

South Australia

## **Statutes Amendment (Screening) Bill 2019**

A BILL FOR

An Act to amend the *Child Safety (Prohibited Persons) Act 2016*, the *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017* and the *Disability Inclusion Act 2018*.

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Statutes Amendment (Screening) Act 2019*.

**2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

**3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

**Part 2—Amendment of *Child Safety (Prohibited Persons) Act 2016***

**4—Amendment of section 6—Meaning of *child-related work* and *work with children***

Section 6—after subsection (1) insert:

(1a) For the purposes of this Act, a service or activity will not be taken to be child-related work merely because—

(a) a person employs a child in the course of the service or activity; or

(b) a person undertakes the service or activity in the same capacity as a child to whom the service or activity relates.

**5—Amendment of section 9—Meaning of *excluded person***

(1) Section 9(1)(a)—delete paragraph (a)

(2) Section 9(1)(b)—delete paragraph (b)

**6—Amendment of section 12—Interaction with other Acts and laws**

Section 12(2)(a)—after "prescribed offence" insert:

or presumptive disqualification offence (within the meaning of section 26A)

**7—Amendment of section 21—Functions**

5 Section 21(1)—after paragraph (d) insert:

(da) to conduct screenings for the purposes of the *Disability Inclusion Act 2018* and to perform such other functions as may assigned to the central assessment unit under that Act;

**8—Insertion of section 26A**

10 After section 26 insert:

**26A—Certain persons presumed to pose unacceptable risk to children**

- 15 (1) Subject to this section, the following provisions apply in relation to the conduct of a working with children check in respect of a person who has been found guilty of a presumptive disqualification offence (whether the offence was committed, or the finding of guilt made, before or after the commencement of this section):
- 20 (a) the person will be presumed to pose an unacceptable risk to children;
- (b) the central assessment unit need not consider or assess any further information in relation to an application for a working with children check made by the person;
- 25 (c) the central assessment unit must, for the purposes of section 26(5), determine that the person is to be prohibited from working with children unless the person satisfies the central assessment unit that—
- 30 (i) the circumstances of the presumptive disqualification offence are such that the offence should be disregarded in determining whether the person poses an unacceptable risk to children; or
- (ii) such exceptional circumstances exist in relation to the person that the person does not appear, or no longer appears, to pose an unacceptable risk to children.
- 35 (2) Nothing in this section limits section 27(3).
- (3) For the purposes of this section, a reference to a *person who has been found guilty of a presumptive disqualification offence* will be taken to include a reference to—
- 40 (a) a person in relation to whom, on a charge of a presumptive disqualification offence—

(i) there is a finding of a court under Part 8A of the *Criminal Law Consolidation Act 1935* that the objective elements of a presumptive disqualification offence are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part); or

(ii) there is a finding of a court of another jurisdiction that corresponds to a finding referred to in subparagraph (i); and

(b) a person who has been charged with a prescribed offence or presumptive disqualification offence, but where the charge has not yet been finally determined.

(4) In this section—

***presumptive disqualification offence*** means an offence, or class of offences, declared by the regulations to be a presumptive disqualification offence (but does not include an offence that is a prescribed offence).

## 9—Insertion of section 33A

After section 33 insert:

### 33A—Fee payable where volunteer undertakes paid employment

(1) If—

(a) a working with children check is conducted under this Act in respect of a person; and

(b) the person satisfies the central assessment unit that the person is a volunteer and so pays no fee in relation to the working with children check; and

(c) the person uses that working with children check to work with children other than as a volunteer,

the person must, unless the fee is waived by the central assessment unit, pay to the central assessment unit the prescribed fee.

(2) A payment under subsection (1) must be made as soon as is reasonably practicable (and in any case within 28 days) after the person commences work with children other than as a volunteer.

(3) A person who fails to comply with subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(4) However, a failure to comply with subsection (1) does not affect the validity of a working with children check.

**10—Amendment of section 34—Records management system**

Section 34(2)(a)—before "a part" insert:

to the extent that the central assessment unit is in possession of the relevant information,

5 **11—Amendment of section 38—Court to provide notice of certain findings of guilt to central assessment unit**

Section 38—after "prescribed offence" insert:

or presumptive disqualification offence (within the meaning of section 26A)

**12—Substitution of section 39**

10 Section 39—delete the section and substitute:

**39—Commissioner of Police to provide information to central assessment unit on charging of certain persons**

15 Without limiting any other Act or law that requires or authorises the Commissioner of Police to disclose information, the Commissioner of Police must ensure that, if a police officer lays a charge of a prescribed offence or a presumptive disqualification offence (within the meaning of section 26A) against a person, the prescribed information relating to the charge is provided to the central assessment unit as soon as is reasonably practicable after the person is charged.

**13—Insertion of section 39A**

After section 39 insert:

**39A—Reporting bodies to notify central assessment unit etc**

- 25 (1) Without limiting any other Act or law that requires or authorises a reporting body to disclose information, a reporting body—
- (a) must, if in the course of performing its functions in relation to a person the reporting body suspects that the person poses, or may pose, an unacceptable risk to children—
- (i) notify the central assessment unit of that suspicion; and
- (ii) provide to the central assessment unit such information as may be in the possession of the reporting body as may be relevant to the notification; and
- 30 (b) may disclose to the central assessment unit any information on any matter relevant to the operation of this Act.
- 35 (2) A notification under subsection (1)(a) must be made in a manner and form determined by the central assessment unit.
- 40 (3) The regulations may make further provision in relation to a notification under this section.

(4) In this section—

*reporting body* means a person or body prescribed by the regulations for the purposes of this section.

**14—Amendment of section 40—Certain persons to advise central assessment unit of changes in information**

(1) Section 40(1)(e)—delete paragraph (e) and substitute:

(e) there is a relevant change of particulars in relation to the person.

(2) Section 40—after subsection (3) insert:

(4) In this section—

*relevant change of particulars*, in relation to a person, means—

- (a) a change in the person's name, residential address or contact details; or
- (b) the use of another name or names by the person; or
- (c) a change of employer by the person; or
- (d) any other change declared by the regulations to be included in the ambit of this definition.

**15—Insertion of Part 5 Division 5**

After section 42 insert:

**Division 5—Information sharing**

**42A—Central assessment unit may disclose etc information with other jurisdictions**

(1) Despite a provision of this or any other Act or law, the central assessment unit is authorised to receive and make use of information relevant to the functions of the central assessment unit under this Act from any person or body in this or any other jurisdiction.

(2) Despite a provision of this or any other Act or law, the central assessment unit is authorised to disclose information (not being information classified by the Commissioner of Police as criminal intelligence) in the possession of the central assessment unit to a prescribed person or body in another State or Territory for purposes related to the screening of persons who work with children.

(3) In this section—

*prescribed person or body* means—

- (a) a person or body whose official function consists of or includes the screening of persons who work with children (however described); or
- (b) any other person or body prescribed by the regulations for the purposes of this paragraph.



## **42B—Access to police information**

- 5
- (1) The Commissioner of Police is authorised to disclose the following information for the purpose of the use of the information in assessing and determining whether a person who engages or proposes to engage in child-related work poses an unacceptable risk to children:
- (a) information relating to any matter that may cause a person to be prohibited from working with children, or require a risk assessment of a person under this Act or a corresponding law;
- 10 (b) information relating to the criminal history of a person;
- (c) without limiting a preceding paragraph, information relating to the circumstances of an offence or other matter disclosed under this section.
- 15 (2) The disclosure of information under this section is limited to disclosure to any of the following:
- (a) the central assessment unit;
- (b) an interstate screening agency;
- (c) the Australian Criminal Intelligence Commission;
- 20 (d) a law enforcement agency of the Commonwealth or another State or Territory.
- (3) A person to whom information is disclosed under this section may disclose that information to an interstate screening agency for the purposes of the use of the information in assessing and determining whether a person poses an unacceptable risk to children.
- 25 (4) Information relating to a person's criminal history may be disclosed under this section whether or not the information relates to a prescribed offence or presumptive disqualification offence (within the meaning of section 26A).
- 30 (5) This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record, of persons may be disclosed apart from this Act.
- 35 (6) This section does not limit the powers of the Commissioner of Police to disclose relevant information as an authorised person under this Act.
- (7) In this section—
- interstate screening agency*** means a person or body exercising functions in the execution or administration of a corresponding law.

#### 42C—Disclosure of information about offences

(1) The central assessment unit may disclose to a law enforcement agency of the State or any other jurisdiction (including a jurisdiction outside Australia) any information obtained as a result of the exercise of a function under this Act that indicates that a relevant offence may have been committed or that constitutes evidence of a relevant offence.

(2) In this section—

*relevant offence* means a prescribed offence, or any other offence declared by the regulations to be included in the ambit of this definition.

#### 42D—Disclose of information to prevent harm

Despite a provision of this or any other Act or law, the central assessment unit may disclose information obtained in the course of the administration or operation of this Act to an appropriate person or body if the central assessment unit is of the opinion that to do so is reasonably necessary to prevent harm being caused to a child.

#### 42E—Disclosure of information for research etc purposes

Despite a provision of this or any other Act or law, the central assessment unit may disclose information obtained in the course of the administration or operation of this Act to an appropriate person or body for the purposes of research into the operation of this Act or a law of another State or Territory related to the screening of persons who work with children, or auditing of compliance with such laws.

#### 42F—Provision of other information to central assessment unit

(1) Despite a provision of this or any other Act or law, a person or body (including, to avoid doubt, an administrative unit or public sector employee within the meaning of the *Public Sector Act 2009*) may provide to the central assessment unit any information that the person or body reasonably believes is relevant to the functions of the central assessment unit under this Act.

(2) A person or body incurs no civil or criminal liability in respect of the provision of information to the central assessment unit in good faith and without negligence under this section.

#### 42G—Information sharing for national register or database

Despite a provision of this or any other Act or law, the central assessment unit may disclose information obtained in the operation or administration of this Act for the purpose of providing relevant information for entry in a national register or database relating to the screening of persons who work with children.

### **Part 3—Amendment of *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017***

#### **16—Insertion of sections 8A and 8B**

5           After section 8 insert:

##### **8A—Transitional provisions—persons the subject of assessment of relevant history conducted by responsible authority**

- 10           (1) This section applies to a person in respect of whom the responsible authority for an organisation had conducted an assessment of relevant history in accordance with regulation 6(1)(a) of the *Children's Protection Regulations 2010* within the 3 years preceding the commencement of this section.
- 15           (2) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
- (b) section 17;
- (c) section 18.
- 20           (3) However, this section ceases to apply to a person referred to in subsection (1)—
- (a) if either of the following occurs:
- (i) the person becomes a prohibited person;
- (ii) a working with children check is conducted in relation to the person; or
- 25           (b) 12 months after the commencement of this section, whichever occurs first.
- 30           (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).
- 35           (5) In this section—
- responsible authority* for an organisation has the same meaning as in section 8B of the *Children's Protection Act 1993*, as in force immediately before that section is repealed.

##### **8B—Transitional provisions—certain emergency service workers**

- (1) This section applies to a person who, immediately before the commencement of this section, was an emergency service worker.

- (2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
- (a) the person becomes a prohibited person;
  - (b) a working with children check is conducted in relation to the person;
  - (c) the person ceases to be an emergency service worker.
- (3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
  - (b) section 17;
  - (c) section 18.
- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).
- (5) In this section—
- emergency service worker*** means—
- (a) a member of—
    - (i) SAMFS; or
    - (ii) SACFS; or
    - (iii) SASES; or
  - (b) a member of the SA Ambulance Service; or
  - (c) a person providing ambulance services pursuant to a restricted ambulance service licence under section 58 of the *Health Care Act 2008*.

### **17—Amendment of section 43—Amendment of section 5—Interpretation**

Section 43(1)—delete subsection (1)

## **Part 4—Amendment of *Disability Inclusion Act 2018***

### **18—Amendment of long title**

Long title—after "mainstream supports and services by people with disability;" insert:  
to provide for NDIS worker check clearances and exclusions for the purposes of the National Disability Insurance Scheme;

### **19—Amendment of section 3—Interpretation**

- (1) Section 3(1)—before the definition of ***Chief Executive*** insert:

***central assessment unit*** means the central assessment unit established under the *Child Safety (Prohibited Persons) Act 2016*;

(2) Section 3(1)—after the definition of *National Disability Insurance Scheme* insert:

**Registrar** means the Registrar of the central assessment unit within the meaning of the *Child Safety (Prohibited Persons) Act 2016*;

## 20—Insertion of Part 5A

5 After Part 5 insert:

### **Part 5A—Screening of NDIS workers**

#### **Division 1—Preliminary**

##### **18A—Interpretation**

(1) In this Part—

10 **authorised person** means—

- (a) the central assessment unit; or
- (b) a person or body exercising functions in the operation or administration of a relevant law; or
- (c) the NDIS Commission; or
- 15 (d) a law enforcement agency of this or any other jurisdiction (including a jurisdiction outside Australia); or
- (e) any other person declared by the regulations to be included in the ambit of this paragraph;

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

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

5 *criminal intelligence* means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

*corresponding law* means—

- 10 (a) a law of the Commonwealth, or of another State or Territory, that corresponds to this Part; or
- (b) any other law of the Commonwealth, or of another State or Territory, that is prescribed by the regulations as a corresponding law for the purposes of this Part;

*disqualification offence* means an offence, or class of offences, declared by the regulations to be a disqualification offence;

15 *disqualified person*—see section 18B(1);

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

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

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

*NDIS Act* means the *National Disability Insurance Scheme Act 2013* of the Commonwealth and includes the rules under that Act;

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

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

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

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

- 40 (a) that is the subject of requirements under the NDIS Act for a person to hold a clearance under this Act or a corresponding law in order to be allowed by a registered NDIS provider to engage in that work; or

- (b) that the central assessment unit is satisfied is work in respect of which it is otherwise necessary or convenient for a person to hold a clearance to facilitate the person's engagement in that work;

5            ***NDIS worker check clearance*** or ***clearance*** means an NDIS worker check clearance granted under this Part;

***NDIS worker check exclusion*** or ***exclusion*** means an NDIS worker check exclusion issued under this Part;

10           ***notifiable person*** in relation to an applicant for a clearance or the holder of a clearance means—

- (a) any NDIS employer who engages or proposes to engage the applicant or holder; or
- (b) any other person, or class of persons, prescribed by the regulations for the purposes of this definition;

15           ***presumptive disqualification offence*** means an offence, or class of offences, declared by the regulations to be a presumptive disqualification offence but does not include an offence that is a disqualification offence;

***presumptively disqualified person***—see section 18B(3);

20           ***protected information*** means information that may, if disclosed—

- (a) prejudice a criminal investigation; or
- (b) identify, or enable the identification of, a person with disability who has been harmed, or is at risk of harm; or
- (c) identify, or enable the identification of, a parent, guardian or family member of a person referred to in paragraph (b); or
- 25           (d) identify, or enable the identification of, a person who has made a report or notification that a person with disability has been harmed, or may be at risk of harm (whether under this Act or otherwise); or

30           (e) endanger a person's life or physical safety or wellbeing, and includes information that is protected information under the *Child Safety (Prohibited Persons) Regulations 2019*;

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

- 35           (a) information relevant to verification of the identity of the person; or
- (b) information about the person disclosed in an application for a clearance or other authority under a relevant law; or
- (c) information relating to the person's criminal history in the State or any other jurisdiction; or

- 5 (d) information about workplace misconduct by the person in the State or any other jurisdiction, being misconduct that concerns persons to whom a relevant risk of harm relates (whether or not such information was obtained in the course of, or relates to, disciplinary proceedings relating to the person); or
- 10 (e) information about any order imposed on the person by a court relating to child protection, apprehended violence or domestic or family violence in the State or any other jurisdiction; or
- (f) information relevant to determining whether the person requires a risk assessment under a relevant law; or
- (g) information about the person's clearance history; or
- 15 (h) information about any current or past engagement of the person by an NDIS employer in this or any other jurisdiction; or
- (i) other information relevant to determining whether the person poses a relevant risk of harm;

**relevant law** means—

- 20 (a) this Act; or
- (b) a corresponding law; or
- (c) the NDIS Act; or
- (d) the *Child Safety (Prohibited Persons) Act 2016*; or
- 25 (e) any other law of the Commonwealth, or another State or Territory, prescribed by the regulations for the purposes of this paragraph;

**relevant risk of harm** means a risk of harm to persons with whose protection a relevant law is concerned;

**risk assessment**, of a person, means a risk assessment of the person under Division 3;

**risk of harm**—see section 18M.

- 30 (2) For the purposes of the definition of **relevant information**, a reference in that definition to **information** will be taken to include a reference to information—
- 35 (a) whether the information was obtained before or after the commencement of this section;
- (b) whether the conduct, finding of guilt or other matter to which the information relates occurred before or after the commencement of this section;
- 40 (c) whether the conduct, finding of guilt or other matter to which the information relates occurred in this State or another jurisdiction;



- (d) regardless of the outcome of any legal or other proceedings to which the information relates.
- (3) For the purposes of this Part, a reference to a person's *clearance history* will be taken to be a reference to the history of action taken under a relevant law in respect of an application for a clearance by the person, or a clearance held by the person under the relevant law, including any exclusion, risk assessment determination, refusal of an application and the suspension or cancellation of a clearance.
- (4) For the purposes of this Part, a reference to a person being *found guilty* of an offence will be taken to include a reference to—
- (a) a finding of a court under Part 8A of the *Criminal Law Consolidation Act 1935* that the objective elements of an offence are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part); or
- (b) any finding of a court of another jurisdiction that corresponds to a finding referred to in paragraph (a).
- (5) For the purposes of this Part, a reference to a person who has been *found guilty of a presumptive disqualification offence* will be taken to include a reference to a person who has been charged with a disqualification offence or presumptive disqualification offence committed as an adult, but where the charge has not yet been finally determined.
- (6) For the purposes of this Part—
- (a) a self-employed person who does NDIS work will be taken to be an NDIS employer who engages themselves to do that work; and
- (b) a person may do NDIS work as a volunteer on their own account (in which case the person is to be regarded as being self-employed as a volunteer).
- (7) Except where the contrary intention appears, a term or phrase used in this Part that is defined in the NDIS Act has the same meaning as in that Act.
- (8) In the interpretation of this Part, consideration may be given to the provisions of the Intergovernmental Agreement.

### **18B—Meaning of *disqualified* and *presumptively disqualified* persons**

- (1) For the purposes of this Part, a person is a *disqualified person* if the person has been found guilty of a disqualification offence committed as an adult (whether the offence was committed, or the finding of guilt made, before or after the commencement of this section).

(2) Despite section section 18A(4), for the purposes of subsection (1) a reference to a person being ***found guilty*** of a disqualification offence will be taken not to include a reference to—

(a) a finding of a court under Part 8A of the *Criminal Law Consolidation Act 1935* that the objective elements of a disqualification offence are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part); or

(b) a finding of a court of another jurisdiction that corresponds to a finding referred to in paragraph (a).

(3) For the purposes of this Part, a person is a ***presumptively disqualified person*** if—

(a) the person has been found guilty of a presumptive disqualifying offence committed as an adult (whether the offence was committed, or the finding of guilt made, before or after the commencement of this section); or

(b) a finding of a kind referred to in subsection (2) has been made in relation to the person.

### **18C—Criminal intelligence**

(1) If the central assessment unit makes a decision under this Part on the basis of information that is classified by the Commissioner of Police as criminal intelligence, the central assessment unit is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest to allow the person to work with people with disability.

(2) In any proceedings under this Part, the court determining the proceedings—

(a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

(b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner of Police by way of affidavit.

### **18D—Protected information**

(1) The Registrar may, in accordance with any requirements set out in the regulations, classify specified information as protected information.

5 (2) If the central assessment unit makes a decision under this Part on the basis of information that is classified by the Registrar as protected information, the central assessment unit is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest to allow the person to work with people with disability.

(3) In any proceedings under this Act, the court determining the proceedings—

10 (a) must, on the application of the Registrar, take steps to maintain the confidentiality of information classified by the Registrar as protected information, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

15 (b) may take evidence consisting of, or relating to, information that is so classified by the Registrar by way of affidavit.

### **18E—Powers of delegation**

20 (1) The central assessment unit may delegate a function or power under this Part (other than a prescribed function or power) to the Registrar or a specified body or person (including a person for the time being holding or acting in a specified office or position).

25 (2) The Registrar may delegate a function or power under this Part (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).

(3) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

30 (c) does not derogate from the ability of the central assessment unit or the Registrar (as the case requires) to act in any matter; and

(d) is revocable at will.

(4) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **18F—Pending applications to be disregarded**

For the purposes of this Part—

40 (a) a person will be taken not to have been granted an NDIS worker check clearance merely because they have made an application for a clearance that has not yet been determined; and

- (b) nothing in this Part authorises an applicant for an NDIS worker check clearance that has not yet been determined to undertake NDIS work.

## **Division 2—NDIS worker check clearances and exclusions**

### **18G—Application for NDIS worker check clearance**

- (1) A person may apply to the central assessment unit for a clearance in accordance with this section.
- (2) An applicant must—
  - (a) reside, or intend to reside, in this State; or
  - (b) undertake NDIS work, or intend to undertake NDIS work, in this State,

and the central assessment unit may refuse to accept an application if the central assessment is not satisfied that the applicant satisfies the requirements under this subsection.

- (3) An application for a clearance must—
  - (a) be made in a manner and form approved by the central assessment unit; and
  - (b) be accompanied by any information required by the central assessment unit; and
  - (c) include, or be accompanied by, proof of the identity of the applicant in a form approved by the central assessment unit; and
  - (d) be accompanied by the prescribed fee.
- (4) The approved form of application for a clearance must provide for the authorisation by the applicant of—
  - (a) the making of inquiries about the applicant by the central assessment unit for an NDIS purpose; and
  - (b) the obtaining of relevant information about the applicant by the central assessment unit from any authorised person for an NDIS purpose; and
  - (c) the disclosure of relevant information about the applicant by the central assessment unit to an authorised person for an authorised purpose.
- (5) The central assessment unit may require an applicant for a clearance to provide a recent photograph of the applicant, obtained in accordance with arrangements determined by the central assessment unit.
- (6) An applicant may withdraw an application at any time by notice in writing to the central assessment unit in the form approved by the central assessment unit, however the withdrawal only has effect if the central assessment unit consents to the withdrawal.

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- (7) The central assessment unit must consent to a withdrawal of an application except in the following circumstances (and must refuse consent in those circumstances):
- (a) a clearance currently held by the applicant under this Part or a corresponding law is under suspension;
  - (b) the applicant's most recent clearance was cancelled under this Part or a corresponding law (other than cancellation at the request of the holder);
  - (c) the central assessment unit has notified or is proposing to notify the applicant that it proposes to issue an NDIS worker check exclusion to the applicant but has not yet determined the application;
  - (d) the central assessment unit is of the opinion that there is a reasonable likelihood that a risk assessment of the applicant will determine that the applicant poses a risk of harm to people with disability.
- (8) The central assessment unit may give written notice of the withdrawal of an application to any person that the central assessment unit reasonably believes to be a notifiable person in relation to the applicant.
- (9) The regulations may make further provision in relation to applications (including, to avoid doubt, provisions setting out additional circumstances in which an application may be refused or terminated by the central assessment unit).

**18H—Certain persons not permitted to apply for NDIS worker check clearance**

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- (1) A person cannot apply for a clearance if the person—
- (a) has made an application for a clearance under this Part or a corresponding law and that application is pending; or
  - (b) currently holds a clearance under this Part or a corresponding law, unless the application is made no more than 3 months before the expiry of the current clearance; or
  - (c) is otherwise subject to a ban on applying for a clearance under this section.
- (2) A person to whom an exclusion is issued under this Part or a corresponding law (being a person who is not a disqualified person) is banned from applying for a clearance for 5 years following the issue of the exclusion except where there has been a relevant change of circumstances.
- (3) A person who has had a clearance cancelled under this Part or a corresponding law is banned from applying for a clearance for 5 years following the cancellation except where—
- (a) the cancellation was at the request of the person; or

- (b) the cancellation occurs under section 18T(2) or 18X(2); or
  - (c) there has been a relevant change of circumstances.
- (4) For the purposes of this section, each of the following is a ***relevant change of circumstances*** in relation to the issue of an exclusion or cancellation of a clearance:
- (a) proceedings for an offence on which the exclusion or cancellation was based are withdrawn or dealt with without a finding of guilt in respect of the person;
  - (b) a finding of guilt for an offence on which the exclusion or cancellation was based is quashed or set aside;
  - (c) a finding in respect of a risk assessment on which the exclusion or cancellation was based is quashed or set aside, or otherwise ceases to have effect;
  - (d) any other change of circumstances that the central assessment unit considers should result in the person being permitted to make an application.

#### **18I—Determination of application—grant of NDIS worker check clearance**

- (1) Except where an NDIS worker check exclusion is issued under section 18J, or an application is refused under subsection (2), an application for a clearance made in accordance with this Part must be granted.
- (2) An application for a clearance may be refused if the central assessment unit is not satisfied that the applicant is, or will be, engaged to do NDIS work.
- (3) To avoid doubt, a refusal to grant a clearance under subsection (2) does not constitute an NDIS worker check exclusion.

#### **18J—Determination of application—issue of NDIS worker check exclusion**

- (1) The central assessment unit must issue an NDIS worker check exclusion to an applicant for a clearance if—
  - (a) the applicant is a disqualified person; or
  - (b) a risk assessment of the applicant is required and the risk assessment determines that the applicant poses a risk of harm to people with disability.
- (2) Subject to this Part, before issuing an exclusion to an applicant referred to in subsection (1)(b), the central assessment unit must notify the applicant in writing of the intention to issue the exclusion and notify the applicant that the applicant may make a submission to the central assessment unit within the period specified in the notice.

- (3) The central assessment unit must consider any submission made by an applicant within the specified period before finally deciding the application.

**18K—Certain persons presumed to pose risk of harm to people with disability**

- (1) The following provisions apply in relation to determination of an application for a clearance in respect of a person who has been found guilty of a presumptive disqualification offence:

- (a) the person will be presumed to pose a risk of harm to people with disability;
- (b) the central assessment unit need not consider or assess any further information in relation to the application;
- (c) the central assessment unit must, for the purposes of section 18J, determine that the person poses a risk of harm to people with disability unless the person satisfies the central assessment unit that—
  - (i) the circumstances of the presumptive disqualification offence committed, or alleged to have been committed, by the person are such that the offence should be disregarded in determining whether the person poses a risk of harm to people with disability; or
  - (ii) such exceptional circumstances exist in relation to the person that the person does not appear, or no longer appears, to pose a risk of harm to people with disability.

- (2) Nothing in this section limits section 18H.

**18L—Notice of grant of NDIS worker check clearance or issue of NDIS worker check exclusion**

- (1) The grant of an NDIS worker check clearance, or the issue an NDIS worker check exclusion, must be by notice in writing and must comply with any requirements set out in the regulations for the purposes of this subsection.
- (2) Subject to this Act, notice of a decision to issue an exclusion must set out the reasons for the decision and any right to seek a review of the decision under this Part.
- (3) The central assessment unit may give written notice of the issue of an exclusion to an applicant to any person that the central assessment unit reasonably believes to be a notifiable person in relation to the applicant.

### Division 3—Risk assessment

#### 18M—Nature of risk assessment

- 5
- (1) A risk assessment of a person for the purposes of this Part is an assessment and determination by the central assessment unit as to whether the person poses a risk of harm to people with disability.
- (2) For the purposes of this Part, a reference to a *risk of harm to people with disability* is to be interpreted in accordance with the following principles:
- 10
- (a) the risk of harm must be a real and appreciable risk of harm;
- (b) the risk of harm does not need to be likely or significant;
- (c) the risk of harm need not arise from recent events.
- (3) In this section—
- harm* includes—
- 15
- (a) any detrimental effect on a person's physical, psychological, emotional or financial wellbeing (*personal harm*); and
- (b) non-consensual or inappropriate conduct of a sexual nature with or towards a person (whether or not that conduct poses a risk of personal harm).

#### 18N—Requirement for risk assessment

- 20
- (1) A risk assessment of an applicant for, or the holder of, a clearance is required in the following circumstances:
- 25
- (a) if the applicant or holder is a presumptively disqualified person;
- (b) in the circumstances prescribed by the regulations for the purposes of this paragraph;
- (c) in such other circumstances as the central assessment unit may determine.
- (2) A risk assessment of an applicant for a clearance is required at the time of application if there are circumstances at the time of application that require a risk assessment.
- 30
- (3) A risk assessment of the holder of a clearance is required if the central assessment unit becomes aware that there are circumstances that require a risk assessment.



## 18O—Matters to be considered in risk assessment

The central assessment unit is to consider the following for the purposes of a risk assessment:

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

## Division 4—Duration and termination of NDIS worker check clearances and exclusions

### 18P—Duration of NDIS worker check clearance

- (1) A clearance remains in force (unless sooner cancelled) for a period of 5 years starting from whichever of the following start dates is applicable in the circumstances:
  - (a) if the applicant is not the holder of a clearance under this Part or a corresponding law when the application for the clearance is granted, the start date is the date on which the application for the clearance is granted;
  - (b) if the application is granted while the applicant is the holder of a clearance under this Part or a corresponding law, the start date is the date on which the existing clearance expires.
- (2) However, the central assessment unit may extend the period for which a clearance remains in force for a period of up to 6 months after the clearance would otherwise have expired if the holder of the clearance has made a valid application for a clearance under this Part or a corresponding law before the clearance expired and that application has not yet been determined.

- (3) If the period for which a clearance remains in force is extended under subsection (2), the clearance will be taken to have remained in force from the original expiry date until the extension takes effect.
- (4) Despite a provision of this or any other Act, the following arrangements apply for the purpose of facilitating alignment of the periods for which a clearance granted to a person under this Part and a working with children check conducted under the *Child Safety (Prohibited Persons) Act 2016* are in force:
- (a) a clearance may, at the discretion of the central assessment unit and with the agreement of the applicant, be granted so as to be in force for a period of less than 5 years;
  - (b) the period for which a clearance is in force may be shortened after the clearance is granted at the discretion of the central assessment unit and on the application of the holder of the clearance;
  - (c) the holder of a clearance may, with the approval of the central assessment unit, apply for a new clearance earlier than 3 months before the expiry of the clearance;
  - (d) the central assessment unit may approve a reduction in the fee payable, or a refund of part of any fee paid, to reflect any reduction in the period for which a clearance is or is to be in force.

### **18Q—Duration of NDIS worker check exclusion**

- (1) An exclusion issued to a disqualified person remains in force indefinitely.
- (2) An exclusion issued to person other than a disqualified person remains in force (unless sooner cancelled) for a period of 5 years starting from the issue of the exclusion.

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

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

Maximum penalty: \$50 000.

- (2) In this section—

*relevant change of particulars*, in relation to a person, means—

- (a) a change in the person's name, residential address or contact details; or
- (b) the use of another name or names by the person; or
- (c) a change of employer by the person; or
- (d) any other change declared by the regulations to be included in the ambit of this definition.

### **18S—Suspension of NDIS worker check clearance**

- 5
- (1) The central assessment unit may, by written notice to the holder of a clearance, suspend the clearance if of the opinion that there is a reasonable likelihood that a risk assessment of the holder will determine that the holder poses a risk of harm to people with disability.
- 10
- (2) The central assessment unit may give written notice of the suspension of a clearance to any person that the central assessment unit reasonably believes to be a notifiable person in relation to the holder of the clearance.
- (3) The suspension of a clearance ceases to have effect—
- (a) on notification in writing by the central assessment unit to the holder that the suspension is revoked; or
- (b) if the clearance is cancelled,
- 15
- whichever occurs first.

### **18T—Cancellation of NDIS worker check clearance**

- 20
- (1) The central assessment unit must cancel the clearance of a person if the central assessment unit becomes aware that the person is a disqualified person, or a risk assessment determines that the person poses a risk of harm to people with disability.

**Note—**

See also section 18K.

- 25
- (2) Without limiting subsection (1) or section 18X, the central assessment unit may cancel a clearance for any of the following reasons:
- (a) the central assessment unit is not satisfied that the person is or will be engaged to do NDIS work;
- (b) the clearance was granted pursuant to an application that was not valid;
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- (c) the clearance was granted because of a mistake and should not have been granted.
- 35
- (3) If the central assessment unit proposes to cancel a clearance other than because the person is a disqualified person, the central assessment unit must notify the person in writing of the proposed cancellation and that the person may make a submission to the central assessment unit within the period specified in the notice.
- (4) The central assessment unit must consider any submission made by the person within the specified period before finally deciding whether to cancel the clearance.
- 40
- (5) The central assessment unit must notify the holder of a clearance in writing of the central assessment unit's decision to cancel the clearance.

(6) Subject to this Part, notice of the decision must set out the reasons for the cancellation and any right to seek a review of the decision under this Part.

(7) The central assessment unit may give written notice of the cancellation of a clearance to any person that the central assessment unit reasonably believes to be a notifiable person in relation to the holder of the clearance.

### **18U—Cancellation of NDIS worker check clearance at request of holder**

(1) The holder of a clearance may at any time request cancellation of the clearance by notice in writing to the central assessment unit in the form approved by the central assessment unit.

(2) The central assessment unit must, as soon as practicable after receiving the request, cancel the clearance except in the following circumstances (and must refuse to cancel the clearance in those circumstances):

(a) the clearance, or a clearance held by a person under a corresponding law, is suspended;

(b) the central assessment unit is undertaking or is proposing to undertake a risk assessment of the holder.

(3) The central assessment unit may give written notice of the cancellation of a clearance under this section to any person that the central assessment unit reasonably believes to be a notifiable person in relation to the holder of the clearance.

## **Division 5—Information gathering and sharing**

### **Subdivision 1—Information gathering**

#### **18V—Court to provide notice of certain findings of guilt to central assessment unit**

A court that finds a person guilty of a disqualification offence or presumptive disqualification offence must ensure that the prescribed information relating to the finding of guilt is provided, in accordance with the regulations, to the central assessment unit.

#### **18W—Commissioner of Police to provide information to central assessment unit on charging of certain persons**

Without limiting any other Act or law that requires or authorises the Commissioner of Police to disclose information, the Commissioner of Police must ensure that, if a police officer lays a charge of a disqualification offence or presumptive disqualification offence against a person, the prescribed information relating to the charge is provided to the central assessment unit as soon as is reasonably practicable after the person is charged.

**18X—Power to require information from applicant or clearance holder**

- 5
- (1) The central assessment unit may, by notice in writing to an applicant for a clearance or the holder of a clearance, request the applicant or holder to provide relevant information about the person for an NDIS purpose.
- 10
- (2) The central assessment unit may terminate an application for a clearance or cancel a clearance if the applicant or holder fails, without reasonable excuse, to provide requested information within the period required for compliance with the request (unless the central assessment unit has withdrawn the request).
- 15
- (3) The period required for compliance with a request for information is the period of not less than 7 days specified by the central assessment unit in the request (however the central assessment unit may extend and further extend the period required for compliance with the request).
- 20
- (4) The central assessment unit must, as soon as practicable after terminating an application or cancelling a clearance under this section, give written notice of the termination or cancellation to the applicant or holder of the clearance.
- 25
- (5) The central assessment unit may give written notice of the termination of an application or cancellation of a clearance under this section to any person that the central assessment unit reasonably believes to be a notifiable person in relation to the applicant or holder.

**18Y—Power to require information from other persons**

- 30
- (1) The central assessment unit may, by notice in writing, for the purposes of—
- (a) determining an application for a clearance or a risk assessment of an applicant or the holder of a clearance; or
- (b) a review of a decision in accordance with this Part,
- 35
- require a specified person to provide to the central assessment unit within a specified period such information or documents in their possession as may be relevant to an assessment of whether a specified person poses a risk of harm to people with disability.
- 40
- (2) If a person fails to comply with a requirement under subsection (1), the central assessment unit may, by further notice in writing served on the person (an *enforcement notice*), direct the person to comply with a notice under subsection (1) within the period (being not less than 28 days) specified in the notice.
- (3) The central assessment unit may revoke an enforcement notice at any time.

- (4) A person who fails, without reasonable excuse, to comply with an enforcement notice is guilty of an offence.

Maximum penalty: \$50 000.

- (5) If documents are given to the central assessment unit under this section, the central assessment unit—

- (a) may take possession of, and make copies of or take extracts from, the documents; and
- (b) may keep possession of the documents for such period as is reasonably necessary; and
- (c) during that period must permit them to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the central assessment unit.

## **Subdivision 2—Information sharing and use**

### **18Z—Central assessment unit may disclose etc information with other jurisdictions**

- (1) Despite a provision of this or any other Act or law, the central assessment unit is authorised to receive and make use of information relevant to the functions of the central assessment unit under this Part from any person or body in this or any other jurisdiction.
- (2) Despite a provision of this or any other Act or law, the central assessment unit is authorised to disclose information (not being information classified by the Commissioner of Police as criminal intelligence) in the possession of the central assessment unit to a prescribed person or body in another State or Territory for an NDIS purpose.
- (3) In this section—

*prescribed person or body* means—

- (a) a person or body whose official function consists of or includes the screening of persons who work with people with disability (however described); or
- (b) any other person or body prescribed by the regulations for the purposes of this paragraph.

### **18ZA—Access to police information**

- (1) The Commissioner of Police is authorised to disclose the following information for the purpose of the use of the information in assessing and determining whether a person who engages or proposes to engage in NDIS work poses a risk of harm to persons with disability:
- (a) information relating to any matter that may cause a person to be a disqualified person or require a risk assessment of a person under this Part or a corresponding law;

- (b) information relating to the criminal history of a person;
- (c) without limiting a preceding paragraph, information relating to the circumstances of an offence or other matter disclosed under this section.

5 (2) The disclosure of information under this section is limited to disclosure to any of the following:

- (a) the central assessment unit;
- (b) an interstate screening agency;
- (c) the Australian Criminal Intelligence Commission;
- 10 (d) a law enforcement agency of the Commonwealth or another State or Territory.

15 (3) A person to whom information is disclosed under this section may disclose that information to an interstate screening agency for the purposes of the use of the information in assessing and determining whether a person who engages or proposes to engage in NDIS work poses a risk of harm to persons with disability.

20 (4) Information relating to a person's criminal history may be disclosed under this section whether or not the information relates to offences that cause or may cause the person to be a disqualified person or require a risk assessment of the person under this Part or a corresponding law.

25 (5) This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record, of persons may be disclosed apart from this Part.

(6) This section does not limit the powers of the Commissioner of Police to disclose relevant information as an authorised person under this Part.

(7) In this section—

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

### **18ZB—Provision of information to central assessment unit**

35 (1) Despite a provision of this or any other Act or law, a person or body (including, to avoid doubt, a State authority or public sector employee within the meaning of the *Public Sector Act 2009*) may provide to the central assessment unit any information that the person or body reasonably believes is relevant to the functions of the central assessment unit under this Part.

40 (2) A person or body incurs no civil or criminal liability in respect of the provision of information to the central assessment unit in good faith and without negligence under this section.

### **18ZC—Provision of information to NDIS employers and participants**

Without limiting any other provision of this Part, the central assessment unit may provide the following information about a person to an NDIS employer or participant who engages or proposes to engage the person to do NDIS work:

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

### **18ZD—Power to retain information etc indefinitely**

- (1) The central assessment unit may keep information, documents or other records received by the central assessment unit under this Part indefinitely (however, nothing in this subsection requires the central assessment unit to do so).
- (2) The central assessment unit may, in accordance with any requirements set out in the regulations, dispose of information, documents or other records received by the central assessment unit under this Part.

### **Subdivision 3—Miscellaneous**

#### **18ZE—Notification by reporting bodies of conduct requiring risk assessment**

- (1) A reporting body must notify the central assessment unit of the name and other identifying particulars of any person against whom the reporting body has made a finding that the person has engaged in conduct that constitutes circumstances prescribed by the regulations as requiring a risk assessment of the person.
- (2) Subsection (1) does not apply in relation to findings made before the commencement of this section (however, a reporting body may, but need not, notify the central assessment unit of any such finding made before the commencement of this section).
- (3) A notification under subsection (1) must be made in a manner and form determined by the central assessment unit.
- (4) A reporting body may amend or withdraw a notification under this section at any time by notice in writing to the central assessment unit.



(5) The regulations may make provision—

(a) requiring the provision by reporting bodies of further particulars of any conduct in respect of which a finding is notified under this section; or

(b) requiring the keeping of records by reporting bodies of information about findings required to be notified under this section.

(6) In this section—

*reporting body* means—

(a) a State authority that is prescribed by the regulations for the purposes of this section; or

(b) a registration or other licensing authority that is constituted under an Act and that is prescribed by the regulations for the purposes of this section; or

(c) any other employer or professional or other body that supervises the conduct of an employee and that is prescribed by the regulations for the purposes of this section.

#### **18ZF—Information sharing for national register or database**

Despite a provision of this or any other Act or law, the central assessment unit may disclose information obtained in the operation or administration of this Part to an authorised person for the purpose of providing relevant information for entry in a national register or database established under the NDIS Act.

#### **18ZG—Information sharing for research, monitoring and auditing purposes**

Despite a provision of this or any other Act or law, the central assessment unit may disclose information obtained in the operation or administration of this Part to an authorised person for the purpose of providing relevant information for use for the purposes of research into the operation of a relevant law, or auditing of compliance with such laws.

#### **18ZH—Disclosure of information about offences**

(1) An authorised person may disclose to a law enforcement agency of the State or any other jurisdiction (including a jurisdiction outside Australia) any information obtained as a result of the exercise of a function under this Part that indicates that a relevant offence may have been committed or that constitutes evidence of a relevant offence.

(2) In this section—

*relevant offence* means a disqualification offence or presumptive disqualification offence, or any other offence prescribed by the regulations for the purposes of this definition.

### 18ZI—Disclosure of information to prevent significant harm

5           Despite a provision of this or any other Act or law, an authorised person may disclose to an appropriate person or body any information obtained in the operation or administration of this Part if there are reasonable grounds to suspect that there is a risk of significant harm to a person with disability, or to a child or other vulnerable person, or to a class of such persons, and the disclosure is reasonably necessary to prevent that harm.

## Division 6—Review of decisions by South Australian Civil and Administrative Tribunal

### 18ZJ—Review of decisions by South Australian Civil and Administrative Tribunal

- 15           (1) The South Australian Civil and Administrative Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of a reviewable decision.
- 20           (2) Subject to this section, an application for review of a reviewable decision may be made to the South Australian Civil and Administrative Tribunal within 14 days after the applicant receives notice of the relevant decision (or such longer period as the Tribunal may allow).
- (3) An application for review of a decision to suspend a clearance cannot be made until the suspension has been in force for at least 6 months.
- (4) The South Australian Civil and Administrative Tribunal may only allow an extension of time under subsection (2) if satisfied that—
- 25                 (a) special circumstances exist; and
- (b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.
- (5) In this section—
- 30                 ***non-reviewable decision***—the following decisions are non-reviewable decisions:
- (a) a decision to issue an exclusion, or to cancel a clearance, where the applicant or holder is a disqualified person;
- (b) a decision to issue an exclusion, or to cancel a clearance, where the applicant or holder is a presumptively disqualified person as a result of there being pending criminal charges against the person;
- 35                   (c) any other decision under this Part of a kind declared by the regulations to be included in the ambit of this definition;
- reviewable decision***—the following decisions (other than a decision that is a non-reviewable decision) are reviewable decisions:
- 40                   (a) a decision to issue an exclusion;

- (b) a decision to terminate an application for a clearance;
- (c) a decision to suspend a clearance;
- (d) a decision to cancel a clearance (other than a cancellation at the request of the holder of the clearance);
- 5 (e) any other decision under this Part of a kind declared by the regulations to be included in the ambit of this definition.

## **Division 7—Miscellaneous**

### **18ZK—Fee payable where volunteer undertakes paid employment**

- 10 (1) If—
  - (a) a clearance is granted in respect of a person; and
  - (b) the person satisfies the central assessment unit that the person is a volunteer and so pays no fee in relation to the clearance; and
  - 15 (c) the person uses that clearance to perform NDIS work other than as a volunteer,

the person must, unless the fee is waived by the central assessment unit, pay to the central assessment unit the prescribed fee.

  - 20 (2) A payment under subsection (1) must be made as soon as is reasonably practicable (and in any case within 28 days) after the person commences NDIS work other than as a volunteer.
  - (3) A person who fails to comply with subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.
  - 25 (4) However, a failure to comply with subsection (1) does not affect the validity of a clearance.

### **18ZL—Effect of Part on other rights and procedures**

- 30 (1) Subject to this section, nothing in this Part affects any statutory right that an employee may have in relation to employment or termination of employment.
- (2) However, any court or tribunal exercising jurisdiction with respect to any such right must have regard to the results of any determination of an application for a clearance or risk assessment carried out under this Part in connection with the work concerned and the welfare of people with disability as the paramount consideration in that determination or assessment.
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- 5 (3) Despite a provision of any other Act or law, the South Australian Employment Tribunal and any other court or tribunal will be taken not to have jurisdiction to order the payment of damages or compensation for any removal from employment of a person in connection with the operation of this Part.

### 18ZM—Limitation of liability

Except as is specifically provided in this Part, no civil or criminal liability attaches to—

- 10 (a) the central assessment unit or any other person exercising powers and functions under this Part; or  
(b) the Crown,

in respect of an act or omission in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this Part.

### 18ZN—False or misleading statements

15 A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Part.

20 Maximum penalty: \$20 000.

### 18ZO—Evidentiary provision

In any legal proceedings, a certificate issued by the central assessment unit and certifying that, on a specified day or within a specified period—

- 25 (a) a specified person was, or was not, the holder of an NDIS worker check clearance; or  
(b) a specified person was, or was not, the subject of an NDIS worker check exclusion; or  
30 (c) a specified person had, or had not, made an application for an NDIS worker check clearance; or  
(d) an NDIS worker check clearance held by a specified person was, or was not, suspended; or  
(e) an NDIS worker check clearance held by a specified person was, or was not, cancelled,

35 must be accepted as proved in the absence of evidence to the contrary.

### 18ZP—Failure to give notice of decisions

A failure to give notice of a decision as required by this Part does not, of itself, affect the validity or effect of the decision.

**18ZQ—Central assessment unit may seek external advice**

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- (1) Despite a provision of this or any other Act or law, the central assessment unit may, in relation to any decision or determination under this Part, seek such medical, legal or other professional advice as it thinks necessary or appropriate to make the decision or determination.
  - (2) Without limiting subsection (1), the regulations may provide for the establishment of an advisory panel to advise or assist the central assessment unit in the performance of its functions under this Part.

10 **21—Amendment of section 19—Interpretation**

- (1) Section 19(1)—before the definition of *excluded person* insert:

*assessable information* means information declared by the regulations to be assessable information for the purposes of this Part;

- (2) Section 19(1)—after the definition of *prohibition notice* insert:

15 *records management system* means the records management system established under section 22D;

- (3) Section 19(1)—after the definition of *screening check* insert:

*unique identifier*, in relation to a person, means the unique identifier issued or recognised in respect of the person under the regulations.

20 **22—Insertion of sections 22A to 22E**

After section 22 insert:

**22A—Steps employers must take before employing person in prescribed position**

- 25 (1) An employer must not employ a person in a prescribed position unless the employer has—
- (a) obtained from the person their full name, address, date of birth and unique identifier; and
  - (b) verified, in accordance with the regulations, that—
    - 30 (i) a screening check has been conducted in relation to the person within the preceding 5 years; and
    - (ii) the person is not a prohibited person; and
  - (c) provided to the central assessment unit—
    - 35 (i) the name, address, telephone number and email address of the business at which the person is to be employed; and
    - (ii) the name and contact details of the person who verified the matters referred to in paragraph (b).

Maximum penalty: \$50 000.

- (2) Subsection (1) does not apply in relation to a prospective employee who is an excluded person.

**22B—Employer to ensure screening check conducted at least every 5 years**

- (1) An employer must not continue to employ a person in a prescribed position unless a screening check has been conducted in relation to the person within the preceding 5 years.

Maximum penalty: \$50 000.

- (2) An employer who employs a person in a prescribed position must, at least once in every 5 year period, verify, in accordance with the regulations, that—

- (a) a screening check has been conducted in relation to the person within the preceding 5 years; and  
(b) the person is not a prohibited person.

Maximum penalty: \$50 000.

- (3) Subsections (1) and (2) do not apply in relation to an employee who is an excluded person.

**22C—Employer to advise central assessment unit of certain information**

- (1) The employer of a person employed in a prescribed position must notify the central assessment unit if—

- (a) the employer becomes aware of any assessable information in relation to the person; or  
(b) the employer becomes aware that the person is prohibited from working with people with disability under a law of the Commonwealth, or of another State or Territory.

- (2) A notice under subsection (1)—

- (a) must be given in a manner and form determined by the central assessment unit; and  
(b) must be given as soon as is reasonably practicable after the employer becomes aware of the relevant matter; and  
(c) must contain the information required by the regulations for the purposes of this paragraph.

- (3) An employer must not refuse or fail to comply with subsection (1).

Maximum penalty: \$25 000.

- (4) Subsection (1) does not apply in relation to an employee who is an excluded person.

**22D—Records management system**

- (1) Subject to this section, the Registrar must establish and maintain a records management system for the purposes of this Act.

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- (2) The records management system must include the information required by the regulations, and may contain such information as the Registrar thinks appropriate.
- (3) The Registrar must correct an entry in the records management system that is not, or has ceased to be, correct.
- (4) The Registrar must ensure that the records management system is such as to enable a person to inspect the records management system in accordance with the regulations.
- 10 (5) The Registrar must ensure that the records management system is such as to enable a person to obtain, in accordance with any requirements set out in the regulations, evidence of the fact that the person has inspected or interrogated the records management system.
- (6) The Registrar must ensure that the records management system is such as to enable a person to whom a unique identifier is issued to obtain without charge that identifier, or evidence of that identifier.
- 15 (7) The records management system under this Part may be combined with the records management system under the *Child Safety (Prohibited Persons) Act 2016*.

#### **22E—Inspection of records management system**

- 20 (1) The Registrar must ensure that the central assessment unit has direct and unrestricted access to the records management system for the purposes of its functions under this Act.
- (2) The records management system may be inspected (without charge) by any person.
- 25 (3) A person who interrogates the records management system under this Act must be provided with evidence of that fact in accordance with the regulations.
- (4) The regulations may make further provision in respect of inspection of the records management system (including provisions limiting access to specified parts of the system, or to information of a specified kind).
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#### **23—Amendment of section 23—Regulations to set out scheme for screening checks**

- (1) Section 23(2)—after paragraph (d) insert:

35 (da) recognising NDIS worker check clearances or NDIS worker check exclusions (both within the meaning of Part 5A) as a screening check or prohibition notice for the purposes of this Part;

- (2) Section 23(2)—after paragraph (e) insert:

40 (ea) imposing requirements relating to the provision of information to the central assessment unit, and the disclosure and use of such information;

## 24—Amendment of section 33—Regulations

- (1) Section 33(2)(c)—delete "\$10 000" and substitute:

\$50 000

- (2) Section 33(3)(c)—after "enactment" insert:

or amendment

## 25—Insertion of Schedule 2

After Schedule 1 insert:

### **Schedule 2—Transitional provisions relating to NDIS worker check clearances**

#### **1—Interpretation**

- (1) In this Schedule, unless the contrary intention appears—

*assessment of relevant history* means an assessment of relevant history conducted under the *Disability Services Act 1993* (as in force immediately before the commencement of this section) by an authorised screening unit;

*authorised screening unit* means a person or body who was, at the relevant time, an authorised screening unit within the meaning of the *Disability Services (Assessment of Relevant History) Regulations 2014*;

- (2) Unless the contrary intention appears, a term or phrase used in this Schedule that is defined in Part 5A of the Act has the same meaning as in that Part.

#### **2—Certain applications for assessments of relevant history taken to be application for NDIS worker check clearance**

- (1) This section applies to an application for an assessment of relevant history made to an authorised screening unit before the commencement of this clause but not determined before such commencement.
- (2) An application to which this section applies will, for the purposes of the Part 5A of the Act, be taken to be an application to the central assessment unit for an NDIS worker check clearance under that Part.

#### **3—Recognition of certain assessments of relevant history as NDIS worker check clearance**

- (1) An assessment of relevant history clearing a specified person to work with people with disability (however described) conducted within the 3 years preceding the commencement of this clause will be taken to be an NDIS worker check clearance in respect of the person granted under Part 5A of the Act.



(2) However, this section ceases to apply to an NDIS worker check clearance referred to in subclause (1) in respect of a person if any of the following occurs:

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(a) the person becomes a prohibited person (within the meaning of Part 6) or a disqualified or presumptively disqualified person; or

(b) an NDIS worker check clearance is conducted in relation to the person under Part 5A of the Act, or under a law of the Commonwealth or another State or Territory; or

10

(c) 3 years elapses after the date on which the assessment of relevant history to which the NDIS worker check clearance relates was undertaken,

and the NDIS worker check clearance will, by force of this clause, be cancelled.