

South Australia

## **Disability Inclusion Act 2018**

An Act to promote the full inclusion in the community of people with disability; to assist people with disability to achieve their full potential as equal citizens; to promote improved access to mainstream supports and services by people with disability; to provide for NDIS worker check clearances and exclusions for the purposes of the National Disability Insurance Scheme; to provide for the screening of persons who want to work or volunteer with people with disability and to prohibit those who pose an unacceptable risk to people with disability from working or volunteering with them; to provide for a community visitor scheme; to provide for responsibilities of the State during and following the transition to the National Disability Insurance Scheme; and for other purposes.

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## Legislative history

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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 *Disability Inclusion Act 2018*.

### 2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

### 3—Interpretation

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

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

**Chief Executive** means the Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

**community visitor** means a community visitor appointed under Part 7;

**disability**, in relation to a person, includes long-term physical, psycho-social, intellectual, cognitive, neurological or sensory impairment, or a combination of any of these impairments, which in interaction with various barriers may hinder the person's full and effective participation in society on an equal basis with others;

**disability access and inclusion plan**, in relation to a State authority, means the disability access and inclusion plan, as in force from time to time, prepared by the State authority under section 16;

**National Disability Insurance Scheme** or **NDIS** means the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

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

**State authority** means—

- (a) an administrative unit (within the meaning of the *Public Sector Act 2009*); or
- (b) an agency or instrumentality of the Crown, or agency or instrumentality of the Crown of a class, prescribed by the regulations for the purposes of this paragraph; or

- (c) a local council constituted under the *Local Government Act 1999*; or
- (d) any other person or body, or person or body of a class, declared by the regulations to be included in the ambit of this paragraph for the purposes of this Act,

but does not include a person or body, or person or body of a class, declared by the regulations to be excluded from the ambit of this definition for the purposes of this Act;

**State Disability Inclusion Plan** means the State Disability Inclusion Plan prepared under section 13, as in force from time to time;

**Tribunal** means the South Australian Civil and Administrative Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) For the purposes of this Act, a reference to **mainstream supports and services** will be taken to be a reference to supports and services (however described) that are not NDIS-funded supports and services.

#### **4—Interaction with other laws**

Except where the contrary intention appears, the provisions of this Act are in addition to, and do not derogate from, any other Act or law.

#### **5—Act to bind, and impose criminal liability on, the Crown**

- (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) The Crown is liable for an offence against this Act.
- (3) If the Crown is guilty of an offence against this Act, the penalty that may be imposed on the Crown is the penalty that may be imposed on a body corporate.

#### **6—Part 2 not to create legally enforceable rights etc**

Part 2 of this Act, the State Disability Inclusion Plan and disability access and inclusion plans are an expression of policy and do not in themselves—

- (a) create legally enforceable rights or entitlements; or
- (b) affect existing rights or liabilities (whether of a substantive, procedural or other nature).

## **Part 2—Objects and principles**

#### **7—Act to support United Nations Convention on the Rights of Persons with Disabilities etc**

It is the intention of the Parliament of South Australia that, to such an extent as may be reasonably practicable, the operation, administration and enforcement of this Act is to support and further the principles and purposes of the *United Nations Convention on the Rights of Persons with Disabilities*, as well as any other relevant international human rights instruments affecting people with disability, as in force from time to time.

## 8—Objects

The objects of this Act include—

- (a) acknowledging that people with disability have the same human rights as other members of the community and that the State and the community have a responsibility to facilitate the exercise of those rights; and
- (b) promoting the independence and social and economic inclusion of people with disability; and
- (c) providing safeguards in relation to the delivery of all supports and services for people with disability; and
- (d) providing a framework to support a whole of Government approach to improving the inclusion of all South Australians with disability in all areas of life in this State; and
- (e) articulating and facilitating the roles of the State during and following the transition to the National Disability Insurance Scheme.

## 9—Principles

- (1) The following principles are to be observed in the operation, administration and enforcement of this Act:
  - (a) people with disability have the same fundamental human rights and responsibilities, and the same right to autonomy, as other members of the community;
  - (b) people with disability have an inherent right to respect for their worth and dignity as individuals;
  - (c) people with disability have the right to participate in and contribute to social and economic life and should be supported to develop and enhance their ability to do so;
  - (d) people with disability have the right to realise their physical, social, sexual, reproductive, emotional and intellectual capacities;
  - (e) people with disability have the right to make decisions that affect their lives including decisions involving risk to the full extent of their capacity to do so;
  - (f) in cases where a person with disability wants or requires assistance in making a decision, supported decision-making is to be preferred over substituted decision-making;
  - (g) people with disability have the right to access information in a way that is appropriate for their disability and cultural background, to enable them to make informed choices;
  - (h) people with disability have the right to respect for their cultural or linguistic diversity, age, gender, sexual orientation and religious beliefs;
  - (i) people with disability have the same rights to privacy and confidentiality as other members of the community;
  - (j) people with disability have the right to live free from neglect, abuse and exploitation;

- (k) people with disability have the same rights as other members of the community to pursue complaints and access justice;
  - (l) the crucial role of families, carers and other significant persons in the lives of people with disability, and the importance of preserving relationships with families, carers and other significant persons, is to be acknowledged and respected;
  - (m) people with disability are free to associate with families, carers and other persons as they see fit, and should be supported where necessary to engage in family, social and friendship activities;
  - (n) the needs of children with disability as they develop, and their rights as equal members of the community, are to be acknowledged and respected;
  - (o) the changing abilities, strengths, goals and needs of people with disability as they age are to be acknowledged and respected.
- (2) In addition to the principles set out in any other provision of this section, the following risks and principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to women with disability:
- (a) many women with disability face multiple disadvantages and are potentially more vulnerable to risk of abuse or exploitation;
  - (b) the provision of mainstream supports and services to women with disability should recognise and seek to address such disadvantage and vulnerability, and should be informed by working in partnership with women with disability to enhance their lives.
- (3) In addition to the principles set out in any other provision of this section, the following risks and principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to children with disability:
- (a) children with disability have the right to a full life in conditions that ensure the child's dignity, promote self-reliance and facilitate the child's active and full participation in family, cultural and social life;
  - (b) decisions affecting children with disability under this Act should be child-centred;
  - (c) without limiting paragraph (b), the responsibilities, rights and duties of a parent or other person legally responsible for a child with disability must also be considered in relation to giving appropriate direction and guidance for the child's welfare;
  - (d) the views of a child with disability will be listened to, and they should be given developmentally appropriate opportunities to participate in decisions that affect them;
  - (e) children with disability are more vulnerable to risk of abuse or exploitation;
  - (f) the developmental needs of children with disability must be taken into account, with particular focus on critical periods in their childhood and adolescence;



- (g) the provision of mainstream supports and services to children with disability should recognise and seek to address such risks and vulnerabilities, and should be informed by working in partnership with children with disability, and in consultation with their parents and other persons responsible for them, to enhance their lives.
- (4) In addition to the principles set out in any other provision of this section, the following risks and principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to Aboriginal and Torres Strait Islander people with disability:
- (a) Aboriginal and Torres Strait Islander people with disability have a right to respect and acknowledgment as the first peoples of Australia and for their unique history, culture and kinship relationships and connection to their traditional land and waters;
  - (b) many Aboriginal and Torres Strait Islander people with disability face multiple disadvantages;
  - (c) the provision of mainstream supports and services to Aboriginal and Torres Strait Islander people with disability should recognise and seek to address such disadvantage, and should be informed by working in partnership with Aboriginal and Torres Strait Islander people with disability to enhance their lives.
- (5) In addition to the principles set out in any other provision of this section, the following risks and principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to people with disability from culturally and linguistically diverse backgrounds:
- (a) cultural, language and other differences create barriers to providing supports and services to people with disability from culturally and linguistically diverse backgrounds;
  - (b) the provision of mainstream supports and services to people with disability from culturally and linguistically diverse backgrounds should recognise and seek to address those barriers, and should be informed by working in partnership with people with disability from culturally and linguistically diverse backgrounds, and in consultation with their communities, to enhance their lives.
- (6) Each person or body engaged in the administration, operation or enforcement of this Act must exercise their powers and perform their functions so as to give effect to the principles set out in this section.

## **Part 3—Administration**

### **10—Functions of Chief Executive**

- (1) The functions of the Chief Executive under this Act include—
- (a) preparing and publishing guidelines for the purposes of this Act; and
  - (b) preparing such reports as may be required under this Act or by the Minister; and

- (c) monitoring the extent to which the objects and principles of this Act are being achieved; and
  - (d) monitoring the extent to which the State Disability Inclusion Plan and the disability access and inclusion plans have been, or are being, implemented; and
  - (e) monitoring the compliance of State authorities with the requirements under Part 5; and
  - (f) making recommendations to the Minister in relation to the compliance of State authorities with the requirements under Part 5; and
  - (g) advising the Minister on any matters related to the operation, administration and enforcement of this Act; and
  - (h) such other functions as may be assigned to the Chief Executive under this or any other Act or by the Minister.
- (2) The Chief Executive has such powers as may be necessary or expedient for the performance of the Chief Executive's functions.

### **11—Powers of delegation**

- (1) The Minister or Chief Executive may delegate a function or power (other than a prescribed function or power) under this Act to a specified person or body (including a person for the time being holding or acting in a specified office or position).
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Minister or Chief Executive (as the case requires) to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **12—Guidelines**

- (1) The Minister may—
- (a) publish guidelines in relation to the preparation and contents of disability access and inclusion plans; and
  - (b) publish such other guidelines as the Minister thinks appropriate for the purposes of this Act.
- (2) The Minister may vary, substitute or revoke guidelines under this section.
- (3) The Minister must cause guidelines under this section to be published on a website determined by the Minister.

## Part 4—State Disability Inclusion Plan

### 13—State Disability Inclusion Plan

- (1) There is to be a *State Disability Inclusion Plan*.
- (2) The State Disability Inclusion Plan is to be prepared by the Minister in accordance with this section.
- (3) The State Disability Inclusion Plan—
  - (a) must set out whole-of-government policies and measures for achieving the objects of this Act throughout the State (and, in particular, measures that further the goal of achieving full inclusion in the community, and the achievement of their full potential as equal citizens, of people with disability); and
  - (b) must provide for collaboration and coordination among State authorities and other entities in relation to the provision of mainstream supports and services to people with disability; and
  - (c) must contain such other provisions as may be required by the regulations.
- (4) In preparing the State Disability Inclusion Plan, the Minister—
  - (a) must, in accordance with any requirements set out in the regulations, consult with people with disability and persons or bodies representing the interests of people with disability (and may consult with any other persons or bodies that the Minister thinks fit); and
  - (b) must call for submissions from members of the public in accordance with a scheme set out in the regulations (and must have regard to the submissions made in response to the call); and
  - (c) must comply with any other requirements prescribed by the regulations.
- (5) The Minister may vary the State Disability Inclusion Plan at any time in accordance with any requirements set out in the regulations for the purposes of this subsection.
- (6) The Minister must cause the State Disability Inclusion Plan, and any variation of the plan, to be published in the Gazette.
- (7) The State Disability Inclusion Plan, and any variation of the plan, has effect from the day on which it is published in the Gazette.
- (8) The Minister must, within 6 sitting days after the State Disability Inclusion Plan or any variation is published in the Gazette, cause a copy of the State Disability Inclusion Plan, or the plan as varied, (as the case requires) to be laid before both Houses of Parliament.
- (9) The Minister must publish the State Disability Inclusion Plan, and any variation of the plan, on a website determined by the Minister.
- (10) However, a failure to comply with a provision of this section does not affect the validity of the State Disability Inclusion Plan.

(11) Each prescribed person or body must, in carrying out its functions or exercising its powers, have regard to, and seek to give effect to, the State Disability Inclusion Plan (however, a prescribed person or body will be taken not to be in breach of this subsection if the State authority is acting in accordance with a requirement under this or any other Act or law).

(12) In this section—

*prescribed person or body* means—

- (a) each State authority; and
- (b) each public sector agency (within the meaning of the *Public Sector Act 2009*); and
- (c) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this paragraph.

#### **14—Annual report on operation of State Disability Inclusion Plan**

- (1) The Chief Executive must, on or before 31 December in each year, report to the Minister on the operation of the State Disability Inclusion Plan during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report from the Chief Executive, have copies of the report laid before both Houses of Parliament.

#### **15—Review of State Disability Inclusion Plan**

- (1) The Minister must cause a review of the State Disability Inclusion Plan to be undertaken at least once in each 4 year period, and a report on the review to be prepared and submitted to the Minister.
- (2) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

### **Part 5—Disability access and inclusion plans**

#### **16—Disability access and inclusion plans**

- (1) There is to be a *disability access and inclusion plan* for each State authority.
- (2) A disability access and inclusion plan is to be prepared by the relevant State authority in accordance with this section.
- (3) A disability access and inclusion plan—
  - (a) must set out the measures that the State authority intends to put in place to ensure that people with disability can access the mainstream supports and services provided by or on behalf of the State authority; and
  - (b) must explain how the State authority proposes to give effect to the objects and principles set out in Part 2; and
  - (c) must explain how the State authority proposes to give effect to the State Disability Inclusion Plan; and
  - (d) must include strategies to support people with disability in the following areas:

- (i) access to built environs, events and facilities;
  - (ii) access to information and communications;
  - (iii) addressing the specific needs of people with disability in its programs and services;
  - (iv) employment; and
  - (e) must contain such other provisions as may be required by the guidelines published under section 12(1)(a) or the regulations.
- (4) Subject to this section, in preparing a disability access and inclusion plan, a State authority—
  - (a) must comply with the guidelines published under section 12(1)(a); and
  - (b) must, in accordance with any requirements set out in the regulations, consult with people with disability and persons or bodies representing the interests of people with disability (and may consult with any other persons or bodies that the State authority thinks fit); and
  - (c) must call for submissions from members of the public in accordance with the scheme set out in the regulations (and must have regard to the submissions made in response to the call); and
  - (d) must comply with any other requirements prescribed by the regulations.
- (5) Despite a preceding subsection, a local council may, with the approval of the Minister and in accordance with any requirements set out in the regulations, prepare a single disability access and inclusion plan to be the disability access and inclusion plan for—
  - (a) that local council; and
  - (b) 1 or more specified local councils,(and the plan will, for the purposes of this Act, be taken to be the disability access and inclusion plan for each such council).
- (6) A State authority may vary its disability access and inclusion plan at any time in accordance with any requirements prescribed by the regulations.
- (7) A State authority must publish (in a format that is accessible to people with disability) its disability access and inclusion plan, and any variation of the plan, on a website determined by the State authority.

### **17—Annual report on operation of disability access and inclusion plan**

- (1) Each State authority must, on or before 31 October in each year, report to the Chief Executive on the operation of its disability access and inclusion plan during the preceding financial year (including a summary of the extent to which the disability access and inclusion plan has been implemented by the State authority).
- (2) The Chief Executive must, on or before 31 December in each year, provide to the Minister a report summarising the reports received under subsection (1) in respect of the preceding financial year.
- (3) A report under subsection (2) may be combined with a report under section 14(1).

- (4) The Minister must, within 6 sitting days after receiving a report from the Chief Executive under subsection (2), have copies of the report laid before both Houses of Parliament (and, if the report is combined with a report under section 14(1), then the requirement of this subsection will be satisfied on the report being laid before both Houses of Parliament in accordance with that section).

## **18—Review of disability access and inclusion plans**

- (1) A State authority must cause a review of its disability access and inclusion plan to be undertaken at least once in each 4 year period, and a report on the review to be prepared and submitted to the State authority.
- (2) The State authority must cause a copy of the report submitted under subsection (1) to be provided to the Minister as soon as is reasonably practicable after receiving the report.

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

### **Division 1—Preliminary**

#### **18A—Interpretation**

- (1) In this Part—

*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
- (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;

*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;
- (d) assessing and determining whether a risk assessment of a person is required under a relevant law;

- (e) ongoing monitoring of a person who holds a clearance or other authority under a relevant law for the purpose of determining whether the person requires a risk assessment or poses a relevant risk of harm;
- (f) administrative review (including internal review) of a decision under a relevant law;

**corresponding law** means—

- (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;

**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;

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

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

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

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

**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;

**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;

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

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

- (b) that the 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;

**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;

**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;

**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);

**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
- (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
- (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—

- (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
- (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



- (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
- (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—

- (a) this Act; or
- (b) a corresponding law; or
- (c) the NDIS Act; or
- (d) the *Child Safety (Prohibited Persons) Act 2016*; or
- (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.

- (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—
  - (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;
  - (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 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.
- (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—
  - (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
  - (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**

- (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).
- (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

- (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—

- (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 unit 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.
- (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**

- (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 18S(2) or 18W(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 of 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**

- (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:
  - (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—

  - (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

- (1) A risk assessment of an applicant for, or the holder of, a clearance is required in the following circumstances:
  - (a) if the applicant or holder is a presumptively disqualified person;
  - (b) in 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.
- (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—Suspension of NDIS worker check clearance**

- (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.
- (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,whichever occurs first.

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

- (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.

- (2) Without limiting subsection (1) or section 18W, 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;
  - (c) the clearance was granted because of a mistake and should not have been granted.
- (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.
- (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.

### **18T—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**

#### **18U—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.

#### **18V—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.

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

- (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.
- (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).
- (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).
- (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.
- (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.

#### **18X—Power to require information from other persons**

- (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,

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.

- (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**

### **18Y—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.

## 18Z—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.
- (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;
  - (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 who engages or proposes to engage in NDIS work poses a risk of harm to persons with disability.
- (4) Information relating to a person's criminal history may be disclosed under this section whether or not the information relates to offences that cause or may cause the person to be a disqualified person or require a risk assessment of the person under this Part or a corresponding law.
- (5) This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record, of persons may be disclosed apart from this 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—

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

## 18ZA—Provision of 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, 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.

- (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.

### **18ZB—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.

### **18ZC—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**

#### **18ZD—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.

### **18ZE—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.

### **18ZF—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.

### **18ZG—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.

### **18ZH—Disclosure of information to prevent significant harm**

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

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

- (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.
- (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—
  - (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—

***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;
- (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:

- (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);
- (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**

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

- (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
  - (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.
- (2) However, subsection (1) does not apply in relation to a person who performs NDIS work other than as a volunteer on less than 7 days in any 12 month period (whether or not the person also performs NDIS work on a volunteer basis during that period).
- (3) 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.
- (4) A person who fails to comply with subsection (1) is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (5) However, a failure to comply with subsection (1) does not affect the validity of a clearance.

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

- (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.
- (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.

### **18ZL—Limitation of liability**

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

- (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.

### **18ZM—False or misleading statements**

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.

Maximum penalty: \$20 000.

### **18ZN—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—

- (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
- (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,

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

### **18ZO—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.

### **18ZP—Central assessment unit may seek external advice**

- (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.

## ***Part 6—Screening of persons working with people with disability***

### ***Editorial note—***

*Part 6 had not come into operation at the date of the publication of this version.*

## 19—Interpretation

(1) In this Part—

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

**excluded person** means a person, or a person of a class, declared by the regulations to be an excluded person for the purposes of this definition;

**prescribed offence** means an offence, or offence of a class, prescribed by the regulations for the purposes of this Part;

**prescribed position** means—

- (a) a position in which a person works, or is likely to work, with people with disability; or
- (b) any other position, or a position of a class, prescribed by the regulations for the purposes of this definition;

**prohibition notice** means a notice prohibiting a specified person from working with people with disability issued to a person in accordance with the regulations;

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

**screening check**—see section 23(1);

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

(2) For the purposes of this Part, a reference to a person being **employed** will be taken to include a reference to a person who—

- (a) is a self-employed person; or
- (b) carries out work under a contract for services; or
- (c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
- (d) undertakes practical training as part of an educational or vocational course; or
- (e) carries out work as a volunteer; or
- (f) performs unpaid community work in accordance with an order of a court,

and a reference to an **employer**, **employee** or **employment** is to be construed accordingly.

## 20—Working with people with disability

For the purposes of this Act, a person **works with people with disability** if the person—

- (a) in the course of their employment provides a service, or undertakes an activity, of a kind prescribed by the regulations for the purposes of this section; or

- (b) *carries on a business in the course of which an employee provides a service, or undertakes an activity, of a kind referred to in paragraph (a) (whether or not the person themselves provides such a service, or undertakes such an activity).*

### **21—Certain persons prohibited from working with people with disability**

- (1) *The following persons (prohibited persons) are prohibited from working with people with disability:*
  - (a) *a person to whom a prohibition notice has been issued;*
  - (b) *a person who, under a law of the Commonwealth, or of another State or Territory, is prohibited from working with people with disability (however described);*
  - (c) *a person who has been found guilty of a prescribed offence committed as an adult.*
- (2) *Subsection (1)(c) applies in relation to a prescribed offence—*
  - (a) *whether the offence was committed before or after the commencement of this section; and*
  - (b) *whether the finding of guilt was made before or after the commencement of this section.*
- (3) *A person who works with a person with disability in contravention of subsection (1) is guilty of an offence.*  
*Maximum penalty: \$50 000 or imprisonment for 1 year.*
- (4) *An employer who employs, or continues to employ, a prohibited person in a prescribed position is guilty of an offence.*  
*Maximum penalty:*
  - (a) *in the case of a natural person—\$50 000 or imprisonment for 1 year; or*
  - (b) *in the case of a body corporate—\$120 000.*

### **22—Working with people with disability without current screening check prohibited**

- (1) *Subject to this section, a person must not work with people with disability unless a screening check has been conducted in relation to the person within the preceding 5 years.*  
*Maximum penalty:*
  - (a) *for a first or second offence—\$20 000;*
  - (b) *for a third or subsequent offence—\$50 000 or imprisonment for 1 year.*
- (2) *Subsection (1) does not apply to an excluded person.*

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

- (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—*
  - (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—*
  - (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.*
- (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.*
- (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.*
- (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**

- (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.*
- (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).*

### **23—Regulations to set out scheme for screening checks**

- (1) *The Governor may, by regulation, establish a scheme for the screening of persons working with, or who are to work with, people with disability (a **screening check**).*
- (2) *Without limiting the matters that may be the subject of regulations under this section, the regulations may make provisions—*
  - (a) *requiring that screening checks be undertaken by a specified person or body;*
  - (b) *exempting a specified person, or specified class of persons, from the operation of section 22(1) in specified circumstances (including, to avoid doubt, where an application for a screening check is not processed within a specified period);*

- 
- (c) *prescribing information, or classes of information, that may or must, or must not, be assessed in the course of a screening check;*
  - (d) *recognising working with children checks under the Child Safety (Prohibited Persons) Act 2016, or other assessments of a person's criminal or other history under any other Act, as a screening check for the purposes of this Part;*
  - (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;*
  - (e) *providing for, or limiting, procedural fairness to be afforded in the conduct of screening checks;*
  - (ea) *imposing requirements relating to the provision of information to the central assessment unit, and the disclosure and use of such information;*
  - (f) *imposing requirements in relation to the confidentiality of information;*
  - (g) *imposing requirements in respect of the keeping of records;*
  - (h) *providing for reviews of, or appeals against, decisions made in the course of a screening check;*
  - (i) *of an evidentiary nature relating to the operation of this Part.*
- (3) *Without limiting a preceding subsection, the regulations may make such provisions as may be necessary or appropriate to make the screening check scheme under this Part consistent with the working with children check scheme under the Child Safety (Prohibited Persons) Act 2016.*

## Part 6A—Restrictive practices

### Division 1—Preliminary

#### 23A—Application of Part

- (1) This Part applies to the use of restrictive practices by a prescribed NDIS provider in relation to a prescribed person or class of prescribed persons.
- (2) For the purposes of this Part, the following persons are ***prescribed NDIS providers***:
  - (a) a registered NDIS provider who uses, or is reasonably likely to use, restrictive practices in the course of delivering NDIS supports to an NDIS participant;
  - (b) any other registered NDIS provider, or registered NDIS provider of a class, prescribed by the regulations for the purposes of this paragraph;
  - (c) any other person, or person of a class, prescribed by the regulations for the purposes of this paragraph (being a person who provides services to NDIS participants but is not a registered NDIS provider).
- (3) For the purposes of this Part, the following persons are ***prescribed persons***:
  - (a) an NDIS participant;
  - (b) a person who receives NDIS supports;

- (c) any other person, or person of a class, prescribed by the regulations for the purposes of this paragraph.
- (4) Nothing in this Part authorises the use of restrictive practices other than in accordance with this Part.

## 23B—Interpretation

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

**Authorised Program Officer**, in respect of a prescribed NDIS provider, means a person authorised as an Authorised Program Officer in respect of the prescribed NDIS provider under section 23L;

**behaviour support plan**, in relation to a prescribed person, means—

- (a) a behaviour support plan for the prescribed person within the meaning of the NDIS Rules, as in force from time to time; or

**Note—**

A behaviour support plan under the NDIS Rules includes an interim behaviour support plan.

- (b) any other behaviour support plan or interim behaviour support plan (however described) prescribed by the regulations for the purposes of this paragraph;

**detention**—see section 23C;

**level 1 restrictive practice** means a restrictive practice (not being a restrictive practice consisting of or involving the detention of a person) declared by the regulations to be a level 1 restrictive practice;

**level 2 restrictive practice** means a restrictive practice, or combination of restrictive practices, (not being a restrictive practice consisting of or involving the detention of a person) declared by the regulations to be a level 2 restrictive practice;

**NDIA** means the National Disability Insurance Agency;

**NDIS participant** means a participant within the meaning of the *National Disability Insurance Scheme Act 2013*;

**NDIS Quality and Safeguards Commission** means the NDIS Quality and Safeguards Commission under the *National Disability Insurance Scheme Act 2013*;

**NDIS Rules** means—

- (a) the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*; or
- (b) if the rules referred to in paragraph (a) are revoked or replaced by rules made under the *National Disability Insurance Scheme Act 2013* dealing with restrictive practices—those rules,

as in force from time to time;

**NDIS supports** means supports within the meaning of the *National Disability Insurance Scheme Act 2013*;

**premises** includes a part of premises;

**prescribed NDIS provider**—see section 23A(2);



**prescribed person**—see section 23A(3);

**prohibited restrictive practices**—see section 23D;

**registered NDIS provider** has the same meaning as in the *National Disability Insurance Scheme Act 2013*;

**restrictive practice** means a regulated restrictive practice (within the meaning of the NDIS Rules);

**Note—**

Section 6 of the NDIS rules defines a regulated restrictive practice as follows:

- (a) seclusion, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted;
- (b) chemical restraint, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition;
- (c) mechanical restraint, which is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes;
- (d) physical restraint, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person;
- (e) environmental restraint, which restricts a person's free access to all parts of their environment, including items or activities.

However, care should be taken to check the current form of the NDIS Rules before relying on that definition.

**restrictive practices guidelines** means the restrictive practices guidelines published under section 23H, as in force from time to time;

**risk of harm**—see subsection (2);

**Senior Authorising Officer** means the person from time to time appointed as the Senior Authorising Officer under section 23I.

- (2) For the purposes of this Part, a reference to behaviour of a person that constitutes a **risk of harm** will be taken to be a reference to any of the following behaviours, or a combination of any of the following behaviours:
  - (a) the use of force against another person, or an express or implied threat that force will be used against another person;
  - (b) self-harm, or an express or implied threat of self-harm;
  - (c) behaviour that substantially increases the likelihood that physical or mental harm will be caused to the person or to any other person (whether intentionally or unintentionally);
  - (d) any other behaviour of a kind prescribed by the regulations.

### 23C—Meaning of *detention*

- (1) For the purposes of this Part, a reference to the *detention* of a person will be taken to be a reference to—
  - (a) any direct or indirect curtailment of the person's ability to leave particular premises or a particular part of particular premises (whether by physical means, by force of policy or rules, by the withholding of information (such as an access code), by an omission or otherwise); or
  - (b) a requirement that the person be and remain in particular premises or a particular part of particular premises (whether on a residential basis or otherwise); or
  - (c) the refusal or limitation of access to means of leaving particular premises or a particular part of particular premises (being means (such as a wheelchair) that the person is otherwise lawfully entitled to access and without which it is not reasonably possible for the person to leave the premises or part of premises); or
  - (d) any other act or omission of a kind declared by the regulations to be included in the ambit of this paragraph,

but does not include an act or omission of a kind declared by the regulations not to constitute the detention of a person.

- (2) For the purposes of this section, the fact that a person may leave premises or a part of particular premises, or access means of leaving premises or a part of premises, with the permission of a specified person does not, of itself, mean that the person is not detained.
- (3) However, the detention of a person pursuant to another Act or law will be taken not to constitute detention for the purposes of this Part.

### 23D—Prohibited restrictive practices

- (1) The Governor may, by regulation, prohibit the use of restrictive practices of a specified kind (*prohibited restrictive practices*) for the purposes of this Part.
- (2) Nothing in this Part authorises the use of a prohibited restrictive practice.

### 23E—Limits on kinds of restrictive practices that may be used by person

Nothing in this Part authorises a person to use a restrictive practice of a particular kind if—

- (a) a condition or limitation on the authorisation of the person under this Part prevents the person from using such a restrictive practice; or
- (b) the person does not hold an authorisation (however described) required under any other Act or law to use such a restrictive practice.

### 23F—Interaction with other Acts and laws

- (1) To avoid doubt, nothing in this Part limits the operation of the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*, or any other rules under the *National Disability Insurance Scheme Act 2013*.
- (2) To avoid doubt, nothing in this Part limits the operation of a behaviour support plan.

- (3) This Part is in addition to, and does not derogate from, the *Mental Health Act 2009*, the *Guardianship and Administration Act 1993* or any other Act or law that authorises the use of restrictive practices.
- (4) Nothing in this Part limits the operation of the *Controlled Substances Act 1984* (and, in particular, a drug may only be administered in the course of a restrictive practice or administration of medical treatment by a person authorised to do so in accordance with that Act).

### 23G—Principles

The following principles are to be observed in the operation of this Part:

- (a) restrictive practices should only be used by prescribed NDIS providers in limited circumstances, as a last resort, in the least restrictive way and for the shortest period possible in the circumstances;
- (b) the use of restrictive practices is to be limited to circumstances in which prescribed persons cause, or may cause, harm to themselves or others;
- (c) the use of restrictive practices in relation to a prescribed person must be done in a manner that—
  - (i) is, as far as is practicable, consistent with the prescribed person's human rights; and
  - (ii) safeguards the prescribed person and others from harm; and
  - (iii) is proportionate to the potential negative consequence or risk of harm; and
  - (iv) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of restrictive practices; and
  - (v) ensures transparency and accountability; and
  - (vi) ensures, where relevant, that restrictive practices are used in relation to a prescribed person in a way that is consistent with a behaviour support plan for the prescribed person;
- (d) the use of restrictive practices must not be used—
  - (i) as a punishment or for the convenience of others; or
  - (ii) to address inadequate levels of staffing, equipment or facilities.

### 23H—Minister to publish restrictive practices guidelines

- (1) The Minister must, by notice in the Gazette, publish guidelines (the *restrictive practices guidelines*) for the purposes of this Part.
- (2) The Minister may, by subsequent notice in the Gazette, vary, substitute or revoke the restrictive practices guidelines published under subsection (1).
- (3) In preparing, varying or substituting the restrictive practices guidelines, the Minister—
  - (a) must seek submissions from the Senior Authorising Officer and have regard to those submissions; and
  - (b) must undertake such consultation as may be required by the regulations (and may undertake such other consultation as the Minister thinks fit); and

- (c) must comply with any other requirements set out in the regulations.
- (4) The Minister must, within 6 sitting days after publishing the restrictive practices guidelines, lay a copy of the guidelines (or the guidelines as varied) before both Houses of Parliament.
- (5) The Minister must cause the restrictive practices guidelines to be published on a website determined by the Minister.

## **Division 2—Senior Authorising Officer**

### **23I—Senior Authorising Officer**

- (1) The Chief Executive may, by notice in writing, appoint a person who holds the qualifications, and has the experience, prescribed by the regulations to be the Senior Authorising Officer.
- (2) The Senior Authorising Officer is to be a member of the Public Service and holds office for a term, and on conditions, determined by the Chief Executive.
- (3) The Senior Authorising Officer is subject to the direction and control of the Chief Executive.
- (4) The Chief Executive may vary or revoke an appointment under this section for any reason the Chief Executive thinks fit.

### **23J—Functions of Senior Authorising Officer**

- (1) The Senior Authorising Officer has the following functions under this Part:
  - (a) to assist the Minister in the preparation, variation or substitution of the restrictive practices guidelines;
  - (b) to keep the restrictive practices guidelines under review;
  - (c) to authorise specified persons to authorise the use of level 1 restrictive practices by a prescribed NDIS provider;
  - (d) to authorise the use of level 1 or 2 restrictive practices (or both);
  - (e) to promote the reduction and, where possible, the elimination of the use of restrictive practices in the disability sector;
  - (f) to provide education and training relating to the use of restrictive practices;
  - (g) to advise the Minister and other persons in relation to the use of restrictive practices in the disability sector;
  - (h) such other functions as may be assigned to the Senior Authorising Officer by or under this Act or by the Minister.
- (2) The Senior Authorising Officer has such powers as may be necessary or expedient for the purposes of performing the Senior Authorising Officer's functions under this Part.

### **23K—Power of delegation**

- (1) The Senior Authorising Officer may delegate a function or power under this Part (other than a prescribed function or power) to a specified person or body.

- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Senior Authorising Officer to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **Division 3—Authorised Program Officers**

#### **23L—Authorised Program Officers in respect of prescribed NDIS providers**

- (1) The Senior Authorising Officer may, in accordance with any requirements set out in the regulations or the restrictive practices guidelines, by written instrument, authorise a person who holds the qualifications, and has the experience, prescribed by the regulations as an *Authorised Program Officer* in respect of a specified prescribed NDIS provider.
- (2) An authorisation under subsection (1) must set out—
  - (a) the prescribed NDIS provider in respect of whom the Authorised Program Officer is authorised under this section; and
  - (b) the restrictive practices the Authorised Program Officer may authorise the prescribed NDIS provider to use; and
  - (c) any conditions or limitations that apply to the authorisation in relation to the use of restrictive practices, or restrictive practices of a specified kind; and
  - (d) the date (if any) on which the authorisation ceases to have effect; and
  - (e) any other information required by the regulations,and may set out any other information the Senior Authorising Officer considers appropriate.
- (3) An authorisation under subsection (1)—
  - (a) may be conditional or unconditional; and
  - (b) has effect for—
    - (i) if a period is specified in the notice—that period; or
    - (ii) if no such period is specified—until it is revoked under this section.
- (4) The Senior Authorising Officer may, by notice in the Gazette, vary or revoke an authorisation under this section, or a condition or limitation of the authorisation, on any grounds the Senior Authorising Officer thinks fit (including, without limiting this subsection, for a contravention of this Part or the restrictive practices guidelines).

## **Division 4—Use of restrictive practices other than those involving detention**

### **23M—General provisions relating to use of restrictive practices**

- (1) Nothing in this Part authorises the use of restrictive practices—
  - (a) as a punishment or for the convenience of others; or
  - (b) to address inadequate levels of staffing, equipment or facilities.
- (2) A prescribed NDIS provider may only use restrictive practices (including restrictive practices of a particular kind) if, in the opinion of the prescribed NDIS provider, there is no other way to minimise the risk of harm, or to prevent further harm from being caused, that is reasonably available in the circumstances.
- (3) A prescribed NDIS provider may be assisted in the use of restrictive practices by such persons as the prescribed NDIS provider thinks fit.
- (4) A person may use reasonable force in the course of using restrictive practices under this Part (however, the use of force is to be a last resort and must be reasonably necessary to enable the use of restrictive practices in the circumstances).
- (5) To avoid doubt, restrictive practices may be used in relation to a prescribed person—
  - (a) without the consent of the prescribed person; or
  - (b) despite a refusal of the prescribed person to consent to the use of restrictive practices.
- (6) To avoid doubt, restrictive practices may be used in relation to a prescribed person who is a child.

### **23N—Authorised Program Officer may authorise use of level 1 restrictive practices**

- (1) An Authorised Program Officer in respect of a prescribed NDIS provider may authorise the prescribed NDIS provider to use level 1 restrictive practices in relation to a prescribed person if the Authorised Program Officer believes on reasonable grounds that—
  - (a) the prescribed person is displaying behaviour that constitutes a risk of harm; and
  - (b) the use of level 1 restrictive practices is necessary to minimise the risk of harm, or to prevent further harm from being caused; and
  - (c) the prescribed person has a behaviour support plan; and
  - (d) the behaviour support plan was prepared in consultation with the prescribed person; and
  - (e) the use of level 1 restrictive practices of the relevant kind is contemplated by, and consistent with, the prescribed person's behaviour support plan.
- (2) An authorisation under this section—
  - (a) must be in writing; and
  - (b) may be conditional or unconditional; and

- (c) must set out—
    - (i) the kind or kinds of restrictive practices that the prescribed NDIS provider is authorised to use; and
    - (ii) any conditions or limitations that apply to the authorisation in relation to the use of restrictive practices, or restrictive practices of a specified kind; and
    - (iii) the date (if any) on which the authorisation ceases to have effect; and
    - (iv) any other information required by the regulations; and
  - (d) must comply with any other requirements set out in the regulations.
- (3) An Authorised Program Officer must, in authorising the use of level 1 restrictive practices, comply with the restrictive practices guidelines.
- (4) A prescribed NDIS provider must, in using level 1 restrictive practices pursuant to an authorisation under this section, comply with the restrictive practices guidelines.
- (5) Without limiting any other provision of this Part, or any other Act or law, a prescribed NDIS provider may, in relation to the use of level 1 restrictive practices in relation to a prescribed person, do 1 or more of the following:
- (a) enter and remain in a place where the prescribed NDIS provider reasonably suspects the prescribed person may be found;
  - (b) search the prescribed person's clothing or possessions and take possession of anything in the prescribed person's possession that the prescribed person may use to cause harm to themselves or others, or to damage property;
  - (c) retain anything so taken from the possession of the prescribed person for as long as is necessary for reasons of safety (and then return the thing to the prescribed person or otherwise deal with the thing according to law).
- (6) A search referred to in subsection (5)(b) must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the prescribed person any humiliation or offence.
- (7) An Authorised Program Officer may only authorise the use of level 1 restrictive practices in relation to a prescribed person—
- (a) for as long as is reasonably necessary to prevent the prescribed person from causing harm to themselves or others; or
  - (b) until the prescribed person's behaviour support plan expires or otherwise ceases to have effect, or is varied such that the use of level 1 restrictive practices is no longer consistent with the behaviour support plan,
- whichever is the lesser.
- (8) A prescribed NDIS provider who uses level 1 restrictive practices in relation to a prescribed person pursuant to an authorisation under this section must, in accordance with any requirements set out in the regulations, cause a written notice in respect of the use of restrictive practices to be given to—
- (a) in the case of a prescribed person who is a child—a parent or guardian of the prescribed person; or

- (b) in the case of a prescribed person who has a guardian or substitute decision maker—the guardian or substitute decision maker (as the case requires) and the prescribed person; or
  - (c) in any other case—the prescribed person.
- (9) Nothing in this section authorises an Authorised Program Officer to authorise the use of level 2 restrictive practices (including, to avoid doubt, level 2 restrictive practices comprising a combination of level 1 restrictive practices).
- (10) The regulations may make further provisions in relation to the use of level 1 restrictive practices under this section (including by prohibiting or limiting the use of level 1 restrictive practices in specified circumstances).

### **230—Authorisation of use of level 1 or 2 restrictive practices by Senior Authorising Officer**

- (1) The Senior Authorising Officer may, on an application under this section or on the Senior Authorising Officer's own motion, authorise a prescribed NDIS provider to use level 1 or 2 restrictive practices, or level 1 or 2 restrictive practices of a specified kind, (or both) in relation to a specified prescribed person.
- (2) The Senior Authorising Officer may only authorise a prescribed NDIS provider to use level 1 or 2 restrictive practices in relation to a prescribed person if the Senior Authorising Officer believes on reasonable grounds that—
- (a) the prescribed person is displaying behaviour that constitutes a risk of harm; and
  - (b) the use of level 1 or 2 restrictive practices is necessary to minimise the risk of harm, or to prevent further harm from being caused; and
  - (c) the prescribed person has a behaviour support plan; and
  - (d) the behaviour support plan was prepared in consultation with the prescribed person; and
  - (e) the use of level 1 or 2 restrictive practices of the relevant kind is contemplated by, and consistent with, the prescribed person's behaviour support plan.
- (3) An authorisation under this section—
- (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) must set out—
    - (i) the kind or kinds of restrictive practices that the prescribed NDIS provider is authorised to use; and
    - (ii) any conditions or limitations that apply to the authorisation in relation to the use of restrictive practices, or restrictive practices of a specified kind; and
    - (iii) the date (if any) on which the authorisation ceases to have effect; and
    - (iv) any other information required by the regulations; and
  - (d) must comply with any other requirements set out in the regulations.



- (4) An application under this section—
- (a) may only be made by a prescribed NDIS provider who is providing, or is to provide, services to the specified prescribed person, or an Authorised Program Officer in respect of such a prescribed NDIS provider; and
  - (b) must be made in a manner and form determined by the Senior Authorising Officer; and
  - (c) must be accompanied by such information or documents as the Senior Authorising Officer may require; and
  - (d) must comply with any other requirements set out in the regulations.
- (5) A prescribed NDIS provider must, in using level 1 or 2 restrictive practices pursuant to an authorisation under this section, comply with the restrictive practices guidelines.
- (6) Without limiting any other provision of this Part, or any other Act or law, a prescribed NDIS provider may, in relation to the use of level 1 or 2 restrictive practices in relation to a prescribed person, do 1 or more of the following:
- (a) enter and remain in a place where the prescribed NDIS provider reasonably suspects the prescribed person may be found;
  - (b) search the prescribed person's clothing or possessions and take possession of anything in the prescribed person's possession that the prescribed person may use to cause harm to themselves or others, or to damage property;
  - (c) retain anything so taken from the possession of the prescribed person for as long as is necessary for reasons of safety (and then return the thing to the prescribed person or otherwise deal with the thing according to law).
- (7) A search referred to in subsection (6)(b) must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the prescribed person any humiliation or offence.
- (8) A prescribed NDIS provider who uses level 1 or 2 restrictive practices in relation to a prescribed person pursuant to an authorisation under this section must, in accordance with any requirements set out in the regulations, cause a written notice in respect of the use of restrictive practices to be given to—
- (a) in the case of a prescribed person who is a child—a parent or guardian of the prescribed person; or
  - (b) in the case of a prescribed person who has a guardian or substitute decision maker—the guardian or substitute decision maker (as the case requires) and the prescribed person; or
  - (c) in any other case—the prescribed person.
- (9) At the end of the period during which an authorisation under this section has effect, the Senior Authorising Officer may, on an application under this section or on the Senior Authorising Officer's own motion, authorise the further use of level 1 or 2 restrictive practices, or level 1 or 2 restrictive practices of a specified kind, (or both) in relation to a particular prescribed person.
- (10) The regulations may make further provisions in relation to authorisations under this section (including by prohibiting or limiting the making of applications in relation to prescribed persons of a specified class, or in specified circumstances).

### **23P—Revocation of authorisation to use restrictive practices**

The Senior Authorising Officer may, if the Senior Authorising Officer reasonably believes that it is appropriate to do so, by notice in writing—

- (a) revoke an authorisation to use level 1 restrictive practices given by an Authorised Program Officer under section 23N; or
- (b) vary or revoke an authorisation to use level 1 or 2 restrictive practices given by the Senior Authorising Officer under section 23O.

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

### **23Q—Senior Authorising Officer may require information from State authorities**

- (1) The Senior Authorising Officer may, by notice in writing, require a State authority to provide to the Senior Authorising Officer such information relating to a specified person as may be in the State authority's possession and that the Senior Authorising Officer reasonably requires for the purposes of this Part.
- (2) A State authority must provide the information to the Senior Authorising Officer in the manner, and within the period, specified in the notice.
- (3) If a State authority refuses or fails to comply with a notice under subsection (1), the Senior Authorising Officer may, after consultation with the State authority, report the refusal or failure to the Minister and to the Minister responsible for the State authority.

### **23R—Senior Authorising Officer may require information from other persons**

- (1) The Senior Authorising Officer may, by notice in writing, require a specified person (whether or not the person is a prescribed NDIS provider) to provide to the Senior Authorising Officer such information relating to a specified person as may be in the person's possession and that the Senior Authorising Officer reasonably requires for the purposes of this Part.
- (2) A person to whom a notice is given under subsection (1) must provide the information to the Senior Authorising Officer in the manner, and within the period, specified in the notice.
- (3) A person who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

### **23S—Senior Authorising Officer may notify NDIA or the NDIS Quality and Safeguards Commission**

- (1) The Senior Authorising Officer may notify the NDIA or the NDIS Quality and Safeguards Commission (or both) of any matter relating to a registered NDIS provider that has come to the attention of the Senior Authorising Officer in the course of exercising a power or performing a function or duty under this Act.
- (2) Without limiting the matters that may be included in a notification under this section, a notification may include personal information relating to a prescribed person or prescribed persons.

### **23T—Senior Authorising Officer may disclose etc information to other jurisdictions**

- (1) Despite a provision of this or any other Act or law, the Senior Authorising Officer is authorised to receive and make use of information relevant to the functions of the Senior Authorising Officer 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 Senior Authorising Officer is authorised to disclose information in the possession of the Senior Authorising Officer to a prescribed person or body in another State or Territory for purposes related to the screening of persons who work with people with disability.
- (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.

### **23U—Disclosure of information to prevent harm**

Despite a provision of this or any other Act or law, the Senior Authorising Officer may disclose information obtained in the course of the administration or operation of this Part to an appropriate person or body if the Senior Authorising Officer is of the opinion that to do so is reasonably necessary to prevent harm being caused to a person with disability.

### **23V—Disclosure of information for research purposes**

Despite a provision of this or any other Act or law, the Senior Authorising Officer may disclose information obtained in the course of the administration or operation of this Part to an appropriate person or body for the purposes of research into the operation of this Part or a law of another State or Territory related to the use of restrictive practices.

### **23W—Provision of other information to Senior Authorising Officer**

- (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 Senior Authorising Officer any information that the person or body reasonably believes is relevant to the functions of the Senior Authorising Officer under this Act.
- (2) A person or body incurs no civil or criminal liability in respect of the provision of information to the Senior Authorising Officer in good faith and without negligence under this section.

### **23X—Information sharing for national register or database**

Despite a provision of this or any other Act or law, the Senior Authorising Officer may disclose information obtained in the operation or administration of this Part for the purpose of providing relevant information for entry in a national register or database relating to the use of restrictive practices.

## Division 6—Dispute resolution

### 23Y—Internal review by Senior Authorising Officer

- (1) A person who is aggrieved by a decision of an Authorised Program Officer or a prescribed NDIS provider under this Part is entitled to a review of the decision by the Senior Authorising Officer.
- (2) An application for review—
  - (a) must be made in a manner and form determined by the Senior Authorising Officer; and
  - (b) must be made within 30 days after the day on which the decision was made (or such longer time as the Senior Authorising Officer may allow).
- (3) On an application for review under this section the Senior Authorising Officer may confirm, vary or reverse the decision under review.
- (4) The regulations may make further provision in respect of a review under this section (including, to avoid doubt, by limiting the kinds of decisions that may be the subject of an application or review).

### 23Z—Review of decisions by South Australian Civil and Administrative Tribunal

- (1) Subject to this section, the Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of the following decisions (*reviewable decisions*):
  - (a) a decision of the Senior Authorising Officer under this Part;
  - (b) any other decision prescribed by the regulations.
- (2) An application for review of a reviewable decision may be made to the Tribunal by—
  - (a) the person to whom the decision relates; or
  - (b) a person, or persons of a class, prescribed by the regulations for the purposes of this paragraph.
- (3) An application must be made within 30 days after the date of the reviewable decision (or such longer period as may be allowed by the Tribunal).
- (4) However, the Tribunal may only allow an extension of time under subsection (3) if satisfied that—
  - (a) special circumstances exist; and
  - (b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

## **Division 7—Miscellaneous**

### **23ZA—Limitation of liability**

- (1) The Minister, the Senior Authorising Officer and any other person or body incurs no civil or criminal liability for an act or omission in the course of performing a function under this Part (being an act or omission done or made in good faith and without negligence).
- (2) An Authorised Program Officer, a prescribed NDIS provider or a person assisting a prescribed NDIS provider, incurs no civil or criminal liability for an act or omission relating to the use of restrictive practices in accordance with this Part (being an act or omission done or made in good faith and without negligence).
- (3) The owner, occupier or operator of premises (however described) incurs no civil or criminal liability for an act or omission relating to the use of restrictive practices at the premises in accordance with this Part (being an act or omission done or made in good faith and without negligence).

### **23ZB—Offence to hinder or obstruct Senior Authorising Officer etc**

- (1) A person who hinders or obstructs the Senior Authorising Officer or an Authorised Program Officer in the course of performing a function or exercising a power under this Part is guilty of an offence.  
Maximum penalty: \$5 000.
- (2) A person who hinders or obstructs a prescribed NDIS provider in relation to the use of restrictive practices under this Part is guilty of an offence.  
Maximum penalty: \$5 000.
- (3) Subsections (1) and (2) do not apply to a prescribed person in relation to whom the Senior Authorising Officer or an Authorised Program Officer is performing a function or exercising a power, or restrictive practices are to be used (as the case requires).

### **23ZC—False or misleading statements**

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.

Maximum penalty: \$10 000.

### **23ZD—Evidentiary provision**

In proceedings for an offence against this Act, an allegation in an information—

- (a) that a specified person was, or was not, the Senior Authorising Officer at a specified time; or
- (b) that a specified person was, or was not, an Authorised Program Officer in respect of a specified prescribed NDIS provider at a specified time; or
- (c) that a specified person was, or was not, a prescribed NDIS provider at a specified time; or
- (d) that a specified person was, or was not, a registered NDIS provider at a specified time; or

- (e) that a specified restrictive practice was, or was not, a level 1 or 2 restrictive practice (as the case requires) at a specified time,

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

### **23ZE—Minister to provide annual report on operation of Part to Parliament**

- (1) The Chief Executive must, not later than 31 October in each year, cause a report on the operation of this Part during the preceding financial year to be prepared and provided to the Minister, setting out—
  - (a) the number of Authorised Program Officers authorised by the Senior Authorising Practitioner during that financial year; and
  - (b) the number of authorisations of the use of level 1 or 2 restrictive practices by the Senior Authorising Officer during that financial year (including any authorisations of the further use of such restrictive practices); and
  - (c) the kinds of restrictive practices authorised to be used by the Senior Authorising Officer during that financial year; and
  - (d) any other information required by the regulations.
- (2) The Minister must, within 12 sitting days after receiving a report under this section, lay a copy of the report before both Houses of Parliament.
- (3) A report under this section may be combined with the annual report of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act (in which case the Minister need not lay a copy of the report before both Houses of Parliament under subsection (2)).

## **Part 7—Community Visitor Scheme**

### **24—Community Visitor Scheme**

- (1) The Governor may, by regulation, establish a scheme for a community visitor or visitors.
- (2) Without limiting the matters that may be the subject of regulations under this section, the regulations may make provisions—
  - (a) relating to the appointment and removal of community visitors;
  - (b) conferring functions and powers on community visitors;
  - (c) providing for the delegation of the functions and powers of community visitors;
  - (d) requiring reports to be provided to the Minister on the operation of the community visitor scheme during a specified period, and requiring such reports to be laid before Parliament.

## **Part 8—National Disability Insurance Scheme**

### **25—Regulations for the purpose of implementing etc the National Disability Insurance Scheme**

- (1) The Governor may make regulations providing for, or relating to, the transition to the National Disability Insurance Scheme.
- (2) Without limiting the matters that may be the subject of regulations under this section, the regulations may make provisions—
  - (a) providing for the exchange of records or information for the purposes of the NDIS;
  - (b) of a saving or transitional nature consequent on the enactment of the *National Disability Insurance Scheme Act 2013* of the Commonwealth, on the amendment of that Act or on the making of regulations under that Act.

## **Part 9—Information gathering and sharing**

### **26—Chief Executive may require State authority to provide report**

- (1) The Chief Executive may, if the Chief Executive is of the opinion that it is necessary or would otherwise assist in the performance of functions under this Act, require a State authority to prepare and provide a report to the Chief Executive in relation to the matters, and in accordance with any requirements, specified in the notice.
- (2) If a State authority refuses or fails to comply with a requirement under subsection (1), the Chief Executive may require the State authority to provide to the Chief Executive within a specified period a report setting out the reasons for non-compliance.
- (3) The Chief Executive may, on receiving a report under subsection (2), submit a copy of the report to the Minister setting out the views of the Chief Executive in respect of the State authority's non-compliance.
- (4) The Minister must, on receiving a report under subsection (3), prepare a report to Parliament setting out—
  - (a) the Minister's response to the Chief Executive's report; and
  - (b) any other information required by the regulations.
- (5) The Minister must, within 6 sitting days after completing a report under subsection (4), cause a copy of both the report and the Chief Executive's report under subsection (3) to be laid before both Houses of Parliament.

### **27—Sharing of information between certain persons and bodies**

- (1) This section applies to the following persons and bodies:
  - (a) a State authority;
  - (b) a community visitor;
  - (c) any other person or body prescribed by the regulations.

- (2) Despite any other Act or law, a person or body to whom this section applies (the *provider*) may, in accordance with any requirement set out in the regulations, provide prescribed information and documents to another person or body to whom this section applies (the *recipient*) if the provider reasonably believes that the provision of the information or documents would assist the recipient—
  - (a) to perform functions relating to people with disability; or
  - (b) to manage any risk to a person with disability, or class of people with disability, that might arise in the recipient’s capacity as an employer or provider of services.
- (3) Subject to this section, but despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.
- (4) Subsection (3) applies—
  - (a) whether or not the information or documents consist of or include prescribed information and documents; and
  - (b) whether or not the information or document ever disclosed the identity of a person, or has been redacted so as to de-identify it.
- (5) Information may be provided under this section whether or not the provider has been requested to provide the information.
- (6) Despite section 29, the recipient of information or documents under this section must not disclose information or documents received under this section except—
  - (a) to another person or body to whom this section applies; or
  - (b) as may be authorised by the regulations.
- (7) In this section—

*prescribed information and documents* means—

  - (a) information or documents relating to the health, safety, welfare or wellbeing of a particular person with disability, or class of people with disability; or
  - (b) any other information or document of a kind prescribed by the regulations for the purposes of this definition.

## 28—Interaction with *Public Sector (Data Sharing) Act 2016*

Nothing in this Part affects the operation of the *Public Sector (Data Sharing) Act 2016*.

## Part 10—Miscellaneous

### 29—Confidentiality

- (1) Subject to this Act, a person engaged or formerly engaged in the administration, operation or enforcement of this Act must not disclose personal information obtained (whether by that person or otherwise) in the course of performing functions or exercising powers under this Act except—
  - (a) as required or authorised by or under this Act or any other Act or law; or



- (b) with the consent of the person to whom the information relates; or
- (c) in connection with the administration or enforcement of this or any other Act;  
or
- (d) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of people with disability; or
- (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

### 30—Victimisation

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.
- (2) However, causing detriment on the ground that a person—
  - (a) has made a false allegation; or
  - (b) has not acted in good faith,does not constitute an act of victimisation.
- (3) An act of victimisation under this Act may be dealt with—
  - (a) as a tort; or
  - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,  
but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

- (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.
- (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.  
Maximum penalty: \$10 000.
- (7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.
- (8) In this section—  
*detriment* includes—
  - (a) injury, damage or loss; or
  - (b) intimidation or harassment; or
  - (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
  - (d) threats of reprisal.

### **31—Service**

Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

### **32—Review of Act**

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed after the third, but before the fourth, anniversary of the commencement of this Act.

- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

### 33—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) exempt a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
  - (b) fix fees or charges in respect of any matter under this Act and their payment, recovery or waiver; and
  - (ba) specify requirements relating to the provision of information or documents to the central assessment unit; and
  - (c) provide for fines, not exceeding \$50 000, for offences against the regulations; and
  - (d) provide for expiation fees, not exceeding \$315, for offences against the regulations; and
  - (e) provide for the facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature consequent on the enactment or amendment of this Act or on the making of regulations under this Act; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified person or body; and
  - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or a specified person or body.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## Schedule 1—Repeal

### *Part 5—Repeal of Disability Services Act 1993*

#### *5—Repeal of Disability Services Act 1993*

*The Disability Services Act 1993 is repealed.*

*Editorial note—*

*Schedule 1 Part 5 had not come into operation at the date of the publication of this version.*

## 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 clause) 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 clause 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 clause applies will, for the purposes of 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 clause 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:
  - (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
  - (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.

## Legislative history

### Notes

- In this version provisions that are uncommenced appear in italics.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Disability Inclusion Act 2018* amended the following:

*Carers Recognition Act 2005*

*Disability Services Act 1993*

*Intervention Orders (Prevention of Abuse) Act 2009*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2018	1	<i>Disability Inclusion Act 2018</i>	14.6.2018	1.7.2018 ( <i>Gazette 28.6.2018 p2618</i> ) except Sch 1 (cl 3)—1.2.2021 ( <i>Gazette 17.12.2020 p5743</i> ) and except Pt 6 & Sch 1 (cl 5)—uncommenced
2019	9	<i>Statutes Amendment (Screening) Act 2019</i>	16.5.2019	Pt 4 (ss 18 to 20 & 24)—1.2.2021 ( <i>Gazette 17.12.2020 p5744</i> ); ss 21 to 23 & 25—16.5.2021 (s 7(5) <i>Acts Interpretation Act 1915</i> )
<b>2021</b>	<b>18</b>	<b><i>Disability Inclusion (Restrictive Practices—NDIS) Amendment Act 2021</i></b>	<b>20.5.2021</b>	<b>30.5.2022 (<i>Gazette 12.5.2022 p1123</i>)</b>

### Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Long title	amended by 9/2019 s 18	1.2.2021
Part 1		
s 3		
s 3(1)		
central assessment unit	inserted by 9/2019 s 19(1)	1.2.2021

Registrar	inserted by 9/2019 s 19(2)	1.2.2021
<b>Tribunal</b>	<b>inserted by 18/2021 s 4</b>	<b>30.5.2022</b>
Pt 5A	inserted by 9/2019 s 20	1.2.2021
Pt 6		
s 19		
s 19(1)		
assessable information	inserted by 9/2019 s 21(1)	16.5.2021
records management system	inserted by 9/2019 s 21(2)	16.5.2021
unique identifier	inserted by 9/2019 s 21(3)	16.5.2021
ss 22A—22E	inserted by 9/2019 s 22	16.5.2021
s 23		
s 23(2)	amended by 9/2019 s 23(1), (2)	16.5.2021
<b>Pt 6A</b>	<b>inserted by 18/2021 s 5</b>	<b>30.5.2022</b>
Pt 10		
s 33		
s 33(2)	amended by 9/2019 s 24(1), (2)	1.2.2021
s 33(3)	amended by 9/2019 s 24(3)	1.2.2021
Sch 1		
<i>Pts 1—4</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>16.5.2021</i>
Sch 2	inserted by 9/2019 s 25	16.5.2021

## Historical versions

1.2.2021  
16.5.2021