270(1)(c) (Cheat or fraud at common law)	A
	section 270AB (Attempted manslaughter)	
<i>Controlled Substances Act 1984</i>	section 32 (Trafficking) where the offence relates to a commercial or large commercial quantity	
	section 33 (Manufacture of controlled drugs for sale) where the offence relates to a commercial or large commercial quantity	
	section 33A (Sale, manufacture etc of controlled precursor) where the offence relates to a commercial or large commercial quantity	
	section 33B (Cultivation of controlled plants for sale) where the offence relates to a commercial or large commercial quantity	
	section 33C (Sale of controlled plants) where the offence relates to a commercial or large commercial quantity	
	section 33F (Sale, supply or administration of controlled drug to child)	
	section 33G (Sale, supply or administration of controlled drug in school zone)	
	section 33GA (Sale of equipment to child for use in connection with consumption of controlled drugs)	
	section 33GB (Sale of instructions to a child)	
	section 33H (Procuring child to commit offence)	
<i>Animal Welfare Act 1985</i>	section 13(1) (Ill treatment of animals)	
<i>Summary Offences Act 1953</i>	section 6A (Violent disorder)	A
	section 26B(1) and (2) (Humiliating and degrading filming)	A
	section 26C (Distribution of invasive image)	A
	section 26D (Indecent filming)	A
	section 37 (Possession, production or distribution of extremist material)	
	section 39 (Valueless cheque)	A

Act	Offences	Conditions
	section 148.1(1) or 2(1) or (3) (Impersonation of Commonwealth officials)	A
	section 268.11, 12, 17, 18, 20, 21(2), 22 or 23 (Crimes against humanity)	
	section 268.29 to 37, 38(2), 39, 45, 46, 49(2), 51 to 54, 57 to 59, 62, 63, 66 to 68, 72, 74, 75, 76(1), 77 to 81, 85, 86, 88, 89, 90(2), 93(2), 94 to 96, 99, 100 or 101 (War crimes)	
	section 268.40(2), 41 to 44, 50, 55, 56, 91, 97 or 98 (War crimes not resulting in death)	
	section 273B.4 (Failing to protect child at risk of child sexual abuse offence)	
	section 302.2 (Trafficking commercial quantities of controlled drugs)	
	section 303.4 (Cultivating commercial quantities of controlled plants)	
	section 304.1 (Selling commercial quantities of controlled plants)	
	section 305.3 (Manufacturing commercial quantities of controlled drugs)	
	section 305.4 (Manufacturing marketable quantities of controlled drugs)	A
	section 306.2, 3, 4 (Pre-trafficking controlled precursors)	A
	section 307.1 or 11 (Importing and exporting offences)	
	section 308.3 (Possessing plant material, equipment or instructions for commercial cultivation of controlled plants)	
	section 309.2, 3, 4, 7, 8, 10 to 15 (Drug offences involving children)	
	section 310.2 or 3 (Harm and danger to children under 14 from serious drug offences)	
	section 372.1, 1A or 2 (Identity fraud offences)	A
	section 474.17A (Aggravated offences involving private sexual material—using a carriage service to menace, harass or cause offence)	
	section 480.4 (Dishonestly obtain or deal in personal financial information)	A

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2020	316	<i>Gazette 17.12.2020 p5761</i>	1.2.2021: r 2