



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

**Inquiry into the National
Disability Insurance Scheme
(Worker Clearance) Bill 2019**

November 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the National Disability Insurance Scheme (Worker Clearance) Bill 2019. The primary purpose of the Bill is to implement the Northern Territory's obligations under the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the Disability Insurance Scheme* (IGA) by establishing and operating 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 Committee received two submissions to its inquiry, both of which supported the intent and objects of the Bill. However, as detailed in this report, clarification was sought regarding aspects of the worker screening application assessment process and the interpretation of key terms used in the Bill.

Following consideration of the evidence and advice provided by the Department of Health, the Committee is satisfied that the Bill complies with the requirements of the IGA which seek to ensure that those persons who pose an unacceptable risk, or are proven to have harmed vulnerable people, are prohibited from having more than incidental contact with people with disability when working for a registered NDIS provider.






While the Committee has recommended that the Assembly pass the Bill, to ensure consistency across the Territory's statute book, it has also recommended that the definition of 'criminal intelligence' be amended to align it with the definition in section 6 of the *Serious Crime Control Act 2009* (NT).

On behalf of the Committee, I would like to thank those that made a submission to the Committee's inquiry. I would also like to thank departmental representatives for briefing the Committee on this Bill and their subsequent advice. Finally, I thank my fellow Committee members for their bipartisan commitment to the legislative review process.



Ms Ngaree Ah Kit MLA
Chair

Committee Members

	Ms Ngaree Ah Kit MLA Member for Karama	
	Party:	Territory Labor
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests, House
	Sessional:	Social Policy Scrutiny
	Mrs Robyn Lambley MLA Member for Araluen	
	Party:	Independent
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
	Mrs Lia Finocchiaro MLA Member for Spillett	
	Party:	Country Liberals
	Parliamentary Position:	Deputy Leader of the Opposition, Opposition Whip
	Committee Membership	
	Standing:	Privileges
	Sessional:	Social Policy Scrutiny, Economic Policy Scrutiny
	Mr Chansey Paech MLA Member for Namatjira	
	Party:	Territory Labor
	Parliamentary Position:	Deputy Speaker
	Committee Membership	
	Standing:	House, Privileges
	Sessional:	Social Policy Scrutiny
	Mrs Kate Worden MLA Member for Sanderson	
	Party:	Territory Labor
	Parliamentary Position:	Government Whip
	Committee Membership	
	Standing:	Public Accounts, Standing Orders and Members Interest
	Sessional:	Social Policy Scrutiny, Economic Policy Scrutiny
Chair:	Public Accounts Committee	

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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the National Disability Insurance Scheme (Worker Clearance) Bill 2019 with the proposed amendment set out in recommendation 2.

Recommendation 2

The Committee recommends that the definition of criminal intelligence in clause 7 be amended to align it with the *Serious Crime Control Act 2009* either by including an identical definition of criminal intelligence or by defining criminal intelligence by specific reference to section 6 of the *Serious Crime Control Act 2009*.

1 Introduction

Introduction of the Bill

1.1 The National Disability Insurance Scheme (Worker Clearance) Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Minister for Disabilities, the Hon Natasha Fyles MLA, on 16 October 2019. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 11 February 2020.¹

Conduct of the Inquiry

1.2 On 18 October 2019 the Committee called for submissions by 13 November 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 As noted in Appendix 2, the Committee received two submissions to its inquiry. The Committee held a public briefing with the Department of Health on 30 October 2019.

Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

- (i) whether the Assembly should pass the bill;
- (ii) whether the Assembly should amend the bill;
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
- (iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendment as set out in recommendation 2.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the National Disability Insurance Scheme (Worker Clearance) Bill 2019 with the proposed amendment set out in recommendation 2.

Report Structure

1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.7 Chapter 3 considers the main issues raised in evidence received.

¹ Daily Hansard, *Wednesday 16 October 2019*, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754880>, pp.8-12

2 Overview of the Bill

Background to the Bill

- 2.1 In June 2018, the Northern Territory Government agreed to the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the Disability Insurance Scheme* (IGA), which established the broader policy framework for nationally consistent National Disability Insurance Scheme (NDIS) worker screening arrangements to prevent workers who may pose a risk to NDIS participants from working in certain roles.²
- 2.2 In presenting the Bill, the Minister for Disabilities, the Hon Natasha Fyles MLA, advised the Assembly that the objective of the National Disability Insurance Scheme (Worker Clearance) Bill is to:

Protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports under the NDIS by:

- a. demonstrating that the rights of people with disability to be safe and protected are a high community priority;
- b. reducing the potential for providers to employ or engage individuals who pose an unacceptable risk of harm to people with disability;
- c. prohibiting individuals who have a history of harm against people with disability from having more than incidental contact with people with disability when working for a registered provider; and
- d. deterring individuals who pose a high risk of harm from seeking work in the NDIS sector.³

Purpose of the Bill

- 2.3 As highlighted in the Explanatory Statement, this Bill implements the Northern Territory's obligations under the IGA 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.⁴

- 2.4 In doing so, 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.⁵

² Daily Hansard, *Wednesday 16 October 2019*, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754880>, pp.8-12

³ Daily Hansard, *Wednesday 16 October 2019*, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754880>, p.11

⁴ Explanatory Statement, *National Disability Insurance Scheme (Worker Clearance) Bill 2019 (Serial 110)*, <https://parliament.nt.gov.au/committees/spsc/110-2019>, p.1

⁵ Explanatory Statement, *National Disability Insurance Scheme (Worker Clearance) Bill 2019 (Serial 110)*, <https://parliament.nt.gov.au/committees/spsc/110-2019>, p.1

3 Examination of the Bill

Introduction

3.1 While submitters supported the intent and objects of the proposed legislation, clarification was sought regarding aspects of the worker screening application assessment process and the interpretation of key terms used in the Bill. These matters are considered in the discussion below along with the subsequent advice provided by the Department of Health (the Department).

Definitions

3.2 As detailed below, concern was raised regarding the meaning of ‘criminal intelligence’ and ‘disqualifying offence’ as provided for under clause 7 of the Bill.

Criminal Intelligence

3.3 The *Serious Crime Control Act 2009* (NT) provides a detailed definition of ‘criminal intelligence’ in section 6 and defines ‘classified information’ as ‘information the Commissioner classifies as criminal intelligence.’ However, under clause 7 the Bill defines ‘criminal intelligence’ as ‘information that the Commissioner of Police classifies as criminal intelligence under the *Serious Crime Control Act 2009*.’

3.4 Consequently, the term ‘criminal intelligence’ would have a different meaning under the two different Acts and what is referred to as ‘criminal intelligence’ under the National Disability Insurance Scheme (Worker Clearance) Act would be referred to as ‘classified information’ under the *Serious Crime Control Act 2009*.

3.5 Pursuant to clause 44, the Bill then attempts to provide a similar scheme to the handling of criminal intelligence to that provided for in section 73 of the *Serious Crime Control Act 2009*, resulting in consequences that:

- Under clause 44(2) and (3), the Northern Territory Civil and Administrative Tribunal (NTCAT) will not need to consider the content of classified information to determine whether it is criminal intelligence but merely whether it is information that the Commissioner of Police has so classified.
- Clause 44(5) then provides that ‘classified information’ also means ‘information the Commissioner of Police classifies as criminal intelligence under the *Serious Crime Control Act 2009*.’
- Because the definition of ‘classified information’ mirrors that of ‘criminal intelligence’ it is logically impossible for NTCAT to consider classified information to not be criminal intelligence under clause 44(2) and (3).

3.6 Given the above, the Committee sought clarification from the Department as to why ‘criminal intelligence’ has been given a different definition to that in the *Serious Crime Control Act 2009*. The Department subsequently advised the Committee that:

This was an unintended consequence of drafting. The definition was amended in draft to be consistent with wording that was used in the Firearms Legislation Amendment Bill 2019.

The intention of the National Disability Insurance Scheme (Worker Clearance) 2019 Bill (the Bill) was for the definition of criminal intelligence to align with the definition in the *Serious Crime Control Act 2009* (the Act). This is why the Bill applies the scheme from s 73 of the Act to the NT Civil and Administrative Tribunal (NTCAT) appeals. We agree with the Scrutiny Committee that an interpretation issue is created by the current definition. Noting the interpretation issue, it would be appropriate for the definition in the Bill to be amended to align with the Act definition (either by including an identical definition or by defining criminal intelligence by reference to s 6 of the Act).⁶

Committee's Comments

- 3.7 In light of the Department's response and to ensure that the Bill is drafted in a sufficiently clear and precise manner, the Committee has recommended that the definition of 'criminal intelligence' be amended to ensure that it is aligned with the *Serious Crime Control Act 2009*.

Recommendation 2

The Committee recommends that the definition of criminal intelligence in clause 7 be amended to align it with the *Serious Crime Control Act 2009* either by including an identical definition of criminal intelligence or by defining criminal intelligence by specific reference to section 6 of the *Serious Crime Control Act 2009*.

Disqualifying Offence

- 3.8 Pursuant to clause 7, a 'disqualifying offence means an offence prescribed by regulation as a disqualifying offence.' The Darwin Community Legal Service (DCLS) suggested that this could adversely impact service delivery in remote communities:

Recruiting and retaining skilled staff is a real challenge in the NT, and particularly in remote areas where needs are greatest. The definition of **disqualifying offences** (to be prescribed by regulation) could screen out a large proportion of the remote population. ... A balance needs to be struck to ensure protection and safety of people with disabilities but understanding that the Aboriginal population is significantly over-represented in the justice system and that mandatory sentencing means small infractions can result in prison time, and thus severely limit the available workforce.⁷

- 3.9 As noted in the Department's information paper *NDIS Worker Screening NT*, this issue was raised during consultations on the development of the *NDIS Quality and Safeguards Framework*:

Some people who responded expressed concern about people being excluded altogether from working in the sector on the basis of past convictions. Most people felt that the risk to vulnerable people clearly outweighed the rights of the small number of people who might be excluded from working in the sector.⁸

⁶ Department of Health, *Responses to Written Questions*, 13 November 2019, <https://parliament.nt.gov.au/committees/spsc/110-2019>, p.1

⁷ Darwin Community Legal Service, Submission 1, p.2

⁸ Department of Health, *NDIS Worker Screening (NT) – Information Paper September 2019*, Northern Territory Government, Darwin, 2019, pp.7-8

3.10 However, pursuant to paragraph 61(b) of the IGA, it is further noted that ‘disqualifying offence’ refers to specified offences of a particularly serious nature within the following categories:

- i. murder and attempted murder
- ii. serious assault against a child or vulnerable person
- iii. sexual assault of a child or vulnerable person including incest
- iv. child pornography-related offences
- v. abduction or kidnapping offences against a child or vulnerable person involving a sexual or abusive element
- vi. bestiality and serious animal cruelty offences.⁹

Committee’s Comments

3.11 While acknowledging the concerns raised by DCLS, the Committee is satisfied that the Bill complies with the requirements of the IGA which seek to prohibit:

those persons who pose an unacceptable risk or are proven to have harmed vulnerable people from having more than incidental contact with people with disability when working for a registered NDIS provider.¹⁰

Meaning of *Risk Assessed Role*

3.12 Clause 11(1) provides that a ‘risk assessed role’ includes:

- (a) a key personnel role of a person or an entity; or
- (b) a role for which the normal duties include the direct delivery of specified supports or specified services to a participant; or
- (c) a role for which the normal duties are likely to require more than incidental contact with a participant.

Noting that financial stress and disability status are associated with economic abuse, the National Disability Services Northern Territory (NDS NT) questioned whether this clause extends to roles that “may encompass financial responsibilities.”¹¹

3.13 As highlighted in the *List of Specified Services and Supports for the Purposes of the National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018*, a number of the classes of supports and services specified by the NDIS Quality and Safeguards Commission may encompass financial responsibilities. For example, ‘management of funding for supports in participant plans’; ‘development of

⁹ Council of Australian Governments, *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme*, 3 May 2018, <https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-nationally-consistent-worker-screening>, p.15

¹⁰ Council of Australian Governments, *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme*, 3 May 2018, <https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-nationally-consistent-worker-screening>, p.3

¹¹ National Disability Services Northern Territory, Submission 2, p.4

daily living and life skills'; or 'assistance with daily life tasks in a group or shared living arrangement'.¹²

Committee's Comments

- 3.14 The Committee is satisfied that the Bill complies with the IGA and that the meaning of a 'risk assessed role' captures roles that may incorporate financial management or the provision of financial supports.

Assessment of Application

- 3.15 DCLS raised concern that inclusion of disciplinary and misconduct information in the assessment of an application for a screening check under clause 22:

sets a high discretionary bar with no guidance about relevance of such information to the safety and prevention objectives of the process.¹³

- 3.16 However, as required under paragraph 56(d) of the IGA, it is noted that clause 22(2)(b) provides that assessment of disciplinary and misconduct information relates specifically to information about the applicant supplied by the NDIS Commission to the Screening Agency including:

- (i) any adverse and substantiated findings of a formal investigation; and
- (ii) any adverse actions by the NDIS Commission.

Committee's Comments

- 3.17 The Committee is satisfied that the Bill complies with the requirements of the IGA which seek to reduce the potential for providers to employ workers who pose an unacceptable risk of harm to people with disability.

Exchange of Criminal History Information

- 3.18 Clause 51(2) provides that the Screening Agency may, on request, provide criminal history information, including spent convictions, relating to a person to the NDIS Commission or screening authority of a State or another Territory. DCLS suggested that this provision runs counter to the provisions of the *Criminal Records (Spent Convictions) Act 2007* (NT).

- 3.19 However, pursuant to Schedule A of the IGA regarding the *Exchange of Criminal History Information for the NDIS Worker Screening Check*, all jurisdictions are required to exchange criminal history information relating to convictions; spent convictions; pending charges; and d) non-conviction charges.

- 3.20 To ensure consistency with the *Criminal Records (Spent Convictions) Act 2007*, clause 64 of the Bill amends section 15A of that Act to provide that exclusions in

¹² NDIS Quality and Safeguards Commission, *List of Specified Services and Supports for the Purposes of the National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018*, <https://www.ndiscommission.gov.au/document/891>, pp.1-2

¹³ Darwin Community Legal Service, Submission 1, p.2

relation to spent records will not only apply to ‘an application for appointment to do work principally involving the care, instruction or supervision of vulnerable persons’, but will also apply to ‘an application for a screening check to obtain a clearance to provide services or supports to participants in the National Disability Insurance Scheme.’

Committee’s Comments

3.21 The Committee is satisfied that the Bill complies with the IGA and notes that the proposed amendment to section 15A of the *Criminal Records (Spent Convictions) Act 2007* will ensure consistency across the Territory’s statute book.

Cost to Workers

3.22 In presenting the Bill, the Minister advised the Assembly that the NDIS Worker Screening Clearance will not replace the Ochre Card (working with children clearance):

but will provide additional protection for vulnerable people, including children, who are NDIS participants.

The Northern Territory’s existing worker screening legislation does not provide authorisation for several of the nationally consistent NDIS requirements specified in the IGA. Some of the key requirements it needs to include are:

- a. exclusion from receiving a clearance, with no right to appeal, due to a person having committed a disqualifying offence;
- b. obligations on excluded workers to declare their NDIS excluded outcome to NDIS employers or NDIS participants;
- c. information sharing requirements with the NDIS Commission and other jurisdictions’ NDIS Worker Screening Agencies;
- d. a nationally consistent risk assessment process;
- e. on-going monitoring of cleared workers’ criminal history and other relevant information;
- f. five-year validity periods for an NDIS worker screening clearance;
- g. a need for interim bans which prevent workers who are required to undergo an assessment from engaging in NDIS work whilst their application for a clearance is being processed;
- h. enforcement action with regards to unauthorised collection, use or disclosure of information; non-compliance with requests for information; providing false or misleading information; engaging in NDIS work without an NDIS worker screening clearance; and transitional arrangements for the phasing in and commencement of regulatory activity.¹⁴

3.23 However, DCLS raised concern that the requirement for multiple worker clearances will add cost and complexity to the sector:

Acknowledging that, particularly in remote areas, there are few specialist services and more likely combined service delivery, workers may be required to get separate clearances for NDIS, ochre card and a criminal history check.¹⁵

¹⁴ Daily Hansard, *Wednesday 16 October 2019*, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754880>, pp.9-10

¹⁵ Darwin Community Legal Service, Submission 1, p.2

3.24 NDS NT expressed the view that:

One Working with Vulnerable Persons' Check should cross Human Service sectors to reduce barriers of cost and administrative process to workforce entry.¹⁶

As is the case in other jurisdictions, NDS NT also suggested that consideration be given to reducing or waiving the cost of NDIS worker screening clearances for volunteers.¹⁷

3.25 In response to the Committee's questions regarding the requirement for two separate clearances where people are working with children and NDIS participants, the Department advised that:

The Northern Territory will consider moving towards implementing a vulnerable persons' check in the future. That vulnerable persons' check will take into consideration the national consistency of the NDIS check, the working with children checks, and any future requirements that may come out of the Royal Commission into the Aged Care System and the Care and Protection of People with Disabilities.

There is still a bit of work that has to be done with that. We need to do further work with Territory Families, obviously, to see how we can get that to work together. It is noted that there will be an impost in the short term while we work together to address that vulnerable persons' check, and to see how we can perhaps look at that small group of people it will affect in the short term, where a person who is working with a child with a disability will be required to have the two cards. ...

We are in discussions with Territory Families on that matter, but for us, we need to stand up the NDIS worker clearance process in legislation and operationalise that.¹⁸

3.26 In addition to the above, it is noted that similar to section 10 of the Care and Protection of Children (Screening) Regulations 2010 (NT), clause 58 of the Bill provides that:

(2) The Screening Agency may do any of the following if the Screening Agency considers it appropriate:

- (a) exempt payment of a fee;
- (b) waive (wholly or partly) a fee;
- (c) refund (wholly or partly) a fee.

In relation to fees for an Ochre Card (Working with Children Screening Clearance), the Committee notes that whereas the full fee is currently \$72, if the clearance notice is required by the candidate for voluntary work only the fee is \$7.¹⁹

Committee's Comments

3.27 Until such time as a single, nationally consistent vulnerable persons' check is developed, the Committee is satisfied that the Bill provides the flexibility for the Screening Agency to waive or reduce fees where it considers it appropriate to do so.

¹⁶ National Disability Services Northern Territory, Submission 2, p.6

¹⁷ National Disability Services, Submission 2, p.6

¹⁸ Committee Transcript, Public Briefing, 30 October 2019, pp.5-6

¹⁹ Care and Protection of Children (Screening) Regulations 2010 (NT), Schedule 4

Appendix 1: Submissions Received and Public Briefing

Submissions Received

1. Darwin Community Legal Service
2. National Disability Services Northern Territory

Public Briefing – 30 October 2019

Department of Health

- Samantha Livesley: Senior Director, Office of Disability
- Michelle Wright: Acting Deputy Director, Office of Disability
- Rosa Nardone: Senior Policy Officer, Office of Disability

Note

Copies of submissions, hearing transcripts and tabled papers are available at:
<https://parliament.nt.gov.au/committees/spsc/110-2019>

Bibliography

Care and Protection of Children (Screening) Regulations 2010 (NT)

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Statement of Compatibility with Human Rights, *National Disability Insurance Scheme (Worker Clearance) Bill 2019 (Serial 110)*,
<https://parliament.nt.gov.au/committees/spsc/110-2019>