

Explanatory Statement

NATIONAL DISABILITY INSURANCE SCHEME (WORKER CLEARANCE) BILL 2019

SERIAL NO. 110

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR DISABILITIES

EXPLANATORY STATEMENT

GENERAL OUTLINE

The NT Government has previously agreed to the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the Disability Insurance Scheme* (the IGA), which establishes the broader policy framework for nationally consistent National Disability Insurance Scheme (NDIS) worker screening arrangements.

This Bill will implement the obligations of the NT as set out in the IGA, while the National Disability Insurance Scheme (Practice Standards-Worker Screening) Rules 2018 (the Rules) further enact the IGA through Commonwealth regulation.

The purpose of the Bill is to establish and operate a nationally consistent worker screening process for employees of NDIS service providers who provide NDIS supports and services for NDIS participants in the Northern Territory.

The Bill provides for:

- the application, assessment, and ongoing national monitoring for NDIS Worker Screening Clearances in the NT; and
- information collection, use, storage and disclosure; and
- the ongoing monitoring of a cleared worker's criminal history and other relevant information to provide a greater level of protection for participants.

The Bill will allow for the protection of the most vulnerable people in the NT and prevent harm arising from poor quality or unsafe supports provided under the NDIS.

NOTES ON CLAUSES

Part 1 Preliminary Matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *National Disability Insurance Scheme (Worker Clearance) Act 2019*.

Clause 2. Commencement

This clause sets out how the Act will be commenced. In this case, it will be the day fixed by the Administrator by *Gazette* notice.

Clause 3. Objects of Act

The objective of the nationally consistent NDIS worker screening is to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the NDIS.

Clause 4. Principles guiding screening checks

This clause sets out a list of general principles underpinning the Act and guiding the process for conducting NDIS worker screening.

The principles focus on the rights of the participant and align with the *United Nations Convention on the Rights of Persons with Disabilities* of which Australia is a signatory.

These principles have been drawn from the *NDIS Quality and Safeguarding Framework*.

Clause 5. Act binds Crown

This clause provides that the proposed Act binds the Crown.

Clause 6. Application of Act

This clause sets out the requirement for an NDIS worker clearance.

Clause 7. Interpretation

This clause is a formal provision that defines various words and expressions used in the Bill.

Clause 8. Meaning of *more than incidental contact*

This clause defines *more than incidental contact* for the purposes of this Act and provides examples to assist in defining *more than incidental contact*.

Clause 9. Meaning of *NDIS work*

This clause defines *NDIS work* for the purposes of this Act.

Clause 10. Meaning of *presumed disqualified offence*

This clause defines a *presumed disqualifying offence* for the purposes of this Act.

Clause 11. Meaning of *risk assessed role*

This clause defines a *risk assessed role* for the purposes of this Act and provides that a registered NDIS provider must assess all employee and personnel roles and identify each one that is a risk assessed role.

This clause also provides that an NDIS provider may assess all employee and personnel roles and identify each one that is a *risk assessed role*.

Clause 12. Meaning of *volunteer*

This clause defines a *volunteer* for the purposes of this Act.

Clause 13. Screening Agency

This clause outlines how a Screening Agency is declared.

Clause 14. Application of Criminal Code

This is a formal clause that provides for the application of Part IIAA of the Criminal Code to an offence against this Act, incorporating the general principles of criminal responsibility, establishes general defences, and deals with burden of proof.

Part 2 NDIS worker clearance

Division 1 Acceptance of applications

Clause 15. Acceptance date for application for screening check

This clause sets out how the acceptance date for an application for a screening check is determined.

Clause 16. Persons ineligible to apply for screening check

This clause sets out the circumstances in which a person is ineligible to apply for a screening check.

Division 2 Requirements for application

Clause 17. Application for screening check

This clause outlines the mandatory requirements for an application for screening check.

The clause provides for the Screening Agency requesting further information from the applicant within the timeframe prescribed in the regulations. Failure to provide this information results in the application being discontinued.

Clause 18. Applicant to give consent

This clause sets out the consent requirements for the applicant which are mandatory and those that are discretionary. The applicant must consent to:

- the Screening Agency seeking information from law enforcement agencies, the NDIS Commission and other prescribed organisations and for those bodies to provide information relevant to the determination of the application to the Screening Agency;
- the screening check results being included in a National Worker Clearance Database and disclosed to the applicant's current and prospective employers, the NDIS Commission and other Screening Agencies;
- ongoing monitoring for the duration of the clearance; and
- the sharing of information relating to the applicant between law enforcement agencies and the NDIS Commission for screening processes for working with vulnerable people.

This clause also provides that the applicant may consent to secondary use of de-identified information for research and other purposes.

Clause 19. Disclosures

This clause outlines specific information that the applicant for clearance must self-disclose in the application.

Clause 20. Employer verification

This clause outlines that screening checks must be performed in relation to persons who are engaged by, or to be engaged by, a registered NDIS provider.

This clause sets out that screening checks may be performed in relation to a person who is engaged, or to be engaged by, an NDIS provider or who is self-employed engaging in NDIS work.

The clause sets out the conditions for employer verification to enable an application for a screening check to be processed.

Division 3 Assessment of application

Clause 21. Eligibility to work while application assessed

This clause sets out the conditions that need to be met to allow the applicant to begin delivering NDIS supports or services after they have submitted an application for a screening check.

Clause 22. Assessment of application

This clause sets out the conditions that the Screening Agency must consider when assessing an application for a screening check.

Clause 23. Determination of application

This clause provides for the Screening Agency receiving an application for a screening check and deciding whether to:

- a) grant clearance to an applicant; or
- b) refuse clearance to an applicant; or
- c) impose an interim bar on the applicant.

This clause also provides for the circumstances in which an application must be refused.

This clause states that the Screening Agency must notify the applicant and the NDIS Commission if the Screening Agency refuses clearance to an applicant.

Division 4 Clearance granted

Clause 24. Clearance granted

This clause provides for the circumstances in which an application for clearance must be granted by the Screening Agency.

This clause states that the Screening Agency must notify the applicant and the NDIS Commission if a clearance is granted to an applicant.

Clause 25. Duration of clearance

This clause provides that a clearance remains in force for a period of 5 years from the date of the clearance unless earlier surrendered, suspended or cancelled.

Clause 26. Cancellation of clearance

This clause provides for the circumstances in which the Screening Agency can cancel a person's clearance.

This clause states that the Screening Agency must notify a person and the NDIS Commission if a person's clearance is cancelled.

Clause 27. Ongoing monitoring

This clause sets out the conditions under which a clearance holder will be subject to ongoing monitoring by the Screening Agency.

This clause authorises the Screening Agency to suspend or cancel a person's clearance as a result of ongoing monitoring.

Division 5 Clearance refused or cancelled

Clause 28. Application of Division

This clause outlines the circumstances when this Division applies.

Clause 29. Excluded persons

This clause sets out the conditions under which an excluded person is prohibited from engaging in NDIS work.

This clause notes that an excluded person is required to disclose the outcome of their screening check to any person or provider to whom they provide supports or services.

This clause also states that an excluded person may not reapply for an NDIS worker screening clearance for a period of five years after the date of the decision.

Division 6 Interim bar or suspension

Clause 30. Application of Division

This clause outlines when an interim bar or suspension applies.

Clause 31. Interim bar

This clause provides for the circumstances in which the Screening Agency can impose an interim bar on an applicant.

This clause states that the Screening Agency must give an applicant a decision notice if an interim bar is imposed on the applicant, notify an applicant if an interim bar ceases to be in effect and must notify the NDIS Commission if an interim bar is imposed on an applicant and if an interim bar ceases to be in effect.

Clause 32. Suspension

This clause provides for the circumstances in which the Screening Agency can suspend a person's clearance.

This clause states that the Screening Agency must give a person a decision notice if the person's clearance is suspended, notify a person if the suspension is lifted and must notify the NDIS Commission if a person's clearance is suspended or if the suspension is lifted.

Clause 33. Internal review of interim bar or suspension

This clause states that the imposition of an interim bar or a suspension constitutes a reviewable decision and who can seek an internal review.

This clause also provides for persons who are not entitled to an internal review.

Division 7 Risk assessment

Clause 34. Requirement for risk assessment

This clause provides for when the Screening Agency may conduct a risk assessment of a person in relation to this Act.

Clause 35. Matters to be considered when determining whether there is an unacceptable risk of harm to a participant

This clause sets out the matters that must be considered when determining when there is an unacceptable risk of harm to a person with disability.

Clause 36. Staff to be appropriately skilled

This clause outlines requirements for staff to be appropriately skilled to undertake a risk assessment.

Clause 37. Determination or intention of Screening Agency after risk assessment

This clause provides for the Screening Agency to make a decision or intention to make a decision after the risk assessment.

This clause requires the Screening Agency notify the person in writing of the Screening Agency decision or intention and must give the reasons for the intention to refuse or cancel the clearance. The written notice must advise the person of the process for requesting an internal review of the proposed decision.

Clause 38. Internal review of intention

This clause outlines that notice of intention to refuse or cancel a person's clearance is a reviewable decision and the person can seek an internal review within the time specified in the written notice.

This clause also provides for decisions that are not subject to an internal review.

Clause 39. Determination of Screening Agency after intention notified

This clause states that if no application for an internal review is received within the specified time, the Screening Agency will proceed to refuse or cancel the clearance as determined; and provide a decision notice.

The Screening Agency must also notify the NDIS Commission of the outcome of an application or the cancellation of a person's clearance.

Division 8 Miscellaneous matters

Clause 40. Withdrawing application

This clause provides for the circumstances in which an applicant may withdraw an application for clearance.

The clause also outlines that the Screening Agency must consent to the withdrawal and notify the NDIS Commission.

Clause 41. Surrender of clearance

This clause provides for the circumstances in which a clearance holder may surrender a clearance.

This clause states that the Screening Agency must give the person a written notice and notify the NDIS Commission if a clearance is surrendered.

Part 3 Review of decision

Clause 42. Internal review

This clause states what constitutes a *reviewable decision* for the purposes of this Act and defines an *affected person* for a reviewable decision.

This clause allows that the CEO may appoint a public sector employee to conduct an internal review of a reviewable decision.

This clause also provides for the conditions which the internal reviewer needs to consider when reviewing the decision and the decision an internal reviewer may make in relation to a reviewable decision.

Clause 43. Review by NTCAT

This clause states the circumstances in which NTCAT has jurisdiction to review decisions made under this Act.

Clause 44. Confidentiality of classified information

This clause provides for NTCAT to keep confidential any classified information provided to it by the Commissioner of Police when reviewing decisions made under this Act.

Part 4 Collection, use, storage and disclosure of information

Clause 45. Authorised purpose

This clause provides for the meaning of an authorised purpose.

Clause 46. Information only to be used for authorised purpose

This clause provides for the Screening Agency to use information it obtains for authorised purpose only.

Clause 47. Sharing and disclosing information

This clause provides for the appropriate sharing and disclosure of information for authorised purpose.

Clause 48. Screening Agency may disclose

This clause authorises the Screening Agency to inform authorised persons of outcomes or relevant information obtained for the purposes of assessment.

Clause 49. Authorised person may disclose

This clause states that an authorised person may disclose to another authorised person information obtained in accordance with this Act in certain circumstances.

Clause 50. Power to require relevant information from other persons

This clause provides for the general powers of the Screening Agency to require a person to provide information that is relevant to assessment.

This clause also authorises the person to provide information requested.

Clause 51. Criminal history information to be exchanged

This clause authorises the Screening Agency to exchange criminal history information with relevant law enforcement and screening authorities.

This clause also outlines specific criminal details that may be exchanged.

Clause 52. Information sharing - miscellaneous

This clause states that the existence or content of any criminal intelligence information must not be disclosed in a notice of decision made under this Act.

Part 5 Offences

Clause 53. Unauthorised collection or use of information

This clause creates an offence and provides for the penalty for unauthorised collection or use of information.

Clause 54. Offence to disclose certain information

This clause creates an offence and provides for the penalty for unauthorised disclosure of information.

Clause 55. Misleading information

This clause creates an offence and provides penalties for intentionally providing information or documentation that is knowingly misleading.

This clause also outlines instances that penalties do not apply if the person draws attention to and provides information necessary to remedy the misleading aspect.

Clause 56. Fail to comply with request for information

This clause creates an offence and provides penalties for failure to comply with a notice issued under section 56 of this Act.

Part 6 Administrative matters

Clause 57. Approved forms

This clause authorises the Chief Executive Officer to approve forms for this Act.

Clause 58. Fees

This clause provides for the regulations to prescribe a fee (if any) payable under this Act.

This clause also authorises the Screening Agency to exempt, waive or refund any fee payable under this Act.

Clause 59. Evidentiary certificates

This clause provides for the issuing of evidentiary certificates by the Screening Agency.

This clause also states that an evidentiary certificate is admissible in legal proceedings.

Clause 60. Protection from liability

This clause protects persons engaged in the administration of this Act from personal liability for acts or omissions done in good faith.

This clause also outlines that any liability the Territory would, apart from the above instance of personal liability, have for the act or omission.

Clause 61. Failure to give notice of decision

This clause provides that failure to give notice of a decision under this Act does not affect the validity of the decision.

Clause 62. Regulations

This clause authorises the Administrator to make regulations under this Act.

**Part 7 AMENDMENT OF CRIMINAL RECORDS (SPENT CONVICTIONS)
ACT 1992**

Clause 63. Act amended

This is a formal clause that identifies the legislation being amended in this part of the Act is the *Criminal Records (Spent Convictions) Act 1992*.

Clause 64. Section 15A amended (Exclusion in relation to spent records)

This clause outlines specific amendments to section 15A of the *Criminal Records (Spent Convictions) Act 1992* to disapply sections 11 and 13 of that Act in relation to a spent record for an applicant for a screening check. The effect of this amendment is that spent records must be disclosed in an application for a screening check.

Clause 65. Repeal of part

This is a standard clause which provides that Part 7 of the Act is repealed on the day after it commences.