



Queensland

Disability Services and Other Legislation (Worker Screening) Amendment Act 2020

Act No. 39 of 2020

An Act to amend the Disability Services Act 2006, the Evidence Act 1977, the Police Powers and Responsibilities Act 2000, the Working with Children (Risk Management and Screening) Act 2000 and the other legislation mentioned in schedule 1 for particular purposes

[Assented to 11 December 2020]



Queensland

Disability Services and Other Legislation (Worker Screening) Amendment Act 2020

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Disability Services Act 2006

3 Act amended

This part amends the *Disability Services Act 2006*.

Note—

See also the amendments in schedule 1.

4 Amendment of s 6 (Objects of Act)

(1) Section 6(1)(c), ‘disability services’—
omit, insert—

NDIS supports or services

(2) Section 6(2), definition *national disability insurance scheme—*
relocate to schedule 8.

[s 5]

5 Amendment of s 7 (How objects are mainly achieved)

Section 7(d)—

omit, insert—

- (d) regulating particular aspects of the provision of NDIS supports or services by particular NDIS service providers under the *National Disability Insurance Scheme Act 2013* (Cwlth) to ensure the quality and safety of the supports or services; and

6 Amendment of s 12 (What are *disability services*)

Section 12—

insert—

- (2) However, *disability services* do not include NDIS supports or services.

7 Insertion of new s 12A

After section 12—

insert—

12A What are *NDIS supports or services*

NDIS supports or services are supports or services provided to a person with disability under the national disability insurance scheme, to the extent that providing the supports or services is funded by the payment of an NDIS amount under the *National Disability Insurance Scheme Act 2013* (Cwlth).

8 Amendment of s 13 (Meaning of *service provider*)

Section 13, before ‘services’—

insert—

supports or

9 Replacement of ss 15–16A

Sections 15 to 16A—

omit, insert—

14 Meaning of *funded service provider*

- (1) A *funded service provider* is a service provider, other than the State, receiving recurrent or one-off funds from the department, or another department prescribed by regulation, to provide disability services.
- (2) It does not matter whether or not the service provider also uses other funds or resources to provide the disability services.
- (3) A funded service provider may be a local government.

15 Meaning of *NDIS service provider*

- (1) A registered NDIS provider and an unregistered NDIS provider are each an *NDIS service provider*.
- (2) A *registered NDIS provider* is a registered NDIS provider under the *National Disability Insurance Scheme Act 2013* (Cwlth).
- (3) An *unregistered NDIS provider* is an entity that delivers NDIS supports or services to people with disability, other than a registered NDIS provider.

16 Meaning of *NDIS sole trader* and *State sole trader*

- (1) An individual is an *NDIS sole trader* if the individual—
 - (a) is an NDIS service provider; and

[s 10]

- (b) as an NDIS service provider, personally provides NDIS supports or services to people with disability.
- (2) An individual is a *State sole trader* if the individual—
 - (a) is a funded service provider; and
 - (b) as a funded service provider, personally provides disability services to people with disability.

10 Amendment of s 18 (Principle that people with a disability have the same human rights as others)

- (1) Section 18(3), after ‘disability services’—
insert—
or NDIS supports or services,
- (2) Section 18(3)(a) to (f) and (4), before ‘services’—
insert—
supports or

11 Replacement of pt 5 (Screening of particular persons engaged by department or particular service providers)

Part 5—
omit, insert—

Part 5 Disability worker screening and related requirements

Division 1 Preliminary

Subdivision 1 General

40 Main purposes of part

This part—

- (a) establishes a scheme for screening persons, by obtaining and considering their criminal history and other relevant information, to assess whether the persons pose an unacceptable risk of harm to people with disability; and
- (b) requires persons who carry out, or propose to carry out, particular work with people with disability to be screened under the scheme before they start carrying out the work; and
- (c) prohibits persons from carrying out particular work with people with disability if the chief executive decides they pose an unacceptable risk of harm to the people with disability.

41 Paramount consideration

The paramount consideration in making a decision under this part is the right of people with disability to live lives free from abuse, violence, neglect or exploitation, including financial abuse or exploitation.

42 Part applies despite Criminal Law (Rehabilitation of Offenders) Act 1986

This part applies to a person despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

43 Exemption for secondary school student on work experience

- (1) This section applies if—

[s 11]

- (a) a secondary school student on work experience carries out disability work for a service provider (the *work experience provider*); and
 - (b) another provision of this part requires a person who is engaged to carry out the disability work to hold a clearance or interstate NDIS clearance.
- (2) Despite the other provision, the student is not required to hold the clearance or interstate NDIS clearance to carry out the disability work.
- (3) The work experience provider does not commit an offence against the other provision in relation to the student carrying out the disability work if the student carries out the work under the direct supervision of—
- (a) for NDIS disability work—a person who holds an NDIS clearance or interstate NDIS clearance; or
 - (b) for State disability work—a person who holds a clearance.

Subdivision 2 Interpretation

44 When a person is *engaged* to carry out work for entity

- (1) A person is *engaged* to carry out work for an entity if—
- (a) the person has an agreement with the entity to carry out the work as an employee or volunteer of the entity; or
 - (b) the person carries out the work under a contract for services between—
 - (i) the entity and the person; or

-
- (ii) the entity and another person.
- (2) For this section, it does not matter—
 - (a) whether the agreement or contract is written or unwritten; or
 - (b) whether the work is carried out voluntarily or for financial reward; or
 - (c) how long the person is engaged to carry out the work; or
 - (d) whether the agreement or contract provides for the person to carry out work on 1 occasion or an ongoing basis, whether regularly or irregularly.
 - (3) Also, for this section, the nature of the work does not matter.

Note—

See also sections 46, 48 and 49.

45 Meaning of *NDIS disability work* and *risk-assessed NDIS work*

- (1) *NDIS disability work* is work that includes the delivery of NDIS supports or services to a person with disability.
- (2) *Risk-assessed NDIS work* is NDIS disability work carried out in a role for which the normal duties—
 - (a) include the direct delivery of specified NDIS supports or services to a person with disability; or
 - (b) are likely to require more than incidental contact with a person with disability.
- (3) For subsection (2)(b), the normal duties of a person's role are likely to require more than incidental contact with a person with disability if the duties include—

[s 11]

- (a) physically touching a person with disability;
or
 - (b) building a rapport with a person with disability as an integral and ordinary part of the performance of the duties; or
 - (c) duties that, under the NDIS (Worker Screening) Practice Standards, are defined to be, or otherwise described as, duties that require more than incidental contact with a person with disability.
- (4) In this section—
- contact* includes—
- (a) physical contact; and
 - (b) face-to-face contact; and
 - (c) oral, written and electronic communication.

rapport means a relationship or understanding that is more than merely polite and functional.

specified NDIS supports or services means NDIS supports or services that, under the NDIS (Worker Screening) Practice Standards, are—

- (a) specified supports or specified services; or
- (b) identified as supports or services that, if delivered directly to a person with disability, must be delivered by a person who holds an NDIS clearance or interstate NDIS clearance.

46 Key personnel of NDIS service provider taken to be engaged in risk-assessed NDIS work

- (1) A person is taken to be engaged to carry out risk-assessed NDIS work for an NDIS service provider if the person is key personnel of the service provider.

(2) In this section—

key personnel see the *National Disability Insurance Scheme Act 2013* (Cwlth), section 11A.

47 Meaning of *State disability work*

- (1) *State disability work* is work that includes providing disability services that is carried out for the department or a funded service provider.
- (2) *State disability work* does not include work carried out at a place where a funded service provider provides disability services that is carried out—
 - (a) by a consumer of the service provider; or
 - (b) by a tradesperson who—
 - (i) performs work at the place from time to time; and
 - (ii) is not an employee of the service provider; or
 - (c) by a volunteer who—
 - (i) is a relative of a person who receives disability services at the place; and
 - (ii) is at the place only to help with the care of the person.

48 When person is *engaged* to carry out *State disability work*

- (1) A person is *engaged* to carry out *State disability work* for the department if the person—
 - (a) is engaged to carry out the work at a place at which the department provides disability services; or

[s 11]

- (b) is a public service employee employed at a place mentioned in paragraph (a); or
 - (c) is a member of a committee established under section 222(a).
- (2) A person is *engaged* to carry out State disability work for a funded service provider if the person is engaged to carry out the work at a place at which the service provider provides disability services.
 - (3) A person is not *engaged* to carry out State disability work for the department or a funded service provider if the person is engaged to carry out the work, and carries out the work, for not more than 7 days in a calendar year.
 - (4) This section does not limit section 44.

49 Particular members or officers taken to be engaged in State disability work for funded service provider

A person is taken to be engaged to carry out State disability work for a funded service provider if—

- (a) the person is a member of a board, management committee or other governing body of the service provider; or
- (b) if the service provider is a corporation—the person is an executive officer of the service provider.

50 Meaning of *clearance* and types of clearances

- (1) A *clearance* is a declaration, issued by the chief executive to a person, that—
 - (a) screening of the person has been conducted under this part; and
 - (b) the person is permitted to carry out disability work.

- (2) An *NDIS clearance* is a clearance issued to a person who made an NDIS worker screening application.
- (3) An *interstate NDIS clearance* is a declaration, however called, issued under a corresponding law that corresponds to an NDIS clearance.
- (4) A *State clearance* is a clearance issued to a person who made a State disability worker screening application.

51 Meaning of *exclusion* and types of exclusions

- (1) An *exclusion* is a declaration, issued by the chief executive to a person, that—
 - (a) screening of the person has been conducted under this part; and
 - (b) the person is excluded from carrying out disability work.
- (2) An *NDIS exclusion* is an exclusion issued to a person who made an NDIS worker screening application.
- (3) An *interstate NDIS exclusion* is a declaration, however called, issued under a corresponding law that corresponds to an NDIS exclusion.
- (4) A *State exclusion* is an exclusion issued to a person who made a State disability worker screening application.

52 Meaning of *notifiable person*

- (1) Each of the following is a *notifiable person* for a person—
 - (a) if the chief executive is aware that an NDIS service provider engages, or proposes to engage, the person to carry out NDIS disability work—the NDIS service provider;

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- (b) if the chief executive is aware that a funded service provider engages, or proposes to engage, the person to carry out State disability work—the funded service provider;
 - (c) another entity prescribed by regulation to be a notifiable person for the person.
- (2) Subsection (3) applies for a person if—
- (a) the person delivers NDIS supports or services to an NDIS participant as—
 - (i) an NDIS sole trader; or
 - (ii) a person engaged by an NDIS service provider to deliver the supports or services; and
 - (b) the Agency is not wholly managing the funding for supports under the NDIS participant’s plan; and
 - (c) the chief executive is notified, or otherwise becomes aware, that the person is delivering the NDIS supports or services to the NDIS participant.
- (3) Each of the following is also a ***notifiable person*** for the person—
- (a) the NDIS participant;
 - (b) another person recognised by the chief executive as a person with the authority or responsibility to act for the NDIS participant in relation to the participant’s plan, other than the Agency.
- (4) In this section—

Agency see the *National Disability Insurance Scheme Act 2013* (Cwlth), section 9.

managing the funding for supports, under an NDIS participant’s plan, see the *National*

Disability Insurance Scheme Act 2013 (Cwlth), section 42.

NDIS participant means a person who is a participant in the national disability insurance scheme under the *National Disability Insurance Scheme Act 2013* (Cwlth).

plan, for an NDIS participant, means the NDIS participant's plan under the national disability insurance scheme.

Division 2 Requirements related to persons carrying out disability work

Subdivision 1 NDIS disability work

53 Registered NDIS provider engaging person to carry out risk-assessed NDIS work

- (1) A registered NDIS provider must not engage, or continue to engage, a person to carry out risk-assessed NDIS work unless the person holds an NDIS clearance or interstate NDIS clearance.

Maximum penalty—

- (a) if an aggravating circumstance applies to the offence—200 penalty units or 2 years imprisonment; or
- (b) otherwise—100 penalty units.
- (2) It is an **aggravating circumstance** for an offence against subsection (1) if the registered NDIS provider has been given notice that—
- (a) the person's NDIS clearance was cancelled on the person's request under division 6; or

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- (b) the person's interstate NDIS clearance was cancelled on the person's request under a corresponding law.
- (3) A registered NDIS provider does not commit an offence against subsection (1) if—
 - (a) the person (a *subcontractor*) is engaged to carry out the risk-assessed NDIS work under a contract for services between the provider and another person; and
 - (b) the provider has complied with the NDIS (Worker Screening) Practice Standards in relation to the subcontractor being engaged to carry out the risk-assessed NDIS work for the provider.

54 Carrying out risk-assessed NDIS work without NDIS clearance or interstate NDIS clearance prohibited

- (1) A person must not start, or continue, an engagement to carry out risk-assessed NDIS work for a registered NDIS provider unless the person holds an NDIS clearance or interstate NDIS clearance.

Maximum penalty—

- (a) if an aggravating circumstance applies to the offence—500 penalty units or 5 years imprisonment; or
- (b) otherwise—100 penalty units.
- (2) A person who is a registered NDIS provider must not carry out risk-assessed NDIS work as an NDIS sole trader unless the person holds an NDIS clearance or interstate NDIS clearance.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (3) It is an *aggravating circumstance* for an offence

against subsection (1) if the person—

- (a) held an NDIS clearance that was cancelled on the person's request under division 6; or
- (b) held an interstate NDIS clearance that was cancelled on the person's request under a corresponding law; or
- (c) is a disqualified person; or
- (d) holds a negative notice under the Working with Children Act; or
- (e) is subject to—
 - (i) offender reporting obligations; or
 - (ii) an offender prohibition order; or
 - (iii) an offender prohibition disqualification order; or
 - (iv) a sexual offender order; or
- (f) is the respondent to an application for an offender prohibition order.

55 Engaging person with NDIS exclusion or interstate NDIS exclusion prohibited

An NDIS service provider must not engage, or continue to engage, a person to carry out NDIS disability work if—

- (a) the person holds an NDIS exclusion or an interstate NDIS exclusion; and
- (b) the service provider knows, or ought reasonably to know, the person holds an NDIS exclusion or interstate NDIS exclusion.

Maximum penalty—200 penalty units or 2 years imprisonment.

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56 Engaging person with suspended NDIS clearance or interstate NDIS clearance, or subject to interim bar, prohibited

- (1) This section applies if—
- (a) a person—
 - (i) holds an NDIS clearance that is suspended under division 6; or
 - (ii) holds an interstate NDIS clearance that is suspended under a corresponding law; or
 - (iii) is subject to an interim bar; and
 - (b) an NDIS service provider knows, or ought reasonably to know, the person's NDIS clearance or interstate NDIS clearance is suspended or the interim bar is in effect for the person.
- (2) The NDIS service provider must not—
- (a) if the person is engaged by the service provider under an existing arrangement to carry out NDIS disability work for the service provider—allow the person to carry out work that is NDIS disability work; or
 - (b) otherwise—start to engage the person to carry out NDIS disability work.

Maximum penalty—200 penalty units or 2 years imprisonment.

Note—

See sections 84(3) and 113(3) for the restrictions on terminating a person's employment solely or mainly because the person's clearance is suspended or an interim bar is in effect for the person.

57 Holder of NDIS exclusion or interstate NDIS exclusion prohibited from carrying out NDIS disability work

A person who holds an NDIS exclusion or an interstate NDIS exclusion must not—

- (a) start, or continue, an engagement to carry out NDIS disability work for an NDIS service provider; or
- (b) carry out NDIS disability work as an NDIS sole trader.

Maximum penalty—500 penalty units or 5 years imprisonment.

Subdivision 2 State disability work

58 Funded service provider must prepare annual risk management strategy

- (1) Each year, a funded service provider that engages 1 or more persons to carry out State disability work must develop and implement a written strategy (a *risk management strategy*) that complies with this section.

Maximum penalty—20 penalty units.

- (2) A risk management strategy must include practices and procedures for engaging persons who carry out State disability work for the funded service provider in ways that—
 - (a) promote the wellbeing of people with disability; and
 - (b) protect people with disability from abuse, violence, neglect or exploitation.
- (3) A regulation may prescribe other matters that must be included in a risk management strategy.

59 Funded service provider engaging person to carry out State disability work

- (1) A funded service provider must not engage, or continue to engage, a person to carry out State disability work unless—
- (a) the person holds a clearance; and
 - (b) the service provider has given the chief executive a notice, under subsections (3) and (4), about engaging the person to carry out State disability work.

Maximum penalty—

- (a) if an aggravating circumstance applies to the offence—200 penalty units or 2 years imprisonment; or
 - (b) otherwise—100 penalty units.
- (2) It is an *aggravating circumstance* for an offence against subsection (1) if—
- (a) the person holds an exclusion and the funded service provider knows, or ought reasonably to know, the person holds the exclusion; or
 - (b) the funded service provider is given notice that the person's clearance was cancelled on the person's request under division 6.
- (3) Before giving a notice mentioned in subsection (1)(b), the funded service provider must take reasonable steps to verify the person's identity.

Examples of reasonable steps—

viewing the person's clearance or driver licence that includes the person's photograph

- (4) A notice mentioned in subsection (1)(b) must be given in the approved form and in an approved way.

60 Engaging person with suspended clearance, or subject to interim bar, prohibited

- (1) This section applies if—
 - (a) a person—
 - (i) holds a clearance that is suspended; or
 - (ii) is subject to an interim bar; and
 - (b) a funded service provider knows, or ought reasonably to know, the person's clearance is suspended or the interim bar is in effect for the person.
- (2) The funded service provider must not—
 - (a) if the person is engaged by the service provider under an existing arrangement to carry out State disability work for the service provider—allow the person to carry out work that is State disability work; or
 - (b) otherwise—start to engage the person to carry out State disability work.

Maximum penalty—200 penalty units or 2 years imprisonment.

Note—

See sections 84(3) and 113(3) for the restrictions on terminating a person's employment solely or mainly because the person's clearance is suspended or an interim bar is in effect for the person.

61 Carrying out State disability work without clearance prohibited

- (1) A person must not start, or continue, an engagement to carry out State disability work for the department or a funded service provider unless the person holds a clearance.

Maximum penalty—

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- (a) if an aggravating circumstance applies to the offence—500 penalty units or 5 years imprisonment; or
 - (b) otherwise—100 penalty units.
- (2) A person must not carry out State disability work as a State sole trader unless the person holds a clearance.
- Maximum penalty—500 penalty units or 5 years imprisonment.
- (3) It is an *aggravating circumstance* for an offence against subsection (1) if the person—
- (a) holds an exclusion; or
 - (b) held a clearance that was cancelled on the person’s request under division 6; or
 - (c) is a disqualified person; or
 - (d) holds a negative notice under the Working with Children Act; or
 - (e) is subject to—
 - (i) offender reporting obligations; or
 - (ii) an offender prohibition order; or
 - (iii) an offender prohibition disqualification order; or
 - (iv) a sexual offender order; or
 - (f) is the respondent to an application for an offender prohibition order.

Subdivision 3 General

62 No contravention of particular requirements in absence of notice

- (1) This section applies in relation to—

-
- (a) a provision of this division about a person carrying out disability work; and
 - (b) a person who—
 - (i) held a clearance that was cancelled under division 6; or
 - (ii) held an interstate NDIS clearance that was cancelled under a corresponding law; or
 - (iii) holds an exclusion issued to the person after the person's clearance was cancelled under division 6; or
 - (iv) holds an interstate NDIS exclusion issued to the person after the person's interstate NDIS clearance was cancelled under a corresponding law.
- (2) A court may not find that the person contravened the provision unless the person was given notice about the cancellation of the clearance or interstate NDIS clearance held by the person or the issue of the exclusion or interstate NDIS exclusion to the person.

63 Complying with requirement to end, or not start, person's engagement

- (1) This section applies if it would be an offence against a provision of this part for an NDIS service provider or funded service provider to engage, or continue to engage, a person (the *engaged person*) to carry out disability work.
- (2) The NDIS service provider or funded service provider must comply with the provision despite another Act or law or any industrial award or agreement.
- (3) The NDIS service provider or funded service provider does not incur any liability because, in

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complying with the provision, the service provider does not engage, or continue to engage, the engaged person to carry out disability work.

- (4) A person whose clearance is suspended under division 6, or whose interstate NDIS clearance is suspended under a corresponding law, may be engaged by the NDIS service provider or funded service provider other than to carry out disability work until the suspension ends.

Division 3 Disability worker screening applications

Subdivision 1 Prohibited disability worker screening applications

64 Application by exclusion holder prohibited

- (1) A person who holds an exclusion or an interstate NDIS exclusion must not make a disability worker screening application.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (2) An application made in contravention of subsection (1) has no effect.

Subdivision 2 Applications generally

65 Application related to NDIS disability work

A person may apply to the chief executive for a clearance if the person—

- (a) is, or proposes to be—

-
- (i) engaged by an NDIS service provider to carry out NDIS disability work; or
 - (ii) an NDIS sole trader; or
 - (iii) engaged by an entity prescribed by regulation for this section; and
- (b) complies with each other criterion prescribed by regulation for this section.

66 Application related to State disability work

A person may apply to the chief executive for a clearance if the person is, or proposes to be—

- (a) engaged by the department or a funded service provider to carry out State disability work; or
- (b) a State sole trader; or
- (c) engaged by an entity prescribed by regulation for this section.

67 Application combined with working with children check application

- (1) A person may combine an application under section 65 or 66 with a working with children check application.
- (2) An application made under subsection (1) is a *combined application*.
- (3) This part applies to a combined application to the extent it is an application under section 65 or 66.
- (4) If a combined application is made to the chief executive, the chief executive must give the information in the combined application, to the extent the information relates to the person's working with children check application, to the chief executive (working with children).

68 Form of application

- (1) A disability worker screening application must be—
 - (a) made in the approved form and in an approved way; and
 - (b) signed by the applicant; and
 - (c) accompanied by the fee prescribed by regulation for the application.
- (2) The approved form must provide for the applicant—
 - (a) to provide proof of the applicant's identity; and
 - (b) to consent to being screened under this part; and
 - (c) if the applicant is engaged, or proposes to be engaged, to carry out disability work—to provide information about the entity that has engaged, or proposes to engage, the applicant to carry out the disability work.

69 Chief executive may request further information

- (1) After receiving a disability worker screening application, the chief executive may give the applicant a notice asking the applicant to give the chief executive, within a reasonable stated time—
 - (a) stated information the chief executive reasonably needs to establish the applicant's identity; or
 - (b) stated information, including by way of a submission, about a stated matter that the chief executive reasonably believes is relevant to the application.
- (2) A request under subsection (1) must state that, if

the applicant does not comply with the request within the stated time, the application may be withdrawn.

70 Applicant must give notice of change in information

- (1) This section applies if, before the chief executive decides a disability worker screening application—
 - (a) the applicant's name or contact details as stated in the application change; or
 - (b) if the application states information about the applicant's engagement with an NDIS service provider or funded service provider—the stated information changes; or
 - (c) another matter, prescribed by regulation for this section, changes in relation to the applicant.
- (2) The applicant must give the chief executive a notice about the change, in the approved form and in an approved way, within 7 days after the change happens.

Maximum penalty—10 penalty units.

71 Notice of change in police information or risk assessment matter

- (1) This section applies if, before the chief executive decides a disability worker screening application, the applicant becomes aware that—
 - (a) the police information about the applicant changes; or
 - (b) a risk assessment matter relating to the applicant changes.

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- (2) The applicant must immediately give the chief executive a notice about the change, in the approved form and in an approved way.

Maximum penalty—100 penalty units.

- (3) For subsection (1)(a), the police information about a person changes if a criminal history event happens in relation to the person.

72 Expired clearance continues in force pending decision

- (1) This section applies if an applicant holds a clearance that, but for this section, would end under section 101(2).
- (2) The clearance remains in force—
 - (a) from when the clearance would have ended under section 101(2); and
 - (b) until—
 - (i) the applicant's disability worker screening application is decided or withdrawn; or
 - (ii) the applicant stops being a person who may apply for a clearance under section 65 or 66.

73 Holder of expired interstate NDIS clearance taken to hold NDIS clearance pending decision

- (1) This section applies if an applicant holds an interstate NDIS clearance that ends under a corresponding law because the term of the clearance has ended.
- (2) The applicant is taken to hold an NDIS clearance—

- (a) from the end of the term of the interstate NDIS clearance under the corresponding law; and
- (b) until—
 - (i) the applicant's disability worker screening application is decided or withdrawn; or
 - (ii) the applicant stops being a person who may apply for a clearance under section 65; or
 - (iii) an interim bar is imposed on the applicant.

Subdivision 3 Withdrawal of application

74 Notice of withdrawal

- (1) If the chief executive withdraws a disability worker screening application under this subdivision before it is decided, the chief executive must give the applicant a notice that states—
 - (a) the application is withdrawn; and
 - (b) the reason for the withdrawal.
- (2) The chief executive must also give a notice mentioned in subsection (1) to each notifiable person for the applicant.

75 Withdrawal by applicant

- (1) The applicant may ask the chief executive to withdraw the applicant's disability worker screening application at any time before it is decided.
- (2) The request may be made orally or in writing.

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- (3) The chief executive must withdraw the application unless the chief executive refuses to withdraw the application under section 76.

76 Refusal to withdraw by chief executive

- (1) The chief executive may refuse to withdraw an applicant's disability worker screening application if—
 - (a) an interim bar is in effect for the applicant; or
 - (b) an interstate NDIS clearance held by the applicant is suspended under a corresponding law; or
 - (c) the applicant was previously issued an exclusion or an interstate NDIS exclusion; or
 - (d) the chief executive, in relation to deciding the application—
 - (i) has given, or is proposing to give, the applicant a show cause notice under section 95; or
 - (ii) reasonably suspects a risk assessment of the applicant will demonstrate that the applicant poses an unacceptable risk of harm to people with disability.
- (2) If the chief executive refuses to withdraw the application, the chief executive must give the applicant a notice that states the reasons for the refusal.

77 Request to withdraw combined application

- (1) This section applies if the applicant made a combined application.
- (2) The applicant may combine a request to withdraw

the applicant's disability worker screening application under section 75 with a notice withdrawing the applicant's working with children check application.

- (3) A request made under subsection (2) is a ***combined withdrawal request***.

Note—

The request may be made orally or in writing. See—

- (a) section 75(2); and
 - (b) the Working with Children Act, section 196(3).
- (4) This subdivision applies to a combined withdrawal request to the extent it is a request under section 75.
- (5) If a combined withdrawal request is made to the chief executive, the chief executive must give a notice about the combined withdrawal request to the chief executive (working with children).

78 Withdrawal because identity can not be established

The chief executive must withdraw a disability worker screening application if—

- (a) the chief executive gives the applicant a notice under section 69(1)(a); and
- (b) the notice includes the warning mentioned in section 69(2); and
- (c) the chief executive can not establish the applicant's identity with certainty.

79 Withdrawal because of failure to comply with particular requests

The chief executive may withdraw a disability worker screening application if—

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- (a) the chief executive gives the applicant—
 - (i) a notice under section 69(1)(b) asking the applicant to provide stated information; or
 - (ii) a notice under section 138U or 138X asking the applicant to give the consent, or take the other action, stated in the notice; and
- (b) the notice includes a warning that, if the applicant does not comply with the notice, the application may be withdrawn; and
- (c) the applicant does not comply with the notice.

80 Withdrawal of NDIS worker screening application in particular circumstances

The chief executive must withdraw an NDIS worker screening application if the chief executive is satisfied—

- (a) that, before the application was made, the applicant applied for an interstate NDIS clearance under a corresponding law and that application has not been decided or withdrawn; or
- (b) since the application was made, the applicant has been issued an interstate NDIS exclusion.

Subdivision 4 Interim bar for particular applicants

81 Application of subdivision

- (1) This subdivision applies if any of the following happens in relation to an applicant—

- (a) the applicant—
 - (i) is charged with a disqualifying offence that has not been dealt with; and
 - (ii) was an adult when the offence is alleged to have been committed;
 - (b) the applicant becomes the subject of a banning order made for a reason that, in the chief executive's opinion, is relevant to whether the applicant poses a risk of harm to people with disability;
 - (c) the chief executive, in deciding the applicant's application, reasonably suspects a risk assessment of the applicant will demonstrate that the applicant poses an unacceptable risk of harm to people with disability.
- (2) However, this subdivision does not apply in relation to an applicant who holds a clearance that is suspended under division 6.

Note—

See sections 56, 60 and 113 in relation to the effect of the suspension of a person's clearance.

82 Chief executive must impose interim bar on applicant

- (1) The chief executive must impose an interim bar on the applicant.
- (2) The chief executive imposes an interim bar by giving the applicant a notice that states—
 - (a) the interim bar is imposed on the applicant; and
 - (b) the reason for imposing the interim bar; and
 - (c) the effect of the interim bar.

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83 Notifiable persons and potential employers notified about interim bar

- (1) The chief executive must give each notifiable person for the applicant a notice that states—
 - (a) the applicant has made a disability worker screening application that has not been decided; and
 - (b) an interim bar has been imposed on the applicant; and
 - (c) the effect of the interim bar; and
 - (d) an employer of the applicant who is given notice about the interim bar under this section must not terminate the applicant's employment solely or mainly because the interim bar is in effect for the person.

Note—

See section 138ZZB in relation to notices under this section if the NDIS commission communicates the relevant information to the notifiable person.

- (2) Also, the chief executive may give a notice mentioned in subsection (1) to a potential employer of the applicant.

84 Effect of interim bar

- (1) This section applies if the chief executive imposes an interim bar on an applicant under section 82.
- (2) While the interim bar is in effect, the applicant must not—
 - (a) start an engagement to carry out disability work; or
 - (b) if, when the interim bar is imposed, the applicant is engaged to carry out disability work for an NDIS service provider, funded service provider or the department—carry

out work for the service provider or department that is disability work; or

- (c) carry out disability work as an NDIS sole trader or State sole trader.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (3) An employer of the applicant who is given notice about the interim bar under section 83 must not terminate the applicant's employment solely or mainly because the interim bar is in effect for the applicant.

Notes—

- 1 See also sections 56 and 60 in relation to NDIS service providers or funded service providers allowing the applicant to carry out disability work.
- 2 See section 138ZZB in relation to notices under section 83 if the NDIS commission communicates the relevant information to the notifiable person.

85 When interim bar ends

- (1) An interim bar imposed on an applicant ends if—
- (a) the applicant's disability worker screening application is—
- (i) decided under division 4; or
 - (ii) withdrawn under subdivision 3; or
- (b) the chief executive decides to end the interim bar under subsection (2).
- (2) The chief executive may decide to end an interim bar if the chief executive reasonably suspects that a risk assessment of the applicant will demonstrate that the applicant does not pose an unacceptable risk of harm to people with disability.
- (3) If an interim bar has been imposed on the

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- applicant for at least 6 months, the applicant may apply to the chief executive to end the interim bar.
- (4) The application must be made in the approved form and in an approved way.
 - (5) The chief executive is not required to decide the applicant's application to end the interim bar if—
 - (a) a charge for an offence against the person has not been dealt with; or
 - (b) the chief executive is aware that an incident involving the person, or an allegation or complaint about the person's conduct, that is relevant to whether the person poses a risk of harm to people with disability is being investigated and the investigation has not ended.
 - (6) The chief executive may decide the applicant's application to end the interim bar—
 - (a) by deciding to end the interim bar under subsection (2); or
 - (b) if the applicant has asked the chief executive to withdraw the applicant's disability worker screening application under section 75—by withdrawing the application; or
 - (c) by refusing to end the interim bar.
 - (7) If the chief executive decides to refuse to end the interim bar, the chief executive must give the applicant a notice that states—
 - (a) the decision and the reasons for the decision; and
 - (b) the relevant review and appeal information.

Division 4 Dealing with and deciding application

Subdivision 1 Preliminary

86 Application of division

This division applies if a person made a disability worker screening application and the application has not been withdrawn.

87 Dealing with application

- (1) The chief executive must—
 - (a) consider the person’s application and the information available to the chief executive about the person; and
 - (b) if section 89 or 90 apply to the person—decide the application under that section; and
 - (c) if section 91 or 92 apply to the person—conduct a risk assessment of the person before deciding the application under that section.
- (2) However, the chief executive is not required to decide the person’s application if—
 - (a) a charge for an offence against the person has not been dealt with; or
 - (b) the chief executive is aware that an incident involving the person, or an allegation or complaint about the person’s conduct, that is relevant to whether the person poses a risk of harm to people with disability is being investigated and the investigation has not ended.

88 Information to be considered

- (1) The chief executive must consider each of the

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following types of information for a person of which the chief executive is aware, if any—

- (a) police information;
 - (b) domestic violence information;
 - (c) disciplinary information;
 - (d) NDIS disciplinary or misconduct information;
 - (e) information about—
 - (i) whether the person holds, or has previously held, a clearance, interstate NDIS clearance, exclusion or interstate NDIS exclusion; or
 - (ii) if the person has previously held a clearance or interstate NDIS clearance—whether the clearance was suspended at any time or cancelled.
- (2) The chief executive may consider other information about the person that is relevant to whether the person poses a risk of harm to people with disability.

Subdivision 2 Deciding application

89 Deciding application—no relevant information

The chief executive must issue a clearance to the person if the chief executive is not aware of any information mentioned in section 88 about the person.

90 Deciding application—disqualified person

- (1) This section applies if the chief executive is aware the person is a disqualified person.

-
- (2) The chief executive must issue an exclusion to the person.

91 Deciding application—exceptional circumstances for adult offender

- (1) This section applies if the chief executive is aware—
- (a) the person has a conviction for a serious offence and was an adult when the offence was committed; or
 - (b) the person—
 - (i) has been charged with a disqualifying offence or serious offence that has not been dealt with; and
 - (ii) was an adult when the offence is alleged to have been committed.

Note—

See section 95 for the requirement for the chief executive to give the person a show cause notice before deciding the person's application if this section applies.

- (2) The chief executive must issue the person an exclusion.
- (3) However, the chief executive may issue the person a clearance if satisfied there are exceptional circumstances such that the person does not pose an unacceptable risk of harm to people with disability.

92 Deciding application—general assessment of risk posed

- (1) This section applies if sections 89, 90 and 91 do not apply to the person.
- (2) The chief executive must—

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- (a) if satisfied the person does not pose an unacceptable risk of harm to people with disability—issue a clearance to the person; or
- (b) if satisfied the person poses an unacceptable risk of harm to people with disability—issue an exclusion to the person.

Subdivision 3 Assessing risk person poses to people with disability

93 How chief executive conducts risk assessment

- (1) The chief executive conducts a risk assessment of a person by—
 - (a) considering the information about the person obtained by the chief executive under this part; and
 - (b) deciding whether the person poses an unacceptable risk of harm to people with disability.
- (2) In conducting the risk assessment, the chief executive—
 - (a) must consider information as required under this division; and
 - (b) may decide the person poses an unacceptable risk of harm to people with disability—
 - (i) if satisfied there is a real and appreciable risk that the person might cause harm to people with disability; and

-
- (ii) without needing to be satisfied it is likely the person will cause the harm.

94 Matters to consider

- (1) This section applies if the chief executive is aware of conduct of the person (the person's *offending conduct*) that—
 - (a) involved the commission of an offence; or
 - (b) was the subject of a complaint, allegation or investigation under a law; or
 - (c) is otherwise relevant to whether the person poses a risk of harm to people with disability.
- (2) The chief executive must consider the following matters—
 - (a) the nature, gravity and circumstances of the person's offending conduct;
 - (b) how the person's offending conduct is relevant to disability work;
 - (c) how long ago the person's offending conduct occurred;
 - (d) if the person's offending conduct was committed against another person (the *victim*)—
 - (i) the victim's vulnerability at the time of the conduct; and
 - (ii) the person's relationship to, or position of authority over, the victim at the time of the conduct;
 - (e) whether the person's offending conduct indicates a pattern of concerning behaviour;
 - (f) the person's conduct since the offending conduct;

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- (g) any other circumstances relevant to the person's offending conduct.

95 Action before making adverse decision

- (1) This section applies if—
 - (a) section 91 applies to the person; or
 - (b) the chief executive is proposing to decide that the person poses an unacceptable risk of harm to people with disability.
- (2) Before deciding the person's application, the chief executive must—
 - (a) give the person a notice (a *show cause notice*) that complies with section 96; and
 - (b) consider any submissions the person makes in response to the show cause notice.

96 Requirements for show cause notice

A show cause notice given to a person under section 95 must—

- (a) state the following information about the person of which the chief executive is aware—
 - (i) police information;
 - (ii) domestic violence information;
 - (iii) disciplinary information;
 - (iv) NDIS disciplinary or misconduct information;
 - (v) other information that the chief executive reasonably believes is relevant to whether the person poses a risk of harm to people with disability; and

-
- (b) state that, because of the circumstances mentioned in section 95(1), the chief executive proposes to issue the person an exclusion unless the chief executive is satisfied that—
 - (i) if section 91 applies to the person—there are exceptional circumstances; and
 - (ii) the person does not pose an unacceptable risk of harm to people with disability; and
 - (c) invite the person to make submissions to the chief executive about—
 - (i) if section 91 applies to the person—whether there are exceptional circumstances; and
 - (ii) why the chief executive should not issue an exclusion to the person; and
 - (d) state the period in which the person may make the submissions, which must be at least 7 days after the chief executive gives the notice to the person.

Subdivision 4 Steps after application decided

97 Application of subdivision

This subdivision applies if the chief executive decides a person's disability worker screening application.

98 Issuing clearance and clearance card

- (1) If the chief executive decides to issue a clearance

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to the person, the chief executive must—

- (a) give the person a notice that states the chief executive has decided—
 - (i) if the person made an NDIS worker screening application—to issue the person an NDIS clearance; or
 - (ii) if the person made a State disability worker screening application—to issue the person a State clearance; and
 - (b) issue a clearance card for the clearance to the person.
- (2) A *clearance card*, for a clearance issued to a person, is a document, in the form of a card, that evidences that the clearance has been issued to the person.

99 Issuing exclusion

If the chief executive decides to issue an exclusion to the person, the chief executive must give the person a notice that states—

- (a) the chief executive has decided—
 - (i) if the person made an NDIS worker screening application—to issue the person an NDIS exclusion; or
 - (ii) if the person made a State disability worker screening application—to issue the person a State exclusion; and
- (b) the reasons for the decision; and
- (c) the relevant review and appeal information; and
- (d) that it is an offence against this Act for a person who holds an exclusion to—

- (i) make a disability worker screening application; or
- (ii) start or continue to be engaged in carrying out disability work; or
- (iii) carry out NDIS disability work as an NDIS sole trader or State disability work as a State sole trader.

100 Notifiable persons and potential employers notified about decision

- (1) The chief executive must give each notifiable person for the person a notice that states whether the person was issued—
 - (a) if the person made an NDIS worker screening application—an NDIS clearance or NDIS exclusion; or
 - (b) if the person made a State disability worker screening application—a State clearance or State exclusion.

Note—

See section 138ZZB in relation to notices under this section if the NDIS commission communicates the relevant information to the notifiable person.

- (2) Also, the chief executive may give a notice mentioned in subsection (1) to a potential employer of the person.

101 Term of clearance

- (1) The term of a clearance starts—
 - (a) when the clearance is issued; or
 - (b) if the person holds another clearance with a term that ends on a later day—immediately after the existing clearance ends.
- (2) Unless it is cancelled earlier under division 6, the

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term of a clearance ends—

- (a) for an NDIS clearance—5 years after it starts under subsection (1); or
- (b) for a State clearance—3 years after it starts under subsection (1).

102 Term of exclusion

An exclusion remains in force unless it is cancelled under division 7.

Division 5 General provisions about clearances

Subdivision 1 Change in information

103 Clearance holder to notify if no longer carrying out work as volunteer or on unpaid basis

- (1) This section applies if—
 - (a) a person holds a clearance that is not suspended; and
 - (b) during the term of the clearance, the person is or was—
 - (i) engaged to carry out disability work only as a volunteer; or
 - (ii) carrying out disability work as an NDIS sole trader or State sole trader only on an unpaid basis; and
 - (c) either of the following changes happens—
 - (i) the person is engaged to carry out disability work other than as a volunteer;

-
- (ii) the person starts carrying out disability work as an NDIS sole trader or State sole trader for financial reward.
- (2) The person must, within 14 days after the change happens—
- (a) give the chief executive a notice, in the approved form and in an approved way, about the change; and
 - (b) if the person is required to pay the prescribed application fee under subsection (3)—pay the prescribed application fee to the chief executive.

Maximum penalty—10 penalty units.

Note—

See section 106 in relation to the chief executive issuing a replacement clearance card because of the change.

- (3) The person must pay the prescribed application fee if the disability worker screening application in relation to which the clearance was issued was made on the basis that the person was—
- (a) engaged, or to be engaged, to carry out disability work only as a volunteer; or
 - (b) carrying out, or proposing to carry out, disability work as an NDIS sole trader or State sole trader only on an unpaid basis.
- (4) In this section—
- prescribed application fee*** means the fee prescribed by regulation for a disability worker screening application made by a person—
- (a) for a person who gives a notice under subsection (2) for a change mentioned in subsection (1)(c)(i)—engaged to carry out disability work other than as a volunteer; or

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- (b) for a person who gives a notice under subsection (2) for a change mentioned in subsection (1)(c)(ii)—carrying out disability work as an NDIS sole trader or State sole trader for financial reward.

unpaid basis, for carrying out disability work, means the work is carried out other than for financial reward.

104 Clearance holder to notify change in other information

- (1) A person who holds a clearance must immediately give the chief executive a notice, in the approved form and in an approved way, if the person becomes aware that—
 - (a) the police information about the person changes; or
 - (b) a risk assessment matter relating to the person changes.

Maximum penalty—100 penalty units.

- (2) For subsection (1), the police information about a person changes if a criminal history event happens in relation to the person.
- (3) Also, a person who holds a clearance must, within 14 days after any of the following matters change, give the chief executive a notice, in the approved form and in an approved way, about the change—
 - (a) the person's name;
 - (b) the person's contact details;
 - (c) another matter about the person, other than a matter to which section 103 or subsection (1) applies, prescribed by regulation for this subsection.

Maximum penalty—10 penalty units.

Subdivision 2 Replacement of clearance card

105 Replacement of lost or stolen card

- (1) If a person's clearance card is lost or stolen (the *lost or stolen card*), the person must, within 14 days after the loss or theft—
 - (a) give the chief executive a notice about the loss or theft in the approved form and in an approved way; and
 - (b) either—
 - (i) apply for a replacement clearance card; or
 - (ii) ask the chief executive under section 124 to cancel the person's clearance.

Maximum penalty—10 penalty units.

- (2) An application under subsection (1)(b)(i) must be—
 - (a) made in the approved form and in an approved way; and
 - (b) accompanied by the fee prescribed by regulation for the application.
- (3) The chief executive must—
 - (a) cancel the lost or stolen card; and
 - (b) if the person applied for a replacement clearance card under subsection (1)(b)(i)—issue a replacement clearance card to the person.

106 Replacement for change of name, contact details or volunteer or unpaid status

- (1) This section applies if a person who holds a

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clearance gives the chief executive notice that—

- (a) the person's name or contact details have changed; or
 - (b) a change mentioned in section 103(1)(c) has happened.
- (2) If the chief executive considers it is appropriate to do so because of the change, the chief executive may issue a replacement clearance card to the person.
 - (3) If the chief executive issues a replacement clearance card to the person, the chief executive must cancel the person's previously held clearance card.

107 Requirement to return replaced card

- (1) This section applies if the chief executive issues a clearance card (the *replacement card*) to a person who holds a clearance to replace a clearance card (the *original card*) previously issued to the person.
- (2) If the replacement card is issued other than because the person's original card expired or was lost or stolen, the person must give the original card to the chief executive within 14 days after the replacement card is issued.

Maximum penalty—10 penalty units.

- (3) If the person's original card was lost or stolen and the person regains possession of it, the person must give the original card to the chief executive within 7 days after regaining possession of it.

Maximum penalty—10 penalty units.

- (4) A person does not commit an offence against subsection (2) or (3) if the person has a reasonable excuse.

**Division 6 Reassessment,
 suspension or cancellation
 of clearance**

**Subdivision 1 Reassessment of risk of
 harm to people with
 disability**

**108 Reassessment of risk of harm posed by holder
 of clearance**

- (1) The chief executive may conduct a risk assessment of a person who holds a clearance if the chief executive becomes aware of information about the person that—
 - (a) was not known to the chief executive when the decision to issue the clearance was made; and
 - (b) in the chief executive’s opinion, is relevant to whether the person poses a risk of harm to people with disability.
- (2) The chief executive must conduct a risk assessment of a person, under subsection (1) or otherwise, before the chief executive makes a decision under this division about whether the person poses an unacceptable risk of harm to people with disability.

**109 Application of div 4, sdiv 3 to conducting risk
 assessment**

- (1) Division 4, subdivision 3 applies with necessary changes for conducting a risk assessment of a person under section 108.
- (2) Without limiting subsection (1), section 95

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applies if, under this division, the chief executive is proposing to decide that the person poses an unacceptable risk of harm to people with disability.

Note—

Section 95 requires the chief executive to give a person a show cause notice, and invite the person to make submissions, before the chief executive decides the person poses an unacceptable risk of harm to people with disability.

Subdivision 2 Suspension of clearance

110 Application of subdivision

This subdivision applies in relation to a person who holds a clearance if—

- (a) the person—
 - (i) is charged with a disqualifying offence that has not been dealt with; and
 - (ii) was an adult when the offence is alleged to have been committed; or
- (b) the person becomes the subject of a banning order made for a reason that, in the chief executive's opinion, is relevant to whether the person poses a risk of harm to people with disability; or
- (c) the chief executive—
 - (i) is conducting a risk assessment of the person under subdivision 1; and
 - (ii) reasonably suspects the assessment will demonstrate that the person poses an unacceptable risk of harm to people with disability.

111 Chief executive must suspend clearance

- (1) The chief executive must suspend the person's clearance by giving the person a notice (a *suspension notice*) about the suspension.
- (2) The suspension notice must state—
 - (a) the person's clearance is suspended; and
 - (b) the reason for the suspension; and
 - (c) how long the suspension will continue; and
 - (d) the effect of the suspension; and
 - (e) under section 128, the person must return the person's clearance card to the chief executive immediately after the notice is given, unless the person has a reasonable excuse; and
 - (f) the relevant review and appeal information.

112 Notifiable persons and potential employers notified about suspension

- (1) The chief executive must give each notifiable person for the person a notice that states—
 - (a) the person's clearance is suspended; and
 - (b) how long the suspension will continue; and
 - (c) the effect of the suspension; and
 - (d) it is an offence for an NDIS service provider or funded service provider to allow the person to carry out disability work while the clearance is suspended; and
 - (e) an employer of the person who is given notice about the suspension of the person's clearance under this section must not terminate the person's employment solely or mainly because of the suspension.

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Note—

See section 138ZZB in relation to notices under this section if the NDIS commission communicates the relevant information to the notifiable person.

- (2) Also, the chief executive may give a notice mentioned in subsection (1) to a potential employer of the person.

113 Effect of suspension of clearance

- (1) This section applies while the person's clearance is suspended.
- (2) The person must not—
 - (a) start an engagement to carry out disability work; or
 - (b) if the person is engaged to carry out disability work for an NDIS service provider, funded service provider or the department—carry out work for the service provider or department that is disability work; or
 - (c) carry out disability work as an NDIS sole trader or State sole trader.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (3) An employer of the person who is given notice about the suspension of the person's clearance under section 112 must not terminate the person's employment solely or mainly because of the suspension.

Notes—

- 1 See also sections 56 and 60 in relation to NDIS service providers or funded service providers allowing the person to carry out disability work.

- 2 See section 138ZZB in relation to notices under section 112 if the NDIS commission communicates the relevant information to the notifiable person.
- (4) The person's clearance continues in force even if it would otherwise end under section 101(2).

114 When suspension of clearance ends

The suspension of the person's clearance ends if—

- (a) the chief executive decides to cancel the clearance under section 115; or
- (b) the suspension ends under section 118; or
- (c) the clearance is otherwise cancelled under this division.

115 Deciding whether to cancel suspended clearance

- (1) The chief executive may decide whether or not to cancel the person's suspended clearance—
 - (a) on the chief executive's own initiative; or
 - (b) in response to an application made by the person under section 116.
- (2) The chief executive must cancel the person's clearance if the chief executive decides the person poses an unacceptable risk of harm to people with disability.

Note—

See sections 108(2) and 109 in relation to making a decision under this section.

- (3) Otherwise, the chief executive may decide to—
 - (a) not cancel the person's clearance; and
 - (b) end the suspension of the clearance.

116 Application to chief executive to end suspension of clearance

- (1) If the person's clearance has been suspended for at least 6 months, the person may apply to the chief executive to end the suspension of the clearance.
- (2) The application must be made in the approved form and in an approved way.
- (3) The chief executive is not required to decide the person's application if—
 - (a) a charge for an offence against the person has not been dealt with; or
 - (b) the chief executive is aware that an incident involving the person, or an allegation or complaint about the person's conduct, that is relevant to whether the person poses a risk of harm to people with disability is being investigated and the investigation has not ended.
- (4) The chief executive may decide the application—
 - (a) by deciding under section 115 whether or not to cancel the person's clearance; or
 - (b) by deciding—
 - (i) not to make a decision under section 115; and
 - (ii) to continue the suspension of the person's clearance.
- (5) If the chief executive makes a decision mentioned in subsection (4)(b), the chief executive must give the person a notice that states—
 - (a) the decision and reasons for the decision; and
 - (b) the relevant review and appeal information.

117 Chief executive decides to cancel suspended clearance

- (1) If the chief executive decides to cancel the person's clearance under section 115, the chief executive must—
 - (a) cancel the clearance; and
 - (b) issue an exclusion to the person as follows—
 - (i) for a person who held an NDIS clearance—an NDIS exclusion;
 - (ii) for a person who held a State clearance—a State exclusion; and
 - (c) give the person a notice that states—
 - (i) the decision and reasons for the decision; and
 - (ii) that, if the person has not returned the person's clearance card to the chief executive, under section 128, the person must return the person's clearance card to the chief executive immediately, unless the person has a reasonable excuse; and
 - (iii) the relevant review and appeal information; and
 - (iv) the circumstances in which the person may apply under section 130 for the exclusion to be cancelled; and
 - (d) give each notifiable person for the person, and each potential employer of the person given notice about the suspension of the clearance under section 112(2), a notice that states—
 - (i) the person's clearance has been cancelled; and

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- (ii) the person has been issued an exclusion; and
- (iii) it is an offence for an NDIS service provider or funded service provider to engage, or to continue to engage, the person to carry out disability work.

Note—

See section 138ZZB in relation to notices under this paragraph if the NDIS commission communicates the relevant information to the notifiable person.

- (2) Also, the chief executive may give a notice mentioned in subsection (1)(d) to another potential employer of the person.

118 Chief executive decides not to cancel suspended clearance

- (1) This section applies if, under section 115, the chief executive decides not to cancel the person's clearance and end the suspension of the clearance.
- (2) The suspension of the person's clearance ends.
- (3) The chief executive must—
 - (a) give a notice that states the suspension of the person's clearance has ended to—
 - (i) the person; and
 - (ii) each notifiable person for the person; and
 - (iii) each potential employer for the person who was given a notice about the suspension under section 112(2); and
 - (b) if the chief executive has the person's clearance card and the term of the person's clearance has not ended under section 101(2)—return the person's clearance card to the person.

Subdivision 3 Cancellling clearance by chief executive

119 Cancellling clearance—disqualified person

- (1) The chief executive must cancel a person's clearance if the person becomes a disqualified person.
- (2) This section applies whether or not the person's clearance is suspended under section 111.

120 Cancellling clearance—wrong or incomplete information

- (1) The chief executive must cancel a person's clearance if the chief executive—
 - (a) becomes aware the decision to issue the clearance was based on information that was wrong or incomplete; and
 - (b) decides the person poses an unacceptable risk of harm to people with disability.

Note—

See sections 108(2) and 109 in relation to making a decision under this section.

- (2) A risk assessment of the person conducted before the chief executive makes a decision mentioned in subsection (1)(b) must include consideration of the correct or complete information.
- (3) This section applies whether or not the person's clearance is suspended under section 111.

121 Cancellling clearance—new relevant information

- (1) The chief executive must cancel a person's clearance if the chief executive—

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- (a) becomes aware of information that—
 - (i) was not known to the chief executive when the decision to issue the clearance was made; and
 - (ii) in the chief executive’s opinion, is relevant to whether the person poses a risk of harm to people with disability; and
- (b) has not suspended the person’s clearance under section 111; and
- (c) decides the person poses an unacceptable risk of harm to people with disability.

Note—

See sections 108(2) and 109 in relation to making a decision under this section.

- (2) A risk assessment of the person conducted before the chief executive makes a decision mentioned in subsection (1)(c) must include consideration of the information mentioned in subsection (1)(a).

122 Action after decision

If the chief executive is required, or decides, to cancel a person’s clearance under this subdivision, the chief executive must—

- (a) cancel the person’s clearance; and
- (b) issue an exclusion to the person as follows—
 - (i) for a person who held an NDIS clearance—an NDIS exclusion;
 - (ii) for a person who held a State clearance—a State exclusion; and
- (c) give the person a notice that states—

- (i) the decision to cancel the clearance and issue the exclusion and the reasons for the decision; and
- (ii) under section 128, the person must return the person's clearance card to the chief executive immediately, unless the person has a reasonable excuse; and
- (iii) the relevant review and appeal information; and
- (iv) the circumstances in which the person may apply under section 130 for the exclusion to be cancelled.

123 Notifiable persons and potential employers notified about cancellation

- (1) If the chief executive cancels a person's clearance under this subdivision, the chief executive must give each notifiable person for the person a notice that states—
 - (a) the person's clearance has been cancelled; and
 - (b) the person has been issued an exclusion; and
 - (c) it is an offence for an NDIS service provider or funded service provider to engage, or to continue to engage, the person to carry out disability work.

Note—

See section 138ZZB in relation to notices under this section if the NDIS commission communicates the relevant information to the notifiable person.

- (2) Also, the chief executive may give a notice mentioned in subsection (1) to a potential employer of the person.

Subdivision 4 Cancellling clearance on holder's request

124 Request to cancel clearance

- (1) A person may ask the chief executive to cancel the person's clearance.
- (2) The request must be made in the approved form and in an approved way.

125 Refusal to cancel clearance

- (1) The chief executive must refuse a person's request under section 124 if—
 - (a) the person's clearance is suspended; or
 - (b) the chief executive is conducting, or proposes to conduct, a risk assessment of the person under subdivision 1; or
 - (c) the chief executive is aware the person has become a disqualified person.
- (2) The chief executive must give the person a notice that states—
 - (a) the chief executive is refusing the request to cancel the person's clearance; and
 - (b) the reasons for the refusal.

126 Cancellation of clearance

- (1) This section applies if a request under section 124 is not refused by the chief executive under section 125.
- (2) The chief executive must—
 - (a) cancel the person's clearance; and
 - (b) give the person a notice that states—

-
- (i) the clearance has been cancelled; and
 - (ii) under section 128, the person must return the person's clearance card to the chief executive immediately after the notice is given, unless the person has a reasonable excuse; and
 - (iii) it is an offence for the person to be engaged in carrying out disability work, or to carry out disability work as an NDIS sole trader or State sole trader, other than as allowed under division 2.

127 Notifiable persons and potential employers notified about cancellation

- (1) If the chief executive cancels a person's clearance under section 126, the chief executive must give a notice to each notifiable person for the person that states—
 - (a) the person's clearance has been cancelled on the person's request; and
 - (b) it is an offence for an NDIS service provider or funded service provider to engage, or continue to engage, the person in disability work other than as allowed under division 2.

Note—

See section 138ZZB in relation to notices under this section if the NDIS commission communicates the relevant information to the notifiable person.

- (2) Also, the chief executive may give a potential employer for the person a notice mentioned in subsection (1).

Subdivision 5 Return of clearance card

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128 Requirement to return suspended or cancelled card

- (1) This section applies to a person if the chief executive gives the person a notice that states the person's clearance is suspended or cancelled.
- (2) The person must return the person's clearance card for the clearance to the chief executive immediately after the notice is given, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Division 7 Cancellation of exclusion

129 Application of div 4, sdiv 3 to conducting risk assessment

- (1) The chief executive must conduct a risk assessment of a person before the chief executive makes a decision under this division about whether the person poses an unacceptable risk of harm to people with disability.
- (2) Division 4, subdivision 3 applies for conducting the risk assessment with necessary changes.
- (3) Without limiting subsection (2), section 95 applies if, under this division, the chief executive is proposing to decide that the person poses an unacceptable risk of harm to people with disability.

Note—

Section 95 requires the chief executive to give a person a show cause notice, and invite the person to make submissions, before the chief executive decides the person poses an unacceptable risk of harm to people with disability.

130 Application to cancel exclusion

- (1) A person who holds an exclusion, other than a disqualified person, may apply to the chief executive to cancel the exclusion if—
 - (a) the application is made more than 5 years after—
 - (i) the exclusion was issued; and
 - (ii) if the person has previously applied to cancel the exclusion under this section—the most recent previous application was decided; or
 - (b) a court decides an appeal, under section 138K, and sets aside a decision that information is investigative information about the person; or
 - (c) there has been a significant or exceptional change in the person's circumstances since the exclusion was issued.

Example of a significant or exceptional change in a person's circumstances—

a person's conviction for an offence is quashed

- (2) If the exclusion was issued because the person is a disqualified person, the person may apply to the chief executive to cancel the exclusion if the person is no longer a disqualified person.

131 Form of application

- (1) The application must be—
 - (a) made in the approved form and in an approved way; and
 - (b) signed by the person; and
 - (c) accompanied by the fee prescribed by regulation for the application.

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- (2) The person may state anything in the application that the person considers is relevant to the chief executive's decision, including, for example, a change in the person's circumstances since the exclusion was issued.

132 Cancellation on application

- (1) This section applies if a person made an application under section 130.
- (2) The chief executive may cancel the person's exclusion if the chief executive is satisfied the person does not pose an unacceptable risk of harm to people with disability.

Note—

See section 129 in relation to making a decision under this section.

133 Other cancellation of exclusion

- (1) The chief executive may act under this section whether or not a person made an application under section 130.
- (2) The chief executive may cancel the person's exclusion if the chief executive is satisfied the person does not pose an unacceptable risk of harm to people with disability and any of the following apply—
 - (a) the exclusion was issued because the person was a disqualified person and the person is no longer a disqualified person;
 - (b) the chief executive is satisfied the decision to issue the exclusion was based on wrong or incomplete information;
 - (c) the chief executive becomes aware of information (*further information*) that—

- (i) was not known to the chief executive when the decision to issue the exclusion was made; and
 - (ii) in the chief executive's opinion, is relevant to whether the person poses a risk of harm to people with disability.
- (3) A risk assessment of the person conducted before the chief executive makes a decision for a reason mentioned in subsection (2)(b) or (c) must include consideration of the correct and complete information or the further information.

Note—

See section 129 in relation to making a decision under this section.

134 Action after decision to cancel exclusion

- (1) If the chief executive decides to cancel a person's exclusion under this division, the chief executive must—
- (a) cancel the exclusion; and
 - (b) give the person a notice about the cancellation.
- (2) The chief executive may decide a disability worker screening application made by the person after the exclusion is cancelled without conducting a risk assessment of the person unless the chief executive is aware of information that—
- (a) was not known to the chief executive when the decision to cancel the exclusion was made; and
 - (b) is relevant to whether the person poses a risk of harm to people with disability.

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135 Notice of decision to refuse application

- (1) This section applies if—
 - (a) a person made an application under section 130; and
 - (b) the chief executive decided to refuse the application.
- (2) The chief executive must give the person a notice that states—
 - (a) the application has been refused and the person's exclusion continues in force; and
 - (b) the reasons for the chief executive's decision to refuse the application; and
 - (c) the relevant review and appeal information.

Division 8 Provisions about obtaining, giving and dealing with information

Subdivision 1 Preliminary

136 Meaning of *relevant person*

- (1) For this division, each of the following persons is a *relevant person*—
 - (a) a person who holds a clearance;
 - (b) a person who has made a disability worker screening application that has not been decided or withdrawn;
 - (c) a person to whom all of the following apply—

-
- (i) the person has purported to make a disability worker screening application;
 - (ii) the application has not been properly made, including, for example, because the application was not accompanied by the fee prescribed by regulation for the application;
 - (iii) the application, as made, contains sufficient information for the chief executive to establish the person's identity with certainty;
- (d) a person who has made an application under section 130 to cancel the person's exclusion and the application has not been decided or withdrawn;
- (e) a person who holds an exclusion if—
- (i) there is an undecided appeal, review or application under section 138J(2), 138L(2), 138ZV or 138ZW relating to the exclusion; or
 - (ii) there is an undecided appeal against a decision on an appeal or review under section 138J(2) or 138ZW relating to the exclusion.
- (2) Also, a person is a *relevant person* for this division if the chief executive is aware that—
- (a) the person holds an interstate NDIS clearance; or
 - (b) the person has made an application under a corresponding law that corresponds to an NDIS worker screening application and an NDIS worker screening unit has asked the chief executive for information about the person in relation to deciding the application.

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(3) In this section—

undecided, in relation to an appeal, review or application, means the appeal, review or application has been started or made but not decided.

137 Chief executive may disclose information about relevant persons

- (1) This section applies if the chief executive may ask an entity for information about a relevant person under this division.
- (2) The chief executive may include information that is reasonably necessary to identify the relevant person in the request.
- (3) The chief executive may also give information about the identity of a relevant person to an entity that is authorised, under this division or another law, to give information about relevant persons to the chief executive—
 - (a) to advise the entity whether or not a particular person is a relevant person; or
 - (b) from time to time to advise the entity about the persons who are relevant persons at a particular time.

138 Information that need not be given

- (1) This section applies if, under another provision of this division, an entity is required to give information to the chief executive and the entity reasonably believes that giving the information may do any of the following—
 - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case;

-
- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
 - (c) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;
 - (d) prejudice a matter before a court, including, for example—
 - (i) a matter or an investigation before the Mental Health Court; and
 - (ii) a prosecution;
 - (e) prejudice a matter before the Mental Health Review Tribunal;
 - (f) endanger a person's life or physical safety;
 - (g) adversely affect a person's mental health.
- (2) Despite the other provision, the entity is not required to—
- (a) give the information to the chief executive; or
 - (b) disclose the existence of the information to the chief executive.

Subdivision 2 Obtaining police information and related information from police commissioner

138A Provision about police commissioner's obligation to provide information

A requirement under this subdivision for the

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police commissioner to give the chief executive information about a relevant person applies—

- (a) only to information in the commissioner's possession or to which the commissioner has access; and
- (b) despite the *Youth Justice Act 1992*, part 9.

138B Meaning of *criminal history event*

- (1) Any of the following events that happen in relation to a person is a ***criminal history event***—
 - (a) the person acquires a criminal history;
 - (b) the person's criminal history changes;
 - (c) the police commissioner decides, under section 138I, that information about the person is investigative information;
 - (d) the person becomes subject to—
 - (i) offender reporting obligations; or
 - (ii) an offender prohibition order; or
 - (iii) an offender prohibition disqualification order;
 - (e) the person is named as the respondent for an application for an offender prohibition order;
 - (f) the person is the subject of an application for an offender prohibition disqualification order.
- (2) For subsection (1)(c), it does not matter when the conduct related to the investigative information happened or is alleged to have happened.

138C Chief executive's request for police information about relevant person

- (1) The chief executive may ask the police commissioner for police information about a relevant person.
- (2) The police commissioner must comply with a request under subsection (1) by—
 - (a) giving the chief executive the police information that exists about the relevant person; or
 - (b) telling the chief executive there is no police information about the relevant person.
- (3) If there is police information about the relevant person, the chief executive may ask the police commissioner for—
 - (a) a brief description of the circumstances of a conviction, charge or investigative information mentioned in the police information; and
 - (b) a section 93A transcript relating to an offence mentioned in the police information; and
 - (c) the information mentioned in section 138F(1) about an offender prohibition order or offender prohibition disqualification order mentioned in the police information; and
 - (d) the information mentioned in section 138F(2) about an application for an offender prohibition order or offender prohibition disqualification order mentioned in the police information if the order is not, or was not, made.
- (4) The police commissioner must comply with a request under subsection (3).

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- (5) If the chief executive no longer needs the information requested—
 - (a) the chief executive must tell the police commissioner the information is no longer needed; and
 - (b) the police commissioner's obligation to comply with the chief executive's request ends.

138D Chief executive's request for domestic violence information about relevant person

- (1) This section applies if the chief executive reasonably believes a domestic violence order may have been made against a relevant person.
- (2) The chief executive may ask the police commissioner for domestic violence information about the relevant person.
- (3) The police commissioner must comply with a request under subsection (2) by—
 - (a) giving the chief executive the domestic violence information that exists about the relevant person; or
 - (b) telling the chief executive there is no domestic violence information about the relevant person.
- (4) If there is domestic violence information about the person, the chief executive may ask the police commissioner for a brief description of the circumstances of a domestic violence order mentioned in the domestic violence information.
- (5) The police commissioner must comply with a request under subsection (4).
- (6) If the chief executive no longer needs the information requested—

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- (a) the chief executive must tell the police commissioner the information is no longer needed; and
 - (b) the police commissioner's obligation to comply with the chief executive's request ends.

138E Police commissioner must notify change in police information

- (1) This section applies if—
 - (a) the police commissioner reasonably suspects a person is a relevant person; and
 - (b) a criminal history event happens in relation to the person.
- (2) The police commissioner must give the chief executive a notice about the criminal history event.
- (3) The notice must state the following information, to the extent the information relates to the criminal history event—
 - (a) the particulars of an offence the relevant person was charged with or convicted of, including the day the person was charged or convicted;
 - (b) a brief description of information that the police commissioner has decided is investigative information about the relevant person;
 - (c) the information mentioned in section 138F(1) about an offender prohibition order or offender prohibition disqualification order to which the relevant person is, has been or becomes subject;
 - (d) the information mentioned in section 138F(2) about an application for an offender

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prohibition order or offender prohibition disqualification order if the order is not, or was not, made.

138F Particular information to be given about orders and applications for orders refused

- (1) For section 138C(3)(c) or 138E(3)(c), the information about an offender prohibition order or offender prohibition disqualification order is—
 - (a) details of the order, including its duration; and
 - (b) for an offender prohibition order—
 - (i) a brief description of the conduct that gave rise to the order; and
 - (ii) whether the order is or was a temporary order or final order under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.
- (2) For section 138C(3)(d) or 138E(3)(d), the information about an application for an offender prohibition order or offender prohibition disqualification order, if the order is not or was not made, is—
 - (a) the reasons the application was made; and
 - (b) the reasons the order was not made; and
 - (c) if the application was for an offender prohibition order—the reasons given by the magistrate or court hearing the application for deciding not to make the order.

138G Person to be notified if investigative information given

- (1) This section applies if the police commissioner gives investigative information about a relevant

person to the chief executive under section 138C or 138E.

- (2) The police commissioner must give the relevant person a notice that states—
 - (a) the police commissioner has decided that information about the person is investigative information; and
 - (b) the investigative information has been given to the chief executive.

138H Use of information given to police commissioner

- (1) Information given to the police commissioner under this division—
 - (a) must not be accessed or disclosed for any purpose other than—
 - (i) a purpose under this part; or
 - (ii) a purpose relevant to law enforcement; and
 - (b) must not be used for any purpose other than for a purpose under this part.
- (2) However, subsection (1) does not apply to information obtained by the police commissioner before the chief executive gave the information to the police commissioner under this division.

Subdivision 3 Provisions about investigative information

138I Police commissioner may decide information is investigative information

- (1) The police commissioner may decide that information related to the conduct of a person (the

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investigated person) is *investigative information* about the investigated person if satisfied—

- (a) there is or was evidence that, at the time of the investigated person's conduct, it constituted a schedule 6 or 7 offence (the *alleged offence*) committed by the investigated person against another person (the *complainant*); and
 - (b) the matters stated in subsection (2) apply in relation to the alleged offence.
- (2) The matters are—
- (a) the police investigated the alleged offence; and
 - (b) the investigated person was formally notified about the investigation, including—
 - (i) by participating, or being asked to participate, in an interview about the alleged offence; or
 - (ii) by otherwise being given an opportunity to answer allegations about the alleged offence; and
 - (c) there was sufficient evidence to establish each element of the alleged offence; and
 - (d) the investigated person was not charged because—
 - (i) the complainant died before the charge was brought; or
 - (ii) the complainant was unwilling to proceed; or
 - (iii) an adult, who was the complainant's parent or guardian, decided the matter should not proceed in the interests of the complainant.
- (3) Evidence of conduct includes information from a

third party if the complainant did not make a formal complaint at or about the time of the investigation.

- (4) Despite the *Police Service Administration Act 1990*, section 4.10, the police commissioner may not delegate the police commissioner's powers under subsection (1) other than to a police officer of at least the rank of superintendent.

138J Appealing investigative information decision

- (1) This section applies if—
 - (a) the police commissioner decides that information is investigative information about a person; and
 - (b) the investigative information is given to the chief executive under subdivision 2; and
 - (c) after the investigative information is given to the chief executive, the chief executive issues the person an exclusion, including because the chief executive cancels the person's clearance.
- (2) The person (the *appellant*) may appeal to a Magistrates Court about the decision (the *investigative information decision*) that information, given to the chief executive as investigative information about the appellant, is investigative information.
- (3) However, an appeal under subsection (2) may only be made within 28 days after the appellant is given notice that the exclusion has been issued.
- (4) The chief executive and police commissioner must be given a copy of the notice of appeal.
- (5) The tribunal does not have jurisdiction to review a decision of the police commissioner that—

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- (a) information is investigative information about a person; or
- (b) information that is investigative information about a person may be given to the chief executive.

138K Court to decide matter afresh

- (1) A Magistrates Court hearing an appeal about an investigative information decision under section 138J must decide afresh whether information given to the chief executive is investigative information about the appellant.
- (2) The appellant must not ask or call on the complainant for the investigative information to give evidence in person before the court.
- (3) Subsection (2) does not prevent documentary evidence being tendered and received in evidence by the court.
- (4) After hearing the appeal, the court may confirm or set aside the investigative information decision.
- (5) For subsection (4), the court must consider the matters the police commissioner was required to consider under section 138I when making the investigative information decision.
- (6) The clerk of the court must give the appellant notice of the court's decision on the appeal.
- (7) The notice must state—
 - (a) that, if the chief executive's decision to issue the appellant an exclusion is a reviewable decision, the appellant may apply for a review of the decision subject to section 138ZT(2); and
 - (b) how, and the period within which, the person may apply for the review.

(8) In this section—

complainant, for investigative information about the appellant, means the complainant under section 138I for the alleged offence under that section that was committed by the appellant who is the subject of the investigative information.

138L Consequence of decision on appeal

- (1) This section applies if a Magistrates Court decides an appeal about an investigative information decision under section 138K.
- (2) If the court decides to set aside the investigative information decision, the appellant may apply to the chief executive under section 130(1)(b) to cancel the appellant's exclusion.
- (3) If the court confirms the investigative information decision, the appellant may apply under section 138ZT for an internal review of the decision to issue the exclusion to the appellant, subject to section 138ZT(2).
- (4) An application mentioned in subsection (3)—
 - (a) must be made within 28 days after the appellant receives the notice under section 138K(6); and
 - (b) may be made even if the appellant applied for an internal review of the decision to issue the exclusion to the appellant before the court decided the appeal.

Subdivision 4 Obtaining police information from other State entities

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138M Obtaining information from director of public prosecutions

- (1) If the chief executive is aware a relevant person has been charged with or convicted of an offence, the chief executive may, by notice, ask the director of public prosecutions for the following information about the relevant person—
 - (a) a written statement briefly describing the circumstances of a charge or conviction for the offence;
 - (b) a copy or written summary of evidentiary material about the offence;
 - (c) if a charge for the offence was not proceeded with—a written summary of the reasons the charge was not proceeded with.
- (2) The director of public prosecutions may comply with the chief executive's request if the director reasonably believes the information may help the chief executive to perform the chief executive's screening functions in relation to the person.
- (3) However, the director of public prosecutions must not give the chief executive a copy or written summary of evidentiary material about the offence that relates only to a person other than the relevant person.

Example—

a report by an expert about a person other than the relevant person

- (4) The director of public prosecutions is authorised to give information, or a document containing information, under this section despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 227 for restrictions on disclosing or giving access to information or documents obtained under this part.

(5) Without limiting subsection (4), this section applies despite the *Director of Public Prosecutions Act 1984*, section 24A.

(6) In this section—

evidentiary material, about an offence, means material compiled in the course of the investigation or prosecution of the offence, including, for example, the following—

(a) a summary of the circumstances of the alleged offence prepared by a police officer;

Examples—

bench charge sheet, QP9

(b) a witness statement;

(c) an indictment;

(d) a record of an interview or a transcript of a record of an interview, including a section 93A transcript;

(e) a report by an expert about the person alleged to have committed the offence.

138N Obtaining information from chief executive (corrective services)

(1) The chief executive (corrective services) must give the chief executive a notice about each person who is subject to a sexual offender order.

(2) The notice must state—

(a) the person is subject to a sexual offender order; and

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- (b) any other information the chief executive (corrective services) reasonably believes may help the chief executive to perform the chief executive's screening functions.
- (3) The chief executive (corrective services) is authorised to give information under this section despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 227 for restrictions on disclosing or giving access to information or documents obtained under this part.

- (4) In this section—

chief executive (corrective services) means the chief executive of the department in which the *Corrective Services Act 2006* is administered.

Subdivision 5 Obtaining disciplinary and other information from particular entities

1380 Meaning of *disciplinary information* and *disciplinary action*

- (1) *Disciplinary information* about a person is information about any disciplinary action taken against the person.
- (2) *Disciplinary action*, in relation to a person, means—
 - (a) for a person who holds, or has held, a foster carer certificate, kinship carer certificate or provisional certificate under the *Child Protection Act 1999*—the person's certificate was amended, suspended or cancelled under that Act; or

- (b) for a person who holds, or has held, a provider approval, service approval or supervisor certificate under the *Education and Care Services Act 2013* or the Education and Care Services National Law (Queensland)—the person’s approval or certificate was amended, suspended or cancelled under that Act or Law; or
- (c) the person was given a prohibition notice under—
 - (i) the *Education and Care Services Act 2013*; or
 - (ii) the Education and Care Services National Law (Queensland); or
 - (iii) the repealed *Child Care Act 2002*; or
- (d) for a person who held a licence to conduct a child care service, including a provisional licence, under the repealed *Child Care Act 2002*—the person’s licence was amended, suspended or revoked under that Act; or
- (e) for a person who is, or has been, a registered teacher or holds, or has held, a permission to teach under the *Education (Queensland College of Teachers) Act 2005*—
 - (i) the person’s registration or permission to teach was suspended under that Act; or
 - (ii) the person’s registration was cancelled under that Act; or
 - (iii) a practice and conduct body made a decision about practice and conduct proceedings against the teacher under that Act; or

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- (f) for a person who was a registered teacher under the repealed *Education (Teacher Registration) Act 1988*—
 - (i) the person's registration was suspended or cancelled under that Act; or
 - (ii) the Board of Teacher Registration under that Act made an order about the person after inquiring into a matter concerning the person's conduct under that Act.
- (3) In this section—

amended, in relation to an approval, certificate or licence held by a person, means the approval, certificate or licence was amended other than—

 - (a) at the person's request; or
 - (b) with the person's agreement; or
 - (c) to extend the term of the approval, certificate or licence; or
 - (d) in another way that is consistent with, or not contrary to, the person's interests.

138P Request for information about disciplinary action against relevant person

- (1) The chief executive may, by notice, ask any of the following entities (each a *State entity*) for disciplinary information about a relevant person—
 - (a) the chief executive (child safety) in relation to disciplinary action mentioned in section 138O(2)(a);
 - (b) the chief executive (education and care) in relation to disciplinary action mentioned in section 138O(2)(b), (c) or (d);

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- (c) the college of teachers in relation to disciplinary action mentioned in section 138O(2)(e) or (f).
- (2) In this section—
- chief executive (education and care)*** means—
- (a) the chief executive of the department in which the *Education and Care Services Act 2013* is administered; or
- (b) the children’s services regulator under the Education and Care Services National Law (Queensland).

college of teachers means the Queensland College of Teachers under the *Education (Queensland College of Teachers) Act 2005*.

138Q State entity must comply with request for disciplinary information

- (1) This section applies if a State entity is given a request about a relevant person under section 138P.
- (2) The State entity must give the requested disciplinary information about the relevant person to the chief executive if the State entity reasonably believes the information may help the chief executive to perform the chief executive’s screening functions.
- (3) Disciplinary information given under subsection (2) must include the following information—
- (a) the disciplinary action taken;
- (b) when the conduct that constituted a ground for the disciplinary action happened;
- (c) the nature of the conduct that constituted a ground for the disciplinary action;

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- (d) other information about the disciplinary action the State entity reasonably believes may help the chief executive to perform the chief executive's screening functions.
- (4) Disciplinary information given under subsection (2) must not include information that identifies, or is likely to identify, a particular child.

138R Request for other information about relevant person from prescribed entities

- (1) This section applies if the chief executive reasonably believes a prescribed entity has information, other than disciplinary information, that is relevant to whether a relevant person poses a risk of harm to people with disability.
- (2) The chief executive may, by notice, ask the prescribed entity for information about the relevant person.
- (3) The prescribed entity may give the information about the relevant person to the chief executive if the entity reasonably believes the information may help the chief executive to perform the chief executive's screening functions.
- (4) This section applies subject to the *Child Protection Act 1999*, section 186.
- (5) In this section—
prescribed entity means—
 - (a) the chief executive (child safety); or
 - (b) the chief executive of the department in which the *Community Services Act 2007* is administered; or
 - (c) another entity that—
 - (i) is prescribed by regulation for this section; and

- (ii) has entered into an arrangement with the chief executive to give the chief executive information under this section.

138S State entity must update disciplinary information

- (1) This section applies if a State entity gives disciplinary information about a relevant person to the chief executive under this subdivision and the information changes.
- (2) The State entity must give the chief executive a notice about the change in the information.

Subdivision 6 Obtaining information about person's mental health

138T Application of subdivision

- (1) This subdivision applies if—
 - (a) the chief executive is deciding whether a relevant person poses an unacceptable risk of harm to people with disability; and
 - (b) the relevant person was—
 - (i) charged with a disqualifying offence alleged to have been committed when the person was an adult; or
 - (ii) charged with or convicted of a serious offence committed, or alleged to have been committed, when the person was an adult; or

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- (iii) charged with or convicted of an offence that relates to or involves a person with disability; and
 - (c) the chief executive reasonably believes it is necessary to consider the relevant person's mental health to make the decision mentioned in paragraph (a).
- (2) The chief executive may form the reasonable belief mentioned in subsection (1)(c) only if—
 - (a) for a charge or conviction mentioned in subsection (1)(b)—
 - (i) the matter of the relevant person's mental state relating to the offence has been referred to the Mental Health Court or an entity of another State with similar functions to that court; or
 - (ii) a court has ordered the relevant person to undertake psychiatric treatment; or
 - (iii) a court has been given a report about the relevant person's mental health prepared by a registered health practitioner; or
 - (b) the chief executive has, under this part, been given a report about the relevant person's mental health prepared by a registered health practitioner.

138U Request to relevant person for consent to preparation of report about person's mental health

- (1) The chief executive may, by notice, ask the relevant person—
 - (a) to consent to a registered health practitioner nominated by the chief executive preparing

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- a report about the relevant person's mental health; and
- (b) to be examined by the health practitioner to enable the health practitioner to prepare the report; and
 - (c) to consent to the health practitioner giving the report to the chief executive.
- (2) The notice must state the following—
- (a) the reasons for the chief executive's request;
 - (b) the name and qualifications of the registered health practitioner nominated by the chief executive to examine the relevant person;
 - (c) when and where the examination is to be conducted;
 - (d) that the health practitioner may require the relevant person to undergo further examinations;
 - (e) that the chief executive must bear the cost of the examination (including any further examinations) and preparation of the report;
 - (f) that the chief executive may consider the report about the relevant person's mental health when deciding whether the person poses an unacceptable risk of harm to people with disability;
 - (g) that, if the relevant person has made a disability worker screening application, the person may ask the chief executive to withdraw the application under section 75;
 - (h) that, if the relevant person does not give the consent, or undergo the examination, the chief executive may—
 - (i) if the person has made a disability worker screening application—

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withdraw the application under section 79; or

- (ii) decide whether the person poses an unacceptable risk of harm to people with disability without a report about the person's mental health.
- (3) The chief executive must be satisfied the registered health practitioner nominated is appropriately qualified to conduct the examination.

138V Obtaining report about person's mental health from registered health practitioner

- (1) This section applies if the relevant person gives the consent mentioned in section 138U(1)(c) to the registered health practitioner giving the report about the person's mental health to the chief executive.
- (2) The chief executive must give a copy of the relevant person's consent to the registered health practitioner.
- (3) The registered health practitioner may give the report to the chief executive.
- (4) The registered health practitioner is authorised to give the report under this section despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the examination.

Notes—

- 1 See section 138ZA in relation to the registered health practitioner being given information about the relevant person obtained by the chief executive from the Mental Health Court or Mental Health Review Tribunal, and restrictions on the use of the information.

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- 2 See section 227 for restrictions on disclosing or giving access to information or documents obtained under this part.

138W Chief executive to bear medical costs

The chief executive must bear the costs for the following amounts charged by the registered health practitioner for preparing a report about the relevant person's mental health under this subdivision—

- (a) the amount charged for examining the person to enable the health practitioner to prepare the report;
- (b) the amount charged for preparing the report.

138X Request for consent to obtain information from Mental Health Court or Mental Health Review Tribunal

- (1) This section applies if—
 - (a) the relevant person has been charged with, but not convicted of—
 - (i) a disqualifying offence or serious offence alleged to have been committed when the person was an adult; or
 - (ii) an offence that relates to or involves a person with disability; and
 - (b) either—
 - (i) the matter of the person's mental state relating to the offence was referred to the Mental Health Court; or
 - (ii) the Mental Health Review Tribunal reviewed a forensic order to which the person is subject, or the person's fitness

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for trial, under the *Mental Health Act 2016*, chapter 12, part 3, 4 or 6.

- (2) The chief executive may, by notice, ask the relevant person to consent to the chief executive obtaining information about the person from the Mental Health Court or Mental Health Review Tribunal—
 - (a) for the chief executive to use when deciding whether the person poses an unacceptable risk of harm to people with disability; or
 - (b) if the chief executive asked the person, under section 138U, to consent to a registered health practitioner preparing a report about the person’s mental health—to be given to the health practitioner to use when preparing the report.
- (3) The notice must state the following—
 - (a) the reasons for the chief executive’s request;
 - (b) the information that the Mental Health Court or Mental Health Review Tribunal may give the chief executive under section 138Y or 138Z;
 - (c) that the chief executive may consider the report about the relevant person’s mental health when deciding whether the person poses an unacceptable risk of harm to people with disability;
 - (d) that, if the relevant person has made a disability worker screening application, the person may ask the chief executive to withdraw the application under section 75;
 - (e) that, if the relevant person does not give the consent, the chief executive may—

- (i) if the person made a disability worker screening application—withdraw the application under section 79; or
- (ii) decide whether the person poses an unacceptable risk of harm to people with disability without obtaining the information.

138Y Obtaining information from Mental Health Court

- (1) The chief executive may, by notice, ask the Mental Health Court (the *court*) for information about the relevant person if—
 - (a) the matter of the person’s mental state relating to an offence mentioned in section 138X(1)(a) was referred to the court (the *referred matter*); and
 - (b) the person gives the consent mentioned in section 138X(2) for the chief executive to obtain information about the person from the court.
- (2) The chief executive must give a copy of the relevant person’s consent to the court.
- (3) If the relevant person’s consent is for the chief executive to use the information when deciding whether the person poses an unacceptable risk of harm to people with disability, the court may comply with the request if the court considers the information may help the chief executive make the decision.
- (4) If the relevant person’s consent is for the information to be given to the registered health practitioner preparing a report about the person’s mental health, the court must comply with the chief executive’s request.

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- (5) The court complies with the chief executive's request by giving the chief executive the following information—
 - (a) the court's decision about the referred matter and reasons for the decision;
 - (b) a copy or written summary of any expert's report about the relevant person received in evidence by the court, including, for example, a medical report, psychiatrist's report or expert report that accompanied the reference of the matter to the court;
 - (c) transcripts of a hearing conducted for the referred matter if the court directed the transcript may be given to a party to the hearing or another person.
- (6) A decision of the court not to give an expert report about the relevant person under this section does not prevent the chief executive applying for leave of the court under the *Mental Health Act 2016*, section 160(2) in relation to the report.

138Z Obtaining information from Mental Health Review Tribunal

- (1) The chief executive may, by notice, ask the Mental Health Review Tribunal (the *tribunal*) for information about the relevant person if—
 - (a) the tribunal reviewed a forensic order to which the person is subject, or the person's fitness for trial, under the *Mental Health Act 2016*, chapter 12, part 3, 4 or 6; and
 - (b) the person gives the consent mentioned in section 138X(2) for the chief executive to obtain information about the person from the tribunal.
- (2) The chief executive must give a copy of the

relevant person's consent to the tribunal.

- (3) If the relevant person's consent is for the chief executive to use the information when deciding whether the person poses an unacceptable risk of harm to people with disability, the tribunal may comply with the request if the tribunal considers the information may help the chief executive make the decision.
- (4) If the relevant person's consent is for the information to be given to the registered health practitioner preparing a report about the person's mental health, the tribunal must comply with the chief executive's request.
- (5) The tribunal complies with the request by giving the chief executive the following information—
 - (a) the tribunal's decision on the review and reasons for the decision;
 - (b) a copy or written summary of an expert's report about the relevant person received by the tribunal in the proceeding for the review, including, for example, a report about an examination of the person under the *Mental Health Act 2016*, section 454;
 - (c) transcripts of any hearing conducted for the review that the tribunal has directed may be given to a party to the hearing or another person.

138ZA Chief executive must give information to registered health practitioner

- (1) This section applies if—
 - (a) the chief executive is given information about the relevant person under section 138Y or 138Z; and

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- (b) the person consented to the information being given to the registered health practitioner preparing a report about the person's mental health.
- (2) The chief executive must give the information to the registered health practitioner as soon as practicable after receiving the information.
- (3) The registered health practitioner must not—
 - (a) make a record of the information; or
 - (b) disclose the information to anyone; or
 - (c) give anyone access to the information; or
 - (d) include any details of the information in a report about the relevant person's mental health prepared under this subdivision.

Maximum penalty for subsection (3)—100 penalty units or 2 years imprisonment.

138ZB Information that cannot be disclosed to relevant person under confidentiality order

- (1) This section applies if information given to the chief executive under section 138Y or 138Z includes information (*restricted information*) that cannot be disclosed to the relevant person under a confidentiality order under the *Mental Health Act 2016*, section 696 or 722.
- (2) If section 138ZA applies to the restricted information, the chief executive—
 - (a) must give the information to the registered health practitioner under that section; and
 - (b) must not keep the information, or a record or copy of the information, after giving the information to the health practitioner.
- (3) Otherwise, the chief executive must not use the restricted information for any purpose.

138ZC Further restrictions on chief executive's use of information

- (1) This section applies if the chief executive—
 - (a) is given information, other than restricted information under section 138ZB(1), about the relevant person under section 138Y or 138Z; and
 - (b) is deciding whether the person poses an unacceptable risk of harm to people with disability.
- (2) The chief executive may use the information to make the decision only if the relevant person consented to the chief executive using the information to make the decision.

138ZD Giving information authorised despite other laws

- (1) The Mental Health Court and Mental Health Review Tribunal are authorised to give information to the chief executive under section 138Y or 138Z despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 227 for restrictions on disclosing or giving access to information or documents obtained under this part.

- (2) Without limiting subsection (1), the information may be given—
 - (a) even if it cannot be disclosed to the relevant person under a confidentiality order under the *Mental Health Act 2016*, section 696 or 722; and

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- (b) if the information is an expert's report—
despite the *Mental Health Act 2016*, section 160.

138ZE Information that must not be given

Information or documents given by the Mental Health Court under section 138Y or the Mental Health Review Tribunal under section 138Z must not include—

- (a) any material (or any record or copy of the material) given to the court or tribunal under the *Mental Health Act 2016*, section 155, 163 or 742, or how the material was taken into account; or
- (b) the reasons of the court or tribunal for taking material mentioned in paragraph (a) into account or not taking the material into account; or
- (c) the content of an expert report about a person other than the relevant person; or
- (d) information about a person, other than the relevant person, that the court or tribunal considers is not relevant to the chief executive deciding whether the relevant person poses a risk of harm to people with disability.

Subdivision 7 Giving information to other worker screening units and NDIS commission

138ZF Application of subdivision

This subdivision applies to information about a person—

- (a) the chief executive was given, or given access to, under this part; or
- (b) in the chief executive's possession in relation to the performance of the chief executive's screening functions.

**138ZG Giving information to chief executive
(working with children)**

- (1) The chief executive may give information about a person to the chief executive (working with children) if the chief executive reasonably believes the information is relevant to the functions of the chief executive (working with children) under the Working with Children Act.
- (2) Without limiting subsection (1), the information that may be given includes—
 - (a) information about a disability worker screening application made by a person; and
 - (b) information about a clearance, interstate NDIS clearance, exclusion or interstate NDIS exclusion held by a person; and
 - (c) police information about a person, including investigative information; and
 - (d) disciplinary information or NDIS disciplinary or misconduct information about a person; and
 - (e) information about a person's mental health.

**138ZH Giving information to NDIS worker
screening unit or working with children
screening unit**

- (1) This section applies if—
 - (a) the chief executive is aware a person holds—

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- (i) an interstate NDIS clearance issued by an NDIS worker screening unit under a corresponding law; or
 - (ii) an interstate working with children authority issued by a working with children screening unit under a corresponding WWC law; or
- (b) an NDIS worker screening unit or working with children screening unit has asked the chief executive for information about a person in relation to deciding an application made by the person under a corresponding law or corresponding WWC law.
- (2) If the police commissioner gives the chief executive information about the person under subdivision 2, the chief executive may give the information to the NDIS worker screening unit or working with children screening unit.
- (3) The chief executive may also give the NDIS worker screening unit or working with children screening unit other information about the person if the chief executive reasonably believes the information is relevant to the functions of the screening unit under the corresponding law or corresponding WWC law.
- (4) However, the chief executive must not give the NDIS worker screening unit or working with children screening unit a section 93A transcript, or information contained in a section 93A transcript.
- (5) In this section—

corresponding WWC law means a law of another State that substantially corresponds to the Working with Children Act.

interstate working with children authority means an authority, however called, issued under a

corresponding WWC law that corresponds to a working with children authority under the Working with Children Act.

working with children screening unit means the entity responsible, under a corresponding WWC law, for issuing interstate working with children authorities.

138ZI Giving information to NDIS commission

- (1) The chief executive may give information about a person to the NDIS commission—
 - (a) under an arrangement between the chief executive and the NDIS commission, for the purpose of the information—
 - (i) being included in the NDIS worker screening database; or
 - (ii) being communicated to the person, or a notifiable person for the person, by the NDIS commission, including, for example, electronically through the NDIS worker screening database; or
 - (b) if the chief executive reasonably believes the information is otherwise relevant to the functions of the NDIS commission.
- (2) Without limiting subsection (1), the information may include—
 - (a) information about an NDIS worker screening application made by a person; and
 - (b) information about an NDIS clearance issued to a person, including the suspension or cancellation of the clearance; and
 - (c) information about an NDIS exclusion issued to a person, including the cancellation of the exclusion; and

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- (d) information about a notice given to a person that relates to an NDIS worker screening application made by the person or an NDIS clearance or NDIS exclusion issued to the person.
- (3) For subsection (1)(a), information is given to the NDIS commission if the information is entered into, or uploaded to, the NDIS worker screening database.

Subdivision 8 Giving information about person engaged in State disability work to particular entities

138ZJ Authorised entities for person

Each of the following is an *authorised entity* for a person—

- (a) a funded service provider (the person's *engaging provider*) if—
 - (i) the service provider has notified the chief executive under this Act that the service provider engages, or proposes to engage, the person to carry out State disability work; and
 - (ii) neither the service provider nor the person has notified the chief executive otherwise;
- (b) another person the chief executive accepts is an authorised representative of the person's engaging provider;
- (c) another person who is a notifiable person for the person;

- (d) an entity to whom the chief executive is required to, or may, give a notice about the person under this Act that relates to—
 - (i) a State disability worker screening application made by the person; or
 - (ii) a State clearance or State exclusion issued to the person.

138ZK Chief executive may give authorised entities particular information

- (1) The chief executive may give an authorised entity for a person information about—
 - (a) a State disability worker screening application made by the person; or
 - (b) a State clearance or State exclusion issued to the person; or
 - (c) a notice about the person given, or required to be given, to the authorised entity under this Act that relates to—
 - (i) a State worker screening check application made by the person; or
 - (ii) a State clearance or State exclusion held by the person.
- (2) The chief executive may give the information under subsection (1) by allowing the authorised entity to access the information electronically.

138ZL Use of information obtained under section 138ZK about person

- (1) This section applies to a person who is given, or accesses, information about a person under section 138ZK.
- (2) The person must not use the information, or

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disclose or give access to the information to anyone else, unless the use, disclosure or giving of access is allowed under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person may use the information, or disclose or give access to the information to another person, if the use, disclosure or giving of access—
- (a) is to identify, assess or monitor a risk, or potential risk, of harm to a person or people with disability in relation to the person to whom the information relates carrying out disability work; or
 - (b) is to establish whether or not the person to whom the information relates—
 - (i) has made a State disability worker screening application; or
 - (ii) has been issued a State clearance or State exclusion; or
 - (c) is to comply with an obligation under this Act; or
 - (d) happens with the consent of the person to whom the information relates; or
 - (e) is required to lessen or prevent a serious threat to the life, health, safety or welfare of an individual, or the health, safety or welfare of the public; or
 - (f) is required by a law enforcement agency to prevent, detect, investigate, prosecute or punish an offence; or
 - (g) is required for a proceeding in a court or a tribunal; or
 - (h) is authorised under a regulation or another law.
- (4) In this section—

law enforcement agency means—

- (a) an entity mentioned in the *Information Privacy Act 2009*, schedule 5, definition *law enforcement agency*, paragraph (b); or
- (b) an enforcement body within the meaning of the *Privacy Act 1988* (Cwlth).

Subdivision 9 Other provisions

138ZM Chief executive may advise whether clearance or interstate NDIS clearance is in force

- (1) This section applies if a person (the *requester*)—
 - (a) asks the chief executive whether, when the request is made, a clearance or interstate NDIS clearance held by another person is in force; and
 - (b) in making the request, gives the chief executive—
 - (i) the other person's name in which the person's clearance is issued; and
 - (ii) the number of the other person's clearance; and
 - (c) makes the request in the approved form and in an approved way.
- (2) The chief executive may tell the requester whether or not the other person's clearance or interstate NDIS clearance is in force at the time.

138ZN Arrangements with chief executive (working with children) about asking for and giving information

- (1) The chief executive must enter into a written

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arrangement with the chief executive (working with children) about—

- (a) asking the chief executive (working with children) for information, or giving the chief executive (working with children) information, under this part or the Working with Children Act; and
 - (b) the chief executive (working with children) asking the chief executive, or giving the chief executive information, under this part or the Working with Children Act.
- (2) Without limiting subsection (1), the arrangement may provide—
- (a) for information to be asked for and given electronically, including on a daily basis; or
 - (b) for information to be given by way of providing electronic access to the information.
- (3) If the arrangement provides for information to be given or accessed electronically and, under this Act or another law, there is a limitation on who may be given the information or access to the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

138ZO Arrangements with police commissioner or other entity about asking for and giving information

- (1) The chief executive may enter into a written arrangement with the police commissioner or another entity about asking for, or giving, information under this part.
- (2) Without limiting subsection (1), the arrangement may provide—

- (a) for information to be asked for and given electronically, including on a daily basis; or
 - (b) for information to be given by way of providing electronic access to the information.
- (3) If the arrangement provides for information to be given or accessed electronically and, under this Act or another law, there is a limitation on who may be given the information or access to the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

138ZP Guidelines for dealing with information

- (1) The chief executive must make guidelines, consistent with this Act, for dealing with information the chief executive obtains under this part.
- (2) The purpose of the guidelines is to ensure that, in the performance of the chief executive's screening functions—
 - (a) natural justice is afforded to persons about whom information is obtained; and
 - (b) only relevant information is used to make decisions under this part; and
 - (c) decisions under this part, based on the information, are made consistently.
- (3) The chief executive must give a copy of the guidelines to a person, free of charge, on request.

138ZQ Chief executive must give person's current address to police commissioner

- (1) If the police commissioner is required to give a notice to a person under this part, the police

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commissioner may, by notice—

- (a) state the person's address or addresses known to the police commissioner; and
 - (b) ask whether the chief executive knows other information about the person's address.
- (2) The chief executive must give the police commissioner other information about the person's address known to the chief executive.
 - (3) The information must not be used, disclosed or accessed for a purpose other than to give a notice to the person under this part.

Division 9 Review and appeal

138ZR Reviewable decisions and affected persons

- (1) Each of the following decisions of the chief executive is a *reviewable decision*—
 - (a) a decision to issue an exclusion to a person;
 - (b) a decision, on the application of a person under section 85(3), not to end the interim bar imposed on the person;
 - (c) a decision under section 116(4)(b) not to end the suspension of the person's clearance;
 - (d) a decision, on the application of a person under section 130 to cancel the person's exclusion, to refuse the application.
- (2) A person mentioned in subsection (1) in relation to a reviewable decision is the *affected person* for the decision.

138ZS Review process must start with internal review

An affected person for a reviewable decision may apply to the tribunal for a review of the decision only if—

- (a) the affected person has applied for an internal review of the decision; and
- (b) the internal review application has been decided, or is taken to have been decided, under this division.

138ZT Who may apply for internal review

- (1) An affected person for a reviewable decision may apply to the chief executive for a review of the decision under this division (an *internal review*).
- (2) However, if the chief executive made the reviewable decision because the affected person is a disqualified person, the affected person may apply for an internal review of the decision only on the ground that the chief executive mistakenly identified the person as a disqualified person.
- (3) If an affected person for a reviewable decision has not been given a notice about the decision and the reasons for the decision (an *information notice*), the affected person may ask the chief executive for a notice about the decision and reasons.
- (4) A failure by the chief executive to give the affected person an information notice about the reviewable decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.

138ZU Requirements for application

- (1) An application for internal review of a reviewable decision must—

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- (a) be made in the approved form and in an approved way; and
- (b) be made to the chief executive within—
 - (i) for a person who has been given an information notice for the decision—28 days after the day the person is given the notice; or
 - (ii) for a person who has not been given an information notice for the decision—28 days after the day the person becomes aware of the decision.

Note—

See also section 138L for the circumstances in which a person may apply for internal review of a reviewable decision after the day mentioned in this section.

- (2) The chief executive may, at any time, extend the period within which the application may be made.
- (3) The application does not affect the operation of the reviewable decision or prevent the decision being implemented.
- (4) In this section—

information notice, for a reviewable decision, see section 138ZT(3).

138ZV Internal review

- (1) The chief executive must, within 28 days after receiving an application for internal review of a reviewable decision—
 - (a) review the reviewable decision; and
 - (b) decide to—
 - (i) confirm the reviewable decision; or
 - (ii) substitute another decision for the reviewable decision; and

- (c) give the affected person for the reviewable decision a QCAT information notice for the chief executive's decision.
- (2) The chief executive may give the affected person notice extending, for a further 28 days, the period for the chief executive to comply with subsection (1).
- (3) The application may be dealt with only by a person who—
 - (a) did not make the reviewable decision; and
 - (b) holds a more senior office than the person who made the reviewable decision.
- (4) Subsection (3) does not apply to a reviewable decision made by the chief executive personally.
- (5) If the chief executive does not give the affected person a QCAT information notice within the period required under subsection (1) or a longer period notified under subsection (2), the chief executive is taken to confirm the reviewable decision.

138ZW Applying for external review

- (1) This section applies to a person who must be given a QCAT information notice for an internal review decision.
- (2) The person may apply to the tribunal, as provided under the QCAT Act, for a review of the internal review decision.

138ZX Stay of operation of particular tribunal decisions

- (1) This section applies if, on an application for a review of an internal review decision under section 138ZW, the tribunal sets aside the internal

[s 11]

- review decision and decides to—
- (a) issue a clearance to a person; or
 - (b) end an interim bar imposed on a person; or
 - (c) end the suspension of a person’s clearance.
- (2) The tribunal’s decision does not take effect until—
- (a) the end of the period within which an appeal against the tribunal’s decision may be started; or
 - (b) if an appeal against the tribunal’s decision is started—the appeal is decided or withdrawn.
- (3) This section applies despite the QCAT Act, sections 145 and 152.

138ZY Effect of applicant for review becoming disqualified person

- (1) This section applies if—
- (a) an affected person for a reviewable decision applies—
 - (i) to the chief executive for an internal review of the decision; or
 - (ii) to the tribunal for a review of an internal review decision; and
 - (b) after making the application, the affected person becomes a disqualified person.
- (2) The application and any proceeding that relates to the application must be dismissed.
- (3) Subsection (2) applies to a proceeding before the tribunal, even if dismissal would be contrary to a direction of the Court of Appeal.
- (4) Any appeal from a decision of the tribunal that relates to the application must also be dismissed.

Division 10 Miscellaneous provisions

138ZZ False or misleading information

A person must not, for this part, give information, or a document containing information, that the person knows is false or misleading in a material particular to—

- (a) the chief executive; or
- (b) an NDIS service provider or funded service provider that engages, or is proposing to engage, the person.

Maximum penalty—100 penalty units or 2 years imprisonment.

138ZZA Chief executive may arrange for use of information system

- (1) The chief executive may approve a system (an *information system*) for—
 - (a) generating, sending, receiving, storing or otherwise processing electronic communications between the chief executive and another person under this part; or
 - (b) generating a decision of the chief executive under this part, other than a decision—
 - (i) that requires the chief executive to conduct a risk assessment of a person before making the decision; or
 - (ii) prescribed by regulation as a decision that may not be generated by the information system.
- (2) The chief executive must take all reasonable steps to ensure that a decision generated by the

[s 11]

information system is correct.

- (3) A decision generated by the information system is taken to be a decision made by the chief executive under this part.
- (4) The chief executive may make a decision in substitution for a decision the chief executive is taken to have made under subsection (3) if the chief executive is satisfied that the decision generated by the information system is incorrect.

138ZZB Notice given to notifiable person by NDIS commission

- (1) This section applies if—
 - (a) another provision of this part requires the chief executive to give a notice about a person to a notifiable person for the person; and
 - (b) the person—
 - (i) is the applicant for an NDIS worker screening application; or
 - (ii) holds an NDIS clearance, NDIS exclusion, interstate NDIS clearance or interstate NDIS exclusion.
- (2) Despite the other provision, the chief executive is not required to give the notice to the notifiable person if the chief executive, under an arrangement mentioned in section 138ZI(1)(a)—
 - (a) has given the NDIS commission the information about the person that is required, under the provision, to be included in the notice; and
 - (b) is satisfied the information has been, or will be, communicated to the notifiable person by the NDIS commission, including, for

example, electronically through the NDIS worker screening database.

- (3) For this part, information about a person communicated to a notifiable person by the NDIS commission as mentioned in subsection (2) is taken to have been given to the notifiable person in a notice by the chief executive under the other provision.

12 Amendment of s 139 (Purpose of pt 6)

- (1) Section 139, heading, ‘pt 6’—

omit, insert—

part

- (2) Section 139(a), after ‘disability services’—

insert—

or NDIS supports or services

13 Amendment of s 140 (Application of part)

- (1) Section 140(1)—

omit, insert—

- (1) This part applies in relation to the following service providers that provide disability services or NDIS supports or services to an adult with an intellectual or cognitive disability—

- (a) an NDIS service provider;
- (b) a funded service provider;
- (c) the department;
- (d) another service provider prescribed by regulation for this section.

- (2) Section 140(2)(b) and (4), after ‘disability services’—

insert—

[s 14]

or NDIS supports or services

14 Replacement of s 205 (Positive notice card is evidence of holding positive notice)

Section 205—

omit, insert—

205 Clearance card is evidence of clearance

A clearance card issued to a person is evidence that the person holds a clearance.

15 Amendment of s 206 (Indictable and summary offences)

Section 206(1)—

omit, insert—

(1) An offence against this Act is an indictable offence that is a crime if the maximum penalty for the offence is—

- (a) 500 penalty units or more; or
- (b) 5 years imprisonment or more.

16 Amendment of s 207 (Proceedings for indictable offences)

(1) Section 207(2)(a) and (b)—

omit, insert—

- (a) the magistrate is satisfied, at any stage of the hearing and after hearing submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction; or
- (b) the magistrate is satisfied, on an application made by the defence, that because of

exceptional circumstances the offence
should not be heard and decided summarily.

- (2) Section 207(4), ‘150 penalty units or 2 years’—

omit, insert—

100 penalty units or 3 years

17 Amendment of s 216 (Application of division)

- (1) Section 216(1)(a)—

omit, insert—

(a) applies in relation to the following service providers that provide disability services or NDIS supports or services to an adult with an intellectual or cognitive disability—

- (i) an NDIS service provider;
- (ii) a funded service provider;
- (iii) the department;
- (iv) another service provider prescribed by regulation for this section; and

- (2) Section 216(1)(b)(i) and (2)(b), after ‘disability services’—

insert—

or NDIS supports or services

18 Amendment of s 222 (Establishment of Ministerial advisory committees)

Section 222(b), ‘and disability services’—

omit, insert—

, disability services and NDIS supports or services

[s 19]

19 Replacement of s 227 (Confidentiality of information about criminal history and related information)

Section 227—

omit, insert—

227 Confidentiality of police, disciplinary, mental health and other protected information

- (1) This section applies to a person who—
 - (a) is or has been a public service employee employed in the department; and
 - (b) in that capacity, was given, or given access to, protected information about another person.
- (2) The following information is *protected information* about a person—
 - (a) police information about the person and information related to the police information;
 - (b) domestic violence information about the person and information related to the domestic violence information;
 - (c) disciplinary information about the person;
 - (d) NDIS disciplinary or misconduct information about the person;
 - (e) information about the person's mental health, including, for example, information given to the chief executive under part 5, division 8, subdivision 6;
 - (f) other information about the person given to the chief executive to help the chief executive decide whether the person poses an unacceptable risk of harm to people with disability, including information about the person given to the chief executive—
 - (i) by the NDIS commission; or

- (ii) by an NDIS worker screening unit; or
 - (iii) by a prescribed entity under section 138R.
- (3) The person must not use the protected information, or disclose or give access to the protected information to anyone else, unless the use, disclosure or giving of access is allowed under subsection (4).

Maximum penalty—100 penalty units or 2 years imprisonment.

- (4) The person may use the protected information, or disclose or give access to the protected information to another person, if the use, disclosure or giving of access—
- (a) is for the performance of the chief executive’s screening functions; or
 - (b) is expressly permitted under part 5; or
 - (c) happens with the consent of the person to whom the information relates; or
 - (d) is otherwise required under an Act.

20 Amendment of s 228 (Confidentiality of other information)

- (1) Section 228(1), from ‘information mentioned’—
omit, insert—
protected information under section 227(2).
- (2) Section 228(3)(c), after ‘disability services’—
insert—
or NDIS supports or services
- (3) Section 228(5)(a), ‘non-government’—
omit.

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21 Amendment of s 229 (Power to require information or documents)

(1) Section 229, ‘non-government’—

omit.

(2) Section 229(1), after ‘disability services’—

insert—

or NDIS supports or services

22 Omission of s 232 (Chief executive may enter into arrangement about giving and receiving information with police commissioner)

Section 232—

omit.

23 Amendment of s 239 (Regulation-making power)

(1) Section 239(2)—

omit, insert—

(2) A regulation may—

- (a) provide for arrangements between the chief executive and the chief executive (working with children) in relation to receiving, withdrawing, dealing with and deciding combined applications; and
- (b) prescribe fees payable under this Act, the matters for which fees are payable and provide for the refund or waiver of the fees; and
- (c) impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

(2) Section 239(3)—

omit.

24 Insertion of new pt 9, div 13

Part 9—

insert—

**Division 13 Transitional provisions for
Disability Services and
Other Legislation (Worker
Screening) Amendment
Act 2020**

Subdivision 1 Preliminary

367 Definitions for division

In this division—

amended Act means this Act as in force after the commencement.

amendment Act means the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020*.

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force from the commencement.

transitioned applicant, for a transitioned application, means the person who is taken to have made the application under section 372(2) or (3) or 373(2).

transitioned application see sections 372(2) and (3) and 373(2).

transitioned clearance see section 369(2).

transitioned exclusion see section 371(2).

368 Particular terms having meaning given under unamended Act

- (1) In this division, a term defined under the unamended Act but not under the amended Act has the meaning it had under the unamended Act.
- (2) In this section—

unamended Act means this Act as in force from time to time before the commencement.

Subdivision 2 Existing prescribed notices, exemption notices, prescribed notice applications and exemption notice applications

369 Existing positive notice and positive notice card

- (1) This section applies if, immediately before the commencement, a person holds a current positive notice or current positive exemption notice.
- (2) The positive notice or positive exemption notice is taken to be a clearance (a *transitioned clearance*), that is both an NDIS clearance and a State clearance, issued to the person under new part 5, division 4.
- (3) However, for the purposes of a corresponding law, the positive notice or positive exemption notice is taken to be a State clearance issued to the person under new part 5, division 4.
- (4) The term of the transitioned clearance ends, unless it is cancelled earlier—

- (a) if the person holds a positive notice—when the positive notice would have ended under the unamended Act; or
 - (b) if the person holds a positive exemption notice because, on the commencement, the person also holds a working with children authority—on the day the term of the person’s working with children authority is due to end under the Working with Children Act, regardless of whether the authority is cancelled earlier under that Act.
- (5) A positive notice card for the person’s positive notice, or an exemption card for the person’s positive exemption notice, is taken to be a clearance card issued to the person under new section 98 for the person’s clearance under subsection (2).
- (6) To remove any doubt, it is declared that subsection (2) applies even if the person is a disqualified person on the commencement.

Note—

See, however, new section 119 which requires the chief executive to cancel a person’s clearance if the person becomes a disqualified person.

370 Existing suspension of positive notice or positive exemption notice

- (1) This section applies if, immediately before the commencement—
- (a) former section 74 applied to a person and a prescribed event under that section had not happened for the person; or
 - (b) a current positive notice held by a person was suspended under former section 86; or

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- (c) a current positive exemption notice held by a person was suspended under former section 88.
- (2) The person's transitioned clearance is taken to have been suspended under new section 111.
- (3) The chief executive must give the person, and each notifiable person for the person, a notice that states—
 - (a) the person's transitioned clearance is taken to have been suspended under new section 111; and
 - (b) how long the suspension will continue; and
 - (c) the effect of the suspension.
- (4) An application under former section 87 or 89 to cancel the person's suspended positive notice or positive exemption notice that, immediately before the commencement, had not been decided or withdrawn is taken to be an application under new section 116 to end the suspension under subsection (2).
- (5) The suspension and application may be dealt with under the amended Act.
- (6) However, the person may not apply under new section 116 to end the suspension under subsection (2) until 6 months after the commencement.

371 Existing current negative notice or current negative exemption notice

- (1) This section applies if, immediately before the commencement, a person holds a current negative notice or current negative exemption notice.
- (2) The negative notice or negative exemption notice is taken to be an exclusion (a *transitioned exclusion*), that is both an NDIS exclusion and a

State exclusion, issued to the person under new part 5, division 4.

- (3) However, for the purposes of a corresponding law, the negative notice or negative exemption notice is taken to be a State exclusion issued to the person under new part 5, division 4.
- (4) New section 130(1)(a) applies in relation to the transitioned exclusion as if the reference in new section 130(1)(a) to 5 years after the exclusion was issued were a reference to 5 years after the negative notice or negative exemption notice was issued to the person.

372 Existing prescribed notice application or exemption notice application

- (1) This section applies if—
 - (a) immediately before the commencement, a prescribed notice application or exemption notice application about a person had been made but not decided, withdrawn or taken to be withdrawn; or
 - (b) an exemption notice application about a person given, under an arrangement between the chief executive and the chief executive (working with children), to the chief executive (working with children) before the commencement is given to the chief executive after the commencement.
- (2) If the person is a person who may make an application under new section 65, the application is taken to be an NDIS worker screening application (a *transitioned application*) made by the person.
- (3) If the person is a person who may make an application under new section 66, the application is taken to be a State disability worker screening

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application (also a *transitioned application*) made by the person.

- (4) If neither subsection (2) nor (3) applies to the application—
 - (a) the application lapses on the commencement; and
 - (b) the chief executive must give the person who made the application and the person about whom the application was made a notice that states the application has lapsed.
- (5) To remove any doubt, it is declared that subsections (2) and (3) apply even if the person is a disqualified person on the commencement.

373 Existing consent to screening by person engaged by department

- (1) This section applies if—
 - (a) before the commencement, a person gave the chief executive consent under former section 50 to undertake screening of the person under former part 5; and
 - (b) immediately before the commencement—
 - (i) the person's consent had not been withdrawn; and
 - (ii) the chief executive had not made a decision about issuing the person a prescribed notice or exemption notice.
- (2) The person's consent is taken to be a State disability worker screening application (also a *transitioned application*) made by the person.
- (3) To remove any doubt, it is declared that subsection (2) applies even if the person is a disqualified person on the commencement.

374 Dealing with and deciding transitioned applications

- (1) The amended Act applies for dealing with and deciding a transitioned application.
- (2) The chief executive must give a notice that states the transitioned application is being dealt with and decided as an application made under the amended Act by the transitioned applicant for the application to—
 - (a) the transitioned applicant; and
 - (b) if the transitioned applicant is not the person who made the application—the person who made the application.

Note—

See new section 69 in relation to the chief executive asking for further information relating to the transitioned application.

- (3) The notice must be given to the transitioned applicant and person mentioned in subsection (2)(b) within 1 month after—
 - (a) for a transitioned application mentioned in section 372(1)(b)—the chief executive (working with children) gives the transitioned application to the chief executive; or
 - (b) otherwise—the commencement.

375 Application of new pt 5 to transitioned applicants

- (1) This section applies to a person if, on the commencement, the person—
 - (a) is the transitioned applicant for a transitioned application; and
 - (b) is engaged to carry out disability work by an NDIS service provider, funded service

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provider or the department, other than as a volunteer; and

- (c) does not hold a transitioned exclusion.
- (2) This section also applies to a person if, on the commencement, the person—
- (a) is the transitioned applicant for a transitioned application; and
 - (b) is carrying out disability work as either—
 - (i) an NDIS sole trader or State sole trader; or
 - (ii) a volunteer engaged by an NDIS service provider, funded service provider or the department to carry out disability work; and
 - (c) holds a transitioned clearance or a working with children authority.
- (3) Despite new part 5 and until a relevant event happens for the person—
- (a) the person may continue to carry out, or be engaged to carry out, the disability work; and
 - (b) new sections 53, 54, 59 and 61 do not apply in relation to the person carrying out the disability work.
- (4) Each of the following is a *relevant event* for the person—
- (a) the person's transitioned application is decided or withdrawn;
 - (b) for a person who holds a transitioned clearance—the clearance is suspended or cancelled;
 - (c) an interim bar is imposed on the person.

Subdivision 3 Application of new part 5 for particular persons

376 Working with children authority holders

- (1) This section applies to a person if, on the commencement, the person—
 - (a) holds a working with children authority; and
 - (b) does not hold a transitioned clearance or a transitioned exclusion.
- (2) This section also applies to a person if—
 - (a) the person is issued a working with children authority after the commencement in relation to a working with children check application made by the person before the commencement; and
 - (b) when the working with children authority is issued to the person, the person does not hold a clearance or exclusion, including a transitioned clearance or transitioned exclusion.
- (3) However, this section does not apply to a person who is a transitioned applicant for a transitioned application on the commencement.
- (4) Until a relevant event happens for the person—
 - (a) the person may carry out, or be engaged to carry out, disability work; and
 - (b) a registered NDIS provider or funded service provider may engage the person to carry out disability work; and
 - (c) new sections 53, 54, 59 and 61 do not apply in relation to the person carrying out disability work.
- (5) Subsection (4) applies only to the extent the

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disability work includes the delivery of disability services or NDIS supports or services to a child or children with disability.

- (6) Each of the following is a *relevant event* for the person—
- (a) the person's working with children authority expires under the Working with Children Act and, at the time of the expiry, the person has not made a disability worker screening application;
 - (b) the person's working with children authority is suspended or cancelled under the Working with Children Act;
 - (c) a negative notice is issued to the person under the Working with Children Act;
 - (d) the person makes a disability worker screening application and the application is decided or withdrawn or an interim bar is imposed on the person.

377 Registered health practitioners

- (1) This section applies to a person if, on the commencement, the person—
- (a) is a registered health practitioner; and
 - (b) does not hold a transitioned clearance or a transitioned exclusion.
- (2) However, this section does not apply to a person who is a transitioned applicant for a transitioned application on the commencement.
- (3) Until a relevant event happens for the person—
- (a) the person may carry out, or be engaged to carry out, disability work; and

-
- (b) a registered NDIS provider or funded service provider may engage the person to carry out disability work; and
 - (c) new sections 53, 54, 59 and 61 do not apply in relation to the person carrying out disability work.
- (4) Each of the following is a *relevant event* for the person—
- (a) the person's current health profession registration expires under the Health Practitioner Regulation National Law (Queensland) and, at the time of the expiry, the person has not made a disability worker screening application;
 - (b) the person's current health profession registration is surrendered, suspended or cancelled under the Health Practitioner Regulation National Law (Queensland);
 - (c) the person makes a disability worker screening application and the application is decided or withdrawn or an interim bar is imposed on the person.
- (5) In this section—

current health profession registration means the person's registration in a health profession under the Health Practitioner Regulation National Law (Queensland) during the period of registration that is in effect on the commencement.

Subdivision 4 New disqualifying offences and new serious offences

378 Effect of conviction or charge for new disqualifying offence or new serious offence

- (1) For applying this Act in relation to a person convicted of a new disqualifying offence or new serious offence, it does not matter when the offence was committed or when the person was convicted of the offence.
- (2) This Act applies in relation to a person who is charged with a new disqualifying offence or new serious offence even if the charge, or the acts or omissions constituting the alleged offence, happened before the commencement.
- (3) For applying this Act to a transitioned clearance—
 - (a) a person convicted of a new disqualifying offence or new serious offence before the commencement is taken to have been convicted of the offence on the commencement; and
 - (b) a person the subject of a charge for a new disqualifying offence or new serious offence that has not been dealt with on the commencement is taken to have been charged with the offence on the commencement; and
 - (c) the fact that the person has been charged with, or convicted of, a new disqualifying offence or new serious offence, is taken to be information not known to the chief executive before the commencement.
- (4) In this section—

new disqualifying offence means an offence that—

 - (a) is a disqualifying offence; but

- (b) was not a disqualifying offence immediately before the commencement.

new serious offence means an offence that—

- (a) is a serious offence; but
- (b) was not a serious offence immediately before the commencement.

379 Existing application to cancel negative notice or negative exemption notice

- (1) This section applies if, immediately before the commencement, an application under former section 82 to cancel a person's negative notice or negative exemption notice had not been decided or withdrawn.
- (2) If the person is a disqualified person—
 - (a) the application is taken to be withdrawn; and
 - (b) the chief executive must give a notice about the withdrawal to the person.
- (3) If subsection (2) does not apply—
 - (a) the application is taken to be an application made under new section 130 in relation to the person's transitioned exclusion; and
 - (b) the amended Act applies for deciding the application.

Subdivision 5 Reassessment of holders of transitioned clearances

380 Reassessment of holder of transitioned clearance

- (1) This section applies if, under new section 108, the

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chief executive conducts a risk assessment of a person who holds a transitioned clearance.

- (2) The chief executive may give the person a notice asking the person to give the chief executive stated information, including by way of a submission, about a stated matter that the chief executive reasonably believes is relevant to whether the person poses a risk of harm to people with disability.
- (3) A request under subsection (2) must state that, if the person does not comply with the request within the reasonable time stated in the request, the chief executive may decide whether the person poses an unacceptable risk of harm to people with disability without the stated information.
- (4) If, after conducting the risk assessment of the person, the chief executive is required, or decides, to cancel the person's transitioned clearance under new part 5, division 6, subdivision 3, the chief executive must issue a State exclusion to the person.
- (5) Subsection (4) applies despite new section 122.

Subdivision 6 Reviews and appeals

381 Definitions for subdivision

In this subdivision—

affected person, for a part 5 reviewable decision, means the person about whom the decision was made.

part 5 reviewable decision means a part 5 reviewable decision under former section 108.

382 Undecided reviews or appeals

- (1) This section applies if, immediately before the commencement—
 - (a) an application for a review of a part 5 reviewable decision, made under former section 109 by the affected person for the decision, had not been decided or withdrawn; or
 - (b) an appeal against a decision of the tribunal relating to a part 5 reviewable decision, started under the QCAT Act by the affected person for the decision or the chief executive, had not been decided or withdrawn.
- (2) The entity hearing the review or appeal must dismiss—
 - (a) the application or appeal; and
 - (b) any proceeding that relates to the application or appeal.
- (3) Subsection (2) applies to a proceeding before the tribunal even if the dismissal would be contrary to a direction of the Court of Appeal.
- (4) The chief executive must make a new decision about the affected person under section 385.

383 Reviews not started on commencement

- (1) This section applies if—
 - (a) before the commencement—
 - (i) the chief executive made a part 5 reviewable decision; and
 - (ii) the affected person for the decision had not applied for a review of the decision under former section 109; and

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- (b) on the commencement—
 - (i) the affected person is not a disqualified person; and
 - (ii) the period for applying for a review of the decision had not ended.
- (2) The affected person may, within the period mentioned in subsection (1)(b)(ii), apply to the chief executive to make a new decision about the person under section 385.
- (3) No fee is payable for an application under subsection (2).

384 Appeals not started on commencement

- (1) This section applies if—
 - (a) before the commencement, the chief executive or the affected person had a right to appeal, under the QCAT Act, against a decision of the tribunal relating to a part 5 reviewable decision; and
 - (b) on the commencement, the period for starting the appeal had not ended.
- (2) The right to appeal ends on the commencement.
- (3) Instead, within the period mentioned in subsection (1)(b)—
 - (a) the affected person may apply to the chief executive to make a new decision about the affected person under section 385; or
 - (b) the chief executive may decide to make a new decision about the affected person under section 385.
- (4) No fee is payable for an application under subsection (3)(a).

385 Chief executive must make new decision about affected person

- (1) This section applies in relation to the chief executive making a new decision about an affected person for a part 5 reviewable decision—
 - (a) under section 382(4) or 384(3)(b); or
 - (b) on application by the affected person under section 383(2), 384(3)(a), 386(5) or 387(5).
- (2) The chief executive must, within the prescribed period—
 - (a) conduct a risk assessment of the affected person; and
 - (b) decide—
 - (i) if the person holds a transitioned exclusion—to cancel or not to cancel the exclusion; or
 - (ii) if the person holds a transitioned clearance that is suspended—to cancel or not to cancel the suspension; and
 - (c) give the person a QCAT information notice for the chief executive’s decision.
- (3) The chief executive may give the affected person a notice extending, for a further 28 days, the period for the chief executive to comply with subsection (2).
- (4) For conducting the risk assessment under subsection (2)(a)—
 - (a) new part 5, division 4, subdivision 3 applies with necessary changes; and
 - (b) the chief executive may give the affected person a notice asking the person to give the chief executive stated information, including by way of a submission, about a stated matter that the chief executive

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reasonably believes is relevant to whether the person poses a risk of harm to people with disability.

- (5) A request under subsection (4)(b) must state that, if the affected person does not comply with the request within the reasonable time stated in the request, the chief executive may decide whether the person poses an unacceptable risk of harm to people with disability without the stated information.
- (6) The chief executive must decide the matter under subsection (2)(b) afresh, disregarding the part 5 reviewable decision and the reasons for that decision.
- (7) The risk assessment under subsection (2)(a), and the decision under subsection (2)(b), may be conducted and made only by a person who—
 - (a) did not make the part 5 reviewable decision; and
 - (b) holds a more senior office than the person who made the part 5 reviewable decision.
- (8) Subsection (7) does not apply to a part 5 reviewable decision made by the chief executive personally.
- (9) If the chief executive does not give the affected person a QCAT information notice within the prescribed period or a longer period notified under subsection (3), the chief executive is taken to have decided—
 - (a) if the person holds a transitioned exclusion—not to cancel the exclusion; or
 - (b) if the person holds a transitioned clearance that is suspended—not to cancel the suspension.
- (10) New sections 138ZW, 138ZX and 138ZY apply

in relation to the chief executive's decision under this section as if it were an internal review decision.

(11) In this section—

prescribed period means 28 days after—

- (a) for making a new decision under section 382(4)—the commencement; or
- (b) for making a new decision under section 384(3)(b)—the period mentioned in section 384(1)(b) ends; or
- (c) for making a new decision on application by an affected person under section 383(2), 384(3)(a), 386(5) or 387(5)—the application is made.

386 Undecided appeals about investigative information decisions

- (1) This section applies if, immediately before the commencement, an appeal to a Magistrates Court about a decision that information is investigative information, made under former section 113, had not been decided or withdrawn.
- (2) The court may continue to hear and decide the appeal as if the amendment Act had not been enacted.
- (3) Former sections 113 and 114 continue to apply in relation to the appeal as if the amendment Act had not been enacted.
- (4) If the court sets aside the decision appealed against, the appellant may apply to the chief executive under new section 130(1)(b) to cancel the appellant's transitioned exclusion.
- (5) If the court confirms the decision appealed against, the appellant may apply for a new decision under section 385 in relation to the

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relevant part 5 reviewable decision.

- (6) An application mentioned in subsection (5)—
 - (a) must be made within 28 days after the appellant is given notice of the court's decision under former section 114(4); and
 - (b) may be made even if, before the appeal was decided, the appellant applied to the chief executive for a new decision under section 385 in relation to the relevant part 5 reviewable decision.
- (7) No fee is payable for an application under subsection (5).
- (8) In this section—

relevant part 5 reviewable decision, in relation to the appellant, means a part 5 reviewable decision relating to the issue of the negative notice or negative exemption notice in relation to which the appellant started the appeal.

387 Appeals about investigative information decisions not started on commencement

- (1) This section applies if—
 - (a) before the commencement, a person had a right to appeal to a Magistrates Court under former section 113 about a decision that information, given to the chief executive as investigative information, is investigative information; and
 - (b) on the commencement, the period for starting the appeal had not ended.
- (2) The person may, within the period mentioned in subsection (1)(b), appeal to a Magistrates Court about the decision.
- (3) Former sections 113 and 114 apply in relation to

the appeal as if the amendment Act had not been enacted.

- (4) If the court sets aside the decision appealed against, the appellant may apply to the chief executive under new section 130(1)(b) to cancel the appellant's transitioned exclusion.
- (5) If the court confirms the decision appealed against, the appellant may apply for a new decision under section 385 in relation to the relevant part 5 reviewable decision.
- (6) An application mentioned in subsection (5)—
 - (a) must be made within 28 days after the appellant is given notice of the court's decision under former section 114(4); and
 - (b) may be made even if, before the appeal was decided, the appellant applied to the chief executive for a new decision under section 385 in relation to the relevant part 5 reviewable decision.
- (7) No fee is payable for an application under subsection (5).
- (8) In this section—

relevant part 5 reviewable decision, in relation to the appellant, means a part 5 reviewable decision relating to the issue of the negative notice or negative exemption notice in relation to which the appellant started the appeal.

Subdivision 7 Other transitional provisions

388 Things done before commencement in relation to prescribed notice or exemption notice

- (1) This section applies in relation to a thing done by

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- the chief executive or another person under this Act before the commencement in relation to—
- (a) a prescribed notice application or exemption notice application; or
 - (b) screening, under former part 5, a person who consented to the screening under former section 50; or
 - (c) a positive notice, positive exemption notice, negative notice or negative exemption notice.
- (2) The thing is taken to have been done under the amended Act in relation to—
- (a) for a thing done in relation to a prescribed notice application or exemption notice application—the transitioned application under section 372(2) or (3) for the application; or
 - (b) for a thing done in relation to screening, under former part 5, a person who consented to the screening under former section 50—the person’s transitioned application under section 373(2); or
 - (c) for a thing done in relation to a positive notice or positive exemption notice—the transitioned clearance under section 369(2) for the notice; or
 - (d) for a thing done in relation to a negative notice or negative exemption notice—the transitioned exclusion under section 371(2) for the notice.
- (3) The amended Act applies for the purpose of subsection (2) with necessary changes.
- (4) This section does not limit another provision of this division.

389 Obligations or powers arising before commencement in relation to prescribed notice or exemption notice

- (1) This section applies if—
- (a) before the commencement, the chief executive or another person was required or permitted under this Act to do, but did not do, something in relation to—
 - (i) a prescribed notice application or exemption notice application; or
 - (ii) screening, under former part 5, a person who consented to the screening under former section 50; or
 - (iii) a positive notice, a positive exemption notice, a negative notice or a negative exemption notice; and
 - (b) on the commencement, the period within which the chief executive or other person was required or permitted to do the thing has not ended.
- (2) The chief executive or other person must or may do the thing under the amended Act in relation to—
- (a) for a thing required or permitted to be done in relation to a prescribed notice application or exemption notice application—the transitioned application under section 372(2) or (3) for the application; or
 - (b) for a thing required or permitted to be done in relation to screening, under former part 5, a person who consented to the screening under former section 50—the person’s transitioned application under section 373(2); or

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- (c) for a thing required or permitted to be done in relation to a positive notice or positive exemption notice—the transitioned clearance under section 369(2) for the notice; or
 - (d) for a thing required or permitted to be done in relation to a negative notice or negative exemption notice—the transitioned exclusion under section 371(2) for the notice.
- (3) The amended Act applies for the purpose of subsection (2) with necessary changes.
 - (4) This section does not limit another provision of this division.

390 Particular references in Act or document

In an Act or a document, to the extent the context permits—

- (a) a reference to a prescribed notice application or exemption notice application under this Act includes a reference to a disability worker screening application; and
- (b) a reference to a positive notice or positive exemption notice under this Act includes a reference to a clearance; and
- (c) a reference to a negative notice or a negative exemption notice under this Act includes a reference to an exclusion.

391 Eligibility applications and eligibility declarations lapse

- (1) An eligibility application made but not decided before the commencement lapses.
- (2) An eligibility declaration held by a person

immediately before the commencement lapses.

392 Continuing obligation of confidentiality

- (1) This section applies if—
 - (a) immediately before the commencement, former section 227 applied to a person in relation to particular information; and
 - (b) on the commencement, new section 227 does not apply to the person in relation to the information.
- (2) Former section 227 continues to apply to the person in relation to the information as if the amendment Act had not been enacted.

393 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
 - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as it was in force before the commencement to the operation of the amended Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) A transitional regulation may only be made within 2 years after the day this section commences.
- (5) This section and any transitional regulation expire 3 years after the day this section commences.

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25 Replacement of sch 2 (Current serious offences)

Schedule 2—

omit, insert—

Schedule 2 Current serious offences

schedule 8, definition *serious offence*

1 *Animal Care and Protection Act 2001*

Provision	Relevant heading	Circumstances for offence
18	Animal cruelty prohibited	

2 Criminal Code

Provision	Relevant heading	Circumstances for offence
215	Carnal knowledge with or of children under 16	the offence is not a disqualifying offence
218	Procuring sexual acts by coercion etc.	the offence is not a disqualifying offence
221	Conspiracy to defile	the offence is not a disqualifying offence
222	Incest	the offence is not a disqualifying offence
223	Distributing intimate images	the offence was committed in relation to an intimate image of a child or vulnerable person
227A	Observations or recordings in breach of privacy	the offence was committed against a child or vulnerable person

Provision	Relevant heading	Circumstances for offence
227B	Distributing prohibited visual recordings	the offence was committed in relation to a prohibited visual recording of a child or vulnerable person
229BB	Failure to protect child from child sexual offence	
242	Serious animal cruelty	
300	Unlawful homicide	the offence is not a disqualifying offence
311	Aiding suicide	
313(1) or (2)	Killing unborn child	
314A	Unlawful striking causing death	
315	Disabling in order to commit indictable offence	the offence is not a disqualifying offence
315A	Choking, suffocation or strangulation in a domestic setting	the offence is not a disqualifying offence
316	Stupefying in order to commit indictable offence	the offence is not a disqualifying offence
317	Acts intended to cause grievous bodily harm and other malicious acts	the offence is not a disqualifying offence
320	Grievous bodily harm	
320A	Torture	the offence is not a disqualifying offence
321	Attempting to injure by explosive or noxious substances	the offence is not a disqualifying offence

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Provision	Relevant heading	Circumstances for offence
322	Administering poison with intent to harm	the offence is not a disqualifying offence and the penalty under section 322, penalty, paragraph (a) applies to the offence
323	Wounding	
323A	Female genital mutilation	the offence is a not disqualifying offence
324	Failure to supply necessities	the offence was committed against a child or vulnerable person who is a person under care in relation to the offender
326	Endangering life of children by exposure	the offence was committed against a child who is a person under care in relation to the offender
327	Setting mantraps	the offence is not a disqualifying offence
328	Negligent acts causing harm	the offence was committed against a child or vulnerable person who is a person under care in relation to the offender
328A(4)	Dangerous operation of a vehicle	
352	Sexual assaults	the offence is not a disqualifying offence
354	Kidnapping	the offence is not a disqualifying offence
354A	Kidnapping for ransom	the offence is not a disqualifying offence

Provision	Relevant heading	Circumstances for offence
363	Child-stealing	the offence is not a disqualifying offence
363A	Abduction of child under 16	the offence is not a disqualifying offence
364	Cruelty to children under 16	the offence was committed against a child who is a person under care in relation to the offender
399	Fraudulent concealment of particular documents	the offence was committed with intent to defraud a child or vulnerable person
408C	Fraud	the offence was committed against, or in relation to the property of, a child or vulnerable person
408D	Obtaining or dealing with identification information	the offence was committed in relation to identification information about a child or vulnerable person
415	Extortion	the penalty under section 415(1), penalty, paragraph (a) applies to the offence
430	Fraudulent falsification of records	the offence was committed with intent to defraud a child or vulnerable person
488	Forgery and uttering	the offence was committed with intent to defraud a child or vulnerable person

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3 *Drugs Misuse Act 1986*

Provision	Relevant heading	Circumstances for offence
5	Trafficking in dangerous drugs	
6	Supplying dangerous drugs	the offence is one of aggravated supply under section 6(2)(a), (aa), (b) or (c)
8	Producing dangerous drugs	the penalty under section 8(1), penalty, paragraph (a) or (b) applies to the offence
9D	Trafficking in relevant substances or things	

26 *Amendment of sch 3 (Repealed or expired serious offences)*

- (1) Schedule 3, authorising provision, ‘section 47’—
omit, insert—
schedule 8, definition *serious offence*
- (2) Schedule 3, entry for the Criminal Code, table, column headings—
omit, insert—

Provision	Relevant heading	Circumstances for offence
(3)	Schedule 3, entry for the Criminal Code— <i>insert—</i>	
400	Concealing wills	as the provision was in force from time to time before its repeal by the <i>Criminal Code and Other Acts Amendment Act 2008</i>

401	Concealing deeds	as the provision was in force from time to time before its repeal by the <i>Criminal Code and Other Acts Amendment Act 2008</i>
416	Attempts at extortion by threats	as the provision was in force from time to time before its repeal by the <i>Criminal Code and Other Acts Amendment Act 2008</i>
417	Procuring execution of deeds etc. by threats	as the provision was in force from time to time before its repeal by the <i>Criminal Code and Other Acts Amendment Act 2008</i>
427	Obtaining goods or credit by false pretence or wilfully false promise	as the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
(4)	Schedule 3, entry for column headings— <i>omit, insert—</i>	the Criminal Code (Cwlth), table,

Provision	Relevant heading	Circumstances for offence
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27	Replacement of sch 4 (Current disqualifying offences)	
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Schedule 4—

omit, insert—

	Schedule 4	Current disqualifying offences
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schedule 8, definition *disqualifying offence*

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1 *Classification of Computer Games and Images Act 1995*

Provision	Relevant heading	Circumstances for offence
23	Demonstration of an objectionable computer game before a minor	
26(3)	Possession of objectionable computer game	
27(3) or (4)	Making objectionable computer game	
28	Obtaining minor for objectionable computer game	

2 *Classification of Films Act 1991*

Provision	Relevant heading	Circumstances for offence
41(3)	Possession of objectionable film	
42(3) or (4)	Making objectionable film	
43	Procurement of minor for objectionable film	

3 *Classification of Publications Act 1991*

Provision	Relevant heading	Circumstances for offence
12	Sale etc. of prohibited publication	the penalty under section 12, penalty, paragraph (c) applies to the offence
13	Possession of prohibited publication	the penalty under section 13, penalty, paragraph (c) applies to the offence
14	Possession of child abuse publication	

Provision	Relevant heading	Circumstances for offence
15	Exhibition or display of prohibited publication	the penalty under section 15, penalty, paragraph (c) applies to the offence
16	Leaving prohibited publication in or on public place	the penalty under section 16, penalty, paragraph (c) applies to the offence
17	Producing prohibited publication	the penalty under section 17(1), penalty, paragraph (c), (2), penalty, paragraph (c), (3) or (4) applies to the offence
18	Procurement of minor for RC publication	
20	Leaving prohibited publication in or on private premises	the penalty under section 20, penalty, paragraph (c) applies to the offence

4 Criminal Code

Provision	Relevant heading	Circumstances for offence
210	Indecent treatment of children under 16	
211	Bestiality	
213	Owner etc. permitting abuse of children on premises	
215	Carnal knowledge with or of children under 16	the offence was committed against a child aged under 14 years or a child who is more than 5 years younger than the offender
216	Abuse of persons with an impairment of the mind	

[s 27]

Provision	Relevant heading	Circumstances for offence
217	Procuring young person etc. for carnal knowledge	
218	Procuring sexual acts by coercion etc.	the offence was committed against a child or vulnerable person
218A	Using internet etc. to procure children under 16	
218B	Grooming child under 16 years or parent or carer of child under 16 years	
219	Taking child for immoral purposes	
221	Conspiracy to defile	the offence was committed against a child or vulnerable person
222	Incest	the offence was committed against a child or vulnerable person
228	Obscene publications and exhibitions	a penalty under section 228(2) or (3) applies to the offence
228A	Involving child in making child exploitation material	
228B	Making child exploitation material	
228C	Distributing child exploitation material	
228D	Possessing child exploitation material	

Provision	Relevant heading	Circumstances for offence
228DA	Administering child exploitation material website	
228DB	Encouraging use of child exploitation material website	
228DC	Distributing information about avoiding detection	
228I	Producing or supplying child abuse object	
228J	Possessing child abuse object	
229B	Maintaining a sexual relationship with a child	
229FA	Obtaining prostitution from person who is not an adult	
229G	Procuring engagement in prostitution	the penalty under section 229G(2) applies to the offence
229H	Knowingly participating in provision of prostitution	the penalty under section 229H(2) applies to the offence
229HB	Carrying on business of providing unlawful prostitution	the penalty under section 229HB(2) applies to the offence
229I	Persons found in places reasonably suspected of being used for prostitution etc.	the penalty under section 229I(2) applies to the offence
229L	Permitting young person etc. to be at place used for prostitution	
300	Unlawful homicide	the unlawful killing is murder under section 302
306	Attempt to murder	

[s 27]

Provision	Relevant heading	Circumstances for offence
307	Accessory after the fact to murder	
309	Conspiring to murder	
315	Disabling in order to commit indictable offence	the offence was committed against a child or vulnerable person
315A	Choking, suffocation or strangulation in a domestic setting	the offence was committed against a child or vulnerable person
316	Stupefying in order to commit indictable offence	the offence was committed against a child or vulnerable person
317	Acts intended to cause grievous bodily harm and other malicious acts	the offence was committed against a child or vulnerable person
320A	Torture	the offence was committed against a child or vulnerable person
321	Attempting to injure by explosive or noxious substances	the offence was committed against a child or vulnerable person
322	Administering poison with intent to harm	the offence was committed against a child or vulnerable person and the penalty under section 322, penalty, paragraph (a) applies to the offence
323A	Female genital mutilation	the offence was committed against a child or vulnerable person
323B	Removal of child from State for female genital mutilation	

Provision	Relevant heading	Circumstances for offence
327	Setting mantraps	the commission of the offence resulted in the death or injury of a child or vulnerable person
349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352	Sexual assaults	the offence was committed against a child or vulnerable person
354	Kidnapping	the offence was committed against a child or a vulnerable person, other than in a familial context
354A	Kidnapping for ransom	the offence was committed against a child or a vulnerable person, other than in a familial context
363	Child-stealing	the offence was not committed in a familial context
363A	Abduction of child under 16	the offence was not committed in a familial context
28	Amendment of sch 5 (Repealed or expired disqualifying offences)	
	(1) Schedule 5, authorising provision—	
	<i>omit, insert—</i>	
		schedule 8, definition <i>disqualifying offence</i>

[s 29]

- (2) Schedule 5, entry for the Criminal Code, table, column headings—

omit, insert—

Provision Relevant heading Circumstances for offence

- (3) Schedule 5, entry for the Criminal Code—

insert—

325 Endangering life or as the provision was in force from
 health of apprentices or time to time before its repeal by the
 servants *Training and Employment Act 2000*

- (4) Schedule 5, entry for the *Crimes Act 1914* (Cwlth), table, column headings—

omit, insert—

Provision Relevant heading Circumstances for offence

- (5) Schedule 5, entry for the Criminal Code (Cwlth), table, column headings—

omit, insert—

Provision Relevant heading Circumstances for offence

29 Amendment of sch 8 (Dictionary)

- (1) Schedule 8 is amended by omitting each of the following definitions—

<i>consumer</i>	<i>harm</i>	<i>positive notice card</i>
<i>corresponding law</i>	<i>imprisonment order</i>	<i>prescribed notice</i>
<i>current</i>	<i>interim sexual offender order</i>	<i>prescribed notice application</i>
<i>disqualification order</i>	<i>investigative information</i>	<i>prescribed period</i>
<i>disqualified person</i>	<i>issue</i>	<i>prescribed person</i>
<i>disqualifying offence</i>	<i>minimum frequency for regulated engagement</i>	<i>registered NDIS provider</i>
<i>eligibility application</i>	<i>NDIS Act</i>	<i>regulated engagement</i>
<i>eligibility declaration</i>	<i>NDIS non-government service provider</i>	<i>relevant disqualified person</i>
<i>engaged</i>	<i>NDIS provider</i>	<i>relevant disqualified person decision</i>
<i>engaged by the department</i>	<i>negative exemption notice</i>	<i>relevant person</i>
<i>engaged person</i>	<i>negative notice</i>	<i>screening decision</i>
<i>exceptional case</i>	<i>non-government service provider</i>	<i>serious offence</i>
<i>exemption notice</i>		<i>service outlet</i>
<i>exemption notice application</i>		
<i>final offender prohibition order</i>	<i>part 5 reviewable decision</i>	<i>sole trader</i>
<i>final sexual offender order</i>	<i>positive exemption notice</i>	<i>temporary offender prohibition order</i>
<i>funded non-government service provider</i>	<i>positive notice</i>	

(2) Schedule 8—

insert—

affected person, for a reviewable decision, see section 138ZR(2).

appellant, for an appeal under section 138J, see section 138J(2).

[s 29]

applicant, for part 5, means the applicant for a disability worker screening application.

approved way, for making an application or request or giving a notice, means a way for making the application or request or giving the notice—

- (a) approved by the chief executive; and
- (b) notified on—
 - (i) the department’s website; or
 - (ii) the whole-of-government website.

authorised entity, for a person, see section 138ZJ.

banning order see the *National Disability Insurance Scheme Act 2013* (Cwlth), section 9.

chief executive (child safety) means the chief executive of the department in which the *Child Protection Act 1999* is administered.

chief executive’s screening functions means the chief executive’s functions under part 5.

chief executive (working with children) means the chief executive of the department in which the *Working with Children Act* is administered.

clearance see section 50(1).

clearance card means a clearance card for a clearance within the meaning of section 98(2).

combined application see section 67(2).

conduct, of a person, means an act or an omission to perform an act.

consumer means—

- (a) for an NDIS service provider—a person with disability who is provided with NDIS supports or services by the service provider; or

-
- (b) for the department or a funded service provider—a person with disability who is provided with disability services by the department or service provider.

corresponding law means a law of another State that relates to the screening of persons who carry out, or propose to carry out, NDIS disability work.

criminal history event, in relation to a person, see section 138B.

dealt with, in relation to a charge for an offence, means any of the following—

- (a) the person who is charged is convicted or acquitted of the charge;
- (b) the person who is charged is convicted of another offence for which the conduct was substantially the same as the conduct of the offence charged;
- (c) the charge has been withdrawn or dismissed;
- (d) a nolle prosequi or no true bill is presented in relation to the charge.

disability work means—

- (a) NDIS disability work; or
- (b) State disability work.

disability worker screening application means—

- (a) an NDIS worker screening application; or
- (b) a State disability worker screening application.

disciplinary action, in relation to a person, see section 138O(2).

disciplinary information, about a person, see section 138O(1).

disqualified person means a person who—

[s 29]

- (a) has a conviction for a disqualifying offence; and
- (b) was an adult when the offence was committed.

disqualifying offence means—

- (a) an offence against a provision of an Act mentioned in schedule 4 or 5—
 - (i) if each circumstance (if any) stated for the offence in the schedule applies to the offence; and
 - (ii) regardless of whether the provision has been amended from time to time or numbered differently; or
- (b) an offence against a provision of an Act of the Commonwealth prescribed by regulation to be a disqualifying offence; or
- (c) a related offence for an offence mentioned in paragraph (a) or (b).

domestic violence information, about a person, means information about the history of domestic violence orders made against the person under the *Domestic and Family Violence Protection Act 2012*.

domestic violence order see the *Domestic and Family Violence Protection Act 2012*, section 23(2).

employer, of a person in relation to disability work, means the entity that engages the person to carry out the disability work.

engaged, in relation to carrying out work, see—

- (a) section 44; and
- (b) also—

-
- (i) for risk-assessed NDIS work—section 46; or
 - (ii) for State disability work—sections 48 and 49.

exclusion see section 51(1).

financial reward does not include a payment that is a reimbursement for expenses.

funded service provider see section 14.

harm, to a person—

- (a) for part 6—see section 144; or
- (b) otherwise—includes any detrimental effect on a person’s physical, psychological, emotional, sexual or financial wellbeing, however the detrimental effect is caused.

interim bar means an interim bar imposed under section 82.

internal review, of a reviewable decision, see section 138ZT(1).

internal review decision means a decision made, or taken to have been made, under section 138ZV on an application for internal review of a reviewable decision.

interstate NDIS clearance see section 50(3).

interstate NDIS exclusion see section 51(3).

investigative information, about a person, see section 138I(1).

investigative information decision see section 138J(2).

NDIS clearance see section 50(2).

NDIS disability work see section 45(1).

NDIS disciplinary or misconduct information, about a person—

[s 29]

- (a) means information about the person's professional conduct in relation to the national disability insurance scheme given to the chief executive by the NDIS commission; and
- (b) includes information about—
 - (i) an incident involving the person, or a complaint or allegation about the person, investigated under the *National Disability Insurance Scheme Act 2013* (Cwlth); and
 - (ii) adverse and substantiated findings of an investigation conducted under the *National Disability Insurance Scheme Act 2013* (Cwlth); and
 - (iii) a banning order made against the person.

NDIS exclusion see section 51(2).

NDIS service provider see section 15(1).

NDIS sole trader see section 16(1).

NDIS supports or services see section 12A.

NDIS worker screening application means—

- (a) an application for a clearance made under section 65; or
- (b) a combined application to the extent it is an application under section 65.

NDIS worker screening database see the *National Disability Insurance Scheme Act 2013* (Cwlth), section 9.

NDIS (Worker Screening) Practice Standards means NDIS Practice Standards that are made under the *National Disability Insurance Scheme Act 2013* (Cwlth) about the screening of workers employed or otherwise engaged by registered

NDIS providers.

NDIS worker screening unit means an entity responsible, under a corresponding law, for screening persons who carry out, or propose to carry out, NDIS disability work.

notifiable person, for a person, see section 52.

parent, of a person, includes—

- (a) in any case—the spouse of a parent of the person; and
- (b) for an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a parent of the person; and
- (c) for a Torres Strait Islander—a person who, under Island custom, is regarded as a parent of the person.

person under care, in relation to a person, means a child or vulnerable person who—

- (a) is receiving care or support because the child or vulnerable person is unable to—
 - (i) care for himself or herself; or
 - (ii) protect himself or herself from harm or exploitation; and

Examples of a child or vulnerable person who is receiving care or support for a reason mentioned in paragraph (a)(i) or (ii)—

- a child in foster care
- an elderly person in residential aged care
- a person with a mental illness receiving inpatient treatment in a hospital

- (b) has a relationship with the person—
 - (i) because of the care or support mentioned in paragraph (a); and

[s 29]

- (ii) other than because the person is a relative of the child or vulnerable person.

QCAT information notice, for an internal review decision, means a notice complying with the QCAT Act, section 157(2).

registered NDIS provider see section 15(2).

related offence, for a particular offence, means another offence that is—

- (a) an offence of counselling or procuring the commission of the particular offence; or
- (b) an offence of attempting, or of conspiring, to commit the particular offence; or
- (c) an offence that, at the time it was committed, was the particular offence; or
- (d) an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted the particular offence or an offence mentioned in paragraph (a), (b) or (c).

relative, of a person—

- (a) means the person's spouse, child, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, niece, nephew or first cousin; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative mentioned in paragraph (a); and
- (c) for a Torres Strait Islander—includes a person who, under Island custom, is regarded as a relative mentioned in paragraph (a); and
- (d) for a person with a parent who is not a biological parent—includes anyone who

would be a relative mentioned in paragraph (a) if the parent were a biological parent.

Example for paragraph (d)—

the child of a person's step-parent

relevant person—

- (a) for part 4—see section 37; or
- (b) for part 5, division 8—see section 136.

reviewable decision see section 138ZR(1).

risk-assessed NDIS work see section 45(2).

risk assessment means a risk assessment under part 5, division 4, subdivision 3.

risk assessment matter, in relation to a person, means a matter that—

- (a) is or may be relevant to whether the person poses a risk of harm to people with disability; and
- (b) is prescribed by regulation to be a risk assessment matter.

schedule 6 or 7 offence means—

- (a) an offence against a provision of an Act mentioned in schedule 6 or 7—
 - (i) if each circumstance (if any) stated for the offence in the schedule applies to the offence; and
 - (ii) regardless of whether the provision has been amended from time to time or numbered differently; or
- (b) a related offence for an offence mentioned in paragraph (a).

section 93A transcript see the *Evidence Act 1977*, section 93AA(3).

serious offence means—

[s 29]

- (a) an offence against a provision of an Act mentioned in schedule 2 or 3—
 - (i) if each circumstance (if any) stated for the offence in the schedule applies to the offence; and
 - (ii) regardless of whether the provision has been amended from time to time or numbered differently; or
- (b) an offence against a provision of an Act of the Commonwealth prescribed by regulation to be a serious offence; or
- (c) a related offence for an offence mentioned in paragraph (a) or (b).

State clearance see section 50(4).

State disability work see section 47.

State disability worker screening application means—

- (a) an application for a clearance made under section 66; or
- (b) a combined application to the extent it is an application under section 66.

State entity see section 138P.

State exclusion see section 51(4).

State sole trader see section 16(2).

vulnerable person means an adult who, because of the person's age, illness or disability, is, or may be, unable to—

- (a) care for himself or herself; or
- (b) protect himself or herself from harm or exploitation.

whole-of-government website means—

- (a) www.qld.gov.au; or

-
- (b) another website prescribed by regulation.
working with children check application see the Working with Children Act, schedule 7.
- (3) Schedule 8, definition *police information*, paragraph (c)—
omit, insert—
- (c) information about whether the person is or has been—
- (i) subject to offender reporting obligations; or
- (ii) subject to an offender prohibition order or offender prohibition disqualification order; or
- (iii) named as the respondent to an application for an offender prohibition order; or
- (iv) the subject of an application for an offender prohibition disqualification order.
- (4) Schedule 8, definition *relevant review and appeal information*, paragraph (a), from ‘to the tribunal’ to ‘division 11, subdivision 1’—
omit, insert—
- for a review of the decision under part 5, division 9
- (5) Schedule 8, definition *relevant review and appeal information*, paragraph (b)(i), ‘section 113’—
omit, insert—
- section 138J
- (6) Schedule 8, definition *relevant review and appeal information*, paragraph (b)(ii), from ‘to the tribunal’ to ‘section 115’—
omit, insert—

[s 30]

for a review of the decision under section 138L

(7) Schedule 8, definition *relevant review and appeal information*, paragraphs (c) and (d)—

omit, insert—

(c) the period within which the person must apply for the review or start the appeal;

(d) how the person may apply for the review or start the appeal;

Part 3

Amendment of Working with Children (Risk Management and Screening) Act 2000

30 Act amended

This part amends the *Working with Children (Risk Management and Screening) Act 2000*.

Note—

See also the amendments in schedule 1.

31 Amendment of s 175 (Clearance required to employ person in regulated employment)

Section 175(2)—

insert—

(d) the employee holds a disability exclusion or interstate NDIS exclusion and the employer knows, or ought reasonably to know, the employee holds the disability exclusion or interstate NDIS exclusion.

32 Amendment of s 176A (Person prohibited from regulated employment without clearance)

(1) Section 176A(2)—

insert—

(e) holds a disability exclusion or interstate NDIS exclusion.

(2) Section 176A—

insert—

(4) Also, if the person was issued a disability exclusion or interstate NDIS exclusion because a disability clearance or interstate NDIS clearance issued to the person was cancelled, a court may not find that the aggravating circumstance mentioned in subsection (2)(e) applies to the person unless the court is satisfied the person was given written notice about—

(a) the issue of the disability exclusion or interstate NDIS exclusion; or

(b) the cancellation of the disability clearance or interstate NDIS clearance.

33 Amendment of s 176C (Exemption required to employ police officer or registered teacher in regulated employment)

Section 176C(2)—

insert—

(d) the employee holds a disability exclusion or interstate NDIS exclusion and the employer knows, or ought reasonably to know, the employee holds the disability exclusion or interstate NDIS exclusion.

[s 34]

34 Amendment of s 176E (Police officer or registered teacher prohibited from regulated employment without exemption)

(1) Section 176E(2)—

insert—

(e) holds a disability exclusion or interstate NDIS exclusion.

(2) Section 176E—

insert—

(4) Also, if the person was issued a disability exclusion or interstate NDIS exclusion because a disability clearance or interstate NDIS clearance issued to the person was cancelled, a court may not find that the aggravating circumstance mentioned in subsection (2)(e) applies to the person unless the court is satisfied the person was given written notice about—

(a) the issue of the disability exclusion or interstate NDIS exclusion; or

(b) the cancellation of the disability clearance or interstate NDIS clearance.

35 Amendment of s 176H (Definitions for division)

Section 176H, definition *restricted employment*, paragraph (b), ‘6(3)(c)(i)’—

omit, insert—

6A(3)(a) or (b)

36 Insertion of new s 187A

After section 187—

insert—

187A Application combined with disability worker screening application

- (1) A person (an *applicant*) may combine an application mentioned in section 187(1) or (2) with a disability worker screening application.
- (2) An application made under subsection (1) is a *combined application*.
- (3) This chapter applies to a combined application to the extent it is an application mentioned in section 187(1) or (2).
- (4) If a combined application is made to the chief executive, the chief executive must give the information in the combined application, to the extent the information relates to the applicant's disability worker screening application, to the chief executive (disability services).

37 Insertion of new s 190A

After section 190—

insert—

190A Chief executive may request further information for combined application

- (1) This section applies if an applicant made a combined application and the chief executive becomes aware that, under the *Disability Services Act 2006*—
 - (a) the applicant's disability worker screening application has been withdrawn; or
 - (b) a disability exclusion has been issued to the applicant.
- (2) The chief executive may give the applicant a notice asking the applicant to advise the chief executive, within a reasonable stated time, whether or not the applicant wishes to proceed

[s 38]

with the working with children check application under this part.

- (3) A request under subsection (2) must state that, if the applicant does not comply with the request within the stated time, the applicant's working with children check application will be withdrawn.

38 Insertion of new s 193A

After section 193—

insert—

193A Effect of interim bar imposed by chief executive (disability services)

- (1) This section applies if—
 - (a) the applicant has also made a disability worker screening application, regardless of whether the applicant made a combined application; and
 - (b) the chief executive is aware that the chief executive (disability services) has imposed an interim bar on the applicant under the *Disability Services Act 2006*, section 82.
- (2) The chief executive is not required to decide the applicant's working with children check application until the chief executive becomes aware that the interim bar is no longer in effect.
- (3) If the chief executive defers deciding the working with children check application under subsection (2), the chief executive must give the applicant a written notice about the deferral.

39 Insertion of new s 196A

After section 196—

insert—

196A Withdrawal of combined application

- (1) This section applies if the applicant made a combined application.
- (2) The applicant may combine a notice withdrawing the applicant's working with children check application under section 196 with a request to withdraw the applicant's disability worker screening application.

Note—

The request may be made orally or in writing. See—

- (a) section 196(3); and
 - (b) the *Disability Services Act 2006*, section 75(2).
- (3) A request made under subsection (2) is a ***combined withdrawal request***.
 - (4) This part applies to a combined withdrawal request to the extent it is a notice under section 196.
 - (5) If a combined withdrawal request is made to the chief executive, the chief executive must give a notice about the combined withdrawal request to the chief executive (disability services).

40 Amendment of s 198 (Deemed withdrawal—failure to comply with particular requests)

Section 198(a)(i), 'or 190(1)(b)'—

omit, insert—

, 190(1)(b) or 190A(2)

41 Amendment of s 221 (Deciding application—no conviction or conviction etc. for non-serious offence)

- (1) Section 221(1)—

[s 42]

insert—

(d) the chief executive is aware of other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person.

(2) Section 221(2), ‘or (c)’—

omit, insert—

, (c) or (d)

42 Amendment of s 223 (Deciding application—negative notice cancelled or holder of eligibility declaration)

(1) Section 223(2) and (3), from ‘police information’ to ‘subsection (1)(a) or (b),’—

omit, insert—

new assessable information about the person,

(2) Section 223—

insert—

(5) In this section—

new assessable information, about a person, means information about the person that—

(a) is, police information, disciplinary information or other information that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person; and

(b) was not known to the chief executive when the chief executive took the action mentioned in subsection (1)(a) or (b).

43 Amendment of s 226 (Deciding exceptional case if conviction or charge)

(1) Section 226(2)—

insert—

(da) information about the person given to the chief executive under the *Disability Services Act 2006*, section 138ZG;

(2) Section 226(2)(da) and (e)—

renumber as section 226(2)(e) and (f).

44 Amendment of s 228 (Deciding exceptional case if disciplinary information exists)

(1) Section 228, heading, after ‘disciplinary information’—

insert—

or other relevant information

(2) Section 228(1)(b)—

omit, insert—

(b) is aware of—

(i) disciplinary information about the person; or

(ii) other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person.

(3) Section 228(2), ‘The’—

omit, insert—

If the chief executive is aware of disciplinary information about the person, the

(4) Section 228—

[s 45]

insert—

- (3) If the chief executive is aware of other information about the person mentioned in subsection (1)(b)(ii), the chief executive must have regard to the following—
- (a) the nature of the information, including the circumstances and gravity of the behaviour or conduct the subject of the information;
 - (b) the relevance of the information to employment, or carrying on a business, that involves or may involve children;
 - (c) the length of time that has passed since the event or conduct the subject of the information occurred;
 - (d) anything else relating to the information that the chief executive reasonably believes is relevant to the assessment of the person.

45 Amendment of s 229 (Chief executive to invite submissions from person about particular information)

Section 229(2)(a)—

insert—

- (iii) any other information about the person that the chief executive is aware of that the chief executive reasonably believes is relevant to whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person; and

46 Replacement of s 231 (Term of clearance and negative notice)

Section 231—

omit, insert—

231 Term of clearance

- (1) Unless cancelled earlier under part 5A, the term of a working with children clearance issued to a person is—
 - (a) if the chief executive decides the term of the clearance under subsection (2)—the term decided by the chief executive; or
 - (b) otherwise—3 years.
- (2) The chief executive may decide that the term of a person's working with children clearance is the same as the term of—
 - (a) if the person made a combined application—a disability clearance issued to the person by the chief executive (disability services) after deciding the application; or
 - (b) a disability clearance otherwise held by the person.
- (3) The term decided by the chief executive under subsection (2) may be less than 3 years or more than 3 years.

Note—

Under the *Disability Services Act 2006*, section 101, the term of an NDIS clearance is 5 years and the term of a State clearance is 3 years.

231A Term of negative notice

A negative notice remains in force until it is cancelled under part 5A.

47 Amendment of s 283 (Deciding application—police officer if further screening not required)

Section 283(a)—

omit, insert—

[s 48]

- (a) the chief executive is not aware of—
 - (i) any police information about the person; or
 - (ii) any other information about the person that would be relevant to deciding whether it would be in the best interests of children for the chief executive to issue the exemption to the person; and

48 Amendment of s 284 (Deciding application—registered teacher if further screening not required)

Section 284(a)—

omit, insert—

- (a) the chief executive is not aware of—
 - (i) any police information or disciplinary information about the person; or
 - (ii) any other information about the person that would be relevant to deciding whether it would be in the best interests of children for the chief executive to issue the exemption to the person; and

49 Replacement of s 289 (Term of exemption and negative notice)

Section 289—

omit, insert—

289 Term of exemption

- (1) Unless a relevant event happens earlier, the term of a working with children exemption issued to a person is—
 - (a) if the chief executive decides the term of the exemption under subsection (2)—the term decided by the chief executive; or

- (b) otherwise—3 years.
- (2) The chief executive may decide that the term of a person's working with children exemption is the same as the term of—
 - (a) if the person made a combined application—a disability clearance issued to the person by the chief executive (disability services) after deciding the application; or
 - (b) a disability clearance otherwise held by the person.
- (3) The term decided by the chief executive under subsection (2) may be less than 3 years or more than 3 years.

Note—

Under the *Disability Services Act 2006*, section 101, the term of an NDIS clearance is 5 years and the term of a State clearance is 3 years.

- (4) Each of the following is a **relevant event** for a working with children exemption—
 - (a) if the holder of the exemption is a police officer—the holder stops being a police officer;
 - (b) if the holder of the exemption is a registered teacher—the holder stops being a registered teacher;
 - (c) the exemption is cancelled under part 5A.

289A Term of negative notice

A negative notice remains in force until it is cancelled under part 5A.

50 Amendment of s 304A (Cancelling authority because of subsequent information)

- (1) Section 304A(1)—

[s 51]

insert—

(ab) other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the person to continue to hold the authority that was not known to the chief executive when the decision was made; or

(2) Section 304A(1)(ab) and (b)—

renumber as section 304A(1)(b) and (c).

51 Replacement of s 344 (Chief executive must give information about particular holders to chief executive (disability services))

Section 344—

omit, insert—

344 Giving information to chief executive (disability services)

- (1) This section applies to information about a person—
 - (a) the chief executive was given, or given access to, under chapter 7 or this chapter; or
 - (b) in the chief executive's possession in relation to an employment-screening decision about the person.
- (2) The chief executive may give information about a person to the chief executive (disability services) if the chief executive reasonably believes the information is relevant to the functions of the chief executive (disability services) under the *Disability Services Act 2006*, part 5.
- (3) Without limiting subsection (2), the information that may be given includes—

-
- (a) information about a working with children check application made by a person; and
 - (b) information about a working with children authority or negative notice held by a person; and
 - (c) police information about a person; and
 - (d) disciplinary information about a person; and
 - (e) information about a person's mental health.

52 Insertion of new s 344C

After section 344B—

insert—

344C Notifying self-managed NDIS participant about particular matters

- (1) This section applies if—
 - (a) a child is an NDIS participant; and
 - (b) a relevant person for the child gives the chief executive written notice that a stated person carrying on an NDIS regulated business is delivering NDIS supports or services to the child.
- (2) The chief executive may give the child, a person with parental responsibility for the child or the child's plan manager a written notice about any of the following matters—
 - (a) if a working with children check application made by the person is decided—that fact and whether the person was issued a working with children authority or negative notice;
 - (b) if a working with children authority held by the person expires or is suspended or

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cancelled—the expiry, suspension or cancellation;

- (c) if, under section 339(3), the chief executive is required to give a notifiable person for the person a notice about a change in police information about the person—the change in the police information.
- (3) A notice about a matter mentioned in subsection (2)(c) must include only the information about the change in the police information that the chief executive is required to give a notifiable person for the person under section 339(3).
- (4) In this section—

NDIS participant means a participant in the national disability insurance scheme under the *National Disability Insurance Scheme Act 2013* (Cwlth).

NDIS regulated business means a regulated business mentioned in schedule 1, section 16A.

parental responsibility see the *National Disability Insurance Scheme Act 2013* (Cwlth), section 75.

plan manager, for a child who is an NDIS participant, means a person other than the child who is managing the funding for supports under the child’s plan within the meaning of the *National Disability Insurance Scheme Act 2013* (Cwlth), section 42.

relevant person, for a child who is an NDIS participant, means—

- (a) the child; or
- (b) a person with parental responsibility for the child; or
- (c) the child’s plan manager; or

- (d) a person who carries on an NDIS regulated business that includes delivering NDIS supports or services to the child.

53 Omission of s 345 (Use of information obtained under this chapter about a person)

Section 345—

omit.

54 Amendment of s 350 (Holder must notify change and pay prescribed application fee—volunteer or business carried on other than for financial reward)

Section 350(4), from ‘issue a replacement’—

omit, insert—

issue the person—

- (a) a new working with children clearance with a new term under section 231; or
- (b) a replacement working with children card for the person’s clearance.

55 Amendment of s 384 (Confidentiality of police, disciplinary and mental health information)

- (1) Section 384, heading, ‘police, disciplinary and mental health’—

omit, insert—

protected

- (2) Section 384(1)(b)—

omit, insert—

- (b) in that capacity, was given, or given access to, any of the following information (*protected information*) about a person—

[s 55]

- (i) police information about the person and information related to the police information;
 - (ii) disciplinary information about the person;
 - (iii) information about the person's mental health, including, for example, information about a proceeding in the Mental Health Court or the Mental Health Review Tribunal about the person;
 - (iv) other information about the person that the chief executive has considered in making an employment-screening decision about the person, including, for example, information given to the chief executive by the chief executive (disability services) under the *Disability Services Act 2006*, section 138ZG.
- (3) Section 384(2)(a), 'information mentioned in subsection (1)(b)'—
omit, insert—
protected information
- (4) Section 384(3) and (4), before 'information'—
insert—
protected
- (5) Section 384(4)(d)—
omit, insert—
(d) is expressly permitted under chapter 8 or section 395; or

56 Replacement of s 385 (Confidentiality of other information)

Section 385—

omit, insert—

385 Confidentiality of other information

- (1) This section applies to a person who—
 - (a) is or has been—
 - (i) a Minister or a member of the Minister’s staff; or
 - (ii) a public service employee employed in the department; and
 - (b) in that capacity, was given or given access to confidential information.
- (2) However, this section does not apply in relation to confidential information that is protected information under section 384.
- (3) The person must not use the confidential information, or disclose or give access to the confidential information to anyone else, unless the use, disclosure or giving of access is allowed under subsection (4).

Maximum penalty—100 penalty units.

- (4) The person may use the confidential information, or disclose or give access to the confidential information to another person, if the use, disclosure or giving of access—
 - (a) is for the purpose of this Act; or
 - (b) is for the purpose of obtaining advice for, or giving advice to, the Minister in relation to the confidential information; or
 - (c) is for the purpose of performing a function under another law; or
 - (d) is for a proceeding in a court or tribunal; or

[s 57]

- (e) is authorised under a regulation or another law; or
- (f) happens with the consent of the person to whom the confidential information relates; or
- (g) is for a purpose directly related to a child's protection or welfare.

57 Amendment of s 395 (Reports by chief executive)

Section 395(3)(b), from 'chapter 8'—

omit, insert—

chapter 8 or 8A, including—

- (i) protected information under section 384; and
- (ii) confidential information to which section 385 applies.

58 Amendment of s 401 (Regulation-making power)

(1) Section 401(2)—

omit, insert—

(2) A regulation may—

- (a) provide for arrangements between the chief executive and the chief executive (disability services) in relation to receiving, withdrawing, dealing with and deciding combined applications; and
- (b) prescribe fees payable under the Act and provide for the fees to be refunded or waived; and
- (c) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

- (2) Section 401(4) and (5)—
omit.

59 Replacement of ch 11, pt 20 (Transitional provision for Disability Services and Other Legislation (NDIS) Amendment Act 2019)

Chapter 11, part 20—

omit, insert—

Part 20 Transitional provisions for Disability Services and Other Legislation (Worker Screening) Amendment Act 2020

590 New regulated employment

- (1) This section applies if, immediately before the commencement—
- (a) a person was employed in employment, or was continuing in employment, mentioned in schedule 1, section 6A; and
 - (b) the employment was not regulated employment mentioned in schedule 1, section 6 as in force immediately before the commencement; and
 - (c) the person does not hold a working with children authority.
- (2) Sections 175, 176A, 176C and 176E do not apply in relation to the employment until—
- (a) 3 months after the commencement; or
 - (b) if the person makes a working with children check application within the period

[s 59]

mentioned in paragraph (a)—the application is decided or withdrawn.

591 New regulated business

- (1) This section applies if, immediately before the commencement—
 - (a) a person was carrying on a business mentioned in schedule 1, section 16A; and
 - (b) the business was not a regulated business mentioned in schedule 1, section 16 as in force immediately before the commencement; and
 - (c) the person does not hold a working with children authority.
- (2) Sections 176B and 176G do not apply in relation to the person carrying on the business until—
 - (a) 3 months after the commencement; or
 - (b) if the person makes a working with children check application within the period mentioned in paragraph (a)—the application is decided or withdrawn.

592 Information that may be given under section 344

- (1) For section 344, the chief executive may give information about a person to the chief executive (disability services) regardless of whether the information relates to a matter that happened before or after the commencement.
- (2) Without limiting subsection (1), the information that may be given includes—
 - (a) information about a working with children check application made before the commencement; and

- (b) information about a working with children authority or negative notice issued before the commencement; and
- (c) information mentioned in section 344(3)(c) to (e) obtained by the chief executive before the commencement.

593 Continuing obligation of confidentiality

- (1) This section applies if—
 - (a) immediately before the commencement, section 385 applied to a person in relation to particular information; and
 - (b) on the commencement, section 385 does not apply to the person in relation to the information.
- (2) Former section 385 continues to apply to the person in relation to the information as if the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020* had not been enacted.

60 Amendment of sch 1, s 6 (Health, counselling and support services)

- (1) Schedule 1, section 6(2) and (4)—
omit.
- (2) Schedule 1, section 6(3), ‘or (2)’—
omit.
- (3) Schedule 1, section 6(3)(c)—
omit.
- (4) Schedule 1, section 6(5), definition *consumer*—
omit.
- (5) Schedule 1, section 6(3) and (5)—

[s 61]

renumber as schedule 1, section 6(2) and (3).

61 Insertion of new sch 1, s 6A

Schedule 1, after section 6—

insert—

6A Disability work

- (1) Employment is regulated employment if the usual functions of the employment include providing disability services to a child or children with disability.
- (2) Employment is regulated employment if the usual functions of the employment—
 - (a) include carrying out risk-assessed NDIS work for an NDIS service provider in relation to a child or children with disability; and
 - (b) are to be carried out—
 - (i) as an employee of an NDIS service provider; or
 - (ii) at a place where an NDIS service provider provides NDIS supports or services to a child or children with disability.
- (3) Employment mentioned in subsection (1) or (2) is not regulated employment if—
 - (a) the employee is a person with disability at a place who receives disability services or NDIS supports or services at the place; or
 - (b) the employee—
 - (i) is a secondary school student on work experience; and
 - (ii) carries out risk-assessed NDIS work or provides disability services only under

the direct supervision of a person who holds a working with children authority; or

(c) the employee is a volunteer at a place who—

(i) is a relative of a person who receives disability services or NDIS supports or services at the place; and

(ii) is at the place only to help with the care of the person.

(4) In this section—

NDIS service provider see the *Disability Services Act 2006*, section 15(1).

risk-assessed NDIS work see the *Disability Services Act 2006*, section 45(2).

62 Amendment of sch 1, s 16 (Health, counselling and support services)

Schedule 1, section 16(1)(d)—

omit.

63 Insertion of new sch 1, s 16A

Schedule 1, after section 16—

insert—

16A Disability work

A business is a regulated business if the usual activities of the business include, or are likely to include—

(a) providing disability services to a child or children with disability; or

(b) providing NDIS supports or services to a child or children with disability.

[s 64]

64 Amendment of sch 7 (Dictionary)

- (1) Schedule 7, definitions *child-related service outlet*, *funded non-government service provider*, *NDIS non-government service provider*, *person with a disability*, *working with children check (exemption) application* and *working with children check (general) application*—

omit.

- (2) Schedule 7—

insert—

combined application see section 187A(2).

disability see the *Disability Services Act 2006*, section 11.

disability clearance means an NDIS clearance or State clearance.

disability exclusion means an exclusion under the *Disability Services Act 2006*.

disability worker screening application means a disability worker screening application under the *Disability Services Act 2006*.

interstate NDIS clearance see the *Disability Services Act 2006*, section 50(3).

interstate NDIS exclusion see the *Disability Services Act 2006*, section 51(3).

NDIS clearance see the *Disability Services Act 2006*, section 50(2).

NDIS supports or services see the *Disability Services Act 2006*, section 12A.

State clearance see the *Disability Services Act 2006*, section 50(4).

working with children check (exemption) application means—

-
- (a) an application for a working with children check for an exemption made under section 187(2); or
 - (b) a combined application, to the extent it is an application mentioned in paragraph (a).

working with children check (general) application means—

- (a) an application for a working with children check made under section 187(1); or
 - (b) a combined application, to the extent it is an application mentioned in paragraph (a).
- (3) Schedule 7, definition *chief executive (disability services)*, after ‘*Disability Services Act 2006*’—

insert—

, part 5

- (4) Schedule 7, definition *disciplinary information*, after paragraph (a)—

insert—

(aaa) under the *Disability Services Act 2006*, section 138ZG, to the extent the information is disciplinary information or NDIS disciplinary or misconduct information under that Act; or

- (5) Schedule 7, definition *disciplinary information*, paragraphs (aaa) to (h)—

renumber as paragraphs (b) to (j).

[s 65]

Part 4 Amendment of other legislation

Division 1 Amendment of Evidence Act 1977

65 Act amended

This division amends the *Evidence Act 1977*.

66 Amendment of s 93AA (Unauthorised possession of, or dealing in, s 93A criminal statements)

(1) Section 93AA(2A)(a) and (b)—

omit, insert—

- (a) preparing a section 93A transcript, or a summary of a section 93A transcript, to give to the chief executive (working with children) or chief executive (disability services) as mentioned in paragraph (b); or
- (b) giving a section 93A transcript, or a summary of a section 93A transcript, to the chief executive (working with children) or chief executive (disability services) under an employment-screening Act.

(2) Section 93AA—

insert—

- (2AB) The chief executive (working with children) or chief executive (disability services) has authority for subsection (1) if the chief executive has the possession or does the thing mentioned in that subsection for the purpose of, under an employment-screening Act—
 - (a) giving a section 93A transcript, or a summary of a section 93A transcript, that is in the chief executive's possession to—

-
- (i) for the chief executive (working with children)—the chief executive (disability services); or
- (ii) for the chief executive (disability services)—the chief executive (working with children); or
- (b) making an employment-screening decision.
- (3) Section 93AA(2B)(a)—
omit, insert—
- (a) was given to the chief executive (working with children) or chief executive (disability services) as mentioned in subsection (2A)(b) or (2AB); and
- (4) Section 93AA(2C)(a) and (2F)(a), ‘a WWC’—
omit, insert—
an employment-screening
- (5) Section 93AA(2E), ‘A WWC’—
omit, insert—
An employment-screening
- (6) Section 93AA(3), definitions *chief executive (employment screening)*, *employment-screening decision*, *former CCYPCG commissioner* and *WWC applicant*—
omit.
- (7) Section 93AA(3)—
insert—

chief executive (disability services) means the chief executive of the department in which the *Disability Services Act 2006*, part 5 is administered.

chief executive (working with children) means the chief executive of the department in which the *Working with Children Act* is administered.

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employment-screening Act means—

- (a) the Working with Children Act; or
- (b) the *Disability Services Act 2006*.

employment-screening applicant, for a section 93A transcript, means a person—

- (a) who allegedly committed the alleged offence to which the transcript relates; and
- (b) about whom—
 - (i) the chief executive (working with children) or the chief executive (disability services) has made an employment-screening decision; or
 - (ii) the chief executive (working with children) or the chief executive (disability services) is about to make an employment-screening decision.

employment-screening decision means—

- (a) an employment-screening decision under the Working with Children Act; or
- (b) a decision under the *Disability Services Act 2006* about—
 - (i) whether a clearance or exclusion should be issued to a person; or
 - (ii) whether a clearance or exclusion issued to a person should be cancelled.

Division 2

Amendment of Police Powers and Responsibilities Act 2000

67 Act amended

This division amends the *Police Powers and Responsibilities Act 2000*.

68 Replacement of ch 23, pt 1A, hdg (Provision for Working with Children (Risk Management and Screening) Act 2000)

Chapter 23, part 1A, heading—

omit, insert—

Part 1A Provisions for employment-screening laws

69 Insertion of new s 789B

After section 789A—

insert—

789B Power to demand production of disability worker clearance card

- (1) This section applies if a police officer knows or reasonably suspects—
 - (a) a person holds a disability worker clearance card; and
 - (b) the person—
 - (i) has been charged with a disqualifying offence within the meaning of the *Disability Services Act 2006*; or
 - (ii) is a disqualified person within the meaning of the *Disability Services Act 2006*.
- (2) The police officer may require the person to immediately give the person's disability worker clearance card to the police officer.
- (3) The person must comply with the requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Schedule 1 **Minor and consequential amendments**

section 70

Disability Services Act 2006

1 Section 10—

omit.

2 Section 32A(1)(b), from ‘a service provider that receives’ to ‘disability services’—

omit, insert—

a funded service provider

3 Sections 142, 146(1), 156(3)(c), 173(2)(d)(iii), 183(c), 191(1)(a) and 194(3) and (4)(b), after ‘disability services’—

insert—

or NDIS supports or services

4 Section 144, heading, ‘pt 6’—

omit, insert—

part

5 Section 144, definitions *community access services*, *respite services* and *restricting access*, after ‘disability services’—

insert—

or NDIS supports or services

6 Section 144, definitions *community access services* and *respite services*, paragraph (b), after ‘the Commonwealth’—

insert—

, including under the *National Disability Insurance Scheme Act 2013* (Cwlth)

7 Section 195(7)—

insert—

service outlet means a place at which disability services or NDIS supports or services are provided.

8 Section 217, heading, ‘div 2’—

omit, insert—

division

9 Section 217, definition *adult with a skills deficit*, after ‘disability services’—

insert—

or NDIS supports or services

10 Section 218(3), definition *keep and implement*, paragraph (b), after ‘disability services’—

insert—

or NDIS supports or services

11 Section 233(1), ‘and the NDIS Act’—

omit, insert—

, including the *National Disability Insurance Scheme Act 2013* (Cwlth),

-
- 12 Section 233(7), definition *eligible person*, ‘NDIS Act’—**
omit, insert—
National Disability Insurance Scheme Act 2013
(Cwlth)
- 13 Schedule 6, authorising provision, ‘section 111’—**
omit, insert—
schedule 8, definition *schedule 6 or 7 offence*
- 14 Schedule 7, authorising provision, ‘section 111’—**
omit, insert—
schedule 8, definition *schedule 6 or 7 offence*
- 15 Schedule 8, definitions *amended Act, amending Act, authorised guardian, commencement, compliance period, new disqualified person, new disqualifying offence, new relevant disqualified person, new serious offence, prescribed police information, previous service provider, repealed Act, stage 2 commencement date, transitional period* and *unamended Act*—**
omit.
- 16 Amendment of references to person or people with a disability**
All provisions of the Act are amended by—
- (a) omitting ‘person with a disability’ and inserting ‘person with disability’; and
 - (b) omitting ‘Person with a disability’ and inserting ‘Person with disability’; and
 - (c) omitting ‘people with a disability’ and inserting ‘people with disability’; and
 - (d) omitting ‘People with a disability’ and inserting ‘People with disability’.

17 Amendment of various provisions

Each of the following provisions is amended by omitting ‘non-government’—

- part 6, division 4, subdivision 3, heading, note
- part 6, division 7, subdivision 2, heading, note
- section 200E
- section 200G(1)(d)
- section 200M(1)
- section 200W
- section 200X(1)
- section 215
- section 226(1)(a)(ii) and (3)(b)
- section 230
- section 231

Guardianship and Administration Act 2000

1 Section 80U, definition *disability services*—

omit, insert—

disability services means disability services or NDIS supports or services under the *Disability Services Act 2006*.

2 Section 80U, definition *DSA* and schedule 4, definition *DSA*—

omit.

3 Section 80U, ‘DSA’, all occurrences not already amended by this schedule—

omit, insert—

Disability Services Act 2006

4 Section 80V(2)(e), ‘DSA, section 144’—

omit, insert—

Disability Service Act 2006, section 149

5 Section 80ZF(4)(b), 80ZO(a), 80ZS(5), definition *restricting access*, 80ZT(1) and (3)(a) and (f) and 80ZU, ‘DSA’—

omit, insert—

Disability Services Act 2006

Working with Children (Risk Management and Screening) Act 2000

1 Section 290A, after ‘person, the chief’—

insert—

executive

2 Section 295(2), ‘clearance’—

omit, insert—

authority

3 Section 297(1), note, 301(1), note, 302(3), note, 304C(1), note and 304F(1), note, ‘, 343 and 344’—

omit, insert—

and 343

4 Section 298(3), ‘, 342 or 344’—

omit, insert—

or 342

5 Sections 300 and 301, heading, ‘notice’—

omit, insert—

authority

6 Sections 304I(2)(a)(i) and 304N(3)(a)(i), ‘section 289(2)’—

omit, insert—

section 289A

7 Sections 304I(2)(a)(ii) and 304N(3)(a)(ii), ‘section 231(2)’—

omit, insert—

section 231A

8 Section 347, note—

omit.

9 Schedule 6, all references to ‘person with a disability’—

omit, insert—

person with disability

10 Schedule 7, definition *guardian*, ‘person with a disability’—

omit, insert—

person with disability

11 **Schedule 7, definition *working with children card*,
paragraph (b)(ii), ‘person’—**

omit, insert—

person’s authority

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