



New South Wales

National Disability Insurance Scheme (Worker Checks) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Children and Young Persons (Care and Protection) Amendment Bill 2018*.

Overview of Bill

The object of this Bill is to establish worker screening arrangements in NSW for the purposes of requirements under Commonwealth law for the screening of workers engaged in or associated with the provision of supports or services to people with disability under the National Disability Insurance Scheme. These arrangements are for the purposes of the State's obligations under the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme entered into between the States, Territories and Commonwealth.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 provides that the health, safety and well-being of people with disability and, in particular, protecting them from abuse, violence, neglect and exploitation is the paramount consideration in the operation of the proposed Act.

Clause 4 defines certain key words and terms used in the proposed Act. The term *NDIS work* means work concerned with the provision of supports or services to people with disability under

the National Disability Insurance Scheme that requires an NDIS worker check clearance under the rules of that Scheme (the *NDIS rules*) or for which such a clearance is otherwise appropriate.

Clause 5 provides definitions of the terms *disqualified person* and *presumptively disqualified person*.

Part 2 Obtaining a clearance

Clause 6 provides for how an application for a clearance is to be made. An application cannot be made before 1 July 2019 or such earlier date as may be prescribed by the regulations.

Clause 7 provides for circumstances in which a person is not permitted to make an application for a clearance.

Clause 8 provides for the circumstances in which an application for a clearance must be granted or refused.

Clause 9 allows the Screening Agency (the NSW agency appointed by the Minister to administer the proposed Act) to impose an *interim bar* on an applicant if of the opinion that there is a reasonable likelihood that a risk assessment will determine that the person poses a risk of harm to persons with disability. Arrangements under the NDIS rules that allow an applicant for a clearance to do NDIS work while an application is pending will not allow this while an interim bar is in force.

Clause 10 requires the Screening Agency to notify an applicant of a proposed refusal of an application and to consider submissions from the applicant.

Clause 11 provides for the giving of notice of a final decision granting or refusing a clearance.

Clause 12 allows the withdrawal of an application for a clearance with the consent of the Screening Agency and provides for the circumstances in which consent must be refused.

Part 3 Risk assessment

Clause 13 provides that a risk assessment is an assessment and determination by the Screening Agency as to whether a person poses a risk of harm to persons with disability. The clause also explains what is meant by *harm* and *risk of harm*.

Clause 14 provides for the circumstances in which a risk assessment is required.

Clause 15 provides that a presumptively disqualified person is presumed to pose a risk of harm to persons with disability unless there are exceptional circumstances that justify a determination to the contrary.

Clause 16 provides for the matters to be considered in a risk assessment.

Part 4 Duration and termination of clearances

Clause 17 provides for a clearance to remain in force for 5 years with an option for the Screening Agency to extend a clearance by up to 6 months if the person has a pending application for a clearance. The clause also authorises certain arrangements to facilitate alignment of the periods for which a person's NDIS worker check clearance and working with children check clearance are in force.

Clause 18 requires the holder of a clearance to notify the Screening Agency of certain changes in relevant particulars within 3 months after the change occurs.

Clause 19 authorises the Screening Agency to suspend a clearance if of the opinion that there is a reasonable likelihood that a risk assessment of the holder will determine that the holder poses a risk of harm to persons with disability.

Clause 20 requires the Screening Agency to cancel the clearance of a person if the Screening Agency becomes aware that the person is a disqualified person or a risk assessment determines that the person poses a risk of harm to persons with disability. The clause also gives the Screening Agency the discretion to cancel a clearance in certain circumstances.

Clause 21 allows the holder of a clearance to surrender the clearance by requesting cancellation of the clearance. The Screening Agency is required to refuse the surrender of a clearance if the clearance or a clearance held by the person under a corresponding law is suspended or if the Screening Agency is undertaking or is proposing to undertake a risk assessment of the holder.

Part 5 Information gathering and sharing

Division 1 Key concepts

Clause 22 provides for the meaning of *authorised person* in Part 5.

Clause 23 provides for the meaning of *relevant law* in Part 5.

Clause 24 provides for the meaning of *relevant risk of harm* in Part 5.

Clause 25 provides for the meaning of *authorised purpose* in Part 5.

Clause 26 provides for the meaning of *NDIS purpose* in Part 5.

Clause 27 provides for the meaning of *relevant information* in Part 5.

Division 2 Information gathering

Clause 28 requires an application by a person for a clearance to provide for the authorisation by the person of, and the consent by the person to, the making of certain inquiries about the person by the Screening Agency and the obtaining and disclosure of certain information about the person by the Screening Agency.

Clause 29 authorises the Screening Agency to require an applicant for a clearance or the holder of a clearance to provide certain information about the person. The Screening Agency is authorised to terminate an application for a clearance or cancel a clearance if the applicant or holder fails without reasonable excuse to provide requested information.

Clause 30 authorises the Screening Agency to require any person to provide the Screening Agency with specified information relevant to an assessment of whether a person poses a risk of harm to persons with disability.

Division 3 Information sharing and use

Clause 31 provides for the general powers of the Screening Agency to obtain, provide and use information.

Clause 32 authorises the Screening Agency to provide certain information about a person to an NDIS employer or participant who engages or proposes to engage the person to do NDIS work.

Clause 33 provides for the disclosure of certain information by the Commissioner of Police 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.

Clause 34 authorises a court or tribunal to disclose certain information to the Screening Agency.

Clause 35 authorises the Screening Agency to retain indefinitely certain information about a person who is or was an applicant for or the holder of a clearance.

Division 4 Miscellaneous

Clause 36 requires certain government and private agencies (*reporting bodies*) to notify the Screening Agency of the name and other identifying particulars of an NDIS worker against whom the reporting body has made a finding that the worker has engaged in conduct that constitutes circumstances prescribed by the regulations as requiring a risk assessment of the person.

Clause 37 authorises the Screening Agency to disclose certain information for the purpose of providing relevant information for entry in a national register or database established under the Commonwealth Act that establishes the National Disability Insurance Scheme.

Clause 38 authorises the Screening Agency to disclose certain information for the purpose of providing relevant information for use for the purposes of research into the operation of certain laws or monitoring and auditing compliance with the requirements of certain laws.

Clause 39 authorises the disclosure to a law enforcement agency of any information obtained as a result of the exercise of a function under the proposed Act that indicates that a relevant offence may have been committed or that constitutes evidence of a relevant offence.

Clause 40 authorises the disclosure of information obtained as a result of the exercise of a function under the proposed Act if there are reasonable grounds to suspect that there is a risk of significant harm to a person with disability, a child or a vulnerable person, or to a class of those persons, and the disclosure is necessary to prevent that harm.

Part 6 Review of decisions

Clause 41 provides for the administrative review under the *Administrative Decisions Review Act 1997* of certain decisions under the proposed Act.

Clause 42 provides for the decisions that are not subject to administrative review.

Clause 43 provides that an application for an administrative review of a decision under the proposed Act does not affect the operation of the decision under review or prevent the taking of action to implement the decision.

Clause 44 provides for the protection of the confidentiality of criminal intelligence information by preventing disclosure of the existence or content of that information in the notice of a decision under the proposed Act or in the course of administrative review of a decision.

Clause 45 provides for the regulations to prescribe a fee to be paid for an internal review of a decision under the proposed Act.

Part 7 Miscellaneous

Clause 46 provides that the proposed Act binds the Crown.

Clause 47 provides for the effect of the proposed Act on the rights of an employee in relation to employment or termination of employment.

Clause 48 protects persons engaged in the administration of the proposed Act from personal liability for acts or omissions in good faith and with reasonable care.

Clause 49 creates an offence of knowingly providing false or misleading information in or in connection with an application for a clearance or in purported compliance with a request or requirement under the proposed Act.

Clause 50 creates offences concerned with unauthorised disclosure and dishonest obtaining of information relating to the exercise of functions under the proposed Act.

Clause 51 provides for the giving of certain evidentiary certificates by the Screening Agency.

Clause 52 provides that failure to give notice of a decision under the proposed Act does not affect the validity or effect of the decision.

Clause 53 provides for the Screening Agency to promote public awareness of and provide advice on requirements for NDIS worker check clearances.

Clause 54 provides for the Screening Agency to monitor and audit compliance with the requirements of the proposed Act.

Clause 55 authorises the Screening Agency to waive payment of, reduce or refund any fee payable under the proposed Act.

Clause 56 provides for proceedings for an offence under the proposed Act to be dealt with by the Local Court.

Clause 57 provides for penalty notices for offences.

Clause 58 provides for the criminal responsibility of directors and others when a corporation commits an offence under the proposed Act.

Clause 59 provides for the service of documents.

Clause 60 enables the Governor to make regulations for the purposes of the proposed Act (including regulations of a savings or transitional nature consequent on the enactment of the proposed Act or any Act that amends the proposed Act).

Schedules

Schedule 1 contains definitions and other interpretative provisions.

Schedule 2 makes consequential amendments to other Acts.